Handing Back Contracts:
Exploring the rising trend in third sector provider withdrawal from the social care market

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Contents

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Executive summary

The purpose of this report is to explore the experiences of and issues associated with processes of handing back social care contracts by voluntary sector providers of services. This research has come at a time of increasing concern regarding the sustainability of organisations (both voluntary and private) that have been involved in contracting public services from government in the social care sector.

1. Overall, 47 contracts were discussed in-depth over 16 interviews, including 3 organisations that had taken on work that had been handed back by others.

2. The majority of organisations reported withdrawing from more than one contract. The majority of these related to care at home services.

3. Withdrawals from contracts occurred in rural and urban areas.

4. Several providers indicated that surrendered service provision accounted for a significant share of the overall volume of business.

5. Of those organisations that handed back contracts, the majority indicated that the contracts concerned had been held for over ten years.

6. Decisions to hand back contracts followed lengthy internal deliberations and efforts to restructure organisations to avoid withdrawal.

7. Prior to handing back services, organisations could run significant annual deficits on individual contracts that ranged from £20K to £100,000. For some organisations, cumulative deficits over a number of services could reach over £1m.

8. The financial viability of individual contracts and the implications of persistent deficits on the overall financial wellbeing of provider organisations, especially the draining of reserves, was often seen as the key reason behind management's decision to withdraw.

9. Failure by the social care system to adequately fund the Scottish Living Wage was highlighted as an important factor for organisations falling into deficit, and draining their reserves.

10. Uncertainty caused by a lack of critical mass and fluctuations in volume of delivered services also contributed to the financial pressures faced by providers, and their decisions to withdraw.

11. The use by local authorities of framework agreements was highlighted as adding to the aforementioned lack of adequate volumes of work for providers.

12. The uncertainty associated with the fluctuating volumes of work flowing from framework agreements was perceived to be even more pronounced in relation to self-directed support (SDS) services. Several respondents saw SDS as epitomizing the trend towards risk shifting from local authorities to providers.

13. A combination of dispersed geographical services and a refusal by local authorities to pay for travel time was a further significant reason for withdrawal from contracts.

14. In roughly half the examples of service withdrawal, the hourly rates were considered to be too low, with some even failing to match providers' actual direct costs.

15. The quality of services provided was another key consideration in withdrawing from service provision. Organisations withdrew from contracts where the parameters of service provision had changed in ways that they felt were incompatible with their values and standards.

16. Prior to withdrawal from contracts, providers reported they had to deal with a number of employee resourcing and relations problems. Specifically:

    • Significant recruitment problems.

    • Deteriorating terms and conditions of employment.

    • Unpaid time and work.

    • Uncertainty and insecurity in employment.

17. Failure to recruit adequate numbers of workers could be a significant reason alone in providers' decisions to withdraw from contracts.

18. Problems with recruitment were particularly acute in rural areas, where unpaid extensive travel time and distances were a disincentive to potential workers.

19. The reputational damage to providers among families and the local community could be quite significant once a decision to withdraw was made.

20. Organisational resources were placed under further strain by a growing reliance on agency staff to fill the gaps in recruitment.

21. Providers reported a general lack of awareness, or a reluctance to engage with, their labour shortage issues by local authorities.

22. Where withdrawal from services was affected through decisions not to take part in retendering exercises, a mixed picture emerged regarding how local authorities reacted. These reactions included:

    • Evidence of complete lack of awareness of the difficulties faced by providers.

    • Challenging the right of providers to withdraw unilaterally.

    • Period of notice of withdrawal being extended to ensure service users were protected.

23. Different views were expressed about the implications that contractual withdrawals had for future relationships. Some providers were not overly concerned, while others feared it would have implications for future business.

24. Local authorities did not meet any of the costs to providers from operating services at a deficit, nor for the expenses associated with withdrawal from contracts.

25. Considerable time and resources were generally devoted to communicating and consulting with users and their families once a decision had been made.

26. Significant efforts were reportedly made to support the transfer of services through either seeking out potential alternative providers and/or liaising with them to minimise disruption to the services users received.

27. A common theme in interviews was the shock experienced by staff when informed that a contract was to be handed back. Staff reportedly felt powerless, which adversely affected motivation and turnover.

28. Where organisations took on services from those providers who handed them back, the existence of infrastructure and management capacity in a particular location were essential for the transfer to be viable.

Introduction

The purpose of this report is to explore the experiences of and issues associated with processes of handing back social care contracts by voluntary sector providers of services. This research has come at a time of increasing concern regarding the sustainability of organisations (both voluntary and private) that have been involved in contracting public services from government (Coalition of Care and Support Providers Scotland (CCPS), 2017 and 2018a; 2018b). Recent research has highlighted how the introduction of the Scottish Living Wage in adult social care may be contributing to greater insecurity of voluntary organisation providers. This insecurity, in turn, is seen to be leading to providers handing back contracts (Cunningham, Baluch, Cullen and James, 2018). This report highlights in more depth the motives for this phenomenon and its impact on providers, funders, employees and service users.

The report proceeds by introducing an overview on the background literature relating to sustainability and outsourcing in social care. This literature is followed by an outline of the study's qualitative method. The results of the study are presented, followed by a discussion and conclusion section, and the report closes with several recommendations.

Background literature

Historical Context: Outsourcing in social care

The British social care market has evolved over recent decades as part of the dismantling of the institutions and regulatory apparatus of Keynesianism welfare provision and amidst concerns over deteriorating public services (Thompson, 2007). Particular criticism was targeted at the insulation of the public sector workforce from the influence of external market forces as a result of services being delivered by staff employed on nationally negotiated terms and conditions (Buchanan, 1972).

The solution to the above problems in service delivery was to favour, where possible, cheaper and more efficient service provision involving the state's phased withdrawal from the delivery of services and its role as direct employer (see e.g. Entwistle, 2005; Walker and Ling, 2002). In its place came the establishment of a quasi-market made up of independent subcontracted organisations from the voluntary and private sectors (Crouch, 2011: Martin, 2011): a process of marketization that has resulted in outsourcing the majority of residential and domiciliary care (Hughes et al, 2009).

Indeed, the political and social consensus over the last forty years has seen successive governments favour outsourcing, beginning with Conservative administrations of the 1980s and 1990s, and the creation of compulsory competitive tendering under the Local Government, Planning and Land Act (1980) (Evans, 2016). These governments advocated for a spirit of entrepreneurialism to be injected into public services, including via the outsourcing of provision, a process which culminated in John Major's era of the 'enabling state' and the associated imposition of compulsory competitive tendering on areas previously seen as untouchable, e.g. the police, and a range of white collar, professional and technical activities (Foster and Scott, 1998). Such outsourcing was further extended during the New Labour era, albeit with attempts to move away from adversarial forms of contracting out geared to cost minimisation. Through partnerships with voluntary and private providers the rhetoric of these New Labour administrations was to deliver mutual gains and innovative service delivery within co-operative networks (Bach and Given, 2010).

Since 2010, successive Conservative-led administrations have further favoured outsourcing through 'Open Public Services' reforms that include the 'Big Society', Localism, the creation of mutualism and cooperatives, and the opening up competition in NHS England to 'any qualified provider' (Bach, 2012). It is no surprise that by 2015 – 16, the UK Government spent £251.5 billion per year on outsourcing and contracting or 13.7% of GDP (Public Administration and Constitutional Affairs Committee, 2018).

At the same time, the creation of competitive quasi-markets in public services such as social care has been further driven by the European Union's (EU) regulatory measures on state procurement. The latter legally required open competition in the award of contracts (above specific

financial thresholds) by all public bodies, and limited state aid that gave unfair advantage to any one market provider compared to others (Evans, 2016). Indeed, Evans states:

For many professionals in the public sector today the EU directives, and their transposition into domestic procurement legislation, have become the most definitive expression of the orthodoxy that all public sector spending decisions are in essence commercial market transactions in which they, as public officials, have a duty to ensure open competition (Evans, 2016, pp. 20).

Moreover, the UK is seen as one of the more zealous compliers with EU directives imposing requirements on how procurement is undertaken. Certainly, the voluntary sector has been able to double its income from contracting over the period since 2000 (Evans, 2016).

Concerns with marketisation and outsourcing during austerity

Outsourcing has always been contentious with regard to its impact on public services and employment. In the former case, concerns have been raised regarding the impact on service quality on the grounds that the margins required for external providers to make a profit, or to break even, or make small surpluses in the case of voluntary organisations, may lead to compromises in service quality (Hebson, 2003: Smith, 2012). With regard to employment conditions, despite some evidence of improving levels of empowerment and job enrichment, there is largely a consensus that outsourcing causes degradation in terms and conditions (Bach and Given, 2010; Smith 2012). Moreover, comparative European studies suggest that workers in the UK are more likely to experience degradation compared to those in other EU countries (Mori, 2017).

Despite the above debates, the consensus that outsourcing represents value for money for the state and better services for the customer has not been seriously challenged in political discourse. Yet questions arise regarding the sustainability of the social care quasi-market and the individual organisations providing services within it, especially in the current era of austerity. Much of the aforementioned Conservative-led agenda of outsourcing has been predicated on it assisting in the reduction of public service expenditure: a focus that has consequently led to concerns about its implications for service quality (Bach, 2012).

In turn, competition at a time of austerity may actually threaten services. The downward pressure on prices during austerity risks exacerbating trends characteristic of what is essentially a monopsonistic public service quasi-market in care, i.e. a market within which the state, as the dominant customer, has the ability to largely determine prices. Thus, representing the buying-side counterpart to a monopoly, a monopsony entails a market in which there is a single buyer controlling the demand for a good or service. As a result, where monopsonies are characterised by large numbers of suppliers engaging in competition, they are likely to be marked, as in the case of social care, by strong downward pressures on prices, perhaps to the point where they fail to cover their actual costs of running services. These competitive and downward pressures

on prices among suppliers, in turn, mean that social care providers will increasingly struggle, leading to bankruptcy or contractual breaches and voluntary terminations (Evans, 2016).

"Handing Back Contracts" – The Social Care Context

In Scotland, over the last two years CCPS's 'Business Resilience Survey' has revealed some alarming findings with regard to the sustainability of services delivered by voluntary sector providers. In the survey, providers are asked '*What proportion of their services are funded at sustainable levels?*' The 2017 study found the responses obtained pointing to '*a more rigorous attention to the sustainability of tenders and existing contract terms, which is leading to a withdrawal from the market*' (CCPS, 2017, pp.2). More specifically, providers were reportedly withdrawing from deficit running services and being much more cautious about what they choose to tender for. Cases of withdrawal were noted to be in more high risk services where people have extremely complex needs (CCPS, 2017).

The aforementioned CCPS study found that 10% of providers were considering withdrawal from contracts, while 33% had already acted in this way. The survey further identified a growing reluctance among providers to carry on delivering services where there is insufficient funding, i.e. to cover items such as travel time, sleepover costs or significant recruitment and retention problems. Caution among providers was further illustrated in their reluctance to 'over-deliver' or make investment decisions to develop new services (CCPS, 2017).

The impact of the government's policy on introducing the Scottish Living Wage in adult social care on the sustainability of services has been highlighted by previous work undertaken by Strathclyde University Business School. A combination of insufficient funding of the SLW policy, and implementation issues has exacerbated some of the above problems of service sustainability. In particular, organisations, both large and small, revealed significant cash flow problems and increasing numbers of deficit services, eventually leading to cases of handing back contracts by providers (Cunningham, Baluch, Cullen and James, 2018).

Moreover, a further 65% of providers in the CCPS Business Resilience Survey revealed how they had withdrawn from or decided not to participate in procurement exercises in the previous year. Reasons for withdrawal were reported as primarily concerned with inadequate funding, insufficient hourly rates, difficult recruitment and retention conditions, implications of TUPE transfers and a perception that contract terms placed 100% risk on the provider (CCPS, 2017). With regard to the types of services where providers had either handed back services or withdrew from a procurement exercise, the study found a wide range of adult provision, with care at home and learning disabilities the most common (CCPS, 2017).

One positive outcome from the above trends was a decline in organisations reporting that they ran services at a deficit. Indeed, a key reason for this reversal, after the negotiation of more realistic contract prices, was seen to be withdrawal from unsustainable services (CCPS, 2017).

The most recent CCPS resilience survey (CCPS, 2018a) reveals further disturbing trends. For example, between 2017 – 18 the proportion of providers reporting that the vast majority of their services (over 75%) are sustainable dropped from 57% of respondents to 44%. In addition, the percentage of respondents indicating that fewer than half of their services are sustainable increased from 15% to 27%. In contrast to 2017s fall in the proportion of providers that reported service deficits, 2018 revealed an increase from 14% to 24%.

The number of organisations reporting they had chosen not to participate in a procurement process had fallen from 65% in 2017 to 53% in 2018. The numbers of organisations actually withdrawing from contracts remained stable between 2017 – 2018 at around 30% (CCPS, 2018a).

Other studies confirm a rising trend in handing back contracts and problems with sustainability. Another survey by CCPS found that 44% of providers had withdrawn from tendering processes and 18% had handed back contracts in the previous twelve months (CCPS, 2018b). Annual pay and conditions benchmarking reports provided by Strathclyde University Business School reveal how the number of organisations that handed back contracts had increased by 15% in a year to 27%, having previously been reported at 20%. Moreover, of those that won a contract in the previous year, 23.5% indicated it was because it had been handed back by another provider (Cunningham, Baluch, James and Young, 2018).

In the wider UK, existing research and increasing media attention provide further useful insights into the phenomenon of handing back contracts in social care. In England, the Association for the Directors of Adult Social Services (ADASS), in a Budget Survey (ADASS, 2018) of 152 local authorities, revealed adult social care markets to be fragile, with continued provider closures and contract hand-backs, along with associated risks to quality. The same report comments on how this fragility among providers is at a time of financial pressures on adult social care budgets related to increasing need, complexity and demand.

Local authorities in the last two years in England have similarly identified 'ensuring market sustainability' as the area of most concern. In addition, despite the majority of local authorities reporting that they have increased fees paid to providers to cover rises in the National Minimum Wage, such financial pressures and fragility in the social care market are seen to be likely to continue through 2019-20 (ADASS, 2018).

As a consequence of the above climate, the aforementioned ADASS study found that 44 councils (or 29 per cent) had contracts handed back by home care providers. A third of these respondents (15 councils) reported that more than one contract had been handed back by providers, with the total rising to as many as 13 contracts. In total, 100 care providers handed back home care contracts to these local authorities. Moreover, 17 councils have seen contracts handed back from care home providers (11 percent) with one council reporting 23 such cases. In total, 45 care home providers handed care home contracts back in these 17 local authority areas (ADASS, 2018).

In research funded by the Welsh Government focussed on domiciliary care workers, registered managers and commissioners, Atkinson and Crozier (2016, p.2) noted that:

"all [participants] indicated widespread use of spot contracts and brokerage systems. All acknowledged the instability these create – for service users but also commissioners – as service providers could 'hand back' contracts that are unduly onerous or uneconomic. Care packages were also acknowledged to remain on brokerage systems for lengthy periods, often because of labour shortages."

From Atkinson and Crozier's research, it can be concluded that insufficient funding prevents organisations from paying staff sufficiently so that they remain with the organisation, or even that they apply in the first place. Those who were employed experienced "considerable employment insecurity and work intensification [...] resulting in many working 'full-time hours for part-time money'" (Atkinson and Crozier, 2016, p.3). This was compounded by payment for contact time only, and non-payment for travel time, resulting in what can only be described as "commissioning-led income security" (Atkinson and Crozier, 2016, p.3). What is more, this situation was seen to have a "negative impact on interactions with service users" (Atkinson and Crozier, 2016, p.3) that acted to make work more difficult, reduce service user cooperation, and diminish the prospect of workers experiencing the values-driven intrinsic rewards which the sector relies on heavily.

A report from Panorama and conducted by Opus (2017) found that 95 of 197 local authorities in England who participated had contracts returned by providers. Further analysis from this report asserts that 69 care homes closed in the opening three months of 2017, and that a quarter of the UK's 2,500 home care providers are at risk of insolvency.

According to the United Kingdom Home Care Association (UKHCA) (2016), the deficit of state-funded homecare during 2016-17 was roughly £513 million. This report again drew specific attention to the growing phenomena of providers handing back contracts to councils, noting that:

"While outside the scope of our data, we note that an apparent increase in homecare providers handing back contracts to their statutory sector purchasers on the basis of inadequate fee levels. With around 80% of homecare services purchased by the state, this has potentially critical implications for the people supported by homecare services," (UKHCA, 2016, p.3).

The issue of contract handback has, in fact, attracted significant attention from professional bodies (e.g. Chartered Institute of Procurement and Supply (CIPS), 2017) and newspapers. It was noted by Alan Long, Executive Director of Mears Group, in a Guardian (2016) newspaper article:

"Exiting contracts in this way is always the last resort and follows many months of trying to develop a different solution with a commissioner.

But, ultimately, it may be the only means to drive the essential change in services that are life-critical to our most vulnerable citizens […] I have huge sympathy for councils on this issue, especially as many have been forced to cut other services to protect social care budgets. However, there is no excuse for setting charge rates that will almost certainly lead to breaches of the minimum wage, or poor service."

Citing the Care Quality Commission in an article from the Financial Times, Plimmer (2017) draws attention to the fact that 81% of local authorities had reduced their real-term spending on social care for older people between 2012-2017, which would suggest that the phenomenon of providers handing back contracts has been in the making for some time. The issue has, however, not been created solely by a reduction in spending. Other factors, such as lack of additional funding to cope with increases to the National Living Wage (NLW), and more stringent immigration rules, which may worsen with the onset of Brexit, have also played a role. The latter one is moreover anticipated to bring greater problems with staffing and recruitment (ADASS, 2018)

The foreword to the jointly produced report by the Local Government Information Unit (LGIU) and Mears (2014, p.iv) warns that "if home care is not in crisis yet, it soon will be. More people need care and there is less money to pay for it […] we are probably lucky [that] there has not been a major home care scandal yet."

Of great concern is that the current financial conditions facing social care, and the associated unsustainability of contracts, mean that providers are facing questions relating to their survival. In April 2018, it was announced that Allied Healthcare, which had contracts with 150 local authorities, 8,700 employees, and provided care for 13,500 people (Wood, 2018), were forced to seek alternative means of funding via a Company Voluntary Arrangement (CVA), as their existing provision became increasingly untenable. In a company statement announcing the news, it was noted that "As with many independent providers in the UK health and social care sector, Allied Healthcare has been operating in a highly challenging environment for a sustained period of time, which has placed pressure on the company." In relation to the predicament, Simon Bottery, of health think-tank King's Fund, asserted: "The problems faced by Allied Healthcare are a symptom of the huge pressures facing a social care system which is at breaking point after years of underfunding […] This is yet another wakeup call to the huge problems in social care," (Jolly, 2018).

The causes of Allied Healthcare's financial woes are multifaceted, but contributing factors included severe cuts to local authority funding, raises in the minimum wage (Plimmer, 2018), and a potential bill of up to £11m resulting from backdated sleepover pay due to a retroactive change in legislation.

This dynamic is familiar to voluntary sector and independent organisations as well. Where independent care homes have been operating at a loss for some time, the question of how long organisations can continue to subsidise these losses becomes increasingly pointed. This can be observed

in relation to Four Season's decision to close seven loss-making sites in Northern Ireland in 2015 (Guardian, 2015). Research by insolvency agency Opus has referred to roughly 13% of care homes as "zombie operators" (Plimmer, 2016), operating continually at a loss and showing little sign of doing otherwise. However, debt is a considerably different matter in relation to independent provision of care: HC-One was founded from the collapse of Southern Cross in 2011, and Terra Firma acquired Four Seasons Healthcare for £825m in 2012 (Plimmer, 2018). More recently, HC-One has taken over 122 care homes previously run by BUPA, at a cost of £300m (Mildenhall, 2017). HC-One themselves are purported to have debts estimated to be approaching £600m (Davies, 2018). Often, mergers and buy-outs are the proposed solution to issues concerning ongoing financial constraint. While the outcome of loss-leading for independent providers is considerably different than that of voluntary sector organisations, the causes are reported to be very similar indeed.

Broader concerns with public sector outsourcing

Finally, in this section although not directly related to the phenomenon of handing back contracts or the voluntary sector in Scotland, the case of Carillion has raised concerns regarding the policies of government and other public bodies towards outsourcing. Until relatively recently, Carillion were regarded to be one of the UK government's most important contractors, with delivery responsibilities in the NHS, the prison service and the armed forces. At its peak, the company employed 20,000 workers in the UK (Cox, 2018). In January 2018 Carillion were forced into compulsory liquidation, and according to the National Audit Office (NAO), the collapse is expected to cost the taxpayer £148m (Morrison, 2018).

The Carillion collapse highlights familiar themes to those outlined above in our summary of Scottish social care. Austerity and the need to reduce public expenditure has reportedly led to an aggressive approach to transferring risk from the state to the external providers of services - often in respect of risks that the government itself has completely failed to analyse or to understand. Government procurement has been driven by price while failing to ensure that risk transfer is realistic and that quality and an appreciation of systemic risk and economic impact are a part of decisions to externalise service delivery (Public Administration and Constitutional Affairs Committee, 2018). Moreover, other large-scale external providers have struggled in the current financial climate with profit warnings for large companies such as Capita (Fletcher, 2018).

Regulatory issues

Having outlined the broader social care context in which contracts are being handed back, attention is now paid to four sets of statutory measures that potentially influence the process of handing back of contracts from external providers to state bodies, including local authorities. The first relates to the Procurement Reform Act Scotland (2014) and accompanying Procurement Regulations (2016). These regulations were brought in as part of a 2014 European Union Directive, and to deal with services above the EU procurement threshold of 750,000 Euros. Among the provisions of the regulations is a commitment to a sustainable procurement duty; the creation of a publicly-available

contracts register; and a requirement that procurement authorities not use price or cost as the sole award criteria. In terms of building sustainable procurement, this duty includes consideration of how authorities can improve the social, environmental and economic wellbeing of an area through their procurement process. In addition, the duty includes outlining how the authority intends to make it easier for small to medium-sized enterprises (SMEs), third sector organisations and supported businesses to participate in procurement.

There is also some recognition of 'Fair Work' principles as Schedule .19 allows tender assessments to take account of how the bidder approaches reward, recognition, training and supervision of staff. Moreover, there can be encouragement of payment of the living wage through the inclusion of 'fair work' criteria (which can include the payment of the living wage). At the same time, the guidance for the regulations is reportedly silent on the responsibilities of the contracting authority and its capacity to create financial and practice conditions that lead to poor quality work (CCPS, 2016).

Second, and in addition to the above statutory regulation, Scotland's Fair Work Convention has an increasingly influential role in regulating social care employment. The aim of the convention is to:

- provide advice on Fair Work to Scottish Government, policy makers and wider Scotland, and
- advocate for Fair Work across Scotland.

A recent report by the Convention has set out recommendations about how to realise fair work for social care workers. The Convention found that despite some good practice among employers, fair work is not being consistently delivered to social care employees. In terms of explaining the reasons for this, the wider funding and commissioning system is identified as the main factor undermining fair work. Indeed, the report highlights how the 'method of procurement creates a situation that is untenable'(Fair Work Convention, 2019, p.8), transferring the burden of risk of unpredictable demand for care entirely on the providers and the workforce. Care providers face uncertainty about the number of hours they are contracted to deliver, which subsequently leads to the proliferation of zero hours and temporary contracts in the sector. Subsequently, one of its key recommendations is to undertake:

"... a radical overhaul of commissioning practices in social care to ensure that fair work drives high quality service delivery through the adoption of both minimum contract standards... and through engagement at a sector level between purchasers, providers and deliverers of social care services ... Such an overhaul should end current commissioning practices of noncommittal hourly rate-based competitive tenders and framework agreements" (Fair Work Convention, 2019, p.37).

The third area of regulatory influence concerns changes in the provision of social care under the Self Directed Support Act (2013) that legislates to further encourage the personalisation of social care through the

expansion of Direct Payment and Individual budgets. The first implication of this legislation is the continued proliferation of smaller packages of individual services, rather than larger block contracts that contain large volumes of work. The second is that personalisation may aggravate wicked problems that are present in the sector, and increase and threaten the sustainability of providers. Specifically, evidence suggests that greater user choice can exacerbate recruitment and retention problems in social care, as organisations find it highly problematic to staff services where working time is characterised by intangibility (Eccles and Cunningham, 2016). Constant recruitment and retention problems can erode narrow surpluses negotiated in contracts by providers requiring them to draw from their financial reserves and threaten their sustainability.

Finally, the fourth source of regulatory influence alluded to above are the Transfer of Undertakings Regulations (1984; amended 2006). These regulations are seen to provide important legal safeguards for workers transferring from one employer to another. Commentators, however, also note the ability of employers to take advantage of increased opportunities to cut terms and conditions with various successive governments expanding the scope of employers to do so for economic, technical or organisational reasons (Cavalier and Arthur, 2006; Dickens 2012).

Research aims and questions

The phenomenon of providers handing back contracts to local authorities is, then, emerging as a key issue in the quasi-market for social care in Scotland. In light of the above literature, the areas to be explored by this research include the following:

- What are the reasons for social care voluntary organisations handing back contracts to the state?

- What types of contracts are providers handing back? Are they predominantly packages of care for individuals, or do they involve significant volumes of business?

- How straightforward (or otherwise) is the process of handing back a contract? How do commissioning authorities respond/ react? What is the nature of provider-commissioner dialogue prior to and during contract surrender?

- How do providers engage and communicate with service users in making a decision to hand back a contract?

- How do providers engage and communicate with staff in making such decisions?

- What is the impact of contract surrender on service availability, people using services, staff morale and terms and conditions, and on the provider that hands it back, and the one that takes it over?

Method

Qualitative data collection and analytical methods were used to gather and collate the experiences of service withdrawal of voluntary sector social care providers. By drawing on a qualitative approach, the research team sought to untangle the interplay of factors influencing service surrender and better understand providers' perceptions of how the process of handing back contracts resonated with service users, the withdrawing/taking-on organisation itself, and staff.

Interview methods are particularly suited to exploring the 'how', 'why' and 'what' of service withdrawal. Semi-structured interviews and a focus group were carried out with voluntary sector providers with experience of withdrawing from service provision, some of which had also taken on surrendered services. These interviews were supplemented with several funder/local authority perspectives. The themes addressed in the interviews and focus group explored the types of contracts or services that had been withdrawn from, as well as the rationale, process and impact of service withdrawal.

Overall, 16 voluntary sector organisations participated in 15 interviews and one focus group. Of these 16 organisations, 14 providers had experience of handing back contracts, two providers had experience of taking on surrendered services and one provider had experience of both. The perspectives of two local authorities were gathered in two further semi-structured interviews. These local authority perspectives offered additional insights, e.g. further contextual factors, including regulatory aspects, and constraints faced by funders that played a part in the phenomenon of service withdrawal.

Tracing the individual examples of service withdrawal through each interview, it was established that around 47 contracts were discussed. However, it should be noted that this figure may not be exhaustive as inevitably conversations jumped around and tended not to flow in uniform trajectories.

The interviews were recorded and transcribed verbatim, with any content allowing for identification of participants removed. Sensitive data, such as numbers pertaining to volumes of business or deficits incurred on individual services, was available exclusively to the research team to aid analysis but only where appropriate and under utmost care were these figures summarised and rephrased in a manner in which confidentiality would be ensured. Data analysis involved inductively identifying central themes directly from participants' accounts of service withdrawal in relation to the study's research questions: what set of factors led to the decision to surrender what types of services; how these translated into the process of withdrawal and; how this had affected the organisation, including its staff, and the service users. The analytical process involved constant comparison of contrasting or similar accounts in seeking to explain whether, for instance, some types of services or geographical areas might be more vulnerable than others to withdrawal; and if so, to establish the underlying causes of this.

Findings
## Handing back contracts: Types of contracts and rationale for service withdrawal

Why have services been handed back by providers?

This section provides an overview of the types of contracts, services and volumes of business social care providers had withdrawn from. While such decisions were never taken lightly as these went against the organisations' ethos and raison d'être to help and support service users, an intensification of this phenomenon was noted. The section begins by outlining how prominent handing back contracts was per type of service, before considering the volume of surrendered business as a proportion of overall business. Lastly, the section considers the role of the duration of service provision as an influencing factor in reaching the decision to withdraw from service delivery.

Types of contracts and volumes of business

The vast majority of the 16 participating providers had more than one and often more than two examples of withdrawing from service provision. While there was variety in the types of contracts and social care packages that providers had withdrawn from, the biggest proportion of examples discussed during interviews related to care at home contracts. A minority of providers additionally indicated that there had been a few incidences of withdrawal from delivery of individual care packages, which was noted by two respondents to be an increasingly common occurrence. Around a third of examples of service withdrawal given by providers concerned supported living and care homes. Just over a quarter of further accounts of service withdrawal related to support and leisure services. In terms of the location of handed back services, decisions to withdraw by providers were not a phenomenon exclusive to remote rural areas but were as likely to occur in urban areas and touched nearly the whole of Scotland.

Types of services handed back (47)

Other 3

Support and leisure services 11

Supported living and care homes 14

Care at home 19
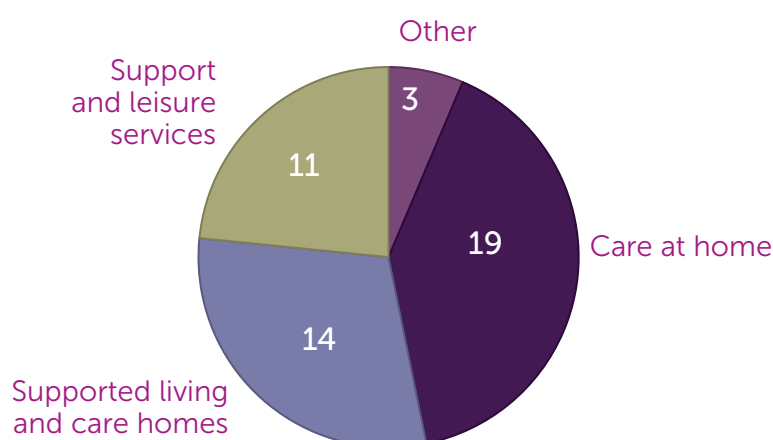
Looking at the volume of business associated with services withdrawn, again a fragmented picture emerged. While service withdrawal spanned across the whole spectrum of services, in the majority of cases it generally occurred in relation to small to medium sized packages and projects. These small to medium sized contracts represented only modest proportions of the overall volume of business undertaken by participants. Considering that most providers indicated withdrawing from two or more services, there was, however, a cumulative effect to the overall volume of surrendered business. More often than not, funding associated with surrendered service provision was not directly replaced.

In contrast, several providers reported handing back contracts that accounted for a quite significant share of the overall volume of business. For example, one provider indicated that handed back services represented approximately 10% of the organisation's income. In some of these cases such lost funding streams were replaced by taking over other contracts of similar volumes or re-channelled through SDS. In another example, the loss of £1.5m worth of income resulting from service withdrawal was compensated for by taking on a contract with roughly the same amount of funding that another provider had handed back. In addition, the loss of income was addressed through a (re-)focusing of the organisation's service provision strategy.

Notably, a few providers further reported holding on to services that were run at a deficit because they represented a significant proportion of the organisations' volume of business, raising questions regarding how long this could be sustained.

The legacy of service provision and its bearing on decision making

Three quarters of our respondents provided details about how long their services had been running before they had handed them back. Of these respondents, the largest proportion reported delivering services for ten or more years prior to handing them back. Contracts ranging in length from zero to five years accounted for the second largest proportion of cases, with several remaining contracts sitting between these two extremes. This data provides insights into the disruption of long-term care and support relationships.

A common denominator that clearly emerged across interviews with providers was that irrespective of the duration for which a service had been running prior to being handed back, the decision to withdraw was not taken lightly. Withdrawal followed lengthy negotiations or attempts to reconfigure services or internal organisational structures. Providers described feelings of upset and deep concern for the service users. There was unanimous agreement that providers resented the imperative to withdraw from service provision and thus from supporting individuals. Some services were run at a deficit for months, sometimes years, in an attempt to turn the situation around.

"I'll be honest, like us all, you know, a very difficult decision to make to decide, no, we can't deliver to vulnerable people in that area anymore.

It was a very difficult decision and as I said we did spend nearly two years riding through deficits of services before we came to that final decision [...] and my hope moving forward is we would not have to do that again. [...] So it kind of goes against the grain, but at the same time in order to ensure the rest of your service's viability then you have to do what you need to do in order to sustain your organisation and what you're currently delivering."

Inevitably, the longer a service had been running, the longer providers had endured challenges, such as deficits incurred or attempts to remodel service delivery. Conversely, for a few contracts of shorter duration, the decision to withdraw was reached more quickly following the emergence of issues with contracts. While, as previously noted, the decision to withdraw from services was not reached lightly, the length of providing that service was somewhat more relative in its bearing on deciding to withdraw compared to the emergence of challenges in delivering on contracts. Pressures on service delivery, such as funding available through hourly rates, changes to procurement legislation or recruitment problems, were seen as intensifying over recent years. As such, pressure mounted on underfunded or otherwise problematic contracts. This applied whether such contracts had always been underfunded over a longer amount of time and following changes over recent years needed re-evaluation or whether financial or other pressures had emerged after much shorter periods of time of contract duration.

Rationale for service withdrawal

This section presents the reasons providers gave for withdrawing from service provision. Financial viability was a significant factor in the decision making especially given the current context of austerity facing providers. Austerity exacerbated the risk of organisations incurring serious financial harm, while fluctuating volumes of business in various geographical spreads further aggravated this harmful effect. Lastly, the section considers evidence on the extent to which it was felt that service quality was being compromised or under threat.

Financial viability

A common theme through the vast majority of, albeit not all, accounts of difficulties concerned the financial viability of delivering particular services. The financial viability of individual contracts and the implications of resulting deficits on the overall financial wellbeing of the organisation were often seen as the 'final straw' to management. This risk to the organisation's wider financial sustainability was commented on by a VS provider highlighting the danger of running services at a deficit:

"I mean, I think the people have seen the writing on the wall. It's just that if you don't make those decisions in care, organisations will go to the wall."

The size of annual individual contract deficits varied from approximately £20K per annum to as much as £100,000. Some organisations experiencing cumulative losses over a number of services reported deficits of over £1m. More commonly providers reported cumulative

losses over several years of several hundred thousand pounds. Moreover, this was seen to be a conservative estimate given the additional senior management time that had gone into trying to make the contract work prior to handing back.

Numerous instances of service withdrawal could be seen to exemplify the financial squeezes brought on by a fiscal climate characterised by austerity, and how this aggravated the volatile nature of delivering certain services. Respondents indicated that some services were no longer sustainable under current financial arrangements with local authority funders.

> *"Usually at the time of budget setting is we're looking forward to the next 12 months financially, whether or not our service is sustainable, financially sustainable. Whereas before I don't think, I think it would have been very much a last option now. In fact I struggle to remember a time when I actually handed back a contract, whereas now it's actually part of our consideration because we can't sustain subsidising public services any longer. And there are some services that we don't believe will ever be fully funded or able to be sustainable financially, in which case we have handed back contracts."*

Indeed, several providers stated that the organisations' boards and management teams moved in the strategic direction of eliminating any service incurring a deficit in order to protect the organisation and its reserves; some highlighting the questionable practice of "propping up statutory services with charitable reserves". A social care provider reflected:

> *"If a service is costing you that much money, then you can't…you just can't run it. […] so I think, yes, it's probably commercially driven in a way, but actually it's worse than that because […] it's not like a private company where you're taking away from profit or you're taking it away from the shareholders. What you're doing is you're taking away from the charity. And money's hard enough to find in a charity. The… you know, than actually spending it on statutory services. Or do we accept that we should be out fundraising to fund statutory services? Because that's what that would lead to, is that you would be seeking funds to support…charitable funds to support statutory services."*

And a further provider noted the impact on reserves:

> *"I think what's came really to light for me personally having been in this, sort of, I suppose care sector for a very long time, the past two, three years has proven to be the finances of organisation, particularly third sector, is getting pulled even tighter and tighter. That puts more pressure on organisations on a whole in respect of their overall financial position when you look at their reserves. You know, organisations can pull on their reserves for so long but there comes a point where you can't keep pulling on your reserves to bail a service*

out that's not viable if every other service is struggling as well. There came a point of a few years ago where you had to start thinking, well, hold on, we need to step back and really have a good look about I hate to do this, but, you know, is that service viable for us to deliver."

Another significant factor frequently cited by providers when discussing what had hindered (or, by the same token, helped) the financial viability of delivering a service was the volume of work available. Uncertainty, lack of critical mass and fluctuations in volume of delivered services added to financial pressures. For example, a few providers described that the discontinuation of provision to a service user in receipt of quite a substantial package of care could be all it took to tip a service into deficit. As such, providers highlighted the necessity of adopting a more prudent approach to business.

Where framework agreements were used by commissioning authorities, such pressures were in most cases aggravated. The vast majority of providers reported having encountered various issues with framework arrangements.

Given the nature of social care provision, the volume of work can fluctuate significantly based on changing demand which posed several challenges to contracts remaining viable. In most cases, volumes of work that could be obtained through tendering exercises on frameworks were simply too small to account for overheads, such as administrative or managerial work generally, but also especially in relation to increased efforts being directed at recruitment and retention. In particular, stagnating volumes of work that could not gradually be expanded, on the one hand, as well as reduced volumes of work, on the other, contributed to reaching the decision to withdraw from service provision in some cases.

"I think if we'd managed to grow a significant care at home business over the three years before the tender came up for renewal, we would have been looking at it in a very different way. We might have said, oh yeah, absolutely we'll stay in this business, but because there was question marks over the ability to grow the business there and whether or not the residential care home would stay there, we were already thinking, this is possibly not an area we want to continue in."

Some participants found that the existence of excessive numbers of other providers on frameworks acted as a constraint in obtaining sufficient volumes of work. In addition, the way that rankings of providers operated on frameworks allowed the top providers in the hierarchy to take their pick of business, with the rest being passed down among the remaining organisations. Another practice included the use of ratios that split the work up between ranked providers that in practice proved challenging to implement.

"When they commissioned it three years later, it was one of the most complex tenders I've ever seen, so they had divided it into geographical lots, which they hadn't done before. They'd also wanted

just one or two providers per area, and then they had a very complex system of saying, if you were the second provider in an area, you had to take something like X or Y per cent of the work. So there was all sorts of complexities within it, which actually when we looked at it, we said, you know what, there's no way we could make this work. It doesn't allow us to build up enough customers in a particular area to make the runs and the sort of rota-ing of staff work. So actually…and we had to do quite a lot of analysis to even get to that point, because they'd made it really complex."

And

"We had no confidence that the framework in terms of how referrals are managed, of course, because what's happened is the top providers have grown exponentially and the rest are contracting. A number have pulled out of that framework. We're not the only one."

A notable exception to the above was a respondent who found framework agreements to work out in their organisation's favour. The respondent put this down to the organisation's usual ability to receive a favourable ranking in tiered frameworks.

"We've got very positive experiences of frameworks, because we've been placed quite high up on the framework."

In addition, providers reported that those that were not at the top of the framework could be left with service users with complex needs who required extremely high support.

"We found ourselves in a position where referrals really dried up very, very quickly. And we discovered that not only were referrals sparse, despite a number of meetings with commissioners, they were becoming more complex. So the top providers, the top five providers in a framework, had the first choice of referrals. So by the time they were coming down towards the bottom third and further on, you were getting referrals for people with complex needs who may require more support than people who had traditionally entered the service."

Several providers also indicated that the grounds on which rankings were awarded were not always clear, especially with the indicators used in the assessment of bids. Providers it seemed were also not always aware of what ranking they had been awarded.

"There's transparency up to the point where everybody does their bids and then they publish the list, but there's no transparency in terms of, here's the reasons why."

While the procurement legislation highlights the suitability of using framework agreements for purchases in which the overall volume

of work fluctuates or cannot be clearly stated from the outset, the implied systemic uncertainty of a 'guarantee of zero' in some instances obstructed organisations' ability to adequately assess the costs and risks associated with accepting such business.

This uncertainty also affected providers who had taken over handed back contracts (and was inherently even more pronounced in relation to SDS). Several providers saw such uncertainties around, for instance, volumes of work as epitomizing the trend towards increasingly shifting risk from local authorities onto providers. Strict (sometimes even punitive) clauses relating to responding to referrals further illustrated this shift of risk. While providers endorsed SDS in principle, in a few instances the uncertainty of balancing business needs to manage fluctuating funding streams (whether based on hourly rates or SDS) proved challenging.

Although recruitment issues are explored in more detail later, there were also a few individual accounts of providers having to withdraw from service provision not as a result of insufficient volumes of work available but as a result of difficulties in recruiting workers to expand or maintain existing services. As a provider explained,

"We commission blind, so people go onto frameworks, they don't know what they're bidding, you know, they don't know what they're gonna get. They're not going for a block contract that they can cost, that they've got all the information. So people go onto frameworks, nowadays, they don't know what they're gonna get off a framework, they don't know what investment to make in terms of putting in an infrastructure, a local office, you know, a local manager, a registration. So they put in, you know, they take a business risk. And all the risks are on the side of the provider. Because we've moved away from the block contract, and the guarantee. So, you know, the provider takes the risk, takes the hit. Of course, for a provider to survive, they need to take these risks, and of course, will go onto framed risk in the absence of any other good business contract. And so, as well as handing back work, handing back packages, individual packages, which I think all providers will have done, actually, stepping away from a framework, or handing back packages so that you're not delivering off that framework. There's all of that activity on top of actually handing a contract back."

Problems with the geographical spread of services

In addition to the total volume of work that could be obtained, the location of the work was a factor in determining withdrawal. Specifically, where the volume of work was located and how individual pieces of work were dispersed across locations emerged as important factors influencing the viability of service delivery. In relation to this, some providers reported that at times local authority payments meant travel between clients was not paid for or was insufficiently accounted for in hourly rates. To attempt to alleviate the problems associated with travel costs, several local authorities had introduced zones within which work would be located. However, a few providers commented that even in

these circumstances, travel could still represent a significant source of costs, with the result that financial challenges remained.

A respondent further noted that at the point of bidding it was still open whether the award of work would fall into a zone in which the organisation already had an infrastructure that could support it.

"A local authority had a framework, and people bid for various lots, and the lots were geographically divided. But you don't know which lots you're gonna end up with. And if you end up with a lot here, and a lot there, you know, and so on, you're on different lots. And then you're ranked differently, so you may get different volumes of work. So you've then got to decide where you put your base, and your travel policy is probably gonna say that everybody gets paid from the base, so that's your place of work."

As a consequence of the issues surrounding volumes of work, their location, and the conditions of some framework agreements, several providers had indicated a recent shift in their approach to business involving thresholds of volumes of delivered hours or minimum hourly rates needed in order for services to be viable and considered.

"X hours, I'm not saying that that couldn't change, but at this point in time that's probably our threshold. We're saying that if, I don't know, a new council came to me and said can you deliver 100 hours, my answer to that would be, yes, but that will cost you a very high hourly rate for me to deliver that in that area. That's not going to be our… whatever you're charging care at home just now that isn't going to be that rate for us to deliver 100 hours in there. It could be twice that depending on what it is we would need to do."

Inadequate hourly rates

Service withdrawal in the majority of cases was underpinned by struggles with the funding available. As was previously highlighted, these stemmed, on the one hand, strongly related to issues around the volume of work that could be obtained and, on the other, to the monetary value of funding available, of which hourly rates constituted a central element. Thus, in roughly half of the examples of service withdrawal, the hourly rates were considered as too low.

Mirroring findings from a recent study of the implementation of the Scottish Living Wage (Cunningham, Baluch, Cullen and James, 2018), hourly rates in most instances were reported to have come under increasing pressure. The key problems stated by providers handing back contracts, however, related not only to the rates themselves but also to assumptions made by local authorities regarding the true cost of care.

Local authority estimates of appropriate and sustainable hourly rates were considered as too low to cover the actual costs of providing a service. As a provider noted:

"They were constrained as well, and we appreciate that, but to set a rate that to us had some kind of fundamental errors in the calculation of how they got to the £15.10 rate, and we articulated that to them, we wrote to them to say assumptions around, for example, pension contributions, and differentials, that these were not correct assumptions … But we didn't make any progress with that."

Differences in hourly rates set by local authorities and the estimated costs of providers per hour of care could be as much as £3.50. Differences in estimates of realistic hourly rates between purchasers and providers could be particularly acute in rural areas.

"I would say our average hourly rate is around the £16.50 mark, but we do go away up to the £20 odds in one of our areas because we are delivering in such a rural area."

The main issues relating to payments included:

- A lack of or insufficient inflationary uplift.

- A lack of or insufficient rate increases, year on year, for the SLW as well as the associated on-costs and legislative changes in how sleepovers were to be compensated.

- The fact that rates only covered pure contact time; with no pay for administrative work, training and development, and time spent travelling between service users (or with increments for travel being insufficient to cover the actual costs).

- Cost calculators used by commissioning authorities were either stripped of components or based on very low assumptions e.g. relating to sickness absence, pensions.

- Not receiving pay for voids, such as empty rooms, or service users being taken to hospital.

In instances where providers had approached commissioning authorities for increases in rates or where rates the providers had put in to tenders exceeded what the local authorities were willing to pay, some providers had described being repeatedly asked for evidence demonstrating the calculations underpinning how they had determined their rates by local authorities. A few providers also reported being told that their rates were the most expensive compared to other organisations by a few local authorities.

"I've talked to other colleagues, and they'll say, oh yeah, they always tell us that we're the most expensive. And I say, oh yeah, they tell us we're the most expensive. So, they try and play organisations off against each other."

Overall, where there were issues with the previously described pressures in relation to funding, these had become more pronounced over recent years. The worsening financial situation in the context of austerity was also exemplified in several local authorities attempting to cut hourly rates further or in offering only very small increases.

"Yeah, but definitely in the last five years, if not slightly longer than that, I think the commissioning process and the margins for care at home have really been eroded away, so some of the contracts that have maybe been in place for a long time that actually were quite easy to deliver and deliver cost effectively, with the cuts in local authorities, they've become less and less able to be sustainable."

In these cases, volumes of work were then deemed even more important as economies of scale could allow the absorption of such costs. Several providers had also restructured internally, e.g., through flattening hierarchies in attempts to shave off managerial and administrative overheads or had indicated they were about to embark on (another) round of such reform.

Service quality and organisations' mission

In addition to the previously described challenges faced by social care providers in relation to sustainability of service provision, the quality of services provided was another key consideration in withdrawing from service provision, if not the factor with most gravitas. A deep concern for services users was shared by the providers. In some cases, where the parameters of service provision had changed in ways that providers felt were incompatible with their organisation's care delivery model, values and standards, service provision was withdrawn. Such incidents related to changes in the care provided to service users that contravened their best interests or safety, such as the removal of sleepovers.

"So, this is much bigger than just being about money. This is about people's lives, and working in ways that enhance people's lives, rather than diminish people's lives just because it saves a bit of money, or because it suits the system and the organisations."

Where there had been an increased use of agency staff, it was also considered likely that service quality would not be at the same level as when services had been provided by internal staff, for instance due to a lack of continuity of care or its delivery by less well trained staff. In a minority of cases, increasingly complex service user needs propelled the need for contractual changes or a reconfiguration of service arrangements. Lastly, (re-)focusing on the organisation's mission and thus types of services provided was another consideration in service surrender. A few providers described withdrawing from services that had been somewhat out with their organisation's usual 'core' business, to some extent as part of wider strategic decisions in remaining sustainable as organisations. Moreover, the withdrawal from contracts and the potential for compromises with organisational issues could have significant workforce implications.

"...where we have more difficulty is knowing that something's not sustainable, incurring huge losses, having real difficulties in terms of keeping staff morale up – that's where you touch on workforce issues."

This leads us to consider the parallel difficulties in employment relations that further influenced providers' decisions to withdraw from contracts.

Unsustainable and insecure employment relations

In parallel with the above unsustainable financial climate, data reveals organisations struggling to sustain decent terms and conditions of employment, and working patterns for staff. This struggle formed part of the decisions by providers to hand back contracts. Some of these problems came from deeper demographic and labour market trends, while others were a direct result of the above financial problems faced by providers.

Recruitment and retention problems

Throughout the interviews one of the main reasons for failures to sustain a presence in particular regions and local authority areas was an inability to recruit sufficient staff. Again, rural areas could be particularly difficult in this regard.

> *"Very high proportion of travel time, Very short visits, very small working age population, very high retired age population. So no workforce to recruit from."*

Similarly, a second provider added:

> *"We could not build capacity, it's a very rural area the demographics within that area around employability, it's quite low. We can't actually employ in that area and that was our biggest thing…we couldn't get staff to deliver service."*

Another provider reported how they advertised home manager and senior care worker posts prior to handing back a contract, and had still failed to fill these when the decision was taken to withdraw from the service over a year later. Where recruitment problems persisted, organisations would reconfigure other services and bring workers in from other areas, incurring higher travel costs, which were not covered by the hourly rate, thus adding to deficits.

Organisations further reported frustrations in receiving limited information from commissioners relating to the reality of matching the needs of particular vulnerable groups and the available labour force.

> *"We started having discussions to say, why did that last provider collapse? 'Ah they couldn't recruit anyone'. What about the provider before that? 'Ah they couldn't recruit anyone' "*

One provider also faced criticism from service users' families, who reportedly exhibited scepticism about the organisation's inability to recruit. Some families even offered to get involved in trying to recruit workers in the community through social media and local community networks. Significantly, however, these families did not secure a single appointment.

Organisational resources were placed under further strain by a growing reliance on agency staff to fill the gaps in recruitment. Costs included the extra hourly cost of agency staff, as well as the increased administrative effort associated with continuous extensive recruitment campaigns.

"...how else do they expect it to happen, and, of course, their contracts are not funded to provide agency staff, so if you're paying an agency £17 an hour, you're getting £9 an hour from the local authority, so we are picking up the extra, which is why it's financially not a sustainable option."

Indeed, some respondents reported how employees were well aware of the problems many providers faced in the labour market and chose to maximise their earning potential.

"...our demographics are changing and that we don't have the people to take up the jobs or the people are going to agencies to work to get more money or whatever."

The quote below is illustrative of how spiralling costs around recruitment, the demand for agency workers and the appropriateness of covering services through charitable donations eventually resulted in a decision to inform the commissioning local authority of a desire to hand the relevant contact back.

".... We had a supported living service in............and for a number of years subsidised that in terms of carrying a deficit within the service. The challenges that we faced were to do with the recruitment of staff........, which meant that we relied on agency staff, which then meant that we were paying over the odds in terms of maintaining the service. We just did not feel that there was a big enough market share for us to ever make it financially viable."

"the overall deficit position for us for those two financial years that made us hand notice in on those services is about £170,000......and you have to then start thinking about how long can we sustain that for and the answer to that was they'd already been sustaining it for quite a few years and we could no longer sustain it....because it was just eating into our reserves."

Within this difficult climate, there was some, albeit limited, evidence of cooperation among organisations. For example, a provider reportedly offered some of their own relief staff to cut down on a provider's agency costs, but because of their own struggles with recruitment, this gesture only managed to cover four shifts.

Recruitment problems were not confined to rural areas, with a number of providers pointing out how Edinburgh and Aberdeen were extremely difficult in terms of hiring staff.

"There is not enough capacity in the market. There isn't enough capacity in the labour market. There are more jobs than there are people, we have a transient population here in [this city]. We've got lots of students who come and go, and we employ quite a large number of students."

This shortage of labour made the margin between having sufficient income from contracts to sustain services, and running deficits very tight.

"Recruitment and retention, and that actually affects your business, because actually you can get up to maybe the volume that you want that would actually allow you to run care business cost effectively. However, if you're constantly recruiting for staff and constantly got turnover of staff, the actually that just erodes your margins yet again."

In addition, there was the reality of competition from multiple providers in the same area competing for the same scarce labour. Respondents reported that this competitive situation could be exacerbated if they had a comparatively small presence in a particular area, because the project budget could not afford to be constantly used to recruit staff, and central resources were themselves limited.

It was further clear that when contracts were handed back it could be the case that, where a TUPE transfer was not possible, a redundancy situation could occur. Here, one provider describes the irony in such situations.

"It seems ludicrous that in an environment where there aren't sufficient employees working in care that we as a provider we'd be making some redundant. It's a crazy scenario to be honest. The more remote the location, the more likely the redundancy."

In terms of retention, providers reported turnover levels of as much as 40%.

"You were basically getting people in, no skills, no background , and then you were exposing them to really, very poor terms and conditions, where they were going in and making a whole succession of calls, but you were only paying them for what they really worked."

Against this background, providers reported a general lack of awareness or reluctance to engage with the reality of their labour shortage issues by local authorities.

"…some of the commissioners and the procurement officers – because I think procurement has got a lot to do with this – it's like they either have no idea what it's actually like, or they do know but they just write what they want; they think if they write it makes it possible. If I just write that you have to deliver a high-quality service that whatever, blah, blah, blah, that recruits this amount of staff and

that you control your turnover, if I just write that magically, just like a spell, and it makes it in the real world that that's how it's going to be; well, social care has a recruitment crisis, it has a retention issue; so writing it isn't going to make any of that happen."

Terms and conditions

Respondents reported how one of the key issues was the unsustainability of terms and conditions. It will be recalled, for instance, that a few respondents in the previous sections highlighted examples where the UKHCA model had been applied. Where this was the case, the resources attached would only cover the "bare statutory minimum in terms of pensions, maternity leave, holiday contributions and travel" (1).

Another significant factor in respondents' inability to match labour costs with service requirements under contracts was the Scottish Living Wage. One alarming example included increases in the SLW leading to commissioners asking providers to cut support to service users in order to pay for increases in workers' pay.

"There is no rationale, anywhere morally for saying 'everybody has their care cut because the worker's wages have gone up."

Such cuts in support could follow a local authority reassessing particular individual packages in order for the provider to be able to pay the SLW, while still expecting the same outcomes to be met.

Several providers more generally reported how the Scottish government's living wage in adult social care policy had led to problems of sustaining contracts as a result of the additional costs involved. In 2016, at the beginning of the Scottish government's SLW policy, one organisation was unable to pay the provider contribution in a particular authority, because of the lack of consideration given to the additional costs involved in terms of maintaining differentials, and increased pension contributions and sickness payments. There were examples of providers refusing to enter into new negotiations when framework agreements were up for re-negotiation due to the inadequate acknowledgement of the costs of the SLW. As one provider observed, when describing a "toxic" tender,

".........it had a capped hourly rate, even though the living wage had increased, and they increased their hourly rate by 2p an hour, capped for three years, there were no inflationary uplifts built in."

This new framework furthermore did not reflect any of the requirements of the government's Fair Work agenda.

"And there's government's policies about fair work, it's not just about the Living Wage, it's set within a fair-work model; so not only were they [the commissioning authority] not passing on the Living Wage increases, in the tender documents it was all about fair work, but actually in that cost calculator they had taken everything down to the statutory minimum; where the government's policy is to try

and increase the quality in social care and get beyond the statutory minimum. So we didn't go for it; morally and financially, and contractually, and in any ways you can think, it would be the wrong thing for this organisation to do."

In contrast, another provider revealed how a local authority was very clear about Fair Work principles and wanted them in their documentation when tendering their business.

"They want people to be paid the Scottish living wage, they want people to actually have union representation, they want people to have the ability to work flexibly."

At the same time, the authority reduced the above provider's hourly rate when retendering for the project they eventually withdrew from. Indeed, this provider reported that the Scottish Living Wage made local authorities more cautious and likely to pass risk onto providers.

There were also reports of training costs and opportunities to undertake staff supervision diminishing on the hourly rates that were paid.

"We had higher standards for staff training, higher standard of staff supervision... We can't do it. For the rate that was paid, can't do it."

And

"We still have to do supervision every six weeks...When you keep adding all of that up that requires some back office management time that has to account for those things and where does that money come from. It has to come out of the pot of money that you have coming in as income, and if you don't have that coming in as income, it has to come from somewhere else."

Other examples of providers making changes to terms and conditions to maintain stability include an adult care provider introducing a degree of deskilling and work intensification.

"We've had to ask people to be taking on a role for which they're actually a little bit more qualified, so as to effectively change from being a SVQ level 3 worker to and SVQ level 2 worker because the salary that pertains to each of these was affordable at Level 2, but not level 3...the manager, local managers, senior managers and so on everybody's working that much harder just to sustain what was there before."

Ironically, the introduction of the SLW meant that the provider had to eventually pay the original level of salary to these staff. Other organisations had to engage in forms of work redesign to cope with the additional of paying for sleepovers at the rate of the SLW. One provider claimed it had to increase working time from 35 hours a week to 37.5

without an increase in pay, as well as move from a final salary pension scheme to a defined contribution scheme. Overall, the following quote illustrates the pressure on employment costs from inadequate increases or cuts in the hourly rate that providers received for care.

"...in their calculations they'd put in a sort of X per cent abstraction rate for sickness; but that doesn't cover your training, your shadowing, any learning and development, sickness, you know, we'd be very lucky if it was X per cent. So, it's not a realistic figure that it had been made up from. And then the pension assumptions were low; there were no differentials for hourly rate for team members, so we would have had some team members below the Scottish Living Wage and some above it; but it was a flat rate, so some people would need to take a pay cut, others would get a pay rise; and how is that sustainable, it's not sustainable."

Unpaid time and work

Respondents reported that there could be periods of time where they were not being paid by commissioners, which had significant employment implications, especially for those staff who had distances to travel between client homes. One respondent with multiple local authority contracts reported that only one commissioner would fund travel time in a way that adequately reflected the difficulties associated with staff having to travel long distances across busy urban areas on public transport, or in remote rural locations. Respondents reported that these challenges were more significant in the latter of these locations. Even where some local authorities were paying travel time that matched the minimum recommended by UKHCA's pricing template, in rural areas this calculation would be an under-estimate. In some organisations, providers paid workers from their own resources for excessive travel costs, but this practice would reportedly be the cause of increasing financial losses unless they were able to negotiate higher rates.

The imposition of contractual terms that stipulated strict fifteen or thirty-minute blocks of paid care by commissioners was also problematic. Employees and organisations reported workers being placed under tight electronic monitoring regimes, where any variation (e.g. 27 rather than 30 minutes) would cause underpayment by the commissioner. A similar charging policy was in evidence when the worker spent additional time in a person's home, i.e. 32 minutes rather than 30, with only the latter paid for.

"In the worse examples, I could be commissioned to support you, so I arrive at your door, the time starts, I can be paid, I have 15 minutes with you to attend to certain tasks before I have to be outside. If I stay any longer, I'm not getting paid for it. So if, for example, you are unwell when I visit, after fifteen minutes I have to be out of the door... That is a tremendous burden on many, many workers because they're visiting lonely, isolated people."

The implications for providers of not paying travel could be that they are not fully paying the Scottish Living Wage as per the Scottish government's policy, notwithstanding stipulations to this effect in the commissioner's tender documents.

Furthermore, if there were deviations and discrepancies beyond the amount of time agreed that a worker should spend in a person's home, then subsequent investigations by commissioners could lead to delays in the payment of thousands of pounds. Other complications occurred when workers did not fully engage with e-monitoring systems, leaving management and administration staff to catch up.

Another dimension to unpaid work experienced by providers was the non-payment of management and administrative costs. Here, several respondents reported difficulties with framework agreements that called for rapid responses to emergency needs, e.g. someone leaving hospital and needing a package of several hours of care, but delivered on a very short period of notice. This type of intervention could not only involve moving workers from other services, but also considerable management and administrative work. The problem, however, was that the commissioner would, again, only be willing to pay for the time the worker(s) were in the person's house delivering the care. Another organisation reported how in order to sustain services it had to undergo what it described as remodelling of services. Again, this process cost considerable amounts of management time, resources and efforts.

Organisations also took on work through framework agreements, but faced the reality of not receiving the minimum number of hours needed for the service to be sustainable for them. Payments would also stop if a person was taken into hospital. Therefore, the organisation and the workforce could be left with no income and nothing to do.

Uncertainty and insecurity in employment

Respondents on framework agreements reported difficulties in their ability to adequately engage in HR planning. This inability to plan workforce numbers was directly linked to organisations being unsure how many referrals they would receive under framework agreements.

"We had great difficulties knowing how many workers to recruit because we never know from one day to the next how many referrals there were going to be. There was no pattern, no norms...It was never clear."

The fragmented nature of referrals further meant that rotas were never set and that their management required the attention of dedicated administration staff. One provider summed up the implications of this uncertainty:

"We can no longer have staff who are paid for 35 hours and they have three hours where they're not doing anything. So, you know we're looking more and more to models where staff are in when they're

required more part time and very flexible contracts and maybe just evenings and weekends because that is when we need them."

The above respondent added that where workers were not able to match up their working time preferences with the hours demanded from service users and commissioners, they could end up under-employed or on split shifts.

Finally, there were problems with job security from the handing back of contracts. In particular, there were three examples of redundancies to central office staff accompanying the handing back contracts. Several other providers meanwhile indicated that redundancies in back office staff may be an option in the future if there were any more substantial withdrawals from service provision.

The dynamics/processes of contract handbacks

In order to provide insights into the central dynamics surrounding the handing back of contracts, what follows in this section focusses on four main issues: the different types of contractual withdrawal identified; the interactions occurring between providers and local authority commissioners; provider interactions with users and new providers; and staff relations and experiences.

Types of contractual withdrawal

The point in the 'contractual cycle' at which decisions to hand back contracts were made varied. At times the decisions made flowed largely from ongoing concerns about the sustainability and viability of particular services. At other times decisions were the product of reflections prompted by re-tendering exercises, and therefore took a form whereby services were 'withdrawn from' rather than 'handed back'. More generally, the interviews pointed to three main, but not entirely mutually exclusive, decision scenarios.

In the first of these, providers had for some time possessed concerns about the financial viability of services and/or their ability to recruit staff to them. In some cases, these concerns had intensified following a failure to negotiate mid-contract uplifts in hourly rates to accommodate increased operational costs. These cost increases were arising from the Scottish Living Wage, an unexpected volume of required travel time, increased reliance on more costly agency staff, and contract adjustments to deal with lower than anticipated demand for services under framework agreements. Indeed, a striking feature of the interviews was the extent to which these issues had served to shape perceptions of service viability and sustainability.

The second scenario encompassed decisions made in the shadow of tendering/re-tendering exercises. Such exercises brought to the fore concerns like those mentioned above while on occasion generating new ones because of the nature of the prices and contractual terms on offer. For example, one respondent observed that:

> *"The run-up to the position we got with the contract was that for about three or four years we had been asking for a rate increase to cover our costs, so we were just breaking even with the contract when, I think it was in February '16, we notified of what the rate was going to be going forward….And no matter how we looked at it we couldn't make that number work. It would have been a massive deficit for us, which would have put the larger organisation at risk; so, I think it was about an £80,000 deficit a year we would have been looking at."*

Meanwhile, it was apparent that on occasion providers indirectly withdrew from services by putting in unacceptable bids. One respondent, for example, noted in respect of an unsuccessful bid that *"it wasn't really so much handing back a contract, but it was knowingly going in with a rate [above the price ceiling] that was sustainable and doing it as a*

point of principle." It also became apparent from interviews that both direct and more indirect forms of contract withdrawal at times existed alongside the returning of individual care packages. For example, another interviewee reported that their organisation had done this around a dozen times in the past year, and gave this illustration of the types of circumstances where such a decision might be taken:

"Say, for example, they're withdrawing a sleepover on somebody and we don't think they should have the sleepover withdrawn but the council persist. We don't think we can support that person safely, we withdraw, no handback the contract because the person's safety is paramount....."

On occasion, the complexity and associated costs of tendering exercises had acted to reinforce such doubts about the desirability of bidding for services, as the following quote illustrates:

"[The council] decided to retender the services, but it was a hugely bureaucratic process that they put in place. And it was going to take a significant amount of resources for us to go through that tendering process, and the amount of resource that it would take, for the number of services that we provided there, was just disproportionate, and so we decided that we weren't going to engage in that retendering process."

The third type of withdrawal scenario involved decisions to hand back contracts that arose from 'post-tendering' challenges regarding the nature, level and/or costing of services commissioned in their aftermath. Central to these situations was the use of framework agreements under which both the location and scale of work that would flow from them was imprecisely, not to say vaguely, defined. Therefore, withdrawals of this type occurred when providers found that the demands arising under such agreements were financially unsustainable or too difficult to staff. One case that illustrated this was a provider who made clear to the commissioning authority that it only wanted to be in third place on the relevant framework agreement. In the event, no providers were recruited to the first two places with the result that, in staffing terms, unviable levels of demand were received. As a result, the provider withdrew from the agreement. Later, the provider ended up acquiring more work from the same authority due to a private one going bankrupt. Ironically, however, at the time of the interview the provider was anticipating withdrawing again. This time the decision was reportedly taken in the face of the commissioner seeking to reshape the contract but *"not having any money to pay for uplifts, not wanting to award a Living Wage uplift."*

In relation to framework agreements, other interviewees reported how they had generated less work than anticipated. The work that they were provided with was therefore uneconomic due to a lack of the necessary economies of scale.

Interactions with local authorities

Where withdrawal from services was done through decisions not to take part in retendering exercises, a mixed picture emerged regarding how local authorities reacted. In some cases, information was sought on the reasons behind the decision and/or attempts made to get the decision changed. In others, there was no reaction:

"it's almost like parts of......council don't realise that we didn't [bid], and a little bit of like we'll have enough people to bid anyway, so it doesn't really matter.....you don't always feel particularly valued as a care provider."

Where contracts were withdrawn through giving notice of termination, the periods of contractual notification reported ranged from three to six months. Interestingly, in one case a local authority challenged the notice given on the grounds that the contract could only be terminated if both parties to it agreed that a service wasn't working, an interpretation that was disputed by the provider. Indeed, several interviewees alluded to the use of contractual clauses aimed at prohibiting the unilateral handing back of work.

In reality, the process of withdrawal often took longer than the specified minimum period of notice. One factor here was the reactions of local authorities when informed of a withdrawal intention. Another was the desire of the providers to ensure that adequate alternative arrangements were in place. Those interviewed reported examples in which local authority funders simply accepted the notice and others where they either asked to be given longer to find new providers or suggested that it was the responsibility of the provider to find a replacement:

"what was interesting to me is that the local authority almost thought they had no role in this, and we kept having to say to them, no, if these providers don't take these customers, then you'll have to work something else out, and it was almost like they didn't understand that they were the commissioner and that actually we didn't have a contact with them anymore."

"So, it got to the point where we said, we want to have the service back, this is us, we're handing the service back. They [the local authority] then had this idea that we somehow would find another provider and we were saying no, that's up to yourselves. The process was absolutely tortuous."

Providers invariably reported a willingness to work beyond the minimum notice period in order to protect the interests of their users. Some also suggested that it was they, rather than the local authority funders, that were most concerned about ensuring that users suffered the least disruption possible:

"....it was a three month notice position, but to be fair we have always said from the very beginning we will give three months' notice but we're usually there a lot longer because we would never transfer a service over and not do it as seamlessly as we could for service users."

"we were really interested in making sure our customers were fine, we made sure that we did the negotiations with the other providers, but the local authority were quite hands off."

Such concerns for users in turn reflected a common view among providers that decisions to withdraw from services were only taken after much deliberation and with real regret for the inevitable disruption they would cause to, often very long-term, clients. Indeed, some expressed real anger about being put in such a situation and faced moral conflicts when considering whether to withdraw from a service.

Interactions with users and alternative providers

As highlighted above, providers contemplating and actually giving up contracts invariably expressed major concerns and worries about the implications of such decisions for users, both in terms of the emotional trauma they could engender and the quality of care that they would receive in the future. For example, one interviewee commented that *"I don't know any organisation that walks away from people that they support without having tried every single thing that they can to sustain it."*

From the interviews, it appeared that considerable time and resources were generally devoted to communicating and consulting with users and their families once a decision had been made. It was also clear from the interviews that these processes of communication and consultation could be very fraught. As an illustration of this, those taking part in a focus group, when talking about the closure of care homes by their organisation, commented on how traumatic it had been to talk to older residents and their families, and noted that:

"The impact of moving somebody with dementia, for example, from something that they know and understand, and a staff group that they are used to working with to another provider in a building with a staff group they don't know, I think they take a massive impact every time....."

In a similar vein, another interviewee observed:

"We had a real commitment to these people ....., and people were really angry with us when we made that decision. And we had to do a lot of work with people to support them to get through that, because it was very difficult. I mean, can you imagine being supported by an organisation for 27 years and then for them to come and tell you, we can't do this anymore? Some of the discussions with people, they were heart breaking."

Given this backcloth, most interviewees mentioned making significant efforts to support the transfer of services through either seeking out potential alternative providers and/or liaising with them to minimise disruption to the services users received. One interviewee, for example, observed that:

"We were very careful about how we did the withdrawal. And before we withdrew, we did a bit of an options appraisal of what providers out there might be the right provider to take on the work we were doing...We were very keen to make sure that the people in....that we supported continued to have a good service. So we wanted to be influencing who took services on."

In this case, the former provider was successful in its attempt to influence who the local authority commissioned to provide the contract in the future. Meanwhile, another interviewee commented that if they had not been happy with the new proposed providers, *"we would have probably said to the local authority, no, you find another provider, but we'll transfer back to you."*

A number of interviewees additionally referred to engaging with new providers in order to facilitate the smooth transfer of services. One organisation, in deciding to extend its contract beyond the required three-month period, for example, was reported to have done so:

"to allow a handover [as] the other providers would not have been in place....and we wanted to actually be able to tell our customers who they were going to........and where possible we wanted to be able to maybe do a handover, a sort of shadowing visit so that our care worker was there and the other care worker was there, so that people weren't left not knowing what was happening to them."

Another provider was reported to have similarly engaged with the service manager of the new provider and in doing so *"created an action plan and a risk assessment"*, and met weekly *"with regards to practicalities of TUPE, with regards to transferring over the young peoples' information, meeting with parents... ."*

Impact

The findings section closes with an examination of the impact of contract withdrawal on (a) the service and service users, (b) staff (morale, T&Cs), (c) the provider handing it back, and (d) the provider taking it over.

Impact on the service and service users

The interview data suggests providers seek to minimise the negative impact of handing back a contract on the continuity of the service and, in turn, their service users. In one example, a provider spoke of giving the required notice when withdrawing from a contract, but always staying on longer than the three-month notice period:

"Nine times out of ten we have been there a lot longer than we've been the three months and that's…we've chosen to do that because we think that's the right thing. Well, it is the right thing to do, you know, about making sure that service users who are being transferred over to new provider or their care is being reviewed…"

In terms of the impact on the availability of the service, respondents noted that the provision of the service continued, whether taken in-house to the local authority or absorbed by another provider on the framework. Oftentimes, the decision to go in-house stems from other providers being unable to take on a service for too low rates.

"I think they had intended on transferring it to another provider, transferring the business to another provider. But I think many others, like us, couldn't do it for the rate that they were willing to pay. And so after giving us notice it was then about a month or so later they determined that they would take the service in-house, so they took it in-house; and we TUPEd - the transfer of undertakings- and we TUPEd the 40-odd staff into the council."

Several respondents pointed out that after moving the service in-house, services are re-provisioned to private or voluntary sector organisations. Although the service provision continues, interviewees alluded to the quality of care diminishing where private providers take on the contract. One respondent described the moral dilemma they faced when deciding to hand back a contract:

"…it's morally can we do this? Can we leave it to the privates? Is it morally the correct thing to do? We know the quality of care goes down. Can we walk away? As soon as we walk away our influence has stopped."

"And yeah real upset amongst senior managers about, what is the right thing to do for our charity, because we have to safeguard the future of our charity versus the interests of individual people that we knew, that we have relationships with. And we know sons and daughters and in some cases people are on our board, because we want people with

direct experience of our service to be involved in governing the charity. How do you tell someone, I'm sorry we can't support your mum or dad anymore because we're going to resign from this contract?"

At the same time, service users also have the right to request self-directed support and choose which provider to contract their services from. In one organisation where the provider decided to resign from a framework agreement, individual budgets for all service users were agreed instead, thereby protecting the service provision and ensuring self-directed support. In another voluntary sector provider, the size of the contract and number of contracted hours rendered the impact quite minimal: *"our delivery was quite small it probably had less of an impact, you know, in that area".*

Providers varied in the extent to which service users were informed of, or involved, in the decision to hand back a contract. One respondent noted the importance of informing the service user's family about the TUPE process through which the carer will remain the same: *"it's when people don't know that or that's not going to happen, that's where it becomes unsettling for people".* It also emerged from the data that where staff might refuse to transfer to the new provider, this inevitably has an impact on the service user.

In one unusual case where a voluntary sector provider organisation was served notice, i.e. were told by the council they were terminating a contract, service users were not involved in the decision: *"if I was a customer I would expect to have a say in that decision as well, whether I wanted my service to be delivered by a local authority as opposed to an expert provider".* The provider sought to minimise the negative impact of this quasi-forced contract withdrawal on the service users by helping the council to redraft the letters to the customers and reduce the fear and anxiety for them. Highlighting their different approaches, the provider noted: *"[...] our reason for being is to support our customers; and it was just a very functional fiscal process for the local authority I think".* Ultimately withdrawing from the contract led to a negative impact on quality as the service was reduced.

"So the quality of people's supports I think would have changed dramatically. [...] I think there would have been some fundamental changes for people, especially people in more rural areas because they couldn't get to a day centre and that's not necessarily the best choice for people."

In conjunction with the above reduction in services, one of the local offices was closed which service users accessed to regularly meet with their carers. This was perceived as detrimental to the quality of service with the provider questioning how well the service users could exercise and receive person-centred, self-directed support in the future. The closure of the service also raised concerns as other service users were *"wondering if this means that they would have to move to a council, for example".*

Several respondents were unable to comment on the actual impact on the service users as they had not solicited feedback. However, concerns were expressed, especially as some service users are unable to communicate their preferences.

Impact on staff: staff morale

Providers attempted to minimise the negative impact on staff and ensure they continue to deliver front-line support until the decision to hand back a contract is made. These providers described their approach towards employees as an honest one that entails providing support towards making informed decisions about their job options. One provider with a unionised workforce involved the unions in discussions with staff about handing a contract back to keep up morale and provide reassurances about job security.

Notwithstanding the support these organisations offered, it became clear from the interview data that contract withdrawal impacts negatively on staff morale. A common refrain in interviews was the shock experienced by staff when informed that a contract was to be handed back, and the challenges of addressing their concerns and emotions, as well as those of users and their families. At the same time, it was also observed how staff concerns extended to worries about what would happen to those they cared for. One interviewee, for example, reported how some staff, faced with transferring to another provider, made the point that their preference was to remain with their current employer but that *"at the end of the day I will go with my user. I'd rather stay with……but I won't let my user down."*

Several interviewees alluded to the sense of powerlessness felt by staff and how this adversely impacted on turnover and motivation, with knock on consequences for the quality and continuity of care. For example, in relation to staff who had previously worked on a transferred service, it was observed that *"they feel maybe that they've left the people they were supporting down….So you have a job to do to lift those staff back up"*. The emotional toll on care workers is apparent from the following quote of a voluntary sector provider:

> *"And for some workers, really very hard personal lessons. It really impacted on some people, really emotionally because they could see the impact we were having on individual people. But there's absolutely no viable argument for us to keep doing it because of the money we were losing."*

In a further example, the negative feedback received from families of service users in the wake of handing back a contract and not retendering for it afterwards was described as distressing:

> *"and for the staff and managers it's been heart-breaking. […] Yeah, it's really hard for us to make that decision, I cannot reinforce enough how emotionally difficult it was for us not to go for that tender."*

Thus, it was clear that decisions to hand back contracts impacted negatively on managers, as well as staff more generally.

"and there certainly was an impact on, well, my colleagues, and myself, you know, your sort of personal resilience, you just think that this is wrong on so many levels. Pay what we need and we'll continue to deliver a really good service, but forcing us into that kind of situation where we couldn't have carried on… ."

Some providers adopted the approach of not divulging the intent to withdraw from a contract given the rules around TUPE and consultation, waiting until after giving notice. In contrast, in one organisation which informed their staff and parents of service users of their intent to give notice, both the families and care workers were reported to have been upset and disappointed at the provider's decision not to tender to be on the framework again. The parents of service users met with IJB officers and the council to express their anger, and even informed the media, MSPs and the First Minister. Staff members were described as upset given their strong identification with their employer and resistance to working for another provider despite having their terms and conditions protected. As the respondent recalled, *"…so it caused upset to the staff, it caused upset to me, the senior management team, upset the board, upset all of the parents and carers".* In the end, however, the provider was able to continue working for all the service users in the local authority under individual budgets rather than the framework, thus removing any negative impact on staff and service users.

It was apparent that much time and resource also went into communicating and explaining what was happening to affected staff, one interviewee, for example, explaining that staff forums were held each month over a three-month period. Where providers recognised unions, it was invariably reported that their involvement was helpful and beneficial.

In many cases it appeared staff were TUPEd over to new providers. In general, it appeared that such transfers led to relatively little change to terms and conditions. In fact, in several cases involving the return of services to local authorities themselves it was noted that staff had experienced some improvements to them.

Impact on staff: terms and conditions

The findings provide a mixed picture of improvement in terms and conditions at the same time as increasing job insecurity. Through the TUPE process, terms and conditions remained unchanged or even improved. TUPE-ing staff into the council reportedly led to greater job security, and increased pay, annual leave and pension provision. Given the higher pay and continuity for service users, one provider referred to this as *"a win-win situation, you know, for both the service user and the staff member".*

However, respondents indicated that these terms and conditions were not sustainable for voluntary sector providers:

"I'm thinking this doesn't work, you can't pay more, you can't have enhanced terms and conditions for the rate that you were willing to pay us; so it was so horrible to listen to a much better pension provision, just everything was a much better offer."

Notably, in the above case, several of the staff who transferred to work in the local authority had since re-applied to the provider citing the differences in working experiences.

In one case of a provider taking on a failing contract from a private provider, they insisted that the local authority pay for the real cost of the service rather than a price or fee. Workers were TUPE transferred from a private provider and their terms and conditions improved to include the SLW and travel time.

Outcomes for staff varied in terms of resignation, redeployment or redundancy. There was only limited evidence of staff resigning rather than transferring. Some respondents noted that members of staff requested to be transferred to another service to stay with the organisation rather than be TUPEd to another provider. In the absence of alternative vacancies with their organisation, one voluntary sector provider reported that staff are faced with the choice between transferring to a new provider or redundancy. To alleviate some of the concerns about redundancy for staff, the organisation offers *"a lot of employee counselling and we do a lot of communication meetings with staff"*. Although not unionised, staff were allowed to bring a representative to these individual consultation meetings. However, the provider noted that in all of the contracts the organisation handed back, redundancies arose.

One respondent summed up the job insecurity as a result of handing back contracts and highlighted that some staff left the care sector entirely:

"Some people chose to stay with [us]. Some people choose because of their relationships they have with the people they support to move to the new organisation. Some people leave the sector."

Although TUPEing to another provider was reported to work quite seamlessly (3), there was a sense that commissioners, not used to being confronted with providers exiting services, lacked the necessary knowledge at contract level about the TUPE process.

"[...] I think it's amazing the amount of commission officers who are not fully aware of TUPE. Who don't understand what TUPE means and don't really understand that no matter what way they want to look at it, it still applies. [...] if you transfer a service user, even in house into your service, our staff have a right to be TUPEd across to your service and they don't get that. [...] five years ago, commissioners never had that in front of them. They never had to think about it because nobody handed services back."

Several interviewees had experienced problems with TUPE transfers involving local authorities who had decided to take services back in-house. One, for example, in noting that the number of contracts being handed back was likely to grow, expressed the view that:

".....commissioners are needing to get a wee bit up to date with employment law, to understand what does it mean when a provider exits, not just for the service user but what does it mean in respect of TUPE and all these sorts of things that I don't think they fully understand or appreciate."

Several respondents also commented on the sheer inefficiency of the TUPE process, with time-consuming iterations between the provider and the council. One interviewee expressed a concern that the amount of resource and time taken up with them *"diverts and organisation's attention from the quality of support; from making sure that people are really well supported; from making sure their workforce is really well supported'."*

A further issue raised by several interviewees was whether, and to what extent, TUPE requirements applied to the handing back of individual care packages, as opposed to 'service contracts', or, for that matter, the awarding of packages that had previously been delivered by other providers. For example, questions were raised about their application to packages that had involved several staff, each providing small quantities of support. Such situations, it was noted, were becoming increasingly common in a context in which increasing amounts of care are commissioned by the hour under framework agreements.

Impact on the provider handing it back: Relationships with local authorities

In the aftermath of handing back a contract, ongoing relationships with local authorities were described as transactional, rather partnership based. Several providers reported declining to tender in those local authorities or for similar contracts in the future. One respondent brought up the issue of power dynamics, bullying and control when describing their relationship with some of the councils. Relating these dynamics to voice, the interviewee noted:

"If social work has got a voice and a place in a council they will be pointing out that we need continuity of care, we need providers; but if finance and procurement get in charge, and they've got a certain appetite, then they won't care which providers do it as long as the work is done, they'll try and control the market. So fundamentally it's about control, who's got control and who wants to try and control the market; and in amongst that they think they can control providers, but we're entities in our own right. So it's quite interesting this kind of power play."

Entering into formally agreed strategic partnerships was raised as a possible strategy that would allow providers and local authorities to have less adversarial relationships.

The findings provided mixed evidence on the quality of relationships with the local authority following the handing back of a contract. In the case of one provider, relationships after resigning from the framework were strained.

"…so their own in house service had to continue to deliver that, which was not their strategy. They wanted to push things to external provision. And they increasingly became angry at us and started to make other conversations about other contracts saying, oh you left us in the lurch. You walked away. You let us down. And they became increasingly angry as time went on."

The relationship remained poor even when the provider began to take on work in that local authority again on a more flexible basis: *"I would say today we have a very poor relationship with them. But we've started delivering on this contract again. So mixed."*

Depending on the local authority, however, there are positive examples of partnership working. With respect to the above voluntary sector provider, relationships were amicable in a different local authority notwithstanding a decision to resign from the framework: *"I think they almost admired that we'd given it a go. But they were not surprised that we'd failed"*. Similarly, other providers highlighted that the exit unfolded in an understanding partnership, noting an amicable split, especially where the contract was for a small number of hours that purportedly has less of an impact.

Impact on the provider handing it back: Prospects for future tendering

Different views were expressed about the implications that contractual withdrawals had for future relationships. Some of those interviewed suggested that they felt that this was not an area of concern, observed that local authorities are used to contracts moving between providers. Others took the view that providers needed to think very carefully about withdrawing because of the potential ramifications it could have for obtaining future business. One interviewee pointed to having faced both types of response in relation to a particular case:

"And at the time, they accepted that, both verbally in a meeting and they put it in writing to say 'we're very sorry you've made this decision. If you change your mind let us know. The door is always open. Please come back and work for us………. A short time later though that changed because they were unable to replace us on the framework…..and they became increasingly angry with us and started making other conversations about other contracts, saying, oh you left us in the lurch."

On the other hand, another voluntary sector provider noted that despite handing back a contract, *"it did enable us to grow our younger people's services over a number of other local authorities"*. This example suggests that handing back contracts can lead to growth of services in other councils through having gained the experience in delivering that service.

The interview data indicates that providers are more cautious in their approach to future tendering. As mentioned above, some organisations

are reluctant or even outright refuse to bid for the same type of unsustainable framework in the future:

"So this type of framework, we will read the specification and then not bid. We tried. We spent maybe six, seven years trying to get this to work. Doesn't work. We know that now. So long as the commissioners keep tendering for the same things, it's not us."

Handing back a contract also prompts organisations to focus on providing certain types of services (e.g. self-directed support contracts only) and no longer tender in councils in which relationships were strained.

An overriding concern across the interviews was the viability of the organisations given their inability to save up reserves for service redevelopment and increasing on-costs.

"And we've not been able to do that for years, so we have no reserves left basically. But as I say, other bigger providers will have reserves and may be able to ride out the storm that little bit longer, but at some point, they won't have reserves left either."

This raises the prospect of a future social care quasi-market with only large service providers who have these resources to sustain themselves. Several respondents highlighted the disconnect between commissioning practice and the reality for service users and providers in the social care sector.

Impact on the provider handing it back: Financial impact

Following on from the above, the financial impact of contract withdrawal on providers appears substantial. One provider pointed out that when handing back a contract, councils are not incurring the losses: *"and that left us in a position where the service was in deficit, and they won't pay us any of the deficits that we incurred there"*. Whereas surpluses are passed on to local authorities, losses on contracts are not.

In addition, providers are seen as absorbing all the recruitment and training costs when staff are TUPEd to the council. Furthermore, redundancy costs are reported from exiting a service if staff are not TUPEd or there are no available vacancies with the current provider. Although one provider reported not making any redundancies in their headquarters as a result of handing back a contract, there was still a material impact on cost recovery and a reallocation of work within the headquarters team.

Non-financial costs for the providers handing back contracts include time spent in meeting the councils, revising business plans, writing and updating the board. Furthermore, the potential impact of handing back contracts on the organisation's reputation remains to be seen. One respondent mentioned the reputational risk from giving services back and reducing the organisation's presence across the whole of Scotland. In addition, providers reported being unlikely to recruit new staff for the contract that is being handed back as these employees would be TUPEd to another organisation.

Impact on the provider that takes it over

Given the implementation of the SLW, some of the respondents felt that it had levelled the playing field across providers, ensuring that the new providers could take on staff in terms of matching their terms and conditions. Yet the interview data also indicates that private providers seemed to be able to take on contracts by minimizing their risk and only paying the care worker for the direct time spent with the service user rather than paying travel time. Viewed as transferring the risk from the commissioner and provider to the workers, the private providers were reported to yield a *"lower quality of care to the individual but profit making".*

Furthermore, respondents expressed scepticism about the sustainability of the providers who stay on a framework that has low hourly rates.

> *"But as a charity, as a business, you can't do work at a rate that you don't think is financially viable, whether a council thinks it's financially viable or not, it's ultimately got to be your decision."*

Pertaining to the issue of sustainability, one telling example involves a small voluntary sector provider that took on a contract for families and children services. The organisation was seen as failing to assess the risks adequately and was unable to deliver the service further after 3-4 months, leading to the service being taken in-house. As a result, the council is delivering the service and investing additional funding into it.

Other respondents suggested that some providers were able to take on contracts by having greater capacity (i.e. staff, infrastructure). On the whole, it remains difficult to ascertain the impact on the provider that takes the contract over as the respondents had not typically taken on such a contract themselves and could only surmise about the potential impact on other providers.

When interviewing providers who had taken on contracts, the key issues appeared to relate to the complexity of any transfer of work, especially where TUPE was involved. TUPE transfers would also bring in the complexity of having staff from other organisations on different terms and conditions compared to existing staff.

In addition, respondents would stress that the reason they were able to take on the contract was related to their existing capacity. That is, this occurred where they already had existing services and infrastructure (including the presence of management) in the locations where they were taking over services. As a result, these organisations found it was possible to absorb any costs as well as staff from particular projects. At the same time, where transferred packages of care were small, and staff were employed across multiple contracts with another provider, this added other layers of difficulty and complexity to any potential transfer.

Discussion, conclusion and recommendations

Available research, as the review provided at the beginning of this report demonstrates, highlights that significant problems surround the outsourced social care market, both in Scotland and the United Kingdom. These problems are numerous, varied and inter-related but notably include questions around the financial and operational sustainability of both services and providers. Indeed, for several years CCPS reports and other research has indicated providers increasingly handing back contracts (CCPS, 2018a; CCPS, 2018b). This has been exacerbated by providers facing significant difficulties in recruiting and retaining staff, and problems paying the Scottish Living Wage. This has, in turn, raised concerns over trends in care standards and the capacity of the social care market to meet a growing demand for services.

This report's findings on the experiences of providers and, to a lesser extent, local authorities involved in the handing back of contracts largely confirms the issues described above. They reveal that the providers concerned deliberated long and hard before deciding to withdraw from the delivery of services – either by terminating contracts or choosing to not re-tender for them. The findings convey that the providers felt they had no choice but to withdraw given the deficits and/or the operational challenges they faced. In particular, providers identified challenges relating to staff recruitment and retention difficulties and problems associated with delivering services remote from their main bases.

The reported causes of the financial deficits experienced by providers echoed those found in previous reports. Hourly rates were at times insufficient to cover the direct costs of service delivery, let alone the overheads that providers need to cover in order to survive, and took no or inadequate account of the travel costs involved in delivering services. Meanwhile funding arrangements for sleepovers were often problematic and uncertain. References were also made to failures to adjust hourly rates in response to rising costs stemming from the introduction of the SLW, increase in pension contributions and the need to pay for sleepovers at the level of the National Minimum Wage.

The findings also indicate that the handing back of contracts, as well as individual care packages, is a growing trend and one that is only likely to intensify as the widely acknowledged crises around social care funding continues. Indeed, the problems discussed above can, in large part, be attributed more widely to inadequacies in government funding. In response to these ongoing and intensifying funding difficulties, the study's findings indicate that voluntary sector providers are increasingly no longer able or willing to subsidise services from their own charitable resources. Instead, they are being forced to only take on services if they can be run without a deficit.

A host of recommendations have been put forward over the years to improve the operation of the social care market. Most recently reports by the Local Government Information Unit (LGIU) and Mears (2014) proposed a range of reforms that would potentially address some of the identified challenges. These include recommending that councils

become more proactive in ensuring that contract specifications are not contributing to the worst practices in homecare (e.g. contracting for 15 minute care slots). They also include adapting technology so that staff can spend more time on personal contact, and receive proper training.

The proposed reforms essentially represent 'second level' solutions in that they are largely focussed on workforce related matters and so fail to sufficiently locate and root the current challenges in the market structures of social care provision. As a result, they fail to address the way in which the underlying structures are themselves in need of reform. Indeed, the findings of the present study highlight that current market arrangements are intimately connected to why handing back contracts is both occurring and becoming more common.

Competitive markets, from a neo-classical perspective, are argued to have a capacity, via the mechanism of price, to create an efficient balance between the demand for a good or service, on the one hand, and its supply, on the other. This matching of supply and demand, however, may break down and become sub-optimal ('market failure'). This seems to be the case with the commissioning and procurement of social care.

The social care market is not a market in the traditional sense as it does not, for the most part, operate through contracting between consumers and providers. Instead the state commissions, and pays for services, on behalf of the consumers of services. This raises the potential for commissioners to commission a sub-optimal level of services and/or to fund them sub-optimally, with resultant threats to service quality and sustainability.

Other characteristics of the social care market contribute to this. Contracting authorities generally constitute the dominant purchasers of services in their area. An imbalance of purchasing power therefore typically exists between them and the providers seeking to supply services creating a monopsony, a form of quasi-market. The result of this power asymmetry is that commissioners can set the price of services rather than having to work with the range of prices generated through competition as would happen in an actual market.

Consequently, as demonstrated in the reported findings of this study, they are able to fund services at prices below the real cost of delivering them and in doing so shift financial and operational risks onto providers. Meanwhile, the budgetary processes of local authorities are heavily shaped by governmental funding decisions. Where, as now, this funding is significantly inadequate to meet the demand for services, such processes essentially act to constrain demand by restricting supply below the level of demand. This, in turn, means that the social care market does not, as in neo-classical theory, serve to match supply to demand. Rather, as is the case with quasi-markets more generally, local authority commissioners act as inadequate proxies for those requiring services within the market.

Insofar as market failure in social care is the product of inadequate funding, it can potentially be reduced by contracting authorities commissioning more services at realistic prices. Indeed, more realistic funding could do much to alleviate the problems that this study has revealed that are driving the increasing tendency of providers to withdraw from services.

Ensuring adequate funding would, however, not address the inherent imbalance of market power seen in monopsony markets like social care. In particular, it does not address the ongoing role of the commissioner within the market in their ability to hold down prices. Action is consequently needed to re-shape these dynamics and support the creation of contracting practices that are more likely to lead to sustainable, quality services. In broad terms this could include:

- Placing restrictions on the ability of commissioners to hold back or drive down prices through the introduction of minimum employment standards or service prices.
- Re-structuring contracting relationships to increase the market power of providers and supported people.

Actions in the first of these areas could include setting sector-based employment standards concerning such matters as access to holidays, pension contributions, and sick pay, and through these means restricting the ability of commissioners to force down labour costs. They could also include setting minimum care prices although this would be a highly complex process, not least because of issues related to the variance in the costs of providing different types of support services and the delivery of support in different geographical areas

In both cases, however, there would be a risk that such minima could, if set inappropriately, lead some providers to move their current arrangements down to meet them potentially compounding current problems around staff recruitment and retention and service sustainability and quality. Setting minimum prices would therefore need to be done in co-production with the sector- perhaps through collective representation of providers at a national/regional and/or local level (CCPS, 2018b).

It is understandable that service commissioners try to closely align service demand and service supply. Generally they approach this through (a) spot contracting under framework agreements (rather than block contracts) and (b) including a relatively high number of alternative suppliers on such frameworks as a means of maximising choice and control for the supported person as well as service flexibility and capacity.

However the findings of this report illustrate, these actions generate adverse operational and financial effects for service providers. For example, they can lead to providers delivering services that are remote from their operational base or receiving volumes of work that are financially unsustainable. Indeed, as observed in this study, at times the death or hospitalisation of just one client can lead a provider to reconsider their ability to deliver support in a given local authority area.

Further tensions arise from personalisation and Self-directed Support that exacerbate these issues of sustainability of services. Providers in this study view SDS as shifting financial risk from local authorities to providers. Research also points to the difficulties in recruiting workers to services where working time is fragmented or less clear in the pursuit of giving the supported person more choice and control (Cunningham et al. 2018a; Baluch, James, and Young, 2018b; Eccles and Cunningham, 2016). Such effects, in turn, are further compounded by unsustainable prices which are insufficient to recruit and retain required staff.

It can also be observed that the dynamics of spot contracting parallel employment strategies (e.g. Zero hours contracting) that provide flexibility to the employer but lack of security to the worker. This echoes trends in the gig economy that have come to be associated with highly insecure and casual forms of employment (Taylor, 2017). Consequently this form of contracting sits uneasily with the Scottish Government's Fair Work Agenda.

The trend towards contracting for services on an individualised and spot basis compounds the problems inherent in a monopsonist market where market leverage sits with a dominant purchaser (the local authority). This may add weight to the view that there is a need to counter this power through the establishment of a market bound by collectively agreed rules negotiated with providers and/or their representatives.

Current interest in, and adoption of, Alliancing and Alliance Contracting can be seen to point in the same direction (see e.g. Addicott, 2014). A whole system shift towards alliancing or other forms of collaborative contracting would be unlikely to occur without some degree of compulsion, or at the very least significant investment in effective change support. This would be particularly important for those who stand to lose power (commissioners) in such a reform of the market.

To support this, a political drive to establish collectively formulated contracting rules governing matters like staff terms and conditions, hourly prices, length of contracts, the usage made of spot and/or block contracts, and volumes of work would be required. There is clearly much scope for reform in both the content of these rules and the level at which these should occur. Issues that would need to be considered are:

- The level at which rule making takes place.
- How the voluntary sector would represent itself.
- The legal status of such agreements.
- How agreements would be enforced.
- The role of trade unions in the agreements.

Given the evidence that destructive supply chain dynamics can be countered by a combination of labour and product market action (see Anner, Blair and Blasi, 2013 and Fine and Bartley, 2018) there would be a case for employment-related rules to be set through sectoral collective bargaining arrangements, strengthening the role of the unions in countering the market power of the local authority.

Summary of recommendations

In summary, the report recommends the following changes. These are divided into first and second level solutions.

First Level Solutions

1. More realistic funding that accounts for the actual cost of care. This includes more appropriate levels of funding to cover the costs of the SLW, sleepovers, travel costs, supervision and training.

2. Re-balancing the distribution of the risks and responsibilities for delivering services between commissioners and providers by ending the use of framework agreements that include inadequate hourly rates.

3. Ensure that any restrictions on the ability of commissioners to hold back or drive down prices through the introduction of minimum employment standards or service prices are consistent with Fair Work Framework and the Scottish Government's Fair Work First initiative.

4. Re-structuring contracting relationships to increase the market power of providers through the establishment of jointly agreed minimum contracting standards at a national, regional or local authority level covering such matters as hourly rates, volumes of work and minimum employment standards.

5. Include in any future review of the Scottish Government's 10 year SDS strategy an element of joined up thinking that accounts for Fair Work practices by weighing the advantages of spot purchasing and its propensity to accentuate features of the 'gig economy' alongside the need for provider stability and service quality. This recommendation would require participation by all government stakeholders, providers, unions and service user representatives in any solutions.

Second Level Solutions

1. A duty on providers to ensure that any negotiated workplace changes to terms and conditions that vary from the minimum Fair Work employment standards do not involve any overall detriment to workers from the agreed negotiated national minimum.

2. Establish an Award of 'Exemplars' in care for those providers that negotiate workplace changes to terms and conditions that show an overall improvement for workers from agreed negotiated national minimum and on Fair Work principles. Such improvements can include issues such as training and development and career paths for care workers, or the usage of new technology so that employees spend more time on personal contact.

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About CCPS

CCPS exists to identify, represent, promote and safeguard the interests of third sector and not-for-profit social care and support providers in Scotland, so that they can maximise the impact they have on meeting social need.

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