WINNERS AND LOSERS?

The social marketisation of civil society.

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Contents

Executive summary

The research in this report, conducted jointly by Maynooth University and Community Work Ireland, scopes the impact of marketization through commissioning, competitive tendering and procurement on the capacity of civil society organisations (CSOs) for collaboration, advocacy, community development and service delivery.

Public procurement is the acquisition of works, supplies and services by public bodies. Commissioning is about the process of deciding whether and how to make or buy a service/programme. Marketisation is a specific approaching to buying services and programmes from external, non-government organisations. At its most fundamental, it is about the introduction of a purchaser/provider split (usually, but not always through competitive tendering) and using competition and price signals to drive efficiency and innovation.

Quasi-markets for welfare and social services are distinct from typical markets because usually there is only one purchaser, and not all of the sellers/suppliers are driven to maximise profit (some are public agencies and others are CSO's). The 'consumers' rarely if ever purchase services directly, instead, they rely on the government as a proxy purchaser.

In Ireland the phrase 'commissioning and procurement' is understood as a recent phase of policy whereby many welfare services are being marketised. Key drivers informing the direction of travel in the Irish context have been cost savings and value for money, as well as cohesion and administrative purposes. However, the research and international experience has shown that value for money does not necessarily equate with retention of quality service or good employment conditions. Contractual terms can also reduce flexibility and the ability to adapt to changing circumstances or to meet emerging needs. In addition, small internal markets may not have the capacity to deliver local services, engage with certain groups or to be attractive to large primes. Public institutions also need the necessary skills to procure and manage commissioned work effectively. International and Irish experience has highlighted both positive and negative impacts of commissioning and procurement on CSOs. These are summarised below.
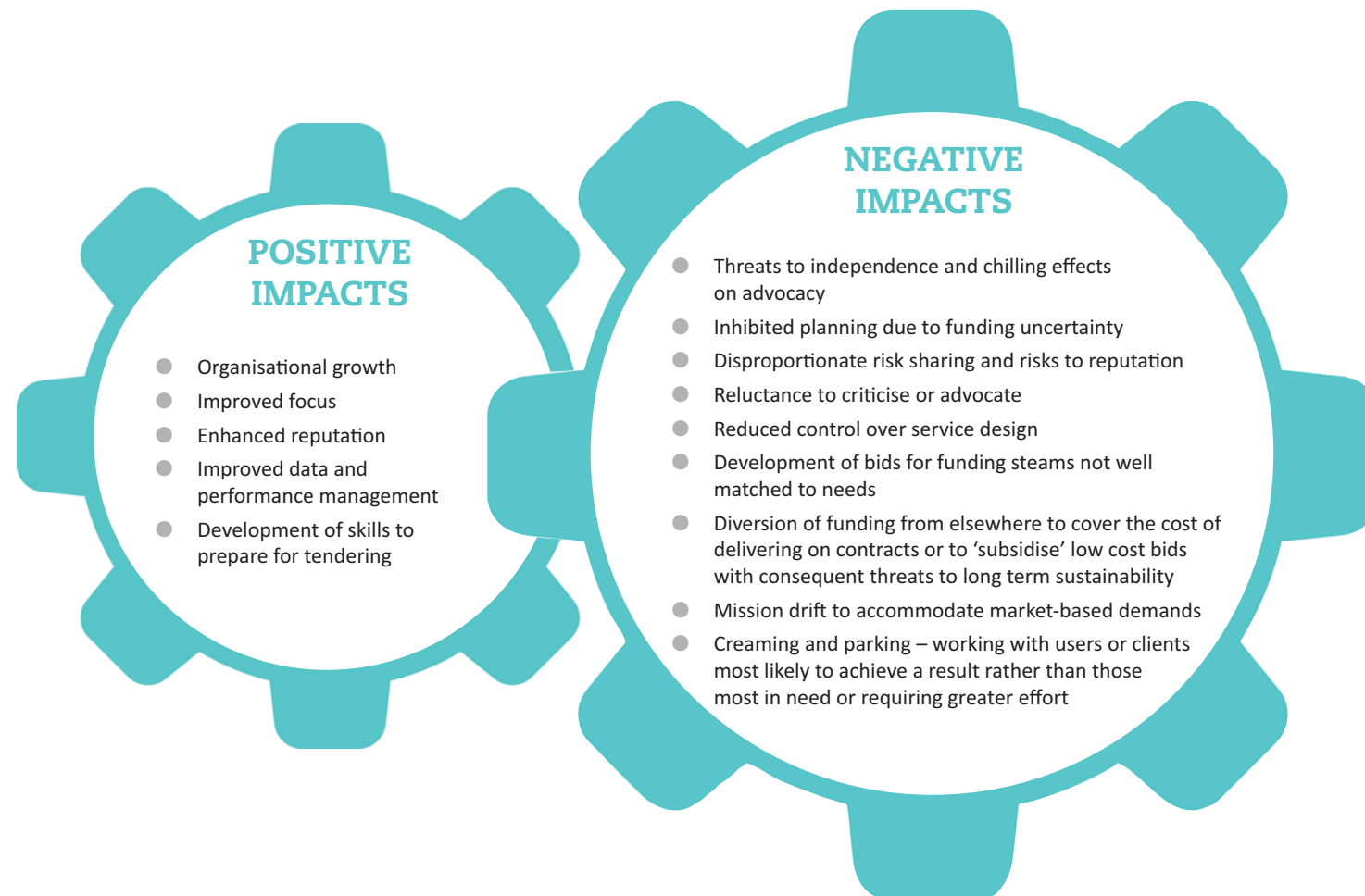
The analysis found that in some sectors, for example Housing First, commissioning and procurement was creating a dynamic of below cost competition and was potentially damaging interagency and collaborative working. In the Public Employment Services sphere, Job Path and uncertainty about procurement have had implications for the type, volume and quality of services delivered to different service users. In community development, the Social Inclusion Activation Programme has been narrowly focused on specified nationally-set targets, rather than meeting local needs, while advocacy and capacity to innovate have also been considerably weakened. In the domestic violence sector, different processes of commissioning are evident across regions and there is an absence of clarity about these feed into national decision making and resource allocation.

We present three strategies for consideration. The first is to avoid procurement altogether for certain sectors and instead develop absolute alternatives to procurement. This option is particularly relevant to community development and process led work, where providers need to be embedded for long periods in local communities. National equality strategies, including the Pubic Sector Duty, and the Sustainable Development Goals can also inform which groups and services should be protected from potentially negative impacts of marketisation.

The second strategy is defensive. It aims to mitigate the negative damage to CSOs of commissioning and procurement. Below cost price making should be avoided. Clear guidance should be developed on how to assess tenders on wider value for money criteria other than cost. More use of pre-qualifying conditions should be considered, especially to support diversity, social inclusion and the sustainability of smaller CSOs. How administrative efficiencies can be achieved other than through procurement should be explored. Guidance is also needed on the use by charities of public fundraising to sub-vent successful below cost tenders.

The third strategy is offensive. It seeks to ensure that where commissioning and procurement must apply, then it should work from a human rights and equality perspective. Any commissioning of need should be transparent, understood and publicly available. The voice and input of service users and staff should be included and inform the assessment of need. Greater use could be made of Social Clauses. relating for example to gender equality or public sector duty. Advocacy, research and policy work should be included within procurement and outputs.

POSITIVE IMPACTS

- Organisational growth
- Improved focus
- Enhanced reputation
- Improved data and performance management
- Development of skills to prepare for tendering

NEGATIVE IMPACTS

- Threats to independence and chilling effects on advocacy
- Inhibited planning due to funding uncertainty
- Disproportionate risk sharing and risks to reputation
- Reluctance to criticise or advocate
- Reduced control over service design
- Development of bids for funding steams not well matched to needs
- Diversion of funding from elsewhere to cover the cost of delivering on contracts or to 'subsidise' low cost bids with consequent threats to long term sustainability
- Mission drift to accommodate market-based demands
- Creaming and parking – working with users or clients most likely to achieve a result rather than those most in need or requiring greater effort

Key questions arising from this research that require further exploration are:

- How does the process of marketization differ in small states? How does Ireland's weak system of local government and highly centralised decision making processes impact on marketization? What role do experts play in marketization, including legal and financial experts?

- How does discourse legitimate the drive away from grants towards commissioning and procurement of Irish social services and community development? How is procurement impacting on the development paths of CSOs? How does commissioning and procurement meet the long term needs of service users? Is commissioning and procurement contributing to a race to the bottom in standards for staff and service users?

SECTION 1
Introduction and Methodological Approach

This report is concerned with the impact of commissioning, competitive tendering and procurement on the capacity of civil society organisations (CSOs) for collaboration, advocacy, community development and service delivery. It examines experiences in four different civil society sectors in Ireland – public employment services (PES), domestic violence (DV), community development (CD) and housing first (HF).

In 2018, Maynooth University held a symposium which examined the policy, political and legal context for procurement of PES. Community Work Ireland had previously undertaken research into the impacts of commissioning on community development and social inclusion work more generally. Community Work Ireland and Maynooth University made a successful grant application to the Irish Research Council New Foundation for the research project which is called CommSoc. The grant funded a **scoping** exercise on the impact of marketization and commissioning on Irish social services and community development processes that were previously funded through public grants.

This report presents the findings of the initial scoping exercise. These findings now feed into a longer-term aim of developing an international comparative research proposal and a collaborative partnership. The purpose will be to secure resources to examine more thoroughly the impact of marketization in sectors previously funded through state grants.

The research question that guided the work of CommSoc was "whether and how commissioning processes reduce advocacy, independence and/or collegial collaboration amongst civil society organisations". The project applied for and received Maynooth University ethical approval in July 2019 and all data and data collection and management was governed by its code of research ethics, research integrity and the General Data Protection Regulation (GDPR).

CommSoc began the process of systematically identifying knowledge gaps, and potential theoretical and methodological approaches to meet those knowledge gaps. It commenced with an international and domestic review of both academic and 'grey' literature, including civil society and public policy reports. Four scoping interviews highlighted important considerations for design of any future collaboration. These included:

- Irish specificities, including historical factors, geopolitical considerations, the small size of the Irish state and social services market, the nature of highly centralized power and relatively weak autonomy and capacity of local level political institutions.
- The choice of the relevant time period and possible comparators in any larger study was also flagged, as was the need to demonstrate alternative approaches to funding and supporting civil society advocacy and service delivery.
- In choosing comparator states, while the initial pull may be towards other liberal states (who have led commissioning and procurement), there is likely much to learn from other small states, and indeed from EU states who have resisted or found alternatives to more negative forms of commissioning and procurement.

The sectors chosen for the initial data gathering exercise offered diversity across national, regional and local processes. They also afforded the opportunity to examine different dynamics as they included sectors where commissioning and procurement was already in practice and others where it is in development. The cases also allowed us to distinguish community development process oriented work and work focused on delivering services to those in need, often under contract from statutory agencies.

CHART 1: Choice of four case studies

	National	Regional	Local
Community Development			X
Public Employment Services	X	X	
Domestic Violence		X	
Housing First		X	

■ *in practice* ■ *in development*

A second symposium held in Maynooth University on September 20th 2019 facilitated both data gathering and the development of the theoretical approach for the research. Dr James Rees (Wolverhampton University) shared his extensive knowledge of the impact of marketization and commissioning on civil society. He offered Strategic Action Fields (see Box 1 below and Appendix 1) as a framework to analyse different sectors. The value of a SAF approach is to the study of commissioning and procurement is that it helps us to understanding how the type of social services quasi-market that we end up with is determined by how the power relationships between incumbents, challengers and commissioners play out at specific points in time and within specific social policy fields.

The focus on 'framing' as an essential tactic of actors within SAFs led to the use of Discursive Institutionalism (see Box 2 below) as an approach to analysing how commissioning and procurement policy was advanced and legitimated.

The symposium served to gather specific data on the four sectors mentioned above. Subsequently, three scoping interviews in each sector took place, after which case studies were developed. Each case sought to understand the relevant sector as a Strategic Action Field. The commissioning and procurement drivers and mechanisms in each sector, including impacts on staff, users and civil society advocacy and collaboration, were assessed. We also sought to identify any perceived benefits and proposals for alternatives to commissioning and procurement across sectors and within each sector. Interviews ranged from 45 minutes and 75 minutes and were manually analysed across a range of pre-coded themes. Data was also utilized from interviews conducted for previous analysis[1].

The analysis was drafted over four months (September 2019 to January 2020) and published in report form. The report was launched in a national feedback conference on March 19th 2020 and subsequently disseminated through international conferences and journals.

Strategic Action Fields

This concept of *Strategic Action Fields* (SAFs) has been applied to various themes, including organisations, social movements and institutions, to conceptualise relationships between organisations, institutions and other actors (Taylor et al P 256). SAFs are the basic building blocks of modern political/organizational life in the economy, civil society and the state. They allow us understand commissioning and procurement through the classic sociological lens of structure and agency, enabling an examination of how fields emerge, how periods of social change and stability are constructed and shaped, and how they are changed by internal actors. Taylor et al (2016) utilise the multi-disciplinary social theory concept of '*field*' to understand social worlds. Drawn from Bourdieu's conceptual triad of 'fields, habitus and capital' the concept focuses on how individuals position themselves in relation to others (Bourdieu, 1977). In 1983, DiMaggio and Powell utilized the concept to understand how state funders shape the responses or strategies of organisations in state funded fields (see appendix 1 for more detail).

Discursive Institutionalism

The theoretical concept of *Discursive Institutionalism* (DI) is used to examine change in discursive dynamics and how policy discourse builds legitimacy for change (Schmidt 2017). DI focuses on the power of ideas, the process through which they are articulated, the discursive interactions between actors as well as the institutional context within which they take place. Different levels of ideas can be ranked in terms of generality. The most general are philosophical ideas, which sit in the background as underlying assumptions, worldviews, and/or ideologies. These are rarely contested except in times of crisis (Schmidt 2017, p.251). At the next level of generality, programmatic ideas combine policy ideas with ideas about methods, instruments, goals and objectives into a cohesive programme, while finally specific policy ideas can change frequently. Schmidt also differentiates two types of ideas; cognitive ideas serve to justify the policies and programmes by speaking to their interest based logic and necessity, while normative ideas attach values to political action and serve to legitimise policy through reference to its appropriateness (Schmidt 2008, p.306-7). Discursive interactions can be in coordinative or communicative forms. A coordinative discourse of policy construction takes place between policy actors, while communicative discourse of deliberation is between political actors and the public and has a legitimisation function. By analyzing levels, types and forms of ideas, DI allows us the transformative power and causal influence of different discourses (Schmidt, 2008 p. 305).

We proceed with Section 2 which offers concepts to explore Quasi Markets in Small States, while the following section examines the lessons from international experience. Section 4 introduces the background to commissioning and procurement in Ireland, while Section 5 offers some macro observations on procurement policy and practice. We then move on to the primary scoping research Section 6 introduces 4 four case studies and Section 7 presents a thematic analysis. Section 8 presents our recommendations, we conclude with recommendations for further research.

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1   CWI (2015 and 2017) and Murphy et al (2017)

SECTION 2
Quasi Markets in Small States

The overall concern of this report is the trend towards marketisation as well as the impacts of commissioning and procurement per se. It is important to acknowledge that marketisation is broader than competitive tendering and can be practiced without competitive tendering (e.g. if Payment-by-Results mechanisms can be inserted into contracts that are rolled over instead of being re-tendered. This section examines the concept of marketization and its impact on the development of markets in small states like Ireland.

Marketization

Commissioning' and 'marketisation' are not equivalent: commissioning is about the process of deciding whether and how to make or buy a service/programme; marketisation is a specific approaching to buying services and programmes from external, non-government organisations.

Marketization[2] is the process by which market forces are imposed on public services[3]. It occurs where, for example, non-monetised welfare is commoditised giving it a market value and through market mechanisms. Introducing market concepts such as competitive tendering into the public sector thus transforms how welfare is delivered and paid for[4]. The adoption of 'business ontology[5]' changes the ethos of public services to entities which must run like businesses as opposed to realising social rights.

The dominant ideology informing the move towards commissioning and procurement is to achieve cost savings and greater value for money. This is understood to be obtained through competition, efficiencies and increased productivity. Public services have come to be redefined to mean services *funded* by the public purse rather than *delivered* by the public sector. Organisations that had been grant funded were offered contracts for services instead of grants, thereby 'marketizing' the work that they did. This process of marketization has five key elements as follows[6]:

- Commodification of services and infrastructure.
- Commodification of labour, reorganisation of work and jobs to maximise productivity and assist transfer to another employer.
- Restructuring the state for competition and market mechanisms.
- Restructuring democratic accountability and user involvement.
- Embedding markets in social services

We include contracting not-for-profits under the umbrella of privatization when the procurement process exposes not for profits to potential competition from private for profit actors. Commissioning and procurement potentially introduce a profit motive in sectors previously protected from the market. However whether competitive tendering will lead to privatisation will depend on how the procurement process is organised. Tendering processes can be designed to reduce the risk of such privatization. Deriving a profit from social inclusion programmes is an issue for real concern. Many fear a consequent loss in supports and services to marginalised communities.

> "The decision to pursue the tendering of the programme implementation raises the real prospect of the privatisation of delivery of social inclusion targets, potentially introducing a profit motivation into this work. To date social inclusion has been delivered by community led non-profit companies, it may now be led by profit seeking, market led companies."[7]

There are also significant risks to the state. These include higher costs, performance and quality problems, costs associated with contract management and monitoring, poorer conditions of employment, as well as the cost of legal advice and legal challenges. Competitive tendering tends to erode working conditions through processes of de-professionalisation, de-skilling, and de-collectivisation, a 'disorganisation of employment relations[8]'.

Quasi-markets

Quasi-markets are distinct from typical markets because usually there is only one (monopsony) purchaser, not all of the sellers/suppliers are driven to maximise profit (some are public agencies and others are CSO's), and the consumers rarely if ever purchase services directly. Instead, they rely on the government as a proxy purchaser[9]. While publicly financed, resources are allocated through (sometimes limited) market-like competition between various autonomous actors. These can include state-owned, private for-profit and nonprofit actors.

In Ireland, many welfare services are delivered through concessions, delegated management contracts, leasing or other forms of public–private partnership[10]. Some attempts to create social service markets such as universal health insurance, childcare and social housing have not been successful[11]. Contracting out of services can lead to tenderers over-promising in order to win the tender, and then not being able to deliver[12]. Contractual terms could reduce flexibility and the ability to adapt to changing circumstances[13].

We examine how quasi-markets or social marketization might be operationalized in different sectors in the Irish context where there are geographical and historical specificities. Key features of relevance include the following:

- The degree to which formal and informal Service Level Agreements (SLAs) have been a feature of the mixed delivery Irish welfare state. This leads to consequences for how commissioning and procurement processes evolve in the Irish CSO sector[14].

- The degree to which key constitutional features, including highly centralized power and political institutions, shape possibilities for actors[15]. Ireland has strong levels of centralization and weak local governance with the least autonomous local government in the EU, and these shape the context in which commissioning or procurement policy and practice evolves.

- The degree of state capacity, which is weak in some areas in Ireland and has been a significant feature in both current and capital procurement projects[16].

Related factors are size and geography. Small internal private markets may not have sufficient capacity to deliver local services (for example, social housing and care infrastructure[17]) or to engage with certain groups (for example, after-school and out-of-school childcare provision, landlords illegally refusing Housing Assistance Payment tenants[18]).

A small peripheral island state (albeit one in the EU), has a limited services market with natural and more expensive entry barriers. Large international primes thus may consider there is insufficient return on investment in delivering services. While less competition from the open market may protect CSOs, some of these organisations may also have monopolistic or oligarchic dominance in certain sectors, with consequences for both power and pricing. Procurement, therefore, can be an attractive mechanism to challenge what some might perceive as an unhealthy dominance. However, it can be particularly challenging for smaller CSOs and can lead to an over dominance of a fewer number of larger organisations.

Size may also matter in political terms, bringing with it particular reform challenges. In a small island where a localist and clientalistic political culture has been somewhat reinforced by a proportional but local electoral system, it is likely that there may be political protection of incumbent actors at the expense of challengers[19]. Institutional, professional and personal relationships may also be less formal, with more overlap between work, social and family networks.

Irish political culture is comfortable with high levels of constructive or strategic ambiguity in political discourse. This makes the identification of drivers of commissioning and procurement difficult, hence our interest in analysis of framing (i.e. how particular stories or views are articulated and the language used to achieve this).

Given the absence of larger private sector competitors in the Irish market, commissioning and procurement is developing largely through social marketization[20]. Rather than handing over services to uninterested external markets or inadequate internal markets, the state attempts to *make markets out of civil society*, with significant consequences for civil society.

2   Whitfield (2006)
3   Marketisation, at its most fundamental, is about the introduction of a purchaser/provider split (usually, but not always through competitive tendering) and using competition and price signals to drive efficiency and innovation. Marketisation is a matter of degree and the level of marketisation within social services quasi-markets can be adjusted according to the frequency of competitive tendering, the openness to external players and new entrants, and the performance signals in the payment models (such as Payment-by-Results). Traditionally these have been planned, delivered and financed by local and central government and in this instance, by the non-government sector.
4   Greve (2015)
5   Fisher (2009:17)
6   Whitfield (2006)
7   McCarthy & Muldowney 2015 submission Joint Committee on Public Service and Oversight and Petitions
8   Greer et al. (2017)

9   Bartlett and Le Grand's (1993)
10 Murphy and Dukelow (2016)
11 Ibid
12 NESC (2018), p.254-5
13 Ibid
14 For example Harvey and Acheson (2004) note that in education and health the incumbents were often church actors
15 Kirby and Murphy (2011)
16 Murphy and Hogan (2020)
17 Murphy and Dukelow (2016)
18 NESC (2018), p.168
19 Boyle (2005)
20 Han (2017)

SECTION 3

Learning from International Experience

This section draws on the literature to highlight learning from international experience of commissioning and procurement. It commences with a discussion about how commissioning and procurement is defined and then explores key skills and the impact on organisations, services and behaviours. It highlights problems associated with designing social services quasi markets (high transaction costs; risk of outcomes-based contracting excluding CSOs from markets, setting usable performance metrics), and concerns about service-quality when public services are delivered via agencies competing in a quasi-market (e.g. mission drift, risk of service standardisation, danger of creaming and parking).

Definition of Commissioning and Procurement

Public procurement can be defined as the acquisition, whether under formal contract or not, of works, supplies and services by public bodies. It ranges from small contracts, such as the purchase of routine supplies or services, to large contracts and the formal tendering for infrastructural projects by a wide and diverse range of contracting authorities[21].

Definitions of commissioning in the literature usually center on a common notion of commissioning as a cyclical process. The New Zealand based NZPC[22] adopted the term commissioning to describe a deliberate approach to that process. Crucially in this approach, 'procurement' will only feature as part of commissioning if the purchase of a service is the option selected as the service model. Six stages are conducted consecutively starting with clarifying objectives; research and analysis; selection of a service model (i.e. in-house provision, market, or other); detailed design; implementation; and service stewardship. Opportunity for feedback at all stages is critical throughout the commissioning process.

Clarity of Terminology

The importance of being clear on the distinction between commissioning and procurement is to acknowledge, in theory, the legitimacy of commissioning as a transparent, accountable, and properly functioning cycle. Done properly, commissioning can draw the expertise and experience of service providers, as well as any difficulties, back into analysis to inform the subsequent service model selection and improve service delivery in each subsequent iteration.

> "Commissioning is a process that starts with understanding the needs of the end users of services. It is not procurement, the purchasing of goods by Government, as it is about delivering a service not buying a commodity[23]."

However, understanding these distinctions between commissioning and procurement is confused. Some associate commissioning with government outsourcing, largely because commissioning processes often result in the procurement of a service or good being selected through the service design process.

In Australia, commissioning sometimes means procurement and other times appears similar to strategic planning.

The Scottish Coalition of Care and Support Providers found that members understood that effective commissioning should set the direction and priorities for a procurement strategy[24] but their experience was that procurement drives such processes[25].

In the UK, procurement happens within commissioning processes only if a decision is reached between planning and design to outsource a service[26]. This triggers a separate procurement cycle comprising of design, tendering, bidding, and contracts followed by monitoring and evaluation to feed back into the original commissioning cycle[27]. However, a 2008 UK study[28] found that more

than half of the public servants surveyed believed commissioning and procurement to be the same thing. Tension is evident between *"the 'rhetoric' of the 'full cycle' approach to commissioning"*, and *"the emergence of a resource-constrained, large-scale and Pay by Result[29] based contracting which perhaps borrows some of the language of commissioning to gain legitimacy[30]."*

CSOs rarely have independent financial means and have no choice but to participate in various commissioning processes. They do so in order to survive and keep their service going, despite recognising that they are participating in often an improperly constituted process. CSOs in the UK have complained that they are excluded from the full cycle, particularly service specification/re-design[31]. In Scotland, providers report that their role in being consulted in a commissioning cycle as *"passive"* and the consultation being *"a box-ticking exercise for a pre-set agenda[32]"*. There, respondents indicated a reluctance to raise issues or criticise as it might put contracts, and therefore people being supported, in jeopardy[33]. Sturgess (2018, p.164) argues that in a significant number of recent UK public service contracts, there has not been *"an honest conversation about results and resources with providers committing themselves to undeliverable results at uneconomic prices"*.

As with the UK experience, commissioning in Ireland is used as a term to obscure rather than to drive strategic discussion about cohesive reform and marketization of social services and community development. Attempts have been made to make the distinction between commissioning and procurement[34] and others fear the tendency to conflate the two terms in Ireland[35]. The two terms are often used interchangeably and, while recognizing they are potentially separate processes, we choose in this report to use the language of 'commissioning and procurement' to capture a distinctive approach to acquisition of public services. We do so largely reflecting the degree to which commissioning in Irish policy discourse become a somewhat 'toxic' and 'tainted' work, and a euphemism for competitive tendering[36].

Marketization of Social Services

Commissioning has a long history, having first emerged over three decades ago in the UK[37]. Drivers of commissioning in the UK are cited as neoliberal ideology and the principles of new public management[38].

Critics argue that certain markets need more nurturing than others, particularly services that deal with complex human needs[39]. Concerns have been raised in the UK by sector observers, including the National Council for Voluntary Organization (NCVO), academics, and researchers, about the *"potential dangers of embedding market mechanisms and commercial approaches into public service delivery without critically understanding the impact this has on the relationship between government, private and voluntary sector organizations in the provision of public services, and on the social-centric missions of VCOs[40]"*.

The assumption that commissioning and procurement of social services ultimately enhances value for money without impacting on quality and cost is not supported by research. Private sector provision of care homes, prisons and other services in the U.K. underperforms compared with community sector provision in terms of quality of service and employment conditions[41]. Although quality standards have been included in the tendering process, *"in practice price tends to exert the more important influence over contract letting decisions[42]"*.

Management Capacity

Management capacity and measurement are key issues to emerge about the problematic nature of marketization of social services. Questions have been raised about the ability and skills of public servant commissioners to deal with the challenges of establishing and managing markets. In the UK, incidences are noted of public sector commissioners finding themselves out-manoeuvred by their counterparts in the private sector due to a lack of relevant skills or experience[43].

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21 Department of Environment, Community and Local Government. Public Procurement Guidelines - Competitive Process
22 The New Zealand Productivity Commission – Te Kōmihana Whai Hua o Aotearoa - is an independent Crown entity which completes in-depth inquiry reports on topics selected by the Government, carries out productivity-related research, and promotes understanding of productivity issues. It was tasked with establishing how best to enhance productivity and value focusing on the purchasing of social sector services.
23 Moss (2010), p. 4
24 CCSP (2017)
25 CCSP (2018), p.10-11
26 In the UK, Reform conducted an overview of how public services are commissioned and procured (Pritchard and Lasko-Skinner 2019). They defined commissioning as the entire process by which public services are designed, acquired and delivered by the state and various subsidiary providers (ibid., p.14); commissioning is a four stage cycle of strategic planning, service design, implementation, and evaluation.
27 Pritchard and Lasko-Skinner (2019) p. 15
28 Sturgess (2018) p. 156

29 Payment by Results.
30 Rees (2014), p.47
31 Rees (2014), p.48
32 CCPS (2018), p.7
33 Ibid, p.12
34 The Centre for Effective Services (2014) and Clann Credo et al 2016
35 CWI (2015)
36 Lyman 2017, p26
37 Hirst and Rinne (2012), p.vii; Sturgess (2018), p.157
38 New Public Management sought to take lessons learnt from the private sector – particularly around choice, competition and innovation – and apply them to public services (Pritchard and Lasko-Skinner 2019, p.28). It shifts administrative orientation away from 'command and control' and bureaucratic models of organising public services towards more entrepreneurial approaches and the incentivisation of public agents through competition, performance management, and performance-related pay. In short, an attempt to govern the public sector by making it more business like. The embrace of NPM positions public servants as contract managers rather than operational delivery staff, captured in the trope 'steering not rowing
39 Pritchard and Lasko-Skinner (2019), p.40
40 Bruce and Chew (2011), p.155
41 The Shadow State, SEUK (2012)
42 James (2011), p.686
43 Pritchard and Lasko-Skinner (2019), p.33

Contract management appears the most consistent problem[44], with too much emphasis placed on the procurement stages of commissioning and not enough on the design or management of the contract[45]. This is related to the 'inescapable problem of transaction costs[46], a key issue and dilemma at the heart of marketisation. A transaction cost perspective also helps in understanding how competitive tendering can lead to privatisation and the dominance of large for-profit players. To reduce their transaction costs, purchasers prefer to enter into fewer but larger contracts with 'primes.' This makes the tendering and contract management processes more efficient from an administrative point of view but it closes off CSOs entry points to the market by reducing the number of low-value, small contracts that are available.

In New Zealand, criticism has been levied at the absence of a lead agency with responsibility for building commissioning capability[47]. Commissioning by government agencies of services in isolation produces a "*disjointed tapestry of contracts, forcing clients to navigate multiple eligibility procedures*[48]".

Service providers in the UK expressed frustration at a lack of understanding leading to a 'mismatch' between the purchasing organization and service providers' understanding of what service and budget was needed[49]. Either service providers were being asked to deliver a greater level of support than could be funded, or the funders were only willing to pay for their core services and not fund other aspects that they felt were important to the quality of service on offer.

Scottish providers identified a "*contracting authority culture*" which was "h*ierarchical and encourages and rewards command and control leadership and follower behaviors*[50]". This meant that it was difficult for individual commissioners to influence their own organisations, with examples being provided of "*good people*" having to "*fight internally to make change happen*[51]".

Measurement and Metrics

There is a trend by governments to move away from input-process-output measurement systems to regimes based on outcomes or external impacts of public services on clients/service users and on the wider community[52]. This is attractive to policymakers as it (in theory) ensures that governments only pay for what works and is administratively simpler than specifying what services should be delivered and how, which requires an understanding of 'what works' in social service delivery. Outcomes-based contracting (also known as Pay by Results) poses additional problems for community and voluntary organisations above and beyond competitive tendering. Many such groups cannot take on the financial risk of Payment-by-Results contracts or access/borrow the capital needed to invest in service delivery infrastructure (offices, staff, IT systems) upfront. For these reasons, the degree of outcomes-based contracting is likely to tilt the quasi-market towards privatisation and capture by multinational human services agencies (if they deem the contracts sufficiently profitable).

Yet outcomes based contracting[53] has proved challenging, and there is growing recognition that in some cases it will be more appropriate to commission for capability than to attempt to specify, measure and reward the delivery of outcomes[54]. Honest and mature conversations about results and resources are thus an important part of the commissioning cycle in order to properly inform a decision to proceed to procure a social service.

Unless the commissioning process makes informed decisions on appropriate measurements, which take into account results and resources, there will invariably be tension between the funder and the service provider in the type of metrics used to evaluate whether the service is being effective and efficient. This relates to the question of whether funders' expectations are realistic and take into consideration the practical difficulties in being able to produce reliable data in the context of complex lives that people accessing social services often live.

Impact on Civil Society Organisations (CSOs)

While not all literature records a negative experience of commissioning, literature on the impact of commissioning on CSOs is largely negative, particularly in respect of the organisations' behavior and service provision.

Positive experiences include organisational growth, learning, improved focus and enhanced reputation[55]. Greater professionalism about data management and being able to produce robust performance management statistics for future funding opportunities was welcomed[56]. Commissioning also provided the catalyst for organisations to become more 'savvy'. They started to prepare the ground in advance of meetings with funders by looking at savings and service innovations, and identifying what suggestions were unfeasible so they could have them removed from the agenda in an informed way[57].

That said, negative experiences predominate and include:

- Threats to CSOs' independence, uncertainty about funding, disproportionate risk sharing and risks to their reputation.
- Shifts from original goals as CSOs accommodate market-based demands[58].
- Acting as a proxy for the state, particularly in applying sanctions and conditionality of service to clients (for example, in labour market related activities), undermines the organisations' original purpose[59], though this also happens without marketisation or competitive tendering.
- Mission drift as other aspects of the work of CSOs such as policy development, campaigning and advocacy can receive lesser priority as market-based demands take preference[60].
- Reshaping of the relationship between the state and CSOs posing the risk that many may be reluctant to criticise.
- The theory of organisational isomorphism[61] anticipates reduced diversity between CSOs as they are each driven to standardise and converge organisational structures, service models, and value orientations under the pressure to win and retain contracts.

Impact on Service Provision

A number of studies have noted negative impacts on service provision. These include:

- Design of services from the perspective of the purchasing organisation rather than the service user[62]. This reduced the control CSOs had over the nature and quality of the service they offered to their clients, particularly where an holistic service was provided which aimed to get to the root of the problems being experienced by the client and to encourage their participation[63] .
- Development of bids for funding streams that were not well matched to the services offered[64].
- A view that the government was trying to deliver social services "*on the cheap*" by squeezing providers very tightly on pricing or provision of insufficient funding[65].
- Diversion of funding from elsewhere to cover the cost of delivering on government contracts[66].

44 Pritchard and Lasko-Skinner (2019), p.39
45 Which may be for years and will impact most on the total cost of the service to commissioners.
46 Bredgaard and Larsen (2008)
47 NZPC (2015), p.172
48 NZPC (2015), p.131
49 Hirst and Rinne (2012), p.32-33
50 CCPS (2018), p.13
51 Ibid
52 Wimbush (2011), p. 211
53 Finn 2012)
54 Sturgess (2018), p.164

55 Martikke and Moxham (2010), p.794
56 Hirst and Rinne (2012), p.39-40
57 Ibid
58 Kelly, (2007)
59 Joseph Rowntree Foundation (2008)
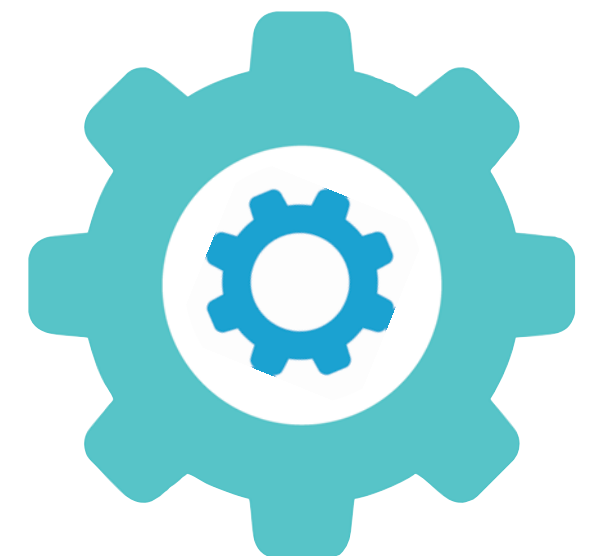60 Davies (2010)
61 DiMaggio and Powell's
62 Hirst and Rinne (2012)
63 Ibid, p.38
64 Ibid, p.33
65 NZPC (2015), p.162
66 Ibid and Hirst and Rinne (2012), p.36

While in Scotland the experience of commissioning and procurement was similar regardless of the size of the CSO[67], this is not the case elsewhere. Smaller providers often have a specific set of problems associated with commissioning and procurement. These include:

- Limitations on the ability of small providers to simultaneously undertake strategic planning and to secure funding[68]. Securing funding was a "*major issue dominating the working lives of project managers, squeezing out other service management activity*[69]". The short term nature of funding and uncertainty about future funding also inhibited planning[70].

- Complex tendering processes disadvantage smaller providers lacking resources and expertise to support bid-writing. The application process for a competitive tender was more complicated and resource intensive than that required for a block grant and this was exacerbated when the lead-time for the tender was short – which is common.

- Setting out in a bid what will be measured and how was a challenge for small players without the ability to hire in expertise[71]. The cost of performance measurement in terms of staff time can be significant[72].

- Outcomes-based contracting tendering rules can frequently exclude smaller, community players. (The Job Path bid process required bidders to demonstrate an annual turnover of €20m for the previous three years, this was similar to the UK work programme experience.)

While, arguably, it is unrealistic to expect a government to manage a large number of small contracts it is also the case that small, often niche, providers are a legitimate and integral part of the CSO landscape. They may not wish to become larger, because doing so may threaten their mission, connection to known clients, or other characteristics they consider important[73].

Diversity of service providers is needed to provide increased choice, and quicker adaptability to changing circumstances. Smaller diverse providers "*bring different perspectives to the challenge of delivering better and more cost-effective public services*[74][7]".

Impact on Behavior

Most CSOs by their nature are responsive to the needs of the most marginalised and, through various mechanisms, relay information to the government on the type and level of service required to reduce inequality and improve societal welfare. However, a reliance on public funding can exert a "*magnetic pull*[75]", which in turn leads to changes in behavior.

- Advocacy can suffer, with reluctance to raise issues or make criticism that might put contracts, and therefore services, in jeopardy[76]. Some studies[77] noted an "*unconscious and subtle de-radicalisation*" of organisations when the activities of the state and those of the community sector become less distinctive.

- The use of selective recruitment practices such as "*skimming*", "*cherry-picking*" and "*lemon-dropping*[78]". These are adopted by organisations to ensure they work with individuals with whom they can most easily achieve a result, while avoiding those for whom a greater effort is required. Another strategy is "*parking*", which refers to a minimum level of service being provided in order to receive a service fee, but not sufficient to achieve real and meaningful outcomes for the individual.

- Mergers and the formation of more competitive consortiums. Some CSOs might involuntarily merge at the behest of the funder, or others may form consortia in advance of a funding bid "*in anticipation of it in an effort to lead the agenda and avoid closure*[79]". The experience from such mergers or consortia has been mixed. Some felt they were still able to provide a specialist service with reduced costs, others cited difficulties pulling organisations together, fears that one organisation would take over, and tensions associated with differences in staff salaries[80].

Funding has always been unreliable and the move to commissioning and procurement continues to be a model of uncertainty and instability. However, in comparison to grants, late notification, sometimes down to the last number of weeks, seems to be a more prominent feature of commissioning and procurement with providers and their staff reporting the uncertainty particularly difficult to deal with[81].

67 CCP (2017)
68 Hirst and Rinne (2012), p.31
69 Ibid, p.31-32
70 Simmonds (2018).
71 Simmonds (2016), p.7
72 Hirst and Rinne (2012), p.40
73 NZPC (2016), p.159
74 Sturgess (2012), p.8 cited in NZPC (2015), p.161
75 Corcoran (2009), p.32
76 CCPS (2019), p.12
77 Aimer (2011), p.304
78 In New Zealand, the term 'lemon dropping' is employed to describe the behaviour of providers who try to get rid of "expensive" clients (NZPC 2015, p.153).
79 Hirst and Rinne (2012), p. 43-44
80 Ibid
81 Hirst and Rinne (2012), p.34

SECTION 4
Background to Commissioning in Ireland

Commissioning and/or procurement are increasingly becoming the norm for the delivery of a wide range of services in Ireland, often legitimated as best value for money and delivering more efficient and transparent outcomes. However, such practices have been a feature of Irish social service delivery for over half a century with Section 39 funding adopted by Health Boards in the 1970s and Section 10 funding adopted by the Local Authorities in the 1990s. Service Level Agreements (SLAs) have long been used in health, housing and social services delivery. This section explores drivers of recent momentum.

Development of Commissioning and Procurement

The recent momentum finds its roots in the financial crisis wherein public sector expenditure in Ireland became the focus of increased efforts to achieve savings. The 2009 Special Group on Public Sector Numbers and Expenditure Programmes (An Bord Snip Nua) was "*convinced that there is considerable scope for increased resort to both shared services and outsourcing in the Irish public service.*" The contraction of the numbers employed by the state, coupled with a drive to reduce expenditure, increased the emphasis on public procurement in policy terms.

The 2011 Programme for Government included the commitment to "*instigate a Government-wide review to identify and eliminate non-priority programmes and outsource, where appropriate, non-critical functions*[82]." Procurement was identified as one of 14 public service reform initiatives announced by the Minister for Public Expenditure and Reform in the Public Service Reform Plan in late 2011. In particular, the 2011 plan signaled the Department of Social Protection's (DSP) intention to contract private/third party providers of employment services (Job Path) on a payment by results basis.

The 2014 Government Statement on Transforming Public Services endorsed public sector collaboration in procurement of shared services as a means of improving both value for money and standards of service to the public. The second Public Service Reform Plan, covering the period 2014-2016, placed particular emphasis on improving outcomes for service users, as well as maintaining the necessary focus on increased efficiency.

> "*Central to this strategy will be the creation of a new framework of competition for public services. The Public Service must begin to transition away from the traditional system of block grants to organisations providing public services and move instead to a new approach based on releasing funds in return for delivering specified outcomes. To this end, a decision making framework for the planning, design, delivery and management of services is required*[83]".

The plan committed the public service to undertake more commissioning, and clarified that this entails specifying required policy outcomes; planning and engaging with potential providers to decide how these outcomes can be achieved; procuring and contracting to obtain the best value for money; and managing the delivery of services so that users' expectations are met. It acknowledged the need to build managerial capacity and capability and commissioning skills as a core competency[84].

In 2015, the Department of Public Expenditure and Reform (DEPR) published *Commissioning for Better Outcomes*. It signaled to CSOs the state's intention to move away from the provision of grants towards competitive tendering for a range of services and social inclusion initiatives. Its commitment to provide a discussion document to the community and voluntary sector, service users and the general public on commissioning, has to date not been realized.

The 2016 Programme for a Partnership Government included a commitment to ensure that all commissioning for human, social and community services takes place in a societal value framework[85] (targeted at maximising the value for society). This reflected work led by actors in the community and voluntary sector to promote increasing societal value as a core objective of commissioning procurement[86].

82 Programme for Government (2011), p.11
83 Reform Plan (2014), p. 15
84 http://www.reformplan.per.gov.ie/2014/strategic_overview_nav/2.2_users/2.2.html
85 Programme for a Partnership Government (2016), p.131
86 Clann Credo et al 2016

Basis for Commissioning and Procurement

Where procurement is deemed to apply, the legal basis in the EU is provided in the Procurement Directives. The most relevant is Directive 2004/18/EC, soon to be replaced by Directive 2014/24/EU[87], which opens up more opportunities for greater emphasis on innovation, environmental and social aspects in public procurement bids.

While the basis for moving to commissioning and procurement for services has been primarily presented as a legal imperative, referring to the EU Directive on Procurement, it has also been presented on the basis that it represents best practice, good governance and a more efficient way to spend public money. The former Minister for the Environment, Phil Hogan, stated in the Dáil that is was: "*In accordance with the public spending code, best practice internationally, legal advice and to ensure the optimum delivery of the services to clients*[88]".

In 2014, Minister of State at the Department of Finance, Brian Hayes, cited good governance in relation to the decision to apply competitive tendering procedures for Rape Crisis Network of Ireland: "*From a good governance perspective, it is important that where the State is grant aiding organisations, it does so in a clear, transparent way*[89]." Minister for Children, Frances Fitzgerald, cited the legal imperatives for procurement rules "*...due to the level of the support services involved and the value of the contract, a tendering process for reappointment of a service is required under EU regulations*[90]."

State signals that work to address poverty, social exclusion and inequality would be redefined as 'service delivery on behalf of the State' were strongly rejected by many in the community sector. In 2019, the Department of Rural and Community Development signalled in its new five-year strategy to support the community and voluntary sector a commitment to reviewing the current national practice in relation to the commissioning model and to move towards a model reflecting a collaborative, partnership and whole-of-government ethos, prioritising societal value and community need[91]. There is some optimism that the review will take account of the difficulties identified many working under a commissioning model. However, while welcomed, there are doubts even within the department that, as a relatively minor department, it will have sufficient gravitas to direct procurement practice of larger expenditure departments.

Responses to Commissioning and Procurement

In practice, it is possible to observe very different patterns of responses from CSOs to commissioning and procurement, which range from opposing to engaging, challenging, appealing and collaboration. At a macro policy level, it is possible to observe two somewhat opposing but nuanced approaches from national advocacy CSOs. Clann Creedo, The Wheel and Community Foundation Ireland[92] have engaged with the concept of commissioning while opposing procurement, while Community Work Ireland has tactically opposed both commissioning and procurement, contending one leads to the other and arguing both are an inappropriate model for community development and social inclusion work that is process-oriented. Others[93] do likewise linking commissioning and competition and seeing 'commissioning as about opening up the provision of public services, many of which are delivered by non-profit organisations, to a variety of providers – essentially bringing public services into the marketplace'.

Analysing the Narrative

As explored in section 2, terms such as commissioning, procurement and competitive tendering are used interchangeably and often imprecisely in the political and policy discourse around funding of social services and community development, a process that has also bene referred to as resignification[94]. The imprecision in terminology stands in contrast to a very definite state narrative around public procurement. We use discursive institutionalism (see Box 2 in section 1) as an approach to analyse that state narrative emanating from the Department of Public Expenditure and Reform (DPER)[95].

DPER is a relatively new department. It was established in 2011 to take over specific functions from the Department of Finance. It emerges in our research as a key institutional actor in developing and disseminating a particular narrative which drove commissioning. We unpack the Public Service Reform report (DPER, 2011), the *Public Service Reform Plan 2014-2016* (DPER, 2014), and its *Statements of Strategy* (2011-2014 and 2015-2017) to seek explanations for the successful development and legitimation of commissioning of social services and community development.

87 Which was originally to have been transposed into Irish law by April 2016.
88 In response to a Parliamentary Question from Éamon Ó Cuív, TD on the tendering process for the SICAP programme, 1st May 2014.
89 http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2014031300048 [Thursday, 13 March 2014]
90 Dáil debates: Rape Crisis Network Funding - Frances Fitzgerald (Minister, Department of Children; Dublin Mid-West, Fine Gael)
    http://www.kildarestreet.com/debates/?id=2014-01-29a.318&m=1009 [Wednesday, 29 January 2014]
91 Sustainable, Inclusive and Empowered Communities (2019), p.27
92 Clann Credo et al 2016
93 Lyman (2017) p 3
94 Meade (2017)
95 We appreciate that the narrow focus on DPER documentation excludes other explanatory drivers for reform such as uncertainty in relation to
    the EU procurement directives and the transnational policy transfer of new public management ideas.

The 2008 financial crisis resulted in Ireland's bailout by the Troika. This introduced a philosophical underpinning to all programmes and policies of prioritizing fiscal prudence. This provided space for a communicative discourse to legitimise actions taken in the name of restoring financial sovereignty and protecting the public purse.

DPER's *Statement of Strategy 2011-2014* stated that the Department's overriding objective was to help regain economic sovereignty by meeting fiscal targets[96]. Its goals were to manage public expenditure and "*to have public administration and governance structures that are transparent, efficient, accountable and responsive*[97]". The strategy to achieve these goals was, "*A stronger focus on value for money and performance information that is more integrated with processes to allocate resources*". By employing the discursive technique of binding normative ideas of transparency, efficiency and accountability to the cognitive ideas of stabilising public finances and value for money, DPER influenced what constitutes the 'common sense' and reinforced a change agenda for the way social services are funded. The roots of this agenda were already established in more communicative political discourse such as the *Programme for Government 2011-2016*. This included a commitment to instigate a government-wide review to identify and eliminate non-priority programmes, and outsource, where appropriate, non-critical functions[98].

We see evidence of the continuation of discursive interactions packaging these normative and cognitive ideas into a cohesive programme of reform and driving a specific policy of public procurement in DPER's later Statements of Strategy and reports on public service reform. The 2011 *Public Service Reform* report opens with a statement of recognition that citizens and businesses expect a modern public service to continually "*improve and deliver services faster, better and more cost effectively*[99]". It continues under the heading of 'Radically Reducing Our Costs to Drive Better Value for Money':

> "*The need to reduce public spending and drive greater efficiency is clearly evident and has been committed to. We will relentlessly focus on delivering better value for money through the implementation of Public Service Reform*[100]."

DPER's second *Statement of Strategy 2015-2017*[101] distilled their goals into two points; managing public expenditure "*at more sustainable levels*", and to have public management and governance structures that are "*effective and responsive to the citizen, transparent and accountable, and which will thereby improve the effectiveness of public expenditure*[102]".

The *Public Service Reform Plan 2014-2016* articulated the features of a specific policy of driving greater use of alternative service delivery models which 'may' include partnerships with private enterprise, voluntary organisations and community groups[103] and which would see the public service "*undertake more commissioning than in the past.*" To this end, the Reform Plan would see the Public Service "*begin to transition away from the traditional system of block grants to organisations providing public services and move instead to a new approach based on releasing funds in return for delivering specified outcomes*[104]."

Even in this exploratory examination, we can see how a particular discursive technique is constructed and applied to frame commissioning for all services as common sense; a powerful idea, which is easily cognitively locked.

In 2017, DPER acknowledged that 'commissioning is a toxic term because of what went on in other jurisdictions[105]' and have in 2018 handed the baton over to the Department of Community, Rural and Community Development, who in 2019 committed as part of their own strategic plan to develop policy. This commitment and the space opened in the context of the post 2020 General Election Programme for Government offer opportunity to clarify policy in this regard.

In effect the Irish context and the relationship between the state and civil society needs to be understood in its own national context. The issue is not tendering out traditionally state delivered services to the community and voluntary sector. The issue is retrospectively applying competitive tendering models to preexisting grant funded services or programmes and to new such projects. In this context the state offered commissioning as a word to capture that process of competitive tendering – and as one civil society commentator put it in 2017 'it is still out there and commissioning is understood as being tendering, its understood as meaning putting people in competition with each other, as very simplistic business models applying to various areas[106]'.

This discourse analysis also draws attention to what is not included in the discourse – public policy objectives of social inclusion, sustainability, human rights, equality and promoting CSO autonomy. So too, the obligation of public sector duty appears poorly integrated into commissioning and procurement policy or practice. Had these ideas informed discursive framing alongside stabilisation of public finances and value for money, the common sense created and applied to social services and community development may well have allowed an alternative services driven process to emerge, rooted in their expertise and appetite for innovation.

96 As specified in the EU/IMF Programme of Support.
97   DPER (2011)
98   Programme for Government 2011-2016, p.11
99   DPER (2011)a, p.2
100   Ibid, p.4
101   See Lyman 2017 for discussion of this reform plan
102   DPER (2015), p.5
103   DPER (2014), p.14
104   Ibid, p.15
105   Lyman 2017 p 22
106   Lynam 2017

SECTION 5
Assessment of Irish Procurement Practice

While it has been stated that the financial crisis has increased enthusiasm for the use of public procurement to achieve wider social policy goals in Ireland[107], this is not evident in legislation or published policy. Indeed, Ireland's overall public procurement policy lacks a central focus: it is set out in eleven different circulars issued by the Departments of Finance and Public Expenditure and Reform[108]. However, it does appear that relative to other EU states Ireland, along with the UK, appears to have interpreted EU procurement legislation very strictly and conservatively to infer little room to manoeuver or opportunity for more innovative non-market means of achieving value for money and efficiency in public expenditure[109]. A key question which we return to later is whether and how it is possible to achieve what is positive about commissioning, particularly using co-production and co-design led models, beyond and without marketisation. Key themes discussed in this section include value for money, administrative cohesion and sustainability.

Value for Money[110]

Under the Public Spending Code, government departments and public bodies have a duty and responsibility to the taxpayer to secure 'value for money' in the use of public resources. Value for money is defined as being concerned with the efficient and effective use of resources. Efficiency involves ensuring the optimum use of resources in developing and delivering programmes and services.[111]

Under the Public Service Management Act,[112] responsibility for ensuring value for money outcomes rests with individual departments and offices. Under section 4(f) and (g) of this Act,[113] departments and scheduled offices are required to provide cost effective public services, achieve better use of resources and comply with the requirements of the Comptroller and Auditor General (Amendment) Act, 1993. Value for money outcomes also apply to bodies which are audited by the Comptroller and Auditor General.

The Act must be read in conjunction with the Public Spending Code: Central Technical References and Economic Appraisal Parameters[114], Circular 13/2013: *The Public Spending Code: Expenditure Planning, Appraisal and Evaluation in the Irish Public Service – Standard Rules and Procedures*[115]; Circular 06/2018: *The Public Spending Code: Publication of Post Project Reviews*[116] and Circular 18/2019: *PSC Central Technical References and Economic Appraisal Parameters Circular*.[117]

However, and crucially, neither the Act nor the circulars provide a clear definition of value for money. Circular 13/13 refers to the expenditure life cycle. It states that economic costs and benefits are not always the only factors, and that social or other public policy considerations may inform the decision making process.

The absence of clear guidelines for interpreting value for money in competitive bids has led to, and reinforces, a practice of seeking and accepting the lowest cost bid as evidence of value for money. This overarching focus on lowest cost as a basis for awarding tenders raises serious issues about sustainability. CSOs delivering below cost services will often have to cross subsidise the provision of such services through charitable fundraising and /or lowering staff pay and working conditions or the quality of the services they deliver.

There is also concern echoed through community consultations about commissioning that is 'seems is a business model, and a concern with value for money that is couched in terms like 'investment[118]'.

Cohesion and Administrative Drivers

A parliamentary briefing note[119] draws on classic new public management tropes to summarise arguments for contracting for public services. These centre on the "*ability of the market to provide more innovative and efficient services than public organisations, these include cost containment, increased customer responsiveness and related service improvement, as well as improved results for service users, policymakers, providers and frontline workers.*" A key advantage of procurement is its perceived capacity to expand/reduce service delivery in line with demand and so avoid long-term commitments. There is also a general expectation that contracting out may generate social innovation and social enterprises.

Arguments against contracting out of public services include the diminution of public accountability and responsibility and jeopardizing the position of more vulnerable groups associated with creaming or skimming of service users.

The briefing note records how a focus on value for money from DPER reinforces a general fear of public criticism by state actors. This focus is also associated with the difficulty of measuring and holding account qualitative processes/outcomes.

Absent from the briefing note is an assessment of the degree to which cohesion, and the bureaucrats' desire for administrative coherence and simplicity, is a significant underlying driver of procurement. This aligns with motivations related to blame avoidance, whereby arms-length management arrangements can provide political protection for both bureaucrats and politicians who are one-step removed from implementation. Concerns[120] have been articulated by many civil society actors that there is a single approach to tendering or commissioning being devised to work across a range of different types of services and that this one size does not fit all. Approaches need to be differentiated across different types of services, supports and processes. At the same time is is also acknowledged that it is legitimate to seek mechanisms to achieve efficient use of public resources and value for money and that this may include the wind down of some existing services.

Sustainability

There are issues of sustainability from a number of perspectives. Over the longer term, using tendering to achieve a more cohesive CSO sector and forcing CSOs into unsustainable practices may lead to the unintended consequence of fewer CSOs able to deliver social services or support community development. A problem aggravated by more intensive use of Payment-by-Results and Outcomes-based contracting. Focusing too much on lowest cost criteria makes it more likely that only larger organisations may be able to win such tenders.

This may lead to an unsustainable loss of diversity in the CSO sector and an over reliance on an oligarchy of larger CSOs who engage in cartel like practices. This has been observed internationally in PES markets in the form of 'herding' around low-cost, work-first strategies[121]. As we will see in case studies below, these combined practices can lead to a short sighted over emphasis on costs at the expense of longer term strategic objectives of quality and sustainability of provision, as well as a more diverse, deeper and more creative CSO sector in Ireland.

There are also sustainability issues relating community development processes that are long term in nature and cannot be is reduced to 'stop and start every 2-3 years' but need long-term commitments to ensure sustainability, as other human, social and community services[122]. A sustainable democracy requires 'recognition of the structural causes of poverty and inequality and the role of community work in addressing structural inequality and collectivising efforts to advocate for change[123]'.

107 Catherine Donnelly " Republic of Ireland" in Neergaard, Ulla B., Catherine Jacqueson, and Grith Skovgaard Ølykke, Public procurement law: limitations, opportunities and paradoxes (Djøf Forlag, 2014)
108 "National Public Procurement Policy Framework" (2018 Office of Government Procurement)
109 Halloran (2020)
110 We are indebted to Dee Halloran for this section
111 https://publicspendingcode.per.gov.ie/
112 http://www.irishstatutebook.ie/eli/1997/act/27/enacted/en/html
113 This states that Secretary Generals or the head of a Scheduled Office are, subject to the determination of matters of policy by the Minister of the Government, tasked with "…(f) ensuring that the resources of the Department or Scheduled Office are used in a manner that is in accordance with the Comptroller and Auditor General (Amendment) Act, 1993 with a view to enabling the matters referred to in paragraphs (a) to (d) of Section 19(1) of that Act to be appropriately addressed by the Department or Scheduled office; (g) examining and developing means that will improve the provision by the Department or Scheduled Office of cost effective public services.."
114 https://publicspendingcode.per.gov.ie/technical-references/
115 https://www.gov.ie/en/circular/20b07e87cbde432d9fdeea5c943b9559/
116 https://www.gov.ie/en/circular/d62d614c5aae4669803f9ed873adbabe/
117 https://www.gov.ie/en/circular/62ce5f-psc-central-technical-references-and-economic-appraisal-parameters-c/
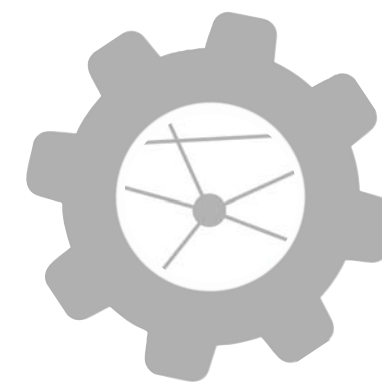118 Lynam 2017 P 18

119 Oireachtas Library (2015), p.6
120 Lynam 2017 p12
121 Considine et al 2019
122 Lynam 2017 p12
123 Ibid p 16

SECTION 6

Four Case Sectoral Studies

Four sectors were selected as case study examples: Public Employment Services (PES), Housing First (HF), Community Development (CD) and Domestic Violence (DV). Strategic Action Fields (SAFs) were used to analyse these sectors. SAFs assist exploration of the dynamics of change in relationships between collective social actors or grouping of individuals, organisations and institutions. Key actors include what are termed incumbents, challengers, invaders and governance units. Relationships can be disrupted by policy reform, reallocation of resources, commissioning and procurement, the consequent dynamics are graphically mapped in each case.

The four cases were first organised into strategic action frameworks (see above and case study diagrams), and compared across a number of codes. Case study briefs and graphs are presented in this section while section 7 discusses the key findings using codes for from the strategic action framework analysis (framing, governance, policy entrepreneurship, challengers, incumbents, dynamic, and territory, the commissioning process; price mechanisms adopted in the procurement processes) and the key research questions (impacts on CSO's staff and service users, collaboration and advocacy).

Public Employment Services (PES)

Public procurement is now a key feature of Irish PES. The new Pathways to Work (2020-2025) is expected to expand procurement beyond the two Job Path providers, Turas Nua and Seetec, into a range of other PES.

The 2012 decision to procure Job Path using a Pay-by-Results model had immediate implications for pre-existing PES. A Pay-by-Results model requires the bidder to fund their own start-up costs and, in effect, to wait for a substantial part of their operating costs to be paid out of benefit savings that accrue as people move off social welfare into jobs. Front loaded funding is beyond the capacity of many CSOs.

The lack of experience in procurement by the Department of Social Protection (DSP) meant that it secured external expertise to develop the procurement process for Job Path. From 2014-2020, the DSP, and then the Department of Employment Affairs and Social Protection (DEASP), maintained grant led contracts, through SLAs, with three distinct types of PES provider:

- Job Clubs engage with job-ready clients in 43 locations. Forty non-profit contractors operate through annual contracts worth €5.3 million.

- Local Employment Services (LES) provide more comprehensive support to job seekers. Twenty-two contractors provide LES services in 25 locations for €19.7 million in 2019.

- EmployAbility provides an 18-month activation support service for people with a health condition, injury, illness or disability, and a recruitment advice service for the business community. There are 24 EmployAbility contracts in place covering 31 locations worth €9.8m in 2019.

Both Job Clubs and LES are paid by the DEASP up to 2020 on a 'costs-met' basis. In 2019, after years of speculation, it was firmly signaled that they will be subject to a competitive procurement process in late 2020. International consultants[124] were contracted to design a PES model and mechanisms to contract such services.

Job Path and uncertainty about procurement of other PES have had implications for the type, volume and quality of services delivered to the different cohorts of service users. There have also been impacts on the quality of work environment, job contracts, continuity of staff, work place autonomy and well-being. Evaluations have shown that the form of procurement influences service user's perception of and satisfaction with different employment services.

Despite assurances to protect the LES as a community-led service, it is unclear how this will be achieved in a procurement context. A primary source of contention is whether the future procurement of LES and Jobs Clubs will be a Pay by Results regime. This would significantly influence the design of the tender and the size of the contract areas. There are also issues relating to the governance of such services and the statutory preference for a more cohesive streamlined governance process will also guide procurement policy.

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124 Institute of Employment Affairs and Social Finance UK.

Diagram one: PES as a Strategic Action Field

2020 PES COMMISSIONING PROCESS

EXTERNAL
EU Competition and Procurement Policy

CENTRAL STATE – GOVERNANCE UNITS
Department of Public Expenditure and Reform/Attorney General
Department of Employment Affairs and Social Protection
Contracted Employment Services

POSSIBLE INVADER

INCUMBENT
INTREO

CHALLENGER
Job Path
New Resources/Skills
New Perspectives

CHALLENGER
LESN, Job Clubs & Employability
Local Presence
Advantage within Network
Embedded Social Value

PROXIMAL SICAP SAF

Ideational Actors
NESC, Labour Market Council, ILDN, academics

PROXIMAL LDC SAF

Housing First (HF)

Commissioning and procurement has long been a feature of homeless services. It was first used in the early 2000s by the Homeless Agency as a mechanism to ensure consistent quality in newly funded services. In time it was extended to all services. While the standards of homeless provision have improved significantly and the original approach taken was a relatively positive example of best practice in commissioning and procurement enabling research, participation, advocacy and evaluation, there are nonetheless significant drawbacks. This approach has led to an overall reduction in the number of service providers. There are now a few dominant providers, particularly at national level[125], who collaborate and compete with each other, affecting capacity to develop strategic objectives. Concern[126] has been voiced about competition between homeless services to provide services in different parts of the country as a result of competitive tendering processes

The publication of the Housing First (HF) National Implementation Plan 2018-2021 was a significant milestone. It committed to annual targets and the rollout of HF in every Local Authority. The plan requires Local Authorities and Approved Housing Bodies to work together to increase the supply of single person housing in eight regions. The primary governance unit is the Dublin Region Homeless Executive (DRHE). It co-ordinates the response to homelessness across the four Dublin Local Authorities and incorporates the office of the National Director of HF who works closely with the Department of Housing, Planning and Local Government, Department of Health, Local Authorities and the Health Service Executive to develop and implement the HF plan. The plan identified a lead Local Authority in each area and a process through which the HF programme is to be procured and delivered in each region.

However, procurement of HF is creating a dynamic of below cost competition for HF contracts across the eight regions. A key question is whether this dynamic will lead to the emergence of a dominant provider. The dynamic may also have negative impacts on staff and service users, as well as morale in the homeless sector.

A number of policy issues and challenges emerge. We need to better understand how procurement impacts on the development paths of homeless CSOs. Enabling below cost tendering has a number of implications for CSOs, staff, service users and the state, and while attractive in the short term, may have serious implications for long-term sustainability. While it is welcome that developmental and training services within the HF sector are accommodated, these are commissioned and procured through a third party[127] with implications for autonomy and control of CSOs' own needs.

The largely quantitative regional assessment of need appears to have been amended to accommodate national HF targets and there is little sense that the voice of the service user was captured in the commissioning process. Above all we have little sense of how commissioning and procurement is meeting the long term needs of the users of HF related accommodation and/or whether commissioning and procurement may be contributing to a race to the bottom in standards for staff and service users.
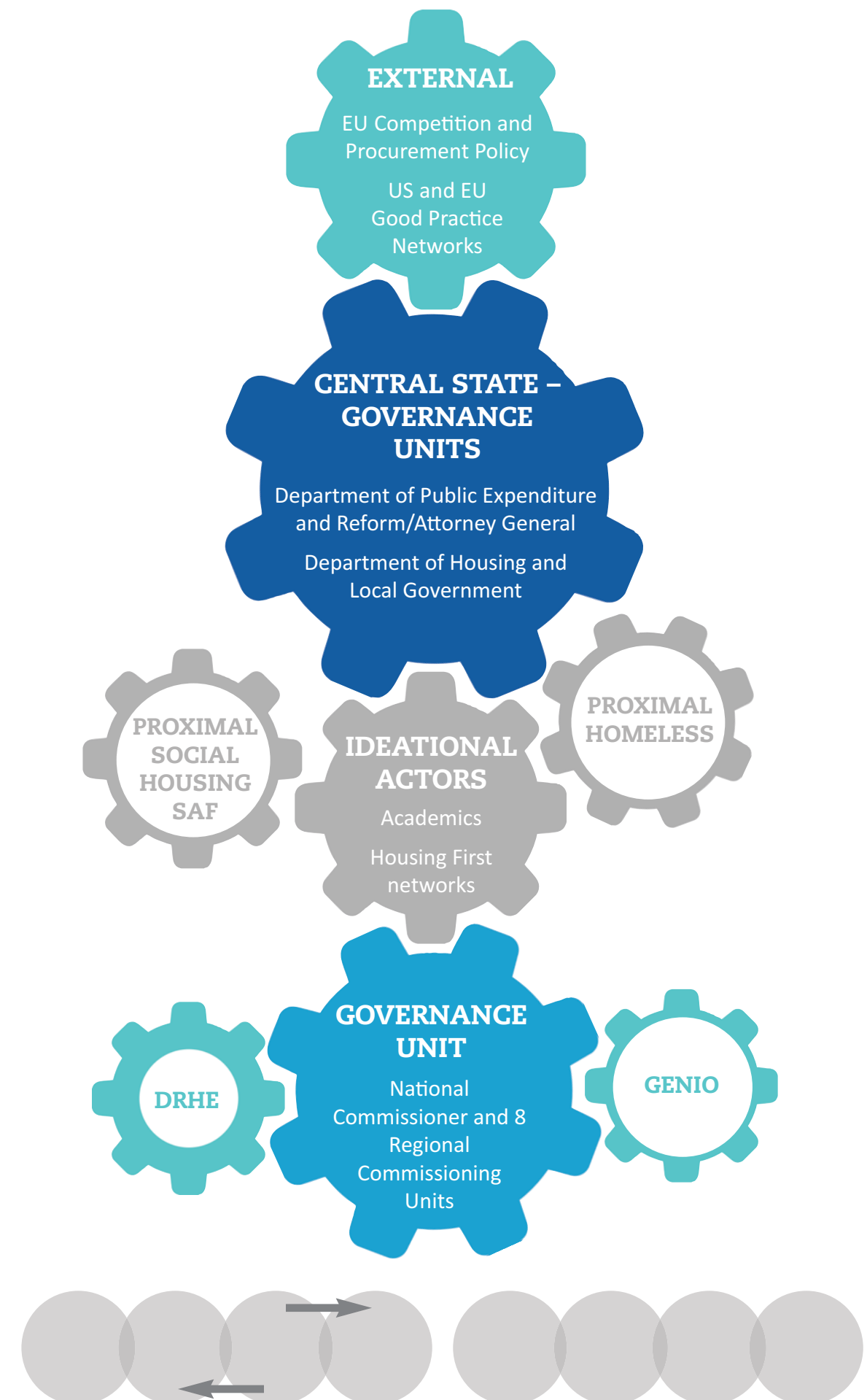
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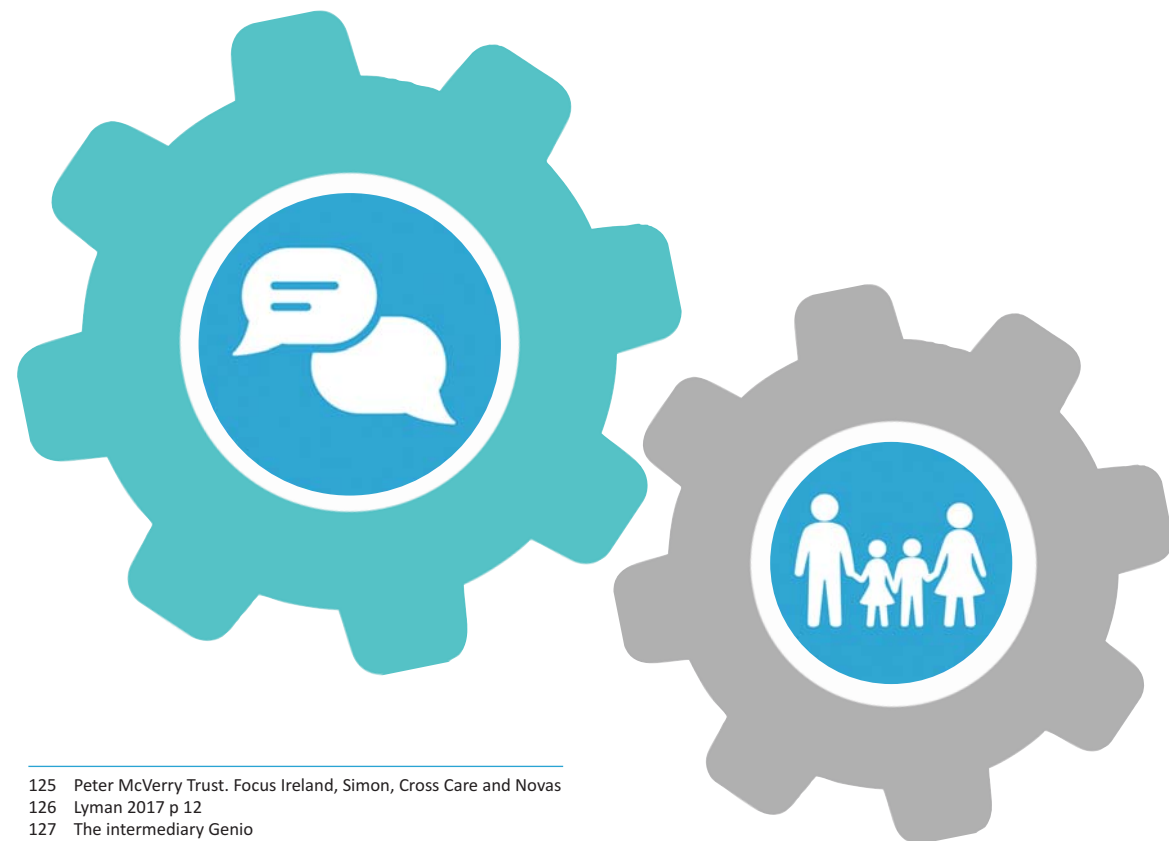
125   Peter McVerry Trust. Focus Ireland, Simon, Cross Care and Novas
126   Lyman 2017 p 12
127   The intermediary Genio

2020 HF COMMISSIONING PROCESSES

EXTERNAL
EU Competition and Procurement Policy
US and EU Good Practice Networks

CENTRAL STATE – GOVERNANCE UNITS
Department of Public Expenditure and Reform/Attorney General
Department of Housing and Local Government

PROXIMAL SOCIAL HOUSING SAF

IDEATIONAL ACTORS
Academics
Housing First networks

PROXIMAL HOMELESS

GOVERNANCE UNIT
National Commissioner and 8 Regional Commissioning Units

DRHE

GENIO

Community Development (CD)

Community development is a long-acknowledged approach to addressing poverty, social exclusion and inequality. With support from the state, Ireland developed an internationally recognised community development infrastructure and a vibrant sector. In the past decade, policy decisions and resource cuts have had a considerable impact on this and have contributed to a considerable erosion of autonomous community work.

In 2009, a cohesion process reduced 94 Area Based Partnership Companies to 52 Local Development Companies. The Local and Community Development Programme (LCDP) was introduced requiring the integration of 180 Community Development Projects (CDPs)[128] with Local Development Companies. Notable exceptions included CDPs working with Travellers and disadvantaged women. These were allowed to remain independent of these arrangements notwithstanding these exceptions, community development is now largely subsumed into local development companies..

In 2014, the LCDP was replaced with the Social Inclusion and Community Activation Programme (SICAP). Local Community Development Committees (LCDCs) were established in each Local Authority area and were nominated as programme contract holders. The implementation of SICAP was subject to competitive tendering, the first time a social inclusion programme in Ireland experienced this process.

Legal advice was that social inclusion could have remained exempt from the competitive tendering process. However, SICAP also included elements funded by EU PEIL[129] and the Department of Environment, Community and Local Government considered that it 'needed to be taken as a whole', making it subject to procurement processes. Decoupling to allow the community work element to remain outside of the tendering process was not considered a viable option in the context of austerity and widespread cuts to all sectors.

Research[130] suggests commissioning has had a significant, largely detrimental, impact on community development. Targets set out in the tendering process are centrally devised, uniform, rigid and are not based on local needs (existing or emerging). CSOs indicated that they are often unable to respond to the emerging needs of their communities and have to prioritize the targets that were set[131]. Some reported being sanctioned for not reaching their targets even when they were able to report other work that responded to the needs of their communities more effectively.

Cherry-picking and parking of clients was widely reported under SICAP I. Advocacy was discouraged and community work was 'depoliticized'. SICAP II was introduced in 2018 and sought to rectify some of the issues identified by the experience of SICAP I. Targets were reduced by up to 40% and there is greater flexibility to identify and respond to emerging needs. However, the extent to which these changes is contested adn while some state the changes are substantive, others have described the changes as 'cosmetic' and 'lip-service' and report that they continue to have to prioritise work that maximizes numbers and prioritizes quantity over quality.
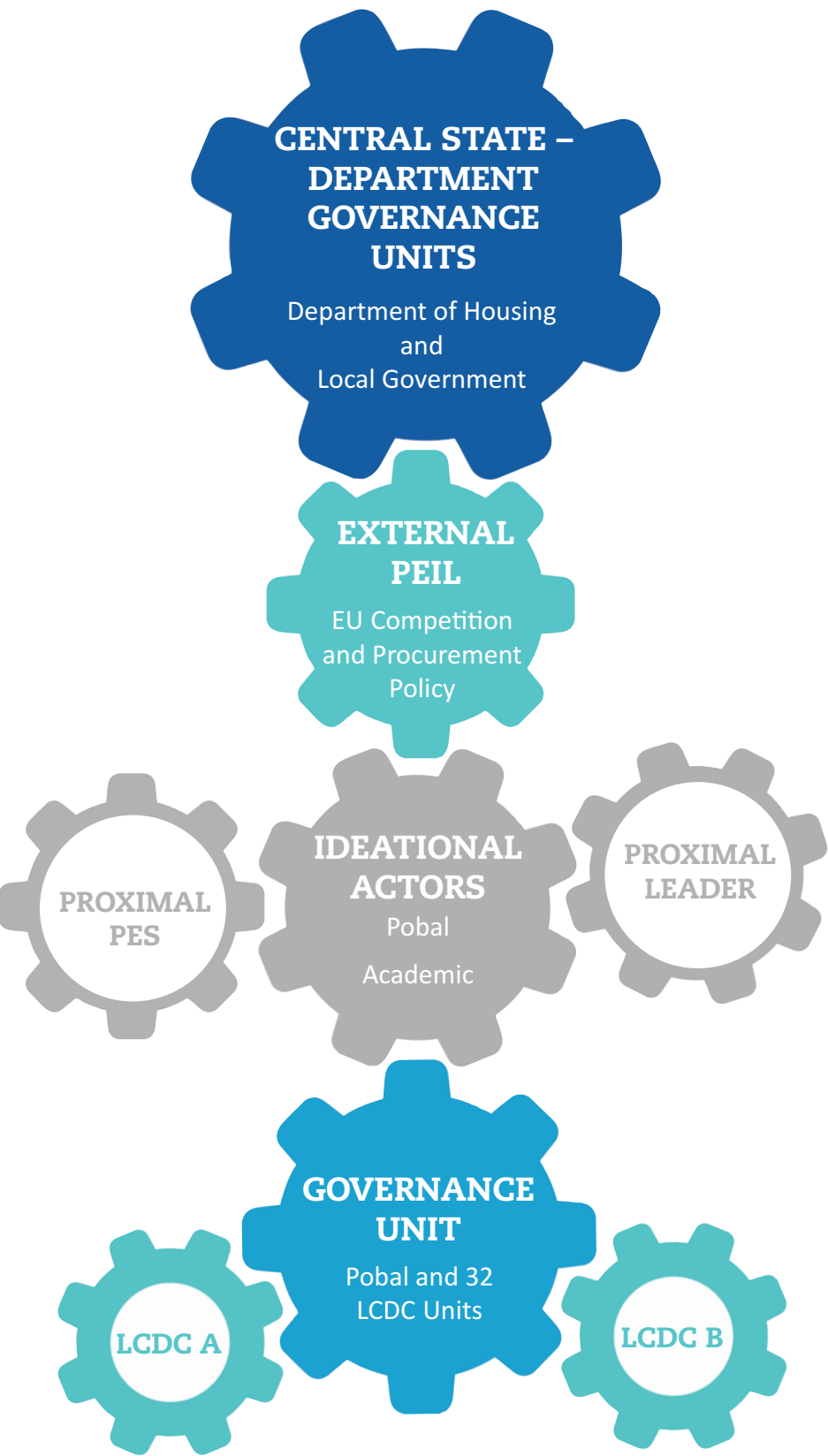
Any open procurement process, such as was employed in SICAP, invites competition from private operators, and the legitimate fear of the privatization of community work. Two rounds of tendering have not yet resulted in any private operator being successful in their bids[132]. Evidence suggests that the more often areas of work are opened to private operators and thus marketized, the more difficult it becomes to 'de-marketize' and return to the status quo.

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128   Previously funded independently under the Community Development Programme
129   Programme for Employability, Inclusion and Learning
130   CWI (2015 and 2017)
131   Ibid. Some of the issues highlighted included homelessness and the housing crisis, racism, gang/drug related violence, and mental health.
132   There is evidence that, in at least one area, a private operator did tender and came a 'close second' to the successful Local Development Company.

Diagram three: Community Development as a Strategic Action Field

2020 SICAP COMMISSIONING PROCESSES

CENTRAL STATE – DEPARTMENT GOVERNANCE UNITS
Department of Housing and Local Government

EXTERNAL PEIL
EU Competition and Procurement Policy

PROXIMAL PES

IDEATIONAL ACTORS
Pobal
Academic

PROXIMAL LEADER

GOVERNANCE UNIT
Pobal and 32 LCDC Units

LCDC A

LCDC B

Domestic Violence (DV)

Domestic violence (DV) services in Ireland come under the remit of Tusla, the Child and Family Agency. Commissioning has been part of Tusla's narrative from its inception. In August 2013, Tusla published the first nationally developed commissioning guidance document. This defined commissioning as "*the process of deciding how to use the total resources available for children and families in order to improve outcomes in the most efficient, effective, equitable, proportionate and sustainable way*" (Gillen et al 2013 p3).

In 2015, Tusla mapped domestic, sexual and gender based violence services (DSGBV), mainly for reporting requirements under the Istanbul Convention, but also partly to gather data to support commissioning. Commissioning in DV was viewed by some in the sector as an opportunity for services to set out exactly what they provide, have it comprehensively costed, and be adequately funded. Others expressed concern that it would place organisations in competition with each other. The lack of attention to policy within commissioning was also of concern as there was no avenue for learning and experience to feed into policy-making. As commissioning was rolled out, despair was expressed with commissioning seen "*as a stick to beat us*", and a process where "*only anything fostering efficiency is valued*".
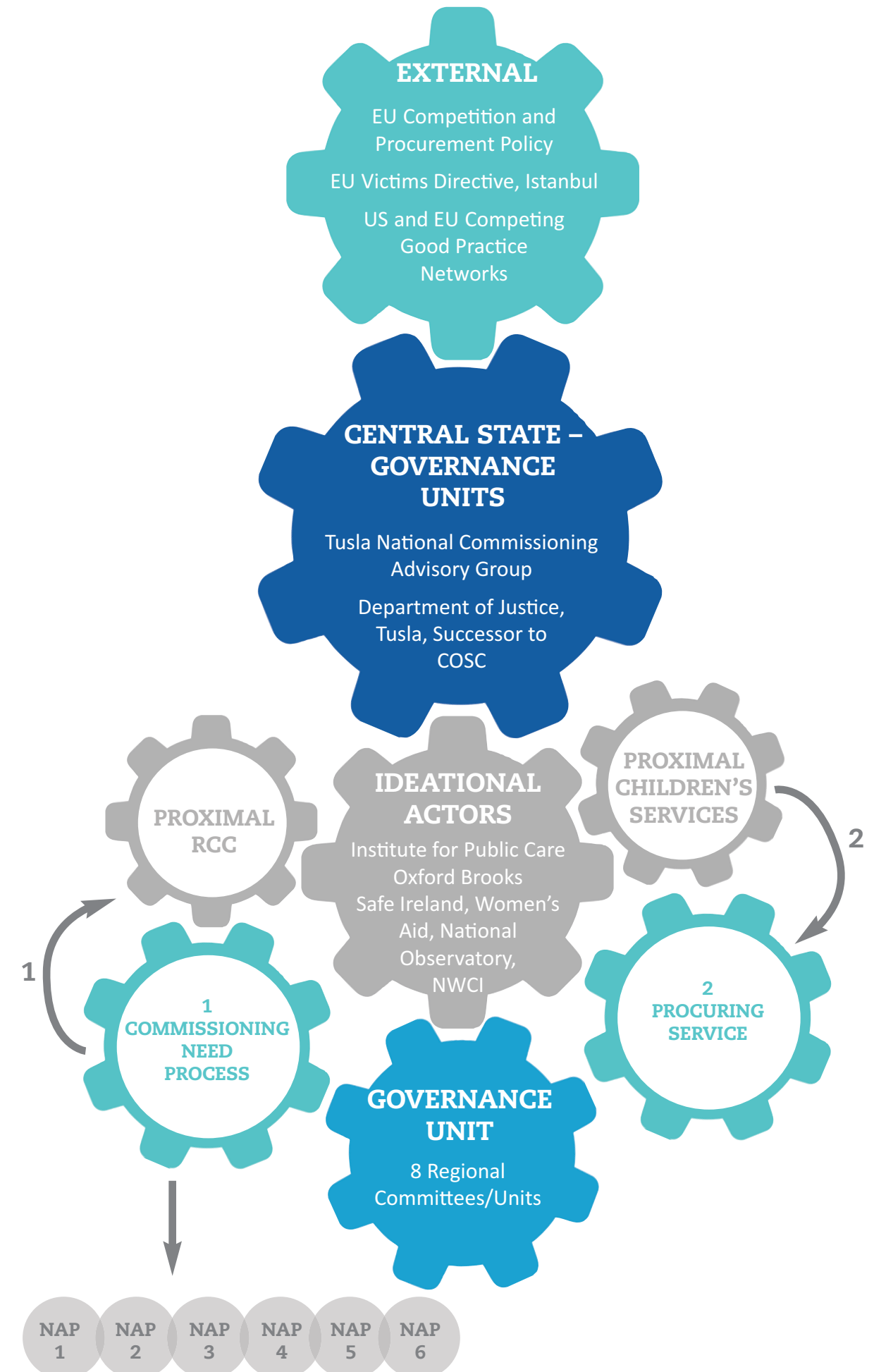
In 2017, commissioning in DV began with six area based needs analysis projects (NAPs). Completing the NAPs independently of each other gave rise to no consistency to the composition of advisory boards, or across the NAPs as they unfolded. Although the initial six reports were completed by the end of 2017/early 2018, they had not been published at the time of writing.

As they are not published, this introduces opaqueness into Tusla's commissioning process, creating unnecessary fear in the sector and leaving service users in the dark. Many had participated in the NAPs on the understanding that they were having a direct input into service improvement. Tusla's commissioning toolkit speaks of a commissioning cycle built around "*working in partnership*" (Tusla 2019 p11). The disconnect between commissioning policy and commissioning in practice means that many of those stakeholders in the DV partnership with Tusla do not know what the NAPs found or recommended; Tusla's interpretation of same; and any action Tusla may take on foot of the NAPs.

An example of this disconnect was identified by participants in our research as the commissioning of a national 24 hour help line. Tusla proposed funding a single merged phone line to cover both sexual and domestic violence. This was without any adequate needs analysis or provision of clarity about what was driving the decision other than procurement for financial purposes. Amalgamating domestic and sexual violence also suggests that the distinction between the two forms of violence may not be fully appreciated.

Diagram four: Domestic Violence as a Strategic Action Field

2020 DV COMMISSIONING PROCESSES

EXTERNAL
EU Competition and Procurement Policy
EU Victims Directive, Istanbul
US and EU Competing Good Practice Networks

CENTRAL STATE – GOVERNANCE UNITS
Tusla National Commissioning Advisory Group
Department of Justice, Tusla, Successor to COSC

PROXIMAL RCC

IDEATIONAL ACTORS
Institute for Public Care
Oxford Brooks
Safe Ireland, Women's Aid, National Observatory, NWCI

PROXIMAL CHILDREN'S SERVICES

1
1 COMMISSIONING NEED PROCESS

GOVERNANCE UNIT
8 Regional Committees/Units

2
2 PROCURING SERVICE

NAP 1   NAP 2   NAP 3   NAP 4   NAP 5   NAP 6

SECTION 7

Analysis of Case Studies

This section interrogates the data across the four case studies to assess impacts of commissioning in the areas of public employment, community development, housing and domestic violence. The analysis proceeded in two key stages.

1. The four cases were first organised into Strategic Action Frameworks and compared across a number codes: framing, governance, policy entrepreneurship, challengers, incumbents, dynamic, territory and price mechanisms adopted in the procurement process.

Strategic Action Fields

This concept of *Strategic Action Fields* (SAFs) has been applied to various themes, including organisations, social movements and institutions, to conceptualise relationships between organisations, institutions, institutions and other actors (Taylor et al P 256). SAFs are the basic building blocks of modern political/organizational life in the economy, civil society and the state. They allow us understand commissioning and procurement through the classic sociological lens of structure and agency, enabling an examination of how fields emerge, how periods of social change and stability are constructed and shaped, and how they are changed by internal actors. Taylor et al (2016) utilise the multi-disciplinary social theory concept of '*field*' to understand social worlds. Drawn from Bourdieu's conceptual triad of 'fields, habitus and capital' the concept focuses on how individuals position themselves in relation to others (Bourdieu, 1977). In 1983, DiMaggio and Powell utilized the concept to understand how state funders shape the responses or strategies of organisations in state funded fields (see appendix 1 for more detail).

2. A further set of codes were then used to examine the four sectors from the perspective of impacts of commissioning and procurement: impacts on service users, staff, advocacy and collaboration and the types of alternatives identified.

Summary of Findings

The table below captures codes on the vertical axis and overall findings across all CSOs and then findings specified under each sectoral heading on the horizontal axis. This is followed by a discussion that captures the overall findings across the sectors[133].

Framing

Previous sections have discussed the overall national frame within which commissioning and procurement is understood in an Irish context. Across all frames we find that the value for money dominates. Also common is a desire for administrative efficiency and rationalizing the number of organisations, associated with words like *simple, cohesion, scale* and *feasibility*. This underscores the degree to which easier management of funding programmes drives the use of commissioning and procurement by state actors as a mechanism for *tidying up* specific sectors. Such was the case for homeless services in the early 2000s, community development in the 2000s and for domestic violence and public employment services in the 2010s.

There are also sector specific frames. Capacity is a dominant frame in PES, *implementing policy* is a dominant frame in HF and need in DV.

133 More detailed sectoral case studies are available on request

Table one: Summary of Findings

Criteria	Overall	SICAP	DV	PES	HF
Drivers	Value for money Quality services Good practice	EU PEIL Rationalization and cohesion	Istanbul Pressure on services Cohesion	Acute capacity EU legislation	Cohesion Homelessness crisis Cost
Framing	Value for money	Cohesion	Meeting needs and pressure on and for services	Value for money and quality standards	Solving crisis Implementing HF
Governance	Attorney General/ Office Procurement 2011-2016 DPER Post 2016 shift to Department of Rural and Community Development	National: DRCD Local: LCDC	National Justice National: Tusla Regional	National DEASP Contracted Services Unit Labour Market Council (2017)	National: DHLG Regional: Local Authorities DRHE HF Tsar
International Policy Entrepreneurs	International think-tanks, Troika, OECD	OECD	Atlantic Philanthropies Institute for Public Care	Centre for Social Inclusion (2014) Institute for Employment Studies (2019)	Housing First International networks
National political and policy leaders	Key political advisors (FG)	Ministerial and senior civil service leadership	Senior appointed bureaucrats	Previous market experience of senior civil servants	Housing First Tsar
National agencies	CWI Wheel DCRD	Pobal	Women's Aid Safe Ireland	Irish Local Development Network	Genio, Dublin City Council Housing Observatory
Challengers and incumbents 1	CWI/Wheel	2013 Limited (gateway)/ LCDCs	All relatively small scale challengers	2014 LESN – low capacity to tender	2014 Dublin region pilot – all challengers
Challengers and incumbents 2	?	2018 local bids from Seetec (gateway) LDCD as incumbent	Next round those in situ as incumbents	2019 Job Path as partial incumbent	2018 Peter McVerry Trust partial incumbent
Present Dynamic (2020)	Contested	Turbulent but settling	Micro jostling	Unsettled and cautious	Active jostling and negative competition
Territory	National Local	County level, same metrics in all	Different regional level commissioning, Procurement national	Oligarchy, two markets 2 regions	National commissioning processes but regional procurement – inconsistent
Price mechanisms	No value for money guidance	LOTS/RAM CSO as output based price-Taker	CSO as outputs based Price-Taker	CSO as Pay by Results prefunding required – outcomes price	CSO as Price-Maker
Impact users	Overall concern re quality	Mixed, improvement over 5 years but evidence of decline in level of community development?	Not clear re services, still capacity issues user evidence mixed	Mixed, positive evaluations/service surveys, but qualitative/	Poor – anecdotal evidence of HF service decline
Impact staff	Insecurity, low pay	Deprofessionalisation, short term contracts, anxiety, Restricted in CD	Low pay, short term contracts	Poor, short term contracts, insecurity, restricted in guidance role, Job Path turnover	Poor, high turnover, job losses, recruitment issues
Impact advocacy	Mutes, chills, inhibits	Back step from CD to individual, local expertise side lined in needs assessment	Advocacy diverted	SLA closes down advocacy ILDN as advocate	Advocates feel punished
Impact collaboration	Decrease in solidarity, breakaways	Competition for same users within area partnership	Examples of competing services	LES/Job Path/SICAP competing for same users	Smaller CSOs gone, oligarchy like conditions, tensions
Alternatives	Minimisation of impact of legislation Standards in Public Office legislation	Shift in criteria positive Examples of co-op led governance Positive exclusion of some groups or services from market (CDP Women and Travellers)	Examine relationship between needs assessment and what is then procured	Grants, but with metrics, previous FÁS experience	Non cost led tenders, price match, decide on outcomes
Benefits	More reflection and maturity	More assessment of what works	Better standards, more services?	Better PES?	More services More sense of what works
Relationship between users' needs and commissioning process?	Not always evident – sometimes just procurement	Small Area Population data informed needs analysis – CD processes do not inform needs assessment	DV regional commissioning process but not evident how this is related to national funding decisions	No evidence informed assessment of need – needs determined by contracts and system requirements	Regional targets readjusted to meet 'national' targets, but this means HF provision not where needed.

Governance

While in some fields, there are clear but different models of state governance, in other fields there is an absence of national oversight and a lack of clarity about who makes decisions and how they are made.

In PES, for example, it is clear that the Contracted Services Unit of the DEASP decides who will be awarded contracts and provides the oversight of these contracts. It is less clear how this relates to overall governance of the Labour Market Council, which was in place from 2012 to 2017 and was to be reconstituted in 2020. Nor is it clear how governance of contracted services relates to governance and oversight of the policy framework, *Pathways to Work*.

In HF, the government initiated a unique Tsar-like arrangement to develop and deliver the commissioning and procurement framework. While it is clear who has national responsibility, it is less clear how such governance happens regionally. Different processes of commissioning and procurement are evident across different regions and there is an absence of clarity about how national guidelines or oversight inform regional practice.

In CD, Pobal plays an important role in designing and monitoring the implementation of SICAP. Local Community Development Committees make the final decision about the awarding of the contract but only after initial assessment of the tender by Pobal.

In DV, Tusla set up a centralised Commissioning Unit in 2017[134]. The individual responsible for domestic, sexual and gender-based violence services reports to the head of procurement. However, operationalisation of the needs analysis programme was delegated to regional steering groups, who then reported to the Commissioning Unit.

Policy Entrepreneurship[135]

All sectors have had impactful leaders (bureaucratic and/or political) in progressing policy. In each sub-sector we also find ideational or implementation actors. International actors include:

- the OECD and EU PEIL as advisers to Pobal,
- the Institute of Public Care at Oxford Brookes University in the UK in relation to DV,
- the Centre for Social Inclusion (2015) and the Institute for Employment Studies and Social Finance UK in relation to PES,
- American and European Housing First networks have informed policy and practice in HF.

Some of these international actors have provided specific expertise to address capacity issues. For example, over the 2012-2014 period the speed of implementation of PES reform in Ireland far exceeded the pace of privatization in the UK and Australia. The Centre for Social Inclusion was contracted to support the DSP's internal Contracted Services Unit. The PES contract was a marked improvement on the UK Work Programme and contained elements of social democratic policy and practice[136]. In September 2019, the DEASP contracted the UK based Institute for Employment Studies and Social Finance UK to support implementation of the next PES tendering process, suggesting that despite five years of managing Pay by Results contracting, a significant state capacity gap to commission and procure services remains.

At a national level, Pobal has informed community development processes, Genio has informed HF, while the Irish Local Development Network informs developments in PES. In DV, the Observatory, Women's Aid and Safe Ireland all play an ideational role.

Challengers and Incumbents

Isolating the challengers, possible invaders and incumbents in each sub sector is complex in a fluid environment.

For example, in PES, while the LES has been a long-term presence since the mid-1990s, it was under an adjacent agency (FÁS) for most of this time and consequently was not considered an incumbent by the DEASP. Job Path, while often assumed to be an incumbent, and somewhat protected by the DEASP, can be considered a challenger that is in the process of moving into an incumbent space.

In HF, CSOs were contracted in 2014 to deliver the Dublin based HF pilot and therefore have some incumbency status. However, these two organisations competed against each other for the Dublin HF contract in 2019 and thus were challengers. By 2020, one CSO might be considered an emerging incumbent given its dominance in HF contracts.

In CD, it seems that having survived two SICAP procurement processes most Local Development Companies might, by 2019/2020, be considered incumbents. However, the presence of competing challengers and indeed invaders, means the incumbent status is relatively frail.

In DV, the diversity and variety of relatively small service providers points to the absence of incumbents. However, the outcome of the commissioning and procurement process may be to create geographical incumbents. Remaining smaller organisations will, by default, occupy the challenger role[137].

Territory

Commissioning and procurement takes place at national, regional and local levels and this can add to the lack of transparency and clarity.

In PES, four regions for Job Path procurement were reduced to two. There are significant fears in 2020 that the logic informing likely PES procurement through larger regional procurement markets may significantly dilute the principle and practice of local provision.

In HF, regional housing outcome targets were changed in order to maintain an overall national target – the regional housing targets do not relate to the actual regional need as assessed in the commissioning process.

In DV, commissioning was conducted largely within a geographical frame. The needs analysis took place regionally, but procurement decisions were assessed nationally. In the context of non-publication of the needs analysis reports, it is unclear whether decisions reflect research recommendations or other criteria.

In CD, SICAP commissioning divided areas into 'lots'. These were broadly in line with LCDC and therefore Local Authority areas. While superficially logical, this reflected the underlying cohesion rationale of aligning local government with community development and local development rather than commissioned need.

There are also territorial impacts. Commissioning and procurement in one sector can impact on proximate sectors. For example, some of the challengers for future CD budgets[138] were introduced to Ireland via the adjacent PES procurement process.

Mechanisms Adopted in the Procurement Process

When it comes to actual procurement of services, there are a variety of procurement mechanisms and decision-making processes. The transparency of such processes is a particular concern[139].

An important overall criterion is how procurement is oriented around price. In some sectors, the price is set and CSOs compete based on ability to deliver required outcomes for a given cost (for example, DV and SICAP). In others, the outcomes are set and the price is determined by the actual result (for example, the Pay-by-Result mechanism used in Job Path). In yet others, the outcomes are set but CSOs compete by naming the lowest cost they can deliver, thereby naming or making the price (for example, HF).

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134 In relation to DV up until the creation of Tusla, responsibility for domestic as well as sexual violence services crossed government. departments. Policy was coordinated within the Department of Justice and Equality by COSC (the National Office for the Prevention of DSGBV). The recent internal restructuring of the Department of Justice saw COSC disbanded which means that in effect 'ownership' of DV as a policy field is now diffused.

135 Cairney (2011 p271-2) describes policy entrepreneurs as elected politicians, leaders of interest groups or merely unofficial spokespeople for particular causes and as people with knowledge, power, tenacity and luck to be able to exploit windows of opportunity and heightened levels of attention to policy problems to promote their 'pet solutions' to policymakers.

136 Wiggan (2015), although concern was raised about value of money (NESC) and lack of evidence base for evaluating PES.

137 A community development narrative was also used by Tusla in the roll out of commissioning using the language of participation and empowerment, underpinning the delegation of each needs analysis to a steering group of regional stakeholders and services, and engaging service users. From the interviews with the researchers a few have spoken about how some of the NAPs were by county but women seeking services would cross county boundaries. So doing, needs analysis by county was therefore meaningless. The service side is dominated by a number of large city based providers. No single organisation has protected status but as in other fields, the larger organisations are better resourced to compete for funding opportunities. Based on one known outcome, which followed a needs analysis, a smaller rural service provider had its remit curtailed with clients passing to a larger city-based service provider.

138 For example, Seetec

139 Freedom of Information requests for this research were denied on 'competition' grounds

The Dynamics of the Commissioning Process

In various sectors including HF, PES and CD, there have been different types of stop-start dynamics. These can be very draining and damaging for capacity to plan, for staff morale and staff retention. The call for tenders for the implementation of SICAP were identified as periods of significant uncertainty by Local Development Companies and resulted in a great deal of unease at Board and staff level.

In all sectors, there are issues concerning transparency regarding criteria to assess need, selection criteria and decision-making. Even those sectors which assess need regionally use different methodologies. It is not clear for example, who decides how many regions, why certain counties are linked with each other, and whether there is consistency across what is asked and assessed in each region. In some instances, there are gaps between commissioning cycles and what is procured, with little resemblance to the agreed need for the region and what might be procured. For example, in DV, despite the extent of the resources utilised in the creation of a Commissioning Unit and a commissioning strategy in Tusla, the first commissioning cycle remains incomplete due to the non-publication of the needs analysis reports.

Impacts on CSOs

Context is important in any analysis of the impact of commissioning and procurement on CSOs. The combination of experiences has meant that it has been challenging to isolate the effects of commissioning from the effects of other dynamics at play at the time.

For example, recent procurement of HF took place in a period of budget expansion where the overall context for homeless service providers was one of growth. The consequences of some tender losses for specific CSOs are somewhat cushioned by success in other programmes.

On the other hand, the procurement context for SICAP I (2012-2014) was one of cohesion, austerity and budget contraction with real concerns about budget cuts, job losses and actual closures of some CSOs.

Similarly, the context for PES was one of austerity and capacity issues. With public attention on the crisis there was little awareness of or public opposition to the introduction of Pay by Results tendering. To some degree this was because there were no losers, as existing CSO led employment services were maintained.

Within DV, the incomplete nature of the first commissioning cycle makes it difficult to assess whether subsequent changes are being made within the context of the needs analysis findings[141].

Impacts on CSOs and their capacity to respond to commissioning also differ according to their size, resources and capacity to compete. Short timeframes can be obstacles and CSOs without a full time staff member dedicated to developing tenders or expressions of interest can be disadvantaged.

For example, Local Development Companies devoted significant resources to their responses to the invitation to tender for the delivery of SICAP, particularly in response to the first call when there was little expertise in the companies for this type of work. Some had capacity to buy in or otherwise access expertise, while others did not and relied on staff to develop expertise quickly.

Feedback from statutory actors processing the 2015 Job Path subcontracting phase suggests there were a significant number of low quality tenders, including from LES.

In some cases, for example HF, an important nuance is where commissioning and procurement created the conditions or context for CSOs to adopt a new strategic objective, prompting them, for example, to aim for higher growth than would otherwise have been the case, thereby influencing the strategic context within which CSOs make development decisions.

Impact on Service Users

The DRHE notes that all funded services with Service Level Agreements[142] agree a number of principles. These include recognition of the rights of service users to services, which promote their dignity, and rights to participate as full citizens. The Health Service Executive provides guidance[143] on service user oriented care for CSOs funded under sections 38 and 39.

CSOs implementing SICAP state that they try to ensure that service users are protected from any adverse effect of commissioning. However, community workers report difficulty in responding to emerging needs in their areas as they are contractually bound to reach the targets that are externally set. During SICAP I, there were reports that the work to address the 'real' needs in the community was undertaken in parallel to the SICAP targets and was very often unreported. While the targets under SICAP II have been reduced, community workers report that rather than being able to act on their professional judgement, they have to 'persuade' the LCDC to allow them to respond to emerging needs.

"Being tied into targets also ignores the 'temporal aspect of community work …how things change and how community workers respond. This may mean that some work that needs to be done is not being done and/or workers struggle to do a piece of work that is no longer required or could be done in a better way[144]".

In DV, a major flaw in commissioning articulated by participants in the research was its failure to capture the experience and expertise required to deal with those experiencing DV. Absent too was an opportunity for CSOs to work towards cultural change to get to the root cause of DV. The advent of commissioning brought a change to the relationship between Tusla and CSOs, which became more controlling. CSOs and NAP researchers expressed concern for the service users who had participated in the NAPs. They had done so on the understanding that their contribution would be taken seriously, would help develop policy, and would help other women.

"Service users are not high priority for Tusla. It is more that they are used for something. Exploited, actually. Certainly not a reciprocal respectful relationship[145]".

In PES, there is evidence of poor service. Clients are being transferred to different service providers to pursue different outcomes, with little continuity of service and with poor communication at the point of handover. There is also evidence that many service users directly object to privatized services and resent profit or income being generated in the context of individuals trying to access employment.

It is not clear the extent to which impacts on staff morale associated with uncertainty of funding and employment can affect service users.

Impact on Staff

Commissioning and procurement have both a perceived and real impact on staff. Many fear it contributes to a race to the bottom and there has been some attempt to raise collective concerns though both trade unions and through CSO advocacy[146]. It is associated with wage reductions, temporary contracts and changes in working condition whereby employment becomes dominated by output and/or outcome targets. Others associate it with a loss of autonomy, professionalism and control, as well less opportunity for innovation and creativity.

There are, however, alternative views about some potential benefits. For example, appropriate use of social clauses in procurement that promote living wages, local labour clauses, gender equality outcomes and environmental improvements. There is growing use of such social clauses with large-scale capital procurement projects (for example the National Children's Hospital).

140 Social impact bonds are an attempt to deal with this problem by pairing CSOs with investors – social venture capitalists - who are prepared to shoulder the investment risk on their behalf.
141 CSOs indicated that there was always uncertainty and competition for money. However, the relationship between the Health Service Executive manager and the CSO manager moderated this to a degree because it allowed the service being provided to be explained and valued. Commissioning was viewed as removing this moderating force.
142 https://www.homelessdublin.ie/info/funding
143 https://www.hse.ie/eng/services/publications/non-statutory-sector/guide-to-service-arrangement-documentation-revised-jan-2012-.pdf
144 Interviewee
145 Interviewee
146 Wheel 2015, CWI, 2015, 2017

The ability to respond to a call for tenders is fast becoming a required core competency for staff in CSOs. This can distract from core work. More generally, the different skills-sets needed to have the capacity to tender or to meet new outcome/output targets mean CSOs may be oriented to different staff skills and talents. There is at yet no evidence that changing needs has translated into third level training of such workers, but this is one possibility. Nor is it clear whether such changes lead to alternative norms with new and different forms of knowledge valued, or whether different terminology and language might impact on the morale of staff and their relationship with service users.

LES staff are clearly stressed and anxious about possible job losses[147], but this has not led to significant staff turnover. Nor, according to evaluations, has it led to a significant decline in service delivery or relationships with service users.

It is evident that loss of HF contracts has directly impacted on staff previously employed in the pilot HF projects. They have had to be diverted to alternative employment within housing CSOs. At the same time there appears to be HF recruitment challenges.

Impact on Advocacy

Some commissioning processes include restrictions[148] within SLAs on advocacy. While it is not always clear how these restrictions impact advocacy, they have been described as having a chilling, inhibiting or suppressing effect[149]. For example, some homeless organisations recorded very direct threats to funding in the context of advocacy, although funding was not actually impacted when they continued with advocacy.

The 2016 LES contract contained a specific advocacy curtailment clause. A condition in the SICAP contract requires CSOs to seek approval for media releases from their LCDC, and while this is only loosely implemented, the existence of the condition has the potential to curtail advocacy[150].

Almost all participants in the DV research voiced fear of speaking out in case it had an adverse effect on funding. CSOs with other sources of income felt they were in a stronger position to speak out and recognized that those fully funded by Tusla were in a much more vulnerable position. One interviewee described it as "*a level of bullying... you are not funded to advocate for better systems, that's not what the money is for*".

Nonetheless, it is worth noting that CSOs persist with advocacy, which is often effective. For example, the Irish Local Development Network[151] and SIPTU[152] collectively advocate in respect of PES through parliamentary committees. In the case of homelessness, a restriction on access to premises by researchers in the 2018 homeless services SLA issued by the DRHE was subsequently revoked following advocacy by the sector.

Impact on Collaboration

The DRHE (2020)[153] notes that all funded homeless services with SLAs agree to a number of principles. These include interagency and collaborative working with statutory and other voluntary bodies. Nonetheless, we find that while positive examples of collaboration exist, integrated delivery of social services has been directly hampered by competition between service providers to attract service users in order to meet procurement targets. For example, PES agencies in the same geographical area have been known to bin each other's advertisements. There is also evidence of collaboration between similar actors in other areas[154], although it does not appear to extend to Job Path. Many community workers feel that collaboration and innovation suffered from the sense of competition introduced by the SICAP commissioning process.

There is evidence of 'co-opetition' between homeless CSOs, whereby organisations both compete and cooperate with each other.[155]

Prior to commissioning, there was ongoing tension in the DV sector and limited collaboration, and it is not clear whether or how commissioning has affected collaboration.

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147 SIPTU (2019)
148 Also known as gag clauses
149 Harvey (2014)
150 For example, one Local Development Company reported that it was criticised for paying for a bus for members of the communities with which it works to attend a protest.
151 The representative body of Local Development Companies which are the governance structure for the vast majority of LES and Job Clubs
152 Representing LES workers
153 https://www.homelessdublin.ie/info/funding
154 Ibid
155 Murphy et al (2017)

SECTION 8
Conclusions and Alternatives

The evidence we have gathered finds little benefits from procurement processes. We find that the types of services and processes explored in this report are not appropriate to a marketized or business model. There are significant disadvantages in terms of, for example, transaction, administrative and compliance costs (seen in other countries), as well as negative impacts on advocacy, collaboration, community development and service provision.

The Future is Public

Across the world, decisions driven by procurement processes are being reversed and alternatives are emerging that value public and social or community delivery of services. For example, The Future is Public note over 1,400 examples of counter-market remunicipalisation across the world. In 2019, Fórsa, SIPTU and Connect successfully promoted a motion to Dublin City Council to revert to public management of refuse collection.

Convinced the market cannot service the needs of those most marginalised, nor empower communities, we offer this research in the spirt of alternatives to private procurement. As far as commissioning is concerned, we recommend empowering commissioning processes and discuss how this might be achieved in a way that promotes public sector duty obligations to promote human rights and equality.

Our strategies are presented under three headings as follows:

- **Avoid:** Avoid procurement and develop absolute alternatives to it.
- **Defensive:** Mitigate the potential damage to civil society advocacy and services.
- **Offensive:** Use mechanisms to enhance positive outcomes in commissioning and procurement.

Avoid: Absolute Alternatives to Procurement

In 2017, DPER[156] acknowledged the need for principles to say competition is only good in certain circumstances, where it is permissible, where it suits the services, where it would be good for the end user". The DPER also acknowledged the need for guidelines and examples of "certain circumstances" where they would feel competitive tendering is not appropriate and should not be used "because it would be disruptive to the service". Likewise the 2016 report 'Lets Commission for Communities' sought a predominantly grant led funding model for the community and voluntary sector with limited use of procurement which should only be used where there it leads to demonstrable societal value.

When the first iteration of the SICAP commissioning process was being designed, it was conceded that it was not fit for purpose for all groups. Fourteen Traveller and 17 disadvantaged women's CDPs successfully argued for an alternative arrangements. An umbrella company, the National Traveller Partnership, was established, under which each Traveller project remained as an independent entity. Women's projects merged with the National Collective of Community-Based Women's Network. In both instances, the need for fewer organisations with which the State had to interact was satisfied, and administrative coherence was achieved by transferring the funding to the Department of Justice. Other alternative arrangements were also accepted, such as the projects in the Cork/Kerry region transferring to the Health Service Executive and the merging of the projects in Limerick.

This and the case of LEADER, which remained exempt from commissioning processes, suggests legal grounds for exemptions could be used more extensively. It is important that there be greater clarity and transparency in relation to legal advice on procurement of social services, for example with greater emphasis on the use of the exemptions in Social Services of General Interest.

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156   Lynam 2017 p 23

Personal or community development programmes which require providers to be embedded for long periods in local communities should be explicitly protected from procurement processes. In particular, and in the context of 2019 commitments in *Sustainable, Inclusive and Empowered Communities* to facilitate and resource autonomous community work, it is necessary to consider decoupling the community development element of SICAP with the elements funded by EU PEIL, thus enabling a community development programme that would be exempt from procurement. Requirements under the Public Sector Duty, national equality strategies, for example the National Strategy for Women and Girls, or the National Traveller and Roma Inclusion Strategy and the Sustainable Development Goals that includes the principle of "Leave No One Behind", can also inform which marginalised groups and services should be protected from potentially negative impacts of marketization.

Consistent with principles embedded in equality legislation, the *Roadmap for Social Inclusion* and specific strategies for marginalised groups[157] there should be no competitive tendering for services/supports targeted at marginalized groups. This is clearly possible within existing legislation, as already evidenced above, and in other instances where direct state funded mechanisms are still in use (for example EmployAbility).

To the degree that rationalization and administrative coherence are clear drivers of procurement, there needs to be more assessment of other mechanisms to achieve legitimate goals of efficiency, administrative coherence, and value for money outside of procurement. For example, pre-2012 FÁS contracts with LES where drawn up based on grants with outcome metrics. While there are suggestions that legal considerations limit the extent to which this can now be done, it is clear, given the exemptions mentioned above, that there is room to manoeuver.

An exaggerated concern with administrative efficiency has consequences for diversity of delivery, which should be valued as a key public services goal in its own right. It is thus worth exploring how the need for administrative efficiencies can be negotiated without procurement and without damaging diversity.

Defensive: Mitigate the Negative Damage to Civil Society Advocacy and Services

A clear mechanism is needed to avoid below cost 'price-making' in procurement processes. It is very tempting in these cost conscious times for civil servants to be drawn towards below cost tenders that on the surface deliver immediate cost savings. These are, however, often unsustainable in the longer term for CSOs (which must sub-vent the cost), for service users (who may endure poorer quality or less services) and for the state (which may have to step in and rescue unsustainable projects and/or deal with the political consequences of poor services). Clear guidance is needed on how tenders should be assessed on wider value for money criteria than simple lowest-cost. Such guidance should prohibit lowest cost as an ultimate or primary criterion.

A further possibility is for the charity regulator to issue guidelines to limit the extent to which charities use public fund raising to sub-vent below cost delivery of services otherwise funded through procurement. This has already been done in the UK.

More use of pre-qualifying conditions can be made to restrict the quasi-market to locally embedded non-profit providers. Making social inclusion, diversity of provision, and sustainability of small CSOs criteria for assessment could mitigate the likelihood that commissioning or procurement would lead to the demise of smaller organisations.

Offensive: Positive Outcomes in the Context of Commissioning and Procurement

A key disadvantage of procurement is the potential loss of public sector duty principles, a potential tool to advance equality and human rights. The public sector duty should explicitly cover any services delivered to people covered under equality legislation through procured services. This should include co-design, collaborative and co-productive[158] models of commissioning social services (which need not involve competitive tendering or outcomes-based contracting).

Where procurement has to apply, it should work from a human rights and equality perspective, so that procuring state agencies, as duty bearers, respect their public duty obligations. They should ensure that any commissioning of need or evaluation of services is transparent, understood and publicly available. It should include the voice and input of service users and a staff perspective. This should not merely be symbolic but should demonstrably inform the assessment of need.

Socially responsibly procurement places social considerations at the heart of the procurement process through the integration of Social Clauses[159] (see appendix 3). These allow social and environmental considerations to be included in the contract specification and used in the selection and award procedures. The National Women's Council Ireland has also pursued advice as to how procurement might be used to advance gender equality (see appendix 4).

The advocacy role of civil society is crucial to democratic participation and deliberation. There are inevitable tensions between state funded service delivery and advocacy. Some argue that, regardless of the method of procurement, there are limits to the degree service delivery organisations can fully engage in advocacy. Nevertheless, there are ways to enhance the likelihood of strong civil society advocacy as a necessary part of a healthy democratic society.

To begin with, the more transparent the procurement decision making processes are, the less fear CSOs will have that they can be penalized for advocacy or that service contracts can be denied for speaking out. In the context of tensions that can arise in expecting and enabling effective advocacy from state funded and state reliant service providers, a parallel strategy is to invest in enabling and promoting the voice of service users[160].

We argue however, it is also possible within commissioning and procurement to incorporate the legitimate democratic role of CSOs as advocates and to include advocacy, research and policy work within procurement and outputs[161]. Advancing and extending the legal rights of civil society to advocate will act as a counterweight to the practical and financial power of funders.

Conclusion

This initial scoping exercise has raised a number of key questions that require further investigation:

- How does the process of marketization differ in small states?
- How does Ireland's weak system of local government and highly centralised decision making processes impact on marketization?
- What role do experts play in marketization, including legal and financial experts?
- How does discourse legitimate the drive away from grants towards commissioning and procurement of Irish social services and community development?
- How is procurement impacting on the development paths of CSOs?
- Does commissioning and procurement meet the long term needs of communities and service users?
- Is commissioning and procurement contributing to a race to the bottom in standards for staff, communities and service users?
- How is commissioning and procurement experienced in other sectors (youth and children's services, mental health supports etc).

157   For example the Traveller and Roma Strategy
158   Lindsay et al 2018

159   Halloran (2016)
160   For example, in the approach used in Housing First procurement which funded the intermediary, Genio, to play a role in promoting overall development, evaluation and service user feedback in relation to Housing First
161   This was originally the approach taken by the Homeless Agency in the early 2000's

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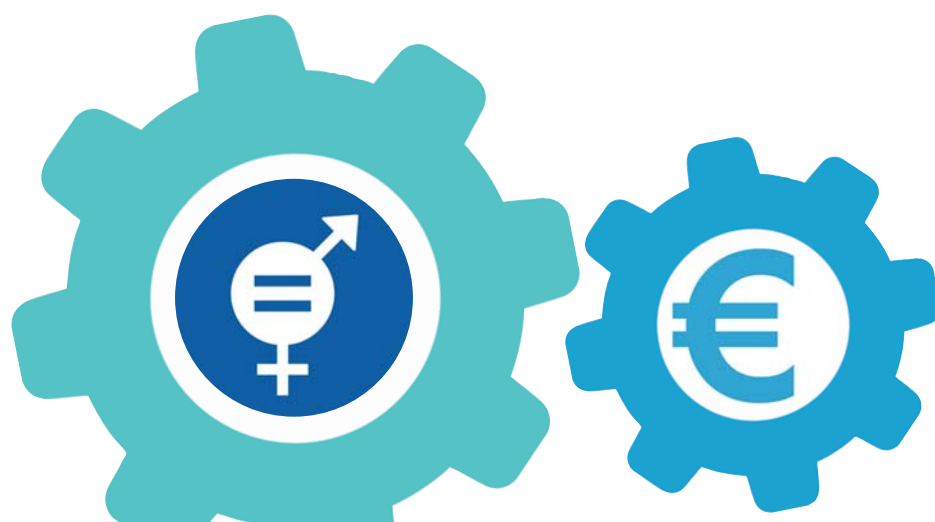
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