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The Commissioners Perspective: The Lived Realities of Commissioning Children's Preventative Services in England and the Role of Discretion

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Abstract

Commissioning remains the dominant process by which England's state and third sector financial relationships are managed, attracting much criticism and debate. In response, the Civil Society Strategy (2018) has called for a renewed focus on collaborative commissioning arrangements. However, the absence of much comment on Commissioners suggests we have not paid enough attention to the role of the individuals who manage these processes. Semi-structured interviews with fifteen Commissioners, responsible for children's preventative services provides new empirical evidence. Drawing on the notion of vertical discretion, that is an individual's freedom from external control, versus horizontal discretion, that is an individuals' freedom for decision-making this paper presents evidence on how Commissioners influence, and in some cases even circumvent, the commissioning process. Findings highlight that greater consideration of the role discretion in commissioning processes can add some insight into how more collaborative commissioning arrangements may be achieved at a local level.

Introduction

Commissioning is a process that public sector organisations, such as local government, the national health service and police, use to plan, procure, deliver and evaluate services for local communities. It marks a step change in state-sector relationships, moving from grant-giving financial arrangement to the awarding of contracts through competitive, market-driven processes. As a result, public sector bodies increasingly commission other organisations, such as third sector organisations (TSOs) to deliver services on their behalf rather than delivering services in-house. In this context, Commissioners are the individual state actors tasked with executing and managing the commissioning process.

Ongoing discussion regarding the opportunities and barriers produced through this process, and the impact this has on TSOs, are well developed within the academic literature (for example see Cunningham, 2008; Crouch, 2014; NCVO, 2014; Rees et al., 2014; Rees and Mullins., 2016; Salamon & Toepler). However, the absence of much comment on, or research into Commissioners suggests we have not paid sufficient attention to the impact these individuals can have on the commissioning process. Defining discretion 'the freedom to decide what should be done in a particular situation' (Thormann et al., 2018: 583), this paper questions the extent to which the individual Commissioner can influence, shape, manage, and in some cases even circumvent the commissioning process. In doing so it examines Commissioners levels of autonomy, resources and freedom to act upon their own discretion within the complex political climate in England, which prioritises the outsourcing of public services (Glasby, 2011).

The first section of this paper presents a brief overview of the current literature, first discussing commissioning in England, second considering the role and space for discretion within public policy and third, discussing children's preventative services as the specific context in which this research is conducted. The second section outlines the qualitative methodology and data collection used for this research. The third section highlights the specific findings from this research and discusses this in the context of discretion making within commissioning.

The Rise of Commissioning and the Commissioner

Defined as ‘a cycle of assessing the needs of people in an area, designing and then securing an appropriate service’ (Cabinet Office, 2006), commissioning is the process by which the formal financial and service relationships between the third sector and the state are managed (Rees & Mullins, 2016; Milbourne & Murray, 2017). Rooted in the discourse of New Public Management (NPM) (Hood, 2011), commissioning promotes a distinct approach to public services which seeks to make them more business-like based on private sector models. Emerging prominently in the UK since the early 1980s (van Thiel & Leeuw, 2002), development of the dialogue around the purchaser-provider split, market testing and the mixed welfare economy was accompanied with the launch of Compulsory Competitive Tendering (Bovaird et al, 2012). Since 2008, public budget attrition and the intensification of organising ideas derived from NPM broadly stressing competition, choice and the introduction of business-like techniques, have all had to be taken as givens in the new landscape (Hood, 2011). Emphasis is placed on efficiency and a customer service approach, with services delivered within a framework of performance management targets. Indeed the widely accepted idea of the commissioning ‘cycle’ which adopts an ‘analysis, planning, delivery/procurement, monitoring and review’ approach has been broadly adopted across all levels of government (Bovaird et al., 2012).

There have been multiple rationales presented for commissioning from a focus on increasing choice, devolving decision making to local areas, increasing public services efficiency whilst making them more accountable, transparent and opening services to a wider set of providers (HM Government, 2011). Further rationales have included increasing value for money, encouraging increased joint working and information sharing, as well as creating shared and pooled budgets (Rees et al, 2017). The arrival of the Coalition government in 2010, intensified a commitment to use commissioning as a mechanism to reform and reshape the landscape of public services (Rees, 2014), and subsequently drove forwards a ‘commissioning agenda’ principally, as outlined in the Open Public Services White Paper, a heightened commitment to outsourcing public sector services and a commitment to the concept of ‘payment by results’ (HM Government, 2011).

Certainly, within children’s services Payment by Results (PbR) (or Outcome Based Commissioning) is increasingly seen as one mechanism to improve the impact of services available to children and families (for example in Children’s Centres and the ‘troubled families’ agenda) (Children’s Society, 2012; DCLG, 2014). Under such arrangements service providers receive some payment dependent upon the achievement of specific outcomes. Developed centrally under the New Labour government (1997-2010), the Conservative-coalition government (2010-2015) and the current Conservative government (2015-present) have propelled this idea forward (NCVO, 2014). However, this has not been without criticism with multiple studies highlighting that PbR risks the temptation for service providers to invest their skilled professional time and resources, not on who most need the support but on those most likely to ensure that the service provider gets the results that trigger the payments (Thoburn, 2013). Further criticisms of PbR contracts have included irrelevant and/or detrimental targets; over-simplification of complex services; excessive use pushing financial risk onto organisations meaning smaller organisations are unable to participate; and excessive use of targets which can minimise innovation and flexibility in service provision (NCVO, 2014).

In short, the landscape of commissioning remains contested, and has been summarised by various actors in different ways (Body & Kendall, 2019; Bovaird et al, 2012; Rees et al, 2017). As a result, considerable variation in how this process has been adopted remains, leading to confusion in both theory and practice (Macmillan, 2013; Miller & Rees, 2014; Rees et al., 2017), alongside differential emphasis applied to the different parts of the commissioning cycle (Rees, 2014). Whilst the term

commissioning has been adopted widely in discourse, establishing a single definition remains problematic. Indeed, Checkland et al., (2012) comment 'commissioners and providers struggled with the more fundamental ideas underpinning commissioning, suggesting that shared understanding is far from the norm' (p.540). More recently, the Civil Society Strategy (HM Government, 2018) makes a commitment to collaborative commissioning arrangements, alongside encouraging local authorities to maximise social value within their commissioning processes. The potential for more collaborative commissioning arrangements has been largely welcomed, however in reality without committed funding or clear accountability the strategy remains more of an idea than a reality (Bennett et al., 2019).

Nonetheless, whilst commissioning remains a debated, multifaceted term, the term Commissioner has received less attention. Often referred to generically throughout the literature, largely as a catch-all term for either individuals, local consortiums, organisations or collectives of organisations, and in general reference to those who manage the commissioning cycle, procure and ultimately commission a service or services, the role and remit of the Commissioner remains ambiguous. According to Miller and Rees (2014) 'policy portrays Commissioners as the strategic overseers of a mixed economy of welfare, using their purchasing and influencing power to ensure that the publicly funded system is shaped to achieve the required outcomes within the resources available' (p.145). Nonetheless, as the 'lynchpin of the commissioning approach' (Rees et al, 2017), there is limited research into the role of Commissioners, particularly as the individuals who are responsible for these processes and are tasked with the coordination and management of the commissioning process. Often discussed in the literature in homogenous terms, the Commissioner becomes an apparent singular form, at time appearing to lack individual agency, voice and power, whilst working in multi-dimensional situations governed by market forces, and commonly responding to significant social need, as in the example of children's preventative services. Increasingly commentators on these relationships are recognising the need for a more nuanced understanding of state and third sector relationships. Glasby (2012: 8) suggests commissioning should be viewed not as a stand-alone policy but rather as a response to a broader set of changes in the way public services are developed, managed and delivered, shifting public services from the 'traditional' public administration to the adoption of more market orientated concepts and approaches. The Commissioner is then responsible for these changes, including setting and measuring clear objectives and outcomes, using market mechanisms to drive down costs and improve quality (Shaw & Canavan, 2016).

Some literature acknowledges the significance of the role of the individual Commissioner and the tensions faced. A study into Commissioners experiences in the English National Health Service highlighted the need for local, mature, trusting relationships between Commissioners and providers in order to provide meaningful partnerships (The Kings Fund, 2018). Meanwhile Egdell and Dutton (2016) highlight relational barriers between Commissioners and providers in service specification design, and concerns regarding Commissioners understanding of community-level needs. Whilst Sellick (2006) discusses the tensions faced by Commissioners within looked after children's services, identifying that despite financial pressures, Commissioners manage dual roles 'as procurers of costly external placements and as professional social workers wishing to promote good child outcomes' (p.462). In later work, Sellick (2011) identifies that further tensions emerge through procurement rules creating barriers in communication between commissioners and providers, however suggests that 'legal or not, it seems that ways are being found to avoid the worst constraints of procurement rule' (p.1801). Indeed, Milbourne (2013) highlights that 'the codification of services into contracts potentially removes both Commissioners and providers from the need for effective communication about services so that the fairness of, or rationale for, specific performance indicators is concealed' (p.502). Alternatively, Rees (2013) suggests that commissioning can enable more long-term trusting

relationships to develop, particularly at a local level between Commissioners and providers. In later work, Rees et al (2017) further highlight the competing priorities Commissioners must balance between representing a purchasing function, which is 'robust and above suspicion', versus a 'relational mindset that includes fostering and maintaining personal relationships' (p.191). Their research, based upon the commissioning of TSOs in the field of community mental health services, highlights the importance of the Commissioner in the commissioning approach and calls for '*further grounded research into the realities of commissioning at the local level*' (Rees et al, 2017:191)

The Role of Discretion in Public Policy

The theoretical concept of discretion within public policy making is well developed in the literature (for example see Checkland et al, 2018; Lipsky, 2010; Thormann et al., 2018; Verhoest et al., 2004). The concept has come to be considered as the space for action that managers have in a given situation (Hambrick & Abrahamson, 1995; Finkelstein & Peteraf, 2007; Hupe, 2013). Whilst there is a general acceptance in this literature that public policy professionals, such as Commissioners, have an important role to play and some level of discretion is inevitable (Checkland et al., 2018; Thormann et al., 2018), the practice and benefits of implementation of discretion is more debated.

To date, actors' ability to use discretion in the public sector, particularly in relation to children's services, has primarily been discussed in relation to Lipsky's (2010; 1980) prominent work on street-level bureaucrats, focusing on frontline workers in children's services. For example, Wastell et al's (2010) ethnographic study into social workers, found that social workers commonly exercised discretion in their work to ensure they carried it out in ways which felt appropriate. Maynard-Mooney and Musheno (2000), reconstituted Lipsky's view of street-level bureaucrats as 'state agents' and instead present the term 'citizen agent' (further developed by Durose, 2009: 2011), which resonates more with ideas of exercising strong discretion. A distinction here is drawn between these agents being 'rule saturated' and 'rule bound' – and acting as a professional, they draw on local knowledge and resources to use their discretion to pragmatically respond to client need (Durose, 2009; Maynard-Moody & Musheno, 2000). Durose (2011), takes this concept further, describing UK local government workers as 'civic entrepreneurs' (see Leadbeater and Goss, 1998), a concept she argues is more expansive than Lipsky's notion of discretion, and is 'characterised by 'discretion' as a choice or judgement within bureaucratic constraints' (p.991), creating new, emergent spaces on the edge of local governance where traditional organisational structures are breaking down.

Thus far scholars have placed some emphasis on the distinction between alternative forces which can help inhibit or create this space for discretion. Top down theories argue that discretion is problematic as it stops policy being implemented as required, creating a control problem (Howlett, 2004). Considered as 'discretion as granted' by Howlett (2004) the emphasis is placed upon the degree of freedom to make decisions granted by the rule maker, in other words 'freedom from external controls' (Verhoest et al., 2004; Checkland et al., 2018). We conceptualise this as vertical discretion, that is the degree to which actors have freedom from hierarchical external controls from more central bodies. In terms of commissioning, for example, this may be interpreted as a commitment to payment by results and/or national policies, depletion of resources, etc - where 'hard' targets and rules are imposed on Commissioners, and therefore passed onto TSOs, by external controls. In short, in this we consider this as how 'rule-bound' or constrained Commissioners as public policy actors are.

Alternatively, bottom-up approaches assume to a certain degree the existence of discretion and instead emphasise how the degree of freedom is used in practice. Considered as 'discretion as used',

by Hupe (2013), these bottom up theories argue discretion is a positive part of the policy implementation process, allowing policies to be tailored to specific circumstances as required, for example in Lipsky's work on street-level bureaucrats (Lipsky, 1980, 2010; Hill and Hupe, 2009; Thormann, 2016). We conceptualise this as a form of horizontal discretion, that is the degree within which an individual can manoeuvre within their own individual positioning. Evan and Harris (2004) develop a similar concept, identifying a distinction between strong and weak discretion. Strong discretion is often associated with professional groups, who are trusted to use their competence and expertise, to make decisions in complex and unpredictable situations. Whereas weak discretion, means the application of standards or rules, and decision-making within set boundaries of established rules. notions of horizontal aspects of discretion, characterised by 'choice or judgement' (Durose, 2011) where individuals may to more or less degrees, based upon their individual situations and internal organisational drivers, draw upon their own professional judgements, resources and social skill (Durose, 2009; Maynard-Moody & Musheno, 2000) in any given situation.

Thus, the space for discretion depends upon this intersection between the vertical discretion granted by the system within which the Commissioner is operating in, that is how rule-bound the system may be, and the horizontal discretion characterised by the space for individual choice and judgement, driven by individual situations and organisational drivers. It is within this framework, of examining the space for discretion from horizontal and vertical perspectives that this paper will now focus on, exploring the lived realities of Commissioners commissioning children's services in England.

Research Context

In England, Children's services are under huge economic strain. Since 2008 austerity and the economic crisis has resulted in a 'doing more for less' culture (Hulme et al, 2015; Vibert 2016). A report by Action for Children (2017), in partnership with The Children's Society and the National Children's Bureau highlighted a £4billion reduction in funding available across central and local government, predicting a 72% reduction in early intervention funding nationally by 2020 based on current trends. Simultaneously children social care demand is rising; between 2008 and 2015 local authorities in England experienced a 22% increase in referrals, alongside a 16% increase in the numbers of children in care (Vibert, 2016). Research reports widespread reductions in both the level and quality of services for disabled children, as services shift from preventative support to crisis management (Stalker et al, 2015). Whilst the greatest reform of school funding for the last 25 years (Institute for Fiscal Studies, 2017), has resulted in further marketization of education (Ball et al, 2012) and growing concerns about increasing inequalities (Body et al., 2017).

Heralded as a way to improve outcomes for vulnerable children, commissioning has a prominent role in service provision for children and young people. Prioritised in the Labour government, the Every Child Matter's Green Paper (HM Government, 2003) identified commissioning as a way of 'developing an overall picture of children's needs within an area and developing provision through public, private, voluntary and community providers to respond to those needs'. By 2006, the Labour government had introduced the idea of 'independent social work practices', 'autonomous organisations, which could be voluntary or privately owned, responsible for employing social workers' (Vibert, 2016:12), with pilots emerging in 2009/10. In 2016, the DfE's paper, 'Putting Children First', stated a firm government ambition that over a third of local authorities should be delivering 'alternative models of delivery' for children's social care, leading to the expectation that further services will be taken out of local authority control (Vibert, 2016).

Research has highlighted how in practice some TSOs working within children's services employ a range of tactics to negotiate or bypass commissioning processes altogether, through focusing on

relational models of commissioning (Body & Kendall, 2019). Indeed, a variety of policy based, practitioner focused and think-tank based literature has embraced this more relational, collaborative approach to commissioning children's services and has sought to explore how commissioning may be most effective in terms of reaching positive outcomes for children, commonly placing the role of Commissioner as central to this process (for example see, Aked & Steed, 2009; Asmussem et al, 2017; Shaw & Canavan, 2016; Vibert, 2016). Consistently this grey-literature highlights the need for Commissioners to invest in strong commissioner-provider relationships, use data effectively to make evidence-based decisions, achieve value for money, collaborate with the sector and focus on clear defined outcomes. Whilst literature finds that most commissioning models seek to incorporate the principle of partnership between the Commissioner and beneficiary organisation (Shaw & Canavan, 2016), in a climate where state and third sector relationships are primarily focused on money and efficiency, the purchaser-provider relationship is often challenging (McNeish et al., 2012).

Methodology

In-depth qualitative, semi-structured interviews were conducted with 15 individuals responsible for commissioning children's preventative services in a single local authority area in England. Each interview lasted between one to two hours. Semi-structured questioning explored the Commissioners perceptions and views of the commissioning process. Within the research process, the Commissioners collectively drew upon 83 examples of commissioning cycles to procure a distinct service, or set of services, that they had been involved with. Commissioners then provided supplementary information including case studies of commissioning processes, tendering documents, minutes of meetings, evaluations, business plans and reports. Adopting an interpretive approach, all interviews were recorded and transcribed, read and re-read to decipher an initial list of themes. The data was then coded, allowing for both exploration of the themes explored in the interviews and any new, emerging themes. Ongoing conversations with the Commissioners, as the research developed, allowed an iterative research process to develop, wherein the researcher and Commissioners could have ongoing discussion and reflections on the themes emerging in the findings. This iterative approach, allowing the researcher to move back and forth between stages, revisiting certain aspects at particular points as part of a 'data analysis spiral' (Creswell, 1998; Dey, 1993) ensured a reflective research approach which sought to authentically capture the reflections and perceptions of the Commissioners.

The research underwent university research ethical clearance, and all participants were approached prior to interviews and provided with full details of the research aim, process and intended outputs. Commissioners were identified for interview through job titles within a single Local Authority area within the South East of England. The sample was then further expanded through 'snowballing', in which Commissioners suggested additional participants. Throughout the research period, three 'meet the market' events were hosted. Attendance at these events, designed for Commissioners and providers to meet to discuss key priorities around children's preventative services, gave the researcher further insight into the Commissioner-provider relationships and additional opportunity to engage Commissioners in the research process. As the research covered a small geographical area, as well as a niche policy area all interview quotations are fully anonymised and only attributed as 'Commissioner'.

Findings

In the following sections, we explore the Commissioner interviewees' perceptions of their autonomy and scope for discretion within the commissioning processes in the single policy area of children's preventative services. We start by exploring six factors, identified by Commissioners, which they perceive negatively impact on their 'space' for discretion. We consider these broadly in two groups. The first three factors predominantly impact on Commissioners vertical discretion, that is their freedom from external controls, whereas the last three factors impact on Commissioners horizontal discretion, that is their freedom to make decisions. In the final section of these findings we identify different strategies which some Commissioners deploy to manage the gap between demands and what they 'feel should be done'. We discuss the implications of the combination of inhibitors and strategies in the discussion section.

Factors Reducing 'Space' for Discretion

We start by identifying three dominant factors which impact on Commissioners vertical discretion, that is their freedom from external controls – these are considered aspects Commissioners felt they had little control over:

1. Process vs Relational Commissioning: Across the Commissioners it was recognised that commissioning processes vary widely across public sector bodies, with a recognition of a continuum of commissioning approaches between process and relational driven (Body & Kendall, 2019; Rees, 2014). Relational approaches tended to seek a more collaborative, partnership approach between state and TSO actors, whereas process driven tend to be more hierarchical and bureaucratically driven by the State actor (see Bovaird and Loeffler, 2012; Crouch, 2011; Cunningham, 2008). Where public sector bodies adopt a more relational-driven approach Commissioners are afforded more discretion, with commissioning processes typically defined by co-production and partnership (Crouch, 2011). In contrast, where public sector bodies adopt a more process-driven commissioning approach Commissioners experience less space to exercise individual discretion, or indeed engage in more collaborative forms of commissioning, focusing more on the bureaucratic, administrative elements of the commissioning cycle, for example as one Commissioner expressed:

I think we were afraid to talk to providers, we followed the letter of the law and the process. We were kept a very close eye on by procurement, they monitored everything, it was all by the book.... You don't get sued that way (Commissioner)

2. Prescriptive Targets: The type of contracts which individual Commissioners oversaw somewhat impacted the space for individual discretion within the process. For example, two of the Commissioners interviewed, as part of their portfolio were responsible for elements of the troubled families programme. Within these circumstances the Commissioners felt they had 'very little room for manoeuvre' in the 'highly prescriptive programme' (Commissioner). Thus, we see here a tension between the vertical and horizontal autonomy. Where Commissioners experienced these hard-external controls, particularly accompanied by reduced freedom for individual choice or judgement, the commissioning process was considered bureaucratic and procedural, with little space for innovation or flexibility. For example:

They (TSOs) are now just seen as an extension of public sector workforce, I do as I'm told, they must do as they are told, they (Senior Managers in the Public Sector) don't want ideas on what to do better, they just want us to do what it says in the contract. It's simple, tick the right boxes and we get paid more money – it's not about the children's wellbeing anymore (Commissioner)

3. Resources: As previously discussed, austerity and reduced public spending has left virtually no area of children's services unscathed. Perhaps unsurprisingly Commissioners commented extensively on shifting government priorities which they felt resulted in reductions in resources, such as funding available for early intervention support, and increased expectations on them to manage multiple services simultaneously. For example, as one Commissioner expressed:

We are continuously expected to do more with less, be agile and responsive and predict where we need to focus next, but with less and less money to distribute, and less people to manage it.

Alongside diminishing resources to distribute, Commissioners themselves felt under increasing pressure to oversee an increased number of commissioning processes and contracts. For example, one Commissioner highlighted how in 2009/10 they were responsible for 2 major commissioned services, both in connected services, and developed close working relationships with the providers, by 2013 they had become responsible for 28 commissioned services across a broad spectrum of provision. However, whilst all Commissioners experienced these resource pressures, some appeared more affected than others.

The final three dominant factors interviewees perceived impacted on Commissioners horizontal discretion, that is their freedom to make decisions. This horizontal space for discretion relied more upon individuals positioning, experience and professional background, and thus offered more flexibility as Commissioners acted on their choices and judgement:

4. Seniority of the Commissioner: Within children's services Commissioners occupied multiple different positions and levels of seniority. Commissioners seniority in the organisational structure varied both between organisations and within single organisations, such as the local authority. With greater seniority, there appeared to be greater levels of autonomy and freedom for discretion. Where Commissioners held lower level positions, they often sat with a Commissioning structure or team within a larger organisation. Commissioners in lower level positions discussed the need to have decisions ratified and 'signed off', whereas those in more senior posts felt more empowered to 'be the decision maker'.

5. Single versus Multi-disciplinary Teams: Commissioners occupied different roles, some were based in a single team located within a specific organisation, for example the local authority, whilst others worked and reported to a multi-disciplinary team, working across a number of commissioning organisations. In the first case of the single teams, Commissioners tended to adopt roles more akin with a coordinator and generalist role, as part of a team they were responsible for a wide portfolio of children's services. Here, discretion was perceived to be distributed more widely across the team and more formulaic, and process-driven commissioning approaches dominated. For example, they rarely saw themselves as the decision maker, as one Commissioner comments:

There is a real difference between what I feel should happen and what does happen, we have a process to follow and the process doesn't always lead to the most expected outcome, but that's what commissioning is supposed to be about.

In contrast, individuals who worked across multi-disciplinary teams, often leading on a specific joint commissioning venture, held far greater degrees of autonomy, and were trusted as a 'lead professional' to advise and direct the commissioning process. One Commissioner commented:

I'm left to it, I advise the board of what I think it is best to do and they go with that, so I end up commissioning the people I like, the organisations I know can deliver based on what I know is needed.

6. Professional Background: Professional background matters. Of the fifteen interviewees, twelve were qualified professionals within children's services, for example three social workers, two teachers, two early years practitioners, two youth workers and three mental health professionals. The remaining three individuals had policy and procurement-based backgrounds. There was consistency amongst the interviewees, particularly those with professional backgrounds within the children's workforce, that commissioning, as a process, had the ability to improve children's services for the better. This acted as a strong motivator for the Commissioners decision making, for example:

After qualifying as a teacher, I worked in education for 8 years. After that I went and worked in a charity providing early intervention services for children. We specialised in anti-bullying and peer mentoring support. I loved my job, but I often felt frustrated that it always seemed the money went to the wrong places. When a job came up in the Local Authority's commissioning team, I went for it. I felt I'd be able to achieve and influence real change and I think I have. It is a job which has a lot of influence but also a lot of responsibility – and I feel that every day – a moral duty to do the right thing. (Commissioner)

However, those with a children's workforce background, compared to those who had a policy making/ procurement background, consistently expressed a prioritisation to 'get it right' for children, above following the process. These Commissioners were most likely to employ the strategies we outline below in order to bypass what they perceived as 'unhelpful' processes.

Whilst the above factors identified by interviewees potentially create or inhibit space for 'discretion as granted' (Howlett; 2004) and 'discretion as used' (Hupe, 2013), they cannot be considered to determine *how* Commissioners exercise discretion within their role. Instead these factors appear to help define the Commissioners starting point, in other words, the space available in terms of exercising their discretion. It is within the framework of these horizontal and vertical aspects of discretion that we can then understand common routines and strategies that Commissioners develop to shape, and even in some cases bypass, the established procedures.

Strategies Employed to Bypass Bureaucratic Systems

Here we consider the strategies employed by Commissioners in the commissioning process to bypass what they perceived as overly bureaucratic systems. These can be broadly defined under three headings; back-stage engagement, promoting visibility and buffering.

Strategy one: Back-stage engagement

Commissioners suggested a high degree of informal engagement with certain TSOs in the structuring and commissioning of services. This was alongside stressing a consistent desire to 'get it right' (Commissioner) for children and the importance of the relationships with TSOs in achieving this:

Engaging providers is absolutely central to what we do, we have to work in partnership, our role is to coordinate the whole process, not be the dictator of it (Commissioner)

Interestingly, whilst Commissioners also emphasised the importance of running fair, open and transparent commissioning processes, this was often alongside, and in tension with, highlighting the

importance of trust, prior knowledge and established working relationships with TSOs. For example, as one Commissioner pointed out:

The processes are really good for making sure it is all fair, but... well I mean, at the end of the day it still comes down to people, doesn't it? And, well, people still comes down to relationships, there is no getting away from it, we know who we want to work with and we definitely know who we don't.

Furthermore, the research consistently found that Commissioners favoured certain TSOs over others often due to having worked with them before. The prior knowledge led to established trust and potentially perceived advantageous circumstances for those TSOs considered as 'close' (Macmillan et al, 2013). As one Commissioner commented:

There is a world of difference between running a formal consultation process and picking up the phone to someone you know to ask their opinion... and a lot of that goes on... so we do consult the sector, but we consult those we know... well those who know what they are talking about. (Commissioner)

These back-stage, more informal relationships, were particularly prominent in situations where Commissioners appeared to seek to exert high levels of individual discretion, often in protest response to more process driven commissioning approaches. Thus, Commissioners actively sought mechanisms to bypass what they perceived as overly bureaucratic systems.

Strategy two: Promoting visibility of preferred TSOs

As public-sector cuts in children's services escalated and commissioning intensified as a mechanism to increase the mixed welfare economy, there was a perception by Commissioners of increased local politician's involvement in the commissioning processes, which Commissioners often found problematic. For example, a Commissioner outlined how a significant amount of funding had been approved by local politicians as a grant, to a group of organisations bypassing an ongoing commissioning process. Others highlighted how they felt, politically, that they could not stop funding a particular TSO due to the connections individuals within that TSO had to senior political members. Thus, Commissioners frequently faced a dilemma about how to negotiate these relationships within a professional process. However, this was not always considered a disadvantage, as more than half of the Commissioners highlighted how they would promote TSOs who they felt were particularly effective with political members to help secure their relationship with the local authority. For example, one Commissioner stated:

I think a lot of the success of organisations is based on visibility, the more visible the better....well for the right reasons of course. Some voluntary organisations are very good at self-promoting and having this visibility with members [the local political representatives], others not so much. Part of our role then is to promote and make visible those strong providers.

Strategy three: Buffering

Participants within this research suggest they often view their position as 'a buffer between the local authority and the providers' (Commissioner) and develop a narrative of 'service protectors'. As one Commissioner commented:

We were not in position to lower the level of cuts – everyone blamed us but it wasn't our decision, I didn't even agree with it... we couldn't stop it, but I do feel as Commissioners we

had an opportunity to soften the blow and we did... yes it was bad but it could have been worse.

The concept of Commissioners as protectors, buffering TSOs from austerity, also featured during the tendering and contract management processes. They felt a responsibility to push TSOs for monitoring information, *'which would be the type the local authority wants to see'* (Commissioner), once the TSO had secured the tender in order to help secure the services future, especially in situations where delivery in PbR contracts were falling short of requirements. Indeed, several Commissioners highlighted mechanisms in which they *'advised'* TSOs to *'be flexible in their interpretation of the rules'* in their presentation of statistical information in order to *'tick boxes to draw down money'* (Commissioner).

Discussion

The interpretive approach adopted in this research does not attempt to make grand claims of generalisability across all commissioning processes and/or all Commissioners. Instead it seeks to provide a deep and rich narrative from the Commissioners themselves. The desire to *'get it right'* coupled with ever-growing frustrations of diminishing resources for children's preventative services, appears to have provided the 'action imperative' (Hupe & Hill, 2007) which encourages *some* individual Commissioners to exercise their freedom to make decisions, considered here as horizontal discretion, despite the system, seeking to maximise their impact in constrained conditions. In short, even where Commissioners perceived they had little room to alter 'external controls', some Commissioners were prepared to bend, or even at times break, the rules to navigate the system within their 'freedom to make decisions', when they felt the processes were inadequate in addressing the needs. These Commissioners were prepared, to greater and lesser extents, to actively pursue these horizontal decision-making opportunities in this space. Here we argue that the ambiguity of commissioning, or as Rees et al., (2017) suggests the incompleteness of commissioning, presents the very opportunity for some Commissioners to exercise a high degree of discretion and take all the flexibility the system has to offer.

Notably, drawing on the data and examples from the interviews undertaken, amongst the interviewees involved in this research, three distinct approaches to commissioning emerged. We discuss these in terms of the idea of freedom to make decisions (horizontal discretion) and freedom from external controls (vertical discretion) (Checkland et al., 2018; Howlett, 2004; Hupe; 2013; Verhoest et al., 2014), the higher the levels of discretion, the more freedom the Commissioner has.

i) Low Horizontal Discretion/ Low Vertical Discretion: In this scenario procurement driven, risk adverse, non-collaborative approaches to commissioning dominated. In keeping with Milbourne's (2013) findings, such approaches often led to a break down in the communication between Commissioner and provider. For example, as one Commissioner, who it could be suggested occupied this space, commented on a recent process to commission children's preventative services:

We just didn't talk to any providers, it wasn't about lack of respect or lack of want, it was about fear. We just didn't dare, as if we did we were told that we would give unfair advantage to certain TSOs and we would be open to challenge. The whole thing was about minimising risk.

Within this type of commissioning approach, there was little evidence of the systematic use of the strategies discussed.

ii) High Horizontal Discretion/ Low Vertical Discretion: In this scenario Commissioners identified themselves as expert professionals and relied more extensively on their own discretion, thus they sought strategies to overcome what they perceived as bureaucratic and unhelpful processes. In short, they self-created space for discretion, despite the system. Therefore a common theme here was the exercising of strategies, to bypass or influence the established processes from *'behind closed doors'* (Commissioner). This created somewhat of a counterbalance to the process-driven market-orientated approach, where TSOs would experience a stronger Commissioner-provider relationship within the confines of a bureaucratic commissioning approach. However, within this Commissioners felt *'vulnerable'*, *'exposed'* and *'concerned about getting into serious trouble'* due to the perceived risks they took *'in bending the rules'* (Commissioner). Such findings chime with Sellick's (2011) identification that Commissioners will often work outside of the rules, *'legal or not'*, to secure positive outcomes for children. Whilst the Commissioners acknowledged that they followed the process to a certain extent, they used their individual relationships to develop a more relational-feeling approach to achieve what they felt was right. Thus, Commissioners felt conflicted between what they felt was the *'bureaucratic driver'* of the public sector organisation, and what they *'felt was in the best interest of children's services'* (Commissioner). For example, as one Commissioner expressed in their interview:

There is what commissioning is supposed to be, the story I am supposed to tell, and what commissioning is in reality.... They're two very different things.

The employment of the identified strategies, particularly *'buffering'*, were commonplace here, and it was by far the most common commissioning process experiences identified by the interviewees. However, this commissioning approach left Commissioners frustrated and discontented. They discussed feeling that they had to take risks in interpretation of the rules in order to secure the best outcomes for children, an outcome they rarely felt they fully achieved, which created tension for their relationships both within their professional role and with the communities they sought to serve. Furthermore, Commissioners frequently suggested irritation at TSOs who they felt they were trying to help but would not 'play the game'. For example, one Commissioner angrily commented:

Commissioning is a game and we don't make the rules, that's way above our heads, but if you want to work for and provide services on behalf of the authority you must play that game and find ways to get around the issues. Some voluntary sector providers seem to think that is our job, to sort it out for them, others recognise they need to meet us half way.

Here however we witnessed the potential formation of exclusionary clubs, or as Osbourne (1997) referred to them, *'clans'*, where emphasis sits with the relational networks and social context of TSOs as social actors. A particular risk within this approach is that these clans play out behind closed doors, under the guise of a market-orientated approach. As a result, these networks remain orientated around particular social networks and there was little evidence of *'new'* TSOs being able to enter the clan, resulting in a potential favouritism of certain providers.

iii) High Horizontal Discretion/ High Vertical Discretion: Where Commissioners felt their organisation internally supported a relational driven approach, they were well positioned in the organisation and had strong professional experience in the children's workforce, coupled with softer external controls, they felt they had strong freedom to exercise their own discretion (Durose, 2011), and as a result a new space for commissioning appeared to be emerging. For example, in one case a Commissioner supported an established TSO to lead a consortium of local providers, informed by data analysis and community engagement, to reconfigure the early intervention services in a particularly deprived geographical area, based on the consortium's and the Commissioners significant local knowledge. Intended outcomes were co-designed with the community and the service provision was flexible. Coordinating the services across commissioning bodies, the Commissioner, along with the consortium of local providers and community, developed a range of

widely acknowledged innovative services. It is here within which we can see the potential for commissioning to open up a more transparent, democratic commissioning space, which encourages greater collaboration between TSOs and the state, and the Commissioner adopt a role more akin to the civic entrepreneur (Durose, 2011).

Conclusion

This research paper responds to the call for 'further grounded research into the realities of commissioning at the local level' (Rees et al, 2017:191), using children's services as a case study example. As children's services come under increasing strain, traditional organisational structures are breaking down, for example, education, health and early intervention support. Whilst this break down of traditional institutions and subsequent blurring of the boundaries creates significant problems for vulnerable children, it provides the 'action imperative' (Hupe & Hill, 2007) to develop innovative commissioning responses which, step outside of the traditional and policy 'rule bound' boundaries. The reality is that Commissioners are largely critical of overly bureaucratic commissioning processes, and often seek to rebalance them through the employment of the strategies discussed, often at professional risk to themselves. Predominantly the findings highlighted that Commissioners feel motivated to act upon their own discretion. Within commissioning processes where vertical discretion was limited by external controls this means Commissioners utilise horizontal discretion opportunities to 'bend the rules', or 'play the game' to ensure that contracts are secured at a local level by TSOs that they perceive as best placed to deliver the required services. Thus, process driven commissioning often becomes more relational, but 'behind closed doors', favouring certain TSOs over others.

Creating a commissioning space which is not overly bureaucratic or risk adverse, outcome focused and seeks to redistribute power across stakeholders, potentially facilitates the Commissioner to both draw on their discretion in an open democratic way and openly invite others to join their 'clan' (Osbourne, 1997). Nonetheless, this paper does not seek to suggest the civic entrepreneur Commissioner as the panacea to all criticisms of commissioning, recognising that such approaches can still be somewhat exclusive for selected TSOs. However, the realities of commissioning highlighted in this paper do suggest that to achieve what they perceive as the best outcomes for children, Commissioners will, majority of the time act on their discretion as much as they are able. Commissioners remain central to the commissioning process, and are often left to, or tasked with, construction and overall facilitation of the commissioning process. This construction is rarely without agenda or bias, commonly based on significant skill and experience. To utilise these skills and really maximise the potential of collaborative commissioning arrangements as highlighted in the Civil Society Strategy (2018), policy makers should seek to create the space for Commissioners to drive forward relational commissioning, and trust Commissioners as highly skilled professionals to carry out this process in an authentic, transparent and democratic way. Under such approaches, expecting compliance with hard external controls is unrealistic – instead they we could suggest they should be empowered to perform their roles utilising their professional knowledge, openly exercising their discretion to ensure they respond to local needs (Barrett, 2004).

Whilst these findings do not attempt to suggest generalisability across all Commissioners, they do offer some important insight for policy discussions. Nevertheless, this research is not without its limitations. Drawing on participants from a single niche policy area, in a single local authority area limits the overall application of these findings to all policy and geographical areas. Furthermore, children's services can often be considered as a particularly emotive and value-led policy area, which

may inspire more confidence in individuals from policy specific professional backgrounds exercising their own discretion in decision making processes. Ultimately further work is needed, to examine the lived experiences and realities of commissioning from the Commissioners perspectives, how this may impact on the sustainability of their roles and their commitment to their field of work, to fully understand the complex and nuanced process of commissioning.

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