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**Complexities of discretion in social services in the third sector**

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**Abstract**

Policy analysts have devoted considerable time to examining the problem of the policy implementation gap, with one important strand in the literature following Michael Lipsky’s work on street-level bureaucracy and discretion. In this paper we aim to contribute to the literature concerning shifts in government/third sector organisation contractual arrangements, and whether they constitute a significant (post-neoliberal) development in policy implementation. Using a case study of contracted government services in Australia we revisit the conception of discretion to reflect on the impact of these changes and document their implications for the use of discretion in management and front-line worker practices.

Keywords: Street-level bureaucracy; discretion; contractualism; social services.

**Introduction**

A persistent concern in social services is the gap between formal policy statements and what policy looks like on the ground. This is the problem of the implementation gap—the idea of a gap between policy and its implementation in practice. An influential approach to the analysis of this problem is the street-level bureaucracy perspective (SLBP), which considers the problem of implementation to be that of the excessive and inappropriate discretion of front-line staff (Lipsky 2010). This perspective is widely used in the analysis of practice and policy, and our interest reflects this, but we take it as a starting point for a critical examination of the way in which policy is put into effect. SLBP originated as an analysis of policy implementation and state bureaucracy in the context of the fiscal crisis of the 1970s. Ever since, its concerns with policy implementation under pressure have resonated with issues of policy practice in the social professions (Evans 2010).

Over the past few decades the policy implementation context has been profoundly influenced by neo-liberal initiatives. In Anglo-phone countries such as the UK and Australia this has been reflected in the move away from state bureaucracies as a primary means to deliver policy to promoting the market as the way to deliver social services. An important aspect of this change in the 1980s and 1990s was the influence of New Public Management (NPM) propositions, shifting from direct provision of services by public bodies to the use of contracted private sector and third sector organisations as a key means of service delivery of social services. Over time, however, subsequent iterations of this broad change have seen a shift towards relational contracting that is intended to moderate the impact of competitive or market contractualism in the social services. Relational Contracting Theory (McNeil 2001, Williamson 1985) emphasises the merits of generating a network of trusted agents to lower transaction costs in “incomplete contracts”; that is where contracts are for the delivery of services that are hard to quantify and assess, such as in community services (Milward and Provan 2000). Recent developments in public management literature (Bertelli & Smith 2009) highlight that where agency capacity to supply specialised services is limited or volatile, if the government department does not retain the responsibility for delivery it must put in place a strong relational basis for the contract. While all business relationships rely on a degree of trust, that degree is greater in situations of complexity typical of the social services.

However, in the wake of the banking collapse and fiscal crisis in public spending, governments are under increased pressure to outsource as a strategy to reduce costs, which raises questions about the priority that public bodies will be able to give to the development of the relational context of contracts. In 2011, for instance, the outsourcing company Capita argued that ‘Billions of pounds could be saved [by governments outsourcing services] and the public wouldn’t notice the difference’ (quoted in Plimmer 2011). Across Europe governments are increasingly turning to outsourcing as a response to austerity. Here the UK government has led the way by increasing the number of outsourcing contracts by 47% in the two years from 2010 to 2012 (**Vize** 2013) and there are projections that the value of public sector outsourcing is likely to rise from the current level of just over £82bn to over £140bn by 2014 (Russell 2013)

These changes require us to consider whether the SLBP is still relevant in the post-state bureaucratic delivery context. While the focus on street-level discretion in SLBP is valuable, it risks being myopic. For Lipsky the key issue in policy implementation is the discretion of front-line workers to ‘ “make” the policies they are otherwise charged with implementing.’ (Lipsky 2010 xx). While he recognises that there are other, more senior, actors in the policy process, he argues it is front line workers who decide what policies look like on the ground; front line workers are the ‘street ministers of education, dispute settlement and health services.’ (Lipsky 2010 12). Managers and senior policy makers, according to Lipsky, tend to be obedient policy servants who carry policy they are given from one level to another and try (as best they can) to get recalcitrant front-line staff to implement policy on the ground. He sees the development of new tools of public management as sharpening the ability of policy makers and managers to better govern policy implementation (Lipsky 2010: 214-5). However, because of this uncritical picture of managers and senior policy makers his analysis seems to us to bracket off their discretion to also: ‘ “make” the policies they are otherwise charged with implementing.’ (Lipsky 2010 xx).

However, Lipsky has recently acknowledged the adoption of sharper business techniques, such as contracting out, by government to manage policy delivery as an area requiring examination (Lipsky 2010). In considering this, a key question in applying SLBP to the contemporary policy context is to what extent can SLBP include the role of contracted organisations to explain the contemporary policy implementation process? This is pertinent because the contracting out of services has added additional layers, processes and organisations to the policy implementation process. A second question raised by contracting out is how does implementing government social policy impact on third sector organisations whose employees are now policy implementers and street level bureaucrats? In essence what happens as policy moves from government bureaucracies via the business and legal language of contract to delivery by value-driven third sector organisations? It is necessary, therefore, to address the complexity of contemporary policy-service delivery arrangements in order to consider the extent to which third sector organisations contracted to deliver welfare services look like street-level bureaucracies, in the wake of the aggressive roll-out and subsequent moderation of NPM principles (Larner and Butler 2005, Macdonald and Marston 2006, Riccucci 2005, Clarke 2004, Salamon 2002; Rhodes 2000).

To do so we re-visit the assumption within Lipsky’s SLBP that policy authority should be understood in terms of hierarchies – as government rather than governance. We argue that this does not take sufficient account of key factors in the current environment —deskilling of staff in hollowed-out government departments, attenuated chains of authority, the complex networks of personal and professional identities, worker allegiances, work-team tacit knowledge, workers’ levels of competence etc. — in generating a critical position from which to assess policy implementation.

The article is structured as follows. In the first section we introduce the research methodology and explain how preliminary findings generated a need to advance existing explanations of discretion and street-level bureaucracy, to take account of current contractualism in social services. To situate our discussion we then revisit Lipsky’s assumptions about the extent to which hierarchical power structures cause managers and front-line workers to have differing degrees of commitment to policy implementation. We suggest they are misplaced in situations where government departments commission third sector agencies to deliver social services. In the third section we then develop an argument for the need to identify *complexities of discretion at the interstices* and assess that contention through our empirical study of the implementation of a policy initiative intended to improve women’s safety through provision of contracted services for perpetrators of domestic violence in Australia. We give an account of discretion at the various levels of the chain of accountability where hollowed-out government departments contract under-resourced agencies to deliver services. Finally we indicate how this suggests difficulties for monitoring and evaluation of outsourced social services under social or relational contracting.

**The study methodology, data collection and analysis**

The research design for the study that triggered this paper was a Realist Evaluation (Pawson 2006, Pawson and Tilley 1997) of three non-government agencies, contracted by a State-level department to deliver domestic violence perpetrator programmes. The three agencies operated in four different locations in Australia, (two metropolitan and two regional) and all were members of large national not-for-profit organisations, which had religious affiliations (Agency A operated in both a metropolitan site and a regional site). The agencies had been funded to deliver programme interventions, emphasising group-based psycho-educational approaches with perpetrators, and coordinated multi-agency service provision with the aim of ensuring victim safety. The initial research aim was to investigate the relative merits of the agencies’ differing models of service delivery rather than how contracting out may itself impact on the merit of the service being delivered. The evaluation design examined two main aspects: 1) the programme itself including men’s participation and progress through a domestic violence perpetrator program and women partners’ safety and access to support services during the programme; and 2) the extent to which the agency was a partner in coordinated domestic violence responses in the local area. The second aspect was important as it has been identified the most effective programmes are those that are part of a local coordinated response (Gondolf 2002).

The evaluation included a mixed method design with quantitative measures such as analysing agency data collected about the programmes and measures administrated to programme participants about aspects such as attitudes to violence and substance use, qualitative data was collected through analysis of policy and programme documents, interviews with programme participants, partners and ex-partners, service delivery practitioners, agencies’ supervisors and managers; state government officers with responsibility for policy making and program monitoring in the area of domestic violence. The data collection was therefore programme level data and that pertaining to how the agency operated as a partner agency in local domestic violence services. Data concerning participants and their partners/ex-partners is not reported here as the interest is with agency implementation of programmes.

The analysis of programme delivery included scrutiny of the contracts, comprehensive programme manuals produced by each agency, compared and contrasted with agency data collected through the contract monitoring process and the data collected in the interviews. Analysis of the qualitative data was informed by interpretivist traditions, using constant comparison (Glaser 1965, Guba and Lincoln 1989, Boeije 2002) to identify themes and issues associated with key research foci. Themes in the data included: (1) staffing of the funded programs, (2) programme logic, (3) contract implementation and coordination, and (4) data collection and reporting practices. Within theme (1), elements of differentiation between agencies included supervision practices, professional backgrounds of staff and experience, professional development of front line staff, employment tenure of front line staff and the levels of staff turnover. With respect to theme (2), elements of differentiation included whether the funded program had been incorporated into the agency’s core business or quarantined and treated as a relatively discrete service delivery arrangement. Within theme (3), elements of differentiation included the degree of integration between the department and the contracted agencies, as well as between these agencies and other potentially complementary local domestic violence service providers. Finally, within theme (4) elements of differentiation included whether data collection required by the funder was embedded in practice records or conducted as a separate activity, and whether reporting processes were generated automatically during practice, or collated separately,

*Unexpected findings*

Early in the study it became evident the programme logic in each site was not as distinctive as was initially expected —yet there was considerable variation in service delivery. The services were funded via identical contracts and the contract reporting requirements typically measured perpetrator throughput and their hours of attendance at the group programmes. All of this was reported in a simple template, and thus was easy for the agencies to acquit in strict accordance with the wording of the contract. Agencies saw the reporting as an external, onerous imposition and did not treat the data collection and review as inherently valuable in their internal quality assurance processes. This led to a decision by the research team to undertake detailed investigation of service delivery practices in relation to contract specification, in light of possible implementation gaps. Therefore this paper focuses on examining service delivery arrangements in light of the reporting and accountability mechanisms in the four sites.

***The third sector: beyond New Public Management***

In the social policy literature over the past decade there has been debate about whether the relations between government and not for profit human service organisations constitutes an inclusive ‘post-neo-liberal’ governance framework for managers and workers (Salamon 2002, Osborne 2006). This is presented as a break with the 1980s and 1990s, when policy implementation involved governments promoting corporatisation and outsourcing social services to third sector organisations, and encouraging the contestability of markets in which the government had previously been a monopoly provider (Milward and Provan 2000). Subsequently, it is argued, NPM peaked a decade or so ago and is now in decline, with the focus shifting to organisations in the [public sector](http://en.wikipedia.org/wiki/Public_sector) operating in a context of networked governance alliances with third sector organisations. That is, they now operate as complex adaptive systems with characteristics which are qualitatively different from market-based forms and business principles as endorsed by NPM (Smith 2010, Rhodes 2008, Larner and Craig 2005, Langan, 2000, Grubbs 2000). The network governance models that promote discourse about service users co-creating value further complicate the policy and organisational landscape and require us to update conceptualisation of policy implementation (Hoyes et al 1993, Robson et al 1997, Considine and Lewis 2003, Rhodes 2008).

Some authors present such collaboration as a post neoliberal organising principle of governance and policymaking that brings greater deliberative processes into policy formulation, implementation and evaluation in response to community needs (Perkins, Nelms & Smyth 2005, Reddel and Woolcock 2004). A particular emphasis is that some collaborations are generated in response to changed community expectations, including demands for trust and collaboration by community groups and individual activists (Larner and Craig 2006, Larner and Butler 2005, Rhodes 2000). In such situations it is argued that the trust-based fluidity of specification of deliverables and reporting requirements that characterise relational contracting is more suitable than the precise specification of principal-agent contracts common in neo-liberal contracting. In Australia, for example, as in many countries, the *National Compact* promoted by the Australian Government through the Office for the Not For Profit Sector attempts to specify and promote the relational approach to contracting as the culmination of extensive consultation between the Government and the not-for-profit sector (Australian Government 2010). Conversely, however, the changes may be seen by some authors as a further incorporation of the community sector through continued top-down imposition of a neo-liberal management style that emphasises accountability and reporting, to accompany that decentralised capacity (Clarke 2004, MacDonald and Marston 2006). Finally, others argue that there is no consistent empirical evidence to support any of these propositions (Onyx et al 2008).

We suggest that the range of positions has relevance because, as observed by Onyx et al (2008), the relationship between organisations and government funding departments is not simple or uniform across jurisdictions. Indeed the tension between them highlights the contradictory tendencies in the overlay of successive iterations of neoliberalism. While some small-scale community voluntary organisations are driven by community commitments, activism and resistance (Larner and Butler 2005), a significant element of the third sector now looks more corporate than voluntary. And, within the sector, there is as much variety as there is similarity (Cooper 2003).

Research looking at the structure of voluntary organisations in Britain, for instance, has identified four broad types of third-sector organisation in terms of their responses to an environment where they are increasingly involved in government contracts for services: non-contractors; cautions contractors; compliant contractors and comfortable contractors (Buckingham 2010). If one were to classify the 3 NGOS contracting for delivery of services in this study, one could designate Agency A as a *compliant contractor* that tended to be heavily reliant on paid staff where, even though there were sometimes tensions between organisational values and the demands of contracts, their financial dependency on contracts resulted in agency compliance. Agency B could be classified as a *comfortable contractor* mainly providing service by professional staff with income primarily from contracts. Agency C could be classified as a *cautious contractor* that tended to have a significant proportion of its income from voluntary donations, and a great importance attached to maintaining and enacting its ethos by all staff, including voluntary and paid workers.

This schema is useful for the present discussion insofar as it highlightsvarying responses to tensions between organisational values and the demands of contracts. It does, however, risk being an overly static perspective that may ‘understate not just the incoherence of power but also the extent to which government is frequently invented from below’ (Larner and Butler 2005). Changes are required of the mission and operations of the contracted agencies over time, in line with competition for resources, the types of services being contracted and the required configuration of services to satisfy reporting requirements, but also in line with the tension between the funding and the engagement with service users (Ohlin 1998, Carson and Wadham 2001, Austin, 2003, O’Connor and Ilcan 2005, Wills and Chenoweth 2005).

Australia’s federal system of government makes for multi-layered policy implementation in the social services, in which the national government sets wide ranging policy directions predominantly through legislation combined with its programme funding through Commonwealth and State Governments. The day to day delivery of social services such as hospitals, community services, child protection, education and law enforcement is the responsibility of State and Territory governments which can lead to differing approaches across Australia in responding to social policy problems (Ohlin 1998). Thus, in Australia, policy implementation often involves a chain of organisational relationships between federal agencies and state bodies, local contractors and service users, with a range of interpretations of policy and negotiations at the interstices. This can also be seen in the UK where the role of central and local government is more to coordinate than declaim policy (e.g. H.M. Government 2007).

**The street-level bureaucracy perspective**

At the core of Lipsky’s (2010) account of street-level bureaucracy are: the inevitable nature of street-level discretion; the different motivations and commitments of street-level bureaucrats and their managers; and the limited ability of managers to control street-level practice. The premise of his argument is that the organisations he describes as street-level bureaucracies are fundamentally complex. They are characterised by: ‘the ambiguity and unclarity of goals and the unavailability of appropriate performance measures (Lipsky 2010,40). This problem is compounded by the fact that they tend to have insufficient resources to meet the everyday demands of people who seek services. Part of this problem is that the goals of public organisations are often vague. This is a combination of policy-makers’ rhetoric, often trying to square circles, and the difficulty of specifying what general goals mean in practice. Furthermore, policy goals can be contradictory and require workers to decide between different priorities to make sense of the policy and make it work.

In this context, discretion—in the sense of freedom within the workplace—arises from this confusion; from the choices, often uncomfortable, that people must make when there are insufficient resources, and when policies do not make sense. But [appropriate] discretion is also the solution and is necessary to make policy operational (Lipsky 2010: 15). This is encapsulated in Lipsky’s assumptions about the different motivations of street-level bureaucrats and managers. While, ‘… workers have an interest in minimising the danger and discomforts of the job and maximizing income and personal gratification’ (Lipsky 2010: 18), ‘managers are interested in achieving results consistent with the agency objectives’ (Lipsky 2010: 18-19). Managers, he argues, are committed to the implementation of the policy they are given, although they do [out of necessity] engage with practitioners to encourage the pragmatic use of discretion to iron out policy problems (Lipsky 2010: 25). In short, for Lipsky, managers are paragons of policy virtue who, in the face of street-level recidivism, maintain a committed line of policy implementation. They struggle to get street-level bureaucrats to put aside their self-interested use of discretion, which distorted service delivery, while at the same time accepting some discretion to make policy work (Lipsky 2010: 162-4).

**Street-level bureaucracy and new public managers**

A challenge when using the SLBP in relation to contemporary policy implementation is that the context has changed over the past thirty years. One aspect clearly echoes the context assumed by Lipsky’s work – a policy environment of fiscal crises and pressing political demands to deliver more for less (Evans 2010). However, in the wake of NPM and outsourcing, strategies of policy delivery now seem at odds with the world he described. Some scholars have argued that Lipsky’s account of front-line practice retains its currency in the welfare arena (Brodkin 1997; 2011, Macdonald and Marston 2006), whereas others argue it became less relevant when NPM had the effect of limiting discretion in government departments (Clarke and Newman, 1993; Lawson, 1993, Rochester 1995).

Notwithstanding the variation in interpretations of the status of governance changes, there is consensus that the intended role of contracted service delivery agencies in recent times is for them to work with government, other agencies, and citizens to co-create public value and to increase the trust that was eroded during the heights of NPM (Hardina 1993). An important element in this shift is increased decentralisation of managerial responsibilities, including line managers managing contracts between commissioning departments and agencies (Larner and Butler 2005, Wills and Chenoweth 2005, Gregory and Hicks 1999, Ott and Dicke 2000). In particular, the increased use of brokerage and a boundary spanning role for managers has been highlighted as part of the decentralised professional and technical capacity for management by negotiation that is being developed in contracted agencies (Frahm and Martin 2009, McBeath and Meezan 2010). While this retreat from simple commercialism of early NPM recommendations may vary across locations, it nevertheless means a significant increase in middle managers’ responsibilities for the expenditure of public money, ostensibly aiming to ensure probity in practice and the fair and just delivery of services to the community (Frahm and Martin 2009).

***Managerial discretion***

Managers in contracted agencies are now expected to be more skilful in managing relationships although benchmarking, auditing and the delivery of particular services are also core components of third sector agency practice and of their relationships with commissioning government departments. New iterations of contractualism recognise both managers and service delivery workers are active negotiators of practice wisdom in ways that move beyond the adversarial dichotomy of Lipsky’s initial SLB formulation. The competing interpretations of the status of current arrangements may be a function of few scholarly studies expressly focusing on the managers’ practices as the unit of investigation (Collins-Camargo et al 2011).

We suggest that Lipsky’s insights are still valuable, not least the emphasis on systems in which actors struggle to reconcile contradictory goals and ambitious goals with insufficient resources. The strength of Lipsky’s account is it remains an effective challenge to managerial accounts of effective and efficient policy implementation. It undermines the argument that, with proper techniques and an acceptance of management authority, organisations can effectively and consistently translate policy into practice (Evans 2010). However two of Lipsky’s assumptions are particularly important to critique in light of current service delivery arrangements. The first is that managers are disinterested policy implementers who simply pass on the policy they have been given to put into effect. The second is that the street-level bureaucrats are, unlike managers, best understood simply as self-interested actors who disrupt and distort policy for their own ends.

First, Lipsky acknowledged that managers adapt and change policy in the process of implementation but, he factored out their discretion asserting they ‘…are interested in achieving results consistent with agency objectives’ (Lipsky 2010: 18-19). This, in a sense, makes Lipsky’s account of managers look similar to the principal/agent account of policy-makers and implementers, where the principal (policy-maker) instructs the agent (implementer), who seeks to realise the principal’s policy (Ulhoi 2007). This is notionally applicable to contractualism’s principal/agent relationship over the past three decades. However, this raises questions about what it is the agent is seeking to do on behalf of the principal. Is it literally to do as instructed, or does the agent seek to make sense of the instructions, or seek to realise the principal’s best interest? Lipsky’s own account of the nature of street-level bureaucracies certainly pointed to the need for agents to make sense of conflicting policy goals and resources, and to achieve the spirit more often than the letter of policy. In this sense, Lipsky’s managers are as much actors using discretion as were the street-level bureaucrats whom he identified as the key discretionary actors (Evans 2010).

We argue that the outsourcing and the contractual and network shifts in policy implementation heighten and elongate managerial discretion (Lawson 1993, Langan 2000; Southern 2002). With outsourcing there is the first interpretation of policy from the point of the tender prepared by the workers in the government department, involved in the contracting process; and within the contracted organisation there are often layers of management involved in implementing programmes. Understanding the translation of policy implementation to service delivery now entails examining *a series of* principal/agent relationships from within a government department to say a local manager who is both the agent vis-à-vis her senior manager, and the principal vis-à-vis the workers she herself manages. This chain of control is necessarily unstable, given the preceding observation about understanding policy instructions. Policy distortion can arise unintentionally, simply by process of ’broken telephone’, where the process of moving down the policy hierarchy and across organisations inevitably entails translation and change in policy understanding and instructions about its operationalisation. Alongside this elongated unintended policy distortion, managers can seek to influence and alter the construction and meaning of policy, which is then passed down the chain (Weissert 1994; Evans 2010). The influence of managers as policy actors, in both government departments and contracted agencies, needs to be incorporated into explanations of policy implementation.

***Complexities of discretion and practitioners’ tacit knowledge***

Second, Lipsky’s account of the motivations of street-level practitioners also requires challenge. Policy is often understood as a means to an end. Government decides its priorities and policy is the mechanism by which these are carried out in direct service delivery (Hogwood & Gunn 1984). SLBP shares this view assuming that discretion tends to distort policy goals, and that practitioners pursue their own interest and only conform to policy under threat of sanction (Lipsky 2010: 19). This account tends to minimise the extent to which decisions beyond technical and pragmatic choices are entailed in the policy implementation process: it assumes that strategic decisions about ends are the property of politicians and policy-makers; implementers simply carry out instructions. There are two primary problems with this account. The first is that ‘policy’ is complex, it is seldom clear cut. It tends to entail a non-negotiable core which is set around an extensive and negotiable periphery (Sabatier 1993). Second, this account of policy implementation denudes most actors in the process of legitimate engagement with policy debates and concerns. However, evaluation of policy implementation requires recognition of the interaction of forces in any particular organisational setting as well as the capacities of particular actors (Lawson 1993, Mulgan 1997; Uhr 1999; Riccucci 2005, Fernandez 2007).

Clearly, all policy actors’ motives play a role in policy implementation (Brodkin 1997, 2011). Policy is not simply a pragmatic process of putting goals into practice, but also entails the negotiation of significant elements of policy, alongside the realization of personal and professional commitments, complex allegiances, and varying degrees of personal competence. It cannot, then, simply be understood in the hierarchy of principals and agents, but has to acknowledge the engagement of each actor with the negotiation of service delivery. Workers acquire tacit knowledge, often characterised as practice wisdom, through informal learning activities with colleagues and peers (Boud and Middleton 2003). This occurs as professionals develop knowledge over time about effective practice, through actively creating and consolidating norms and mores, and testing individual situations against the accumulating evidence base of previously negotiated outcomes (Carson et al. 2004). Implementation is more than just a passive individual process or a reaction to management decisions in the context of a linear causal process. It involves negotiating and creating meaning, in the interaction between the professional and the client as well as the profession, the team and organisation. In other words, it is a generative process.

SLBP assumes that discretion distorts policy goals, and that the role of professional commitments and values tends to be a mask for self-interest. However, professional values may be also understood in terms of a commitment to realising professional and personal goals at all levels in the organisation, and discretion as a site where policy can be evaluated and changed to better realise those goals in practice (Maynard-Moody and Musheno 2003, Evans 2010). This argument can also be applied to organisations which are agents of policy implementation, and to managers and front-line workers within them. Their role is not simply to carry out the instructions of their principal, but is also to be aware of and to tailor those instructions to a range of competing motivations, allegiances, local conditions and variable levels of competence.

**Discretion in policy implementation – An Australian case study**

This study sits within a broader context of outsourced social services, in which contracting-out domestic violence programmes has been preferred because programme interventions could be expanded without the State having to invest in infrastructure and human resource development. The commissioning department was purchasing services based on government policy directions, and the agencies tailoring interventions/programmes to deliver to individual perpetrators of domestic violence. These were contracts for the delivery of services that were hard to quantify and assess (Milward and Provan 2000, Bertelli & Smith 2009), in ways that epitomise Relational Contracting Theory (McNeil 2001, Williamson 1985). The social service interventions being contracted out to meet the policy ends were obviously not tangible ‘objects’, but involved a range of programmes and practices aimed at redressing the problem. This further added layers of variation and discretion in its application over multiple sites and time. Therefore, while government sought to standardise monitoring and reporting, the technologies of human service intervention proved to be quite variable in part because the complexity of the problems they were addressing.

As outlined above, the case study is an examination of organisations contracted by an Australian State Department of Corrections to deliver men’s domestic violence perpetrator programmes with involuntary service users (court ordered offenders) and their partners or previous partners. Wide variation in policy implementation - programme practice - in four sites could not be explained by differing service delivery models, location and community difference across sites. This warranted a focused investigation into the practices in the funding department, and not only how the agencies managed their contracted programmes and the practices of the front-line workers. Thus the study shifted from only being a comparative evaluation of offender programmes to include an examination of the role of discretion in policy implementation and outsourcing, particularly in the interstices between layers in the process of policy delivery.

**Agency discretion in contract implementation**

The agencies in question were all large multi-site third sector organisations, based in four different locations in the State, with prior experience in delivering men’s domestic violence perpetrator programmes which aided their success in obtaining the contracts. The recognition of agencies’ prior experience, as well as poor contract specification by deskilled workers in a hollowed-out government department, meant that contracts with the organisations were general and did not contain detailed specification about programme quality, standards of practice, staff qualifications or working practices with other agencies. From our initial data collection we quickly noted that across sites the contracting process was implemented very differently by the agencies. In one organisation (Agency B) there was a long history of fee for services which pre-dated the early trends towards managerialism and contracting of the 1980s. In this setting the contracted services followed a direct line of outlay, that is, the programmes specifically run for the State Department were separate from the fee paying services and individual practitioners were individually paid on fee for service contracts to run the programmes. In contrast, in Agencies A and C the contract money was not ‘ring fenced’ but rather used to increase the reach of programmes by employing new workers or increasing current employees’ working hours.

The contracted organisations had freedom to determine who was employed on what basis and how the programme would operate. Consequently, contracting did not result in organisations having to modify either their managerial or service delivery arrangements as a result of winning service delivery contracts. Thus there was considerable discretion in the implementation of programmes by agencies. Accordingly employment practices and the level of experience, and training and supervision varied. The cumulative impact of these variations was ever-increasing layers through which managers’ and front-line workers’ discretion produced disparity between and within agencies and led to variation in programme practice.

***Variations in practice***

Too often the discretion of front-line facilitators running a programme is presumed to be idiosyncratic and individualistic, an individual worker response to workload demands and pressure (*pace* Lipsky 2010). Increasingly, however, systematic and endorsed discretion at the agency level about how the programme is to be managed cascades down to set the parameters of front-line worker discretion. That is, front-line worker discretion is often bounded by the discretionary decisions of managers about the agency’s standard of practice, and associated with variation in training and supervision within agencies (Lawson 1993, Riccucci 2005).

This describes the programme practice we observed across sites. While all organisations had basic documents such as policy guides on domestic violence, programme practice showed variation across sites including, for example, the length of a group intervention. This is important for two main reasons: first, at the time of contracting national good practice standards existed (Chung et al 2004) about such elements which would have been simple to incorporate into a contract and was not done, second the length of group intervention would be a significant variable in determining programme cost so for this reason it should have been specified more precisely by funders. This is more than the domain of practitioner discretion as it was determined much earlier in the implementation process.

Policy ‘solutions’ being implemented by non-government managers and front-line workers in the social services are rarely straightforward tasks specified concretely in contracts (Fernandez 2007). Differences in the ability to deliver services were evident, arising from varying agency practices. Two of the agencies which employed social workers on a longer term and permanent basis tended to have experience in domestic violence and exposed the workers to new training and developments as permanent members of staff (Agencies A and C). By contrast, while some of the workers in Agency B employed on casual contracts did have experience in working in domestic violence, this was not universal, and there was no obvious provision for supervision or upskilling as anticipated by the contractor but not specified in the contract. Opportunities for further development or even participation in case reviews or case conferences were not made evident during interviews with managers indicating significant variation in practice quality across sites.

Structural (agency level) and systematic discretionary behaviour contributed to an implementation gap in the sense that it was at odds with the core policy intention of the commissioning department. For example, contracts stated that agencies were required to have contact with female partners of programme participants to assess risk and signpost them to support services. Two agencies (A and B) had minimal commitment to contacting female partners/ex-partners even though it is recognised nationally and internationally as part of good practice, to ensure their safety and to contribute to ongoing assessment of men’s risk. Organisation practice varied from the minimum at one site (Agency B) where women were called once and posted a letter through to best practice where consistent attempts to gain women’s perspectives were made by Agency C. We concluded that pre-existing organisational cultures and practices for managing contracts, and employment practices, directly impacted on the context into which the front-line staff were recruited, and the organisation and quality of services provided. On balance, therefore, we found that Agency C, the *cautious contractor* corresponded more closely to what we deemed to be good practice than did Agency A or B, the *compliant* or the *comfortable contractor* respectively. This variation was, we suggest, shaped by the pre-existing culture of the organisations and the impact of this on managerial discretion and front-line worker discretion, which we now consider in turn.

***Managerial discretion***

There are three relevant components of agency managers’ discretion. The first related to defining the tasks that were required of the front line practitioners. In agencies with unsafe practice, the agency managers did not highlight the importance of victim contact to the incoming practitioners, thus choosing to minimise the agency commitment to that element of the contract. The second strand of discretion related to professional development, supervision and support of front-line programme facilitators. Without concrete directives and supervision support to address this issue, and payment based on class-based sessions, the practices of the group facilitators were influenced by this omission. There were differences in the practises of facilitators in the agencies, including decisions about strategies to validate the veracity of participant feedback on changes in their behaviour between sessions. The net effect was that the differing disciplinary backgrounds of staff, and the limited management specification of endorsed practices, reinforced agency level neglect of a central element of the contract. It was not simply a matter of front-line workers cutting corners in order to cope with limited resources, even though there was that, it was more a matter of management decisions about staff skill mix, specifically staff having backgrounds in the social professions, and managers’ adoption (or not) of known good practice standards. The third strand of discretion involved monitoring the practice of facilitators. Managers in Agencies A and B, did not monitor practice carefully enough to acknowledge the implications for the implementation of policy nor to compensate for this by actively seeking to regulate street-level practice.

One agency (Agency C) was alone in practices at the managerial and front-line levels that reinforced a conscientious delivery of programmes that incorporated victim contact and feedback as a determinant of content and pace of the perpetrator programmes. Aligned with its conceptions of good practice, this agency assiduously pursued outreach and safety monitoring of women victims despite its contract with the department entailing the same level of funding as the other agencies and the same (minimal) reporting requirements to the Department about men’s programme attendance. This could be attributed to the commitment of agency management and front-line workers to adherence with high quality standards of practice even where contracts did not specify such requirements.

By contrast the management of Agency A professed to observe the victim contact requirement by hiring a separate (part-time) worker to contact victims and document the extent of this contact and their response. This was, however, disconnected from the practices of facilitators, leading to a situation where some facilitators completely ignored victim contact as an issue whereas others employed by the same organisation chose to embed this as an issue in determining group processes and pace through the documented group programme for perpetrators.

The emphasis in some of the literature on the relational skill-sets of managers in human service agencies was less evident in these situations than was the drive to meet performance targets. At each level of management in the agencies decisions were made that had implications for how the contract was put into practice. There was discretion in interpretations of what constituted minimum domestic violence service delivery, reflected in wide variation in decisions about programme length, appropriate skill mix, experience and commitments of staff employed in putting the programmes into practice and how their practice should be regulated.

***Front-line worker discretion or mandated practice?***

While it was evident that managers within the organisations exercised substantial discretion in decisions about how the contract was implemented it was also evident that, at the micro level of professional practice, discretion was exercised by front-line practitioners and variation in practice reinforced by their managers. To complicate the attenuated accountability chain, the front-line workers confounded the management staff decisions about priorities, although not simply on the basis of personal workload management, but rather varying conceptions of appropriate (good) practice.

In running programmes for domestic violence perpetrators, there are choices that each practitioner makes about what s/he assesses will promote the best outcomes for safety. The variation in the level of professional experience and standards of practice to which different workers adhere also highlights the place of discretion. In the evaluation study it was clear some practitioners in all agencies, especially Agencies A and B, did not adhere to standards of practice associated with female partner contact or programme length. While the contract contained a requirement for female partner contact it did not specify precisely what this should involve. This lack of specificity about core practice not only left room for discretion but also created the risk of limited achievement of intended policy goals including victim safety.

This aspect of programme practice highlights a wider issue about how workers’ frame policy. In this case study, this concerned whether they saw the primary goal as therapeutic, that is supporting men to change their behaviour, or as managing risk in terms of the promotion of women’s and children’s safety. While these goals are not mutually exclusive, some workers chose to prioritise therapy over assessing risk and safety. In one agency for instance (Agency A) safety implications tended to be minimised by some staff as it may have been disruptive to their therapeutic relationship. This contravenes the core policy concern of victim safety and reducing recidivism. Agency A was systematic in its assessment of perpetrators and its attempts to deliver rigorous group based psycho-educational programmes but paid much less attention to follow-up with victims, simply sending out cursory letters inviting victims to contact the agency. In contrast, other workers were clear that the programme was concerned foremost with the safety of women and children and that this was seen to override any therapeutic concerns about breaching the man’s trust or confidentiality.

Clearly, within the policy implementation process there was evidence of continuing street-level discretion. Brodkin has pointed out that discretion is neither good nor bad but the ‘wild card’ of implementation (2011). Tacit knowledge may not always generate positive outcomes for the worker or the service delivery because peer-informed learned practices can result in poor strategies that are not necessarily positive for clients or appropriate for workers (Brodkin 2011). But to restrict the account of practitioners’ behaviour solely to self-preservation is unduly limiting and ignores wider evidence (Evans 2010). Practice may sometimes be unsatisfactory but poor practice is not always just an individual aberration. It may reflect the work-team and/or management endorsement. In the situation being investigated here, discretion was set within contexts created by the discretion of policy makers and managers reflected in the contracting and implementation processes. The role of street-level discretion varied in interesting ways. In some settings such as Agency A and B it was used by practitioners to circumvent core policy commitments [to victims] whereas in another setting (agency C) it was used to ‘correct’ vagueness and lack of specificity in the contract formulation and commissioning by the hollowed-out government department, and realise the core policy commitment to victims.

***Managers, practitioners and discretionary practices***

Intra-organisational factors, whereby discretion of managers and practitioners reinforce each other in some agencies, and confound each other in other agencies, demonstrate why variations occur between agencies with the same mandates and responsibilities (Southern 2002, Romzek and Johnston 2005).

In this case study we have attempted to document how the drivers of discretion at different organisational levels operated, to provide a more complex account of why policy implementation varies within the contemporary state. It has highlighted how the layers of discretion were shaped by the State and the contracted agency as well as the managers’ institutional location and practitioners’ personal and professional imperatives. A dichotomous distinction between managers and front-line workers oversimplifies the multifaceted policy implementation process. Therefore while, as Lipsky (2010) and others have noted, there will always be variation in front-line practice, it cannot be attributed simply to the discretion of practitioners, but rather it reflects the range of intricate transactions between policy developments and frontline practice and varying levels of expertise service delivery workers and agency managers in the management of those transactions. While there have been longstanding analyses in organisational sociology and public administration about the relationships between managers and employees concerning change, control and resistance, as well as workplace learning, this paper has highlighted the changed power dynamics and additional transactions brought about by the trend to outsource previously state-delivered services.

***Conclusions***

As others have previously identified, the social problems which social policy interventions aim to alleviate are complex, without singular causes or straightforward processes for interventions. When the process of outsourcing is added to this mix, it will inevitably be an area of contention, as the outcomes will not be easily measureable, and in some cases not easily comparable. As a consequence of these changing conditions, which have added further layers to policy implementation, we have shown that existing dichotomous notions of individual worker discretion associated with the SLBP do not adequately capture the structural imperative. The analysis needed to recognize the complexities of discretion in these situations.

The scholarly focus on the spread of social and relational contractualism is valuable in recognising that managers and service delivery workers and programme participants are all active negotiators of practice wisdom in ways that move beyond the adversarial dichotomy of Lipsky’s initial formulation. Current perspectives in the literature highlight sophisticated skill sets of forming relationships and brokering partnerships that are expected of managers in the outsourced service delivery and governance formations. This is a context in which relationship and facilitation skills are perhaps required even more than in other configurations. Thus new theoretical models of policy and service delivery are warranted. It does not follow, however, that relational contracting necessarily constitutes a fundamental shift beyond neo-liberalism negotiated and clawed out by bottom up activists challenging the dominance of the market contractualism at the heart of NPM, particularly in this case where the service users are involuntary offenders who are court ordered to attend. Neither the market contractualism of NPM nor the social contractualism and network governance of post-neoliberal collaborations have resolved the variation which derives from worker discretion and the ensuing policy and service delivery implementation gaps. Contractualism within the arena of social policy does not give managers increased control over front-line staff but, rather, adds more layers and interstices, where multiple points of discretion need to be documented and understood.

In this paper we have suggested that the findings here constitute a cautionary tale about relational contracting being able to assure service delivery in contracts between hollowed out government departments and resource poor third sector organisations, particularly when those services involve intangible programmes of personal support for clients in need, such as in the case of supporting victims of domestic violence.

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