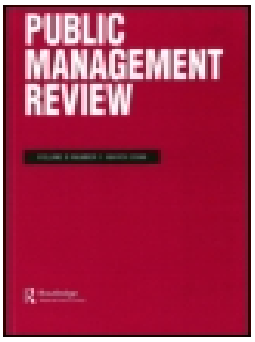

Public Management Review

ISSN: (Print) (Online) Journal homepage: https://www.tandfonline.com/loi/rpxm20

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To cite this article: Paula Blomqvist & Ulrika Winblad (2020): Contracting out welfare services: how are private contractors held accountable?, Public Management Review, DOI: 10.1080/14719037.2020.1817530

To link to this article: https://doi.org/10.1080/14719037.2020.1817530

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PUBLIC MANAGEMENT REVIEW
https://doi.org/10.1080/14719037.2020.1817530

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Contracting out welfare services: how are private contractors held accountable?

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ABSTRACT
A challenge for governments contracting out public services is holding accountable contractors who fail to meet agreed-upon standards. In social services, contract monitoring is complicated by the fact that contracts tend to be incomplete and performance hard to assess. In this study, we examine how local governments in Sweden hold private contractors accountable in nursing home care. The main finding is that a mixture of accountability mechanisms was used, but that social accountability was seen as most effective. Marketaccountability measures like contract termination and financial sanctions could not be applied as local governments lacked the capacity to enforce them

KEYWORDS Nursing home care; contracting; marketization; privatization; accountability; Sweden

Introduction

Contracting has become a common mode of governance in welfare services. Delegating the provision of social services to private organizations has come to be seen as a way to improve both their quality and cost effectiveness, despite the fact that evidence for such effects is scarce at best (Petersen, Hjelmar, and Vrangbæk 2018; Overman 2016). The wide-spread practice of contracting as a form of governance has raised concerns about the ability of states to monitor private contractors and hold them accountable (Ditillo et al. 2015; Amirkhanyan 2011, 2009; Brown, Potoski, and Van Slyke 2006). Accountability is a central value in contracting in that it ensures, like accountability in all democratic governance, that public authority is not abused or resources wasted (Mulgan 2006). Achieving accountability in contracting requires timely and accurate information about the performance of contractors as well as the ability to modify their behaviour through sanctions (Bovens 2007).

In the area of social services, monitoring contractors is further complicated by the fact that such services are known to be complex and hard to evaluate qualitatively (Romzek and Johnston 2005). At the same time, accountability in this area is needed to protecting the rights of some of the most vulnerable groups is society, such as the sick, the elderly or the socially disadvantaged (Dicke 2002; Blank and Haskins 2001).

When formerly public services are contracted out to private organizations, hierarchical accountability measures such as direct supervision, audit, and codes for civil servants are

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weakened. In theory, they can be replaced by accountability measures related to the function of markets, such as consumer sovereignty, competition, and contracts (Donahue 2002; Savas 2000). Some have pointed to, however, that market accountability measures are poorly suited for the type of quasi markets created through public contracting, especially in areas where quality standards are hard to observe and consumer powers weak, like the social services (Hart, Shleifer, and Vishny 1997; Le Grand and Bartlett 1993). Others have argued that the best way to achieve accountability in public contracting is neither hierarchical or market accountability measures but social mechanisms like collaboration and trust between the contracting partners (Epstein 2014; Amirkhanyan 2009; Van Slyke 2007). In recent years, an observed tendency of public agencies to mix different types of accountability measures in relations with private contractors has led researchers in the field to talk about 'hybrid' accountability regimes, where elements from hierarchical, market, and social types of accountability are combined. So far, however, empirical studies of hybrid forms of accountability are scarce and more research has been called for to understand the conditions under which they emerge and whether they are effective (Benish and Mattei 2019; Fine et al. 2016; Ditillo et al. 2015).

In Sweden, competitive contracting has been practiced in the welfare area since the 1990s. The form of contracting used is quite formal, with competitive tendering processes, high contract specificity, and relatively short contract duration (3–6 years). One area where contracting is common is nursing home care for the elderly, where private contractors provided about 20% of all beds in 2019. The vast majority of private contractors, about 90%, were for-profit firms in the same year, inmany cases chains owned by international venture capital. The Swedish policy shift from a previous virtually all-public nursing home sector to a system where profit-seeking firms compete for public contracts has not been uncontroversial. After a few scandalous incidents of reported quality deficiencies in the 2010s, critics have repeatedly questioned the ability of local public agencies to supervise the private contractors and ensure that public quality standards are met (Lorentzon 2016; Lloyd et al. 2014). In this light it is somewhat surprising that few studies have examined systematically how the monitoring of private contractors in this area is done and which measures are used to hold them accountable if quality deficiencies are found (for partial exceptions see Hanberger and Lindgren 2019; Isaksson, Blomqvist, and Winblad 2017).

The aim of the article is to fill this gap by investigating how local public agencies in Sweden act to hold private contractors accountable in the nursing home sector. Two main questions are asked: what types of accountability measures are most commonly used; hierarchical, market-based, or social? And which type of measures or combination thereof is considered to be most effective for achieving accountability? The methodology used in the is article is qualitative interviews with public and private stakeholders in four local sites in Sweden. The interview material was analysed thematically, drawing on an analytical framework of different accountability types developed for the purposes of the study. The findings in the article indicate that of the three main accountability types, the hierarchical and social types were most frequently used to collect information and set standards, while the social was seen as most effective to modify the contractors' behaviour.

The paper is structured so that we first provide a conceptual background to the issues of monitoring and accountability in contracting, highlighting key questions that have been raised in this literature. Thereafter we present the case of Sweden, the research methodology, and the empirical study. The paper ends with a discussion of the findings, limitations and conclusions.

Contracting and accountability

Contracting occurs when governments delegate the provision of a formerly public service to a private organization and relations between the two are regulated through formal contracts (Kelman 2002, 282). Contracting is usually motivated by multiple political objectives, such as reducing overall costs, increasing efficiency, improving quality, stimulating diversity, and offering users more choice (Overman 2016; Peters and Pierre 2005; Boston 2000). A reoccurring discussion in the literature on contracting has been the alleged difficulties of governments to monitor the performance of private contractors (Ditillo et al. 2015; Amirkhanyan, Kim, and Lambright 2012; Amirkhanyan 2009; Brown, Potoski, and Van Slyke 2007). As described by agency theorists, the core of the problem is related to the nature of delegation, which implies that the agent always has more information about the task to be performed out than the principal (Halachmi and Boorsma 1998; Pratt and Zeckhauser 1991). If the contractors are profit-maximizing firms, there are also economic incentives to shirk from contractual obligations, for instance by reducing the quality of services (Mahoney, McGahan, and Pitelis 2009). Information asymmetry is a problem in all contracting relations, but have been argued to be especially difficult to overcome in cases where the services to be performed are complex (non-standardized) and outcomes hard to measure (Brown, Potoski, and Van Slyke 2007; Domberger and Jensen 1997). In such cases, which includes most social services, monitoring contractor performance is made hard both by the difficulty of specifying quality standards beforehand in the contracts (ex ante monitoring), and assessing their quality after they have been performed (ex post monitoring). In social services, the problem of obtaining relevant and timely information about contractor performance also relates to the fact that the power of the service users tends to be weak as they often lack the ability to change service provider (exit) or voice complaints when dissatisfied. Some have argued that these characteristics make social services less suitable to contract out, particularly to actors which are profit-seeking (Blank and Haskins 2001; Hart, Shleifer, and Vishny 1997). Despite this, contracting has become a wide-spread practice in many social service sectors, including health care, care for the elderly and disabled, substance abuse treatment, child protection and public employment services (Jantz et al. 2018; Joshua 2017; Allen et al. 2016; Bode 2006; Romzek and Johnston 2005; Gilbert 2002).

One proposed solution to the problem of contractor monitoring has been to employ softer forms of contracting, where the contracting partners develop collaborative practices and build mutual trust over long periods of time, thereby diminishing the need for oversight and control on part of the public principals (Epstein 2014; Van Slyke 2007). In relational contracting, monitoring is characterized by free exchange of information and the negotiating of joint solutions, rather than one party placing demands on the other by referring to written agreements (Amirkhanyan, Kim, and Lambright 2012; Bertelli and Smith 2010; Amirkhanyan 2009). A related concept is that of public-private partnerships (PPPs) which also entail long-term collaboration between public agencies and private firms, for instance in the form of franchising or joint ventures (Cladwell, Roehrich, and George 2017). Previous research demonstrate, however, that cooperative contracting models have shortcomings of their own, foremost in the form of undermining competition and reducing economic efficiency but also in reducing transparency for external stakeholders such as the public or media (Kivleniece and Quelin 2012; Sterling 2005). Several studies have also questioned the premise that collaborative practices like relational contracting or PPPs reduce the need for systematic performance measurement (Barlow, Roehrich, and Wright 2013; Amirkhanyan 2011; Romzek and Johnston 2005).

The question of how the performance of private contractors can be monitored by public agencies is not just a technical matter but relates to wider debates about accountability in democratic governance. Accountability, referring to the ability to hold someone responsible, or *answerable*, for their actions, is a central value in all democratic settings as it serves ultimately to ensure that the authority of the state is not abused (Flinders 2017;Mulgan 2003). Accountability is usually understood as resulting from a relationship between two actors, where one has delegated responsibilities to the other; for instance, voters to elected politicians or politicians to civil servants. Scott points out, however, that accountability is not a static quality in a relationship, but rather an on-going process, where accountability occurs spontaneously (Scott 2006). For accountability to exist, Bovens (2007) lists three conditions to be met: first, that there is information about the actions of the accountable party; second, that there is some standard or norm concerning appropriate behaviour and, third, that the body to which an actor is accountable can modify its behaviour through sanctions or other forms of corrective action. The literature on accountability further recognizes that there are different types of accountability, depending on the specific measures, or mechanisms, through which one actor is held accountable to another. The types most commonly referred to are hierarchical, market, and social accountability. *Hierarchical* accountability, typical of public organizations, is created in relationships where information about an actor's performance is collected through direct supervision or audit. In hierarchical accountability relationships, the standard to hold an actor accountable to is public law or regulations, and the sanctions used are legal action or formal reprimands from supervising bodies. *Market accountability* refers to relationships between buyers and sellers on the market, where information about performance is gathered in the form of end results (or products) and price signals, rather than supervision. Sanctions come mainly in the form of withdrawal by the buyer or fines; and the standard is typically based on the contractual or purchasing agreement between the two parties (Mulgan 2006). *Social accountability*, sometimes also referred to as network- or trust-based accountability, refers to a form of accountability where two actors become accountable to each other on the basis of mutual agreement and common norms, rather than hierarchical control or economic transactions. In such relations, information is shared through dialogue and informal contacts and sanctions consist of soft measures like expression of disproval and discussion, rather formal sanctions. Social accountability can also include professional relationships, where members of the same profession are accountable to each other based on mutual codes of behaviour and ethics (Scott 2006; Mulgan 2006). Combining the three conditions for accountability (information, standards and sanctions) with the different ways in which accountability is achieved (hierarchical, social and market), an analytical framework for studying accountability can be constructed (see Table 1 below):

When public services are contracted out to private organizations, accountability relationships change. Even though democratic leaders are still, in most cases, accountable to voters for the provision and quality of such services, their ability to exercise direct control over service provision becomes reduced. As noted by Jantz et al. (2018): 'Contracting out makes accountability chains much longer' (p.322). In addition, the main standard to be referred to is no longer public law but the contract where the

Table 1. Accountability types.

Accountability types	Information-gathering methods	Standards to which actors are held accountable	Sanctions
Hierarchical	Supervision of processes	Public law	Legal or quasi-legal action (hard)
Market	Measurement of results	Contracts	Buyer exit or financial penalties (hard)
Social	Running dialogue, cooperation, external network actors	Common social or ethical norms	Disapproval, dialogue, negotiation (soft)

obligations of the contracting partners are specified. This shift in accountability type has been seen as an advantage by the proponents of contracting, as it is believed to give states more control over the costs and quality of public services (Benish 2014). Others have argued, however, that market accountability does not work as well in public contracting as on regular markets. One reason for this is that the buyers of the services, e.g. public agencies, are not the same as the consumers, which means that consumers lack market power to signal their satisfaction with the services. Another reason is that competition is often weaker in public contracting than on regular markets, thereby reducing accountability through price signals or reputation (Fine et al. 2016, Chan and Rosenbloom 2010). Romzek and Johnston 2005).

In recent studies of accountability in public contracting a tendency has been observed that public agencies mix accountability measures of different types. One example of such 'hybrid accountability' is when contracts, being a market accountability measure, are used to set standards but public audit systems used to monitor the contractors (Jantz et al. 2018). Another example is when hierarchical or market-based forms of accountability are complemented with social accountability measures in the form of informal contacts or professional collaboration across the public/private divide (Allen et al. 2016). The discovery of new mixes of accountability measures used in contracting has led to new questions being asked about the nature and effectiveness of hybrid accountability in modern governance. One question concerns the way in which accountability systems evolve (Ditillo et al. 2015; Byrkjeflot, Christensen, and Lægreid 2014). Another is whether hybrid forms of accountability are effective, and if so, under what circumstances (Benish and Mattei 2019; Bovens, Goodin, and Schillemans 2014). So far, relatively few studies have examined how hybrid accountability forms function in practice, but one concern is that, rather than strengthening overall accountability effectiveness, they risk causing fragmentation, reducing transparency and leading to different accountability measures off-setting each other (Malbon, Carey, and Reeders 2018; Romzek 2014). Others have argued that hybrid accountability works like a layering process, where new accountability measures complement existing ones, resulting in higher accountability (Ditillo et al. 2015). Regarding the question of how hybrids are created, several studies indicate that factors like the nature of the service contracted out and its political salience play a role. Byrkjeflot, Christensen, and Lægreid (2014) compared the development of accountability measures across welfare areas in Norway, showing that a complex service with high political visibility, like hospital care, led to more hierarchical accountability measures being used than the administration of social security payments, which was more standardized and drew less media attention. In a quantitative study of contracting in Italian municipalities, Ditillo et al. (2015) found a similar pattern of high political visibility leading to more hierarchical control, but also noted that services with high asset specificity and low measurability tended to be characterized by accountability measures based on trust, rather than hierarchy. In contrast to some previous studies (see, for instance, Marvel and Marvel 2007), the study found no relationship between mode of delivery (public, non-profit, for-profit) and type of accountability measures used. Detillio et al concluded that, given the complexity in how accountability in contracting is created, more qualitative and mixed methods are called for in order to understand the factors behind such processes.

In the following case study, we use interviews with a wide array of actors involved in contracting processes in order to investigate how local governments in Sweden strive to hold private contractors accountable within the area nursing home care. The study is explorative, seeking to describe practices and understand why some accountability measures are chosen over others. In light of previous research, we expect to find accountability measures from all three main types of accountability (hierarchical, market and social) but given the documented difficulties of employing market forms of accountability in complex social services and the relatively high political visibility of a service like nursing home care, we expect hierarchical forms of accountability to be most prevalent.

Contracting for nursing home care in Sweden

Nursing home care refers to around-the-clock nursing services to live-in residents with substantive medical and social care needs. In Sweden, nursing home care is part of the universal public welfare system, which implies that such services are available to all elderly citizens, or permanent residents, with an assessed need. The system is financed through local income tax (70%), together with a smaller share of state grants (20%) and user fees (10%). Until the early 1990s, nursing home care was almost exclusively a public service in Sweden, provided directly by local governments, the 290 municipalities. Following a change in the law in 1992, it became legally possible for the municipalities to contract out the provision of nursing home care to private actors, including for profit-firms (Blomqvist 2004). As a result, the share of private providers increased from a few percent to 20% of all beds in nursing homes in 2017, of which over 90% were found in the for-profit sector (NBHW 2019; Winblad, Blomqvist, and Karlsson 2017). The municipalities enjoy significant autonomy in organizing social services such as nursing home care, and can decide themselves whether to contract out such services or provide them in-house. As a result, the proportion of privately provided services varies greatly across the country, with the majority of the municipalities having no private providers at all, while others have contracted out all of their nursing home care.

Contracting in the elder care sector in Sweden is regulated by the Law on Public Procurement, and implies in most cases that municipalities put the operations of nursing homes out to tender while the facilities remain publicly owned. Private bidders compete for the contracts, which are awarded on the basis of a combination of price and quality. The municipalities are free to formulate their own conditions in the contracts, as long as the principle of competition neutrality is observed, which means, for instance, that the selection of bids must be based on transparent criteria made public in the tendering call. Contracts are typically extensive, containing over one hundred quality demands. The selected provider receives full funding for the operation of the home in question and is not allowed to charge any user fees aside from the fee schedule set by the municipality. The placement of residents is done by municipal social workers, which means that private contractors cannot select their users. Most municipalities recognize the right of the elderly to choose freely between nursing homes, but in practice it may be hard to meet all preferences.

The financial compensation of the contractors is calculated per bed, sometimes with added weights for residents with extensive care needs. In recent years, some municipalities have gone over to a contracting system where competition for contracts is based on quality rather than price. In these cases, a fixed price is set, after which the bid with the highest quality of services is selected (Moberg 2017; Erlandsson et al. 2013). A contract between a municipality and a private care provider normally spans 3–6 years with the possibility of a maximum extension of two or three years (Isaksson, Blomqvist, and Winblad 2017).

According to the Swedish Social Services Act (*Socialtjänstlagen*), the municipalities remain responsible for the quality of all elder care services provided within the public system, including those contracted out. This implies that the municipalities are legally mandated to ensure that services are of 'high quality', as stipulated by the Act. In addition to the Social Services Act, nursing home care is regulated by decrees and recommendations from the National Board of Health and Welfare (NBHW). Generally, there are few regulations regarding the specific organization and content of the services, as this is left to the discretion of the municipalities, but the NBHW stipulates in general terms that there should be quality monitoring systems in place and that the medical quality of nursing home care services is supervised by a municipal medically responsible nurse (MRN). The Board also requires that all providers of elder care services must have in place systems for incident reporting, through which the care staff are obliged to report all incidents or deviations from the individual treatment plan to medically licenced personnel and managers. In cases of serious incidents or quality shortcomings that could harm residents, managers are required to report the incident to the municipal Social Board which in turn might report it further to the NBHW, a regulation known as Lex Sarah. The obligation to report incients applies to all providers of nursing home care, including private organizations.

Research strategy and methodology

The main research methodology used in this study was in-depth interviews with key informants with insight into local processes of contracting. In-depth interviews make possible a comprehensive investigation of complex issues where many factors and interests intersect. Interviews with key informants can also be helpful in identifying and contextualizing causal mechanisms, making it a suitable method for investigating the function and relative importance of different accountability measures. The interviews were carried out in four different sites, or municipalities. Sweden can be seen as a case with relatively good conditions for contract accountability in nursing home care, as contracting in this area has been practiced for a relatively long time. The form of contracting used can be described as relatively 'hard', with competitive tendering, high contract specificity and short contract duration, circumstances which would lead to an expectation that practices for contract monitoring and accountability would be relatively well-developed. This implies that if certain forms of accountability are found to be less effective in the Swedish case, there is a higher probability that the situation is similar, or worse, in other cases.

The selection of the municipalities was based on a 'best case' logic, as they all had relatively long experience of contracting out nursing home care (starting in 1992–1993), and a relatively high level of private provision (between 22%-81%) compared to most other municipalities. The municipalities where interviews were carried out also had more contracts with private providers (6–13) than other municipalities in Sweden which had contracted nursing homes, where the median was two contracts (Winblad own data 2011). This implies that the selected municipalities can be expected to have had better opportunities to develop practices for contractor accountability than the average municipality in Sweden. Employing a maximum variation strategy, the four municipalities were also chosen to be as different as possible in terms of geographical location, size, urbanization structure, and political majority. One municipality was suburban, located in a big city area, two were located in medium-sized towns (in the northern and middle parts of the country), and one was a small, rural town located in the south. Three municipalities were led by centre-right political majorities, one by a left-wing majority. Two of the municipalities had non-profit contractors as well, but only for a few smaller nursing homes. This case selection logic implies that, if similar patterns of creating accountability are found across the cases, in spite of the fact that they are different, the likelihood increases that such patterns can be found in other Swedish municipalities as well (Flyvbjerg 2006). The data were collected over time between 2007–2014. Information on the characteristics of the four municipalities where interviews were held is presented in Table 2.

a: Kolada (2020). b: at the time of the study. c: 2011 (own data). d: 2007 (own data).

In total, 43 face-to face interviews were carried out in the selected municipalities, between nine and thirteen in each case. The respondents represented four different categories of actors involved in the local contracting and monitoring processes: elected political representatives, typically the chairmen or vice chairmen of the municipal social or elder care board, municipal civil servants, medically responsible nurses and managers in contracted, privately managed nursing homes. Interviews were in all cases conducted face-to-face and lasted between one and two hours. Information about the number and types of respondents in each municipality is shown in Table 3.

The questions asked in the interviews were related to three themes based on the preconditions for accountability identified in the conceptual background section (1) methods used for collecting information regarding contractor performance; (2) standards used to hold contractors accountable; and (3), the use of sanctions or other forms of corrective behaviour in situations when contractor performance was seen as poor. The specific questions differed somewhat between different categories of respondents, as some were seen as having more specific information about certain areas than others. The questions were semi-structured in order to obtain more and better contextualized information regarding practices and working routines and to allow for respondents to use their own words to describe experiences and impressions. The purpose of the interviews was not just to 'evaluate' different types of accountability measures, but to understand how they worked in the specific context of nursing home contracting. In this sense, the study can be seen as explorative.

All interviews were recorded and transcribed. The transcribed interviews were analysed using a manual method of qualitative content analysis (Elo and Kyngäs 2008). Each interview was first coded in accordance with the pre-determined main

Table 2. Basic information about the municipalities where interviews were conducted.

	Medium-sized town	Suburban town	Medium-sized town	Small town
Population[a]	143 702	69 325	60 495	40 229
Geographical location	Mid Sweden	Mid Sweden	Northern Sweden	Southern Sweden
Type of municipality	Medium-sized town	Suburban town in municipality near big city	Medium-sized town	Small town in rural municipality
Political majority[b]	Centre-right	Centre-right	Left-wing	Centre-right
Started contracting[c]	1993	1992	1997	1992
Contracted beds by private providers[c]	23%	81%	22%	29%
Services covered by the contracts	Nursing home care (incl dementia care)	Nursing home care (incl dementia care)	Nursing home care (incl dementia care)	Nursing home care (incl dementia care)
Contract length + prolongation in the last tendering call[c]	3 + 3 yrs	4 + 2 yrs	4 + 3 yrs	3 + 3 yrs[d]
Number of tenders in the last tendering call[c]	6	6	9	10

Table 3. Number and type of interviewed persons.

	Medium sized-town	Suburban town	Medium-sized town	Small town
Elected political representatives	2	1	3	2
Municipal civil servants	4	7	5	5
Medically responsible nurses	1	1	1	1
Nursing home managers	2	2	4	2
Total	9	11	13	10

themes guiding the interviews. Additional subthemes were later added as they emerged from the interviews, such as regarding the role of local media or the tendency to use public nursing homes as 'bench marks'. Hence, the analytical approach can be described as mainly deductive with smaller inductive elements. The coding was further refined at a later stage to address discrepancies. In the last step, themes from each interview were contrasted and compared. In addition to the interviews, a large number of documents were collected from the municipalities, including policy programmes, documentations of contracting processes, and evaluation reports. Shorter surveys were also administered to municipal civil servants on two occasions (2011 and 2014) to collect factual information regarding local conditions.

Findings

Obtaining information on contractor performance

The answers to the questions about how information on contractor performance was obtained showed that most activities undertaken to this end by the municipalities can be described as hierarchical in nature. The most common of these were: inspections, progress reports collected from the contractors, announced and unannounced visits, follow-ups of complaints from relatives, and investigations of incident reports. Inspections were conducted in all municipalities by the MRN (medically responsible nurse) to control practices like documentation, certain working routines, and the handling of medication, all of which are regulated by the NBHW. Visits to contracted homes weremade regularly in all cases, usually by the MRN. Unannounced visits were used in three cases, but infrequently. All municipalities had staff especially assigned to supervise and evaluate care quality in the contracted nursing homes, and it was generally not felt that resources for this task were lacking. In two of the cases, the urban municipality and the largest of the medium-sized cities, controllers were used to collect and analyse multiple data on quality aspects of care processes. Another monitoring method used was thematic evaluations, where information was collected only on particular quality aspects, like nutrition or social activities. In such instances, data from all nursing homes in the municipality were compared, regardless of ownership. As one municipal civil servant explained:

> You cannot take one place (at a time) because you need a point of reference. . . . If you only look at one home . . . and just go on what they wrote in their bid, for instance, then I think you can get the wrong picture. I think you have to look at it from a broader perspective. *(municipal civil servant)*

Complaints from relatives directly to the municipality were identified by virtually all respondents as an effective way to get notification if the quality in contracted nursing homes was poor or something had happened. Complaints would normally lead the municipalities to contact the home in question to investigate the matter. Another source of information regarding quality in the contracted homes was incident reporting, which was seen as important. As noted in the description of the Swedish case, all nursing homes are obliged to have an incident reporting system where the staff reports incidents or quality deficiencies to the management, who, if the incidents can seen as a threat to the well-being of the residents, are obliged to forward these to the municipalities, usually the MRN. The MRNs investigate the reports, and, in more serious cases, report them further to the municipal social board and the NBHW, who will conduct their own investigations. The interviews showed in all the four municipalities investigated that the incident reporting systems were seen as functioning well in the contracted homes, and that there was no observed difference in the tendency to report incidents in these homes compared to homes operated by the municipalities themselves.

In all municipalities where interviews were conducted, it was also reported that the exact same methods were used to monitor quality in contracted homes as in the 'in-house', or publicly operated nursing homes. This was typically presented as a matter of principle: 'We do it in the same way–there is no difference' (*medically responsible nurse*). 'We want to have the same demands on everyone, the same requirements for all, regardless of if you happen to be a municipal provider or a private one' (*municipal controller*). Another observation made during the interviews was that nursing homes operated by the municipalities themselves appeared to serve as a 'base line' for quality comparisons with the contracted homes, despite the fact that contracts between the municipality and private contractors often contained more extensive quality demands. The logic, expressed by both elected political representatives and civil servants, seemed to be that, as long as the quality level in contracted homes *did not fall below* that of the municipal homes, it was seen as satisfactory. As explained by one municipal civil servant when asked about how quality standards had been affected when the municipal homes were contracted out: 'We do not see a negative effect, at least. Then I could not tell you that we see a positive effect either.' An MRN in another municipality made a similar observation: 'They [the residents] are not worse off, that's the simple, diplomatic, way of putting it. But I really mean that: I have not received any such signs.' The tendency of the respondents to underscore that they made no distinction between contracted and in-house services when monitoring quality, or that there was no difference in observed quality, is interesting as it indicates that the municipalities did not see themselves as monitoring *contracts* as much as conducting a general quality audit of nursing homes.

The interviews showed that the municipalities did not only use hierarchical methods such as inspections or investigations of compliaints to get information about quality at the out-contracted nursing homes, but also a range of more informal channels. The most common of these appeared to be running contacts with the managers in the privately operated homes and municipal representatives over practical matters. In all four municipalities investigated, such contacts were pointed to as one of the most important channels for obtaining information about the quality of the services in the privately operated homes. How frequent such contacts were, and what form they took, varied. In two of the cases, there were regularly scheduled meetings between municipal representatives and the managers of contracted homes. In the other cases, the contacts were more informal and spontaneous:

> They often get in touch with us to check in; if they have received any complaints, they want to let us know since they know that we will get the call later. It feels good that they give us a warning. In some cases, they have house meetings and then they invite someone from our side as well. (*municipal civil servant*)

> All informal and formal meetings are important – it could be anything from lunch to a case of needs assessment. (*chairperson, Social Board*)

> I have met many of the people from [big company name]; they are very concerned with having good contacts with us. (*chairperson, Social Board*)

The municipal social workers, who assess the care needs of the sick elderly and place them in nursing homes, appeared to be another important channel of information for the municipalities. Municipal representatives in the interviews estimated that there were contacts between the social workers and the contracted homes several times a week, usually in relation to user placements, and saw this as a useful way to get signals if something was amiss in the contracted homes. As described by one political representative: 'They are the eyes and ears of the municipality out in the organization' (*chairperson, Social Board*). In several of our interviews, municipal respondents spontaneously referred to 'networks' or 'signals' when they described how they would get information about quality deficiencies in contracted homes. As explained by a politician: 'I have my network and I have my informants so I will always find things out … nothing will escape my attention, I can tell you that' (*chairperson, Social Board*). In another municipality, an MRN talked about the 'flow of information' that enabled the municipality to monitor the contracted nursing homes:

> We do not follow a list [when we visit contracted homes], we have this flow of information .. . we get some information, maybe it's someone on the Social Board that has heard this or that … it can be valid or not valid … and then we have to make sure. (*medically responsible nurse)*

The impression that running contacts with the contractors was one of the most effective methods for obtaining information about their performance was further strengthened by accounts of the high level of trust between municipalities and the private contractors. This was noticeable in all municipalities but one, where a large, for-profit firm had recently taken over the operation of several nursing homes previously run by non-profit organizations, which was viewed with scepticism by some respondents. In general, however, relations between the municipalities and private contractors appeared highly cooperative and trusting. In response to our direct question of whether they felt that they had enough insight into contracted homes, all municipalrepresentatives except one answered 'yes'. As stated by the chairperson of the municipal Social Board in one municipality: 'I do not feel there is any difference. … We can come to them any day and make an unannounced or announced visit; we have that possibility. But we have never seen any need to do that'. The impression of high trust and good working relations in at least three out of four cases was confirmed by representatives of the private contractors. Another question asked in the interviews was whether respondents representing the municipalities perceived any risk that the for-profit firms operating contracted homes would reduce the quality of the services in order to make a profit. Generally, the respondents did not perceive such a risk: 'I do not think so. No, I don't feel that, actually. The municipal providers have economic demands on them too'. (*municipal* *civil servant*). Only in one municipality did a political representative express a concern that there was less insight into the contracted homes:

> We say that we want to have certain goals but we do not actually know how the work is carried out. You don't know that. … We have a closer relationship to our own providers. We definitely do. Because we are their employers. (*vice chairperson, Social Board*)

Somewhat unexpectedly, the case studies also revealed that local media played a role as a channel of information for the municipality. Local newspapers in all municipalities were reported to critically scrutinize the private companies that had taken over the operation of municipal nursing homes. In particular, incident reports from contracted homes, accessible to media when reported to the municipality through the Swedish Open Publicity Act, often attracted attention. This media attention was naturally seen as problematic by the private contractors, but also by some of the municipal respondents. It was clear that the municipalities, just like the contractors, had an interest in avoiding negative publicity. The perception both among municipal representatives and the contractors was that contracted nursing homes were more exposed to negative publicity than municipal homes:

> It's been like a black cloud, this thing with the big fat headlines in the press, a scoop, you know? We have really tried to stay away from anything like that. Because of that, all private entrepreneurs here have stayed very humble; you have to be humble in your work and in your relationship to the municipality … (*former head manager, private nursing home contractor*)

Interestingly, it appeared that the role of local media reinforced tendencies towards cooperation between the municipalities and private contractors. The risk of negative media exposure created incentives for both parties to maintain close relations, as this helped them get information without delay if there had been incidents and made it possible to present a united front of having things under control to critical journalists. This appeared most important for the private firms, who were reported to be very quick to contact the municipalities to coordinate strategies if something happened. As noted by one municipal civil servant:

> They are very quick there [with regard to incidents]. As soon as something has come up, the very same day they get in touch. … /T/hey want to tell us about it, that something has happened and that they have started an investigation. They are really, really quick about that. All of them.

In none of the municipalities visited was information about contractor performance gathered through methods that could be described as market-based, such as data on outcomes, for instance regarding the health or well-being of the residents in such homes. The exception was user surveys, which were used in all cases, and seen as being of medium importance by most municipal respondents, and as highly important by a few, notablypolitical representatives. The observation that negative media attention seemed to be avoided at all costs by the private contractors indicates, that reputation, too, functioned as an market-based accountability mechanism.

The use of standards and sanctions

During the interviews, questions were also asked about what standards were used to hold private contractors accountable. Most respondents seemed to think that the contracts themselves were quite important, particularly when there was disagreement. As explained by a political representative: ' … if the contractor does not comply, you have to go to the contract' (*chairperson, Social Board*). On the other hand, it was quite clear that most of the formal monitoring activities initiated by the municipalities, such as inspections or investigations of incident reports, were regulated by public law rather than contracts. It was also noted that a standard feature in the contracts between the municipalities and private contractors was a paragraph stating that all public regulations regarding nursing home care should be observed by the latter. In this manner, public law was a standard-setting accountability measure which applied to contractors both directly through the law and indirectly through their contracts. Standards for accountability were thereby created through a combination of public law and contractual agreement.

The third theme investigated was the use of sanctions and corrective behaviour. The interviews generally gave an impression of the level of conflict being low. Municipal representatives in all four municipalities described relations between themselves and private contractors as well-functioning and trusting, and were hard-pressed to think of any areas of conflict.

Interviewer: Have you had any conflicts with the private providers?

> No, nothing. (*municipal civil servant*)
>
> No, I don't know what those would be. Nothing that I can recall that we have heard of in the Board. What sort of conflicts could those be? (*chairperson, Social Board*)
>
> I would say we have a trusting relationship. … It has been a friendly atmosphere. And if it has not been good, we can just pick up the phone; we all know where to find each other, we can get together the same afternoon. (*chairperson, Social Board*)

If there had been instances of disagreement, they had in most cases concerned matters such as inventories, and been related to the take-over by private contractors of a municipal nursing home. Another issue which had been known to cause disagreement was the placement of new residents. If their care needs were extensive, contractors would sometimes demand extra resources, or physical adjustments of the facilities. All respondents described, however, that such disagreements were handled through regular dialogue and compromise, rarely giving rise to conflicts. As explained by one municipal civil servant:

> We have no problems with the relations with the private contractors. They don't always agree with us, but then they get in touch, we have a discussion, and then we settle on something that works. Sometimes we have to adjust a little, sometimes they have to get in line, but it works well. (*municipal civil servant*)

When asked to describe how they handled information about quality deficiencies, for instance through complaints from relatives, municipal respondents in all cases said that the first thing they did was to call the contractor:

> I will inform them that I have received some complaints. … and then we follow up the matter … We will talk about it, have a meeting … In such situations, people are very professional, very matter-of-fact. In most cases they will tell us directly that they have seen to the matter. It has never happened yet that they did not, they are concerned about their reputation. (*municipal civil servant*)

> Then you call the contractor, you want an explanation. … If it concerns the care, it's the MRN or the others who will go out and investigate. (*chairperson, Social Board*)

In all cases, this form of 'soft' sanctioning through dialogue was cited as the main way in which municipalities corrected the behaviour of the contractors. The interviews also showed that there were common norms regarding how complaints or other instances of quality deficiencies should be handled. Despite social accountability mechanisms appearing to be the most frequently used for sanctioning, there were also examples of hierarchical measures. One example was the incident reports, which were reported to sometimes lead to private contractors being asked to appear in front of the municipal Social Board to answer questions. If the Board was not satisfied with the contractors' explanations, it could demand that they present a formal plan (*åtgärdsplan*) for how things would be improved. This plan would later be followed up by the municipal staff who would report back to the Board. In the case of a serious incident, the NHBW would be notified in accordance with the Lex Sarah law. In one of the municipalities, contractors appearing in front of the Board seemed to happen quite regularly:

> And all these Lex Sarahs … then it will go up to the Board and then we ask the private contractors to come so they can represent themselves. They get to have a dialogue with the Board. (*MRN)*

Finally, the interviews showed that the use of sanctions associated with markets, such as financial penalties, or termination of contracts, were very rare. In none of the municipalities had a contract ever been terminated in advance despite the fact that this was formally a legal option. Nontheless, municipal respondents explained that this simply would not work, as they had no hope of winning a legal battle, especially against the larger private firms:

> If it becomes a legal conflict … then the burden of proof is entirely on us. And then they become players, you know? … We know from other municipalities that they are not easy to deal with, the big ones. They are good, they have lawyers who only work with trying to discredit what a small municipality says. (*municipal civil servant*)

Likewise, none of the municipalities had used financial sanctions, despite the fact that this was a standard feature in the contracts. Financial penalties were seen as virtually impossible to use, even if serious quality deficiencies were detected. The reason was that the private companies never agreed to pay but always took the matter to court, where the municipalities would have to prove legally that the conditions of the contract had been breached. In none of the municipalities had there been any attempt to to take a contractor to court. As explained by a municipal civil servant when asked if financial sanctions were used:

> We would never get away with that. The Board would probably be happy to ask for it, but the companies would never pay, but take it to court … and we could never win there.
>
> Interviewer: So, it's all based on you reaching a consensus with the private contractors then?
>
> Municipal civil servant: Yes, it's a lot like that. We don't have the back-up of herds of lawyers. If you are lucky, like us, you have a municipal legal counsel, but she does not specialize in contract law.

In sum, our findings suggest quite clearly that measures related to social accountability, such as dialogue and negotiation, were most commonly used and seen as most effective in sanctioning contractor performance. In the case of incident reports, hierarchical sanctions such as appearing in front of a board and producing written correctional plans were also used. Standards used to hold contractors accountable were taken from all types of accountability measures (e.g. public regulations, contractual agreements, and social norms) but it could perhaps be argued that public regulations played the strongest role in setting the norms for what constituted 'good' nursing home care. Market sanctions were not found to be effective, both because of the incompleteness of the contracts, which made it hard to prove quality deficiencies in court, and the superior legal resources of the private contractors. A possible exception is the role of reputation, which were cited in some interviews as being important for the private firms and which likely made them more prone to engage in the social dialogue with the municipalities.

Discussion

The findings in this study indicate that the most common ways to hold private contractors accountable in nursing home care in Sweden are hierarchical and social in nature. It was found that the municipalities used a range of methods to collect information on contractor performance, such as inspections, various form of audit, complaint procedures and incident reporting systems, all of which can be seen as hierarchical in type and which were aimed at controlling work processes rather than outcomes or results. The standards most commonly used to hold contractors accountable were found to be public law or regulation, for instance regarding medication, documentation or incident reporting. Sanctions used to correct contractor behaviour were not legal, but in some cases clearly hierarchical, such as appearing in front of the municipal Social Board.

Alongside hierarchical measures of accountability, there was also ample evidence of social accountability measures being used. Informal or indirect channels for obtaining information on quality in contracted nursing homes were described in several interviews as being the most important, and it was clear from accounts of dialogue between the contracting partners that social accountability measures were also important for setting -or agreeing upon- quality standards. Finally, there was also many examples of how soft forms of sanctioning took place through social accountability measures like discussion in cases of conflict or indications of poor performance. The frequent use of social accountability measures, particularly in information-gathering, likely reflects the high information costs associated with monitoring a complex service like nursing home care (Hefetz, Warner, and Vigoda-Gadot 2014; Hefetz and Warner 2007; Clarkson and Challis 2006; Hart, Shleifer, and Vishny 1997). In this sense, the findings support previous research indicating that collaborative practices might be more efficient for achieving accountability than hierarchical or market-based, particularly in services where outcomes are hard to measure like social services (Amirkhanyan, Kim, and Lambright 2012; Amirkhanyan 2009). A possible negative implication of the use of social accountability measures to gather information about quality in the contracted services is that the monitoring becomes reactive, or incident-based. The system observed in the Swedish study appeared to work a bit like an alarm-system, alerting the municipalities at the indication of a problem, but otherwise leaving the private contractors alone. It also seemed to be directed foremost towards securing *basic* standards of quality rather then ensuring compliance with contracts or pro-actively developing the quality of the services.

Market-based forms of accountability were found to be used less frequently than hierarchical or social ones. In none of the municipalities visited were clinical outcome data collected to evaluate contractor performance. While contracts were said to be referred to when conflicts occurred, they appeared to be less important for holding contractors accountable for observed quality deficiencies than public regulations or social dialogue. Market sanctions such as contract termination and financial sanctions were not used at all as they were seen as impossible to use, given the legal resources of private contractors. Only two accountability mechanisms that can be related to markets appeared to play a significant role: user surveys and reputation. User surveys, being an output measure, were seen as an important quality indicator, especially by elected municipal representatives; and reputation appeared to be an important motive behind the contractors' eagerness to avoid negative media exposure.

The finding that elements from all three accountability types; hierarchical, market and social; were used to hold contractors accountable in the Swedish case is consistent with the notion of hybrid accountability as presented in earlier research (Benish and Mattei 2019; Jantz et al. 2018). The rich empirical detail obtained through the interview data complements earlier work by providing a deeper understanding of the ways in which different accountability mechanisms can combined and reinforce each other. This can be seen for example in the interaction between hierarchical and social accountability mechanisms that could be observed trough the case study. The public laws regulating nursing home care and competitive tendering did not only make up the formal institutional context in which the contracting took place, they also helped *embed* private contractors in the public institutions, thereby providing municipalities with numerous channels through which they could interact more informally with them. One example is that the municipalities typically retained ownership of nursing home facilities and thereby came to interact frequently with the contractors over issues such as maintenance, rent, and inventories. Another is is regulation in the Swedish Social Services Act that needs assessment of individual users cannot be delegated to contractors, which meant that the municipalities retained the right to decide on the placements of residents among them. The findings in the study show that this, too, resulted in frequent contacts and exchange between the municipalities and the private contractors.

Another example of a hybrid form of accountability observed in the study was the interaction between public law and contracts in producing standards for accountability. While many public regulations in nursing home care did apply to private providers as well, the municipalities had also written in to the contracts that these should be observed by the contractors. This 'double governance' points to a certain confusion regarding how, exactly, the responsibilities of private contractors were to be regulated. In general, however, different types of accountability measures seemed to reinforce rather than undermine each other in the Swedish case.

Finally, in line with some earlier research, the findings in the study also pointed to the importance of political factors (Ditillo et al. 2015; Byrkjeflot, Christensen, and Lægreid 2014). The political salience of the service area appeared quite high and local media was found to play an important role as 'watch dog', looking to report on any indication of quality deficiencies in the contracted services. This circumstance, and the fact that it appeared to lead to tighter collaboration between the municipalities and the contractors in order to avoid negative publicity, raises the question of how strong the political incentives for monitoring private contractors actually are. Media scandals due to quality deficiencies in contracted nursing homes reflect badly not only on the contractors but local governments themselves. To disclose that contracted services have quality deficiencies, or are of poorer quality than those in municipal nursing homes, would therefore constitute a political risk. The political risks involved in contracting out a service like nursing home care may thus be another reason, for why the local public agencies in this study often seemed to prefer social accountability mechanisms rather than market-based or legal sanctions, which would invariably attract media attention.

Political motives would also explain why user surveys were found to be a commonly used accountability measure. As long as the residents of the contracted nursing homes (and their relatives) appeared content, or *as* content as those in the public homes, there is in fact little incentive for local governments to spend a lot of resources trying to improve quality in contracted homes by ensuring that contractors live up to every quality aspect stipulated in the lengthy contracts. This 'good enough' approach on part of the local governments could also explain the observed tendency to use municipal nursing homes as bench marks against which the contracted homes were compared. If the contracted nursing homes were not performing worse than the municipal ones, the decision to contract them out can be presented as a success, given that their costs were generally lower.

Limitations

The methodology used in the paper can be said to have some limitations. First, the empirical observations are limited to four municipalities and 43 interviews, which makes it hard to generalize the results, despite the maximum variation case selection and the strong similarities between the responses in the different cases. Second, given that the selection of respondents was partly circumstantial, as some persons we contacted did not have the opportunity to meet with us, it cannot be ruled out that another set of informants would have had slightly different views due to having different experiences or other personal or ideological characteristics. In this respect the triangulation of data, such as interviews with key respondents, documentation analysis, and short surveys, strengthened the validity of the results.

Conclusions

The two research questions asked at the outset of the paper were what types of accountability measure were most commonly used by local governments in relation to private contractors and which measures, or combinations thereof, were considered most effective. The results show that hierarchical and social measures were most commonly used, but that social measures were seen as most effective, particularly in sanctioning. Another conclusion is that local governments seemed to be less interested in holding the private contractors accountable for fulfiling all contractual obligations than making sure that basic care standards were met and open scandals avoided. An implication of this rather defensive accountability strategy is that, even if it will help preventing serious quality deficiencies, there will be little quality *improvement* as a result of the contracting.

A policy implication of the conclusions in the article is that, if accountability in public contracting in a service like nursing home care is to be achieved, it might be necessary to combine different accountability methods as neither hierarchical, market or social accountability methods seem fully adequate in and of themselves. Future research might use findings from this largely explorative study to develop more comprehensive methods for assessing the effectiveness of different accountability measures in public contracting.

Disclosure statement

The authors declare that they have no competing interests.

Funding

This work was supported by the Swedish Research Council for Health, Working Life and Welfare under Grant [2014-05134].

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Data availability statement

The data supporting the findings of this study are available by request at paula.blomqvist@statsvet.uu.se. The data are not publicly available due to their containing information that could compromise the privacy of research participants.

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