

Contracting for Public Values

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 groningen

Contracting for Public Values

Investigating the Contracting out of Employment
 Reintegration Services, in the Netherlands

PhD thesis

to obtain the degree of PhD at the
 University of Groningen
 on the authority of the
 Rector Magnificus, Prof. E. Sterken
 and in accordance with
 the decision by the College of Deans.

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Dedicato a Remo.

“E rade volte accade che le particolari passioni non nuochino alle universali commodità.”
 (“Seldom, it happens that the pursuit of private passions does not injure the common good.”)

Niccolò Machiavelli, *Istorie fiorentine*, Book V, Chapter 31. 1520-1525

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Part I

INTRODUCTION

Chapter 1

Introduction

Chapter 1: Introduction

1.1 Introduction

This chapter will provide a short introduction to the main topic addressed in this study, discuss its social and scientific relevance and give an overview of the book's structure.

Safeguarding public values?

"Government has neglected public values in decisions on privatisation.". This was the title of an article in a national Dutch newspaper at the beginning of this century.¹ The article claims that successive Dutch governments responsible for various acts of privatisation have failed to sufficiently take the public interest into account and have instead focused narrowly on the interests of individuals as consumers. The article was based on a critical report drawn up by the Dutch Scientific Council for Government Policy (WRR) about several large-scale privatisations of public utilities (electricity, transport, etc.) that took place at the end of the previous century.² The WRR report was a response to an on-going debate about the success, or rather lack of success of these measures. In its report the WRR discussed how public values can be safeguarded. One particular option that was elaborated upon is safeguarding through the use of contracts (WRR 2000, p. 100). This notion of using contracts to safeguard public values is the starting point for this study and is an important inspiration for our main research question.

Safeguarding public values using contracts

How can public values be safeguarded by using contracts? At first glance, the answer to this question seems quite straightforward. Just formulate which public values are important to you and then put them in the contract! However, reality is not that simple. We illustrate this with a short anecdote about the Dutch privatisation of their National Railway Service.

Safeguarding punctuality of public transport

In 1995 the Dutch Railways, a state run company, was privatised. A performance contract gave the company a concession to commercially exploit the Dutch railway system. One of the criteria stipulated was punctuality: in order to qualify for certain executive bonuses, at least 80% of trains were needed to run on time. This seemed straightforward enough and

1 Trouw, 24 - 05 -2000, Rijk heeft bij keuzes privatisering publiek belang verwaarloosd, <http://www.trouw.nl/tr/nl/5009/Archief/archief/article/detail/2506349/2000/05/24/Rijk-heeft-bij-keuzes-privatisering-publiek-belang-verwaarloosd.dhtml> (14-02-2013).

2 WRR, 26- 04- 2000, Het borgen van publiek belang, Den Haag: Sdu Uitgevers. A summary of which is also available in English at <http://www.wrr.nl/publicaties/publicatie/article/het-borgen-van-publiek-belang/> (14-02-2013).

indeed over time the punctuality of trains improved. However, it emerged that the number of trains running had decreased. Services likely to incur a delay were quite literally cancelled. Travellers were even told to disembark from the train and wait for the next one; sometimes involving a wait of half an hour or more. In other words: customers paid a high price to keep the punctuality statistics high. Recently investigative journalism revealed that the Dutch Railways continue to apply a similar strategy when bad weather is expected. In these situations the number of intercity trains running is deliberately decreased in order to meet performance targets that award bonuses.³

This study does not address the safeguarding of public values in Dutch utilities. For that we refer to the work of Bauke Steenhuisen (2009). Nonetheless, what this anecdote illustrates is that using contracts to achieve public policy targets is complicated and can yield undesired results. This applies even more where there are public values at stake, which cannot be measured as concretely as the punctuality of trains, such as the values connected to social services. It is exactly how public entities deal with these challenges when they contract out their service delivery that sparked our interest for investigating this theme.

Main topic of study: safeguarding public values in the field of employment reintegration

In the last few decades many Western welfare states have undergone reconstruction (Esping-Andersen 1996; Taylor-Gooby 2001). The reforms have placed more emphasis on activating welfare recipients and have often initiated processes of privatisation. In the Netherlands similar developments occurred around the turn of the century. Legislative changes were introduced strengthening the emphasis on activation and to a large degree privatising the previously public task of delivering services for the purpose of activating social security benefit claimants (reintegration services). The privatisation of employment reintegration services meant that private actors started to play a role in establishing the forms of support to which individual benefit recipients are entitled. Such a role played by private partners is deemed to be more cost efficient, but it can also have adverse consequences when the profit motive overshadows certain public interests. This prompts the question: to what extent can such consequences be kept at bay when using contracts to govern the delivery of a public service? In fact, on numerous occasions, the preparatory works of the so called SUWI act⁴, which contains the bulk of the privatisation reforms in the area of reintegration services, stresses the importance of contracts in controlling how service delivery takes place. The notion that public authorities were supposed to use contracts as an instrument for ensuring the quality of services was echoed several times in

3 RTL Nieuws, 13 February 2012, Uitzwaaien raakt bonus NS-bazen niet, http://www.rtl.nl/components/actueel/rtlnieuws/2012/02_februari/13/binnenland/NS_bonussen_veilig_door_truc_treinenloop_vertraging.xml (14-02-2013).

4 See preparatory works of the (the Work and Income (Reorganisation) Act), pages 4, 5, 17, and 47-49.

answers given by the Dutch Secretary of State for Social Affairs and Employment in response to questions from MPs about this topic⁵. In practice, this notion implies that public entities tasked with commissioning reintegration services are, in their role as principals, made responsible for safeguarding public interests related to the delivery of reintegration services and that contracts are expected to have a significant role in this. In this study we have looked in to this issue from the point of view of Dutch municipalities contracting out employment reintegration services for social assistance claimants.⁶

Based on the foregoing, we developed our overarching primary research question:

- *How do municipalities safeguard public values when contracting out the delivery of employment reintegration services?*

The aim of this study is to answer this question in an explorative manner by gaining insights into how municipalities deal with this major issue in practice. To achieve this a qualitative study was undertaken combining both a broader content analysis of tender documents⁷ and focused case studies in nine municipalities. While not intent on testing a particular theory, this type of research could not be done without any prior theoretical foundation. Therefore the empirical part of this study builds on theoretical explorations of several preliminary issues associated with upholding public values while contracting out employment reintegration services. These explorations function as a lens guiding our empirical observations and through which we have subsequently interpreted our findings.

1.2 Two challenges

When delving into this topic it soon became apparent that the way in which Dutch municipalities were tasked to use contracts to deliver the public employment reintegration services gives rise to some intriguing dilemmas and challenges. One of these is that contracts inherently benefit from clarity and simplicity, while public policy goals are often ambiguous and complex. The ambiguity surrounding the definition of the public values that are supposed to be expressed in the contract therefore poses a particular challenge when endeavouring to record these values in contractual terms. At an abstract level we can all agree upon the important values underlying society; once these have to be put into practice,

5 See Parliamentary Papers II 2005/06, 28719 No. 25, page 4 - 8 and Parliamentary Papers II 2007-2008, 28719 No. 44, page 29.

6 Under the Dutch Work and Social Assistance Act municipalities are required to provide assistance to benefit claimants with their employment reintegration.

7 Tender documents are the requests for proposal that are used to initiate public procurement of services. These contain the specifications and requirements for the goods or services that need to be acquired.

however, this consensus falters. This is even more so when we are dealing with the product of employment reintegration services, the nature and objective of which is very much subject to debate. In other words: analysing which public values should be safeguarded and to do so, is quite a challenge. But even if this challenge is overcome, this is not the end of the story. It is not enough simply to stipulate the right provisions to make a contractual relationship work. Contracts benefit from clarity and at the same time they also help to create clarity as they provide a written reminder of what is agreed between parties. But literature on the functioning of contracts also shows that often there is more at stake. Factors such as trust and intrinsic motives play a critical role in the success of contracts. These also have to be taken into account when studying how public values can be safeguarded when using contracts and indeed it is interesting to find out how, at a working level, municipalities deal with these issues.

An additional challenge that municipalities face is the need to maintain control in order to ensure services are delivered in line with public standards while the nature of the service involved requires a high level of customisation for it to be effective in activating the client. This contradiction may result in counteracting choices in the management of contractual relationships. The focus on formalisation in these relationships might help ensure control, while allowing customisation might require an emphasis on trust to create room for flexibility. This means that somehow municipalities must find a way to deal with this inherent contradiction between control and freedom when contracting out employment reintegration services.

1.3 Scientific relevance

The focus of this study is academically relevant because we still do not have sufficient knowledge of how public values can be upheld by using contracts when social services are privatised. On the one hand, there is a substantial body of literature dedicated to the safeguarding of public values. This literature focuses on the context of infrastructure or public service delivery, mainly related to the procurement of public works or to the delivery of utilities such as gas, electricity or water (De Joode 2007; Furneaux & Brown 2007). On the other hand, much attention has been given to the phenomenon of contracting out for social services (Deakin & Walsh 1996; Peat & Costley 2001; Savas 2002; Van Slyke 2003; Van Slyke 2007). Within this body of literature there is also growing attention for contractualism within the context of the activating welfare state (Sol & Westerveld 2005; Sol & Westerveld 2007) and more specifically employment services (Bruttel, 2004; Struyven, 2003; Struyven & Steurs 2005; Van Berkel & Van der Aa 2005; Bredgaard & Larsen 2007; Bredgaard & Larsen 2008; Van Berkel 2010). But the question how contracts can be used to uphold public values has not been extensively dealt with. It is our belief that a study combining these topics can contribute new and unique insights into how public entities deal with issues surrounding the safeguarding of public values when contracting out employment reintegration services.

1.4 Social relevance

An additional reason for wanting to investigate our topic relates to the social relevance of this topic for the Dutch welfare state. In the Netherlands there has been an on-going discussion throughout the last decade about the pros and cons of contracting out employment reintegration services.

Of particular relevance in this respect is the on-going shift towards a more activating welfare state. One of the characteristics of the activating welfare state is that instead of redistributing financial wealth, the welfare state is much more tasked with redistributing opportunities to participate in society. The delivery of employment reintegration services is an important part of how these opportunities to participate are redistributed. In fact, employment reintegration services are a central part of the support in kind that social assistance seekers receive from the state when applying for benefits.

The privatisation of these services may have profound consequences for the levels of protection awarded by the welfare state. In this respect it must be borne in mind that participating in employment reintegration trajectories⁸ is an important part of the activation duties that clients must undertake in order to be able to claim and receive social assistance benefits. The quality of the services and the manner in which the services are organised can have a profound impact on the kind of support that benefit claimants receive. Contracting out the delivery of these services will give space to the market mechanism (Pollitt & Bouckaert 2011) which may impact upon the redistribution of the aforementioned opportunities to participate. In particular there is a danger that commercial providers might opportunistically exploit information asymmetries in order to make profits at the expense of weaker or more vulnerable service recipients. Earlier evidence shows that in the past employment reintegration services providers have indeed focused on those clients that are easiest to reintegrate at the expense of those individuals that have less chance on the labour market (Struyven & Steurs 2005; Van Berkel & Van der Aa 2005). This potential moral hazard can substantially undermine the equity and fairness of support provided by the welfare state as the weakest or most vulnerable members of society will not get the support they would based on their needs, be entitled to. Studying how these adverse effects can be overcome when using contracts is therefore relevant for the welfare state as a whole.

1.5 Setup of the study and structure of the book

This study is divided into five main parts: an introductory part, a theoretical part, two empirical parts and a concluding part. The introductory part consists of this first chapter and of a second chapter, discussing the object of this study: employment reintegration services.

⁸ In Dutch service pathways are called *trajecten* (trajectories). Henceforward we use this term when referring to service packages or pathways that clients receive from providers.

The theoretical part constitutes the basis on which the study is built and addresses several preliminary theoretical issues that we feel needed tackling before designing the core of our study. These theoretical issues are grouped around three themes that are treated in an equal number of chapters, i.e.:

- Public values and safeguarding;
- Functioning of contractual relationships;
- Dynamics of the contracting out process.

Public values and safeguarding

For the first theme we had to conceptualise the notions *public values* and *safeguarding*. This proved to be a complex task particularly in relation to the notion of safeguarding. In the end we decided to make a distinction between two kinds of safeguarding, *basic contractual safeguarding* and the *safeguarding of specific public values*. This distinction had a strong effect on the structure of the study.

The importance of this choice for the setup of our study makes a short explanation of our motives and of the differences between the two kinds of safeguarding necessary. This topic is addressed in more detail in chapter 3.

While acknowledging that safeguarding is an ambiguous term, within the context of this book we understand safeguarding to mean ensuring that service delivery occurs in the desired manner. The “desired manner” consists of two elements. First ensuring that the service providers commissioned with delivering the service comply with contractual arrangements by delivering the performances desired by the principals and second ensuring the required services are delivered in line with relevant standards that apply to public services.

Basic contractual safeguarding

Basic contractual safeguarding focuses on the first element and the more general challenge of ensuring compliance on the part of the service providers. It is about how the commissioning public entities act to ensure that services are delivered in accordance with their wishes and the contractual arrangements. In essence this is a control issue closely related to the aforementioned challenges associated with using contracts to safeguard public values and it is very much addressed from the perspective of the principal, in our case the municipalities, as it involves safeguarding relating to the desired execution of service delivery. However, one can question whether the fact that services are delivered in line with contractual arrangements and the wishes of the municipalities necessarily means that all the relevant public values are fully safeguarded. Municipalities might not consider specific elements of service delivery (for instance privacy or durability) to be significant enough to require safeguarding and thus these aspects might not be included in the contract or communicated to the service providers as being relevant for service delivery.

Safeguarding specific public values

To overcome this myopia the choice was made to adopt a second perspective focusing on how several specific public values relevant to providing employment reintegration services are dealt with - regardless of their being in the contract or not. These are public values we believe are relevant not because the principals deem them to be important, but because they are closely associated with the very core of the municipalities' task: the provision of employment reintegration services. We selected the following five specific public values relating to service delivery:

- Customisation of services to meet clients' needs;
- Ensuring durable outcomes;
- Prevention of adverse selection;
- Protection of privacy;
- Handling complaints.

We selected these particular public values because they touch upon elements of the service task that we feel are closely linked to key public service standards associated with delivering employment reintegration services within the context of the welfare state. Another reason for selecting these values is the belief that these elements of the service task are most likely to be (adversely) affected by the switch to contractual governance. This reasoning is further explained in chapter 7. Safeguarding specific public values thus focuses on the second element of services being delivered in the desired manner.

The basic difference between these two kinds of safeguarding is that the *safeguarding of specific public values* focuses on those public values relating to the delivery of employment reintegration services that would be at risk of being overlooked if focus was exclusively on *basic contractual safeguarding*.

The above has led us to formulate two distinct sub questions for this study. One dedicated to *basic contractual safeguarding* exploring the research question:

- *RQ1: How do municipalities perform basic contractual safeguarding when contracting out employment reintegration services?*

And one question dedicated to investigating the safeguarding of *specific public values*:

- *RQ2: How do municipalities safeguard specific public values when contracting out employment reintegration services?*

Functioning of contractual relationships

The next preliminary theme that is dealt with from a theoretical perspective is the functioning of contractual relationships. This is the topic of chapter 4 and it explores

theoretical notions on the use of formalisation based and stewardship based approaches to promoting compliance. The insights derived from this chapter caused us to adopt a third research question.

- *RQ3: How do formalisation and stewardship measures feature in the safeguarding arrangements in contractual relationships under study?*

This third question is raised in relation to both basic contractual safeguarding and the safeguarding of specific public values.

Dynamics of the contracting out process

The third theoretical theme is about gaining a better understanding of the process of contracting out. This theme is explored in chapter 5. We felt that since the contracting out of employment reintegration services occurs within the context of public procurement processes it would be useful to acquire a more comprehensive understanding of the kind of dynamics we may encounter in this field. In order to capture these dynamics we have adopted a four phase model which divides the contracting out process loosely into chronological order. The four phases are:

- Make or buy phase;
- Specification phase;
- Selection phase;
- Contract management phase.

Methodological setup

In our methodological chapter (chapter 7) we explain the design of the empirical part of the study, building on the insights derived from addressing the preliminary questions. In this chapter we also discuss our motives for selecting the particular public values included in our investigation in connection with the second research question.

The empirical part of this study is based on data gathered through qualitative methods including a content analysis of 20 tender documents (contracts) used by municipalities to purchase employment reintegration services and case studies at nine Dutch municipalities. For the case studies 44 interviews were conducted with policy makers, contract managers, case managers and representatives of service providers. The choice to combine the content analysis of tender documents with case studies was made in order to get a comprehensive picture of both the legal and practical reality of using contracts to govern the delivery of employment reintegration services.

Presentation of empirical findings

This brings us to the two empirical parts themselves. The first one (part III of this dissertation) is a collection of five chapters (chapter 8 through chapter 12) dedicated to our findings and conclusions with regard to basic contractual safeguarding. The second one (part IV of this dissertation) contains two chapters (chapter 13 and chapter 14) dedicated to the findings and conclusions with regard to the safeguarding of specific public values investigated in this study. The third research question is dealt with in each of the concluding chapters (chapters 8 and 14) of both empirical parts.

Conclusions

The study concludes with a systematic presentation of the answers to the research questions and a discussion of these within the wider context of the theoretical framework as well the practical implications of our findings.

1.6 Structure of the book

- ***PART I - INTRODUCTION***
 - CHAPTER 1: INTRODUCTION
 - CHAPTER 2: OBJECT OF STUDY

- ***PART II - MODELLING***
 - CHAPTER 3: PUBLIC VALUES AND THE SAFEGUARDING OF PUBLIC VALUES
 - CHAPTER 4: MODELLING CONTRACTUAL RELATIONS
 - CHAPTER 5: THE CONTRACTING OUT PROCESS
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Chapter 2

Object of study

Chapter 2: Object of the study: employment reintegration in the Netherlands

2.1 Introduction

In this chapter we seek to define employment reintegration and discuss the general developments that have taken place in the past 50 years in relation to labour intermediation as a public task. We also look at the developments in the Dutch welfare state that culminated in the contracting out of employment reintegration services. We conclude by explaining why the task of providing employment reintegration services still remains a public task.

2.2 What is employment reintegration?

Employment reintegration is a specific type of employment intermediation to assist disadvantaged groups in re-entering the labour market (in the Anglo-American literature this type of activity is also referred to as welfare-to-work services) and is generally intended for welfare benefit claimants. Although employment reintegration and activation services encompass a wide variety of activities they have one thing in common: they all involve interventions for the purpose of diagnosing and overcoming the different problems and obstacles clients face in entering the labour market. The services may be aimed at resolving specific social problems that inhibit the finding of employment such as dealing with drug abuse, high debts or domestic violence or at improving employee competences with a view to improving work related skills and experience.⁹

These services are so called ‘soft’ services. In other words the degree of human interaction during the provision of the services has a significant impact on the chances of success and the quality of the service is often difficult to observe or measure (Panet & Trebilcock 1998; Mosley & Sol 2005, p. 4, 12). Because of the many variables at play it is often unclear as to which service produces most net effect or indeed whether a specific service produces any net effect at all (Bruttel 2004).

To complicate matters further, according to the dominant policy logic this type of services ideally should be customised or tailored to the individual needs of the client. As a result clients often receive several different services at the same time, sometimes from different service providers. For instance a client may receive coaching for mental health

⁹ For a more in-depth discussion of particular methodologies used and typology of the problems the services aim to resolve see “Fit or unfit” (Sol et al. 2011).

issues from on particular service provider, on the job training from another and debt assistance from yet another service provider. This requires skilled coordination to ensure that these services complement and do not counteract each other.

2.3 From labour intermediation to employment reintegration

In the Netherlands the provision of general labour intermediation, or the bringing together of supply and demand on the labour market in a fair and efficient manner, used to be considered a public responsibility. Indeed the same was true throughout Europe in the mid-20th century (Freedland et al. 2007, p.104). It was feared that without state intervention the market would not prevent employers from abusing their power and would not provide a fair and equitable distribution of jobs amongst employment seekers. To this end the ILO even promulgated Convention No. 96/1949 stimulating signatories to regulate or ban private for profit labour intermediation activities. Until the 1990s in many European countries a formal public monopoly on the provision of employment intermediation existed. This had not always been the case. Research conducted by Freedland et al. (2007, p. 107) into the development of employment services in several European states shows that three phases can be discerned.

The first one is a liberal phase during which employment intermediation was unregulated and mainly provided through private for profit initiatives with little or no regulation. In the next ‘collective’ phase, responding to abuses that occurred in the liberal phase, organised labour unions and worker associations tried to exercise more control over the way demand and supply met on the labour market by organising labour exchanges. This was followed by the second phase, the public task phase. Opposite forces - political pressure not to leave control over access to labour markets in the hands of the unions and social pressure not to leave this task solely to the market - resulted in many countries in the establishment of a public monopoly on labour intermediation (Freedland et al. 2007, p.110).

The current phase involves a return towards more private initiatives. Gradually the rise and acceptance of temporary work agencies paved the way for the return of private for profit intermediation, initially subject to heavy regulation. Today private employment agencies are considered a normal channel for finding (temporary) employment or entering the labour market and are even seen as effective tools for providing flexibility in the modern labour market. Since the 1990s¹⁰ the public monopolies have been broken down and public employment agencies have shifted their focus to the unemployed who are of little interest to private providers (Freedland et al. 2007 p.149). In other words public agencies have become providers of last resort. Safeguarding access to the labour market is still a public responsibility but it involves far less direct state intervention. In the

¹⁰ One factor contributing to this development (at least in the EU) were the rulings of the European Court of Justice. In the *Hoffner*, (C-41/90), *Job Centre Case* (C-111/94) and *Job Centre II* (C-55/96) cases the ECJ established that ineffective public monopolies were in violation of former Art. 86 (current Art. 106) of the Treaty.

Netherlands public employment services also shifted their focus towards providing more specialised forms of intermediation to the more disadvantaged groups of unemployed persons. This intermediation is referred to as employment reintegration and regularly involves private service providers. (Freedland et al. 2007, p. 153; Sol & Westerveld 2005; Van Berkel & Van der Aa 2005).

2.4 Factors inspiring welfare reform

Two developments played a significant role in shaping the current system of employment reintegration in the Netherlands. The first is a change in the conception of welfare state protection. The second development is the rise in popularity of the ideas of New Public Management during the 1990s that triggered reforms in many areas of public services delivery (Hood 1991).

2.4.1 *Change in the conception of the welfare state*

Many Western welfare states have been reformed in recent decades (Pierson 2001; Gilbert 2002; Taylor-Gooby 2004; Henman & Fenger 2006). The golden age of welfare was followed by a turbulent period of crisis in the welfare state, sometimes referred to as the age of austerity (Pierson 2001). During this period (1980s and early 1990s) the underlying values and logic of the welfare state were reviewed. With the costs of welfare state programmes outstripping growth in GNP governments sought new ways of keeping the system viable. Most welfare states went through a variety of reforms ranging from cost-containment programmes (*Recalibration*), adapting welfare programmes to new ideas of how targets should be achieved (*Rationalisation*) and adapting welfare state programmes to changes in society (*Updating*) (Pierson 2001, p. 425).

‘Rationalisation’ is reflected in the move towards a stronger emphasis on the activation of individuals receiving welfare support – for instance in mandatory welfare-to-work programmes. ‘Updating’ can be found in the change in attitude concerning entitlement to welfare support: from universal entitlement towards emphasis on individual responsibility. This trend towards individualisation has not only occurred in the Netherlands (Van Oorschot 2006), it can also be observed in several other European welfare states. (Serrano-Pascual & Magnusson 2007, p. 17; Van Berkel & Valkenburg 2007). There has also been a shift away from solidarity towards entitlement based on disadvantage and risk with focus on reciprocity or contractual exchange (Paz-Fuchs 2008; Serrano-Pascual & Magnusson 2007; Van Berkel & Valkenburg 2007). This new focus requires benefit recipients to be more committed to limiting their period of dependency on benefits and to participate actively in welfare-to-work or other activation programmes. This move towards individualisation and individual responsibility is also reflected in the individualisation of the obligations associated with benefits (Faber & Westerveld 2005; Serrano-Pascual & Magnusson 2007). One example is the set of obligations laid down in a reintegration plan or a service programme. Often such plans are shaped as a contract, so as to create commitment and a sense of responsibility with the welfare recipient.

2.4.2 *New Public Management*

The rising belief that states and public administrations had grown too big to be effective was far more wide spread than just the welfare state proper. Under the banner of New Public Management (NPM) these ideas gained pervasive popularity between the late 1980s and mid 1990s and have inspired many public services reforms (Hood 1991). A pivotal element of the NPM approach to public administration is what is called ‘market type mechanisms’ (MTM) (Politt & Bouckart 2004, p. 33). To increase efficiency and choice in the delivery of public services, public agencies should adopt techniques and incentives derived from the market sector. One practical example is the outsourcing of public services by separating policy making from the service provision - or separating purchaser from provider. Services then are commissioned and purchased by a public entity on the market and delivered by private vendors. This idea is based on the assumption that service delivery will improve because providers are exposed to the competitive pressures of the market and thus have a stronger incentive to innovate and strive for efficiency gains. Many NPM inspired public services reforms incorporate contractual governance for the delivery of public services (Domberger & Jensen 1997; De Búrca & Scott 2006). The use of contracts as a governance mechanism has been the tool of choice for “separating the steering from the rowing” as it has been popularly referred to (Osborne & Gaebler 1992).

2.5 **Developments in the Dutch welfare system since the 1990s**

The background to the Dutch situation in the early nineties

The Dutch social security system underwent a period of major reforms in the 1990s in response to discontent expressed during the 1980s and early 1990s (WRR 1987; 1990). This discontent was triggered by the economic crisis of the late 1970s and early 1980s which saw high unemployment combined with high inflation, known as the *Dutch disease* (Rhodes 2001). The crisis was overcome in large part through a tripartite effort of macro concertation that yielded the 1982 *Wassenaar Agreement* and formed the basis for later reforms (Van der Meer et al. 2005). Dependence on unemployment benefits increased sharply in the 1980s, creating a new crisis and leading the Dutch Prime Minister Ruud Lubbers to make his famous pronouncement “*the Netherlands is sick*”. In 1992 following a parliamentary inquiry, the *Buurmeijer*¹¹ *commission* presented its conclusions. These criticised the tripartite governance of the systems for administering sickness and disability benefits as well as the unemployment benefit schemes. Basically it stated that employers and employee representatives used these systems to offload the cost of redundancy onto the tax payers. Against the backdrop of these developments both the social assistance and the public employment services were reformed in the 1990s.

11 See *Enquête naar het functioneren van de organen belast met de uitvoering van de sociale verzekeringswetten*, Parliamentary Papers II, 22730, nr.7-10, 1993.

Changes in social assistance benefits: a move towards activation

In the Netherlands the functioning of the welfare state underwent two changes (Van Berkel 2007) austerity measures were introduced to contain the costs of welfare programmes and a new definition of entitlement, focusing more on individualised responsibility was adopted. This emphasis on individual responsibility had already been introduced in the Netherlands with the Social Assistance Act of 1965. However, the idea of social assistance as a 'last resort' lost ground when unemployment became more widespread in the eighties. Motivated by a desire to counter the problem of benefit dependency amongst an increasing group of long term unemployed and to combat the misuse of benefits in the 1990s welfare reforms were introduced aimed at implementing and enforcing the obligations attached to eligibility for welfare support (Van der Veen & Trommel 1999) and strengthening the emphasis on activation (Van Oorschot 2006). This focus on activation was most clearly reflected in the New Social Assistance Act (ABW) of 1996¹² which replaced the 1965 ABW act. Activation was one of the three main goals this Act was intended to secure (Noordam 1999; Van Berkel 2006; Van Oorschot 2006). More specifically several articles in this Act (*Art. 111, sub 1* and *Art. 113, sub 1, comma e*) re-emphasised the need for self-sufficiency and the duty to return to self-sufficiency by way of acquiring income, preferably through employment. The Act also emphasises the general obligation for benefit recipients to participate in activation programmes (Noordam 1999) and allows for more sanctions to be imposed if benefits recipients fail to cooperate with these activation programmes (Bannink 1999, p.73).

The WIW¹³ Act (Job seekers engagement / Jobseeker employment act) was adopted in 1997 and entered into force in 1998. This Act provided municipalities with the means to force job seekers to participate in activation programmes, underlined the need for social activation and provided placement subsidies for creating work experience positions. Article 118 of the 1996 ABW Act required municipalities to outsource at least some of these reintegration activities. Nonetheless, because municipalities were obliged to purchase most reintegration services from and to work together with the public employment service (PES) providers. This meant that public employment services still played an important role as primary service providers providing career advice, schooling, job brokering and other placement support, as well as administering reintegration subsidies (Noordam 1999, p. 81).

2.6 Changing the Dutch Public Employment Service

The re-emergence of private employment intermediation providers

The state first became involved in employment intermediation in the early 20th century. Initially its activities were limited to the setting up by municipalities of employment funds and municipal labour exchanges (De Graaf-Zijl et al. 2010). Later, under the 1930

12 (Nieuwe) Algemene Bijstandswet (ABW 1996), Wet van 12 april 1995, *Stb.* 1995, 199.

13 Wet Inschakeling Werkzoekenden, Wet van 4 december 1997, *Stb.* 1997, 760.

Employment Service Act, the Dutch public employment service (*Arbeidsvoorziening*) was officially created and charged with bringing together demand and supply in an effective and just manner (WRR 1987).¹⁴ Only in 1940 a unified national employment service was set up by the German occupiers. A complete state monopoly on employment intermediation was not established until after WWII when the Netherlands ratified ILO Convention No. 96¹⁵ (De Graaf-Zijl et al. 2010). The 1960s witnessed the first signs of the re-emergence of private and for profit initiatives when private parties started to offer employment intermediation related services, although officially these remained the domain of PES. These private providers included head-hunters, recruitment and selection agencies and short-term staffing and temporary employment agencies. In 1965 the Provision of Temporary Employment Act¹⁶ was introduced and a few years later a licensing system was set up for *bona fide* private employment services providers (Sol 2001). This effectively created a regulated operating theatre for private employment services providers.

The decline of public employment services

The Dutch PES was reformed in the late 1970s and early 1980s in response to dissatisfaction with activation results (the PES New Style Approach). In 1985 the Dutch Scientific Council for Government Policy (WRR) recommended more reform and the establishment of a tripartite governance structure that included employers, employees and government. It was expected that involving these ‘social partners’ in the running of employment services would create a governance structure in which optimum use would be made of their knowledge and interest in the labour market (Van Gerven 2001). The 1990 Employment Service Act¹⁷ marked an end to the state monopoly on intermediation and the tripartisation of PES became a reality. This same period also saw limited experiments with private providers (temporary work agencies) executing some of the employment intermediation tasks, in particular managing subsidised placements (De Koning 2010).

However, PES was increasingly criticised. The Court of Auditors reported in 1993 that targets were not being met (Van der Meer & Visser 2004). The 1995 Buurmeijer¹⁸ parliamentary commission levelled strong criticism at the tripartite governance of welfare in general. In that same year the Van Dijk Commission that was appointed to evaluate the PES organisation, signalled a total lack of focus on effectiveness (Sol 1998, p. 20).¹⁹

14 Arbeidsbemiddelingswet , Wet van 29 november 1930, *Stb.* 1930 nr. 433.

15 ILO Convention No. 96 (1949), *Stb.* 1951, 543.

16 Wet op de Terbeschikkingstelling van Arbeidskrachten, 1965 .

17 Arbeidsvoorzieningswet, Wet van 28 juni, 1990, *Stb.* 1990, 402.

18 See note 10

19 Commissie Evaluatie Arbeidsvoorzieningswet , besluit # BWBR0006794, *Stcrt.* 1994, 127.

In 1996 the new Employment Service Act²⁰ ended the brief corporatist experiment. The Dutch PES structure was brought under the governorship of the organisations responsible for benefit administration. It was argued that these organisations had a strong incentive to increase the participation rate of the most disadvantaged because they were responsible for paying the benefit claimants (De Koning 2010). PES was also increasingly exposed to private competition (Van Gerven 2001; Van der Meer & Visser 2004). In 1996 the bipartite social pact on *Flexibility and Security* was concluded. In the 1998 *Placement of Personnel by Intermediaries Act* (the WAADI Act)²¹ the foundation was laid for measures that would lead to the abolition of the permit system for private employment service providers (Sol 2001). The final remnants of the public monopoly on employment intermediation were thus removed and the provision of employment intermediation was set to become a regular commercial activity. The role of the public employment services was reduced still further and focused on hard to place benefit claimants and vulnerable groups facing difficulties in accessing the labour market.

Towards the end of the century

The turn of the century was a significant time for employment intermediation services. Municipalities were no longer required to buy reintegration services from the PES (*SUWI experiments*) (Van der Meer & Visser 2004). In 2000 the Dutch PES was split into several independent organisations each having a specific task. Some of these organisations remained public such as the regional Centres for Work & Income: the front office and one-stop-shop for the intake of unemployed and social assistance seekers and for vocational training. Other parts of the PES infrastructure were prepared for privatisation, such as the reintegration service provider *Kliq*²² (Sol 2001). Discussions on the restructuring of the benefit administration and management structures were also in full swing. After some abortive attempts, in 2001 parliament legislated the SUWI Act (Reorganisation of Work and Income Administration)²³ (Van Gerven 2001, p.42; Goudswaard 2001). The law was a compromise between the conservative-liberal VVD party and the Dutch labour party PvdA, that made up the so called *purple coalition* government. The VVD wanted to pursue a NPM type market based reform privatising the public employment services and the administration of unemployment benefits, while the PvdA did not want the task of deciding on benefit applications to be outsourced to private actors. The compromise as embodied in the SUWI reforms held that the task of administering the unemployment benefits would

20 Arbeidsvoorzieningswet 1996, Wet van 29 november 1996, *Stb.* 1996, 619.

21 Wet Allocatie Arbeidskrachten Door Intermediairs (WAADI), 1 juli 1998, *Stb.* 1998, 384.

22 Ironically *Kliq* would go bust relatively soon after the setting up of the private reintegration market as in the end it was not able to compete with private reintegration providers. This is because municipalities and the UWV were not obliged as was originally intended to buy services from this formally public organisation and this meant *Kliq* was not able to generate sufficient turnover.

23 Wet Structuur Uitvoeringsorganisatie Werk en Inkomen, SUWI (29 -11-2001), *Stb.* 2001, 624.

remain within the public domain, while the provision of reintegration services would be left to market forces.

2.7 The 21st century: SUWI and WWB reforms

SUWI reform

The SUWI Act, which came into force in 2002, profoundly restructured the system of Social Security in the Netherlands. One of its main goals was to simplify and streamline the administration of unemployment and disability benefits and public involvement in employment reintegration. The new law enacted three changes that would reshape the way in which social security was administered. First, it established a single public agency for the administration of all unemployment benefits – replacing several corporatist entities (art. 14 SUWI). Secondly, it introduced the principle that the party responsible for paying out benefit claims should also be responsible for the reintegration of claimants into the labour market, thus creating financial incentives for better reintegration activities. The third change was the introduction of the obligation to outsource the delivery of employment reintegration services to private vendors – even though the administration of unemployment benefits would become a public responsibility. This created a new market for reintegration services. The legislator expected that this new market would optimise the allocation of public and private resources in providing reintegration services through the forces of competition and self-regulation. Inevitably this market would exhibit the characteristics of a so-called quasi-market (Bartlett & Le Grand 1993; Struyven & Steurs 2005).

To appreciate these policy choices, one should be aware that policy makers and politicians had previously toyed with the idea of creating a private market for unemployment insurance too. Since the 1993 parliamentary enquiry led by Buurmeijer, there had been general agreement that the previous corporatist system was dogged with flaws and failings. However, policy makers disagreed vehemently about how to replace the old system. Market and state ideologies clashed. SUWI was a compromise between an entirely state operated system and a totally market based system. Thus the choice for the market as the provider of employment reintegration services is a negative choice motivated more by dissatisfaction with previous solutions (state and community) than by a positive evidence based conviction that the market would do better (Sol & Westerveld 2005, p. 387; Van Gestel et al. 2009).

WWB reform

The SUWI reform divided responsibility for reintegrating different client groups between the UWV – the agency that became responsible for the reintegration of unemployment and occupational disability beneficiaries – and the municipalities, which remained responsible for social assistance beneficiaries. Although local governments were encouraged to contract out their reintegration services this was not immediately mandatory. However, whenever

municipalities did outsource their reintegration activities they were required by law to follow the tender procedures prescribed in the SUWI Act. Two years after the implementation of the SUWI Act in 2004 the new Work and Income Act (WWB)²⁴ was passed, replacing the 1996 ABW Act. The WWB Act, just as its predecessor, regulates the provision of social assistance benefits by municipalities. The functions of this legislation are twofold. First, just as the ABW, it provides those in need with means of subsistence in the form of entitlement to social assistance (art. 11 WWB). Secondly, (and this was an innovation) it promotes the labour market participation of benefit recipients by requiring them to cooperate with reintegration or activation efforts and requiring them to accept *generally acceptable available work* (art. 9 WWB). The latter entailed a broadening of the definition of the kind of employment benefit recipients would be required to accept as previously they had to accept *suitable work* implying employment at level for which they were educated or reflecting their experience. This change thus meant that benefit recipients were now required to accept any *available job*.

Furthermore, the WWB Act brought several major changes in the administration of social assistance and employment reintegration support. First, the WWB Act established a new system for financing local governments' social assistance expenditures. Under the previous system the national government reimbursed municipalities for up to 90% of the costs incurred in paying social assistance benefits. The new WWB regime created a lump sum financing model that entitles municipalities to a fixed annual grant. The grant is divided into an income part and a reintegration part. The reintegration part is earmarked for providing employment services. The income part is meant to cover the cost of paying social assistance benefits and is calculated on the basis of projections about the number of benefit claimants. In order to induce municipalities to reduce the number of benefit claimants any surplus the income part yields can be transferred to the general municipal budget. Moreover, municipalities are entitled to keep any surplus they are able to achieve with respect to the income part for three consecutive years. These surpluses are not earmarked and thus municipalities are free to decide how to spend these funds. However, any shortages due to an increase in the number of benefit claimants and thus in the cost of social assistance has to be supplemented from the municipalities' own budget. As a result municipalities were able to accumulate surpluses as they continued to receive money for clients no longer receiving social assistance for up to three years - as long as they succeeded in reducing the number of benefit recipients. The income part of the grant would only be adjusted to the actual number of benefit claimants after three years.

From 2001 until 2007 the budget available to the municipalities and to the UWV for providing reintegration services has been upwards of 2 billion euros a year. In 2008 the municipalities received about 1.6 billion for the financing of employment reintegration services. Until 2008 many municipalities retained strong financial reserves with respect to

24 Wet Werk en Bijstand, WWB (9-10-2003), *Stb.* 2003, 375

the budget available for employment reintegration. However, from 2008 onwards total spending on reintegration started to exceed the budget received from the central government. From 2009 municipalities used their accrued surpluses to finance the difference between the funds provided by central government (1.5 billion) and the actual costs (1.8 billion) incurred in providing employment reintegration services. However, the budgets provided by central government for employment reintegration will continue to decline steadily and are expected to drop to about 1 billion or possibly lower in 2014 (RWI 2010). In addition, between 2012 and 2014 new reforms are expected as government endeavours to cope with politics of austerity induced by the financial crisis. These will almost certainly contain a further budget reduction (of 50% to 70%) while at the same time broadening municipal responsibility in regard to the organisation of welfare support.²⁵

The second change in the system of administering social assistance was the introduction of the obligation to contract out almost all the reintegration activities for which tender procedures are prescribed in the SUWI Act (art. 7 sub 4 and art. 34 sub 3 WWB). This formally established outsourcing as the primary means for providing employment reintegration services. However, two years later, in 2006, this obligation was lifted. The reason for this sudden backtracking by the government at that time was that municipal discretion in shaping its reintegration services would be more in line with the financial autonomy the lump sum grant system implied. Thus since 2006 local governments have the option to either provide reintegration services themselves or to buy services on the private reintegration market. Of course, municipalities still do have to comply with the procurement regulations of the EU and its implementation in Dutch legislation when applicable.

2.8 Employment reintegration as a public task

What constitutes a public task? In theory, a socially desirable activity becomes a public task when the community or the markets fail to realise outcomes considered important by society (Nentjes & Woerdman 2010, p. 45; Freedland et al. 2007, p.104). In the light of this theory it is clear that employment reintegration is a public task because when left to the markets or the communities this task is not provided in a satisfactory manner.

Our historical overview shows that the prevention of different kinds of failures is the main reason why providing access to the labour market remains a public responsibility. History showed market failure: abuse of power by employers; (Sol & Westerveld 2005, p. 3);

²⁵ The exact nature of these reforms depends largely on the final outcomes of political negotiations between governing parties elected in the fall of 2012. However, the failed implementation of the *Wet Werken Naar Vermogen* reform indicates that this will most likely consist of extensive decentralisation coupled with extensive budget cuts. The logic underpinning these reforms - being that by giving municipalities more freedom by merging existing budgets and at the same time reducing these budgets - municipalities will be forced to realise efficiency gains.

community failure (abuse of power by unions); and state or public sector failure (inefficacy and inefficiency) (Nentjes & Woerdman 2010, p. 27). It was to tackle these failures that intermediation between supply and demand in relation to employment reintegration services was made into a public task (Freedland et al. 2007, p.105 -109).

In the five decades covered in the previous section, private for profit initiatives were able to solve some of the previous markets failures that spurred the developments in public employment services in the 20th century. However, changes in the dynamics of the labour market and in the models of production have created new forms of market failure. The move towards post-Fordist production arrangements with large quantities of low skilled jobs being exported to low wage countries resulted in less demand for low skilled workers and higher volatility in relation to the skills required on the labour market (Koch 2006, p. 31). Thus it has become unattractive for private entrepreneurs to provide employment services for this group of low skilled workers: the chance of success is low and required investments are high. This creates a different market failure than that originally encountered, namely the failure to provide access to the labour market for the most disadvantaged unemployed. The exclusion of a specific group at the lower end of the skill spectrum would not have been problematic as long as extensive income support was still acceptable and practicable. However, under the current welfare schemes entitlements are increasingly made dependent on the (improvement of the) employability of the recipient, so that sooner or later benefit recipients will be able to provide for themselves again. Changes in the demand side of the labour market make it difficult if not impossible for lower echelon group of employment seekers to rely on their own employability to provide income security. If these recipients are not actively supported, it is increasingly unlikely they will find a way back to employment. In an era in which combating social exclusion is a recognised European goal and equal access to the labour market is an important public value, it stand to reason that reintegration into the labour market remains a public task.

2.9 Summary

Public employment services have lost their formal function as the primary intermediates between supply and demand on the labour market. Dissatisfaction with the previous system of delivering employment reintegration services in combination with new ideas about how the state should function (NPM) has encouraged governments to apply market type mechanisms and to contract out employment reintegration activities. The shifts between different modes of provision (market, community or state) and the current trend towards a hybrid market presents society with a challenge. It is because of this challenge that employment reintegration services remain a public responsibility governed by public values that need safeguarding even when the delivery of the services are contracted out to private service providers.

Part II

Modelling

This second part of the book is dedicated to the modelling of the contracting out process. The conceptual model to be developed in the next three chapters serves to focus our empirical research. It will include those aspects of outsourcing that require investigation in order to understand what municipalities actually do when safeguarding public values under conditions of contracting out.

We use a number of basic concepts to build our model. Core concepts are ‘safeguarding’ and ‘public values’: they determine the shape of this study and are dealt with in chapter 3. From a concise discussion of the literature we derive definitions of these concepts that fit the specific purpose of this study. The discussion results in a distinction to be made between two approaches to safeguarding public values.

Secondly we conceptualize ‘contractual relationship’. The safeguarding of public values by public authorities is traditionally connected to the bureaucratic way of organizing public affairs. Contracting out creates relationships and work processes that are quite distinct from those common in complex organizations. Therefore we need a fundamental theoretical understanding of how contractual relationships function before we can identify safeguarding instruments and safeguarding activities under contractual conditions. Two approaches to contractual relations are discussed (formalisation and stewardship), both of which affect adherence to contractual arrangements. This is the topic of chapter 4.

The third building block of our model is the concept ‘contracting out process’. A process is a sequence of events. In chapter 5 we aim to capture the succession of choices and activities that find their origin in the contracting out of public services. We devise a process model that divides the process into four distinct phases. It will be shown that in each phase municipalities have a specific set of safeguarding options.

Chapter 6 summarizes the theory presented in the preceding chapters in a succinct model. We refine the research questions and draw conclusions for the design of the empirical part of our research.

Chapter 7 explains the methodology underlying our empirical data collection. We describe why we focus on specific public values and why we selected specific methodologies.

Chapter 3

Public values and the
safeguarding of public values

Chapter 3: Public values and the safeguarding of public values

3.1 Introduction

The purpose of this chapter is to clarify two concepts that are basic for this study: ‘public value’ and ‘safeguarding’. The chapter is divided into two parts. The first part discusses public values for the specific purpose of this study. The second part discusses how public values can be safeguarded.

3.2 Conceptualising ‘public values’

Like so many other concepts in social science the term ‘public values’ does not have a single definition. The concept is used with varying meanings in many different contexts, not only in political discourses and in the media²⁶, but also in scholarly disciplines such as law, sociology, political science, economics and public administration. We do not address all these differences but use a single perspective, that of public administration.

The first issue to be dealt with is to distinguish ‘public value’ from ‘public interest’. The latter refers to an elusive ideal and the former to specific identifiable content (Bozeman 2007). ‘Public values’ thus are considered to be the operationalization of ‘public interests’. This study deals with the concrete and observable rather than the abstract and philosophical and thus in line with the Bozeman approach we will use the term ‘public values’.

The next question is how to define ‘public values’. One general approach is based on the commonly held notion that protecting public values benefits the society as a whole in contrast to private values, the protection of which benefits individuals or specific groups (Charles et al. 2007). A more specific definition is given by Barry Bozeman (2007, p.13): “...those (values ed.) providing normative consensus about rights, benefits, and prerogatives to which citizens should (and should not) be entitled, the obligations of citizens to society, state, and one another and the principles on which governments and policies should be based....”.

Another dichotomy requiring attention is the distinction between a more legal-normative and a more deliberative approach to public values. (Van Gestel et al. 2007). The legal-normative approach is based on the idea that public values are abstract and absolute

26 A *lexis nexis* search revealed that the Dutch term for public values: “publieke belangen” was used in a cross-section of Dutch written media in about 70 articles between May 2010 and May 2011. It was used in regard to a range of topics such as the stability of the banking sector, the reliability of electricity provision and whether state owned casinos can use in public funds for marketing campaigns that might undermine the public policies against gambling addiction.

principles, such as democracy, equality or freedom. Public values then are embodied in major laws, constitutions and treaties. The deliberative approach is based on the idea that public values emerge from the interactions between stakeholders. They are formulated, reinforced and embedded in society through democratic processes. They are susceptible to political debate and shift in content (Beck-Jorgensen & Bozeman 2007).

In addition, there is an economic approach, rooted in the theory of complex externalities. According to this approach, public values coincide with the offsetting of externalities that markets generate (Teulings et al. 2003, p. 5).

A final approach is the one adopted by the Dutch Scientific Council for Government Policy (WRR) and described in its report on safeguarding public values (WRR, 2000). It combines elements from several approaches and defines public values as: “*those values and principles that society deems important and the guarding of which is considered to be a government responsibility – reflected in legislation enacted after a normative debate.*”

From these different approaches we derive two common characteristics of public values that define the concept of public values as used in this study.

A first characteristic is that public values are values shared by a society as a whole. That society considers them so important that these values require safeguarding. Because public values are what a society considers to be public values at a certain point in time they are subject to debate and change over time (De Bruijn & Dicke 2006; Plantinga 2010). This also implies that public values from one society may differ to another. In other words, public values are specific for a certain time and a certain society.

Secondly, shared values are public values if the state is perceived to be responsible, either directly or indirectly, for ensuring that these values are sustained when this cannot be done through society itself. Indeed, the very existence of a state can be traced back to a shared aspiration to uphold shared values. The state may fail in this duty. Such a ‘public value failure’ occurs when the state does not realize or protect a specific public value (Bozeman 2007, p. 144). Thus the second characteristic of public values is that the state is thought to be responsible for ensuring these values are protected and realised, even if the organisations of the state are not always the best instruments for achieving this.

In summary: for the purpose this study we stay close to definition used by the WRR of and define ‘public value’ as a value that is shared by the members of a society and that should be protected by the state.

In the literature two subsets or categories of public values are distinguished: *substantive* or *terminal* public values and *procedural* or *instrumental* public values. The former category contains values that entail achieving a specific outcome or indicate a desirable end-state of existence (democracy, freedom, security, justice or inclusion). The latter group of values pertains to how certain goals or outcomes are achieved (efficiency, equity or equal access to service) (De Bruijn & Dicke 2006; Van Gestel et al. 2007). This distinction is not absolute: the context in which public values are examined could very well influence their classification as either *substantive* or *procedural*.

This study centres upon the welfare state or more specifically social security activation policies or - even more specifically - employment reintegration. The array of substantive public values associated with this context is quite broad, ranging from the prevention of poverty to promoting participation in the labour force or the redistribution of wealth.²⁷ There is an equally broad range of procedural public values, all relating to the way the state interacts with its citizens.²⁸ Indeed the very existence of a welfare state²⁹ is in part a manifestation of a set of specific public values reflecting how people in a society want to live together and how they aspire to offset, collectively, risks such as sickness, old age and poverty (Briggs 2000; Gilbert 2002). Later on in the chapter on methodology this distinction between substantive and procedural public values will be used for the selection of particular public values that are the focus of this research.

One more general observation needs to be made here. According to some, the higher the need to transform a public value into practical goals and means, the more discussion there will be about its interpretation and the more often it will conflict with other public values. This may readily result in the search for trade-offs between different public values (De Bruijn & Dicke 2006). More generally, safeguarding public values frequently implies a trade-off between realising and safeguarding different competing public values.

3.3 Conceptualising the safeguarding of public values

Safeguarding implies actions consciously undertaken to realise or protect public values. Public values may be realized or protected, too, by unplanned societal mechanisms such as the proverbial ‘invisible hand’ of the market. Such mechanisms are not included in our concept of safeguarding. In this case, intervening to ensure specific public values are upheld or to prevent public value failures.

27 Some other objectives derived from important public values in this context are: promoting social cohesion, promoting participation in society, promoting emancipation and redistributive functions.

28 Procedural public values such as equality, legality, predictability and protection of individual rights.

29 Moreover, many of these arrangements have come into being because it was felt that private provisions for safeguarding certain public values did not suffice.

Even though the ‘spontaneous’ occurrence of public values through various social structures is not part of our concept of safeguarding, the phenomenon itself requires some examination. First of all, it should be noted that the unpremeditated or unconsciously coordinated existence of public values is often the aggregate outcome of individual actions intended to secure individual preferences. This does not mean that the state necessarily abstains from any intervention. If other societal systems fail to realise a specific public value, the state may step in. This is referred to as the state’s residual responsibility to safeguard. Indeed, some public values are deemed so important that upholding these should never be allowed to fail (human rights) and more stringent or redundant measures might therefore be necessary for the “just-in-case” scenario, to make sure these public values are safeguarded to the fullest extent. State intervention to safeguard or realise public values can take different forms. But a defining feature distinguishing safeguarding from the unpremeditated or unplanned creation of public values is that it entails some form of active intervention in society by the state (De Ridder 2010).

At a societal level we can discern three general coordination mechanisms for social life that play a role in both the unplanned realisation of

BOX I

Bread as public value

An interesting example to illustrate the development over time of safeguarding of public values is offered by bread (Teulings 2003, p 5). Nowadays in western societies bread is a common commodity available through many outlets. Therefore it may take some imagination to think of bread as public value. However, bread and its variations has been and remains a staple food in almost any society. Because of this significance it has a long history of safeguarding.

When the human race over a time developed the agrarian society, wheat and other grains became an ever more important part of the daily diet. Bread as we know it now was introduced relatively late. It is supposed to have originated in ancient Egypt, where the right type of grain was available (Jacob 2007). As bread became a stable part of everyday eating habits the production scaled up beyond production for personal use. The market became an important mechanism for providing people within more urbanized agglomerations with bread. The rise of the market as means of provision of bread was accompanied, as in many cases, with first instances of regulation by authorities aimed at safeguarding that the masses would pay fair prices for this product and would not be cheated.

As early as Roman times bread size, weight and prices were regulated; this marks the first type of intervention by authorities (the state, cities, kings or lords) to intervene through regulation in order try to safeguard the public value of the availability of bread. Bread prices remained an object of regulation through Byzantine and Carolingian times (Seabourne 2006). In the late Middle Ages England saw large scale regulation of the price and size of bread through *The Assize of Bread and Beer* (Smith 1904; Ross 1956). In the early Middle Ages, as trade in more urban societies developed, guilds came to play an important role in regulating the trade of bread (Jovinelly & Netelkos 2006). Thus communities rather than markets became the more important coordination mechanism governing the availability and quality of bread. In addition, from the 13th century onwards the use of breath stamps became a tool for local authorities to certify that bread would meet specific quality standards. This shows how both the market and the community can contribute to the unpremeditated safeguarding of the quality and availability of bread. Yet, in times of famine or crisis, when the availability or quality of bread was under threat, municipal authorities would take over the production of bread and intervene by directly providing bread to the needy (Creigull 2002). In other words, the provision of bread became a public service. This illustrates how (local) authorities might act on their residual responsibility to safeguard the availability of bread. As industrialization wiped away the guilds, the market grew to become the primary mechanism for providing bread and safeguarding the public value of availability of bread. Gradually the role of the state and community diminished and nowadays the market is the primary mechanism safeguarding this public value. However, even today the state retains a residual role. It does not prescribe weights or prices anymore, but it does provide supplementary safeguards through health and safety standards that regulate production and processing of food.

This example shows that ways for safeguarding of particular public values is not fixed. Different mechanisms (market, community and state) alternate as safeguarding mechanisms throughout history. The example also illustrates how the state retains a residual responsibility even for a public value that is safeguarded well through the mechanism of the market. If the state happens to overlook its importance there always are the outcries of public opinion demanding state intervention when food safety standards are violated.

public values and the deliberate safeguarding of public values (Thompson 1991): *markets* that safeguard public values through competition; *communities or networks* in which the safeguarding of public values is effected through interactions between various stakeholders; and *hierarchies* where public values are safeguarded through directives (De Bruijn & Dicke 2006; Charles et al. 2007; Van Gestel et al. 2007).³⁰ These mechanisms can both facilitate the spontaneous realisation of public values and be used as tools by the state to actively safeguard particular public values. Each mechanism offers specific advantages and disadvantages. Markets create a drive for efficiency but may also set aside aspects of equity or equality. Communities can help in shaping and achieving common goals based on trust and social interaction but there is also a risk that outsiders will be excluded. Hierarchies provide a structure for control, legitimacy and the concentration of professional expertise that are well suited for safeguarding qualities such as equality, however, strong focus on rules can lead to inefficiencies.

Unlike hierarchies, which are deliberately created, the market and communities mechanisms usually develop spontaneously from bottom up. Hierarchies are intended to serve a purpose and the rules and mandates on which they are founded make them highly visible. They are used by the state to intervene if the other mechanisms seem likely to fail. However, in practice all three of these mechanisms have a part to play in the safeguarding of public values (De Ridder 2010). This is illustrated in our example regarding the safeguarding of the public value and the availability and quality of bread in box I.

The next question is how the state fulfils its (residual) responsibility to intervene when public values are not sufficiently safeguarded. In order for the state to intervene to safeguard public values these public values need to be legally recognised as such, giving the state a legal mandate to act. This legal recognition can either take on the form of a legal obligation to respect public values (i.e. fundamental rights) or a legal duty on the part of the state to realise a specific goal or public value (a public task). Such a task requires policies. There are different safeguarding policies available to the state depending on the extent of the intended intervention. Safeguarding policies range from the state simply providing the tools that enable private parties to safeguard public values (civil law under which courts can uphold contracts or individual rights) to the implementation of a more wide reaching regulatory framework (a set of public laws that bind all parties and are enforced by the state). In its most far reaching form safeguarding can involve direct state intervention by way of creating public agencies to provide services directly to those in need. Over time the need to intervene may change and so may the methods used to intervene. An established method may lose effectiveness or new methods may gain favour.

30 In its report on safeguarding public values, the *Scientific Council for Government Policy* (WRR, 2000) lists the following mechanisms that contribute to the realisation of public values: *competition, law and regulation, institutionalized safeguarding through reinforcement of values and hierarchy*. These four specific mechanisms largely correspond to the more general coordination mechanisms that we discuss.

The use of a specific instrument to secure specific public values can have consequences for the realisation of other public values. The choice for a certain method of safeguarding therefore often implies trade-offs between the preservation of several public values. For instance, the use of market mechanisms can safeguard the public value of efficiency but this will be at the cost of equality; community-type institutions will probably generate participation, but can also lead to exclusion or arbitrariness; hierarchical structures may improve the process of safeguarding but can also create unresponsiveness. In an ideal world all these trade-off decisions would be fully informed decisions but due to practical limitations this is rarely the case in reality (Lindblom 1959).

Due to its dynamic nature the safeguarding process often requires a combination of different mechanisms and varying degrees of intervention. Safeguarding public values is indeed like trying to hit a moving target and involves a lot of trial and error learning that will be most reminiscent of “muddling through” (De Ridder 2010).

3.4 Contracting out and safeguarding

This study is about safeguarding public values under conditions of outsourcing in quasi markets. This is an intermediate form of safeguarding inspired by new public management and has increased in popularity during the last two decades (Domberger & Jensen 1997; Bartlett & Le Grand 1993). This particular type of state intervention combines tools supplied by the safeguarding policies at both extremes of the range of policies available to the state. The public services to be safeguarded embody the public values that society fails to realise spontaneously and that were previously delivered directly by public organisations (hierarchies) such as healthcare, pensions or employment services and yet they are delivered by parties (private actors) and through mechanisms (the market) that on their own failed to realise these public values in an unpremeditated or serendipitous manner.

Contracting out can be viewed as a form of safeguarding in its own right. Its purpose is to ensure that public values such as efficiency, effectiveness and choice are realised. At the same time, the use of contractual governance requires additional instruments and activities to ensure that other public values are not jeopardised. Contracting out a public service does not release the commissioning authority from its broader responsibility to make sure public values are safeguarded. Under contractual arrangements, too, the authority will be called upon to ascertain that standards for the delivery of public services are met (Warner & Hefetz 2004; Brown et al. 2006; Warner & Hefetz 2008; Cohen & Eimicke 2008).

The same factors that are expected to contribute to the realisation of the aforementioned public values (efficiency, effectiveness, choice) can imperil other public values, such as those incorporated in standards for dealing with citizens when receiving public services. Contractual governance is based on the assumption that private actors who are competing in a market and who are profit driven have an incentive to be more effective and efficient than public providers (Prager 1994). Furthermore, the competition is presumed to enhance specialisation and innovation, thus increasing the range of service solutions available on the market and thereby choice. At the same time, however, the incentives

under which private providers operate can have adverse effects. The pursuance of profit might drive private actors to cut corners or try to increase profits at the expense of aspects they consider less important, possibly pushing aside public values such as equity or equality that can run counter to profit and efficiency considerations. In particular procedural aspects of service delivery such as standards of conduct that are deemed essential in governing the interaction between state and citizens may suffer. These standards can be traced back to the (procedural) public values of *the rule of law* or the *Rechtsstaat*, and encompass the principles of legality, equality of treatment, predictability, and due process (Nagel 1991).³¹ Private actors – who enjoy more freedom of operation than the state – are not necessarily bound by the standards and principles that bind public actors when delivering public services. The private vendor just is required to adhere to the contract concluded with the public agency and he is not likely to be concerned with anything but the provisions of the contract. The outsourcing agency thus cannot assume that the private provider will, of his own accord, comply with rules of good governance and standards for public services. Yet translating abstract principles, such as due process or equality, into the language of a contract can pose a serious challenge. The commissioning agency might not understand the complexities of wording the contract in a way that ensures that all aspects of the service delivery are clearly described and defined. Furthermore, public authorities are exposed to financial pressure and the necessity to prioritize. This may induce them to favour specific policy targets while not committing themselves fully to safeguard all relevant public interests involved.

The safeguarding of public values within the context of contracting out public services means: ensuring that the services being commissioned are delivered in the desired manner. The “desired manner” consists of two elements: ensuring that the vendor delivers the services that he is being paid for, and ensuring that the public task is fulfilled with due observance of the relevant public values.

3.5 A twofold approach to safeguarding

The distinction, outlined in the previous section, between the two basic elements of safeguarding public values under conditions of outsourcing has led us to adopt a twofold research approach. We distinguish between what we refer to as *basic contractual safeguarding*, or making sure that the services are delivered in accordance with specifications and the *safeguarding of specific public values* that are relevant for the public task at hand.

31 In the Netherlands, almost all of these ‘principles of good governance’ are codified in the General administrative law act (*Algemene Wet Bestuursrecht - Awb*). These principles of good governance regulate the way in which public authorities make use of their discretionary powers.

Basic contractual safeguarding has a lot in common with contractual management in the private sector: how does the buyer make sure he gets what he assumes he is buying. There is an extensive literature to guide us when modelling the relation between buyer and vendor. Still it will be necessary to take into account the peculiarities that may rise out of the fact that the buyer is a public agency and that the services bought are derived from a public task.

Still, an investigation of contractual compliance alone will not provide a complete picture of safeguarding in contractual relations. Even when the commissioning agency manages to ensure satisfactory compliance with contractual arrangements not all relevant public values are necessarily safeguarded – for all kinds of reasons. Safeguarding requirements may not be included in the contract. The commissioning agency may not be willing or able to safeguard all relevant public values. The agency could take adherence of the vendor to specific public values for granted. Therefore part of the research was focused on the safeguarding on specific ‘stand-alone’ public values such as ‘equity’ and ‘privacy’. The selection of such public values to be included in this study will be discussed in chapter 8.

3.6 Summary

In this chapter we have defined public values and safeguarding. Public values are: *those values that society deems so important that the state is tasked with the ultimate responsibility to protect or safeguard them*. We distinguish two kinds of safeguarding: *basic contractual safeguarding* and the *safeguarding of specific public values*. Basic contractual safeguarding is the effort to ensure that services are delivered according to the specifications of the commissioning authority. Safeguarding specific public values is the effort to ensure compliance on the part of the vendor with definite public values that relevant for the public task implied in the services procured. These definitions form the basis on which we develop and refine our theoretical modelling of contractual governance in the coming chapters.

Chapter 4

Modelling contractual
relations

Chapter 4: Modelling contractual relations

4.1 Introduction

In this chapter we develop a model of contractual relations. The literature provides a number of different ways to look at contracts and the relations between contracting parties. We will draw on these theoretical approaches to build a framework that fits outsourcing by public agencies and that incorporates the safeguarding of public values. The purpose of the model is to guide our empirical research. It should focus the research on those mechanisms of real life contractual governance that are relevant for a good understanding of both basic contractual safeguarding and the safeguarding of specific public values.

The chapter starts with a section that explores contractual relationships. Next we discuss the devices available to the purchaser for promoting contractual compliance. The third section contains an analysis of how such tools are used within two different approaches to contractual governance: *formalisation* and *stewardship*. The chapter concludes with a summary of the implications of the above for the model of contractual governance to be applied in this research.

4.2 Contracts and contractual relationships

In this chapter the term *contract* is used in two ways. First we discuss the contract as a legal concept underlying a legal transaction. Later in the chapter we treat it as a tool to be used by the purchaser in his relationship with the vendor.

Basically a contract is an agreement between two or more parties concerning the performance or non-performance of work or the delivery of goods or services in exchange for some sort of counter performance. The characteristic that distinguishes a contract from a mere promise is that the contract has legal consequences: it can be enforced (Llewellyn 1931). For an agreement to acquire legal consequences it is required that both parties have expressed the mutual will to enter into the agreement: there must be a ‘meeting of the minds’ – or in Dutch *wilsovereenstemming* (Van Dunné 2004, p. 317). A contract can take written or oral form. A written contract provides a stronger sense of security. It makes it much easier for parties to revisit what was assented to, to submit disputes to a judge or an arbitrator and to provide concrete proof of what was agreed upon. To afford legal certainty about legal consequences and about the interpretations of contracts, the general principals governing the concluding of contracts are codified in ‘contract law’. Contract law establishes a general framework within which contracts can be concluded and defines the constraints and the minimum requirements to which contracts are subject. The practical content of the contract is dictated by the contracting parties within the scope of contract law in line with the notion of contractual freedom.

A contract is thus a formalised agreement between parties relating to an exchange of some sort that is subject to the constraints imposed by contract law but is otherwise free in form or content and only limited by the intentions and will of the parties. Often it deals with

a broad spectrum of subjects such as the principal requirements of the performance, the remuneration, the measures for monitoring compliance and the distribution of residual rights. It creates a legal reality, formalising the arrangements agreed between the parties and creating legal obligations that are recorded in the contract. The future conduct of parties vis-à-vis one another is regulated by explicitly stating the performances agreed upon, the mutual expectations and rules that will govern the relationship once the contract has been concluded (MacNeil 1977).

A contractual relationship is a relationship between parties that stems from a contractual agreement, either written or oral. The relationship consists of three elements. The first element is the *exchange* of performances, or the mutual fulfilment of agreed obligations. The second element is the formal side of the relationship, it manifests itself in the recording of the mutually agreed arrangements in the contract underpinning the transaction. The third element is the material side, the social relationship³² between the contracting parties, which manifests itself in the way parties interact with each other and in the social norms and expectations and norms that govern how they behave towards each other (Greve & Ejersbo 2005, p. 130; Mitchell 2009). Thus, human interaction and social relationships are a basic element of contractual relationships (Deakin et al. 1994; Rubin 1995).

How do contractual relationships work? It is often simply taken for granted that parties will adhere to a contract and such adherence is deemed a matter of proper conduct. Although it is accepted that at times there will be need to enforce compliance, how such enforcement will take place in practice is open to considerable debate. Theories on the use of contracts revolve around the question of how parties can be made to stick to the agreed arrangements. On the face of it the threat of court action should be a major deterrent to non-compliance, but research has revealed that only a small number of disputes arising from contracts ends up in court (Macaulay 1963; Arrighetti et al. 1997; Mitchell 2009). To some extent this can be explained by the costs associated with bringing a conflict to court.

4.3 The principal-agent model of contractual relations

Contractual relationships are founded on an agreement in which the future behaviour of the contracting parties is defined. One party commissions a performance and a second party will execute this performance in return for a counter performance, usually monetary payment. A classic theoretical approach for understanding the dynamics between the parties to a contract is the principal-agent model. (Eisenhardt 1989 A; Williamson 1979). In this model the commissioning party is referred to as the *principal* and the party executing the

32 It is a social relationship in the sociological sense: 'the likelihood that interaction takes place'. A contractual relationship is a special social relationship in that the likelihood is based on a contractual agreement.

performance is called the *agent*. A central theme in the principal-agent approach is explaining how a principal goes about making an agent comply with what parties agreed to (Eisenhardt 1989 A; Laffont & Martimort 2001).

Compliance is the act by which the agent delivers the desired performance in accordance with the agreed arrangements. Non-compliance is the failure to deliver the performances as desired by the principal. Broadly speaking the theory identifies three causes for non-compliance: 1) miscommunication; 2) an unwillingness on the part of the agent and 3) a lack of knowledge about the causal relationship between performance and results.

Miscommunication – the first cause – means that the agent does not have sufficient information about the wishes and expectations of the principal. The remedy seems obvious: the principal communicates more clearly what he expects of the agent. Still, there is a limit to the amount of stipulation and specification.

The second cause is the inclination of the agent to shirk deliberately from the terms of the agreement. In the economic literature this is referred to as ‘relational risk’ or ‘moral hazard’. The latter term suggests that an agent is ‘morally’ bound to comply – a sociologist would say that social norms demand the compliance of the agent. At the same time, there is an intrinsic risk in contractual relations that the agent will defect from his obligations. This risk stems from what is called ‘information asymmetry’: the difference in information about agency performance between principal and agent. Necessarily the agent will always be better informed about his own behaviour than the principal.

One of the assumptions of the principal-agent theory is that parties to an agreement will act (boundedly) rational and are governed by self-interest. An agent, if left unobserved is prone to ‘opportunism’. Opportunistic behaviour is defined by Williamson (1985, p. 30) as ‘seeking self-interest with guile’. Given the chance, parties in contractual relationships are likely to behave opportunistically. Thus the agent will use his information advantage to cheat and exert less effort than is expected. In other words, the agent is under the incentive to exploit the principal’s lack of information and extract payment from the principal without applying the agreed effort (Eisenhardt 1989 A; Van Slyke 2006). The principal’s remedy is ‘monitoring’: investing in acquiring additional information so as to reduce the gap. Yet there is a limit to how much monitoring can be increased since at some point the costs will exceed the gains in terms of more compliance. The principal then can never be totally sure whether the agent is indeed doing everything within his ability to achieve the agreed performance.

The third cause of uncertainty implies a lack of knowledge about the relation between effort and result both with the agent and the principal. Such knowledge typically is acquired by way of research and development in the broadest sense. The party investing in the R&D attains an information lead that increases the existing information asymmetry. Under such circumstances a lack of results may give rise to two kinds of conflicts. First, the agent has put in a lot of effort which the principal is not willing to compensate due to a lack of results. Second, the agent has exerted little effort and yet claims the opposite - a claim that

is difficult for the principal to verify. The theoretical solution is to write a contract that contains a suitable distribution of the risks involved in such lack of knowledge.

The principal has various measures available for dealing with uncertainty and enforcing compliancy. However, the application of these measures incurs costs and is subject to limitations. These costs are part of what is often referred to as the transaction costs associated with a particular transaction (Williamson 1979; 1991). Transaction costs have to be distinguished from the price of the services bought. They include costs associated with bargaining and drawing up a contract, the costs of finding a suitable agent, the costs of monitoring an agent's performances and the costs associated with managing and supervising agents or enforcing contractual compliance. The principal therefore will weigh the costs of applying such measures against the likelihood that the measure will improve compliance. Depending on the resulting cost-benefit outcome, such considerations may even induce the principal to internalise services rather than contract them out.

4.4 Promoting compliance

We can differentiate between four kinds of measures available to the principal to reduce the relational risk and impose compliance. These are 1) enforcing delivery of the desired performance; 2) simplifying the services to be purchased in order to reduce information asymmetry and opportunities for opportunist behaviour; 3) using an agent who is intrinsically motivated in line with the principal's preferences and 4) using a 'trustworthy' or non-opportunistic agent.

4.4.1 *Enforcement*

We define 'enforcement' as any activity undertaken by the principal to compel the agent to comply with contractual arrangements. For enforcement to be possible at all, two conditions have to be fulfilled. First, there needs to be clarity as to what is being enforced and clear communication to the agent about the performances and results desired. This can be either set out in the contract or discussed orally with the agent during the negotiations. Secondly, the principal needs to possess the means for making the agent deliver the desired performance. He must have power over the agent that enables him to influence the agent's behaviour. This power may be derived from authority or from other properties such as economic resources or the physical ability to coerce. Authority enables the enforcer to reward or discipline the agent with the intention to influence the agent's behaviour. In a contractual relationship this authority is derived from the contract; the principal can reward or discipline the agent by making or withholding payments. A reward or threat should be credible. For instance the easier it is for either party to withdraw from the contractual relationship (terminate the contract) the more implicit power they have in the form of a credible exit threat.

Both conditions for enforcement (clarity and power) can be created or strengthened by making use of formalisation. 'Formalisation' is the creation of a set of rules governing a relationship. These rules may stipulate types of expected behaviour, qualify an expected performance, and specify an arrangement for the enforcement of the rules (Vlaar et al.

2006). A written contract is a good example of formalisation. Contractual language can inform the agent about the principal's expectations. The agent in a contractual relationship then knows what the principal wants and what compliance entails for him. Thus formalisation can create mutual clarity about expectations. Contractual provisions can also give the principal legal remedies (power) for tackling non-compliance. This as it provides the principal with a basis for the application of 'control strategies' to influence agent's behaviour (Kenis & Provan 2006).

One such control strategy is *direct hierarchical control*. Decisions are made and coordination takes place at the top or in the centre and are implemented by the agent under direct surveillance. The principal is authorised to give the agent direct instructions throughout (March & Simon 1958; Blau & Scott 1962; Ouchi 1977; 1979; 1980). The authority the principal needs to exercise this control can be written into the contract. Hierarchical control requires the principal to acquire information on the agent's performance. Provisions to that effect can be stipulated in the contract. Of course, to put such formal provisions into effect, the principal will need to gather information or even be on site to oversee the agent's performance. This requires resources and adds to the transaction costs.

Another control strategy is *binding the agent's behaviour* or *rule-based control* (Child 1984). Rules prescribe the agent's behaviour in specific events or in certain situations. Stipulation of the agent's behaviour can be so extensive as to cover the whole of the service delivery process. This reduces risk and creates predictability. Yet it also limits the agent's freedom of movement and therefore has the drawback that it can reduce his ability to explore creative or innovative solutions to problems.

The third control strategy involves *output or outcome based controls*. The contract stipulates requested outputs or outcomes and the way these will be measured, as well as the rewards the agent is entitled to depending on the outputs realised. The control strategy entails measuring outputs or outcomes and rewarding agents accordingly (pay for performance incentive schemes). The incentive scheme can be designed to create an optimal aligning of the interests of the contracting parties (Sappington 1991; Brown, Potoski and Van Slyke 2006). Compliance incentives are then built into the contract. While an incentives based strategy may require fewer resources than hierarchical control, it gives rise to its own specific problems. Thus the agent could game the incentive structures for the most easily attainable rewards (Davies et al. 2005, p. 28). If multiple incentives are used there is a risk of the most powerful incentives crowding out the weaker ones (Miller & Whitford 2002).

All three control strategies discussed have their own advantages and disadvantages. Hierarchical control may achieve a high degree of compliance while imposing significant limitations on the agent's ability to act autonomously with the result that the capacity and the expertise to coordinate and make decisions must lie with the principal. Rule based control has the advantage of structuring the service delivery process and creating predictability but can result in inflexibility and a limited ability to respond to contingencies. While output or outcome based controls leave the agent with a significant amount of

discretion and produce benefits in terms of flexibility, efficiency and innovation, the outputs and outcomes must be relatively easy to measure and the determinants of outputs must be known so that outcomes can be ascribed to the work of the agent.

The rigorousness of enforcement can vary. The agent may be left with a considerable amount of freedom or he could be held on a very tight rein. Stricter enforcement can be expected to deliver higher compliance, but it likely requires more resources, too. The more rigorous the enforcement, the more the principal has to invest in monitoring the agent's performance and in actively influencing the agent's behaviour.

4.4.2 *Simplification*

The second range of compliance measures available to the principal is 'simplification'. This means that the principal specifies the performance required from the agent in such a way that the behaviour and the output are easy to observe and assess. If the performance contracted for has elements that are difficult to observe, it will be demanding and expensive for the principal to assess how the performance is being executed or whether and to what extent targets are being reached. (Schreuder & Douma 2008, p. 127). Such a high degree of information asymmetry opens opportunities for the agent to shirk. This problem of moral hazard can be resolved by simplification: the complexity of the purchase is reduced and the information asymmetry is limited (Page jr. 1990; Fernandez 2009). Such contractual conditions make it relatively difficult for the agent to evade his commitments.

There are several ways for simplification to be applied. The most straightforward approach is that the principal purchases only those products that are easy to observe and measure. However, not every performance lends itself to simplification without a decrease in quality. If there is a real discrepancy between what the principal originally desired and what the agent can be expected to deliver without too much information asymmetry, the principal has two options. The first is: accepting lower quality. The second is: executing internally those elements of the performance that are difficult to simplify. This last option will incur more costs. The rational principal will seek to optimize the trade-off between higher costs and higher quality.

Another route to simplification is formalisation. The contract spells out in detail the processes for delivering the purchased services. Complexity and information asymmetry are reduced (Vlaar et al. 2006). The agent is left little room to deviate from the prescribed process and has hardly any occasion for opportunistic behaviour. Simplification through formalisation overlaps with rule-based control and entails similar drawbacks in the form of increased costs and reduced flexibility.

Expanding the model

Where the previous two types of measures to increase compliance are based on economic approaches, the next two categories are based on a sociological approach (Meier & Johnson 1977; Jones et al. 1997). This approach moves beyond the assumption that agents will behave opportunistically if given the chance. Instead it is based on the assumption that there are other forces in addition to self-interest that will induce agents to comply even when the principal is unable to observe their efforts (Ghoshal & Moran 1996 A).

4.4.3 *Intrinsic motivation*

The third category of measures open to the principal makes use of intrinsic motivation. Agents can be intrinsically motivated to realise specific goals. By engaging agents who share certain goals the principal can reduce the relational risk and thus the need to enforce compliance. Intrinsic motivation is increasingly acknowledged in the literature as an important factor for explaining the behaviour of agents in contract relationships (Greve 2000; Frey & Jegen 2002; Fehr & Falk 2002; Jensen & Stonecash 2005). Intrinsic motivation is the internal drive to perform an activity without any apparent reward other than performing the activity itself, unlike extrinsic motivation which is a response to external factors (Ryan & Deci 2000). Examples of extrinsic motivation are the fear of the negative consequences of non-compliance or deviant behaviour or the promise of explicit rewards such as monetary incentives. Enforcement is the application of extrinsic motivation to compel agents to comply.

Intrinsic motivation is influenced by several factors that can vary from agent to agent (Deakin et al. 1994). These factors are: the inherent satisfaction agents might derive from performing certain activities, the degree of self-interest or altruism that drives agents, the norms and values agents have and the goals the agents pursue (Heide & John 1992). For-profit entrepreneurs for instance, aim to maximise profits and therefore can be expected to be driven by self-interest. They will comply as long as compliance delivers the desired profits and additional efforts to comply do not erode these profits. These agents are likely to be less intrinsically motivated to comply in full than agents operating on a non-profit basis who are driven by more intrinsic motives. The goals other than monetary compensation that agents pursue can also be part of the intrinsic motivation that drives agents to comply. These goals may be congruent with those of the principal. For instance, agent and principal share a particular calling such as helping the needy or contributing to society or solving a particular problem. Fewer enforcement measures will need to be applied to agents who are intrinsically motivated to achieve similar goals to those pursued by the principal.

To utilise intrinsic motivation the principal needs to have information on the agent's goals and values. Finding agents with goals and values similar to those of the principal will incur additional costs which might or might not be set-off by the long term benefits of applying fewer enforcement measures. Another way for the principal to use intrinsic motivation is 'socializing' the agent (Van Maanen & Schein 1979; Ouchi, 1979; Grusec & Hastings 2008). Norms, values and preferences about how the agent is expected to behave are impressed upon the agent. In the end this may alter the agent's 'premises of decision

making' so that his behaviour will be aligned with the preferences of the principal (Perrow 1986, p. 128). This way of controlling the agent can be termed 'cultural control' or 'social control' (Kenis & Provan 2006). Obviously, socializing an agent is a long term project that takes effort and cannot be done in the framework of a short term contract.

4.4.4 *Trust*

A fourth range of measures available to the principal to increase compliance involves trust. 'Trust' has several different meanings (Rousseau et al. 1998). For the purpose of this study we define trust of one actor towards another actor as "the confidence of the one actor that the other actor will behave in line with positive expectations about his behaviour and has a willingness to show vulnerability". The degree of trust between parties may range from none or distrust to full or unconditional trust.³³ Trust increases as mutual expectations are fulfilled (Rousseau et al. 1998), which is more likely to occur in longer term relationships with frequent interaction (Parkhe 1993). Trust can reinforce itself: if an agent feels he is trusted by the principal this can be an incentive for him to increase his compliance in order to avoid violating the trust placed in him. There are two other factors that contribute to the development of trust: a certain amount of risk and a certain amount of interdependence. Without risk there is no vulnerability and therefore no need for trust and without interdependence there is no connection between parties in relation to the risk.

Trust is often described as a vital factor in the functioning of contractual relationships (MacNeil 1977; 1980; Powel 1990; Deakin et al. 1994; Uzzi 1996; Jones et al. 1997; Dyer & Singh 1998; Faems et al. 2008; Mitchell 2009; Fernandez 2009). It is assumed that the more trust there exists between parties the less relational risk there will be and thus fewer enforcement measures will be needed (Ferrin et al. 2007; Fernandez 2009). The trust factor can be of particular importance when there is a high degree of information asymmetry and the cost of reducing this would be substantial. Trust can therefore contribute to reducing total transaction costs.

The principal can use 'trust' in two ways. He can seek an agent who has a high regard for reciprocity and a record of correct or honest behaviour. The honouring of past commitments can be considered a viable indicator of trustworthiness. The principal can also seek to create a trusting relationship with its agent. Then the trust in the relationship is based on the principal's personal experience rather than on the track record of the agent. Whatever the source of trust in a relationship, the benefits they produce in terms of fewer enforcement measures require time to materialise. Reputations have to be assessed and the agents need time to prove themselves.

33 According to Williamson (1993, p. 484) unconditional trust is mostly found in personal relationships between family members or lovers and almost never applies to commercial relationships, where interaction is driven by a more cautionary calculative approach that builds on the assumption of opportunistic behaviour.

To summarise, there is a variety of measures the principal can adopt to increase compliance. He can straightforwardly enforce the contract, he can contract for merely uncomplicated services so as to limit information asymmetry and he can employ intrinsically motivated or trustworthy agents to limit moral hazard. Each measure has its own advantages and drawbacks and not all measures are suitable for every situation. Enforcement is expected to raise levels of compliance, but requires resources. Simplification reduces the risk of non-compliance and the need for enforcement. However, inherently complex services have limited possibilities for simplification without a loss of quality. High intrinsic motivation and trustworthiness of an agent reduces the need for compliance enforcement. If such agents are not available an emphasis on enforcement is the alternative. If few resources are available for enforcement and if simplification is not an option, contracting a trustworthy agent becomes more viable. We expect a rational principal to be aware of these trade-offs and to decide accordingly. Such a principal will invest in compliance enforcement wherever possible until the point is reached at which the marginal costs of enforcement start to outweigh the marginal benefits in the form of more compliance. The circumstances under which the principal commissions the performance determine what kind of measures will provide an optimal balance between compliance and transaction costs.

4.5 Formalisation and stewardship

The four types of measures for increasing compliance can be lumped together into two main categories that involve specific approaches to contractual relationships: *formalisation* and *stewardship* (table 4.1).

Table 4.1	
<i>Types of compliance promotion measure</i>	
Formalisation measures	Stewardship measures
Enforcement	Intrinsic motivation
Simplification	Trust

Formalisation

Formalisation is the creation of a set of rules (see above in section 4.4.1) for the purpose of influencing and constraining the behaviour of agents. Enforcement and simplification both represent measures that can be categorised under the term ‘formalisation’ because they are based on written agreements between the parties.

Stewardship

For the purposes of this study we define stewardship in line with what Van Slyke (2006, p. 11) describes as ‘stewardship theory’. According to Van Slyke “*stewardship theory examines relationships and behaviors often ignored in economic theories, emphasizing collective, pro-organizational behavior in which a higher value is placed on goal convergence than on agent self-interest*”. In this theory the starting point is not that agents

are motivated by individual goals (as in the principal-agent approach), “but rather are stewards whose motives are aligned with the objectives of their principals” (Davis, Schoorman, and Donaldson 1997, p. 21). The theory emphasises the importance of shared goals, intrinsic motivation and trust for achieving contractual compliance. Intrinsic motivation and trust therefore fall within this category.

This dichotomy between formalisation and stewardship helps us to understand how contracts function. There is a long-standing theoretical debate on the functioning of contracts and how compliance can be increased. This debate pits economic approaches (principal-agent theory) against sociological approaches (relational contracting/stewardship theories). The dominant question debated in the literature on this topic is under what conditions trust or intrinsic motivation (stewardship measures) best explain agent behaviour and under what conditions opportunism is likely to occur. Under the latter set of conditions, the rational principal will put an emphasis on the contract (formalisation measures) in order to build a successful contractual relationship (MacNeil 1977; Williamson 1979; 1993; Deakin et al. 1994; Ghoshal & Moran 1996 A; Poppo & Zenger 2002; Klein Woolthuis et al. 2005; Van Slyke 2006). There is obviously a certain amount of trade-off here: to what extent is the principal prepared to risk allowing time for trust to develop and sacrifice some of the formalisation aimed at enforcing compliance. In the literature on contracting out, trust is often set against formalisation (Rousseau et al. 1998; Zhou et al. 2003; Brown et al. 2007; Faems et al. 2008; Mitchell, 2009). The level of formalisation is thought to be inversely associated with the level of trust and an increase in one is expected to result in a decrease in the other (Klein Woolthuis et al. 2005).

Formalisation, particularly in the form of contracts, incurs costs (Klein, 2000). These include the costs of having the contract drawn up and the costs resulting from a lack of flexibility in the operations of the agent. Too much formalisation may also have a negative effect on the behaviour of the other party and can induce agents to underperform by quashing intrinsic motivations and the development of trust. The agent may interpret strict formalisation as a lack of trust on the part of the principal which in turn can influence the behaviour of the agent in a negative manner (Deakin et al. 1994; Ghoshal & Moran 1996A; Brown et al. 2007).³⁴ Formalisation can diminish opportunities to rely on trust or intrinsic motivation, at the same time a strong emphasis on trust or intrinsic motivation with no or little formalisation can make way for uncertainty that agents are able to misuse. This is, however, not always the case. Empirical studies suggest that high levels of trust between public managers and contractors do not necessarily lead to less monitoring and that trust

34 The assumption is that the agent, prompted by a lack of trust from the principal, may be more inclined to adopt a somewhat antagonistic attitude towards the principal and be more prone to undertake opportunistic actions. This creates a vicious circle in which not trusting agents begets opportunistic behaviour, as intrinsic motivations to comply with agreed arrangements are crowded out by the sense of distrust (Frey & Oberholzer-Gee 1997; Frey & Jegen 2002).

has a larger positive impact on contract performance than the instruments from the formalisation toolkit (Fernandez 2009).

Using trust as the building block of a contractual relationship also has its drawbacks. Relying on trust has the associated risks of abuse. Too much “trust in trust” can be detrimental (Deakin et al. 1994, p17): undeserved trust provides opportunities for misuse or malfeasance (Granovetter 1985; Williamson 1993; Nooteboom et al 1997). In addition, trust commonly comes about in an idiosyncratic manner and is based on personal interaction between actors. The rise of trust therefore is hard to predict or engineer beforehand. Furthermore, trust can easily evaporate: *trust comes on foot and leaves by horse*. Moreover, socialising agents or seeking out intrinsically motivated agents takes time and resources.

4.6 Summary

In this chapter we developed a model of ‘contractual relationships’. We started with the basic assumptions of the principal-agent approach and added insights from the stewardship approach. From this model we derived four kinds of measures that a rational buyer could use to increase compliance and facilitate safeguarding when contracting out services. The dynamics of formalisation and stewardship-based measures can have both positive and negative interaction effects that are likely to affect the way municipalities are able to safeguard public values in contractual relationships. These dynamics will be an object of investigation in our empirical research of contract management by municipalities. More in particular we will want to know if and to what extent municipalities use formalisation and stewardship-type measures in contractual relationships.

Chapter 5

The contracting out process

Chapter 5: The contracting out process

5.1 Introduction

The purpose of this chapter is to provide a model of the process of contracting out. Contracting out public services creates a specific contractual relationship that is different from private contractual relationships because of the conditions under which the purchaser operates. First we present a four phase model and then we discuss which stages in the contracting out process can theoretically be thought of as points of application for the four kinds of measures discussed in the previous chapter. We also define what we refer to as ‘ideal measures’, or basic measures that form the basis of efforts to increase compliance and which we can logically expect to observe in an ideal contractual relationship.³⁵

The setup of the chapter is as follows. In the next section the four phase model of the contracting out process is presented, outlining for each phase its basic features and deriving the ideal type measures for securing compliance that fit the phase. In the following section we discuss four contextual factors that affect the contracting out process. The final section summarises the implications of the model for safeguarding public values in the contracting out process.

5.2 Contracting out in four phases

The four phase model applied in this study is adapted from a framework by Brown, Potoski and Van Slyke (2006). This framework is a useful starting point for discussing the contracting out process and for identifying when during the process each of the four measures to secure compliance can be applied. Following Brown et al. (2006) we distinguish these four phases: the *make or buy* phase, the *selection* phase, the *specification* phase and the *contract management* phase. Each phase has its own distinct set of opportunities and constraints that the principal is confronted with in its efforts to influence and control the behaviour of the agent. Together the phases represent a sequence, the contracting out process that is cyclical. The process restarts with each new round of contracting out although in reality the order of the sequence may vary.

35 For the purpose of this chapter we define this as a contractual relationship that functions based on the simplest assumptions that contracts can be complete and thus self-enforcing and that parties therefore will not show much opportunistic behaviour. While we will call these options ideal options this does not imply a preference or suggestion that these are ideal solutions.

5.3 The make or buy phase

Characteristics

In the first phase, the public agency responsible for the delivery of public services is to decide whether to make or buy the service. Typically the choice will be based on the costs, benefits and risks associated with both options (Hart et al. 1997). Yet the rational buyer will also take into consideration what possible vendors are available and what kind of procurement might be feasible. The agency may even consider the choice between buying a complete service or only parts thereof.

One of the costs a rational buyer will take into consideration are the transaction costs associated with each option. If the transaction costs exceed the costs of internal production the buyer will prefer internal production over contracting out (Williamson 1979; 1985). Transaction costs typically depend on the characteristics of the service being bought and on the *expected* cost of enforcing contractual compliance. In practice the agency looking to contract for services will rarely have a complete picture of all the transaction costs beforehand, if only because he will not be fully informed for instance about the factors that will affect an agent's compliance. Another condition the public agency will take into consideration is their own capacity to produce the service in-house (Domberger & Jensen 1997; Brown & Potoski 2003). Using the capacity to produce the service internally will be weighed against the opportunity costs of not using that capacity. Also the potential buyer can regard it as worthwhile to retain service provision capacity because it could give him leverage over future contractors (Milward & Provan 2000). A buyer with surplus capacity of his own can credibly threaten to exit if the market fails to deliver. Lastly, the rational buyer will gauge market characteristics, in particular the availability of suitable providers, since they influence transaction costs. For instance the search cost or switching cost will be relatively high if only a few capable, qualified or trustworthy suppliers are available.

The choices that the agency actually can make in this phase depend of course on the amount of discretion of the agency. Especially make or buy decisions are often made in higher echelons: legislation may require outsourcing and a political body may favour market type mechanisms, as Brown et al. (2006) pointed out. Under such conditions, the agency merely has to decide how to acquire the service (Fernandez et al. 2008).

Safeguarding

In the make or buy phase safeguarding largely coincides with the make or buy decision itself. The public agency will purchase the entire service if it anticipates low enforcement costs and good compliance. Safeguarding risks are expected to be minimal. The agency will produce the services internally if it anticipates that the enforcement costs associated with contracting out the services will exceed the benefits. There are two options, however, that require more detailed attention from a safeguarding point of view: 'partial outsourcing' and 'embedded providers'. Both options are discussed next.

Partial outsourcing

If the service to be contracted out is made up of a number of different varying components, partially contracting out is an option. The safeguarding measure to be applied is *simplification of the performance*. The service components for which it is relatively easy to establish whether the services have been delivered in accordance with the agreed specifications are to be outsourced. Service components for which it is hard to monitor quality or the performance of the agent (large information asymmetry) will be produced internally.³⁶ Although this approach gives the principal more control over agents, it requires the principal's organisation to have the capacity to produce the more complex service components internally. In the absence of such capacity the principal can either contract out complex components anyway and take the risk of non-compliance or limit service delivery to simple components and accept that the overall quality of the service will be lower.

If the service to be outsourced is inherently complex and difficult to break up, the agency can apply the measure of engaging an intrinsically motivated agent. This could be an agent that is closely affiliated to or embedded within the principal's organisation. Theoretically, compliance is secured in two different ways. First, embedded agents are likely to share the principal's norms, values and goals. Such a shared frame of reference is likely to guide and constrain agents in accordance with the preferences of the principal (Cialdini & Trost 1998, p. 152). Exchanges between principal and agent are facilitated because they share the same informational basis (Jones et al. 1997). The more agents share values, norms and goals (*goal congruency*) with the principal the less enforcement will be needed to ensure the agent complies with the service requirements (Heide & John 1992).

Secondly, engaging embedded agents can increase compliance because non-contractual enforcement mechanisms, social enforcement mechanisms in particular, are more effective when applied in a shared context (Arrighetti et al. 1997; Hedström & Swedberg 1998, p.25; Meier & Johnson 1977; Jones et al. 1997). Such enforcement mechanisms are not directly rooted in the contract that binds the parties but are generated by other institutional links. For example principals and agents that are bound within a specific operational context will be more inclined to cooperate fully because they can expect to be cooperating or conducting transactions again in the future. This expectation will deter parties from non-compliance because their behaviour now and in the past will affect their chances of cooperating again in the future (Heide & Miner 1992). Deviant behaviour on the part of the agent will damage the agent's reputation and cause it to be shunned by the other actors operating within the same context.

36 Breaking up the service in manageable portions resembles the risk management strategy of *compartmentalisation* which is commonly used in high-risk environments (Kenney 2003; Potter & Potter 2003). The larger risk of non-compliance is separated in smaller more easily controllable risks.

5.4 The specification phase

Characteristics

In the specification phase the contract is drawn up that will be that legal foundation of the contractual relationship. The specification starts with the formation of a set of documents such as a call for tender. Such documents are used during the tender procedure to communicate to potential bidders in the market that the public agency requires certain specified services. The specification of the service to be bought, particularly outcome requirements and process quality requirements, requires skill, good planning and careful preparation. One can distinguish between specifications relating to inputs, to process and to outputs. Input requirements refer to anything the provider has to bring to bear before executing the contract, i.e. personnel qualifications or certified operating procedures. Process specifications refer to requirements the contractor must meet during service delivery. Output specification refers to the required service outcomes that must be realized and the standards they must meet. When outcome is difficult to measure or to define, specifying the quality of the delivery process and the input can be used as a proxy. Process indicators leave uncertainty as to whether the goals have actually been attained.

The principal also has to establish the degree of detail with which the service requirements will be specified in the contract. The principal can either stipulate requirements very precisely or leave the provider more discretion³⁷ in deciding how to achieve the desired service goals. If a high degree of uniformity in terms of service quality is sought, the principal will precisely specify process requirements. If the quality of the output is considered more important than the uniformity of the process the principal will stipulate in detail outcome requirements and leave it up to the agents to decide how to achieve these.

Safeguarding

Ideally, a large degree of safeguarding is to be attained by the specification itself. The contract then is virtually complete and clearly communicates all the principal's service preferences to the agent. No room is left for misunderstanding that could lead to non-compliance. Such an ideal contract could be considered as self-enforcing. However, it is not possible to write a complete contract that covers all potential future events (Klein 2000). There will always be a degree of ambiguity and the more complex the service, the more ambiguity has to be allowed for. The commissioning public agency will commonly have to suffice with specifying the service outcomes as clearly as possible. If need be, ambiguities can be resolved through later negotiations or through judicial arbitration.

While the self-enforcing contract is merely a theoretical concept, the principal can write enforcement provisions into the contract. The principal reserves rights to control

37 Discretion: "the ability and right to decide exactly what should be done in a particular situation" (Lipsky 1980 ,p. 13).

enabling him to apply the safeguarding measure of enforcement. Such rights can encompass all formal control strategies (hierarchical, rule-based and output control) discussed in chapter 4, paragraph 4.4.1. Rule-based control can also be used as a measure for simplifying the required performance. Actually the contract then combines simplification and enforcement: it specifies setting out rules to which the agent must adhere when delivering the simplified services. This kind of specification can be done in two ways. The principal can stipulate in detail the agent's discretion and he can write precise service requirements. Detailed process oriented service requirements, dictating how performances should be delivered, reduce the agent's freedom in an indirect way. By removing decision making components from the production process to be outsourced and limiting the agent's discretion, the nature of a performance alters from outcome to process based.

5.5 The selection phase

Characteristics

In this phase of the contracting out process the principal selects an agent that is expected to deliver the services as required. The essential and often difficult part of selection is the ex-ante assessment of the quality of the candidate agent. The rational principal will attempt to weigh the expected quality of service, the price and possibly past performance of potential contractors (Weber et al. 1991). Price and to a certain extent past performance are rather quantifiable selection criteria. Quality is more ambiguous and within the context of social services often riddled with subjective elements. As a proxy of quality of service the principal can use what is known of the quality of the supplier: trustworthiness, willingness to cooperate, and willingness to invest and share risk.

Safeguarding

Ideally the principal realises safeguarding in this phase by selecting an agent who is well qualified and able to deliver the specified services at a reasonable price. This fits the classical enforcement based approach to contractual relations. The principal has other options, however. He can also implement stewardship measures to ensure compliance. This can be done in two ways: 1) seeking *value congruency* by selecting an agent who shares the principal's values and goals and 2) by selecting a *trustworthy* agent. If successful, either way will reduce the need for ex post efforts to enforce compliance.

The assumption is that agents that share the principal's goals and values will be more inclined to comply with the principal's expectations (Davis, Schoorman, & Donaldson 1997; Lundin 2007). Value congruency between principal and agent reduces diverging expectations and misunderstandings and can be a basis for building trust. A shared frame of reference for the parties involved in the transaction can, thus reduce the need for enforcement measures (Jones et al. 1997). Still, it is difficult to make an objective ex ante assessment as to whether a potential agent shares the principal's goals and values relating to service delivery. Goals and particularly values are often undefined and a matter of

perception. More likely the proof is in the proverbial “pudding”; the principal will determine whether goals and values are indeed shared through direct practical experience of how the agent performs.

The trustworthiness of an agent can be derived from the agent’s track record (honouring past agreements) either by way of reputation or by personal experience (Sitkin & Roth 1993; 1998; Klein Woolthuis et al. 2005). A trustworthy agent is more reliable and therefore can be expected to be more inclined to comply with the agreed arrangements (Braynov & Sandholm 2002). Establishing trustworthiness beforehand typically comes with uncertainty. Although an agent’s reputation says a lot about how trustworthy a potential supplier is, ultimately this can only be determined through experience. The principal can circumvent this difficulty by using a two stage selection strategy. The principal enters into a small pilot transaction with the supplier first. On the basis of the experiences during this pilot he decides whether or not to enter into a long term contractual relationship with the agent.³⁸

5.6 The contract management phase

Characteristics

The contract management phase begins when a contract is signed. The agent will go ahead with performing the activities contracted for and the principal will begin ‘managing the contract’: monitoring the performance and intercede if necessary. In an ideal-type contractual relation, the contract is self-enforcing and requires only a minimum of management. In a more realistic model of contractual relations the principal will undertake action to ensure compliance or develop trust. Basically, contract management consists of two kinds of activities: monitoring the accomplishments of the agent and influencing the agent if those accomplishments fall short. Monitoring can take all kinds of different forms, varying from self-reporting by the agent to close observation by the principal. As for supervision the agent, the principal is to apply any of the various control strategies (rule-based, hierarchic and output-based control) discussed earlier. We will now look at each of the two elements more closely.

Monitoring the agent’s performance

Monitoring is all about actively reducing the information asymmetry between principal and agent and thus limiting the risk of opportunism on the part of the agent (Laffont & Martimort 2001). The principal will want to make sure that he has an adequate level of information about the performance of the agent. Adequate information is a requisite

38 This notion of testing the waters is tellingly illustrated in the generally low trust environment of crime and drug dealing where formal contract enforcement opportunities are often scarce. As we know from many crime themed TV series it is frequent practice to affect smaller buys to test the waters and trustworthiness of transaction partners.

condition for any interventions (Koeszegi 2004). Monitoring can take many different forms which all have specific benefits and drawbacks (Brown & Potoski 2006). Information about service delivery can be gathered directly: from internal sources through direct observation, experience, inspection or field audits. The advantage of this kind of monitoring is that it provides richer information exchanges as the transfer of information is facilitated (Lengel & Daft 1989). The disadvantage of this kind of monitoring is that it requires sufficient capacity and is often costly. Information about service delivery can also be gathered indirectly through the delivery of progress reports, reviews of performance data or client records that are supplied by vendors. This type of monitoring is relatively cheap and makes it possible to gather a greater volume of information. The downside is that such information is less reliable than the data gathered directly. The agent who is providing the information may have an interest in misrepresenting its own performance. Third party sources such as certification, audits or customer satisfaction surveys are also a source of acquiring information about the delivery of the services. While this also incurs additional costs it has the advantage that it requires less internal capacity and the danger of deliberate misrepresentation is reduced because third parties are likely to have no personal interest in embellishing performance results. In theory, any deficit in monitoring can be overcome by acquiring additional monitoring capacities. However, the constraints of the real world may not allow for this.

Monitoring and safeguarding

Without information about the agent's performance it is not possible to establish contractual compliance. The gathering of information about the agent's performance is thus an essential part of safeguarding. Monitoring has a dual function in ensuring the services are delivered in the required manner. Of course it primarily is gathering information needed to evaluate service delivery and to intervene if necessary. Yet monitoring also has a built in incentive for the agent to perform; the awareness of being observed is in many cases sufficient to prevent opportunistic behaviour. The extent and manner in which the principal monitors agent performance will depend on the benefits it yields in terms of sufficient and useful information about agent performance, the resources this requires and expectations about how the act of monitoring itself contributes to increasing agents' compliance.

Supervising agents

The supervision of agents consists of all the activities of the principal for controlling and influencing the agent in order to secure his compliance. These activities can be categorized in the three control strategies discussed in chapter 5: rule-based, hierarchical and output-based control. Supervision varies depending on the control strategy applied. Rule-based control means that the principal checks whether the applicable rules and procedures are being followed and intervenes whenever this is not the case. One such intervention could be introducing new rules or protocols. When exercising hierarchical control the principal will instruct the agent directly and oversee the execution of these instructions. The extent of these instructions varies. The more detailed the instructions are the more unilateral and

binding they will be with serious consequences in the event of non-compliance. Less detailed instructions will be less binding in nature with less severe consequences for non-compliance.

Output-based control means that the principal rewards the achievement of specified targets or goals. During the contract period he may alter incentives or create new incentives in order to adjust the agent's behaviour and improve performance. As was mentioned in the section on specification, all these control strategies are based on *formalisation*. Rules of conduct for the agent are recorded in the contract, control prerogatives are provided through the contract and incentive systems, particularly remuneration structures, are also defined in the contract.

The principal can also apply *stewardship* control strategies that use social control and reputation as a means of influencing the agent. Social control can be strengthened through a gradual process of socialisation of the agent. Through the transfer and repeated reinforcement of specific norms about service delivery, the agent's attitude toward the task contracted for will become more similar to the ideas of the principal. To give an example, the principal might repeatedly underline the importance of client participation when providing feedback to the agent in order to instil the value of client participation upon the agent. More generally, this control strategy can be seen as 'unobtrusive control': influencing the premises of the agent's decision making rather than explicitly instructing and correcting the agent (Perrow 1986, p 128).

The extent of the supervision given by the principal to individual agents will be directly linked to the agent's performance and level of compliance. Good performance is thus rewarded with less supervision (trust). The duration of the contractual relationship will also influence the degree of supervision; longer relationships will be based on more trust and thus will be subject to less supervision.

Safeguarding

We assume that in the event of non-compliance on the part of an agent the principal will intervene. In practice the principal can safeguard the service delivery it desires by adequately supervising its agents with a view to increasing compliance with the service requirements. This can be achieved using several control strategies to influence the behaviour of agents. The principal must provide adequate supervision without this incurring too many costs or becoming overbearing.

5.7 Factors influencing the contracting out process

We distinguish four factors that influence the options for safeguarding available to the principal in each phase (Brown, Potoski and Van Slyke 2006). These factors are: the service characteristics, the institutional context, market characteristics and the organisational capacity of the buyer.

Service characteristics

Services to be outsourced can vary in a number of ways. Depending on the characteristics of a specific service, choices in each of the stages of the contracting process may turn out differently. One relevant property of a service is its complexity. The more complex the service, the more difficult it is to define and measure the outcomes of the service and to disentangle short-term results and long-term outcomes (Deakin & Walsh 1996; Van Genugten 2008). Thus the results of trash collection are more quantifiable and measurable than those of most social services (Panet & Trebilcock 2000; Van Slyke 2003; Cohen & Eimicke 2008). Employment reintegration services are inherently complex because they need to deal with a large variety of factors that may form obstacles on the client's road to employment.

The institutional context

The institutional context within which the services are delivered is made up of both the legal framework and the policies that govern service delivery. Legal factors determine the public agency's mandate for contracting the services out while the policies will, for example, define the service goals that a particular public service should achieve. Specific legislative areas (contract law, administrative law, procurement legislation) will contain regulations that limit or augment the choices of the public agency in the outsourcing process. In particular the EU procurement regulations for public agencies (intended to create a level playing field for public contracting in all of the Union) tend to influence the options and alternatives a public agency has at its disposal in a contracting out process.

Market characteristics

A core argument for applying market-type mechanisms such as contracting out is that the disciplining forces of the market (competition in particular) will enhance efficiency, innovation and quality (Domberger & Jensen 1997; Jensen & Stonecash 2005). The underlying assumption is that the market in which the outsourcing takes place is (nearly) perfect. There should be a sufficient number of suppliers and buyers or, at least, the market should be highly contestable, meaning new suppliers can easily enter it. Preferably information about the quality of the vendors and their products is readily accessible. However, the perfectly competitive market is a construct that does not exist in reality. Numbers of suppliers and numbers of purchasers and the degree of transparency are three key variables that characterise real world markets.

Many contemporary public service markets have the additional characteristic of the quasi-market (Bartlett & Le Grand 1993; Lowery 1998; Kähkönen 2004). A key feature of such a market is that the public agency buys services to be delivered by the vendor to a third party (e.g. a patient or an unemployed person being trained in job skills). This implies that the buyer cannot make first hand appraisals of the performance of the provider and thus a quasi-market structure may amplify the information asymmetry between principal and agent. All these market characteristics are likely to be relevant for the choices available during the contracting out process.

Organisational capacity of the buyer

A fourth contextual factor that we can expect to influence the contracting out process is the governmental or public agency's capacity for core contract management activities such as planning, resource allocation, monitoring, evaluating and the handling of contractual relationships. The resources and capacities that the outsourcing public agency has available may vary in kind and in amount, but are scarce by definition. The development of these capacities is vital for ensuring the successful management of any form of service delivery and can have a profound impact on various aspects of the different phases of the contracting out process (Brown, Potoski and Van Slyke 2006). Furthermore the outsourcing party (the *principal*) will invest its resources in specification, selection, monitoring and enforcing to the extent that such investments will equal the returns in terms of the service quality delivered by the vendor, the agent. In real life outsourcing processes, the choices of a public agency may diverge considerably from this ideal-type. Nevertheless, the amount and quality of the resources available will influence the choices the outsourcing public agency makes. One plausible assumption concerning this factor: the more experience and knowledge the public agency has of contracting out, the more likely it is that deliveries will be in accordance with its requirements. Another assumption that is supported in the literature is: the more expertise the public agency has in-house about the procured service, the more successful the agency can be in effectively supervising the contractor (Provan and Milward 2000; Peat and Costley 2001).

5.8 Safeguarding throughout the contracting out process

The principal has a compliance promotion package with a variety of safeguarding tools, so the analysis of the previous sections shows. We also demonstrated that theoretically each phase in that process is suited for its own specific set of compliance measures. During the make or buy phase measures to simplify the required performance can be applied or embedded agents can be engaged. In the specification phase the principal can use *formalisation* type measures (simplification and enforcement). The selection phase fits with *stewardship* measures such as finding value congruent or trustworthy agents. Finally, in the contract management phase both enforcement and socialisation are the tools to be used: enforcement to compel the agent and socialisation to foster intrinsic motivation and develop trust.

Any principal has a number of difficulties and dilemmas to cope with when outsourcing a public task. One challenge is how to achieve the required performance at the lowest transaction costs. The principal will seek to combine the different enforcement measures in order to achieve the optimum effect. For example buying services of which the outcome is hard to assess will involve costly enforcement measures and the principal will therefore opt to produce these services internally. Should this prove impossible the principal could consider creating a solid base for enforcement within the contract during the specification phase and to reduce the risk of non-compliance by specifying the service requirements in detail. In cases where it is hard to establish the quality of the service

beforehand and direct enforcement is not possible the principal might seek out a trustworthy agent as a means of ensuring compliance.

Another dilemma is how to balance the safeguarding of the diverse public values that are related to a specific task. For instance, public services need to be predictable and uniform in order to guarantee equal treatment of citizens. This can best be realised by applying strategies of the formalisation kind: hierarchical control and rule-based control. However, services are often contracted out with the purpose to improve the effectiveness or the efficiency of the service or to customise a service to a client's specific needs. Then stewardship measures such as social control or fostering trust are called for. In other words one measure that is applied to safeguard one specific public value may well adversely affect other measures aimed at safeguarding other public values. The principal will have to resolve this issue in the contracting out process.³⁹

5.9 Summary

In this chapter we set out to deepen our understanding of the contracting out process. To this end we presented a theoretical model that divides the contracting out process into different phases. As we have seen each of the four phases (*make or buy* phase, the *selection* phase, the *specification* phase and the *contract management* phase) involves specific challenges and opportunities for ensuring that services are delivered in compliance with the requirements. Table 5.1 shows the theoretical safeguarding options available to the principal as derived from the analysis in this chapter. The table contains both ideal and specific safeguarding options. The latter is divided into formalisation and stewardship-based measures. This four phase model will be applied in our empirical study into the way public values are safeguarded in practice when employment reintegration services are contracted out.

³⁹ See paragraph 5.5.

Table 5.1*Summary of theoretical safeguarding options*

Type of measure to increase compliance	Ideal measures	Formalisation measures		Stewardship measures	
		<i>Enforcement</i>	<i>Simplification</i>	<i>Intrinsic motivation</i>	<i>Trust</i>
Contracting-out phase					
<i>Make or buy phase</i>	Based on <u>transaction costs</u> considerations either making or buying		<u>Deconstructing</u> service products into simple subparts, eliminating complexity	Use <u>embedded providers</u> , utilising social control.	
<i>Specification phase</i>	“ <u>Complete</u> ” contract; stipulating in detail the agent’s products	<u>Preserving rights of control</u> in the contract as formal base for control strategies	<u>Extensive stipulation</u> of delivery process and performance	<u>Limited specification</u> as agents share goals	<u>Limited specification</u> as agents are reliable
<i>Selection phase</i>	<u>Price-quality decisive</u> selection Criterion			Selection of <u>value congruent agents</u>	Selection of <u>trustworthy agents</u> based on reputation
<i>Contract management phase</i>	<u>Monitoring and supervision</u> based on efficiency	Control through <u>comprehensive contract management</u>		<u>Socialising</u> agents into sharing of values or goals.	<u>Building trust</u> during contract relation



Chapter 6

Refining research questions

Chapter 6: Conclusions: the research questions

6.1 Introduction

The object of research of this study is the way municipalities safeguard public values when contracting out employment reintegration services. In this chapter we summarise our theoretical analysis and its implications for our research design. It is not the purpose of this study to test a particular theory. Rather, the theoretical analysis resulted in a framework that models the object of research and that will guide empirical investigations. We will summarise it in the next section. On the basis of this theoretical framework we refine the research questions and describe our approach to basic contractual safeguarding and the safeguarding of specific public values.

6.2 Theoretical framework

6.2.1 *Public values and safeguarding*

The two central concepts of our theoretical framework are: ‘public values’ and ‘safeguarding’. Therefore they require a precise definition. In our framework, public values are: *those values that society deems so important that the state is tasked with the ultimate responsibility to protect or safeguard them*. This implies that the state or any other public body responsible for performing a specific public task is required to ensure that the associated public values are safeguarded.

We define safeguarding as: *ensuring that services are delivered in accordance with the requirements*. We made a distinction between *basic contractual safeguarding* and the *safeguarding of specific public values*. ‘*Basic contractual safeguarding*’ is ensuring that services are delivered in accordance with the contractual service requirements and in accordance with the wishes and standards of the commissioning public agency. ‘*Safeguarding specific public values*’ is ensuring that public values governing particular aspects of service delivery are preserved, regardless of whether or not these values are referred to in the contract.

We make this distinction because to limit the investigation to basic contractual safeguarding would lead to the inclusion of only those aspects of safeguarding that the commissioning public agency deems important and writes into its contracts. However, municipalities are likely to focus on their own policy objectives without taking the bigger picture into account. We cannot assume that the municipalities are aware of the full range of public values that require safeguarding, or that they are willing and able to safeguard public values comprehensively.

6.2.2 *Dynamics of contractual relationships*

In chapter 4 we developed a model of contractual relationships with the behaviour of the principal (the buyer) and the agent (the vendor) as focal points. The model contains four types of measures that the principal can employ to promote compliance on the part of the agent. These measures are: *enforcement*, *simplification of the performance*, *intrinsic motivation* and *trust*. These measures to promote compliance are grouped into two larger categories: *formalisation measures* and *stewardship measures*.

Formalisation measures' use formalised rules and instructions to control agent behaviour and reduce the chances of non-compliance. Formalisation is either used as a basis for enforcement or as a tool to simplify what is required of the agent. Enforcement comprises all those measures intended to force the agent to comply. Simplification is the reduction of the complexity of the services to be bought, with the intention to limit the agent's discretion and forestalling opportunism. The key assumptions underlying formalisation is that agents will act opportunistically whenever the occasion arises. In our empirical research we will investigate to which extent municipalities do employ formalisation.

'Stewardship measures' are based on the assumption that the intrinsic motivation and the trustworthiness of the agent are in itself a safeguard against opportunistic behaviour. Intrinsic motivation means that the principal and the agent share relevant values and goals. Intrinsic motivation can be fostered by cultivating shared values. Trustworthiness of the agent means that the agent can be trusted to execute the contract as a faithful steward. Such trust can be based on reputation or it develops through experience in a contractual relationship. The principal therefore can use such agency characteristics to reduce or minimize the need for outright enforcement measures, and the costs associated with enforcement. In our empirical research we will investigate to which extent municipalities do employ stewardship.

There is a complex interaction between formalisation and stewardship measures. Usage of the one may counteract or crowd out the effectiveness of the other. It complicates the choices of the principal concerning his toolkit of safeguarding measures. In our empirical research we will investigate if and how municipalities balance the two categories of measures and with what result.

6.2.3 *The contracting out process*

In chapter 5 a model is developed to capture the dynamics of the contracting out *process*. The process is divided into four phases: the *make or buy* phase, the *selection* phase, the *specification* phase and the *contract management* phase. For each phase we identified particular compliance issues, and for each phase we derived an ideal type set of measures that the commissioning public agency can apply to promote compliance. Choices concerning the safeguarding toolkit made in one phase affect the application of measures in

a later phase of the contracting out process. For example, the basis for enforcement as a way of ensuring compliance is laid in the specification phase while the actual usage occurs in the contract management phase. The options open to the commissioning public agency in each phase are influenced by contextual factors (*the service characteristics, the institutional context, market characteristics and organisational capacity of the buyer*). This four phase model is used to organize our observations in the empirical investigation of the way municipalities safeguard public values when contracting out public services.

6.3 Refining the research questions

From the previous chapters arise number of choices concerning the design of the empirical research and the questions that will guide it. First of all, we made the distinction between ‘basic contractual safeguarding’ and ‘the safeguarding of specific public values’. For each of these two objects of research we will formulate separate research questions even though the general structure and theoretical framework remain the same. These questions are addressed in empirical parts (part III and IV) of this study. Beyond that, stemming from the analysis in chapter 4, an additional question has been added to our main research question.

6.3.1 Basic safeguarding

The research question in relation to basic safeguarding is:

- *RQ1: How do municipalities perform basic contractual safeguarding when contracting out employment reintegration services?*

To answer this question, we examine each phase of the contracting out process, recording how municipalities act in each phase to ensure that services are delivered in accordance with their requirements and in compliance with the contract.

6.3.2 Safeguarding specific public values

The research question in relation to safeguarding *specific public values* is:

- *RQ2: How do municipalities safeguard specific public values when contracting out employment reintegration services?*

The approach for collecting data to answer this question is basically the same as that for answering the previous research question. However, there are a number of possible deviations that require separate investigation. First of all it is not certain that the commissioning public agency has the explicit intention to safeguard these specific public

values.⁴⁰ Furthermore, these public values may or may not be included in the contract specifications and may or may not be subject to the monitoring by the principal. Therefore we focused on investigating how preferences relating to specific public values were communicated to the service providers and whether the service providers were monitored or supervised in relation to these.

6.3.3 *Formalisation and stewardship in contractual relations*

The analysis of chapter 4 gives rise to an examination of the dynamics of formalisation measures and stewardship measures in our empirical research. Data are to be collected about how *formalisation* and *stewardship* relate to one another within the contractual relationships. We assume that the contracting out of employment reintegration services will feature both types of measures because these services require specialised skills as well as flexibility. Agent autonomy is called for to enable flexibility and the use of specialised skills. Yet the principal will also want to retain a certain degree of control in order to guarantee that relevant public values are safeguarded. We typically can expect a trade-off between contradictory requirements. Formalisation (rules and regulations) is the tool of choice to guarantee public service values such as equality, transparency and predictability. Stewardship, which may counteract formalisation measures, will be needed to allow for a degree of innovation and customisation. For this reason we have included the following research question:

- *RQ3: How do formalisation and stewardship measures feature in the safeguarding arrangements in contractual relationships under study?*

40 The actual selection of these aspects will be discussed in our methodological chapter.



Chapter 7

Methodology

Chapter 7: Methodology

7.1 Introduction

This chapter explains the methodology applied in our study. The chapter is divided into three parts. The first section contains an explanation of how our research questions relate to the general set-up of the study. This is followed by an account of the reasoning behind the choice of specific public values for the answering of our second research question. Finally, we look at the two primary data collection methods (content analysis and interviews), the choices made before, during and after the gathering of data and the criteria on which the selection of municipalities for the case study is based.

7.2 Relating research questions to methodology

The overarching research question in this study is how Dutch municipalities safeguard public values when contracting out employment reintegration services. We answer this based on three main research questions:

- *RQ1: How do municipalities perform basic contractual safeguarding when contracting out for employment reintegration services?*
- *RQ2: How do municipalities safeguard specific public values when contracting out for employment reintegration services?*
- *RQ3: How do formalisation and stewardship measures feature in the safeguarding arrangements in contractual relationships under study?*

Object: contractual governance

In order to answer these questions we developed a theoretical model and collected empirical data. The empirical object of our study is contractual governance, which we define as the contractual relation between a municipality and a contractor. We investigate how such a relationship begins and develops and how both parties in the contractual relationship behave toward each other so as to gain a better understanding of the safeguarding of public values in contractual relations. Our investigation focuses on the way contractual governance took shape during the period of our study (2008 - 2010) and on how it had evolved from 2004 onwards when municipalities were obliged to contract out on a large scale. The outcomes of the contractual process are not examined. There are two reasons for this.

First, given the central research question, we are not so much interested in the outcomes, in terms of the amount benefits claimants reintegrated into employment, that are realised by

privatisation as in the consequences of privatisation for safeguarding public values. Contracting out instead of internal production comes with a change in governance structure. Our research interest is in the implications of this change (i.e. the introduction of contractual governance) and its consequences for service delivery and for the safeguarding of public values.

Second, a lot of research already has been dedicated to outcomes of privatisation in the field of employment reintegration services, especially to the question whether reintegration by private providers is more effective than reintegration by public agencies. It has proven difficult to establish such outcomes of service delivery and to determine causal relationships (Sol et al. 2009, p. 212- 215). The main reason is that the policy environment is highly complex and many variables may influence outcomes (Konle-Seidl & Eichhorst 2009, p. 422). Exogenous and endogenous factors may influence outcomes in such a way that the impact of the change in governance on the final outcomes is lost or blurred. On the other hand, there is little research on the subject of this study: *“the impact of contracting out and the change in governance this represents”* and the effect this might have on the safeguarding of public values in the Dutch context.

Dual method: combining content analysis and case studies

The inputs and the process of contracting out are studied in two ways. We investigate the legal reality of contracting out with a content analysis approach and we use case studies to look into the empirical reality behind the legal documents.⁴¹

Studying contractual relations implies an examination of the contracts that form the basis of those relations. The outsourcing of employment reintegration services usually starts with a tender procedure and all contractual obligations can already be found in the tender documents that form the basis for bidding by prospective contractors. Content analysis was applied for the investigation of tender documents. Studying contractual relationships also implies the study of the relationship between the contracting parties as it develops over time. For this part of the investigations we did nine case studies in as many municipalities. At the start of the project in early 2008 five exploratory interviews⁴² were

41 Strictly speaking case studies are a research approach and content analysis is a method that can also be used in a case study. For the purpose of more easily distinguishing between the two instances of data collection we call our broader examination of the tender documents content analysis and the more in depth investigation (using both document analyses and interviews) of contractual relations at municipalities our cases studies.

42 The interviews were held with seven different professionals responsible for contracting with private employment reintegration service delivery providers. These professionals were all employed by five different municipalities: Amsterdam, Zwolle, Schiedam, Purmerend and Coevorden. These municipalities were selected on the basis of their availability to cooperate and the size of the city. The interviews were topical semi-structured interviews and consisted of 29 open ended questions covering three topics: the procurement process, the contents of the contract and the

conducted with professionals operating in the field to test drive this dual approach. This was followed by a period of desk research during which relevant policy documents, laws and tender documents were studied.

7.3 The criteria for selecting specific public values

The second research question asks for the examination of the safeguarding of a sample of specific public values. In this section we discuss how we selected these specific values. A first broad ordering of relevant public values is the distinction between substantive public values and procedural public values. Substantive public values are inherent to the policy area at hand – employment reintegration in our case. Procedural public values are derived from the normative model of good governance. We will include both substantive and procedural public values in our sample.

Relevant substantive public values

The core substantive goals of Dutch reintegration policy are ensuring income security for the unemployed by *providing income for those in need* and *promoting participation* of people in society through the effective activation of benefit recipients. The goal of *promoting participation* seems the most relevant for this study because the delivery of employment reintegration services is meant to realize this goal. Yet it is not a topic in this study; the main reason is that such an approach would amount to evaluating the effectiveness of reintegration policy as implemented by the municipalities. As indicated above, there has been a myriad of academic investigations examining policy effectiveness (Bruttel 2004; Struyven 2003; Struyven & Steurs 2005; Van Berkel & Van der Aa 2005; Bredgaard & Larsen 2008) and several policy evaluations (MSZW 2006; MSZW 2008; Divosa 2008A). The findings of these studies showed mixed results and there is still much debate about whether employment reintegration is actually effective and (economically) efficient (MSZW 2008; NICIS 2008). Given the earlier mentioned complications to establishing causalities we feel that another study in this area would not add new insight to this debate.

Rather than investigating the effectiveness of contractual governance for the *promotion of participation* we have investigated aspects of service delivery that are supposed to attribute to achieving this substantive target. These aspects (or sub goals) are: *customisation* of service delivery (*maatwerk*) and *durable outcomes* (*duurzame resultaten / uitstroom*). The first sub goal refers to a modality of service delivery supposed to produce good outcomes

contract management. In preparation for these interviews and to generate input for questions, several purchasing documents used by each of these municipalities were analysed. The interviews were recorded and transcribed.

and the second refers to a specific quality of the outcomes to be produced: a durable outflow away from social assistance into employment.

Consequences of contracting out

There are two major differences between the contracting out of service delivery and the traditional direct “public” provision of these services. The contracting out of services entails a shift away from hierarchical towards contractual governance and often involves private commercial actors.

Shift towards contractual governance

Several problems accompany the shift towards contractual governance.⁴³ One of the primary problems is that contracts tend to be incomplete due to the fact that the costs of drafting them limit the detailing of targets and requirements. There is little room for manoeuvre when translating ambiguous or complex public policy targets into terms and conditions in a contract. Problems may also arise in relation to the measurability and definability of service quality as this also does not lend itself for translation into clear contractual requirements. These limitations may lead to the more complex or ambiguous aspects of service delivery becoming lost in translation during the drafting of the contract and pushed aside by the more easily definable aspects of service delivery. In view of this we selected aspects of service delivery that will probably be adversely affected by the need to translate them into contractual terms and conditions.

Shift towards using private or for profit service providers

Private actors are assumed to have different motives than public actors. Private commercial providers are generally expected to be driven by profit. This provides private actors with an incentive to operate effectively and efficiently that public actors do not have. The downside to this is that the quest for profit might tempt private actors to cut corners or seek to increase profits at the expense of quality or to the detriment of the safeguarding of public values. Thus we have selected aspects of service delivery that might be neglected by the private provider because these could have a negative impact on profits.

43 In view of the fact that chapters 5 and 6 contain a more detailed overview of the issues and challenges created by contractual governance here we refer briefly to only those relevant to our selection.

To summarise we base the selection of the specific public values investigated in this study on the following the selection criteria:

- The selection will contain both substantive and procedural public values.
- The relevance of aspects with regard to the delivery of employment integration services.
- The likelihood of selected public values being affected by contracting out and the problems associated with contractual governance.
- The expectation that the profit motive that drives commercial actors may lead to concessions in safeguarding specific public values.

7.4 Selected specific public values

7.4.1 Customized service delivery

As we established in chapter 2, during the 1990s a shift took place towards a more individualised conception of welfare state support (Serrano-Pascual & Magnusson 2007, p. 17). This more individualised approach is reflected in the notion that welfare support in the form of activation services should be tailored to the needs of the individual benefit recipient through more individualised service provision models (Van Berkel & Valkenburg 2007). A drive for “customisation” features prominently in preparatory works⁴⁴ for the WWB Act where it is referred to as being an important aspect of policy delivery. More recently the courts have acknowledged that clients are entitled to customised services.⁴⁵ Customisation⁴⁶ of service delivery is an ambiguous concept (Valkenburg 2007; Borghi & Van Berkel 2007) and requires further definition. The *Rechtsstaat* dictates that state powers and especially interventions that concern individual citizens, are bound by rules and need to have a legitimate basis in law. The discretion that inevitably accompanies the use of customised solutions leaves considerable room for arbitrariness or inequality in the interaction between state and citizen, which conflicts with *Rechtsstaat* principles. Such conflicts can particularly easy occur, in the area of social security where the basic notion is that individuals in determinate circumstances have a right to a specified amount of support. It is an entitlement, and not a favour or a piece of good luck (WRR 1994, p.24).

44 In the preparatory works the term is used at least 23 times and it is explicitly referenced that support given in the context of employment reintegration needs to be customised.

45 In fact in two recent judgements it was established that service trajectories that clients are required to participate in need to be customised to the circumstances of the individual and be based on a careful consideration that takes these circumstances into account. Centrale Raad van Beroep, 10/3003 WWB + 10/3004 WWB (LJN BW4084) and Centrale Raad van Beroep, 09/4180 WWB + 09/5485 WWB (LJN BW7522).

46 In the literature also referred to as individualised, personalised or tailored service delivery.

The use of such an ambiguous concept is likely to create uncertainty about the type of service or the level of support the provider is required to deliver. It may result either in an over-generalised description of the services required or in an over-formalised description of these services. An over-generalised description leaves room for almost anything and provides no guiding standard at all. An over-formalised description will create a straitjacket (Tollenaar 2010, p. 149) that ultimately inhibits the very flexibility that the customisation of services is intended to achieve.

All in all, customised service provision complicates the application of contractual governance. A contractual relationship based on straightforward, well defined outputs is relatively easy to manage and has limited transaction costs. This tension between the *Rechtsstaat* principles of administration of justice and the effectiveness of the service delivery is the reason to include “customisation” in the set of specific public values to be examined.

The way in which municipalities safeguard customization was investigated in the following ways. The relevant definitions and rules in the contract were identified and analysed in order to see what kind of customized service delivery municipalities intended to buy. In addition, data were collected about the way the municipalities dealt with customisation requirements during the contract process and to which extent they tried to make sure that the services delivered by the suppliers met the stated requirements.

7.4.2 *Durability of outcomes*

Durability of outcomes refers to the period of time that the immediate results of re-integration activities hold on. It is another concept that is widely used in policy discourse about employment reintegration. Thus the explanatory memorandum accompanying the introduction of the WWB Act emphasises ‘durability’ as a key element of promoting participation. ‘Durability of outcomes’ also plays a major role in discussions on the effectiveness of active labour market policies because the positive effects of activation, such as schooling, are often only visible after five to eight years (OECD 2005, p. 183; Konle-Seidl & Eichhorst 2009, p. 418).

If ‘durability of outcomes’ is a stated goal for employment reintegration services, it can pose problems for contractual governance. Contractual relationships have a limited time frame, often no more than two years. How long can service providers reasonably be expected to wait before being rewarded for achieving durability of outcome and how much influence do these service providers have on the continuance of employment in the longer term after they have delivered the services? Either the incentive will become less effective as time passes with no rewards or the service provider will make less effort as it becomes clear that its influence on the outcome is dwindling. These pragmatic concerns may drive out more fundamental considerations in the contractual relationship, such as what ‘durability of outcome’ actually means.

We established how ‘durability of outcomes’ is safeguarded in the contracting out process in the following ways. We determined how durability was defined and what

requirements it was subject to according to the contract and tender documents. We analysed the measures the municipalities take to ensure that contractors meet the requirements, including incentives. Lastly we observed what municipalities do to ensure compliance and to what effect.

7.4.3 Prevention of adverse selection

The first procedural public value included in the selection is the *prevention of adverse selection*. This is one of the core public values of the welfare state and is related to the value of *equity* (in the sense of just and deserved).

The inclusion of adverse selection is based on the following considerations. In relation to the welfare state equity is generally considered to be of great importance (Barr 1993, p. 4). This emerges most strongly in the compensation of people who are undeservedly disadvantaged. These days this is most apparent in the individualised support that assistance seekers are given as part of the ‘activation’ paradigm that dominates many contemporary welfare states. A key element in providing this individualised support is the allocation of resources dedicated to providing in-kind services, such as employment reintegration services. In a classical bureaucratic setting the allocation of resources is done by street level bureaucrats who dispense state support to benefit claimants (Lipsky 1981). However, when the provision of services is contracted out it is unsure who will be responsible for allocating resources. If this is the responsibility of the personnel of the private service providers, there is a risk that profit motives will drive out equity considerations.

In this study we use practical indicators for observing the safeguarding against adverse selection. We distinguish two specific forms of adverse selection: *cream skimming* and *parking* (Van Berkel & Van der Aa 2005; Struyven & Steurs 2005; Koning & Heinrich 2009). *Cream skimming* is the ex ante selection of clients with whom service providers are most likely to achieve the desired outcomes with the least effort.⁴⁷ *Parking* is the ex post neglecting of more difficult clients when service providers only invest resources in those clients in respect of whom the desired outcomes are most likely to be achieved. The more difficult clients are ‘parked’ in a service trajectory.

The prevention of adverse selection in the form of either parking or cream skimming is relevant as it can affect the redistributive function of the activating welfare state. If services are only targeted at those clients who are most receptive to them there is a substantial risk that clients most in need of these services will not receive them because this would be generally less profitable. The WWB encourages cream skimming as it rewards

47 The issue of preventing cream skimming is also discussed and recognised as an important responsibility of the public entities commissioning the services in the Explanatory Statement accompanying the SUWI Decree. See: Nota van Toelichting Besluit SUWI (20-12-2001), Stb. 2001, 688.

reductions in the number of people claiming benefits in the short term. It would therefore be interesting to find out whether municipalities pass this incentive on to their service providers. In order to understand how adverse selection is dealt with by the municipalities we examine the measures taken by them to prevent their service providers from indulging in cream skimming and parking.

7.4.4 *Safeguarding privacy*

The fourth aspect we will look at is the *safeguarding of privacy* during service delivery. Although privacy is a substantive public value in its own right, for the purposes of this study we shall treat it as an individual right that should be respected when delivering employment reintegration services and therefore consider it a procedural public value. Privacy is one of the standards of conduct with which public entities are required to comply in their dealings with citizens when they exercise their public mandate to gather information on citizens. Privacy is a significant aspect within the context of reintegration (based on Art. 17 WWB Act) because during the reintegration process clients are required to hand over a significant amount of personal information.⁴⁸ Clients can expect that the state will handle this information with due care even when this is transferred to a private party. Under art. 67 subsection 1 E of the WWB Act municipalities are authorised to divulge information about clients to third parties involved in service delivery insofar as this information is relevant to achieving the task at hand. This mandate is, however, limited in the second subsection of the article by way of prohibiting divulgence if such divulgence would violate a client's privacy rights. In other words municipalities have an explicit legal duty to safeguard privacy by ensuring that information is divulged and handled correctly.⁴⁹

At a more general level both private and public actors are bound to respect this value because the fundamental right to privacy is laid down in article 10 of the Dutch Constitution. However, it would be wrong to assume that the existence of a legal obligation automatically means that the privacy of clients is safeguarded. Indeed, from a recent privacy evaluation carried out under the SUWI (IWI 2009) it emerges that municipalities frequently fail to comply with the standards for handling data and safeguarding the privacy of clients. Although this evaluation focused primarily on the internal handling of client data by municipalities, it raises the concern that the same problems might also arise in connection with safeguarding privacy when employment reintegration services are contracted out by the municipality to private actors.

48 This includes a broad range of personal information that needs to be handed over to the municipality and can also consist of a considerable amount of additional personal information gathered by external experts during the diagnosis of clients in regard to medical, psychological conditions or social problems.

49 To this end the SUWI decree requires public entities employing private or other actors who deliver services to use contract that contains a requirement to safeguard privacy of individuals.

It is perhaps the very obviousness of the need to protect privacy that makes it so interesting to find out how this major aspect of service delivery is safeguarded. To gain some understanding of this we will address how municipalities deal with the privacy aspect during both the contracting out process and the delivery process. In particular we will focus on whether any provisions are taken to prevent either contracting party from using data for purposes other than those relating to the delivery of employment reintegration services.

7.4.5 *Safeguarding the handling of complaints*

The fifth aspect we have selected regards *filing complaints* and applying for redress. The opportunity to voice grievances is part of the classic mechanism that facilitates citizens in drawing attention to situations in which they are treated unequally or in which their individual rights are violated. In the market the exit option gives clients the opportunity to express their dissatisfaction (Hirschman 1970). Since clients using employment integration services have few options to vote with their feet⁵⁰ the voice option of a complaints procedure is particularly important to address grievances.

Complaints relating to employment reintegration services can be filed at a collective level through participation in specialised bodies such as the client councils that were introduced under the SUWI Act and at an individual level through, for example, complaints procedures or client satisfaction surveys. We will focus our attention on the latter and examine how commissioning municipalities ensure that complaints about service delivery are dealt with in the correct manner.

In theory there are several options available to clients at an individual level, albeit not all of these are practicable. The General Administrative Law Act (AWB) contains a complaints and redress procedure in relation to decisions taken by public entities concerning, for example, the granting of benefits or the application of sanctions. However, the opportunities presented by this procedure are limited, because it only allows for appeal against the service plans defining the activities that benefit claimants are required to participate in⁵¹ and does not offer real opportunity to voice complaints about the service delivery itself. Alternately, benefit claimants may file a complaint with the national or local ombudsman. However, these procedures can only be used against actions or decisions of public entities and not against the private service providers. Actions by private organizations that are not commissioned by law to perform a public task do not fall within the scope of appeal of these procedures.

50 Clients are compelled to cooperate and can expect sanctions and possibly loss of benefits if they do not do so. In addition, exit is also limited by that fact these types of services are delivered through a quasi-market, where it is the public actor who generally selects a service provider and the client generally has no option to switch or choose another provider.

51 These service plans can be considered to be an individual decision in the sense of Art. 1.3 sub 2 AWB (Faber 2009, p. 184) and are thus open to appeal before an administrative judge.

Clients seeking to file complaints about the execution or the delivery of employment integration services are in fact largely depend on voluntary or non-binding procedures. Complaints can be filed with the municipality commissioning the services, although the municipality has no legal obligation to act on these because the dispute does not concern a formal public decision. Alternately, the client can file a complaint with the (private) service provider; although, again this is not a legally binding procedure. Private service providers work in accordance with a complaints code that mainly addresses contractual commitments⁵² between the municipality and the service provider. Since the clients have no direct contract with the provider they have no legally enforceable right to have their complaints dealt with. The client thus depends to a large extent on the drafting of the contract and the effectiveness of the municipalities' enforcement of complaints clauses when filing complaints through this channel.

The procedure for filing complaints at an individual level is thus complex. Municipalities are bound by law to require service providers to adopt a complaints procedure but in reality clients have limited legal opportunities to file complaints. We will use the complaints procedures available in the different phases of the contracting out process as a basis for establishing the opportunities open to clients to file complaints and apply for redress in relation to services delivered by private actors. We will also look at how municipalities respond to complaints about service providers and how they monitor and supervise these providers with regard to the correct handling of complaints.

Summary of the selected aspects of service delivery

To summarise, we have opted to investigate *customised service delivery*, and *the durability of outcomes* in view of the challenges these aspects pose in combination with contractual relationships. We have selected the *preventing of adverse selection*, *the safeguarding of privacy* and *the handling of complaints* due to the relevance these aspects have in association with the public nature of the delivery of employment reintegration services and because of the impact the contracting out of these services is likely to have upon these aspects. Table 7.1 provides an overview of the selected aspects and the reasons for their selection.

52 On the basis of Art. 4, (sub section b) of the SUWI decree, public entities buying employment reintegration services from private or other actors are obliged to use contracts that contain a requirement to adopt a complaints code of some sort. However, there are no binding standards about what this complaints procedure must entail, other than that it must be written and made available to clients in case of a conflict.

Table 7.1 <i>Overview of selected specific public values</i>		
Selected specific public values	Type of public values	Reason for selection
Customised Service Delivery	<i>Substantive process</i>	Ambiguous concept, difficult to translate into contractual terms. Hard to reconcile with equality standards of public service delivery.
Durability of Outcomes	<i>Substantive outcome</i>	Difficult to measure and time bound constraints are created by contractual relationships.
Prevention of Adverse Selection	<i>Procedural</i>	Private actors are profit-driven and incentives are created by WWB to achieve short term results.
The Safeguarding Of Privacy	<i>Procedural</i>	Clients are required to provide personal information that is likely to be handed over to private actors. This aspect tends to lose ground even in municipal organisations.
Handling of Complaints	<i>Procedural</i>	Limited opportunities to complain about service delivery and these are mostly based on contractual arrangements. Importance of a complaints procedure in the absence of exit options.

7.5 Content analysis of tender documents and contracts

7.5.1 Purchasing documents

We collected purchasing documents as a basis for our analysis. These purchasing documents generally consist of calls for tender, contract concepts and accompanying appendices. Tenders for the purchase of employment reintegration services are published in the Netherlands on three primary websites.⁵³ These sites send automatic updates to members by e-mail every time a new tender for employment reintegration or social

53 These are: <http://www.aanbestedingskalender.nl>, <http://www.aanbestedingenonline.nl/> and <http://www.blikopwerk.nl>.

activation services is published allowing us to assemble all tenders published by Dutch municipalities between late 2007 and early 2009.

When a tender was published on the site all the relevant documents were downloaded. Any documents not available online, were requested from the municipality by e-mail. All the municipalities contacted provided the relevant documents. We assembled purchasing documents related to 25 tenders for employment reintegration services in this way. Twenty tenders were selected based on the size of the municipality, date of issue, size of the documents and the kind of services being purchased. Preference was given to recent documents, documents for the purchase of employment reintegration or activation services, a mixture of relatively long and relatively short documents and a mixture of both large and small municipalities. Five sets of documents proved to contain insufficient information for analysis, were outdated or where aimed at purchasing a different kind of services. This resulted in a collection of purchasing documents from twenty Dutch municipalities as detailed in table 7.2. These documents range in size from between 5 to 112 pages and the municipalities commissioning the services vary in scale between 36,000 to 800,000 inhabitants.

Amsterdam	Gouda	Maarsssen	Oss
Breda	Groningen	Nederweert– Cranendonck	Venlo
Delft	Heerenveen	Rotterdam	Wageningen
The Hague	ISD* Heemstede- Bloemendaal-Zandvoort- Bennebroek- Haarlemmerliede- Spaarnwoude	Roermond	ISD* Voorne-Putten- Rozenburg-Goeree- Overflakkee
Emmen	Leiden	Oosterhout	Zoetermeer

* ISD: Intermunicipal Social services Department

7.5.2 Analysis

Our analysis techniques were similar to those used by Ngwenyama & Sullivan (2007) in their work investigating the role outsourcing plays in risk management and consisted of a critical reading of the documents and the application of (*qualitative content analyses methods*) (Mayring 2000; Elo & Kyngas 2007). The documents were coded using a coding matrix that was developed using both deductive and inductive approaches (Mayring 2000; Elo & Kyngas 2007). The coding itself consisted of assigning codes to portions of text in the documents; usually complete sentences or paragraphs. We used a coding in context method whereby the documents were coded during ocular scanning (Ryan and Bernard 2003) and a computer-aided qualitative data analysis package *Nvivo 8* (Bazeley 2007).

The coding matrix was designed based on an exploratory analysis of 4 tender documents and the two relevant acts (SUWI and WWB) that govern Dutch activation and employment reintegration services.⁵⁴ It was revised after the analysis of the first 5 cases. After 10 cases had been coded a second revision took place. Following the adding or altering of any categories in the coding matrix a re-scan of all the documents was performed. This involved revisiting the documents and searching for relevant terms using text search queries and a re-coding of previously coded cases. This method was also used, where possible, to confirm the completeness of the coding process. The coding and analysis were completed in spring 2009. The categories of the final coding matrix are included in appendix B.

7.6 Case studies

Introduction

We conducted case studies in nine municipalities in order to understand the empirical reality behind the contracts and tender documents used to purchase employment reintegration services. This decision to conduct case studies also reflects our object: to gain a better understanding of the decisions taken in the contracting out process and to understand how the interactions between the actors take place. Case studies provide us with a more circumstantial description of the context in which the investigated phenomena occur and give us a more comprehensive overview of how public values are safeguarded and of what actually goes on in the contracting out process (Yin 2003, p. 13). We looked for patterns in both cross-case and within-case analysis, by applying a process tracing logic (Yin 2003, p. 8; Gerring 2004; George & Bennett 2005, p. 205-219) to see how public values are dealt with in the different phases of the contracting out process. Our theoretical framework relating to the different phases of the contracting out process lends itself well to a step by step exploration of the process for contracting out employment reintegration services. The primary unit of analysis (Yin 2003, p. 22) in our case study are the 9 selected municipalities. In the case study we focus the safeguarding behaviour of these municipalities both in relation to basic contractual safeguarding and to the safeguarding of specific public values.

7.6.1 Types of respondents and interview topics

In each of the nine cases we collected data by way of five interviews with different actors involved in the service delivery process. These interviews served to get a more in depth understanding of how the actual practice of managing service providers related to the data gathered from the document analyses and to get at the backgrounds behind choices made in design of the tender documents. They also served to get more insights into the experiences

⁵⁴ I have to thank my students (Krista, Nicole, Marike and Matthijs) for their contributions in analysing the relevant law and tender documents and assistance with developing a first coding matrix.

of municipalities with tendering and what were the true criteria for selecting providers, beyond those expressed in the tender documents. In addition, the interviews were used to better understand how the design of the contracts and their usage evolved over time since the municipalities started to contract out. Finally the interviews served to get an understanding of how the selected public values were safeguarded in practice.

We interviewed senior municipal policy advisers responsible for reintegration policy, municipal contract managers, municipal case managers and representatives of the service providers. The respondents were selected using a 'snowball' type selection procedure in which we asked initial respondents to refer us to further key informants. The senior policy advisers were our entry points at the municipalities. They were asked to provide us with information about which contract managers and case managers would be relevant to our study – that is with relevant experience and knowledge of the contracting process and management of providers. They were also asked to indicate two service providers (one private provider and one provider linked to the municipality) that the municipality worked with regularly. Subsequently providers were approached with the request to interview a staff member with knowledge and experience of the working relations with the municipality. The service providers were thus chosen on indication of the municipalities. This approach was chosen in order to secure cooperation from both municipalities and service providers.

This spread of respondents was sufficient to reconstruct the reality of contractual governance. It allowed for triangulation between various actors in the contracting and service delivery process. The focus on contractual governance was the reason why we did not pursue interviews with additional actors outside the contractual relations examined. In addition, earlier attempts in 2008 at ensuring cooperation of Divosa and Stimulansz had not yielded any results, as they were already committed to other big research projects covering efficiency aspects of reintegration underway in the same period as this study.

Our interviews were semi-structured and the interview guides were based on six main topics.⁵⁵ The questions we asked were derived from our findings from the content analysis of the purchasing documents and based on our theoretical propositions about the contracting out process.

The following six topics were included in all interview guides:

⁵⁵ Dutch versions of the interview guides are available from the author at request.

1. General introductory questions:
 - Relating to the characteristics of the respondent and their experience at the municipality.
 - Relating to the tasks they perform at their organisations.
2. Questions about contracting out in general:
 - Relating to the general experience the respondents have with contracting out.
 - Relating to experiences their organisation has over time with contracting out.
3. Questions about the selection of providers:
 - Relating to how service providers were selected.
 - What were the considerations behind the selection of specific service providers?
 - What issues were encountered during the selection of providers?
4. Questions about the content of the contract and tender documents:
 - Relating to the drawing up of contracts and tender documents.
 - Relating to the changes and developments these documents had undergone.
 - Relating to the role these documents play in the relationship between contracting parties.
5. Questions about the execution of contract management and the relation between parties:
 - Relating to the degree of contact and how communication between contracting parties occurs.
 - Relating to how information was gathered about performances delivered by providers.
 - Relating to how service providers were evaluated by the municipalities.
 - Relating to how feedback was given to providers about how they perform service delivery.
 - Relating to the general characteristics of the relationship between contracting parties.
6. Questions about how the municipality controls providers in relation to our selected aspects of service delivery:
 - Relating to how municipalities envisage the specific aspect of service delivery should be realised.
 - Relating to how the specific aspect of service delivery is realised by providers.
 - Relating to how information is gathered about how providers deal with the selected aspect of service delivery.
 - Relating to how municipalities give feedback to providers and how they deal with the selected aspects of service delivery.

Pilot study

To test the validity of the interview guides trial interviews were conducted with similar respondents at the UWV in Groningen. This allowed us to evaluate the interview guides to see whether these would solicit answers that would provide the desired information. Based on the experiences of this pilot (Yin 2003, p. 79) questions were revised. In light of the timeframe available for this study it was decided to conduct the case study at nine municipalities. The decision to select multiple municipalities was based on the desire to be able to (analytically) generalise the findings of our case study and to strengthen the validity of our findings as different municipalities serve as replication (Yin 2003, p. 49) for data collection in different municipal contexts.

7.6.2 *Selecting the municipalities for the case study*

Criteria for selecting the municipalities

A first step in the selection was the search for municipalities that actually contract out employment reintegration services. Some data were available at the RWI website (RWI 2009), who in 2007 had conducted a relatively large-scale survey among municipalities.⁵⁶ Central questions in the survey were how much of their employment reintegration budget municipalities spent on contracting out services and how much they spent on providing the services directly. From the survey it could be deduced that about half the municipalities contracted out almost 80% of their services to external providers. Some municipalities contract out very few services. For this study it was necessary to select municipalities that had considerable experience with contracting out. Therefore, to be selected for a case study a municipality needed to spend at least 50% of their available employment reintegration budget on contracting out services.

From the exploratory interviews and the data from the RWI survey it emerged that a third modality for producing employment reintegration services was also widely applied - contracting out to service providers linked to the municipality. The survey revealed that almost 80% of the responding municipalities contract out services both to private providers and to service providers linked to the municipality. These are service providers who either through subsidy relations or ownership are linked to a municipality.⁵⁷ Because this is an intermediate form of service delivery positioned somewhere in between making and buying, it somewhat complicated the selection. Since it was such a widespread phenomenon and because the close link of the provider to the municipality could affect the way contracts are used, we extended our set of selection criteria to include the requirement that case municipalities should both contract services out to private providers and to service

⁵⁶ The survey was conducted in 2007 and 133 out of almost 443 municipalities responded.

⁵⁷ Often they perform other tasks or services (provide sheltered work, social care or parks and waste management) for the municipalities.

providers with links to the municipality. Then we included at least one service provider linked to the municipality and one private provider in each case.

We also wanted to ensure that our selection of cases was analytically representative of the types of municipalities operating on the Dutch employment reintegration market (Yin 2003, p. 32). The most apparent differentiating variable in this respect is the size of the municipalities. Smaller municipalities can be expected to have relatively few resources and capacity to enable them to produce services internally or to manage contracts. Larger and often more urban municipalities are likely to have the necessary resources, but probably have to deal with more concentrated and more socially complex populations of benefit claimants. More urbanised municipalities therefore may face more complex issues than do smaller more rural municipalities. The selection criterion stemming from these considerations was that the sample of cases should show a spread in the size and in the geographical location of the municipalities.

A third criterion was that only municipalities would be selected that were “relatively” successful in the execution of reintegration policy in terms of client outflow. The aim of this study is to discover how municipalities cope with contracting out successfully and the affect this has on the safeguarding of public values. Negative performances and limited success of municipalities in the area are attributable to a number of factors apart from the quality of contract management. Circumstances like the composition of the local labour market, specific attributes of the group of benefit recipients or some general incompetence on the part of a municipal organisation can all contribute to success or failure. For this study, we selected successful municipalities to find out how these deal with the challenges of the contracting out process.

We have thus selected our municipalities on the basis of the following primary criteria:

- To be included in the sample municipalities had to use at least 50% of their available budget to contract out services and use both private service providers and service providers linked to the municipality.
- The sample should show a spread in size and geographical location.
- To be included, municipalities had to have some degree of success in relation to employment reintegration.

Procedure for selecting municipalities

The Dutch Central Planning Bureau (CPB) provided data on the employment reintegration performance of Dutch municipalities. The data from the CPB was cross-referenced with the data from the RWI omnibus survey of 2008. This resulted in lists containing about a 150 municipalities ranked according to relative performance. By matching the performance and the budget characteristics of these municipalities those municipalities could be identified that perform relatively well and spend more than 50% of their available employment reintegration budget on contracting out to either private providers or to providers linked to

the municipality. These lists formed the basis on which municipalities were selected for the case study.

Slightly more than half the municipalities included in our sample for the content analysis of the purchasing documents were also represented in the combined data list. Six municipalities from the content analysis sample ranked high in performance and met the additional selection criteria (Amsterdam, Heerenveen, Roermond, Groningen, Rotterdam and Wageningen). Two of them (Amsterdam and Heerenveen) were not able to participate. The other four municipalities were available. To find five more municipalities, all those municipalities that failed to meet our selection criteria were eliminated, leaving about twenty municipalities from which we selected those that met our criteria regarding size and performance. We were able to find five more municipalities that were willing to participate and that met our selection criteria (see table 7.3).

Table 7.3 <i>Size and geographical location of the selected municipalities</i>		
<100.000	>100.000	G4>300.000
Lelystad (Centre) Zutphen (North-east) Roermond (South-east) Wageningen (South east)	Haarlem (North- west) Amersfoort (Centre) Groningen (North-east) Enschede (North east)	Rotterdam (South- west)

Generalisation

A case study design provides limited opportunities for generalisation to a population. The sample of cases used in this study is not in that sense representative of all the 443 Dutch municipalities at the time of the research. The procedure outlined above, should however, have produced a sample that is theoretically representative (Eisenhard 1989B). The findings of this study therefore should form an adequate representation of the way in which the different types of Dutch municipalities approach contracting out.

The sample selected for the case studies shows only a partial overlap with the set of municipalities whose purchasing documents were analysed. To remedy this we performed an analysis of the purchasing documents used by the five municipalities not included in our main content analysis. This scrutiny revealed that the general content of these purchasing documents matched the patterns of content found in our original analysis of the twenty purchasing documents.

7.6.3 Conducting the case research

Once the municipalities had been selected and their cooperation was secured, appointments were made for the first interviews with the senior municipal policy advisers. Several municipalities agreed to cooperate under the condition that all respondents in our study

would remain anonymous and all purchasing documents would be treated as confidential and not be published.

The first interviews with the senior municipal policy advisers were used to verify the data on the municipalities already gathered and to prepare the data collection proper. In these interviews the focus was the ascertaining how the municipalities in question contracted for reintegration services, the experiences they had with tendering and what the considerations were behind the adopted purchasing strategies. We also used these interviews for acquiring copies of the most recent purchasing documents or tenders used by the municipality for purchasing employment reintegration services. Based on the analysis of these purchasing documents more specific questions were prepared for the subsequent interviews with contract managers, case managers or providers.

The interviews with contract managers focused on the experiences of the municipality with tendering and selecting of providers; on how contracts had evolved and their importance. On how contract management was conducted and how the selected public values featured in contract management and tenders. The interviews with case managers focused on how selected public values featured in daily practice of service delivery and how providers were supervised. In the interviews with service providers the focus was on how they experienced tenders with the municipality and how they interacted with contract managers and case managers. The providers were also asked how the selected public values featured in their service delivery and how these featured in the supervision they received from the municipality.

We conducted 44 semi-structured interviews⁵⁸ with 61 respondents. An overview of all respondents is provided in table 7.4 at the end of this chapter. All the interviews were conducted on location, recorded and transcribed afterwards. Respondents were sent a copy of the interview transcription for review and comments. The comments (mostly additional explanations and clarifications) were integrated into the final transcripts. The interviews with case managers and contract managers were generally conducted with pairs of respondents to ensure that answers would represent not only the experience and vision of individual respondents, but reflect a broader empirical reality at the municipality. This also made it possible for us to cross check answers. The interviews with policy advisers and representatives of the service providers were conducted with single respondents because the policy interviews were generally used to acquire an overview of the general policy and experience with the contracting out of the municipality and therefore subjectivity is less of an issue. The interviews were conducted in three stints in order to allow for planning and organisation of the next round of interviews. The first interviews were with policy makers,

58 This does not include the exploratory interviews conducted at beginning of our study.

then with contract managers and case managers and the last interviews were with providers. The process of organizing and conducting the interviews started in late 2009 with the bulk of the interviews taking place in the first semester of 2010. Because in the summer months many respondents were not available due to vacations, the final interviews took place in autumn 2010. Finally in 2011 to conclude the empirical part of the study a small gathering with some of participating the policy makers and respondents from service providers was organised in order to report back on the findings. At this occasion respondents indicated they could identify with findings presented.

The transcribed interviews were analysed using the computer-aided qualitative data analysis package *Nvivo 8*. This analysis was done by loading all transcriptions into the *Nvivo 8* work database and then coding all questions and accompanying answers with regard to topic and content. Although this required additional time being allocated to coding, it did give us a better understanding of data as the coding process allowed a second scrutiny of the data after the transcription.

The use of *Nvivo 8* facilitated an orderly comparison of the answers provided during the different interviews by comparing answers based on content, type of respondent and municipality. Answers were further divided into 49 subcategories corresponding to specific questions on specific topics. A detailed analysis was carried out on the answers in each of these categories. This gave us a clear and comprehensive picture of the findings regarding each of the six categories of topics that were then summarised. The empirical chapters present these findings related to the specific topics in their descriptive sections. We examined the data gathered during the interviews three separate times, which produced a detailed and full understanding of the data content, which aided the later analysis and interpretation and provided us with a comprehensive picture of the empirical reality of contracting out at the municipalities we studied. Two more separate analyses of the content and case study data were performed: one focusing on the research question regarding basic contractual safeguarding and one focusing on the research question regarding safeguarding the selected specific public values. These two analyses form the basis for the empirical chapters.

Table 7.4					
<i>Overview of respondents</i>					
Type respondent	Policy maker	Contract managers	Case managers	Commercial provider	Municipally linked provider
Municipality					
Amersfoort	Senior policy maker reintegration	Policy maker reintegration tasked with contract management	Case manager reintegration Case manager reintegration	N/a	Unit manager learning and working unit
Enschede	Project manager participation	Contract manager work-first Contract manager services and subsidies Senior advisor acquisition	Municipal reintegration coach	Team manager responsible for account Enschede	Team manager work first
Groningen	Senior advisor (activation) product acquisition Director social service department	Contract manager Contract manager	Municipal reintegration consultant Municipal reintegration consultant	Senior partner / owner	Managing director
Haarlem	Director social service department	Contract manager Coordinator reintegration	Case manager reintegration Case manager reintegration	Unit / account manager	Project manager reintegration
Lelystad	Strategic advisor labour market and education	Policy advisor participation Contract manager	Case manager reintegration Case manager reintegration	Unit / account manager	Managing director
Roermond	Sub director cluster reintegration	Manager production house Policy advisor Contract management	Case manager reintegration with contract management responsibilities Case manager reintegration with contract management responsibilities	Managing director	Team manager
Rotterdam	Senior policy maker reintegration	Team manager tasked with contract management Strategic product manager	Case manager reintegration Case manager activation	Managing director	Managing director
Wageningen	Team manager work and income	Contract manager Account manager reintegration	Case manager reintegration Case manager reintegration	Managing director	Senior manager reintegration
Zutphen	Strategic policy maker reintegration Policy maker reintegration	Contract manager	Case manager reintegration Case manager reintegration	Account manager	Manager employment development

Part III

**BASIC CONTRACTUAL
SAFEGUARDING**

Basic contractual safeguarding we defined as the efforts of the commissioning authority to ensure that services are delivered according to the specifications of the commissioning authority. In this third part of the study we present the findings of our investigations into the way municipalities actually take care of basic contractual safeguarding. The leading research question for this part is:

- *RQ1: How do municipalities perform basic contractual safeguarding when contracting out employment reintegration services?*

The presentation is divided over four chapters. Each chapter deals with one of the phases of the contracting out process as distinguished in chapter 5. This way of ordering the material enables us to identify all the actions and dynamics phase by phase. We examine the choices municipalities make in each phase and establish how these choices affect the way in which municipalities conduct basic contractual safeguarding.

The chapter on the make or buy phase is about the considerations and choices related to buying or making services and about the way this affects the municipalities' ability to ensure that services are delivered in accordance with their requirements. The specification phase chapter covers the design of the contract, the formulation of the service requirements, the kind of discretion that the service providers are afforded, and the contractual basis created for contract management. The chapter on the selection phase deals with the criteria on which the selection of service providers is based and the selection process itself. The main topics of the chapter on the contract management phase are the setup of the contract management and the way in which the municipalities monitor and supervise the service providers.

All four chapters have the same outline: a description of the activities of the municipalities during the specific phase of the contacting out process, followed by an analysis of these activities in relation to the compliance measures theoretically available in each phase. The concluding chapter contains an overall analysis aimed at answering the first and the third research question.

Chapter 8

The make or buy phase

Chapter 8: The make or buy phase

8.1 Introduction

This chapter examines the decisions taken by the municipalities in the make or buy phase of the contracting out process. Their main choice is between providing the employment reintegration services themselves or outsourcing them to an external provider. They do have a third in between option: purchase some of the service components and generate the remaining components in house. Municipalities can purchase services from diverse providers ranging from market-oriented entrepreneurs (without connections to the municipality) to providers operating within the municipal organisation (providers affiliated to the municipality or ‘linked providers’).

We examine how municipalities arrive at their make or buy choices, how and why the municipalities purchase services and how these municipal considerations have changed over time. We also look at the reasons why municipalities favour a specific kind of service provider. Finally, we analyse how basic contractual safeguarding is dealt with in the make or buy phase.

8.2 The make or buy decisions

Following the enactment in 2004 of the Social Assistance Act (WWB) municipalities were, under article 7:4 and article 34:3 of said act, required to engage third parties to deliver all reintegration services commercially. The mandatory outsourcing was rescinded by 1 January 2006, further to a motion in Parliament.⁵⁹ Henceforth, municipalities were free to choose whether ‘to make’ (provide the services themselves) or whether ‘to buy’ (purchase the services). This was true for all services related to the municipality’s task of increasing the participation of WWB clients on the labour market and later of people not eligible for benefits, referred to in Dutch as ‘nuggers’ (*niet-uitkeringsgerechtigden*) (Art. 7, paragraph 1a, WWB).

Procurement regulation

When Dutch public agencies procure goods or services above a certain price threshold, they are subject to EU procurement regulations which, among other things, require the tendering of the purchase. The purpose of these regulations is to create a EU-wide level playing field for providers and to prevent particularism and favouritism on the part of the public agency. Apart from that, tendering is often made obligatory with even lower price thresholds in

⁵⁹ Act of 1 December 2005, Official Gazette 2005, 625, amending the Social Assistance Act and any other acts in connection with the repeal of the contracting out requirement for municipalities for reintegration activities.

local regulations. Usually the reason is economic in nature: tendering is supposed to enhance the efficiency of the market, resulting in better value for money (Eichenhofer & Westerveld 2005, p. 23).

The European public procurement directives (2004/17/EC and 2004/18/EC) stipulate that ‘public sector’ procurement must follow transparent and open procedures, ensuring fair conditions of competition for suppliers. The implementation of the EU directives in Dutch national law is to be found in the BAO decree.⁶⁰ The commissioning of services with a value above the threshold of € 200,000 is subject to stringent tendering requirements based on the principles of non-discrimination, transparency, proportionality and mutual recognition. Following the EU directives, the BAO distinguishes between two types of services for which different regimes of procurement rules are applicable: a more rigorous regime for 2A services and a less stringent regime for 2B services. The most important distinguishing feature is that 2B services, as opposed to 2A services, do not evoke cross-border interests to justify the application of the full procurement regime (European Court of Justice, C-507/03).⁶¹ Social and health services are considered 2B services, which means in effect that a less formalistic tender procedure can be used as long as the general principles and requirements of the EU directives are complied with.

In a series of court cases the ECJ has made clear that the tender requirement does not apply when a public agency is directly assigning a contract to another public organisation.⁶² Prerequisites are that the organisation is evidently public in terms of ownership (no private capital participation) and that it is performing a clear public task. From these rulings it follows that a municipality can procure the delivery of a service directly from an independent municipal organisation, without a tender procedure, as long as the organisation conforms with the control and ownership criteria first developed in the ‘Teckal’ case.⁶³

8.3 General developments in purchase methods

During the period of time surveyed in our empirical research, a striking general development in the way municipalities organised reintegration services took place. There was a shift away from the purchasing of large scale complete reintegration service

60 BOA stands for *Besluit Aanbesteding Overheidsopdrachten* (Decree on the tendering for public procurement)

61 ECJ, 13 November, 2007, Case C-507/03 (Commission of the European Communities v Ireland).

62 Three ECJ rulings are particularly relevant: the decision in the ‘Teckal’ case (18 November, 1999, Case C-107/98; *Teckal Srl v Comune di Viano and Azienda Gas-Acqua Consorziale (AGAC) di Reggio Emilia*); in the ‘Brixen’ case (ECJ, 13 October, 2005, Case C-458/03; *Parking Brixen GmbH v Gemeinde Brixen and Stadtwerke Brixen AG*), and the decision of the ECJ, 9 June, 2009, Case C-480/06 (Commission of the European Communities v Federal Republic of Germany) (De Koninck & Ronse 2008, p. 330, 481, 501).

63 For more in depth discussion of these criteria see: De Koninck & Ronse 2008, p. 330 – 341.

trajectories towards the purchasing of service components and specific service trajectories for individual clients. It was a frequently recurring development in the analysed purchasing documents and is also reflected in our cases. There were 5 municipalities⁶⁴ that even declared that they had largely dispensed with “bulk buying”, the purchasing of lots and of complete service trajectories. When purchasing complete trajectories, the emphasis was on the *results* or *outcomes* (number of reintegrated clients) and service providers are left to make their own decisions about how these results should be achieved. The lot system was quite popular initially. Clients with a similar distance from the labour market were grouped together in the same lot. One of the ideas behind this purchasing of lots was that *creaming* could be prevented. Buying service trajectories for homogeneous groups of clients would leave the providers little room to differentiate and cherry-pick the best clients (Koning 2003). Later on, this way of outsourcing was largely abandoned because the purchasing public agencies experienced that they had but little control over the process with the result that problems were not addressed until it was far too late. To give an example, providers were paid according to the number of placements and therefore invested more in the most promising clients. Because the service trajectories were long (one or two years) this creaming came to the municipalities’ attention at a very late stage.

More generally, municipal agencies that bought such services wholesale found it difficult to obtain sufficient information about the performance of providers. They were only informed by way of standard reports that were often incomplete or incorrect and they had no direct knowledge regarding the progress of the service delivery. These large scale service trajectories continued to be purchased until 2007, after which focus switched to the purchasing of specialised service components from a range of different providers. These new purchasing strategies involved buying services for specific objectives and with a view to attaining intermediate outcomes. Performance targets were introduced that were relatively easy to enforce; for example achievement lead times. Alongside the purchase of services in modules came a tendency to purchase services individually and directly from specific providers and not as part of a tender procedure.

8.4 Modular and individual purchasing

8.4.1 *Modular purchasing*

Virtually all the municipalities participating in this study purchased services in modules. Modular purchasing usually means that the client manager puts together a service trajectory for a client that consisted of different modules purchased from a single or several providers. Control remained largely in the hands of the client manager and it was he who determined how the service trajectory as a whole would take shape. 7 of the 9 municipalities featured in

64 Amersfoort, Zutphen, Enschede, Haarlem and Wageningen.

our case study applied this modular purchasing method. Only 2 municipalities⁶⁵ did not (yet) do so. At the time the case study was being conducted one of these was in the process of switching to modular purchasing. However, this was going to be a long process because the transition would have far reaching consequences for internal work procedures.

We found that there were four reasons for municipalities to switch to more modular purchasing methods: 1) the modular purchasing method created more opportunities for the case managers to control the trajectory because it was they who determined the nature of services in the different phases of the service trajectory; 2) the modular purchasing method facilitated customisation; 3) modular purchasing involved the purchase of shorter term service components in which the client manager played a more active role and thus was able to monitor the progress of the service delivery more closely and 4) modular purchasing was the choice of case managers and politicians. Political pressure was exerted to purchase service modules because this facilitated customisation which was a hot political topic.

Some municipalities encountered problems with this modular purchasing method. The compartmentalised nature of the service trajectories and the much larger number of product modules made it harder for case managers to keep track of the services that are available and so they did not have time to truly understand the substantive content of all the service modules. This resulted in many modules being underutilised or not utilised at all.

8.4.2 *Purchasing services for individual clients*

In the later stages of the period of time under study, municipalities have tended to purchase services for individual clients in addition to or in combination with service modules. These individual services are purchased by the case managers, usually without a tender procedure and on the basis of a quotation. They give the case managers more room for flexibility. All nine of the municipalities studied had the facilities for buying individual services but not all used these facilities to the same extent. Haarlem and Amersfoort used them intensively while Enschede and Lelystad applied them sporadically. Several case managers anticipated that these facilities were to be reduced in the near future as funding would decrease. The contract management of the individual service trajectories was usually the responsibility of the case managers, requiring them to have specific skills in negotiating directly with providers.

In Amersfoort buying services for individual clients is also used as a means of getting to know service providers and testing their services with little risk attached and with no tender procedure or contract being required. When service trajectories purchased for individual clients proved successful these trajectories were then at times included in the standard range of existing tools. When specific service components were seen to be

65 Lelystad and Zutphen.

particularly successful a proper tender procedure would then be started. On the other hand an unsuccessful service component could easily be removed from the service toolkit.

Individual services allow case managers to adapt the service to the client's specific situation. In Haarlem case managers said they were more creative when purchasing individual services for clients while reducing the number of regular (tendered) service components.

In some municipalities problems were encountered when case managers invested too much time in making plans for individual clients or tried to do too much themselves. Contract managers explained that case managers were inclined to do because they felt that the purchasing of services was merely imposed from above and that many of the service products procured did not enable them to assist clients better. As a consequence, obtained services might not be utilised. Clients were not sent to these trajectories because case managers did not embrace them or because they did not fully understand them and prefer wherever possible to put together service trajectories themselves by buying individual services for their clients. To curtail this excessive use of individual services for individual clients some municipalities have introduced budget caps. This however, caused substantial time loss as individual service plans needed to be vetted by the purchasing department. Yet, the purchasing department did not always have the substantive knowledge to properly judge these budget allocation requests – with the result that almost all the products that case managers wanted to purchase for an individual client were routinely approved anyway.

8.5 General purchasing considerations

We made an inventory of the reasons why municipalities purchase services and why they did so from specific types of service providers. The findings of this research are summarised in table 8.1. Because this study is about safeguarding when *contracting out* or *purchasing* services we assume that the make or buy choice has already been made. We have not examined the make or buy decision in relation to particular service products delivered by specific providers. We just asked each municipality what their general reasons for purchasing services are.

Table 8.1 <i>Summary of purchasing consideration</i>	
Why buy services?	Lack of capacity. Lack of expertise. Pragmatic reasons.
Why make services?	Disappointing experiences with services delivered by the market. Better starting position for providing particular services.
Why engage private providers?	Provide expertise. More flexible. More performance and result oriented. Clearer relationships; no competing policy objectives or hidden agendas.
Why engage local providers?	Local providers well embedded in local context. The local dimension is an important element in the reintegration of clients. No need to rebuild infrastructure every few years.
Why engage municipally linked providers?	Already have expertise with similar client groups. Offer more continuity in time. Offer more extra contractual control opportunities: ownerships subsidies. Make use of existing infrastructure and preventing underutilisation of the municipal infrastructure. Pragmatic reasons: no other providers available

Why do municipalities purchase reintegration activities?

In the majority of cases municipalities purchased because they had too little internal capacity to supply the services or because they lacked expertise. They did not necessarily expect to achieve better results with activities purchased on the market but the market parties were expected to be more innovative and creative. A number of municipalities indicated that the tenders were also a tool they use to keep their internal service providers or municipally linked service providers focused.

We found 2 municipalities that said that purchase decisions were made based on highly pragmatic considerations, without any coordinating policy framework to guide decisions about whether to make or buy. In the largest of our municipalities such a pragmatic stance was mainly a thing of the past but because of the large scale of its operations it still had a pragmatic approach to purchasing. However, in the same municipality there was a tendency to deliver more services in-house or to engage providers affiliated to the municipality. This reflects a more general trend. Almost all the municipalities in the case studies said they were delivering more services in-house because of the bad experiences they had had when they were still required to outsource. Several municipalities⁶⁶ said that the negative experiences they had had with purchasing services (such as placements and intermediation to get clients off benefit dependency) led them to provide these services in-house via employer support offices. Municipal agencies believed they are in a better position to deliver these services because as local agencies they have access to a large network of potential employers in the region.

66 Rotterdam, Roermond and Enschede.

Only one municipality believed that specific tasks (in particular care related tasks) should be performed by the municipality because these tasks are a public responsibility. The other municipalities stated neither this nor any other argument relating to public responsibility as a reason for them to provide the service themselves. However, they did say that because municipalities are expected to provide Sheltered Employment Services (WSW) for clients with mental or physical handicaps, they often already have existing networks and infrastructure in place for this type of employment related services.

It thus emerges that municipalities purchase services primarily because they or the organisations affiliated to them lack the internal capacity or expertise to deliver these services themselves. They began to deliver services by themselves because they expect to be able to achieve better results by doing so.

8.6 The choice of providers

Private providers

Municipalities reported that they purchased from private providers because these offered expertise that was not available internally or from local providers affiliated to the municipality. Other reasons for choosing a private provider was that these were believed to be more flexible, more efficient and more performance driven than providers affiliated to the municipality, as a result of which municipalities find them easier to work with. Relationships with private providers were often more business-like, making management more transparent. This meant that agreements were more easily reached and private providers could be more easily dealt with than other types of providers.

It is worth noting that some municipalities indicated that in some cases they opted for private providers rather than their own providers to avoid conflicting objectives.⁶⁷ Private providers have no hidden agendas or policy objectives of their own besides making a profit. Our largest municipality said that some providers affiliated to the municipality tend to give priority to their own objectives while the municipal reintegration objectives took second place.

67 A remarkable disadvantage mentioned by one municipality is the fact that municipally affiliated providers often also have their own agenda and policy objectives and that these are sometimes not related to the objective of getting people back to work. An example of this is the situation regarding a municipal waste and urban sanitation company that, within the scope of a project, provided cleaning services in the city using clients of Social Affairs. The assignment for this project was that within a specific time x number of clients had to be directed to this municipal waste and urban sanitation company to clean. But this particular company believed that Social Affairs had not sent them the proper candidates. Thereupon Social Affairs was blamed for the fact that the city was not clean. In that project sending clients to work ultimately only focused on getting as many candidates as possible for the cleaning activities that had to be performed and little on improving the clients employability.

In summing up, municipalities purchased from private providers because they lack expertise themselves, because they are thought to be more responsive and flexible and because they do not have conflicting policy objectives of their own.

Why do municipalities purchase from local providers?

We found 2 municipalities (Haarlem and Lelystad) that purchased largely from local providers. These are semi-public organisations such as education institutions or welfare and relief organisations. Municipalities reported that they bought from these organisations because they were well embedded in the local context. Municipalities also engaged this type of provider because they felt that the local dimension is an important part of the reintegration process. Clients are often bound to a local context and solutions must therefore be found locally. Municipalities also preferred local providers because otherwise with every new tender the existing organisational infrastructure would have to be torn down and built up again with a new partner. Indeed, although many private providers of reintegration services pretend that they have a good local network and good contacts, most often this merely means that they intend ‘the opening of a local branch office’, without having any real connection with the existing local infrastructure. This too is reason to engage local providers. Municipalities thus purchase from local providers because these have a better knowledge of the local context and have better local networks.

Why do municipalities purchase from providers affiliated to the municipality?

The municipalities said that in many cases the existence of an infrastructure within the context of the Sheltered Employment Services (WSW) was a reason to engage providers affiliated to the municipality because these organisations often had substantial expertise in assisting clients on the lowest steps of the participation ladder.⁶⁸ Another reason for this choice was that these organisations were often able to offer more continuity because they were embedded in the local infrastructure and were bound to the local context. It is highly unlikely that they would be able to pull out of the geographical area if things went badly as private providers may do. The fact that this type of organisations is linked in some other way to the municipality via ownership or subsidy gave municipalities additional opportunities to direct or to exercise influence and thus control over the course of the service trajectory. Some municipalities indicated this link also worked the other way around and these organisations may use specific channels, such as political channels, to serve their own interests.

68 The participation ladder is a tool that municipalities use to determine the distance of a particular client to the labour market. It consists of six intermediates stages corresponding to different steps in the process of regaining employment. Clients on the lowest step are considered furthest away from employment and clients on the final six step are in employment or employable. More information is available in Dutch at <http://www.participatieladder.nl/home.html> (13-02-2013).

Another advantage of providers affiliated to the municipality was that these sometimes have extensive physical infrastructures within which activities such as Work-First trajectories could take place. Municipalities were keen to make use of these. In many cases considerations relating to the funding of these organisations also played a role. This was given added impetus by the fact that the flow of clients to the more traditional Sheltered Employment Services (clients with a WSW indication for sheltered work) had slowed in recent years and that within the WSW a shift had taken place towards significantly more extramural service trajectories. Thus the full capacity of the internal infrastructure of these organisations was not always utilised. Thus in part municipalities purchased reintegration employment services from this type of organisations to combat the risk of underutilisation.

Several municipalities indicated that providers affiliated to the municipality were also engaged for pragmatic reasons depending on the situation. For example there may be no available alternatives because no market bidders can be found. Or, as has happened in two municipalities as an alternative to previous market providers that went bankrupt.

Municipalities thus favoured providers affiliated to the municipality because they have substantial expertise and offer more opportunity to exercise control outside the contract and because municipalities wished to keep the existing infrastructure intact.

8.7 Analysis: safeguarding in the make or buy phase

Theoretically, a principal decides whether to make or buy based on the transaction costs. Logically, if the transaction costs incurred to ensure compliance are high, the principal will either prefer to make services internally or search for ways to lower transaction costs. Initially municipalities contracted out services on a large scale but unsatisfactory compliance on the part of the service providers caused many municipalities to reassess their decisions to buy rather than make. They would shift to partial outsourcing and to purchasing more services from affiliated service providers. In terms of our theoretical framework these two developments can be classified as the application of simplification and the application of embedded agents to counter non-compliance.

Simplification in the make or buy

Simplification was encountered in various forms. The most far-reaching practice was the shift towards internal production. A subtler switch was the partial outsourcing of specific service components: only some of the service components were contracted out while the components for which it was difficult to enforce compliance were produced internally. Typically those were components with a high degree of asset specificity and a high degree of complexity. Asset specificity implied significant specific investments that agents were not always willing to make. Complexity implied that the quality of the services delivered was hard to assess. Put together, adequate surveillance of such services entailed high transaction costs. A prime example of the evasion of such costs is the widespread move amongst the municipalities in our sample to set up internal job brokering services or employer support offices tasked with placing clients directly. The municipalities found it

far more efficient to invest in internal capacity for the deliverance of such components than to invest in the supervision of external providers.

Another kind of simplification is found in ‘modular’ and ‘individual’ buying strategies. Such strategies reduced information asymmetry and thus limited opportunities for non-compliance. Modular buying eliminated complexity: rather than purchasing composite services with complex final outcomes the municipalities bought service components with intermediate easy to gauge outcomes. Individual buying – that is purchasing a set of services for one client at the time – gave case managers a better position to hold providers individually accountable for the services they delivered. Both purchasing strategies gave case managers a stronger position in managing and coordinating the service delivery process. It enabled them to gather sufficient information about how the execution of the services. Since case managers had a good overview and were involved in every step of the delivery process, this strategy reduced the information asymmetry between municipality and provider.

These simplification strategies were a reaction to problems municipalities experienced in enforcing compliance in the early years of contracting out when services were bought on a large scale. The municipalities had experienced that the procurement of complete service trajectories resulted in insufficient knowledge of and control over the delivery of the services. Through simplification the municipalities succeeded in gaining better control and more compliance.

Use of embedded providers

Another change municipalities made to reinforce control over service delivery was to engage providers affiliated to the municipality. Thus many municipalities started buying social activation services from embedded agents (providers connected to the municipality⁶⁹, non-profit providers or local for profit suppliers). Such services required an intense effort but were hard to evaluate on results. The municipalities expected better results from these municipal-affiliated providers because they were considered to be familiar with the local context within which the services were to be delivered. In theoretical terms: the

69 We found that in most cases the choice for using embedded providers is made in the make or buy phase. Indeed, we see that in 7 out of 9 municipalities in our case study the choice was made to directly mandate the service provision to municipally linked service providers without them participating in a competitive tender. This is why we decided to discuss the choice to make use of embedded providers in this make or buy chapter. In addition, many of the municipalities indicated that when it comes to deliberating the provision of services often it is not a question of a choice between specific providers but more a choice between specific modalities of service delivery. Meaning that in practice the make or buy choice is generally made between contracting out to private providers or mandating service provision to municipally linked providers, which many municipalities equate with internal production.

municipalities selected providers for goal congruency and similarity in frames of reference. The municipalities of Haarlem and Lelystad for instance explicitly stated that they selected local service providers because these had a better understanding of the local population and the local conditions. Several other municipalities, however, held the opposite view. They preferred to engage private providers exactly because they did not share values or goals with municipally affiliated organisations. They considered private providers to be more responsive and result-oriented than providers affiliated to the municipality. They assumed those providers to focus on profit and to do what they were paid for – with no political agendas of their own, something that could not always be said for providers affiliated to the municipalities. So in a way, these municipalities, too, selected specific providers for their intrinsic motivation, although they did not rely on the congruency of goals and values but on the intrinsic motivation of private parties to make a profit.

A second reason for the municipalities to engage embedded providers was that they expected more control over service delivery and more continuity in the provision of services. When the supplying provider was a subsidiary of the municipality, ownership rights gave additional leverage over the provider. A local non-profit might be subsidized and its dependency on municipal contributions would make for additional municipal influence.

Additional make or buy considerations

Our findings also show that decisions taken in the make or buy phase can be influenced by factors other than transaction costs. These are considerations which cannot be directly traced back to contractual governance but which are derived from *sunk cost* considerations: not utilizing internally available or affiliated resources and infrastructure would mean some sort of asset destruction. Furthermore, linked infrastructure or connected operations that were running at a deficit could be made profitable with these additional assignments. Engaging such organisations to provide employment reintegration service components thus amounts to a hidden subsidy.

When considerations about the viability of the local sheltered work infrastructure get pitted against the considerations concerning the optimal governing of provision of reintegration services different public values collide. Similar collisions occur when the goals related to employment reintegration policy get pitted against the goals of providers affiliated to the municipality (the sanitation department whose goal it is to keep the municipality clean). Such conflicts illustrate that the safeguarding of all relevant public values will not always coincide with one specific make or buy option. This confirms the notion of public value trade-offs: decision to safeguard one public value may adversely affect another public value unfavourably.

8.8 Summary

In response to unsatisfactory compliance results municipalities have adapted their make or buy decisions with a view to ensuring services are delivered in accordance with their requirements. The municipalities were increasingly inclined to contract out only some

service components and to produce the rest in-house. They have adopted modular and individual purchasing strategies that reduce information asymmetry through simplification. The municipalities have also opted to engage more providers affiliated to the municipality for the delivery of those service components that are harder to monitor such as services for problem clients. The decision to engage private providers to deliver specific service components is also based on the desire to safeguard public values. Other considerations not directly related to the delivery of the services, especially budgetary considerations also have a strong influence on the make or buy decisions municipalities make in practice.

Chapter 9

The specification phase

Chapter 9: The specification phase

9.1 Introduction

This chapter examines how municipalities act in the specification phase in the contracting out process and how they formulate specifications for the delivery of the services.

We analysed the purchasing documents used in tender procedures with reference to several aspects. First we looked at the kind of services being purchased, the service targets defined and the requirements formulated in relation to the service. We then established the degree of discretion providers are allowed when delivering the services as this is an indicator of how the municipalities apply the strategy of simplification. To establish how much discretion providers are granted we looked at how decision-making powers are allocated and at the consent requirements stipulated in the purchasing documents. We also examined the relationship between the different requirements that providers must meet while delivering the services based on the assumption that the more process requirements there are, the more the freedom (and thus discretion) of the providers is limited. The degree of discretion is also reflected in the role given to providers in the drafting of the service plans and the degree of authority they have to amend these plans independently. These service plans play an important role in the delivery of the services because they formulate exactly what is required of the agents. We also examined the requirements set out in the purchasing documents about contract management because the contract is a basis for enforcing compliance with the agreed arrangements. To this end we studied the instructions contained in the purchasing documents relating to how the providers should supply information, how the providers are evaluated and how the delivery of the services is to be monitored.

The data for this chapter was mainly gathered through the content analysis⁷⁰ of 20 purchasing documents (tender documents, contracts and attachments)⁷¹ used to buy reintegration services. Additional information about specification and the degree of discretion granted to providers in practice was collected during the case studies.

The structure of this chapter is as follows: first we elaborate on the nature of specification in relation to contracting out employment reintegration services. We then present the different kinds of contracts that are concluded and establish how the degree of discretion given to providers is determined both on paper and in practice. This is followed by a description of how the different components of the contract management are reflected in the purchasing documents. The chapter concludes with an analysis of what municipalities do to achieve basic contractual safeguarding in the specification phase.

70 For this a total of 1117 pages were analysed using the computer program *Nvivo 8*.

71 For details about the tender document analysis see paragraph 7.5 of chapter 7.

9.2 Specification of service requirements

For the purpose of contracting out employment reintegration services, specification involves the drafting of the contract governing the delivery of the services to be purchased. When these services are contracted out with a tender procedure, specification also involves the drafting of the tender documents in which the principal communicates its requirements to the market. In order to guarantee a level playing field for all (potential) bidders, the procurement regulations dictate that maximum transparency must be pursued from the start of the tender procedure and therefore the purchase documents (the tender documents, contracts and any appendices) should specify as clearly and as extensively as possible what the services consist of and how these should be delivered.

Types of contracts

From the analysis of the purchasing documents it emerged that municipalities tended to use No-Cure-Less-Pay (NCLP) remuneration structures. This was the primary financing structure in 15 of the 20 purchasing documents. The financing structure in the other 5 documents was either No-Cure-No-Pay (NCNP), a fixed amount per service trajectory or a combination of these.

In the majority of cases contracts were framework contracts or contracts for indefinite volumes with no guaranteed purchase volumes. These contracts define the conditions subject to which services will be purchased. In 7 of the 20 cases it was explicitly stated that the contract is a framework contract. In 10 of the 20 purchasing documents there were no references to any purchase guarantees or fixed volumes making these in fact also framework contracts. A fixed purchase volume was only stipulated in three cases. Although in most cases (16 of the 20) the documents did contain an estimate of the expected purchase volume this was made subject to the explicit condition that it is not a binding guarantee. In relation to the duration of the contracts it emerged that in most cases the contracts are short term with the possibility of renewal. The contracts that parties enter into following a tender procedure usually had a total duration of between one and five years. About half of these contracts had an initial term of one year and the rest a term of two years. In most cases the contracts can be renewed twice for the term of one year.

From the above we conclude that municipalities used framework contracts with a NCLP remuneration structure that were of relatively short duration and that could be renewed several times, up to a maximum of five years.

Type of services purchased

In most cases several types of services were purchased per tender. These can be roughly divided into four groups: services aimed at employment reintegration (*reintegration*), services aimed at activation (*activation*), customised trajectories (*tailored solution for individual clients*) and specific expertise in relation to specific problems (*acquisition of external expertise*). The service targets for the service trajectories that were purchased varied per service trajectory. Not all the trajectories had the objective of getting clients off

benefit and into employment. Services were also purchased to achieve specific intermediate outcomes on the road from benefit dependency to employment, such as improving client skills and helping clients up the participation ladder.⁷² The variety of purposes was also reflected in the modular purchasing strategies, which a number of municipalities used, according to the purchasing documents. Municipalities purchased modules per client focused on solving specific problems and achieving simple sub-results.⁷³ For an overview of the type of services purchased, divided into four groups with an explanatory note see table 9.1.

The table shows substantial variation in the types of services purchased as well as a reasonable degree of specialisation in the service trajectories and service trajectory components purchased by municipalities.

72 See note 68.

73 For further elaboration of modular buying see paragraph 8.4.1 of chapter 8 on the make or buy phase.

Table 9.1				
<i>Overview of services bought in the 20 cases</i>				
Service Cluster	Type	Type of service bought	Extended description of service or format used in practice	Number of cases
Reintegration		Services aimed at employment reintegration	Service aimed at reintegrating clients into the labour market.	17
		Providing practical work experience	Either through internships or real employment positions. In either sheltered or real world conditions.	6
		Improving employee competencies	Through internships or simple work or activation activities.	11
		Improving job search or interviews skills	Assistance in finding jobs and courses.	5
		Work first	Work-first activities.	4
Activation		Services aimed at activation of clients	Either through social or community activities or volunteer work.	17
		Providing care services	Either health or psychological care.	7
		Improving motivation of clients and resolving motivational issues	Through One on one coaching or group activities	4
		Improving physical condition of clients	Through sports or other social activities.	5
Tailored solution for individual clients		Custom or tailored support services	Aimed at removing specific obstacles client faces. Includes budgeting, self-esteem issues, personal issues(problems related to divorce or abusive relationships) and illiteracy.	11
Acquisition of external expertise		Providing support in dealing with child care services	Assisting with organizing and acquiring of placements slots for childcare.	5
		Providing services for integration into Dutch society of foreigners	Includes Dutch language and culture courses and preparation for <i>inburgeringsexamen</i> (integration exam).	1
		Re-socialization (after detention)	Preparing client for reinterring of society after detention.	3
		Disciplinary tracts	Designed to discipline uncooperative clients.	1
		Providing services for diagnosing of clients and external expertise	Either psycho-physical or employment affinity and proficiency related diagnoses or expertise.	12

The primary and secondary objectives of the services

We examined the policy aims stated in the tender documents on which the purchasing documents were based in order to define the service targets the municipalities are trying to achieve by purchasing the services. Almost all the documents we examined contained explicit references to policy targets. The two policy targets most often observed were:

- employment reintegration or regular participation on the labour market;
- the social activation of clients, or the encouragement of social participation or activation of clients.

In 7 cases the purchasing documents referred to both these policy targets with employment reintegration being the primary target and social activation the secondary target. The social activation of clients was the only and primary goal in 2 cases.

In brief, in the purchasing documents municipalities stated two primary targets for the services: employment reintegration and/or social activation. Municipalities also define a general policy context within which the targets needed to be achieved.

General developments in the design of contracts

To find out how contracts and tender documents have developed through the years we asked the contract managers what changes they have observed in recent years. From their responses it emerged that developments varied from municipality to municipality. The majority of municipalities over the years have tried to reduce the length of the contracts. To this end the contracts were streamlined and items not being used were been dispensed with. New items often replaced the discarded ones, such as more specific arrangements relating to reporting.

A further trend is that municipalities have been trying to formulate more specific targets and requirements in the contracts while at the same time retaining flexibility by leaving the options open for future adaptations. This was complicated by the fact that at the same time they had to take account of restrictions imposed by procurement regulations. Another trend was the replacement of NCNP remuneration structures by NCLP remuneration structures. Sometimes trajectories would even be paid for in full immediately. Payments were increasingly linked to achieving specific sub-targets or more practical deliverables within the service trajectory. Past experience at several municipalities shows that disputes can arise when agreements and commitments that parties make are not properly recorded on paper. This is why municipalities in later stages tried to be as comprehensive as possible in writing. Many oral agreements were recorded as addenda to the contract.

It emerges that developments in contract design were contradictory. On the one hand municipalities sought to streamline the contracts while on the other hand they considered it important to record all the agreements in the contract to create optimum clarity. A shift also took place towards more NCLP financial structures.

9.3 Discretion given to providers

We examined the purchasing documents for any indications of implicit or explicit division of responsibilities and powers. We also investigated the discretionary leeway that providers were given, the role of providers in designing the service plans and the extent to which they could alter these independently.

Discretion given to providers in the purchasing documents

Almost all the purchasing documents stated the case managers as having final responsibility for how the services are provided and the final say in how the service trajectory should proceed. Only in 2 cases was no reference made to this in the purchasing documents. In thirteen cases it was explicitly stated that the decision-making power to set service targets and decide what resources will be used lies with the case managers. 16 of the 20 purchasing documents required the provider to submit the service plan to the case manager for approval before service delivery can start. The same applies to changes to the service plans. In 2 cases no mention was made of this approval and in the other 2 cases there was no service plan. In the majority of cases a service trajectory was not completed until the case manager had signed for acceptance and approved the final reports. In almost every case the general decision-making power and discretion resided with the case managers and the provider's discretion was limited in some way. In many cases the actions of the provider were bound ex ante by the permission and ex post by the approval of case managers – often written permission by e-mail. In 2 cases delivery was only checked ex post by means of approving the final client reports.

The fact that providers had to obtain prior approval before starting to deliver the services or before introducing any changes means that there was a heavy emphasis on ex ante control and on the curtailment of the discretionary leeway the providers had for taking decisions relating to the delivery of the services.

Specification of service delivery requirements

We also examined the purchasing documents to find out what kinds of requirements were imposed on providers. We distinguish between *structural* requirements (that relate to requirements that the provider must meet before starting to deliver the services), *process* requirements (that relate to requirements the provider must meet while delivering the services) and *outcome* requirements (that relate to the outcomes providers must achieve). On average a municipality specified 21 structural requirements, 33 procedural requirements and 15 result requirements. Because the number of requirements could vary quite substantially from tender to tender, the relative ratio was examined. Of all the requirements specified by the municipalities, procedural requirements comprised the largest proportion (45%). About one third (30%) of the requirements were structural and about one quarter (24%) were result requirements. This shows that there was a strong emphasis on setting requirements for the process of service delivery.

Procedural requirements imposed on the service delivery

A more in depth examination of the kind of process requirements providers had to meet when delivering the services, revealed that the purchasing documents contained different kinds of procedural requirements. They related to the ten topics described below. The aims have been ranked according to the number of cases in which they appear in the purchasing documents.

1. Requirements relating to the building in which the services are to be delivered; for example requirements about the accessibility for disabled clients (18);
2. Requirements regarding the linking of activities to a service plan (17);
3. Requirements regarding the maximum duration of the trajectory (16);
4. Requirements relating to customisation and adjusting services to the needs and problems of the client (16);
5. Requirements regarding lead times (16);
6. Requirements regarding the kind of activities clients are expected to undertake, such as the requirement that clients must gain work experience in a real working environment, that clients must be engaged for a minimum number of hours a week or a requirement regarding the maximum number of clients that can perform activities within a group context at any one time (14);
7. Requirements relating to the form (for example one-to-one) and the degree (the number of hours) of supervision clients should receive (14);
8. Health & Safety rules and other rules applying to the service delivery (13);
9. Requirements regarding the handling of personal data of clients (10);
10. Requirements regarding the continuity of the services (9).

The above summary shows that many of the imposed procedural requirements greatly affect the service delivery process. These include the requirement that all activities performed with clients must be part of a service plan, the requirement regarding the kind of activity that has to be performed with the client and requirements regarding the number of hours that clients must be engaged in activities and the requirements concerning the way the supervision should be provided. Such requirements enabled municipalities to determine beforehand how the service trajectories were to be designed.

Discretion given to providers in the case studies

Respondents from the majority of municipalities indicated that the providers had a reasonable degree of freedom when executing the contract, especially in the early year of the period of time covered in this research when municipalities were still purchasing complete service trajectories. Later on the actual discretion of the providers became more limited. This freedom could vary in accordance with the type of service being purchased and with respect to particular providers. Providers with a good track record were often given more freedom.

The service providers were also asked about the freedom they received in attaining service targets. From their responses it emerged that 8 of the 9 providers affiliated to the municipality felt they had a reasonably large degree of freedom for attaining service targets. In these cases the providers were simply bound to meeting the performance agreements and were left to decide for themselves how to do this. Several providers (from the largest municipality) observed that the municipalities were inclined to specify beforehand the elements that a service trajectory should include. Of the 8 private service providers interviewed 2⁷⁴ said they had a substantial degree of freedom in designing the service trajectories and in deciding how to achieve the agreed service targets. One provider from Roermond indicated he had a limited degree of freedom; the municipality stipulated in the contract how the service trajectory should be executed. The remaining 5 private service providers indicated that within the agreed contours of the contract they had a reasonable degree of freedom both in designing the trajectories and in deciding how they want to achieve the agreed service goals.

From the above we conclude that on the whole providers in later stages tended to have less freedom than in the early years of outsourcing. Still both the providers affiliated to the municipality and the private providers believed that they had a reasonable degree of freedom. Providers affiliated to the municipality tended to have more discretion because the agreement they had with their municipality were generally less specific agreements than the contracts drawn up for private providers. The degree of discretion granted to providers also varied between providers: on the whole, the better providers performed the more freedom they received.

The role of providers in designing the service plan

The service plan (*trajectplan* in Dutch) is the formal instrument in which the majority of decisions relating to the implementation of the service trajectories are recorded beforehand. In almost all cases the service plan was mandatory. It is a good example of formalisation because the service plan detailed and limited the discretionary freedom of providers beforehand. The greater the role of the providers in designing the service plan, the more influence they had on the course of the service trajectory. We found that only in Amersfoort the service plan was entirely determined by the case managers. In the other municipalities the standard practice was that case manager formulated the service targets, the care or diagnostic needs (whether or not in consultation with the client) whereupon the practical details of the service plan were determined by the provider. The service plan was then approved by the case managers after which the service trajectory could start. Only in one case a provider indicated that the case managers actually had no role at all in designing the service plan: clients were actually directly employed by this service provider. However, in general it was the case managers who defined the service targets and care needs to be

74 Rotterdam and Groningen.

included in the service plan while the providers determined the more practical aspects of the trajectory. Such a detailed plan required the case manager's final approval before service delivery could commence. The case manager thus had a great deal of control over the service plan.

Prerogative to change the service trajectory or service plans

Another factor determining the degree to which the service plans limit the discretion of the providers is the extent to which providers are authorised to change or deviate from the service plan.

Case managers said that changes to the course of service trajectories or service plans were always made in consultation. However, prior permission was usually only needed for significant changes. Occasionally a municipality would only learn about less significant changes⁷⁵ at a late stage from the final reports. Case managers indicated this was a product of the trade-off between the degree to which municipalities want to work efficiently and the degree to which they want control over and accountability from the providers. Efficiency and control clearly were not always compatible. If a provider had to consult his case manager about every change and had to wait for permission each time, the implementation of the service trajectory might be delayed for an unacceptable period of time.

All providers except those in Enschede said they always consulted case managers before changing the service plan. The municipal affiliated provider in Enschede said that he sometimes skipped the formal requirement of requesting permission in order to avoid delays in the implementation of the service trajectory. If necessary he could easily contact the case managers and the case managers had a lot of faith in the municipality affiliated organisation. The case manager himself said that indeed the trajectory managers of the providers affiliated to the municipality often knew the clients better than the case managers did. The private service provider contracted by this municipality indicated that he only asked permission for structural changes to a service plan. Other, less drastic changes were told to the case managers during casual contacts or at the time of the final report.

From the above we conclude that the majority of municipalities providers were obliged to obtain prior permission of the case managers if they wanted to deviate in a substantial way from the service plans. For reasons of efficiency smaller changes to the trajectory programme could often be reported afterwards. In some cases providers with a good relationship with the municipality got more freedom to deviate from service plans.

⁷⁵ Significant changes are changes that have financial consequences or as a result of which products other than those agreed beforehand have to be used or when external training or schooling is deemed necessary.

9.4 Contract management in the purchasing documents

We analysed the purchasing documents for provisions about obtaining information on service delivery, about the supervision of providers are supervised and how evaluations are made. We looked for references to information to be collected from reports, inspections and audit reports or certification and for stipulations of management prerogatives and requirements for regular consultation. We also looked at the targets in respect of which providers were to be evaluated and the formulation of the associated incentives.

9.4.1 *References to monitoring*

Reports

We found that 18 of the 20 purchasing documents required providers to submit reports to the municipality. In all 18 of these cases regular management reports were required: reports containing quantitative information about the execution of the service trajectories with information on the performance of providers such as lead-times and the number of service trajectories started, in progress and finished. In most cases these reports had to be drawn up in line with a pre-determined format. In 10 cases quarterly reports were required, in 4 cases monthly reports and in 5 cases the frequency of the reports was to be determined at a later date. In 13 of the 19 cases the contracting agency required substantive reports at client level such as intake and progress reports. The delivery frequency of these reports varied but was usually once every three months. In other cases it was once a fortnight, once a month or once every two months. In 14 cases the purchasing documents required the submission of a final report at client level. In 9 cases both a progress report and final report at client level were required. In 4 cases this was either one and in another 4 cases the final report was to be accompanied by what is referred to as a warm transfer (transferring clients by means of a personal meeting). Remarkably, in one municipality (Groningen) the clients themselves were allowed to submit a progress report with the help of the providers.

From the above we conclude that the purchasing documents generally contained a clear contractual basis for monitoring.

Additional means of collecting information

In 3 cases the purchasing documents stipulated that the municipality should be granted access (if wished) by the provider to inspect how the services are being delivered. 13 of the 20 cases required either an audit report or access be granted to an auditor appointed by the municipality to inspect the books. 7 of the purchasing documents referred to the municipality reserving the right to initiate a client satisfaction survey to evaluate the clients' opinions on the delivery of the services. It was striking that only 4 of the 20 municipalities stipulated that the *Blik op Werk* certification was an absolute requirement for participation

in the tender.⁷⁶ Most municipalities stipulated in the tender documents that certification was not mandatory but merely an advantage.

Overall, in the majority of the cases the purchasing documents contained language that laid a contractual basis for collecting information about the way the providers would deliver the services. In only a few cases is any mention made of a certification requirements.

9.4.2 *Supervision and evaluation*

In 14 cases the purchasing documents required regular progress meetings to be held between the municipality and the providers - primarily quarterly meetings during which the general progress of the service delivery was to be discussed and evaluated. In 10 cases the purchasing documents required a detailed evaluation – usually annually or immediately prior to the expiry of a contract. In 2 cases the purchasing documents indicated that the results of a client satisfaction survey were to be discussed at these evaluations.

All the purchasing documents stipulated a provider performance in terms of general targets and specific service targets. In 16 cases the documents contained more specific success criteria that defined what conditions a successful result would need to meet. In most cases financial incentives were included in the remuneration structures. An example of such an incentive is the provision that the last instalment of the payments for a trajectory would be payable only when a specific result had been achieved. 9 purchasing documents specified quantitative success-criteria about the results to be achieved, such as minimum reductions in benefit dependency or a number of clients successful placed. In 4 cases maximum drop out percentages⁷⁷ were defined and in one case a maximum return rate⁷⁸ was stipulated.

In most of the purchasing documents municipalities defined a successful result with indicators that could be observed. Often such indicators were combined with a financial incentive, usually in the form of a NCLP remuneration structure.

9.5 **Analysis: safeguarding in the specification phase**

An analysis of the municipalities' specification phase decisions shows that they applied a variety of tools to ensure that the services are delivered in accordance with their requirements. In the course of the period covered by this research, the municipalities undertook several measures to increase their control over service delivery. Where initially contracts were formulated to specify outcomes backed up with financial incentives later on municipalities included monitoring mechanisms in the contract to enable them to enforce compliance in the contract management phase. Later contracts also stipulated at length how

76 Roermond, ISD Heemstede, Leiden and Venlo.

77 The maximum percentage of clients that may drop out of service trajectories.

78 The maximum amount of clients that providers can send back or refuse before they receive a penalty.

the municipality wanted services to be executed, with detailed targets and delivery requirements. Most municipalities also started to provide an overview of the policy context in which service delivery was to occur. Specification of the delivery process increased to the point that work protocols were introduced, requiring that the delivery of services should always be based on a service plan drawn up for each client. In short: the municipalities increasingly made concrete efforts to clarify what they expected the agents to do.

In the next sections we discuss two themes derived from our theoretical framework: the use of contractual specifications to *simplify* the performance asked from the agents in order to reduce the risk of non-compliance and the *preserving of rights of control* in order to provide municipalities with a legal basis to more easily enforce contractual compliance in later stages of the relation.

Simplification through specification

Our findings show that the municipalities made use of two forms of simplification: *reducing* the agent's discretion and *dividing* the service task into different service components.

The requirement that all service delivery should be based on a service plan is a practical example of formalisation in order to control agents' behaviour. It is also an example of simplification: the expected performance is specified in great detail and the agent's discretion is reduced. The municipalities restricted agent discretion further by specifying process requirements and effectively dictating the decisions to be made by providers during the delivery of the services. These requirements were usually far reaching, encompassing for example the place, duration and type of activities. Municipalities also limited the agent's discretion by assigning the authority to decide to the case managers and by making changes in service plans or deviations from service plans subject to the approval of the case managers. Municipalities thus tried to maintain a high degree of ex ante control over service delivery by reducing the agents' discretion.

What is particularly striking here is that the municipalities felt they gave providers a large degree of freedom and that most providers share this perception – even though under the contract providers needed the approval of the case manager before starting to deliver the service and for all changes they wished to make to the service plan during service delivery. This apparent contradiction might be traced back to the fact that many municipalities distrusted the market because of poor compliance on the part of service providers in the past causing them to feel that any freedom they would give providers was already a considerable amount of discretion. A probably stronger explanation, however, can be found in the fact that during the actual execution of the contract, the municipalities gave providers more leeway than the contracts and purchasing documents suggested. This was confirmed for instance by the case managers of one specific municipality who admitted that in practice the required approval for changes in the services plans could be sought retroactively, if necessary. Furthermore, several respondents explained that repeated positive experiences (trust) with specific providers were usually rewarded with more operational discretion. This is an indication that in later stages of the contract process, trust could alleviate the formal restrictions imposed on discretion as laid down in the contracts and tender documents.

Another form of simplification that we encountered builds on what we already observed in the make or buy phase: municipalities separated the services to be contracted out in different service components and used the purchasing documents to specify those components. In many contracts payments were linked to intermediate service outcomes and to an approval from the case manager before providers could proceed with the next stage of the service trajectory. All these different tools of simplification – limiting agents' discretion, specifying process requirements and dividing the service task into components – theoretically reduce information asymmetry and limit the opportunities for agents to exploit uncertainties. Practically it meant that the municipalities achieved a better position to control and influence the behaviour of the vendors.

Reserving the right to control

We found that almost all the purchasing documents analysed contained requirements with regard to monitoring and evaluating service delivery and stipulations of the authority to instruct providers.

With regard to monitoring, in most purchasing documents the municipalities specified in detail how information about service delivery would be gathered and what information should be provided. Most purchasing documents contained the provision that vendors must supply a number of systematic progress reports and more general management information about how service delivery proceeds. The vendors were required to provide both qualitative information and quantitative information about the service delivery. Theoretically these conditions in the purchasing documents are a way of reducing information asymmetry. Practically they were the legal basis for acquiring the information the municipalities wanted about the quality of service delivery and about the degree of compliance.

The general impression that emerges from the documents is that information was to be transferred primarily in writing with only a few so called warm transfers (personal communication). Such an emphasis on written information could cause the municipality to be blinded by a paper reality. Yet, most purchasing documents also specified moments during the delivery process for evaluation of the provider's performance, and even stipulated when periodical meetings and consultations were to be held.

The purchasing documents also provided a contractual basis for using several formalisation-based control strategies (output control, hierarchical and rule based control). Output control was reflected in specification of financial incentives linked to the achievement of specific targets. The explicit decision-making authority assigned to case managers and the fact that altering service plans was usual subject to the approval of the case manager confirms the supervisory role most municipalities defined for their case managers. This clearly resembles a situation of hierarchical control in which the municipal authorities could intervene if necessary and instruct to agents and give them feedback which could increase compliance. Thus the municipalities created a quasi-hierarchy relation where the case manager was put in an almost hierarchical command and control position over the providers. The thorough specification of the work processes and service requirements to be found in the purchasing documents and the extensive application of work protocols reflect the use of rule-based control.

From the above we can conclude that the municipalities safeguarded that services would be delivered in accordance with their requirements by retaining ex ante control over service provision. This was achieved by specifying procedural service requirements and by writing extensive authority for case managers to control into the contract and – more generally – by creating a legal basis for contract management. It is interesting to note that by keeping most of the decision-making powers in-house the final responsibility for the service delivery remained firmly in public hands. One could wonder whether restricting the freedom of the providers to the extent indicated in the contracts would not stifle their creativity and limit

their innovation and flexibility. We will come back to this when we analyse the contract management phase.

Finally, we observe that in the specification phase certification is attributed surprisingly little importance. Only in four cases were providers contractually required to possess any form of certification. This is striking since certification and self-regulation are considered important pillars for safeguarding the quality of services in the preparatory works⁷⁹ of the SUWI legislation that forms the basis of the privatisation of employment reintegration services. One would therefore expect that certification and in particular the certification provided by the branch organisation of reintegration suppliers would be a mandatory standard. However, as we will see in the next chapter there were specific reasons why the municipalities forwent this obligation.

9.6 Summary

During the specification phase, the municipalities in our sample fitted a number of instruments for basic contractual safeguarding. They applied various forms of the simplification strategy to reduce non-compliance and established a formal basis for contract management. It emerges that the municipalities used contracts to limit the discretion of providers and to internalise important parts of the service delivery such as coordination and decision-making. While this allows municipalities to maintain a strong chain of public accountability it also might affect the provider's ability to adapt service and to work efficiently.

⁷⁹ See preparatory works of the SUWI Act, Parliamentary Papers II 2000-2001, 27 588, nr 3, p. 49.

Chapter 10

The selection phase

Chapter 10: The selection phase

10.1 Introduction

In this chapter we examine the behaviour of municipalities in the selection phase of the contracting out process. It is the phase in which the municipalities select their providers.

The selection phase in a tender procedure is two-dimensional. On the one hand there is the paper reality: the tender documents, the selection criteria and adjudication criteria. On the other hand there is the actual process of making a choice between potential providers. Our enquiry to understand both these dimensions starts, in section 10.3, with an investigation of the paper reality of the selection process. This will be based on a content analysis of the tender documents municipalities use to select providers. The following section (10.4) contains a reconstruction of the actual selection process in the municipalities included in our case sample. This reconstruction is primarily based on data obtained in interviews. The chapter concludes with an analysis of the basic contractual safeguarding during the selection phase.

10.2 Awarding a contract

Providers were usually selected in a tender procedure. However, as we discussed in the make or buy chapter, selection sometimes occurred earlier, in the make or buy phase. This happened when a municipality decided to have the services produced by a provider affiliated with the municipality or even by an internal agency. Selection without a tender procedure also occurred in the selection phase. When small quantities of service trajectories were purchased the municipality sometimes decided to award the contract directly to a specific provider. Services purchased for individual clients were usually not acquired through a tender procedure; rather it was the case manager's task to select a provider. Case managers tended to select from known providers with whom a contract had already been concluded, although this was not always the case.

Table 10.1 shows the different ways in which in our cases the providers were selected. Of the 9 municipally affiliated providers included in our research, 3 had competed in a (competitive) tender procedure. 2 had participated in a tender procedure for part of the services they deliver and the remaining 4 affiliated providers were awarded the contract to deliver reintegration services directly. All 8 private providers in the case studies had participated in a tender procedure. This means that the majority of providers in the case study, including the municipally affiliated providers, were selected through a tender procedure.

Table 10.1*Overview of selection procedures used to select service providers*

Method of selection	Type of provider	Private providers (n = 8)	Municipally affiliated providers (n = 9)
Competitive tender		8	3
Partial tender in combination with direct award of contract.		-	2
Direct award of contract		-	4

10.3 A paper trail

Introduction

We investigated how municipalities select providers by analysing the content of 20 cases (sets of purchasing documents). The emphasis was on the criteria on which the selection is based. The rules of tendering require that providers are selected in the most transparent and objective way possible. For this reason the tender documents have to stipulate the way providers are selected and the criteria according to which the contract will be awarded. Selection generally takes place in two stages. In the initial pre-selection stage selection criteria are applied to determine which providers can participate in the tender procedure. These criteria serve as a filter and can vary substantially in relation to content as long as they do not discriminate.⁸⁰ In the second stage, the adjudication criteria are applied to determine the specific provider or providers that will be awarded the contract. These criteria serve to highlight the differences in the substance and quality of the services proposed in the different bids. Here too, no discriminating criteria may be applied. Vendors have to submit a bid that meets all the requirements stipulated in the tender document. Usually the tender documents contain a formal checklist that detail requirements and required documents to be submitted with the bid. From our analysis of the purchasing documents it emerged that the duration of the tender procedures in our research averaged about three months.

10.3.1 *Selection criteria*

Our analysis of the 20 cases revealed that the selection criteria used to determine which providers might participate in the tender procedure were mainly input requirements.⁸¹ These are requirements that providers must have satisfied prior to the awarding of the contract. The analysis of the purchasing documents produced twelve different types of selection criteria. For the majority of these criteria providers had to declare that they fulfilled the requirement. Failure to meet any one of them was a reason to be excluded

80 Discriminating in the sense that they would preclude classes of vendors (for instance from other European member states) to participate in the tender.

81 See chapter 9, paragraph 9.3 for an explanation of input requirements.

from participating in the tender procedure. Table 10.2 shows the types of requirements for participation in the tender procedure as found in our sample of documents.

The purchasing documents varied substantially as to the number of selection criteria they contained. While “presence of a complaints procedure and privacy regulations” and “ability to state that provider does not fall under the exclusion criteria of the BAO” were found in nearly all the purchasing documents, in only half of them these requirements formed part of the formal selection criteria. This is noteworthy because only failure to meet the requirements that form part of the formal selection criteria could result in the exclusion from the tender procedure. The same was true for the other types of criteria: although they often appeared in the purchasing documents as general input requirements, they only reappeared in the formal selection criteria in less than half the cases.

Table 10.2 <i>Overview of selection criteria found in purchasing documents (n= 20)</i>		
Selection criterion	Number of cases: criterion found in purchasing documents	Number of cases: criterion indicated as a selection criterion
Ability to demonstrate staff have sufficient professional skills and expertise	20	7
The existence of privacy regulations	19	9
Ability to demonstrate the provider is not in a state of bankruptcy	19	8
Ability to demonstrate the provider is adequately insured	19	7
Ability to state that provider does not fall under the excluding criteria laid down in articles 45 through 53 of the Dutch Decree on Tender Rules for Government Tenders (<i>Besluit Aanbestedingsregels Overheidsopdrachten</i> (BAO)) or in article 45 paragraph 1 of the EU Directive 2004/18	18	8
Ability to submit a certificate of good conduct and to state that provider has not been irrevocably sentenced under the articles 140, 177, 177a, 178, 225, 226, 227, 227a, 227b and/or 323a, 328ter paragraph 2, 416, 417, 417bis, 420bis, 420ter and/or 420quater of the Dutch Penal Code	18	8
Having (or the ability to obtain) a local office	18	8
Ability to demonstrate the provider has experience with the type of services being purchased, by means of references	17	10
The existence of a complaints procedure	16	8
Ability to demonstrate the provider has sufficient funds to be able to perform the contract	15	7
Ability to submit proof of registration in the commercial register or Chamber of Commerce	14	8
Having a system for maintaining quality assurance	9	7

Generally speaking these selection criteria function as a risk reduction tool to ensure that evidently fraudulent or bad providers are excluded and that the most serious risks are always legally covered. The criteria were often worded as input requirements but not explicitly referred to as selection criteria. As a result, in some cases the sifting and differentiating function that selection criteria can have remained underutilised.

10.3.2 *Adjudication criteria*

Providers who complied with the selection criteria were allowed to participate in the tender procedure. At this stage the adjudication criteria came into play to select the provider or providers that would be awarded the contract.

To enhance the transparency of a tender procedure, the principal is required to state beforehand how the quotations and proposals of the potential providers will be evaluated and how it will be decided whether the providers meet the stipulated criteria. The procurement regulations stipulate that municipalities can either opt for the provider quoting the lowest price or for the most economically advantageous tender. In relation to this latter option several criteria can be defined to establish the best price-quality ratio. To increase transparency when applying the ‘economically most advantageous’ test, the purchasing documents should state how the different adjudication criteria are weighted.

The role of price in the award criteria

In all cases where municipalities explicitly stated the criteria to be used as a selection basis (16 of the 20) reference was made to *price-quality ratios*. In the adjudication criteria found in the purchasing documents this price-quality ratio was usually divided into quality criteria and price criteria. These criteria were assigned scores and in principle the highest scoring provider would be awarded the contract. In 14 of the 20 cases price was part of the adjudication criteria. In the 6 other purchasing documents price was not named as part of the adjudication criteria. In 2 cases price did have the highest relative score among the adjudication criteria, with a maximum weighting of 30%.⁸² In none of the 14 cases in which price was found to be part of the adjudication criteria was it assigned the highest weighting. We can therefore conclude that although price was usually named as one of the adjudication criteria used to award the contract, it was almost never assigned the heaviest weighting.

Other quality-related factors in the award criteria

In addition to price, seven other categories of criteria emerged that were used to determine the best price-quality ratio. Table 10.3 shows the frequency of use of the seven criteria in the purchasing documents.

⁸² This means that 30% of the score awarded to a particular provider in the adjudication procedure was dictated by price.

Table 10.3 <i>Adjudication criteria in purchasing documents (n= 20)</i>	
Category of adjudication criteria	Number of cases
Quality of the services in general	16
Professionalism of staff	11
Provider's vision on service delivery	10
Experience of providers with the services being purchased	10
Assessment of a model service plan	8
Criteria related to specific parts of the service (prospected lead-times, availability of internship places; bidder's employer network)	6

The category 'quality of the services in general' was in the purchasing documents often divided into different sub-elements that could also be found in the other individual adjudication criteria. They include:

- the municipality's assessment of a model trajectory plan or a service plan;
- the availability of a quality assurance system;
- the method used by the provider to guarantee client satisfaction;
- a description of the provider's vision on service delivery;
- the expected lead-times;
- the availability of a relevant local network for the placement of clients;
- the measures taken to guarantee the continuity of the services.

This means the award criteria that were found most frequently in the purchasing documents were all linked to substantive aspects (quality) of service delivery. Quality is an element that returned in almost every case as the most important factor in the award criteria. However, the ways in which quality was defined and weighted varied greatly. Often the evaluation of the model trajectory plan or the plan of approach was weighted heavily. But the provider's vision on the services and its experience with the delivery of the type of services requested were also seen as important elements of quality. In seven cases providers were required to give a presentation to explain how they would go about delivering the services. It is noteworthy that the 'educational level of staff' was the most frequently recurring criterion in the operationalization of quality. This suggests that the municipalities considered the education of staff to be an important indicator of quality.

The differences in formulation and setup of the adjudication criteria we found were substantial. In about half of the cases municipalities limited themselves to 'price' and 'quality', with quality specified in no more than 3 sub-elements. In the remaining cases, up to 7 or 8 sub-elements were formulated (all falling within the six stated categories) to define quality in addition to price. A recurring element in the quality assessment was that providers had to lay down on paper how they intended to provide

the services or which methods they planned to apply. The requirement that a quality safeguarding system had to be in place, was often considered to be sufficiently covered by any accreditation, such as the *Blik op Werk* certification.⁸³ In many cases, possession of a certification would give the potential providers extra points, but certification was usually not mandatory.

Summing up, the municipalities in our sample showed a variety of ways to operationalize quality even though they used similar types of elements to define and operationalize quality. The most frequently used categories were ‘provider’s vision on service delivery’; ‘description of the way in which trajectories are to be implemented’ and ‘the educational level of staff’.

10.4 Selection in the case studies

Introduction

Our next step is, to obtain an adequate representation of the selection processes in our cases and to compare the picture that emerged from the content analysis of the purchasing documents with the actual selection practices. Because the content analysis showed that the interpretations of quality were quite varied, we were especially interested in the meaning of ‘quality’ in the practice of selection.

A complete tender procedure on average took between six and nine months including preparations – even though the tender documents stated a term of three months from the start of the procedures. Many municipalities perceived the length of these procedures as an obstacle because in nine months a lot can change in the client population. This was particularly felt during the beginning of the economic crisis in 2008 when it took a long time before some of the municipalities were able to respond with suitable services. These time lags were in large part caused by tender requirements and by the fact that the crisis led to an urgent need of new and different kinds of services. Since existing services were not of much use anymore, municipalities had to start tender procedures for the acquisition of alternative facilities. In most cases it took at least six months and sometimes longer before the right services could be purchased. Furthermore, it emerged that the costs of the entire procedure, roughly estimated, varied from € 10,000 to € 20,000. In other words, tender procedures proved to be costly in terms of both money and time.

The tender procedures were structured as follows: after the potential providers had submitted their bids and proposals these are evaluated by an adjudication committee which in most cases consists of contract managers, policy staff and often case managers. This committee evaluates the quotations by assigning each quotation a score based on the

⁸³ *Blik op Werk* is the standard certification for the Dutch employments reintegration sector. It is executed by a foundation setup by the branch Association of providers active on the reintegration market.

weightings. The committee then discusses the assigned scores and the quotation with the highest scores is awarded the contract.

10.4.1 *What did municipalities want to know about providers?*

Municipalities saw the quality of staff as one of the most important factors on which the success of the service delivery depends. Commitment, motivation and professionalism were considered to be important aspects of staff quality. This is consistent with the findings in the content analysis. However, when a tender procedure had to be applied, it was often relatively difficult to gain an assessment of the people inside the different bidding companies. In the tender procedures the focus was largely on the paper reality, the way the providers presented themselves in their bids. Nevertheless, many municipalities made an effort to gain some insight into the qualities of the personnel of the bidding companies. One way to do so was to have potential providers give a presentation during the tender procedure – presentations given by the staff that would be working in the provision of the services. Staff of the municipalities where this was part of the procedure felt that these presentations enabled them to obtain a reasonably good idea of the type of staff deployed by the providers. It at least allowed them to identify potentially bad providers. The drawback was that the municipality had no guarantee that the providers would actually deploy the high-quality staff doing the presentations. Indeed, several municipalities had the experience that providers used practiced and qualified staff to give presentations and provide the services during the initial months of the contract – only to move on to the next tender procedure while being replaced by far less experienced staff. One solution adopted to avoid this problem was to keep an eye on who the providers were deploying. In one municipality the contract manager always had an introductory talk with new external staff coming to work on the execution of the contract so as to gain some assessment of the people providing the service. Such a check was never arranged for in the contract, so formally the municipality had no say in the personnel matters of the providers. Therefore any control of the quality of the workers engaged had to be informal.

Municipalities attached a lot of importance to finding out exactly what the providers' service trajectories entailed and how the potential providers differed from one another in this respect. The municipalities wanted to know what knowledge and expertise providers had in relation to the requested services and whether providers were reliable and would comply with the agreed arrangements. The most important sources of information were the references and sometimes the previous experiences that municipalities had had with specific providers. More generally the municipalities considered a disposition for compliance and reliability important provider qualities, even though it was difficult to assess this beforehand. To overcome this, one municipality would first place a small order with a new provider – such as services for individual clients. Thus the municipality created an opportunity to test the provider and to base future assessments on this experience.

In short, the municipalities considered the quality of the staff of the providers, in terms of knowledge, motivation, commitment and reliability, an important standard to base their selection decisions on. This corresponds with the findings from the content analysis of the purchasing documents. However, our research also revealed that the municipalities were not always successful in gaining sufficient information to test all these aspects. To determine quality the municipalities wanted to know in what areas providers substantively differed from one another and whether providers would be reliable.

10.4.2 *Core standards when awarding contracts*

Most municipalities would argue that in principle quality was the most decisive standard in the selection process. However, in reality price was often a decisive factor too, if only because it has a highly differentiating effect. We now will discuss both these standards as they are applied in the practice of the selection process. Lastly we will examine how the municipalities dealt with value congruency as a proxy for quality.

Quality in the selection process

Quality is an ambiguous concept open to different interpretations. In this section we will explore what according to the municipalities in our sample constitutes quality in the delivery of reintegration services and how this is reflected in the selection of providers.

According to the municipalities, a prime aspect of quality was good communication between the municipal agency and the provider, especially in the form of timely feedback by provider. A second element of quality was the extent to which the provider was aiming for the best possible result with the client. A third element was compliance on the part of the provider with the agreed arrangements. The professional quality of the provider's staff (whether or not assessed based on their *curricula vitae*) and the provider's understanding of the client's problems were also frequently named. It is remarkable that quality was particularly associated with the attitude of the providers and with the interactional elements of the contractual relationship. Contract managers noted that it was often hard to account for either of these elements of quality in the selection process because most aspects (complying with agreements for instance), could only really be judged once municipalities had actually worked with the service provider. Municipalities did nevertheless attempt to gain some information about these aspects. Thus they asked providers to write down in detail how they expected to set about designing and delivering the services. Of course, a convincing presentation on paper of aspects such as a vision on service delivery or a proposed approach, did not guarantee that the delivery will occur as proposed. As a consequence, municipalities attached proportionally great importance to any prior experiences they might have had with a provider.

Overall, quality was frequently measured against what were referred to as the 'softer' or less measurable aspects of the services, such as the attitude and commitment of the providers and their penchant for cooperation. The assessment of such aspects actually

required prior experienced in mutual interactions. As a proxy, municipalities requested potential providers to put their intentions, visions and plans in writing.

Price in the selection process

The analysis of the tender documents revealed that in most cases price was used as an adjudication criterion but that it was never assigned the heaviest weighting. This suggests that municipalities did not use price as the primary criterion for selecting providers. This was confirmed in conversations with contract managers who generally indicated that quality was the most important factor for selection. Still the function of price in the adjudication is not to be neglected. Applying price as an adjudication standard is interlaced with issues. One problem several municipalities experienced was the crowding out power of price. Indeed, it in some cases price became the most differentiating aspect by which providers distinguished themselves from one another when all the providers gave an equally convincing description of how they intended to realise quality of service. As a result the intention not to make price the most decisive criterion was washed away by its differentiating power and price became the decisive factor in the awarding of the contract. The procurement regulations dictate that in such cases the buyer opts for the provider offering the lowest price. Doubts that municipalities felt about the providers with the lowest price could not be sufficiently substantiated, while often those doubts proved to be well founded in a later stage when the awarded contract was being executed. One of the municipalities in our sample (responding to demands from council members) applied adjudication criteria that assigned a fairly low weighting to price. Several providers delivered a good presentation and nearly all the providers were given the same score for quality. Here, too price became the only differentiating and therefore decisive factor in the awarding of the contract. This particular municipality was also confronted with the problem that certain providers were very keen to get a foothold in a big city. These providers therefore quoted prices far below what was usual. This often had unfavourable consequences for the quality of the services delivered. Some of the providers even ended up going bankrupt due to the low prices they had offered. This in turn made it hard to guarantee the continuity of the services for clients.

We can thus see that while price was usually not the primary adjudication criterion on the basis of which municipalities wanted to select providers, under specific circumstances, price did become the decisive criterion for the awarding of a contract.

Value congruence in the selection process

Most municipalities were of the opinion that providers were usually aware of the public dimensions associated with (public) reintegration services, as distinguished from other 'regular' employment services. In particular, providers were conscious of the fact that the target group of employment reintegration services consisted of the more vulnerable people in society and that reintegration services as public service needed to meet specific requirements such as equitable treatment and efficient use of public resources. Yet such

awareness was at best an implicit condition in the selection of providers – since such awareness could only really be established while working together. Three municipalities indicated that this type of awareness was a criterion in the selection of providers. For instance Amersfoort tried to convey the importance of this dimension in its tender documents in order to have potential providers to indicate their position in this field. Two other municipalities (Haarlem and Lelystad) indicated that for this reason they preferred to select local organisations, which they assume were familiar with the local context and public dimensions and would have an awareness of the target group.

Thus we can conclude that at least several municipalities explicitly attempted to select value congruent providers. However, for the majority of municipalities value congruency was at best an implicit standard. For them it was too difficult to establish the sharing of values or ideas beforehand. This was particularly true if the principal was allowed only limited interaction beforehand with potential providers, as is the case in tender procedures.

10.5 Selection: the provider perspective

According to the providers in our sample, a tender is an expensive affair requiring an upfront investment of between € 5,000 and € 10,000 to present a bid with no guarantee of landing a contract or seeing returns. Several private providers felt that public or semi-public providers had an implicit advantage when they participated in competitive tenders. In their opinion, forcing public providers to compete in the tender did not at all level out the playing field. Several of the public providers also stated their unhappiness at having to participate in tender procedures. They felt they should not have to compete with private providers for the delivery of such niche services. Besides, if a municipally-linked provider lost a bid, that could sour relations significantly.

Some providers experienced the tender procedure as a constraint that forced them to present their services in a particular manner that was largely determined beforehand and that more often than not did not correspond well with their own methods. Sometimes, providers had to make excessive changes in their work processes in order to meet the requirements laid down in European procurement rules, with the result that providers decided not to participate in a tender procedure at all.

Thus we find that amongst the providers, too, there were reservations about the use of tender procedures to select providers. The strict selection requirements were sometimes perceived as an obstacle to landing contracts.

10.6 Analysis: safeguarding in the selection phase

From our research we have found that municipalities tried to ensure that services were delivered in accordance with their requirements in several ways. They tried to select high-quality agents that could deliver desired service results at a reasonable price. They may also tried to select agents who were value congruent or trustworthy in order to ensure high quality of service, although this had varying degrees of success. We have also found that

tender procedures and in particular the procurement regulations did not always aid the selection of what the municipalities consider to be the best providers.

In the next sections we discuss three elements from our theoretical framework: the importance of *value congruency* in the selection strategy of the municipalities in our sample; the importance of *trustworthiness* as an anchor point for selection; and lastly procurement regulation as a barrier for selection based on value congruency and trustworthiness.

Selection based on value congruency

The municipalities in our sample did attempt to select value congruent providers. This is most clearly reflected in the fact that in many cases the *adjudication criteria* contained requirements such as presenting a vision on service delivery – requirements that often formed the most heavily weighted element in the adjudication criteria. Potential providers also had to give presentations about their vision on service delivery and about their underlying ideas convictions. Nonetheless, the practical application of selecting on the basis of value congruency turned out to be difficult, particularly because it was hard, without prior experience with a vendor, to assess his values or goals. This point can be illustrated with the example of the criterion “sharing an understanding about what the public dimension of providing employment reintegration is”. Our research revealed that this criterion usually is applied only implicitly. In fact, only three municipalities used it as an explicit standard. This can partly be explained by the difficulty of assessing such a quality beforehand. Another explanation is that sometimes municipalities explicitly wanted providers who did not share a certain frame of reference because such a provider would be driven by other values: less bureaucratic and more goal oriented or efficient.

Some municipalities used the selection criteria of *embeddedness* as a proxy for value congruency. Municipalities preferred local service providers because they expected these to have a shared frame of reference with respect to the local conditions. This is contrary to our theoretical expectations. The assumption derived from the theoretical framework is, that the search for embedded providers would be confined to the make or buy phase because in this phase it is easier to select embedded providers without the risk of violating procurement regulation. The application of embeddedness in a tender procedure during the selection phase could easily be perceived as discrimination, which would be at odds with procurement regulations. Nonetheless, two municipalities made an explicit decision to aim for selecting local service providers. To overcome the legal hurdle, these municipalities used an adjudication criterion that allowed the selecting of local service providers without a violation of the procurement regulations; for instance the requirement that providers have strongly developed local networks in the region.

The selection practices we have described show that municipalities wanted to select agents with whom they have certain values and ideas in common about how the services should be delivered. Yet because it is difficult to assess such characteristics of a provider

without prior experience, a municipality would usually apply intrinsic motivation standards for providers with whom it already had worked before.

Selection based on trustworthiness

A similar problem occurred when municipalities attempted to select *trustworthy* providers. As an indicator for trustworthiness, municipalities required potential providers to produce references from previous contracts. Although selecting trustworthy providers seems an obvious choice, our study revealed that it was not easy for the municipalities to do so. Assessing whether a potential provider is trustworthy without first-hand experience, requires *ex ante* indicators for trustworthiness – which are difficult to devise. Municipalities were not inclined to share experiences regarding specific providers, so this potential source of information on the trustworthiness of vendors was not available.

The municipalities did experiment with different ways for selecting providers with value congruency or vendors that could be considered trustworthy – providers with which they already had had direct experience. This can be illustrated with the example of the municipality of Amersfoort, which utilised individual buying⁸⁴ as a kind of two-tiered selection strategy. The purchasing of services for individual clients (tier 1) was used to learn how providers deliver services and whether their performance was satisfactory. If these experiences were positive more substantial contracts could be awarded later on (tier 2). Another example is the strategy of the municipality of Haarlem. This municipality initially contracted several providers to deliver one and the same part of a service task. The vendor that proved himself the most reliable and successful would be given the next batches of clients. These two-tiered selection strategies are examples of ‘reputational control’.⁸⁵ Successful providers are rewarded for past performance with the assignment of extra clients. Still, tender procedures imposed considerable constraints on the application of these strategies, too.

Procurement regulations as a barrier to optimal selection

One of the most notable findings from the case studies is, that procurement regulations hindered the selection of suitable service providers. According to the municipalities in our sample, tender procedures not only cost a lot of time and money, but they also were a barrier to selecting providers that fitted the selection criteria the municipalities considered to be the most indicative of service quality. The procedures were thought to be too formal and inflexible. In some cases the emphasis on objectivity led to price crowding out quality. It forced municipalities to select low bidding sub-par providers. In view of the above we would suggest that procurement regulations are the most formidable obstacle in the

84 The practice of ‘individual buying’ is described more extensively in chapter 8.

85 Reputational control is one of the social control strategies that we discussed in the section on contract management in chapter 4.

selection phase to ensuring that the services are provided in accordance with the municipalities' requirements. This bold statement does, however, require some nuancing. The problems with selection through tendering pointed out above are largely attributable to the fact that the municipalities themselves apply the procurement regulations too strictly. Most municipalities in our sample bought employment reintegration services in accordance with the 2A procedure, a relatively stringent procedure that is meant for the procurement of general services. Instead they could have utilised the less stringent 2B procedure which applies to social services.⁸⁶ Secondly, procurement regulations and tender procedures themselves are intended to safeguard specific public values: they are supposed to prevent corruption and promote transparency in public procurement and to create a level playing field within the single European market. However, the data from our research show that tender procedures do not necessarily guarantee the selection of the best provider in terms of quality. This is especially true when procuring services which involve a strong human component. More generally one can question whether the compulsion to objectify, that characterises the procurement regulations, is suited for the acquisition of services of which it is inherently difficult to quantify and objectify quality.

10.7 Summary

In the selection phase municipalities sought to ensure basic contractual safeguarding by selecting competent providers who possess the right expertise and capacities and that are intrinsically motivated, show value congruency and are trustworthy. The municipalities in our sample used adjudication criteria such as 'vision on service delivery', 'reliability' and 'trustworthiness'. Some of them adopted a system of two-tiered selection to test the trustworthiness and dependability of potential agents. The municipalities attempted to a limited extent to select embedded providers assuming that they would be share the values of the municipality. Nevertheless municipalities experienced difficulties in selecting suitable providers. One problem was the crowding out of quality by price in tender procedures. Another problem was the strict application of procurement regulations that often formed a barrier to the optimal selection of suitable providers. However, in later years municipalities started to experiment with selection procedures that allowed them to gain practical experience of potential providers before awarding large scale contracts. In doing so, the municipality increased the likelihood that the selected provider would perform in accordance with the interests the municipality sought to safeguard.

86 In the Dutch procurement regulation (*BOA-besluit*) the European categories mentioned in the EU service directive (92/50/EEC) on public procurement which are referred to as annex 1A and annex 1B services are renamed 2A and 2B services.

Chapter 11

**The contract
management phase**

Chapter 11: The contract management phase

11.1 Introduction

This chapter describes how the municipalities operated in the contract management phase. Contract management starts when the contractual relationship becomes a reality. It can involve a complex array of measures undertaken by the principal to manage the performance of the service providers. Contract management can be divided into two components: *monitoring* and *supervising*. Monitoring encompasses the gathering and processing of information and supervision involves the assessment and instructing of agents. These are the topics on which we focus in this chapter.

This chapter starts with a general overview of contract management in the contracting out of reintegration services. The next section contains a more detailed examination of how information was gathered and processed for monitoring. This is followed by a section describing how providers were assessed and supervised during service delivery. The role played by trust and formalisation in contract management is then addressed. The chapter concludes with an analysis of how the municipalities sought to realize basic contractual safeguarding in the contract management phase.

11.2 Contract management in general

In the municipalities in our sample, contract management was usually conducted at two levels: by contract managers on a macro level and by case managers at client or operational level.⁸⁷ The main actors in the contract management phase were the *contract managers* and the *case managers* on the part of the municipalities and the *account managers* and *caseworkers* on the part of the service providers. At the contract management level, interaction usually took place between the contract managers and the account managers, while at the operational level contacts were usually between case managers and caseworkers.

11.2.1 The actors in contract management

The role of contract managers

The contract managers conducted quarterly meetings during which the general progress of the service delivery was discussed. At almost all the municipalities these meetings focused

⁸⁷ Only in two larger municipalities is contract management conducted at three levels, distinguishing between a general delivery management level, a contract management level and an operational level.

on numerical progress stats and on discussing any difficulties related to performance. Contract managers often acted as an escalation level, taking on the problems that could not be resolved at the operational level. The substantive treatment of individual cases was rarely seen at contract management level. Besides the running of the quarterly meetings and the supervision of service providers at macro level, the contract managers also took care of the internal implementation of the service contracts within the municipalities' organisation. The contract managers made sure that the characteristics of the various service products and the contracts were communicated to the case managers.

The role of case managers

At all the municipalities in the case study the case managers were allocated a supervisory role in both the coordination of the reintegration process and in the contract management. Thus the case managers usually had to decide which clients were sent to which providers. The key role of the case managers created at least some tension with the purchasing department in 6 of the municipalities in our sample. There were issues about the deployment of the service trajectories purchased or about the way clients were allocated to service providers. Such problems usually had to do with new products acquired by the purchasing department which the case managers did not consider as adequate for the needs of their clients. Thus trajectories, bought in tender procedures, were not used by the case managers. In one of our smaller municipalities for instance no clients had been signed up to new service trajectories for up to half a year after the tender procedures had been completed. Most municipalities tried to overcome this problem by better informing case managers about the purchased products. Some municipalities even organised speed-dating sessions and meet-and-greets, which enabled service providers, clients and case managers to become acquainted with each other. The foregoing demonstrates case managers were also tasked with the approval of the service plans on which service delivery was based. Once a service plan was approved and service delivery had commenced, the case manager had to monitor the progress of the delivery with reference to the service plan. Information for the monitoring was obtained from client reports and through contacts with the service providers. In most cases the case managers also approved the final reports submitted on the completion of a trajectory. Generally, in most municipalities the case managers were responsible for the coordination and the management of key parts of the service delivery.

11.2.2 Contact between the principal and the service providers

The municipal contract managers had meetings with both private and affiliated service providers with equal regularity. On average, the frequency was once every three months, with variations according to the type of client or the progress of the service trajectory. There was less contact when a trajectory was running smoothly. At contract management level representatives of the service providers and the municipalities usually met in person during the quarterly meetings. Also, contract managers visited the service providers at their premises.

Most case managers said they communicated with a representative of the service providers on a monthly or weekly basis. This was confirmed by the providers who said that on average they talked to their case managers once a week or more. Personal meetings at operational level tended to be not too frequent with much of the communication taking place by e-mail and telephone. In only four municipalities regular face-to-face meetings at operational level between case managers and representatives of the service providers took place.

11.2.3 *Coupling case managers with service providers*

In 6 municipalities⁸⁸ a new practice was adopted during the period of time under research: the job of ‘case manager’ was converted into ‘product manager’. This represented a considerable break with the previous situation in which case managers were linked to clients. Case managers would follow the client throughout their stay in benefits. The new product managers were linked to service providers and clients would move on to the next manager when they were ready to receive another service. The product managers were more involved in the management of the contracts, attended the quarterly meetings with the contract managers and in 2 municipalities (Roermond and Amersfoort) they had to write the quarterly reports – based on information provided by the service providers.⁸⁹ In Roermond, case managers were also given responsibility for a part of the financial management of the contract: they approved intermediate payments to providers.

The purpose of creating this new function was to get a better grip on the accomplishments of each service provider separately. A case manager, who is in charge of contacts with one or two providers, rather than with a number of clients, can obtain a better view of the provider’s achievements with all of his clients. Moreover, the provider’s case workers were supposed to feel more accountable to a case manager coupled with their organisation than to any number of case managers connected to different clients. It was expected that as a result the case workers would make more of an effort to ensure the smooth delivery of services.

It is clear that the role of the case managers in the contract management could be crucial. They decided about the assistance to be provided to clients and they signed the clients up to specific service trajectories. They also were often responsible for coordinating and monitoring the performance of both client and provider. Yet it was often not easy for them to fulfil this key role effectively. The case managers were often swamped with heavy case loads and then they simply did not have enough time to attend to all their responsibilities.

88 Rotterdam, Amersfoort, Wageningen, Enschede, Haarlem and Roermond.

89 In the other 7 municipalities in our sample the quarterly reports were submitted by the service providers themselves.

11.3 Contract management: monitoring

Introduction

Monitoring is intended to reduce information asymmetry between the principal and the agent and forms the basis for the supervision, instruction and correction of agents. Beyond that, monitoring in itself may influence agent behaviour: the very fact of being observed may encourage compliance. In this section we examine how the municipalities in our sample obtained and processed information about service delivery.

The municipalities acquired their information primarily from two main sources: from the experiences and input of the case managers and from the reports written by the service providers. There were two kinds of reports: individual client reports and aggregated numerical management reports. Some of the municipalities used other information gathering methods as well, including dossier audits, inspections and controls conducted by external organisations.

11.3.1 *Monitoring through reports*

Management reports

The management reports written by the service providers contained numerical information about the inflow and outflow of clients, the nature of the service trajectory, absenteeism, lead times, dropout rates and return rates and provided general information about the service delivery. Amersfoort, Wageningen and especially Enschede required qualitative information. Most municipalities demanded management reports to be submitted every quarter while some wanted it once a month or once every two months. Only reports on absenteeism had to be filed daily or weekly. In one municipality the smaller service providers were not expected to submit management reports; they could suffice with client reports.

The municipalities usually furnished a format or structure detailing what kind of information should be provided. Enschede utilised a particularly detailed format. It had been designed to apply to all service providers and all services. It was used both internally by the case managers and externally by the service providers in order to enhance the compatibility and completeness of the information. In addition to the usual information (for example about outflow and placement percentages) this format also requested information about qualitative, substantive issues. Thus the provider had to explain why a specific result had or had not been achieved; he could indicate his satisfaction with the level of collaboration, he had to state whether commitments and agreed arrangements had been met, what kind of customisation of services has been applied and whether and why a trajectory has been deviated from. According to the municipality this detailed format provided a rich array of information, and allowed for uniform processing and easy comparison of the information gathered from both internal and external sources.

Client reports

Client reports, about individual clients, came in several different formats. We identified three basic kinds of client reports:

- Intake reports, which contain information about the situation of the client at the start of the trajectory and usually about the service plan as well;
- Regular progress reports, describing the development of the client, the goals still to be achieved and the progress of the service trajectory;
- Placements, outflow or final reports, reporting on the result of the trajectory or the reasons for its termination.

7 municipalities wanted client reports every three months, 2 municipalities every two months and 1 municipality every month. The quality of client reports varied greatly and the municipalities could not always get a sufficiently clear picture of what was actually being done with the clients. Usually case managers were responsible for signing off on the reports and also for addressing a service provider if he was performing below par. The official tool for dealing with poor quality reports was a refusal to sign-off. Due to lack of time this did not happen often. In particular towards the end of a service trajectory case managers would rather help new clients than spend much time on the assessment of bygone.

Processing of the reports

To gain a useful insight into the process, the quality and the results of the services delivered, the municipalities had to process the collected information.

In all but two⁹⁰ municipalities the service providers delivered the management reports directly to the contract managers. These reports only contained information originating from the service providers. In only 3 municipalities the management reports were fed directly into the municipality's own information system. At other municipalities it was not possible to enter these reports directly into the system due to system incompatibilities. In those situations the reports were either stored separately or transferred manually to internal systems. At all the municipalities the processing of the management reports consisted of an examination of the inflow, the outflow, the final results and the dropout rate. At some municipalities the processing also dealt with other key performance indicators – indicators that had been negotiated with the providers – and with the correspondence between actually achieved results and expected decreases in benefit dependency.

At almost all the municipalities the client reports were delivered directly to the case managers. The case managers then inserted the client reports into the client file in the internal client information tracking system. At some municipalities there were problems

⁹⁰ In these two municipalities (Enschede and Roermond) the management reports are written internally by case managers. This was done based on internally available information and information supplied by the service providers.

with feeding information into the internal client information systems due to technical incompatibilities between internal information processing systems. Sometimes this meant that information needed to be copied by hand into different systems and this costs additional time. This incompatibility between information systems made it difficult to obtain overviews of all the trajectories from the internal systems on the basis of externally acquired data and created situations where internal systems were insufficiently up-to-date. Several municipalities⁹¹ had their internal information not up to standard. Consequently, they were over-reliant on external information (reports submitted by service providers) or information obtained from the experience of case managers, which was often considered to be too subjective. These issues prompted some of the municipalities to invest heavily in new information management systems, as illustrated by the case of Enschede described above.

11.3.2 *Case managers' experiences*

In most municipalities case managers' experiences were a major internal source of information for the monitoring of service delivery. At all the municipalities the case managers were supposed to enter the information they possessed about the activities and the progress of the client into the client information tracking system. However, partly due to lack of time and partly due to technical issues case managers were not always consequent in doing so. For this reason most municipalities had to create a system specifically for recording case managers' experiences. Haarlem for instance set up a specific intranet ranking system with a kind of Wikipedia format, ranking various providers on the basis of case managers' experiences. Thus the experiences of case managers were recorded and processed in a systematic way.

The regularity with which case managers' experiences were collected differed between municipalities. Almost all of them had regular case meetings on a weekly, fortnightly or monthly basis when case managers would discuss the progress and problems of the service delivery with their immediate supervisors. In several municipalities the contract managers attended these meetings too and if not, they were sent the information acquired during these meetings. 3 municipalities⁹² had set up a specific consultative body or workgroup to aggregate and record the case managers' experiences in a structured manner before passing them on to the contract managers. In several other municipalities the case managers experiences were passed on more informally. In preparation of their quarterly meeting contract managers would visit the case managers to obtain their input or request them to submit experiences with service provides by e-mail. The amount of effort put into this varied between contract managers and sometimes between case managers too. Consequently, the quality of information thus gathered was highly dependent on the efforts

91 Groningen, Enschede, Zutphen, Haarlem and Rotterdam.

92 Rotterdam, Enschede and Haarlem.

of the individuals involved. According to some contract managers, case managers tended to focus on incidents and negative experiences, leaving out successes – thereby skewing the picture their experiences provided.

11.3.3 *Additional methods of acquiring information*

Internal audits

Several municipalities applied internal dossier audits to check the quality of the information being supplied by the service providers. In Haarlem, Amersfoort, Enschede and Rotterdam far reaching audits of client dossiers were carried out regularly on a random basis. These audits included checks as to whether the data in the reports corresponded with the internal data. The substance of the reports and recommendations were examined and compliance with service plans was checked. In Rotterdam these controls included randomly conducted exit interviews with clients; the information from these interviews was checked against the reports. Several municipalities used field inspections to acquire direct information about service delivery. Haarlem, Enschede, Roermond and Rotterdam regularly carried out controls at the service provider's location. Roermond even based its contract managers at the same location as the service providers; they could visit the work floor a number of times a week to see how the service providers delivered their services.

External control: accountant audits and certification

In our cases we encountered two kinds of external controls. The first was the accountant's audit; 5 municipalities required the service providers to submit an audit report once a year. These audits dealt with the legality of the spending of public funds by the providers.

The second form of external control was certification. An example is the *Blik op Werk* certification mark, the official certification mark set up by the branch organisation for reintegration (Boaborea). Unlike the UWV, most municipalities in our sample did not require their providers to possess the *Blik op Werk* certification. Municipalities considered certification merely as an advantage and not as a necessity. They believed that making certification mandatory would exclude smaller or local service providers from participation in the tender procedures. A number of respondents even doubted any added value of the *Blik op Werk* certification, alleging that it was not substantive enough.

Many of the service providers included in our study belonged to an organisation that controlled and certified them in some way or other. The majority of the certified service providers carried the *Blik op Werk* certification mark. A minority of organisations and service providers had some other certification that better suited the nature of their services

or was more customary in their specific sector (for instance the WSW⁹³ sector or the construction sector).

Of the 7 service providers affiliated with a municipality, 3 had the *Blik op Werk* certification. 1 of them had this certification only for part of its operations: a company it owned.⁹⁴ 1 affiliated service provider had the ISO certification mark, 1 the NOLOC mark (branch organisation for trainers), 1 had applied for the *Blik op Werk* certification mark, 1 was certified through the certification mark applicable for WSW organisations (Cedris branch code) and 1 affiliated service provider had no certification mark at all. The 2 semi-public service providers in our sample were both certified – 1 by *Blik op Werk* and 1 by its own certification mark. Of the 8 private service providers that participated in the case study 5 were certified by *Blik op Werk* and 1 had applied for this certification mark. 1 private service provider was certified through the NEN 4400⁹⁵ standards and 1 service provider had not applied for certification because it was too expensive and not a mandatory requirement.

In summing up, 2 of the 17 service providers were not certified, 8 were certified through *Blik op Werk* and 2 service providers were in the process of applying for this certification mark. In total we found 6 different kinds of certification or standards used for certification.

The municipalities in our sample did not make systematic use of any other external sources of information besides the auditing accountants and the certification institutions. They did not regularly acquire or share information or experiences with external parties or professional organisations such as Divosa⁹⁶ or Stimulansz⁹⁷. The only other form of acquiring or sharing information from external sources was the occasional exchange of experiences with other municipalities in the region or the following up on references from providers.

11.3.4 *Service providers' experience with monitoring*

The majority of service providers was monitored primarily through the reports they were required to submit. Of the 17 service providers 14 indicated they were expected to submit management reports each quarter. 7 service providers had to submit reports on a monthly or

93 WSW is 'sheltered work'. The certifying body providing certification for this sector is the branch organization Cedris.

94 In this particular case the municipally affiliated service provider operated an affiliated Ltd company that executed certain services. This construction was chosen in order to facilitate application of a different collective labour agreement and to satisfy accounting requirements.

95 NEN 4400 certification is handed out by the Dutch national normalisation authority (*Nederlands Normalisatie-Instituut*) and certifies quality of services delivered by commissioned providers.

96 Divosa is the Dutch association for municipal professionals working in the field of social services. It actively promotes debate about social policy themes relevant for municipalities.

97 Stimulansz is a non-profit foundation that is active in supporting municipalities with developing social policies.

two monthly bases and 6 were required to submit an annual report. All the service providers had to write regular client reports. Service providers in 5 municipalities (all private providers were required to submit periodic audit reports.

1 of the service providers told us that its reports often got lost at the municipality and new copies were frequently requested. This service provider did not have the impression that the municipality was very serious about monitoring and acquiring data about provider performance. 2 service providers from one of the medium sized municipalities believed that their municipality could monitor them more proactively. They often submitted detailed reports on their own initiative because the municipality did not make any real effort to request these.

11.4 Contract management: supervision

The second component of contract management is the supervision of providers. The municipalities strived to increase compliance by supervising and instructing their service providers. We distinguish between *structural supervision*, given as part of more general evaluations or assessments and *incidental supervision* given in the event of problems in individual cases.

11.4.1 Structural supervision and evaluation of service providers

Almost always, the quarterly reports served as interim evaluation moment during the course of the contract: these reports were usually discussed during the quarterly progress meetings held at contract management level. On those occasions a municipality would issue instructions about adjustments to the service delivery and provide feedback in relation to both structural problems and less urgent problems that did not require immediate attention. Problems that had been discussed at operational level and were not yet resolved could be addressed here too. The information on which evaluations and structural supervision were based consisted primarily of figures contained in the management reports and the information extrapolated from experiences of the case managers. All the municipalities in our sample involved the case managers (directly or indirectly) in the evaluation of the service providers. The case managers might participate in some of the quarterly meetings or provide information on providers to the contract managers prior to the evaluation.

Some municipalities had a system for collecting and aggregating case manager experiences that allowed the case managers to state their opinion of service providers on a regular basis. Rotterdam for example used an ‘expert workgroup’ and Haarlem had a ‘case manager feedback group’ for this purpose. Haarlem also used the aforementioned internal ranking system to gather information for evaluation.

The criteria for assessing service providers were usually those referred to in the quarterly reports, supplemented by the criteria contained in more specific performance agreements. Several municipalities assessed service providers not so much on (detailed) performance figures but with reference to the general satisfaction of the municipalities with the service

delivery. Several municipalities based their assessment decisions on the practical value of the services for clients irrespective of the performance given by the providers.

The majority of both affiliated and private service providers said they were assessed against previously agreed performance indicators for results and outflow. One service provider told us they had never been officially assessed and quarterly meetings were only held if requested by the service provider.

From the above it emerges that structural supervision was usually given at contract management level further to the quarterly reports. In most cases an annual assessment took place, sometimes in combination with an assessment with a view to contract renewal. In most cases assessments and structural supervision were based on information gleaned from reports and case managers' experiences. Both the municipally affiliated and private service providers were assessed on their performance and their compliance with the agreed arrangements and other written commitments.

11.4.2 *Incidental supervision*

Incidental supervision was given in reaction to acute problems or requests for adjustments in individual cases. This kind of supervision occurred at both the operational level and the contract management level. The contract management level usually functioned as escalation level for urgent problems that could not be addressed or resolved at the operational level.

Usually case managers addressed the service providers directly at the operational level about problems or any adjustments they wanted to be made, typically by e-mail or telephone, especially if they had a good relationship with the service provider. If the response of the service provider was inadequate the problem would be passed on to the contract manager or team manager who would discuss the problem at the next quarterly meeting. Several case managers told us that their senior managers did not always tackle these problems in an adequate manner. Consequently they had to look for a solution themselves. There were several ways for case managers to put pressure on service providers to meet their commitments. One instrument was the refusal to sign a report and thus deny payment to the providers. This approach required additional time consuming paperwork and thus it was not the case managers' preferred option. Another method was to stop sending the service provider clients until the problem had been addressed adequately. This approach, however, was considered too harsh a measure for minor deficiencies. Moreover, it was sometimes hardly applicable: occasionally at the management level informal commitments had been made about the volume of clients that would be allocated to a service provider. A case manager could not overrule such an agreement by himself.

Case managers who were coupled with specific service providers (see paragraph 11.2.3) usually had more leverage over their providers. These case managers often played an important role in both structural and incidental supervision. The most concrete example of this was found in Roermond where the coordinating case managers were also responsible for the financial settlement of trajectories and for approving payments and therefore had considerable additional means to influence providers directly. In more recent contracts,

Roermond had even spread out the payment into three or four smaller instalments, subject to the completion of specific sub-elements of the service trajectory – just in order to give case managers more power to enforce compliance.

11.4.3 *Intervention and escalation*

The majority of corrective measures taken against service providers related to the poor quality of reports, excessive lead-times and the failure to achieve results – the latter because nothing substantive was done with clients or clients were simply left to fend for themselves. According to both the contract managers and the case managers, service providers most frequently needed to be corrected for deficiencies in the contents of their reporting on clients' absenteeism and lead-times. Invoicing was also an area that required frequent supervision. At the start of the contractual relationship municipalities consciously supervised their providers relatively strictly to make service providers aware that they were being monitored. Later, when performance was satisfactory, supervision was often relaxed.

There was a pattern of escalation in the municipal interventions with the service providers. The case manager would usually address the service provider directly about urgent problems, giving a term within which the provider would have to improve performance or rectify the situation. If the problems persisted or nothing was done about them the situation could be escalated to the contract management level and formal meetings could be arranged between the heads of both organisations. If parties failed to find a solution at such a meeting the counsellor or municipal board could send a formal letter of complaint to the service provider. A client stop could be introduced and payments stopped or withheld until the situation was improved. Several municipalities included penalty clauses in their contracts. These clauses were rarely applied however, because it involved too much administrative work and it was difficult to implement the collection and settlement of the penalty in the financial systems.⁹⁸ The final and most serious option on the escalation ladder of intervention measures is the termination of the contract. This measure, too, was rarely applied because terminating the contract meant that the municipality had to start another costly and time-consuming tender procedure. Terminating the contract would also reduce the municipality's capacity to accommodate clients and this in turn would create long waiting times, demotivating clients waiting for a trajectory. In the long run, termination was considered more damaging than continuing to work with underperforming service providers. The majority of municipalities had, however, terminated at least one contract with a service provider.

98 The accounting systems the municipalities use are usually geared to payment of sums not the collecting sums therefore it is really difficult to deduct or collect penalty fees.

Summarizing: incidental supervision was mainly done by the case managers. To strengthen the case managers' position, most municipalities linked case managers to specific service providers. Case managers could put pressure on service providers by refusing to sign reports although this was sometimes felt to be a disproportionate response in relation to the deficiencies of the service provider. Payments were sometimes divided into smaller instalments to give the case managers additional and more proportional leverage.

When problems persisted, supervision would be gradually escalated to the contract management level, picking up problems that case managers were unable to resolve themselves. Disciplinary measures imposed on service providers who persistently underperformed included official warnings, stern meetings at board or management level followed by the withholding of payments or a client stop. However, municipalities were very reluctant to apply the most severe enforcement measure: the termination of the contract. Termination would create a gap in the provision of services and generate another costly and time-consuming tender procedure.

11.4.4 *The experience of service providers*

The service providers confirmed that problems were usually discussed at the operational level (between case managers and caseworkers) and that case managers usually intervened directly, immediately seeking contact with a provider when a problem arose. Requests for more general changes in service delivery were usually discussed in the quarterly meetings at contract management level.

How service providers perceived the municipal supervision varies significantly. Some service providers were hardly aware of any supervision being given while others said the supervision given by the municipality was even stricter than that given by UWV.⁹⁹ The municipality of Wageningen stood out because the providers characterised it as the municipality that was strongly committed to partnership, more so than other municipalities with which the providers had experience. The supervision of the largest municipality in our sample often took place through frequent informal contacts because the usual (formal) channels were perceived as being too bureaucratic, according to the providers.

11.4.5 *Effectiveness of contract management*

The objective of contract management is to ensure compliance with the contractual agreements. Therefore the effectiveness of contract management is the degree of control over the agent that the principal achieves. In our research we tried to establish whether the municipalities in our sample succeeded in realizing sufficient control.

The majority of the contract managers were not satisfied with the degree of control. It was often difficult to verify whether the service providers were complying with the

99 Many respondents at the municipalities indicated that they consider the manner in which contract management is organized at the UWV as a model of best practice.

agreements because of a lack of objective information. Most information was based on self-reporting by the service providers – with reports that were often of a poor quality. Case managers from several municipalities expressed dissatisfaction about the degree of control they had over the delivery of the services, because they did not have the right resources and sufficient time to exercise effective control. Only contract managers in Wageningen were positive about the degree of control achieved. They contributed the effectiveness of their supervision to the fact that the parties understood one another and had frequent open contact.

11.5 Trust and formalisation in contract management

During the initial stages, the contract was certainly seen as a cornerstone on which to build a contractual relationship although even then many issues were still resolved in mutual consent. In a relationship based on trust the contract acts as a safety net and only comes into play when things go wrong. The degree of trust (based on positive experiences with and good performances by the service providers) affected the way the municipalities applied the contract and the role they ascribed to it. This dynamic function of the contract in the contractual relationship was confirmed by the service providers. When things were going well, the contract took a back seat and would only be brought to the fore again if problems arose.

Although both the service providers and the municipalities indicated that the contract was important to the relationship and that they intended to operate within its confines, they also said that the contract must be flexible enough to allow them to adapt to changing circumstances. Parties thus pushed the procurement rules to their limits in order to navigate this field of tension between the static and the dynamic contract. They used addenda and work agreements to create the required flexibility and to enable them to remain responsive to the changing realities of service delivery.

We can therefore conclude that formalisation (application of the rules of the contract) was dominant in the early stages of a contractual relationship. When, after a while, trust developed, the written contract became less important. Only when the relationship deteriorated and conflicts developed the rules of the contract would be invoked again. This corresponds with earlier findings (Das & Teng 1998; Dyer & Singh 1998) showing that once trust is established the function of the written contract changes.

11.6 Analysis: safeguarding in contract management

In the literature, the management of contractual relationships is moving back and forth between ‘enforcement’ and ‘trust’. The enforcement approach goes back to the principal agent model of contractual relations, assuming that all agents are under an incentive to cheat their principal. Compliance to the agreed terms of the contract therefore is contingent on the level of enforcement brought to bear by the principal. The trust approach is based on the stewardship model of contractual relations, assuming that dependable agents can be found and that trust between principal and agent can be fostered to their mutual benefit.

There is a trade-off between the two approaches: enforcement is costly compared to stewardship, while there is a risk in the stewardship approach that the investments in enforcement might do away with.

In this analysis we answer two questions about the general safeguarding by the municipalities in our sample. The first question is: to which extent did the municipalities utilize either enforcement or stewardship as a strategy for the management of their contracts? The second question is: what explains the differences found in the utilisation of these two different approaches?

From the description in the previous sections, it becomes clear that the municipalities spent a lot of effort in enforcing contracts with formal instruments. All of them used a variety of instruments to formally monitor the actions and performances of the providers. However, we also found that many municipalities were unhappy about the quality of the information they managed to gather. The primary cause was the inadequate or even poor quality of the reports submitted by the providers. At the same time, case manager experiences were not very suitable as (internal) source of information either. Finally, when data were of acceptable quality, the two sources differed concerning the nature of the information, that the one could not be checked against the other. Many municipalities felt that, due to this lack of quality information, they had insufficient control over the delivery of the services.

Do these findings indicate underinvestment in information gathering? Not necessarily. In budget-driven organisations like these municipalities, the resources for contract management are more or less a given. There was no strong incentive to be critical of the marginal utility of investment in control. Therefore the municipalities did have no way of knowing whether additional control would have improved the quality of service delivery. The overall dissatisfaction about the level of control that we found, primarily indicates that the municipal officials felt they were often sailing in the dark as to the quality of service delivery. In theoretical terms: the municipalities had not succeeded in resolving the problem of information asymmetry.

The discrepancy between resources and control ambitions was manifest also in the many complaints about heavy case loads and lack of time to supervise and correct service providers. This is the more remarkable because we selected relatively successful municipalities in terms of outcomes. Both the case managers and the contract managers had the experience that they had insufficient opportunities to manage their providers adequately. They rarely applied sanctions such as a client stop, much less the ultimate measure of terminating the contract. Deficient information positions made such interventions risky and possibly costly. Termination of contract thus lost its power as credible exit threat. This in turn made competition less effective as an instrument for ensuring good service delivery.

The single most important factor impeding an easy monitoring of service delivery was the sheer complexity of the services. The very notion of tailor-made trajectories for each individual client emphasized the variation in approaches and combinations of activities and the non-routine character of the services. The kind of effective monitoring that would have satisfied the contract managers and case managers would have required close scrutiny of the progress of each client separately. Of course, the costs of such an exercise were prohibitive – even in Roermond, where the contract managers were based at the same location as the service providers. Although they visited the work floor a number of times a week they could not always sufficiently guarantee execution of services according to desired expectations.

Gradually, over the years municipalities began to shed their control ambitions while seeking other more efficient ways to safeguard the general public interest of effective reintegration of social assistance receivers. One way they developed to secure compliance with far less formal control was the socialisation of providers. In the beginning of the contract period, providers would be subject to strict controls. At a later stage, those providers that could be considered compliant, ‘trustworthy’ agents were allowed more leeway, up to the point that they were more or less left to their own devices. The resources available for control could then be focused on the management of underperforming providers. The providers who were given full rein were better able to adjust their services to the individual circumstances of the client. Of course this process of socialisation of providers was slow and still required relatively intense monitoring (and sufficient input of resources) at the start of the contractual relationship. A more specific tool for socializing providers into the realm of the municipality was the coupling of case managers with specific providers. This had the effect of strengthening the relationship between the case manager and the caseworker, which in turn engendered reciprocal trust and commitment and a basis for limiting day to day monitoring. Wageningen, the municipality that was most satisfied with the amount of control it had over service delivery, also stood out as the municipality with the most stewardship oriented approach to governing its contractual relations. More generally, even though the stewardship strategy based on trust did not completely compensate for the shortcomings of formal enforcement measures (monitoring and supervision), it did raise compliance levels while saving resources.

11.7 Summary

In the contract management phase the municipalities’ main sources of information came from providers’ reports and case managers’ experiences. Despite considerable efforts, the quality of the information the municipalities collected remained relatively poor. The inherent complexity of employment reintegration was an impediment for acquiring adequate information. Without adequate information it was difficult to supervise and correct the service providers in an effective manner. This is reflected in the general municipal dissatisfaction with the degree of control over the service vendors. Beyond that the municipalities were often not able to intervene in an effective way. This ultimately

undermined the credibility of municipal sanctioning of underperformance and the municipal ability to safeguard the public interest of effective reintegration of social assistance receivers.

Municipalities supervised and corrected service providers at two levels: the contract management level and the operational level. Later on they developed a two stage strategy of creating trust and bonding. The contractual relationship started with close supervision, in order to socialise providers and to build mutual trust. Strong interpersonal relationships were developed by coupling case managers with specific providers. Such a stewardship approach, as most widely adopted by the municipality of Wageningen, went a long way in overcoming the aforementioned control issues, although they did not completely alleviate them.

Chapter 12

**Conclusions: basic
contractual safeguarding**

Chapter 12: **Conclusions: basic contractual safeguarding**

12.1 Introduction

In the preceding chapters we have seen how the municipalities set about ensuring that services were delivered in accordance with their requirements in each phase of the contracting out procedure. In this chapter we will draw upon this knowledge to establish how basic contractual safeguarding was realised throughout the contracting out process.

We start the chapter with a summary of how basic contractual safeguarding is realised in each of the four phases of the contracting out procedure. Subsequently we present the overall safeguarding pattern that can be reconstructed from our findings. Finally we discuss some of the more striking safeguarding strategies adopted by the municipalities and we analyse how formalisation and stewardship featured in basic contractual safeguarding. We end with some general conclusions and answer our first research question.

12.2 A summary of findings

This section summarises the instruments applied by the municipalities in each phase of the contracting out process to ensure that the services were delivered in accordance with the municipalities' requirements. An overview of these findings is found in table 12.1.

12.2.1 *Make or buy*

In this phase the municipalities decided whether they could best guarantee the quality of services by either making or buying the services they needed. We found that the municipalities, after an initial period of radical outsourcing increasingly turned to making components of the services internally – even up to the point that they internalized whole blocks of production again. A telling example is the 'employer support office' tasked with job brokering that placed clients directly using wage subsidies. Furthermore, the municipalities had a substantial part of the more complex services delivered by service providers affiliated to them. A typical example is the contracting out of work-first activities to so-called WSW organisations that traditionally provide sheltered employment services for the municipalities.

Municipalities over the years stopped procuring services in bulk, in combination with specifying outcome requirements. Instead they started buying small scale specialised service modules, specifying particular outputs or process performance. These specialised services were purchased for smaller, more homogenous groups of clients or for individual clients. Such modular buying was intended to give the municipalities more control over the delivery of the services and thus to increase compliance.

12.2.2 Specification

The municipalities stipulated comprehensive service requirements in order to make their requirements and the conditions of service delivery clear to the service providers. The municipalities also sought to ensure that the services were delivered in accordance with their requirements by limiting the discretionary leeway of the providers. To this end, the contracts specified a large number of process requirements and stipulated that the most important decisions were subject to the ex ante or ex post approval of the case managers. On paper, this gave the municipalities a large degree of control over actual service delivery: many of the operational decisions would still be taken by municipal officials. Formal control instruments (hierarchical, rule-based, and output control) for influencing the behaviour of agents were inserted in the contracts. Thus we found protocol requirements, monitoring and supervision prerogatives, and financial incentives all included in the contracts.

Table 12.1	
<i>Summary of general safeguarding findings</i>	
Contracting out phase	Safeguarding measures found in practice
<i>Make or buy phase</i>	<ul style="list-style-type: none"> - Making difficult-to-specify services internally. - Buying difficult-to-specify services from affiliated providers. - Buying service modules or individual services. - Buying processes instead of outcomes.
<i>Specification phase</i>	<ul style="list-style-type: none"> - Formulating extensive process service requirements. - Contractually making the case manager responsible for decisions. - Using contracts to create a contractual basis for managing. - Contractually requiring allocation decisions to be vetted by case managers. - Binding service delivery to service plans as well as using work protocols to define how service delivery must occur beforehand.
<i>Selection phase</i>	<ul style="list-style-type: none"> - Selecting providers based on quality versus price criteria. - Trying to select value congruent agents by using vision as an important selection criteria. - Using individual purchasing of services as a two-tiered selection strategy to test providers.
<i>Contract management phase</i>	<ul style="list-style-type: none"> - Executing contract management on both a general and an operational level. - Using reports and case manager experiences as primary information sources. - Using additional monitoring tools such as inspections to gather information. - Coupling case managers with providers in order to provide better oversight as to how service delivery occurs and to forge personal bonds. - Giving case managers a pivotal role in supervising managing and coordinating service delivery and final decision-making prerogatives. - Strictly supervising providers at the start of the relationship and later as providers have proved themselves by delivering performance giving less strict supervision.

12.2.3 Selection

Core municipal activity during the selection phase was the assessment of potential service providers to discover those who offered the best price / quality ratio. The assessment of quality was not just appraising the capacity and capability of the providers but also the providers' vision of the required services and their reliability. The municipalities did not just strive to select agents that were capable and qualified but they also searched for trustworthy agents that shared their goals, visions and ideas about how the services should be delivered. Potential suppliers were required to make detailed written explanations of how they proposed to deliver the services as part of the tender procedure. The municipalities considered the 'soft' or subjective elements such as trustworthiness, professional drive and client approach to be the best indicators of quality. Unfortunately such characteristics were difficult to assess without prior experience with the service provider. A further complication was that the application of such subjective elements brought the municipalities into conflict with the procurement regulations that require objectivity and transparency. Tender procedures thus restricted the opportunity to select providers based on 'soft' criteria – although these restrictions were partly the result of too strict interpretations of those regulations by the municipalities themselves.

To resolve these problems several municipalities started using two-tiered selection procedures that enabled them to test service providers. Under a general procurement contract, services delivery would initially be distributed over a number of providers. At a later stage clients would only be allocated to the best performing provider. Another strategy was to purchase a limited number of individual services just to test a provider.

12.2.4 Contract management

The central issue that the municipalities were dealing with during the contract management phase was to ensure compliance with the letter and spirit of the contract. The municipalities applied a host of enforcement measures to ensure that the procured services were delivered in accordance with municipal requirements. This section contains a brief inventory.

Monitoring

The two main sources of information on service delivery available to the municipal management were: detailed management reports submitted by the providers and case managers' experiences that municipalities collected and aggregated. Other sources of information included direct observation through inspections and information obtained from third parties in the form of certifications and audits.

The municipalities were not very successful in collecting the kind of information needed for effective control. The self-reporting by the services providers often produced poor quality information. Some of the municipalities tried to remedy this with random dossier inspections and new systems of monitoring. The reporting on the case managers' experiences was often incomplete: these experiences were often only recorded incidentally or biased. A few municipalities attempted to improve on this, too. All together, the

effectiveness of the monitoring instruments was limited. It would have taken large investments to increase the quality of information to a level that would reduce information asymmetry sufficiently.

Supervision

Municipalities gave supervision and feedback to their providers at two levels: the contract management level and the operational level. The intensity of the supervision depended on the degree of trust municipalities had in specific providers. A common pattern was that monitoring and supervision were strictly applied at the start of a contractual relationship. Once the providers had demonstrated that they delivered the services in accordance with the municipalities' requirements they were allowed more discretion.

Another practice was to couple case managers with specific service providers. This made monitoring easier and gave case managers a better picture of what the service providers were doing to assist clients. The coupling also creates personal bonds between case managers and caseworkers. It was expected that such bonding would make providers more inclined to meet their commitments in the long run.

The lack of municipal capacity to monitor and supervise adversely affected contract management. Providers who experienced little monitoring started to slack and the quality of their services decreased.

12.3 Changing patterns of safeguarding

Adaption

Our study has revealed that the municipalities in our sample changed their approach to contracting out reintegration services considerably over the years covered by our research. When outsourcing was still mandatory, municipalities procured in bulk and contracted for outcomes in combination with incentives to induce compliance. This type of outsourcing reflected the ideal of classical approach to contracts: a combination of clearly specified products and the right kind of build-in incentives would curtail the amount of contract management required to ensure adequate performance and thus minimize transaction costs. In response to disappointing performances on the part of many providers (and the market as a whole) there was a shift towards buying reintegration processes instead of outcomes, in combination with an intensification of contract management. These changes clearly were an adaption to the market conditions that the municipalities encountered in the first stages of the outsourcing wave. The municipalities thus revealed themselves as learning organisations. The adaptations concurred with a theoretical prediction: the rational principal will adjust contractual arrangements until transaction costs are minimized. In a complex environment such as the reintegration market, such an optimisation was not easily attained right at the beginning. A process of trial and error over a number of years produced in the end what was considered optimal in the individual municipality.

Factors influencing transaction costs

During the initial years of outsourcing, the municipalities experienced a number of difficulties when attempting to enforce compliance in the contract management phase. Most municipalities did not succeed in generating the amount of control over service delivery they thought necessary, not even after they invested heavily in contract management structures. More specifically it was costly to acquire and process information adequately and to supervise and correct the contractors.

One factor made it especially difficult to influence contractors: the ultimate enforcement measure (terminating contracts when providers underperformed) was practically not available. The costs of contract termination – especially the costs of a breach of continuity in service delivery and the costs of selecting new and better providers – by far outweighed the cost of a relatively underperforming contractor. Tender requirements added considerable additional costs in both time and money to switching from one provider to another. As a result municipalities lacked a credible exit threat which meant it was difficult for them to get rid of any ‘lemons’,¹⁰⁰ they might encounter on the market. This condition in turn provided a lot of opportunity for providers to shirk from their duties, knowing that the principal would be unable to intervene in the most far reaching way. Incidentally, this in combination with a high degree of information asymmetry, both in the selection phase and in the contract management phase, more generally led to low competitive pressure in the market. Price was generally the only indicator available to distinguish one bid from another. Even then it was almost impossible to determine what could be considered the right price.

This imperfection in the Dutch reintegration market had negative consequences for the possible benefits that market competition was supposed to produce. Theoretically, competition should force providers to increase efficiency and/or improve quality. However, if the competitive pressure is low or absent due to lack of a credible exit, the functioning of the market will be adversely affected. One could even argue that tender requirements forced up switching costs so much that it actually impeded competition.

The optimisation of transaction costs that municipalities practiced in later years entailed creating the conditions to control as much of the service delivery as possible ex ante. They did this in three ways: 1) the municipalities kept many activities related to service delivery close at hand, for example by producing parts of the service task internally or by contracting out to municipal-connected providers; 2) they deconstructed the service task (modularisation) into simple sub-elements, which were then purchased one by one and 3) they bought services on a small scale or even individually per client. The last two ways are

100 ‘Lemon’: the hard to detect bad quality car on the market of second hand automobiles (Akerlof 1970).

forms of simplification that reduced the complexity of the transaction. This in turn reduced the information asymmetry between the principal and the contractor. Ultimately this gave the municipalities more adequate information on the performance of the providers, and this made it more difficult for providers to avoid compliance.

Common safeguarding pattern

Commonly the municipalities in our study aimed to realise basic contractual safeguarding by applying measures to ensure compliance with the terms of the contract. Once they had learned that ensuring compliance through ex post enforcement was either ineffective or too costly, they shifted to maintaining ex ante control over service delivery to reduce the opportunities for non-compliance. This included measures such as specifying requirements in detail, producing (parts of) services internally and re-internalise coordinating and managing tasks. The benefits of investing in ex post measures to increase compliance did not outweigh the benefits of preventive measures aimed at limiting the opportunities for shirking.

12.4 Specific control strategies

In addition to the general pattern discussed in the previous section, we found several unique control strategies applied by individual municipalities.

Amersfoort: focusing on internal capacities

Amersfoort is the clearest example of a municipality that maintained control by executing a large part of the service task internally. Indeed, for this purpose they had set up a specialised department which they referred to as their internal reintegration service provider. This set up can best be described as a form of professionalised bureaucracy. Services were delivered by experienced case managers who each had their own specialisation and expertise and who were given a large degree of discretion with regard to service delivery. Specialised services were only bought when no internal expertise was available. A lot of the services Amersfoort bought were contracted out to their municipally affiliated WSW provider. Amersfoort produced most services internally and had a considerable amount of internal expertise. This had the added advantage that they knew exactly what they wanted when they bought services on the market. This extensive body of internal expertise allowed the case managers and contract managers to be very hands on when managing and supervising contractors – a feature that highly facilitated the cooperation with the providers. Most of the services Amersfoort purchased were bought individually, making it possible to test the waters and to get to know new service providers and new services at a low cost and low risk. Positive experiences could then lead to a full-scale procurement procedure.

Lelystad: focusing on value congruence

The municipality of Lelystad consciously engaged local contractors to deliver services. The municipality wanted providers that were well embedded in the local society and had an excellent knowledge of the local context in which the services were delivered and of the local labour market situation. The municipality also wanted providers that shared a relevant frame of reference with the principal (value congruency), which made cooperation easier. However, the explicit preference for local service providers caused tensions with the tender regulations and meant that the available pallet of services was largely defined by what local contractors had to offer and not always by what was needed.

Wageningen: focusing on trust and partnership

The Wageningen municipality aimed for creating trust-based partnerships with suppliers. It did so by whenever possible working on an equal footing with providers and avoiding traditional principal-agent attitudes. Providers confirmed this partnership focus. The fact that Wageningen is a smaller municipality is probably an important factor that enabled it to work in this informal and open manner. The smaller scale of service delivery and the lower number of providers and clients made it easy for the municipality to acquire an overview of the service process and to foster informal relationships with specific providers. Wageningen was the only municipality that felt it has enough control over service delivery to enable it to give proper quality guarantees.

Roermond: focusing on enforcement through physical control

The municipality of Roermond focused strongly on maintaining control in their set up of service delivery. To achieve this Roermond used detailed contracts and required the services to be delivered at a specific work location (a building and accompanying work area) that was directly managed by the municipality and where municipal officials were present at all times. This meant the municipality had almost physical control over how the services were delivered. The contract manager could literally watch the delivery taking place through his window and walk around the work location to see what clients were doing. Thus the municipal officials could observe for themselves how the services were delivered; this reduced any information asymmetries to a minimum. The officials were able to gather information, interact, manage and instruct in a rather informal manner. This approach provided detailed knowledge of the way the services were delivered and plenty of opportunities for correcting the service provider and ensuring compliance. The drawback of this approach was that it required substantial investments and resources and there is a risk of too much control over provider's possibly stifling innovation and flexibility. Providers in this municipality said that Roermond was clearly stricter in its enforcement of contractual requirements than other municipalities they work with in the same region.

Enschede: combining internal provision and extensive monitoring

Enschede had a municipal agency producing services internally and purchased substantial service components on the market as well. The municipality invested significantly in

acquiring and maintaining internal expertise for the in-house service delivery but also in the capacity for monitoring and contract management when contracting out services. Enschede distinguished itself from the other municipalities in our sample by explicitly investing in its monitoring capacity to improve the quality of the information about service delivery. The municipality developed a comprehensive new monitoring format in cooperation with providers. It unified the way in which data were collected and reported, making it possible to draw comparisons.

Rotterdam: characterised by extensive formalisation

Rotterdam, the big city in our sample, had a comparatively large scale outsourcing operation: around a hundred providers delivering about 20,000 service trajectories yearly. Here, contract management was setup in a three tier system. Compliance with contracts was strictly enforced. However, the limits of formal control were evident, too: in Rotterdam the strict enforcement of contracts led to inflexibility, inducing the contracting parties to seek informal solutions in order to get things done.

12.5 Formalisation and stewardship in basic contractual safeguarding

Formalisation – the attempt to capture all relevant aspects of the product to be procured in enforceable rules – was applied widely in the first stages of contractual relations. Different kinds of formalisation (the contract itself, but also service plans, and additional work protocols) were used to predetermine the manner in which the services had to be delivered and to limit the discretion of the service providers. Stewardship – the attempt to select those providers that can be trusted with the execution of the outsourced task without the risk of opportunistic behaviour – was the approach to contractual governance that the municipalities in our sample more and more utilised as time went by. This model of trust based on personal experience with contractor performance, was utilised in addition to, and more and more also as a replacement of more formal means of enforcement. This is reflected in the role that was ascribed to the contract, a function that in many cases is dynamic. The function of the contract in the outsourcing strategy of the municipality consequently became dynamic. It shifted between the firm formal base on which the contractual relationship was built and the mere safety net on which parties would fall back in the unlikely event of a real conflict. There was a general pattern in the development of stewardship relations in our municipalities that displays the dynamic function of the contract even more clearly. After an initial period of socialisation, during which service requirements were reconfirmed and reinforced within the framework of contractual arrangements, enforcement became less strict for those providers that had proved themselves dependable and with which the municipality had developed a trust relationship. The contract and the formal means of its enforcement would only be revived if problems occurred of such magnitude that trust deteriorated.

Trust is not the only basis for a stewardship relation. The other element of stewardship – intrinsic motivation or value congruency – was clearly observable during the selection phase. In many cases, municipalities used indicators for evaluating prospective contractors such as ‘vision on the process of service delivery’; a proxy for value congruency. Value congruency selection easily clashed with the procurement regulations that require objectivity and transparency. This impeded a more subjective selection assessment based on direct or personal experience; a way of evaluating potential providers that municipalities found most important for establishing value congruency. The formal requirements of the procurement regulations thus hampered the application of the stewardship model grounded in pre-existing value congruency.

Another strategy municipalities used for the building of trust and the development of good working relations with contractors was an emphasis on strong personal relationships between municipal officials and employees of the contractor. One example is the coupling of one case manager with a (representative of) one specific provider. Indeed, in none of the cases the relationship with providers was very detached or distant (at-arms-length). Even the clearly more formal municipalities such as Roermond and Rotterdam allowed for informal arrangements and trust in the way providers were managed and supervised. In other municipalities much if not most of the supervision was provided through informal channels. The clearest example of an explicit trust based approach to contractual governance we found in the case of Wageningen: according to both municipal officials and providers contractual relations were open relationships on an equal footing without hierarchy.

12.6 Conclusions

What do these findings mean for our first research question?

- *RQ1: How do municipalities perform basic contractual safeguarding when contracting out employment reintegration services?*

The condensed answer to the question is, that the municipalities primarily used four measures to realise basic contractual safeguarding.

- A. The municipalities produced, whenever possible, in-house all those elements of the service task that had proven difficult to contract out.
- B. The municipalities engaged municipality-affiliated agencies to provide those services or elements of the service task that were difficult to specify and measure.
- C. The municipalities deconstructed complex reintegration service tasks into simpler sub-parts and only contracted out the simpler sub-elements.
- D. The municipalities applied formalisation: contractual rules and enforcement that limited the provider's discretion and shifted to a stewardship-like approach whenever the development of trust warranted it.

In other words, the municipalities ensured services were delivered in accordance with the principal's requirements by restricting the outsourcing to private contractors. Actually we found that the municipalities mainly purchased services on the market to extend or to complement their own capacities; especially when they lacked specific expertise. Thus all the rhetoric notwithstanding, there was only a limited degree of privatisation in the Dutch employment reintegration sector. The notion that the delivery of employment reintegration services for welfare recipients was largely privatised should be revised.

When the municipalities did contract out, contractual governance initially often resembled a quasi-hierarchy: the contract created an almost hierarchical command and control structure in which the municipal case managers retained a strong degree of control over providers. This emphasis on municipal control over service delivery had the auxiliary effect that a chain of public accountability was maintained. From the literature we know that public accountability can get lost when a public authority is operating in a web of contracts (Deakin & Walsh 1996). The municipalities in our sample firmly vested public responsibility with public employees (case managers and contract managers) who bore the responsibility for key elements of the service delivery such as allocation decisions. Such responsibilities remained intact, even when the contractual relationship evolved into stewardship.

The answer for the first research is not complete without the notion of the learning organisation. The municipalities in our sample changed the ways in which they realized

basic contractual safeguarding during the six years covered by our study. In the beginning, municipal contractual practices much resembled the ‘ideal typical’ fashion of classical contracting. The contracts stipulated outputs and contained incentive structures such as pay-for-performance. Relationships with providers were at arm’s length and only results were monitored, after service delivery. Providers were given considerable leeway to design processes and trajectories, with the expectation that contractors would innovate and economize. The municipalities hoped that this would contribute to the safeguarding of the public value of efficiency (be frugal with tax payers’ money). This was of course the theory behind the national policy of outsourcing such services. However, as it turned out, provider discretion often meant ‘room for opportunistic behaviour’. In particular the information asymmetry between principal and contractor was abused: many so-called cowboys (entrepreneurs looking for a quick profit) appeared on the emergent reintegration market. In reaction to these negative experiences the municipalities adapted their contractual governance strategies. They restricted provider discretion in order to take control over service delivery – calling into question the policy theory that given sufficient freedom reintegration service providers will innovate and deliver services in more efficiently. For most of the municipalities in our sample it became a matter of optimising the trade-off between maintaining sufficient control over service delivery on the one hand and leaving sufficient room for providers to operate flexibly and efficiently. The extensive application of the stewardship model based on trust presented a solution. The overall pattern of contractual governance that emerged over the years was that municipalities applied formalisation (strict contracts and formal enforcement) while applying stewardship whenever proven feasible to create the discretion providers needed to be responsive and operative. This solution seems to embody the very essence of realising public value trade-offs: trade-offs between the safeguarding of effectiveness (realisation of policy goals) and the safeguarding of public parsimony (through market type efficiency).

This approach to the delivery of employment reintegration services for welfare beneficiaries is possibly a typical Dutch compromise between using market type mechanisms on the one hand and adhering to a neo-Weberian public service culture on the other (Pollitt & Bouckaert 2011). Such a compromise enabled the municipalities to make use of the market by outsourcing to supplement existing capacity while at the same time maintaining sufficient control to ensure an adequate level of basic contractual safeguarding.

Part IV

SPECIFIC PUBLIC VALUES

Safeguarding of specific public values we defined as the efforts of the commissioning authority to ensure the compliance of the vendor with public values that are relevant for the public task implied in the services procured. This fourth part of the book contains the results of our investigations into the efforts that the municipalities make to ensure that their contractors adhere to these public values. The leading research question for this part is:

- *RQ2: How do municipalities safeguard specific public values when contracting out employment reintegration services?*

As explained in chapter 7 we limited the research to a selection of specific public values: customisation services, durability of outcomes, prevention of adverse selection (creaming or parking), protection of privacy and the processing of complaints. The way municipalities secure these values is traced throughout the contracting out process. With particular focus on 1) if the principal communicates preferences to the agent about the handling of specific public values; 2) if the principal monitored the agent's handling of specific public values and 3) if the principal in any way supervised the agent's handling of specific public values. This as communication, monitoring and intervention are the three basic activities minimally required for effective safeguarding.

This part consists of two chapters. The first chapter describes and analyses the safeguarding of each value separately. The next chapter discusses the results of our empirical investigations in order to answer the second research question. In that discussion we also examine whether any public value trade-offs are made, and how stewardship and formalisation feature in the safeguarding of specific public values.

Chapter 13

Safeguarding of specific
public values

Chapter 13: Safeguarding of specific public values

13.1 Introduction

This chapter examines how each of the five specific public values we have selected is safeguarded throughout the contracting out and service delivery process. The public values as selected in chapter 7 are: *Customisation*, *Durable outcomes*, *Prevention of adverse selection*, *Protection of privacy and the Processing of complaints*. Of each we describe how municipalities deal with these aspects of service delivery both in the purchasing documents and in practice. We also reveal how these public values feature in each phase of the contracting out process.

We start with the safeguarding of customisation followed by durable outcomes, the prevention of adverse selection, privacy and finally the processing of complaints. Our findings in relation to these aspects will be presented and the implication these have for the safeguarding of our specific public values will be analysed.

13.2 Customisation of service delivery

13.2.1 Customisation in the purchasing documents

If the municipalities wanted customisation they would have made that clear to the service providers. It would be logical to stipulate such a requirement in the purchasing documents. We analysed these documents to find out if and how customisation¹⁰¹ was referred to. As it turned out, in all 20 cases, the purchasing documents contained language expressing a need or a desire for customised or tailor-made services.

In 11 cases the purchasing documents explicitly stated that the aim was to purchase ‘customised service trajectories’ for clients. In the other cases customisation was mentioned as one of the qualities of the services to be delivered. In 16 of the 20 cases the customisation of services was also formulated as procedural service requirement in the purchasing documents. These municipalities thus made customisation an explicit requirement, creating a formal contractual basis upon which they could demand and enforce the delivery of customised services.

101 In Dutch customisation of services is referred to as ‘*Maatwerk*’.

Definition of customisation

Because customisation can be interpreted in many ways we examined all the definitions found in the purchasing documents. In 17 of the 20 cases the purchasing documents included an explanatory note about what the commissioning municipality understood customisation to mean. These definitions varied in regards to detail. In 5 cases the procurement documents just stated customisation was required for specific elements of the service delivery – without any further practical instruction. In the other cases the documents contained a more detailed description of how customisation should be realised. In 5 of these cases a highly detailed definition was used, consisting of a number of paragraphs describing what sort of customisation was required.

Three approaches to customisation

Our analysis of the different definitions of customisation revealed three approaches to customisation.

- A. A *client centred approach*, focusing on adjustments of the services in order to accommodate the situation or problems of the client.
- B. A *supply centred approach*, focusing on the available range of services. Customisation then is facilitated by a wide range of services being purchased. The availability of a large supply of solutions ensures that a proper service trajectory can be found to suit any client.
- C. A *demand centred approach*, in which customisation focuses on matching the skills and experience of clients with the demand on the labour market. This involves adjusting the client's qualities to match the available demand on the labour market.

In 15 of the 17 cases in which we found a practical description of customisation, the approach was client-centred: it was specified that services should be adjusted to meet the needs of the client. Although in all these 15 cases the documents stated that client-related needs should be taken into account, in only 4 cases the documents indicated that an active role for the client in planning the customisation was required. In 3 of these cases the documents stipulated that the client actually should have a choice. In the other cases the purchasing documents did not mention that clients would be able to give input for the programming of their own reintegration.

In 2 cases we found a more supply-oriented approach to customisation. Here the purchasing documents defined customisation in terms of adjusting the service trajectory to demand on the labour market. It should be noted here that in these 2 cases this definition was combined with a more client centred definition of customisation.

The supply centred approach to customisation, focusing on the availability of a wide range of services, was found in 4 cases. The documents in these cases expressed the assumption that tailor made reintegration solutions for all clients would be possible if the municipalities had the largest possible range of services available to them. In 2 of these 4 cases the supply centred approach was combined with elements of the client centred definition of customisation. Table 13.1 contains a summary of the (combinations of) strategies for customisation found in the purchasing documents.

Table 13.1				
<i>Combinations of approaches found in definitions of customisation (n = 17)</i>				
	Supply-centred	Supply- and client-centred	Demand- and client-centred	Client-centred
# Cases found	2	2	2	11

13.2.2 *The realising of customisation*

It is to be expected that contractual language does not always cover all of the intentions of the principal. Moreover, the way the contract is executed will not always coincide with either the provisions in the contract or the intentions behind those terms. We therefore investigated what the municipalities had in mind when they referred to the customisation of services in their policy and what kind of customisation was actually realized.

The intended type of customisation

Almost all the municipal respondents (case managers and contract managers) saw customisation as the modification of services in such a way that the needs, wishes and situations of individual clients could be met. This is in line with the client centred approach to customisation that we found in the tender documents. An exception was the case of Enschede: here the policy aimed for customisation of services for groups of beneficiaries rather than for individuals. It was thought that in contractual service delivery, customisation at an individual level was difficult to achieve and difficult to monitor. Enschede achieved customisation at group level by purchasing services for all the stages of the participation ladder.¹⁰² Thus it had a considerable array of different products available. This is in line with the supply centred approach to customisation that we identified in the analysis of the tender documents. We found no customisation policies that were in line with the demand centred approach.

It thus emerges that in our cases the client centred approach was dominant in the policy intentions of the municipalities.

The type of customisation realised

In the majority of cases the customisation of services that was actually obtained occurred at the individual level, so our conversations with municipal respondents revealed. Most case managers said they put together service trajectories that would accommodate for the needs and capacities of the specific client, using all of the resources available. The aim of such trajectories was the removal of any specific obstacles preventing a client from becoming active again. Trajectories like this could take on many different forms. It might for example include extra transport or child care for a client if the lack of it was an impediment for participation. Customisation could also mean that the case manager would take into account the (realistic) wishes of clients regarding their future occupation. More generally, case managers arranged for customisation for an individual client when drawing up his or her service plan.

Service providers were also involved in customisation. Yet they generally had limited opportunities to customise their services by themselves, because the service trajectories they delivered were usually standardised. Providers tried to take the situation and the

102 See for more information on the participation ladder see note 68.

individual client into account but were often bound to stay within the limits set by the contract and the modules or trajectories agreed in the contract. The majority of service providers said the framework set by the contracts left limited room for tailoring services to individual needs. Besides, it was difficult to design individual trajectories when supplying services for large numbers of clients. Several service providers even claimed that the customisation of services referred to in policy papers and in purchasing documents was simply a figment of the policy makers' imagination. The service providers could only make minor adjustments to the service trajectories agreed in the contract. For example, they could change the number of hours spent by a client on a particular activity or the duration of the trajectory and they could omit parts of a trajectory. Only in 3 municipalities (Rotterdam, Wageningen and Groningen) the service providers could design their trajectories in such a manner as to make a large amount of customisation and adjustments to problems of clients possible. Thus the activities undertaken by clients could vary significantly per service trajectory. A summary of the different kinds of customisation found in our cases is given in table 13.2.

From the above we can conclude that municipalities sought to realise customisation at an individual level and it was usually the case managers who were responsible for this customisation. The majority of service providers said they were constrained by the limits set by the contract when it came to the amount of customisation they were able to deliver.

Table 13.2 <i>Kinds of customisation realised (n = 9)</i>		
Type of customisation	Individual level	Group level
Responsibility		
Internal	<i>Amersfoort, Lelystad, Zutphen, Roermond, and Wageningen¹</i>	(Enschede)
External	<i>Rotterdam, Wageningen and Groningen</i>	-

¹ The municipalities in italics (Lelystad, Zutphen, Roermond, and Wageningen) indicated that they mainly realise customisation at an individual level but responsibility varies although often it resided with case managers.

13.2.3 Customisation throughout the contracting process

The municipalities in our sample used different measures to safeguard the customisation of services for individuals in each phase of the contracting out process. In the make or buy phase municipalities purchased modules or services for individual clients to enable them to deliver as much customisation as possible. Indeed, case managers considered both these possibilities (individual and modular purchasing) to be key factors in bringing about customisation. Both methods of procurement were thought to stimulate creativity and innovations while seeking tailor made solutions fitting the individual client's needs. According to the case managers there often was a tendency to focus on the utilisation of available trajectories rather than on the client's problems. Case managers were tempted to

seek a client (problem) for a specific trajectory rather than a trajectory for an individual client. Individual and modular purchasing, however, necessitated that case managers got actively involved in coordinating and managing service delivery on an individual level. Case managers needed to have sufficient knowledge of the available modules and their presumed effects for their proper deployment. Due to time and knowledge constraints case managers were not always able to fulfil this role properly. As a result, clients were signed up for trajectories that did not match the clients' needs well. The same problem arose when the agency management pressured case managers to sign more clients up to specific service providers because there were still unutilised trajectories. This mainly happened when formal or informal volume agreements were made with service providers.

Customisation also featured prominently in the *specification phase*. In the majority of purchasing documents municipalities specified a detailed definition of what they required in terms of customisation or they would make customisation a specific process requirement. In almost all the purchasing documents the responsibility for approving the service plan (on which service delivery to individual clients is based) resided with the case manager. As a consequence, the case manager was also responsible for monitoring whether or not the proposed service plans contained sufficient customised service solutions. Service providers often felt restricted in delivering customised services by the contractual frameworks within which they had to operate.

In 4 of our cases customisation showed up in the *selection phase* – as part of the adjudication criteria used to select providers. The purchasing documents stated that the commissioning municipalities would assess the level of proposed customisation the potential service providers' strived for. However, from our research it emerged that in reality the delivery of customised services was given little weight during the selection. Municipalities did not really focus on customisation because it was difficult to assess beforehand the kind of customised services that service providers would be able to deliver.

In the *contract management phase* the customisation of the services was primarily monitored by the case managers. In almost all the municipalities the monitoring of customisation was based on substantive client reports and sometimes on information acquired through contact with clients. This monitoring was largely done *ex ante* to service delivery and through the approval of the service plans: the service plan was regarded as the most practical means for monitoring the extent of the customisation realised. The service plans were usually checked superficially, in terms of the targets, duration and costs of the trajectory. Few case managers actually checked whether the service plan really accommodated for the problems of the client. Sometimes case managers would also verify *ex post* whether customised services had been delivered, usually through progress reports or final client reports. However, these verifications were time-consuming and therefore often limited to whether the terms of the contract had been met, neglecting whether sufficient customisation had been achieved. In several municipalities, so-called exit interviews held

with clients were also used to attest to the degree of customisation that was realised. However, overall ex post checks on customisation, when made, were mostly incidental and random. Respondents in Enschede explicitly admitted that they did not monitor customisation at an individual level because this required far too much administrative capacity at the back-end of the service delivery process. Then again, Enschede bypassed the problem: the municipality aimed for customisation at a general level (beneficiary group), requesting as little individual customisation from service providers as possible. In doing so, the need to monitor contractual partners on customisation was removed.

Another approach encountered (most clearly observed in Groningen and Wageningen) to tackle this issue was the use of trusted providers. This reduced the need for monitoring. They could be allowed more discretion so they had the freedom of operation needed to develop trajectories tailor made for individual clients.

How challenging controlling and monitoring customisation was, emerges from the experience of Roermond. A service provider here was required to provide work-study service trajectories to a group of clients within a work location run by the municipality. At that time the case workers in the contract still had a reasonable amount of room for manoeuvre. They could design the trajectory themselves and in doing so deliver a customised service. At a given moment some of the clients were, in the opinion of the caseworkers, ready to start an internship. These clients got placements at different external locations. When the responsible alderman visited the workplace unexpectedly he found it to be almost empty because the majority of clients had been placed in internships. This caused great concern and the attendance list, when requested, disclosed that a substantial number of clients who should have been present were absent. The alderman wanted to know where these individuals were. He voiced serious doubts about whether it was possible to check if the clients were indeed learning the right things at their internships. The service provider, however, did not believe it necessary for clients in an internship to continue to show up at the work location. At the request of the municipality checks were carried out to find out what the clients placed in internships were actually doing. As it turned out, the concerns of the councillor and the municipality were not entirely unjustified: some clients had dropped out of the internship and were simply staying home. This ultimately resulted in a more strict use of attendance lists and the introduction of mandatory attendance hours. From then on the municipality wanted to be able to monitor whether clients were participating fully. This experience created awareness at the municipality of Roermond that creating room for the delivery of customised services and the need to retain control over the service providers could be conflicting.

The majority of providers experienced little monitoring with regard to customisation. Only in 2 municipalities (Amersfoort and Wageningen) did service providers receive explicit monitoring in this area. At contract management level in particular the supervision of customisation was minimal. Indeed, in 3 municipalities service providers claimed that this aspect was not monitored. If there was any monitoring at all, it was limited to things like

checking if service providers were not allowing clients to do too many group activities. Service providers believed that the lack of monitoring of customisation was due to the fact that the case managers often did not have the time for it. Another explanation, suggested by both the service providers and the municipalities, was the absence of a practical review framework for assessing customisation. There were no generally applicable norms to evaluate what kind of customisation was adequate or equitable. This meant that municipalities often had no idea themselves of the level of customised services that should be delivered.

The feedback given to service providers at contract management level was usually highly abstract. Structural feedback with regard to customisation was rare. In 4 municipalities (Enschede, Roermond, Wageningen and Amersfoort) service providers did receive some feedback about customisation at contract management level. In the case of Roermond, as described above, the municipality came to the conclusion that the service provider wanted to deliver too much customisation and in doing so transgressed the limits of the contract. Service providers generally got more feedback at the operational level – especially in 4 municipalities (Wageningen, Rotterdam, Amersfoort and Zutphen). This was usually incidental and often related to specific cases in which exceptions had to be made for individual clients.

13.2.4 *Analysis: safeguarding customisation*

How did the municipalities in our sample safeguard customisation? First: the purchasing documents almost always expressed a preference for customised services. Most documents also indicated in general terms that customisation was an explicit service requirement. Second, when it came to the actual purchasing of services, many municipalities excluded this aspect from the service task contracted for – whether it was customisation for groups of beneficiaries or customisation for individuals. Thus the municipalities retained the effecting of customisation with all its ambiguity in-house and simplified the performance asked from the agent. This meant a reduction of transaction costs: fewer resources were needed for controlling and monitoring service delivery. Modular purchasing – the breaking up of service trajectories into simpler parts – turned out to be particularly suited for this kind of simplification. Of course this approach did require additional resources for the internal realisation of customisation; resources that were not always available.

The monitoring and supervision of customisation – as far as it was left to providers – was mainly done *ex ante* – through the assessment and approval of the service plan. Customisation was rarely monitored *ex post* – mostly because of lack of time. The sparse feedback on customisation given was either abstract in nature or incidental, relating to individual cases. While the service plan was the tool of choice for safeguarding customisation, it also constrained the discretion of the service providers and thus their ability to deliver tailor made services. Some municipalities circumvented this obstacle and gave trusted providers more discretionary freedom.

Summarizing: the municipalities in our sample safeguarded customisation in three ways: 1) by leaving this aspect out of the services contracted for and handling it in-house; 2) by using service requirements and service plans to retain control over outsourced customisation and 3) by allowing trusted providers the discretion required to realise the customisation of outsourced services.

13.3 Durability of outcomes

13.3.1 *Durability in the purchasing documents*

In 17 of the 20 purchasing documents analysed we found references to durable placements or durable outcomes. 13 documents had an explicit description of what ‘durable placement’ or ‘durable outcomes’ was meant to entail. In 1 case (Wageningen) the documents explicitly stated that durable outcomes had the highest priority, even in relation to other aspects of the services.¹⁰³ In almost half of the cases we also found a contractual clause explicitly stipulating that durable outcomes were required.

Definition of durable outcomes

An outcome is ‘durable’ if that outcome is sustained over a fixed period of time. That period of time is a policy choice of the municipality. The time dimension makes it relatively difficult to apply the qualification ‘durable’ in short term contractual relationships because the fixed time period will outlast the contractual term. It seems logical, however, that in long term contracts the municipalities would specify the fixed period of time that defines ‘durability’. Indeed, we found such a specification in thirteen of the purchasing documents. The durable outcome of social activation (which is not aiming for employment), was defined in only three cases.

Durability and re-employment

In almost all cases the definition of the term ‘durable outcome’ contained the same five elements:

- The client has a (paid) employment relationship.
- The client has a job for a definite period of time (varying between 6, 9 and 12 months).
- The client has a job on the regular labour market.
- The client is no longer dependent on a benefit.
- The client is not placed in subsidised work.

¹⁰³ “While effectiveness and efficiency are paramount in the allocation of reintegration facilities, these assumptions may not be detrimental to the durability of the outcome.” Inquiries revealed that this wording was politically motivated and that its practical application should not be overestimated.

Durable placement thus at least meant that a client had progressed to a paid job where he or she had worked for at least six months. In several of the purchasing documents it was even stipulated that this job had to be work offered on the regular labour market and that the job would relieve the client from welfare dependency. Other elements (found less frequently) were the requirement concerning the duration of the placement in terms of a minimum number of consecutive months; or the requirement that the job should be for a specified minimum number of hours a week. In one case reference was made to investments in ‘start-qualifications’¹⁰⁴ for clients to increase the durability of the outcomes. Based on the definitions found in the purchasing documents we can conclude that durable placement was in the majority of cases defined as “*placement of the client in a regular job that gives the client benefit independency, for a period of at least six months.*”

Durability and social activation

A number of municipalities purchased services for the purpose of ‘activating’ clients: leading the client toward a meaningful occupation outside the labour market. We found practical definitions of the durability of the outcomes of social activation in 3 purchasing documents. These definitions included a specification of the nature of the activities that clients were to undertake (usually some kind of voluntary work), a specification of the number of hours per week that clients would have to be engaged in such activities and the requirement that the client would be ‘climbing the participation ladder’. Notwithstanding these attempts at delineating durability of social activation outcomes, assessing it turned out to be difficult: in reality ‘durable activation’ could mean something different for each client.

Overall, ‘durability of placement’ was defined in some detail in most purchasing documents. Practical requirements that providers had to meet in order to claim success were also set out and six months of placement in employment was generally considered to be a durable result.

104 Minimal educational attainment required for entry on the job market comparable to a high school diploma.

13.3.2 *Realising durable outcomes*

What form of durability did municipalities strive for?

Almost all the municipalities applied the same specification of durability in relation to job placement: the client had to be working for at least six months without benefit dependency and usually also without placement subsidies. In only 2 of the municipalities (Roermond and Lelystad) the contractual term of nine or twelve months was actually applied. The durability terms actually applied thus largely correspond with the results of the tender document analysis. However, many case managers and some contract managers were sceptical about the six months term; it could hardly be conceived as a standard for durability. According to many of the case managers, durability should mean that a client has no need at all anymore to return to social assistance. Such ‘real’ durability, however, would require trajectories providing clients with so many capabilities and experiences that they would cease to be dependent on welfare – at least for a number of years. Even though there was this widespread feeling that the six months term was in no way an adequate operationalization of durability, it was applied anyway, for practical reasons such as measurability. There were limits to what was reasonably attributable to the contractor. Ascribing client dropouts (clients relapsing into social assistance) after the first six month of employment to the supplier was difficult for instance. The time gap between the activities of the service provider to achieve the placement of the client and the moment the client returned to benefit dependency was simply too large. The contractor would bear a disproportionately high risk if he would be held responsible for clients who for unforeseen reasons and without any direct omissions or actions on the part of the service provider, dropped out. A further reason why municipalities applied this six month period was that clients could, after the expiration of the term, be removed from the books. Without such a closing date, the case loads of the already overburdened municipal agencies would continue to grow. According to some of the service providers many municipalities (not necessarily those included in our sample) were in the early years up to 2009 highly focused on short-term outcomes, just to be able to show results. An additional incentive for this approach was the fact that, after a six months period in a job, the drop out client would be entitled to unemployment benefits administered by a central government agency (UWV). He would then not return to the municipal welfare records.

The kind of durability realised

For many clients it turned out to be difficult to achieve any placements in gainful employment whatsoever. According to case managers it was already an achievement if at least part of the clients was employed again – not least because durability is largely affected by the general economic climate. Since the start of crisis of 2008/2009 many former welfare beneficiaries who acquired employment were laid off again and became dependent on benefits once more. In this difficult economic climate many municipalities considered it a feat to secure even a six months placement. An emerging problem at the time, that highlighted the tensions between the application of the durability standard of six months

and the use of subsidies to support employment placements, was the surge in so-called ‘revolving door’ clients.¹⁰⁵ While placement subsidies helped to achieve placements, many clients were dismissed after the subsidy expired, returning to welfare once more. In one municipality an affiliated service provider would dismiss clients after six months and then tell them to return after another six months when they would be eligible for placement subsidies again.

The cases show that the timeframe of six months placement was the common standard for durable outcomes, both in the purchasing documents and in the implementation of the contracts. Although there was a general awareness that a six months employment term was not an adequate specification of durability, municipalities still had all kinds of pragmatic reasons to stick with that term. The main reasons were: the limitations to holding contractors accountable for drop outs, the need to curb ever increasing case loads and the given that drop out clients would transfer to unemployment insurance benefits after six months employment.

13.3.3 *Durability throughout the contracting process*

In the *make or buy phase* some of the municipalities in our sample decided to retain within the municipal agency (e.g. the municipal employer support office) activities that were sensitive for durability, such as employment services and placements. They expected to achieve more durable outcomes this way: municipalities often had an existing network with the local small and medium sized enterprises, and could approach employers more easily than external contractors. In addition, it gave the municipality more control over how and where clients were placed with employers. Also the municipality avoided disputes with external service providers about whether or not the contractors fulfilled the durability criteria. For the same reasons 2 municipalities in our sample (Groningen and Roermond) delivered the after-care services to clients themselves. Indeed, most municipalities considered after-care to be a very important device for achieving durable outcomes. According to several case managers, the biggest challenge for many clients was not finding a job, but keeping it. The municipalities had the experience that after-care services bought on the market were of mixed quality at best. The internal delivery of after-care gave the municipalities more control over the quality of this type of service.

In the *specification phase* durability was an important item. The need for durable outcomes was written into almost all the purchasing documents we analysed. In addition, the majority of the documents stipulated durability as an explicit outcome requirement. Municipalities

¹⁰⁵ Clients who exit social assistance benefits for a short period before flowing back into them. This is an alternating pattern where clients find some employment usually with a placement subsidy and after six months or a year are dismissed and claim unemployment benefit after which they fall back on social assistance.

also made use of financial incentives to stimulate durability, as the analysis of the tender documents and the case studies revealed. We found two forms of financial incentives: 1) a specific placement bonus that was paid when the durability criteria discussed above were fulfilled and 2) durability was made an integral component of the service that was being acquired. For the bonus approach, municipalities an additional bonus was on top of the regular services fee. In the latter approach municipalities usually applied the NCLP remuneration structure: the final instalment of the payment was only paid on achieving a durable placement. Over time more and more municipalities began to specify after-care in the contract as part of the services bought. This meant that aftercare, to be delivered for a period of six months, became a component of the services bought – thus incorporating durability in the services acquired. Another tool used for the safeguarding of durability was the trajectory with a job guarantee. The contract then stipulated that the contractor delivering the trajectory was required to secure a job guarantee for a minimum term of six months. Thus by definition the durability criteria for placement were complied with when the contractual performance was delivered.

A noteworthy example of how incentives were used to encourage durability of outcomes was found at one of the service providers in Rotterdam. At this service provider a contractual setup was used that contained both an outcome funding and a durability incentive. In this setup the provider got complete responsibility for readying the clients for the labour market and was compensated only through the use placement subsidies available to them when clients would be successfully posted in jobs with external employers. This remuneration structure entailed that the provider would receive a fee from the organisation where the client was posted (just as a regular temporary work agency would) and in addition a small fee from the municipality for each month the client was posted. The break-even point at which the provider would have earned enough from the fees to recuperate its initial investment was, if the client had remained employed for at least 1.5 to 2 years. This automatically meant that a client had to have been durably at work (in other words longer than 12 months) before a service provider reaped any benefits. In essence it amounted to a kind of trickle NCNP remuneration that had the provider bear a substantial amount of risk upfront. The provider was willing to accept this skewed division of risk because it had working relation of more than a decade with the municipality.

To which extend was the safeguarding of durability a topic in the *selection phase*? Durability of outcomes was found to be part of the adjudication criteria in 2 purchasing documents. In both instances the documents stated that the service provider would be assessed on the basis of its previous performance records in achieving durable placements. From the field research it emerged that durability was hardly applied in the selection process itself. There were attempts to include durability as a criterion when assessing the past performance of potential providers, but comparing the durability records of different service providers proved difficult. The available figures did not always reflect the reality and usually all service providers scored equally well on this topic.

In the *contract management phase* durability was one of many aspects of service provision that municipalities monitored. To this end the data were used from the different reports the service providers were required to submit. Cases management reports usually were supposed to contain information about the degree of durability achieved. In some cases municipalities even required specific reports on placement or outflow. Finally, service trajectory service providers were commonly required to submit a trajectory's closing report that gave details not only of the placements but also about the kind and extent of after-care that was delivered. Service providers were often required to submit proof that a client was still employed after six months – in the form of an employment contract or salary slip. Frequently the submission of proof was linked to a financial incentive: service providers were only paid the last instalment of their fee after producing such proof. The municipalities also used the SUWI-net information system¹⁰⁶ to check whether former clients were still employed after six months. Many municipalities attempted to keep track of clients beyond the first half year of employment. It often turned out to be difficult to keep in touch with the clients. The longer those clients were off benefit the less inclined they were to provide the municipal agencies with information.

Supervision on durability did take place if a municipality had outsourced the arrangement of placements. It was discussed in the feedback given to suppliers but usually in a fairly general manner. More structured discussions took place within the context of establishing achieved placement rates. According to some service providers the degree of feedback they received on this topic tended to be linked to the political leaning of the municipal council. Some political parties attached more value to 'durability' than others and this was reflected in the way municipal agencies would supervise their contractors. The political orientation of the council thus was a factor influencing the choice between the short-term approach of the 'shortest-path-to-work' logic and the long-term approach towards durability of placements.

13.3.4 *Analysis: safeguarding durability of outcomes*

We can conclude that the municipalities tried to realise durable outcomes in several ways. The municipalities safeguarded durability in relation to placement by applying incentives coupled with durability related indicators and by buying durability in the form of a process. The inclusion of extensive outcome requirements coupled with financial incentives in the purchasing documents made this aspect part of the contractually agreed performances and this gave municipalities a legal (formal) basis for enforcing these. With the switch from an outcome to a process the municipalities circumvented the problem of the long stretch of time between the initial result and the durable result. This is prime example of how

106 The SUWI-net information system contains information about payments of social insurance premiums that employers are required to pay. In this manner municipalities can see if clients have been regularly employed.

municipalities changed the characteristics of the performance procured, shifting from buying an outcome (that is hard to assess) to buying a (more simple) process. This configuration was most clearly visible in the case of the private provider in Rotterdam where placement for a longer period of time was in part financed through so called ‘placement subsidies’ granted by the municipality to the provider. Another way in which municipalities safeguarded durability was the internal production of elements of the service task that were related to durable outcomes. The municipalities made these choices because they expected to deliver better results themselves but also because they expected to have more control over how durability of outcomes was achieved.

The safeguarding of the durability of the outcomes of social activation got far less attention in the purchasing documents. The reason was probably that it was more difficult, due to lack of formal employment, to define what the ‘durability of social activation’ is. At the same time it emerged from the policy discourse in the purchasing documents that municipalities generally viewed social activation as a step towards reintegration and not as an outcome in itself. In an attempt to safeguard durability with respect to social activation municipalities increasingly turned to the participation ladder¹⁰⁷ as a framework and defined ‘durability’ in terms of the number of steps that clients moved up the participation ladder.

Despite the fact that durability of outcomes is a topic that clearly received a substantial amount of attention throughout the whole contracting process one is left to wonder whether the focus on six months as an indicator of durability really contributed to safeguarding this specific public value. Municipalities themselves acknowledged that they used this period largely for pragmatic reasons and that this six-month period did not match up with the ideal form of self-sufficient durability.

Six months is a short time frame. A preliminary evaluation by the Dutch Inspectorate for Labour and Income has shown (IWI 2008) that in the majority of cases outflow for a period of six months generally has meant that the year after outflow people were still employed. However, this evaluation was undertaken in economically more attractive conditions (2006-2007) and one can question if in the aftermath of the global economic crisis these findings still hold true. Especially because according to case managers there was the increasingly worrying problem of the so-called revolving door clients who continuously alternated between receiving benefits and short spells of employment. Illustrative of this problem was the example of the affiliated service organisation that dismissed clients after placement subsidies ran out and told that they could come back when they were again eligible for subsidies. This shows that even the municipalities themselves did not set the correct example when making use of subsidised employment and thus contributed to sustaining the

107 For more information on the participation ladder see note 68..

problem of revolving door clients. This is undoubtedly contrary to the idea of safeguarding durable labour participation as a public value.

In short, municipalities safeguarded durability of outcomes by changing service characteristics so as to incorporate durable outcomes; by making use of incentive structures or by reserving those elements of service delivery most closely connected to durability for internal production. However, one can question whether the six months employment term, used as a definition for a durable outcome, really embodies ‘durability’ of employment in the long run.

13.4 Preventing adverse selection

13.4.1 *The problem of adverse selection*

The municipalities in our sample were confronted with two kinds of adverse selection by contractors. The first is *cream skimming*: clients expected to be difficult were incorrectly referred back. Service providers would openly send back the more difficult clients, claiming that these clients did not fit their service profile. The second kind of adverse was the *parking* of clients: clients were placed in a service trajectory without real support. A telling example was the situation in which clients were literally parked behind a computer for days without any supervision – expected to search for vacancies. Many of these clients simply spent entire days just surfing the internet. The cream skimming and parking were greatly reduced later in the stretch of time covered by our research, when the municipalities ceased to buy complete service trajectories in bulk. The general feeling in most of the municipalities in our sample was that the contractors did not engage much in adverse selection, barring some incidental cases. Case managers of 2 municipalities (Rotterdam and Lelystad) reported that adverse selection was a common problem and that its prevalence was not declining.

Adverse selection in the form of cream skimming was particularly triggered by the application of a no-cure-no-pay remuneration scheme for trajectories. The municipalities discovered that contractors selected more strictly when operating under NCNP terms than under less stringent NCLP terms. The municipalities were not principally opposed to this selective approach as long as the contractors only returned those clients they really could not help. Real cream skimming – selecting only those easiest to reintegrate – was not acceptable.

Pay for performance also caused adverse selection – in the form of parking – especially when high or even excessive placement rates were agreed. One of the municipalities for instance reported parking to occur when a placement rate of 80% was agreed with a service provider. The provider concentrated solely on realising this 80% with the result that the remaining 20% got little to no attention at all and remained almost permanently in the service trajectory. Contractors even started to openly declare their unwillingness to accept less promising clients because otherwise it would be impossible for them to meet the agreed performance targets. This type of adverse selection was also more

likely to occur under (bulk) contracts that assigned a large number of clients to one service provider, to be processed in a short space of time. Lead-times (the time frame within which a specific number of clients had to be placed in a service trajectory) then would be stressed. Under such conditions service providers tended to abandon their ‘cherry picking’ by cream-skimming up front and instead turned to parking many of the more difficult clients, while focusing service efforts on the most promising clients. Sometimes the motive for parking was to win favour with case managers or departments. Providers knowingly accepted clients who were known to have little chance of success in order to avoid disappointing case managers. Afterwards, these clients were parked or placed in a service trajectory and left to fend for themselves.

From these experiences the municipalities learned that pay-for-performance arrangements (with placement in regular work being the performance to be remunerated) stimulated adverse selection. However, it became also clear that adverse selection was largely linked to specific conditions, such as the application of NCNP, an exceptional inflow of clients or excessive placement requirements that put the service provider under pressure. The general feeling in the municipalities was that adverse selection had definitely been an issue for some time and that the contractual arrangements devised by the municipalities themselves were partly to blame. Later on in our research period it became far less common than in the early days of contracting, mainly because of the changes in contractual arrangements.

13.4.2 *Prevention of adverse selection in the purchasing documents.*

The analysis of the purchasing documents did not yield any explicit references to preventing adverse selection. We did, however, find some indications suggesting that adverse selection was on the mind of the authors of the purchasing documents. One such indication was reference to return rates in terms of the number of clients the service providers were allowed to reject. It implied that municipalities wanted to use return rates to detect adverse selection in the form of creaming. In one particular case (Rotterdam) the purchasing documents contained a clause stipulating a maximum return rate (percentage of clients that the contractor was allowed to send back or refuse) of between ten and fifteen per cent. In 2 cases purchasing documents contained clauses that required service providers to accept all clients without any right to send clients back. In most of the other cases the purchasing documents contained details about the procedures for invoicing when clients dropped out, but no requirements concerning the acceptance or return of clients.

The purchasing documents also contained indicators that municipalities considered important for detecting adverse selection in the form of parking. For example, 18 out of 20 municipalities specified requirements about the maximum duration of trajectories, varying between six and twenty four months. When a client remained in a specific service trajectory for longer than the agreed maximum duration this was considered an indication that the client had received too little attention and was left to his own devices. Requirements concerning maximum lead-times were found in 16 of the 20 cases. A lead-time is the period of time between signing up for and the start of (different parts of) the service trajectory.

Generally, the maximum lead-time between two components of a trajectory varied from five workdays to one month. If far more time elapsed between two stages of a service trajectory this was considered an indication of parking.

While analysis of the purchasing documents did not yield explicit references to preventing adverse selection, most of the purchasing documents did contain measures that could be used for preventing adverse selection – measures such as the specification of indicators that could make the detection of adverse selection easier.

13.4.3 *Preventing adverse selection throughout the contracting process*

The *make or buy phase*: as indicated before, the municipalities learned from the experiences with outsourcing in the early stages of the required purchasing of re-employment services. The lesson that bulk procurement¹⁰⁸ harboured incentives for contractors to cream skimming was one reason to shift to modular buying practices. Another measure to prevent cream skimming was to assign clients to service providers in small homogenous groups, making it more visible if service providers were picking and choosing the best clients beforehand. A third method was to assign difficult clients to more specialised service providers such as the internal municipal WSW agency which is charged with delivering social activation services. Yet another anti-cream skimming measure was to purchase a separate diagnosis for each individual client and to purchase diagnostic services separate from intervention services. This meant that the service provider put a client to work for a trial period whereupon an assessment of that client was made. The service provider was only paid for the diagnosis. The case manager then decided what would be a suitable trajectory for the client given the assessment. The expectation was that a contractor would be more objective about the proficiencies of a client if the contractor did not have an interest in the consecutive trajectories. A last way to avoid cream skimming that several municipalities applied was to cease purchasing outflow or placement oriented trajectories. Instead, these municipalities purchased trajectories with other intermediate service goals, for example preparing clients for a specific service module or helping clients move up the participation ladder. A municipal agency such as the employer support office then took care of the placement of clients with employers.

The *specification phase*: although cream skimming was not explicitly discussed or referred to in any of the purchasing documents, they did contain – as already discussed – indicators for detecting adverse selection as well as measures aimed at combating creaming and parking (maximum durations for trajectories and lead-times). Another contractual measure to combat cream skimming was to stipulate that the case managers had the authority to make the final decision about the allocation of client to service trajectories.

108 The purchase of large quantities of trajectories for large groups of clients that are assumed to be at more or less the same distance from the labor market.

The *contract management phase*: cream skimming and parking were addressed whenever the contractors submitted progress reports and final reports for review. These reports provided the contract managers of the municipalities with information about the cream skimming and parking indicators (return rates, exceeding lead-times and maximum trajectory duration). In 7 municipalities, client return rates were a permanent topic in the management reports submitted by providers. Some municipalities made maximum return rates a point of approval. Rotterdam actually applied a financial penalty for exceeding the agreed maximum return rate. However, the experiences with these penalties were mixed: some service providers simply took them as a cost that was easily outweighed by the financial benefits (bonuses) of achieving better placement figures through negative selection and by returning the more difficult clients. High placement rates were also important because they formed part of the criteria on which providers were assessed and awarded future contracts.

Case managers monitored service delivery for signs of adverse selection on an operational level. They checked the progress reports and the final reports submitted by the providers. So called ‘copy-paste reports’, in which the service plan had literally been copied in the follow-up reports, for instance were a sure sign that cream skimming or parking had taken place. Information about possible adverse selection was to be gathered through enquiring service providers about the progress of service trajectories and through regularly asking clients about their activities. According to case managers the best way to prevent or correct adverse selection was ample communication with the clients in order to detect such issues at an early stage. Case managers, however, did not always have sufficient time to do this thoroughly. Then adverse selection would only come to light when things had already gone wrong. The case manager would discover only after three months (in a quarterly report) or after a year (in the final report) that nothing had been done with a client. Discovery was the more difficult because many clients did not mind too much if their service provider left them alone. An additional measure found to be used in several of our municipalities was conducting exit interviews with clients to monitor parking. In Enschede a maximum registration term was set for each client in the client tracking system. As soon as this term expired, the case managers were reminded to schedule a meeting with the client. Wageningen was the only municipality that applied ‘trust’: the contract managers there were convinced they had enough contact with the service providers and enough trust in the relationship with the service providers to ensure that cream skimming and parking hardly ever occurred.

According to many of the case managers the best way to prevent adverse selection was for the municipality to maintain an overview of the whole process and retain final control over service delivery. The coupling of case managers with service providers was often used to this effect (see chapter 11). Case managers could then monitor the clients placed with a specific provider more efficiently because they needed only focus on one or two providers.

It gave the case managers a better idea of the substance of particular service trajectories providers specialised in and of the activities clients should be engaged in.

In most of the municipalities, the feedback and supervision on adverse selection remained incidental. Only in Rotterdam it was a regular topic discussed in the contract management meetings as part of the assessment of return rates. In the other municipalities an intervention would only be undertaken if one was aware that large scale cream skimming was taking place. The case managers usually were primarily responsible for preventing adverse selection: they were in the best position to detect incidences of cream skimming or parking and to call on the errant service providers. Some of the case managers said that they immediately sanctioned such behaviour, for instance by withholding approval of the final report and the payment linked to that report, or by referring the matter to the contract manager.

13.4.4 *Analysis: safeguarding the prevention of adverse selection*

We found that municipalities did take action to prevent adverse selection. Mostly such action was aimed at limiting the opportunities for adverse selection. An inventory of measures found to be used in our municipalities includes the following:

- Referring clients to contractors in small groups with little heterogeneity;
- Deconstructing the service process and reserving the right for taking allocation decisions or making these decisions subject to the case managers' approval;
- Procuring relatively short service trajectories while defining lead times and maximum service delivery periods in the purchasing documents.

The procurement documents contained next to nothing in terms obligations on the part of contractors to refrain from adverse selection. However, as we have seen municipalities were aware and did take preventive measures to combat adverse selection. In fact, the strong focus on ex ante prevention might explain why there is so little reference to adverse selection in the purchasing documents.

Municipalities gathered information about adverse selection from the service plans, the client progress reports, the final reports and, when time allowed, through frequent contact with clients. The case managers had the responsibility for supervising providers with regard to adverse selection. Thus adverse selection also featured prominently in the monitoring and supervision of contractors.

In summary we have established that the prevention of adverse selection has significantly influenced the course of the contracting out process with both preventive and reactive measures being taken in almost all phases to reduce the opportunities for adverse selection.

13.5 Protecting the privacy of clients

13.5.1 *Protection of privacy in the purchasing documents*

From the analysis of the purchasing documents it emerged that in 18 of 20 cases the tender documents stipulated that service providers must have a privacy code as a condition for acquiring the contract. However, in many cases this obligation was merely substantiated by requesting the prospective service provider to sign a declaration stating he had such a code and that it would be produced upon request. Only 7 of the 20 purchasing documents required service providers to actually attach a copy of their privacy code to their bid. Only in half the cases the documents contained more practical requirements for privacy codes such as the standards laid down in the Dutch Data Protection Act (WBP). In approximately half the purchasing documents a process related service requirement was found that required providers to act in conformity with the WBP in relation to clients' personal data when delivering services. Nine of the twenty analysed purchasing documents specified that the privacy code requirement was a component of the formal selection criteria.

13.5.2 *Measures for protecting privacy*

In general the municipalities in our sample considered the correct handling of clients' personal data as an important element in the execution of reintegration service tasks. But in some cases privacy regulations were also seen by both the municipalities and the service providers as a barrier to efficiency. Service providers and municipalities were regularly forced to obtain information about clients through all sorts of detours, whereas the clients often had no objection to sharing this information. In general clients were most forthcoming about all sorts of issues and on occasion they would disclose more personal details than is strictly necessary. Clients were indeed just happy that someone was listening to them. Unnecessary or irrelevant information disclosed by clients was not usually recorded in the client's case file.

The main way in which municipalities said to protect privacy was limiting as much as possible the personal information given out to third parties. In our sample 7 of the 9 municipalities always obtained permission from the client before sending personal information to service providers – or at least intended to do so. In this respect it is striking to note that municipalities sometimes asked the clients to transfer their personal files themselves to the service providers. In this way the municipality avoided handing over such information.

Nearly all the service providers interviewed reported that they had privacy regulations in the form of a privacy code and that they did not pass on details of clients to third parties without obtaining the prior permission of the municipality or the client. The great majority of the service providers used a digital client information tracking system in which clients' data were protected through a digital security structure. Files were generally kept in a locked room or closet and were not allowed to be removed from the work locations. Some of the service providers admitted that files on occasion wandered around anyway. Of all the

respondents interviewed, only one respondent reported experiencing a serious incident in relation to privacy: a municipality had disposed of archive records together with the regular garbage, not knowing that these were client files.

13.5.3 *Protecting the client's privacy throughout the contracting process*

Privacy protection was most explicitly addressed in the *specification phase*. The tender documents nearly always stipulated that service providers must have a privacy code. In half the analysed purchasing documents the requirement that service providers had to have a privacy code was also part of the selection criteria. Nonetheless, in the *selection phase* the municipalities in our sample rarely assessed the substance of these privacy codes in the selection procedures. Only 2 municipalities (Wageningen and Enschede) regularly took a more thorough look at the contents of such codes. Although the remaining municipalities also required providers to have a privacy code they only acknowledged the receipt of these codes or at most glanced through them briefly. Generally speaking, these codes were only read when problems arose. Most municipalities did not assess the substance of the privacy codes because it was difficult and cost too much time.

Information about compliance with privacy regulations was not generally collected nor was compliance with the privacy codes monitored as a part of contract management. According to our respondents, the municipalities assumed this would be monitored by *Blik Op Werk*, the certifying organisation. This is remarkable because from the analysis of the purchasing documents it emerged that this certification was only required in two of the twenty purchasing documents. The case studies revealed that only two of the nine municipalities (Zutphen and Roermond) made the *Blik Op Werk* certification obligatory.

All the service providers interviewed confirmed that the municipalities might do a check-up on the privacy code during the tender procedure, but would not monitor them afterwards on the issue of privacy. The eight service providers certified by *Blik Op Werk* said the certification organisation did indeed monitor them, just like all affiliated companies, once every two years, checking whether the provider had an adequate privacy regulation, whether employees within the organisation were familiar with this regulation and if the privacy protection measures actually worked.

The information gathered by municipalities about how service providers deal with privacy usually consisted of general impressions and experiences of case managers concerning the way particular providers handled clients' personal data in their communication with the municipality. In none of the municipalities in our sample was client privacy a permanent issue about which information had to be provided in the regular management reports. Municipalities had only limited insight in the way service providers actually handled client privacy. This was particularly true for small companies whose services had not been acquired through a regular tender procedure. The municipalities did not always know even whether or not these small companies had privacy regulations or privacy codes, as municipal respondents told us. These smaller service providers were often engaged for the purchasing of services for individual clients and the contracts used for acquiring these services usually did not contain any requirements with concerning privacy

or certification. Some respondents acknowledged that under these terms there was a real risk that the privacy aspect was neglected.

A few contract managers commented that even though there should be more supervision in relation to privacy, they would not know how to go about checking compliance with privacy codes during the delivery process. Only two municipalities (Enschede and Roermond) did give service providers feedback on their handling of safeguarding privacy. The privacy aspect was also occasionally addressed when service providers and municipalities encountered the privacy rules as an obstacle for efficiency. Sometimes this led to allowing clients to transfer documents themselves. From the interviews with both the respondents from the municipalities and the service providers it could be established that most of the municipalities did not discuss privacy in the feedback given to service providers.

13.5.4 *Analysis: safeguarding client privacy*

The municipalities dealt with this aspect of service delivery mainly in three ways:

- By requiring providers to possess a privacy code in line with a legal obligation laid down in the SUWI act;
- By stipulating process requirements stating that providers must handle client data in conformity with the Dutch Privacy Protection Act (WBP);
- By giving as little information as possible to third parties.

Fortunately, there are some previous studies on privacy in the context of re-integration that provide material for comparison and can help us put our findings into context (CBP 2005; IWI 2009). Generally, such a comparison leads to the conclusion that little has changed since these reports were published.

In line with the facts reported by IWI, we found that municipalities still operated on a 'need to know' basis in order to limit the information given to third parties. Municipalities tried to keep the information given to third parties to the minimum that they deemed necessary for the execution of the services and to reduce the risk that information might be misused. At the same time municipalities evaded responsibility for transferring client data by encouraging clients to hand over their file to the provider themselves. One can question if clients were aware of all the possible implications of submitting their file to a provider. Also there is room for doubt whether clients submitted their file voluntarily: if they were not willing to give their information to providers this could be considered as a refusal to cooperate with reintegration efforts – a behaviour that the municipality was entitled to sanction with a reduction of the welfare benefits.

Another of our findings is in line with the report of the CBP, the Dutch Data Protection Authority. Providers were required to deliver extensive reports on the progress of clients containing a considerable amount of personal information. The CBP-study called into question whether all this personal information about clients gathered by the municipality was relevant for the task at hand. Our research reveals that five years later, municipalities

were still requesting the same detailed reports from their providers, without a clear justification of the necessity of all this personal information. The CBP-study also stated that municipalities seemed to handle the issue very pragmatically and that there was a low level of privacy awareness. We observed this pragmatism, too, but we did not find a low level of awareness at the municipalities or the providers. Indeed, most respondents came across as being very aware of privacy issue when questioned about it. Nonetheless, municipalities seemed to undertake little systematic action to safeguard privacy beyond limiting the information given to providers and requiring them to have a privacy code. Furthermore one can question if the awareness of privacy really contributed to safeguarding it as indications were that both municipalities and providers mostly saw it as an obstacle to efficiency. Finally, the CBP-study reported that, despite the low awareness of privacy, no significant abuses of privacy were encountered. This too matches the findings of our study.

The conclusion is that municipalities did take some measures to safeguard the public value of privacy, mainly by limiting information transferred to third parties and formulating the contractual requirement that the contractor possess a privacy code. It is questionable however, to what extent municipalities were able to ensure that providers handled this privacy properly. The municipalities themselves rarely monitored providers on privacy. They expected it to be safeguarded through certification, while certification was not a contractual requirement. Indeed, usually only the larger providers were certified while the smaller service providers could squeeze through the net when it comes to privacy controls.

13.6 Handling complaints

13.6.1 *The handling of complaints in the purchasing documents*

Our analysis of the purchasing documents revealed that municipalities treated 'handling of complaints' in much the same way as 'privacy'. Most tender documents contained a clause stipulating that a service provider was required to have a system for investigating any complaints filed by clients. All the municipalities required the service providers to have a complaint code in place. A few of the documents also demanded that a copy of the complaints code be attached to the bid submitted for the tender. However, in the majority of cases service providers were only required to sign a statement to the effect that they possessed such a code. 3 of the 16 municipalities requiring a complaints code also had requirements for the handling of complaints and more specifically for the complaints investigation procedure. The most common requirements were: the term within which the complaint should be investigated, the obligation to keep record of the investigation; the requirement that the investigation should be conducted by an independent person; the obligation to confirm receipt of the complaint and to inform the plaintive of the possibility of appeal against the decision on complaint. We found 4 municipalities that also specified

in their tender documents that regular complaints reports were required.¹⁰⁹ There was 1 municipality that obliged service providers were to summarise complaints and their investigation during the regular progress meetings. In approximately half of the purchasing documents the requirement that service providers possessed a complaints code was also part of the selection criteria.

13.6.2 *Investigating and handling of complaints*

The procedure for filing a complaint about service providers differed substantially from municipality to municipality. In Wageningen, Rotterdam, Zutphen and Haarlem clients were expected to resolve problems themselves with the service providers: complaints had to be filed with the contractor first. In other municipalities a complaint could be filed with the case manager who would then pass it on to the responsible team manager or contract manager for further investigation. The municipalities of Haarlem, Amersfoort and Wageningen had appointed a coordinator especially for investigating complaints. Amersfoort had both a complaints committee and a complaints coordinator for handling complaints. In Roermond and Enschede complaints were investigated by the case managers responsible for the service provider that was the subject of the complaint. The municipality of Lelystad had declared the general municipal complaints procedure applicable also for complaints against the reintegration service providers; complaints were filed with and investigated by the central administration of the municipality. Lelystad was aware that larger providers had their own complaints procedures but they were unsure as to whether the same was true for the smaller service providers. In Zutphen clients could file a written complaint with the manager of the one-stop-shop employment centre, whereupon this manager would decide how the complaint would be investigated.

In our study we did not examine how individual complaints were dealt with because this would depend on too many idiosyncratic factors affecting the specific case and would be beyond the scope of our study. As a result we can make no claims about how complaints were handled in individual cases. Nonetheless, we did ask about the volume of complaints that were submitted and how these were dealt with in general. When questioned about how complaints were investigated in their own municipality case managers from 5 municipalities indicated that they were unaware of an official complaint ever having been filed. Only 2 case managers interviewed had been involved in investigating complaints themselves. In both cases the director of the social services department had final responsibility for settling the complaint. Case managers from 7 of the 9 municipalities did not know how a formal complaints procedure would proceed but most of them thought they could find out should the need arise. Case managers in Amersfoort, Rotterdam and Haarlem

109 This report is usually required on an annual basis and describes all the complaints filed during that year and the investigation of these.

were not even sure there was a protocol for investigating complaints about service providers.

Case managers usually investigated and handled complaints in an informal manner, often by way of a meeting between the three parties involved (client, service provider and case manager) or by approaching the service provider directly. According to our informants, few official complaints were actually filed. The majority of complaints were settled informally. This of course also more makes it difficult to acquire an overview of how complaints and to if low levels of official complaints are due to lack of complaints or simply because many complaints are not registered. Case managers added that all complaints were taken seriously, but that the challenge was to filter out the complaints filed by clients simply because they did not want to participate in any service trajectory.

All the service providers in our sample told us they had a complaints procedure that was set out in their complaints code. The majority of service providers had complaints investigated internally, by the management or by a managing director, or by an independent person or organisation appointed to investigate complaints. 3 service providers had published their complaints regulations on a website and one service provider's website stated that the printed version of the regulations could be requested by e-mail. Several providers presented clients with a copy of the complaints and privacy code as part of an introductory information pack at the beginning of the service trajectory.

Respondents indicated that only few official complaints were lodged although it is difficult to judge whether this is due to the absence of complaints in general or due to the fact that complaints are dealt with in an informal manner which according to many respondents was often the case.

13.6.3 *Handling complaints throughout the contracting process*

The public value of the just handling of complaints was not dealt with in the *make-or-buy phase*. It did in the *specification phase*: all purchasing documents contained a clause that providers needed to have a complaints code in place – be it that the majority of documents only required a signed statement to that effect. Also in the *selection phase*: in about half of the purchasing documents the requirement to have a complaints code was part of the selection criteria. Again, in most municipalities the signed statement mentioned above sufficed. These municipalities rarely requested a copy of the code and the complaints codes were almost never assessed. A few municipalities was required the service provider to submit copies of its complaints and privacy codes with the tender bid. These codes, too, were hardly ever assessed. All together, the complaints codes requirements were just a formality as part of the selection criteria but had no meaning in the selection.

Our research revealed that compliance with the complaints regulations was not monitored in the *contract management phase*. The complaints codes were at best consulted in the event of an incident. Almost none of the municipalities in our sample systematically collected information about this aspect. None of the municipalities required that the service providers recorded the handling and the investigation of complaints in their regular

management reports. The exception were a few affiliated service providers which recorded the number of complaints received in their annual reports. Only the municipalities of Rotterdam and Roermond explicitly required that all complaints received by providers be reported to the municipal agency. Generally the municipalities just assumed that service providers would notify the municipality of complaints. Most service providers said they always reported any complaints they received.

The municipalities did not monitor whether the service providers complied with the complaints codes. This was left to the *Blik op Werk* organisation and other branch organisations (Cedris, NOLOC, ISO and proprietary certification providers¹¹⁰) that certified providers, although the latter did not always explicitly monitor for this aspect. Only *Blik op Werk* monitored compliance with respect to this topic by checking whether:

- there was a complaints code;
- the substance of these regulations met general norms;
- the organisation's employees were familiar with the respective codes;
- complaints were investigated within a specific timeframe and,
- complaints were actually investigated.¹¹¹

Blik op Werk also monitors client satisfaction through an external survey.

The supervision on the handling and investigation of complaints was very limited. Only in Wageningen and Rotterdam it was a regular topic of discussion during quarterly progress meetings. In the other municipalities service providers merely received incidental feedback (i.e.: in the event of specific or numerous complaints). Generally speaking this issue was not a regular subject for discussion at operational level. Feedback on complaint handling was only given when the municipality was aware of specific complaints.

13.6.4 Analysis: safeguarding the correct handling of complaints

Our findings show that municipalities tried to ensure the correct handling of complaints primarily through requiring providers to possess a privacy code in line with a legal obligation laid down in the SUWI act. However, just as with the requirements regarding the possession of privacy code we found that in practice municipalities rarely evaluated the substance of the complaints codes and that little follow-up occurred on this topic during contract management. This strengthens the impression that the requirement that a provider that possesses such a code was often just a hollow formality as little to nothing was done to enforce the application of these codes.

To a lesser degree (just as with privacy) municipalities also relied on certification to ensure that providers would handle this aspect of service delivery correctly. From analytical

¹¹⁰ See chapter 11 for more extensive description of the kind's certification encountered.

¹¹¹ For further information on the monitoring by *Blik op Werk* see the website: <http://www.blikopwerk.nl/keurmerk/downloads> (17-2-2011).

perspective certification can be classified as somewhat of a middle ground between the use of formalisation and trust and relies on both to function correctly. This as it is based on a set of formally established standards that are deemed to represent a specific quality of product and it is trusted that when an actor possesses the certification mark their product will meet desired quality standards. However, in our case there were two issues that undermined the usefulness of certification for safeguarding the correct handling of complaints. Certification was not made a mandatory condition for being granted a contract thereby limiting the competitive benefits of getting certification that usually drive its adoption, either because certification is a requirement imposed buyers or because producers think it will to positively distinguish them from their competitors. Thus there was less incentive for providers to adopt it. Particularly smaller providers did not see the added value of obtaining certification, as the associated costs were high and not having it did not preclude them from gaining contracts. The second issue with respect certification that becomes apparent is that there was considerable variation in the types of certification (six types where encountered) that providers carried. This variation made it more difficult to be able to rely on certification to ensure that this or other aspects of service delivery were guaranteed as these different types of certification represented very different standards of quality. The latter resulting in uncertainty about what the formal standards behind the various types certification actually guaranteed, while the former issue diminished the degree to which certification could be trusted to be depended on as a tool to safeguard quality, because only a part of providers were covered by certification. Ultimately this meant that certification could only in a limited manner guarantee that handing of complaints was properly safeguarded as only *Blik op Werk* compressively monitored providers on this aspect and non-certified providers usually did not experience any monitoring in respect to how they implemented and complied with their own complaints code if they had one.

All in all the municipalities dealt with the issue of complaints in a very similar manner as they did with privacy, relying primarily on ex ante requirements with regard to complaints codes without much substantial ex post follow-up in form of monitoring or supervision. The degree of insight the municipalities had into how complaints were dealt with thus remained an issue. In addition, municipalities put a lot of faith in the assumption that certification would ensure this aspect was dealt with in a correct manner, while at the same time not promoting the adoption of certification by making it an obligatory requirement for service provision. Furthermore, one can question if the predominant practice of informal handling of complaints and the variety of procedures used to handle these were able to ensure that that clients could express grievances in an accessible manner and that complaints would be handled correctly – in an equal and non-arbitrary manner.

13.7 Conclusion: safeguarding specific public values

Of the five specific values we selected for close scrutiny, customisation, durability and the prevention of adverse selection were clear priorities in most of our municipalities. The

municipalities devised and implemented effective instruments for their safeguarding – some as the result of a process of learning from experience. By contrast, the other two values (privacy and complaints handling) were only paid a token respect. Their safeguarding was mostly left to chance.

Chapter 14

**Conclusions: safeguarding
specific public values**

Chapter 14: Conclusions: safeguarding specific public values

14.1 Introduction

In the preceding chapter we have described how the municipalities dealt with the five specific aspects of service delivery we have selected to examine more closely. In this chapter, on the basis of these findings we will, analyse how municipalities safeguarded specific public values during the contracting out process. The chapter starts with a summary of our findings of how municipalities sought to safeguard our specific public values. Next we focus on three topics: 1) public value trade-offs and the crowding out of procedural public values; 2) formalisation and stewardship in the safeguarding of specific public values and 3) certification and safeguarding the selected of public values. In conclusion, we formulate an answer to our second research question.

14.2 Summary of findings

14.2.1 *Customised service delivery*

The approach to the safeguarding of customisation depended on the type of customized service delivery the municipality wanted. *Tailor made solutions* for a defined group of clients usually were already predetermined in a service plan for that group that would be part of the contract. Beyond that, ensuring customisation was not different from general safeguarding, that is: ensuring that the contractor complied with the terms of the contract. However, most municipalities in our sample aimed for *individual customisation*. This customisation was primarily ensured through internalisation: the case managers were given the overall responsibility over trajectories and over the resulting customisation. Insofar customisation was left to the providers themselves, the municipalities made very clear in the purchasing documents and connected service plans what kind of customisation they expected. Some municipalities sought to ensure the required customisation by contracting trustworthy providers who could be given the discretion needed to come up with tailor made solutions.

14.2.2 *Durable outcomes*

Municipalities sought to ensure the value of *durable outcomes* in several ways. In their tender documents they specified detailed outcome requirements, and made clear what importance they attached to durability. Financial incentives were used to induce providers to deliver durable outcomes. In later years, municipalities switched from buying an outcome to buying a process in order to gain more control over durability. This was accompanied by an increased emphasis on after-care, the purchasing of placements and the

application of placement subsidies for periods of at least six months. Some municipalities even internalised elements of the service related to achieving durability – similar to the way customisation was ensured. However, the crucial question concerning safeguarding this public value was, if the term of six months employment can really be considered a durable outcome or whether this is just a form of window dressing. The general feeling in the municipalities that these six months did not really amount to durability and the increased problems experienced with revolving-door clients, suggests the latter.

14.2.3 *Preventing adverse selection*

The purchasing documents did not contain any clear intentions or requirements concerning the prevention of *adverse selection*. However, some requirements specified in the purchasing documents indirectly referred to the securing of this value. Rather than telling providers not to skim cream or park, municipalities took practical measures to limit the opportunities for adverse selection. Clients were preselected and signed up in small homogeneous groups in order to reduce the opportunity for creaming: differentiating between different types of clients. Providers' discretion with regard to allocation decisions was reduced and the decisions were left to the authority or at least the final approval of the case manager. The prevention of adverse selection was also actively dealt with in contract management. More generally we can conclude that the broad spectrum of measures municipalities applied to combat adverse selection appeared to be quite successful as creaming and parking over time decreased.

14.2.4 *Privacy*

The safeguarding of the *protection of client's privacy* was largely a paper feat: municipalities specified the formal requirement that providers should possess a privacy code or a non-mandatory certification. Only a limited group of providers was certified; the privacy code requirements rung somewhat hollow because the codes did not have to be submitted. Municipalities did not actively and systematically monitor providers with respect to privacy and the information they did have was based on impressions acquired incidentally. Most municipalities expected *Blik op Werk* to check, verify and monitor how providers handled privacy aspects. However, only few of our municipalities made the *Blik op Werk* certification mark mandatory. This meant that in particular the rarely certified smaller providers were not really monitored on privacy. Overall, the municipalities had only limited control over the way providers dealt with privacy issues. It is questionable whether the municipalities in our sample could ensure that providers handled this aspect of service delivery correctly. There were no indications of large-scale abuse or mishandling of client data, however.

14.2.5 *Filing and handling complaints*

With regard to the opportunity clients had to voice their *complaints* the situation largely resembled that of the safeguarding of privacy. The primary measure municipalities adopted

to secure this aspect of service delivery was the requirement that providers possess a complaints code. However, just as with privacy, the principal rarely required agents to hand over a copy of their code and hardly ever evaluated the substance of such a code. Just as with privacy the importance of the just handling of complaints was duly expressed in the tender documents. And just as with privacy, the follow up was left wanting. The topic got little attention in the contract management phase and then only when there were complaints pending. Providers were not formally required to inform municipalities about any complaints that were lodged. Municipalities assumed that providers would be monitored on this topic by their certification organisation (*Blik op Werk* or another) even though they did not require their providers to have a certification. As mentioned in the previous section, only a few of the municipalities required the *Blik Op Werk* certification mark. Thus most providers were not really monitored for complaints handling.

14.3 Public value trade-offs and crowding out of procedural aspects

The first inference to be drawn from the presentations in the previous chapter is, that there was quite some tension between the safeguarding of the different specific public values. Often these tensions resulted in public value trade-offs. For instance: limiting provider discretion in the contract – thought necessary for general safeguarding and for prevention of adverse selection – also constrained providers in their ability to customise services. This tension between maintaining control and leaving sufficient discretion for providers to operate was aptly demonstrated by the Roermond story about interns who had to be classified as absentees.

More generally, municipalities put a strong emphasis on the safeguarding of durability, customisation and the prevention of adverse selection, to the detriment of ensuring privacy and the right to complain. This confirms our expectation that the safeguarding of procedural public values might be crowded out by the safeguarding of substantive public values. The difference in the way the municipalities dealt with the two groups of values might well be traced to the differences in the origin of the values. Indeed, the specific values that received most attention are akin to the process of reintegration itself. The success or failure of reintegration to a large extent coincides with the safeguarding of these values. Professionals in the reintegration sector will generally consider it a matter of course that these values should be protected. The values of privacy protection and the right to complain on the other hand stem from the general framework of good governance. For sector professionals such general principles present a formal obligation at best, and a nuisance whenever they seem to hinder reintegration activities. Efficiency concerns clearly trumped concerns about protection of privacy and correct handling of complaints. An additional factor driving this trade-off might have been the funding of the municipal reintegration task that stresses the outflow of clients from welfare. Clearly the safeguarding

of procedural public values cannot be taken for granted in contractual relations, especially not when substantive policy goals are backed up by strong financial incentives.

14.4 Formalisation, stewardship and specific public values

The municipalities in our sample widely applied formalisation in their contractual relations, with the purpose of maintaining control over service. They resorted to the stewardship model to increase the discretion of a contractor (for instance to cater to the needs of individual clients), but only if sufficient trust had developed. A good example of the application of the stewardship model is offered by the issue of customisation. The outsourcing of tailor made service solutions prompts difficulties in the monitoring and supervision of the contractor. These difficulties stem from the paradox that customisation requires adequate discretion while the same operational leeway also generates the need to control whether providers do not abuse this freedom. One solution that municipalities applied was circumventing this issue by producing customised services in-house. Another solution municipalities used was formalisation: prescribing service requirements in detail in the contract and the subsequent service plans. However, as indicated in the previous section, it is precisely this formalisation that constrained providers in their ability to customise services to client needs. Many municipalities therefore sought refuge in the stewardship model and outsourced the delivery of customised services to proven trustworthy contractors. In accordance with the general pattern we found, municipalities initially formalised, creating a strict contractual framework to bind the provider. Once the contractor had proven to be trustworthy more discretion was given. Thus relational trust served to overcome the control deficit inherent to contractual discretion. However, finding or fostering trustworthy providers was a resource-intensive process, often hampered by the rigidity and formalisation demanded by tender regulations.

A similar tension between formalisation and trust is clearly observable in the municipal safeguarding of the protection of privacy and of the right to complain. The municipalities applied formalisation: contractual requirements that providers possess codes concerning the handling of these issues. However, the requirements were reduced to a mere formality because the municipalities only requested that the potential provider declared to be in the possession of such codes while doing little to control or enforce this requirement once the contract was concluded. Here, too, trust replaced formalisation: the municipalities seemed to have had a great deal of confidence that providers would deal with these issues in a correct and adequate manner. Yet in this instance it was a formalised trust, as it was based on the assumption that contractors were certified and that certifying organisations such as *Blik op Werk* would adequately monitor. However, municipalities often did not require a certification and therefore it remains uncertain to what extent the trust was really justified.

On the whole we can conclude that both formalisation and stewardship were utilised for the safeguarding of specific public values in contractual relations. Even so, negotiating the contrasting dynamics that come with formalisation and stewardship remained problematic for the municipalities. Trust, especially important for realising customisation,

served as an effective complement to the control that formalisation provided. In the instances of safeguarding ‘privacy’ and ‘complaints’, however, there may well have been too much and unjustified reliance on trust.

14.5 The role of certification in safeguarding

As it came up several times in this chapter, we will take a brief detour to examine the function certification had in the safeguarding of specific public values. Based on the policy theory¹¹² behind the privatisation of the delivery of employment reintegration services, it might have been expected that the municipalities would have attached great importance to certification, in particular for the safeguarding of procedural public values such as client privacy and the right to complain. Yet we found that the function of certification was quite insignificant as witnessed by the fact that the municipalities did not demand certification as a requirement for participation in tender procedures. At the time of our study only a minority of providers active on the Dutch reintegration market were in fact certified by *Blik op Werk*. The certification organisation *Boaborea* at the time expected that in 2010 45% of the providers would be certified (*Blik op Werk* 2009) and that this number would increase in subsequent years. Unfortunately, little information is available about certification levels after 2010. The *Blik op Werk* website proclaimed in 2012 that at least 600 service providers carried their certification. It is, however, unclear what percentage of provider’s active in the sector this number represented. There are reasons to doubt whether the projected increase ever came about. Many municipalities never made certification mandatory and most small providers found certification too expensive: two conditions that certainly did not enhance certification.

The issue of certification illustrates the tension in contractual relations between the need to maintain control and the need to generate efficiency. In the case of certification efficiency considerations prevailed. Municipalities wanted to be able to use smaller and local providers. They believed that these would be more innovative, had more specialised knowledge of the target groups and a better understanding of the local context in which the services were to be delivered. A second factor that hindered the more universal adoption of certification in order to guarantee quality was the large variety of certifications available. In our study we have encountered at the least six different types of certification relevant for employment reintegration, all attesting to something different. This variation certainly did not help to create clarity about what certification actually guaranteed the safeguarding of cherished public values. Furthermore, some municipalities and providers were critical of the added value of certification. They questioned the value of the industry standard – the

112 In the preparatory works of the SUWI Act, certification and self-regulation are mentioned as important pillars for safeguarding quality of service on the Dutch reintegration market.

Blik op Werk certification – especially because it provided too little insight into the substantive quality of the service providers.

The protection of the public values of privacy and the right to complain would have benefited if certification was made mandatory for all providers operating in the Dutch reintegration market. However, there was little support for this from either the Ministry of Social Affairs or the Association of Municipalities. In the summer of 2009 and in early 2010, in response to questions about the buying framework used by the UWV, the Minister of Social Affairs and Employment wrote to the Senate that he considered it undesirable to make certification mandatory because it would generate substantial additional costs and administrative burdens.¹¹³ Nevertheless, the verdict about the added value of increased certification is still out. At the time of our study only the large service providers representing about half the market were certified. To end on a positive note: at the end of 2012 *Blik op Werk* launched a ‘light’ version of its certification procedure for independent professionals (*ZZP-ers*). This might make it more appealing for the smallest providers to get certified.

113 Letters of 7th July 2009 and of 8th February 2010 from the Minister of Social Affairs and Employment to the Senate regarding *mandatory certification reintegration providers*, Letter label: R&P/A&V/2010/351.

14.6 Conclusion

What do these findings mean for our second research question?

- *RQ2: How do municipalities safeguard specific public values when contracting out employment reintegration services?*

The general answer to our second research question is that municipalities predominantly safeguarded the selected aspects of service delivery by *internalisation*: avoiding outsourcing those parts of the services to be delivered that were sensitive to impairing the public values concerned. The municipalities in our study produced a considerable part of the activities related to customisation, durable outcomes and the prevention of adverse selection in-house.

The more specific part of the answer pertaining to if public values trade-offs occurred is that procedural public values were hardly safeguarded at all. The attempts municipalities made to ensure the protection of privacy and the right to complain were feeble at best – not much more than the formal requirement of a privacy code and the reliance on non-mandatory certification.

An additional feature of the municipal safeguarding strategies was the prominent role given to case managers. When municipalities did decide to contract out services, the case managers were primarily responsible for safeguarding the specific public values. However, since this safeguarding was one of many tasks awarded to case managers, its execution was often crowded out by other concerns.

Part V

CONCLUSION

Chapter 15

Conclusions

Chapter 15: Conclusions

15.1 Introduction

The starting point for this study was an interest in discovering what happens to public values when a public task is outsourced. The premise was that public tasks are considered a public responsibility for a reason and that contracting out such a task to a private actor might compromise the public values intrinsic to that task. An exceptional opportunity to explore this matter presented itself when the Dutch legislature enacted the obligation for municipalities to outsource all of their labour market reintegration activities. Traditionally, the municipalities administered social welfare benefits. But since 2004 the WWB Act also made them responsible, for guiding welfare recipients back into the labour market – under the condition that all reintegration activities were contracted out. The mandatory outsourcing was accompanied by the political assurance that contracts and certifications would safeguard public values associated with this task. As from 2006 the legal requirement to outsource was rescinded. All together these circumstances presented a near perfect laboratory case to study the safeguarding of public values in contractual relations.

The central research question derived from these considerations was:

- *How do municipalities safeguard public values when contracting out employment reintegration services?*

In order to answer this question we adopted three distinctive theoretical perspectives that allowed us to demarcate and guide our investigation.

15.2 Theoretical perspectives

15.2.1 *The meaning of 'public value'*

For the purpose of this study it was necessary to delineate the concept of public value. We take public values to be: *those values that society deems so important that the state is tasked with the ultimate responsibility to protect or safeguard them.* When a public task is outsourced, there is an accompanying duty to ensure that the associated public values are safeguarded. The state or some other public entity is thus required to maintain a certain degree of control over the execution of this task. More specifically, the safeguarding of public values when contracting out reintegration services necessitates the principal to ensure that the services being commissioned are delivered in accordance with the principal's requirements and with the requirements derived from the specific public values relevant to employment re-integration. This definition contains a distinction between *basic contractual safeguarding* and the *safeguarding of specific public values*. The former refers to *the way the municipality ensures that services are delivered in compliance with*

contractual arrangements and in accordance with the municipalities' requirements. The latter denotes the way the municipality guarantees that specific public values relevant for the outsourced public task are properly dealt with.

The distinction between basic and specific safeguarding is crucial: limiting the investigation to basic contractual safeguarding would mean that only the public values are included that are derived from the policy goals of the municipality while other relevant public values would be overlooked. It should not be taken for granted that the municipalities have a complete overview of all the public values that may need safeguarding or that they are willing and able to safeguard the relevant public values comprehensively.

As a consequence of this distinction the central research question is divided in two specific research questions.

- *RQ 1: How do municipalities perform basic contractual safeguarding when contracting out employment reintegration services?*
- *RQ 2: How do municipalities safeguard specific public values when contracting out employment reintegration services?*

To answer the second research question we looked at how municipalities communicated their requirements concerning specific public values to the contractors and to which extent they monitored and supervised the contractors on their compliance with these requirements. Since the number of relevant public values is too large to investigate in its entirety, a selection was made using the following criteria:

- The selected public values should be related to the delivery of employment reintegration services.
- The public values in the sample should potentially be affected by the outsourcing of the services and the ensuing contractual governance.
- The sample should include both substantive and procedural public values.
- The handling of the public values in the sample should potentially be affected by the profit motive that drives commercial service providers.

The resulting sample contained two substantive public values: *customisation* and *durability of outcomes*; and three procedural public values: *preventing adverse selection*, *safeguarding privacy* and *handling complaints*.

15.2.2 *Modelling contractual relationships*

To guide and focus the research, we needed to develop a model of contractual relationships and contractual governance. Drawing on the literature, we designed a model that incorporated four governance strategies the principal has available: *enforcement*, *simplification of the performance*, *intrinsic motivation* and *trust*.

Enforcement

Enforcement by the principal includes all activities aimed at compelling agents to comply with agreed contractual arrangements. Enforcement makes use of the extrinsic motivation of the agent to make him comply with the contractual arrangements. The principal can enforce compliance based on contractual authority to do so. There is, however, a limit to the amount of control a principal can exercise, since the resources required to achieve control are not boundless. Therefore the principal will seek a balance between the degree of compliance the principal strives for and the resources enforcement measures require.

Simplification of the performance

The principal defines the performance required from the agent in simple terms. This will reduce information asymmetry and give the agent fewer opportunities for non-compliance.

Simplification can be realised by carving the service up into components or modules that are separately outsourced. A complex activity thus becomes a number of smaller activities that are easier to monitor. Alternately, simplification can be realised by specifying detailed service requirements in the contract. Such specifications can change the nature of the performance asked of the agent. The assumption is that the more comprehensively the contract specifies the desired performances, the fewer uncertainties remain about what commissioned agents should be doing - uncertainties that can be opportunistically exploited by the agent.

There is, however, a limit to the amount of detail in specification: a complete contract that covers all the potential situations is logically impossible. Furthermore, simplifying the agent's performance often results in a gap between what is desired or needed and the level of performance such simplification produces. Simplifying the service to be purchased does not simplify the problems to be resolved by this service.

Utilisation of intrinsic motivation

The principal can make use of the intrinsic motivation that drives the agent by selecting agents who share his goals and values. The assumption is that an agent who scores positively on these motivational factors will be more inclined to comply of its own accord without explicit enforcement being required. The principal can search for so called *embedded providers* as proxies for goal and value congruency: providers who operate in a similar cultural context to that of the principal. The assumption is that providers who share an operational context or a professional frame of reference with the principal are likely to also share some relevant goals or values with the principal. This could also lower transaction costs because there will be less need for enforcement measures. However, its success depends on the availability of this particular type of agent and can be hindered by the obligatory procurement procedures. The principal may also seek to instil particular values or norms in agents through *socialisation*. Socialisation is a process whereby values are transferred through interaction and reinforced through repeated confirmation of these values. This, however, requires time and resources.

Utilising trust

Trust can be utilised to reduce the need for enforcement. Trust is assumed to decrease non-compliance. The principal can make use of trust in two ways: he can search for a trustworthy provider who has a reputation for being reliable, and he can foster relational trust, based on personal experience with individual agents. Trustworthiness is hard to assess beforehand. Fostering trust is time consuming and comes with a risk: the agent needs to be allowed discretion to prove himself - discretion that could be abused.

The above measures can be categorized into two functional types: *formalisation measures* and *stewardship measures*. Formalisation is a model of contractual governance based in the reliance on enforceable rules that enable the principal to control the agent behaviour (*enforcement*) and on contractual specifications that minimises the opportunity for non-compliance (*simplification*). Stewardship is a model of contractual governance based on the assumption that *intrinsic motivation* and *trust* can be harnessed in order to promote compliance.

The dynamics between stewardship and formalisation

The literature on contractual relationship theories also produced the basis for a third research question. There is likely to be a complex dynamic in the interaction between formalisation measures and stewardship measures. For one thing, one type of measure may crowd out the other. The third research question was:

- *RQ3: How do formalisation and stewardship measures feature in the safeguarding arrangements in contractual relationships under study?*

15.2.3 *The contracting out process*

Our third theoretical perspective focuses on the dynamics of the contracting out process. We have divided the contracting out process into four specific phases: the *make or buy* phase, the *selection* phase, the *specification* phase and the *contract management* phase. For each of these phases there are specific measures to further compliance and each phase has its own particular problems. The governance choices to be made in each phase are affected by contextual factors: *service characteristics*, *institutional context*, *market characteristics* and *organisational capacity of the buyer*). The phase model of the contracting out process is a basic framework for presenting the findings of this study.

Theoretical safeguarding options

Table 15.1 (the details of which are discussed in chapter 6) shows the different contractual governance measures available to the municipalities. This scheme serves as a frame of reference for interpreting the findings of our study.

Table 15.1					
<i>Summary of theoretical safeguarding options</i>					
Type of compliance promotion measure	<i>Ideal measures</i>	Formalisation measures		Stewardship measures	
		<i>Enforcement</i>	<i>Simplification</i>	<i>Intrinsic motivation</i>	<i>Trust</i>
Contracting-out phase					
<i>Make or buy phase</i>	Based on <u>transaction costs</u> considerations either making or buying		<u>Deconstructing</u> service products into simple subparts, eliminating complexity	Use <u>embedded providers</u> , utilising social control	
<i>Specification phase</i>	" <u>Complete</u> " <u>contract</u> , stipulating in detail the agent's products	<u>Preserving rights of control</u> in the contract as formal base for control strategies	<u>Extensive stipulation</u> of delivery process and performance	<u>Limited specification</u> as agents share goals	<u>Limited specification</u> as agents are reliable
<i>Selection phase</i>	<u>Price-quality decisive</u> selection criterion			Selection of <u>value congruent agents</u>	Selection of <u>trustworthy agents</u> based on reputation
<i>Contract management phase</i>	<u>Monitoring and supervision</u> based on efficiency	Control through <u>comprehensive contract management</u>		<u>Socialising</u> agents into sharing of values or goals	<u>Building trust</u> during contract relation

15.3 Basic contractual safeguarding

A compilation of findings that constitute the answer to our first research question (How do municipalities perform basic contractual safeguarding?) are presented in table 15.2. The table shows that municipalities preferred to ensure services are delivered in accordance with their requirements by not contracting the entire service task out to private providers. The municipalities purchased services to complement their own capacities or when specific expertise is not available in-house. When the municipalities did contract out and purchased services, the manner in which they did this strongly resembled quasi-hierarchy. Contracts were used to create an almost hierarchical command and control structure in which case managers retained a strong degree of control over how providers can deliver services. Furthermore, the focus on procedural service requirements prescribing behaviour further

inhibited the discretion of agents; at least on paper. One additional conclusion is, that the notion that the delivery of employment reintegration services for welfare recipients is privatised should be revised (Van Berkel 2010). Our cases show that the municipalities contracted out very selectively. This not only allowed them to retain a large degree of control over the service delivery, but it also guaranteed a chain of public accountability because public employees (case managers) remained largely responsible for the process of service delivery.

Table 15.2				
<i>Summary of basic contractual safeguarding measures applied by municipalities</i>				
Type of compliance promotion measure	Formalisation measures		Stewardship measures	
	<i>Enforcement</i>	<i>Simplification</i>	<i>Intrinsic motivation</i>	<i>Trust</i>
Contracting-out phase				
<i>Make or buy phase</i>	<ul style="list-style-type: none"> - <u>Hiving off</u>: municipal affiliated providers deliver hard to specify services. (Extra contractual enforcement) 	<ul style="list-style-type: none"> - <u>Modular buying</u> - <u>Partial internal production</u> - <u>Individual buying</u> 		
<i>Specification phase</i>	<ul style="list-style-type: none"> - <u>Preserving control rights</u>: Executive instructions (case manager) Formalised sanctions Decision making prerogatives reside with case manager - <u>Detailed stipulation of work process</u>: service plans work protocols 	<ul style="list-style-type: none"> - <u>Detailed stipulation of work process</u>: Specifying extensive procedural service requirements 		
<i>Selection phase</i>			<ul style="list-style-type: none"> - Trying to select <u>value congruent agents</u>: Vision as an essential selection criterion 	<ul style="list-style-type: none"> - <u>Testing reliability and trustworthiness</u> by individual purchasing
<i>Contract management phase</i>	<ul style="list-style-type: none"> - <u>Principal manages on an operational level</u>: case managers with pivotal role in: managing, coordinating and supervising service delivery - <u>coupling case managers</u> with providers(not with clients): to provide better oversight over service delivery 		<ul style="list-style-type: none"> - Through <u>initial strict contract management</u> socialising agents to deliver services to desired standards 	<ul style="list-style-type: none"> - <u>Splitting contracts</u>: Having provider compete ex post - <u>Coupling case managers</u>: to strengthen personal bonds between provider and case managers and develop trust

15.4 Safeguarding specific public values

Table 15.3 provides a summary of the results that together constitute the answer to the second research question (How do municipalities safeguard specific public values: customisation, durability of outcomes, preventing adverse selection, privacy and complaints?). The table shows that these specific public values were safeguarded throughout the different phases of the contracting out process. Our study reveals that municipalities tended to safeguard these values by removing the activities related to these values from the contractual exchange. For instance, in order to promote durability of outcomes municipalities started providing placement and intermediation services themselves through employer service points. Modularisation and individualisation were important elements in the way municipalities sought to safeguard customisation and prevent adverse selection. Modular and individual buying allowed municipalities to adjust service trajectories to the needs of particular clients. Modular buying that removed allocation decisions from the contractual performance was used to prevent adverse selection. Individualised buying reduced the danger of adverse selection because it limited the amount of service trajectories bought, while at the same time making it harder for providers to cherry pick clients with a short distance to the labour market who could easily be helped. Modularisation also created intermediate progress points that allowed municipalities to observe the efforts of providers more easily and thus prevent the parking of more difficult clients.

Table 15.3 <i>Summary of how specific public values are safeguarded in practice</i>					
Factors influencing compliance	<i>Customisation of services to clients needs</i>	<i>Realisation of durable outcomes</i>	<i>Prevention of adverse selection</i>	<i>Safeguarding of client privacy</i>	<i>Ensure correct handling of complaints</i>
Contracting-out phase					
<i>Make or buy phase</i>	- Internalising Customisation	- <u>Internalising</u> parts of the service trajectory related to durable outcomes - <u>Procuring durable outcomes as a process</u>	- <u>Procuring small numbers of trajectories</u> For <u>homogenous groups.</u> - <u>Separating diagnosis from intervention</u>		
<i>Specification phase</i>	- <u>Stipulating customisation requirements</u> - <u>Stipulating means for evaluating Customisation</u> (service plans)	- <u>Stipulating requirements</u> on durable outcomes - <u>stipulating financial incentives</u> aimed at achieving durability	- Stipulating service related indicators for <u>detecting adverse selection</u>	- Specifying requirements for <u>privacy code</u>	- Specifying requirements for <u>complaints code</u>
<i>Selection phase</i>		- <u>Previous performance</u> on durability as selection criterion		- <u>Requirements of a privacy code</u> applied as a selection criterion	- <u>Requirements of a complaints code</u> applied as a selection criterion
<i>Contract management phase</i>	- Case managers <u>approving</u> customisation service plans	- Supervision on durability of achieved outcomes	- Supervision and intervention on return rates, lead times and service delivery duration	- No systematic monitoring by the municipalities - Substitute supervision by certification organization	- Informal handling of most complaints - Incidental feedback on complaints - Array of complaints procedures - No systematic monitoring - Substitute supervision by certification organisation

Three topics related to the safeguarding of specific public values deserve separate discussion: communication of requirements, monitoring and supervision. We found that detailed requirements were communicated in particular with regard to the need for ‘customisation’ and ‘durable outcomes’ and to a lesser extent with regard to ‘privacy’ and ‘complaints’. The odd one out here was ‘preventing adverse selection’ for which the purchasing documents did not directly specify any requirements. This was probably because the municipalities safeguarded this public value through other means; primarily by reducing opportunities for adverse selection by way of individual and small scale purchasing. This shows that communicating requirements was not a necessity for safeguarding specific public values. Indeed in relation to privacy and the handling of complaints explicit requirements were communicated but there was little follow-up in the form of either monitoring or supervision. The municipalities gave the values ‘protection of privacy’ and ‘correct handling of complaints’ the least attention. Indeed the efforts the municipalities put into safeguarding these two procedural public values pale into insignificance when compared to the monitoring and supervision aimed at ensuring that the primary service goals are achieved.

15.5 How do municipalities safeguard public values when contracting out?

The municipalities in our sample use the following measures to ensure public values are safeguarded when contracting out employment reintegration services.

15.5.1 *Extensive contract management*

Contract management, as we have observed, was a key element in the manner in which municipalities seek to enforce compliance. Over the nine years covered by our research there has been a shift from less intensive ‘at-arms-length’ to more extensive ‘hands-on’ contract management. In the beginning municipalities were buying in bulk and the monitoring of the contractor, aimed at determining final outcomes, was primarily based on reports that were compiled and delivered after service delivery was concluded. In response to disappointing compliance results and high levels of creaming and parking municipalities adopted more rigid and extensive contract management configurations.

Theoretically, contract management fits within the enforcement category of formalisation measures. It reduces information asymmetry while inducing agents to comply. The municipalities made considerable efforts to enforce compliance through contract management. To make such enforcement possible, the municipalities built a strong basis for contract management in the specification phase: strong decision-making prerogatives and control rights were written into the contracts. It put the municipal case managers firmly in the driving seat.

This approach to enforcement featured most prominently in the municipality of Roermond where detailed contracts formed the basis for a rigorous control of the

contractors. The services had to be delivered in a specific work location that was managed by the municipality itself. Thus municipal officials had an almost physical control over service delivery. This form of control comes perhaps closest to enforcement in its most primal near-hierarchical appearance. This type of enforcement requires substantial investments and resources and comes with the risk that providers are over-controlled and thus constrained in their freedom to operate in an innovative and flexible manner.

15.5.2 *Modular and individual buying*

Modular buying is a compliance measure that almost all municipalities adopted. It is in line with the theoretical simplification option of by deconstructing required performances to reduce the opportunity for non-compliance. Again, over the years the municipalities changed their strategy from buying complete service trajectories towards purchasing specialised modules aimed at achieving interim results. Modularisation was accompanied by an increased internal production of particular elements of the service task, by extensive specification of service requirements and by a further limiting of agent discretion.

15.5.3 *Internal production*

Activities that required specific or long term investment and that market parties were not always willing to make were often produced in-house by the municipalities. Other activities that municipalities preferred not to contract out included those of which the outcomes were hard to measure and that therefore incurred high transaction costs. This partly explains the more general trend of municipalities returning to direct internal provision that took place over the years covered in our research. The establishment of municipal employer support offices for providing job brokering services is an example of this internalisation. Theoretically, internalisation is the most extreme form of simplification – it reduces the performance asked from the agent to nought. Another example of simplification by way of internalisation was the phenomenon that the coordination and decision-making elements of service delivery were kept with the case managers. This approach to simplification is particularly illustrated by the case of Enschede where customisation was done at group level and where municipal officials were made responsible for customisation. In this way the most complicated elements of customisation (decision-making and coordinating) were largely eliminated from the contractual exchange. This is theoretically similar to the choice made in Amersfoort where a considerable part of service delivery was provided internally and only very specialised services were contracted out. The cases of Enschede and Amersfoort also provide illustrative examples of how principals dealt with the residual performance gap that is created by simplifying or limiting the performance required from agents. Enschede accepted less customisation in return for the control over service delivery. Amersfoort compensated for the performance gap by producing services internally and thus realising the required service quality.

15.5.4 *Extensive specification and limiting agent discretion*

The discretion of agents can be limited by stipulating detailed requirements as to how services should be delivered. This is also a form of simplification. The focus is on procedural requirements and involves buying processes rather than outcomes. Such a strategy was often used for the safeguarding of durable outcomes: while initially ‘durability’ was contractually defined as a complex and multidimensional outcome, in later years the municipalities sought to realise it by buying a process in the form of a work experience placement in combination with six months after-care service. Municipalities also tried to keep control over service delivery by limiting provider discretion in the contracts. A clear example of this is that the responsibility for resource allocation decisions was often directly reserved for the in-house case managers. Alternately the contract could require the agent to come up with service plans that were subject to the case manager’s approval. By limiting agent discretion with regard to this decision-making element, municipalities simplified the performance asked of providers.

15.5.5 *Individual buying*

In addition to modularisation municipalities applied individual purchasing for specific clients. The individual buying simplified the transaction by limiting it to one client. Both these solutions enabled municipalities to reduce information asymmetry and therefore maintain a better overview of how service delivery occurred. Indeed, problems in observing agent performance led municipalities to adopt both these purchasing strategies in order to be able to better control the service delivery process.

15.5.6 *Hiving off*

Hiving off occurs in the make or buy phase when a municipality outsources particular services to a provider affiliated to that municipality. This was primarily done for activities with high asset specificity. An example are the work-first trajectories that required particular work environments in which clients could be diagnosed and where their abilities and problems could be assessed. Because many municipalities already had sheltered work organisations that employed a similar physical infrastructure and had the required expertise, the municipalities made use of these linked providers for their most problematic clients. These services are by their nature difficult to monitor and supervise. Other institutional links such as subsidy relationships, ownership ties or existing contractual relationships also provided opportunities to enforce compliance. Usually this hiving off amounted to a hybrid solution between buying and producing internally. The presumed advantage was that it allowed for commercial operations, while maintaining strong links with the public sector so that service delivery would benefit from a public service ethos.

15.5.7 *Fostering trust*

The coupling of case managers with specific providers is a practice we saw in almost all the municipalities in the case study. It enabled casual monitoring and promoted good

interpersonal relations between representatives of the provider and the case managers. The assumption was that providers under these conditions would try hard to meet the expectations of their counterparts and thus be more inclined to comply with agreed arrangements. Theoretically this is an example of increasing compliance by fostering trust through repeated cooperation. This practice of pairing up actors in the process in order to strengthen bonds shows that municipalities explicitly attempted to trust between parties by stimulating familiarity.

The case of the municipality of Wageningen was most distinguished in creating partnerships and cooperative trust-based relationships with suppliers. To achieve this municipal officials worked as much as possible on an equal footing with providers in an attempt to avoid the more traditional principal / agents attitude that is often associated with contracting out. The fact that Wageningen is a smaller municipality was probably an important factor enabling it to work in this informal and open manner. Interestingly, Wageningen also distinguished itself as the only municipality indicating that it had enough control over service delivery to be able to guarantee quality.

15.5.8 *Grooming providers*

A practice encountered in many municipalities in our study is the breaking in of new providers through strict contract management. It meant a tight enforcement of contractual requirements followed by less strict supervision and more discretionary leeway as providers proved their trustworthiness. This is a practice that many contract managers claimed to employ because in the long run it allowed them to concentrate enforcement efforts on those providers who were underperforming.

Theoretically this fits within the category of compliance measures aimed at imbuing agents with an intrinsic motivation to comply through socialisation. Socialisation processes involved an element of trust: particular providers were given discretionary leeway based on how well they performed. In the long run socialisation did contribute to reducing compliance enforcement requirements, but it also required investment in time.

15.5.9 *Two-tiered selection*

We encountered two forms of two-tiered selection. The first form consisted of individual purchasing to ‘test-drive’ the services delivered by the provider. This was practiced in Amersfoort where it was used to test new providers before setting up full-scale tenders to purchase the services. The second form of two-tiered selection was the separation of contracts: two or more providers were engaged to deliver particular service modules. Competition continued after the contracts were awarded: additional clients were allocated on the basis of provider performance. This splitting of contracts was encountered in Haarlem and to some degree in Enschede: in both cases private and affiliated or public providers were contracted to deliver the same or similar services.

Theoretically two-tiered selection fits within the category of seeking compliance by selecting a trustworthy agent. However, because in practice trustworthiness is an element that is difficult to judge beforehand it is a very subjective criterion. This makes it

incompatible with the objectivity centred logic of the tender procedures which do not accommodate making use of subjective selection criteria such as personal experience as this might reduce transparency. The selection of trustworthy providers is thus hampered by procurement regulations. The use of two-tiered selection allowed municipalities to overcome this issue and still select on the basis of proven reliability.

15.5.10 *Selecting intrinsically motivated providers*

There were several ways in which providers were selected for their intrinsic motivation. First, municipalities selected commercial service providers because they were supposed to be intrinsically motivated to do what the principal commissioned: they are result oriented and do not have their own policy goals. Secondly, intrinsic motivation was reflected in the importance attributed to the agent's vision of the services found in many of the tender documents. Municipalities considered the drive, motivation and vision of the service providers to be good indicators of service quality. However, assessing such subjective elements beforehand and during the tender procedure was relatively difficult. Potential providers were, for instance, asked to objectify their vision of service delivery by writing down service plans that detailed how they intended to deliver the services. Apart from the fact that such a document offered no guarantee that service delivery would actually occur as stated in the plans, many potential providers had excellent bid writing skills and thus almost all potential service plans were high-quality. This eliminated their differentiating effect; often providers achieved the same scores for their plans. As a result, tender procedures that aimed for on intrinsic motivation often ended up with price being the most differentiating criterion. The procurement regulations thus had the effect that price was over-emphasised in the selection process, even when there was no explicit stress on price (Sol & Westerveld 2005, p. 391).

Some municipalities (in particular Lelystad) were successful in engaging locally embedded providers. They required potential providers to have (or be able to set up) an extensive network with local social service organisations and employers. Providers from outside the municipal jurisdiction were often unable or unwilling to invest in such networks. Municipalities wanted to engage local providers because they were presumed to have an excellent knowledge of the local policy context in which service delivery would occur and because it ensured that the municipality and the providers shared a similar frame of reference about the local labour market situation which made cooperating easier. In addition, the expectation was that local providers had better links with local institutions, were well embedded in the local social fabric and were therefore better equipped to solve the problems of clients locally.

Theoretically the selection of agents on the basis of shared values or a shared orientation towards service delivery is in line with the notion that agents with a particular intrinsic motivation will be more inclined to comply without explicit enforcement. The selection of agents based on proxies for intrinsic motivation (such as the selecting of a locally embedded agent) is in line with the notion that value congruent agents are more likely to deliver services according to the requirements of the principal.

15.6 Formalisation and stewardship

As indicated above, municipalities made use of both stewardship and formalisation compliance measures in order to ensure services were delivered in accordance with their requirements and to safeguard the specific public values selected for this study. To answer our third research question we will now discuss and summarise how stewardship and formalisation interact in the contractual relationships between providers and municipalities.

Formalisation and stewardship in basic contractual safeguarding

With respect to basic contractual safeguarding municipalities tended to rely strongly on formalisation in the form of predefined rules, simplification and enforcement to retain control over service delivery. Still, trust and formalisation were often used simultaneously, in a complementary manner while the function of the contract changed during its execution. The municipalities used formalisation to reduce the risk of non-compliance as a precautionary measure, while at the same time enforcing compliance less strictly in the contract management phase once the provider proved to be trustworthy. This matches the findings of Faems et al. (2008) who also established that trust allows for a more flexible mode of contract management. This same pattern is reported by Lamothe & Lamothe (2012) who (on the basis of an extensive survey) conclude that American local governments write heavily formalised contracts but govern contractual relations on the basis of relational values.

We also saw how formalisation in the form of objective requirements stemming from procurement regulations can conflict with the use of intrinsic motivation and trust. An excessive reliance on strictly objective and formalised selection criteria crowded out the use of either trust or intrinsic motivation during the selection of providers. This is most aptly illustrated by price crowding out other more subjective quality criteria in the selection procedures.

Formalisation and stewardship in the safeguarding of specific public values

The dynamics between formalisation and stewardship became particularly clear in the way municipalities dealt with contracting out customisation and preventing adverse selection. These two public values were best safeguarded by contradictory approaches. Customisation requires sufficient freedom for service delivery in order to be responsive to the needs of particular clients. A stewardship approach thus seems most appropriate for safeguarding this specific public value, as it can more easily accommodate the need for discretion. The prevention of adverse selection is best safeguarded by limiting the discretion of the agent in order to eliminate opportunities for adverse selection. In our cases this tension becomes apparent for instance when on the one hand municipalities attempted to make use of trust in order to enable providers to customise service delivery while on the other hand they extensively applied simplification to limit provider opportunities that might be opportunistically exploited for adverse selection. The mitigation of the need for control and

the need for flexibility was one of the key challenges municipalities faced when contracting out this type of service (Sol & Westerveld 2005, p. 387).

The answer to the third research question can thus be summarised as follows: generally municipalities dealt with the contradictions between formalisation and stewardship by utilising them in a complementary manner. They put a strong emphasis on formalisation (simplification and enforcement) to maintain control and made use of fostering trust and intrinsic motivation grooming agents whenever possible to allow flexibility and responsiveness of service delivery. However, this complementary use of formalisation and trust was absent in the safeguarding of the values of privacy and complaints.

15.7 Towards explaining the municipal contract governance

So far the discussion in this chapter was about the ways and means municipalities applied to safeguard public values. In this last section we make some tentative inferences to explain why municipalities safeguarded in the manner that they did. For this we return to the four contextual factors discussed in chapter 5. We will discuss to which extent these factors might explain how municipalities contract out and conduct contractual governance.

15.7.1 *Service characteristics*

The factor that most clearly influenced how municipalities acted to increase compliance are the service characteristics. Employment reintegration services are characterised by high levels of uncertainty with regard to the achievement of the desired outcome (employment) and by considerable difficulties with regard to attributing successes to agents. This makes it inherently difficult to monitor and establish to what degree contractors are delivering according to contractual requirements. This is evidenced by the difficulties that municipalities experienced when monitoring quality of service. The same applies for evaluating the expected quality of service beforehand when selecting providers. The information asymmetry associated with this type of activity is high and provides the agents with considerable occasion to behave opportunistically. It shows in the poor performance Dutch reintegration providers delivered in the first years of contracting out and in particular in the high levels of adverse selection in the form of cherry picking (or cream skimming) and parking. These key characteristics of employment reintegration, the uncertainty surrounding the achievements of success as well as the difficulties in monitoring agent performance, can go a long way to explain the strong emphasis that municipalities have put on control. Because of these same characteristics, the procurement of employment reintegration services on the market comes with substantial transaction costs.

15.7.2 *The institutional context*

The institutional context in which municipalities operated and in particular the unnecessarily rigid adherence to procurement regulations also influenced how our municipalities went about contracting out employment services. The experiences of our

municipalities show that tender procedures made it more difficult to ensure compliance by selecting intrinsically motivated or trustworthy providers because they prevented the municipalities from assessing providers based on subjective criteria such as drive, attitude and vision although they themselves deemed these factors to be the best indicators of quality. We also see that the strict application of procurement regulations led in some cases to a situation in which the tender requirements actually inhibited competition. If a provider turned out to be a 'lemon' and the municipality wanted to terminate the contract then according to the procurement regulations a new tender had to be started. The high cost associated with switching providers, caused in large part by tender requirements, dissuaded municipalities from using the exit option of terminating the contract. Under such conditions municipalities lacked a credible exit threat that could discipline underperforming providers.

15.7.3 *Market characteristics*

The market on which Dutch municipalities were purchasing employment reintegration services was a quasi-market and this can exacerbate information asymmetries because services are delivered to a third party. In practice this was reflected in the difficulties municipalities had in monitoring the quality and outcomes of service delivery and the way this influenced the enforcement efforts municipalities had to make. Past problems experienced by municipalities with compliance particularly influenced the compliance promotion strategies adopted by the municipalities later on and go a long way in explaining the subsequent strong focus on keeping and maintaining control.

The strict tender procedures caused many municipalities to seek trustworthy preferred suppliers for the long term in order to reduce the costs of finding providers. In the case of the Dutch reintegration market we can thus conclude that the availability of agents was not only affected by the actual existence of a particular type of agent but to a large extent by the procurement regulations that dictated how agents should be selected thereby indirectly influencing agent availability. This had a profound impact on the kind of compliance measures municipalities were able to apply: the selection of agents based on trust was hampered by the formalistic approach dictated by procurement regulations.

15.7.4 *Organisational capacity of the buyer*

The organisational capacity of municipalities and especially the resources available to them also influenced the compliance measures they adopted. This particularly affected the effectiveness of contract management to overcome the problem of information asymmetry, which required significant resources that not all municipalities had. The result of this was that certain aspects of the service task remained difficult to control, even if efforts to enforce compliance were increased. Interestingly, general municipal resources, and not only those reserved for reintegration, also determined make or buy choices when deciding whether to engage service providers affiliated to the municipality because this contributed to closing the exploitation budgets for those activities that were in part dependent on municipal financing. In fact our findings show that in some cases such choices were not so

much based on the benefits of engaging affiliated providers but on the budgetary benefits of engaging these providers in terms of balancing the municipal budget.

The organisational capacity of municipalities is also linked to scale and perhaps contrary to expectations we found that large scale and the accompanying resources did not always positively influence municipalities' ability to control and manage service delivery. This is illustrated by the case of the largest municipality in our sample, Rotterdam, a municipality with an extensive three-tier structure for ensuring compliance. As it turned out, the formality of such a big system and the anonymity this created, adversely affected efficiency and led actors at the operational level to seek more informal solutions to get things done. One strategy to overcome this issue was the coupling of case managers with providers and by doing so simulating smaller scale operations that allow more interpersonal interactions. In fact our case studies present strong evidence that municipalities operating on a smaller scale could actually be at an advantage when contracting out a trust-based service such as employment reintegration because their smaller scale allowed them to more easily build stronger interpersonal relations based on trust.

15.7.5 *Balancing compliance and transaction costs*

The nature of employment reintegration services gives rise to substantial transaction costs when these are purchased on the market. Trying to enforce without exorbitant costs was a constant problem for the municipalities that they sought to resolve by maintaining strong focus on ensuring ex ante that services were delivered in accordance with their requirements. This produced a trade-off between the high costs and limitations of ex-post enforcement and the benefits of utilising simplification to limit opportunities for non-compliance ex ante. One element in this trade off was the given that the deficiencies in monitoring and supervision made it difficult to fully enforce compliance. In practice we found that municipalities considered the costs of drafting a contract (containing detailed service requirements) and the possible losses of efficiency (due to limiting discretion) were deemed worthwhile in view of the control it gave the municipalities over service delivery. When such a balance was not found many of our municipalities brought activities back in-house.

15.8 **Theoretical reflections**

The theoretical underpinnings of this study were mainly derived from three bodies of literature. Firstly, we were informed by the discourse on public values and their safeguarding for which Bozeman (2007) is exemplary. The second source was the literature on contractual relations that oscillates between the principal-agent approach (Williamson 1979) and the stewardship approach (Davis, Schoorman and Donaldson 1997). Thirdly we used prescriptive texts, meant for public agents, on how to outsource, an approach for which Van Slyke (2003) is exemplary. In this section we discuss two aspects of the application of these different strands of literature: its usefulness as input for our research and extend to which our research expands on what was known already from this literature.

15.8.1 *Modelling the contracting out process*

For the modelling of the contracting out process a framework was needed that would incorporate both the chronology dimension – the sequence of actions and events – and the interactive dimension – anything occurring between the outsourcing agency and the contractor – in an interconnected way. We started out with a four phase process frame put forward by Brown, Potoski and Van Slyke (2006), in a piece that was meant to enlighten practitioners on the consecutive choices to be made when outsourcing. We expanded on this frame to make it into a full-fledged analytical tool. Thus the fourth phase of the original (contract management) was stipulated to contain to distinguishable sets of interactions: the collection of information concerning the contractor’s performance and the influencing of the contractor’s behaviour. Furthermore we added the compliance promoting activities most likely to be applied in each of the four phases.

This theoretical framework proved to be useful as a tool for structuring the data gathering and for analysing the collected data. In the document reviews and the interviews, each phase was a separate item to be researched. For the analysis of the data, the collected information could be ordered along the lines of the framework. Such ordering not only revealed the specifics of contract governance in each of the phases, but also the interrelatedness, from one phase to the next, of compliance activities and interactions between principal and agent. It allowed us to show how experiences and choices made in one phase of the process influenced opportunities and decisions in another phase. The most obvious example of this is how the choices, made during the specification of contracts, influenced the options for compliance promotion in the contract management phase. Furthermore, the four phase model could be applied to depict the cyclical character of many principal-contractor relations. That enabled us for instance to show how difficulties experienced in overcoming information asymmetry during contract management influenced subsequent make or buy decisions. Altogether, modelling contractual relations on the basis of chronology proved effective in capturing the dynamics in those relationships.

15.8.2 *Safeguarding of public values*

The public value that is at the core of this study is the active participation of all in societal activities in general and in gainful employment in particular. The state steps in because of a market failure: the labour market is supposedly unable to provide gainful employment for all those on welfare. The public policy studied in this research – reintegration of welfare recipients into the labour market – actually is aiming at repairing this deficiency. The public-interest features of ‘full employment’ are reinforced by another policy, aimed at the realisation of the public value that each citizen is entitled to income support whenever without income through causes beyond his control. State income support for the unemployed is costly, and reintegration into the labour market contributes to alleviating this financial burden. Even though the assumptions underlying these policies were questioned, they were essentially adhered to during the period of time covered in our research. However, as was true for many areas of public policy, here, too, New Public Management (NPM) ideas caused a shift in the trade-off between the different public values at stake. As

discussed in chapter 3, in one public policy different public values may be at stake at the same time. Such public values may be contradictory in the sense that they cannot all be optimally realized at the same time. Trade-offs ensue, in which one value is given more weight than another. The NPM philosophy induced governments to give more weight to efficiency: the public value of spending public money cost-effectively. Contracting out reintegration services typically is an NPM style attempt to retain a level of state intervention in the labour market in order to safeguard the public value of full employment, while at the same time promoting efficiency through the application of market type mechanisms, that is contractual arrangements.

There is a substantial body of literature dedicated to the safeguarding of public values within the context of the procurement of public works or the delivery of utilities such as gas electricity or water (De Bruijn & Dicke 2006; De Joode 2007; Furneaux & Brown 2007; Van Gestel et al. 2008; Veeneman et al. 2009). Such areas each seem to have their specific pattern of trade-offs between different public values and there specific mix of tools for safeguarding those public values. The safeguarding public values in contractual relations when outsourcing reintegration services has not been extensively explored. Reintegration service delivery differs from public utilities and network services in a number of ways. Reintegration services encompass a strong human element, outcomes are not very measurable and causal links between intervention and outcomes are often blurry. Moreover, they are often purchased on a quasi-market. Public values associated with the welfare state such as emancipation, equity or equality are generally more abstract than the public values that matter in public utilities. The more abstract the values are, the more difficult it is for the principal to ascertain that values are truly or sufficiently safeguarded. This study explores the safeguarding of public values in the context indicated above.

It should be noted that the make-or-buy decision was initially not made by the local governments themselves. The shift in trade-offs between efficiency and substantive public values in the realm of labour market reintegration was forced on them by national legislation. Therefore it is not quite clear to which extend the municipalities themselves expected outsourcing to come with a more efficient and effective service delivery. What is clear however from our study is, that all municipalities in our sample gradually returned in some degree to more in-house production and delivery and to more control over external providers. In the end a large measure of reintegration activities was kept in-house while services or elements of services were only selectively bought on the market. There are strong indications in our cases that the specific features of reintegration services mentioned above (human element, outcomes difficult to assess and hard to attribute to intervention) do make it relatively difficult to outsource those services without considerable loss in terms of safeguarding core public values such as increasing participation. Gains in efficiency on the other hand often did not materialize.

According to the literature, the application of market type mechanisms in public service delivery creates a paradox. On the one hand the execution of the service often requires flexibility and responsiveness so as to be able to adapt to unforeseen situations, new developments or individual needs. This would call for wide discretion for the agent (the

contractor or concession holder). At the same time the public nature of the service task requires a certain degree of control to ensure public services standards and public values are safeguarded. The simultaneous need for freedom and control often appear to conflict. We find this paradox in the area of employment services as well as in the domain of public utilities (Sol & Westerveld 2005, p. 387; Van Gestel et al. 2008).

At first glance, in our welfare case the need for certainty overruled the need for responsiveness and flexibility, just as in infrastructure projects investigated by Van Gestel et al. (2008). However, our study shows that municipalities overcame the aforementioned paradox by applying both control and leeway. They maintained control by internalizing a large part of the services, while using extensive contracts with all kinds of control clauses. They gave discretion whenever the trust developed in their relation with a contractor allowed. Trusted contractors were able to adapt services to the needs of individuals and to the changing conditions on the labour market. Over time, the municipalities learned that a contract, however extensive and specified, in itself does not provide the kind of control needed to safeguard public values in the way the municipality thought fit. This coincides with findings from the studies done in infrastructure (Van Gestel et al. 2008). Additional measures (such as internalisation of production and engaging trustworthy providers) turned out to be important complements for ensuring both the amount of control and the amount of flexibility required for adequate delivery of public services. This may have implications for contractualism in public service delivery in general. Impediments for using trust (such as procurement regulations in our cases were) or for internalizing part of the services to be delivered (politically motivated obligations to contract out) may very well prohibit contracting out in such a way that public values are adequately safeguarded.

In our cases trust appears to have been the essential prerequisite for enabling municipalities to contract out and safeguard public values at the same time. The safeguarding of public values through trust might well be an interesting area for further exploration. Particular items for further research could be: the conditions under which trust can be effectively used in safeguarding public values, and the extent to which the usage of trust is compatible with the logic of control that accompanies contracting out of public tasks. While trust can greatly enhance efficiency, as it reduces the need for control, it may not always provide the certainty that in the case of public services is deemed desirable. Some initial examples of how trust can feature in both a positive way (trust enabling responsiveness) and in a negative way (unproven blind trust with respect to privacy and complaints) are already provided by our findings.

In the design of our study, we made a distinction between the generic public value inherent in the task of reintegrating welfare recipients and a number of specific public values that we expected the municipalities to safeguard as well. The specific public values were split up in substantive values that had a direct relation with main policy objectives of reintegration services (durability and customization), and procedural public values selection (prevention of adverse selection, voice and privacy) that are derived from general good governance principals. Our findings confirm that procedural public values tend to be being crowded out by 'harder' substantive values – a tendency observed in infrastructure projects

as well (Koppenjan et al. 2008). In our cases the substantive public values gained a lot more attention than procedural values.

Interestingly in our cases this crowding out was not the result of choices on the part of the private service providers, but predominantly generated by the municipalities themselves. This suggests that this crowding out effect is due to a lack of ‘good’ public management by the commissioning public agency – much more so perhaps than in the infrastructure or utilities sectors, where private actors are given the leeway to make such trade-offs themselves.

There are two possible explanations for the crowding out of procedural public values observed in our cases. The first explanation has to do with the intergovernmental financial structure used for the financing of municipal welfare activities. The incentive scheme built into that structure put a premium on (short term) outcomes while ignoring process. Since procedural values were less connected with the realisation of the primary goal of reintegration (increased participation) than the substantive values, procedural values may well have been driven out by the incentives that municipal governments were subject to. Of the procedural values only prevention of adverse selection got substantial attention in the contracting out process. Adverse selection impacts the efficiency of the reintegration efforts and thus is relatively closely connected to the achievement of the substantive goal of promoting participation. Beyond that, the municipalities themselves, too, tended to view the safeguarding of procedural values as negatively interfering with the achievement of the primary goal of reintegration. An additional explanation can be found in the NPM inspired political discourse surrounding activation policies and reintegration. Here raising the level of efficacy of activation policies had long been a dominant theme. The traditional emphasis on procedural justice in the management of benefits on the other hand was considered a barrier to efficiency. It was one of the reasons to push for the obligatory outsourcing of these services in the first place. This message of results over process is likely to have resonated with municipalities when they started to contract out. This conjecture is corroborated by the fact that the municipalities’ initial purchasing strategy focused predominately on outcomes and little on process.

This implies that further investigation of crowding out of public values when contracting out for these types of services might benefit from a focus on how by public entities responsible for contracting prioritise their service goals and the trade-offs that might result from this. Additionally a focus on the impact of financing structures associated with policy fields in which contracting out occurs also appears to be a fertile avenue for exploration to provide better insight on how these public values trade-offs are made.

15.8.3 *Contractual governance*

The topic of contractualism in employment reintegration has drawn a lot of scholarly attention over the last decade (Sol & Westerveld 2005; Freedland et al. 2007; Van Berkel & Valkenburg 2007; Serrano-Pascual & Magnusson 2007). One of the themes in those studies has been the pitfalls of contractual governance (Bredgaard & Larsen, 2008; Lindsay

and McQuaid 2009; Van Berkel 2010). Our study builds on these previous works and complements this literature by providing more detailed insights in how these issues appeared and were dealt with in the day to day implementation of municipal reintegration policies.

One issue widely discussed in all of the literature on contractual governance is the danger of adverse selection (cream skimming or parking). Contractual relations in the area of employment reintegration would be no exception (Mosely & Sol 2005, p. 5). Indeed, in our cases, too, there was adverse selection in the form of cream skimming and parking, especially in the earlier years of contracting out. However, our study adds to the existing literature in showing in some detail what ways and means municipalities found to limit the opportunities for such behaviour on the part of contractors. Primarily they altered the manner in which services are bought, introducing modular buying for instance. Such solutions did come with their own costs, in terms of a reduction of provider discretion and flexibility and an increase in control costs, possibly impairing the overall efficiency of the system. Beyond that, an incentive for adverse selection by the municipalities themselves was built into the financing structure of the WWB: focussing on easy-to-reintegrate clients would yield the largest gains in terms of reducing the number of benefits claimants. Indeed this was a threat to the public value of equity: those most in need might no longer be targeted for services aimed to redress disadvantages for accessing the labour market.

Another practical issue discussed in the literature is the impact of procurement regulations on the municipal capability to safeguard public values in contractual governance (Sol & Westerveld 2005, p. 391). The effect most cited is, that the focus on objectivity required by procurement regulations might induce outsourcing agencies to over-emphasise price against quality. Our study gives clear empirical evidence of how this hazard can materialise – even without an explicit emphasis on prices. In reviewing bids, most other considerations were often supplanted by price, simply because the quality of employment reintegration services is typically difficult to establish up front. Price then easily becomes the one indisputable selection criterion. Another phenomenon observed in our cases was a reluctance to terminate contracts of under-performing providers, a reluctance that emanated from the costs involved in the re-tendering required by procurement regulations. This tendency limited competitive pressure in the market. The averseness to enforce through termination that we found is in line with the observations of Girth (2010). She argued that the transaction costs of sanctioning and the dependency on providers to deliver the service explain to a large extent why public managers avoided enforcing sanctions when contract performance was found unsatisfactory. In our study we observed that not only the transaction costs of the sanctioning process itself but also the transaction costs of finding new service providers while service demand continues contributed to the reluctance to enforce.

A promising avenue for further investigation thus could be the examination of the empirical consequences of using tenders and comparing those consequences with the theoretical assumptions underlying tendering. Further exploration would especially be indicated for the actual working of tendering under conditions such as are dominant when

outsourcing welfare services, services with a strong human component for which it is difficult to objectify quality. Do the tender logic and the procurement rules take into account the issues encountered in our study? How for instance could a principal test for the reliability and trustworthiness of agents within tender procedures?

15.8.4 *Formalisation and stewardship*

The literature contains an on-going debate about the functions of trust and formalisation in the governing of contractual relations (MacNeal 1977; Williamson 1979; Deaken et al. 1994; Rousseau et al. 1998; Poppo & Zenger 2002; Zhou et al. 2003; Klein Woolthuis et al. 2005; Faems et al. 2008; Mitchell 2009; Fernandez 2009). From older studies we already know that contracts rarely are enforced in the way they are written and the renegotiation is the more likely approach when circumstances change. The more recent literature emphasizes that within the framework of a formal contract, a trust relation may develop that changes the function of the contract (Das & Teng 1998; Dyer & Singh 1998). Our studies contributes close up views on how the municipalities in our cases sought to establish trust relations in order to limit overall transaction costs and more specifically the costs of compliance enforcement.

Thus our study illustrates how trust and formalisation were applied complementary to one another. Formalisation was used as a “quick and dirty” manner to communicate the norms and values and reciprocal expectations that would govern the contractual relation, while in the long run more subtle social control strategies were applied. The contract starts out as a primary framework shaping the actual relation: the formal “cornerstone”. Later, when a trust relationship between contractual parties develops the contract moves to the background. It then becomes more of a “safety-net” – still present (since the contents of the contract is internalised in the minds of contracting parties), but much less visible. In a sense parties then operate ‘in the shadow of contract’ without being explicitly referring to that contract.

Another issue discussed in the literature is the effect of ‘dispositional trust’. Dispositional trust stands for “*a diffuse expectation of others’ trustworthiness*” (Gulati & Sytch 2008). In our study we found that initially (based on bad experiences of the first years of out sourcing) the municipalities in our sample had a distrust of the market as a whole. This low level of dispositional trust induced them to make extensive use of formalisation to reduce the risk of non-compliance. Our cases also show that an initial low level of dispositional trust can be overcome. Once a particular provider had proved himself to be reliable and trustworthy, trust functioned as a moderating factor that allowed the principal to relax formal enforcement during contract management. This matches findings of Faems et al. (2008) who show that trust paved the way for a flexible mode of contract application. The findings of our study additionally show that formalisation and trust can be applied in a combined manner. Formal enforcement then is used as a way to condition or socialise agents into compliance behaviour. Later on, when socialisation has generated trust, the agent is rewarded with a much looser monitoring and enforcement regime with more

operational leeway. This pattern is also reflected in the findings of Lamothe & Lamothe (2012). They conclude that the American local governments in their sample write heavily formalised contracts in accordance with expectations from economic theory, but govern them according to relational values much more in line with (sociological) relational theory about the functioning of contracts. This challenges the conventional dichotomous understanding of contractual governance as being divided between formal or relational stewardship. They suggest that service characteristics are an important factor for explaining this pattern: the more difficult to define services are, the more difficult it becomes to evaluate performance and the more likely it is that contractual governance becomes relational. Our findings render a more qualitative account of how these seemingly opposing manners of governing contractual relations can operate almost concomitantly. Our study shows how in the real world municipalities dealt with the tension between the freedom to operate on the one hand and maintaining sufficient control on the other, by applying formalisation and trust seemingly at the same time. Close up observation learned, however, that on a micro level trust and formalisation were not really dominant at the same time. Instead, the emphasis was alternatingly on either one, depending on the performances achieved by the agent.

15.9 Implications of our findings for the central research question

In answer to our main research question (How do municipalities safeguard public values when contracting out the delivery of employment reintegration services?) we can conclude the following. Safeguarding of public values when contracting out public service pretty much boils down to *if you want something done properly, either do it yourself or you can carve the service up into small parts to spread the risk of outsourcing*. The basic contractual safeguarding of the investigated municipalities consisted of limiting wholesale contracting out while smartly selecting the elements of the service task to be contracted out and producing the complex components of the task in-house. This gave them enough control over service delivery to ensure compliance with their requirements. However, our study of specific public values has also shown that this did not guarantee that all the public values were equally safeguarded. While municipalities made considerable efforts to ensure the durability of outcomes, customisation of services and prevention of adverse selection were all safeguarded, procedural public values such as the protection of privacy and handling of complaints got far less attention throughout the contracting out process. Interestingly, this was not due to any unwillingness on the part of the providers but is rather a consequence of limited attention being given to these subjects by the municipalities as principals. Our expectation that procedural public values could be crowded out by more substantive public values appears to have materialised. A plausible explanation for this is the pressure on municipalities brought on by the financing structure associated with employment reintegration that strongly focused on realising the substantive goal of increasing participation by reducing the number of benefit recipients. It could also be argued that the way in which certification was used gave the municipalities a false sense of security with respect to these issues as they presumed that privacy and complaints were

covered by the oversight offered by the certification organisation. While it was true that certification organisations did audit providers in this respect, many municipalities did not require certification as a prerequisite for the delivery of services or even the participation in tenders.

Our findings thus show that there is a tendency for procedural aspects of service delivery to be crowded out by substantive policy goals. This tendency seems to be reinforced by the outcome oriented governance structure created by WWB financing, a structure that forces municipalities to focus on substantive goals at the expense of procedural public values.

15.10 Practical implications

First we can conclude that when contracting out a complex activity with outcomes that are hard to assess, such as employment reintegration, the monitoring and supervising of these activities is by definition difficult. Nonetheless, the municipalities in our study show that there are solutions to these problems. These are usually found by way of making or delivering the complex components of the services themselves or by way of deconstructing these into smaller more manageable and bite-size chunks, that allow for easier digestion from a contracting perspective. This shows that when public managers are faced with the challenge of outsourcing complex tasks it pays off to carefully re-think what a task really entails and creatively re-evaluate what can be done internally and what needs to be contracted out. And in response opting to buy those elements that are well suited for contracting out and keeping the elements that are difficult to contract out closer to home.

Yet one could wonder to what extent contracting out such a complex activity as reintegration is cost-effective at all. Fundamentally, reintegrating those who remain excluded from labour markets is about eliminating the particular barriers that withhold hold these people from entering the labour markets in the first place. In most cases these barriers are due to multiple problems that are not resolved easily. These problems often require human attention and constant commitment by those delivering the support in order to help clients progress. There is no cheap way to change the nature of the problem which is that without significant investment many clients will not be able to participate on modern labour markets. This remains true no matter how you organise the execution of this activity. This ultimately means that contracting out the delivery of these types of more complex social services is likely to produce limited cost savings, as the inherent complexity of the matter means that the costs of governance will remain high. This confirms the view that contracting out these kinds of services is not a 'panacea' at all because the fundamental problem underlying the demand for employment reintegration is not really addressed by a change of governance mechanism (i.e. the shift towards contractual governance) (Van Berkel 2005).

15.11 Concluding remarks

In short the privatisation of public tasks and the contracting out of public services in particular is full of paradoxes, such as the need for control in order to ensure quality versus the freedom that the market is supposed to provide, and the fact that measures to reduce transaction costs that make use of trust are often contrary to the procurement rules and regulations. Yet while one cannot call the privatisation of employment reintegration services in the Dutch case a success, it is not a complete failure either. It has made municipalities think and learn more about how to optimise the delivery of these services and ALMP's in general. It has spurred innovation in this area in general and within the municipalities in particular. In fact the obligation to contract out forced the municipalities to reassess their own policies and confronted them with the products and approaches available on the market. This internal innovation is reflected in the many service types that have been part of commercially developed pilot programmes and which later became service products that the municipalities started providing themselves. In a sense one could say that municipalities have contracted out the development and testing of some of the new innovative approaches to the market and later included these in their own range of services. Moreover the use of private providers has helped to overcome general capacity issues by providing services for clients for which the municipalities had insufficient capacity themselves.

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Appendix A: Case descriptions

This appendix contains the case summaries describing some features characterising the nine municipalities investigated in our study; in particular the service delivery setup encountered in these municipalities and their experiences with contracting out. The kind of service provider interviewed is also described.

Amersfoort

This municipality has slightly fewer than 145,000 inhabitants and in 2009 it executed 2,300 reintegration service trajectories. The average case load for case managers in this municipality at the time of our study was about 70 clients. This municipality at the time of our study provided many services internally and primarily made use of the municipally linked service provider we interviewed. Other providers were only used for acquiring highly specific services.

Service provision setup

This municipality stands out because very early on the choice was made to setup an internal employment reintegration service department falling directly under municipal control. As a result case managers at this municipality possessed a high level of expertise as they were already used to providing employment reintegration services directly. This meant they were able to give direction to service providers in a very practical manner.

Only specialised services were acquired externally and most services were acquired from one larger municipally affiliated provider. Negative past experiences with acquiring services on the market lay at basis for this decision to cooperate mainly with this single municipally affiliated provider. At the time of our study there was also an increased focus on the purchasing of individual services.

Contract management in this municipality was performed in a very hands-on manner mostly by case managers who also had broad responsibilities in monitoring service providers. In addition there was a specific contract manager overseeing and coordinating general contract management activities.

Service providers

In this municipality only one service provider was interviewed. This was a municipally affiliated provider that delivered the bulk of externally acquired services such as work first, social activation and sheltered work services. This provider operated on the basis of a subsidy agreement containing performance criteria on which subsidies were awarded, as well as a contract awarded in a tender procedure. This provider indicated that in their

experience the municipality often took the lead in providing direction as to how service delivery should occur and that there is close corporation in developing service products.

Groningen

This municipality has almost 200,000 inhabitants and in 2009 executed about 5,700 reintegration service trajectories. The average case load for case managers in this municipality at the time of our study was about 90 clients. This municipality at the time of our study had contracts with about 80 service providers, many of which small non-profits.

Service provision setup

In this municipality the internal guidelines used for acquiring external services dictated that all service delivery above € 25,000 should be acquired through tender procedures. As a result almost all services were put to tender. This had been particularly detrimental for smaller local providers who found it difficult to compete in tenders with bigger often more professional service providers. To overcome these issues several experimental purchasing strategies had been explored. One of these was making use of very minimal tender documents (five pages) stating only the bare necessities instead of the complex contracts that had been used in the past. This low threshold approach yielded many innovative service initiatives. However, because little was recorded in the contract the contract managers came under increased pressure when trying to maintain an overview of the many different arrangements made with the different providers.

Contract management was executed at two levels by case managers with respect to day-to-day operations and by contract managers at a more abstract level. Having both contract managers and case managers on the same page had been a particular challenge in this municipality. The latter had not always been open to using products acquired by the former. A distinguishing feature of contract management in this municipality was that for several types of service trajectories clients themselves were able to provide progress reports used for monitoring service delivery.

Service providers

In this municipality we spoke with representatives of two service providers: a semi-public service provider (partially funded by the local university) specialised in higher educated benefits recipients. Services were acquired from this provider on the basis of the regular contract and through individual purchasing; and a small scale private service provider operating locally and specialising in enhancing clients' employee skills by providing them with work experiences in the food service industry. Service provision occurred on the basis of a contract won in the tender procedure.

Both service providers said that a key feature of how this municipality managed its providers was the important role case managers had in practice in assigning clients to

particular providers. Both indicated that having good working relations with case managers was therefore paramount for being able to successfully complete a contract.

Enschede

This municipality has almost 150,000 inhabitants and in 2009 executed about 4,800 reintegration service trajectories. The average case load for case managers in this municipality at the time of our study was about 120 clients. This municipality at the time of our study made use of about 30 service providers.

Service provision setup

In this municipality the decision was made to work intensively with the UWV sharing a one-stop shop front office. A significant part of employment reintegration services were carried out internally through municipally affiliated service providers and other specialised services were acquired from private providers.

The often negative experiences with tender procedures led the municipality to circumvent the rigidity and red tape involved in these procedures by using pilot projects that were exempt of tenders to experiment with different service solutions. And subsequently when service products were successful putting them up for a larger tender.

Contract management in this municipality was divided into three tiers; day-to-day operations executed by the case managers, structural supervision executed by contract managers at the quarterly progress meetings and strategic management occurring on a yearly basis at the highest level. It is noteworthy to mention that prior to participating in our study contract management in this municipality was subject to significant changes. In order to overcome information asymmetries a completely new monitoring practice was developed requiring significant investments. This new approach focused on gathering quantitative and qualitative information from both internal and external sources in order to acquire more reliable and comparable information about service delivery.

Service providers

In this municipality we spoke with representatives of two service providers: a municipally affiliated services provider that was formally part of the municipal organisation and which also delivered work first, social activation and sheltered work services. Service provision was based on a contract that was directly awarded to the service provider without a tender; and a large nationally operating private service provider contracted to deliver life coaching services and work experience placements on the basis of a tender.

The private service provider said that compared to the UWV for which they also provide services this municipality was much more oriented towards partnership. The municipally affiliated provider said it has a very close relationship with the municipality. There was

intense cooperation and a considerable amount of trust between case managers and representatives of the service provider as the latter got a lot of leeway from the former.

Haarlem

This municipality has about 150,000 inhabitants and in 2009 executed 3,500 reintegration service trajectories. The average case load for case managers in this municipality at the time of our study was about 80 clients. This municipality at the time of our study made use of fifteen up to twenty service providers.

Service provision setup

In this municipality there was a strong focus on customisation and to achieve this matching service products were acquired for all six categories of clients on the *participation ladder*. This was combined with the purchase of individual services.

In order to create ex-post competition it was decided to divide some contracts between both private and municipally affiliated providers. The provider delivering the best services would then be assigned the highest volume of clients.

Contract management in this municipality was organised at two levels. Case managers were responsible for day-to-day operations and contract managers for the general overview. This municipality was faced with the particular problem of constraints on the capacity to execute contract management. At the municipality there was an awareness that more could be done to maintain control of service delivery, however, additional capacity was not available. In order to improve the quality of internal information available to case managers several specific instruments were deployed such as an internal ranking system that allowed case managers to rank service providers according to their experiences, an internal Wiki type information system providing information on all the different available service trajectories and a dedicated workgroup for discussing and aggregating case manager experiences.

Service providers

In this municipality we spoke with two service providers: a municipally affiliated service provider responsible for delivering employment reintegration, work first, social activation and sheltered work services; and a large nationally operating private service provider providing life coaching and social activation service trajectories. Both service providers operate on the basis of a contract concluded after having participated in a tender procedure.

Both service providers suggested that supervision and contract management in this municipality could benefit from a more proactive stance. For instance both said they would appreciate more active and frequent feedback from the municipality about their performance and that it was often the providers that initiated quarterly meetings rather than the contract managers.

Lelystad

This municipality has about 75,000 inhabitants and in 2009 executed 800 reintegration service trajectories. The average case load for case managers in this municipality at the time of our study was about 120 clients. At the time of our study this municipality operated about twenty contracts with providers.

Service provision setup

This municipality has elected to buy most services from a single partner in order to avoid fragmentation. In addition, a conscious choice has been made to invest in local social infrastructure resulting in a preference for local service providers. This choice was reinforced by the fact that when five years earlier the municipality had put the delivery of these types of services out to tender there was little to no interest from market parties. In practice this meant that the biggest share of services was provided by the affiliated service provider. Additional services were acquired from local semi-public organisations such as existing educational institutes. While offering the opportunity to make optimum use of existing resources one of the drawbacks of this local focus has been that the service solutions tend to emphasise approaches based on existing infrastructure and are sometimes less outward looking or innovative.

Contract management in this municipality is two-tiered; case managers being responsible for daily operations and a single contract manager being responsible for maintaining a general overview.

A particular lesson that was learnt in this municipality was that contract management is a full-time job. When this was left to policy advisers, who executed this task on the side, contract management often fell short of the mark. This municipality also said it felt there were constraints posed by a limited capacity for contract management. According to the case managers in practice they bore a lot of responsibility for managing and supervising the providers.

Service providers

Two service providers from this municipality participated in our study. A service provider affiliated to the municipality is responsible for delivering work first, social activation and sheltered work services and a large nationally operating private provider provides life coaching, on-the-job training and internship placement services. The affiliated provider operates on the basis of the contract that was directly awarded while the private provider won the contract to provide services in a tender.

Both providers see the municipality as a business-like principal dictating the goals and types of services that the providers must achieve. The private service provider indicated that while there was a long-standing relationship with the municipality there had been a

breakdown of communications that almost jeopardised this. However, through renewed commitment from both sides and investments in re-establishing communications, in particular the setting up of regular face-to-face meetings between both parties, cooperation was secured for the longer-term.

Roermond

This municipality has about 55,000 inhabitants and in 2009 executed 1,500 reintegration service trajectories. The average case load for case managers in this municipality at the time of our study was about 100 clients. This municipality at the time of our study had eight to ten contracts for service provision at their work location.

Service provision setup

In this municipality the council decided to buy a broad spectrum of services to be able to cater to all the different clients in the local client population. The final matching and the placement of clients with employers was done internally because of disappointing performances by market parties in this area in the past. This decision was also based on the strong conviction that the municipality itself was best suited to interact with local employers because they already had frequent dealings with them on other issues. Furthermore, it had proven to be difficult to design well-functioning performance contracts in relation to the placement of clients making it difficult to contract out this type of activity.

Overall the experiences with tendering and contracting out in this municipality had been that quality of service providers can vary significantly. Negative past experiences have led this municipality to focus increasingly on maintaining control over service delivery. This culminated in a service provision setup that mandated that all private providers had to deliver their services at a distinct service location that was managed directly by the municipality. At this location a municipal contract manager could physically oversee the delivery of services and immediately provide feedback.

Contract management in this municipality was two-tiered. The individual service trajectories and particular service providers being supervised by specifically assigned case managers, while the contract manager maintained a more general overview of service delivery. This municipality stands out in particular because of its strong focus on maintaining control throughout the service delivery process.

Service providers

Two service providers from this municipality were interviewed for our study: a municipal services provider responsible for matching and coordinating the placement of clients with employers, which was formally part of the municipal organisation and which operated as separate department on the basis of a performance contract; and a medium-sized regionally operating private service provider specialising in service trajectories combining education and work experience. The private provider received its second follow-up contract through a tender procedure and the municipal service provider was awarded the contract directly.

Both providers indicated that this municipality stood out as being particularly focused on maintaining control with a strong emphasis on procedural requirements. In particular the private provider indicated that this municipality is sterner in its contract management in comparison to other municipalities and even more so than the UWV.

Rotterdam

This municipality is one of the four largest cities in the Netherlands and has about 600,000 inhabitants and in 2009 executed 18,000 reintegration service trajectories. The average case load for case managers in this municipality at the time of our study was about 275 clients. This municipality had about 100 active contracts with service providers at the time of our study.

Service provision setup

This municipality stands out because of the large scale on which service delivery needs to be executed. At the time of the study more than 100 different service contracts were concluded with almost as many service providers. This multitude of contracts and providers also meant that in this municipality significant investments had to be made to not only manage contracts, but also for implementing contracts within the internal organisation, as case managers could easily lose the overview with so many products.

Over the years the experience had been that in the past tender regulations were adhered to in much too strict a manner. In some cases service contracts were put up for tender that with hindsight would not have needed to be subject to the strict procurement regime of 1B tender producers. The use of these overly formalistic and time-consuming tenders in turn meant that available services often lagged behind the services that were actually needed. Another issue encountered frequently in this municipality had been the difficulties of using price as an adjudication criterion in tenders. Because the municipality was such a huge market many providers underbid in order to acquire a contract so that in other parts of the country they could claim to be a service provider for the city in question. In several cases this led to a race to the bottom that eventually concluded with several service providers going bankrupt, because of the low quotations with which they participated in tenders, ultimately compromising service continuity. Based on these and other often negative experiences with tendering at the time of our study this municipality started to adopt (then

expected to be completely implemented in 2011) a new approach to acquiring services opting to execute more service delivery internally and implementing new fast tracked procurement procedures, in which tenders would be considered optional instead of a standard course of action.

To manage the many contractual relationships a substantial organisation executed contract management at three levels. Daily operations being in the hands of supervisory case managers, contract managers acting on an intermediate level concluding service level agreements, and policy departments managing services at a strategic level for the whole client population.

Service providers

Two service providers from this municipality were interviewed for our study: a non-profit foundation responsible for organising and placing clients in voluntary work activities, operating on the basis of subsidies received from various municipalities without a tender procedure; and a private service provider specialised in providing longer-term education and work experience trajectories in the construction sector through wage subsidies. This provider operated on the basis of contracts acquired through several tender procedures.

Both service providers indicated that they worked together with the municipality in a constructive manner. However, due to the large scale on which this municipality operated service providers experienced a considerable amount of bureaucracy in the manner in which they were supervised. This resulted in the need for providers to frequently find informal workarounds in order to overcome red tape that was inhibiting the responsiveness of service delivery. The private service provider also indicating that the relationship with the municipality was well-established as it had already lasted more than a decade.

Wageningen

This is the smallest municipality in our study at about 40,000 inhabitants and in 2009 executed it executed 500 reintegration service trajectories. The average case load for case managers in this municipality at the time of our study was about 120 clients. At his municipality at the time of our study seven contracts were used to provide services.

Service provision setup

This municipality uses it tenders to communicate clear preferences about how and subject to which what conditions services should be delivered. Particularly noteworthy is that tender documents contained a passage to the effect that while efficiency and effectiveness of service delivery were important these should never come at the expense of the durability of final outcomes. Moreover, based on past experiences a choice was made to reduce the complexity of tender documents and instead relying on basic contracts to prevent over formalisation of the relationships with providers. In addition, based on past experiences the choice was made to seek closer cooperation with service providers in order to be able to

detect and intervene earlier when problems occurred. The municipality indicated that it is actively striving to work together with its providers as partners. To this end the interaction with providers occurs in an open and reflexive manner where both parties operate on a similar level and are open to exchanging inputs.

Contract management in the municipalities is organised in two tiers. Case managers being responsible for daily operations and contract managers for maintaining the overall perspective. In general case managers are able to ensure that service delivery occurs in a desired manner and interventions by contract managers are rare. It is noteworthy to mention that this was the only municipality in our study in which contract managers indicated they felt they exercised sufficient control over service delivery.

Service providers

In this municipality two service providers were queried for our study: a municipally affiliated services provider responsible for delivering, work first, sheltered work services and youth training programs; and a smaller private service provider operating locally providing life and job-coaching service trajectories. The municipally affiliated services provider was awarded its contracts directly and the private provide got the contract through a tender.

Both service providers indicated that their relationship with the municipality as principal was open and constructive and very much two-way. In addition, the municipally affiliated provider indicated that this municipality in comparison to others had very direct lines of communication making it easy to communicate to resolve problems. The private service provider is still building its relationship as the contract was concluded only six months earlier.

Zutphen

This municipality has about 45,000 inhabitants and in 2009 executed 870 reintegration service trajectories. The average case load for case managers in this municipality at the time of our study was about 60 clients. In this municipality at the time of our study four primary service providers had contracts for service delivery.

Service provision setup

The service set up at this municipality is very hands-on aimed at facilitating the practical execution of services combined with the choice to purchase nearly all services externally. This focus on the practical side of service delivery was largely the result of the setup of a new one-stop shop combining the social service departments of several municipalities. However, it also created some disparity with policy framework that was supposed to underlie the service delivery setup. This meant that initially purchasing occurred very much on an ad hoc basis focusing on the service requirements of the moment without a

comprehensive policy framework underlying the purchasing choices. In turn, this contributed to problems with implementing service products in the internal organisation as case managers operated largely without an overarching policy framework. Furthermore, past experiences with purchasing large amounts of service trajectories had been negative and thus the choice was made to focus more on smaller scale acquisition on acquiring specific service modules. The same goes for large tender procedures that had proven to be difficult to administer and that not always guaranteed that the best suppliers would win the contract. In the end in the experience of this municipality, the persons behind the service provider were more important than all the expositions given in the tender bids. Therefore the focus shifted to trying to select service providers of which the personnel was well known or has been worked with in the past.

Contract management in this municipality consisted of two tiers: operational responsibility residing with the case managers and contract manager being responsible for maintaining a general overview of the service pallet available. A particular issue encountered in this municipality was the difficulty to integrate information received from providers through reports into internal information systems making it difficult to achieve general overviews over how service delivery occurs with respect to the entire population.

Service providers

Two service providers were interviewed in this municipality: a municipally affiliated services provider responsible for delivering, work first, sheltered work services and assessment services, the contracts on which service delivery was based were granted without a tender; and a large nationally operating private service provider contracted to deliver services aimed at improving employee skills and job interview training as well as social activation services all on the basis of a tender.

The municipally affiliated service provider indicated that its relationship with the municipality was strained after they had recently participated in a tender and lost out to a private provider. At the same time existing, although almost expired contracts, continued to be the basis for on-going service delivery and this created awkward working relations as formally there was no continuation of the previous contracts. A workaround for this situation was found by purchasing service trajectories for clients on an individual basis through the conclusion of on the spot mini contracts. The private service provider indicated that their relationship was still in the start-up face as the contract had been active for almost 6 months, however, only few clients had been sent through to them. According to the provider this was caused by implementation difficulties at the municipality where their products failed to catch on with case managers.

Appendix B: Coding matrix document analysis

Categorization used in the Coding Matrix (Translated In English)

- **Service requirements**
 - *Structural requirements*
 - Technical suitability
 - ☞ Is authorised to pursue this professional activity
 - ☞ Is registered at the chamber of commerce
 - Professionalism personnel
 - ☞ Minimum qualification requirements
 - ☞ Command of Dutch language
 - ☞ Disposes of relevant contextual legislative knowledge
 - ☞ Other language requirement personnel
 - ☞ Dispose of multidisciplinary competences with the organization
 - Disposes of a privacy code
 - ☞ Complies with the Dutch privacy law
 - Has complied with all legal obligations for taxes and premiums.
 - Has a system for dealing with complaints
 - ☞ Additional specific requirements the system for dealing with complaints must meet
 - Requirement in regard to financial strength
 - ☞ Turn over requirements
 - ☞ Dispose of bank guarantee
 - Has appropriate insurance coverage
 - Disposes of a local network of employers with possibilities for placing clients
 - Quality control system of the organization
 - ☞ Possess quality of service certificates or certification
 - *Process requirements*
 - Meeting all requirements dictated by law during service provision
 - Meeting health and safety requirements during service provision
 - Requirements for service delivery location
 - Requirements for available facilities at service delivery location
 - Requirements with regard to the assistance or guidance client should receive
 - ☞ Service provider should notify non-attendance
 - ☞ Hours service provider is contactable by telephone
 - ☞ Service provider should cooperate with other service provider who also assist client
 - ☞ Service provider should offer clear information about service provision to clients
 - ☞ After care requirements
 - ☞ Intensive and or personal assistance or guidance to client requirement
 - ☞ Service provider should have attention for debt related problems of clients
 - ☞ Service provider should use a pre- specified methodology
 - Service provider should provide active and intensive job brokering activities
 - ☞ Service provider should offer round the clock (24h) services
 - Requirements with regard to activities of the client
 - ☞ Client should be able to acquire real world work experience
 - ☞ Customised or tailored service provision is requirements
 - ◆ Activities should take a minimum of 32 hours per week
 - ◆ Activities should take a minimum of 20 hours per week
 - ◆ Activities should take a minimum of 16 hours per week
 - ◆ Activities should provide added value in the perception of the client
 - ◆ Activities should adjusted to individual possibilities of the client
 - ◆ Activities should in tune with interests or ambitions of the clients
 - ◆ The possibility of choice of different activities for clients

- ☞ Activities should help clients integrate into social networks
 - ☞ Service provider disposes of client placement possibilities for undertaking internships or employment
 - ☞ Client activities take place on the real labour market
 - ☞ Client activities take place in a sheltered work environment
 - ☞ During activities there should be special attention for improving Dutch language skills of clients
 - ☞ Requirements with regard to group or one-on-one activities
 - ◆ Maximum amount of clients per activity
 - Requirements with regard to total service trajectory time-span
 - Requirements in regard to the intake of clients
 - ☞ Requirements in regard to the lead time before intake of clients
 - ☞ Requirement for visiting the clients at home to perform intake
 - Requirement for service plan
 - Requirements with regard to lead time for service delivery
 - Requirements with regard to continuity of service delivery
 - Requirements for service provider to use local social infrastructure during service delivery
 - Service provider should be able to provide service in a flexible manner
 - Service provider should be able handle flexible inflow of clients
 - Client must enter in employment of the service provider
 - ☞ Salary of client should at least minimum wage
 - ☞ Requirements with regard to labour conditions the clients will have
 - Requirements with regard to the obligation of taken clients assigned to service provider
 - Requirements with regard to treatment of client data
 - *Outcome requirements*
 - Service goals
 - ☞ Employment reintegration into the labour market
 - ◆ Outflow form social assistance
 - ◆ Integration into the regular labour market
 - ◆ Durable outflow
 - ☞ Active participation or activation
 - ◆ Durable outcome
 - ◆ Voluntary work
 - ◆ Clients can operate independently in society
 - ☞ Improving job search or interviews skills
 - ☞ Improve employee competences of clients
 - ☞ Creating client skills and competences portfolio
 - ☞ Providing services for Integration into Dutch society of foreigners
 - ☞ Re-socialization (after detention)
 - ☞ Improving motivation of clients and resolving motivational issues
 - ☞ Improving physical condition of clients
 - Custom or tailored support services
 - ☞ Providing service Aimed at removing specific obstacles the client faces
 - Providing Assistance with non-attendance management
 - Providing support with managing childcares services
 - Providing Work-first services
 - Disciplinary trajectories
 - Providing Care services
 - Diagnose of clients and acquisition of external expertise
 - Definition of Result
 - ☞ Drop-out percentages
 - ☞ Success rate
 - ☞ Use of SMART indicators
- **Selection mechanisms**
 - *Selection criteria*
 - Knockout criteria

- Complies with exclusion rules laid down in Dutch and European procurement legislation (BAO Act and EC-directive 18/2004)
 - *Adjudication criteria*
 - ◆ Weighing of criteria
 - ↳ Vision of contractor on service delivery
 - ↳ Quality of service
 - ↳ Price criteria
 - ↳ Experience with tendered for service
 - ◆ References
 - ↳ Example of service reports or service plans
 - ◆ Innovation or creativity in purposed service delivery
 - ↳ Added value or social returns of contractor for local community context
 - ↳ Customer service altitude of contractor
- **Miscellaneous categories**
 - *General contract characteristics*
 - Length of contract
 - Definition of contract terms
 - Terms of service
 - Litigation clauses
 - Limitation of risk
 - ↳ Liabilities
 - Sub-contracting
 - Requirement for additional arrangements to be put in writing
 - *Commissioning of services*
 - Stipulation of responsibility
 - ↳ Decision making authority
 - ↳ Requiring permission
 - ◆ Requiring signing off by principal
 - *Information transfer*
 - Use of declarations
 - Requirements for proving or providing evidence
 - Written reporting
 - ↳ Final report
 - ↳ Intermediate reports
 - ↳ Quarterly reports
 - Vis-à-vis evaluation
 - ↳ Tripartite evaluation with client
 - ↳ Evaluation principle and contractor
 - *Financing*
 - No Cure No Pay
 - No Cure Less Pay
 - Flat Fee for Service
 - Use of bonus or malus incentives
 - Specification of cost build-up
 - *Free categories*
 - Case manger
 - Estimation of required service trajectories
 - Specification target group for service delivery
 - Policy overview
 - Main Policy goal
 - Policy objective
 - ↳ Custom or tailored service delivery

Samenvatting

De onderzoeksvraag die in dit proefschrift centraal staat, is:

Hoe borgen gemeenten publieke belangen bij het uitbesteden van re-integratie?

Waarom borgen van publieke belangen bij re-integratie?

Er zijn twee redenen waarom in dit onderzoek gekozen is de focus te leggen op het borgen van publieke belangen bij het uitbesteden van re-integratie. Ten eerste het feit dat er begin 21e eeuw een belangrijke verandering is geweest in de manier waarop de toeleiding naar werk (re-integratie) van werklozen en overige uitkeringsgerechtigden is georganiseerd, namelijk privatisering. Ten tweede het veronderstelde belang dat toegekend werd aan het afsluiten van contracten om te borgen dat publieke belangen bij een private uitvoering van re-integratie gewaarborgd zouden blijven.

Privatisering van re-integratie

Waar vroeger re-integratieactiviteiten uitgevoerd werden door de publieke arbeidsbureaus, is met de invoering van de wet SUWI (2002) en later de WWB (2004) het landschap met betrekking tot de uitvoering van re-integratie grondig veranderd. Een belangrijk deel van de uitvoering van deze taak ging namelijk over naar private actoren; uitvoerders met een winstoogmerk. Het idee was dat een financiële drijfveer zou bijdragen aan een effectievere en efficiëntere uitvoering van de re-integratietaat. Maar een financiële drijfveer kan er ook voor zorgen dat andere relevante aspecten van de taak, die niet meteen bijdragen aan winstgevendheid, ondergesneeuwd kunnen raken. Zo zou winstbejag ervoor kunnen zorgen dat de ondersteuningsfunctie van re-integratie voor kansarme werklozen ondermijnd wordt wanneer de aandacht vooral uitgaat naar cliënten die gemakkelijker bemiddelbaar zijn – en daardoor meer omzet en winst genereren.

Hiermee rijst dan ook de vraag of het laten uitvoeren van voorheen publieke taken (zoals re-integratie) door private actoren gepaard gaat met voldoende borging van de publieke belangen die met deze taken gemoeid zijn. Immers, er waren klaarblijkelijk ooit voldoende redenen om de publieke uitvoering van deze taken te legitimeren.

Arbeidsbemiddeling (de voorloper van de hedendaagse re-integratie, uitgevoerd door Arbeidsvoorziening) was voor een aanzienlijk deel van de 20^{ste} eeuw dan ook een monopolie van de overheid. Belangrijke redenen hiervoor waren het borgen van een vrije toegang tot de arbeidsmarkt en het waarborgen van goede aansluiting tussen arbeidsaanbod en -vraag. Pas vanaf het einde van de jaren '50 werden private initiatieven op dit terrein steeds meer gemeengoed en het duurde uiteindelijk tot de jaren '90 voordat het publieke

monopolie op arbeidsbemiddeling werd afgeschaft. Tegen die tijd vervulden uitzendbureaus feitelijk een steeds belangrijker rol in het samenbrengen van vraag en aanbod op de arbeidsmarkt. De publieke taak van Arbeidsvoorziening verschoof daardoor steeds meer naar het aan het werk helpen van moeilijker gevallen (langdurig werklozen). Dit gegeven, samen met de opkomst van het activeringsgedachtegoed, resulteerde erin dat de publieke taak van arbeidsbemiddeling in brede zin verschoof naar re-integratie. Later, aan het eind van de 20e eeuw, werd via de genoemde hervormingen ook de uitvoering van re-integratie geprivatiseerd. Dit werd ingegeven door een op efficiencyoverwegingen gebaseerde beweging naar een meer private uitvoering van de sociale zekerheid. Daarbij past een kanttekening: omdat slechts de uitvoering aan private actoren werd uitbesteed en de eindverantwoordelijkheid voor deze taak publiek bleef, was er eigenlijk geen sprake van privatisering in de meest strikte zin. Desalniettemin kan men zich wel afvragen of een dergelijke verschuiving in het uitvoeringsarrangement gevolgen zou kunnen hebben voor de manier waarop de aan deze taak verbonden publieke belangen geborgd worden, zeker omdat verschillende publieke belangen kunnen botsen. Kernprincipes uit de sociale zekerheid zoals het doel van verheffing, solidariteit of rechtsgelijkheid verhouden zich niet altijd makkelijk tot met privatisering geassocieerde belangen van efficiëntie en kostenbesparingen. Het zijn de hieruit voortvloeiende mogelijke spanningen tussen verschillende publieke belangen die aan de basis liggen van de keuze om onderzoek te doen naar de aan het begin genoemde centrale onderzoeksvraag.

Borgen van publieke belangen door middel van contracten

In de discussie rond de privatisering van de uitvoering van re-integratie en met name bij de invoering van de Wet Werk en Bijstand (WWB) is het thema van het borgen van publieke belangen in de Tweede Kamer verschillende malen aan de orde geweest. Uit kamerstukken en de Memorie van Toelichting kan worden opgemaakt dat contracten en certificering een belangrijke rol kregen toebedeeld om ervoor zorg te dragen dat de kwaliteit van dienstverlening gegarandeerd zou worden. Van gemeenten werd bovendien verwacht dat zij in hun rol als opdrachtgever door middel van contracten ervoor zouden zorgen dat gewenste doelstellingen met betrekking tot activering en het vergroten van participatie op effectieve en efficiënte wijze kon worden veiliggesteld. Hiermee werd de verwachting geschept dat bij uitbesteding van re-integratie contracten een prominente functie zouden gaan hebben bij het borgen van publieke belangen.

Echter een bekende veronderstelling met betrekking tot het gebruiken van contracten is dat hoe meer helderheid er bestaat over welke prestatie er concreet mee bereikt moet worden, hoe succesvoller contracten hieraan kunnen bijdragen. Het hanteren van contracten om een ambigu begrip als publieke belangen veilig te stellen, is tegenstrijdig met het voorafgaande. Daardoor lijkt het dan ook “gemakkelijker gezegd dan gedaan”. Want hoe zou het borgen van publieke belangen door middel van contracten in de praktijk echt vorm kunnen krijgen? Is het simpelweg opschrijven in een contract dat het publiek belang

geborgd dient te worden hiervoor voldoende? Deze vragen zijn dan ook een tweede inspiratiebron voor het ondernemen van dit onderzoek.

Opzet onderzoek

Het onderzoek bestaat uit een theoretisch en een empirisch deel. Om de centrale onderzoeksvraag te kunnen beantwoorden, was het van belang helderheid te krijgen met betrekking tot een aantal theoretische voorvragen. Dit waren: *wat verstaan we onder publieke belangen en onder het borgen hiervan?* Dit ter afbakening van het onderzoek. *Hoe werken contract relaties?* Dit om te begrijpen wat de mogelijke implicaties hiervan zijn voor het kunnen borgen van publieke belangen in contractrelaties. En: *hoe werkt een uitbestedingsproces?* Dit om inzicht te krijgen op welke manier tijdens het uitbestedingsproces borgen van publieke belangen kan plaatsvinden. De antwoorden op deze vragen vormen samen het analysekader waarmee het empirische deel van het onderzoek is uitgevoerd.

Publieke belangen en het borgen hiervan

Hoewel er een levendig academisch debat bestaat over wat publieke belangen precies zijn, is voor dit boek gekozen om publieke belangen als volgt te definiëren: *Die waarden of belangen die door een samenleving zo belangrijk worden geacht dat de overheid de verantwoordelijkheid heeft gekregen om deze te waarborgen.* Deze conceptualisering impliceert dat de staat per definitie een belangrijke verantwoordelijkheid draagt voor het borgen van publieke belangen. Dit wil echter niet zeggen dat publieke belangen alleen gewaarborgd kunnen worden door overheidsingrijpen. De overheid heeft de eindverantwoordelijkheid om in te grijpen wanneer publieke belangen onvoldoende gerealiseerd worden. Daarnaast wordt voor dit boek een onderscheid gemaakt tussen *substantieve* en *procedurele* publieke belangen. Bij de eerste gaat het om publieke belangen die een einddoel of eindstaat vertegenwoordigen en bij de tweede gaat het om publieke belangen die tijdens het proces van het bereiken bepaalde doelstellingen gewaarborgd dienen te worden. Daarbij is een veronderstelling dat bij het realiseren van substantieve publieke belangen de procedurele publieke belangen nogal eens naar de achtergrond worden gedrongen of helemaal uit het oog verloren worden.

De operationalisering van ‘borging’ met betrekking tot publieke belangen bleek een aanzienlijke uitdaging. Vooral omdat het lastig is om te bepalen wanneer iets daadwerkelijk voldoende is geborgd en wat dit dan concreet betekent, zonder in ideologische discussies te geraken. Voor dit boek is daarom gekozen om in het conceptualiseren van ‘borgen’ een sterke link te leggen met de uitvoering van dienstverlening die onderdeel is van een publieke taak. In algemene termen wordt in dit boek onder ‘borgen’ verstaan: *het zeker stellen dat ingekochte diensten op een gewenste wijze uitgevoerd worden.* Het begrip ‘gewenste’ heeft daarbij betrekking op twee aspecten: 1) het veilig stellen van naleving van de contracten en 2) het zorgdragen dat relevante publieke belangen niet in het geding komen.

Een uit het voorgaande voortkomende uitdaging was vervolgens om vast te stellen welke publieke belangen relevant zijn voor de publieke taak van re-integratie en te kiezen welke onderdeel zouden worden van dit onderzoek. Het is immers bijna niet mogelijk om alle mogelijk relevante publieke belangen die met deze taak gemoeid zijn in één onderzoek op te nemen. Uiteindelijk hebben deze uitdagingen er voor gezorgd dat de keuze is gemaakt om in dit onderzoek op twee soorten borging te focussen. *Contractueel borgen* en *het borgen van specifieke publieke belangen*.

- **Contractueel borgen:** Hieronder wordt verstaan het zorgdragen dat publieke dienstverlening uitgevoerd wordt volgens de standaarden en wensen van de opdrachtgever.
- **Borgen van specifieke publieke belangen:** Bij het borgen van specifieke publieke belangen gaat het om de manier waarop omgegaan wordt met specifieke aspecten van de dienstverlening die relevant zijn voor de publieke taak waarvan de uitvoering wordt uitbesteed.

Er is gekozen om dit onderscheid tussen deze twee vormen van borgen te maken om een zo breed mogelijk perspectief op borging te kunnen hanteren. Zou er alleen maar naar contractueel borgen gekeken zijn dan is het perspectief erg smal en de kans groot dat aspecten die wel relevant zijn voor de taak, maar mogelijk niet in contracten zijn opgenomen, niet meegenomen zouden worden in het onderzoek. Daarbij was een uitgangspunt dat publieke opdrachtgevers (in dit geval gemeenten) waarschijnlijk hun eigen beleidsdoelstellingen hebben die niet per se één op één overkomen met een bredere set van publieke belangen die aan re-integratie verbonden zijn.

Deze keuze heeft vervolgens geleid tot de formulering van de eerste twee deelvragen:

- **Onderzoeksvraag 1:** *Hoe realiseren gemeenten contractuele borging bij het uitbesteden van re-integratie?*
- **Onderzoeksvraag 2:** *Hoe borgen gemeenten specifiek geselecteerde publieke belangen bij het uitbesteden van re-integratie?*

De werking van contract relaties

Op basis van een exploratie van literatuur over de werking van contractrelaties zijn vier soorten maatregelen geïdentificeerd, die gebruikt kunnen worden om een bijdrage te leveren aan het laten nakomen van contractuele verplichtingen. Dit zijn: *dwang*, *versimpeling van de gevraagde prestatie*, *intrinsieke motivatie* en *vertrouwen*.

- *Dwang* biedt de opdrachtgever de mogelijkheid om nakoming direct af te dwingen. Om een situatie te creëren waarin dwang gehanteerd kan worden, kunnen bijvoorbeeld contractuele bevoegdheden gebruikt worden.
- *Versimpeling* reduceert complexiteit van de gevraagde prestatie. Dit vermindert de kans dat de uitvoerende partij de complexiteit kan misbruiken om ongemerkt afspraken over de gevraagde prestatie niet na te komen.
- *Intrinsieke motivatie* gaat uit van de veronderstelling dat uitvoerende partijen uit eigen beweging gemotiveerd zijn om de contractueel gewenste prestatie te leveren. Zo kan het gebruikmaken van een uitvoerende partij die dezelfde doelen als opdrachtgever nastreeft de noodzaak van afdwingen om nakoming te garanderen, verminderen.
- *Vertrouwen* gaat uit van de betrouwbaarheid van de uitvoerende partij en dat zij contractuele afspraken zullen nakomen. Hoe meer een partij te vertrouwen is, des te kleiner is de kans dat dwang nodig is om nakoming veilig te stellen.

Deze vier soorten nakomingsmaatregelen kunnen op hun beurt onderverdeeld worden in twee hoofdcategorieën. Maatregelen die gecategoriseerd kunnen worden als *formaliseringsmaatregelen* en als *rentmeesterschap* maatregelen. Dwang en versimpeling vallen onder de categorie formaliseringsmaatregelen, omdat ze sterk gerelateerd zijn aan het gebruik van formalisering; het gebruik van intrinsieke motivatie en vertrouwen kunnen op basis van literatuur als rentmeesterschap maatregelen worden gecategoriseerd.

De theorie op dit terrein leert ook dat er een spanningsveld lijkt te zijn tussen het toepassen van deze beide soorten nakomingsmaatregelen. Het gebruik van de ene soort kan de mogelijkheden om de andere soort te kunnen gebruiken verminderen. Zo kan bijvoorbeeld het gebruik van veel formalisering om dwang mogelijk te maken de mogelijkheden voor het gebruik van vertrouwen inperken. Daarmee compliceert dit de keuzes die de opdrachtgever kan maken om op een zo efficiënt en effectief mogelijke manier contractuele nakoming zeker te stellen. Dit spanningsveld en de complexe dynamiek tussen deze twee soorten maatregelen hebben geresulteerd in het formuleren van onze derde onderzoeksvraag:

- **Onderzoeksvraag 3:** *Hoe verhouden formalisering en rentmeesterschap maatregelen zich tot elkaar in de borgingsarrangementen die aangetroffen zijn in de contractuele relaties in deze studie?*

De dynamiek van het uitbestedingsproces

Om een beter inzicht te krijgen in de dynamiek van het uitbestedingsproces en de momenten dat genoemde nakomingsmaatregelen toegepast zouden kunnen worden, is op basis van literatuur een model voor dit proces ontwikkeld. In dit model wordt het uitbestedingsproces in vier fasen verdeeld: 1) *de maak-of-koop fase*; 2) *de specificatie fase*; 3) *de selectie fase* en 4) *de contractmanagement fase*.

Elke fase biedt zijn eigen uitdagingen maar ook mogelijkheden om te borgen dat uitvoerders de ingekochte dienst op een correcte manier leveren. Daarnaast zijn er ook interactie-effecten. Keuzes die in bijvoorbeeld de specificatie fase gemaakt zijn beïnvloeden de mogelijkheden die men heeft om in de contractmanagement fase de leveranciers aan te sturen. Andersom kan het zijn dat ervaringen uit de contractmanagement fase van invloed zijn op beslissingen die men in een volgende uitbestedingsronde met betrekking tot de maak-of-koop keuze maakt. Deze modellering heeft ertoe geleid dat wij hebben gekozen om per fase van het uitbestedingsproces te kijken hoe men contractuele borging aanpakt.

Methodologie van onderzoek

Selectie specifieke publiek belang

Voor de tweede onderzoeksvraag zijn vijf publieke belangen geselecteerd die relevant zijn voor de re-integratietoek. Dit zijn: *het leveren van maatwerk, het realiseren van duurzame resultaten, het voorkomen van afroming, het waarborgen van privacy van cliënten en de afhandeling van klachten.*

Deze vijf publieke belangen zijn gekozen vanwege hun relevantie voor re-integratie; vanwege de waarschijnlijkheid dat borging ervan zou kunnen worden beïnvloed door het gebruik van contracten; en vanwege het feit dat op basis van het winstoogmerk dat private actoren motiveert, deze publieke belangen mogelijk in het nauw zouden kunnen komen. Daarnaast is de keuze gemaakt om zowel een aantal substantieve als procedurele publieke belangen te kiezen. Dit om te kijken of substantieve publieke belangen procedurele mogelijk verdrijven.

- **Maatwerk en duurzame resultaten:** Maatwerk en het realiseren van duurzame resultaten zijn gekozen als substantieve publieke belangen omdat dit belangrijke elementen zijn in het bereiken van het einddoel van re-integratie: het vergroten van participatie.
- **Het voorkomen van afroming:** Het voorkomen van afroming is als procedureel publiek belang gekozen omdat het zorgdragen voor het feit dat iedereen die recht op hulp heeft deze ook krijgt, een belangrijk element is in de sociale zekerheid. Wanneer alleen de makkelijkst bemiddelbare cliënten hulp zouden krijgen, zou dit niet alleen ingaan tegen het idee van billijkheid maar ook tegen de verheffingsgedachte die een belangrijk onderdeel vormt van de Nederlandse verzorgingsstaat. Echter, het gebruik van private, op winst gerichte actoren kan de kans op afroming vergroten, want door alleen de ‘makkelijkste gevallen’ te helpen, kan men meer winst maken.

- **Het waarborgen van de privacy van cliënten:** Het waarborgen van privacy is relevant omdat bijstandsontvangers grote hoeveelheden persoonlijke informatie moeten overdragen aan de overheid ter controle van de juistheid van de bijstand. Het is de vraag of bij het uitbesteden van re-integratie er voldoende gedaan zal worden om ervoor te zorgen dat op een correcte manier wordt omgegaan met de verzamelde persoonlijke informatie.

- **Het waarborgen van een correcte afhandeling van klachten:** Afhandeling van klachten is gekozen als procedureel publiek belang omdat het kunnen uiten van grieven met betrekking tot hoe men door de overheid wordt behandeld, een klassiek middel is om aandacht te vragen voor situaties waarbij die behandeling van burgers onwettig of onrechtvaardig is. Normaliter zijn er voor een consument die zich op een markt begeeft verschillende opties om uiting te geven aan ongenoegen over een product. Men kan zoals dit in het Engels wel eens geformuleerd wordt ‘stemmen met de voeten’; dit wil zeggen: weggaan en een andere leverancier voor het gewenste product zoeken. Of men kan proberen de grieven op te lossen door te klagen bij de producent en daarmee een stem aan het ongenoegen geven. Bijstandsgerechtigden zijn verplicht om mee te werken aan re-integratie; daardoor hebben zij niet de optie om zich terug te trekken wanneer ze ontevreden zijn over het product dat hen door marktpartijen aangeboden wordt. Dit maakt het van belang dat er een andere manier is om hen een stem te geven waarmee ongenoegen over eventuele problemen geuit kan worden. In de praktijk zijn cliënten voornamelijk aangewezen op rechtens niet bindende klachtenprocedures, die op basis van de contracten die tussen de gemeente en de leverancier gesloten zijn, gelding hebben. Juist doordat cliënten zich hierbij in een zodanig afhankelijke situatie ten opzichte van re-integratiebedrijven bevinden, is het van belang dat afhandeling van klachten op een correcte wijze gebeurt. Zeker omdat het gaat om het verkrijgen van dienstverlening die weliswaar door private actoren geleverd wordt, maar in het kader van een publieke taak.

Verzameling gegevens

Het verzamelen van empirische gegevens is op twee manieren gedaan. Ten eerste door een contentanalyse uit te voeren op 20 bestekken die gebruikt zijn voor het inkopen van re-integratie. Daarbij is gekeken naar de doelstellingen waarvoor de verschillende diensten ingekocht werden, evenals de vereisten die aan de dienstverlening werden gesteld. Verder is gefocust op de criteria waarop leveranciers gekozen werden, hoe op papier het contractmanagement was vormgegeven en hoe de geselecteerde publieke belangen aan de orde kwamen in de bestekken. De bestekken zijn in de periode tussen 2008 en 2009 verzameld. Ten tweede zijn – om naast een beeld van de juridische realiteit ook inzicht te krijgen in de praktijk van het uitbesteden van re-integratie – in 2010 casestudies uitgevoerd bij negen gemeenten. Deze gemeenten zijn gekozen op basis van een drietal criteria. Ten eerste is gezocht naar gemeenten die relatief veel uitbesteden zodat de gemeentes in kwestie

voldoende ervaring zouden hebben met uitbesteding van re-integratie. Daarnaast is gekozen om gemeentes van verschillende grootte te selecteren om hierdoor een zo breed mogelijke vertegenwoordiging qua schaal van verschillende soorten gemeenten in de studie te kunnen incorporeren. Als derde is gekozen om gemeentes te selecteren die relatief goede resultaten bereikten met betrekking tot uitstroom van cliënten. Deze laatste keuze is gemaakt omdat we met dit onderzoek juist wilde kijken hoe het borgen van publieke belangen gebeurt in termen van resultaten.. Uiteindelijk zijn onderstaande negen gemeenten bereid gevonden om in ons onderzoek te participeren.

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In elke gemeente zijn interviews gehouden met beleidsmakers, contractbeheerders, klantmanagers en vertegenwoordigers van twee leveranciers. In deze gesprekken is gevraagd naar de manier waarop de contractrelaties vorm kregen, wat in de praktijk doorslaggevende criteria waren voor het selecteren van leveranciers, hoe leveranciers aangestuurd werden en hoe er omgegaan werd met de vijf specifiek geselecteerde publieke belangen. De gegevens die op deze twee wijzen verzameld zijn, hebben wij vervolgens met behulp van het kwalitatieve data-analyseprogramma *Nvivo 8* geanalyseerd om zo een beeld te krijgen van hoe beide vormen van borging plaatsvonden.

Bevindingen en conclusies

Uit de bestekkenanalyse bleek dat gemeenten het hanteren van uitgebreide specificaties en formuleren van ingrijpende controlebevoegdheden gebruikten om zoveel mogelijk grip te houden op de uitvoering van de dienstverlening. Dit beeld werd bevestigd in de casestudies waar eenzelfde nadruk op grip houden op de uitvoering uit naar voren kwam. De gemeenten in onze studie hanteerden feitelijk vier soorten maatregelen om veilig te stellen dat de dienstverlening op een vereiste manier uitgevoerd zou worden.

- **Zelf doen:** Als eerste koos men ervoor om zoveel mogelijk complexe elementen van de re-integratietaken intern uit te voeren. Een duidelijk voorbeeld hiervan is de belangrijke rol die klantmanagers hebben in het vaststellen en goedkeuren van welke soort ondersteuning cliënten toegekend krijgen.
- **Gelieerde uitvoerders:** Ten tweede bleek dat wanneer men toch uitbesteedde, men de moeilijk controleerbare elementen van de dienstverlening vaak ondergebracht bij aan de gemeente gelieerde uitvoeringsorganisaties, zoals WSW-bedrijven. Dit bood de gemeente mogelijkheden om via buiten het contract om bestaande verbanden controle uit te oefenen op de manier waarop dienstverlening werd uitgevoerd.

- **Versimpelen van de ingekochte prestatie:** Een derde manier die men hanteerde om grip te houden op de uitvoering was het deconstrueren van de complexe re-integratie taak tot simpeler modules. Dit kreeg vorm in het alom toegepaste modulair inkopen van re-integratie. Daarbij werden voornamelijk kortere trajectonderdelen ingekocht – gericht op het behalen van deelresultaten. Het gaat dan bijvoorbeeld om trajecten die gericht zijn op één aspect, zoals het vergroten van zelfvertrouwen of het bijbrengen van arbeidsvaardigheden. Deze manier van versimpelen maakte het makkelijker om te controleren of de overeengekomen prestaties ook daadwerkelijk door leveranciers geleverd waren.
- **Uitgebreid formaliseren om controle te behouden:** Als vierde maakte men gebruik van formalisering in de vorm van uitgebreide contracten en bestekken om zo controle te behouden. Men gebruikte de contracten om de discretionaire ruimte van de leveranciers sterk in te perken en hiermee de kans op opportunistisch gedrag te verkleinen. Ook werd formalisering gebruikt om een sterke contractuele basis te creëren om nakoming af te dwingen. In de praktijk bleek overigens dat wanneer leveranciers zich reeds bewezen hadden, er op basis van vertrouwen meer vrijheid aan hen werd toegekend.

Met betrekking tot de eerste onderzoeksvraag (Hoe gemeenten contractueel borgen) is het antwoord kort gezegd: Men borgt dit voornamelijk door zo min mogelijk uit te besteden. Wanneer dit wel gebeurt, borgt men door gebruik te maken van versimpeling, formalisering of gelieerde leveranciers om zo zoveel mogelijk controle te behouden. In feite relativeert dit het idee dat taken volledig zijn overgeheveld naar de markt, want het bleek dat uiteindelijk maar een gelimiteerd deel van de re-integratie-activiteiten echt werd uitbesteed. Men kocht vooral diensten in om expertise binnen te halen of een gebrek aan eigen capaciteit te compenseren. Daarbij bleven de belangrijke en complexe zaken, zoals het nemen van beslissingen met betrekking tot het toekennen van ondersteuning, intern bij de klantmanagers.

Borgen van specifieke publieke belangen

Voor het borgen van specifieke publieke belangen pasten de gemeenten voor een deel dezelfde werkwijze toe. Zo bleek dat om de (moeilijk meetbare) duurzame uitstroom veilig te stellen, veel gemeenten ervoor kozen om de laatste fase van het re-integratie proces (dit is het plaatsen van cliënten bij werkgevers) zelf uit te voeren via zogenoemde werkgeversklokken. Hetzelfde geldt in principe ook voor het realiseren van maatwerk, dat in de praktijk voornamelijk de verantwoordelijkheid van klantmanagers bleek te zijn. Die waren in het kader van modulair inkopen belast met het via modules samenstellen van passende trajecten voor de cliënten. Daarbij vervulde modulair inkopen ook een belangrijke rol in het tegengaan van afoming, doordat de beslissingen over toekenning van middelen (allocatie) hierdoor bij de klantmanager bleven. Terwijl juist deze allocatiebeslissingen met betrekking tot welke middelen er voor welke cliënt ingezet zouden worden een van de primaire mogelijkheden is waarbij afoming kan plaatsvinden. Een andere manier waarop

men afroming tegenging was door op kleinere schaal en voor meer dezelfde soort cliënten in te kopen. In zijn meest extreme vorm resulteerde dit in individuele inkoop van diensten voor cliënten. Door kleinere hoeveelheden in te kopen was het moeilijker voor leveranciers om de makkelijkere cliënten eruit te pikken en was het bovendien makkelijker voor gemeenten om te zien wanneer moeilijkere cliënten minder aandacht kregen. Door het gebruik van modulair inkopen ontstonden tussentijdse meetpunten, die het eveneens makkelijker maakte om te zien of bepaalde cliënten minder aandacht kregen dan verwacht.

Met betrekking tot privacy en de afhandeling van klachten is opvallend dat deze beide onderwerpen voornamelijk op papier geborgd bleken te zijn. Ook kwamen deze onderwerpen allebei niet of niet structureel aan de orde in het contractmanagement. Zo werden de inhoud en de nakoming van de contractueel vereiste klachtenprocedures of privacyreglementen in de praktijk zelden of nooit gecontroleerd. Eigenlijk werd er met betrekking tot deze onderwerpen alleen op incidenten gereageerd.

Al met al borgde men de door ons geselecteerde aspecten veelal door de daaraan gerelateerde elementen van dienstverlening vooral zelf uit te voeren. Privacy en klachtafhandeling bleken de spreekwoordelijke ondergeschoven kinderen in het geheel te zijn indien wel werd uitbesteed.

Met betrekking tot de derde onderzoeksvraag gericht op de dynamiek tussen het gebruik van *formalisering* en *rentmeesterschap* in het borgen bleek dat deze zowel complementair aan elkaar kunnen zijn als elkaar in de weg kunnen zitten. De complexiteit van de dynamiek tussen de twee soorten maatregelen werd vooral duidelijk in de manier waarop gemeenten omgingen met het realiseren van maatwerk en het voorkomen van afroming. Deze twee publieke belangen zijn ogenschijnlijk het best geborgd met een tegenstrijdige aanpak. Maatwerk vraagt vrijheid om responsief te kunnen zijn waardoor een rentmeesterschap gebaseerde benadering het meest passend is, want dit geeft de benodigde discretionaire ruimte. Het voorkomen van afroming is daarentegen juist gebaat bij het inperken van discretionaire ruimte; hoe minder mogelijkheden de uitvoerder heeft om af te wijken van de afspraken, hoe kleiner de kans wordt dat hij kan afromen. Het spanningsveld dat hierdoor ontstaat, werd duidelijk zichtbaar toen gemeenten veel ruimte aan leveranciers gaven, om maatwerk mogelijk te maken, en dit tegelijkertijd tot een situatie leidde waarbij op aanzienlijke schaal afgeroomd kon worden. Dit was in de eerste jaren van het aanbesteden veel aan de orde.

Verder bevestigen de problemen die gemeenten, door de formalisering benadrukkende aanbestedingsregels, ondervonden met het vinden van bewezen betrouwbare leveranciers, hoe een sterke nadruk op formalisering het creëren van vertrouwen kan bemoeilijken. Maar formalisering en vertrouwen bestonden vaak ook naast elkaar. Men gebruikte strenge, op controle gerichte contracten om het risico op niet-nakoming te verkleinen. Maar men paste deze na een initiële periode van strenge handhaving en als er voldoende vertrouwen bestond

in de praktijk minder streng toe. Formalisering en vertrouwen bleken dus niet per se elkaars tegenpolen te zijn, maar juist ook complementair aan elkaar gebruikt te kunnen worden.

Eindconclusie

De eindconclusie met betrekking tot de hoofdvraag hoe bij uitbesteding van re-integratie gemeenten belangen borgen is: voornamelijk door zoveel mogelijk zelf te doen. Dit geldt voor beide typen borging die in dit onderzoek aan de orde kwamen. Tegelijkertijd laat de situatie rond privacy en de afhandeling van klachten zien dat dit niet per se betekende dat relevante publieke belangen allemaal op een gelijkwaardige manier geborgd werden. Er bleek duidelijk meer aandacht te worden besteed aan substantieve publieke belangen (zoals het realiseren van duurzame uitstroom en maatwerk) die dichterbij het einddoel (vergroten van participatie) van re-integratie liggen. Procedurele belangen zoals waarborgen van privacy van cliënten en het afhandelen van klachten bleken daarbij ondergeschikt te zijn. Daarmee is de verwachting, dat substantieve publieke belangen procedurele publieke belangen zouden verdringen, bevestigd. Een belangrijke verklarende factor hiervoor is waarschijnlijk de financieringsstructuur van de WWB die het zo snel mogelijk realiseren van uitstroom benadrukt.

Men kan stellen dat de privatisering van re-integratie niet echt een succes is geweest: het heeft niet de uitstroom opgeleverd die men ervan verwachtte en de transactiekosten bleken hoog. Omgekeerd kan men ook niet volhouden dat deze privatisering volledig is geflopt. Het feit dat gemeenten werden gedwongen re-integratiedienstverlening in te kopen, heeft er zeker voor gezorgd dat men meer is gaan nadenken over wat voor diensten men daadwerkelijk nodig had om cliënten te activeren. Ook heeft het inkopen nieuwe innovatieve aanpakken opgeleverd. Aanpakken die gemeenten later overgenomen hebben om ze vervolgens in eigen beheer uit te voeren. Daarnaast hebben gemeenten geleerd hoe men dienstverlening op dit terrein kon optimaliseren door een combinatie te maken van uitvoering in eigen beheer aangevuld met extern ingekochte diensten.

Al met al blijkt dat het privatiseren of uitbesteden van de uitvoering van publieke taken doorwrocht is met paradoxen. Zo is er de tegenstrijdigheid tussen het streven naar de vrijheid en flexibiliteit die het gebruik van de markt kunnen geven tegenover de noodzaak van het houden van controle zodat de kwaliteit van publieke dienstverlening gegarandeerd kan worden. Verder blijft de vraag of er van meet af aan niet te veel werd verwacht van een verandering van aansturingsmechanismen (verschuiving naar het gebruik van contracten) die fundamenteel niks wijzigden aan de complexiteit van het op te lossen sociale probleem van het weer actief krijgen van burgers die buiten de boot zijn gevallen. Ten slotte valt op te merken dat veronderstelde flexibiliteit die het gebruik van marktpartijen zou moeten bieden, in casu niet altijd gerealiseerd kon worden. Men kan zelfs stellen dat de aanbestedingsverplichting en de bijbehorende aanbestedingsregels de concurrentiedruk op de re-integratiemarkt deels hebben verminderd. Dit kwam doordat de noodzaak om aan te besteden de kosten voor het wisselen van leveranciers, zowel in tijd als in geld uitgedrukt,

omhoog dreven. Daardoor was men minder snel geneigd van leverancier te wisselen wanneer de dienstverlening niet optimaal was. Uiteindelijk gevolg: minder concurrentiedruk op slecht presterende marktpartijen.

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