



Welfare fraud against municipalities and regions

Deceit and irregularities among companies and non-profit organisations

The Swedish National Council for Crime Prevention (Brå) -
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English summary of Brå report 2022:1

Summary

This report examines incorrect payments from Swedish municipalities and regions to companies and non-profit organisations active in the welfare sector. Sweden has 290 municipalities and 21 regions, and these are self-governing in certain areas. The municipalities are responsible for social care, including care of the elderly and disabled as well as individual and family care. Their areas of responsibility also include education from preschool to secondary school. The regions' areas of responsibility include healthcare and dental care. Together, the municipalities and the regions disburse more money than the state authorities to private actors in the welfare sector. Moreover, both the municipalities and the regions award grants to non-profit organisations as a means for supporting civil society at local and regional level.

The report includes an analysis of the types of irregularities discovered by municipalities and regions. They range from criminal schemes to more extensive forms of misuse where municipalities and regions have been induced to pay too much. The report analyses the situation at a system level, looking at areas such as home care, association grants, personal assistance and care providers. The report also analyses how municipalities and regions work to prevent and remedy irregularities, as well as how these welfare frauds are handled within the criminal justice system. The report describes both challenges and good examples for municipalities and regions to learn from in efforts to develop their work against welfare fraud. The study is based on interviews with 166 people, an analysis of 97 cases and a questionnaire sent to all municipalities in Sweden.

Welfare markets are particularly worthy of protection. Accordingly, there are barriers that private suppliers have to pass before entering the markets. These include suitability assessments conducted by the authorities when issuing licences and by the municipalities and the regions before signing contracts. However, these barriers do not keep all fraudulent suppliers out as the requirements for exclusion are high. Nor are licences required in all areas of the welfare sector, with healthcare providers being the primary exemption. Moreover, irregularities may arise only after the supplier has established itself in the market. It is particularly difficult to exclude companies that use trustworthy frontmen and false fronts or that systematically replace any board members deemed unsuitable.

In the case of non-profit organisation grants, the equivalent of contracts are the terms, conditions and requirements that municipalities and regions impose on non-profit organisations to qualify for funding. These requirements are generally much more lenient as non-profit organisation

grants are intended to support non-profit activities while the suppliers above are expected to deliver a service to the municipality or region.

Municipalities and regions can also prevent irregularities by establishing requirements for suppliers and subcontractors in their contracts. For private actors, these should encompass what is being purchased as well as transparency and access to information necessary for following up the services provided. The extent to which municipalities and regions work with adjusting contracts, audits, inspections and performance monitoring differs. One key factor is how big a role the private suppliers have in the welfare systems run by the municipality or region, and this varies widely. Another key factor is whether there is preparedness and support within the organisations to conduct audits, inspections and monitoring (of private actors as well as those of their own welfare services).

Municipalities and regions have discovered irregularities in a number of ways. Most common is by tip-off or complaint. These can stem from, for example, care recipients, patients or residents, as well as from staff in both the concerned and competing companies. More systematic monitoring could enhance the ability to discover irregularities by identifying discrepancies. Monitoring and inspections of healthcare and home care have the greatest opportunities for comparing the supplier's reporting and performance. At present, monitoring and assessments are primarily focused on major discrepancies and obvious irregularities. More resources and experience are required to expose less obvious cases and to identify grey zone cases as well. Follow-up work is, however, complicated by the fact that within municipalities and regions, information, investigative capacity and responsibility are often distributed across organisational boundaries, such as between administration, finance and legal departments. Accordingly, some municipalities and regions have gathered various areas of expertise in special units or collaborative forums to enable and optimise follow-ups.

In the vast majority of cases, the irregularities that come to light are handled by means of a dialogue between the municipality or region and the company or association. The aim is to clarify the rules and change behaviour. Some municipalities and regions also use other measures, such as fines or the termination of contracts. In exceptional cases, the matter is reported to the criminal justice system, the concerned supervisory authority or the Swedish Tax Agency. Investigations of cases reported to the police are commonly discontinued. Since the services and contracts are often complex, proving criminal acts, as well as which individuals are responsible for them, is challenging for the criminal justice system. It can be difficult to determine whether there are shortcomings in the contracts drafted by the municipality or the region or in their performance of thorough monitoring, or whether the provider has exploited the systems. Another difficulty is determining whether

responsibility should be attributed to an individual or, alternatively, to the company or association as a legal entity. Nor is it always clear who should be considered to represent the company or the association. One particular difficulty arises in the case of non-profit organisations, where the representatives may have changed over time and information on this is often lacking in official registers.

Brå's assessment and suggestions

Here, Brå presents its assessments and suggestions, which concern improving the conditions and methods to prevent and combat welfare fraud committed by companies and non-profit organisations.

Prevent fraudulent companies from entering the market

The most effective measure against welfare fraud is not allowing fraudulent companies to enter the market in the first place. Mandatory licensing offers the greatest potential for excluding such actors, although the licensing process can be made more thorough. Sweden's Health and Social Care Inspectorate (IVO) has itself expressed the need to harmonise and tighten regulations within this area as well as to increase the opportunities for information sharing between authorities, municipalities and regions (see, for example, IVO 2020a, 2020b, IVO 2021). Brå would welcome the development of the licensing assessment process in the direction proposed by the inspectorate and believes that several aspects of the licensing and supervisory processes could be bolstered, such as by placing greater emphasis on the responsibility of the legal entity. At present, this is done to a greater extent in Sweden's Alcohol Act and Commercial Transport Act than within healthcare and social services. It is reasonable to say that the welfare sector is worthy of at least the same protection. However, there is some uncertainty as to the extent to which it is possible for companies to replace representatives who are deemed unsuitable and thereby continue to operate within the welfare systems. If the supervisory authorities for the welfare systems had clearer regulations enabling them to assess the suitability of the legal entity as well, this would help to remove the loophole.

Nor does Brå see any reason for dormant companies to retain their licence for a longer period of time as such companies can be used by fraudulent actors to continue their ventures, but with a new front. There is also a need for greater transparency regarding the licensing and supervision of companies. Here, Brå believes there is much to be emulated from the supervisory authorities responsible for the supervision of the anti-money laundering regime. The authorities, for example, communicate decisions on sanctions via both websites and newsletters.

Brå notes that companies subject to licensing requirements undergo more thorough scrutiny. Consideration should be given to whether more areas – such as healthcare and dental care – should be subject to licensing. Another possible measure would be to expand the circle of individuals scrutinized in conjunction with public procurements and in provisions of services according to the Act on System of Choice in the Public Sector. One advantage of giving responsibility for a private actor's entry into the market to a licensing authority is that companies are then subjected to the same level of scrutiny regardless of the geographic location of their services.

In procurements and in systems of choice, municipalities and regions also need to do more when assessing companies to prevent fraudulent companies from entering the market. The report includes good examples of how this work can be conducted and developed, although Brå can see how some regulations are difficult to interpret or are restricting the exclusion of disreputable companies. One such example is that the grounds for exclusion encompass a very limited number of offence types. Moreover, it is not possible to request criminal record extracts covering only these types of offences, and, due to the principle of proportionality, municipalities and regions avoid requesting general criminal records. Brå assesses that an inquiry should be initiated to clarify in which cases serious professional misconduct can be cited as ground for exclusion. Overall, the results suggest that the grounds for exclusion from procurements and systems of choice need to be tightened and made easier to call upon.

Increase the incentives for municipalities and regions to act
Since 2019, municipalities and regions are obligated to monitor private suppliers and ensure that the contract allows for access to information that **provides insight into the supplier's activities (Chapter 10, Sections 8-9 of Sweden's Local Government Act)**. However, this obligation has not been adequately enforced. Few, if any, municipalities and regions work systematically in all areas with monitoring that go beyond dealing with major discrepancies and obvious irregularities. Instead, monitoring tend to be superficial, seldom going beyond routine checks on the submitted data. This is most noticeable in the case of association grants, which are not covered by the wording of the Local Government Act. Brå's assessment is that considerably more municipalities and regions than today should increase their resources for monitoring and inspecting the companies and non-profit organisations in these areas.

The study also shows that case officers may avoid more thorough scrutiny of certain operations. This is particularly true when there are links to organised crime, when large sums of money are at stake or when private actors threaten the municipality or region with legal action. Added to this is the risk of being

unable to offer a certain type of service that the municipality or region is obligated to provide to its residents.

The municipalities' statutory responsibility for crime prevention work is also being clarified (SOU 2021:49, Brå commission Ju2021/04249). According to the proposal, the municipalities shall work with a knowledge-based approach, which means that they have to conduct situational analyses encompassing the causes of crimes and the necessary conditions for preventing them, as well as prepare action plans. The municipalities need to coordinate their work with other organisations through cooperation agreements as well. Economic crime and welfare fraud are addressed in the proposed legislation, and this may appear to be a particularly daunting task for the municipalities. However, when welfare fraud is considered within the framework of the situational analysis, the potential for action is reinforced as the identified problems and risks become a part of the bigger picture in the crime prevention work conducted together with other actors and organisations.

Improve the work of municipalities and regions

The results show the importance of contracts that ensure the access to information for conducting audits, inspections and monitoring. It is also important to clarify the activities for which companies do and do not receive compensation. In this way, misunderstandings and misuse can be prevented. Dialogue meetings between principals and providers can clarify both the regulations and the view of the municipality or the region as regards the responsibility of companies or non-profit organisations for any irregularities in their own organisations or those of their subcontractors. Documenting and communicating the position of the municipality or the region is vital so that fraudulent actors cannot later claim to have misunderstood anything.

Municipalities and regions need to improve their ability to interpret data and documents presenting the financial documentation of companies and non-profit organisations. There is also a need for greater general awareness about useful information in the public domain and from which authorities it can be retrieved. Moreover, the municipality or region may already have relevant but overlooked information about the shortcomings of companies and non-profit organisations. Irregularities risk being seen as less serious, and the underlying documentation as insufficient, due to a lack of broad oversight within the municipality or the region.

Brå considers it important that operations are in fact monitored in the way set out in contracts and guidelines. This also applies to the scrutiny of subcontractors, as there seems to be less experience and preparedness to examine and inspect subcontractors. With limited resources, municipalities and regions need to develop principles for prioritising the actors to be

scrutinised. The report includes commendable examples of municipalities or regions collaborating on reviews for more efficient use of resources, which even leads to the discovery of irregularities that would otherwise be overlooked. This could be, for example, the same supplier requesting compensation for the same activity from several different principals. Today, cooperation between different municipalities or regions mainly involves administrators working in the same field. Brå assesses that increased exchange between administrators working in different fields could improve the quality of inspections and monitoring. Initially, it may seem unlikely that an administrator in a municipality could benefit significantly from exchanges with an administrator in a region. Nonetheless, both administrators may be working with investigations within systems of choice or with the same type of scrutiny of private actors – albeit in different fields of welfare.

Ensure information sharing

Similar to a previous inquiry (Ds 2020:28), this study shows that there is a need for a clearer legal basis for the processing of personal data for control purposes. Brå considers that municipalities, regions and supervisory authorities should be allowed to request information from tax accounts. The information contained in tax accounts cannot be altered retroactively. In contracts, the municipality or the region could require that the company or the association send information directly, via the Swedish Tax Agency's e-service, to avoid the risk of manipulation. However, this need remains even in the absence of a contract, such as in the case of personal assistance or prior to procurement and entry into systems of choice (cf. Sweden's Ministry of Finance 2022, Sweden's Construction Market Commission 2022). In addition, Brå assesses that municipalities, regions and supervisory authorities need access to employers' monthly tax returns for individual employees to check whether the employer pays wages and taxes for employees who, for example, submit reports for time spent providing home care or personal assistance. This information may also be needed to check the identity of the employee. In isolated cases, authorities have requested information from the Swedish Tax Agency with reference to the so-called general clause of Sweden's Public Access to Information and Secrecy Act (Chapter 10, Section 27) regarding public information and were thereby able to prevent incorrect payments or to revoke licences. This approach is not, however, applied systematically.

As regards payments, the opportunities for sharing information are more limited for municipalities and regions than they are for state authorities. The reason is that payments are made primarily within healthcare and social services, which often involve sensitive personal data. Nevertheless, in order to stop and remedy incorrect payments, there is sometimes a need to share information about individuals whose personal data have been exploited by a

supplier in order to obtain compensation on false grounds. The individuals themselves may be unaware that they are being exploited in this way. Fabricated data can be combined with real data, which means that the data can reveal details about the state of their health. In addition, these individuals may suffer in that they receive less help than they need and may be subjected to substandard, or even directly harmful, care and treatment. Accordingly, it is not only the privacy of the individual that is at stake, but also the right to safe, publicly funded welfare of adequate quality. Yet another aspect is that the individual may find the exploitation of their personal data an unpleasant experience, especially when the extent of that misuse is not fully explored by the criminal justice system.

Brå assesses that the breaches of confidentiality allowed by Chapter 10, Section 2 of the Public Access to Information and Secrecy Act should be used more widely. This section states that information may be disclosed if this is necessary for the disclosing authority to perform its duty. It can also be noted that Sweden's Social Services Act, in Chapter 12, Section 10, refers to this very section of the aforementioned act to clarify that offences that impede social services in their work can be reported to the police regardless of the duty of confidentiality. There is, furthermore, reason to expand the scope of the obligation to notify other affected authorities of suspected benefit frauds (see below under Use the criminal justice system).

For mandatory licensing to prove effective, Brå considers that in regard to such licensed activities, there should be a provision allowing breaches of confidentiality in order to provide access to the information that the licensing authority needs from other authorities (as in the case of Sweden's Alcohol Act, Chapter 9, Section 8).

Need for national registers

The report shows that the principals need access to information about any other municipalities and regions in which the companies and associations are active. This would make municipalities and regions less dependent on the companies and non-profit organisations themselves informing them about where they operate and whether they are being investigated by other principals for irregularities. Several of the national registers requested concern cataloguing which municipalities and regions may have data of use to others. Such as to which municipalities, regions and state agencies that non-profit organisations have submitted applications for grants. It may also be considered to list the lead representatives at the time of each application. There is also a need for a register of all contracts (procurements and systems of choice) between municipalities and regions and companies. In addition, there is a need for a national register at the Health and Social Care Inspectorate encompassing all licensed private actors and investigations by supervisory authorities. In this context, it is worth considering the alcohol

register (Chapter 13 of Sweden's Alcohol Act), to which municipalities and the Swedish Tax Agency have direct access.

Brå assesses that there is much to be gained by coordinating information from municipalities and regions in order to identify fraudulent companies and non-profit organisations. Accordingly, the necessary conditions for establishing the aforementioned national registers should be examined.

Develop sanctions and measures

Brå's assessment is that efforts involving sanctions and measures against irregularities need to be developed. Promising examples are found in some municipalities and regions, whereas in others such matters are seldom taken beyond the dialogue stage, even in the event of recurring irregularities. Municipalities and regions need to incorporate effective sanctions in their contracts. In the case of non-profit organisation grants, principals can use their terms and conditions in a similar manner. The challenge is greater in areas where the principal has no contract with the provider, such as within personal assistance and in relation to the so-called national tariff (laws and ordinances regulating compensation within some specific types of ways to organise healthcare), which limits the opportunities for sanctions.

There is reason for not increasing the overall administrative burden on companies and non-profit organisations, but in the case of recurring irregularities that have not been serious enough to result in sanctions, there may be reason for demanding greater transparency. Brå also considers that, in the event of recurring irregularities, municipalities and regions should work more with tangible fines and the transfer of certain control costs to providers, as well as not allow companies to expand their operations while under investigation.

The analysis shows that the legislator has left it to the courts to establish practice on where to draw the line in the application of, for example, the grounds for exclusion in Sweden's Public Procurement Act (LOU) and Act on System of Choice in the Public Sector (LOV), regulations allowing breaches of confidentiality and certain other measures (such as the cancellation of contracts). There is currently a lack of clarity, which means that municipalities and regions act differently. Establishing common practice does, however, require both time and resources. In Brå's assessment, most municipalities and regions do not have the capacity to handle the delays and uncertainties that arise in the local welfare systems while also pursuing legal cases with all that it entails.

Use the criminal justice system

The companies and the non-profit organisations included in the study commit diverse types of crimes falling under the jurisdiction of both the

Swedish Police Authority and the Swedish Economic Crime Authority. Municipalities and regions do not have the tools to provide sufficient documentation, which means that cases do not always end up with the right authority initially. This contributes to inefficiency in the investigations. Moreover, specialist expertise may be needed to investigate these cases.

Brå shares the assessment made in a previous inquiry (Ds 2020:28) that, for reasons of efficiency, a law on corporate crime against welfare systems is needed. The inquiry suggests that this could be achieved by expanding the Swedish Benefit Crime Act to encompass companies or by adopting equivalent legislation on welfare fraud committed by private suppliers. Brå also agrees that there is a need for a law on the obligation to notify regarding corporate welfare fraud similar to the one that exists for benefit fraud (the Swedish Benefit Crime Act 2008:206). That this should also encompass the regions has been suggested by the MUR initiative (Sweden's Social Insurance Agency 2021), a collaboration between various state authorities to counter welfare fraud. It is also important that welfare fraud against municipalities and regions is included if changes are made to what and when information can be exchanged between authorities regarding payments from the welfare systems (cf. Sweden's Ministry of Finance 2022).

Brå assesses that the expertise in crime prevention available within the police authority, the economic crime authority and the tax agency can play a key role for municipalities and regions when drafting contracts and terms and conditions (cf. Ds 2020:28). This could indirectly help to bridge the gap between contract law and criminal law. For example, the tax agency has produced material on how municipalities can scrutinize non-profit organisation grants and remuneration for personal assistance, including which data in the public domain are of relevance and can be requested.

An often overlooked aspect of the criminal justice system is the role of criminal law in the entry of companies into the market. In certain cases, a criminal record or other misconduct that remains on record is required to prove the unsuitability of a representative. However, the irregularities of importance in this context are seldom a priority for law enforcement as the concerned offences are of low penal value yet still require resources to investigate. Brå's assessment is that in certain cases involving the welfare sector, the criminal justice system should nevertheless prioritise these less serious offences in order to remove strategic individuals from the market.