
Article:
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https://doi.org/10.1111/lapo.12049

LAW & POLICY

Legal Compliance in Street-Level Bureaucracy: A Study of UK Housing Officers

Journal:	*Law & Policy*
Manuscript ID:	L&P-15-08-03
Manuscript Type:	Original Manuscript
Keywords:	street-level bureaucracy, legal compliance, homelessness

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Abstract

Street-level bureaucratic theory is now at a fairly mature stage. The focus on street-level bureaucrats as 'ultimate policymakers' is now as familiar as it is important. Likewise, the parallel socio-legal study of the implementation of public law in public organisations has demonstrated the inevitable gap between law-in-the-books and law-in-action. Yet, the success of these advances comes at the potential cost of us losing sight of the importance of law itself. This article analyses some empirical data on the decision-making about one legal concept - 'vulnerability' in UK homelessness law. Our analysis offers two main contributions. First, we argue that, when it comes to the implementation of law, the legal abilities and propensities of the bureaucrats must be taken into account. Bureaucrats' abilities to understand legal materials make a difference to the likelihood of legal compliance. Second, we must also pay attention to the character of the legal provisions. Where a provision is simple, it is more likely to facilitate legal knowledge and demands nothing of bureaucrats in terms of legal competence. Where the provision is also 'inoffensive' and 'liveable' it is less likely to act as an impediment to legal conscientiousness.

Keywords: street-level bureaucracy; legal compliance; homelessness

Introduction

Street-level bureaucracy has long been an important focus for scholars of public policy and public administration. Foundational work by Prottas (1979), Brown (1981) and, perhaps most significantly, Lipsky (1980) has led to a burgeoning field of enquiry within the political sciences (Maynard-Moody and Portillo, 2010). Such research has revealed the significance of the structure of street-level work to the nature of the policies that are delivered on the frontlines of public services. Thus, researchers have revealed the significance to policy administration of organizational culture (e.g., Riccucci, 2005a), organisational settings (e.g., Jewell and Glaser, 2006), limited resources and excessive demand (e.g., Prottas, 1979; Lipsky, 1980), and the emotional demands of direct client contact (e.g., Guy, Newman and Mastracci, 2008). These conditions trigger various coping mechanisms that structure routine work (Nielson, 2006; Tummers et al, 2015). The inevitable discretion of frontline work (Maynard-Moody and Musheno, 2000; Riccucci 2005b) also creates a space into which wider cultural morality flows (Hasenfeld, 2000). Perceptions of deserving and undeserving citizens/clients can channel street-level work (Maynard-Moody and Musheno, 2003). Studies have also shown that the gender (e.g., Wilkins and Keiser, 2005; Wenger and Wilkins, 2009), ethnicity (e.g., Schoenholtz et al, 2014) and social status (e.g., Portillo, 2012) of street-level bureaucrats and clients can affect individual decisions on the frontline. In light of these myriad findings, street-level bureaucrats, rather than senior policy-drafting officials, have been deemed the "ultimate policymakers" (Lipsky, 1980).

In addition to political science, however, street-level bureaucracy has also been a significant focus for socio-legal studies (e.g., Cowan and Hitchings, 2007; Halliday et al, 2009; Pratt, 2012; Alpes and Spire, 2014). Lipsky's distinction between the formal policies of senior officials and the actual policies delivered by street-level bureaucrats (Lipsky, 1980) resonates particularly well with socio-legal scholars, mapping nicely onto one of their own core sets of

distinctions: that between the law-in-books and the law-in-action (Pound, 1910; Halliday et al, 2012). In keeping with street-level bureaucratic theory, socio-legal scholarship has similarly stressed the significance of discretion (e.g., Hawkins, 1992), routinisation (e.g., Silbey, 1980), working conditions (e.g., Baldwin et al, 1992) and cultural morality (Hawkins, 2003) to the nature of the law-in-action produced at the frontline.

Yet, a distinct feature of socio-legal work on frontline service delivery has been the particular concern with the question of *legal* compliance (e.g., Loughlin and Quinn, 1993; Sunkin, 2004), querying the reasons why public service organisations fail to comply, not just with legislative rules, but also with the guidance of the courts (e.g., Mullen et al, 1996; Halliday 2000; Hertogh and Halliday, 2004). Such studies – unsurprisingly in light of street-level bureaucratic theory – have exposed the numerous barriers that stand in the way of legally compliant behaviour on the part of governmental bodies (e.g., Sunkin and Le Sueur, 1991; Loveland, 1995; Cowan, 1997). However, they have also been useful in pointing to the significance of what might be termed the 'legal abilities and propensities' of street-level bureaucrats for the extent of legal compliance. In particular, Halliday has set out a framework to help us understand the gap between the law-in-books and the law-in-action within street-level bureaucracies (Halliday, 2004). He has argued that the extent of the gap is determined, in part at least, by the extent of street-level bureaucrats' legal knowledge, legal competence and legal conscientiousness. In other words, the law-in-action produced by the everyday activities of street-level bureaucrats is affected by the fact that the bureaucrats are implementing *law* and not just policy. Thus, the street-level bureaucrats' varying ability to understand and work with legal materials and their varying attitudes and stances towards the importance of lawfulness is part of the broader context that affects the nature of the law-in-action (Hertogh, 2010).

In this paper, we draw on qualitative research of street-level bureaucracies in the UK housing sector to add further depth to the socio-legal scholarship on legal compliance. The paper is founded on a puzzle that emerged from the empirical findings. For, unusually in light of the thrust of street-level bureaucratic research, we discovered a small oasis of consistent legal compliance across our three case studies – in the application of the legal concept of 'vulnerability' within the context of homelessness law. In this way, we have been forced to turn the common socio-legal research question about street-level bureaucracies – "how do we explain non-compliance with law?" – on its head. Instead, the core research question of this paper is: Why, amidst non-compliant street-level bureaucrats' practices, do we find legal compliance in relation to one particular aspect of their work? The answer, we suggest, lies in the character of the particular legal provision demanding compliance and the effect this has on the likelihood of street-level bureaucrats' legal knowledge, legal competence and legal conscientiousness. In this way, whereas much street-level bureaucratic theory focuses (in broad terms) on the conditions in which bureaucrats work and on their identity and characteristics, our study urges us additionally to maintain a focus on the legal provisions demanding compliance. For the character of the law, in some circumstances, can decrease the extent of the gap between the law-in-books and the law-in-action.

This article proceeds in five main stages. First, to provide some context for our study, we offer some descriptive background to the public administration sector that we examined – English housing law as it affects homeless people. Second, we describe the research methods that we employed in the study. Third, we then set out our findings descriptively in order to substantiate the foundational empirical claim that, in one particular aspect of the legislative scheme being implemented, we discovered a small oasis of consistent legal compliance. Fourth, we then analyse those findings in the light of existing socio-legal scholarship and

seek to explain them. Lastly, we conclude with a consideration of the implications of our study for future research on the production of law-in-action in street-level bureaucracies.

The Context: English Homelessness Law

In international terms, England[i] is unusual in giving homeless people a set of justiciable rights (Fitzpatrick and Stephens 2007). The right to housing is enshrined in a specific piece of legislation. The original legislation dates from 1977 and, despite amendments and re-enactments, remains largely unaltered in its basic structure. The UK Parliament has devolved the task of implementing what is known as 'homelessness law' to the most local level of government, known as local authorities. When someone applies for housing, the local authority must conduct certain stipulated enquiries if it has reason to believe that the applicant may be homeless. The housing duty is triggered only if applicants are assessed as being (1) eligible to apply (in relation to their immigration status); (2) legally 'homeless'; (3) in priority need; and (4) not intentionally homeless. Thus the legislation has been described as constituting something of an "obstacle race" for housing applicants (Robson and Watchman 1981). The focus of our project and this article is on the third of the 'obstacles' set out above: the notion of having a "priority need" for housing.

The concept of 'priority need' is defined in the legislation.[ii] It includes the dependence of children. However, if there are no dependent children, the status of having a 'priority need' will generally only be granted to an applicant:

> who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason…[iii]

Accordingly, local authority decisions on whether a housing applicant without children is legally 'vulnerable' often turn on the use of medical evidence.

The notion of "vulnerability" is not further defined in the legislation. Instead, its meaning has been developed and refined through case law. At the time of our fieldwork, the leading case was that of *R. v Camden LBC, ex p Pereira* (1998). Here, the Court of Appeal stated that vulnerability means an applicant being:

> less able to fend for himself than an ordinary homeless person so that injury or detriment to him will result where a less vulnerable man will be able to cope without harmful effects (per Hobhouse L.J., 330).

The Court of Appeal gave further clarification six years later in *Osmani v. Camden L.B.C.* (2004):

> One has only to attempt to apply the *Pereira* test to any particular case by asking the question whether the applicant would, by reason of whatever condition or circumstances assail him, suffer greater harm from homelessness than an 'ordinary homeless person', to see what a necessarily imprecise exercise of comparison it imposes on a local housing authority ... For the purpose of applying the vulnerability test a local housing authority should take care to assess and apply it on the assumption that an applicant has become or will become street homeless, not on his ability to fend for himself while still housed. (per Auld L.J., para. 38)

Both of these case law developments on the meaning of vulnerability were reflected in subsequent governmental guidance for local authorities implementing the legislation (CLG 2006). Generally speaking, where legislation gives public officials discretionary decision-making powers, it is common in the UK for that discretion to be the subject of governmental guidance via statutory codes. The specific terms of such codes are not legally binding, but must nonetheless be taken into account by local authorities when making their decisions. Thus, they are best thought of as 'soft law' documents (Sossin, 2004). At the time of our

fieldwork, the Code of Guidance relating to homelessness law, which had been in place since 2006, reiterated, albeit without naming them, the decisions in both *Pereira* and *Osmani*.

> 10.13... the local authority should consider whether, when homeless, the applicant would be less able to fend for him/herself than an ordinary homeless person so that he or she would suffer injury or detriment, in circumstances where a less vulnerable person would be able to cope without harmful effects.
>
> 10.14... The applicant's vulnerability must be assessed on the basis that he or she is or will become homeless, and not on his or her ability to fend for him or herself while still housed.

Rights of Review / Appeal

Applications for housing under the homelessness legislation are quite high – over 100,000 each year in England alone (CLG, 2014). Only about 50% of applications, however, are successful. Those whose housing applications are rejected have a right to an internal administrative review of that decision, though the take up of these rights of review has been surprising low (Cowan, Halliday and Hunter, 2006). If the original decision is upheld at internal review, applicants may then appeal to the county court on a point of law. Thereafter, appeals may be made to the Court of Appeal, similarly only on a point of law. There are no available data on the number of homelessness appeals in the County Court. However, given the low level of take up of internal review, it seems likely that proportionately very few cases go to this very first stage of appeal. Even fewer will reach the Court of Appeal.

Virtually all decisions of the Court of Appeal are published and available via legal websites. Decisions of the county court, however, are generally not published and so are much less visible. These differences in visibility reflect the difference accorded to them in terms of their

importance. In terms of the definitional development of legal terms and concepts, the key cases are those that proceed to the Court of Appeal.

Research Methods

The public administration of homelessness law has been a popular site for socio-legal case studies of street-level bureaucracy in the UK (Loveland, 1995; Mullen, Pick and Prosser,1996; Cowan, 1997; Cowan and Halliday, 2003; Halliday, 2004; Watts, 2013). This is because, despite the fact that the number of court cases is very low relative to the number of applications made for housing, the incidence of homelessness court cases relative to judicial reviews about other matters has traditionally been very high (Sunkin, Bridges and Meszaros, 1996). Accordingly, a focus on homelessness decision-making has provided fertile ground for exploring issues of street-level bureaucratic compliance with the dictates of the courts, in addition to the legislative rules.

Our data reported here comes from a study funded by the UK's *Economic and Social Research Council,* which examined the decision-making of homelessness officers for applicants who were vulnerable. The study focused particularly on the use of medical evidence. It employed a mixed-method qualitative case study approach with the case studies located in three different local authorities across England. The authorities (London Borough, Northern City and Eastern Town)[iv] were purposively selected to include both urban and rural jurisdictions, large and small authorities (in terms of the annual number of homelessness applications), and different approaches to assessing medical evidence. Two of the local authorities employed the services of external medical advisors, albeit to different degrees, while the third did not. Experience of legal activism was not a selection criterion of the fieldwork sites. Nonetheless, it is worth noting that our three case study authorities were quite different in this respect too. In both London Borough and Northern City there were a number

of cases that proceeded to internal administrative review of decisions on vulnerability. In such cases, the applicants were usually represented by lawyers, who would write lengthy letters setting out the relevant case law in some detail. There was no such evidence in Eastern Town.

In each of our fieldwork sites, the implementation of homelessness law was conducted in municipal offices. Generally speaking within the UK, applications for housing under homelessness law are sufficiently high that most local authorities have dedicated teams of officers whose work is entirely devoted to dealing with homelessness applications. This was certainly the case in our three fieldwork sites. Each had a team of specialized frontline officers supervised by managers (albeit of differing sizes: 4 in Eastern Town; 14 in London Borough; 6 in Northern City). Frontline officers would interview homeless applicants, conduct inquiries where necessary, and make a determination about whether applicants qualified for assistance under the legislation. These frontline officers were generally career civil servants (at a local government level).

Fieldwork took place between 2011 and 2012. The case studies in each fieldwork site comprised four elements. Firstly, a semi-structured in-depth interview was carried out with the local authority manager (or senior representative in an equivalent role) responsible for assessing homelessness applications. Interviews explored each local authority's organisational policies and procedures as regards the use of medical evidence (in both applications and internal administrative reviews), and explored the rationale behind the different approaches adopted.

Secondly, a focus group was undertaken with frontline homelessness officers who had handled applications and/or reviews involving medical evidence. These involved between four and six participants, depending upon the size of each local authority. Vignettes – short

written scenarios intended to illicit responses to typical situations (Hill 1997) – based on 'real' anonymised cases, were used across all three case studies. This enabled consistent comparison of different organisational cultures.

Thirdly, individual homelessness application case files were examined in detail. Across the local authority areas forty-one case files of the most recent decisions (including both cases that were accepted and rejected), where a decision on vulnerability involved taking into account applicants' medical issues, were examined. In addition, nine of these cases proceeded to internal administrative review and this review stage of the case file was also examined. This enabled the research team to analyse real cases and assess the actual medical evidence that was requested and provided in the case and how influential that medical evidence was in the final decision.

Finally, following the case file analysis, a semi-structured in-depth interview took place with the officer(s) handling each individual case. The researchers conducted forty-six interviews with decision-making homelessness officers regarding the individual decisions on each of the case files, including those that went on to internal administrative review. With reference to each case, interviews explored: officers' understanding of the application of the law to a particular case; their understanding of and response to the medical evidence before them; whether they sought particular types of medical evidence; how and to what extent medical evidence (from various sources) influenced their decision on the case; any other factors taken into account.

The interview and focus group data were subject to thematic analysis, having first been transcribed. The coding scheme aimed to capture the bureaucrats' perceptions of the role of law and legality in relation to their routine decision-making about 'vulnerability'. This included references to a legal test of vulnerability, as well as references to relevant court

cases, and the legal test developed in these cases (or phrases similar to the test). Additionally, drawing particularly on prior socio-legal work on homelessness decision-making (e.g., Loveland, 1995; Mullen et al, 1996; Cowan, 1997; Halliday, 2004), these data were coded for the features of the broader decision-making context that militated against legal compliance. A similar exercise was also undertaken with all the documentation from the different authorities, both from the individual cases and from policy/procedure documents.

Findings

As noted already above, previous empirical studies of the general implementation of homelessness law have highlighted the unlawful features of routine bureaucratic practices and the barriers that stand in the way of full legal compliance (Loveland, 1995; Mullen, Pick and Prosser, 1996; Cowan 1997; Halliday 2004). In many respects, and unsurprisingly, our findings were similar. We observed a variety of practices that could be characterised as legally dubious. For example, at the time of fieldwork, as a matter of procedure, Northern City asked medical practitioners for their view of whether an applicant was vulnerable and in practice took this view as decisive. Case law has long made it clear that such practice is unlawful. The decision on vulnerability is squarely one for the local authority itself and not external advisors.[v]

Nonetheless, in one respect, our data marked something of a contrast. Whereas the general thrust of research on street-level bureaucracy has been to document and explain failure to comply with law and formal policy, our data revealed a small oasis of legal compliance – in relation to the substantive test to be used when determining whether an applicant was vulnerable. In this respect, despite being purposively sampled to represent different size, locality and decision-making arrangements, our three local authorities were all legally compliant.

So, for example, in Northern City, the letter template asking the external medical advisors for their opinions included a statement of the "Test of Vulnerability":

> In some areas of law, "vulnerable" is used without much in the way of further definition. However, in homelessness cases vulnerability means that an applicant is "less able to fend for himself than an ordinary homeless person so that injury or detriment will result were a less vulnerable man will be able to cope without harmful effects"; that is to say a person is vulnerable if he has a lesser ability than that of a hypothetical "ordinary homeless person" to fend for himself that he would suffer greater harm from homelessness than would such a person. The test must be applied on the assumption that he is or will become street homeless not on his ability to fend for himself while still housed.

As we can see, this directly reproduced part of the decision in *Pereira* and also reflects the decision in *Osmani.* The same was true as regards Northern City's decision letters to applicants where priority need was denied. Among the 11 cases we examined, three different formulations were found. All three formulations set out "the test":

> when homeless, would you be less able to fend for yourself than an ordinary homeless person so that you would be likely to suffer injury or detriment in circumstances where a less vulnerable person would be able to cope without harmful effects?

In two of the formulations, the *Pereira* case was referenced in full. Further, it was apparent that the above paperwork represented more than shallow technical compliance for the purposes of appearances. Rather, it reflected the officers' convictions about the appropriate test to be used. Northern City's officers made reference to the case law when discussing how to make vulnerability decisions:

> Again it's looking at *Pereira* – would he be any less vulnerable than any other street person? Would he be more vulnerable on the streets than an average Joe Bloggs really? (NC focus group)

> …on the balance of probabilities would this person be just as able to cope as the average homeless person. (Case officer NC/7)

> We've got to look to the test and we've got to….use the test to see whether or not they're vulnerable. (Case officer NC/11)

The same legal compliance on this point was found in Eastern Town. Its senior manager asserted:

> We use the *Pereira* test […] and we apply the *Osmani* rules. So hopefully most of the time we get it right.

At frontline level, local authority officers made frequent reference to these cases in discussing how to make vulnerability decisions:

> ....when you look at the *Pereira* test, you're looking at the different issues, and I believe he was more than capable of dealing with most things in everyday life. (Case officer ET/3)

> My biggest concern in all of this is what would happen if he would become street homeless and with the *Osmani*. It's not how he is coping now, I've got to look at how he will be if he becomes street homeless.... (ET focus group)

In relation to some of Eastern Town's cases we were able to see front-line officers' full reports of their decisions. These too revealed compliance with the legal test for vulnerability. For example, in ET/1 the report noted:

> I have carried out a Pereira Test and the indication would be that this is not a priority. However, I am of the opinion that the combination of his medical issues would lead to him being vulnerable if he became street homeless.

In interview, the officer explained further:

> I quickly changed my mind once I researched into [his medical condition] […] In my opinion he wouldn't have passed the *Pereira* test, it was mainly the *Osmani* bit that, the effect that if he was street homeless, obviously his mental health would have suffered, in my opinion, because he needed the toilet facilities for the Crohn's disease, … if he'd been street homeless that would have brought on his OCD. (Case officer ET/1)

As regards London Borough, the legal requirements of vulnerability decisions were designed into the day-to-day documentation used by its front-line officers. For example, the internal guidance produced for officers included a section on determining vulnerability:

> Determining vulnerability is a matter of judgement and all relevant factors must be taken into consideration before making a decision. In all cases one must apply the test of vulnerability: *By law, when deciding whether someone is vulnerable, you must look at whether they are unable to fend for themselves, when homeless, so that they will suffer injury or detriment in circumstances where a less vulnerable person would be able to cope without harmful effects. R v London Borough of Camden ex parte Pereira (1998)* (italics in original).

Equally, in each of its decision letters about vulnerability exactly the same italicized section was included. The centrality of the legal test was reflected in how frontline officers discussed the reasoning behind their decisions, albeit without direct reference to the legal cases:

> [The test was whether the applicant was] vulnerable when compared to someone else who might have less significant problems or less of an impact on themselves... (Case officer LB/11)

> As a double amputee I would just, I would imagine he would certainly be in priority need as somebody who was less able to fend if left without accommodation. (Case officer LB/8)

> based on the further information that we received, it, it, it was pretty clear that he, he wouldn't be able to fend for himself, you know, if he, if he was to become homeless. (Case office LB/3)

Analysis of Findings

Our findings above present themselves as an interesting puzzle: why amidst variable and unlawful practices do we find a small oasis of consistent legal compliance in relation to the vulnerability test? The answer, we suggest, lies in the character of the legal provision demanding compliance, and the significance of that character for the likelihood of street-level bureaucratic legal knowledge, legal competence and legal conscientiousness (Halliday, 2004). More specifically, we suggest that the vulnerability test within the homelessness legislation is (1) simpler than other aspects of the legislative scheme; (2) less offensive to frontline officers; and (3) more accommodating of the pressures within the decision-making environment that countervail against legal compliance – what Sunkin (2004) has called the "liveability" of law. We flesh these arguments out below.

Simplicity

The vulnerability test articulated in the key cases of *Pereira* and *Osmani* lent itself easily to a short and straightforward abbreviation. When compared to other legal elements demanding compliance from the local authorities, the vulnerability test had an attractive simplicity about

it. A comparison with one of other 'obstacles' (Robson and Watchman, 1981) within the legislation - that of the "intentionality" of homelessness - is instructive. The concept of 'intentional homelessness' has been the most heavily litigated aspect of the homelessness litigation (Loveland, 1991). The basic idea underscoring this provision was that an applicant for housing may be deemed intentionally homeless:

> if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy. […] [A]n act or omission in good faith on the part of a person who was unaware of any relevant fact shall not be treated as deliberate. (Housing Act 1996, s. 191)

In contrast to the vulnerability test, this intentionality test was rather complex. As we can see, it involved questions of intention, causation, availability of accommodation, reasonableness of accommodation, good faith and relevance of facts. Each of these has given rise to litigation where the statutory concept has been developed through case law. The case law on intentional homelessness has been extensive and, in places, rather convoluted (Arden, Orme and Vanhegan, 2012). As a legal concept, it was far from simple and did not lend itself to easy abbreviation. Indeed, its abbreviated discussion in the central government's Code of Guidance (CLG 2006) extended to seven full pages of text.

Likewise, if we consider the legal demands of natural justice or due process in the decision-making process, they are much more complex than the vulnerability test. The case law – even that restricted to homelessness law - is sufficiently expansive to accommodate competing models of bureaucratic justice (Halliday, 2004). Accordingly, much depends on context (Elliott and Thomas, 2012). The legal requirements of natural justice are best thought of as

contingent rather than clear. By way of contrast, the vulnerability test was both contained and straightforward.

This is not to say, of course, that the legal test of vulnerability is not *contestable*. The notion of the "ordinary homeless person" has been the subject of much critique by those who represent homeless applicants (see, e.g., Madge-Wyld, 2013). Although the meaning was settled at the time of our study, we must recognize that stable and relatively straightforward legal provisions can be rendered more complex and uncertain through litigation. Indeed, the vulnerability test has recently been subject to such litigation in the Court of Appeal and the Supreme Court.[vi] In the light of this decision, local authorities will have to rethink how they approach decision-making on vulnerability. However, our point here is that at the time of our fieldwork, the test was short, easily intelligible and thus straightforward to apply.

The significance of legal simplicity for the existence of legal compliance lies, first, in the affect it has on the likelihood of legal knowledge on the part of street-level bureaucrats. Knowledge of the legal provision demanding compliance is clearly a fundamental pre-requisite of legal compliance (Loveland, 1995; Mullen et al, 1996; Halliday, 2004). Legal simplicity aids the translation of case law specifics to general bureaucratic guidelines and templates. We can see this in the encapsulation of the abbreviated vulnerability test in the central government's Code of Guidance (CLG 2006) and in the London Borough practice manual for frontline officers. It is also evident in its inclusion in the decision-letter templates in London Borough and Northern City.

Secondly, legal simplicity also has significance for the legal competence of street-level bureaucrats. Halliday's discussion of 'legal competence' referred to the fact that much of the English public law aimed at regulating public administration operates at a level of general principle (Halliday, 2004). Whereas the courts are clearly adept at applying legal principles to

the particular facts of litigated cases, it is a very tall order to expect street-level bureaucrats similarly to be able to extract the relevant principle from a case law judgment and then re-apply it to their full set of work tasks. However, where the particular aspect of public law demanding compliance is sufficiently simple and contained, legal competence in the way described by Halliday is not required. In other words, legal simplicity extinguishes legal competence as a necessary condition of legal compliance. As we can see, in relation to the vulnerability test, the requirement for doctrinal reasoning skills are absent. The test invites easy application rather than skilled interpretation.

Inoffensiveness

As was noted in the introduction to this article, street-level bureaucratic theory stresses, amongst other things, that the inevitable discretion of street-level bureaucrats opens up a space into which cultural morality can flow (Hasenfeld, 2000). Perceptions of deserving and undeserving citizens/clients channel street-level work (Cowan, 1997; Maynard-Moody and Musheno, 2003). Thus, legal provisions that militate against cultural norms are less likely to attract compliance (Hawkins, 2003). Equally, in policy contexts that have an excess of rules, street-level bureaucrats make discretionary choices about which rules to apply (Prottas, 1979; Sainsbury, 1992), often influenced by the dictates of cultural morality.

However, our focus on the vulnerability test demonstrates that fidelity to law and fidelity to cultural morality are not always in opposition. As Maynard-Moody and Portillo remind us: "we must move beyond the false dichotomy between street-level discretion and rule-based implementation" (Maynard-Moody and Portillo, 2010: 13). The vulnerability test set out in the legislation and further articulated in the key cases of *Pereira* and *Osmani* did not, in and of itself, 'offend' the cultural morality of our research subjects. Rather, it was structured in such a way that it could be applied faithfully without coming into conflict with any convictions based on cultural morality. It preserved the discretion of the street-level

bureaucrats, in other words. The vulnerability test, including its development by the Court of Appeal, required the street-level bureaucrats to conduct a comparative exercise (that is, about whether the applicant would be less able to fend for himself than an ordinary homeless persons if street homeless); but it did not determine the outcome of that comparative exercise. In this way, legal compliance was not positioned in opposition to the dictates of cultural morality.

The vulnerability test, then, was not likely attract the 'legal cynicism' observed by Hertogh in his study of Dutch public administration, whereby, even though street-level bureaucrats were knowledgeable of the law, they felt alienated from its terms: "They generally [did] not feel that their own values [were] sufficiently reflected in the law" (Hertogh 2010, 218). Rather, in relation to vulnerability decision-making, it was more likely that officers would be 'legal loyalists' (Hertogh, 2010), feeling free to be 'legally conscientious' (Halliday, 2004). In other words, a basic commitment to legality, to acting lawfully, would not be overwhelmed or dislodged by the demands of cultural morality.

Liveability

As we saw above, Halliday's discussion of 'legal conscientiousness' (Halliday, 2004) and Hertogh's discussion of 'legal cynicism' (Hertogh, 2010), both point to the fact that law is but one of the normative pressures – or "social spheres" (Galligan, 2007) - under which street-level bureaucrats operate. In addition to cultural morality, there are other normative systems within the environment, such as performance audit, financial management, local political accountability, etc., that may similarly dislodge a street-level bureaucratic inclination towards legal compliance.

Nonetheless, our argument here is that certain legal provisions may have an unusually accommodating character within the decision-making environment – what Sunkin has described as the "liveability" of law (2004). Specifically, we suggest that the vulnerability

test has a kind of Teflon quality, whereby it can enter the public administration environment without causing any friction. Thus *notwithstanding* the existence of general competition between legality and other normative pressures within the street-level bureaucratic environment (Halliday, 2004), the character of the vulnerability test managed to avoid that competition and so facilitate legal compliance.

Much like the findings of previous studies, the local authorities we studied in this project were subject to a range of environmental pressures that would ordinarily militate against legal compliance. For example, there were clearly some financial pressures at play that in turn gave rise to time pressures for the decision-making process. This came out much more in the interviews with managers than in the interviews with front-line officers around individual decisions. For example, in Northern City, the manager explained that the officers were working to "numbers in bed and breakfast and temporary accommodation":

> I would be expecting some feedback on anybody who we've had in bed and breakfast for more than a couple of weeks, what we're doing, where we are, so that they would, they would need to prioritise and, and provide information and make sure they were chasing up the information in order to make a decision.

In London Borough the manager referred to the pressure of having targets for investigation times and occupancy of temporary accommodation. The importance of target time of investigations was also reflected in the focus group:

> ... if these specialists or the GPs are taking forever to come back with the information, obviously we are certain times when we have to make decisions. We may be basing the decision just on the information that we have in front of us.

However, although these financial and time pressures impacted on the investigative process leading up to a decision and so threatened compliance with the legal requirements of due process and procedural rationality (Halliday, 2004), they did not impinge on the application of the vulnerability test itself. Rather, the correct legal test would still be applied, albeit sometimes to a more limited range of evidence in order to comply with time pressures. In other words, an abandonment of the legally correct vulnerability test was not required in order to be responsive to the alternative normative pressures. Adherence to the correct vulnerability test did not endanger the meeting of financial or efficiency targets. Given that the test was irrelevant to the routine competition between law and the other normative systems within the decision-making environment, there was no temptation or pressure on street-level bureaucrats to move away from a commitment to legal compliance.

Conclusion

Street-level bureaucratic theory is now at a fairly mature stage, given that it is now almost 40 years since the political sciences turned their attentions towards the frontlines of public services in an attempt to fully grasp the realities of policy delivery (Maynard-Moody and Portillo, 2010). The focus on the inevitable distortions of formal policy and the depiction of street-level bureaucrats as the "ultimate policymakers" (Lipsky, 1980) are now as familiar as they are important. Likewise, the parallel socio-legal study of the implementation of public law in public service organisations, much of which has drawn explicitly on street-level bureaucratic theory, has demonstrated the inevitable gap between the law-in-books and the law-in-action (Halliday and Scott, 2010). And yet, the success of these empirical and theoretical advances comes at the potential cost of us losing sight of the fact that, in some circumstances and in some respects, the policy drafters can still be the ultimate policymakers. The aim of this article has been to analyse some empirical data that revealed one such instance – the application of the concept of 'vulnerability' in UK homelessness law.

Our analysis has offered two main contributions to street-level bureaucratic theory. First, drawing on the socio-legal scholarship on the implementation of public law, we have argued that scholars of street-level bureaucracy must pay attention to the fact that, when it comes to the implementation of public law, including its developments in the courts, the legal abilities and propensities of the bureaucrats must be taken into account. Bureaucrats' abilities to understand and work with legal materials, and their attitudes towards the importance of lawfulness make a difference to the likelihood of legal compliance. In their review of street-level bureaucratic theory, Maynard-Moody and Portillo suggested that:

> The expression of street-level agency occurs in the context of three core relationships: with the immediate supervisors, with peers, and with clients and citizens. (2010: 13)

To that list we would add of fourth relationship: that with legality. Thus, the study of street-level bureaucrats' legal skills as well as their 'legal consciousness' (Cooper, 1995; Halliday and Scott, 2010; Hertogh, 2010) is an important direction for research.

Our second and related contribution has been to argue that, in addition to studying the structure of street-level work and the identities and characteristics of street-level bureaucrats, we must also pay attention to the character of legal provisions demanding compliance. We have demonstrated that the character of a legal provision can alter the likelihood of legal compliance – by virtue of the effect it has on the legal abilities and propensities of street-level bureaucrats. Where a legal provision is simple, it is more likely to facilitate legal knowledge on the part of street-level bureaucrats and demands nothing of them in terms of legal competence. Where the provision is also 'inoffensive' and 'liveable' it is less likely to act as an impediment to legal conscientiousness. Thus we can expect legal compliance rather than deviations from the terms of the law.

Of course, the intricacy of our argument serves also to demonstrate how difficult it can be for law makers, whether the legislature or the courts, to create law that matches the conditions we have outlined. Studies of legislative process in the UK have demonstrated that much legislation is the result of political negotiation and compromise (Page, 2001), where concerns of simplicity, inoffensiveness and liveability are likely to be difficult to anticipate and easy to sacrifice. And the primary concern of the courts is to resolve retrospectively a specific claim of unlawfulness, rather than to prospectively create law for future and general application. In short, there is much in the routine business of lawmaking that stands in the way of crafting legal provisions that facilitate compliance. And yet, our study shows that it is not impossible and some such provisions do exist. They may be exceptions to the rule but, in some respects, are all the more important because of that. In any event, if we want to understand the reality of policy delivery on the frontlines, we must not close our eyes to their existence and possibility.

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[i] The Housing Act 1996 applies in both England and Wales, and there is similar legislation in Scotland. However, post devolution homelessness law is diverging across the three jurisdictions. This study focuses on three local authorities in England.

[ii] Housing Act 1996, s.189

[iii] In 2002 the priority need categories were extended to include some other groups of single people e.g. all 16 and 17 year olds and 18-21 year old care leavers, together with others who also had to be "vulnerable" as defined such as former prisoners or members of the armed forces. Equally, a single person may be in priority need by virtue of being homeless as a result of an emergency. None of these were included in the study.

[iv] These geographic descriptors are used as pseudonyms for each of the study areas throughout the rest of the paper so as to preserve their anonymity.

[v] *R. v. London Borough of Lambeth, ex p. Carroll* (1987)

[vi] In December 2014 the Supreme Court head three appeals from Court of Appeal decisions on the meaning of "vulnerable": *Kanu v London Borough of Southwark* [2014]; *Johnson v Solihull MBC* [2014] and *Hotak v London Borough of Southwark* [2013]. The decision of the Supreme Court was given in May 2015.