

Enhancing responsiveness and consistency in regulatory bureaucracies: comparing collective work using discretion pragmatically versus formally granted discretionary room at inspectorates in England and the Netherlands

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Abstract

Discretion used to be considered a feature of individuals, but growing literature shows that it has collective features as well. To develop understanding of the individual and cooperative work inspectors do using discretion and the discretionary room granted to them, we compared two inspectorates; Care Quality Commission (CQC) in England and Joint Inspectorate for Youth (JIY) in the Netherlands. Our analysis reveals that inspectors engage with colleagues, managers and stakeholders to include other perspectives, gain mandate and broaden their repertoire. At CQC, inspectors use their discretion collectively; on their own initiative they involve others to interpret, balance, and deviate from rules to reach judgments. At JIY, teamwork is central and regulatory teams are granted collective discretionary room. We argue that collective work permits both responsiveness and consistency. In studying the judgments of inspectors and other street-level bureaucrats, it is vital to look at collective work and how it combines consistency and responsiveness.

Keywords: discretion, discretionary room, inspectors, regulation, street-level bureaucrats

Introduction

Traditionally, inspectorates of services such as health and social care are positioned in between central governments and the organizations carrying out public tasks. In this mediating role, regulatory bureaucracies are expected to exercise control over the quality of care, take action in cases of poor quality, and protect vulnerable people from harm (OECD, 2014). The consequences of inspectors' judgments may be far-reaching for the services they inspect and the people using the services. Therefore, it is important that inspectors do not make arbitrary judgments and that their judgments are fair. To do this, inspectors need to act consistently on the one hand (Tuijn *et al.* 2014; OECD 2014; May & Wood 2003), and be responsive to the specific case on the other hand (Bardach & Kagan 2002).

One strategy that inspectorates adopt to promote consistency is standardization of inspections, for instance, using an inspection framework with predefined criteria to reach judgments about compliance. However, a standard inspection framework cannot contain comprehensive criteria to cover the full range of situations that inspectors encounter. Not all judgments can be scripted beforehand. Moreover, over standardization may lead to inspectors 'ticking the boxes' and becoming less responsive to unknown or unexpected risks, which may have a negative impact on what they aim to achieve (Perez 2014; Walshe & Phipps 2013; Bardach & Kagan 2002). Reflexivity is put forward as one strategy to enhance responsiveness. Reflexive inspections are characterized by consensus with judgment based on experimental and participatory processes (Perez 2014; Sabel & Zeitlin 2012; Huising & Silbey 2011). Reflectivity stimulates flexibility and adjustment to specific circumstances, but may make the work of inspectors opaque and inconsistent (Perez 2014). It is generally agreed that inspectors need discretion to act responsively and come to balanced judgments (Sparrow 2000; Mascini 2013).

In the literature, discretion is often considered a feature of the individual professional worker, who interprets, balances or deviates from generic rules to make a decision. A particularly influential perspective in this literature is Lipsky's work on the use of discretion by public officials responsible for delivering policy on the front line (e.g. Hupe & Buffat 2014; Evans 2011; Lipsky 2010). Lipsky introduced the term 'street-level bureaucrats' for these workers. In the traditional literature, discretion raises concerns and needs constraining because its use is associated with variation between workers, which potentially has negative consequences on consistency and fairness. More recently, a

growing literature suggests that discretion can be used to benefit both workers and the organization, as it increases responsiveness and flexibility to advance organizational purposes (Piore 2011; Silbey 2011). Workers' uses of discretion are significantly affected by collective and organizational dynamics, which create constraints and incentives to possible courses of action, among which the degree of discretion granted.

In the literature, discretion often figures as a broad term with multiple meanings. Hupe (2013) distinguishes between discretion and discretionary room. In this paper, we adopt that distinction. We use 'discretion' to refer to the behavior of the individual worker interpreting, balancing, and deviating from rules. We use 'discretionary room' to refer to the organized space that allows workers the freedom to make a choice among various courses of action (Hupe 2013).

Our paper aims to contribute to the understanding of how inspectors, who need to act consistently and responsively at the same time, use discretion and their discretionary room in the regulatory bureaucracies in which they operate. We focus on how inspectors involve others to make their judgments in the context of their organization. We compared the work of inspectors assessing the provision of care at two inspectorates with different organizational forms; Care Quality Commission (CQC) in England and Joint Inspectorate for Youth in the Netherlands (JIY; *Samenwerkend Toezicht Jeugd*). While CQC inspections might be considered standardized and, at the time of our research, conducted primarily by individual inspectors, JIY inspections used reflexive processes carried out by teams. Thus, there were considerable differences in the individual and cooperative work inspectors performed to reach their judgments and use their discretion. Based on the comparison of the two inspectorates, we argue that inspectors create collectives to use their discretion effectively. This entails engaging other people – inspectors, managers, experts, and stakeholders – and incorporating their skills, knowledge, and authority in their work. The way discretion is used depends on the inspectorates' organizational form. Whereas at CQC engaging others was mainly left to the inspectors' own initiative, at JIY teams of inspectors are granted collective discretionary room. Although discretionary room is often referred to as freedom granted to an individual, we argue that collective discretionary room addresses worries about inconsistency in the judgments of individual inspectors as it places limits on individual variation, while allowing enough room to make fair judgments that respond to the specific case.

The next section of this paper elaborates on the individual and collective features of discretion and discretionary room. Then we describe our methodology and the context of both inspectorates. Our comparative analysis of how inspectors create and use discretion is at the heart of the paper. Finally, we discuss our findings and draw conclusions.

Individual and collective aspects of discretion and discretionary room

Inspectors have been described as ‘street-level bureaucrats’, doing their jobs outside the purview of their managers in interaction with non-voluntary clients, and using discretion in their work (Walshe & Phipps 2013; Mascini & Van Wijk 2009; May & Wood 2003). Inspectors use discretion when they apply generic rules and regulations to specific situations that are often too complex to be reduced to scripted formats. They are compelled to interpret and balance rules, for instance to take account of the consequences of their actions for providers and people using the services (Mascini & Van Wijk 2009; Bardach & Kagan 2002).

Discretion is an important concept in understanding the work of street-level bureaucrats, and is taken to mean choice or judgment within recognized boundaries (Durose 2011). A classic formulation of discretion from Davis (1969, p.4; used e.g. in Tummers & Bekkers 2014, Evans 2011, Hupe & Hill 2007) is ‘whenever the effective limits on his [the public official’s] power leave him free to make a choice among possible courses of action or inaction’. This definition suggests that it is a feature of the individual. The use of individual discretion may have a negative impact on fairness. When workers follow their personal ‘logic of appropriateness’ (March & Olsen 2004), they make judgments that lead to variation and hamper equal treatment. There is considerable literature on the factors that influence judgments. Rice (2013) describes characteristics of street-level bureaucrats, such as their moral values, training and personal experiences, and the characteristics of the person they are regulating, such as demography, behavior, knowledge of rules and laws. These may tip the balance for or against ‘big-hearted’ or ‘mingy’ judgments (Rice 2013).

While discretion is ubiquitous in the workplace and nearly all rules embody matters of interpretation (Canales 2011; Hupe & Hill 2007), the negative impact on fairness has led to ‘fear of discretion’ (Pires 2011). In traditional literature on street-level bureaucracy, the emphasis is on how to constrain discretionary room (Maynard-Moody & Musheno 2012) by formulating more rules or hierarchical control by managers (Piore 2011). The use of

discretion occurs in a context of conflict between the organization and individual worker. While managers seek to limit their staff's use of discretion to encourage workers to act consistently and 'go by the book' (Bardach & Kagan 2002), street-level bureaucrats oppose this control as they feel the need to be responsive to the specific case (Evans 2011; Durose 2011; Lipsky 2010). Such tensions put individual workers under pressure and cause stress (Lipsky 2010; Bardach & Kagan 2002).

Although discretion is a feature associated with individual decisions and actions, workers do involve others in their decision-making. The use of discretion is increasingly considered to be embedded in and the result of relations with workers of other organizations rather than an accomplishment of the individual (e.g. Hupe & Buffat 2014; Sabel & Zeitlin 2012; Evans 2011; Ellis 2011; Silbey 2011; Huising & Silbey 2011; Pires 2011; Piore 2011). In this regard, literature on the sociological citizen is relevant (Silbey *et al.* 2009). Sociological citizenship applies to workers who understand themselves and their work as links in a complex web of interactions (Canales 2011; Coslovsky 2011; Haines 2011; Pires 2011; Silbey 2011). They are pragmatic, experimental, and adaptive, going beyond and outside the prescribed rules and processes, involving all kinds of relevant others to achieve the ostensible organizational purposes (Coslovsky *et al.* 2010). Huising and Silbey (2011) have named this practice of workers in regulatory bureaucracies 'relational regulation'. Although interaction with others is necessary to make relational regulation work, the involvement of others is considered the workers' own initiative.

This emphasis on individual initiative in relational regulation does not consider teamwork, when workers reach their judgments together. We lack the concepts to understand how judgments are made by teams or networks and the tension felt by teams to act consistently and responsively. We introduce the notion of experimentalist governance in teams to explore whether a collective view on discretion is relevant. The policy strategy of 'experimentalist governance' is used to tackle volatile and complex problems. Through experimenting in interdisciplinary teams, and monitoring and reflecting on progress and disruptions, workers cooperate to develop new methods and innovative solutions to advance organizational purposes. Rules are not a given; teams are allowed to transform and improve on them (Perez 2014; Sabel & Zeitlin 2012; Pires 2011; Piore 2011). Experimentalist governance departs from the organizational features that gave rise to ad hoc deviation from rules by the solitary street-level bureaucrat (Sabel & Zeitlin 2012). The

focus is on interdisciplinary teams that have been granted discretionary room as a resource strategy to advance organizational purposes.

The three bodies of literature described here have differing views on consistency and responsiveness. In traditional literature on street-level bureaucrats, organizational purpose is associated with applying rules to stimulate consistency and equal treatment, relegating responsiveness to the background. Consistency is not considered in literature on experimentalist governance, where acting responsively by transforming rules is prominent. Consistency and responsiveness are both included in literature on relational regulation. Sociological citizens are considered a distinct group of people, who work alongside another group of strict rule enforcers in rule governed organizations. While sociological citizens take a pragmatic approach to act responsively, strict rule enforcers strive for consistency (Silbey 2011; Coslovsky 2011; Canales 2011). Following literature on street-level bureaucrats and sociological citizens, in this article we acknowledge the importance for inspectorates of being able to act both consistently and responsively. In addition, in accordance with the literature on experimentalist governance, we recognize that inspections are not always done individually, but are also carried out in teams. In these instances, discretionary room is granted to teams. To discriminate between situations when discretion is formally granted to individual workers – individual discretionary room – and situations when discretion is granted to teams, we introduce the notion of collective discretionary room (see Table 1). We use this label for teams of inspectors granted collective discretionary room to reach judgments together, dealing jointly with the tension between rule compliance (consistency) and specific circumstances (responsiveness). We also distinguish between individual and collective use of discretion. We apply the notion of individual discretion to ways individual inspectors use their own ‘logic of appropriateness’ (March & Olsen 2004), interpreting, balancing, and deviating from rules to reach judgments and take action. In many organizations, individual workers use discretion on their own initiative as social citizens in cooperating with colleagues and people from other organizations (Rice 2013; Silbey 2011; Huising & Silbey 2011; Noordegraaf 2011; Hupe & Hill 2007). We use the notion of ‘collective discretion’ to refer to how individual inspectors pragmatically involve others at their own initiative to interpret, balance and deviate from rules to reach judgments and take action.

In this article, we compare the individual and cooperative work inspectors do to use discretion and to benefit from the discretionary room granted to them in two contrasting

organizational forms; one in which discretionary room is individual and the other in which it is collective. The next section describes how we conducted this comparative research.

Methods

This paper reports on part of a research project that conducted an international comparative analysis to understand the role of inspectors in the specific context of an inspectorate. The two inspectorates included in our study differ considerably. While CQC inspections in England are standardized and, at the time of research, were often carried out individually, JIY inspections in the Netherlands were reflexive and conducted in teams. We selected these inspectorates, with maximal variation, to gain a deeper understanding of the particularities of the specific contexts and shared patterns of inspectors' roles (Yin 1994). The literature describes a decentered, comparative approach as a context-sensitive method that acknowledges variations and brings together a team of researchers from various geographical locations. The locations are chosen because they have significant variability (Bourgeault *et al.* 2009; Wrede *et al.* 2006). The researchers shape the research questions in interaction, interpret the data together, and develop analytical concepts that have meaning across geographical boundaries (Wrede *et al.* 2006).

Our team consisted of four researchers from various disciplinary backgrounds at two geographical locations. We could therefore draw on the knowledge and expertise of the specific context of two countries. To compare the two cases, we combined interviews with inspectors with document analysis. CQC inspectors (n=11) and JIY inspectors (n=17) were interviewed for between 45 minutes to two hours. The inspectors varied with respect to professional background, experience as an inspector, age and gender. We used a semi-structured interview format to describe their daily work three situations they encountered in practice: one where the inspector was able to make a difference, one where things did not go to plan, and a third that the inspector considered routine. We also collected documents relevant to the role of inspectors, the inspectorates, and the broader organizational context. All interviews were audio-recorded, transcribed verbatim and read closely several times. In addition, we held two meetings with inspectors (one each at CQC and JIY) to discuss results. The notes on the conversations were included in the analysis.

Analysis was done iteratively, with multiple shifts between data and literature. In line with decentered comparative research, we held meetings to analyze and interpret the data and the two inspection contexts. At these meetings, we compared differences and similarities

and shared information through storytelling. We specified our research question and decided to focus on discretionary room and how inspectors use discretion. We also developed the notions of individual and collective discretionary room and individual and collective discretion as analytical concepts.

The first and second authors are inspectors at JIY and CQC, respectively. In their dual roles of inspector and researcher, they had access to data as well as much tacit knowledge about the work of inspectors in the social and political context of their country. A disadvantage of this dual role is that it raises the issue of methodological distance (see also: Rutz *et al.* 2013; Alvesson 2009). Tensions in the dual roles were managed in two ways. First, the research team meetings formed an important part of the analysis, with researchers questioning each other's interpretations. These discussions stimulated self-reflection and challenged locally situated assumptions. Secondly, we discussed the analysis with representatives of health and social care inspectorates from various countries (members of the European Partnership of Supervisory Organizations of services for health care and social work), representatives of various regulatory agencies inspecting services in other sectors in the Netherlands (e.g. Inspectorate for Education, Human Environment and Transport Inspectorate, Inspectorate for Social Affairs and Employment) and in meetings with other researchers. These audiences recognized our findings and provided us with examples of the collective work to use discretion and discretionary room at other inspectorates in various countries, which helped us to elaborate on and to enhance the reliability and validity of our analysis.

Context

This section describes the two contexts in which the studied inspectors do their work.

Care Quality Commission

CQC was set up in 2009 and brought together the inspectorates for health care, social care and the Mental Health Act Commission. The Health and Social Care Act (2008) outlined CQC's role to register services and inspect whether they were meeting standards set out in regulations. CQC regulates a broad range of health and social care services such as hospitals, care homes, home care, general practitioners, dentists and community health services. During inspections, inspectors used standardized instruments to collect evidence with a variety of methods including interviews with users of services and staff, looking at records, reviewing policies and procedures, and observing, in addition to considering data

about performance, and information gathered from stakeholders. They examine the evidence to assess whether the provider meets the predefined standards.

At the time of the data collection (January–May 2014), inspectors at CQC conducted inspections of small social care services, independent health services and dentists on their own. Inspections of larger organizations and all hospital inspections were conducted in small teams. The majority of services were inspected annually. Over 30,000 locations were inspected in 2013/14 (CQC, 2014). In about 85% of the inspections, services were judged to have met the expected standards. When the predefined standards were not met, a judgment framework was used to decide whether to ask the service to report how they would improve or to take enforcement action. Enforcement actions ranged from warning notices through civil penalties to placing conditions on registration and suspension or cancellation of registration. CQC inspectors are part of a strong UK tradition of neutrality and objectivity in public services, within which the principle of equal treatment of the public is very strong (Vandenabeele *et al.* 2006). However, the framework explicitly recognizes that judgments must consider the particular circumstances of the service provider. The CQC's model of responsive regulation reflects the pyramid of enforcement responses (Ayres & Braithwaite 1992); considering the individual situation, the impact of non-compliance on service users and assessing the ability of the provider to improve.

Recently, CQC has undergone considerable change in response to criticism of a lack of consistency in inspectors' judgments and for using inspection methods that did not differentiate between care sectors (Parliamentary Public Accounts Committee 2012). Since April 2014, CQC has had three inspection directorates (hospitals, primary medical services, and adult social care). There is sector-specific training for inspectors in those directorates and inspection methods that differentiate between sectors have been developed. Another prominent change is that inspections are often conducted by more than one inspector, possibly accompanied by one or more specialist advisers. Teams of 25 or more people, for example, inspect large general hospitals. In addition to CQC inspectors, there are advisers from outside CQC, such as nurses, consultants and 'experts by experience' (experience of receiving care) (Iacobucci 2015). To meet the challenge of ensuring consistent judgments, inspection methods are scripted and a quality assurance approach culminates in scrutiny by a national panel, to minimize variation.

Joint Inspectorate for Youth

Since 2003, five government inspectorates have cooperated in JIY: the Health Care Inspectorate, Inspectorate of Education, Inspectorate for Youth Care, Inspectorate for Safety and Justice, and Inspectorate of Social Affairs and Employment. Based on the Convention on the Rights of the Child, the focus is on the child. The partnership's inspections are mainly theme-based,¹ focusing on public problems concerning young people that cannot be solved by one organization or sector, but require synchronized contributions from many sectors. Examples are child abuse, obesity, youth offenses, addiction, and poverty. The partnership's intention is to contribute to solving problems on the local level (ISYA 2009). To achieve this, inspectors inspect a broad range of local services through all sectors providing services to children, including health, youth care, education, police, and social affairs.

Multidisciplinary teams of three to eight inspectors conduct inspections to reach collective judgments. Joint inspections include reflexive methods focused on involving all stakeholders to create solutions that match young people's needs, for instance in brainstorming and consensus-building sessions with professionals, managers of providers, and young people contributing to the inspections. Inspectors use a regulatory framework for their assessments, based on eight criteria (see also: Rutz *et al.* 2014). The framework and methods can be adjusted to specific circumstances or the theme under scrutiny. If providers are found to be non-compliant, they are encouraged to improve their cooperation and take concrete steps to create better outcomes for children and their families (ISYA 2009). Although the partnership lacks official enforcement powers, the inspection teams use their authority to convince providers to make the necessary changes. Individual inspectorates in the partnership can take enforcement measures if it is needed to stimulate compliance and improvement of services.

The Youth Act that came into force in January 2015 gave the inspectorates in the partnership the task of assessing local care systems for young people. A new framework for this task has been developed. In addition, the five inspectorates cooperating in JIY have developed a joint inspection program, which synchronizes regular inspections of services for young people.

¹ Inspectors also investigate critical incidents involving children.

CQC and JIY inspections and the organizational forms of the two inspectorates differ considerably. Table 2 highlights the key characteristics of both inspectorates. Despite the differences, there are similarities. Both CQC and JIY inspect quality of care, with inspectors using relatively open criteria for interpretation to arrive at a judgment. Consequently, inspectors at both organizations use a great deal of discretion in their work.

Results

To make a difference

Inspectors at both CQC and JIY were determined to make a difference to people using services, especially vulnerable people. In common with other public officials, they expressed altruistic motives, going beyond individual or organizational interests to concern public interest (Lipsky 2010; Vandenabeele *et al.* 2006). Inspectors emphasized that they could make a difference because of their authority as an inspector. In the interviews, inspectors illustrated this by referring to the relatively limited scope to take action they had in previous jobs. To quote an CQC inspector, who used to work in the commissioning team of a local authority:

'[I] started to tire of it a bit, mainly because of the lack of any authority really in terms of trying to get providers to do any actions or anything like that. So that's why I joined the CQC, to try and have a bit more clout and try and improve things.'

Because inspectors are in the position to make an impact, it is important that they do not follow their personal 'logic of appropriateness' (Tuijn *et al.* 2014; March & Olsen 2004; May & Wood 2003). Both inspectorates had set rules to stimulate consistency. At CQC, standards were set out in regulations and the judgment framework promoted neutrality and equal treatment. JIY stimulated consistency through deliberative discussions among inspectors and between inspectors and managers, as part of the reflexive processes. JIY also had protocols on whom to involve in each phase of the inspection. For instance, before distribution to others, an inspection report first needed the approval of the team manager, managing director, chair and one of the chief inspectors in the program committee. Inspectors considered it important to follow these procedures. When a colleague inspector sent a report to an inspected service before the team manager and managing director had approved it, one JIY inspector commented:

'That is against how we want to work and against our procedures. An inspector cannot do this on his own without involving others.'

The action had serious consequences. The inspection was terminated and the inspector concerned was no longer allowed to work at the partnership.

Discretion use in two inspectorates

Organizational rules in the form of CQC regulations and JIY protocols held the promise that judgments would not depend on an inspector's own logic. The rules embodied a standard decision-making process. Yet, in many situations, inspectors could not rely on following rules, as illustrated by a CQC inspector who commented that 'every inspector has something that does not fit in the box'. In these situations, inspectors needed to find other ways to reach judgments and used their discretion to consider specific circumstances.

Organizational dynamics and form may significantly affect the use of discretion. CQC inspection work often involved inspectors going out on their own, taking responsibility for their own judgments. Even when they went out in small teams – for instance, to inspect a hospital – one inspector primarily made the judgment. An inspector explained:

'I wasn't leading the inspection so I didn't need to make a judgment, I just needed to feed back what I found. So I left it to [name] to make the judgment. I just said my evidence suggests this, but you need to make the judgment across everything that we've looked at.'

It was part of the organizational routines to make judgments alone. Discretionary room was granted to individual inspectors. This differed significantly from JIY inspections, in which cooperation and deliberation were key characteristics. One JIY inspector described his input into developing an inspection framework as contributing to a dialog with others:

Interviewer: 'Do you think that you were able to contribute to the development of the framework? Because that took a lot of deliberation, didn't it?'

Inspector: 'Yes, yeah, of course it was developed in a dialog with the others. My contribution came about through the discussion. So I can't tell you which part of the inspection framework is based on my input.'

Here, it was part of the organizational routine to make judgments together. JIY teams were free to develop inspection plans that matched the circumstances of the problem under scrutiny and to develop new methods or tools to conduct the inspections. Discretionary room was granted to collectives, which made individual input no longer discernible.

The cooperative work of making judgments

Although the CQC inspections may be considered mostly individual and JIY's as teamwork, we found that both regulatory bureaucracies' inspectors engaged others and created collectives to use discretion. Rather than using discretion individually, which might have a negative impact on fairness and consistency and make the individual inspector vulnerable to criticism (as shown in the example of a JIY inspector no longer allowed to work at the partnership), creating collectives gave inspectors additional skills and knowledge, and a broader mandate and repertoire. In this section, we describe the three kinds of collectives we found in the contexts of the two inspectorates.

Involving colleagues to create support

The first collective that the inspectors created concerned the involvement of colleagues in their discretionary judgment. In the literature, it is often described that professional workers should be granted discretionary room or trusted to use discretion because of their specialist theoretical knowledge, practical skills, defined codes of conduct and commitment to professional values and norms (e.g. Evans 2011; Durose 2011; Hupe & Hill 2007; Freidson 2001; Abbott 1988). CQC and JIY inspectors not only used their own skills and knowledge, but also needed the skills and knowledge of others to use their discretion successfully.

CQC inspectors, working mainly on their own, emphasized how much onus there was on the individual inspector in reaching judgments. An experienced inspector, describing taking action to confront poor practice, characterized this as follows:

'It was actually having the confidence in my own judgments and my own ability to stand up to them [the owners of a non-compliant service]. And I've got that, because I've got my background in regulation, I've got the legal frameworks, and I've got the expertise and knowledge.'

To limit isolation and create opportunities for deliberation, some inspectors had informal arrangements. One inspector explained that she and a colleague rang each other daily; it might be a quick 'hello' or a discussion about a tricky inspection. This inspector and her colleagues also arranged regular peer-support meetings to share learning, and weekly catch-ups by telephone conference to exchange views.

Because inspectors mainly worked individually, they needed to decide for themselves when to involve others in inspections:

'I think that the bottom line with that is that you will be faced with situations which are difficult, and I think it's knowing when to make a decision yourself, and when you need other people to help you make that decision.'

CQC inspectors involved colleagues when they wanted support and advice; when they wanted an impartial view, needed additional evidence, or if they felt they lacked specific or state-of-the-art knowledge. In the latter situation inspectors involved colleagues who had specific knowledge because of their background or experience. One inspector explained that colleagues consulted her on questions about mental health issues as she had the experience and in turn she consulted colleagues on other matters, infection control, for instance. CQC inspectors asked for information from advisers with specialist knowledge or expertise or invited them to join them on inspection visits.

J1Y inspectors also included the skills, knowledge, and expertise of others, combining them in the inspection teams. One inspector characterized inspections as a concerted effort:

'You are part of a project group. So you don't need all the skills yourself. I think that not everyone has to be able to analyze information, not everybody needs writing skills, and not everyone needs to be able to develop an inspection framework. But with your colleagues you are in a team and together you make sure the job is done.'

Literature describes involving colleagues in judgments as a way for workers to deal with work pressure and find gratification, and for managers, as an instrument for quality control (Hupe & Buffat 2014; Lipsky 2010; Bardach & Kagan 2002). In addition, we found that engaging colleagues and including others' knowledge and skills could benefit

inspectors as it enables them to act responsively while sharing responsibility for the judgment.

Including managers for mandate

The second collective that the inspectors created concerned the involvement of managers to gain a mandate for their actions.

At CQC, the majority of the services were judged to meet standards. If inspectors felt that standards were not met, they were granted discretionary room to consider the most appropriate action within the bounds of the inspectorate's judgment framework. If they decided compliance actions were appropriate (most common), they needed only their manager to confirm the decision. Inspectors and their managers used their discretion to consider the impact of both failure to meet standards and the service providers' motivation on service users. These aspects were crucial to the action inspectors decided to take. In situations where the stakes of their judgments were high, such as when there was a risk of moderate or major impact on service users or when there was persistent failure to meet standards, CQC inspectors involved their managers in a discussion. Inspectors organized a review meeting with their manager, often including members of the legal department. Inspectors presented information and set out the regulatory options, based on evidence on the service, and their view of the service's ability to improve. However, deciding what action to take on non-compliance was not always straightforward. An inspector compared this to balancing on a tightrope:

'It was quite difficult at the time to decide well should I make compliance actions, bearing in mind this home has never had compliance actions before, or should I issue a warning notice which is quite a harsh action to take, bearing in mind that people [service users] generally told us their needs were being met. And it's a tightrope to decide whether the right action has been taken.'

In this case, the manager decided to take the stronger action. The manager constrained the inspector's use of discretion in favor of his own. The inspector suggested this was because the CQC had decided to be seen as tougher than before because of external criticism. This manager tended to consider additional considerations.

Similarly, managers at the JIY took into account aspects that the team of inspectors would not do on its own, such as political aspects, the perspective of the media, and whether the five participating inspectorates would approve. Inspectors at the JIY also needed to involve their manager in situations where there were high stakes, for instance, when the team of inspectors made major changes to the inspection plan or when they decided to make major adjustments to the inspection framework. Inspectors considered this flexibility to be an important virtue. This is illustrated by a situation where inspectors felt they needed to adjust the inspection framework for the care for vulnerable families with multiple problems. According to the inspection criteria, professionals providing support were expected to involve the families' social networks. However, during inspections, the team discovered that some people in the social network had a negative influence on the young people (e.g., relatives with a criminal history or other serious problems whose advice was detrimental to progress). Therefore, the inspectors adjusted the inspection criteria and involved the manager and one of the chief inspectors in confirming these. In this example, the inspectors engaged managers in their discretionary room to improve the rules and apply these new rules to other situations as well. In this regard JIY's approach showed similarities with experimentalist governance (Sabel & Zeitlin 2012) which gives teams broad discretionary room and uses their experience to improve the approach.

Engaging stakeholders to create extra options

The third collective that the inspectors created, concerned engaging stakeholders to extend their abilities to take action or to prevent harm.

For CQC, local authorities and commissioners of care for people are vital stakeholders because CQC could arrange alternative care and encourage providers to improve. A CQC inspector said that she looked for an alternative to cancelling the registration of a care home as there was no similar service in the area. This inspector involved the head office of the service and contacted the commissioners to persuade them to put extra pressure on the service to improve their quality of care. As the inspector used to work for the local authority, she found it easy to cooperate with the commissioners:

'And from there we've worked closely with the provider, with the local authority [...] But because I'd worked [there] at a more senior level, I knew the assistant director for contracting so I had those relationships in place. [...] The fact I knew processes and I

understood safeguarding and the collective care process [of the area] meant that I was able to work with others and move that forward.'

The inspector's activities with the commissioners led the care home to make the necessary changes. At JIY, inspectors also asked stakeholders to use their authority. For instance, they asked local authorities to impose conditions for care quality in contracts for services. Moreover, JIY added the authority and abilities of individual inspectors to the team's repertoire. One inspector explained that when she expected to meet resistance in a health care service, she introduced herself as a health care inspector instead of a JIY inspector. In these situations, she used the authority of her home inspectorate to convince people to cooperate. She used the metaphor of a lion to describe this authority:

'So in a lot of situations we encounter at JIY, you don't need the lion, because generally people are willing to cooperate and share information. But on some occasions [...] you do need the lion. It doesn't occur often, but it happens sometimes. [...] Mostly the advantage [of using formal authority] is that people agree to cooperate. It results in people giving you information you otherwise wouldn't have obtained.'

This inspector used her discretion to increase the options available to her in particular instances. This also increased the available options for the team, which usually relied on using persuasive arguments. Other team members asked this inspector to use her authority when they met resistance to cooperation in health care services:

'At the moment one midwifery service seems uncooperative. [...] So [name of a colleague] said to them: 'An inspector from your own inspectorate will call you'. I am fine with that, let me call and persuade them.'

The authority and ability of this inspector, related to her home inspectorate, were incorporated in the discretionary room of the team.

In summary, at CQC, discretionary room was individual and acting responsively was the responsibility of individual inspectors. Individual discretionary room was granted to decide whether services comply with the standards, and in situations of non-compliance to consider the impact of failure to meet standards on service users. CQC inspectors created collectives to engage others in their judgments, on their own initiative and outside

prescribed rules. As sociological citizens, they drew on their informal relations and used their discretion collectively.

At the JIY, discretionary room was collective and acting responsively was a shared responsibility of the team. Collective discretionary room was granted to develop inspection plans, methods, and tools, to stimulate scrutinized services to improve, and to adjust and improve rules. This did not mean that JIY inspectors did not use discretion individually. We found that inspectors did act on their own at times. However, using individual discretion made inspectors vulnerable to criticism. The relations inspectors drew on and the collectives they created provided them with a broader repertoire of roles, tactics, and opportunities. A CQC inspector could call on the knowledge of a specialist advisor to consider a judgment, and at the same time engage a manager in the discretionary room to decide which action to take against non-compliance and use the authority of local commissioners to prevent harm to service users. JIY inspectors could use the skills of colleagues to collect information from various perspectives, using the discretionary room to improve inspection frameworks, or the powers of 'the lion' to persuade services to cooperate. This broader repertoire may help inspectors to act responsively and consistently at the same time. We elaborate on this in the next section.

Discussion and conclusion

In this paper, we compared two different inspectorates to analyze the individual and cooperative work inspectors do to use their discretion and the discretionary room granted to them to act responsively to specific situations. Our analysis reveals that inspectors create collectives to use discretion effectively. They engage colleagues, managers, and stakeholders to include other perspectives and knowledge, and to gain mandate and broaden their repertoire. The organizational context shapes the collectives and how inspectors are enabled to use their discretion and discretionary room. JIY formalized collective work, granting teams of inspectors collective discretionary room. At the time of our research, CQC granted inspectors individual discretionary room but as sociological citizens, individuals took the initiative to engage others and use discretion collectively. As described above, CQC had recently changed the set up of its inspections, now often conducted by teams, which created the opportunity for collective discussion of the evidence. However, scripted inspections may limit the team's repertoire to respond to issues not included in the inspection framework. The quality assurance process promotes consistency, but may be less responsive to the circumstances of individual providers. This

change in organizational context highlights the challenges for regulators in finding a balance between collective and individual discretionary room and being consistent and responsive at the same time.

In the literature individual discretion and discretionary room have been described as individual resources for street-level bureaucrats to act responsively (Hupe & Buffat 2014; Bardach & Kagan 2002). We found that discretion is used collectively. As social citizens, inspectors pragmatically involve others on their own initiative to interpret, balance and deviate from rules to reach judgments and take action. In the literature, sociological citizens conducting relational regulation are described as a faction of workers working alongside strict rule enforcers (Huising & Silbey 2011). Some scholars characterize sociological citizens as operating covertly in a regulatory bureaucracy that claims to be consistent, creating a more responsive organization but not openly (Coslovsky 2011). Here, responsiveness and consistency are considered opposites. However, collective discretionary room – organizing others' involvement and a shared space to act flexibly – allows for responsiveness and consistency at the same time.

Collective discretionary room enhances responsiveness in two ways. Firstly, it includes various perspectives and principles in reaching a balanced judgment. The involvement of other inspectors, managers, and stakeholders adds knowledge and skills and multiplies the number of angles from which to view the subject under scrutiny. This facilitates the ability to make complex decisions, balancing rules, context, interests, and understandings of the subject (Bardach & Kagan 2002; Thiele 2006; Pires 2011). Second, the broader repertoire available to inspectors may enhance responsiveness. If inspectors lack tools to do what they consider necessary in a particular case, the inclusion of other stakeholders may open up alternatives to stimulate compliance and improvement of the organizations under scrutiny. This broader repertoire is available not only to inspectors who may be viewed as sociological citizens with good relations at other organizations, but other inspectors may also draw on these relations and gain access to these alternatives.

Collective discretionary room may enhance consistency in two ways. Firstly, by working collectively, inspectors develop a shared perspective, and share knowledge and experience in reaching judgments and stimulating compliance and improvement. Other scholars have pointed out that discussion and reaching consensus can increase consistency of judgments (Tuijn *et al.* 2014; Pires 2011). Second, cooperative work done in collective discretionary

room opens up the possibility of adjusting and redefining goals, strategies, and tools, making them more practicable and effective. Therefore, collective discretionary room may not only reduce variance, but also enhance learning and the development of more effective ways of working (Pires 2011).

Collective discretionary room also has limitations. The work of engaging others, weighing various perspectives and reaching consensus is time-consuming. Collectives also constrain the flexibility of individual inspectors and the inclusion of others in the judgment does not always result in the judgment individual inspectors had hoped for.

Our findings have implications for the practice of regulatory bureaucracies and for research into discretion. Rather than controlling and constraining the use of discretion, it is important for regulatory bureaucracies to strengthen and organize collective processes to obtain benefit from discretion. This means that they should not leave the inclusion of others solely to the inspectors' initiative, but should organize processes for interaction between inspectors and their colleagues, and for engaging others outside the organization. In arguing for strengthening collective discretionary room, we do not suggest minimizing the importance of individual discretionary room or defining and adhering to rules. We have shown that collective discretionary room has limitations. In straightforward situations, individual inspectors can make judgments themselves (based on rules) and involving others would delay the process. In situations that need a swift response, individual discretion may prove invaluable in promoting compliance or improvement of services under scrutiny. The combination of individual use of discretion, cooperative work at the inspector's own initiative to use discretion collectively, discretion granted to individuals, discretion granted to teams, and a set of rules gives inspectors a broad repertoire to act in the wide variety of situations they encounter.

Based on our findings, we propose broadening the view on the use of discretion and discretionary room in two ways. First, to study inspectors and other street-level bureaucrats, it is important to look broadly at the collectives they create and the teams and networks to which they belong. The argument of contemporary scholars reflects this broader view of discretion; workers should be studied in context, including horizontal and vertical relations and institutional and systemic environments (Hupe & Buffat 2014; Rice 2013; Huising & Silbey 2011; Pires 2011; Silbey *et al.* 2009). The ways in which discretion is granted influences the way discretion is used (Hupe 2013). In our study, we showed that

discretion may be granted to both collectives and individuals and that it may be used both individually and collectively. How discretionary room is arranged and how discretion is used varies between regulatory bureaucracies and both are affected by organizational conditions. Although regulators from various countries recognized our findings when we discussed our analysis, our exploratory study was limited to two organizational contexts. Future research should focus on various ways to organize discretionary room and how its organizational form affects the collective and individual use of discretion.

Second, rather than viewing rules as the creators of consistency and discretionary room and the use of discretion as stimulating responsiveness, it is important to reconsider how consistency and responsiveness are related. Whereas literature on street-level bureaucrats presents consistency and responsiveness as two opposite ends of a continuum, and literature on relational regulation labels two distinct groups of inspectors, we found that consistency and responsiveness can be combined by organizing discretionary room collectively. As said above, our study was limited in extent. As it is vital for regulatory bureaucracies to act both consistently and responsively, this deserves further study.

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Tables

Table 1: The distinction between individual and collective work combined with the distinction of discretion and discretionary room, applied to the regulatory context

	Discretion	Discretionary room
	Interpreting, balancing and deviating from rules to make a judgment and take action	Organized space which allows the freedom to make a judgment and take action
<i>Individual</i>	Individual discretion - Individual behavior of an inspector interpreting, balancing and deviating from rules to reach judgments and take action	Individual discretionary room - degree of freedom formally granted to individual inspectors to reach judgments and take action
<i>Collective</i>	Collective discretion - Ways individual inspectors pragmatically involve others on their own initiative to interpret, balance and deviate from rules to reach judgments and take action	Collective discretionary room - Degree of freedom formally granted to regulatory teams to reach judgments and take action

Table 2: Key characteristics of the Care Quality Commission and Joint Inspectorate for Youth (CQC, 2014; Walshe & Phipps 2013; Rutz et al. 2013)

	Care Quality Commission	Joint Inspectorate for Youth
<i>Country</i>	England	Netherlands
<i>Year established</i>	2009	2003
<i>Number of staff</i>	2,148 (2013)	22 (2014)
<i>Inspectors</i>	Inspectors work from home. They have various professional backgrounds (e.g. social work, nursing, care work, research, governance)	Inspectors work in teams. They have various professional backgrounds (e.g. social work, teaching, legal, youth care, criminology, epidemiology)
<i>Inspections</i>	Assessing against standards to support enforcement	Measuring performance to stimulate improvement
<i>Regulatory focus</i>	Legislation-led regulator	Mission-led regulator