

**The politics of discretion: authority and influence in asylum dispersal**

Final Accepted Paper for *Political Geography*, 94, 102560.

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# **The politics of discretion: authority and influence in asylum dispersal**

## **ABSTRACT**

This paper considers how discretion, understood as both a capacity to make decisions and a form of influence that is often hidden, operates within the accommodation and support of asylum seekers. Combining critical discussions of discretion with accounts of a ‘local turn’ in migration policy, I argue that discretion plays a key role in shaping how policy is implemented and offers insight into the changing governance of asylum at national and local levels. Drawing on empirical material examining the development of the UK’s asylum dispersal system, the paper extends accounts of discretion beyond ‘street-level’ to argue for a focus on how discretion reflects different claims to institutional authority. Addressing four accounts of discretion in dispersal, I argue that tracing discretion can offer insights into how ‘implementation gaps’ in asylum policy are negotiated and how tensions between national and local governments are contained. Tracing discretion in this way may advance critical interrogations of power relations in welfare bureaucracies and develop understandings of institutional agency and influence within liberal democracies.

This paper examines the power relations governing the accommodation of asylum seekers in the UK. In particular, the paper considers how discretion, understood as both a capacity to make decisions and a form of influence that is often hidden, operates within the accommodation and support of asylum seekers. Exploring how discretion operates, and who maintains the right to exercise discretion, offers insights into the changing governance of asylum at national and local levels. Drawing on discussions of a ‘local turn’ within migration policy (Ahouga 2018; Doomernik and Glorius 2016), I argue that discretion plays a critical role in shaping how policy is implemented. This is not simply the discretion of ‘street-level bureaucrats’ (Lipsky 1980), faced with direct service encounters. Rather, discretion offers insight into how governing practices take shape and how negotiations of influence and authority operate in the grey areas of policy and governance (McConnell 2010). Thus whilst in border studies, discretion has been associated with the actions and judgement of the individual border official, and in public policy with the public servant, I draw attention to the discretionary capacities of different authorities and their relations to one another. In this sense, I examine discretionary capacity as a political tool that informs contemporary governance, and that advances geographical debate in two ways.

In the first instance, detailing how discretion is understood, how it is used, and what role it plays in navigating tensions between different actors, advances knowledge of how capacities for influence and authority are distributed and claimed in a context of welfare state restructuring. In the aftermath of widespread outsourcing, May et al. (2019:1258) assert that ‘what exactly constitutes the “state”’ in discussions of the welfare state ‘is no longer clear’, as a convergence of bureaucratic practices and managerial tendencies between public, private, and third sectors blurs categorical distinctions. In response, they argue for a focus not on a public/private sector binary that has always obscured considerable hybridity (Martin 2017), but

on the bureaucratic logics of welfare encounters and how these are ‘deliberated, improvised, negotiated and experienced’ (May et al. 2019:1261). Considering how discretion operates within the convergences of a hybrid welfare state, offers insight into the changing positions of diverse actors, be they nominally public, private, or third sector institutions. In examining the role discretion plays in tensions between national and local government, this paper unpacks the assemblage of authorities, actors, and political claims that constitute the accommodation of asylum seekers in contemporary Britain.

At the same time, this paper goes beyond a critical account of discretionary authority, and considers how discretion names forms of decision-making, negotiation, and influence that are often hidden. Examining discretion in this way draws on recent debates over researching hard to access or hidden forms of knowledge (Belcher and Martin 2013; Williams and Coddington 2021), and discussions of the strategic mobilisation of ignorance and ambiguity as means of constructing, and controlling, knowledge of migration and its management (McGoey 2012; Scheel and Ustek-Spilda 2019). Within feminist political geographies, a concern with the power relations of obfuscation has begun to ask how forms of secrecy become objects of study, and what methodological resources may be required to address such obfuscation (Hiemstra 2017). For example, Bosma et al. (2020:10) argue that ‘what becomes important to understand about the secret is less its hiding per se, and more the way in which it structures social relations, regulates communication, and distributes political power’. Whilst discretion is not necessarily ‘secret’, it is nonetheless a capacity often hidden from view and, in doing so, serves to structure power relations. Discretion is thus a key dynamic within grey areas of governance. Situated between policy intentions and their implementation, discretion denotes one form of opaque negotiation and translation between policy and practice. As outlined through this paper, much work on discretion focuses predominantly on its function as a decision-making capacity or

power (Fassin 2014), and its connections to overlooked forms of authority and influence remain underdeveloped. In exploring how discretion operates, this paper brings to the foreground the subtlety of discretion as it affects negotiations of governance, knowledge, and secrecy. I argue that the politics of discretion are particularly suited to the forms of governmental remodelling seen in the asylum system over the last decade, as discretion operates as a governance tool that may help to manage the tensions of national policymaking and local policy implementation.

The paper develops as follows. The next section outlines recent debates over the governance of asylum support in Europe and a turn to examine the ‘local’. These discussions draw on analyses of multi-level governance to foreground how local governments may support asylum seekers and refugees despite restrictive national contexts. In looking to the UK, the paper places these European debates in conversation with critical discussions of discretion. Extending an account of discretion beyond ‘street-level’, I argue for a focus on how discretion reflects different claims to institutional authority. To illustrate, the paper examines four accounts of discretion. First, the loss of discretion felt by local authorities who no longer have the capacity to offer ‘under the radar’ forms of support to asylum seekers facing destitution. Second, the tactical mobilisation of discretion by local government to effect compromises that may temporarily improve, yet not undermine, a violent dispersal system. Third, the mobilisation of discretion to challenge national government and outsourced accommodation provision. Fourth, the defensive use of discretion by local government as a means of managing demands on resources, and avoiding blame for any adverse impacts of dispersal. In concluding, I argue that tracing the loss, mobilisation, and defensive use of discretion can offer insights into how ‘implementation gaps’ in asylum policy are negotiated and how tensions between national and local governments are contained. Tracing discretion in this way may thus advance critical interrogations of power relations in welfare bureaucracies (May et al. 2019), and develop

understandings of institutional agency and influence within liberal democracies (Hofman and Aalbers 2017).

### **GOVERNANCE AND THE ‘LOCAL TURN’**

Since 2002, the UK government has used the enforced eviction of asylum seekers who have exhausted their appeal rights as one pillar in a policy framework designed to deter. Whilst the UK was an early advocate for employing destitution as a means to encourage voluntary removals, other European countries have followed this path (Ataç et al. 2020; Könönen 2018; Spencer 2018). Recent work has focused on this issue to illustrate the ‘implementation gap’ between government policy on migration and the practices of those tasked with enacting policy ‘on the ground’ (van der Leun 2006; Üstübcici 2020). In particular, discussions of a ‘local turn’ have foregrounded the growing trend for municipalities to develop their own responses to migration that are distinct from those of the nation-state (Ambrosini 2013; Bauder and Gonzalez 2018).

Notable within these debates, has been the recognition that whilst restrictive policies may be legislated at a national level these are rarely implemented in full (Ataç 2019; Schweitzer 2019). Restrictions on welfare access that encourage the removal of asylum seekers, are often questioned, challenged, or undermined by local governments and street-level bureaucrats (Ataç et al. 2020; Kos et al. 2016). A multitude of actions is in evidence through such work, from municipal actors publically obstructing national policy in forms of ‘governmental activism’ (Verhoeven and Duyvendak 2017), to more mitigation-led ‘municipal activism’ (Spencer and Delvino 2019:27), where access to services is facilitated ‘in spite of, and to a degree mitigating, restrictive national legal and policy frameworks’. Taken together, Kos et al. (2016:356) suggest

a landscape in which local governments are finding ways of ‘cushioning, bypassing, resisting and counteracting various aspects of exclusionary asylum policies’.

Discussions of these emergent tensions between national and local government, have increasingly drawn on accounts of multi-level governance (Ataç et al. 2020; Caponio and Jones-Correa 2018). In this framing, cooperative forms of governance rely upon sharing responsibility between national and local levels, as opposed to more centralist models that present a top down policy framework. Where such patterns of responsibility break down, Scholten (2013) argues that we see ‘decoupling’, a state of contradictory policies and weakened effectiveness between national and local government. Thus whilst an ‘implementation gap’ in asylum governance refers to a grey area situated between policy design and its practice, discussions of ‘decoupling’ draw attention to a divergence in outlooks, interests, and priorities between different governance actors. Situations of ‘decoupling’ may be conflictual, as in the municipal activism of some Dutch cities, or more quietly negotiated. In the latter instance, Spencer (2018:2048) argues that cities may avoid conflict through finding means to provide welfare access ‘which is low visibility so that government can overlook, or potentially be unaware of, the ways in which its rules have been breached or circumvented’. These forms of mitigation constitute examples of a ‘shadow politics’, which extends rights to irregular migrants whilst avoiding open conflict with national government (Spencer 2018; Guiraudon 2004). The significance of such ‘low visibility’ negotiations is, as van der Leun (2006) argues, that they represent areas of discretion and, as such, are open to inconsistency.

The turn to examine ‘local’ configurations of refugee reception (Doomernik and Glorius 2016; Hinger et al. 2016; Werner et al. 2018), has thus offered critical insights into the relation between implementation gaps and the tensions of ‘decoupling’. However, with the notable

exception of Spencer's (2018) European-wide study, this work has largely overlooked the UK. Debates in the British context have focused on how mechanisms of 'everyday bordering' operate as a manifestation of a 'hostile environment' outlined in national policy and enacted through localised measures of hostility, discomfort, and abandonment (Yuval-Davis et al. 2018; Darling 2011). As such, the capacity for local government to contest, cushion, or rework policy has remained absent from these discussions. In the context of asylum, this is of critical importance as the role of local authorities has shifted significantly following the outsourcing of accommodation and support services in 2012. The impact of such a move has not only reshaped relationships of authority between national and local government, but also empowered private contractors as intermediaries between national and local arms of the state (Darling 2016a, 2022). In this context the politics of discretion takes on renewed importance, for whilst discussions on multi-level governance have noted the capacity for local governments to retain discretion over policy implementation, the nature and form of such discretion remains unexamined. To address this omission, I focus on critical accounts of discretion.

## **DISCRETION**

Discretion is a noun that refers to both 'the freedom, right, or ability to decide something' and 'the quality of behaving in a quiet and controlled way without drawing attention to yourself' (OED 2018). In many political discussions, the former meaning takes precedence, with discretion representing a means of interpreting rules, making decisions, and enacting authority. This account is most readily identified with Lipsky's (1980:3) analysis of 'street-level bureaucrats', described as 'public service workers who interact directly with citizens, and who have substantial discretion in the exercise of their work'. In studying these professionals, Lipsky (1980) argues that street-level bureaucrats produce pragmatic versions of public policy



that may differ from official accounts, but that are often tacitly accepted as a means of making policy work. For Lipsky (1980:xii), the ‘decisions of street-level bureaucrats, the routines they establish and the devices they invent to cope with uncertainties and work pressures, effectively become the public policies they carry out’, as their expertise and competence is mobilised to legitimate their decisions. This account has been highly influential, with discretion seen as a means to manage the uncertainty faced by street-level actors in a multitude of policy fields (Brodkin 1997).

Subsequent discussions have argued that the freedom attributed by Lipsky has been overplayed. Not only do resource constraints and managerial oversight hinder such freedom, but discretion is a relation to a set of rules, rather than a departure from them (Evans 2018). Highlighting the constraints on street-level actors, Evans and Harris (2004:887) argue that discretion represents a form of ‘condoned flexibility’ that ‘operates along a gradient, allowing different degrees of professional freedom within a complex set of principles and rules’ (881). Discretionary authority is thus positioned as ‘the freedom to act within prescribed limits, as granted by a legitimate rule maker’ (Hupe 2013:435), and therefore relies upon the legitimation of an authority figure or institution. In offering a latitude of interpretation and implementation discretion is a relative concept, foregrounding the space to manoeuvre relative to rules and the taking of ‘decisions about which of a number of different rules should operate’ (Evans and Harris 2004:882). As such, the relationship between rules and discretion is a dynamic one, with the application of rules never fully containing the capacity for discretion (Dworkin 1978; Hawkins 1995). It is for this reason, as Fassin et al. (2015) highlight, that the moral imaginaries and ethical conduct of those exercising discretion come to matter. As Schultz (2020) illustrates, discretion may be individual and collective, situated at the level of institutions and the individuals tasked with enacting policy. In both instances, discretion is influenced by the

institutional culture of different services and by the impact of governmental decisions. It is in this intersection between rules, discretion, hierarchies of authority, and the moral framing of institutions, that policies on migration enforcement are situated.

Drawing on such work, migration control has been argued to demonstrate a high level of discretionary power, not least because discretion is critical to the functioning of border enforcement (Kalir et al. 2019). As van der Woude and van der Leun (2017) find, the multiple actors and institutions that constitute the EU's border management systems, rely upon discretionary decision-making to sort and regulate migration. In exploring the origins of discretion, Hall (2017) argues that discretion shares a history with discernment, referring to both a judgement and a form of separation. As such, discretion is exercised as part of the act of dividing and determining claims. Whilst the rise of algorithmic technologies within bordering has created new forms of pre-emptive decision-making, this has meant the reworking of discretionary authority among front-line border officials, rather than its erosion (Hall 2017). For example, in her study of customs officers at the borders of Canada, Côté-Boucher (2016:59) shows how the increasing complexity of knowledge required of border officials produces a reliance on discretion as a 'complexity reduction strategy'. Drawing on experience, professional judgement, and the requirement to divide and determine claims rapidly, customs officers were constantly adapting to new information and rules. In this context, Côté-Boucher (2016:60) finds that 'the sheer number of rules gives one flexibility to choose among them to justify decisions'. As with street-level bureaucrats, in border enforcement discretion operates as a means of determining how, and what, rules are applied.

Taken together, these discussions foreground discretion as one mode of governing the complexities of decision-making. In representing a dynamic relation between rules and

freedom that relies upon the judgement, expertise, and legitimacy of the decision-making actor, the capacity to exercise discretion is a key political attribute. Focusing on the interconnections between discretion and the multi-level governance of asylum, thus offers insight into discretion not as a ‘street-level’ practice of individuals, but as a ‘meso-level’ practice of organisations and institutions vying for influence (Alberti 2021). This is to position discretion as a practice situated within, and helping to shape, the interstices between different authorities and institutions, the grey areas of governing between policy design and ‘street level’, reflecting an area of often intentional ambiguity (Schultz 2020; Stel 2021). Exploring the discretionary landscape of local authorities highlights how discretion is mobilised and employed within assemblages of authority that have been reshaped as accommodation contracts have been outsourced (Darling 2016a). One effect of which is to disrupt patterns of discretionary action, and to create new mobilisations of discretion as a means to challenge national government. As such, I propose discretion as a governance tool situated at the interface between work on street-level professionals and work on municipal activism, in which local authorities assert authority in ways that question the work of the nation-state.

## **RESEARCHING DISPERSAL AND DISCRETION**

This paper forms part of a project that examined the UK’s asylum dispersal system, focusing on four cities, Birmingham, Cardiff, Glasgow, and Sunderland. Through fieldwork between October 2012 and December 2015, this project explored how changing dispersal practices impacted local authorities, refugee support organisations, advocacy groups, and asylum seekers. Most notable among these changes was the transfer of accommodation contracts from consortiums of local authorities to three private providers in 2012. The security contractors G4S, the multinational services company Serco, and the housing company Clear Springs were

the new contract holders. These contracts, known collectively as COMPASS, marked a significant shift in the support of asylum seekers and centralised control over dispersal with the Home Office.

To examine this changing landscape, I conducted 105 interviews with a wide range of actors in asylum support. These included local authorities, policy-makers, asylum advocates and refugee organisations, the Home Office, and asylum seekers and refugees. In addition, policy documents from local authorities, the Home Office, parliamentary enquiries, and refugee support organisations were collated to document the political relations underpinning dispersal. Ethnographic observation work was also undertaken at refugee support organisations in each city, and at regional policy events, developing extensive field notes on support services and policy negotiations. In drawing these resources together, all interviews and field notes were transcribed alongside copies of all policy documents. The analysis that followed focused on identifying the relations between actors at the heart of dispersal, both nationally and in each city, before exploring how these relations had shifted in light of COMPASS.

Whilst this project did not set out directly to address discretion, this issue arose through an inductive engagement with interview materials, such that discretion emerged as an important dynamic in asylum governance and, at the same time, raised a set of methodological challenges. Most notable, is a consideration for how the often unseen nature of discretion can be drawn out, and for identifying the limits of such knowledge when examining how institutional power shapes everyday life. In part, these issues have been documented in work on ‘institutional ethnography’ (Billo and Mountz 2016), that utilises a range of ethnographic methods to consider ‘what people do as well as what they say’ (Herbert 2000:552). This is to consider the power of institutions as traceable through a combination of situated experiences, texts, and

narratives, as work on immigration bureaucracy has highlighted (Mountz 2010). At the same time, it has been argued that researching the grey areas of governing requires a more purposeful approach (Bosma et al. 2020). This paper's focus on discretion advances such arguments through traversing the often hidden nature of discretionary decisions whilst going beyond an institutional approach. In this vein, understanding discretion draws on Hiemstra's (2017) use of the 'periscope' as a methodological approach that develops a coherent, yet inherently incomplete, picture of the previously illegible. Building on studies of covert research subjects, Hiemstra argues that barriers to research are rarely totalising, offering partial traces of knowledge that can be carefully pieced together (Belcher and Martin 2013; Maillet et al. 2017). As Williams and Coddington (2021:144) comment, by 'mobilizing different methods of data collection, different aspects of the phenomena under study become visible, allowing us to piece together a more robust understanding than any individual method would allow'. Periscoping goes beyond a triangulation approach to explicitly interrogate the power relations of institutions and 'lay bare the violences concealed in gaps between public knowledge and restricted access' (Hiemstra 2017:330). The multiple perspectives of periscoping are of value in researching discretion not only because this approach sheds light on overlooked subjects, but also because it questions the power relations that shape discretion, critically interrogating who has the capacity for discretion, on what basis, and to what ends such capacity is mobilised. Taking work on discretion forward thus requires a sensitivity to where discretion surfaces within relations of governing, and an attentiveness to documenting how discretionary authority illuminates grey areas of governing.

At the same time, piecing together multiple forms of information make periscoping a valuable means of approaching fieldwork reflectively. In this instance, whilst empirical research was conducted a number of years ago, inductively tracing the patterns and politics of discretion

became possible only once able to reflect back across the full range of narratives, documents, and field notes produced. Inductively tracing discretion was a process of returning multiple times to empirical accounts, and, as such, periscoping offered a means to (re)approach these multiple sources in relation to recent events, and to look back across different materials and narratives to explore their interconnections.

### **DISCRETIONARY SUPPORT AND LOCAL GOVERNMENT**

The first account of discretion I explore focuses on how local authorities lost the capacity to take discretionary action in the case of asylum. The removal of discretion served to manage the ‘decoupling’ of policy goals between national and local government. Those seeking asylum are expected to leave the country if unsuccessful, whilst those granted refugee status are given a 28 day ‘move-on period’ to find suitable accommodation, access employment or benefits, and make the transition into the mainstream welfare sector. In reality, this move-on period has been widely criticised for not enabling refugees the time required to make a series of critical transitions (Refugee Action 2020). In both outcomes, the end of the asylum process marks a transition out of dispersal accommodation and into considerable uncertainty.

In conversations with local authorities, how to address the needs of those facing such uncertainty came to the fore, as Alan, a housing officer in Cardiff, noted:

One of the things we were allowed to do before, if it was a council property then we could swap that property from being an asylum seeker property to being a homelessness property. So the family could stay in that unit, but you cannot do that with Clear Springs. In terms of homelessness we rent over 200 houses in the private sector and

we'd just swap one. So the family could stay where they are, so they've moved from being an asylum seeker in a property to being a homeless family in the property... We can't do that now, now they go into council temporary accommodation or are homeless (Alan interview, 2013).

This practice, known as 'flipping', was highlighted as a valuable policy tool that allowed local authorities to manage the housing pathways of asylum seekers and refugees. Through 'flipping' local authorities could convert a property from dispersal accommodation to social housing at the point at which an individual received refugee status or required emergency accommodation following refusal. For those who had been granted refugee status, 'flipping' offered temporary security. At the same time, local authorities could maintain accommodation whilst assessing longer-term housing options. For those refused refugee status, 'flipping' afforded a short-term measure of relief and gave time to find alternative hostel accommodation, gather evidence for fresh appeals, and avoid immediate destitution. Whilst only a temporary measure, as Alice, a refugee policy coordinator from Glasgow commented, 'flipping' 'gave the council some leeway, they could buy some time and signpost people to support, and to housing projects and charities who might have space' (Alice interview, 2013).

The discretion shown by local authorities in 'flipping' properties to support asylum seekers is an example of the form of pragmatic response that Spencer (2018) argues marks attempts by local governments across Europe to maintain, or extend, support for irregular migrants. Citing potential problems of public health, reducing street homelessness, preventing crime and supporting community cohesion, she finds local governments justify interventions that offer support in a similar way to 'flipping'. In the case of asylum accommodation, such pragmatic justifications were clear, with Alan and Alice both pointing to the risks of homelessness.

Discretionary capacity is thus used to manage the perceived harm effected by national policy, in a similar sense to that described by Kos et al. (2016) in their account of Dutch municipalities supporting irregular migrants. They argue that the ‘provision of emergency reception and other facilities serves to *cushion* the negative effects of national policies...Municipalities feel responsible in respect to their mandate to maintain public order and public health’ (Kos et al. 2016:365, original emphasis). The pragmatism of short-term relief is evident, but Kos et al. (2016) also argue that by acting in this way, local governments are implicitly questioning the decisions of national government. Through providing a pragmatic safety net, local government raises the critical question of how such a situation arises in the first place.

In the UK, local government interventions did not go beyond this ‘cushioning’ role. Rather, in the move to outsource asylum accommodation to private providers since 2012, the discretionary capacity of local authorities to provide short-term relief has been removed. At the same time, the transfer of accommodation provision to private providers did not mean a transfer of discretionary practice for three principal reasons. First, private providers lack the capacity and incentive to offer discretion. Private providers approached the task of accommodating asylum seekers through procuring properties from the private rental sector but have, since 2014, found it increasingly difficult to meet dispersal demand. The impact has been a growing use of temporary accommodation in hotels as a stop-gap measure until dispersal accommodation is available. This not only means that private providers have no capacity to accommodate asylum seekers once they reach the end of the asylum process, but that providers have an incentive to see evictions take place in order to move new tenants into dispersal accommodation and out of expensive temporary accommodation. Any form of discretionary relief runs counter not just to the capacity of private providers, but also to the potential profits to be made in housing asylum seekers.



Second, private providers are constrained by their contractual agreements. Just as there is little incentive for private providers to act in ways that would harm their profits, there is also little incentive for them to go beyond, and potentially challenge, the terms of their contracts. Doing so would risk a critical relationship with government in a context of close ties between private sector contractors and multiple government departments (Crouch 2016). Contractualism of this form, as Raco (2016) argues, offers no formal grounds for discretion as decisions are taken at the point of contract development, with the subsequent process of delivering services being constrained by the initially outlined limits. Whilst this lack of contractual flexibility has been argued to enhance efficiency (Crouch 2011), it lacks the ability to adapt to changing conditions. In this sense, it runs counter to the pragmatic spirit of developing solutions ‘on the ground’, that typifies the discretionary decision-making of ‘street-level bureaucrats’.

Finally, private providers lacked the experience required to exercise discretion. As Hupe (2013) argues, the claim to legitimately act with discretion is built upon the track-record and expertise of the individual or organisation exercising discretion. Discretionary capacity is thus afforded more readily to those with greater expertise, knowledge, and experience of a field of policy (Pratt and Sossin 2009). In dispersal, the knowledge gap between local government and private contractors was significant at the point of transition, meaning that private providers had to rapidly develop expertise and experience in a new field of operations, often through the recruitment of staff from third sector organisations and charities (Darling 2016b).

The loss of discretion around ‘flipping’ for local authorities thus serves to highlight how discretion reflected the unique position of local authorities within horizontal and vertical relations of authority. Significantly, within a highly centralised governance structure, this is a

loss of discretion ‘upwards’, as the Home Office recaptured authority and further constrained the ability of local government to ameliorate policy measures designed at the national level. Whilst the practice of ‘flipping’ represented one means for local authorities to potentially ‘work round the system to be supportive’ as Sarah, a refugee support worker from Cardiff put it (Sarah interview, 2013), the room for such interventions was strictly limited, even before privatisation. Following the outsourcing of accommodation, such discretionary space is further reduced as private providers are not in a position to sustain any forms of discretionary support. This is not to say that individual contractors did not occasionally slow the enforcement of eviction orders to give families some leeway. However, this was extremely rare and was reliant on individuals at the ‘street-level’ taking exceptional action, often displaying a moral concern at odds with their expected conduct (May et al. 2019), rather than interventions at an institutional level that may shape how policy is practiced more widely (Fassin et al. 2015). In such instances, we see the distinction that Schultz (2020) identifies between individual and collective discretion in action, as the removal of a space for collective, institutional discretion within asylum accommodation served to constrain challenges to a logic of migration control driving policies on asylum support.

### **TACTICAL DISCRETION**

Whilst ‘flipping’ was significant in responding to the end of the asylum process, there were other forms of discretion that relied less on acting ‘under the radar’ of government policy, and more on negotiating the limits of policy openly. In these instances, discretion carried a tactical value in influencing the implementation of policy, designed to ‘seek nontrivial improvements and alterations to existing practices’ without advocating a wholesale rejection of current approaches (Gill et al. 2014:374). As Gill et al. (2014:379) argue in relation to asylum support

groups, tactical forms of intervention seek to improve conditions for asylum seekers ‘by dealing with the state on its own terms’ (de Certeau 1984). The tactical use of discretion was therefore a means for local governments not only to avoid conflict with national government, but also to seek improvements to existing practices.

These discreet negotiations of dispersal were evident in the ability of local authorities to influence Home Office decision-making and its knock-on effects. In Glasgow, Fiona, who worked for a policy networking group, summarised these arrangements:

Glasgow’s quite a small place and people were working quite well together, one of the first issues that we focused on was case resolution where we convened a group that was made up of Glasgow City Council, Home Office, Scottish Government, and it was basically to say these are the numbers that are coming through the case resolution process. The Home Office were able to say this is the proportion that we think are likely to be granted status. And Glasgow’s able to look at its homelessness stocks. In Scotland all refugees are entitled to homelessness assistance, so that had the potential to create a massive burden on local authorities. So what we did was we had a group that sat down and said, these are the people that are coming through the system, this is the housing stock that Glasgow has available, and then the Home Office managed their decision-making so that those people were able to get into homelessness accommodation as quickly as possible (Fiona interview, 2013).

As with ‘flipping’, the discretionary negotiation of decision-making did not alter the nature of the decisions being made, it did not affect the outcomes of the asylum process or advocate for the rights of those refused to stay as with more ‘activist’ municipal examples (Ataç et al. 2020;

Kos et al. 2016). Rather, it provided a discretionary negotiation between local and national authorities, such that the demands of managing asylum caseloads for the Home Office were connected to efforts to manage housing stocks and homelessness among local authorities.

The introduction of private accommodation providers into the governance arrangements of dispersal threatened this discretionary arrangement. In Cardiff, Sarah noted that local authority homelessness officers rarely received details on forthcoming evictions from the provider Clear Springs, which hindered their ability to prepare emergency accommodation for those with refugee status (Sarah interview, 2013). As Bethan, a refugee support coordinator from Cardiff summarises, this left local authorities with less scope to shape when evictions were taking place:

It's not just here, there's a similar thing in Glasgow, in terms of that removal of the joined up nature of that flow, from being able to subtly influence with some discretion when those decisions are taken....that is then having a knock on to refugees who've gained status and their ability to access different bits of the housing market (Bethan interview, 2013).

The insertion of private providers as mediating actors in this relationship served to hinder 'joined up' working on asylum decisions, making it harder to connect the timing of decisions to local authority concerns around housing provision. Just as the practice of 'flipping' became impossible following privatisation, so this discretionary coordination also became much harder to sustain.

The tactical negotiations that discretion afforded were also evident in efforts by some local authorities to improve conditions in dispersal accommodation. In Cardiff, Dorothy, a council member, highlighted how the local authority sought to influence decisions on accommodation standards and services:

What's come up several times is, I hate to use the term 'critical friend', but that kind of voice, that carries more gravity from the local authority, to an organisation like Clear Springs, asking what are you doing about this? Rather than just one third sector organisation saying this isn't okay. It has more gravitas to say the local authority is considering a bunch of these issues and this keeps coming up. We talked about trying to improve the standard of the welcome pack. So they're [asylum seekers] not just getting a bare minimum checklist, but what can we do to make that more than just the bare minimum? So working with Clear Springs, to influence what we can and also kind of noting, well, actually this isn't up to standard, what are you doing about it? Rather than letting it slide. Because, even the private sector is under strain....but that doesn't mean it's okay to house somebody inappropriately, or to not support them to access the help they need (Dorothy interview, 2013).

The efforts to improve welcome packs that Dorothy cites are minor improvements within the wider dispersal system, but they are made possible by assuming the position of a 'critical friend' rather than that of an adversary in the implementation of public policy. The framing of the 'critical friend', from the perspective of local authorities, is thus both a tactical one – designed to enhance the possibility of improvements in provision – and a discreet one – designed to avoid open conflict with national government and even to avoid attention being drawn to the improvements being made lest such attention lead to criticism.

These responses highlight that context is critical to the dynamics of discretion. ‘Flipping’ and forms of tactical influence over decision-making and evictions, were far more commonly discussed in Cardiff and Glasgow than in Birmingham and Sunderland. This was not simply a reflection of the different political orientations of local government in each case, as in municipal responses in the Netherlands (Miellet 2019). Rather, it also reflected the nature and development of third sector support organisations in these cities. Both Cardiff and Glasgow have well developed refugee support sectors, including hosting the headquarters of the Welsh Refugee Council and the Scottish Refugee Council respectively, and were home to a number of integration networks set up since the start of dispersal in 2000 (Darling 2021, 2022; Wren 2007). Whilst the refugee community networks of Birmingham were by no means less established, the proximity of refugee networks to the devolved authorities in Scotland and Wales made a difference to the political and institutional context in Glasgow and Cardiff. Although immigration and asylum are areas of policy retained by Westminster, Scottish and Welsh authorities have competencies across a range of social policy areas, including homelessness and social cohesion, and have often taken more inclusive stances towards immigration (Mulvey 2018). Having the combined backing of devolved authorities and an established refugee support sector, gave greater weight and legitimacy to the decision-making of local authorities. The context of discretion therefore matters, as this shapes how likely discretionary decisions are to be taken, and how readily they will be challenged or questioned.

### **DISCRETIONARY FRICTION AND THE CHOICE TO INTERVENE**

In the negotiations noted above, discretion becomes a matter of ‘being discreet’, as much as it was a matter of autonomy, authority, and decision-making. Yet within the ‘decoupling’ that

marked this period, discretion also produced more overt frictions between those involved in dispersal. Two areas come to the fore when considering the accounts of those working in, and with, local government during this period. First, decisions to intervene and challenge private providers, and second, the avoidance of blame that came through non-decisions. These institutional responses rely on that sense of discretion as a capacity to interpret rules that Hall (2017:498) foregrounds in asserting that ‘discretion means making sense of rules, and making (constrained) choices about their relevance and (non-)use in distinct situations’. To understand how discretion produced friction, I will first focus on the discretionary application of rules, before considering the defensive mobilisation of discretion.

In the first instance, local authorities retained the ability to question the condition, location, and suitability of housing provided for asylum seekers. Ruth, a policy coordinator for a national refugee support organisation, noted that such oversight varied considerably:

It has been different in different areas, because in some areas there have been asylum teams who were in place, to do a lot of the support, signposting and troubleshooting. And before they worked with the private contractors, so they had a really good understanding of the needs of individual asylum seekers. They were able to link them into services at local authority level, which meant that they were being caught in a net before they fell into homelessness. In some of those areas, the asylum teams have either acted as a, kind of, critical friend, or have been really quite vocal in some of their work against Serco and G4S. Saying when it’s not appropriate to select housing in certain areas, and have been breathing down their necks when it comes to things like welcome packs and what service they are providing (Ruth interview, 2013).

The variability Ruth notes between different dispersal areas and providers, is discernible in the distinction between her account of local authority asylum teams working with private accommodation providers to identify potential challenges, and the breakdown in communication experienced in Cardiff between private providers and the local authority noted earlier. Again, this highlights the importance of local context in shaping how dispersal is enacted and how the presence of relationships between local government and private providers that pre-existed COMPASS may have eased these tensions.

Even in such collaborative contexts, Ruth notes that asylum teams sought to hold private providers to account for the service they provide. The COMPASS contracts entailed a range of requirements that accommodation providers must meet, including timeframes for addressing complaints and faults, the provision of welcome packs and information in multiple languages, and specifications for the provision of furniture, appliances, and household items. The extent to which Clear Springs, G4S, and Serco were meeting these requirements was subject to scrutiny by the Home Office. However, local authorities retained the ability to inspect properties and had a veto over the procurement of new properties on the basis of concerns over social cohesion. As Ruth highlights, in some cases local authority asylum teams, used this authority to push private providers to improve their services.

Whilst by no means widespread, this regulatory practice was notable where individuals sought to improve the quality of provision. In Sunderland, John a housing officer, argued that:

We have a good relationship with them [the sub-contracted housing company providing accommodation]. If there are issues with properties I will tend not to go to G4S, I will go to the landlord, and he knows by virtue of me going to him direct that it is an issue,



and he knows that if he doesn't sort the issue out then that's going to start reflecting badly on him. And if need be I'll take up cases and I'll enforce (John interview, 2014).

This enforcement of housing standards relies upon local authorities having retained a capacity to inspect properties. Yet in reality, very few local authorities continued to enact such oversight. In part, this was due to a lack of regulatory capacity following austerity (Hodkinson 2017), but it was also due to a desire to be relieved of an unpopular area of social policy. This was a point made by Laura, who worked for an asylum support organisation across the north of England:

Council budgets are being slammed down to zero, it's hard to persuade councils to take this on as a big issue when there's lots of other things that they feel they should put their money in. Sometimes though... they kind of do good things without telling anyone about it, because they know it's not a particularly strong local vote winner....if you have the right people working in some councils you're likely to get more awareness (Laura, interview, 2014).

John's account of addressing accommodation issues with landlords, and drawing on networks of connection in the housing market of Sunderland to do so, reflects both the supportive context of some local authority work that Laura mentions, and the uneven and unreliable nature of such support across, and even within, local authorities. With formal responsibility for asylum accommodation removed from local authorities, budget cuts and reductions in staff with expertise in asylum ensured that housing regulation became a matter of contingency and made choices on enforcement discretionary. Discretion is exercised to enforce rules that cut across the different actors and authorities governing dispersal, involving the mobilisation of local government's role in housing regulation to question the quality of provision offered by a private

company contracted through national government. Discretion in this instance represents the capacity to choose to question the practices of private providers and, through them, the contractual constraints and requirements of the Home Office. At the same time, discretion is exercised in the choice to act ‘without telling anyone about it’ as Laura notes, as interventions to regulate housing and enforce standards are taken that retain a tactical sense of discretion as a discreet action that avoids overt confrontation or attention.

### **DEFENSIVE DISCRETION AND FRUSTRATING DISPERSAL**

The final account of discretion takes the opposite stance, focusing on how local government may decide not to act or intervene. This ‘defensive’ use of discretion involves strategies of intentional ‘non-decision-making’ (Catney and Henneberry 2012). Drawing on public planning disputes and environmental campaigns, Catney and Henneberry (2012:560) argue that the fear of blame may lead policy actors ‘to avoid exercising discretion at all or, alternatively, to use discretion defensively’, in an attempt to ‘reduce perceived responsibility for policy and to deflect potential blame for implementing unpopular policies’. The sense of uncertainty and indecision that marks a ‘defensive’ use of discretion, is also reflected in Hall’s (2017:501) etymology of discretion, wherein the origin term ‘discretio’ means ‘not making a decision at all, hesitating in everything’. Indecision and the need to test one’s judgement were therefore constitutive of discretion as a form of governing (Hall 2017), and such traces remain in the use of discretion as a capacity for avoiding or deferring a decision (Eule et al. 2019).

In the case of asylum accommodation and support, defensive discretion enabled local governments to reduce the possible costs of dispersal through discretionary avoidance, and to frustrate the procurement of new properties through discretionary indecision. Whilst

privatisation brought to the fore a lack of communication between private providers and local government, it also enabled local authorities to avoid details of destitution they might otherwise be faced with. As Ruth recounted in the case of Birmingham:

If somebody has been given notice by the Home Office, and they are going to be leaving accommodation, then there has to be some kind of communication with the no recourse to public funds team. But nobody is being proactive in that regard, they are not saying here is a person that's just about to get to crisis point. And I have heard in other areas, like in Islington...there the local authority, whenever anybody is given notice by the Home Office, or when they get a positive decision and they are going to be moving on, they do a proactive community care assessment. So they are actually identifying something like one in three people who qualify for support. But obviously the more assessments they do, the more they will find that people need support. So I think there is a real reluctance to do anything as proactive as that, because they know it will cost them more money (Ruth interview, 2013).

Counter to local governments using their discretionary capacity to inspect properties and enforce standards, here local authorities are choosing a pathway of avoidance in order to limit the impact of evictions on their services. Whilst maintaining a strong refugee community sector, Birmingham was one of the first municipal authorities in the UK to publically remove its support for the accommodation of asylum seekers, thereby helping to lay the groundwork for privatisation in 2012 (Darling 2016a). The capacity for discretionary avoidance runs counter to the discretionary enforcement of standards seen elsewhere. Discretion in this instance goes beyond a decision to not apply certain rules or entitlements, and encompasses a decision not to explore how, and to what extent, entitlements may exist. In not assessing needs,

and not seeking to enhance communication between local government, private providers, and the Home Office, local authorities can sustain the policy intentions of national government and, simultaneously, reduce demands on their own services and resources.

Discretionary avoidance can also be employed to hinder the workings of national policy. The clearest example of this disruptive role was in the procurement of properties to be used to accommodate asylum seekers. Under COMPASS, private providers were required to gain the consent of local government to procure properties. In theory, this gave local authorities a veto over precisely where dispersal was located. However, in reality, the Home Office retained the ability to override such a veto and the conditions on which local government could oppose the use of a property were limited. In Cardiff, for example, housing officer Alan highlighted that;

With Clear Springs we do have a right to say if they can move into an area....We're allowed to consider community cohesion but other than that it's very limited really. Community cohesion, whether or not putting asylum seekers in that area would cause more problems (Alan interview, 2013).

From a Home Office perspective Stuart, a Home Officer manager, discussed the challenges of procurement:

They [local authorities] need a pretty strong reason for doing it [stopping the procurement of a property]...on occasions it's actually worked because they've stopped G4S procuring properties which simply aren't fit for purpose. I've seen a couple of the properties, and they're absolutely appalling....It is difficult though, G4S think the local

authorities are an obstacle, the local authorities think that G4S are solely about a profit and they don't care about the individuals (Stuart interview, 2014).

Decisions by local government to block or delay the procurement of properties for accommodating asylum seekers was, as Stuart indicates, a source of considerable tension. Such tensions are evident in evidence given by G4S to the Home Affairs Committee in 2016. In their written submission, G4S note that restrictions on procurement represented a key challenge to fulfilling their contract:

COMPASS providers are required to seek the approval of local authorities for each suitable property that is identified and which landlords approve for use for housing asylum seekers. G4S's experience has been mixed. Some local authorities readily accept asylum seekers being housed in their area, however many more do not. It is not the case that there is a lack of appropriate housing, rather it is a denial of access by local authorities which are unwilling to take part (G4S 2016).

The issue of procurement illustrates the antagonisms at the heart of the dispersal system under COMPASS. The ability to question and veto the procurement of a property was one of the only powers left in the hands of local authorities following privatisation, and its use was intended to address concerns over community cohesion that had grown throughout the first decade of dispersal. In the absence of more joined up models of collaborative working and communication, slowing procurement enabled local authorities to force private providers to explain their decisions and offered an opening for questions of social cohesion to be raised.

Defensive discretion is thus associated with two modes of (in)action. On the one hand, decisions from local authorities to remain uninvolved in the dynamics of dispersal and to remove themselves from policy discussions. Choosing not to act in a regulatory capacity, not to follow up on needs assessments, and not to question the policy decisions of the Home Office or the practices of contracted housing providers, all serve to sustain a distance between local government and asylum. As Weaver (1986:384) argues, ‘the best way for policymakers to keep a blame-generating issue from hurting them politically is to keep it off the agenda in the first place’. Not taking decisions and not acting on an issue become means of absencing local government from policy consequences and avoiding blame where dispersal proved unpopular. At the same time, decisions from local authorities to block or slow the process of property procurement, display an effort to use what power local governments retain to challenge private contractors to consider the wider impacts of dispersal policy. Read as such, the frustrations of G4S and the Home Office are directed at both the discretionary decision-making of local government that may reject procurement requests, and the discretionary non-decision-making of local government where councils are accused of slowing the process of procurement. Such practices of deferral were limited, but they indicate the challenging nature of negotiating decision-making in a context where local and national government are increasingly ‘decoupled’.

## **CONCLUSION**

In this paper I have considered how discretion operates within the governing of asylum. In doing so, I have looked to discretion not only as a tool of ‘street-level’ bureaucracy, but as a capacity for decision-making that reflects power relations within the practice of asylum policy. The ability to exercise discretion, to decide upon the selective application of rules, and, as

importantly, to determine when decisions will not be taken and actions deferred, all encompass important dynamics of legitimacy and authority. In the case of asylum dispersal, the privatisation of accommodation for asylum seekers has served to shift the dynamics of discretion available to local authorities, and increasingly strained relationships between local and national government. In this context, discretion matters because it offers a limited means for local government to question restrictive policies and to operate within the grey areas of governance. However, with the centralisation of accommodation effected by COMPASS, dispersal became a system more closely dictated by central government, detached from the influence of local government and more clearly orientated by a 'migration-control logic' (Ataç 2019). Even in those contexts where support for discretionary relief was most forthcoming, an emphasis on migration control became a dominant force following privatisation, as the hands of local government were increasingly tied. Allowing for constrained discretion enabled the 'decoupling' of governance to avoid conflict, as pragmatic compromises sustain the overall direction and structure of governing.

Understanding the dynamics of discretion may also advance a range of geographical debates beyond the case of asylum policy. For example, a growing focus on the role of lobbying and the influence of different interest groups over policy has emerged in both political and economic geography (Hofman and Aalbers 2017; Kuus 2014). These discussions could be developed with a critical engagement with discretion as an expression of power relations and capacities, in addition to the forms of influence and networking readily associated with governance elites. Similarly, discussions of the changing nature of state bureaucracies and their relationship with citizens provide further scope for unpacking the nuances of discretion as a tool of both expressing and disrupting authority. Critical work on food banks (Cloke et al. 2017), welfare provision (Høybye-Mortensen 2015; Zacka 2017), and the convergence of

statutory and voluntary modes of support in the wake of austerity (May et al. 2019), has drawn attention to the narrowing scope for discretion among welfare professionals. This work raises questions for further research, most notably on how discretionary capacity is unevenly spaced within the restructuring of the welfare state and its varied geographies at ‘street level’. Finally, a turn to examine discretion may help geographers to further detail the ‘messy, everyday unfolding of institutional operations’ (Billo and Mountz 2016:212). This is because discretion demands a focus on recognising often ‘discreet’ exercises of authority. Feminist approaches to interrogating power relations and institutional obfuscation offer valuable ways forward here (Hiemstra 2017; Williams and Coddington 2021), yet there is scope for further work, not least in embodying the effects of discretionary power, to appreciate how discretionary decision-making is understood by those affected as well as those empowered by discretionary capacity. Taking discretionary capacity seriously, and *looking for discretion* as a methodological approach, may further critique institutional power and offer a fuller account of its material effects.

Despite these openings, a concern with discretion as a political tool has clear limits. As Gill et al. (2014) argue, tactics are often wedded to a constrained framing of political possibility that can be connected to the more ‘radical work’ of opposing border control, but that risk co-option where such a connection is missing. It is this link between local authority tactics of discreet negotiation and the political mobilisation of opposition to asylum evictions, unsafe accommodation, and inadequate support, which is increasingly strained in a context of privatisation and outsourcing. As Ataç et al. (2020:128) are careful to highlight, the services provided by local governments to asylum seekers often support survival alone and do nothing to address the structural conditions of exclusion that drive national policies. In such a context, the link between discretionary action at a local level and wider opposition becomes disrupted



by the very focus on negotiated outcomes and ‘minor’ improvements that are kept discreet. The tactical improvements effected through discretionary negotiations are therefore both discreet and discrete, mobilising the duality of the term. First, in being quietly addressed through negotiated agreements and compromises, and, second, in being singular issues that do not accumulate or resonate beyond their specific contours. For example, in addressing a call for improved welcome packs, accommodation providers are able to contain potential disquiet and avoid a situation in which poor provision of information is linked to other issues. It is in precisely this way that discretion allows for pragmatic change, but at the cost of wider critiques. Discreet forms of ‘under the radar’ intervention may, as various interviewees have indicated, offer effective means to foster improvement, but discretion rarely encouraged more profound changes. Discretion, as both a decision-making capacity and as a subtle form of action, represents a tool of governing that sustains the structures and systems that give rise to discretion in the first place.

Despite these limits, Baumgärtel and Oomen (2019) see grounds for hope in discretion opening up forms of disruption to restrictive migration policy. They argue that as discretionary spaces emerge local actors develop expectations around their own role in supporting asylum rights, and increasingly may act in ways that diverge from national priorities. In the UK, some cases of this form of disruptive discretion are evident. For example, at the end of 2020, Islington council announced that they would not be complying with government legislation to make rough sleeping grounds for deportation (Bartholomew 2020). Whilst limited to non-compliance, this decision was part of a wider critical stance by the council towards a national policy focus on producing a ‘hostile environment’ for irregular migrants, setting local government at odds with national government (Ataç et al. 2020). Such hopeful cases must be tempered by a wider pattern of discretionary action that whilst supportive of asylum seekers,

has so far failed to coalesce into a more assertive challenge to the governing of asylum. Thus, whilst discretion may offer moments of protection, to anticipate that it can offer more than this is to lose sight of how discretion is a tool of governance as much as it can be a tactic of disruption.

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