

**Policy officials' second-order legal  
consciousness and its influence on the design  
of policies at the UK Ministry of Justice**

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## **Abstract**

Policymakers in central government are responsible for designing and maintaining an array of public services. Working together with their key stakeholders, policy officials sculpt a policy from its early outline to its eventual implementation. The aim of this paper is to analyse central government policy officials' 'second-order legal consciousness' – that is, their beliefs about their stakeholders' understanding of the law – and its impact on policymakers' decisions. This paper draws on data from 12 in-depth, semi-structured interviews with civil servants in the UK Ministry of Justice, focusing on their perceptions of some of their stakeholders' views of the law. The data reveals policymakers' second-order legal consciousness regarding their frontline colleagues, government ministers, Parliament, and the courts, and crucially, how this informs policy design. Much of the existing literature examines frontline operational officers' legal consciousness, and its impact on 'law in action.' However, this research demonstrates for the first time that policy officials in the UK Civil Service exhibit a second-order legal consciousness in relation to some of their key stakeholders during the policy-making process. This paper begins to fill an important gap by examining the impact of this second-order legal consciousness on law-making and implementation. Finally, this paper concludes by considering the opportunities for further research on the impact of officials' second-order legal consciousness on a range of public services.

## **Declaration**

I declare that this thesis is my original work, and I am the sole author. This paper has not been previously submitted for a degree or other qualification at this, or any other University.

All sources are referenced.

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## 1. Introduction

The Civil Service is central to the creation and execution of legislation, policies, and public services. In this paper, I explore central government policy officials' second-order legal consciousness – that is, their beliefs about their stakeholders' understanding of the law – and how this shapes government policy and legislation. Policymakers' stakeholders include, for example, government ministers, delivery partners across the policy area, end-users, Parliament, the judiciary, and interested third parties. Policymakers' perceptions of these stakeholders' legal consciousness have an impact in how policies are shaped.

From the outset, when a central government official is developing an initial plan for a new law or policy, they will usually have certain existing ideas about how the policy will end up being implemented, where it will apply, and who will carry it out. For instance, a new piece of legislation could give additional powers to a local, 'frontline' operational authority, and when implemented, can alter the way a system works in practice. This sort of change could have a significant impact on ordinary citizens' everyday lives. The perceptions which officials form and develop throughout the policy process strongly influence how policies are designed, how they are implemented by frontline officials, and ultimately, how they impact members of the public. My research aim is to explore how policymakers' perceptions of their stakeholders' legal consciousness influence the design of policies in the criminal justice system of England and Wales.

There is a wealth of existing academic literature on officials' legal consciousness, but much of this focuses on frontline officials and their experience of applying government policy.<sup>1</sup> For instance, certain limitations written into legislation may feel like a blocker or red tape, meaning that operational colleagues are left with limited discretion or autonomy when fulfilling their responsibilities. This literature is incredibly useful in understanding the challenges which operational colleagues face when exercising their powers. However, we can go further by examining the earlier stages of the process to find out why the policy was designed in this way, what was central government's intention, and what central government officials expect from operational colleagues during the implementation phase?

I will start by introducing the concept of second-order legal consciousness and its relevance in the context of central government policy officials. I will then summarise the policy cycle and

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<sup>1</sup> I will discuss some of the existing literature in Section 2 of this paper.

demonstrate how, throughout the cycle, officials interact with a multitude of stakeholders, each with varying degrees of interest and involvement in the policy.

In the final section of my thesis, I will demonstrate my findings from 12 in-depth semi-structured interviews with policy officials at the UK Ministry of Justice. Through my empirical research, I aim to draw out policymakers' perceptions of some of their stakeholders' legal consciousness, including frontline officers, ministers, Parliament, and the judiciary. Through my empirical research, I will discover central government officials' views of these various' stakeholders' understanding of the policy and the legal framework in which it sits. I will explore how these ideas shape officials' policy decision-making, from initial design to implementation.

My research will begin to fill the gap in the existing academic literature on government officials' legal consciousness. If we examine central government policy advisors' perceptions of their stakeholders' legal consciousnesses, we can better understand the challenges of policy design and implementation. Moreover, my aim is for my work to give policymakers an opportunity to step back and scrutinise how they work with their various stakeholders and better understand their perspective when putting policies into practice. I aim for my work to help bridge the gap between policy design and implementation, and lead to better quality policies which will have a positive impact on end-users across the criminal justice system.

## **2. Legal consciousness and second-order legal consciousness**

In this section, I will begin by defining some of the central concepts in this paper, firstly legal consciousness, then specifically, second-order legal consciousness. I will briefly summarise the existing relevant academic literature on legal consciousness, particularly its focus on frontline officials' perceptions of the law. However, the research done to date stops there and does not examine why the law is the way it is, why policies were drafted in this way, and how the policy's architects envisaged its implementation. We can go further and begin to unpick this, specifically, what policymakers think of their operational stakeholders' perceptions of the law, and how these ideas shape the law's design. In this section, I will draw out where the literature starts to do this, touching on central government officials' perceptions of the law and intentions when drafting policies. This analysis will set the context for the rest of this paper, where I will explore the notion of central government policy officials' second-order legal consciousness.

## Legal consciousness

An individual's legal consciousness refers to their overarching perceptions of the law, and the "ways in which [they] experience, understand and act in relation to law."<sup>2</sup> These perceptions are not necessarily permanent or invariable, just like an individual's perceptions or ideas about anything. An individual's perceptions of the society in which they live and the rules which govern it usually evolve as time goes on, and so their legal consciousness is an "everchanging, context-based concept, constantly altered by experiences and interactions."<sup>3</sup>

These perceptions and understandings of the law impact the individual's actions and decisions in their day-to-day life and work. "Consciousness is revealed not only in what people say, but also in what they do."<sup>4</sup> An individual's prior knowledge, expertise, and lived experience impacts their day-to-day actions and decisions.

However, the law does not automatically take priority over the various other factors that an individual considers in their daily life. "Law is both an embedded and an emergent feature of social life", but it may not have any "necessarily overwhelming power". The law is just one factor which a person considers, "intertwined... with other social structures."<sup>5</sup> The law may even become so engrained into our daily lives, that we may not actively notice it, question why a legal rule is in place, or how it came to be. Ordinary citizens may not ponder the sources or reasonings for legal rules. For many ordinary citizens, 'it is the way it is,' because individuals themselves cannot change the law, and they may even feel they cannot influence a change in the law. We may then ultimately expect the rules which govern our daily routines to be a certain way.

## Second-order legal consciousness

Relational legal consciousness is an umbrella term which refers to a person's "beliefs about the legal consciousness of any individual besides herself, or of any group whether or not she is part of it."<sup>6</sup> In other words, what does an individual think about how someone else perceives the law? More specifically, second-order legal consciousness refers to how an individual's

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<sup>2</sup> Cowan and Harding, (2021). Legal Consciousness and Administrative Justice. In *The Oxford Handbook of Administrative Justice*. Edited by Hertogh, Tomlinson and others. 1st ed. OUP at p. 437.

<sup>3</sup> Young, K (2014): Everyone Knows the Game: Legal Consciousness in the Hawaiian Cockfight, 48 *Law & Soc'y Rev* 499, at p. 502.

<sup>4</sup> Halliday, S, (2019): After Hegemony: The Varieties of Legal Consciousness Research, *Social & Legal Studies*, Vol. 28(6) 859–878 at p. 863.

<sup>5</sup> Sibley, S, (2005): After Legal Consciousness, *Annual Review of Law and Social Science*, Vol. 1:323-368, at p. 346.

<sup>6</sup> Young, K (2014): Everyone Knows the Game: Legal Consciousness in the Hawaiian Cockfight, 48 *Law & Soc'y Rev* 499, at p. 502.



legal consciousness is influenced by another specific person or group.<sup>7</sup> For example, “Person A’s legal consciousness is shaped by Person A’s beliefs or impressions about the beliefs... of Person B... with regard to the law.”<sup>8</sup> If Person A’s friend or colleague views a certain criminal offence as not very serious, their belief is likely to impact Person A’s outlook of that same offence, or even the legal context in which that offence fits. The greater number of people in Person A’s community who share the same view, the more likely it is that Person A’s view will be affected. As a result, ultimately, Person A may also perceive the offence as less serious, regardless of what the law actually says.

As Chimowitz and Young set out, Person A’s legal consciousness could also be affected by a group, (regardless of whether or not they are part of the group). For example, this group could be the organisation in which they work or represent. Over time, the group may have mutually developed their own processes, working culture and ideas in relation to the law. Especially if Person A is a part of this group, or works closely with this group, their perceptions of the law are likely to have been affected by the group’s perceptions. If this group is particularly sizable, powerful, and influential, this may lead to the group’s collective legal consciousness having an even greater influence on their own legal consciousness. “Legitimacy or illegitimacy (can also) contribute to perception of order.”<sup>9</sup> Here, by legitimate, I mean something which is justified and valid. “Law frequently ‘brands’ people (and groups) with formal roles and labels that carry social meaning.”<sup>10</sup> This meaning influences people to view that person or group as more legitimate in the eyes of the law, or the State. If Person A perceives the group as legitimate or trustworthy, this is likely to lead Person A to perceive their legal ideas to also be legitimate.

It is interesting to unpack which individuals’ or groups’ legal consciousness have the greatest impact on one’s own perceptions of the law. Within an individual’s wider community of friends or colleagues, which groups are most relevant, or hold the most importance? In due course, my empirical research will set out which key stakeholders’ respective legal consciousnesses had the greatest influence on my participants’ own legal consciousnesses, and the impact this had on their policy decision-making. This links heavily with an individual’s perceptions on the legitimacy of the group(s) in question, the size of the group, and its place and level of authority within the wider community or organisation.

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<sup>7</sup> Ibid.

<sup>8</sup> Chimowitz and Young, (2022): How parole boards judge remorse: Relational legal consciousness and the reproduction of carceral logic, *Law & society review*, Vol.56 (2), p.237-260 at p. 242.

<sup>9</sup> Young, K (2014): Everyone Knows the Game: Legal Consciousness in the Hawaiian Cockfight, 48 *Law & Soc’y Rev* 499, at p. 502.

<sup>10</sup> Ibid at p. 523.

I will set out in due course how an individual policy official's legal consciousness can be influenced by other colleagues' legal consciousness, or by the Civil Service's collective legal consciousness, and the impact that this has on their policy work.

### **The law through a frontline officer's eyes**

Much of the current legal academic literature focuses on the legal consciousness of operational delivery officials, and how it affects how they implement policies. The literature explores how "public policy... is delivered on the frontline", or in other words, "law in action."<sup>11</sup> This helps us to understand how operationally feasible a law or policy is. Moreover, a frontline official is likely to be the first or only person that a member of the public comes into contact with when accessing public services, so this literature is also incredibly useful in understanding how the public see and experience the law.

Frontline officers can see legal rules as unworkable and often impractical. From previous studies, we know that many frontline public servants, such as police officers often view the law as distant, alien, and illegitimate,<sup>12</sup> and as an obstacle which blocks real solutions<sup>13</sup> from being reached. The bureaucratic nature of legal rules imposed on officers is seen to be something which prevents them from dealing with issues in the community effectively. Officers may end up having to tell members of the public that there is not much they can do to solve their problem, because the law doesn't allow them to. This leads to members of the public feeling "a deep sense of mistrust (and) abandoned by the authorities."<sup>13</sup> Legal rules essentially prevent officers from building trust with the community, leading officers to continue to view as unworkable.

Frontline officers may also see the law as something which is forced on them, giving them little freedom in their decision-making, and little to no autonomy over how they exercise their powers. The law may feel them leaving powerless.<sup>15</sup> Officers are faced with a "system-led decision-making process",<sup>14</sup> a "bright line of algorithmic rules"<sup>17</sup> which control their course of action. The nature of this system is reflected in the way that certain public services are experienced by members of the public. Due to the rigid nature of the operational process

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<sup>11</sup> Halliday, Simon et al, (2012): Street-Level Tort Law: The Bureaucratic Justice of Liability Decision-Making, *Modern Law Review* 75, no. 3, 347-367, at p. 350.

<sup>12</sup> Hertogh, M (2018): Frontline Officials and Public Law. *Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life* edited by Marc Hertogh. London, Palgrave Macmillan, at p. 143. <sup>13</sup> Ibid at p.141.

<sup>13</sup> Ibid at p. 138.

<sup>15</sup> Ibid at p. 143.

<sup>14</sup> Cowan and Harding, (2021). Legal Consciousness and Administrative Justice. In *The Oxford Handbook of Administrative Justice*. Edited by Hertogh, Tomlinson and others. 1<sup>st</sup> ed. OUP at p. 453. <sup>17</sup> Ibid at p. 444.

that the officer must adhere to, members of the public are made to feel as if they are being processed.<sup>15</sup> The officer may not even be able to give them sufficient reasoning behind their decision-making, if the system doesn't allow for it, which leads to the public feeling as though the law is being imposed on them, without understanding why.

As we see across the literature, these experiences often lead frontline officers to view the law as less important during their day-to-day work. Instead of the law, officers may rely on their own "experience... personal instinct (and) intuition"<sup>16</sup> when exercising their role. Frontline staff want to respond effectively to the public's concerns and issues, so they seek "individual justice that emphasises individual solutions for specific problems",<sup>17</sup> something which the algorithmic, rigid legal system does not offer. Rather than following exactly what the law prescribes, officers may infer their own meaning from the legal rules and make a decision based on their own judgement, on a case-by-case basis. However, manipulating the legal system in this way requires the officer to have a strong grasp on the rules and how they work on the books and in practice. The law is "impossible to game or to resist, unless one knows... how to manipulate the machine itself."<sup>18</sup> An officer ought to have a strong understanding of the law as it's written and what is permissible within the limits of the legal system, in order to work around it. Arguably, a frontline officer with a weaker understanding of the law and how it's implemented is less skilled at making the law function effectively in their work, to deliver for the public.

The existing literature on second-order legal consciousness examines how a frontline officer's perception of the public's legal consciousness impacts how they exercise their powers.

"Second-order legal consciousness may shape enforcement itself...legally empowered actors' perceptions of how people subject to their authority understand law shape (its) manifestation."<sup>19</sup> For example, offenders who are knowledgeable about how the law or policing works may change their pattern of criminal behaviour to avoid a potential arrest or sanction.

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<sup>15</sup> Ibid at p. 449.

<sup>16</sup> Richards, S (2015): Unearthing bureaucratic legal consciousness: Government officials' legal identification and moral ideals. *Int. J.L.C.* 2015, 11(3), 299-319 at p. 308.

<sup>17</sup> Hertogh, M (2018): Frontline Officials and Public Law. *Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life* edited by Marc Hertogh. London, Palgrave Macmillan, at p. 142.

<sup>18</sup> Cowan and Harding, (2021). Legal Consciousness and Administrative Justice. In *The Oxford Handbook of Administrative Justice*. Edited by Hertogh, Tomlinson and others. 1<sup>st</sup> ed. OUP at p. 450.

<sup>19</sup> Headworth, S (2020): The Power of Second-Order Legal Consciousness: Authorities' Perceptions of "Street Policy" and Welfare Fraud Enforcement, *Law & Society Review* 54, no. 2: 320-353, at p. 324. <sup>23</sup> Ibid at p. 336.

Offenders “wise up... learn about... officers’ behaviour and adjust their own behaviour accordingly to evade enforcement.”<sup>23</sup> Subsequently, police officers may catch on to this and adjust their own practices in order to apprehend offenders.

Other citizens’ legal consciousness is also shaped by their perceptions of frontline officers’ legal consciousness. “People are more likely to support police if they see police as legitimate authorities, and are more likely to see police as legitimate authorities if they believe police act fairly.”<sup>20</sup> This is one of the key reasons why law enforcement authorities want to build a good relationship with communities in order to respond to crime effectively. As discussed earlier, if the law obstructs this, it negatively impacts the public’s perception of the law, through officers’ actions, or inaction.

To overcome this, frontline officers may once again seek to adapt how they apply the law, in order to gain trust and confidence from the communities they serve. Young’s study of cockfighters in rural Hawaii reflects this. “Everyone knows the game. The predictability of enforcement occurring at a regular time and in a regular manner allows cockfighters to understand the police’s actions as a component of the game.”<sup>21</sup> There is a common understanding between offenders and law enforcement officers. As long as these unofficial rules<sup>22</sup> are followed, the cockfighters can continue their activity, knowing they will evade arrest. “The fighters know that their actions are illegal, and that theoretically, they could all be arrested in one fell swoop. But... this doesn’t happen”.<sup>23</sup> Police officers’ decision to apply, or here, to *not* apply the law, impacts the fighters’ and wider communities’ opinion of the law. This “increases the fighters’ perception of the (criminal) activity as ‘valid.’”<sup>24</sup> However, the wider public still perceive the police and by extension, the law as legitimate and just. Officers still get “two ‘easy arrests’ each week, (they) give the larger community the impression that they are dutifully enforcing anti-cockfighting laws.”<sup>29</sup> Interestingly, in this example, the police force are choosing to *de facto* decriminalise cockfighting by manipulating the legal system and not enforcing the law on the books, giving the public a false impression of law enforcement. However, this proves successful and still has a positive impact on the wider community’s legal consciousness.

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<sup>20</sup> Young, K (2014): Everyone Knows the Game: Legal Consciousness in the Hawaiian Cockfight, 48 *Law & Soc’y Rev* 499, at p. 503.

<sup>21</sup> *Ibid* at 516.

<sup>22</sup> *Ibid*.

<sup>23</sup> *Ibid*.

<sup>24</sup> *Ibid* at p. 517.

<sup>29</sup> *Ibid*.

As I set out in this section, the current legal academic literature focuses on law in action and law enforcers' various frustrations at the lack of discretion that the law allows them, leading them to find suitable work arounds, in order to regain the community's trust. This begs the question as to why the law was ever designed in such a way?

### **A glimpse into policy design**

Although the existing literature focuses on the law through frontline officers' eyes, the frontline's reflections start to give us a glimpse of how and why the law was designed in such a way. Contrary to ordinary citizens' or the frontline's view, that the law is just the way it is, a series of decisions were made further upstream; design, testing, evaluation, and implementation, leading to the law being the way it is. By examining the earlier stages of the policymaking process, we get an idea of policymakers' legal consciousness, and how that influenced how the law came to be. From this analysis, we see that the law is often used as a method or tool to achieve a certain policy goal.

For example, where local authorities have an image of the law as a rigid, powerful influence which gives them little freedom in their decision-making, this is likely to be because the law is a device which central government has used as "a means of promoting policies decided upon elsewhere."<sup>25</sup> A conscious decision was made to not give local actors certain decision-making powers. This may be because, at the design stage, central government sought uniformity in how their polices would be implemented, to ensure as far as possible, that the end-users of the policy, (members of the public), would ultimately receive the same service. A more formalised decision-making process allows for greater consistency in implementation.<sup>26</sup> However, this central control inevitably results in a rigid system of rules and set decision-making model which local actors have no choice but to implement. This in turn leads to operational officers viewing the law as an external influence, detached from operational authorities' day-to-day realities.

Alternatively, local government actors may view the law as a facilitator, a green light, or a resource which they can deploy.<sup>27</sup> This is a much more positive outlook on the law. However, once again, the law is only perceived in this way because central government lawmakers devised it in this way. The law is designed to give local frontline officials the green light to

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<sup>25</sup> Cooper, D, (1995): Local Government Legal Consciousness in the Shadow of Juridification, *Journal of Law and Society*, Vol. 22, No. 4 pp. 506-526 at pp. 511-512.

<sup>26</sup> Halliday, Simon et al, (2012): Street-Level Tort Law: The Bureaucratic Justice of Liability Decision-Making, *Modern Law Review* 75, no. 3, 347-367, at p 353.

<sup>27</sup> Cooper, D, (1995): Local Government Legal Consciousness in the Shadow of Juridification, *Journal of Law and Society*, Vol. 22, No. 4 pp. 506-526 at p. 515.

act. But the law is often not an absolute, facilitative mechanism. Local actors are given the green light in prescribed situations, predetermined by central government, often with conditions and limitations attached. The level of discretion given to frontline officials may depend on the complexity and severity of the matters which central government expect frontline officials to deal with. “The more complex the nature of the claim, the less we might see the value of the decision-maker applying inflexible rules. The complexities... are less likely to be adequately captured in a scheme of strict rules.”<sup>28</sup> With this in mind, policymakers choose to draft the law as a facilitator, allowing for greater autonomy in individual decision-making.

The current literature has been incredibly useful in understanding frontline officers’ and the public’s legal consciousness. Frontline staff are sometimes understandably frustrated at the law for constraining their role and limiting them in responding to the public’s needs. In turn, members of the public may be left feeling let down by the law. Frontline officers’ experiences and accounts from across the literature leave us questioning why the law was drafted in such a way, and what was the lawmaker’s own intention and legal consciousness, when designing the legal system? I am aiming to take a top-down approach, scrutinising how decisions made by civil servants in central government are informed by their legal consciousness, and how they eventually filter down to the frontline. Policymakers’ perceptions of the law and of their frontline colleagues’ understanding of the law have a strong influence on their decision-making and are central to policy design. I will demonstrate this in the following sections of my paper.

### **3. Setting the scene: the business of policymaking**

Before analysing how a policy official’s second-order legal consciousness shapes policy, we need to clarify the definition of policy, who a policymaker’s key stakeholders are, and how they feed their views into the policymaking process. In the previous section, I delved into the academic literature on legal consciousness, setting out what legal consciousness and second-order legal consciousness mean, and their significance in the context of law-making. In this section, I will explain the policy process and demonstrate that throughout the policy cycle, officials interact with a multitude of stakeholders, each with varying degrees of interest and involvement in the policy process. I will demonstrate this through the lens of criminal justice policymaking at the Ministry of Justice. This background on the policy process will contextualise my findings through my empirical research, in the sections which follow. There

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<sup>28</sup> Halliday, Simon et al, (2012): Street-Level Tort Law: The Bureaucratic Justice of Liability Decision-Making, *Modern Law Review* 75, no. 3, 347-367, at p 353.

is a vast amount of academic literature on the ins and outs of policymaking, and literature which specifically examines policymaking in the criminal justice context, at the Ministry of Justice. My intention is not to tackle it in its entirety, nor is it necessary for the purposes of this paper. My key aim in this section is to set out a definition of the policy process and provide some context as to how policy officials work with and perceive their stakeholders, specifically in the criminal justice policy space at the Ministry of Justice, before delving into the detail of my primary research.

Public policy means the deliberate decisions of a government, or equivalent authority, towards specific objectives.<sup>29</sup> This includes for example, legislation, executive decisions, or government programmes, towards specific objectives set out in the governing party's manifesto.<sup>35</sup> Eventually, these government policies are carried out by street-level bureaucrats,<sup>30</sup> or the frontline. However, before skipping ahead to this final implementation phase, there are a number of other stages which policymakers must progress through, to go from an initial policy problem to a workable final product which seeks to solve the original challenge. Framing policymaking in these general stages is useful to understand the policy development process. In reality, developing policy may look slightly messier, which I will soon come on to.

“‘Agenda-setting’ refers to the first stage in the process when a problem is initially sensed by policy actors and a variety of solutions put forward. ‘Policy formulation’ refers to the development of specific policy options... ‘Decision-making’ refers to the third stage in which governments adopt a particular course of action. In the fourth stage of ‘policy implementation’, governments put their decisions into effect... Finally, ‘policy evaluation’ refers to the fifth stage in the process in which the results of policies are monitored by both state and societal actors.”<sup>31</sup> The UK Civil Service Policy Profession Standards<sup>32</sup> provides a practical framework of the key stages of the policy process, from early design all the way through to implementation. However, in practice, policymaking can be messier than as projected in some of the literature documenting the policy stages, or the Standards. Policymakers may find themselves muddling

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<sup>29</sup> Weible, C, (2017): The Scope and Focus of Policy Process Research and Theory. In *Theories of the Policy Process*, edited by Weible, C et al, 4<sup>th</sup> ed, Taylor & Francis Group, at p. 2. <sup>35</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Howlett, M and Giest, S, (2012): The policy-making process. *Routledge Handbook of Public Policy*. Edited by Howlett, M et al. 1<sup>st</sup> ed, Routledge at p.17.

<sup>32</sup> Civil Service Policy Profession Standards. Available from: [Policy profession standards - GOV.UK \(www.gov.uk\)](https://www.gov.uk/policy-profession-standards) [Accessed on 01/07/2024].

through what ends up being a rough, messy, non-linear process,<sup>33</sup> where they may revisit earlier stages, or examine questions that lie outside the scope of these defined stages.<sup>34</sup>

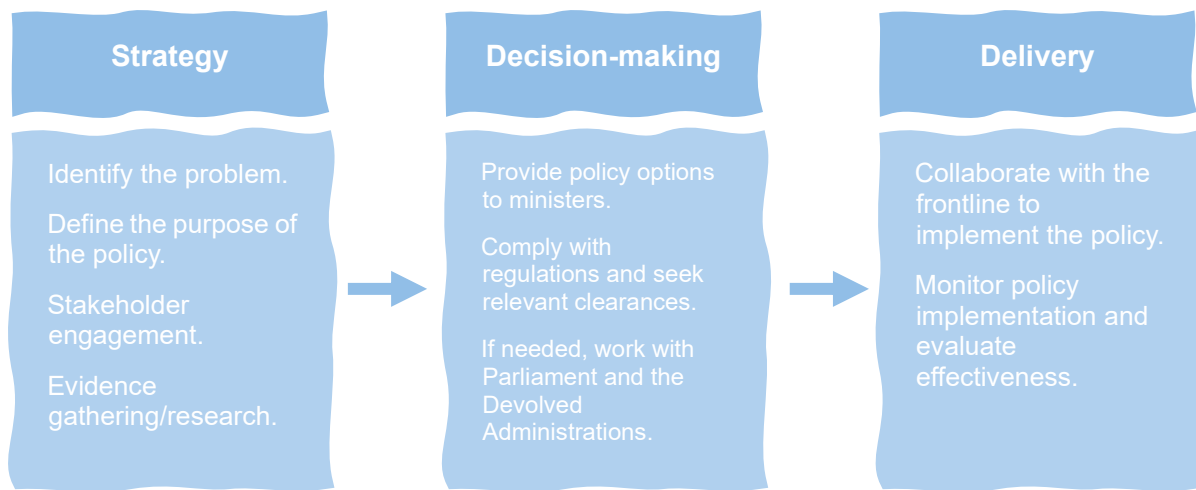


Figure 1

The policymaking process also involves numerous stakeholders who each play a vital role in bringing the policy together. These stakeholders can be organised into ‘networks’ or organisations that the government depend on to help meet their goals.<sup>35</sup> Government officials and their networks of stakeholders “develop clear connections with each other because of their shared interests.”<sup>42</sup> These connections and engagement can help government officials understand their stakeholders’ perceptions and preferences, how stakeholders feel about the current activities of government,<sup>36</sup> and any proposed future activity. Policymakers may also find themselves surrounded by numerous layers of networks of stakeholders, each with their own unique ‘stake’ in the policy area and each with their own legal consciousness. Every policymaker will have different stakeholders, depending on their policy area within government. These may range from departmental and cross-government colleagues, interested third party groups, ministers, Parliament, the frontline who are responsible for implementation, the people to whom the policy is directed, and the wider public. In the criminal justice context, these could include for example, government departments focused on crime and justice, victims’ rights groups, offenders and victims, the Justice and Home Affairs Select Committees, and frontline police, prison, and probation officers. The nature of these networks of stakeholders varies along a continuum, from those who are tightly knit to policy teams, to other networks, less well connected to central government, or more loosely organised or

<sup>33</sup> Lindblom, C.E. (1959): The science of “muddling through,” *Public Administration Review*, 19(2): 79-88.

<sup>34</sup> Cairney, P. (2011): *Understanding Public Policy: Theories and Issues*, 1<sup>st</sup> ed, Palgrave Macmillan at p.4.

<sup>35</sup> Hudson, J and Lowe, S (2004): *Understanding the policy process: analysing welfare policy and practice*. 2<sup>nd</sup> ed, Bristol Policy Press at p. 153. <sup>42</sup> Ibid.

<sup>36</sup> Franklin, A. (2020): *Stakeholder Engagement*, 1st ed, Springer at p.124.



focused on self-contained issues.<sup>37</sup> Each network will have varying degrees of interest and influence over the policy process. As a result, policymakers are likely to perceive each of their stakeholders differently, depending on who they are, how much influence or interest policymakers perceive them to have, and their relationship to government.

As I will eventually come onto when setting out my findings from my empirical research, policymakers may choose to focus on some stakeholder groups in their network over others. The stakeholders which my participants discussed the most were the frontline, government ministers, Parliament, and the judiciary. Existing academic literature describes how policy officials at the Ministry of Justice have engaged with some of these stakeholder groups in the past, and express wanting to account for their views when designing new policies: “As ever, the question of ‘who is in the room?’ is key: who is being consulted and indeed what officials are being empowered to lead on policy change?”<sup>38</sup>

For example, when it comes to the frontline, “many spoke of their efforts to be inclusive, to recognize the wide range of views within Probation... those affected by central decisions.”<sup>39</sup> Civil servants and ministers are keen to involve the frontline in policy design, to understand what they want and what works for them: “One thing that the [Probation Minister] was very conscious of was just the realpolitik of what do the people on the frontline want? What do the unions want?”<sup>47</sup> However, at same time, policymakers remind the frontline of the overarching policy “mission”, and the “expectations placed upon Probation”,<sup>40</sup> when implementing a policy.

In parallel, the literature acknowledges the role of government ministers during the policy process at the MoJ. Ministers are responsible for setting the direction on policies and making key decisions, and so government departments tend to follow their minister.<sup>41</sup> This leads to civil servants designing and implementing policies which their ministers want, despite their own reservations: “The ceaseless message from the Justice Secretary was to achieve the policy goal no matter the obstacles. ‘Yeah, we’re working day and night to get this thing that we think is essentially a bad idea through and as good as possible because we just have to

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<sup>37</sup> Hudson, J and Lowe, S (2004): *Understanding the policy process: analysing welfare policy and practice*. 2<sup>nd</sup> ed, Bristol Policy Press at p. 156.

<sup>38</sup> Annison H. (2019): Transforming Rehabilitation as ‘policy disaster’: Unbalanced policymaking and probation reform. *Probation Journal*, Vol. 66(1) 43–59 at p. 51.

<sup>39</sup> Annison, H. (2023): Making Good? A Study of How Senior Penal Policy Makers Narrate Policy Reversal. *The British Journal of Criminology*, XX, 1–18, at p.16. <sup>47</sup> Ibid at p. 11.

<sup>40</sup> Ibid at p. 13.

<sup>41</sup> Annison H. (2019): Transforming Rehabilitation as ‘policy disaster’: Unbalanced policymaking and probation reform. *Probation Journal*, Vol. 66(1) 43–59 at pp. 50-51. <sup>50</sup> Ibid at p. 49. <sup>51</sup> Annison, H (2018): The Policymakers’ Dilemma: Change, Continuity and Enduring Rationalities of English Penal Policy. *British journal of criminology*, Vol.58 (5), p.1066-1086, at p. 1075.

meet the deadlines. Grayling is not allowing us to stop.”<sup>50</sup> However, despite ministers’ clear intentions to get policies through, civil servants acknowledge the need to get their other stakeholders onside: “It wasn’t simply a matter of just bulldozing [a policy] through a clearance process because the Home Secretary wants this to happen. You needed to persuade people.”<sup>51</sup> The literature points to this process of deliberation, which was particularly apparent during the years of the coalition government.

The existing literature provides useful context of how policymaking works, the policy cycle, and where stakeholders come in. It also gives previous examples of how policymaking has been done at the Ministry of Justice, and how MoJ civil servants have previously engaged various stakeholders to inform their policy decisions. This helps us to understand some of the inner workings of policymaking at the MoJ, which will contextualise my findings through my empirical research, in due course.

#### **4. Research methodology**

This brief section sets out my data collection methodology and wider ethical considerations relating to my empirical research.

I am a civil servant at the Ministry of Justice, and so I have existing connections with many fellow policy professionals across the Department, and I was easily able to contact them. I recruited participants via email, which set out my research goals, the purpose of the interview, ethical considerations, and the request to them to take part in the research. Participants were not paid to take part in the research.

##### **Sampling and recruitment**

For the purposes of this study, I drew on a qualitative dataset of 12 in-depth, semi-structured interviews with civil servants in the policy profession at the UK Ministry of Justice, conducted from November 2023 to January 2024. My participants have a wide variety of experience working on criminal justice policies. I ensured that my participants were diverse in terms of gender, Civil Service grade and policy area. This was in order to encompass a range of views from policy officials with varying levels of experience, expertise, and responsibilities, across various policy areas. The views of my participants are their own and do not represent those of the government, the Ministry of Justice, or the Civil Service as a whole.

## Participant data by Civil Service Grade

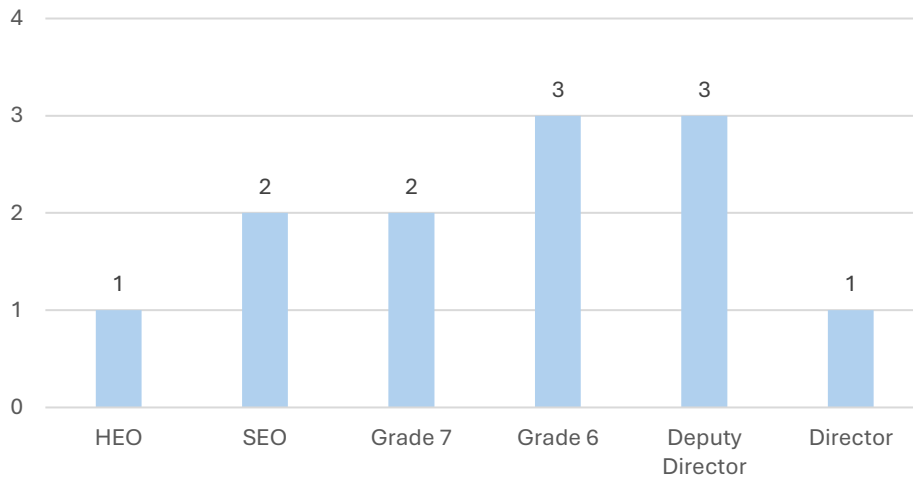


Figure 2

As per participants' convenience, my interviews were conducted either in person at a Ministry of Justice office or using videoconferencing via Microsoft Teams. All interviews were recorded and transcribed. All participants have been anonymised. The interviews took place with the approval of the Ministry of Justice Ethics Advisory Group, and the Economics, Law, Management, Politics and Sociology ethics committee at the University of York.

As I am also a civil servant at the Ministry of Justice, my methodology draws on best practice for insider research,<sup>42</sup> where the researcher interviews a group to which they themselves belong. This gives me greater access to my participant pool, and my participants may feel more at ease speaking to me, as an insider. As a senior policy official, I have worked through the stages of policymaking myself and my experience helped me to understand participants' experiences and perspectives. However, as I may have worked alongside my participants, and they knew me professionally, there is a risk of my participants' answers being impacted. This risk is minimal, given that my discussions centred around the general role of stakeholders in the policy process and officials' second-order legal consciousness, and did not touch on specific policies or any sensitive issues. As a civil servant, I understand the limitations on discussing policy-specific material,<sup>43</sup> and so my interview schedule avoided questions of this nature. I also ensured to not offer my own reflections on policymaking during the interviews, in order to mitigate against the risk of impacting participants' responses.

<sup>42</sup> Greene, M. (2014): On the Inside Looking In: Methodological Insights and Challenges in Conducting Qualitative Insider Research, *The Qualitative Report*, 19, 1-13.

<sup>43</sup> Cameron, B. (2021): Qualitative Insider Research in a Government Institution: Reflections on a Study of Policy Capacity. *The Qualitative Report*, 26(11), 3519-3533 at p.3521.

## **Interview schedule**

In the following three sections, I will demonstrate some key findings from my research. The interviews were semi-structured, covering key issues but allowing scope for the interviewee to shape the direction of the interview and to, to allow each conversation to flow with ease. On average, interviews lasted for 45 minutes. The interview schedule covered participants' general reflections regarding their previous experiences working on policies, specifically working with stakeholders. During the interviews, I asked participants about how they expected or perceived their stakeholders to think about the law and policies, i.e. their second-order legal consciousness, and how this impacted their policy decisions. Throughout the interviews, I asked participants for their views on a variety of stakeholders including the frontline, government ministers, Parliament, the judiciary, interested third parties, and the public. Most participants chose to discuss their perceptions of specifically the frontline, government ministers, Parliament, and the judiciary, more so than any of the other stakeholders. This in itself is an interesting finding. This may be because my participants considered these stakeholders to be more significant in the policymaking process. Moreover, because I gathered rich, interesting data on these specific stakeholder groups, I have chosen to focus the next three sections on my findings regarding policymakers' second-order legal consciousness in relation to these groups in particular.

## **Limitations**

It is important to acknowledge the limitations of my data. This is the first time that UK civil servants in central government have shared their views on their second-order legal consciousness in relation to their stakeholders. My objective was to research the views of a small group of officials who work in the criminal justice policy space at the Ministry of Justice. My sample size included 12 participants who worked across a variety of policy areas including parole, sentencing, probation, prisons, and youth justice. During the interviews, I asked participants about some of the stakeholders they work with. Therefore, my data does not capture the full range of views, experiences, and second-order legal consciousnesses of all policy officials across the UK Civil Service, in relation to all of their stakeholders.

## **5. The Frontline**

Frontline operational officers are ultimately responsible for implementing policy and legislation, and a policymaker will undoubtedly consider how a policy is to be operationalised, during its initial design and planning. The link between policy design and implementation is the focus of

a burgeoning literature across political science,<sup>44</sup> however the ways in which a policymaker's second-order legal consciousness in relation to the frontline shapes policy is worth exploring. In this section, I will demonstrate key findings from my empirical research, regarding policymakers' second-order legal consciousness in relation to the frontline. Through the data, I will explain policymakers' perceptions of the frontline's view of the law, depending on how tightly written the law is and therefore how much autonomy it allows frontline officers. I will set out participants' reflections on how they expect the frontline to apply the law as written, in practice. Lastly, I will use the data to unpick policy officials' perceptions and expectations of the frontline's legal consciousness linked to their understanding of frontline organisational culture and identity.

### **The frontline's perceptions of the law**

Participants generally responded that the frontline's perceptions of a policy depended on the policy itself, and how much flexibility and autonomy a policy offered them. Participants' views were mixed; some expressed that policies which delegate more autonomy to the frontline are generally more well received, whereas others believed that the frontline prefer a stricter legal framework in place.

*Generally, I think the more autonomy that is given, the more well-accepted the policy is.*

Participant 2.

*Operational partners I mean, will always object to be, you know, what they perceive to be being straightjacketed and sort of having autonomy taken away from them, and generally always be in favour of the opposite, I think.*

Participant 4.

According to these participants' responses, where hard law such as a piece of legislation, which specifies a strict legal framework, is imposed onto a frontline operational authority, the frontline may perceive it to be negative. Policymakers perceive that frontline staff think the law limits them on what they can say and do. These responses correspond with the current literature regarding frontline officials' legal consciousness.<sup>45</sup> Some policymakers expressed the need to factor their second-order legal consciousness into the policy design process, to make sure that a policy works effectively once implemented:

*Making sure that it [the policy] is flexible and it is able to move. Because if you just put an impossible structure in place, I just don't think people are going to be as willing to follow*

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<sup>44</sup> As set out under Section 3 of this paper.

<sup>45</sup> Cowan and Harding, (2021). Legal Consciousness and Administrative Justice. In *The Oxford Handbook of Administrative Justice*. Edited by Hertogh, Tomlinson and others. 1<sup>st</sup> ed. OUP at p. 453.

*it, because they're like, well this is physically impossible.*

Participant 2.

This response demonstrates that officials' second-order legal consciousness informs their policy decision-making. Participants recognise that putting a rigid, 'impossible' legal structure in place is likely to not be welcomed by the frontline and will instead be perceived by the front line as inflexible to changing circumstances on the ground, generally lacking operational feasibility. This may lead officials to draft policy in such a way that allows the frontline more flexibility and autonomy to respond to unforeseen circumstances, on a case-by-case-basis:

*You have to have a policy that is adaptable and malleable, and you can work around it, whilst being rigorous and, you know, there's a set structure in place but also like in said situation X, Y, Z is possible.*

Participant 2.

Taking the frontline's perceptions into account, policymakers design a piece of law which they anticipate frontline officers will perceive to be more workable, and 'malleable' to unpredictable situations on the ground.

However, other participants believed that the frontline perceive a stricter legal framework be a good thing, and prefer this to be in place:

*Frontline staff would like very clear and specific guidance because that protects them.*

Participant 12.

*What frontline practitioners are finding difficult is having to arrive at professional judgements in these cases when actually legislation could be braver and it could say, okay, if you're an individual convicted of X offence, then we think this should happen.*

Participant 9.

These participants' responses indicate that policymakers perceive that the clear lines drawn in hard law protect the frontline from having to make difficult decisions, as these decisions are made for them by the legislation itself. As described in existing academic literature, the legislation acts as a cushion or green light<sup>46</sup> which allows operational officers to make a decision and justifies their decision-making. The legislation may also protect the frontline from challenges, both legal and operational. These responses indicate that policymakers think that the frontline prefer or expect a legal framework to be imposed on them, and for some decisions to be made for them. These views expressed by policymakers are contrary

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<sup>46</sup> Cooper, D, (1995): Local Government Legal Consciousness in the Shadow of Juridification, *Journal of Law and Society*, Vol. 22, No. 4 pp. 506-526 at p. 515.

to the conclusions made across existing literature, which describe that frontline officers lament strict legal frameworks which leave them powerless.<sup>47</sup>

### **What do policymakers expect of the frontline?**

As I set out in Section 2, the existing literature on frontline officials' legal consciousness indicates that the frontline often view legal rules as unworkable leading officers to view the law as less important during their day-to-day work.<sup>48</sup> The frontline then 'bend' the law, and rather than apply it directly, apply their own intuition to real-life scenarios. Having established policymakers' general views on the frontline's perceptions of law and policy, I then asked participants how they expect the frontline to apply the law and policy, in order to investigate whether policymakers' expectations of frontline officials' legal consciousness aligned with the assessment set out in existing literature. Once again, participants' views were split with a clear majority; most participants expected the frontline to apply the law and policy exactly as written, whereas the minority accepted that uniform nationwide implementation of a policy was unlikely, given the vast number of frontline officers and their distinct organisational cultures. The split in participants' views indicates that policy officials' second-order legal consciousness varies, with regards to the frontline.

An overwhelming majority of participants expressed that they expect the frontline to apply the law and policy as it has been written:

*Certainly, the intention is that they would follow it, line-by-line, step-by-step.*

Participant 1.

*I have no concerns that we're seeing bits of system knowingly, deliberately, or egregiously breach the law.*

Participant 10.

Similar sentiments were expressed elsewhere in the sample, with participants stating that they perceive and expect frontline staff to follow the government's policy, "*to the letter*", (Participant 6).

Even when asked whether they expect the frontline to bend the rules when implementing policies and legislation, participants often said no:

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<sup>47</sup> Hertogh, M (2018): Frontline Officials and Public Law. *Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life* edited by Marc Hertogh. London, Palgrave Macmillan, at p. 143.

<sup>48</sup> Young, K (2014): Everyone Knows the Game: Legal Consciousness in the Hawaiian Cockfight, 48 *Law & Soc'y Rev* 499.

*It should be implemented as you expect it to be implemented. So, the expectation would be that it would be implemented, that they wouldn't bend the rules and that they would just do as they're told.*

Participant 7.

Interestingly, these findings greatly contrast with the existing literature on frontline officers' legal consciousness. As discussed in Section 2, the existing literature demonstrates that operational officers apply unofficial rules and manipulate legal systems, often to build trust with communities.<sup>49</sup> However here, the data shows that participants seem to either be unaware of this reality, or they choose to ignore it. Most participants expressed that they expect the frontline to apply the law exactly as written, and they don't have any concerns that operational officers bend the law.

A minority of participants said that in reality, the frontline cannot implement everything exactly as drafted, and there are likely to be "variations" in implementation.

*Do I expect them to follow it? Yes. Do I think they do? Probably not, not in all cases. But I also think it depends exactly what the change is. So, I'm pretty sure that if you legislate to require something to happen and you mandate it, they will endeavour to do that. If you issue guidance, I'm sure it feels a little bit more fluid. So, I think there's probably variations.*

Participant 7.

My empirical research also exposes policymakers' perceptions of the frontline's own distinct organisational culture and processes. The data speaks to a separation between central government and its operational arm, with its own distinct culture and ways of working. As discussed earlier in Section 2, an individual's legal consciousness could be affected by a group,<sup>50</sup> (especially if they are part of this group). This group could be the organisation in which they work. Over time, the group may have mutually developed their own processes, working culture and ideas in relation to the law. Some participants expressed that they thought that the reason for inconsistencies in policy implementation is down to organisational culture and operational capacity, rather than the nature of the legislation or policy itself. In other words, according to policymakers, it depends on which frontline authority is implementing the policy and how they identify as an organisation. These factors significantly impact the frontline authority's collective legal consciousness, which eventually impacts individual officers' legal

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<sup>49</sup> Young, K (2014): Everyone Knows the Game: Legal Consciousness in the Hawaiian Cockfight, 48 *Law & Soc'y Rev* 499.

<sup>50</sup> Chimowitz and Young, (2022): How parole boards judge remorse: Relational legal consciousness and the reproduction of carceral logic, *Law & society review*, Vol.56 (2), p.237-260 at p. 242.



consciousness. For example, a participant said that they perceive the Probation Service to identify as its own organisation, separate from the Ministry of Justice:

*In Probation they're technically part of MoJ. They don't see themselves as working for the Secretary of State for Justice, or the Lord Chancellor, or whoever. They work for Probation, and even though it's under the MoJ umbrella... it's not always seen as like one organisation and those decisions can feel very far removed. [There are twelve] probation regions in England and Wales, and they all deliver things slightly differently because they are different, and they're staffed differently, and they just have different approaches to different things.*

Participant 3.

As the Probation Service feels far removed from central government, by extension, the government's decisions which are imposed on Probation officers also feel foreign, and unexplained. Moreover, one participant with direct experience in a frontline setting reflected on their perceptions of the frontline's distinct organisational identity. Participant 5 expressed their views on the frontline's disconnect with policy, and indifference to why legal rules have come about, who created them and why.

*As a prison officer, you've no idea whether that's the, you know, the governor's come up with that idea or whether the government have passed a law that says everybody has communal dining on Tuesday, you've given it little thought, you're just thinking how do I make this work? Or, this is a good idea, isn't it? I actually think it's better or it's a rubbish idea because they're all throwing food at each other, you know.*

*I worked in a jobcentre [for] five years and I wasn't thinking in terms of who the Secretary of State was... there was just these rules that materialised from somewhere. We weren't thinking in terms about policy, it was just like that's what it was, you get on with it.*

Participant 5.

As Participant 5 reflects on both the Prison Service and their own experience in a different frontline setting, this disconnect could also simply be because the frontline's key priority is to 'get on with' the day job and focus on operational implementation, not to ponder the rationale behind the legal frameworks they are required to implement.

### **The impact of second-order legal consciousness on policy design**

The data demonstrates policymakers' second-order legal consciousness in relation to their frontline stakeholders, particularly how policymakers perceive and expect the frontline to think about the law. Moreover, the data also begins to reveal how this second-order legal consciousness impacts policymakers' decision-making.

Participants acknowledged that where they expect the law to be implemented ‘to the letter’, they have a role to play in ensuring that is communicated to the frontline:

*If you’ve got a specific view on how that policy should be put in place, then that is how it has to be done, and you’ve got to make that guidance pretty damn tight.*

Participant 11.

*You’d expect that to be implemented to the letter, and you do your best to clarify exactly what it was they should do.*

Participant 5.

*In the Prison Service there are documents called Policy Frameworks... or Prison Service Instructions, and those set out step-by-step, what individual staff must do to operate a certain function or policy in the system, whatever it may be; and those are there for a reason.*

Participant 1.

Participants’ second-order legal consciousness in relation to the frontline impacts the lever or instrument which they choose to implement a policy. Where central government wants something implemented to the letter, they issue clear guidance and policy frameworks, which frontline staff ‘must’ adhere to.

A participant also made clear that policy design and communication vary, depending on which frontline authority they are dealing with, that authority’s relationship with central government, and its own organisational culture:

*The level of autonomy that your frontline has, it can impact how you draft your policy, and your guidance, and your code of practice, for example. Yes, yes, definitely because you know how much control or not you’ve got over your frontline. You know, HMPPS, HMCTS, they are part of the Ministry of Justice, they’re part of our own workforce, so we’ve got a bit more direct influence over them.*

Participant 5.

Participant 5 explains that certain frontline bodies are inherently part of the Ministry of Justice, such as His Majesty’s Prisons and Probation Service. As central government have a high degree of control over this frontline authority, they can expressly set out how exactly they expect the frontline to implement the law, such as through strict policy frameworks,<sup>51</sup> as explained by Participant 1, above. The data shows that the frontline view the law as being imposed on them, as a direct result of central government officials’ choice of policy lever which allows central government to exercise a high degree of control over the frontline.

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<sup>51</sup> Ministry of Justice. HMPPS Policy Frameworks. Available from: [Prison & Probation Policy Frameworks - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/prison-and-probation-policy-frameworks). [Accessed on 14/05/2024].

The frontline's organisational culture also impacts how policies are communicated to them by central government officials:

*There is only so much we can do to fully understand what [43] police forces' ways of working are and what they do, and every Probation officer and their ways of working, and we'll work through our colleagues, so through HMPPS headquarters, they will issue communications. We work through HMCTS headquarters. They will issue communications. They've got ways of introducing change across their organisations.*

Participant 7.

*There's a Chief Probation Officer, there's CEOs. They can issue like, they issue the guidance, and I think, I don't know, maybe that helps because it's coming from someone within their own structure that they all kind of have a lot of trust and faith in, so that can help.*

Participant 3.

As discussed earlier, policymakers recognise that the frontline, such as the Probation Service, identify as their own organisation with their own ways of working, separate from central government. Despite central government officials' deliberate choice of policy vehicles which allow them to exercise control over the frontline, central government recognises that the frontline view themselves as their own entities and respect this organisational culture. Here, Participants 3 and 7 explain that they understand this nuance and encourage higher ranking officials in the Probation Service to communicate policy changes to their own staff, as there is an inherent level of trust within Probation. The frontline authority has their own 'ways of introducing change'. Allowing senior officials within the frontline authority to communicate policy changes may even alleviate other issues identified by participants, such as the frontline feeling as if laws are imposed on them. Existing academic literature points to MoJ policymakers using specific narratives or storylines to communicate their policy to Probation frontline staff, in order to justify their policy and deflect challenges from their operational partners.<sup>52</sup> As Participant 7 suggests, 'working through' the relevant frontline body, policy officials can convey "a narrative that has considerable cultural force", and potentially "alter the views of relevant policy participants."<sup>53</sup> The existing literature and my research demonstrate policymakers deliberately communicating policies in a certain way, and using the frontline's own organisational culture, to impact the frontline's legal consciousness. From participants' responses, policymakers do this to 'try and get them onside', (Participant 3, to encourage the frontline to execute the policy.

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<sup>52</sup> Annison H, (2022): The role of storylines in penal policy change. *Punishment and Society*, Vol. 24(3) 387–409.

<sup>53</sup> Ibid.

Another way in which policymakers are seen to try to impact the frontline's legal consciousness is by including them in policy decision-making.

*My policy approach has always been to bring delivery partners into the shaping and creation and design of the policy because they need to know actually what it is that they're doing and how it can be operated.*

Participant 8.

Participant 8's engagement with the frontline helped them to design policies which allow the frontline enough flexibility to adapt and respond to changing conditions on the ground and mitigate against the risk of creating a policy which is not operationally viable.

Including the frontline in the policy design stage, or even working alongside the frontline informs policymakers how much flexibility and autonomy is needed to operate a policy effectively, and as intended by government. This also speaks to the wider issue of bridging the gap between central government and the frontline.

Through my data collection, I have established that central government policy officials at the UK Ministry of Justice demonstrate a second-order legal consciousness in relation to their frontline stakeholders, namely His Majesty's Prisons and Probation Service. This legal consciousness is shown to be connected to participants' expectations of the frontline when implementing policies, however, interestingly these expectations do not align with the assessment of frontline officers' legal consciousness in existing academic literature.

Reacting to their perceptions and expectations, policymakers deliberately design laws and policies in such a way, such as by choosing certain policy vehicles and choosing modes of policy communication, which respond effectively to their frontline's legal consciousness. The data also demonstrates discrepancies between the various policymakers, and their respective second-order legal consciousnesses. These variations in policymakers' second-order legal consciousnesses are likely to lead to differences in their approaches to designing policies which impact the frontline. To that end, the data demonstrates that policymakers' second-order legal consciousness in relation to the frontline influences some of their decisions regarding policy design.

## **6. Ministers**

During the policy process, officials must work effectively with government ministers and seek their agreement for a policy before pressing ahead with implementation. As I will set out in this section, policy officials regard ministers as highly influential, powerful decision-makers with significant authority over government policies. Therefore, policymakers' second-order legal consciousness in relation to ministers is also vital in shaping policies. In this section, I will draw

out numerous key findings from the data, including policymakers' assessment of ministers' perceptions of existing legal frameworks, and of new policies they seek to introduce. These findings also bring to light what factors policymakers believe influence ministers' legal consciousness and how in turn, policymakers believe ministers' legal consciousness impacts policy and legislation.

### **According to policymakers, what do government ministers think of existing law?**

According to the data, ministers are a highly influential participant in the policymaking process:

*At the end of the day, we're delivering their policy, and they get to say what does or doesn't happen.*

Participant 5.

*Our job is to implement the policy decisions they make, so to me that doesn't put them in the category of stakeholder, but as decision-maker.*

Participant 12.

*The minister's opinion is the most important opinion. I think that's the bottom line in terms of what our job is, which is ultimately to do what ministers want.*

Participant 4.

The data demonstrates that officials believe that government ministers' ideas and views of the law and policy prevail during the policymaking process. These responses alone demonstrate that policymakers' second-order legal consciousness in relation to ministers is likely to have a vital role during the policymaking process, because ministers ultimately decide the direction of the government's policies. Therefore, it is vital to delve into how policymakers think ministers generally perceive existing law and policy, and future policies they seek to introduce.

Generally, participants' views regarding ministers' perceptions of existing policies and legislation were mixed. Some participants voiced that some ministers do not understand the nuances, or purpose of existing law. Others voiced how some ministers generally viewed existing legislation in a negative way. In contrast, other policymakers thought that ministers, particularly those at the Ministry of Justice understood and respected existing legal frameworks, and the rule of law.

*A consistent issue, not just [at] MoJ, [but] across probably all Cabinet ministers over recent years of questioning, not questioning the rule of law, but testing the rule of law a lot more than people used to do and testing the limits of what legislation can do, which has been challenging. Sometimes they don't grasp how, you know, legislation is largely drafted to be quite specific and so it's really, you know, some things you just can't change within the limits of the legislation we've got and it's really hard to get new legislation through, you know, even if you have loads*

*of legislative vehicles, as we do currently. It's not that easy to just go, 'oh we'll just do this'.*

Participant 3.

Participant 3 discussed how some government ministers have 'tested the limits' of how far their policies can go within existing legal frameworks. Some ministers don't understand why existing legislation is drafted in a certain way, and why it imposes these limits. Certain ministers see existing legislation as an obstacle, effectively preventing them from putting new policies in place. Ministers' inevitable frustration at the limits which an existing overarching legal framework imposes will lead them to question whether they can change it:

*I can see that a lot of politicians and a lot of the public as well, kind of perceive, for example, human rights legislation in a particular way, they don't really see what the benefits of it are but as far as their - the only time they encounter it is when someone's, you know, using it as a cover, as they see it, to somehow game the system or avoid some, you know, unhappy consequence.*

Participant 5.

As Participant 5 notes in this example, some ministers encounter individuals using existing legislation to 'game the system.' Seeing existing legislation being utilised contrary to the way that the government intended, negatively influences ministers' perception of existing legislation, and prompts them to change it.

On the contrary, participants acknowledged that some ministers respect and understand the purpose of existing legislation:

*In Justice you get quite lucky, and we get a lot of ex-lawyers and so actually they often have really good grasp of the law... they understand, they grasp that we have legal obligations etc. etc.*

Participant 3.

*Ministers that I've worked with and experienced are sensible, realistic, pragmatic and would understand the constitutional setup.*

Participant 10.

Policy officials recognise that some ministers' legal consciousness is positively influenced by their work experience and their legal education and practice. Certain ministers' 'good grasp of the law' leads them to regard the rule of law and existing legal rules in a 'sensible' and 'pragmatic' way. The existing academic literature also points to this idea that different ministers have different perspectives on law and policy depending on their background, and civil servants adapt to a new minister's style of working. Existing literature cites MoJ policymakers'

perceptions of previous Justice Secretaries, who were also qualified lawyers, and how their legal background helped them understand how things moved in the criminal justice system.<sup>54</sup>

Importantly, these mixed findings demonstrate that policymakers' second-order legal consciousness varies, with regards to different government ministers. In other words, it is inappropriate to generalise that ministers have a collective, legal consciousness, because each minister will approach existing legislation differently. My mixed findings in relation to policymakers' second-order legal consciousness in relation to government ministers is similar to that of the frontline. Neither group is shown to demonstrate a uniform legal consciousness. The data shows that ministers set the direction for policies, and civil servants '*ultimately to do what ministers want*', (Participant 4). This means that civil servants' second-order legal consciousness is likely to vary, depending on the minister in charge. These variations in policymakers' second-order legal consciousness are likely to lead to differences in their approaches to policymaking.

### **How do policymakers believe Ministers want to introduce new policies?**

The majority of participants perceived that ministers regard and use the law as a tool, or vehicle to create change:

*Some ministers see it as a vehicle to make their own mark and establish their own ambitions and legacy.*

Participant 6.

This is largely due to the fact that government ministers are also Members of Parliament with set political objectives:

*Pretty much anyone who enters politics wants to do it because they want to make some kind of change, you know, and like I say, they'll have a personal manifesto, but they'll also have their Department's objectives, their government's objectives.*

Participant 5.

These comments suggest that ministers are motivated by their own, their government Department's, and their Party's ambitions, and view the law as a means to put those political objectives in place.

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<sup>54</sup> Annison, H (2018): The Policymakers' Dilemma: Change, Continuity and Enduring Rationalities of English Penal Policy. *British journal of criminology*, Vol.58 (5), p.1066-1086, at p. 1076.

Other participants highlighted that ministers are also heavily influenced by the public, and this pressure from the public can influence ministers to put certain policies in place, for example in response to a major event:

*Ministers are hugely swayed by the public. That drives an enormous amount of our policymaking; public response, and outcry to a release [from prison]. The Parole Board's decision to release John Warboys resulted in two reviews of the Parole Board, loads of changes to the law.*

Participant 12.

*They will be influenced by their own stakeholders though, which may be parliamentarians, may be victims, may be the public, and they've got to go out and win an election.*

Participant 5.

According to participants, the public's emotive reactions to certain events, (in this case, the release of an offender), has compelled ministers to act. Crucially, according to Participant 5, ministers need to be seen to be doing something, to sway the public's opinion and eventually 'win an election.'

The majority of participants agreed that the main tool which ministers preferred, in order to be seen to be acting, is legislation. Ministers see legislation, rather than any other policy lever, as the most influential and effective, in order to respond to public outcry and win public confidence.

*They are always thinking of the political angle, so super shiny and exciting. To say you're going to, you know, slightly modify the constitution of an arm's length body, right, who cares. Like, obviously lots of people care, but publicly, politically, it's not going to get them very far.*

Participant 2.

*I think they will see a success as being a piece of law that has been passed. They're so used to a lever, for want of a better phrase, that they see and have been schooled in as a success, they have been immensely proud that they have passed a Bill, laid an SI, achieved something quite concrete. A minister being able to say, 'I passed this Bill', is a very powerful and intoxicating thing to be able to say. To say, 'I've delivered some process improvements in probation', is going to be less.*

Participant 9.

Policymakers believe that ministers view legislation as a 'powerful' tool. Delivering a piece of legislation is seen to be 'achieving something concrete'. Ministers know that the public see legislation as a 'concrete', or tangible solution to a problem. Moreover, legislation is 'shiny and



exciting', it's a newsworthy policy lever which is sure to grab the public's attention. Policymakers believe that ministers, being politicians, gravitate towards legislation for these reasons. Unfortunately, according to responses, this means that other non-legislative policies get less attention from ministers, and these other issues remain unresolved. This is due to policymakers' perception that the wider public either don't care about these issues, or don't understand them well enough. Regrettably, according to participants, some ministers' preference towards legislation is not always the right answer to a policy problem:

*So even when we said, "We're not entirely sure you need to legislate," we did ultimately legislate because we went for that belt-and-braces approach, and because she [the minister] was clear on her vision.*

Participant 11.

According to this participant, ministers' inclination to legislate, to persuade the public that they are acting to respond to a particular issue, is not always the solution. It is important to reiterate that a civil servant's role is to "work effectively with ministers (and) understand the options for providing policy advice."<sup>55</sup> Based on their findings, officials develop a recommendation for ministers to consider. Then, it is up to the minister to decide what to do, and 'our job as civil servants ultimately is to implement the policies that they want to implement.' (Participant 1). According to Participant 11, despite their advice to not legislate, a minister chose to do so based on her own 'clear vision' for a specific desired outcome.

Unfortunately, another negative consequence of ministers preferring legislation as a policy lever, is ending up with a complicated mess of legislation:

*In Probation, there is I'm afraid, a graveyard of huge bold legislative moves that have not changed the outcomes because fundamentally, the diagnosis has - less in the legal framework and more in the operational capacity.*

*I fear that the sheer number of pages of legislation that Parliaments have been passing in recent years, has led less to a situation where people are clear on what the law is and actually, more confused about this plethora of laws that exist.*

Participant 9.

According to Participant 9, ministers' legal consciousness regarding legislative change results in a 'plethora' of legislation that often doesn't work as it doesn't solve the original problem. As discussed earlier, some ministers prefer legislation over other policy levers because it is 'super shiny and exciting', (Participant 2), not always because it's the optimal solution to the original

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<sup>55</sup> Civil Service Policy Profession Standards. Available from: [Policy Profession Standards \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/). [Accessed on 29/09/23] at p.8.

problem. Participant 9 identifies that this can, in turn, negatively impact the public's legal consciousness. The public are left 'confused' by a complicated, messy legal framework. Meanwhile, the original problem, in this example in the probation policy space, remains unsolved.

At times, the desire to gain public confidence may not only influence ministers to legislate, but to legislate quickly:

*In the space of five hours, [it was] broadcast around the world, rioting in the city centre of Dublin like it's never seen before. That event simply was not on anybody's minds at midday. That led to the Justice Minister fielding journalistic questions before eight pm that went straight into legislation and powers. It, to me, is an example of the problem that we face, all of us, civil servants included. The pressure that... the Justice Minister was under to describe what action she's taking in response to an event.*

Participant 9.

Participant 9 describes the riot which took place in Dublin, in November 2023. The participant nods to 'social media's speed of reporting', which instantly notified the public of the events and influenced the minister to quickly respond to public pressure to take action. This policymaker perceives that some legislation is rushed through because the government is under immense public pressure to deliver a solution quickly. As a result, reactive legislation giving the police new powers was passed with little time for thorough scrutiny.<sup>56</sup> Many participants surveyed believe ministers feel they should be seen to be acting quickly in response to the issues of the day.

Legislation may be seen as the most effective solution, but, according to policymakers, it is not always a quick fix. Some participants reflected that in their experience, some ministers have expressed frustration at the sheer amount of time it takes to make policy, particularly to pass legislation:

*I think a lot of ministers get frustrated with the policy making process, because they think it could take too long. They think that it could take account of things that don't really need to be taken account of or it isn't leading in the right way or it's telling them the wrong answers or it's telling them things can't be done, or it's throwing up too many problems.*

Participant 8.

*I think they view it as a blocker, in my opinion. I think - and that is not the case for every minister I must caveat but, in my experience, there are many ministers who have made it*

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<sup>56</sup> RTE: 'Govt to enable facial recognition technology laws in response to Dublin riots'. RTE, 26 Nov 2023. Available from: [Govt to enable FRT laws in response to Dublin riots \(rte.ie\)](https://www.rte.ie/news/2023/11/26/govt-to-enable-facial-recognition-technology-laws-in-response-to-dublin-riots/). [Accessed on 18/05/2024].

*clear that, you know, that this is a hindrance to what they're trying to deliver... oh you know, 'why do we need to do this, why do we have to engage so and so, why do we need to legislate?'*

Participant 2.

These reflections correspond with other participants' observations, that many government ministers want a quick policy solution, which is seen to be efficiently solving an immediate problem in society. The process of passing a Bill can take months, which may pose as a 'hindrance', through some ministers' eyes.

The data firstly reveals that central government policy officials at the UK Ministry of Justice demonstrate a second-order legal consciousness in relation to government ministers. The data also reveals policymakers' belief that ministers' legal consciousness impacts ministers' own decisions regarding policy and legislation.

Most policymakers surveyed believed that ministers view the law as an opportunity to make change – the law is seen by ministers an instrument to carry out their political ambitions. According to the data, most ministers prefer legislation rather than other non-legislative policy levers. Policymakers assessed that ministers view legislation as the most powerful, impactful way to show that they are enacting change and effectively responding to issues faced by the public. Ministers see legislation as a tangible solution to a problem, which they can clearly point to, rather than a non-legislative measure which can be more difficult to communicate.

Participants discussed that the public sways a minister's legal consciousness, in terms of how they regard existing legislation, and their own policy ideas. Ministers' preferences towards legislation, and in some cases, swift legislation, are a direct result of wanting to appease the public and satisfy the public that the government is taking action.

However, despite this knowledge that most ministers gravitate towards legislation, civil servants continue to lay out all relevant evidence and options for ministers to consider, and recommend other non-legislative options where appropriate, depending on the policy.

Responses indicate that policymakers' second-order legal consciousness does not impact their advice to ministers, nor does it impact their working practices. The data demonstrates that civil servants remain impartial, present all the options to ministers, and let ministers make the ultimate decisions on policies.

## **7. Parliament and the Judiciary**

Once the government's policy has been published, it is in the public domain, open to further scrutiny by Parliament. Later on down the line, once the policy has entered into effect and is

being exercised, it may be subject to interpretation by the courts, and it is open to further scrutiny through the process of judicial review.

Parliament and the judiciary are two important contributors to policies, who officials consider during the process of designing and implementing a new policy, be it a legislative or non-legislative measure. In this section, I will demonstrate that policymakers view both Parliament and the judiciary as processes which must be worked through in order to produce a successful policy, and how policymakers' second-order legal consciousness, in relation to these two processes, impacts their policy decisions.

### **How do policymakers take Parliament into account?**

Much of participants' discussion of Parliament centred around Parliament as a process to complete, in order to make policy:

*It is generally a very helpful process, and I have on occasions thought, I actually hadn't thought of that, or that justice select committee hearing was really insightful, they brought up some things that I hadn't thought about.*

Participant 2.

*Every time you get a view from Parliament on anything that you're working on, the system kicks into gear to say, well what do we think about that, and should we amend our approach, or should we continue going?*

Participant 7.

The majority of responses revealed that Parliament is generally viewed as a process, or a 'system' by policymakers.

Very few participants discussed their perceptions of how Parliament as an institution, or individual parliamentarians regard the law or policy. Some responses which refer to individual parliamentarians' legal consciousness just substantiate the idea that Parliament is seen as a process:

*The fact that MPs have whips is, makes a huge difference to how we handle the House of Commons. Commons as a whole, they're generally fine with my policies because they're told to be fine with it.*

Participant 4.

This response demonstrates that policymakers understand that the parliamentary process entails predetermined steps which policy officials need to follow in order to push the government's policies through. Participant 4 perceives that MPs in the House of Commons

are generally 'fine' with their policies, because 'they're told to be fine with it', in accordance with the way in which parliamentary business is organised, in this case, through whips.

Through a policymaker's eyes, Parliament is seen as a well-defined, established process, with a set way of working.

Parliament is also perceived as a practical challenge for policy officials. The parliamentary process inherently includes certain steps which policymakers must respond to. Responses indicate that officials react to the system-led process of Parliament, and amend their policy decisions accordingly:

*It's not a surprise when the Opposition write to you and say they don't like your policy. It's not only for political reasons that we'll listen. [It's] for practical reasons in terms of, you know, we need to get this thing through Parliament, and I think generally the government will only change policy if they feel like they have to, to get it through the Lords. It's not, 'oh they've had a great idea', most of the time, you know, 'that'll make this a better policy'. It's, 'if we don't change this, all these Lords are not going to vote for the Bill and it's going to make our lives difficult'.*

Participant 4.

*What have various select committees said? Are they going to kick up a fuss? Are they broadly supportive? Understanding what the parliamentary landscape looks like is a key point of policy making, to ensure that actually, we know where we may need to concede or make changes in order to make something work.*

Participant 8.

From a policymaker's perspective, the system of Parliament is so engrained, that they expect letters from the Opposition Party voicing their dissent in relation to a policy. For practical reasons, policymakers advise their ministers to make concessions to a policy, to 'get it through' the Houses. Officials acknowledge that where Parliament 'kicks up a fuss', the government likely 'needs' to concede on their policy in order to get it through.

Therefore, the data demonstrates that policymakers' decisions and policy plans are influenced by their second-order legal consciousness in relation to specifically, the process of Parliament. Interestingly, responses indicate that policy officials expect to make these changes and concessions, as a consequence of the system of Parliament.

### **How do policymakers perceive the judiciary?**

There is a sharp distinction between how participants perceive the judiciary, and their other stakeholders:

*Oh, no, they're never a stakeholder. No, judges are never a stakeholder.*

Participant 12.

*The judiciary, you know, they are independent decision makers so it's pretty important to try and get them onside. You know, with people that are internal obviously they have their own views and they always will do, but you can bring them on a bit more of like, 'look we all work for MoJ, we all work for ministers, like let's do it', you know. Whereas I think judiciary are completely independent. We don't have any levers over the judiciary. So if they don't like something, that's really hard to get back from.*

Participant 3.

When it comes to other groups such as internal members of staff, policymakers find it easier to influence them to agree with a certain policy plan. According to Participant 3, this may be because '*we all work for ministers*', and ultimately, it is easier to persuade certain stakeholders that this is what a minister has directed them all to do. However, participants' responses indicate that they don't view the judiciary as a stakeholder in the same way. As I will come on to in this section, this view influences how policymakers communicate with judges. Moreover, the courts are independent from government, policy officials '*don't have any levers over them*'. This means that from an official's point of view, it is crucial to ensure that a policy is legally watertight before it is published. In this section I will set out the process of engagement with the judiciary, which policy officials follow to ensure that their policies are legally sound, and to avoid the risk of future legal challenge.

Similarly to policymakers' engagement with Parliament, policymakers' engagement with the judiciary during policy design is also seen as part of the process, in order to produce a successful policy. Policy officials work with the judiciary to seek assurance that their proposed policy is likely to be implemented in the way in which government intends:

*They will very often, very politely suggest some thoughts, from a judicial perspective, on how those ways might actually play out in practice.*

Participant 9.

*We definitely listen to the judiciary in terms of, we want to do X, and if they say, oh, I'm not sure that achieves that, because of how we would implement it in the courts, then we would definitely look at that because they are the people who are going to be using it and acting on it. If they're saying, 'I don't think your law does what you think it does', we need to listen to that because that's not our intention. Our intention is to deliver a particular thing.*

Participant 7.

In order to avoid any unintended consequences, policy officials work with the judiciary to understand how the courts would apply a new piece of law once it enters into effect. Officials

then use this feedback to iron out the policy before implementation. There are, however, instances where policies end up being challenged before the courts. In reference to a policy they had previously worked on, Participant 1 described:

*You know, there were difficulties in the operational process, in actually implementing it, and eventually - it was struck down in the courts via JR about nine months later or so, which again caused us a lots and lots of work, to then unpick it and come up with a new policy. JR certainly influences the direction of travel, because if they say a policy's unlawful then you've got to change it.*

Participant 1.

The judiciary's decision of whether or not a policy is lawful, through the process of judicial review, is perceived as a 'lot of work', to deal with. Officials face having to 'come up with a new policy', which is in line with the court's judgment. And so, in order to avoid legal challenge, policymakers consider "*what the risk of challenge might be, what the likelihood of success might be and what the impact of successful challenge might look like*", (Participant 8). During earlier stages of policy design, policy officials consult the judiciary where necessary, and amend the policy accordingly.

The responses make clear that policymakers demonstrate an understanding of how the judiciary may interpret a piece of legislation. The process of working with the judiciary during policy design helps central government officials produce a lawful policy and '*avoid those elephant traps and getting JR'd down the line after a policy's been obviously introduced*', (Participant 1). The data shows that policymakers perceive the judiciary's involvement during policy design, and the judiciary's scrutiny of the lawfulness of policies, as part of the process of making policy. Similarly to Parliament, the extent of the judiciary's involvement in policymaking is well-established; policymakers know to carefully ask the judiciary their professional perspective on how proposed legislation may be interpreted by the courts. Moreover, the system of legal challenge is understood, and participants' responses indicate that they expect to look out for '*elephant traps*', and to close loopholes which may lead to judicial review. This is similar to how policymakers expect challenges from parliamentarians, and therefore make concessions to policies in order to get them through Parliament.

Notably, none of the participants surveyed shared their views on how they think that judges perceive specific laws or policies. In fact, most participants specifically expressed that they understand and respect the independence of the judiciary, and they would never ask a judge's own views regarding a policy. Some participants discussed that judges themselves are very careful in how they work with the Ministry of Justice, and wider government, in order to

maintain their independence. Policymakers recognise that judges have an established way of working, separate from government:

*They're a separate arm, you know, they do what they need to do, and they very sensibly don't want to engage in what they don't need to engage in.*

Participant 11

*They can't and won't offer a view on policy in terms of is it - the merits of policy, is it a good idea or not. What they can do is say, if you do this, these are the potential issues that we can see as a result in terms of how it might be operationalised.*

Participant 7.

*I've just sent a letter to the Senior Presiding Judge, where I'm at the beginning of a policy cycle and I think we'd like to talk to him. Obviously, the engagement on both sides is careful. They will... certainly, he will not want to be too actively visible in policy making or even opining what might or might not be the interpretation of something.*

Participant 9.

The data demonstrates that participants do not express a second-order legal consciousness, in relation to judges' opinions of specific laws or policies. According to the responses, officials do not speculate on judges' own views on policies, in order to maintain a clear distinction between the government and the judiciary. Policymakers view the judiciary for exactly what they are: a '*separate arm*' of the State. As a result of this constitutional separation between the government and the judiciary, government officials and judges alike are '*careful*' and '*sensible*' during their engagement.

However, the data reveals that policymakers do express a second-order legal consciousness in relation to how the law may eventually be interpreted and applied by the courts. As set out in Section 2, an individual's, or a group's legal consciousness refers to the "ways in which [they]... understand and act in relation to law."<sup>57</sup> The data indicates that policy officials' careful engagement with the judiciary informs their understanding of how the judiciary might act, in relation to a proposed piece of legislation. This includes the potential risk that a member of the public may challenge a policy, and the judiciary may strike it down due to its unlawfulness. A policymaker's understanding of how a judge may act in relation to the law, directly impacts their policy decision-making. Officials may choose to amend their policy accordingly, to avoid the risk of legal challenge. The data therefore demonstrates that officials' second-order legal

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<sup>57</sup> Cowan and Harding, (2021). Legal Consciousness and Administrative Justice. In *The Oxford Handbook of Administrative Justice*. Edited by Hertogh, Tomlinson and others. 1<sup>st</sup> ed. OUP at p. 437.



consciousness in relation to the role and process of the judiciary impacts their policy decision making.

The empirical data makes clear that central government policy officials demonstrate a second-order legal consciousness in relation to Parliament and the judiciary in a similar way. Policymakers view both Parliament and the courts as processes to follow and respond to accordingly, in order to achieve a successful policy outcome. Policymakers' key priority is to move their policy through these processes, and so they engage with the two institutions to understand what necessary concessions or amendments ought to be made, to ensure a successful outcome. Officials understand these two institutions' respective legal consciousnesses and amend their policy plans if they deem it necessary. Officials expect the system of Parliament to respond to prospective legislation in a certain way, and they react accordingly, for example, by making concessions to a Bill. Similarly, policymakers engage carefully with the judiciary and build their understanding of how the courts may eventually interpret prospective policies. An official's perception of how a policy may be interpreted by the courts may prompt them to make amendments. My research demonstrates that policymakers react to their perceptions of the processes of both Parliament and the judiciary in relation to policies. To that end, policymakers' second-order legal consciousness in relation to both Parliament and the judiciary informs some of their decisions.

## **8. Conclusion**

This research demonstrates for the first time that policy officials in the UK Civil Service exhibit a second-order legal consciousness in relation to some of the key stakeholders in the policymaking process. Whilst the existing academic literature predominantly focuses on the legal consciousness of frontline officers, my research begins to scrutinise the second-order consciousness of those in charge of designing the policies which are eventually implemented by 'street level bureaucrats.' Looking at policymakers' second-order legal consciousness allows for exploration of how central government officials' assumptions of their stakeholders can impact the policymaking process, and the final policies which are eventually implemented.

At the beginning of this paper, I summarised the existing academic literature on legal consciousness and second-order legal consciousness. The literature provides a variety of frontline officers' accounts and experiences of applying the law and policy. We see that frontline authorities view the law as unworkable, impractical, and often something which is forced on them, leaving them little autonomy in their decision-making. As we see across the literature, these experiences often impact officers' exercise of their functions, namely by circumventing the law. These accounts from across the literature leave a gap, or question as

to why policies and legislation were drafted in such a way, and whether law makers anticipated, or factored in their operational colleagues' perceptions of the law, when designing the legal framework.

My research begins to fill this gap in the existing academic literature. Researching central government policy advisors' perceptions of their stakeholders' legal consciousnesses is crucial to answering the question of why a policy was designed in a certain way. My research has demonstrated that policy officials' second-order legal consciousness in relation to the frontline impacts certain policy decisions. For example, the level of autonomy a policy offers to the frontline directly impacts how much freedom frontline officers have in decision-making in case-by-case situations.

However, I recognise that through the eyes of a policy official, frontline officers are just one of many stakeholders. My paper also scrutinises policy officials' second-order legal consciousness in relation to government ministers, Parliament, and the judiciary. For example, officials understand ministers' general perceptions of existing law, the law-making process, and future laws they seek to introduce. Equally, officials perceive how policies move through the processes of both Parliament and the courts. Here, again the data I gathered clearly demonstrates that policymakers exhibit a second-order legal consciousness in relation to each of these stakeholder groups. However, interestingly, my findings reveal that this second-order legal consciousness, and its impact on policy design, varies depending on the stakeholder group.

The data demonstrates that policymakers have mixed perceptions of the frontline's legal consciousness, which leads to mixed views regarding their expectations of the frontline when applying policies and legislation. This includes for example, that some policy officials believe that the frontline would prefer either greater or reduced autonomy to exercise their functions.

As a result, policymakers decide to either create a stricter or looser legal framework which either restricts or increases a frontline officer's flexibility. Reacting to their second-order legal consciousness, policymakers deliberately design laws and policies in a certain way. The data therefore demonstrates that in relation to the frontline, policy officials' second-order legal consciousness has a significant impact on policy design.

The data shows that Parliament and the judiciary are regarded as processes to follow, in order to get a policy implemented successfully. My research demonstrates that policymakers' second-order legal consciousness in relation to these stakeholders is vastly different to that of the frontline. Officials understand these institutions' respective legal consciousnesses and

react accordingly, amending their policy plans if they deem it necessary. This includes for example, by recommending to ministers to make concessions to a Bill to get it through Parliament. Therefore, much like in relation to the frontline, policy officials' second-order legal consciousness in relation to both Parliament and the judiciary impacts their decisions on the final policy or legislation.

Finally, the majority of participants' views in relation to ministers were alike. For example, many respondents perceived that government ministers regard legislation as a powerful opportunity to create change. Some participants recognised that this could have negative consequences, including legislating where it isn't necessary to do so, resulting in a complicated web of legislation. However, the data suggests that here, policy officials' second-order legal consciousness did not impact their decision-making or advice to ministers. Despite this knowledge that most Ministers gravitate towards legislation, the data indicates that officials lay out all the relevant evidence and options for Ministers to consider, and still recommend other non-legislative options where appropriate, depending on the policy. Therefore here, unlike in relation to the frontline, Parliament and the judiciary, officials' second-order legal consciousness in relation to ministers did not impact their policy decisions.

In summary, my findings demonstrate that policymakers exhibit a second-order legal consciousness in relation to some of their stakeholders and it varies, according to the stakeholder group. Moreover, the data reveals that the influence and impact of policy officials' second-order legal consciousness on their policy decisions also vary, depending on the stakeholder. My findings build on the existing academic literature and provide a new lens through which to examine the impact which second-order legal consciousness has on government policies. However, as previously stated, my data has its limitations and does not capture the full scale of the impact of second-order legal consciousness in relation to officials across government.

Although my research provides an important, and interesting insight into a group of policymakers' second-order legal consciousness, it only begins to fill the gap in the existing academic literature on this topic. Further work can and should be done to explore this in greater detail. This could entail expanding the sample size to include policymakers who work across other government departments and exploring officials' second-order legal consciousness in relation to a wider stakeholder cohort. This could also include examining the second-order legal consciousness of officials working to different government ministers across an array of policy areas, each with varying backgrounds and experiences. This will provide a greater insight into the second-order legal consciousness of a variety of officials working across many

different policy areas, in relation to a larger group of their stakeholders. This will also provide a deeper understanding of the impact of officials' second-order legal consciousness on a range of policies, legislation, and public services. Further work can also be done to examine the second-order legal consciousness of the stakeholders in question, such as the frontline.

Scrutinising what operational officers think about policymakers' perceptions of the law can aid in bridging the gap between operations and policy, and even support policymakers to design laws which better respond to the frontline's needs and expectations. Further research can support our understanding of the impact that central government officials' second-order legal consciousness has on a wide array of public services.

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