LIZET VAN DONKERSGOED

Exploring Ethics in the Practice of Public Welfare Professionals

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Exploring Ethics in the Practice of Public Welfare Professionals

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(met een samenvatting in het Nederlands)

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Contents

What this thesis is about

This thesis is about dilemmas, discretionary space and ethics in public welfare. In my position as a lecturer of ethics in socio-legal practices I am concerned with the way in which these practices open up to an ethical development of their professionals. Thus, this thesis is a search for the most fundamental themes and issues in understanding and judging public welfare as a, perhaps, ethical socio-legal practice.

In the field of public services professionals function as the intermediary between government and citizen. In their daily work public welfare professionals take care of the important societal task and goal of poverty alleviation. During the last decades, public welfare has developed into a civil right that involves many obligations on the part of the client in return. The requirement to see to it that the client fulfils these obligations has complicated the public welfare professional's task of helping citizens in need.

Basically, the significant societal task of public welfare can be viewed as relating a legal rule to a specific situation. Professionals in public welfare have the freedom to decide how to use the law within a given legal framework. In the literatures on socio-legal practices this freedom is called "**discretionary space**"[1], my first core concept. Discretionary space from the public welfare professional's perspective has not yet been fully researched in the Netherlands. The call for a new professionalism and for creative professionals who do not hide behind rules[2] raises important questions regarding discretionary space practices. For example, how do public welfare professionals use this freedom? Are they aware of their discretionary space in all situations? In what situations, and for whose benefit, is it used, or not used, and with what justifications? These questions can be understood in the light of what I shall call "**ethics**", my second core concept.

The ethics presented here focusses on the particular socio-legal practice of public welfare, and is therefore a form of "applied ethics" (Becker et al. 2007, 106; 323)[3], an ethics in practice that is directed towards specific domains of reality. It is a pragmatist form of ethics, drawing on, for example, Dewey and Rorty in its main purpose of looking for context-driven solutions to practical problems rather than universal principles.

An ethical perspective seems invited given the interests in the integrity of public services which have become a growing concern in the Netherlands. This is emphasized by the renewal in 2006 of the *Civil Servants Law*[4], which includes the demand to "behave

1. Dutch: discretionaire ruimte
2. See, e.g., Hazelzet 2015; Spierts 2014; Zuurmond 2013; Lans 2008.
3. Dutch: "toegepaste ethiek"
4. Ambtenarenwet. Throughout this thesis the names of laws and regulations have been translated into English by the author.

like […] a good civil servant."[5]. This suggested the need to find an ethical perspective that would shed some light on what it means to be "a good civil servant"[6] in public welfare practice. Such an ethical perspective could be seen to be about "good work" (Jacobs 2008), the "real and good" (McNamee & Hosking 2012, 39; Gergen 2009), and "ethical know-how" (Varela 1999).

The ethical perspective taken here is also linked to the Bachelor of Socio-Legal Services[7] of the Utrecht University of Applied Sciences[8], at which I am a lecturer. This program is geared towards a broad field of (public) socio-legal services in The Netherlands. There are literatures that focus on these practices, including their ethical aspects. It is part of my daily professional practice as a lecturer of ethics in socio-legal services to stay up-to-date regarding the developments in these fields, in order to be able to tune in on these practices in my teaching[9]. As I see it, ethics, in the context of public welfare practice, includes careful application of welfare law. Drawing on Joan Tronto's work on "ethic of care" (Tronto 1993) it would also, to some degree, reflect an effort to be attentive and responsive to the needs of all involved, including oneself (Varela 1999). In particular, the view on ethics taken here aims at being helpful to public welfare professionals navigating the dilemmas of their daily practice. This brings me to my third core concept, which is "**dilemma**".

Webster's Dictionary (1913) defines dilemma as: **"**A state of things in which evils or obstacles present themselves on every side, and it is difficult to determine what course to pursue; a vexatious alternative or predicament; a difficult choice or position." I use the term dilemma as "a difficult choice or position" (Webster 1913[10]). This definition seems most in line with the general construction common in the Dutch field of professional social (legal) work and the discourse of normative professionalisation[11].

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5. Ambtenarenwet art. 125ter: "The authorities and the civil servant are obliged to behave like a good employer and a good civil servant." (tr. by author of "Het bevoegd gezag en de ambtenaar zijn verplicht zich als een goed werkgever en een goed ambtenaar te gedragen."). In addition, it includes the demand to establish integrity policies for every governmental organisation. Compare http://www.integriteitoverheid.nl, a site which was initiated by central government and a section of CAOP, the national knowledge and services center concerning work (independent foundation), and which advises public services.

6. See the Law on civil service, Art. 125 ter:"The authorities and the civil servant are obliged to behave like a good employer and a good civil servant." (tr. by author of "Het bevoegd gezag en de ambtenaar zijn verplicht zich als een goed werkgever en een goed ambtenaar te gedragen"), where "good" is connected to integrity of public services (e.g., Memorie van Toelichting on good civil service, TK 29 436 nr.3)

7. Sociaal juridische dienstverlening

8. Hogeschool Utrecht

9. Since 2005 I have been a lecturer of Bachelor students at Utrecht University of Applied Sciences; my responsibilities, shared with my colleagues, include the educational stream The Critical Social Legal Professional (de kritische SJD-professional), and in particular the various courses on ethics in practice within that stream. In addition, I have conducted exploratory projects around ethical dilemmas of public professionals in various socio-legal practices. These projects took place at the research center KSI (Kenniscentrum Sociale Innovatie), which is the research center of the faculty of Society and Law, of the Utrecht University of Applied Sciences. They include the project Moral dilemmas in social legal services 2009/10, lectorate IMD, KSI, HU, and interview pilots at several social services departments, 2010.

10. http://www.encyclo.co.uk/webster/D/66

11. See 2.1 for more on this movement (e.g.Jacobs et al. 2008; Bakker & Montesano Montessori (eds) 2016).

One of the things I did to explore dilemmas, discretionary space and ethics in public welfare, was to conduct an empirical study in a department of public welfare. I attended case meetings of public welfare professionals (called *client managers*), which allowed me to gather various empirical materials including transcripts of the case conversations.

Starting out by constructing ethics in public welfare practice as concerning both law and care, I directed my research towards dilemmas of law ethics versus care ethics. Initially this binary seemed relevant and helpful. However, it seemed that these professionals saw themselves faced with other dilemmas that were not directly connected to law versus care. Moreover, in the more complex cases the law-care binary was not helpful and appeared to collapse, as I will show. When in addition it appeared that the client managers did not talk about ethics in any explicit way, these observations left me empty-handed, so to speak. The exploration of my curiosities led to an impasse that made me reconsider how ethics might be practised in public welfare.

A breakthrough came with my embracing relational constructionism. This social science discourse centres ethics, and appeared to invite an exploration of ethics in relation to **soft(er) self-other differentiation**, the core concept of Part 3. Rather than assuming and centring "hard", subject-object constructions of, for example, "power over" others (McNamee & Hosking 2012), soft self-other differentiation appeared to offer new and helpful ways of practising ethics. I will finish this thesis by exploring concrete possibilities of practising soft self-other differentiation as an ethics in public welfare practice.

PART 1

Discretionary Space, Dilemmas, and Ethics of Law and Care in the Practice of Public Welfare

What you will find in Part 1

An exploration of Dutch public welfare practice shows how discretionary space, which includes tailor-making, constructs dilemmas. Public welfare is one of these practices that specifically challenge an ethical orientation, because it appears to contain conflicting values that can be seen as revolving around the duality of law and care. From an exploration of law as following rules, and care as responsiveness, a dilemma of professional responsiveness emerged. The dilemma between law and care provided the basis for a dilemma framework that identifies three interrelated viewpoints particularly suited to the practice of public welfare.

First, from an ethical point of view it is the dilemma between an orientation towards law ethics versus care ethics. Second, from the point of view of responsiveness it is a dilemma between primary responsiveness towards legal rule or the client and their context. Third, from the point of view of professional approach it is a dilemma between a mode that is more controlling versus one that is more supporting (see Figure 1). By an application of the dilemma framework I conducted a 'top-down' analysis of the empirical material. This part relates how I conducted the empirical inquiry, and why, on the basis of the first findings, I felt the need to add to the 'top-down' analysis a 'bottom-up' approach. It concludes by listing three core categories that organise my exploration of discretionary space, dilemmas, and ethics in the practice of public welfare.

1

Public Welfare Professionals, Discretionary Space and Dilemmas

This chapter introduces Dutch public welfare, its discretionary space and dilemmas, and explains the two functions of public welfare professionals as authorized by mandate. A short account of the historical context of public welfare shows how the view on social security has shifted, complicating the relationship between professional and client. Public welfare has become a semi-mandatory practice. Thus, an inherent problem seems to manifest, which is the tension between tailor-making practice and the legal requirement of equal treatment.

1.1 Discretionary space in practice

My interest in public welfare revolves around the concept of "discretionary space"[12] (e.g., Polstra 2011; Van Ewijk 2010; Karssing & Wirtz 2008; De Savornin Lohman&Raaff 2008; Van der Veen 1990), also called "discretionary authority"[13] (e.g., Loonstra 2012; Tak 1996), or "professional discretion" (e.g., Evans 2010; see also Lipsky 1980). I identify discretionary space as the freedom to decide within a given legal framework.

Some authors underline the importance of addressing the issue of discretionary space from the perspective of public professionals (civil servants), placing the actual execution of political and legal policies in the hands of the policy performers—the so-called street level bureaucrats (Lipsky 1969, Lipsky 1980), or frontline workers (De Savornin Lohman & Raaff 2008)—rather than in the hands of policymakers. It makes discretionary space an important concept in connection with the call for a new professionalism (e.g., Luijtgaarden 2017; Kanne 2016; Spierts 2014; Van Ewijk & Kunneman 2013; Jacobs et al. 2008), and for creative professionals who do not hide behind rules (e.g., Hazelzet 2015; Spierts 2014; Zuurmond 2013; Lans 2008).

The degree to which public professionals successfully manage to translate government policies into decisions regarding individual citizens seems crucial for societal relations in a democracy. As some authors say: It is their task to apply the "system" of legal rules and regulations to the citizen's "lifeworld"[14] (Habermas, in De Savornin Lohman&Raaff 2008, 126-132). This perspective clearly places any dilemma occurring in practice in the hands of public professionals—such as public welfare professionals.

To focus on Dutch public welfare, this socio-legal practice establishes two functions: basic financial support, and support to find paid work[15]. The former is often called client management, the latter mostly re-integration: supporting jobless clients to return to societal participation, preferably to paid work. In many municipalities, these two functions are carried out by two different kinds of public welfare professionals. The professionals usually called *client managers*[16], are accountable for the client's process and take care of the first function of legitimate applications, whereas *work coaches* or *re-integration managers*[17], take care of the second function. In this study our focus is on client managers.

To better appreciate the position of the client manager as a public service professional, it is helpful to know something about the basis of their authority. It is

12. Dutch: discretionaire ruimte
13. Dutch: discretionaire bevoegdheden/bevoegdheid
14. Dutch: *systeemwereld; leefwereld*
15. *Participation Law*, art. 7 lid 1 a&b.
16. Dutch: *klantmanagers* ; sometimes called: income counselors (Dutch: *inkomensconsulenten*)
17. In Dutch mostly: *trajectbegeleiders / re-integratieconsulenten / participatiecoaches*

established by mandate, the country's legal doctrine which obliges civil servants to act on behalf of, as well as under the responsibility of their legal authorities[18]. To carry out public welfare policy, central government has appointed local councils, which in turn have mandated civil servants, such as policy managers and client managers, to act on their behalf. Thus, the legal authorities that client managers are answerable to are the City Council[19], in cooperation with the local council. These authorities develop and issue local policy regulations within a given local political context, staying within the framework of national law. Local policy regulations, such as local specifics of intake procedures or other requirements, aim at adjusting national legal rule to the local (political) situation. Client managers are in the bottom tier of this organisational hierarchy.

Regarding discretionary space, application of the law might be seen as the mere execution of policy. For example, the report to the Government *Safeguarding the Public Interest* (2000) from the Scientific Council for Government Policy in the Netherlands (WRR[20]) mentioned a "mechanical" execution of the rules that used to be "quite possible", but which currently seemed no longer appropriate[21]. Another example is provided by social scientist Spierts who refutes the argument of Bovens (2013) that social-cultural professionals are mere executors of policies of others (Spierts 2014, 300-301).Similarly, in her research on professionalisation in the field of public welfare, Hazelzet argued: "Client managers are not automatons" (Hazelzet 2015, 47)[22] [23]. These comments seem to suggest recognition of discretionary space.

In my conversations with client managers and policy managers in the field during the last decade, I have found that some client managers seem more strict in the application of the law, primarily confronting the client with the law and its requirements. On the other hand there appear to be client managers who are less strict in the application of the law and who tend to centre the client and their context. An illustration of a similar kind of ambivalence concerning the use of discretionary space was the subject of the documentary of 2010 on client management *Be with me*, which staged two experienced client managers at a Public Welfare Department in a city in the Netherlands[24].

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18. See, e.g., Loonstra 2012, 377; cf. art. 10:1 Awb: "Mandate (authorization) refers to the authority to decide on behalf of the government" ; tr. by author of "Onder mandaat wordt verstaan: de bevoegdheid om in naam van een bestuursorgaan besluiten te nemen."
19. "B&W", "burgemeester en wethouders" ; in law and governmental texts also called "het college"
20. Wetenschappelijke Raad voor het Regeringsbeleid
21. Dutch: "Waar 'mechanische uitvoering' vroeger goed mogelijk was, vragen de verdergaande individualisering en decategorisering binnen de samenleving steeds vaker om een professionele afweging van individuele gevallen in het licht van algemene normen." (WRR 2000, 133)
22. "Klantmanagers zijn geen mechanische uitvoerders"
23. See my article of 2009 for this argument with a similar reference to professionals working like a jukebox.
24. *Sta me bij*, a documentary of Monique Lesterhuis en Suzanne Raes was nominated as best Dutch documentary at IDFA 2010; http://docunet.nl/sta-me-bij/

In summary, focus is on public welfare professionals called client managers who, as front line professionals in a local (political) context, use their discretionary space in various ways.

1.2 Shifting constructions of public welfare

In our society entitlement to basic social security has gradually shifted from (government) charity for the poor to the establishment of various legal rights, most of which involve certain obligations in return (Boer e.a. 2014; Verheugt 2009, 455; Noordam 2006).

Welfare law started in the 19th century with the first law on poverty, called the *Poor People's Law* (*Armenwet)*. The *Poor People's Law* [25] gave the government a minimal role in taking care of the poor as a last resort, apart from existing private charity (Boer e.a. 2014; Verheugt 2009, 455; Noordam 2006). Two subsequent laws discontinued the use of the term the poor; instead the term welfare was introduced. With the *General Welfare Law* of 1965 and of 1996 (*Algemene Bijstands Wet*, ABW and Abw) the role of the government was expanded considerably, and the temporary character of any welfare supply was underlined[26] (Boer 2014, 20).

From then on, public welfare was distinctly meant to only bridge a temporary gap of income, welfare supplies going on during as short a period as possible. Notably, enforcement and control was now connected to the entitlement to welfare by an increased emphasis on application (instroom)[27] and re-integration (uitstroom)[28]. The underlying principle of the *Law Work and Welfare* (*Wet Werk en Bijstand*, WWB) of 2004, which replaced the Abw of 1996, was the principle of work before welfare[29], a general principle from then on. The *Memorie van Toelichting*[30]on the WWB makes this principle clear right from the start:

"Every Dutch citizen in this country is assumed to be able to independently earn a living through labor. When this is not feasible and no other provision is available, it is the government's duty to help them find employment and to offer financial assistance for the period that independent livelihood through employment is not yet possible"[31] (*Kamerstukken II* 2002/03, 28 870).

25. Two versions: *Armenwet* 1854, and *Armenwet* 1912 (see, e.g., Noordam 2006, 350).
26. The concept of a trampoline was introduced by then minister of Social Affairs and Employment Ad Melkert (Boer et al., 2014, 20).
27. This is called 'sharpening the gatekeeper's post" (het aanscherpen van de poortwachtersfunctie), see, e.g., Boer et al. 2011, 180.
28. For the terms "instroom" and "uitstroom", frequently used in practice, see De Boer et al. 2011, 187.
29. Tr. by author of "werk boven uitkering", see, e.g., De Boer et al. 2011, 20.
30. An official document of clarification accompanying legislation
31. tr. by author of "Iedere Nederlander hier te lande wordt geacht zelfstandig in zijn bestaan te kunnen voorzien door middel van arbeid. Als dit niet mogelijk is en er geen andere voorzieningen beschikbaar zijn, heeft de overheid de taak hem te helpen met het zoeken naar werk en, zo lang met werk nog geen zelfstandig bestaan mogelijk is, met inkomensondersteuning."

Income supply is mentioned as the government's second, additional, task, next to the government's focus on offering support to find a job.

In recent years, the most important and far reaching change in social security (which includes public welfare) has been the transfer of a number of public services from central and provincial government to local councils. This was part of economic and political austerity measures, and an adjustment of the structure of public service. This movement, called the decentralizations[32], culminated in establishing a new law, the *Participation Law*, in January 2015. The transfer has had a great impact on social security practice[33]. Local councils have since been faced with accountability for more social (security) tasks, in combination with severe austerity measures [34] [35] [36]. In the last decade, our so-called social welfare state can be said to have turned into a "participatiesamenleving". This is a well-known concept that expresses the goal/norm for every citizen to participate in social structures in one way or another[37].

Current public welfare rules are found in the *Participation Law* (*Participatiewet*, PW). Just as its predecessor the WWB, the *Participation Law* is designed to put the safety net function of welfare income after the re-integration function (*Kamerstukken II* 2013/14, 33 801; PW art. 7:1 sub a & b). The title no longer carries terms like "poor" and "welfare", the word "participation" illustrating an increased appeal to citizens to contribute to society through paid work.

The language of these successive laws seems to reflect a marginalization of the most needy group of people in our society. The current official message (reflecting current public opinion) is clear: everybody should work for a living. Moreover: "Every Dutch citizen in this country is assumed to be able to independently earn a living through labor" ((*Kamerstukken II* 2002/03, 28 870; see quote above). However, in practice there is a group of people who, for various reasons, are seemingly unable to find a job, apparently needing what is labelled as temporary support on a more permanent basis. Public welfare professionals are faced with having to find ways to deal with this particular group of clients as well. Their assignment to execute welfare law implies both serving citizens in need and assuring the fulfilment of their clients' legal obligations.

To complete this first sketch of current public welfare, the last decade has witnessed a continuously expanding austerities program. In addition, client managers

32. De drie decentralisaties (the three decentralisations), or: de drie transities (the three transitions)
33. This empirical inquiry took place in 2012, so these developments had not yet been discussed at that time.
34. For example, the new *Participation Law* contains more civil services obligations, but fewer financial means: costs were cut by 1,8 billion Euro (in 2015).
35. Next to welfare and re-integration the *Participation Law* includes (parts of) two former laws, namely the *Wet sociale werkvoorziening* (Wsw), and *Wajong*; see for more detailed information, e.g., Divosa Branche organization http://www.divosa.nl/dossiers
36. See, for instance, http://www.divosa.nl/dossiers/samenhang-3-decentralisaties (consulted 17-4-2014).
37. The King's speech on the opening-day of the Dutch parliament in 2013 used this concept. In the field of public service it is used frequently in the last decade.

have had to implement in their working procedures a constant stream of major and minor adjustments in national law, and, as a result, a stream of local policy welfare regulations as well[38]. The client manager must be up to date in order to be able to function as contact person for internal as well as external parties (Polstra 2011). In practice this implies contacting many different local and national organizations, some of which currently seem to be in constant transition themselves, just like Dutch social security itself. They include organisations such as health care insurance, addiction care clinics, debt assistance, welfare organisations, homeless support, and so on.

We may conclude that public welfare has shifted from a single focus on poverty alleviation to a two-pronged approach that, in addition to providing a basic income, emphasizes the client's obligation regarding securing a paid position[39]. This double assignment, along with an increase of clients obligations, complicates the relationship between professional and client, and calls for appropriate skills on the part of the client manager who is accountable for all processes concerning the client.

1.3 Public welfare practice: a selection bureaucracy in a semi-mandatory setting

Some authors see public welfare as characteristic of a so-called semi-mandatory setting[40]. This practice takes an intermediate position in the broad field of (public) social (legal) work that runs from a mandatory to a voluntary setting[41] (Menger, Krechtig, Bosker (eds.) 2014, 115-130; Menger 2018). In a voluntary setting clients work with professionals of their own accord, without legal enforcement, such as social work in schools, and some forms of budget coaching. In a mandatory setting, clients are in situations that are forced upon them by the judge, such as probation, certain forms of youth care, and certain forms of debt support.

Applying for public welfare benefits is usually done by clients of their own accord, and therefore cannot be called part of a mandatory setting. However, a client's

38. A shop floor example of these constant (politically instigated) shifts, sometimes even back and forth, was the *Act on household control* (*Huishoudtoets*). It was an austerity measure based on the notion that one household may only have one welfare entitlement. It was announced and partly came into effect on January 1st 2012, and was supposed to start fully on July 1st 2012, but, having caused great commotion in the country because of foreseeable problems regarding implementation, it was withdrawn shortly before that last date in retro-action from January 1st 2012. However, in the *Participation Law* that replaced WWB from January 1st 2015 onwards, a revised version of household control returned.

39. Perhaps a little different from the English 'welfare', the Dutch 'bijstand' primarily points to: 'support'; this leaves room for various forms of support.

40. Dutch: semi-gedwongen kader. One example is the name of the Raak Pro subsidized 4-year research program on the Working Alliance in 5 different social-legal fields, including public welfare: *"Work alliance in (semi-)mandatory setting effectively reinforced"* (tr. by author of "*Werkalliantie in (semi) gedwongen kader effectief versterkt*"); which runs from 2015 to 2019, conducted by researchers from Utrecht University of Applied Sciences.

41. in Dutch called: *gedwongen kader*, and *vrijwillig kader*

context may move them to apply for public welfare. When they do, welfare law puts the client under various obligations that reflect the body of thought that forms the basis of the "participatiesamenleving". To remind the reader, this is the well-known concept of society that expresses the goal/norm for every citizen to participate in social structures in one way or another. The client's obligations include making tangible efforts to leave public welfare services as quickly as possible by applying for any suitable job with regular pay[42]. Other obligations include duly notifying the client manager of any relevant change, and being fully cooperative in the re-integration process by, for example, attending an addiction care program or some other training needed to re-integrate in the labor market[43]. Moreover, since the *Participation Law* of 2015, many municipalities require public welfare clients to engage in a *compensatory activity*: non-paid work as a courtesy to society in return for benefits received[44].

The fact that clients incur a penalty, such as a temporary cut in their allowance when they do not fulfill their obligations, gives public welfare a more or less mandatory character. As public welfare benefits are minimal, a cut is likely to be unwelcome to the client. Considering the context of most people who apply for public welfare, one might argue that their urgent needs force them into this field of obligations, and thus into a (semi-)mandatory setting.

For the client manager this means that (s)he can no longer be the civil servant who just establishes and controls the legitimate right to public welfare benefits in a more or less voluntary setting. Increasingly (s)he is accountable for controlling the various obligations of the client, which includes taking measures when obligations are not met. It is in this sense that the label semi-mandatory is significant.

Another label, or viewpoint, of interest might be *bureaucracy,* a term that is used by many since Max Weber's book *Economy and Society* (1921). Mostly, this label of *bureaucracy* is probably not exactly associated with a lively ethics culture. However, an interesting view on bureaucracy comes from Du Gay (2000), who claims that it is just another form of ethics aiming to guarantee fair and equal treatment (Bos et al. 2005, 203)[45]. Regarding public welfare and its distribution, this view on ethics can be defended.

One way to illuminate some of the bureaucratic aspects of the context in which the client manager works, is to examine the language of "selection bureaucracy" as used in the research of public services by social scientist Loes Berendsen (Berendsen

42. According to *Participation Law*, art. 9 lid 1
43. *Participation Law*, art. 17
44. Tr. by author of *Tegenprestatie*; art. 9 lid 1 sub c WWB; see, e.g., De Boer et al. 2014.
45. See also Benhabib's concepts of the generalized other, as opposed to the concrete other (Zanetti 2008, 64).

2007). In her dissertation of 2007[46] she focusses on Employee Insurance in the field of public social security and, more specifically, on the relation between public managers and insurance physicians. The role of the latter can be constructed as the front line professionals in that field[47], because of their direct contact with clients. In Berendsen's language, organisations of (public) service are "selection bureaucracies":

> *"Selection bureaucracies are service organizations that are primarily concerned with selection processes, in which general rules have to be applied uniformly and carefully to situations of individual citizens" (Berendsen 2007, 50).*[48]

Berendsen identifies a selection process of four phases in the working processes of professionals in selection bureaucracies. These can be recognized in the working processes of client managers in their daily practice of applying public welfare. The first phase is the first contact: the citizen claims a right and applies for benefits. The second constructs the citizen as a client and some agreements are made. The third phase is called the actual selection, in which the professional transforms the narrative of the client into a case to which rules of law apply; and subsequently into a consistent story to account for the outcome. Finally, the fourth phase closes the interaction by granting or denying the specific benefit applied for (Berendsen 2007, 50-51).

Local public welfare departments can be seen as "service organizations primarily concerned with selection processes" (see quote above). Thus they might well be classified as selection bureaucracies; after all they select beneficiaries of benefits on the basis of their assessment. Interestingly, Berendsen deems the third phase, the phase of transformation, a crucial stage with respect to discretionary space, in the sense that the workers who apply the rules have the most discretionary space in this phase (Berendsen 2007, 51). While she calls the third phase the phase of the actual selection, one could argue that all phases are phases of selection, not just the third.

A second point of interest in the quotation above refers to Berendsen's seemingly normative call for a uniform and careful application of the rules. Thus, interestingly, in the case of selection bureaucracies and their professionals, Berendsen seems to suggest a double assignment. By choosing the term "uniformly" she apparently adopts the perspective of the law and refers to a uniform, equal, application of the rules, while, on

46. *Bureaucratic dramas. Public managers in relation to insurance physicians.* (tr. by author of *Bureaucratische drama's. Publieke managers in verhouding tot verzekeringsartsen.*)
47. the Implementation Institute for Employee Insurance (Uitvoeringsinstituut werknemersverzekeringen, or UWV)
48. Tr. by author of "selectiebureaucratieën zijn dienstverlenende organisaties die zich primair bezighouden met selectieprocessen waarvoor algemene regels uniform en zorgvuldig moeten worden toegepast op situaties van individuele burgers."

the other hand, by choosing the term "carefully" she perhaps adopts the perspective of the individual citizen, stressing the need for attentiveness to the client and their situation.

In addition, Berendsen connects a uniform application of rules to one of the most prominent legal principles of our social democracy: *the principle of equality of rights*[49], adding to it the confirmation that the application of general rules to individual cases is stressful by definition (Berendsen 2007, 50). This refers to an equal treatment problem that we will return to later in connection with the practice of client managers. However, Berendsen does not draw particular attention to the central difficulty of the practice, namely that "uniformity" can hardly be compatible with any consideration for specific individual circumstances. Indeed, some measure of freedom to act (discretionary space) is vital when it comes to considering and acting on the specific details of a case. An application requires room to accommodate differences following the requirement of consideration of individual circumstances, even if only minimally. Clearly, this implies acting non-uniformly. To put it differently, Berendsen's phrasing suggests a contradictory norm, which reflects a practice problem seemingly inherent to law application.

This brings us directly to the importance of the concept of discretionary space in practice.

1.4 Discretionary space enables tailor-making

In Dutch public welfare practice, the concept of discretionary space is connected to the principle of individualisation (individualisering) (Noordam 2006, 349; Van der Veen1990, 24). In the application of welfare law this is a major principle, that is well-known in practice: it is the choice for tailor-making[50]. Discretionary space sustains the public welfare function as a social safety net in individual cases and allows for the choice between tailor-making and regular rule application. Tailor-making practice stands in contrast to the strict following of regular rules.

In the national legal context, tailor-making in Dutch public welfare application is generally based on the *Participation Law*, art. 18 lid 1[51]: "The Mayor and City Council

49. tr. by author of *rechtsgelijkheid*, the equality principle in the first Article of the Dutch constitution; see also its extension of more specific legislation in the *Law Equal Treatment* (*Wet Gelijke Behandeling*). Rechtsgelijkheid may also be translated as equality before law, or equality of justice ; this last translation seems less appropriate here, because it seems to refer more to law than to justice, and thus seems to be a term of a more general than specific nature. See also Boersema who, in the English summary of his dissertation on "gelijkheid" from the first Article of *Constitutional Law*, translates "gelijkheid" by "equality of rights" (Boersema 1998, 449). This is not the place to discuss this at length. I follow Boersema because "gelijkheid" in his dissertation is connected to human rights (see his subtitle), and by that route also to rights of citizens, and so it seems to me that this option is the one translation that comes closest to the practice application of of public welfare law.

50. Dutch: maatwerk.

51. Identical to the former WWB art. 18 lid 1; which was law at the time of my data assembling, in 2012; see Chapter 3.

Members determine the support and the obligations related to it commensurate with the circumstances, available options and means of the recipient."[52]. This assessment involves tailor-making in two steps: first, categorically, by local policy regulations, and second, individually, within the relationship between the client manager and the client—seen as the domain of the 'street level bureaucrat"(Lipsky 1969, Lipsky 1980); or "front line professional" (De Savornin Lohman&Raaff 2008).

A tailor-made approach, by definition, needs room for making adjustments. Discretionary space could provide this room, as it seems to offer the policy-maker and the professional the space in which to tailor-make specific services. In the case of what may be called 'the average client', there appears to be no dispute when it comes to the application of the law. Particular details of a given client situation might be considered irrelevant by both client and professional and therefore do not introduce a problem, nor do they even seem to constitute a choice[53]. Tailor-making however, appears to be quite a different approach, which requires responsiveness by the professional to the client.

For example, tailor-making in law application includes acting according to the legal "general principles of decent public service"[54] (Loonstra 2011; Tak 1994), which have been developed in jurisprudence and are partly laid down in law[55]. These are well-known principles that function as general guidelines in public service practices. In the context of public welfare, four of these seem particularly significant, including: the principle of equality[56]; the ban on arbitrariness[57]; the justification principle[58]; and the principle of due diligence[59] [60]. In the context of public welfare practice we will encounter these important guidelines, which express a normative stance. That is why they can be called ethical guidelines as well. For now, in the context of discretionary space, it seems noteworthy that none of these principles is phrased in a particularly precise manner[61], leaving space to determine how they should be applied in a given situation. In other words, these principles leave local policy makers and professionals some discretionary space in the application of the law.

52. "Het college stemt de bijstand en de daaraan verbonden verplichtingen af op de omstandigheden, mogelijkheden en middelen van de belanghebbende."
53. In the city of my data assembling, around 80 % of public welfare clients are gone after 3 months (Jaarrapportage 2015 Werk, Inkomen en Zorg, intern rapport).
54. algemene beginselen van behoorlijk bestuur
55. in the *Algemene Bestuurswet* (Abw)
56. het gelijkheidsbeginsel
57. het verbod van willekeur
58. het motiveringsbeginsel
59. het zorgvuldigheidsbeginsel
60. These principles are laid down in, respectively, *Constitutional Law* art.1; art. 3:4 Awb; art. 3:46-50 Awb; art. 3:2 Awb. See also, for instance, Loonstra 2012, 379-381; Tak 1994, 220-223.
61. E.g. Tak (1994) who speaks of "open concepts" ("open begrippen") in the context of jurisdiction(174).

Another source of discretionary space by the use of open phrases is provided by the *Participation Law* (*Kamerstukken II* 2013/14, 33 801). A clear example of this might be one of the *Participation Law*'s central articles, namely art. 7:1 sub b:

> *"The Mayor and City Council Members supply welfare to persons in the Netherlands who are in, or are in danger of getting into, such circumstances that they do not have at their disposal the means to provide for the necessary costs of living".*[62]

Questions may arise about entitlement due to the open-ended way this article has been phrased, for example: What circumstances may be referred to? What would be necessary costs of living, what unnecessary? What would determine the difference? Although jurisprudence sometimes helps to make particular aspects more clear, these questions indicate that discretionary space is available to local policy makers and, in particular cases, also directly to client managers. Due to differing political orientation and differing local policy regulations one municipality may consider a client's application necessary costs of living as stated in the article, whereas another municipality may come down on it entirely differently. This divergence trickles down to the client managers level as well.

In cases of "special benefits"[63] (*Participation Law* art. 35), which is welfare in case of "extraordinary but necessary costs"[64] (Geugjes 2015, 249), the *Participation Law* acknowledges the principle of tailor-making as the main rule[65]. To account for tailor-made special benefits, professionals refer to specific legal concepts such as 'special circumstances" [66], or "very urgent reasons"[67]. In many municipalities, the authorized use of these concepts is worked out in more detail by local policies. Still, a client manager deciding to individualise, must report and justify this choice in each individual case.

Having to relate to these open-ended norms is not without risk for any professional. For example, the discretionary space opened up by these phrasings does not imply that client managers can relax their vigilance regarding the "general principles of decent public service", four of which are mentioned above. Should they overlook any of these principles, then they run the risk of a justified appeal. They need to stay alert and cannot, for example, ignore the requirements of the justification principle due to an ill-founded decision report about the client, nor can they fail to live up to the requirements of the principle of due diligence due to some sloppy informational

62. "Het college verleent bijstand aan personen hier te lande die in zodanige omstandigheden verkeren of dreigen te geraken dat zij niet over de middelen beschikken om in de noodzakelijke kosten van het bestaan te voorzien."
63. "bijzondere bijstand"
64. "bijzondere noodzakelijke kosten"
65. In the *Memorie van Toelichting* to the *Participation Law*, specifically in the paragraph on poverty control, the word "maatwerk" ("tailor-making") occurs 27 times, which may indicate this special focus (*Kamerstukken II* 2013/14, 33 801).
66. tr. by author of "bijzondere omstandigheden": art. 35 lid 1 *Participatiewet*
67. tr. by author of "zeer dringende redenen": art. 49 sub b *Participatiewet*

letter to a client about procedures. In case of both the principle of equality and the ban on arbitrariness, obligations and consequences in practice appear to be more complex. Both concepts will return later, in connection with the practice.

In summary: tailor-making is central in Dutch public welfare; it requires discretionary space. This complicates the work of client managers, who have to decide on the basis of open-ended legal norms that allow a wide variety of responses.

It may be clear that many questions arise in practice about how to deal with these options. Client managers have to address these questions and handle the uncertainty of legal rule in practice. Generally, they deal with it by choosing either tailor-making or regular rule application. This raises questions such as: How do they decide? In what cases do client managers appear to prefer one in favour of the other?

1.5 Discretionary space and "unjustified differences"

Some views on discretionary space seem to construct it as a problem of inequality. Ample discretionary space would imply a set of rules that does not regulate applications in too much detail, leaving both the local council policy and the client manager space to accommodate the needs in particular cases. However, this tailor-making seems to involve a precarious balance as well, because of the legal requirement of equal treatment (Constitution art. 1; the principle of equality). For example, in 2013 the Central Plan Bureau presented an interesting note arguing that, as a result of the decentralizing movement in the public domain in recent decades, there was a risk of significant differences *between municipalities*. The paper called it a "dilemma of effectiveness[68] and (legal) equality" (CPB 2013)[69]. This statement clearly identified the dilemma of the freedom of policymaking, paving the way for tailor-making, and thus the risk of significant differences in application—which are implicitly deemed unwelcome differences.

To examine public welfare law (*Participation Law)*, the national legislator relates to the subject of discretionary space for public welfare professionals with a measure of doubt. On the one hand, the *Participation Law* emphasizes the principle of tailor-making, as we have seen in the *Memorie van Toelichting* (*Kamerstukken II* 2013/14, 33 801). On the other hand, this same *Memorie van Toelichting* is at odds with the tailor-making principle for client managers: "In their practice client managers have (too)

68. In this field, the term "effectiveness" ("doelmatigheid") usually points to re-integration.
69. "dilemma tussen doelmatigheid en (rechts)gelijkheid", Notitie Decentralisaties in het sociaal domein, 4 september 2013, 4.

much room for assessment; they do or do not apply measures as they see fit. This leads to unjustified differences in the application of the law, both within a municipality as between municipalities."[70] (*Kamerstukken II* 2013/14, 33 801, 31-32).

One reaction to this concern about "unjustified differences" (see quote above) can be seen in the many political amendments during implementation of the *Participation Law* that enacted an excessive amount of regulations with a controlling character. These regulations seemed to greatly diminish the discretionary space needed for tailor-making, in spite of the explicit original intention of the *Participation Law* as reflected in the *Memorie van Toelichting*. It caused concern in the field: "Will we get space for tailor-making?"[71]. When it was called "the desperately-needed freedom of policy"[72], this reaction seemed to 'forget' the importance of space for tailor-making by client managers. When local policy needs space for tailor-making to adjust to local circumstances, then, similarly, client managers need space for tailor-making to adjust to the client and their context.

The recent *Law on Fraud* (2012)[73] may be viewed as an additional threat to discretionary space and tailor-making. This particular law has intensified fines, making them higher and their execution compulsory, leaving hardly any discretionary space in case of willful fraud. However, both practice and research show that the charge of willful fraud is very difficult to prove. There is often a lot more to it than meets the eye, as researchers Fenger and Voorberg made clear: "There is a multiplicity of fraud approaches, fraud motives, and fraud causes." (Fenger & Voorberg 2013, 32)[74]. In the political movement around the *Fraud Law* we seem to encounter a political presupposition concerning poverty control that leaves little room for a client's specific context. This is important for client managers because it points to a context of beliefs in society in general within which their practice takes place. This context may appear to simplify their work, but in fact it complicates their responsiveness to specific client cases.

Interestingly, the construction of discretionary space inherently bearing the risk of unequal treatment—thus making the work of public professionals more complex—seems to have gained recognition in the field, recently. In the last two decades public

70. "Klantmanagers hebben in de uitvoering een (te) grote beoordelingsvrijheid; zij leggen naar eigen inzicht wel of geen maatregel op. Dat leidt tot ongerechtvaardigde rechtsverschillen, zowel binnen een gemeente als tussen gemeenten onderling."

71. "krijgen we ruimte voor maatwerk?" The then chairman of Divosa (branche organization of Public Social Services heads and policy managers) Rene Paas comments on the then coming *Participation Law* on his weblog of April 15th, 2014. http://www.divosa.nl/actueel/weblog/we-zijn-er-niet-gerust-op

72. "de broodnodige beleidsvrijheid"; id.; less attention went to ample discretionary space for client managers in their practice, which, as mentioned before, seems to me of vital importance in the actual contact between citizen and government. See, e.g., the body of thought of Marcel Spierts (2014); Van der Lans (2009); Tonkens et al. 2006.

73. *Wet aanscherping handhaving en sanctiebeleid SZW-wetgeving* ; also known as *Fraudewet* (*Law on fraud*) (2012)

74. This issue is only very lightly touched upon here in the context of discretionary space for tailor-making , and obviously requires and deserves more investigation than is possible in this frame.

professionals seem to have developed from obedient civil servants to consciously operating professionals[75]. The traditional concept of a civil servant obediently carrying out a political mandate has evolved into a notion of a new type of professional who is capable of acting more independently. This seems to bring with it the political risk of losing control. A parallel may be drawn to the relational tension between ministerial accountability[76] and the desired autonomy of public organisations (Timmerman & Plug, 2009,104).

For example, already in 2000, the earlier mentioned report to the Government *Safeguarding the Public Interest* (2000) from the WRR[77] (Scientific Council for Government Policy in the Netherlands) had been stating that there was a growing need for professionalism at the desk (WRR 2000, 133). In the report, WRR focussed on the development of the civil servant, acting purely within the mandate of the task entrusted to him by policymakers, into the public professional who acts as an independent agent within the framework of a mandate and who is ethically accountable for his actions.

This development requires emancipation on the part of the public professional and encourages him to explore new frontiers. In the case of the client manager, this emancipation may be illustrated by the recent establishment of a professional association for client managers (November 2012), which explores the profession's profile development[78]. This is an interesting development with regard to ethics and discretionary space. Public professionals, such as client managers, are encouraged to claim a measure of freedom and accept accountability. In their daily practice the modern public professional faces the challenge of balancing the justified demands of citizens with the justified demands of democratically established rules and regulations (Zanetti 2008). The law takes a normative stance, which implies an implicit reference to ethics. That is why the public professional's balancing act is a normative act.

Notably, in his speech at the Divosa annual meeting in 2016, vice-president of the Raad van State Mr. J.P.H. Donner addressed the issue of discretionary space inherently bearing the risk of unequal treatment (Donner 2016). In his speech he opened up new ways of professional development in public service. He stressed the continuing need to prevent arbitrary government decisions. However, rather than relying on equal treatment, government decisions should rely on a new basic principle of law, which, according to him, the *Participation Law* had introduced. Donner identified this new principle, calling it: "to each his own"[79].

75. Karssing&Wirtz's contribution Ambtenaren als professionals (Civil servants as professionals) highlights the development from civil servant to public professional. Another well-known and long-term advocate for new style professionalism is Jos van der Lans, e.g., in Van der Lans 2008.
76. ministeriële verantwoordelijkheid
77. Wetenschappelijke Raad voor het Regeringsbeleid
78. www.bvk.nl
79. "ieder het zijne"

This view marks a turnaround in the application of the law. In order to act out this principle the use of discretionary space seems required. It seems to favour responsiveness to clients and their context, rather than regular rule application. It emphasizes and opens the door for tailor-making, and thus professional auto-nomy in a very literal sense[80].

In summary, this section has looked at discretionary space in connection with, on the one hand, tailor-making practice and, on the other hand, the requirement of equal treatment (a topic which will return later). This chapter has introduced what I call the first core concept of this study: discretionary space in public welfare practice. An introduction to the second core concept, ethics, will be presented in the following chapter.

80. The Greek origin: auto is self, and nomos is law

2

Ethics and Public Welfare Practice

A recognition of discretionary space as the freedom to decide within a given legal framework (see Chapter 1) seems to point to the importance of ethics in law application. As many philosophers argue, ethics in practice presupposes some degree of freedom, or at least a possibility to choose[81]. For example, Foucault said: "Freedom is the ontological precondition for ethics" (Bos, Jones, Parker 2005, title page)[82]. The professional freedom in law application called discretionary space may be seen as the space that allows ethics to unfold—or not. Thus, in the context of public welfare, my interest in ethics is closely connected to the discretionary space of law application.

To remind the reader, the view on ethics taken here is a form of applied ethics (Becker et al. 2007, 106; 323)[83], which revolves around practical questions that, as mentioned, could be seen to be about what it means to "behave like […] a good civil servant"[84] (*Civil Servants Law* art. 125ter). Although I am aware of the possible distinction between morality (moral) and ethics (ethical), for the purpose of this thesis I decided to view these phrasings as roughly pointing to the question in practice of what is "good"—and this is what I am broadly referring to as ethics.

Public welfare practice is a law applying practice. That is why the first section of this chapter centres 'following rules'. Philosophers Derrida and Wittgenstein offer insights into the actual process of following rules, and thus bring us back to the concept of responsiveness. On closer examination, in the context of public welfare responsiveness can be seen to contain a dilemma—earlier identified as "a difficult choice or position" (Webster 1913). This dilemma of responsiveness can be called the dilemma between law and care. This chapter finishes with the exploration of a particular approach to ethics that is built on this dilemma between serving the client and serving the law: "care ethics" versus "law ethics" (De Savornin Lohman & Raaff 2008).

81. One example would be Jean-Paul Sartre who in his *Existentialisme is humanisme* even speaks of "man is condemned to be free" (Groot 2000, 242; tr. by author of "[Dat bedoel ik wanneer ik zeg dat] de mens ertoe veroordeeld is vrij te zijn.").
82. "Vrijheid is de ontologische voorwaarde voor ethiek." Throughout this thesis original Dutch texts are translated into English by the author; footnotes will provide the original Dutch.
83. Dutch: "toegepaste ethiek"
84. *Ambtenarenwet* art. 125ter: "The authorities and the civil servant are obliged to behave like a good employer and a good civil servant." (tr. by author of "Het bevoegd gezag en de ambtenaar zijn verplicht zich als een goed werkgever en een goed ambtenaar te gedragen.")

2.1 "Normative Professionalisation" and socio-*legal* work

In the broad field of social work, Dutch (public) professionals share a development called "normative professionalisation"[85], a call for more reflection on moral values (Jacobs et al. 2008, Tonkens et al. 2006, Gastelaars 2006, 2007, Spierts 2014, Van Ewijk & Kunneman 2013, Kanne 2008, 2016). This movement offers various views on what might be viewed as ethical issues in practices of social work. From around 1990 onwards it developed from an active resistance against the norms of efficiency and controlling management to a widespread discourse on professional moral values (Jacobs 2008, Van Ewijk & Kunneman 2013; Spierts 2014). As part of this, the literatures on the ethics of care have been an important source of inspiration, particularly the work of Joan Tronto (Van Ewijk & Kunneman 2013, 11). One example might be the work of social work scientist Lia van Doorn. She pointed to the decline of socially accepted moral standards that used to back up professionals in their dealing with frequently occurring moral/ethical dilemmas. As they seemed left to their own devices these days, she set up various movements to increase an open moral discussion, especially within social work areas (Van Doorn 2008; Van Doorn 2010; Kanne & Grootoonk 2013).

However, socio-*legal* work is characterized by an obligation to follow rules. Apart from accounting for political aspects, this significant aspect is rarely addressed in the literatures on normative professionalization. They do not particularly focus on the professionals whose daily practice is applying legal rule. Thus, the concept of discretionary space in these contributions does not apply in the same way as to client managers, who, after all, not only work on behalf of their clients, but on behalf of the law as well. In contrast, most social workers in the Netherlands have a single focus: they work for and with their clients. The literatures in the field mostly reflect that single focus situation[86]. Notably, in other European countries the distinction between social work and socio-legal work is not common. Mostly, what is called social work in, for example, Germany, would be called socio-legal work in the Netherlands[87].

Because public welfare takes place in a socio-legal, semi-mandatory context (Menger et al. 2014)[88], there are differences that matter. The specific difficulties and dilemmas that client managers face are different, due to their double assignment. Working on behalf of the law implies *following rules*, while working on behalf of the

85. "normatieve professionalisering" (Jacobs et al. 2008); see also, e.g., Bakker & Montesano Montessori (eds) 2016.
86. An example of an exception is the contribution in 2008 of Karssing & Wirtz (Jacobs 2008), and Karssing's dissertation of 2006 (Karssing 2006). Here it is recognized that public socio-legal professionals have a dual task: caring for their clients as well as following rule of law.
87. From contact with colleagues in Germany, Denmark, Sweden, Spain.
88. See Chapter 1

client seems to require *responsiveness* to the client. These features warrant a more detailed exploration, particularly in connection with the ethical aspects of their practice. This follows in the next two sections.

2.2 Ethics and law: following rules and bridging the "gap"

This section explores the process of following rules. It seems possible to view this process as bridging the gap between the general rule and the specific situation. To remind the reader, public welfare's primary purpose is to correct a state of affairs: installing provisions where there are none, providing sustenance wherever it is needed. Correcting a state of affairs implies normative choices. Public welfare is said to have a "normative function" (Loonstra 2012, 22; Nieuwenhuis 2006). One construction of this function may be the norm stated in the earlier mentioned *Law on civil service*, Art. 125 ter:

> *"The authorities and the civil servant are obliged to behave like a good employer and a good civil servant."*[89]

This seems to highlight an ethical orientation—ethics being concerned with what is "good". Part of what I mean by "good" is connected to "integrity" of public services, as the *Memorie van Toelichting* on good civil service asserted (*Kamerstukken II,* 2003/04, 29 436 nr.3).

The *Memorie van Toelichting* that accompanied the *Participation Law* stated: "With this bill (…) the government aims at making just choices (…)." (*Kamerstukken II* 2013/14, 33 801, *Inleiding*)[90]. As this statement clarified the intention on the part of the legislator to make "just choices", it can be related to the opening pages of the famous *A Theory of Justice* (Rawls 1971), where American political philosopher John Rawls emphasized the importance of justice as "the first virtue of social institutions":

> *"Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust." (Rawls 1971/1999, 3).*

From my point of view, the "virtue of social institutions" such as public welfare will appear just or "unjust" in their concrete application. In a similar way, philosopher Alphonso

89. Translation by author of "Het bevoegd gezag en de ambtenaar zijn verplicht zich als een goed werkgever en een goed ambtenaar te gedragen".
90. "Met dit wetsvoorstel (…) beoogt de regering rechtvaardige keuzes te maken."

Lingis, when speaking about the connection between justice and ethics in a practice context, stated: "Justice comes down to how we relate to others, which is ethics, ethical relations."[91]. He seemed to claim a relation between ethics and justice by pointing to ethical relations as the means to achieve justice.

The text of public welfare law aiming at "just choices" (see quote above) is phrased in general terms in order to cover a wide range of contexts. By definition, there is space between general rule and specific application. Consequently, applying the law to a specific case can only be done when at least some of the particulars of that case are violated or disregarded. Violating or disregarding elements of a given situation seems to have something to do with the idea of (not) doing justice to it. This is a central issue of discretionary space. Here an ethical task seems to rise: there is space between following rules and application of the law, implying choices.

French philosopher Jacques Derrida took an inspiring stand in this context of the complex interaction of application of the law and justice as ethics in practice, when he spoke of the necessity of an act to *re-establish* the law, so to speak, when applying the law to a specific situation:

> *"To be just, the decision of a judge, for example, must not only follow a rule of law or a general law but must also assume it, approve it, confirm its value, by a re-instituting act of interpretation, as if ultimately nothing previously existed of the law, as if the judge himself invented the law in every case." (Derrida 1992, 22).*

Here Derrida seemed to indicate that – if justice is to be done – following a rule of law or a general law demands a particular, special act, which he called: "a re-instituting act of interpretation". This might be interpreted as an act of professional discretion in order to bridge the gap between general rule and a specific situation.

Then, in analogy of Derrida's example of a judge's decision process (see quote above), and taking this example one step further, let us now consider public professionals whose task it is to apply the law to citizens in their unique context. Might we say that it is their task to, in Derrida's words, "not only follow a rule of law", but to perform "a re-instituting act of interpretation"? It seems that Derrida was arguing that the gap, or space, that exists between a general rule and a specific situation may be constructed as "ethical space" (McCown 2013)[92], in which an "act" might be performed in a variety of ways, including ways that could be constructed as ethically responsive.

In our legal system, the final word on application of the law is spoken by the judge. Indeed, in the field of public services, jurisprudence, the judges' verdicts on similar

91. Personal notes from conversation, 24-06-2011; see also Lingis 2016.
92. The phrasing of "ethical space" is derived from McCown's dissertation on mindfulness, see McCown 2013. More on "ethical space" and McCown in Part 3.

cases, helps public professionals in that it clarifies how the law might be interpreted and applied in a specific case. However, jurisprudence does not provide a blanket solution for all future cases, as each new case will be unlike any other, even if only slightly so[93].

In their article on philosopher Ludwig Wittgenstein's view on ethics and the following of rules, Belgian Research Professor for Philosophy of Education Paul Smeyers and his American colleague Nicholas Burbules seemed to make this same point:

> *"Wittgenstein made it clear that following a rule is not just a matter of mimicking a particular behavior from one situation to another. Though we follow rules, they cannot be fully made explicit; it is always necessary to take into account all the elements of the new situation one finds oneself in, which implies, among other things, communication, dialogue, and above all commitment (Burbules and Smeyers, 2002).*

Here, Burbules and Smeyers—in re-constructing Wittgenstein's view on following a rule—seem to value an attentiveness that makes it "necessary to take into account" the particulars of the specific situation. Such attentiveness would include what Burbules and Smeyers call "communication, dialogue, and above all commitment". These phrasings show an appreciation for a responsive approach. One might assume that in order to bridge the gap between the general rule (text) and the specific situation (con-text, here-and-now), some form of relational attentiveness, or responsiveness, is crucial. I will turn to this concept now.

2.3 Ethics and responsiveness: the ethics of care

Responsiveness can be understood as "openness and susceptibility in reciprocity" (Kanne, 2008, 186). Thus defined, it is a concept of interrelatedness, connected to the "ethic of care" that Carol Gilligan proposed in her book "In a Different Voice" (Gilligan 1992). The book was (partly) a critique on Kohlberg's six-step hierarchy of moral understanding that was based on a notion of justice. Kohlberg's model showed the development of moral understanding as following six steps, each step being superior to the previous one. The highest stage was the moral point of view of a fully matured human being who acts and argues autonomously, objectively and from universal principles.

Gilligan, and others after her, emphasized quite a different concept. Central to their notion of an "ethic of care" (Tronto 1993) is a particular responsiveness to others.

93. An allegory in a different context might illustrate this. In the language of music, the score is the link between composer and player. It can be thought of as providing the basis for ever new, unique sounding musical performances. Music can also be thought of as creative musical performance, only sounding at one specific moment at one specific place. It is an act of interpretation, as if ultimately "nothing previously existed" (Derrida 1992), as if the musicians themselves invented the music then and there.

For instance, in the context of a critical theory-based ethics in U.S. Public Administration, Zanetti, discussing Gilligan (and Benhabib), said: "The central concern in the care ethic is responsiveness to others." (Zanetti 2008, 64).

In my search for an ethics appropriate to public welfare service, the concept of responsiveness, drawing on care ethics theories (Gilligan 1982; Tronto 1993; De Savornin Lohman&Raaff 2009; Kanne 2008)[94], seemed useful. In various care ethics theories, socially situated relational practices are emphasized rather than abstract argumentation and deliberation (Becker 2007, 367; Varela 1999). They often center around concepts such as "attentiveness" and "responsiveness" (Kanne 2008, 186). Some care ethics theories seem to have constructed responsiveness as a relational focus, acknowledging other in "attentive commitment" and, as mentioned, as "openness and susceptibility in reciprocity" (Kanne 2008, 186; also, e.g., Tronto 1993, Gilligan 1992). The concept of responsiveness developed in this study also draws on *Ethical Know-How*—three inspiring lectures by biologist, cognitive scientist and Buddhist Francisco Varela (Varela 1999). In the context of his exploration of "the ethical expert", he referred to a general starting point in ethics of "responding to the needs of others" (Varela 1992, 23).

In addition, the term 'responsiveness' was used by author Michael Lipsky, well-known for his studies on street-level bureaucracy (Lipsky 1980, 1969). In his publication of 1980 he concludes that in public service "to become more responsive" to clients is mostly "dysfunctional". The reason is that "increases in client demands at one point will only lead to mechanisms to ration services further at another point, assuming resources remain unchanged" (Lipsky 1980, 101; also Van der Veen 1990, 17). As Lipsky argues, with resources remaining unchanged, more responsiveness to clients in some service would only lead to less responsiveness to other clients or in other services. What Lipsky refers to is still relevant today, particularly since public services have undergone severe austerity measures. The pressure not to be relationally responsive towards the client in public services might very well still be prevalent today. It concerns a dilemma I will now attend to, in the next section.

2.4 A dilemma of professional responsiveness

Assuming that ethics in practice involves responsiveness to some extent, as well as acknowledgement of the rights and interests of the parties involved, then clearly this would raise the question: responsiveness to whom, or to whom first? To legal rule, or to

94. For more authors on care ethics in various different practices in the Netherlands, see, e.g., Kanne 2008, 186.

client, or both, or perhaps to something or someone else? It is precisely the discretionary space—the freedom of decision on the part of professionals within the given legal framework—that raises a dilemma of professional responsiveness.

Earlier I identified the term dilemma as "a difficult choice or position" (Webster 1913). Thus, an ethical dilemma can be identified as such a difficult choice or position containing competing moralities. In this context social theorist Kenneth Gergen seems to indicate that, concerning moral choices, a choice for responsiveness in one relationship may include being less or not responsive in some other relationship. In his book *Relational Being* he states:

> *"In every choice I am both moral and immoral. For every relationship of which I am a part, I am also a part of another relationship for whom my present actions may be misbegotten." (Gergen 2009, 359).*

Could this imply that a client manager's choice to be responsive to legal rule presupposes his being less or not responsive to the client and his context, and vice versa? Gergen certainly seems to consider this a possibility.

Apart from possible pressure one way or the other, it seems hard to imagine how a client manager can be of service without relating responsively, even if minimally, to the client and his context. At the same time, the allocation of benefits based on legal rule must be warranted. Responsiveness to the client and their context must be balanced with responsiveness to the rules. In the case of public welfare, client managers are required to perform a balancing act. On the one hand they have to determine the legitimate basis on which to grant or reject an application. On the other hand they are required to do so for all those who apply. Not all applications can be granted. Due to a limited budget, distribution is necessary and distribution norms need to be acknowledged and worked with. These distribution norms are stated in welfare law, as well as in local policy regulations. Obviously, these do not and are not able to completely determine the distribution in practice. Here discretionary space comes in. It is the space in which a professional can make a difference by performing an "act" (Derrida 1992, 22) in a variety of ways, including perhaps ways that are ethically responsive to some extent.

One could say: the professional's discretionary space enables responsiveness to legal rule to be balanced by responsiveness to a particular client. To be more precise about responsiveness to legal rule, entitlement to welfare for all citizens is laid down in the law, and so, the law aims at taking care of the interests of all citizens who are, will be, or might be applying for public welfare. In this sense responsiveness to legal rule can be seen as responsiveness to any other (future) client entitled to public welfare, because legal rule is supposed to take care of all these "other" clients.

Noteworthy in this context is Zanetti's account, building on Benhabib and Gilligan, of "the generalized other" as opposed to "the concrete other" (Zanetti 2008, 64). In this context, and regarding the distribution of public welfare, Du Gay's view, earlier mentioned, on bureaucracy as a form of ethics aiming to guarantee fair and equal treatment, can be defended (Bos et al. 2005, 203).

2.5 An inherent dilemma between law and care

The double assignment discussed in the previous section, to be responsive to both legal rule and client and context, suggests a possible tension, or an inherent dilemma.

Van der Veen, in his 1990 study of a Dutch public welfare Department, already makes reference to what he calls the tension between the 'social function" and the "controlling function" of the public welfare servant (Van der Veen1990, 62). We may relate this to the concept of responsiveness as discussed. One could argue that in the language of responsiveness, being responsive to legal rule would align with the client manager's controlling function, while being responsive to the client and their context would align with his social function.

In their contribution to "Good work; explorations of normative professionalization" (Jacobs et al. 2008), authors Karssing and Wirtz, drawing on Van Gunsteren, offer a critical discussion of the discretionary space[95] of public professionals. They speak of a "double bind", thereby indicating the precariousness of the normative position of civil servants. They state:

> *"Double binds occur because civil servants are required to apply the law objectively, independently and impartially and at the same time be responsive and act compassionately when it comes to the needs and wishes of individual citizens." (Karssing&Wirtz 2008, 141).*[96]

We may recognize an orientation towards legal values in the notion of applying the law "objectively, independently and impartially". In the demand "to be responsive and act compassionately when it comes to the needs and wishes of individual citizens", we may recognize an orientation towards values of care. Thus, it seems possible to see the authors here presenting civil servants "double binds" as a dilemma of two normative requirements pointing to opposite directions, however to be fulfilled "at the same time" (see quote above).

95. "discretionaire beslissingsruimte" (Karssing&Wirtz 2008, 146)
96. "Er is sprake van dubbele bindingen omdat van ambtenaren tegelijkertijd wordt geëist dat ze zowel objectief, onafhankelijk en onpartijdig de wet uitvoeren als responsief zijn en "met een menselijk gezicht" oog hebben voor de noden en wensen van individuele burgers."

More recently, this tension was referred to by Polstra in his study "Laveren tussen belangen" ("Navigate Various Interests"). He identified several contexts[97] that client managers and re-integration managers work from, the first two of which are: 1) a context of legal rules, which points to their task of carrying out the law's rules and regulations, and which includes acknowledging a vast amount of rules branched out and frequently adjusted as well as directives coming from national law, policy regulations, and jurisprudence; and 2) a practice context of what he calls: "supporting, coaching, stimulating and motivating the client"[98] (Polstra 2011, 2). It seems likely that attending to the context of legal rules would require the client manager's responsiveness to legal rule, while attending to the context of "supporting, coaching, stimulating and motivating the client" would activate the client manager's responsiveness to client and context.

This same dilemma is phrased in slightly different terms in different settings. The mandatory setting of Dutch probation provides a context in which Menger and Donker speak of a "dual role", and a "hybrid job"[99]. They point to the professional challenge to find "a good synthesis between coaching and controlling roles" [100] (Menger et al. 2014, 127).

Here we must keep in mind that most probation workers are social workers, who are familiar with coaching practices in this field. However, socio-legal workers, such as client managers in public welfare, have a different focus. Primarily, they have to apply public welfare law. Therefore, their coaching is confined to stimulating citizens to find a job by enacting the processes that guide clients to becoming self-supporting, independent citizens (again). For this reason, the terms supporting or sustaining the client are better suited to this type of practice than the term coaching. As mentioned earlier[101], public welfare is called one of the semi-mandatory settings in the field of Dutch public services. Working within this setting, the public welfare professional, too, is challenged to "find a good synthesis" between supporting and controlling roles.

Moreover, this challenge can be a dilemma that could be phrased in terms of ethics. In her contribution to a critical theory-based ethics in the context of U.S. Public Administration, Zanetti points to such a dilemma. She uses the language of "the ethic of justice" and "the ethic of care". She talks of a "dichotomy" of these two ethical orientations (Zanetti 2008, 65). In line with the earlier discussion, this seems to speak of an ethical dilemma of responsiveness.

97. He calls them *the 4 worlds of client management (* "de vier werelden van klantmanagement")
98. "het ondersteunen, begeleiden, stimuleren en motiveren van de klant."
99. "Duale rol: hybride werken"
100. "een goede synthese vinden tussen begeleidende en controlerende rollen" (Menger et al. 2014, 127).
101. See 1.3.

An ethics in practice that acknowledges this particular dilemma of being responsive to both legal rules and client and context, could be helpful to deepen this inquiry. Such an approach to ethics will be discussed in the next paragraph.

2.6 Law ethics and care ethics

The discussion so far has identified a regularly referenced binary regarding responsiveness to legal rules versus responsiveness to the client and their context. The ethics in practice approach of social scientist Jacquelien de Savornin Lohman and socio-legal professional and lecturer Hannie Raaff, developed in their book *In de frontlinie tussen hulp en recht* (*On the front line between support and law)* (De Savornin Lohman/ Raaff 2008)[102], focusses on just that dilemma. Their approach seems to provide some potential for use in exploring the ways in which client managers make their decisions. It offers a particular view on how to handle the sometimes conflicting interests in public social services and offers an interesting perspective on complexities of clients cases in public welfare practice. This approach may be helpful to clarify some of the complex relations of this practice. Its perspective on "law ethics" and "care ethics" provides the basis for a conceptual frame that adds to our discussion of the dilemma between responsiveness either to legal rules or to client and context. For this purpose a review of these two professional ethical orientations is included here: a law ethics orientation and a care ethics orientation.

In their book the authors address the particular complexities of socio-legal professionals in various public practices in the Netherlands in a very practical way. They call (public) socio-legal professionals "front line workers", and focus on a basic strain in their work, reflected in the choices within their professional discretionary space. By describing two different orientations towards these choices, they place the daily work of public professionals in an environment of competing interests and dilemmas.

The title of their book already suggests the dilemma which is constructed and elaborated upon: on the one hand there is the client who needs support, and on the other hand there is the law to be applied. The authors place this assignment in the context of a choice for two different ethical orientations. On the one hand, an orientation towards ethics of law[103], and on the other hand, an orientation towards ethics of care[104].

102. This book is one of the most frequently used in Bachelor social legal education in the Netherlands. In a personal conversation (27-2-2014) the publisher W.N.-of publishing company Coutinho-confirmed that editions of this book are used in 80 % of all Dutch SJD-opleidingen (Social Legal Bachelor Education). In turn, local councils seem to increasingly consider a Bachelor social legal education to be the most preferred education for client managers (without work experience) (Timmer 2014, 62).

103. For more on the concept of a law ethics, see also, e.g., De Brabander 2013, 175

104. For more on the concept of a care ethics, see also Tronto 1993; or, e.g., Schuyt & Steketee 1998; Becker et al. 2007; Zanetti 2008.

In particular cases professionals have discretionary space at their disposal which enables them to act relatively more in line with law ethics or with care ethics. These two ethical approaches are presented as notions that may serve as possible justifications for a particular course of action. In their presentation the authors initially seem to present the two approaches as diametrically opposed:

> *"The ethics of law starts from objective, general standards that apply to everyone, whereas the ethics of care stresses the connection between people that might vary depending on the context." (De Savornin Lohman & Raaff 2008, 119)*[105]

In developing the concept of a law ethics in practice, the authors draw on several literatures, including the work of philosophers Kant, and Habermas[106]. The concept of law ethics in professional practice aims at providing some grip on complexities that are part of the daily workload by emphasizing the significance of notions such as "equality, universal values, objective reality, rationality, accountability, autonomy, control, entitlement, duty" (De Savornin Lohmann & Raaff 2008,119-139,154). An orientation towards law ethics in this sense may be seen as relatively more connected to a responsiveness to legal rules.

In developing the concept of a care ethics in practice, the authors draw on the work of political scientist Joan Tronto[107], as well as on the works of philosopher Richard Rorty and feminist psychologist Carol Gilligan. The concept of care ethics in professional practice aims at providing some grip on complexities that are part of the daily workload by emphasizing the significance of notions such as "difference, relative values, context-related reality, emotions, involvement, dependence, bonding, need, altruism" (De Savornin Lohmann & Raaff 2008, 141-151,154). An orientation towards care ethics in this sense may be seen as relatively more connected to a responsiveness to the client and their context.

The authors do not take a stand as to which orientation should be preferred, but rather appreciate each orientation in and of itself. Interestingly, they add a third possibility that is presented as a professional ideal, ethically speaking: professionals are invited to reflect on ethical notions of both orientations, in the context of a particular practice situation. The authors propose using the strain from practice dilemmas in order to enhance professional quality of daily work, and for this purpose introduce a plan by way of an assessing-and-deciding model. In balancing the values of the two orientations,

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105. "De rechtenethiek gaat uit van objectieve, algemene, voor iedereen geldende maatstaven, terwijl de zorgethiek de nadruk legt op binding tussen mensen die kan verschillen al naargelang de context, de omgeving". Compare also, for example, Zanetti who speaks of "ethic of justice" and "ethic of care" (Zanetti 2008, 64-5)

106. The authors also include Rousseau, Montesquieu, Rawls and Kohlberg in their discussion of law ethics.

107. Tronto draws on "18th century Scottish Philosophers": Hutcheson, Hume and Smith; a short review of these philosophers is included in De Savornin Lohmann& Raaff's book.

professionals may combine the best of both worlds, so to speak, in a particular situation. In this context the authors use the term "synergy" in combining the two orientations, and give examples of this practice in various working fields (De Savornin Lohman&Raaff 2008, 153-164, 180). They emphasize the importance of looking for this "synergy", or synthesis, by saying:

> *"This is not about embracing one given orientation while rejecting another, but rather about using both orientation frames to best advantage so that its combined strength may benefit people. In order for us to do that, we should first get a clear view of the differences, so that we, through thesis and anti-thesis, may come to synthesis." (De Savornin Lohman & Raaff 2008, 153/4).*[108]

Thus the authors encourage workers to explore both ethics orientations, in order to come to what may be the best decision in a particular case: a "synthesis" of both orientations. This suggests that a resolution to the dilemma is being offered, but it is a rather limited and unsatisfactory one. Particular phrases in this quote, such as "to best advantage"[109], and "benefit"[110] may give rise to questions. What would be "to best advantage", or "benefit", in particular cases? The authors do not answer these questions in general terms, presumably because they believe that such answers are dependent on the particulars of a given situation. However, they do provide various examples of different work field practices in order to illustrate what these phrases might imply.

2.7 A dilemma framework

Given the discussions so far, the following emerged as a framework of "sensitizing concepts" (Boeije 2008, 47) to assist this inquiry. This framework presents the dilemma of law and care from three different angles, because I identified three viewpoints that seemed particularly suited to the practice of public welfare. First: from an ethical point of view it is the dilemma between an orientation towards law ethics versus care ethics. Second and similar to the first: from the point of view of responsiveness it is a dilemma between responsiveness primarily towards legal rule versus the client and their context. Third, from the point of view of professional approach it is a dilemma between a mode that is more controlling versus one that is more supporting.

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108. "Het gaat er niet om de ene oriëntatie te omarmen en de andere af te wijzen, maar om beide oriëntatiekaders zo goed mogelijk te gebruiken, zodanig dat de gezamenlijke kracht ervan ten goede komt aan mensen. Om dat te kunnen doen, moeten we eerst de verschillen goed voor ogen zien te krijgen, om vervolgens van these en antithese tot synthese te komen."
109. "zo goed mogelijk"
110. "ten goede komt aan"

DILEMMA FRAMEWORK	Law	Care	Based on:
Ethical orientation:	Law ethics	Care ethics	Pedagogy literatures and care ethics theories
Responsiveness:	Primarily to regular legal rules	Primarily to client and context	Care ethics theories
Basic professional approach:	Controlling	Supporting	Pedagogy literatures and literatures on (semi-) mandatory settings

FIGURE 1: dilemma framework

The second and third column of the framework put forward two different approaches. One approach is connected to an orientation of law ethics, with client managers primarily looking for ways to be responsive towards regular legal rules, working in a more controlling mode. The other approach is connected to an orientation of care ethics, with client managers primarily looking for ways to be responsive towards a particular client and their context in a more supporting mode. It can be compared to what some have labelled the two main functions of the public welfare professional: their "social function", as opposed to their "controlling function" (Van der Veen 1990, 68; Polstra 2011).

Admittedly, a dilemma as presented here does not always manifest. In many client cases, a satisfying resolution may be reached, because, after all, public welfare law aims at providing support for citizens in need. This goal is explicitly mentioned in the *Memorie van Toelichting 33 801* on *Participatiewet 2015*: "In The Netherlands the provision of general welfare guarantees the security of a social safety net that people who truly need it can fall back on"[111] [112]. However, there are client cases in which there is no immediate and clear alignment of legal rules with the clients' needs and applications. In these cases client managers are challenged to bring about a balance between responsiveness to the particular client and context and responsiveness to legal rules.

Moreover, this dilemma framework presents a relationship between law and care which some authors see differently. For example, and as mentioned, De Savornin Lohmann & Raaff suggested that by getting a clear view of the differences of both orientations we "through thesis and anti-thesis, may come to synthesis" (De Savornin Lohman & Raaff 2008,154). In addition, in the context of a critical theory-based ethics in U.S. Public Administration, Zanetti seemed to look for ways to overcome the binary, drawing on Benhabib and Gilligan (Zanetti 2008).

111. "In Nederland bestaat met de verlening van algemene bijstand enerzijds de zekerheid van een sociaal vangnet waar mensen die dat echt nodig hebben op terug kunnen vallen". (translation by author)
112. As mentioned earlier, for example, in Stededam around 80 % of public welfare clients are gone after three months (Jaarrapportage 2015 Werk, Inkomen en Zorg Stededam, intern rapport).

Because I did not find any empirical study inquiring into the validity of this binary in socio-legal practice, I now suggest to apply the concepts of law ethics and care ethics to public welfare, more specifically, the practice of client managers. It seems one way to find out how an ethical balance between responsiveness to the particular client and their context, and responsiveness to legal rules, may be achieved.

2.8 My research question

This "sensitizing" (Boeije 2008, 47) dilemma framework constructed above shows a dilemma of ethical orientations, the dilemma of law or care, connected to a notion of professional responsiveness and approach. Thus it seemed to express my research curiosities and interest to find out more about ethical dilemmas in socio-legal practice.

If this is a dilemma that is recognizable in practice, then it will presumably be recognizable by references to the two basically different professional notions, for example in texts produced by client managers' conversations on client cases. Examining these conversations might show us what complexities in client cases are identified and the extent to which they are recognized or discussed as a dilemma between law and care. Therefore, based on the discussions so far, my research curiosities and interest could be summarised as:

What do client case discussions reveal about the dilemmas that public welfare professionals face, and does the distinction between law and care illuminate these dilemmas?

3

An Empirical Inquiry into the Practice of Public Welfare Professionals

To explore discretionary space, ethics and dilemmas of client managers in public welfare practice I conducted an empirical study in a carefully chosen city—for the purpose of this thesis called "Stededam"—in the Netherlands. When new local policies were introduced that centred a tailor-making practice, management proposed case meetings in order to enable client managers to discuss client cases on a regular basis. This chapter relates how my inquiry is centred around these case meetings, how I positioned myself in the case meetings and how I assembled various empirical materials.

A first, 'top-down', analysis did not seem to cover all the issues that seemed to arise from the transcripts. Given my research curiosities, I started to analyse the transcripts of the case meetings in a 'bottom-up' way. Analysis thus organized the transcripts into three distinct but interrelated core categories (dilemmas):

1) *the dilemma of abiding by regular rules or (investigating) tailor-making*
2) *'under siege', getting stuck in dilemmas; and*
3) *dilemmas of 'last resort' complexities.*

3.1 Why I chose Stededam and its case meetings as the practice site of my inquiry

This inquiry focusses on the Department of Social Security in the middle-sized municipality of Stededam, situated in the middle of the Netherlands, and its client managers (around forty). The choice for this particular municipality was based on various aspects, not the least of them being a new local policy that involved the discretionary space of client managers. During case meetings[113] the client managers would discuss client related issues taken from their daily professional practice of public welfare application. The set-up and aim of these case meetings appeared to give reason to presume that complex client-related issues would be the subject of discussion. In the document installing these case meetings I read that the proclaimed aim of case conversations was "to reflect on their own actions and to learn from each other"[114] (internal document *Set-up Case Meetings*, see Appendix 3). It seemed to me that by initiating these case meetings management took care to provide a context for possible ethical development. It made me eager to study the conversations of client managers in these case meetings. When I discussed the design of my inquiry project with the head of the Social Security Department, I was fortunate to be allowed full admission.

In addition to the opportunity to attend these case meetings, other factors seemed to point towards the choice of this particular municipality and practice site for this research. The municipalities I had come across and had visited, handled the severe public welfare austerities and continuously changing legal contexts of the past few years in different ways. One way to meet the needed austerities appeared to be to expand the standard regulations (and dismiss professionals).

However, this particular municipality had adopted a distinctly different approach. Here, the council made the political decision that, in order to economize, (almost) all standards—the so called generic arrangements—were to be abolished in favour of a tailor-made approach towards all of the city's clients (*Raadsinformatiebrief 7 oktober 2011*, *reg.nr. 3918723*)[115]. This was a remarkable development, because at the time (2011) it was directly opposite to the way in which many other Social Services Departments were moving, as I had found out earlier in personal and informal conversations with policy managers and client managers from several councils in the region. As has since become apparent, this council was ahead of its time, as the new Participation Law (2015), which includes public welfare law, later moved in the same direction.

113. Dutch: *casuïstiekbesprekingen*
114. "*De doelstelling van casuïstiek bespreken is reflectie op het eigen handelen en leren van elkaar.*"
115. This is a Local Council information letter from the Mayor and City Council Members ("B&W", "burgemeester en wethouders"), dated October 7th, 2011. See Appendix 5; also from personal conversations with the head of the Social Services Department and quality managers in A.

Moreover, this city, medium-sized, with all the problems of a larger community, appeared to be a kind of "best practice" in the field, as in 2011, for the third time in a row, its Social Services Department won a yearly first prize in the Public Social Services competition organized by national branch organization Divosa.

Finally, my relationship with the head of the Social Security Department was a cordial one from the beginning. Our exchanges were characterized by our shared interest in (Eastern) philosophy[116]. When later I developed an interest in this inquiry project, he naturally became gatekeeper (Silverman 2010, 203) in the empirical inquiry process, and consented to my admission at the client managers case meetings without any restrictions.

3.2 Renewed welfare policy in Stededam[117]

Given my interest in discretionary space and ethics in practice, it would be useful to say something more about the particular qualities of this site and their new welfare policy. This major shift in client managers' working processes seemed particularly interesting because, as mentioned, it emphasized a more tailor-made approach—based on discretionary space—rather than a more standardized approach. As I learned from personal, informal conversations with the head and managers of the department, as well as from local policy documents, the new policy was called "renewed welfare policy"[118]; it was implemented in January 2012 (Raadsinformatiebrief 7 oktober 2011, reg.nr. 3918723)[119].

The idea and aim of this new policy was to extract funds from the generic settlements to go to the really needy clients as determined by the client managers' screening of their caseload. All existing clients were informed of this change that most significantly included the canceling of two frequently handled generic provisions: 1) the canceling of general compensation through special benefits in case of necessary medical costs that were not insured by health insurance companies, and 2) the canceling of a general extra allowance for each client of 200 Euro yearly for social participation (the so-called sopa= social participation allowance).

Within the frame of this renewed welfare policy, the general approach to the client underwent another major change. In the more "prosperous" times before around 2010, procedures used to be oriented towards offering the client a range of supportive

116. We share an interest in exploring possibilities of practical "applications" of inspirational wisdom teachings from, amongst others, Meister Eckhart (13th century) and Lao Tze (around 4th century B.C.)
117. The information conveyed in this section is derived from field notes of my conversations with the head of the department, with quality managers, policy managers, and from local policy documents which can be found in the Appendices.
118. "herijkte minimabeleid"
119. See Appendix 5

options that the Social Security Department could provide, the so-called "proposal" approach[120]. In those times, client managers were asked to be alert to the phenomenon of "lack of use"[121], which means that they had to be attentive to the possibility—in fact often occurring—that a client was not aware of, nor was getting, certain provisions that (s)he was actually entitled to. Client managers would offer the client what (s)he in his/her particular circumstances could perhaps use.

However, from the time of the renewed welfare policy on, the approach was no longer supposed to be orientated towards efforts of client managers to find this out by themselves. Rather, in their dealings with a given client, they were supposed to decide which of their needs had to be met by public welfare as a last resort, by interviewing and assessing the client. The so-called "demand" approach[122] thus replaced the earlier "proposal" approach, as I learned from conversations with managers and from the local policy document informing client managers about the implementation of the renewed welfare policy [123].

In the *Raadsinformatiebrief*[124] on the subject I read that, in order to enact these changes, client managers arranged meetings with the so-called vulnerable clients[125]. In connection with these most vulnerable clients, the renewed welfare policy introduced two newly developed open norms that were called "social participation" and "grip on life"[126]. These were put forward as being the most important criteria of entitlement to extra provisions next to regular maintenance[127]. The first criterion, the client's degree of social participation, referred to any form of the client's social interaction, ranging from minimal social contact to a (part-time) paid job. The second criterion was the degree in which a client would seem to have a "grip on life", being able to sort out and organize, primarily, financial citizen duties and rights without getting stuck. As mentioned before, various austerity measures were being enacted, including the abolishment of the yearly generic social participation allowance of 200 Euro. These two norms of social participation and grip on life were designed to help the client manager in their re-consideration of extra support or allowances for those clients who needed it, in other words, for the so-called most vulnerable clients.

The overall aim of public welfare to assist clients to leave Social Services as self-supporting citizens as soon as possible remained a basic tenet of this system. However, a certain part of the welfare client population was apparently not expected to be able

120. "aanbodgerichte aanpak"
121. "onderbenutting", see for instance De Savornin Lohman & Raaff 2008, 29-31
122. "vraaggestuurde aanpak"
123. From local policy document *Stand van zaken implementatieproces minimabeleid 12 december 2011.*
124. *Raadsinformatiebrief 7 oktober 2011, reg.nr. 3918723;* see Appendix 5.
125. "kwetsbaren"
126. "sociale participatie" and " grip op eigen leven"; these phrasings were also frequently used in the case meetings.
127. "levensonderhoud"

to live up to that goal. So, in addition, and with special regard to this group of clients, Stededam initiated some new and extra local provisions. First, an extra fund was set up to support clients who were in danger of becoming isolated, to participate in society. This extra local fund was called "tailor-made net"[128]. Second, the function of a "minima-coach", a kind of temporary re-integration manager, was installed; these coaches were to visit and support the most needy clients—diagnosed as such by their client manager—to get them back on track, so to speak. A third new local regulation declared the so-called stacking of extra costs in one year per client to be a possible justification for special benefits[129].

Abolished	**New**
Social participation allowance of €200,=, yearly	Minima coaches
Special benefits for extra medical costs	Tailor-made net
Most other (smaller) generic settlements	New criteria for individual extra support: - social participation - grip on life - stacking of extra costs

FIGURE 2: Main local policy changes in Stededam from 1-1-2012 on.

3.3 A new task for client managers

From a local policy document called *Guideline for responsibly choosing individual tracks*[130] (May 2011), I learned that up until that time it was normal procedure to start a reintegration track for every public welfare client. Within the framework of the employment re-integration program every welfare client had both a re-integration manager and a client manager. Then during 2011, it was decided that this could no longer be a matter of course, because the automatic starting of a re-integration track in all cases, so for each applicant, was considered to be not sensible, and too costly. For some clients, re-integration appeared (temporarily) unfeasible. In some cases of prolonged welfare, re-integration, or even any form of social participation that could lead to re-integration by (paid) work, had been attempted without success. In these

128. "*maatwerkvangnet*" (local policy document *Stand van zaken implementatieproces minimabeleid 12 december 2011);* a term frequently used in the case meetings as well.
129. *Raadsinformatiebrief 7 oktober 2011, reg.nr. 3918723,* see Appendix 5. Also derived from field notes of observations and conversations with managers.
130. *Richtlijn verantwoord kiezen binnen individuele trajecten*; also from conversations with managers.

cases support from a re-integration coach by a re-integration track would (temporarily) not make sense. Consequently, this group of clients was placed under the sole care of client managers.

This new set-up implied that concerning all clients the client manager was handed an extra task: from now on, within the framework and process of handling a case, the client manager had to *assess* the client. They had to develop a view on the client and their potentialities concerning reintegration, and to distinguish between clients who would be getting a re-integration course as well as a re-integration manager, and those who would not (*Functiebeschrijvingsformulier,* Appendix 1)[131]. Moreover, the group of clients now placed under the sole care of client managers generally appeared to be the most complex group of clients. When re-integration was deemed not feasible, even with the support of a re-integration manager, it indicated a case in which a client was facing more than one problem. That is why, mostly, various Social Services organizations were involved with these so-called 'multi-problem' clients, their backgrounds including problems with violence, various types of addictions, mental/physical disorders, chronic disease, a traumatic past, and so forth.

Many client managers in Stededam were relatively new to this task of assessing the client. It required arguments from the client and their context. For example, arguments concerning the client's ability to participate socially (the criterion of social participation), and to cope on his own (the criterion of grip on life). Earlier, they seemed to have been more inclined to lean mainly on purely legal arguments.

Management recognized that the client manager in general was new to this role and was perhaps ill-prepared or equipped to deal with taking care of this particular group of clients. I came to understand, and was in fact told so by client managers on frequent occasions, that complex cases were usually the subject of exchange in the various client managers rooms at the Department. This was general practice, despite the fact that client managers handle client applications independently and remain accountable for their own caseload of clients. Nevertheless this new task was one of the reasons to start the case meeting conversations that I was allowed to study.

3.4 Attending case meetings

From January 2012 onwards regular case meetings of client managers were organized at the Social Department in Stededam, within the frame of the implementation of the so-called renewed welfare policy[132]. To remind the reader, this was a new general policy,

131. Also from conversations with policy managers at the site

132. From personal conversations with policy managers and quality manager; also from internal document *Set-up Case Meetings, November 23d, 2011 (see Appendix 3)*

allowing client managers more discretionary space in their daily work, emphasizing an individually tailor-made approach towards welfare clients rather than a more standardized approach.

Every three or four weeks, all client managers (around forty in this council) would gather in groups of around six client managers, usually in the presence of a quality manager, senior or policy manager who would attend to procedures. The case meetings were set up as a platform of discussion around the more complex cases. They usually took ninety minutes. Client managers were asked to bring in the cases, taking turns to present them.

It seems useful to say something more about the light structure that supported the discussions. Management proposed that certain steps were to be taken in the discussions. These were communicated to all participants by means of an internal briefing[133]. Several client managers recognized this particular set-up as a well-known "intervisie"[134] format:

Step 1: bringing up the case (5 minutes)
Step 2: clarifying the case (10 minutes)
Step 3: determining approach, individually (5 minutes)
Step 4: discussing individual approach in group (15 minutes)
Step 5: conclusions (5 minutes).
(Set-up Case Meetings; Appendix 3).

In steps 1 and 2 the client manager would sketch the situation and history of the particular case in more detail. In steps 3 and 4 the other client managers would offer their contributions and suggestions regarding entitlements or desired course of action in the case, and how that could be accounted for. It is interesting to note that regarding step 5 (conclusions) a definitive outcome was quite often not reached in the meeting. While, in the end, participants might agree on possible steps to be taken in a particular case, it was left up to the client manager—sometimes explicitly—to decide on how to proceed. In many cases, the chairman would finish by asking the client manager in question if the discussion had been of any use. The answer to that question was an unequivocal yes in all case meetings I attended in which the question was asked.

From January 2012 up till June 2012 I attended twenty-one case meetings, twenty of which were audio recorded and transcribed; one recording failed. I did not attend all case meetings held within that period (around forty). The reason was that I

133. See Appendix 3.
134. "Intervisie" is a well-known Dutch word pointing to a structured exchange of opinions amongst equals (e.g., professionals or students); see, e.g., Groen 2011; an earlier attempt to install "intervisie" meetings amongst client managers had not been successful (from personal conversations)

felt that twenty meetings would provide ample data. I decided to spread these visits over a period of half a year, rather than trying to attend all scheduled case meetings in a shorter period of time. In addition, I chose to let my agenda as a lecturer decide whether or not I would attend a case meeting. During the twenty-one meetings attended, thirty-seven client cases were discussed extensively. In addition, many cases were briefly touched upon, not having been scheduled, supplementing the story of participants as illustrations.

It was clear from the start that clients would not be present at these meetings; the conversations would be amongst client managers—discussing clients and their contexts. One way to explore my research curiosities about their dilemmas in relation to law versus care would then be to attend these conversations, thus obtaining "naturally occurring talk" (Silverman 2011, 274). It would enable me to assemble data about dilemmas that client managers face in their most challenging cases.

Obviously, it would have been very interesting to attend client manager- client conversations[135]. However, practical as well as methodological problems made this unfeasible. In addition, I am well aware of the limitations of this inquiry in a single city with one Social Department, compared to an inquiry that would include more municipalities, or more extensive ethnographic research at the site. However, attending these case meetings would enable me to assemble (a limited amount of) material in the form of audiotapes of naturally occurring conversations—and this looked very promising: it would enable an in-depth analysis of how these client managers, in their conversations during their case meetings, would actually go about constructing their understanding of their professional social world together (Silverman 2011, 276).

Moreover, I realized that in fact attending case meetings appeared to be in better alignment with the aim of my research than attending meetings between client managers and clients. The reason is that in these case meetings client managers would be talking to each other about the various more complex cases, exchanging their views on how to handle them. I would have access to the way in which they would talk to each other about their understanding of their discretionary space for tailor-making, connecting the interests of client and legal rule in practice, thus showing their professional dilemmas more clearly than they would probably be doing in the conversations with their clients.

135. At an early stage I managed to attend a few client manager—client exchanges, which enhanced my sensitivity regarding the client managers' daily practice. At the same time, however, it convinced me that this was not the most informative or efficient route to follow.

3.5 Positioning at case meetings

In January 2012 the head of the department and I signed a commitment paper which accounted for my activities in the frame of this PhD at the department (see Appendix 4). At the start of the first case meetings I introduced myself to the participants, stating my independence and impartiality in the project, and my strictly anonymous use of the material. I explained that people could expect me to make notes, and that I would not participate in the conversation. I then asked for consent to audiotape the conversation, explaining this would make it possible for me to be more accurate by using the exact phrasing used by the participants.

The meetings took place in various conference rooms in the department. Participants mostly sat behind tables placed in a circle. It was my design to behave as unobtrusively as possible, so I usually came in early to set up the recording device, taking my place somewhere in the circle, after which the participants would take their seats as they entered.

While recording the client managers talking to each other, I positioned myself as an inquirer who was rather separate from the ongoing professional discussions that I was interested in. I set out to minimize my participation, because I was interested in *their* world. My behavior was guided by my curiosity and interest in the processes of client managers constructing their specific local realities, their "story"—or "narrative"—(Kohler Riessman 2008) of the client's case and their various ways of relating to it, including perhaps ethical ways; in short, what they constructed as "real and good" (McNamee&Hosking 2012, 39; Gergen 2009). Attending and observing the case meetings, while recording the conversations, was an excellent opportunity to study how these client managers talked about their most complex client-related issues, and to observe how possibilities to be responsive to the client and/or to legal rule were or were not discussed.

So, I kept my distance, and chose to stay away from the conversations as much as I could, maintaining "a non-speaking role" (Silverman 2010, 29). I participated as a "peripheral member" (Adler & Adler 1987), observing everything that happened "as an outsider to the group" (Smelser & Baltes, 2001, 11076), and striving "to be as separate as possible from the object(s) of (my) inquiry" (McNamee&Hosking 2012, 27).

I acknowledge and accept that my presence in the room, despite my efforts to be discreet, may have affected the conversations (and so the transcripts). To what extent is unknown to me. It seems hardly possible to be inquiring in a way that is not, in some degree, participating. However, the degree to which an inquirer participates varies. In this case, since I was curious about what took place in *their* world and wanted to understand more about *them*, my participation in the case meetings was designed

to be as minimal as possible. I did not talk during the case meeting conversations, and gave special attention to my appearance and behavior. I tried to be as little "in the way" as possible, as my field notes around the time of the first case meetings[136] show:

> *"I try not to attract attention in any way, neither by laughing nor by making any sounds; I try to keep changes in my posture to a minimum."*
> *"I do not laugh with them and try to avoid eye contact."*
> *"It's hard but I manage quite well to keep my mouth shut. Also I am wearing "neutral" dress, according to local custom, without conspicuous adornments or anything. I make eye contact as little as possible on purpose, and minimize my facial gesticulation, but not to the degree of being stoical."*[137]

At times I felt uncomfortable in my peripheral participation; it almost felt like being an intruder, sitting there and hearing them talk about all these issues that sometimes mattered a great deal to them, while remaining utterly silent. At times, and particularly at lively, exciting moments in the discussion, I felt quite embarrassed about my offering them no information nor contribution whatsoever, seemingly detached, while listening in to all they were willing and open enough to say.

A few times the participants stated afterwards that they had completely forgotten about my presence. My field notes contained my reaction: I sometimes doubted this, interpreting it as a display of willingness to cooperate 'in the right way', and sometimes I was more or less inclined to believe it. My general impression was that the client managers mostly took me for granted, since they did not turn to me nor look at me while they were having their discussions.

At that stage in the proceedings I considered myself still somewhat of an outsider who was not yet well acquainted with the many complex and detailed ins and outs of the practice. I felt the time for making a contribution had not yet come. Involuntarily, a relationship between the participants and myself developed in which some friendly talk before the start and after the end of a case meeting seemed completely natural, 'business as usual', while I kept (almost) completely silent during the actual case conversations. In the course of the case meetings, as the participants got more used to my presence, they sometimes started asking me questions, and sometimes minimal interaction took place.

136. Field notes 16-01-2012, 19-01-2012.
137. "Ik probeer op geen enkele manier aandacht te trekken, ook niet met lachen, geluid; andere houding aannemen probeer ik tot een minimum te beperken."
"Ik lach niet mee en probeer ook oogcontact te vermijden."
"Ik vind het moeilijk maar het lukt me heel goed om mijn mond te houden. Ik heb ook "neutrale" dus ongeveer lokaal gebruikelijke kleding aan, geen opvallende sieraden o.i.d. Ik maak expres zo weinig mogelijk oogcontact, en reageer in mimiek (van gezicht) minimaal, maar ook weer niet stoïcijns."

3.6 Other sources of empirical material

Attending case meetings and recording discussions provided a unique opportunity to assemble empirical material that would presumably inform me about possible dilemmas of law and care as seen by client managers. During the first case meetings I found the client-related discussions by client managers hard to follow. Often the elements that appeared to make the case difficult were simply beyond me. It appeared I was not yet familiar with the many specific local policies, procedures and implicit customs, nor with the many municipal organizations and the names of the professionals involved. In most of the case conversations, a certain amount of time was spent clarifying certain new procedures, rules and regulations, or (new) developments in the network of cooperating city partners (such as the local Credit Bank, or health care insurance organizations), and so on.

As a relative outsider I lacked relevant knowledge of local contexts: Attending case meetings was not enough. I had to go to additional sources of evidence (Yin 2014, 17). At my own request I obtained local policy documents, including those describing the client managers assignment and profile (see Appendix 1 and 2), and the required set-up of the case meetings (see Appendix 3).

I also made informal notes of observations during the case meetings—notes intended to complement the audiotapes by focusing particularly on details other than sound, such as a speaker's distinct posture or arm gestures.

During the same period (first half of 2012), I spent as much time as possible at the department, and frequently had planned and unplanned conversations with client managers, policy managers and quality managers, as well as with the head of the department. Field notes of these conversations complemented the more formal analysis of the transcripts.

In summary, I assembled and used the following data:

- recordings, transcripts, and observation notes of case meeting conversations
- field notes from conversations and observations at the department
- local policy documents on the case meetings set-up
- local policy documents on local political processes
- local policy documents on assignment and competences of client managers (see Figure 3).

Source of empirical material	Information emerging as used
recordings, transcripts, and observation notes of case meeting conversations	main empirical material on case conversations
field notes from conversations and observations at the department	background information on department processes
local policy documents on the case meetings set-up	background information on case meeting process
local policy documents on local political processes	background information on local political context of local policies (the renewed welfare policy)
local policy documents on assignment and competences of client managers	background information on task of client managers

FIGURE 3: sources of empirical material

3.7 The first core category produced by the dilemma law-care

From the audiotapes of the case meetings I made transcriptions of ten of the twenty audio-taped case meeting conversations myself, the other ten were constructed by three undergraduate students under my supervision. The audiotape quality was good and it was no problem to discern the various voices of the participants. Initial transcripts only included the words which were said in the conversation, because these early verbatim transcripts were suited to the first exploratory rounds of analysis. Later I re-transcribed particular extracts chosen for more detailed analysis, using a modified version of the notation developed by Jefferson (1984) for conversational analysis (Silverman 2010, 200,430-1) (see Appendix 8).

I conducted a textual analysis of the transcripts, similar to Phillips & Hardy's social linguistic approach (Phillips & Hardy 2002, 22). An example of this approach would be the work of Mauws (2000, in Phillips & Hardy 2002), who in his inquiry explored experts' decisions regarding the applications for financial support submitted by musicians (Phillips & Hardy 2002, 22-23). Just as Mauws started coding with three broad categories drawn from the existing literature, I also started 'top-down', by applying my distinction between law and care that I had found in the (pedagogy) literatures on (ethics of) public/social service practices, on care ethics theories, and on public welfare/client management. These two codes are the two basic orientations towards a client's case: from the premise of the law, or from the premise of care.

In order to apply these codes to the transcripts, I endeavored to set out what these two codes might imply in more concrete detail in the context of law application

in public welfare practice. I listed three key characteristics defining the codes, drawing on the literatures mentioned, and then adjusting them to the particular practice of the client manager.

To be more precise, first, examining the (pedagogy) literatures on ethics of public services and law application, I identified a choice concerning an *ethical orientation* between law ethics and care ethics. Second, while care ethics theories used the concept of responsiveness (to clients), I presumed that in public welfare responsiveness to legal rule was required as well. Thus, I identified a choice concerning *responsiveness:* primarily to the client and their context, or primarily to regular legal rules. Third, examining pedagogy literatures on (semi-) mandatory settings, I identified a choice concerning the *basic professional approach* towards the client: either a more controlling or a more supporting approach. The result was a clear difference of the two codes law and care concerning these three interrelated choices (dilemmas): *ethical orientation*, *responsiveness* and *professional approach*.

In sum, the first code involves a primary orientation towards law ethics, a primary responsiveness to regular legal rules, and a professionals approach that tends to be more of a controlling nature. The second code involves a primary orientation towards care ethics, a primary responsiveness to the client and their context, and a professionals approach that tends to be more of a supporting nature.

This can be seen in Figure 1, the framework below, which I presented earlier, in Chapter 2.

DILEMMA FRAMEWORK	**Law**	**Care**	**Based on:**
Ethical orientation:	Law ethics	Care ethics	Pedagogy literatures and care ethics theories
Responsiveness:	Primarily to regular legal rules	Primarily to client and context	Care ethics theories
Basic professional approach:	Controlling	Supporting	Pedagogy literatures and literatures on (semi-) mandatory settings

FIGURE 1: dilemma framework

The case conversations that point to the first code **'law'** would have to include language showing involvement with the law in the sense of appreciating entitlement to benefits on the grounds of Participation Law articles. The transcripts would be illustrating this by, for example, client managers stressing equal treatment of clients and justifying a decision by mentioning other clients in comparison. The discussion would show an inclination to abide by regular rules without further investigation, which would enable accounting for a denial of the client's application. I would have to find confirmations of

their assessment that a more strict and controlling relationship would be desirable; of a response to the client and their context defined by paying attention to the client's and their own obligations, stressing accountability, duty and rationality in the relationship. The transcripts would show a construction of the client either as accountable for a legitimate use of public welfare, or else as justifiably brought to accountability by a rejection of their application or disciplining measures.

The case conversations that would point to the second code **'care'** would have to include language showing an appreciative involvement with the client and their context, and discussions of the client and their case in a language of empathy and connectedness. The transcripts would be illustrating this by statements on the part of client managers that indicate their apparent willingness to listen to the client's account by, for example, words that express acknowledgment of the client's needs. The language used would have to show some willingness to try to gain a better understanding of the client and their context by investigating details. I would have to find illustrations of client managers' inclination towards a more supportive rather than controlling relationship by, for example, efforts on their part to look for ways to account for tailor-making. The transcripts would show a construction of the client as (temporarily) less able to function independently and in need of public welfare support.

I started by coding the transcripts with these two broad codes in mind. Initially, this resulted in identifying a preliminary but widespread question, a subject of conversation that seemed to be underlying the case discussions. It can be phrased as follows:

> *Are we inclined to respond to the case discussed by investigating possibilities for tailor-making, or are we inclined to respond to it by abiding by regular rules?*

Of the thirty-seven client cases discussed extensively in the transcripts, I found around thirty-one that could be traced back to revolve around this essential question. I found that arguments to go along with the client's account, which would lead to tailor-making practice, alternated with arguments against going along with the client's account, leading to a strict application of regular rules. This seemed to tie in directly with the constructed dilemma, with the client managers' handling of the interests of the two main 'stakeholders'—client and law—and with what client managers appeared to assess as "real and good" (McNamee&Hosking 2012, 39; Gergen 2009) in a given case. Thus, the application of the dilemma framework produced a kind of first "core category" (Boeije 2008, 105): in the transcripts the dilemma of law or care appeared to play itself out by the question of either abiding by regular rules or (investigating) tailor-making.

3.8 'Bottom-up' analysis: the second and third core category

In applying the dilemma framework to the transcripts I discovered that the 'law versus care' binary did not seem to cover all that seemed of interest from the point of view of my curiosities concerning discretionary space, ethics and dilemmas. It appeared that some of the discussions emerging from the texts did not fit comfortably to the binary. In particular, in some cases I wondered why the conversation leaned towards application of regular legal rules, thereby leaving the possibilities of tailor-making unused. The binary law-care as set up did not seem to clarify these cases.

That is why, given my interest in discretionary space, ethics and dilemmas, I started to analyse the transcripts looking for common issues or general themes in the texts. In other words, I decided to add to the 'top-down' analysis of the transcripts a 'bottom-up' way of analysing. I used word frequency counts regarding concepts and phrasings in the transcripts[138], in order to come to an understanding of types of recurring constructions[139]. I read the transcripts thoroughly many times, in each of the various case discussions trying to identify the exact concern or complexity that had caused the client manager to bring it to the meeting in order to be discussed with colleagues. I learned that in the light of my interest in (ethical) dilemmas in practice some case conversations seemed more interesting than others. By labeling fragments I conducted "selective coding" (Braun & Clarke 2013, 202-3), meaning that I chose a few case conversations that looked particularly rich—aiming for a more intensive analysis connected to my research curiosities and interest. Next, as a kind of test, I brought back the results to the whole set of transcripts (Silverman 2011, 62).

As I continued to analyse the transcripts 'bottom-up', it struck me that client managers seemed to get stuck in various dilemmas (not directly connected to the law-care dilemma). A core category seemed to emerge: **client managers 'under siege'**.

I continued my analysis, checking my explorations by re-reading relevant selections of the transcripts and re-listening to the specific tape fragments. Textual analysis of local policy documents, particularly those on the position and function of client managers[140] appeared to help. By getting more and more familiarized with the transcripts (Carver 2014, 2), it struck me that the last resort function of public welfare seemed a particularly complicating factor in the relationship of the client manager with the client. Thus, I identified a third core category: **'last resort' complexities.**

138. See Appendix 9 for a list of these early "in-vivo" codes (Boeije 2008, 92; Silverman 2011, 68).
139. For example, the words "kosten"/"-kosten" ("cost"/"costs") appeared 698 times in the whole set, which might illustrate the emphasis on this subject. Compare also, for example, the words "noodzakelijk"/"noodzaak" ("indispensable"/"necessity") which were used relatively frequently: 216 times, in the whole set of transcriptions that covers 20 conversations; on average around 10 times every single conversation. This may point to the criterion of necessity seemingly playing a large role in assessing a client's case.
140. See Appendix 1

3.9 Wrap-up

At the end of the previous chapter, I summarised my research curiosities and interest by my research question:

What do client case discussions reveal about the dilemmas that public welfare professionals face, and does the distinction between law and care illuminate these dilemmas?

This chapter focussed on how I conducted an empirical study centred around case meetings of client managers in Stededam. My explorations as related in this chapter organized the transcripts of the case conversations into three distinct but interrelated core categories:

1) *the law-care dilemma: abiding by regular rules versus (investigating) tailor-making,*
2) *'under siege', getting stuck in dilemmas, and*
3) *dilemmas of last resort complexities.*

PART 2

Client Managers' Dilemmas

What you will find in Part 2

Part 1 offered a perspective on public welfare from the viewpoint of dilemmas, discretionary space, and ethics—my three core concepts. A framework linked the ethical orientations of law and care to a primary responsiveness to legal rule or the client, and to a more controlling or supporting approach. In addition, Part 1 outlined the analytic process and presented three main themes, or core categories.

This part of the thesis explores these core categories. They are called (a) law-care, (b) 'under siege', and (c) 'last resort complexities'. The first core category, produced by the law-care dilemma, is presented in Chapter 4. It addresses the 'top-down' search for the framework dilemmas in the empirical material, particularly the transcripts of the case conversations. The following chapters concern the 'bottom-up' analysis of the empirical material, mainly the transcripts, exploring the second core category called 'under siege' (in Chapter 5), and the third one called ' last resort complexities' (in Chapter 6).

At the end of Part 2, a turning point marks the transition to Part 3. I will show how an exploration of my research curiosities and interest led to an impasse. This particularly concerned the core concept of ethics. It caused me to reflect on my entire approach and explore other constructions of ethics that might be practised both in the client managers practice and in my own practice. This reflexive exploration will follow in Part 3.

4

Manifesting the Law-Care Dilemma

This chapter focusses on what I noticed about the case conversations and the assignment of client managers in Stededam when I applied the 'lens' of law vs. care. It investigates the empirical material, particularly the transcripts, by a 'top-down' analysis in terms of the law-care dilemma. To remind the reader, in practice this appeared to amount to the question: *Are we inclined to respond to the case discussed by investigating possibilities for tailor-making* (care), *or are we inclined to respond to it by abiding by regular rules* (law)? Illustrations of this question in the empirical material, particularly in the transcripts, show how the law-care dilemma plays itself out in various ways, inducing the client manager to perform a balancing act. In concluding this chapter, while the law-care distinction seemed to clarify some of the complexities of clients' cases, it struck me that additional risks in the work of client managers seemed to leave them in a relatively tight position. Thus, I concluded to do a 'bottom-up' investigation (in Chapters 5 and 6).

4.1 Special benefits dilemma: flipping from law to care

While doing the 'top-down' investigation of the ways in which the law-care dilemma might manifest in case conversations, I became acutely aware that client managers appeared to be talking about a case primarily in terms of a binary choice: they either opted for tailor-making or they did not. In other words, initially, client managers would either be reluctant to go along with the client's account and deny the application on the basis of regular rules, or they would honour the client's account, or partly so, and (partly) grant the application by tailor-making, basing their decision on some rule of exception.

Prior to the meeting participants would receive an outline of the client case, including a main question. This question usually came down to: what would be the best course to follow, or how should we continue with this client in view of the context presented. Most cases were initiated by a client's application for special benefits.

In many cases client managers seemed inclined to start looking for a solution of the case by focusing on the legal framework, including local policies. It was the complexity of the rules and regulations that would apply to a particular case which made them bring it in in the first place, aiming to sort out relevant details assisted by colleagues. Interestingly, client managers realized that in some cases adhering strictly to legal rule would result in a denial of the client's application. Then a law-care dilemma seemed to manifest, because, in the client manager's assessment, this would, in turn, lead to a rather undesirable situation for the client. This awareness of the application of regular legal rule possibly resulting in undesirable consequences caused the client managers to look for alternative ways of dealing with the case (examples follow below). In a number of cases this led to them explicitly trying together to account for an exception of the regular rules, by individualisation[141].

Thus, in my use of the term ethics, and in the context of my dilemma framework, I would say that the initial orientation can be seen as an ethics of law. The subsequent adjustment would then qualify as an ethics of care. It seemed that (implicit) arguments showing an inclination to honour the client and their context alternated with (implicit) arguments showing a reluctance to go along with their account. We can see this in the following examples concerning applications for special benefits.

To appreciate these cases, we must understand that applications for special benefits refer to extra supplies, apart from regular maintenance[142]. They might include, for example, applying for funds to buy a new washing machine, or to pay the dentist. Deciding on applications for special benefits is a fairly commonly occurring task[143], and

141. See Part I

142. "levensonderhoud"

143. The two most basic and common applications of public welfare that the client manager handles are: 1- sorting out what exact supply clients are entitled to as a basic cost of living ("bijstand"); also called: maintenance ("levensonderhoud"); and 2 - assessing what extra provisions clients are entitled to: an allowance of so-called special benefits (bijzondere bijstand).

one of the more complex assignments client managers are faced with. That is why in case of special benefits a particular set of questions came up regularly. These questions could possibly clarify a case, help to identify the possibilities for tailor-making, and help achieve a legitimate outcome. The four questions, based on Participation Law Article 35[144] and well-known in practice, are as follows:

1. Are there any payments due?
2. Are the expenses unavoidable?
3. Are there any special circumstances that need to be taken into account?
4. Are we the last resort?[145]

In the context of "the four questions", as they were called, the law-care dilemma can manifest in the following way. As a matter of principle, the application is granted only if questions 1, 2 and 4 have been answered affirmatively. In other words, an application gets the go-ahead when payments are due, the expenses cannot be avoided, and public welfare is indeed the last resort (arguments of law). However, question 3 regarding special circumstances may overrule the other aspects, and account for an exception (arguments of care). The two cases following below illustrate arguments of the law- care dilemma as well as the use of the four questions (see above) in order to find a solution to the case.

A client had ordered and paid for a new washing machine, and had applied for special benefits after the fact. Client managers agreed in concluding that question 1 had to be answered negatively: there were no longer any payments due. Apparently, the client had found the money to pay for it. So, in this light, question 4 had to be answered negatively as well: obviously, public welfare was not the last resort, because another financial resource had been found. On these grounds, the application of special benefits would have to be denied (arguments of law). However, question 3, special circumstances, was answered affirmatively: recently there had been extra medical expenses. In this case, in light of the affirmative answer to question 3, the negative answers to the other questions were overruled. The client manager had sufficient grounds to tailor-make on the basis of "special circumstances" and partly grant the application (arguments of care) (Transcript 2, first case).

In another case, which was used as a comparison, it was discovered that the client had been borrowing money elsewhere in order to make a payment that was due. The new debt had become the payment that was now due (positive answer to question 1).

144. See also in Part I, par.1.3.2

145. Derived from case meeting conversations, in which these four questions came up regularly. In Dutch, the usual phrasing in the case meetings in Stededam was: *doen de kosten zich voor? zijn ze noodzakelijk? zijn er bijzondere omstandigheden? is er een voorliggende voorziening?*

This, however, gave rise to a new dilemma. Helping a client in this type of situation could be seen as granting welfare for debt relief, which is illegal according to Article 13 lid 1 sub g (Participation Law). This meant that if the client manager were indeed to award special benefits, he would have to take extra measures to account for the allowance[146].

These examples show that, initially, regular legal rule appears to determine the outcome. In my use of the term ethics, and in the context of my dilemma framework, this can be seen as an ethics of law. The (potential) subsequent tailor-making outcome would then qualify as an ethics of care.

Client managers seem to construct some cases of special benefits in which they claim discretionary space and thus tailor-making, while in others they do not. In many cases, this appeared to depend on their construction of "unavoidable" and of "special circumstances", as it relates to the four questions based on Participation Law (see above). Guidelines as to what constructions would be considered legitimate may be found in jurisprudence, as well as in local policy directives. In the case meetings I attended jurisprudence was hardly mentioned. Instead, local policy directives dominated, such as "grip on life" and "social participation". To remind the reader, these belonged to the so-called renewed welfare policy[147].

For example, in a case meeting legal arguments were presented to reject an application for special benefits to pay for children's glasses. Then, two participating client managers brought up (social) "participation":

> *A-If the children don't do well in school because their glasses are broken, and they do not have any glasses, that obviously presents a problem.*
> *B- Yes, you'll have, you'll have...*
> *A- I don't know what the actual strength of those glasses is.*
> *B- But you'll have a participation problem.*
> *A-Yes, that's what I mean. Then you'll have a participation problem.*[148]

Apparently, they considered "a participation problem" a possible argument in favour of granting the application. Thus, in this case as well, the dance between law—abiding by regular rules—and care—tailor-making—seems illustrated.

In sum, in the context of applications for special benefits, when the application of regular rule would produce an outcome that seemed rather harsh towards the client, the conversation seemed to evolve from abiding by regular rules (law) to tailor-making

146. For example, in case of debts an exception can be accounted for when Art. 49 lid b Participation Law is applicable.
147. See 3.2.
148. The original quotations in Dutch can be found in Appendix 10.

(care). This would depend on the client managers' construction of "unavoidable" and "special circumstances" in relation to the policy directives of "grip on life" and "social participation".

4.2 Special benefits dilemma: flipping from care to law

When legal rule provides discretionary space for tailor-making, then client managers have to decide whether or not they see reasons to attempt tailor-making in a particular case. The following case is another illustration of how notions of care and law seem to compete. In addition, it may show some of the complexities in practice that client managers are confronted with.

This is the case of a mother of four children and her debt of around €108.000,=, of which around €80.000,= is caused by the tax authorities reclaiming extra allowance connected to child care services. The money seems to have disappeared. At the time of the case meeting, the client manager is convinced that the sole support of this family is welfare—10% of which goes into debt payment. Moreover, the family has no additional health care insurance. Now the mother has applied for special benefits to pay for spectacles for herself and two of her children.

Regular rules do not provide for such an application, since welfare clients supposedly carry additional health insurance which covers spectacles and the like. However, as stated earlier, Participation Law provides for exceptions to the regular rules, by way of the principle of individualisation. A client manager may make use of this principle and grant special benefits invoking the articles of exception, as long as it is accounted for by convincing contextual arguments, preferably based on actual jurisprudence. In daily practice, this is entirely the client manager's decision. As a controlling mechanism, quality managers randomly look into the reports drawn up by client managers.

In this case, because children are involved, it might seem only natural to follow an ethics of care orientation, which is characterized by values like emotions, involvement, dependence, bonding, need, and altruism (De Savornin Lohmann & Raaff 2008,141-151, 154). On the basis of these qualities an ethics of care orientation would focus on ways to individualise (tailor-make), which would translate into granting the application and finding ways to account for it. However, the conversation[149] turns to the cause of this debt:

E-Yes, if this is caused by fraud, yes, then she has, yes …

149. The participants were the involved client manager C, the other client managers B+E+D+H, a policy manager F and a senior manager A who acted as chairman.

A-Yes, but reading it like this I feel it has to be, especially an amount like this, it has to be fraud.
((Concurring yes-yes sounds))
A-It could hardly be a mistake in filling out of, and during several years, it is not just one year, I'm assuming, although we don't know for sure.

A little earlier the client manager concluded:

C-And, and apart from the way everything went, what I'm getting now is that we have a situation of €80.000 evidently not being parked on some bankaccount and readily available, and it's just a case of abject poverty (3). Yes.

These two circumstances, on the one hand apparent fraud and on the other hand "abject poverty", illustrate the law-care dilemma in this case. Apparent fraud would require an approach based on notions of law, like disciplining measures, accountability and control, whereas "abject poverty" would invite notions of care, like context-related reality, dependence and need (De Savornin Lohman & Raaff 2008, 154). This dilemma becomes manifest in the discussion that ensues when it appears that the money is gone:

E-But the question is: What did she do with it?
C-((hesitatingly)) ye-e-es, right. Do you want (1) to know?
E-I would like to know, yes
C-What for?
F-I'm assuming it was simply spent, because it comes in bit by bit, spread out over 16 years, maybe even (1) If it's spread over 10 years (1)it is a lot, 8.000.
E-It's 80.000.
C-But suppose, with the money gone, in the worst case spent on ( ) and the money is no longer there.
E-No.
C-But she'll have to pay it back.
E-Yes, but, you're now saying: She lives in poverty. I'm sure she does, but what did she do with all that money?
C-Yes, but how would that change your assessment now? Do you want to have a tinge of reproach in there, by saying like, okay, she went to the Bahamas, so I'm not going to do anything about the spectacles, or: she used it to pay for an operation, so ((laughs a little))
E-((laughing)) well, the Bahamas, then I'm not so sure! ((laughter))

The discussion then continues in a different direction, seemingly signifying that the question of what the client spent the money on is considered not relevant (anymore).

Next to the fact that children are involved, "abject poverty" (see quote above) seems to ask for care arguments as well. However, the client manager's suspicion of fraudulent behavior on a large scale seemed to impede. A judge would not accept legal debt restructuring due to a citizen's past fraudulent behavior. Legal debt restructuring is a regulation that gives individuals a chance to rise above debt and eventually start a new life. The individual remains at a very low income level for three years, while paying off as much debt as possible, after which all remaining debts are legally erased[150].

The client manager involved asked himself and his colleagues the following question: "Would it be appropriate to grant this client extra benefits funded by public money (welfare), when society, by means of a judge's verdict, will—in all probability—deny legal debt restructuring due to fraud?" From this perspective the dilemma would flip (from care) to law, favouring values like accountability, autonomy, and control (De Savornin Lohmann & Raaff 2008,119-139, 154). This would translate into a rejection of the application. That would leave the client to deal with the cost herself, despite the fact that there are children involved. As an *autonomous* person she would be held *accountable* for her situation.

In contrast, granting the application would directly contradict a judge's verdict. Due to the fact that jurisprudence shows that legal authorities (in this case a judge) would construct a rather harsh, disciplinary stance, the participants felt that the construction of a more lenient relationship between the client manager and the client would be difficult to account for.

In the end, the case discussion made a distinction between the mother and her children. The client manager seemed to be inclined to grant special benefits to pay for the children's spectacles. He still appeared hesitant to grant those same benefits to the mother (Transcript 10, 2d case).

To bring this case back to the dilemma frame, its focus can be re-constructed as follows. Either the client manager decides to approach the case and the client on the basis of an appreciative relationship that is characterized by responding to the client and her context in a supporting way, indicative of a care ethics orientation. Or he decides to approach the case and the client on the basis of a relationship that is characterized by controlling and disciplining the client, in response to regular legal rule, indicative of a law ethics orientation.

150. Settled in the *Wet Schuldsanering Natuurlijke Personen*

4.3 Oscillating between law and care

Yet another example of the law-care dilemma follows here. It illustrates how a client manager may go back and forth in assessing and approaching a client's case.

Client manager H introduces a particular client's case by telling the case meeting participants[151] that he has suspended the client's supply of welfare because she is running behind on her obligations towards Social Services and refuses all contact. The reason the client manager brings in this case is not the client's application, but a notification he received from the housing association, announcing the lady's upcoming eviction from her house, due to her not having paid the rent for several months. Despite the suspension of welfare supplies having already been initiated by the client manager, he brings in this particular case at the case meeting.

He had sent an introductory e-mail to the participants prior to the meeting at the end of which he poses the question: "What must be done with this category of clients?"[152] Possibly, a sense of concern or care for this client, or "this category of clients", had led him to bring in this case, for there seemed hardly to be any other compelling reason for him to do so. In the introductory mail as well as in the conversation, the client manager puts forward several WWB[153] articles as arguments to justify his action of welfare suspension. The emphasis on legal qualities, such as commitment to engagements, accountability, duties and obligations, of which the client had fallen short according to the client manager, seems to indicate an orientation towards an ethics of law, and a more controlling approach.

But then, during the conversation, he puts forward another justification: "I blocked the benefits hoping she might respond"[154] (Transcript 10:162-3). This argument seems to loosen the hold this orientation has on the case and leave some room for moving with the client. Moreover, it is a relationally inspired remark: he says he is acting (blocking the supply) in order to get a reaction from this client. He hopes that his action will trigger a response from his client, because up till that moment she did not react or respond to any attempt to contact her in order to receive information necessary to continue her welfare supply:

> *B-(name H) needs information, he has some questions. In order to establish the right to receive benefits, he has some questions, and it can't be addressed at this point, well and…*

151. The participants include client managers B and E and policy manager A.
152. "Wat zou er verder met deze categorie klanten moeten gebeuren?"
153. At the time of my attending the case meetings, in 2012, WWB (see 1.2) was law; the articles mentioned did not change in the subsequent Participation Law (2015).
154. "Ik heb de uitkering geblokkeerd in de hoop dat ze reageert."

E-And if (name H) calls her, does she answer?
H- No, no. Her phone is switched off all the time until she has to make a phone call herself, and that is to anyone but the council. That's when she switches it on for a while. Well, and e-mails are not answered, she doesn't respond at all.
B-Well, I think that if you call her into the office, she won't come.
H-No, exactly. We have called her into the office together, and she didn't show up either.

Finally, the client manager mentions a third justification that played a role in his assessment: equality of treatment. At one moment in the conversation one of the colleagues mildly challenges the decision to suspend benefits, arguing that blocking would most probably not be helpful in the long run in her assessment. The conversation continues, and then another colleague directly asks the client manager about his specific reasons for suspending the client's supply:

"Did you have a specific reason for suspending, or was it just she did not meet the conditions therefore I suspend?"

His answer is rather brief:

"Yes. I treat everybody like that, therefore her too."

This argument seems to hark back to the legal argument of equality, promoting 'equal treatment'. Clearly, according to the letter of the law this client had not been fulfilling her duties as a public welfare client, including not duly informing Social Services about relevant changes of her living situation. On the basis of regular rules this is sufficient ground for measures such as, for example, suspension of supplies.

Then, at several instances in the conversation the suspending of benefits is mildly criticized in various ways, and participants make an effort to suggest alternatives to get the relationship client–client manager, or client–Social Services, going again. In the end, the client manager agrees to unblock her supply when it becomes clear that her case will be taken up by a special cooperation team of the city's social work organizations.

As we can see, the client manager presents different justifications for his decision to suspend. They seem to reflect an oscillation between ethical orientations. The first justification consists of putting forward the legal articles, based on an ethics of law orientation. A second justification is the client manager's hope that his client might respond: "I blocked the benefit hoping she might respond."(Transcript 10:162-3). This seems to soften his orientation towards law and open up new possibilities. His hope for a response seems to speak of an orientation to an ethics of care, at least to some extent. Finally, the third justification consists of a reference to equal treatment. Here he

seems to return to an orientation of law ethics, especially since he declares to abide by a standard seemingly without any consideration for the client and her context: "I treat everybody like that, therefore her too".

One remark in particular, right at the beginning of the conversation, seems to explicitly express concern for the client:

> *"Because she is actually, speaking for myself, a uhm, a lady who needs help (1), refuses help (1), and still, a way needs to be found to uhm, how to put it, to guarantee her or safeguard a decent existence."*

Clearly, at this point the client manager shows concern for his client's well-being.

In sum, the transcript shows the client manager going back and forth between care for his client and adherence to the law. This case seems to show something of the complexities involved that client managers talked about. The oscillating arguments also illustrate the law-care dilemma frame and its three viewpoints. In particular, it seems a dilemma between two types of relationship between client manager and client. On the one hand, a relationship that is characterized by discipline and control. On the other hand, a relationship that is characterized by room for concern and care.

4.4 The case of the blind man: "Of their own choice"

Choosing to support a client through tailor-making—in the law-care dilemma leaning towards care—requires the client manager to examine the client's context carefully. However, the transcripts did not always show a genuine interest in the details of the client's context—which, in terms of the law-care dilemma, left them leaning towards law. The following case[155] serves to illustrate this point. It is a conversation in which the client managers hardly seemed inclined to delve into the details of the clients' context. In fact, there were clear efforts to keep the clients and their context at a distance.

An Ethiopian family of four had come to the Netherlands two years before. Both parents are illiterate, the father being almost blind, the woman expecting their third child. Their special benefits application includes public transport costs, baby equipment and dental costs. The client managers' discussion centers around the question: is it necessary to provide for all these costs (at once)? As we have seen, the determination that costs are unavoidable[156] is one of the conditions[157] when it comes to granting an application of special benefits.

155. The participants of this conversation were a senior and five client managers.
156. "noodzakelijk"
157. See section 4.1: 'the four questions'.

One of the special benefits applications pertains to the bus fare for one child to go to school. One of the client managers seems to be disinclined to grant the application. She suggests that the father could walk the child to school, explaining her view as follows: "*When you have poor eyesight, it does not automatically mean, does it, that uh…*"[158] (Transcript 20, 62). Here this client manager seems to suggest that the client should be more active despite his poor eyesight. But then the client manager of this family corrects her by saying (again): "*Yes, it is not that his sight is just poor, he is actually almost blind ( ) He can hardly see a thing, he had to write his signature and then he sat like this ((puts her head to the table)) fumbling his name.*"[159] (Tr. 20, 66-67). Clearly, the physical condition of this client is such that in all probability he is unable to accompany his little child to school. Initially, however, the client managers do not seem to pick up on this, as becomes clear a few minutes later:

> *A-That mother, the files say of her that she is extremely busy, that she does everything, shopping and housekeeping and cooking and looking after her husband and*
> *B-Yes, but then again, it seems to me, how to put it, to me it's like if you have poor eyesight that does not mean, does it, that you are incapable of doing anything?*
> *A-Mmm*
> *B-You know, I can't speak from experience, but I mean, you do see quite a lot of people who are actually quite mobile, take for example uh (1)."*

Apparently, the colleague is not in favor of special benefits for school bus costs, insisting this father can actually do more than he is inclined to.

This exchange seems indicative of the entire conversation. The transcript seems to indicate that the client managers involved are in agreement when it comes to trying to minimize this family's allowances. It is not clear to me why. They do not know this family, except for the one client manager involved. The phrase "(That is) of their own choice"[160], frequently used by some as a justification for denying benefits, seems to underline a construction of the clients as being autonomous and accountable. In the conversation it also seems to illustrate the construction of distance. The client managers seem to prefer not to get too much involved with these clients. "*Of their own choice*" is almost like a mantra, recurring seven times during the conversation. Each time it is suggested that the clients have a choice and therefore should not be choosing something they cannot pay for by themselves.

158. *"Het wil toch niet zeggen dat als je slechtziend bent dat je uh"*
159. *"Ja hij is niet slechtziend hij is echt bijna blind ( ) hij kan echt vrijwel niks zien, hij moest z'n handtekening zetten en toen zat-ie zo ((buigt helemaal met hoofd naar tafel)) te priegelen."*
160. *(Dat is) eigen keus*

The client managers seem to be constructing a distance with rather hard boundaries. They consent to take the general stance of "not necessary", in the sense of "not unavoidable", rather quickly. The involvement of the client managers with the case appears rather minimal. It seems to flow from an implicit assumption that goes unchallenged during the conversation, and seems to rest on the consensus that these clients are overreaching in their applications. Therefore, as a matter of course, public services cannot be expected to grant all their wishes.

While it is not clear why this case unfolded as it did; it *is* clear, that the conversation could have taken another turn. As explained earlier, there is ample discretionary space in public welfare law and local regulations for tailor-making. In other words: in this case, just as in any other case, other constructions would have been possible. The extra effort to find a tailor-made solution was not exerted in this case.

However, transcripts of similar cases are indicative of an extra effort on behalf of tailor-making. Case in point is the case of a woman who applied for special benefits for continuing Hebrew studies, which was her hobby. For years, this had been her only activity in social participation. After having heard the persuasive plea of her client manager, the group of client managers attending the meeting agreed in granting this application. Apparently, they had been convinced that the special benefits were truly appropriate in this particular case. (Tr. 9, 2d case).

Pondering the client managers' apprehension towards some clients, I wondered whether it could have something to do with their public assignment which includes fraud alertness. This complicating factor seems to construct a double-layered relationship and may lead to both trusting and distrusting the client. It is one of the topics in the next section.

4.5 "Assignment specifications" manifesting law and care

In order to explore the law-care dilemma in the client managers work it appeared useful to examine a document called "Assignment specification form of client managers at Stededam", which lists the objectives of the position:

> *Position objectives.*
> *Accountable for aspects of legitimacy (high-grade control) and direction concerning client management of one's own group of clients, including the safeguarding of the*

progress and the completeness within the framework of effectiveness. Is contact person for other parties (internal and external).[161]
(Assignment specification form; see Appendix 1).

In this document, three objectives become apparent: 1) accountability for "legitimacy"; 2) accountability for directing the various processes "within the framework of effectiveness"; and 3) being "contact person", both for internal and external contacts.

To start with the third "position objective" (see above), as a "contact person" the client manager must be up to date and well informed, in order to be able to function as contact person for internal as well as external parties (Polstra 2011). In practice this implies staying in contact with many different local and national organizations, including various local and non-local organizations such as addiction care clinics, health care insurance, debt assistance organizations, welfare organizations, homeless support.

As to the first "position objective", to be "accountable for aspects of legitimacy"[162] in practice includes finding out and controlling the exact allowances and benefits the client is entitled to. It involves accountability for a legitimate application of all relevant rules and regulations including Participation Law articles, actual jurisprudence and local policy regulations and instructions. In addition, it includes "high-grade control" (see document quote above)[163]. This is a technical term to indicate that aim of control is to reach the situation that the client will follow rules and regulations on their own accord; it refers to a policy of both prevention and repression (see, e.g., De Boer et al., 2014, 234; Fenger & Voorberg 2013). This implies that signaling fraud cases, and acting upon it, is one of the client manager's main tasks, further ahead in the Assignment specification form clarified as one of the "Subtasks"[164]. The topic of fraud alertness will come back in the next section.

We now turn to the second "position objective" listed in the local policy document mentioned above: the accountability for directing the various processes "within the framework of effectiveness"[165]. This basically means that client managers are in charge of and accountable for the direction of the entire process, including the process of "effectiveness". The latter is in fact the responsibility of professionals called

161. **"**Doel van de functie. Verantwoordelijk voor de rechtmatigheidsaspecten (hoogwaardig handhaven) en de regie inzake klantmanagement van een eigen groep cliënten, waaronder bewaking van de voortgang en volledigheid in het kader van doelmatigheid. Is het aanspreekpunt voor derden (in- en extern).
162. "rechtmatigheidsaspecten"; see, e.g., Polstra who refers to this first objective as "de wereld van wet en regelgeving"–the context of legal rules (Polstra 2011, 2)
163. "hoogwaardig handhaven".
164. See Appendix 1.
165. Dutch: *doelmatigheid*

reintegration managers[166] (if they are involved). It is the reintegration manager's job to guard the effectiveness process by bringing the client closer to becoming a self-sufficient, independent citizen who is no longer in need of public service[167].

The two concepts of "legitimacy" and "effectiveness" appeared well-known and frequently used in the department. They are closely connected to the two main functions of public welfare in the Participation Law which are to be carried out by local councils: supplying basic benefits for cost of living for citizens in need; and guiding citizens to paid work by taking care of processes that coach clients towards becoming self-employed independent citizens (again)[168].

Let me now link these two main "position objectives" to the dilemma frame. The objective of "legitimacy" requires the client manager to determine what the client is entitled to and what their duties are. Due to these qualities of legitimacy and entitlement, the approach is likely to be of a more controlling nature. A primary responsiveness to rule of law would seem to point to an ethics of law orientation. Likewise, the objective of "effectiveness" requires the client manager to determine the most effective course of action, so, one that results in the client leaving public welfare as soon as possible, preferably permanently[169]. Due to the support given to activate clients within their specific contexts, the approach is likely to be of a more supporting nature. A primary emphasis on the client's context would seem to point to an ethics of care orientation.

The following case illustrates the dynamics of the two "position objectives" of "legitimacy" and "effectiveness" being present in a single case. The case also shows that the possibility of tailor-making can be of great importance to clients.

A client manager presented the case of a young man on welfare who applied for a certain tranquillizer which was not included in his health insurance. This fact would directly lead to a denial of the application, because regular rule prohibits providing for a medicine that is not funded by health insurance. This follows the general argument that if health insurance does not provide for particular medication, then the medication was not considered necessary, with necessity being the legal condition[170] for granting special benefits. In the ensuing conversation it became clear that this man, who had emotional problems as well as debts, would never be able to get a grip on his life and leave public welfare without the help of this medication. This turned out to be the argument that led to the granting of the application. After all, from the point of view of effectiveness special benefits to meet the cost of this medication seemed appropriate (Transcript 9, first case).

166. Dutch: *trajectbegeleiders*
167. They serve the purpose of uitstroom ("exit")
168. *Participation Law* Article 7:1 sub a&b.
169. This is called the goal of "duurzame uitstroom" ("permanent exit")
170. One of the four questions, see 4.1.

The objective of "effectiveness" led to the granting of the application, whereas the objective of "legitimacy" was pointing into the opposite direction. One could say that support for the client was hindered by legitimacy arguments. In this case the dilemma was solved by the acknowledgment that individualisation could supersede regular legitimacy requirements. Tailor-making proved to be the instrument that allowed the client managers to put the client and his context centre stage. The argument of "effectiveness" overruled the argument of "legitimacy" (by way of regular rule), and special benefits for the medication were granted.

In sum, in the light of law-care dilemmas this section has presented (main parts of) the assignment of the client manager. The task of both striving for "legitimacy" and "effectiveness" may lead to a dilemma of discretionary space in practice, illustrated in the case of the tranquillizer presented.

4.6 "Prevention and combatting of fraud"

Next to the three mentioned "position objectives", the client manager's assignment appeared to contain another law-care dilemma. Here we return to the complicating factor of fraud alertness as part of the client manager's assignment. Where, further ahead in the Assignment Specification Form, the subtasks of the client manager are mentioned, two seem to be potentially contradictory. Concerning one subtask, the text says:

> *"Is accountable for the prevention and combatting of fraud".*

Concerning another, it says:

> *"Spotting and determining of problems and referral"*[171] *(Assignment Specification Form, see Appendix 1).*

To connect this to the law-care dilemma framework, I construct this apparent contradiction as a dilemma facing client managers. They have to choose between two types of relationship with their clients. One is characterised by control: "prevention and combatting of fraud". The other is characterised by support: "spotting and determining of problems and referral" (see quotes above). It appears client managers have to do both at the same time, particularly in the kind of cases that were brought to the table during case meetings.

171. " Is verantwoordelijk voor de fraudepreventie en –bestrijding (…) Signalering en vaststelling van problemen en verwijzing - Signaleren en onderkennen van schulden- of immateriële problematiek bij cliënten tijdens de intake- of vervolggesprekken en verwijzen."

Earlier[172] I mentioned that these cases mostly concern so-called multi-problem clients. These are clients who in many cases are poor in conditions and resources, who regularly challenge regulations, stretching relationships, and whose backgrounds may include problems with violence, various types of addictions, mental/physical disorders, chronic disease, a traumatic past, etc. To remind the reader, in general, clients have two professionals watching over them. When a client is on a re-integration track, he has both a client manager and a re-integration manager. The client manager takes care of the legitimacy and directs the whole process, while the re-integration manager coaches the client to exit public welfare as soon as possible. However, the clients discussed in the case meetings mostly had to cope without a re-integration manager coaching them, because in these cases re-integration appeared to be (temporarily) unfeasible. The group of clients who were on a re-integration track, supervised by a re-integration manager, was hardly ever discussed. The clients who were discussed mostly depended for support on the client manager exclusively.

Particularly in the case of a so-called multi-problem client, the task of "spotting and determining of problems" (see quote above) can presumably not be performed without a minimum of attention to the client and their context. This seems to call for a minimal amount of trust between the two parties. On the other hand, the relationship of the client manager with their client cannot be wholly trusting either; the task of fraud control requires the client manager to be alert to deceit. Addressing these two tasks can be constructed as a double-layered assignment: being alert both to the client's issues that need support, and to fraud.

Having to be alert to a client's problems as well as to possible fraudulent behavior, clearly illustrates the construction of a dual role on the part of the client manager. On the one hand the client manager has to respond to the image of the client as a citizen in serious need who must be supported and helped financially in order to find their way back to being selfsupporting again as efficiently as possible. This relates to the care side of the law-care dilemma. On the other hand the client manager has to keep the image of that very same client as a potential fraud active in his mind, simultaneously. Clearly, this relates to the law side of the law-care dilemma.

The double role the client manager has to perform may cause strain in the relationship between the client manager and the client. While trust would seem to be a crucial component in a supportive relationship, having to be on the alert because of potential fraud invites distrust into the (same) relationship. Distrust and suspicion concerning a client might lead to a more controlling relationship. However, evidence was sometimes lacking even in cases when suspicion was strong. The *grey area* from

172. See 3.3- *A new task for client managers*

deliberate fraud to not being able to cooperate seemed vast. Determining fraud seemed difficult for a number of reasons, especially in the more complex, multi-problem situations.

With the arrival of the new Law on Fraud, the dilemma of choosing to construct more supporting or more disciplining relationships between the client manager and their client has not become easier. As remarked earlier, in Chapter 1, the political movement around the *Fraud Law* seems to leave little room for a welfare client's specific context. This is important for client managers because their practice takes place in the context of societal beliefs. In 2013, which was after the period of my observations in Stededam, this new Law on Fraud was launched: "Law intensifying control and sanction policy regarding Social security regulations"[173]. Through this law, fraud control in social security (and labor law) has been intensified, and partly made obligatory. It includes heavier sanctions for offenders, and aims at "treating fraud in social security allowances more harshly"[174] (*Kamerstukken II* 2011-2012, 33 207).

In practice, however, things are not so clear-cut. Research indicates that fraud happens against the backdrop of a great variety of circumstances. Fraud is apparently a multi-faceted phenomenon. This is openly at variance with an opposing view, currently dominating politics, which is inclined to claim that clients are either committing fraud or not (Fenger & Voorberg 2013). Difficulties have arisen at various local councils: apparently, problems arose regarding applications and the local implementation of this new obligatory sanction policy. Recent jurisprudence, as well as the secretary's response, seems to have put all this in a better, and perhaps more reasonable, perspective[175]. A new law on fraud has been announced.

To conclude, the task of fraud alertness is another complicating factor. It might be one of the reasons why client managers keep some of their clients at a distance.

4.7 Nuancing the relationship between law and care

As I explored the 'top-down' binary of law versus care as a dilemma in the empirical material, in some cases this seemed to manifest, as discussed in the previous sections. In other cases, law and care seemed part of their conversations, however not necessarily as a dilemma. The concept of a dilemma appeared to be too narrow a construction. It seemed to require a more nuanced view on the relationship between law and care. In the client managers' conversations law and care seemed to play out their roles like in a

173. "Wet aanscherping handhaving en sanctiebeleid SZW-wetgeving" ; also known as "Fraudewet" (Law on fraud)
174. "fraude met uitkeringen harder aan te pakken"
175. CRvB 24 november 2014, ECLI:NL:CRVB:2014:3754; https://www.rijksoverheid.nl/documenten/kamerstukken/2014/12/16/kamerbrief-fraudewet-onderzoek-nationale-ombudsman-en-aanbieding-rapport-inspectie-szw-de-boete-belicht

dance. The case conversation presented below may illustrate this. In this complex case the client managers reached a solution to satisfy the interests of both the client and Social Services.

The central question in this case appears to be whether or not a client manager can claim discretionary space to begin with, since accounting for tailor-making is relatively difficult in some cases. The case revolves around the explicit legal rule not to allow welfare nor special benefits in case of debt. This stipulation seems to point directly towards an ethics of law orientation. However, this case illustrates a client manager's effort to strive for responsiveness to the client—presumably from an ethics of care orientation—despite the strict, but not absolute, rule governing the case.

A woman has been receiving public welfare for many years and is now badly in need of dental and physiotherapy treatments, for which she has filed an application. Normally, these are provided for by health insurance—supplementary health insurance, to be precise. A public welfare client is typically and explicitly expected to have supplementary health insurance, in addition to the compulsory basic health insurance, and pay for it herself from her regular welfare supply. The reason is the fact that basic health insurance does not cover a number of common treatments like dental and physiotherapy treatments. In order to be minimally insured for these costs one must have the supplementary health insurance. Regular rule does not allow welfare for anything that health insurance can provide for by basic or supplementary insurance (see, e.g., De Boer, Heesen & Ros 2014,129). The rationale behind this rule is the fact that health insurance is "an actual present provision"[176] (PW art. 15 lid 1), and public welfare should really be the very last resort.

However, the client appears to have huge debts, including a health insurance debt of around €4,000. For that reason the health insurance company does not allow her to take a supplementary insurance, which would cover the cost of the treatments needed. Obviously, she is not able to pay for it herself, since a large part of her welfare allowance already goes to debt payments and her cost of living can already barely be met. Moreover, she clearly needs the treatments. During the case meeting the client managers present all seem to agree that she should be helped in some way. This means that they do not choose to have regular rule govern this case, which would leave the woman deprived of necessary care. According to her client manager, she is really trying to get her life back on track. In the discussion the client is constructed as someone who really tries hard. Her file reads in part:

"Client does her utmost to get her life back on track again."
"She appears to have a very positive attitude."

176. "een voorliggende voorziening"

This language constructs the client showing behavior that can be counted on. Here it seems that an implicit norm to show good will by trying hard looks to have been fulfilled. Apparently, the client managers seem to be inclined to grant special allowances, as an ad hoc solution, to pay for the necessary dental and physiotherapy treatments. The client managers consider the possibility of accounting for this decision using the local policy rule of extra support in case of "stacking"[177] of costs. Although this rule seems to apply, the client managers question and discuss it. Next, their attention goes to WWB rules, which do not allow welfare or special benefits to pay off debts. This is explicitly stated in WWB art. 13:1 sub g. The reason behind this rule is the argument of the legislator, that generally speaking debts have usually been incurred by ill-adjusted expenditure patterns rather than by a lack of means. Therefore, the state—the tax payer—should not have to pay for these choices (see e.g. De Boer et al., 2014, p. 55).

Then one of the client managers brings up the possibility that this client may need years of extra welfare because of her debts as well as her continuing health problems. He then ventures to say: "*I actually think that the solution for her will have to be found in debt relief.*"[178] (Transcript 6, 293-4). He specifically refers to the health insurance debt. Judging by the specific use of language ("*the solution for her*"), this client manager seems to want to take the (future) well-being of the client into account (care). He constructs her debt as the real issue. He has done a calculation and suggests a much more effective way to solve the problem: paying the health insurance debt for her. This would enable the client to get supplementary health insurance again, which would pay for most of her health care expenses to come. It would be a solution for the problems of dentist and physiotherapy expenses now and in the future, for the client as well as for the department.

However, a big obstacle which has just been recalled in the conversation, remains: legal rules do not allow welfare or special benefits to be applied to pay off debt (law). Still, legal rule as well as jurisprudence allow a very small margin: in exceptional cases involving debt, special allowances can be permitted. In his documentation the client manager will have to explain very clearly how the specific conditions of this article are being met. This includes the presentation of the so-called very urgent reasons[179], in line with jurisprudence, that are required as stated in WWB/PW art. 49 (see e.g. De Boer et al., 2014, p. 55). It will require an extra effort of the client manager. Not only will he have to identify the debt as the real issue and look for possibilities within the confines of the law, he will also have to justify his assessment and show in his account that the case meets the conditions of the exception to the rule.

177. "stapeling"
178. "*Ik denk eigenlijk dat de oplossing voor haar moet liggen in het oplossen van de schuld.*"

179. "zeer dringende redenen"

In such a case the client manager will need to stand tall, as he risks being called back by the quality manager. He expresses his awareness of this risk by saying:

> *"As a matter of principle we cannot offer welfare for debts. But this is (1). I do think this is an exceptional situation. If I say, well, from where I'm standing I would risk saying: this one time I'll do just <u>that</u>."*

Apparently, from the client manager's perspective pursuing this solution involves a measure of "risk". This client manager takes a stance to defend his proposal, because he constructs this client case as "exceptional". As we have seen, this client would have been awarded special benefits for the two types of treatment on the basis of the local policy rule in case of the stacking of extra costs. The bold suggestion of around €4,000 of debt relief by Social Services is viewed as a more effective solution in the long run, both for the Department and the client—"effectiveness" being one of the "position objectives"[180]. It would leave the client in a much less vulnerable and less dependent position. Thus, responsiveness to regular legal rule—no welfare for debt relief—is turned into responsiveness to client and context, supported by rules of exception.

A little while later, this same client manager explains his proposal in such a way that he seems to construct legal rule as a rigid boundary[181]. In the following quote, the client manager first constructs legal rule as a "fact". Then he counters it. He says he has ignored strict legal rule in certain circumstances before, although he regards this as going against the rules. He proposes to do something that he claims is not in accordance with the law. He says that he can do so, because he is allowed to make his own decisions. In addition, according to him, it so happened that this application was not part of the control group, and therefore was not going to be checked. He talks about daring: "I'll dare risk it" (see quote below). In addition, he justifies his proposal by pointing to the effectiveness of his 'solution', by calling it "a breakthrough". In this quote this client manager A exchanges opinions with the present senior B in a group that included two other client managers.

> *A-I've done debts before. It's actually not permitted, not allowed. And, well, then I'll do it, because it's up to me after all, and I won't be called on it, because my my, um, my application won't surface anywhere, so to speak.*
> *B-No, exactly*
> *A-But as a matter of fact what you're doing is acting improperly, so to speak.*
> *B-Yes yes*

180. To remind the reader: this is one of the main position objectives stated in the local policy document concerning assignment specifications for client managers; see 4.5.
181. This is a subject that will return more elaborately later, in 5.1.

A-But if you can get a breakthrough this way, I'll dare risk it, you see.

To conclude, in this case extra efforts to look for alternative solutions that can be accounted for eventually worked out in favor of the client as well as Social Services. Like a dance, both law and care seemed part of the conversation. However, doing so demanded more than an average commitment on the part of the client manager. Apparently, he expressed having the courage to take a risk. This case conversation is an example of what I frequently encountered in the transcripts, namely that responsiveness to the client and their context (care) is not without cost. It seems that some of the client managers are aware that using their discretionary space for tailor-making requires extra effort in some cases.

4.8 "Why am I not familiar with my own caseload?"

So far we have explored various ways in which client managers in the case conversations claimed to use, or leave unused, their discretionary space for tailor-making. The discussions seemed to fit the dilemma frame presented at the end of Chapter 2. By analysis, illustrated by the various cases presented up till now, it became clear that, indeed, in the conversations the distinction—dilemma or dance—between law and care seemed to play itself out by the question of either abiding by regular rules or (investigating) tailor-making. Thus, I concluded that to a certain degree the distinction between law and care seemed to illuminate the client managers dilemmas. This relates to the second part of my research question[182].

However, the question about what the client case discussions reveal about their dilemmas, which relates to the first part of my research question, now seemed to surface. The reason is that, in some cases, it struck me that the conversation leaned towards application of regular legal rules, thereby leaving the possibilities of tailor-making unused. I started to ponder about the example of the case, presented in the last section, which seemed to suggest that, in some cases, using discretionary space for tailor-making would require extraordinary effort on the part of the client manager.

In this and the next section I will convey two aspects that seemed to affect the choice/dilemma between law and care. In some cases the client managers seemed to lean towards the side of regular law application, rather than towards an approach of care and support that would include investigating details of the client and their context. Two aspects struck me as relevant in this context. First, client managers sometimes appeared

182. To remind the reader, the research question is: *What do client case discussions reveal about the dilemmas that public welfare professionals face, and does the distinction between law and care illuminate these dilemmas?* See 2.8.

to feel they have to make choices for clients they hardly know (this section). Second, both granting and turning down a client's application appeared to involve taking risks on the part of the client manager (next section).

During many of the case meetings I attended it became clear that vital information was missing and still needed to be retrieved. The conclusion of the meeting would then often be that the client manager involved was going to have to investigate these relevant details. Or the client manager would say he would plan (another) appointment with the client. Sometimes, (possibly) important details came up during the conversation. An example:

A client applies for a bicycle for her son, to go to a football club. However, during the case meeting it becomes clear that the child, who has a mental disability, may not be able to ride a bike on his own. Since both parents, for various reasons, are not able to accompany the child, this must be investigated first, either at the school or at Youth Care. The client's application must be checked for its practical worth[183] (case Transcript 17).

The question may be asked why this client manager did not come to the case meeting fully prepared. The reason may be found in the size of the caseload each client manager has. I encountered the problem of heavy caseloads quite often in case meetings: there is only a limited amount of time available for contact with a client. As a consequence, it appears that in some cases very little is known about the context of the client. This lack of information seemed to be a common occurrence and would mostly be taken for granted by the client managers.

For instance, after participants have discussed a given case, one of the client managers remarks:

"Mmm difficult case";

to which another client manager replies:

"Yes, it is, isn't it, especially when you do not know the people well";

to which the first client manager again replies:

"No exactly yes that is usually the case"

Here the client managers recognize they are usually not too well informed about their clients, which makes it difficult for them to adequately deal with cases. I was told that it takes time to get all the information about a new client on the table, which preferably includes contacting all institutions involved. Management seems to keep the pressure

183. Apparently, the parents were judged not to be able to assess this; it did not become clear why.

up when it comes to time spent on a case and thus caseloads are heavily loaded. Still, applications must be processed. Client managers discussed their displeasure at not being familiar with the clients in their own caseload:

> *"Why am I not familiar with my own caseload?"*

In addition, client managers criticized the policy of transfer of caseloads without the extra time needed to get a reasonably adequate impression of the new clients[184]. The reason why client managers still seemed to take this situation for granted, may be that current local policy does not seem to require them to be adequately familiar with their caseloads. This is emphasized in a local policy document that lists the required competences of a client manager in Stededam. Its text includes stating:

> [client manager] analyses problems, discovers the real question behind the problem without having at his disposal knowledge of the subject or full information[185] (local policy document: *Competence Profile client manager, p.2*)[186].

This local policy construction should be easy to challenge, as it seems at variance with the legal principle of due diligence[187]. This principle is one of the "general principles of decent government", referred to in Part 1[188]. It describes a competence commonly expected of any public professional (public servant), and thus also of any client manager. Under the heading "Integrity" ("Integriteit") we find: "meticulously handles personal and/or sensitive information"; "assesses interests and different views meticulously"[189] (local policy document: *Competence Profile client manager, p.1)*[190].

In any case, the principle of due diligence, here locally translated into the term "meticulously" (see quote above), seems to presuppose adequate time for client managers to gather the necessary client information. A situation characterized by apparently too little time and information combined with a professional obligation to act "meticulously", leaves the client manager in a vulnerable position. Criticism is easily given; however, client managers criticize each other rather cautiously, as they know how difficult the job is. In order to avoid this position the client manager might be more likely to adhere to regular rule, rather than take the more complex route of tailor-making.

184. e.g., Transcript 18, 873-891
185. "[klantmanager] analyseert problemen, achterhaalt de werkelijke vraag achter het probleem zonder over inhoudelijke kennis of volledige informatie te beschikken".
186. Competentieprofiel Klantmanager; see Appendix 2
187. Dutch: zorgvuldigheidsbeginsel
188. See 1.4
189. "gaat zorgvuldig met persoonlijke en/of gevoelige informatie om"; "weegt belangen en verschillende zienswijzen zorgvuldig tegen elkaar af"
190. Competentieprofiel Klantmanager; see Appendix 2

Related to the discussion above is the time it takes to properly document a case. Handling an application requires an accurate justification for the client's file, in order to meet the demands of due diligence and justification of governmental decisions, which are two of the so-called general principles of decent public service, earlier mentioned[191]. Especially in complex cases writing a justification is time-consuming, as the sorting out of intricate details of a given case requires extra effort. Then time pressure may lead to simplification, and thus to re-constructing complex cases into simple ones. Presumably, simplification is not necessarily in the client's best interest.

A critical question arises here: Is there an ethical way in which client managers can handle their cases professionally when they have barely entered into a relationship with their clients?

4.9 Risks of granting and rejecting

When I wondered about reasons why the balance between law and care seemed to lean towards law, a second aspect struck me as relevant. Certain aspects of both granting and turning down an application seemed to lead to a preference for regular rule rather than tailor-making.

One way to explore these aspects is to look at the dilemmas of law versus care that a client manager seems to face when he has decided to grant or turn down an application. Granting an application seems connected to a more responsive relationship between client manager and client, more allowing and supportive (care), while turning down an application seems connected to a stricter relationship, more disciplinary and controlling in the sense of a primary responsiveness of the client manager to regular rule (law). In the relatively more complex and challenging cases it appeared that both granting and rejecting an application had their own arguments and their own effects. Client managers appeared to navigate in a tight corner, as I will now show.

In order for a client manager to come to a decision, he has to determine whether or not the application meets the conditions set forth in law, local policy regulations and jurisprudence. When a client manager has reached the decision to grant an application by tailor-making, (s)he will have to account for it convincingly. Particularly in the case of individualisation, arguments based on the unique specifics of a particular client's case are centred. Such a decision may easily lead to a discussion or dispute. It may be subject to criticism on the part of a colleague, the quality manager or another superior.

191. See 1.4. Dutch: *algemene beginselen van behoorlijk bestuur*; the justification principle, in Dutch: *het motiveringsbeginsel*; the principle of due diligence in Dutch: *het zorgvuldigheidsbeginsel*

Consequently, rejecting an application often seems the road of least resistance, as it can usually be justified by a simple reference to regular legal rule, thereby avoiding the trouble of further investigation.

These two aspects that concern the choice for tailor-making: (a) the 'risk' involved in granting an application, and (b) the time consuming element discussed in the previous section, may lead to a natural preference, so to speak, for turning down applications. However, this has its own risk, constituting yet another dilemma.

When an application is rejected, a client manager has to be prepared to deal with the client's possible complaint or appeal. Moreover, more than once an official complaint is said to have resulted in a repeal, overruling the client manager and his arguments[192]. One can imagine the loss of face a repeal will cause. The next time a client manager is faced with a similar decision, granting it would seem much more appealing than turning it down, however time-consuming and arduous the accounting for it may be.

In these ways, the dilemma of law or care—regular rule application or tailor-making—seems to induce the client manager to perform an extraordinary balancing act. The path of least resistance might well not be in the client's best interest, but serve the client manager's own protection. On the other hand, the 'route of self-protection' might risk an appeal, which would not be in the client manager's interest either.

In conclusion, some cases seem to revolve around neither legal rule nor client and context, but around client managers themselves. While obviously an orientation towards self-preservation seems hard to reconcile with a proper administration of public welfare, further exploration on the seemingly tight position of the client manager seems needed, and is the subject of the next chapter.

4.10 Conclusion of Chapter 4

This Chapter has applied the dilemma framework to the transcripts. The transcripts revealed that client managers indeed seem to grapple with the law-care dilemma, which seems to be characteristic of the job. This dilemma played itself out by the discussions about either using a form of tailor-making or abiding by regular rules, and appeared to be widespread in the case conversations. In some cases it struck me that client managers leaned towards application of regular legal rules, thereby leaving the possibilities of tailor-making unused.

192. I derived this from personal conversations with client managers; in conversations with management it was emphasized that in appeal usually the client managers assessment is followed.

As far as the three perspectives of the dilemma frame are concerned, I conclude that two of the three were indeed major subjects of discussion, though not always explicit. These are the dilemma of being responsive to both regular legal rule and clients and their context, and the dilemma of a more supporting versus a more controlling or disciplining relationship.

However, the third perspective, the perspective of ethical orientations, was less clear and explicit. Moreover, in the course of the analysis, it became more and more obvious that factors other than an ethics of law or care orientation demanded space in the case conversations. Quite a different discourse seemed to be at work at the same time.

In other words, and as conveyed in Chapter 3, in applying the dilemma framework to the transcripts I discovered that the binary of law versus care did not seem to cover all that seemed of interest from the point of view of my curiosities concerning discretionary space, ethics and dilemmas. In some cases the binary appeared more like a dance than a dilemma. Moreover, the first part of my research question[193] seemed to ask attention: the question what the client case discussions reveal about the dilemmas that the client managers see themselves as facing, appeared to need a deeper level of reflection.

In order to further explore the empirical material in the light of this question, I also needed an analysis that did not start with my 'top-down'core category of law-care, produced by the dilemma frame. Instead, I needed to start from the empirical material, particularly the transcripts, in a 'bottom-up' way. In Chapter 3 I related that this way of 'bottom-up' analysis identified a second and third core category. The next chapter centres the second core category, called 'client managers under siege'.

193. To remind the reader, the research question is: *What do client case discussions reveal about the dilemmas that public welfare professionals face, and does the distinction between law and care illuminate these dilemmas?* See 2.8.

5

Discretionary Space, a Mission Impossible? Manifesting 'Under Siege'

This chapter revolves around case discussions that illustrate my research curiosities—the three core concepts of discretionary space, dilemmas and ethics in public welfare practice— albeit in a different way than the 'top-down' application of the law-care dilemma frame discussed in Chapter 4. This chapter on the other hand, considers a 'bottom-up' analysis of the empirical material, in particular the transcripts.

As related, in some cases it struck me that client managers seemed to lean towards the application of regular legal rule, leaving the possibilities of tailor-making unused. It made me wonder what the client case discussions would reveal about the dilemmas that client managers appeared to see themselves as facing.

This chapter illustrates how, in practice, using discretionary space—and also the choice to use, or not use, discretionary space—leaves the client manager in a tight corner and seemingly on a mission impossible. However, in concluding this chapter, I discuss the importance of using discretionary space—tailor-making—in public welfare practice.

5.1 "You cannot do much for her because the law does not allow that space"

Given my interest in ethics and the dilemmas of professional responsiveness[194], I wondered why client managers seemed reticent in some cases, and hardly prepared to meet the apparent needs of their clients. In these cases they left tailor-making unused, despite the range of possibilities offered by individualisation, including the extra local fund of "tailor-made net"[195]. That is why I felt the need to analyse the materials in a different way, namely, 'bottom-up'. This deeper reflection allowed me to see some of the predicaments that client managers seem to see themselves as facing. As an example, in the following case conversation the client manager rests on his claim that the law does not allow him to do something. It illustrates how various details of a complex case might move a client manager to be inclined to stick with a strict application of regular rules.

In this case meeting[196] there are five client managers (B, C, D, H, E), a policy manager (A) and a quality manager (F). The case is presented by client manager H, and concerns a long-term public welfare client, a middle-aged woman, who is disabled and entirely dependent on WWB supply. Presumably, the stipulations in the local renewed welfare policy work to her disadvantage. Several attempts by different client managers to contact her in order to look for ways to work with the new rules together with her were not successful. In fact, she refuses any contact with client managers or other council staff. At the time of the meeting she is about to be evicted because of a rental backlog of four months. That is the reason why the client manager (H) brings in the case.

Right at the beginning of the case conversation client manager H says:

> *"It is a typical example of a case in which the client manager is completely tied, due to the fact that you cannot do much for her because the law does not allow that space."*

Judging by his statement "*the law does not allow that space*", discretionary space for tailor-making is apparently not available, according to the client manager. This standpoint was already clear from the mail that was sent to the participants prior to the meeting. Referring to the client's refusal to respond, the e-mail reads:

> *"By her positioning beneficiary makes it impossible for the council to help her" (Informational mail Transcript 10, 1st case).*

194. See 2.3 and 2.4

195. See 3.2: "maatwerkvangnet" (local policy document *Stand van zaken implementatieproces minimabeleid 12 december 2011);* a term frequently used in the case meetings as well.

196. The participants of this conversation are the involved client manager H, the other client managers B, C, D and E a policy manager F and a senior manager/chairman A. Other aspects of this case conversation were presented earlier, in 4.2.

Furthermore, it says that the client apparently has not been using welfare money to pay for what she should have, namely the rent, and that the client does not comply as she should by refusing contact. The e-mail concludes: "*It can be argued, that beneficiary makes it impossible to continue welfare supply*."[197] (Informational mail Transcript 10, 1st case).

The client manager seems to be telling his colleagues that he has no choice. He states he is unable "to help her" (see quote above) and be responsive to this client, because he claims that "the law does not allow that space" (see quote above).

I wondered why this client manager, who is quite experienced, apparently chose not to look for ways to use discretionary space in order to be responsive towards his client. Do the transcripts give a clue as to what made him reluctant to look for ways to individualize, and instead more inclined to view the law as a rigid bastion of rules? The following case re-construction offers a possible answer to this question.

At the case meeting the client manager tells the participants about the visit he and a colleague tried to pay to this client, in order to look for ways to prevent eviction. However, the door was slammed in their face:

> *"We came to her door and, um, she was at home by chance, she was just coming home. She had walked her three dogs and she came riding in her mobility scooter and, um, then obviously she couldn't enter the house very quickly, so we were at her door fairly quickly. Then she slammed it right in our faces. And um, later we rang the bell and when she saw that we were there for her she actually did come outside. Even if only to make sure who we were, because she did not yet know me. And I introduced myself as her new client manager asking if we could do anything for her. And, um, she did not even answer that. She told us to scram!"*

Clearly, the client refuses any contact. However, with eviction around the corner, no contact does not seem to be an option. In his introductory e-mail the client manager had already indicated that inaction was no solution: "*Doing nothing means the press will have a field day reporting on her circumstances and the council's role. We could do without that."*[198]. And a little further he states: "*However, the council's hands are tied because of beneficiary's reluctant attitude*"[199] (Informational e-mail case 1, Transcript 10).

The client manager's problem turns out to be a dilemma. He cannot do his job because the client refuses every contact. However, inaction is not an option either, for reasons involving the press. One of the participants—he is a visiting policy manager—

197. "*Gesteld kan worden, dat belanghebbende voortzetting van de bijstand onmogelijk maakt."*
198. *"Nietsdoen, betekent dat haar omstandigheden en de rol van de gemeente voer voor de pers wordt. Daar zit niemand op te wachten."*
199. *"De gemeente kan echter door de weigerachtige houding van de belanghebbende niets doen"*

asks him what he means by his statement about the press. Then, it appears that the media had been involved previously in a way that was not particularly favourable for the council and the department:

F - What struck me is that you wrote: "doing nothing means that the press will have a field day reporting on her circumstances and the council's role."
H - Yeah.
F- ((quoting the informational mail)) - "We could do without that."
H - She's a disabled woman with three dogs, and the moment you make her uh sleep under a tree you'll make the papers.
B - Yes, uh, then SBS and RTL[200] and all the others will be staked out on the corner
C - Or she'll address the council member herself; she could do that too
F - That sounds like an argument to do something while you might rather not (2) I think that's interesting.
((Various voices)) - That's true
H - But at one point someone in the office simply said: well yes, uh, let's pump in assistance and we'll be rid of her. But that's, that's a solution for
F - But also out of fear for the media?
H - I think that's part of it, yes
D – So that has already happened, that has occurred, the media have been involved already?
H - In the past, yes
D - In the past , like
A - So this has been going on for a long time
H - Yes, it has been going on for a long time and something needs to happen with this lady

Apparently, the threat of a 'media attack' is taken seriously because at an earlier stage a media circus had occurred, to the advantage of the client, casting the Council and Social Services in an unfavourable light. The client manager seems to barely have any wiggle room: a possible client complaint hangs over him like the sword of Damocles. I could well imagine the headlines if the press were to get wind of it: Lady evicted; Social Services nowhere to be seen. This seemed a real dilemma: no room to wiggle in a case that is mired, yet feeling the need to do something. The construction of a rigid authority of law may seem a welcome option to a client manager in such a dilemma, seemingly 'under siege' from various sides, and in a relationship that is stuck like that.

200. SBS and RTL are television/radio stations also keen on local news.

A number of times during my stay at the department I heard client managers claim in various ways that, due to the law, one could not do anything for a particular client. However, another view on law application seems possible. I often witnessed client managers saying: 'After all, individualisation is always an option, really.' It is indeed up to the client manager to decide whether or not to adhere to the regular rules or individualize in a given case. Clearly, in the face of various pressures an appeal to the seemingly firm fortress of the law does seem an attractive option. Claiming the notion that the law is a rigid authority that needs to be adhered to strictly, appears to be an easy way out of complexity, particularly in instances when the relationship between client manager and client is under pressure. When the client manager claims that the law "does not allow that space" (see quotation earlier in this section), they may feel that their actions are more easily justified.

In contrast, the tailor-making route is much harder to justify, because it looks for a response to the many elements in a given case, some of them contradictory as shown in the cases discussed. If the client manager chooses the more nuanced approach of tailor-making, he will run a risk: in his justification he can no longer depend on the law as a strict body of rules. After all, the individualisation principle contradicts the inflexibility of a rigid authority. Clearly, in this practice the principle of tailor-making undermines the claim of rigid boundaries. The account that the scope of the law is strict and unyielding is a feeble one. The Participation Law (and its predecessor WWB), through its individualisation principle, is inherently flexible, as was explained in Chapter 1. This means that when a client manager justifies his course of action by appealing to the rigid authority of regular rules, his decision might be successfully challenged by a client's complaint. This seems a tight corner for client managers, and an easy way out hardly ever seems open to them.

The fact that client managers deal with citizens who do not always share a nuanced view on justice complicates the client manager's job. Justification of decisions is a legal requirement for civil servants including client managers[201], both towards the superior and towards the client, however, the way of persuasively making the case may be quite different in each instance. It seems possible to see an analogy in the notion of the law as a rigid authority with the discourse of the "Received View of Science" (RVS), described by Woolgar (McNamee & Hosking 2012, 19; Hosking 2008, 676). This particular discourse of science is used by scientists within particular contexts. McNamee and Hosking's explanation of the RVS includes the following:

201. Dutch: "motivering", see AWB afdeling 3.7; it is one of the "general principles of decent public service".

> *"Woolgar's notion of the RVS refers to a discourse that is used only in certain contexts, such as when one wants to claim authority so as to defend or legitimize an argument in cultures where the discourse of science is persuasive." (McNamee & Hosking 2012, 20).*

In addition, drawing on Woolgar, McNamee & Hosking describe the RVS by saying:

> *"In this context objects are understood to exist independently of their connections or ways of relating." (McNamee & Hosking 2012, 20).*

A third significant theme of the RVS mentioned by these authors is the assumption:

> *"that scientists know how to do science, that they share a high degree of consensus about this, and they believe that designing and following a scientific methodology can produce (relatively) objective knowledge." (McNamee & Hosking 2012, 20).*

Reasoning based on the notion that the law is a rigid authority can be constructed as an example of discourse such as the RVS. Following are three points that relate the discourse of the RVS to the field of law application and the above case.

First, substituting the word *law* for the word *science* in the first quote above, might make clear that the discourse of law as a rigid authority is used in the above case: "when one wants to claim authority so as to defend or legitimize an argument in cultures where the discourse of *law* is persuasive."

Second, the RVS assumption that "objects are understood to exist independently of their connections or ways of relating" (second quote above), may be analogous to the assumption that the law is an independent object, a set of rules that exists somewhere "out there", and so, 'it is what it is', so to speak. This view does not allow the user, in our case the client manager, any influence. Consequently, accountability is diminished as well. One cannot be accountable for something one cannot direct or influence. This leaves the client manager in our case in a 'safe place'.

The view seems to be at variance with the sober notion that for law to exist, it must be used, for example, it must be applied, by continuing processes of communication. The case discussions taking place in Stededam can be seen as such continuing processes of communication. During the discussion of the above case, the case of the lady in the mobility scooter, several alternative courses of action were identified. This meant that, next to a 'received view of law', another discourse, one with softer boundaries that opened up new possibilities, was allowed alongside the discourse of a more rigid nature.

As a third and final point that relates the discourse of the RVS to the field of law application, it suggests that scientists know and agree on how to do science, and believe

that scientific methodologies can produce (relatively) objective knowledge (McNamee & Hosking 2012, 20) (third quote above). Thus, the RVS in the field of law application may construct the notion of professionals who know how to go about applying the law, who share "a high degree of consensus" (see quote above) about it, and who believe that legal methods will produce (relatively) objective outcomes. Obviously, the whole point and purpose of the case meetings deny this view. In addition, this view seems to be at variance with the construction of application of the law as a continuous process in search for a relative consensus as a temporary, local construction (Van Donkersgoed 2009 and 2014)[202].

In conclusion, this section presented a case conversation that related to the dilemma of law versus care, but seemed to involve complicating aspects that put the client manager in a tight corner, seemingly checkmate. It may clarify why a client manager might be inclined to stick with a strict application of regular rules. When a client manager seems compelled to look after their own interests and take care of themselves rather than investigate and take care of the client in their context, it seems to rest on the claim that the law does not allow that space. Client managers seem to be aware that, as soon as they leave the path of regular rules behind, they are in a potentially 'dangerous' position. To make things even more complicated, and as I related in the previous chapter, the justification of regular legal rule appears to be a feeble refuge, because the client manager might risk a justified appeal of the client. There seems no easy way out in this case, which thus illustrates the core category of 'client managers under siege'.

5.2 " If every client manager decides for themselves…"

One of the issues that came up regularly as a concern in the conversations of the client managers was the civil service demand of equal treatment. 'I have a whole list of clients who are in the same position and they will want the same benefits'. I have heard client managers express this or similar concerns on more than one occasion, appealing to equality as a basis for turning down (or granting) a client's application. This seems to reflect the pressure felt by client managers to treat the clients in their case-load equally. An illustration of this fact may be the 'aggression protocol', which is invoked about once

202. In my experience as a lecturer, I find undergraduate students often appear to gradually shift their view on the legal system from a construction of strict legal rules and requirements offering hardly any space in application, to the appreciation of the construction of discretionary space. This opens up their reference frame to more possibilities and more responsibility as a (coming) law applying professional.

a month on average. This protocol, that allows for police intervention, supports public servants including client managers in the case of violence, or serious threat thereof, by clients[203].

Presumably, when setting up the case meeting procedure, the safeguarding of equal treatment was one of the main considerations of policymakers and management. Many councils try to safeguard equal treatment by issuing detailed policy regulations. In Stededam the choice was made to abandon certain generic regulations in favor of tailor-making with the help of the two new policy criteria of "social participation" and "grip on life"[204]. As I related earlier, this approach allowed the client managers discretionary space in which to explore various options in order to connect to their clients.

This choice was supported and promoted by the department management, but not always by the client managers themselves. They may become very uneasy about their decisions, as I have witnessed during my visits[205]. Any complaints on the part of clients due to inequality of treatment will of course be directed towards the client managers, which makes their apprehension about discretionary space quite understandable. As the quotes that follow will illustrate, at these particular moments they specifically asked for more regulation from the management. Discretionary space seemed not appreciated in those particular contexts. The client managers expressed a preference for stricter regulation that would back them up, rather than having to run all sorts of risks.

'How do I avoid unequal treatment?' This section will illustrate the seeming anxieties underlying this question. From the transcripts three particular concerns emerged: (a) "you can diverge widely", so "shouldn't we simply fill in the details a little bit more"; (b) "incredible arbitrariness"; and (c) clients 'shopping' at the helpdesk (Transcript 15 and 13, see below).

a) "You can diverge widely"[206]

A first concern about equal treatment relates to: 'When working with the law you'll get different outcomes'. I have heard policy managers express this sentiment on various occasions[207]. Notably, these 'different outcomes' may put client managers in a tight corner of insecurity. Case in point is one of the case meetings at which no superior is present. Client manager A is asked to take on the role of chairman. Together, the six client managers—including B, C, D, and F—discuss various regular rules, such as *no*

203. From personal conversations at Stededam Social Security Department
204. See 3.1.2
205. For example, I heard client managers refer to big differences in treatment as "contradictory", ("tegenstrijdig" Tr. 13, 1168), even "crooked" ("krom", in an informal conversation).
206. Transcript 15, 832-5
207. In personal conversations with professionals and managers, in Stededam and elsewhere(2009-2013).

welfare support for debts[208], focussing on the conditions which would legitimize tailor-making. The following transcript shows their struggle to find a balance between equal treatment (law) and tailor making (care).

F - Suppose someone has 4,000 euro on their account and that person has expenses. Then you might feel like saying, you can pay for it yourself, right?
C - Yes.
F - Even though you might be talking about exempted capital assets B - Yes, but that is exactly what I was thinking about, you know. I'm thinking like, I can come up with, uh, so many different solutions.
C - Yes.
B - that you start to wonder, right, that, being the council, you'll say "yes", but at the same time you'll have to apply the principle of equality to some extent, won't you?
D and C - Yes.
B - It's so easy, then, to
F - Yes, you can diverge widely, yes
B -…diverge widely and so I was thinking, all right, shouldn't we, all of us, simply fill in the details a little bit more.
D – Yes (2) ( )
C -But of course it remains tricky when looking at someone's personal situation…((D and A are talking at the same time; imperceptible))
C - …that someone is in debt and everything, and their benefits have been seized, that is a different situation compared to when someone has capital assets. That's how it always will be. It has always been like that and it still is: you take someone's personal circumstances into account.
B - Well, but how about we forget about the debt, you know, just for now.
C - Yes.
B - I mean, let's just leave the debt out of the picture for now. Someone simply, has various expenses that we feel are necessary.
C - Necessary.
B - Whereabouts is the tipping point? Look, we're not talking about a tenner, are we?
C - No, this isn't about a tenner.
D - No.((D is mumbling imperceptibly)) (4)
B - Nobody knows!
D - No.
A - No-o. This is tricky because we are being told to consider the individual case.
C - Yes.

208. WWB/PW art. 13 lid 1 sub g

A - And what is, what do <u>you</u> feel fits this family? When it comes to stacking. How much? And I don't think there is just one line, that an amount has been mentioned.

This excerpt shows client manager F introducing a supposed case with exempted capital assets. Then B expresses his concern regarding the variety of solutions possible in a given case, which would be at variance with the equality principle. He pleads: "shouldn't we, all of us, simply fill in the details more?". This is followed by a short silence. Then C states that the challenge has always been the need to take a client's personal circumstances into account. Then B brings more focus to this point by suggesting they leave the debt out of the equation and asking: "Whereabouts is the tipping point?" By this he means: at what level of expense do we consider welfare benefits legitimate? This is followed by a still longer pause in the conversation. It might indicate their embarrassment: they seem to have no clue as to how to deal with this question. B concludes: "Nobody knows!"; no one seems to know the exact boundary or tipping point. Finally, A, the ad hoc chairman, concludes that—although "nobody knows"—client managers still must make individual assessments without the help of a fixed amount: "What do you feel fits this family?"

b) "Incredible arbitrariness"

A second concern about equal treatment is the risk they run of being arbitrary. A case in point is a conversation about a case involving physiotherapy and other expenses. The participants[209] disagree about the way to proceed and seem to be reluctant to appreciate their differences. The fragment shows client manager A initiating a discussion about a reasonable threshold for extra benefits. Apparently, they are searching for a specific maximum amount for which a client manager can legitimately grant special benefits without arbitrariness.

A - Yes, okay. But if every client manager decides for themselves, well, I think 300 euros is a reasonable threshold level and the other says 400, you obviously get incredible arbitrariness …
((Two voices)) - Yes
A - …and I don't think we'd want that.
E - I think in this situation you'll get this anyhow, because if there is only physical therapy, one will say: no, you won't get it, because we don't do it anymore, and the next one will say: yes, sure, I think it is so much, you'll get it.
A - Yes, that is why I feel it is very un-, un-, I feel there is inequality.

The excerpt shows that the client managers discuss arbitrariness in relation to taylor-making (care) and express their concern. Client manager A starts out by saying "But

209. The participants are a superior B, and 6 client managers: A, C, D, E, F, and G.

if every client manager will decide for themselves" (what they feel is a reasonable amount). She seems to prefer a joined assessment. She makes her final point: "incredible arbitrariness", and two of her colleagues voice their agreement. Next, E concedes that differences in assessment will always occur. Finally, A concludes that "inequality" is the reason for her objection (to exercising discretion in this case).

Client managers seem to want to avoid the risk of being accused of unequal treatment. At the same time, they are acutely aware of the differences in context among the various cases in their caseload. These differences in context might very well serve as the basis for tailor-making. Yet, they shy away from tailor-making, apparently fearing the accusation of "unequal" (and therefore "unfair") treatment.

The concept of equal treatment seems to be based not only on a legal principle but on a societal principle as well. The general public—which includes public welfare applicants—seems to associate equality with justice and inequality with injustice, a position that may give rise to the assumption that clients are justly entitled to "equal treatment", following a "uniform" application of the law[210]. This complicates the accountability of client managers, because in practice the concept of "equality" hardly seems to hold: every client context is unique, and criteria for assessing two cases as equal can never be fully specified.

c) *Clients 'shopping' at the helpdesk*

A third concern about equal treatment focusses on significant differences in assessment among a group of client managers. Client managers indicate their worry that colleagues might decide differently in similar cases: one client manager may be inclined to allow more or higher benefits than the other. The following excerpt illustrates quite clearly the awareness on the part of client managers of the risk of clients 'shopping' for the most favourable outcome. Leading up to the statement quoted below, the chairman had argued that differences in outcome are unavoidable. He had added, however, that different assessments do not seem to happen all that often. Then one of the client managers states that substantial differences in assessment do pose a problem from the client manager's point of view:

> *"But, well, look, it doesn't have to, even if it doesn't happen very frequently, it does occur. And even if, if there are only twenty in an entire year and if those twenty differ enough that at some point someone ((client)) says: Oh, when is A doing helpdesk? Because then I want to see A, and I do not want to see B, because B won't grant it and A will."*

210. See also Berendsen 2007, quoted in 1.3

She makes her point by picturing clients shopping at the helpdesks, when they find out they are better off with one client manager compared to another. It is certainly conceivable that problems arise in the relationship between the client manager and the client when clients come to understand (construct) that client managers are handling seemingly similar cases in completely different ways, and with completely different results. Conversely, cases constructed as different that are treated equally, might be just as problematic.

Client managers are not alone in their anxiety regarding the risks that come with using discretionary space, including inequality of treatment. Local politicians seem to feel vulnerable as well when it comes to possible differences in outcome. They seem to have an interest in a strong and politically convincing discourse of equality of service as an expression of equality of rights. At least once during my inquiry in Stededam equality of service proved to be a genuine concern on the part of the local council. It was feared that the execution of "rechtsgelijkheid" ("equality of rights"), established by law and embedded in culture, was under undue scrutiny[211]. Any decision dubbed wrong by anyone involved, could risk arousing media attention, unequal treatment and therefore injustice always being a popular theme in the media. It could lead to accusations by the media and the public, directed at the public welfare system, running the gamut from being too soft and indulgent to being too strict and disciplinarian.

It seems to me understandable that local politicians are watchful when it comes to being at the receiving end of naming and shaming by the media. After all, unfavorable media attention might give rise to all sorts of political consequences. In one of the client cases discussed earlier[212], we saw how the Social Security Department had been getting a bad rap by the media. The client managers in attendance understood that such unwelcome media attention could happen any time.

To conclude, the texts I have brought forward here illustrate that one of the dilemmas of 'client managers under siege' seems to be a friction between tailor-making practice (care) and the demand of equal treatment (law). The latter aims at safeguarding public service decisions from arbitrariness. In the process of following my curiosity about what was happening in the case conversations, one of the things that stood out for me was this situation of client managers recognizing that when they go the tailor-making route, they are potentially open to the critique of arbitrariness. In the context of a dance of law and care, these texts seemed to show that, although both notions seemed present, care for the client was not the main topic of conversation. Rather, client managers' anxieties—as related above—seemed to compel them to discuss how to take care of themselves.

211. From personal conversations with policy makers and head of the Department
212. Transcript 10, see 5.1

5.3 "Well yes, you would need a directive for that"[213]

Client managers 'under siege' seem to see themselves as facing the task of reconciling equal treatment with tailor-making. This led me to wonder if their management helped to alleviate, or perhaps added to the pressure on client managers.

As related in Part 1, when near the end of 2011 the council of Stededam decided to abolish most of the generic settlements and centre tailor-making in their service to clients, management installed case meetings to support client managers in this relatively new task. This was accompanied by an internal instruction document (*Set-up Case meetings*[214]). This document is especially relevant because it may reveal the way in which the client managers' superiors look at the problem of tailor-making in connection to equal treatment. It expounds on the set-up and start of case meetings, and spells out what is expected of client managers. First, this section focusses on two points that struck me when I looked at this document. Then follows a further exploration of the course taken by management and the reactions from client managers. This section concludes with an example of a discussion between client managers and the management on the subject that left the issue undecided.

Case meetings in Stededam were initiated to provide an opportunity to talk about client cases: "Aim of case conversations is to reflect on their own actions and to learn from each other"[215] (*Set-up Case Meetings*, see Appendix 3). As related, this set-up followed the local austerities that abolished most generic settlements, in favor of tailor-making. The document explains that the new policy prescribes different procedures and requires new client manager skills. It continues:

> *"Moreover, it is important that within tailor-making practice equal cases receive equal treatment. In addition, it is important that the client manager learns to use the space for a justified deviation from the rules if this is necessary in the individual case. Therefore the choice has been made to conduct case meetings. The heart of the method is participants discussing as equals the professional practice in supporting our clients." (Set-up Case Meetings, see Appendix 3)*[216].

The following discussion will focus on two points: (a) "equal cases" (in quote above), and (b) the two-fold task of both tailor-making and equal treatment as expressed in this internal instruction document.

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213. "Ja daar zou je dan een richtlijn voor moeten hebben" (Transcript 13, 1064)
214. See Appendix 3
215. "*De doelstelling van casuïstiek bespreken is reflectie op het eigen handelen en leren van elkaar.*"
216. Interestingly, the Dutch phrasing of "in gelijke gevallen, gelijk wordt gehandeld" sounds like an echo from a very authoritative source: our Dutch Grondwet Artikel 1 (Dutch National Constitution article 1) which starts by stating: "Allen die zich in Nederland bevinden, worden in gelijke gevallen gelijk behandeld." ("All who are in the Netherlands are treated equally in equal cases.")(tr lvd).

First, the statement at the beginning of the quote, "it is important that within tailor-making practice equal cases receive equal treatment", seems to aim at "equal treatment" amongst client managers of "equal cases". This seems to imply that there are equal—or similar[217]—cases, that may be identified as such by investigating and comparing clients and their contexts. Obviously, the application of legal rules works this way. The term "equal treatment" refers to this basic legal as well as ethical equality principle[218], that is reflected in this document. Moreover, rules are, by definition, applicable to more than one case. Indeed, for rule application to happen we must assume that cases may be constructed as similar. The application of a rule is the concrete effect of this assumption. However, the construction of cases as equal focusses on what is seen as equal aspects while disregarding the unequal aspects[219]. Apparently, the system of the application of rules seems to work smoothly only when people agree in their assessment that some aspects of a case are relevant and others are not, and can therefore be discarded. Notably, while client managers have the task to decide on public welfare in particular cases, they must decide which aspects are relevant and which are not. However, the grounds on which to decide this appeared to be not clear at all in many of the client cases that were discussed in the case meetings I attended.

Second, the line in the instruction document expressing the importance of both tailor-making practice and equal treatment may indeed provoke discussion in case meeting conversations. On the one hand, the statement "it is important that within tailor-making practice equal cases receive equal treatment" (see quote above) seems to encourage the client manager to re-construct a given case equal to other cases, and thus fitting the same rule. The act of constructing a case as an equal case to other cases in order to make it fit some rule, requires a focus on rules. This is because it starts by asking in what way this case can be compared to other cases *regarding fitting a particular rule*. Here, the Internal Instruction Document seems to put the relationship of client managers with rules first. This could be interpreted as being in alignment with the practice orientation of an ethics of law.

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217. In English, the words equal and similar look quite different. In Dutch, these words are quite similar: equal = "gelijk", and similar = "gelijkend", or "op elkaar lijkend"; so at least in appearance these Dutch phrasings are closer to each other than they are in English. In addition, the word *gelijkend* is less used, being a little old-fashioned. This leads to the possible assumption that perhaps in this Document, the author might have aimed at *gelijkend*, so: similar, rather than *gelijk*: equal.

218. Grondwet Artikel 1 (National Constitution article 1)

219. See also the legal doctrine; e.g., Tak, in the context of legal principles of governmental law (bestuursrecht), says: "*Het gelijkheidsbeginsel houdt in dat gelijke gevallen gelijk dienen te worden behandeld. Toepassing van dit beginsel komt overigens in de praktijk weinig voor. Dit hangt samen met het feit dat zelden twee gevallen volstrekt gelijk zijn.*" ("*The principle of equality of rights implies that equal cases should be treated equally. Application of this principle however does not often occur in practice. This is because two cases are rarely completely equal.*" (Tak 1996, 223) See also in similar phrasings, e.g., Loonstra 2012, 381. However, application of this principle seems to occur in the Netherlands, e.g. by more *specific* legislation in the Law on Equal Treatment (Wet Gelijke Behandeling); compare also the research and verdicts of *College voor de Rechten van de Mens* (Institution for Human Rights); and the work of several so-called *Art.1 organizations*.

On the other hand, the document calls for tailor-making: "use the space for a justified deviation from the rules if this is necessary in the individual case" (see quote above). This seems to encourage the client manager to re-construct a given case unequal to other cases, which makes tailor-making necessary and implies a focus on the particularities of the case. A focus on the particularities of a given case would bring forward the more unique, and so, unequal, aspects of the case. Here, the document seems to put the relationship between the client manager and the client first. This could be interpreted as being in alignment with the practice orientation of an ethics of care.

In summary, this internal instruction document does not provide an evident solution to the client managers dilemma between equal treatment and tailor-making as I have shown in the previous section they saw themselves as facing. However, I observed how policy managers of the department would try to explain to the client managers that the case meeting conversations constituted an alternative type of support. Thereby the policy managers in fact directed the client managers' attention to the co-construction of a flexible range of equal treatment shared within the community of client managers[220]. Indeed, this seems to be in line with the core aim of the initiative: "Heart of the method is participants discussing as equals the professional practice in supporting our clients."[221] (Set-up Case Meetings, see Appendix 3).

Apparently, management proposes a professional exchange as the central focus of case meetings. This could be seen in the light of the development of client managers from civil servants to public professionals, mentioned earlier[222]. The success of the new set-up depends on client managers acting as public professionals who know their position and balance their decisions through professional exchange[223].

How did the client managers in Stededam receive this message from the management? At one of the case meetings (Transcript 13, see below), the senior manager tried to explain the purpose of the case meetings. At this point in the conversation, several of the client managers present ask for more specific directives for this and other cases. The reason seems to be their fear of unequal treatment, as well as their insecurity regarding the way they should use discretionary space in the absence of directives. The

220. See also Van Donkersgoed 2014.

221. "Kern van de methode is dat de deelnemers op voet van gelijkheid het beroepsmatig handelen bij het ondersteunen van onze klanten met elkaar bespreken."

222. At the end of Chapter 1.

223. This can be called "practice dialogue" (Van Donkersgoed 2014). In a way the process of case meetings resembles a particular construction of jurisprudence in practice. Jurisprudence can be seen as an exchange of judges' verdicts on cases, producing a flexible body of connected legal issues and ways of handling them. Similarly, the case meeting conversations may construct a flexible body of "how we do things here", reflecting the local real and good. Compare also the term moresprudence in, for example, the book of editors Mariël Kanne and Ellen Grootoonk (2014): *Moresprudentie in de praktijk.*

quote starts at a point in the discussion where, once again, a client manager (A) raises the issue of a demand for equal treatment in similar cases[224] (in this excerpt a senior manager B and another client manager C are involved):

A-Well I actually think this is an important one, really
B-Yes but you
A-That everybody should deal with that more or less in the same way
B-Yes well but that is why we have, that is why we have this meeting in that respect
A-Yes but then, but
B-so it will no longer be the case, (name of A), that everything is included in work instructions, at ( ) euro or at 200 euros then we are going to do something. It is more and more: look for what you think is realistic.
C-But what would be feasible here?
B-Yes well that is difficult but when I look here then I think that we will surely come to a conclusion because it is not all that different and everybody feels that at some point the physio is over the top.

The senior manager tries to answer the obvious concern of client managers by explaining that this is the reason why they come together in these case meetings. Rather than more rules—in answer to the call: "everybody should deal with that more or less in the same way" (see quote above)—this superior is promoting the case meeting conversations as an alternative means to come to some flexible range of equal treatment. However, as the conversation progresses the client managers still seem to have qualms regarding this new way of finding consensus in a given case. They seem to prefer clear-cut policy directives which would give them firm backing:

D-Yes but what counts as large, I mean, is 500 euro large, too?
E-Well yes, you would need a directive for that

Apparently, in some instances, client managers equate the responsibility of discretionary space with trouble.

In conclusion, the new initiative in Stededam, reflecting the ethical position of local management, seems laudable and reasonable. But is it? Does it not, in effect, overcharge client managers? They seem to be rather reluctant to accept discretionary space, as it leaves them quite exposed, and 'under siege' from various directions. The following question arises: Does the new initiative, though perhaps ethical in essence, in effect put more strain on the client managers? The next section focusses on this question.

224. This conversation takes place between client manager A, senior manager B and a colleague client manager C. Four other client managers, including client managers D and E, are present as well.

5.4 Discretionary space, a 'mission impossible'?

The explorations of this chapter illustrated that client managers appeared to see themselves as facing various dilemmas not directly concerning clients or the law versus care dilemma frame. This is the reason why I constructed their position as one of being 'under siege'. Discretionary space appeared to imply more uncertainty, thereby increasing the risk of, for example, arbitrariness. A number of dilemmas and difficulties seemed to inhibit client managers to work with their clients from an ethics of care orientation. In some instances discretionary space for tailor-making seemed to increase their risks, making the ethics of care orientation towards the client even less of a desired approach. In these instances they seemed compelled to care for themselves.

In summary, the material presented in this chapter identified a number of dilemmas. Client managers asked themselves "What would be feasible here?" (See quote above, Transcript 13, 1183). They seemed to be insecure about establishing a "tipping point" (Transcript 15, 849) in each case, and to prefer more directives that would fill in the details. This relates to the double assignment of equal treatment as well as tailor-making. Client managers recognized that when they go the tailor-making route, they are potentially open to the critique of arbitrariness. They spoke about the 'threat' of clients 'shopping' on the basis of substantial differences in treatment and outcome amongst client managers. And this chapter started with a case that left the client manager in a tight corner due to the 'threat' of a media 'attack' and a client who was not being very cooperative. All these circumstances and dilemmas seemed to lead to a preference to take the 'safe' route and apply regular legal rule.

One of my supervisors remarked that the task of the client manager to tailor-make decisions is a "mission impossible. When tailor-making seems too risky, it could be seen as understandable self-defense when the client manager tends to use law ethics notions, thus losing sight of the client and their context.

Indeed, one way to look at this might be to conclude that in these circumstances the task is impossible; client managers should therefore not be required to perform it. Would less room for tailor-making be a solution for client managers? I will explore this theoretical proposition.

Suppose the following rule was issued: As of today individualisation in public welfare is prohibited. Instead, working without individualisation means: simply follow the rules of law and the policy regulations. At this stage in our exploration two observations can be made. First, individualisation is a tool that may help client managers to respond in a way that seems to be of a higher stance ethically than without individualisation. They do so by being able to observe and take into consideration the unique details

of a particular client case. Second, working without individualisation cannot prevent difficulties from occurring in the human act that bridges the gap between the general and the specific, something which is inherent to law applying practices.

Regarding the first observation, the level of ethical conduct, the previous explorations have illustrated that client managers currently may allow or deny applications basically on two grounds: regular rules or individualisation. Without individualisation, only the regular rules remain as an option. In many cases, this might be easier for the client manager. However, most likely, it would not serve the client in the best possible way.

For example, to re-consider a case mentioned earlier (in 4.5), a young man was receiving welfare and applied for a certain tranquillizer. The drug was not covered by his health insurance and he could not afford to pay for it himself. Presumably, the drug would help him get a grip on his life again. On the basis of applying regular rule, without any individualisation, this case would have resulted in the client manager turning down the application.

To remind the reader[225], usually the reason for bringing in a client's case at the case meeting was the expectation of the client manager that the client's situation would worsen if the application was met by a refusal on the basis of regular rule. In many of these cases, some form of individualisation brought about an acceptable solution. An undesirable situation for the client was thus averted. To put it differently, the extra potential that individualisation offers to be of assistance to citizens in dire circumstances seems to be of a higher ethical stance.

Regarding the second observation, I will argue that working without individualisation cannot prevent dilemmas from occurring in the practice of law application.

The practical viewpoint on law application seems to say that a legal rule is only a legal rule when it is applied in a particular case. A human act is needed to support the legal rule in its course to becoming effective[226]. In the context of public welfare law this is the job of the client manager.

In this context I now consider the concrete situation of a client manager at work, applying legal rules in practice. For example, a particular client claims to be entitled to a particular benefit and applies for it. In the domain of 'the letter of the law' the client manager constructs contextual meaning, while in the domain of the client and their context, (s)he constructs a story that fits the rule: this process results in the so-called client's case[227]. Then the client manager conveys the decision to the client by, for

225. See 4.1
226. To offer a parallel: a score of music is in need of support to take its designed course of sounding at a particular time and place; only a human act can support the score in its course to becoming audible music.
227. See also the third phase of Berendsen, 1.3.

example, writing an e-mail, calling, or having a face-to-face meeting. This can be seen as the human act that in effect bridges the gap between the general (law) and the specific (the client's situation).

However, when a situation is brought under the rule of a particular rule application, it seems that this can never be wholly 'just', because the two 'sides' (particularly the concrete situation) can never be fully specified. This gap seems unbridgeable.

A way to discuss approaching the task of law application in an ethical, or just, way, was offered by French philosopher Jacques Derrida. As mentioned earlier[228], Derrida spoke of the necessity of an act to *re-establish* the law, so to speak, when applying the law to a specific situation (Derrida 1992, 22). In his lecture on law and justice he spoke of the "aporia"—unbridgeable gap—between law and justice. It seems to me that, regarding justice, he was pointing to the concrete situation, and, regarding law, to the fact that the application of legal rule is in need of a human act.

According to Derrida, for justice to be at all possible, an interpretive, even "reinstituting", act (Derrida, 1992, 22) is necessary.

To conclude my argument, if individualisation was outlawed, legal rule would still need an interpretive, "reinstituting" act in concrete situations. Given the fact that in the application of the law there is always a gap to be bridged, it would appear that individualisation increases the options for bridging it. If individualisation was no longer a task of public welfare, the client manager would not be invited to consider the particularities of a case. Indeed, he would in fact be asked to close his eyes to any deviating detail in the client's circumstances that is not covered by legal rule. Simply put, the client manager would be asked not to be responsive to the client. The "aporia" between law and justice (Derrida 1992) would then be just the same as in the case of possible individualisation. However, the possibilities of doing justice to an individual case by being responsive to the client would substantially be diminished.

In conclusion, while at times discretionary space in practice seems to be a mission impossible, it also opens up important potential, which I feel is worth while to protect. It seems that client managers need and deserve more support to (be able to) use this potential.

That is why, to conclude this chapter, I would like to cite Bateson, Jackson, Haley, and Weakland, who in their article on the "double bind" (dilemma) of the schizophrenic propose an extraordinary way to counter a dilemma. The authors present an analogy:

> *"In the Eastern religion, Zen Buddhism, the goal is to achieve Enlightenment. The Zen Master attempts to bring about enlightenment in his pupil in various ways. One of the things he does is to hold a stick over the pupil's head and say fiercely, 'If you say*

228. See 2.1

> *this stick is real, I will strike you with it. If you say this stick is not real, I will strike you with it. If you don't say anything, I will strike you with it.'.(…)The Zen pupil might reach up and take the stick away from the Master—who might accept this response." (Bateson et al. 1956, 5)*

This story may be an apt illustration of the fact that leaning to one side at the cost of another, will not do. One must find the creativity and courage at another level, so it seems, in order to respond in a new way. When it comes to public welfare practice, I wondered what might invite such creativity. As I see it, case meetings could serve as the platform for a shared commitment to find the best possible solution for a client, thus inviting creativity into the process.

5.5 Conclusion of Chapter 5

In this chapter a 'bottom-up' examination of the empirical material, particularly the transcripts, illustrated that, in some cases, client managers seemed to be rather reluctant to accept discretionary space, as it appeared to leave them quite exposed, and 'under siege' from various directions. It seemed to bring them to choose options that would most likely leave them in the least vulnerable position. They expressed a preference for stricter regulation that would back them up, rather than having to run all sorts of risks, including being potentially open to the critique of arbitrariness.

I finally concluded that client managers need and deserve creative support to perform the apparently difficult task of law application by using discretionary space for tailor-making.

6

At a loss: Manifesting 'last resort complexities'

I started this inquiry by putting the dilemma frame including the orientations of ethics of law and ethics of care to work by exploring the empirical materials (particularly the transcripts). Chapter 4 illustrated the first core category of law and care in various ways. Chapter 5 moved on to the second core category of 'client managers under siege'. Here the dilemmas that the client managers saw themselves as facing were not directly related to law versus care. Rather, in different ways, their own position seemed at stake. This final chapter of Part 2 will focus on the third core category called 'last resort complexities'. The dilemma of this category seems caused by the client managers' function of being the client's last resort, at least financially. This means that they have to relate to their clients in one way or another, because in some cases, public welfare being the last resort, clients will keep coming back.

In this chapter, one particular case is centred, which I deemed to be an example 'par excellence' of a case involving last resort complexities. It is used in this chapter to highlight some various complex aspects of such a multi-problem[229] case that seem to raise an ethical question: what would genuine responsiveness to these clients in their situation be?

229. To remind the reader, multi-problem cases concern clients who in many cases are poor in conditions and resources, who regularly challenge regulations, stretching relationships, and whose backgrounds may include problems with violence, various types of addictions, mental/physical disorders, chronic disease, a traumatic past, etc. See also 3.3- *A new task for client managers.*

6.1 At a loss: 'revolving door' welfare support

When a client manager seems to be at a loss regarding a case, it often concerns a client from what the client managers called "the granite files"[230]: it is a group of multi-problem clients who have been receiving welfare benefits for a long time, and will, in all probability, be doing so for a long time to come. Time and again these clients are assessed, the assessment usually leading to the conclusion that they cannot do without public welfare, due to persisting complex problems.

To remind the reader, client managers are accountable for the legitimacy of their caseload. A legitimate welfare application includes clients obligations. This means that client managers are accountable for recipients of welfare to, for example, cooperate with public service and inform the service of relevant facts and circumstances[231]. Furthermore, one important obligation for the client to receive welfare legitimately is the requirement to re-integrate[232], which means putting in an honest effort to apply for any suitable, paid job in order to leave public welfare services as quickly as possible. When this is not feasible, the client manager is supposed to stimulate and support the client to social participation—to move up the ladder of social participation from no social participation at all to social participation by paid work. When clients do not comply, client managers are required to respond by taking any number of measures. The aim of these measures is to persuade the client to come into compliance with the rules.

Some multi-problem cases appeared to be inordinately challenging: apparently, some clients are very difficult to reach. The discussion during case meetings then focussed on the relationship between the client manager and the client that seemed to have reached an impasse.

I will now focus on one case which was discussed at length in about one and a half hour. Present at this case meeting are the client manager A who brings in the case; five colleagues (including B and C) and a superior manager D.

The clients of the centred case are a couple, traumatized and addicted to both drugs and alcohol. They have been public welfare clients for many years. The reason for the client manager to bring in the case at the meeting is their recent application for special benefits. What is more, in the course of the conversation it becomes clear that their general welfare supplies are at stake. The client managers discuss the case. Generally, public welfare aims at outplacement in a job (*uitstroom naar werk),* but it quickly becomes clear that this is not a realistic goal. The next best options would

230. Dutch: *granieten bestand* . This particular phrasing I heard at Stededam and other municipalities.
231. Article 17 WWB/Participation Law
232. Article 9 lid 1 WWB/PW

be an unpaid job, social participation, or social activities in any form. Apparently, any past attempts in this direction have failed. Work or any other structured activity being unfeasible, a temporary exemption is already in use with regard to the obligation to find work. In her introductory mail the client manager writes:

> *"Various attempts to set up an activation track for both clients have led to nothing… I no longer see any possibilities in that direction".*

At the case meeting one of the client managers who used to be the contact for the male client, confirms this state of affairs. Regarding the suggestion to specifically try and activate him in tracks or programs in any way, she says: "*No he just doesn't show up, he might show up twice and then quit coming altogether. You know it is just undoable, it really is*."[233] (Tr. 21, 753-754).

Apparently, efforts to activate him are no longer an option. The seven participants then start talking about realistic expectations for the future. They seem to agree that this is probably going to be a case of continuous welfare support, and in addition to that, extra benefits every year or so. As a colleague-client manager puts it:

> *B - I think we're seeing a pattern of them soiling their house, acquisition of new stuff, but then again complete neglect and that's the pattern more or less*
> *A - Yes, exactly <u>that</u>*[234]
> *B – And now we're again at the point of an application, do we put money in it. And what do you expect that the future will bring? How long are they going to continue in this way, one year, two years, three years, or? That's how it is, really*
> *A - That's it, that's simply the hard part*
> *B – Yes, yes*

In the above quoted fragment, the heart of the matter seems the low level of expectations for these clients. The problem is compounded by the prospect of continued welfare applications due to the destructive pattern of their soiling their house. The client manager will continue to have to respond to these repeated applications. When the client manager agrees by saying: "That's it, that's simply the hard part", she seems to implicitly express the norm that public welfare money should lead to some measure of improvement in a client's situation. The client manager's colleague seems to refer to a kind of *revolving door* welfare support. It seems to confirm that they see no alternative. Here we arrive at the last resort function of welfare. This case exemplifies the limitations of the client managers' mandate in challenging, multi-problem cases. The dilemma

233. *"Nee hij komt niet, hij komt misschien twee keer, en dan komt ie niet meer. Weet je het is gewoon niet te doen het is echt niet te doen."*
234. Underlined words in the transcript are spoken with emphasis

of the client manager presents itself: What to do? Do nothing? Abide by the rules? Or tailor-make—in what way? The next sections will explore how the conversation of this client's case developed.

6.2 At a loss: alternating between law and care

Right at the beginning of this case discussion, a particular interaction produces an inkling as to why this client manager chose to bring in this particular case. At the start, the superior (G) asks the client manager (A) if she wants to elucidate the case, to complement the introductory text she mailed to the participants. She answers his question by starting off in a way that seems to make clear how she experiences her relationship with these clients:

D - Would you like to comment (name A), on the family's story?
A - The W. family ((full name))
D - The W. family ((full name))
A – Um, yes, I can tell for me that I, um, it's about the emotion I feel
D - Yes
A – Um, I start to feel this, uh resistance, on the one hand I think, oh all the support that is needed
D - Yes
A - And on the other hand, um, I can tell it's the same for the K. and M.[235] social workers, namely all kinds of support is readily consumed without anything in exchange. And, th.. I'm actually kind of fed up with that. ((Laughing)) I've noticed. Because she's always sending, and ((name of colleague present)) used to be mrs W's client manager at one point too ((shuffling of papers)), she's always sending these compelling letters, that's at least how I experience it
((Simultaneous speech)) - well, they're more like books, you know!
A - But okay, she has these mental health complaints after all, so that explains it, oh well ((with a German accentJ) "very extremely totally super soon extra help help help, quick quick!" ((leafs quickly through the letter; people are laughing)) and then I think: oh ((several laughing simultaneously))
A - Oh well…
B - I would send it back asking for a summary
C - Could you summarize that please? ((laughing))

235. Social work institutions

A - And then I no longer take it seriously, but well that is more or less, um, what you feel and think inside
D - Yes
A - Fact is that there, there is of course some concern about these people (2) and uh (2) I'm not really sure how to deal with it

The last sentence shows the client manager's exasperation. She is not sure at all how to proceed, which way to go. She tells her story in a way that makes her dilemma in this case quite visible, because the conversation goes back and forth. From constructions that seem to justify her reaction to keep a distance from her client(s), being disinclined to go along with their account and wishes, she sways to constructions that seem to acknowledge the clients' need for support. This can be seen in three movements.

First, the client manager expresses her emotional response ("*the emotion I feel"),* describing it as "*resistance*". This is immediately followed by her acknowledgment that help is needed: "*oh, all the support that is needed*". Second, she makes a turn-around when it comes to the ease with which the clients apparently accept help: *"all kinds of support is readily consumed without anything in exchange."* This moves her to declare that she is through with it: "*I'm actually kind of fed up with that*." She adds a comment that shows how much pressure she experiences: *"she's always sending these compelling letters."* But right after that, she links this behavior to the client's psychiatric and traumatic background, indicating this could be an explanation for her compelling letters: *"But okay, she has these mental health complaints after all, so that explains it"*. Third, she mocks the client who has a German background, by reading part of the letter with a German accent; thereby ridiculing the client a little. This brings support from her colleagues, who laugh, and seem to sympathize with her.

But then again, the client manager acknowledges the other side of the dilemma: "Fact is, that there, there is of course some concern about these people."

This is immediately followed by two longer pauses, setting the stage for the forthright statement that she does not know how to proceed.

The transcript shows the client manager's dilemma in the alternating construction of her clients: victimized through trauma and circumstances, and thus in need and worthy of welfare support, versus uncooperative and insistent. Thus, significantly, from an apparent ethics of care orientation she values the notions "*concern*" and "*need*"—terms she uses in this excerpt—emphasizing a relatively supporting approach. On the other hand, from an apparent ethics of law orientation she tries to apply notions like client responsibilities and duties, emphasizing a relatively controlling approach. Neither

one of the approaches seems to work. In the light of this dilemma I can appreciate the two straight and open questions directed to her colleagues at the end of her information mail:

> *"Question: how would you handle the allowance of mrs W.? And how would you handle the application of special benefits? "*

In an attitude of openness she invites her colleagues to help her with her relationship with her clients. The answer, I felt, was an atmosphere of openness to new possibilities.

6.3 At a loss: 'hard to keep *in* welfare, but they cannot do *without*'

Considering their accountability to supply welfare in a legitimate way, the participants start to look for ways to persuade these clients to comply with their obligations as rightful receivers of public welfare. Both clients have been exempted from the obligation to apply for a job. Unfortunately, they do not comply with most of the other requirements. The client manager informs the participants that these clients have failed to inform Social Services of relevant facts and circumstances, such as, moving in and out of the country. Repeatedly calling them to come to the department for identification purposes[236] did not work. Based on the information from social workers there is good reason to believe that the clients now have a cohabiting household again, after a period of separation. However, the obligation to update on living arrangements has not been met. Moreover, the male client has told the client manager that he is no longer able to identify himself due to the apparent "loss" of his passport, thereby putting the obligation of identification under strain.

The client manager has been trying to explain their obligations and, for example, persuade the clients to inform Social Services about their changed living situation, because this requires a renewed welfare application based on a cohabiting household. In the introductory mail she says: "*We are trying to move them to apply for WWB together, although directly through me, but even that has not yet worked out.*"[237]. The phrasing "*although directly through me*" indicates that the client manager had already taken for granted that the clients would not apply anew, and she offers them a direct way, working around this obligation, to continue supplies through her. However, this has not yet worked out. Cooperation seems tiresome.

The participants discuss ways in which to normalize the relationship and stop the apparent strain on the client manager. One option would be to take measures and

236. This is one of the client's obligations: article 17 WWB/Participation Law

237. "*We proberen ze in beweging te krijgen om samen wwb aan te vragen, weliswaar bij mij, maar zelfs dat lukt nog niet.*" (text mailed by client manager, case Transcript 21)

cut down on their benefits, or freeze them. These controlling measures aim at bringing the client back into compliance with the rules. However, this seems difficult to reach in a multi-problem case. To remind the reader[238], a multi-problem case is a complex case because a lot of diverse problems are interacting in the client's life. In some of these cases, reaching the goal of compliance with the rules seems unlikely, which renders the measures rather pointless. At some point in the discussion the possibility of following regular rule is suggested, which would legitimately freeze the clients' welfare. The client manager agrees, saying:

"I should have just frozen it, chop-chop, yes (2) I can't manage that with them".

Through her phrasing the client manager seems to acknowledge the complexity of the relationship, as well as perhaps the futility of taking measures like freezing benefits. This feeling of futility may be one of the reasons why she has not been able so far to initiate a freeze or take any other measures in a "*chop-chop*"-fashion.

Regular legal rule says that an uncooperative client will meet with measures, such as a cut in benefits. However, in this case such measures were not taken. At one point the chairman asks the client manager about any measures taken as a result of the client recurrently not showing up at activity programs. She answers rather evasively: "*That, not that I know of* "[239]. In other words, no measures have been taken during the three years these clients have been part of her caseload.

The reason why no measures have been taken may have to do with the last resort function of welfare. Long-term multi-problem clients from the so called granite files are hard to keep *in* welfare because of their negligence. At the same time it seems impossible for them to do *without* welfare. Their return to welfare after a period of expulsion is to be expected because welfare is in fact the last financial resort. Some of these clients have repeatedly been forced out of public welfare due to their continuous neglect of their obligations. However, they often return after a period of three months – the legal maximum duration of exclusion. This reflects the last resort net function of public welfare. The reason for their return to public welfare is usually their unchanged situation, possibly worsened by additional debt.

It might be interesting at this point to have a look at Van der Veen's study of a Public Welfare Department in one of the bigger cities in the Netherlands. He makes reference to what he calls the tension between the "social function" and the "controlling function" of the public welfare "servant" (Van der Veen 1990, 62). He argues that the work of public welfare servants is complicated because of this tension, as well as another

238. See 3.3.
239. "*Dat, niet dat ik weet*", Tr. 21: 316

important function which he calls the last resort function[240]. He concludes that perhaps for this reason public welfare servants seem to have become indifferent to a certain degree. In addition, he states that most civil servants experience two of their tasks as extremely difficult: the task of handling the issues of the client's responsibility, and the task of handling the individualisation principle (the legal possibility of tailor-making). To release this tension, they are inclined to minimize the role of these two issues. According to Van der Veen's study the client's responsibility was hardly ever discussed, and the individualisation principle was mostly ignored (Van der Veen1990, 62).

Van der Veen's broad outline of the practice sketched in terms of a social function and a controlling function is recognizable in the practice that is the subject of this study. The social function would point to the importance of taking the client and his situation in consideration, while the controlling function would urge the client manager to apply regular rule, including taking controlling measures. The case discussed in this chapter illustrated both functions, as well as the subsequent dilemma.

However, times have changed since Van der Veen's study. Client managers still seem to experience as difficult both the principle of the client's responsibility and the individualisation principle. However, in the case meetings I attended, the client managers did not respond in the way Van der Veen describes in his study of 1990. Instead of turning away from these issues, the client managers in Stededam frequently discussed client responsibility in terms of e.g. "self-reliance" and "grip on life"[241]. Moreover, the difficulties experienced when applying the individualisation principle were discussed at almost every case meeting I attended. In fact, they were the main topics of discussion.

To continue this chapter's case discussion, and as I explored earlier[242], the relationship between the client manager and the client can become strained when the client manager has reason to distrust the client. Alertness to fraud is an important task of the client manager. However, in the given circumstances of the case under discussion, this task seems to lead nowhere. Later in the conversation, it becomes clear that the male client is presumably hustling while roaming the city in search of old iron. That activity may yield extra income, which then raises the question whether or not the extra income should be reported and be subtracted from his welfare income. "*But how to substantiate a charge like that?*"[243], is the client manager's conclusion.

A - He says it doesn't bring in anything.
B - Yes, but that is, of course, he's not doing it for free. Look, an addict who does something for free, I've never heard of such a thing. So, that, that

240. "bodemfunctie"
241. Dutch: zelfredzaamheid , and grip op eigen leven
242. See 4.6
243. *"Maar maak het maar hard" (Tr. 21, 196)*

A - It is fair to say that there is additional income.

This could be the subject of an investigation, but in the following conversation the client managers agree that the amount of additional income cannot be more than marginal because of the fact that the man does not have a car or even a bicycle. Moreover, a survey done by Social Services some years ago did not produce any other information. At one point the client manager openly assumes these clients must be stealing; that remark leads to the other participants shrugging shoulders: what can you do?

Indeed, this seems to provide for another argument to leave this issue as it is and not investigate again what the exact additional income is and how this should have been reported and subtracted, let alone the issue of confinement for ignoring his obligations:

G - Look, that's why I asked about it before. Well, is there a car and do they drive around and so on? But there is no, that's not the case
B - You have actually concluded that it is nothing else than very minimal
A - Yes.
B - And I think that in the given circumstances it is sort of, right, then
A - You're saying: You've got to let it go ?
B - Yes, I think so. Look, if he doesn't bring it in with old iron then he'll bring it in by taking something somewhere else, you know. Formally it is not allowed, but these are of course the circumstances that you have to take into account.

In this case, an ethical question seems to arise: what would genuine responsiveness to these clients in their situation be? What *can* be done? What *should* be done? How can the relationship between the client manager and the clients be opened up to allow in new ways of relating that are perhaps less disheartening (McNamee & Hosking 2012)? There seems to be an argument for tailor-making, rather than the application of regular rules, as the obvious strategy for the client manager to go on with these clients. However, up till now the client manager had done nothing but individualise. While the relationship was characterized by individualisation, it did not seem to solve the problem which the client manager appears to experience, considering expressions such as: "*Even that has not yet worked out*" (see quote above).

It appears that in this case the client manager's task is constructed as endless trying without success. At one point in the conversation she says: "It is a bottomless pit and so very frustrating"[244]. She had repeatedly reached out to help the client when he seemed to be in need, but time and again it did not work out as she intended. She relates an incident that had occurred earlier, illustrating this: She had granted the client

244. "*Het is zo'n bodemloze put en het is zo frustrerend.*" (Transcript 21, 312).

special benefits for toothache problems and travelling costs, but later found out that he had not been to the dentist at all, but the money was gone. Although there is no explicit reference to it in the conversation, it seems implicated that either the toothache was a lie, and the need for money the main reason for the client to make it up, or the toothache was indeed bad and urgent, but the client's addiction made spending money on something like drugs or alcohol apparently more urgent. The question of the client manager seems to be: How to be responsive and effective in a case like this?

6.4 Two different views on this case

At a particular moment in the case conversation, participants started to talk about what approach might be realistic. Two approaches surfaced.

At first, the participants—six client managers and a superior—seem to agree that the core issue in this case is how to relate to these clients. What is the best way to proceed? Would it be better to be responsive, working around the rules in order to meet the clients in their need? The grounds for this approach is the assessment that a straightforward approach would never work with these clients. This approach is put forward by one of the client managers. He suggests treating these clients in a special way, unlike the way other clients are being treated. He phrases the reason for his preference as follows:

> *"These people, these people are off their rocker, you can set out, yes, you can set out to expect a whole lot but they're not going to do it anyway"*

This approach meets with strong opposition by two or three other participants. They appear to be convinced that a straightforward demand to comply with regular rule will benefit both the client manager and the clients. As we will see below, one of their arguments is that this approach will provide clarity for both parties involved.

The dilemma is clear to all: a straightforward application of the regular rule might perhaps result in compliance; however, the odds are it ends by expulsion from welfare. Up till now the client manager has opted for an individualised approach. However, this approach has not yielded any results. She seems reluctant to continue in this way. One of her colleagues suggests passing on these clients to another client manager. She turns down this offer, saying she is determined to find new ways of handling the case herself.

As responsiveness has clearly not worked, the other strategy is considered: could it be that a strict application of regular rule might in fact be a relationally responsive answer in this case? One of the colleagues (B) makes this theme explicit when he suggests:

"No, but it's just like this: this is what we are asking and if you can't deliver then that happens. Period. And then there is no room to wiggle left, then they can't do this or that, no this is simply what happens. That will be clear to them. Okay, so then they will know how to respond to that. Because you can give them some leeway and they'll take more and more, and it will go on and on and you end up in this quagmire, right, what do you do then? It's starting to add up. I would say very clearly, very distinctly, just as with small kids, that is what's going to happen, that".

The clients are being compared to small children who need and thrive on clear boundaries. In addition, this analogy is taken one step further:

"I think that um addicts generally understand the language of money pretty well and that in fact you could use that power you know, you know, as it were, on the one hand to sort of get them to move in a certain direction that they simply need to go, on the other hand there are a lot of problems associated with it and you should take those into account as well".

This client manager clearly sees both sides of the dilemma and carefully considers a solution. He suggests taking full advantage of the power position of the client manager in her relationship with the client. When he says, "*get them to move in a certain direction that they simply need to go"* (see quote above), he acknowledges the revolving door problem as well as the responsibility to respond in a way that has a chance of success, even if it seems overpowering at first.

Still, the client manager is hesitating. The group discusses her concerns and her qualms about being strict. Then, one of her colleagues urges her to revise her expectations:

B - Right, but I do think that you should ask yourself if you really want to continue with these clients? (3), uhm, or perhaps you could adjust your expectations, what you can reasonably expect of them or, um, but also in the sense of: suppose they don't deliver and the benefits are terminated. Then that's just what is. You know, that's when things start to roll, they'll return and then, uhm, I think it would be good to have that type of attitude to
A - Let it crash if they don't show up
B - If they, yes, because, on the one hand it is somewhat, quite uncomfortable and maybe on the one hand not exactly what you would want to have happen, but on the other hand it does go with I think with a degree of clarity that you offer them, and a degree of responsibility in the matter you offer, because otherwise you'll keep on acting and giving and…
A - Yes

B - You know, if you offer clarity then at some point you have to be prepared to say this is part of the deal, done. I did offer you clarity in this, didn't I ?"

The colleague understands that with clear boundaries these clients might disqualify themselves for welfare. Then, upon returning to welfare, welfare after all being the last resort, the dynamics may have changed. Perhaps at that point, the clients might comply with part of the deal, showing some accountability. The colleague is focusing on the key issue, namely: how to get the relationship back on track. He reassures his colleague by saying, "*that's when things start to roll, they'll return*". In fact, he is sketching a development that is illustrative of the last resort function of public welfare. At the end of this case meeting the client manager expresses her relief. She is happy to take the advice at heart and agrees to follow the line suggested by her colleagues: abiding by regular rule in order to get the relationship going again.

6.5 Conclusion of Chapter 6

This chapter revolved around one particular clients case. The choice at the end of the case conversation, a strict application of regular rule, might be linked to an ethics of law orientation in the relationship between the client manager and the clients. However, in this particular case strictness seemed inspired by genuine care for these clients *and* the client manager. The new resolve—to be strict—expresses relational responsiveness and corresponds to an ethics of care orientation in the relationship between the client manager and the clients. We might even conclude that precisely an ethics of care orientation which focusses on the context of the clients and their obviously limited abilities, translates into an approach that accepts the clients as they are in their current circumstances, and thus leaves them without any hope of improvement. In other words, in this case, the duality of the choice between an ethics of care orientation or an ethics of law orientation seemed to have collapsed.

Would this collapse imply that the duality of such a choice is perhaps not sophisticated enough in practice, at least in some cases? In other words, would this collapse imply that the construction of a duality does not do justice to the intricacy of the process of welfare application in some cases? This question started a renewed reflection on my part on the construction of this duality, which is the subject of Part 3. First, the conclusion of Part 2 is presented.

Conclusion of Part 2

Here at the end of Part 2, I return to my initial research curiosities as formulated in the question: *What do client case discussions reveal about the dilemmas that public welfare professionals face, and does the distinction between law and care illuminate these dilemmas?*[245] In Part 2 I explored this in the context of the empirical materials. I now will summarise the themes that emerged.

The first chapter of Part 2, Chapter 4, put the dilemma frame to work. The transcripts showed in a number of cases that the distinction between law and care illuminated the dilemmas of client managers. The law-care dilemma played itself out in the choice between tailor-making and regular rule application. In some cases it struck me that particular difficulties in their practice seemed to make them more inclined to an application of regular legal rule, thereby leaving the possibilities of tailor-making unused.

Other difficulties apparently placed the client manager in a precarious position, almost pushing him to defend himself against being 'under siege', by abiding by regular legal rule. This was shown in Chapter 5, in which the case conversations that have been discussed showed various ways of being 'under siege' as well as different ways how client managers cope. Regarding the dilemma of equal treatment versus tailor-making, it appeared that client managers might not be too keen on a lot of discretionary space. However, management stayed with their policy and appeared to expect them to discuss the difficulties in the case meetings, rather than provide more regulation. The final case discussion (Chapter 6) appeared to evolve from the dilemma of tailor-making versus regular rule application to the question of how to go on together in a less disheartening and more hopeful way.

In conclusion, client case discussions revealed that many of the dilemmas that client managers appear to face, seem to push them away from tailor-making. Client managers often seem to assess discretionary space for tailor-making as a difficult choice; as an extra risk; as something to better be denied; as a problem to be solved by more regulation; and finally, as seemingly irrelevant to solve the present problem. The latter appeared in the case discussed in Chapter 6. My dualistic construction of law and care seemed to lack support. In discussing the case of the couple addicted to substance abuse, the duality of a supporting or a controlling approach finally seemed to collapse. The notions of an ethics of care orientation—"difference, relative values, context-related reality, emotions, involvement, dependence, bonding, need" (De Savornin Lohmann & Raaff 2008, 141-151,154)—seemed to be the argument to embrace a new

245. I developed this question in Part 1, and formulated it in 2.8.

approach towards these clients, namely on the basis of clear law ethics notions such as "rationality, accountability, autonomy, control, entitlement" (De Savornin Lohmann & Raaff 2008,119-139,154).

Most significantly, rather than a dilemma between law and care, in this complex case the client manager seemed to be facing the relational question of how to go on with these clients. While on the one hand the distinction between law and care did not seem to lead the conversation anywhere, on the other hand new opportunities seemed to arise from a relationally responsive conversation.

Moreover, I gradually realised that the client cases discussed in this part also revealed that client managers appeared hardly to address the ethical aspects of the dilemmas they saw themselves as facing in any explicit way.

These discoveries started me off to reflect on my construction of dualities, and the particular ways by which I had conducted this inquiry. At this point, I had the feeling I had come to a grinding halt, pressing me to a reflexive turn. This reflexive turn is the topic of Part 3. It will give rise to the construction of a third research question to be explored.

PART 3

Towards an Ethical Space

What you will find in Part 3

Thoughts leading to Part 3

Part 3 is of a very different order than Parts 1 and 2, as the following line of thought will clarify.

Part 1 presented my research curiosities around discretionary space, ethics and dilemmas in public welfare by the question: *What do client case discussions reveal about the dilemmas that public welfare professionals face, and does the distinction between law and care illuminate these dilemmas?*

Based on the analysis of the empirical materials, the Conclusion of Part 2 provided some answers. However, at the end of Part 2 the inquiry came to a grinding halt, causing me to reflect on my entire approach. The exploration of my curiosities had led to an impasse that made me empty-handed, so to speak.

So, at first, the distinction between law and care seemed a relevant and helpful simplification to illuminate possible dilemmas. On the basis of chosen literatures, I constructed a framework in which I placed law ethics notions (primary responsiveness to regular legal rule and a more controlling approach to the client) in contrast to care ethics notions (primary responsiveness to the client and their context and a more supporting approach to the client), positioning the two as mutually exclusive options.

However, once I had empirical material, examination of the transcripts placed in question the usefulness of the law versus care framework. On the one hand, there seemed to be many dilemmas that just did not fit this framework—dilemmas not directly connected to a dilemma between law and care but rather to risks the client managers saw themselves as facing. On the other hand, even when notions of law and care seemed relevant, my positioning of them as mutually exclusive opposites didn't fit with what I found. So I decided I had to drop my dilemma framework and re-consider how ethics might be practised in this case. My empirical material did not seem to offer a useful starting point for these considerations, because the case conversations seemed to provide little evidence of ethical concerns.

As I searched for other possible constructions of ethics in relation to the client managers' practice, I returned to critical reflection on the ethics of my own inquiry practices. As I outlined in Chapter 3, I had taken care to conduct an inquiry that could

be called ethical, according to the conventional standards of 'normal', post-positivist science. However, I had become increasingly uncomfortable about my (dualistic) positioning of myself as a researcher aiming to be as independent and separate as possible from my research objects—the client managers. My felt need to explore other constructions of ethics opened up the possibility for me to further explore ethics both in the client managers' practice and my own; this was an interesting new step. Earlier[246] I indicated that public welfare has been conceptualised as a "selection bureaucracy" (Berendsen 2007), emphasizing a practice of defining, dividing and separating. In this view, one party is poor and needs support in relation to another party representing the government, wealth and power. This power divide makes the ethics of public welfare into a very alienating practice of us versus them, the powerful versus the powerless, the voiced versus the voiceless[247].

Reflecting on this, I could see that I perhaps contributed to just such asymmetric power relations by treating my client managers as objects for study by me, the knowing subject (McNamee & Hosking 2012, 26; Anderson 2012). Could this be viewed as an (un) ethical construction?

This brings me to the last part of this thesis. Here I will develop an alternative to 'hard', subject-object relations by exploring 'soft' self/other constructions or **symmetrical relationality** as the principle of ethics in public welfare practice. Could the relational truth of human equality—the first legal principle of Constitutional Law: Article 1— really be taken as the basis of practice? What could this look like?

What you will find in Part 3

The considerations sketched above led me back to "relational constructionism" (Hosking, Dachler and Gergen, 1995), as a social science discourse (Alvesson and Deetz, 2000) that opened up new ways of exploring ethics as practice, including both my own inquiry practices and the practices of public welfare professionals.

In particular, the relational constructionist discourse invited me: (a) to centre ethics—because fact and value are seen as intertwined rather than separate; (b) to consider ethics in relation to power—because power, together with fact/value, is considered an ongoing construction; and (c) to explore ethics in relation to soft(er) self-other differentiation—rather than assuming and centring "hard", subject-object constructions of "power over" and "knowledge that" (McNamee & Hosking 2012; Crowther & Hosking 2009; Hosking 2011; 2008).

246. See 1.3

247. Compare, e.g., Foucault's analysis of the growth of social service provision as the disciplining of society by a political regime of hard lines of division between one group of persons and another (History of Madness, 2009).

Part 3 outlines key aspects of the relational constructionist discourse of social science. Then, it centres soft self-other differentiation (McNamee & Hosking 2012; Hosking 2011;2008), and explores its major orientations which are primarily based on openness to other(ness). A further exploration of soft self-other differentiation makes use of some relevant and related writings by Wittgenstein, Varela and McCown. I will show how the work of these authors can be connected with and used by a relational constructionist discourse in order to further explore how ethics as soft self-other differentiation can be understood.

As I explored these texts it seemed to me that striving for soft self-other differentiation by way of a special kind of dialogue might constitute practices that invite ethical forms of 'doing' one's professional practice in a socio-legal context. To find out what this could look like in the practice of case meetings, I turned to McCown's example of "ethical space" (2013). His model of ethical space suggested questions that client managers could ask each other in the context of the existing structure of case conversations in Stededam. I will finish this thesis by exploring the practice potential of an ethical space in dialogue as a concrete way to address the question central to Part 3:

How might ethics as soft self-other differentiation be theorised and practiced in a socio-legal context?

7

Practising reflexivity: my turn to Relational Constructionism

This chapter will convey how I felt the need to explore other constructions of ethics. As the meta-theory of relational constructionism appears to centre ethics in relational processes, allowing both harder and softer self-other differentiation, this made me wonder: What new possibilities does a relational constructionist perspective open up in connection to ethics as a professional practice?

Key aspects of the social science meta-theory of relational constructionism are outlined, which also lead to reflexively exploring the ethics of my own inquiry practices.

7.1 My question, conceptual framework, and social science discourse are put in question

While analysing the empirical research materials, I became more and more aware of the relational complexity in which client managers work. In this context, my construction of the dilemma framework and its dualistic opposition of law and care gradually came to look too particular and restrictive. Through examination of the transcripts it became clear that many dilemmas simply did not fit this framework but, for example, seemed to concern the risks the client managers saw themselves as facing (see Part 2). Moreover, my positioning of law and care as mutually exclusive orientations was not necessarily what I found—in some cases the binary simply collapsed. The case of the couple addicted to substance abuse (Chapter 6) is a case in point. Initially, the client manager involved in this case seemed unsure how to proceed, alternating between an approach of willingness and flexibility and one of strict adherence to legal rule. Paradoxically (given my dualistic framework), the discussion ultimately resulted in a decision based on an ethics of law orientation, which, at the same time, seemed primarily inspired by an ethics of care orientation. Responsiveness towards the clients, the client manager and their relationship seemed to prevail. In comparison to most other case conversations, this discussion seemed to reveal sensitivity and responsiveness among participants, as well. The conversation seemed to develop from a binary choice between two opposite professional approaches towards a search for ways to do justice to the parties involved in ongoing relationships.

Reflecting on the relevance of the dilemma framework, I realized that the binary—which I had constructed through drawing on various pedagogical literatures—had led me to make two significant assumptions. When in Part 1 I posed the question: "Being responsive to whom?", I had assumed that being responsive to both law and client at the same time would hardly be possible, particularly in complex cases. Furthermore, I had assumed that the more difficult cases owed their intractability partly to the either/or situation regarding law and care. That is why I had hoped and expected that the framework would help to clarify the dilemmas that client managers saw themselves as facing —which it did to some extent. However, these two initial assumptions appeared to be neither relevant nor helpful.

So I decided I had to drop my dilemma framework and re-consider how ethics might be practiced in the client managers' practice. This said, I was still somewhat stuck in that the case conversations seemed to provide little evidence of ethical concerns. In this way the case conversations, my empirical material, did not seem to offer a useful starting point.

As I searched for other possible constructions of ethics in relation to the client managers' practice, I also became increasingly sensitive to the ethics of my own inquiry practices. As I outlined in Chapter 3, I had taken care to conduct an inquiry that could be accepted as ethical according to the conventional standards of 'normal', post-positivist science. Thus I attempted to be the proverbial fly on the wall, creating a distance between myself and the object of my inquiry so that I could generate relatively objective " 'aboutness' knowledge" (Hosking 2011,54). Given my social science perspective, I centred knowledge, de-centered ethics, and thought little about power (more on this shortly). This said, I felt uncomfortable with my distant positioning. In Chapter 3.2.2 I reported my concerns, when reflecting on my field notes:

> *At times I felt uncomfortable in my peripheral participation; it almost felt like being an intruder, sitting there and hearing them talk about all these issues that sometimes mattered a great deal to them, while remaining utterly silent. At times, and particularly at lively, exciting moments in the discussion, I felt quite embarrassed about my offering them no information nor contribution whatsoever, seemingly detached, while listening in to all they were willing and open enough to say*[248].

Reflecting on my social science discourse in use and my approach to ethics I was aware that my focus had been on taking precautions so that no harm was done to the parties involved and taking appropriate steps to ensure that value-free knowledge was produced using sufficiently reliable and valid methods (Silverman 2010). I began to wonder why I centred the (un)ethical practices of my research objects while, at the same time, giving ethical concerns such a limited and marginal role in my own practice as the expert investigator. It seemed to me that I was viewing ethics in a very particular, restricted way (e.g. Silverman 2010, 152-178; McNamee & Hosking 2012, 106; Hosking & Pluut 2010, 72). I think that Rhodes and Brown emphasized the same point by phrasing: "It is no longer acceptable for us to ask others to reveal something of themselves while we 'remain invulnerable' " (Rhodes & Brown 2005, 483; in McNamee & Hosking 2012, 111). But why not? Something about the relationship and the power aspects of that relationship seemed wanting.

So, not only was I called on to let go of my dualistic conceptual framework, but I began to re-view my dualistic construction of my 'research object': viewing the client managers' practices as separate from mine; and my dualistic construction of ethics: viewing ethical concerns in fundamentally different ways. I became aware that I needed a "social science discourse" (Alvesson and Deetz, 2000) that could open up new ways of

248. Field notes 16-01-2012, 19-01-2012.

exploring ethics as practice, including both my own inquiry practices and the practices of public welfare professionals; that discourse seems to be "relational constructionism" (Hosking, Dachler and Gergen, 1995).

7.2 Assuming ongoing, relational realities that co-construct 'the real and the good' in language-based processes

"It is not individual agents who enter into relationships, but relational processes that give rise to the very discourse of the individual."(Gergen 2011, 207). This relational ontology is the heart of the relational constructionist meta-theory[249]. It centres ongoing relational processes (not already existing 'things') and includes all activities in which humans participate, including all inquiry and theorising.

In other words, the relational constructionist discourse "does not centre some assumed 'real' reality, does not centre an individual knower, and is not about the world as the subjective creation of mind." (Hosking 2008, 672). Instead of taking as a central focus entity A (self) who is relating to entity B (other), centre stage is given to the interacting processes of relating as joint action. Relational processes are viewed as "the ongoing production site of self and other and their relations" (Hosking 2008, 676). Put slightly differently, ongoing co-ordinations of "act" and "supplement" simultaneously construct and reconstruct self, other and relations (Hosking 2008; Crowther & Hosking 2009; Hosking 2011). The relational constructionist discourse shifts interest from knowledgeable facts about a singular, independent reality towards relational processes of reality construction, thus recognizing multiple co-existing realities (Crowther & Hosking 2009, 10).

A key feature of the meta-theoretical perspective of relational constructionism is that (unlike post-positivist or mainstream science) it does not assume the separateness of fact and value (McNamee & Hosking 2012, 106). Rather, facts—what is considered real—and values—what is considered good—are viewed as co-constructed in relational processes. Other dualities are also viewed as co-constructed in relational processes. Thus, relational constructionism "collapses dualist oppositions such as those between fact and value, description and

249. It is a meta-theory or human science discourse that provides a general orientation inviting us to view every approach or thought style—including relational constructionism itself—as socially, locally and historically co-constructed (see, e.g., Hosking, Dachler & Gergen, 1995; Hosking 2008, 2011; Gergen 2009, 2011, 2015; McNamee 1994, 2009, 2015; McNamee & Hosking 2012).

explanation, theoretical and empirical" (Hosking 2008, 672). Within the relational constructionist orientation "we acknowledge right and wrong, good and bad as meanings crafted in community with others—always situated within historical, cultural, and local contexts" (McNamee 2015, 423).

From a relational constructionist perspective, the case meetings, for example, are viewed as relational processes that continuously re- and co-construct "local-cultural", "local-historical" (Hosking 2008) relational realities. For example, clarifying the "local-cultural" aspect, there was a specific way in which case meetings got under way. At each meeting, participants seemed to expect the senior manager to start the conversation by welcoming the participants. This can be seen as a local-cultural convention which re-constructs the notion that 'this is how we start, and this is a good way to start'. In other words, the opening re- and co-constructed a particular local-cultural relational reality: "The assumption of *local-cultural* realities emphasizes that what is validated or discredited as (not) real and (not) good is local to the ongoing practices that (re-) construct a particular form of life." (Hosking 2008, 675).

The relational constructionist discourse assumes and centres the ongoing quality of relational processes. From a relational constructionist orientation relating is "always re-constructing more or less stable, local, relational realities as 'content', so to speak." (Hosking 2011, 54). It constructs every (con)text as emerging out of relationships (Gergen 2009). In other words, in contrast to the more usual "ontology of being" it centres an "ontology of becoming" (Hosking 2008, 673). As Crowther and Hosking put it: self, other, and relations are "re-conceptualized as ongoing constructions, as they are made and re-made in ongoing relational processes." (Crowther & Hosking 2009, 5). This invites a focus towards ongoing language-based processes as they re-construct "local-cultural, local-historical constructions" (Hosking 2008, 675; McNamee & Hosking 2012, 39). As Hosking affirms:

> *"Talk of the individual as possessing a self, a mind and individual knowledge gives way to talk of relational processes. Language is viewed, not as a way of representing some independently existing reality but, as a key medium in which inter-acting 'goes on'." (Hosking 2011, 52)*

When we construct language as an interactive process of co-constructing our real and good, then this would concern the question of ethical forms or ways of socio-legal practice. "Language provides us with the ability to be reflexive—to question ourselves and imagine alternative forms of action." (McNamee 2015, 429).

Moreover, relational processes are theorised to include "not just conceptual language as it is written and spoken but also the simultaneously embodied, aesthetic and sensual, local-cultural, and local-historical aspects of relating" (Hosking 2008, 673). Put slightly

differently, relational realities include: "the nonvisual dynamical patterns actually occurring with us as we speak and listen" (Shotter 2010, 21). I began to wonder what new possibilities could emerge from an emphasis on language-based processes in this broad sense. Later I will return to the link between ethics and non-conceptual language.

Returning to my dualistic constructions of inquiry and ethics, and the unease I had felt about my distant positioning, it now seemed to me that relational constructionist meta-theory could offer an alternative to dualist constructions that could be more "relationally engaged" (McNamee & Hosking 2012, 14). Not requiring the distinctions of these dualities, relational constructionist meta-theory accommodates the possibility of shifting away from them to the unfolding of relational processes as they co-construct relational realities of "real and good" (Hosking & McNamee 2006, 89).

7.3 Dropping the distinction between my (scientific) practices and the practices I am 'studying'

As I have said earlier, I had begun to question the ethics of my own inquiry practices and failed to find much explicit evidence of ethical concerns in the conversations of those I was studying. In my attempts to find another way forward, I came to understand that my philosophy of science position was getting in my way. Specifically, in this context, post-positivist research embraces the dualistic separation of two contexts. The "context of justification"—assumed to be the province of philosophy—is traditionally separated from the "context of discovery" which is assumed to be the province of empirical science (Hosking 2008, 672; McNamee & Hosking 2012).

The context of justification refers to the different social science paradigms, which differ in assumptions about what exists (ontology), what we can know about what exists (epistemology), and how we produce that knowledge (methodology). These three areas of assumptions define the context of discovery (empirical science). 'Normal' post-positivist research is done without examining these basic assumptions because this is considered to be the task of philosophers. Empirical research is assumed to focus on empirical material and arguments to justify hypotheses or knowledge claims. That is why reflexivity is confined to what was researched, how it was conducted, and how this might have affected the quality of the assembled empirical material.

In contrast, from a relational constructionist meta-theory there is no particular reason to make and preserve that distinction. It can be made, obviously, but there is no requirement to do so. In a relational constructionist view, both "contexts" are constructed in ongoing relational realities (McNamee & Hosking 2012, 42; Hosking 2011,55; Hosking & Pluut 2012, 61-2; Hosking 2008, 672). "What we are able to know, the relational realities we construct and inhabit, depends on our engagements with other, as does

our ability to offer what others accept as coherent or rational justification."(McNamee & Hosking 2012, 42). As a result, we see that reflexivity no longer has to be confined to the "context of discovery"—and therefore focusses on the quality of the 'findings' and the ethics of the researchers practice. Instead, it embraces the "context of justification"—the assumptions about what is, what can be known of what is, and how it can be known (McNamee & Hosking 2012, 82).

The perspective offered by relational constructionism opened up a whole new way of regarding my research and involvement. Its conception of self-other relations as co-arising in ongoing processes cannot but include the inquirer/theorist in its perspective. Furthermore, while I could perfectly well be included in ways that are detached, mobilising 'power over', and seeking to know about other (see earlier), it now became possible for me to participate in softer self-other differentiation. As Crowther & Hosking observed: "The knower is recognized to be *part of* the co-construction process, rather than *apart from* it" (Crowther & Hosking 2009, 5; italics original). I began to wonder what new possibilities for knowledge, power and ethics this might open up.

Thus I felt called into a reflexive examination of my own fundamental assumptions and ways of being in my inquiry (Cunliffe 2003, 999). It now appeared to me that, when I was attending the case meetings, instead of taking "a leap into a constantly shifting ocean" I had opted to study "organizational life from the security of the shore." (Cunliffe 2003, 999). To put it slightly differently, I had left my stance as a scientific researcher unquestioned and had focussed on other, namely the practice of the client managers. While this can be appreciated as perhaps well-conducted research of a particular "form of life" (Wittgenstein 2009), namely post-positivism, I now started to feel that the relational constructionist meta-theory could offer ways of reflexivity that might address my newly arising ethical sensitivity. Within relational constructionist discourse I found appreciation for this growing feeling in a statement by authors Hosking and McNamee: "We are not free to simply claim what is or is not the case without responsive support." (McNamee & Hosking 2012, 39). I had conducted the inquiry and analyzed the transcripts almost without such responsive support from the participants. Rather, to underpin my design I had looked for support in the science community. This recognition gave me a new way of looking at the ethics of my own practice[250].

"Shifting reflexive attention to the research process itself, enables a relational conception of ethics and responsibility" (Hosking & Pluut 2010, 71). Thus, the relational constructionist discourse invited me to pay "reflexive attention to the research process itself", to how I had 'othered' my research objects and therefore, to the ways in which knowledge, power and ethics were constructed.

250. It also made me wonder about the possibilities for ethics in the case meetings—where the client was not present.

7.4 Constructing Self, Other and relations: hard and soft differentiation, knowledge and power

The discourse of relational constructionism theorises self and other as a "relational unity" (Crowther & Hosking 2009, 6) in the sense that each is constructed in relation: relational processes co-construct realities. The discourse assumes relational processes in which self and other and relations co-emerge in more or less hard (or soft) differentiated relations: "Forms of life can differ in their particular lines and degrees of differentiation" (Hosking 2008, 676).

The language of "hard self-other differentiation" refers to relational processes that construct self and other as separate, bounded entities who interact in instrumental relations (McNamee & Hosking 2012; Hosking 2011, 2008). Some refer to this kind of relating as a "Subject-Object" discourse of self, other and relations (Gergen & Hosking 2006; Hosking 2008; McNamee & Hosking 2012), constructing "an *active-passive binary* between an active and responsible agent (Subject) and an acted upon Other—as a passive object." (Hosking 2005, 611). As others have said, all ways of relating can be thought of as part of the "knowledge/power nexus" (McNamee & Hosking 2012, 74). This led me to reflect on how power and knowledge are constructed in hard, Subject-Object ways of relating. Reflecting on my inquiry, I could see how my practices might be viewed as constructing Subject-Object relations between myself and my research objects. I have already spoken of how I strived to distance myself and be a fly on the wall. This is essential if one wants to produce a certain kind of knowledge: knowledge about "Other" (see quote above).

Regarding the centring of knowledge in inquiry Hosking and McNamee argued that a subject-object discourse assumes a subject who "builds positive knowledge or knowledge of probable relations" and this knowledge is "about 'other' " (Hosking & McNamee 2012, 26). I strived for "a methodology of hard subject-object differentiation—so as to produce (relatively) objective knowledge" (McNamee & Hosking 2012, 29). Thereby I claimed to be able to produce "'aboutness' knowledge" (Hosking 2011,54), including knowledge about the client managers, almost without engaging them in the process. Reflecting on this, I began to wonder how else knowledge could be understood if not detached and objective; was self-existing objective knowledge necessarily what I was seeking, and how was knowledge interrelated with power and ethics?

Softer self-other differentiation seems to open up other possibilities to construct knowledge. In addition to an emphasis on 'know-what'/'knowledge that' in harder self-other differentiation, attention can now be directed towards 'know-how'; in other words, to the how of relational processes as they unfold in the here-and-now of a particular local-social-historical reality. Hard differentiated, subject-object ways of relating have

been linked to the dominance of one rationality over another: "In subject-object ways of relating, one rationality dominates others (here we speak of "power over"), and the 'what' and 'how' of relating is imposed 'from the outside,' so to speak" (McNamee & Hosking 2012, 62). The authors emphasize how "relations are reduced to instrumentalities as defined by and for the knowing subject" (McNamee & Hosking 2012, 26). Reflecting on this I remembered that, at the start of my empirical inquiry, I had been introduced as a "scientific researcher". When I was attending the case meetings and taping the conversations, I felt I was conducting so-called scientific research. I gradually started to realize that to acquire "'aboutness' knowledge" (Hosking 2011,54) in this manner could and probably would re-construct subject-object ways of relating: the rationality of science as "power over" local rationalities (McNamee & Hosking 2012, 62). By claiming to know about and comment on other(s) in subject-object relations, I elevated the discourse of science above other discourses.

I increasingly questioned my approach, while at the same time recognizing that a relational constructionist meta-theory could offer another way of relating. The evaluation of a practice could place "the voice of science on an equal footing with other community-based discourses." (McNamee & Hosking 2012, 81). This would involve shifting to ways of relating that may be called soft self-other differentiation. These are characterized by an orientation of openness to other(ness), including other possible selves (McNamee & Hosking 2012; Hosking 2011, 2008; Shotter 2010, vii; Hermans et al. 1992). It is an invitation to embrace what Shotter called " 'withness' (dialogical)-thinking" rather than " 'aboutness' (monological)-thinking" (Shotter 2010, vii). This kind of "relational engagement" (Hosking 2011, 57) offers practices that open up to multiple, emergent and ongoing local realities.

This relates to power becoming differently understood and co-constructed. From a relational constructionist meta-perspective a discourse of power is considered a discourse of relational processes. Power is theorised as a quality of ongoing relational realities which enables both the closing down and opening up of possibilities (Hosking 2008, 678). Thus, constructions can be harder self-other differentiated, like subject-object constructions involving "power over" (Hosking 2008, 677). Or they can be softer self-other differentiated, involving constructions of "power with"—theorised as the power to act—or "power to"—theorised as "practices that allow the construction of different but equal forms of life" (Hosking 2008, 678): "When relating goes on in softer self-other differentiation, the different participating 'forms of life' have 'power to' unfold from within their own local rationality (in different but equal relations)" (McNamee & Hosking 2012, 62).

Similarly, knowledge becomes differently understood. Given the relational constructionist view on knowledge/facts as intertwined with value, a single focus on

knowledge/facts is no longer the only justified approach. Instead, a shift to a focus on valuing/ethics is made possible. By not assuming the necessary separation of fact and value relational constructionism "both broadens the scope of ethics and gives what might be called ethical or moral issues a central place in our inquiries." (McNamee & Hosking 2012, 106). This view on ethics as a central concern—because it considers fact and value as co-constructed and intertwined—has been theorised and applied in various contexts adjacent to the socio-legal context, as three examples show.

The first example is taken from the context of social accounting. Crowther and Hosking emphasized that their approach requires: "considering fact and value as joined, and therefore, viewing ethics as a central issue grounded in relating" (Crowther & Hosking 2009, 10).

The second example in the context of therapeutic practice is Gergen's view of "relationships as the source of our presumptions of good and evil" (Gergen 2015, 412). He asserted that "At a basic level, we may say that virtually all relationships will generate at least rudimentary understandings of good vs. bad. They are essential to sustaining patterns of coordination. Deviation from accepted patterns may constitute a threat." (Gergen 2015, 412).

The third example is taken from the context of relating in inquiry and transformation practices. McNamee & Hosking argued that in any relating process: "Who we are and who or what is other are co-created together with an order of value." (McNamee & Hosking 2012, 43). They invited us to acknowledge that "we are always already participating in a particular set of values and beliefs—'forms of life' where fact and value are inseparable." (McNamee & Hosking 2012, 79). They continued to argue that this would be a reason to give "what might be called ethical or moral issues a central place in our inquiries" (McNamee & Hosking 2012, 106).

These examples from different social—but not specifically socio-legal—contexts show the possibility of centring ethics and seem to support the possible invitation of a parallel development in a socio-legal context.

In yet another way knowledge becomes differently understood. Because a relational constructionist discourse centres relational processes as they unfold, it directs attention to "know-how" rather than "know-what" (Varela 1999, 6; 23). As Hosking put it: "The relational constructionist perspective deals with the 'how' of constructing and says little about the 'what' or 'content'" (2011, 57). An inquiry no longer focusses on producing "'aboutness' knowledge" (Hosking 2011,54), involving subject-object relations and "power over" (McNamee & Hosking 2012, 62). Such a practice of obtaining self-existing knowledge as objectively as possible is no longer required, giving way to

the possibility of inquiry processes that centre "some sort of recognition of (an)other as intimately connected with (a) self" (McNamee & Hosking 2012, 101); in other words, relational inquiry of soft self-other differentiation.

Thus, an interest in different but equal relations developing in ongoing processes would construct inquiry as an engaged unfolding (McNamee & Hosking 2012) of how to go on together within the specific relational realities that are co-constructed. Blurring the distinction between researcher and researched would make the inquiry a practice of co-inquirers.

Reflecting on this, I began to see how relational constructionist discourse opens up the possibility of an inquiry into the ethics of public welfare that would be very different from my empirical inquiry. Power relations, in the sense of "who and what gets warranted as real and good" (Hosking & McNamee 2006, 89) can now be explored in relation to knowledge and ethics. I have offered just a glimpse of such an analysis in relation to my own inquiry practice; now it's time to turn to my new question which shapes Part 3. The question is:

How might ethics as soft self-other differentiation be theorised and practiced in a socio-legal context?

8

Soft self-other differentiation as a dialogical practice

The previous chapter conveyed how the general orientations provided by the meta-theory of relational constructionism persuaded me to reflect on my own inquiry and to conclude that a relational constructionist discourse could open up the possibility of a view on ethics in public welfare that would be very different. Moreover, the relational constructionist concept of soft-self-other differentiation in relation to ethics intrigued and inspired me. That is why in this chapter the relational constructionist themes set out in Chapter 7 will be carried forward and developed, thus sustaining a further exploration of how ethics in socio-legal practice might be understood from this new perspective.

More narrowly, and more precisely, my interest concerns the specific lineage of relational constructionist discourse which centres ethics as a practice of soft self-other differentiation (McNamee & Hosking 2012; Hosking 2011, 2008; Gergen 2009, 2015; McNamee 1994, 2009, 2015). I will identify five interrelated orientations that seem to make up soft self-other differentiation. The perspective of each of these will be the focus of the following sections. The discussion will include various voices from different literatures that seem related to a relational constructionist discourse of soft self-other differentiation. For example, drawing on care ethics theories the practical concepts of "a moral conversation", "the art of ambivalence", and "holding contradictions" (Zanetti 2008) are included.

In addition, I came across the work of authors Sheila McNamee and Kenneth Gergen. They seemed to have developed their own perspective on ethics which is also grounded in a relational/social constructionist discourse. They did not speak of soft and hard self-other differentiation, but highlighted terms like "relational sensibility" (McNamee 2015, 422) and "relational responsibility" (McNamee & Gergen 1999; Gergen 2009, 2011; McNamee & Hosking 2012). Their "relational ethics" (Gergen 2015; McNamee & Hosking 2012, 106), based on "relational theory" (Gergen 2011, 219), seemed to point to something similar to soft self-other differentiation. Their language and work on ethics appeared to add on to an enhanced understanding of soft self-other differentiation viewed as an ethical practice in various ways. These ways include elaboration on how to practice relational sensibility (McNamee) and how to sustain relational responsibility by so-called second-order morality (Gergen).

This chapter starts by identifying five interrelated orientations that seem to make up soft self-other differentiation (8.1). Then, each of the following sections will take up one of these orientations in order to thicken and further expand the notion of soft self-other differentiation as it might be practiced in case conversations in a socio-legal context (8.2-6).

8.1 A first exploration of ethics as soft self-other differentiation in case conversations

To remind the reader, at the level of relational constructionist meta-theory the focus is on relational processes of becoming (see e.g. Hosking, Dachler, & Gergen, 1995; Hosking 2008, 2011; McNamee & Hosking 2012). This meta-view assumes that relational processes accommodate the co-arising and the co-construction of self and other. By not assuming the necessary separation of self and other, relational processes can co-construct harder and/or softer self-other differentiated relational realities (Hosking 2008, 677). Hard self-other differentiation involves 'power over' and 'knowledge that', while soft self-other differentiation opens up other ways to construct knowledge and power.

In addition, when relational constructionist metatheory does not assume the separateness of fact and value (McNamee & Hosking 2012, 106), it invites us to see fact—what is considered real—and value—what is considered good—as co-constructed in relational processes. Thus, this meta-theory accommodates centring what is considered good—ethics—in all kinds of relational processes, allowing various forms and ways of ethics. In other words, ethics can be co-constructed in relational processes that are harder or softer self-other differentiated.

My interest concerns the specific lineage of relational constructionist discourse which centres ethics as a practice of soft self-other differentiation (McNamee & Hosking 2012; Hosking 2011, 2008; Gergen 2009, 2015; McNamee 1994, 2009, 2015). In her article in Organization Studies, *Telling Tales of Relations: Appreciating Relational Constructionism* (2011), Dian Marie Hosking mentioned she has been "using the summary term 'soft' self-other differentiation" while speaking of specific kinds of relational practices which "might also be called 'relationally engaged' (rather than distancing, separating and supposedly 'neutral')" (2011, 57). Together with co-author McNamee she confirmed: "We see relational ethics as a stance for constructing 'soft' rather than 'hard' self-other differentiation." (McNamee & Hosking 2012, 106).

My interest in this specific kind of "relational ethics" launched a search for literatures on the subject of soft(er) self-other differentiation. I found that not many authors using the language of relational constructionism have written about this subject. Indeed, it seems difficult to capture in words the nature of soft self-other differentiation. For example, as we have seen, soft self-other differentiation opens up the possibility to construct knowledge as 'knowledge with', and power as 'power to'. In addition, it seems that the term soft self-other differentiation is identified by some, and different terms are used by others. For example, "ethical value" (Wittgenstein's *Lecture*

on Ethics; 1965) and "ethical know-how" (Varela's *Ethical Know-How. Action, Wisdom, and Cognition*; 1999) seem related to the concept of soft self-other differentiation, although they do not use the term. These relations will be explored in Chapter 9.

Looking for more specifics to deepen my understanding of this kind of relational constructionist ethics I turned to *Research and Social Change* (McNamee & Hosking 2012). In this book the authors offer clear orientations from the relational constructionist tradition. Their suggestions include the following interrelated approaches:

- "a general orientation toward openness and multiplicity" (5);" respect for differences" (11); "the challenge is to give space to these multiple local realities, and to let them be" (48);
- opening up to other by listening, by being "not too quick to know" (56), and by "stepping into the moment with others" (105);
- "centring dialogue (or rather multiple dialogues)" (67); "listening that stays open, that gives space to the possibility of becoming other (transformation)" (76);
- "appreciation and relational engagement"(5); "relationally engaged practice", "with curiosity and without judgment"(14);
- " 'power to' rather than 'power over' ", as relational processes "construct possibilities for participants to go on in different but equal relation" (67).

(McNamee & Hosking, 2012)

This outline of approaches to ethics seems to emphasize the practice of what Hosking summarized as soft self-other differentiation (2011, 57). It seems to come down to "dialogical practices" (McNamee&Hosking 2012, 67), or, more specifically, dialogue "grounded in the assumption of interrelatedness" (McNamee & Hosking 2012, 102). This kind of dialogue would be "radically different from debate, where communication is aimed at persuading the other or at defending a set of beliefs." (McNamee & Moscheta 2015, 31).

In order to clarify their very specific perspective on dialogue—"grounded in a relational or dialogical view of person and processes" (McNamee & Hosking 2012, 67)—the authors included work from a variety of backgrounds, all of which "share in the attempt to open up 'power to' rather than close down through 'power over'." (McNamee & Hosking 2012, 67). This kind of dialogue would invite processes that construct "possibilities for participants to go on in different but equal relation" (McNamee & Hosking 2012, 67). The authors narrow down their use of the term dialogue to refer to this very special kind of conversation, identifying it by concluding:

> *"Dialogue is a slow, open, and curious way of relating characterized by (1) a very special kind of listening, questioning, and being present; (2) a willingness to suspend assumptions and certainties; and (3) reflexive attention to the ongoing process." (McNamee & Hosking 2012, 68).*

This very special kind of dialogue seems to me to construct soft self-other differentiation in practice. Key to this process would be an active invitation to engage in being curious and open to the other. It concerns what Shotter called the ability "to confront the strange nature of radical otherness without wanting to assimilate it to what is already known and familiar to us" (Shotter 2010, 41). This would seem to require: "having the patience to defer judgment, to dwell on and in a situation for sufficient time (…) to allow its 'otherness' to enter us and to make us 'other' " (Shotter 2010, 41). In the following I will refer to this distinctive construction of dialogue by using the term Dialogue (with a capital D). It is in my view equivalent to the practice of soft self-other differentiation.

In what ways would a practice of Dialogue be possible in the context of socio-legal practice? It seems clear that this would need a space, so to speak, for professionals to come together and co-create their "real and good" (McNamee&Hosking 2012, 39; Gergen 2009). Case meetings might have the potential to serve as such a space. More specifically, the structure of the case meetings I attended in Stededam could be examined in order to see if some of its aspects might seem to have a potential to develop into the sensitivity of this orientation. If case conversations among client managers would thereby gain in (ethical) quality, then, presumably, through mirroring, the conversations with their clients could benefit in this way as well.

To remind the reader, the five steps of the case meeting structure in Stededam are: (1) Client manager sketches a client case; (2) Questions are asked in order to clarify the case; (3) Writing down individual approaches in silence; (4) Offering options and how to account for them; (5) Concluding the conversation[251]. In my opinion four elements of this structure may be considered to be in alignment with soft self-other differentiation.

First, the overall structure of the five steps is light and supports the conversation without directing it too much. This may help to invite an orientation of openness. It offers the participants a space to listen to each other and to, for example, slow down the process to co-construct a deeper exploration of certain details.

Second, in steps one and two the participants are required to refrain from voicing opinions and only ask questions to clarify the case. This relates to a practice of being "not too quick to know" (McNamee & Hosking 2012, 56), and of suspending judgement, which we have seen identified as one of the most significant orientations of soft self-other differentiation.

Third, when there is no pressing for consensus—and the chairman is asked not to[252]—the exchange of opinions in step four might offer an opportunity to practice "opening up to other by listening", which is a special listening "that stays open, that gives space to the possibility of becoming other (transformation)" (McNamee 2012, 56; 76).

251. See Appendix 3: Internal document *Set-up Case Meetings*
252. See Appendix 3: Internal document *Set-up Case Meetings*

Fourth, reflection was supposed to be the aim of the case meetings in Stededam. This was mentioned twice in the internal briefing: "The purpose of discussing cases is reflection on actions and learning from each other"; and: "The aim of case discussions is to allow participants to reflect on their actions. Therefore, do not primarily strive to reach consensus, but make sure that agreements and differences are made clear, as well as the grounds for a given course of action" (Set-up Case Meetings; Appendix 3). The intention thus seemed to be to reflect on their actions and stay with multiple opinions. In other words, "the challenge is to give space to these multiple local realities, and to let them be" (McNamee & Hosking 2012, 48).

Admittedly, while attending the case meetings in Stededam I did not find any explicit mention of moral values or ethics, nor was there any reference to an ethical code. Still, this case conversation structure seems to offer at least some potential as a first step towards developing case conversations that could invite practising soft self-other differentiation.

In sum, the heart of practising soft self-other differentiation as a relational constructionist ethics (Hosking 2008; 2011) seems to be a very special kind of Dialogue identified by the interrelated orientations of (a) openness to other and otherness; (b) listening, being present; (c) suspending judgements; (d) reflexive attention to the relational processes; and (e) power to/with other rather than power over other.

Returning to our question *How might ethics as soft self-other differentiation be theorised and practiced in a socio-legal context?,* I started to wonder about the potential of this special kind of Dialogue. Would co-constructing Dialogue of soft self-other differentiation be a way to invite ethics in socio-legal practice? If we can see soft self-other differentiation as one way of practising ethics, would this then imply that we should strive for soft self-other differentiated relations as much as we can, as a means to invite ethics in practice? In other words, could striving for softer self-other differentiated relations bring us closer to ethical forms/ways of 'doing' case conversations in a socio-legal context?

Addressing this issue seemed to require further exploration. So, the following sections will offer this exploration, using the five interrelated orientations of soft self-other differentiation as identified above, and keeping in mind a connection with case conversations in a socio-legal context.

8.2 Openness to other(ness): working with multiplicity

The central feature of soft self-other differentiation seems to be an orientation of openness to other and otherness. Without being open to other(ness) self-other differentiation cannot be soft; it seems a required condition. One way to practice the openness of soft self-other differentiation would be to allow, invite and appreciate multiple relational realities to co-construct the local real and good.

This section explores various (ethical) ways to deal with multiplicity. It also investigates possible benefits of striving for multiple narratives rather than consensus, in what is called a "moral conversation". It addresses the problem of the client not being present. Finally it proposes to use the potential of case meetings as a "second order morality" platform where "relational responsibility" (McNamee & Gergen 1999; McNamee 2009; Gergen 2009, 2011; McNamee & Hosking 2012) can be practiced, finding beneficial ways of working with multiplicity.

Working with multiplicity, coordinating multiple (normative) realities, is one of the challenges in public welfare that client managers saw themselves as facing, as we have seen in Part 1 and 2. In the (adjacent) context of therapeutic practice McNamee raised the question: "What counts as ethics in a world of multiplicity, difference, and complexity?" (McNamee 2015, 422). Her answer shifted away from "the modernist world of certainty" to a "relational sensibility where complexity and uncertainty serve as guideposts", asking us to "release our grasp on the idea of a universal, decontextualized notion of ethics." (McNamee 2015, 422). Her "relational sensibility" can be seen in alignment with soft self-other differentiation in which working with multiple realities would ask for openness to other(ness).

Ethics as "relational sensibility" (see quote above), by some called "relational responsibility" (e.g., McNamee 2009; Gergen 2009), appears to be characterized by an interest in multiplicity and in opening up rather than closing down possibilities (McNamee & Hosking 2012, 106).

The stance of Dialogue in its orientation of openness to other and otherness seems particularly interesting because an attentiveness to diversity and various perspectives may generate new possibilities. Appreciation for multiple narratives and perspectives may start with a curiosity to find out about the rationale behind the other's stories. From the perspective of relational constructionism the stories of, for example, client managers and clients are social constructions that are seen value-laden. The real and the good are co-constructed simultaneously. Multiple stories can be multiple perspectives that may not only generate new possibilities but may support the ethical broadening of the issue under discussion as well.

When a case conversation focusses on the assigned task of reaching a decision about a course of action, then it might tend to strive towards consensus rather than

multiplicity. This might be more so in a situation of risks such as the client managers saw themselves as facing, as I related in Part 2. In such a context consensus amongst the participants can be one way to feel more safe.

How can the participants of case conversations be invited to participate in a Dialogue that engages in openness to other(ness)? One way to invite openness could be to develop a "moral conversation". This phrasing draws on care ethics theories and was used in a socio-legal context by Zanetti in her contribution to *Critical Theory Ethics for Business and Public Administration* (2008). Her work seems relevant as it put ethics in the centre. Drawing on Benhabib's work on feminist theory and ethics she emphasized the possibility of a "moral conversation" in a socio-legal context by stating:

> *"Benhabib urges one simultaneously to assume the standpoints of both the concrete and generalized other (…).This may be accomplished by engaging in a "moral conversation" in which the goal is not to reach a rationally motivated consensus but rather to demonstrate the willingness and readiness to seek understanding with the other in an open and reflexive manner." (Zanetti 2008, 65).*

To remind the reader, this may apply to many of the case conversations that—as we have seen in Part 2—attended to "both the concrete and generalized other", or, in other words, to the client and their context as well as to the principles of legal rule that serve to guarantee legal rights to any citizen.

At this point it struck me that the clients were not physically present at the case meetings. It evoked the question: How does one "seek understanding with the other in an open and reflexive manner" (see quote above) when the other, the client, is not there? How can one speak of a moral conversation in the absence of the other, the one who is being discussed? Surely, attentiveness to the self-other relationship as a basic ethic of practice would seem to require that their voice be heard, and so, to call for their actual presence.

In the context of a critical constructionist discourse, Hosking identified "critical" as being "suspicious about any claim to know what is and what is best for another" (Hosking 2008, 671)[253]. Bearing this important point in mind, it seems, however, conceivable to have a moral conversation in the sense Zanetti described (2008, 65), even when the other is not present. In Benhabib's words:

253. Some people in the field see including clients in case conversations as the next step in the development of the new principle of "each his own" (Donner 2016); see Donner's speech as referred to in 1.5.

> *"To think from the perspective of everyone else is to know how to listen to what the other is saying, or when the voices of others are absent, to imagine to oneself a conversation with the other as dialogue partner." (Zanetti 2008, 65).*

So if it is possible to have a moral conversation in the absence of the client, then apparently it will require imagining a conversation with the client as dialogue partner. This would seem based on a genuine curiosity and appreciation of the client and their context. I wondered how such openness to other(ness)—"the willingness and readiness to seek understanding with the other in an open and reflexive manner" (see quote above)—could be invited in the case conversations. This seemed particularly difficult in case of so-called competing moralities between client manager and client, or between the participants of a case meeting.

To clarify, the cases discussed in the case meetings were generally of a kind that evoked discussions as to how and what would be desirable and permitted. In striving to find ways to go on together, the different views were competing with each other. From a relational constructionist viewpoint, different views are seen as different also in morality, because the real and the good are co-constructed simultaneously. The challenge seems to be to stay open when different moralities compete.

In my search for more clarity on this, I came across Kenneth Gergen's concept of "second order morality" (Gergen 2009, 2015). This concept seemed to address the challenge of staying open to other(ness) in a context of competing moralities in a way that seemed fit to the practice of case conversations.

Gergen identified "first order morality" as our communal understandings of good and bad in existing patterns of coordination (2009, 357; 2015, 412). "To function within any viable relationship requires embracing the values inherent in its patterns, whether we articulate our values or not." (Gergen 2015, 412). This implies that first-order morality is essentially being sensible within a particular "form of life" (Wittgenstein 2009).

In the case meetings, when it comes to morality—ethical standards or values—people from various backgrounds join to discuss the situation of others, namely their clients, who have various backgrounds themselves. Various ethical viewpoints embedded in different world views are brought to the table, both explicitly and implicitly. These ethical viewpoints may be called first order moralities, which then come together to form a new first-order morality: "Wherever people come into coordination first-order morality is in the making. As we strive to find mutually satisfactory ways of going on together, we begin to establish a local good, 'the way we do it.' " (Gergen 2015, 412).

So, in a case meeting various forms of first-order morality will be coordinated to establish a new "local good" (see quote above). Because our first-order moralities are different and, as Gergen asserted, tend to conflict, we need "a process that can restore the possibility of first-order morality" (2015, 414). This process is what Gergen developed

as the concept of "second-order morality" (2009, 364; 2015, 414): a means to "protect and restore the process of collective valuing together." (2015, 414). Second-order morality is based on the relational processes of co-action and co-construction rather than on a logic of discriminate entities (2015, 414). Individual responsibility is replaced by "*relational responsibility*, that is a responsibility derived from relational participation" (Gergen 2015, 414; emphasis in original). In other words, it is our "collective responsibility for sustaining the potentials of coordinated action." (Gergen 2009, 364). The ethical responsibility of client managers can thus be seen as a relational responsibility to be practiced in case meetings re-constructed as platforms of second order morality.

To relate this to the relational ontology of relational constructionist meta-theory, we can see that relational responsibility is a key practice which seems in contrast with an individual ontology and discourse constructing subject-object relations (McNamee & Hosking 2012, 62) of harder self-other differentiation.

So, the challenge seems to be to develop relational practices that move toward relational responsibility. Gergen addressed this challenge by formulating some questions to be used in the context of therapeutic practice (2015, 414-5). Some of these phrasings, slightly adapted[254], seem to suggest a way of developing relational responsibility in the practice of case meetings:

> *How can we, with our differences, build in directions that we can all value? How does our relationships here draw in those not present? How are we here being responsive to the broader communities in which we reside? (Gergen 2015, 414-5)*

These questions seem powerful invitations to a collective exploring of ethical ways of 'doing' case conversations in a socio-legal context. In this way it seems possible to re-construct the case meetings as a platform of "second-order morality".

In sum, working with multiplicity by practising openness, a main orientation of soft self-other differentiation, may involve relational sensitivity which appreciates multiple stories. It may involve striving for a moral conversation which might be sustained by co-constructing case meetings as a platform of second order morality.

8.3 Listening, being present, suspending judgement: the "art of ambivalence"

This section explores a very special kind of listening that involves a way of being present in "the here-and-now" (Hosking 2008, 678) of unfolding relational realities. It will also

254. My adaptation solely concerns the number of participants. Gergen talks about a relationship of two; in the case meeting situation, there are more than two participants.

discuss the question: How can one listen and be responsive to more than one or even multiple stakeholders at the same time? Here, the "art of ambivalence" comes in as a way to hold contradictions in order to come to "organic" resolutions (Zanetti 2008). This is also the reason why the importance of suspending judgements is emphasized.

In soft self-other differentiation, the conversation might become "relationally engaged" (McNamee & Hosking 2012, 86) by "a stepping into the moment with others (…) in the movement away from imposing expertise or searching for the 'right' knowledge or method." (McNamee & Hosking 2012, 105).

This seems quite challenging in the context of the client manager's job. In many cases they seemed to rely on "searching for the 'right' knowledge" and "imposing expertise" (see quote above). Rather than a focus on applicable rules and exceptions, another process is suggested: letting go of the impulse to go straight to the 'solution' by making space to stay with an unresolved issue for a while. In this way, what Harlene Anderson called a "not-knowing" approach (Anderson 2012) would make space for the unfolding of new possibilities.

For example, soft self-other differentiation may transform the practice of asking questions about a case—in the structure of the case meetings similar to the second phase of asking questions to clarify the case—from a way to find out about a particular situation as a pre-existing reality, into a practice of co-constructing realities. As Hosking stated: "Good questions are theorised as those that help to enlarge possible worlds and possible ways of being in relationship." (Hosking 2008, 683).

Being present in this open and attentive way seems to be a way to practice soft self-other differentiation which involves careful and appreciative listening (Hosking 2008, 683; McNamee & Hosking 2012, 56). It is a kind of listening that is not instrumental, and, for example, not aimed at producing knowledge to be used, as it would be in subject-object relations of harder self-other differentiation (Hosking 2008, 680). Soft self-other differentiation would involve listening in ways that are open to other(ness), and not self-centered, as Hosking explained:

> *"To reconstruct listening in relation to soft self-other differentiation will require letting go of overly sharp distinctions (…) In the absence of these hard differentiations, and in the presence of our discourse of relational processes and sound participation, listening is shifted out of the "self-contained individual" (Sampson, 1995) and into embodied participation in local-cultural, local-historical processes." (Hosking 2008, 680-1).*

Pondering the possibility of this very special kind of listening in the context of case conversations in public welfare, I realized that one important aspect was not yet clear to me. This concerned the question to whom the client manager should be listening,

or, in other words, should show responsiveness. In the client manager's practice various stakeholders come into play. How can this concept of listening in soft self-other differentiation be helpful in a context that would require being responsive to multiple stakeholders? The complex practice of the client manager cannot but evoke the question: responsiveness to whom? Put differently, when Gergen in his book *Relational Being* asserted that "care for the relationship becomes primary" (Gergen 2009, 364), the question seemed to become: care for which of the given
relationships? In reminiscence of the complexity of many cases discussed by the client managers, it seemed to me inevitable that a choice must be made. On what grounds should any of the many occurring relationships become the primary focus of care? Moreover, if conflict arose in different self-other relationships, on what grounds would being responsive to one over the other be justified?

Here Zanetti's work appeared to open up possibilities. She suggested to practice "the art of ambivalence" (Zanetti 2008, 71). This practice seems similar to practising soft self-other differentiation because both seem to work from a not-knowing position. In Zanetti's words:

> *"Most importantly, I suggest that public administrators learn and practice the art of ambivalence (…). This is an echo of Benhabib's call to consider both the generalized and concrete other simultaneously. We don't typically perceive ambivalence as a virtue, much less as an art, but it can be both of these things to the extent that it allows time for the organic resolution of a perceived dilemma, or permits the transfiguration of opposites into a more powerful whole." (Zanetti 2008, 71)*

She concludes that we can learn "to practice ambivalence by holding contradictions" (Zanetti 2008, 71). This argument about practising the art of ambivalence seems very consistent with Dialogue and could be put to work in the context of a relational constructionist discourse that opens up soft self-other differentiation and relational responsibility.

However, considering "both the generalized and concrete other simultaneously" at first sight does not seem to be a very practical guideline. Her suggestion to learn to "practice ambivalence by holding contradictions" raises the question: How can this be achieved?

When turning to the attended case meetings in search for an example, I found the case conversation discussed in Chapter 6 about the couple addicted to substance abuse (Transcript 21) to be inspiring. It helped me to see how practising "ambivalence by holding contradictions" might be invited by a careful attentiveness to how the relational processes unfold. In this conversation participants proposed various alternatives. Listening and responding to other's opinions in a professional and respectful manner

on the part of all participants seemed to be the dominant feature. In their efforts to come to an acceptable solution to the case, they actively engaged in holding space for each other in order to invite and explore their differing views. Their example showed that it is possible to come to a solution by taking time to allow space for different viewpoints to arise—different voices to be heard—seemingly without any enforcement. In this case, the space gently held by the participants, the ambivalence caused by the simultaneous consideration of opposing views, seemed to gradually give way to "the organic resolution of a perceived dilemma." (Zanetti 2008, 71; see quote above).

This seems to be a possible answer to the question I posed about responsiveness to whom. Rather than the co-construction of a conversation as a collection of separate views, or a collection of separate stakeholders each representing their own interest urging for different responses, the focus may be put on attentive listening and being present with other(s) in the ongoing process of exchange—a developing conversation in an "organic" (Zanetti 2008, 71; see quote above) process of co-construction.

This "art of ambivalence" (Zanetti 2008, 71; see quote above) may be learned through practice. This may not appear to be easy, especially when we take into account Zanetti's warning that "learning to practice ambivalence by holding contradictions is not intuitive for most of us, and it most certainly is not encouraged in most walks of life. We risk appearing indecisive, inefficient, incompetent." (Zanetti 2008, 71).

Nevertheless, the art of ambivalence by holding contradictions seems to hold the promise of a space which, I would argue, enables generating new and creative solutions and possibilities to go on together. It seems similar to the space co-created by the suspending of judgements, identified as one of the five interrelated orientations of Dialogue (practising soft self-other differentiation). Central to Dialogue is "a willingness to suspend assumptions and certainties" (McNamee & Hosking 2012, 68). In practice this would come down to what McNamee called a "continued juggling of difference" (2015, 432). In sum, these sources seem to imply a kind of holding space while staying with lack of clarity. Holding space seems a critical feature when it comes to being open and able to listen to the other, and to being receptive to the possibility of otherness.

It seems noteworthy to emphasize that this is not about surrendering one's professional judgements. In a certain phase of the process decisions must be made. Our focus rather is to find ethical ways to reach those decisions. Thus, professional relational processes of engagement in Dialogue would mean "holding one's own position" while at the same time remaining attentive to the unfolding of relational processes, staying "open and curious about the local or internal coherence of those very different positions" (McNamee 2015, 428)[255]. McNamee and Hosking put this clearly when they

255. Moreover, a relational constructionist view does not necessarily make a distinction between the process and the product: the path is the goal, so to speak (Hosking 2008).

stated: "We like to think of dialogue as requiring an entirely different sort of space, one that enables the suspension of dogma without requiring any relinquishing of passion and commitment." (2012, 72). In other words, in Dialogue a reflexive openness to other would not imply foregoing one's own ideas. Rather, Dialogue would offer ways to transcend a debate of dogmas. It values partaking in the conversation, contributing to it, holding space for ongoing relational processes to arise and unfold.

By bringing these voices together the importance of suspending judgement in Dialogue is emphasized. Let me end this section with a quote on this subject from John Dewey, in his book *How we think* (1910):

> *"Reflective thinking is always more or less troublesome because it involves overcoming the inertia that inclines one to accept suggestions at their face value; it involves willingness to endure a condition of mental unrest and disturbance. Reflective thinking, in short, means judgment suspended during further inquiry; and suspense is likely to be somewhat painful." (Dewey 1910, 13)*

It seems quite a difficult task for professionals on the shop floor. Indeed, it seems not feasible without supportive training facilitated by management. In this quote Dewey connected the willingness to suspend judgement with reflective thinking. This orientation of soft self-other differentiation is the subject of the next section.

8.4 Reflexive attention to the relational processes: relational engagement

Contrasting a focus on the outcome of processes, this section emphasizes relational engagement by soft self-other differentiation in language-based processes that include non-conceptual language.

McNamee and Hosking pointed to the importance of reflexive attention to the relational processes when they argued: "To be relationally responsible (ethical) is to be attentive to the very process of relating itself." (McNamee & Hosking 2012, 106). In soft self-other differentiation, it is the *how* of relating that needs greater emphasis, which involves a focus on relational processes as they re- and co-construct local-cultural, local-historical realities (Hosking 2008; McNamee & Hosking 2012). What could reflexive attention to the relational processes mean, particularly in case conversations in a socio-legal context?

If the case meetings focussed on the 'how' of their exchange, carefully co-constructing realities of real and good, then they would practice Dialogue and put to work an "ethic of discursive potential" (McNamee 2015): "Within an ethic of discursive potential, we can attempt to coordinate multiple moral orders and imagine a future

that is relationally sensitive. We can harness the potential of coordinating differences to move beyond simple solutions, universal resolutions, and our desire to eliminate difference once and for all." (McNamee 2015, 419; 2017). So, in practice, an ethic of discursive potential would cherish multiplicity. It would mobilise the kind of "relationally sensitive ethic" (McNamee & Hosking 2012,109) that involves reflexive and appreciative attention to the local rationale and coherence of both self and other and relationships.
As I discovered, the concept of a relational perspective can be confusing, and soft self-other differentiation can seem to lead to vagueness. For example, concepts of "relationally engaged" practices (Hosking 2011, 57) seem to revolve around both care for the self and for the other. On the one hand, some care ethics theories, for example, seem to emphasize the other (Kanne 2008, 186; also, e.g., Tronto 1993, Gilligan 1992). On the other hand, when we assume that ethics is close to wisdom (Varela 1999, 3), we find that, for example, eastern wisdom traditions often seem to emphasize the care of self. Psychologist Ken Gergen addressed this seeming dualism of care for self and care for other by enclosing both in his concept of "relational responsibility":

> *"In relational responsibility we avoid the narcissism implicit in ethical calls for "care of the self." We also avoid the self/other split resulting from the imperative to "care for the other." In being responsible for relationships we step outside the individualist tradition: care for the relationship becomes primary." (Gergen 2009, 364)*

Thus, multiple co-existing relational realities are seen emerging from relational constructions, and relational responsibility is seen as an approach that cares for the relationship of self and other as well as for both self and other. Put slightly differently, this perspective "both allows and invites us to explore ways of being in relation that depart from the subject-object separation" (Hosking 2011, 57). In other words, it seems to imply softer self-other differentiation.

In addition, these "ways of being in relation" (see quote above) may include non-conceptual forms of relating (Hosking 2008, McNamee & Hosking 2012). Next to conceptual, written and spoken language, this discourse also emphasizes the non-conceptual, embodied aspects of language actually occurring as we relate to each other (Hosking 2008, 673; Shotter 2010). Relations between non-conceptual language, soft self-other differentiation and ethics will be one of the topics of the next chapter, using Wittgenstein's *Lecture on Ethics* (1965). In contrast, in written and spoken language one has to rely on a discourse of more or less separate entities: "The language is itself a threshing device, separating what might otherwise be viewed holistically." (Gergen 2009, 384). On pondering this statement I once more realized that from the outset I had

been inspired by the concept of soft self-other differentiation because of its connection with a more "holistically" (see quote above) constructed approach to ethics (contrasting the duality inspired view on ethics I used in Part 1 and 2).

Reflexive attention to relational processes emphasizes relational engagement among participants rather than a focus on the outcome. Thus, soft self-other differentiation seems more process oriented than decision oriented (McNamee 2009; Gergen 2009; McNamee & Hosking 2012).

Regarding public welfare, this seems to point to a basic shift in accountability for professionals. It emphasizes a careful decision process rather than compliance to legal demands, such as equality for example. Incidentally, this is exactly what vice-president of the Raad van State Mr. J.P.H. Donner suggested in his speech at the Dutch public welfare branch meeting of 2016 (Donner 2016; see also 1.5). He introduced the new principle in law application: "to each their own" (Donner 2016), which requires careful attentiveness to the process of tailor-making rather than a univocal focus on the outcome in terms of equal treatment.

This is quite a turn-around in public welfare. In response to Donner's challenge to the profession, case meetings might be co-constructed as ongoing processes of communal learning that could open up new potential. For example, they could centre a reflexive exploration of the ways in which the ongoing relational processes re- and co-construct existing patterns of real and good, thereby possibly opening up new ways to go on together. For example, participants may co-construct particular local-cultural and local-historical ways to engage in the challenge of establishing a relatively stable construction of 'equal treatment' by a "moral conversation" (see above, Zanetti 2008, 65). They would be co-constructing a locally underpinned body of 'how we do things here and now, in this kind of context', thereby temporarily establishing a kind of flexible range of locally determined equal treatment (Van Donkersgoed 2014; 2018).

The approach of reflexive attentiveness to the co- and re-construction of realities of real and good would also seem to involve the need to reflect on how our activities can be ways to "open up 'power to' rather than close down through 'power over' " (McNamee & Hosking 2012, 67). This is the subject of the next section.

8.5 Beyond dominance: power relations that open up possibilities

A curiosity to find out new and perhaps more ethical ways to construct power relations in a socio-legal context is what drives this section. One of the orientations of practising soft self-other differentiation we identified earlier as power to/with other, rather than power over other in harder self-other differentiation. Law, in as far as it is constructed as an 'independent' power over other that is inherent in legal regulations to be executed

by civil servants, seems to construct "subject-object" relations of harder self-other differentiation. This section examines questions of legal authority that may arise in the context of law application in a socio-legal practice. It will explore the alternative offered by relational constructionism: relations of soft self-other differentiation, which allow for relational processes of power to and/or with other by, for example, using story-telling.

To remind the reader, a relational constructionist meta-perspective theorises power as a quality of ongoing relational realities that may enable the closing down and opening up of possibilities (Hosking 2008, 678). In Hosking's words:

> *"In a critical relational view, power is constructed in always ongoing, relational processes, that is, in ongoing relations between acts as texts. This means that power is a quality of intertextuality rather than being inherent in entities and individual acts." (Hosking 2008, 678).*

In this view power seems to relate to the intermingling processes of ongoing relations between various (con)texts within a case conversation which may include legal texts.

As we have seen, relational processes can be harder self-other differentiated, like subject-object constructions involving "power over" (Hosking 2008, 677). When they are softer self-other differentiated, they involve constructions of "power with"—theorised as the power to act—or "power to"—theorised as "practices that allow the construction of different but equal forms of life" (Hosking 2008, 678).

Indeed, when we turn from relational constructionist meta-theory to soft self-other differentiation as a relational constructionist way of ethics, then this seems to require something other than 'power over': "Ethics concerns the relational processes at play when diverse forms of life are coordinated, requiring something beyond a dominance of one set of values and beliefs over the other." (McNamee & Hosking, 2012, 106).

To understand this statement it seems useful to remind the reader of the perspective of relational constructionist meta-theory which views all relational processes as local-historical and local-cultural constructions. The assumption of local-*cultural* constructions emphasizes that ongoing relational processes (re)construct patterns in a local culture that validates or discredits what is co-constructed as (not) real and (not) good (Hosking 2008, 675). The assumption of local-*historical* constructions emphasizes that texts, or acts, "both supplement previous acts and have implications for how the process will go on." (Hosking 2008, 676).

It follows that from this viewpoint there are no universal, general criteria by which one reality construction can be considered better than another. Any criterion is itself viewed as a web of interactive relations that is embedded in ongoing local-historical and local-cultural processes. Thus, Hosking and McNamee argued that the

"relational constructionist tradition offers no basis for privileging any one 'form of life' (Wittgenstein 2009)" (McNamee & Hosking 2012, 6). This seems to be valid for no basis of privileging any one form of ethics as well. Indeed, the authors emphasized: "We can no longer impose our ethics (our way of talking, of acting) on others." (McNamee & Hosking 2012, 109).

This could very well be the ultimate in respecting others. However, in the context of public welfare application, this suggestion may come across as slightly otherworldly. It seems to challenge the context of socio-legal practice, in which law application seems based on the authority of law. After all, law application processes seem to revolve precisely around "a dominance of one set of values and beliefs over the other" (McNamee & Hosking, 2012, 106, see quote above).

To put it more sharply, when Hosking, in the context of allowing multiple voices to be heard, stated that relational responsiveness "is impossible when one voice dominates" (Hosking 2008, 680), then the question is: Are not professionals who apply the law, such as those in public welfare, precisely required to allow "one voice", the voice of the law, to dominate and have power over all other voices? Is not that the whole purpose of the law?

The problem seems even more clear in this relational constructionist statement: "Power is an ongoing, relational construction, able both to open up and to close down possibilities" (Hosking (2008, 671). In the language of law practitioners, this relational perspective on power seems outside their "language game", or "form of life" (Wittgenstein 2009). In this (also political) "form of life", the law is constructed by definition as a dominant directive in practice. The legal system is seemingly hierarchical in structure and use and thus seems incompatible with the moral norm of "something beyond a dominance of one set of values and beliefs over the other" (see quote above, McNamee & Hosking, 2012, 106). In short, the relational constructionist emphasis on power being a relational quality that can open up and close down possibilities seems to challenge legal norms, which seem constructed in order to be imposed.

To address this vital issue, McNamee and Hosking (2012) clearly formulated what it means to regard power from a relational constructionist perspective:

> *"Power is a term that might be used to speak of the unfolding relations between different local-communal rationalities. In subject-object ways of relating, one rationality dominates others (here we speak of "power over"), and the 'what' and 'how' of relating is imposed 'from the outside,' so to speak. When relating goes on in softer self-other differentiation, the different participating 'forms of life' have 'power to' unfold from within their own local rationality (in different but equal relations)." (McNamee & Hosking 2012, 62)*

In other words, the practice of softer self-other differentiation seems to develop from a curiosity to understand other(ness), allowing space for multiple perspectives to unfold from within their own rationalities. Thus, it is an invitation to look for inspiration and new creative ways to go on together. How can this be connected to law application practices as discussed during the case conversations ?

Soft self-other differentiation invites us to construct 'power to', which was theorised as "practices that allow the construction of different but equal forms of life" (Hosking 2008, 678). In the context of case conversations, practices of "power to" seem particularly interesting, as these may invite various "forms of life" to unfold from within their own local-cultural coherence. One of these "forms of life" might be the legal regulations in their seemingly hierarchical structure to be discussed for use in a specific client case. These are seen as local-cultural, local-historical constructions, of which Hosking explains: "Inter-acts vary in the scale of their interconnections. This means that my reference to "local" could apply to forms of life as general as "Western" or "scientific"." (Hosking 2008, 675). Thus, the relational reality of legal regulations in, for example, public welfare might be viewed as relational processes identified by local-cultural, local-historical realities that are relatively more stabilized.

In addition, Hosking emphasized the essential artfulness of what she called stabilized effects—such as laws, I would add—drawing attention to the relational processes that make and re-make them (Hosking 2008, 676; see also McNamee & Hosking 2012, 40). This viewpoint seems to emphasize that each time a rule is executed, it is re-constructed (Derrida 1992[256]). How this is done seems an ethical interest.

'Power to' seems to emphasize inviting a variety of viewpoints. In this sense, as we have seen when discussing multiplicity (8.2), multiple perspectives can amount to multiple stories that not only generate new practical possibilities but may also support the ethical broadening of the issue under discussion.

In other words, in an encounter in the here and now, by "stepping into the moment with others" (McNamee & Hosking 2012, 105), law seems just one of many rules, regulations, boundaries—but equally so: opportunities, potential, possibilities. All of these can be acknowledged as relational processes of more or less relative stability. Thus, the participants of case meetings are re-constructing a playing field—a "form of life" (Wittgenstein 2009)—where relational processes of softer self-other differentiation might offer new and creative ways to go on together. And if case conversations among client managers by their various perspectives would gain in (ethical) quality, then, presumably, through mirroring, the conversations with their clients could benefit in this way as well.

256. See also 2.2 and 5.4

In addition, Crowther & Hosking (2009) offer a suggestion that centres "space" and "dialogue":

> *"Another possibility could be to develop practices that give space for multiple stakeholders to participate on the basis of different expertises and interests, as 'different but equal', and as partners in a dialogue rather than consumers of already made decisions. This would be a process in which multiple stakeholders construct 'power to' go on together in different but equal relations, with differing values, interests and rationalities, rather than constructing the more usual subject-object relation of 'power over'." (Crowther & Hosking 2009, 11)*

Crowther & Hosking then add:
"Going on together through *dialoguing* and so constructing 'power to' is, of course, not easy to do." (Crowther & Hosking 2009, 11; emphasis in original).
In their invitation to practice dialogue they emphasize one particular way to practise 'power to'. It is the key activity of "what some would call story telling" and what others would call "narrating", which, quite simply, revolves around "participants' telling it how they see it." (Crowther & Hosking 2009, 12).

Stories appear to be natural mediators between the particular and the general. Indeed, some researchers have found that stories are "better guides to behavior than are rules, maxims, and pure reason." (Hermans, Kempen & Van Loon 1992,30). So, when we identify 'power to' as a practice that allows "the construction of different but equal forms of life" (Hosking 2008, 678), then a way to 'power to' would seem to be: inviting "different but equal forms of life" to tell their story of "how they see it" (Crowther & Hosking 2009, 12; quote above). Regarding case conversations, this would involve making space for participants to engage in appreciation for the various stories about the different ways in which each of them would re-construct and handle the case under discussion. Notably, this is very similar to the space offered by step 4 in the structure of case conversations in Stededam (see 8.1).

It seemed to me that the conversation about the case of the couple addicted to substance abuse (Transcript 21), discussed in Chapter 6, illustrated a kind of conversation that comes close to this type of dialogue and storytelling. The participants seemed to listen and respond to each other in a co-constructing process, while not shying away from contradictions. Rather than centering on the decision as such, the conversation increasingly revolved around the relationship of the client manager with her clients, and around the question of how to go forward. The conversation for me seemed to go into the direction of open listening, holding ambivalence, and being not too quick to know, all of which are characteristics of soft self-other differentiation. It gave me hope that new, more open ways of relating could be possible in a socio-legal context. Soft

self-other differentiation practised in this way seemed to allow a case conversation to turn into a very special process, one that Crowther & Hosking called "a sacred process in the sense that Self and Other are seen as a relational whole; we are part of, rather than apart from, Other—other people, 'nature', social realities." (Crowther&Hosking 2009, 12).

8.6 Concluding Chapter 8

To summarize this chapter, the relational constructionist discourse that centres ethics speaks of practising soft self-other differentiation, and a very special kind of Dialogue. This would involve various interrelated orientations including holding space and openness to other, appreciating multiplicity in a practice of relational engagement, and being attentive to the process of relating itself. As an alternative to the subject-object relations of 'power over' which may be more common in the context of public welfare law application, a focus on soft self-other differentiation might shift to the co-construction of 'power to' as a relational reality which is continuously relationally being (re-)constructed. It seems to me that moving towards this kind of 'power to' in public services could be a powerful and desirable development. I think that practices like case meetings could provide the space needed for this development.

To return to the question central to Part 3: *How might ethics as soft self-other differentiation be theorised and practiced in a socio-legal context?*, I conclude that this chapter has made a first attempt to address this question. However, a deeper exploration of the concept of soft self-other differentiation and its link with ethics seems necessary. In particular, three subjects connected to soft self-other differentiation which have only been mentioned briefly, seem to need more elaboration. The next chapter will explore soft self-other differentiation in connection with (a) non-conceptual language (Wittgenstein 1965); (b) "empty self" (Varela 1999); and (c)"ethical know-how" (Varela 1999).

9

Further thickening soft self-other differentiation as a dialogical practice

Exploring soft self-other differentiation in more depth seems to raise fundamental issues that concern the limits of knowledge as "aboutness-knowledge" (Hosking 2011, 54), of conceptual language, and of a sense of a central I. These seem present in particular versions of relational theory and related literatures, though relatively undeveloped. That is why I have been looking for literatures on ethics that seem to allow experiences which reflect a different way of knowing, seemingly not attached to some sense of I, and not in language. Both Wittgenstein in his *Lecture on Ethics* (1965) and Varela in his *Ethical Know-How* (1999) seem to go beyond those limits in their exploration of ethics. We need to know about going beyond these limits because that is an essential aspect of what I want Dialogue to mean. These texts help to better understand soft self-other differentiation, pushing beyond the obvious daily practices of talk and of self turning towards the other.

Both these texts seem to develop themes that earlier were set up as defining qualities of soft self-other differentiation: (a) non-conceptuality (to be discussed in 9.1), (b) the self not being central (9.2), and (c) different ways of knowing (9.3). Therefore, although they do not use the term soft self-other differentiation, I will explore the two chosen texts as "narratives" (Kohler Riessman 2008) from different perspectives of soft(er) self-other differentiation, in order to thicken soft self-other differentiation as a dialogical practice.

9.1 A 'space' of non-conceptual language

In this section I will use Wittgenstein's *Lecture on Ethics* (1965) to explore soft self-other differentiation in more depth. It will revolve around linking non-conceptual language to ethics and soft self-other differentiation. Wittgenstein's *Lecture on Ethics* seems to clarify this particular connection. It is the reason why I deem a tentative exploration of this text relevant and helpful.

Section 8.4 showed that relational constructionism includes non-conceptual language in relational processes that co-construct their real and good (Hosking 2008; McNamee & Hosking 2012). When we look for relational processes that move away from hard self-other differentiation, alternatives to written and spoken language seem welcome. For example, Hosking stated: "Non-conceptual forms of relating may be especially helpful in avoiding the subject-object constructions built in to most current, natural languages."(Hosking 2008, 684).

One way of approaching non-conceptual aspects of language would be to use conceptual language in an allegoric way. This is how philosopher Ludwig Wittgenstein seemed to approach ethics in his *Lecture on Ethics* (1965)[257]. What initially struck me in this text was one of Wittgenstein's conclusions, namely that in his quest to find ways to talk about ethics he had "run against the boundaries of language" (1965, 12). In conveying his thoughts about ethics his approach seemed to lean on what can be shown, rather than what can be put into words. He seemed to indicate an area that I would call a space of softer or even no differentiation of self and other, as the following discussion will show.

The text of the *Lecture on Ethics* distinguished between "good" as an expression of relative values and "good" as an expression of absolute values. Expressions such as right or good can be used in a factual sense, or in a different sense all together. Wittgenstein's examples clarify this. Expressions such as "a *good* chair" or "the *right* road" concern facts and propositions and are illustrations of what he called the "trivial or relative sense" (1965, 5). They meet a certain predetermined standard in their context. For instance, the right road could mean that it is the right road relative to the goal of arriving somewhere in the shortest time. In contrast, we appear to use the same terminology in a different sense to express what we deem valuable and important. In his lecture Wittgenstein referred to this as the "ethical or absolute sense".

257. According to the editors of *The Philosophical Review*, the text of *A Lecture on Ethics* "was prepared by Wittgenstein for delivery in Cambridge sometime between September 1929 and December 1930. It was probably read to the society known as 'The Heretics,' to which Wittgenstein gave an address at that time." (Wittgenstein 1965,3)

However, he continued his argument by stating that expressions such as good or right in an ethical or absolute sense must be "a chimera" (1965, 7). In fact no state of affairs can be called absolutely good. Consequently, the question Wittgenstein posed was: What do we do when we call something good in the absolute, ethical sense?

When we express ourselves ethically, he continued, we use analogies or similes[258] to identify that which we feel is really important. We have to use these, he explained, because when we try to talk or write about ethics, we run into trouble. As Wittgenstein put it, we "run against the boundaries of language" (1965, 12). Thus, in order to convey his insights about ethics, Wittgenstein illustrated them rather than explaining them in propositions or looking for definitions. He described a particular experience of his as his "first and foremost example" of what he meant by ethical, absolute value. He hardly revealed any context about this experience, merely stating:

> *"I believe the best way of describing it is to say that when I have it I wonder at the existence of the world. And I am then inclined to use such phrases as "how extraordinary that anything should exist" or "how extraordinary that the world should exist"." (1965, 8).*

To this first experience he added another experience, which is his experience of feeling absolutely safe:

> *"I mean the state of mind in which one is inclined to say 'I am safe, nothing can injure me whatever happens' " (1965, 8).*

Interestingly, Wittgenstein admitted that, on closer examination, these phrases appear to be "nonsensical", because they do not refer to any factual state of affairs. However, he viewed their "nonsensicality" as the very essence of the experiences these expressions referred to. "Nonsensicality" appeared a way "*to go beyond* the world and that is to say beyond significant language" (1965, 11). Trying to write or talk about ethics precisely aimed at going beyond the boundaries of language. Calling ethical value absolute value seemed to illustrate this aim.

Moreover, "no description that I can think of would do to describe what I mean by absolute value" (1965, 11). He seemed to use "nonsensical" phrases in order to go beyond what description can do. It seems that Wittgenstein here presented the view that ethical value—which he equated with absolute value—cannot be expressed directly. It can

258. Wittgenstein used the terms: analogy(1x), simile(9x), allegory(3x). In addition, he explained that in the context of ethical, absolute expressions, we seem to use "some sort of analogy", and not a straight analogy, because, in contrast with usual analogies, it does not seem to be based on any facts (1965, 9-10).

only be expressed by using "similes", since he "would reject every significant description that anybody could possibly suggest, *ab initio*, on the ground of its significance." (1965, 11).

Regarding the use of language in the (con)text of the *Lecture on Ethics*, Wittgenstein seemed to wonder about the relationship between words and things, thereby restricting language to conceptual language. This is different, as we have seen, from a relational constructionist perspective which shifts emphasis from language to relational processes. These are theorised to include "not just conceptual language as it is written and spoken but also the simultaneously embodied, aesthetic and sensual, local-cultural, and local-historical aspects of relating" (Hosking 2008, 673).

In the *Lecture on Ethics* Wittgenstein explained:

> *"Our words used as we use them in science are vessels capable only of containing and conveying meaning and sense, natural meaning and sense. Ethics, if it is anything, is supernatural and our words will only express facts" (1965, 7).*

So, in his *Lecture on Ethics* Wittgenstein seems to point out that if we want to talk about ethics, using similes is the only way to do it, because "our words will only express facts" (see quote above).

In their article *Wittgenstein, the practice of ethics, and moral education* (2002), authors Burbules and Smeyers addressed this issue of the inexpressibility of ethics according to Wittgenstein. They drew attention to the fact that already in his *Tractatus Logico-Philosophicus* (1921), Wittgenstein stated that "ethics is like religion and aesthetics, and cannot be spoken about (*Tractatus*, 6.421)" (Burbules & Smeyers 2002, 248).

However, as is well known, later in his career Wittgenstein developed new ideas about how language, including conceptual language, works. He no longer adhered to a strict division between expressions based on logic, and all other expressions that he called "nonsense" (Burbules & Smeyers 2002, 248). In his *Philosophical Investigations*, first published in 1953, he further developed the concept of "language games" within their different "forms of life" (Wittgenstein 2009). The *Lecture on Ethics* is dated just between the *Tractatus* period and his later *Philosophical Investigations*, thus seemingly bearing witness to the development of his philosophical ideas on the subject.

In their article, Burbules and Smeyers suggested a continuity in Wittgenstein's views on ethics. They tried to explain in what sense ethics might be called inexpressible with the help of some of the ideas that later became central in Wittgenstein's philosophy—language games, forms of life, how we learn to follow a rule, and family resemblance.

Notably, these concepts are part of the relational constructionist lineage. For example, Hosking and Gergen said:

> *"In his account of the language game, Wittgenstein generates a replacement for the traditional mapping and mirror metaphors of language. Wittgenstein compellingly develops a view of language as a pragmatic medium through which we do things with each other. In effect, language becomes a relational medium (Gergen & Hosking 2006, ch.20).*

In addition, Gergen acknowledged:

> *"Wittgenstein's later writings (1953) have played a primary germinating role. (...) They locate the genesis of all ontologies within the linguistic practices of persons in relationship. The metaphor of the language game is pivotal here, as it suggests that all words come into meaning through their communal use." (2011, 207).*

In this line of thought, Burbules and Smeyers seem to emphasize it is the doing that matters here, the showing of a practice, and not the articulation of reasons or rules. Drawing on the earlier *Tractatus Logico-Philosophicus*, they stated that ethics "belongs to that realm where, as he [Wittgenstein] says, things cannot be *said* but only *shown*." (Burbules & Smeyers 2002, 248; emphasis by authors).

Thus, the authors conceived of ethics as a practice, drawing on key elements of Wittgenstein's philosophy, and on other theorists such as Foucault, who have tried to "decenter the ethical subject", and "problematize the idea of a stable, ethical self." (Burbules & Smeyers 2002, 256). In the next section I will continue to explore this line of thought, discussing the ideas of Francisco Varela who was another theorist on this very subject. The remainder of this section will explore and propose to re-construct Wittgenstein's expression "state of mind" (see quote above, 1965, 8) which he used in the context of his view on ethics.

The particular way in which the *Lecture on Ethics* seems to convey Wittgenstein's view on ethics (at that moment in time, 1929) suggests that ethics belongs to or comes from some place or space, so to speak, beyond significant (propositional) language. It made me wonder if the metaphor of space—reminiscent of discretionary space—could be of practical value regarding the question of how to invite ethics into socio-legal practice. In his book *The Ethical Space of Mindfulness in Clinical Practice,* Donald McCown, a mindfulness teacher, coined and studied this concept of ethical space in the context of mindfulness gatherings (2013). The focus in these gatherings was on co-creating mindfulness, which, as McCown said, is often associated with mindfulness "inside" the individual. However, he acknowledged an extension of the concept of mind in mindfulness:

> *"Co-creation suggests that the processes, states and traits associated in other discourses with mindfulness "inside" the individual also may be seen as developed and expressed within the relationships of the group. They are therefore conceived of as located in a space accessible to all." (McCown 2013, 82).*

This seems to make McCown's concept of (ethical) space an interesting concept in relation to the case conversations. It raises the question whether or not processes traditionally located "inside" the individual participant can be "conceived of as located in a space accessible to all" in that context, as well. It seems related to what Sampson, in the context of a dialogical view on humans and inter-action, stated: "*The most important thing about people is not what is contained within them, but what transpires between them*." (Sampson 1993, cited in McNamee&Hosking 2012, 42; emphasis by authors). In Chapter 10 I will return to "ethical space" (McCown 2013) in relation to case conversations.

To return to Wittgenstein's examples of absolute, ethical value, as we have seen the text of the *Lecture on Ethics* refers to a particular "state of mind": "I mean the state of mind in which one is inclined to say 'I am safe, nothing can injure me whatever happens' " (1965, 8). Would it be possible to (re-)construct this "state of mind" as a "state"—or space—beyond (self-other) relationships? Put differently, would it be possible to re-construct this "state of mind" as some space of very soft to even no self-other differentiation, reflecting a kind of non-dualistic ethics?

For this to be possible at all, one cannot construct "mind" as belonging to a separate individual. Rather, according to a relational ontology, and as expressed by anthropologist Gregory Bateson (1979): "Mind is social" (McNamee & Hosking 2012, 77). In his *Steps to an Ecology of Mind* (1972), Bateson argued "that a proper understanding of mind would see it as extended or 'immanent', not only in the human body but throughout the entire living world." (Hosking 2011, 62). In this view, mind would be something that we all partake of (Bohm 2004, 98-9). Conveying his view on dialogue, David Bohm's ideas on "thought" and on "participation" (Bohm 2004, 98-9) seem to make a similar point (Bohm 2004; also Bohm, Factor, Garrett, 1991)[259]. In cognitive science as well, "mind is increasingly researched as extended in the world—including the body." (Hosking 2011, 50).

Wittgenstein's reference to a particular "state of mind" connected to absolute ethical value (*Lecture on Ethics* 1965, 8) as being a state of awe and wonder and of feeling perfectly safe reminded me of a familiar notion in a particular stream of eastern wisdom traditions called Advaita Vedanta. It is an Indian philosophical movement with roots in the Vedas. As one of many Hindu traditions it talks of the ultimate goal for humans of

259. See also "participative knowing"/"participative consciousness", Reason and Torbert (2001) in McNamee & Hosking 2012, 69.

the fourth state, called "turiya": a superconscious state of soul in which it becomes one with Brahman, the highest awareness (Dikshit 1973, 529). The fourth state is said to be the natural state beyond the three states of waking, dreaming, and deep sleep.

In the context of these considerations one could see "state of mind" as a kind of *space of soft self-other differentiation*. Here we appear to be talking about the recognition of a dimension beyond conceptual language that some called "sacred" (Gergen 2009; Crowther & Hosking 2009; McCown 2013, 150). For example, Kenneth Gergen's book *Relational Being* ends with a chapter called *Approaching the Sacred* which deals with the "sacred potential of relational being" (2009, 388). In the context of socio-legal practices this term might come across as rather puzzling and detached. However, Gergen referred to the sacred as inherent to daily life: "The sacred is not distinct and distant, but immanent in all human affairs." (Gergen 2009, 393). Again, this could align with what McCown seemed to point to when he asserted that relational processes are "located in a space accessible to all" (McCown 2013, 82).

To summarise, in order to better understand ethical value—calling it absolute value—Wittgenstein's *Lecture on Ethics* seemed to push beyond conceptual language. Moreover, in this text Wittgenstein seemed to be looking for a different way of knowing, by centring a state or space of soft to even no self-other differentiation that seemingly decentres an ethical subject. The latter subject is directly related to the topic of the next section.

9.2 A "virtual" or "empty" self

This section will focus on illuminating soft self-other differentiation by relating it to the concept of the "empty self" as used by Varela in his *Ethical Know-How*, and others.

To remind the reader, the interrelated themes of this chapter, to be explored in relation to soft self-other differentiation and ethics, are (a) non-conceptuality, which was primarily discussed in the previous section, (b) the self not being central, which is the main topic of this section, and (c) different ways of knowing, which will be centred in the next section.

The exploration of the last section—connecting Wittgenstein's ethical value as absolute value (1965) to soft self-other differentiation—may have added to the picture of soft self-other differentiation as an ethics in practice. However, it did not seem to offer more concrete suggestions applicable to case conversations. In search of a more practical approach of the know-how, so to speak, of soft self-other differentiation, I found that some writers who use the language of relational constructionism have drawn on certain Buddhist literatures and experiences. Amongst these are social scientists Dian Marie Hosking and Kenneth Gergen. When it comes to exploring the meaning of

soft self-other differentiation, spiritual traditions seem to offer relevant perspectives. Practices like meditation of various sorts allow one to have an experience of a different kind of knowing, not attached to any sense of I, and not confined by language.

When cognitive scientist and biologist Francisco J. Varela, who was also a Buddhist, was invited to talk about ethics, he appeared able to combine his expertise from these various fields, or forms of life (Wittgenstein 2009), with his concept of "ethical know-how" (1999). That is why I now propose to bring in Varela's lectures on ethics contained in the book *Ethical Know-How* (1999), which seem a real contribution to conversations about ethics in relation to relational constructionism. By bringing the various strands of his argument together he arrived at the concept of a "virtual" or "empty" self (1999), which, as we will see, can be linked to soft self-other differentiation.

At the start of his lectures Varela explained: "Ethics is closer to wisdom than to reason, closer to understanding what is good than to correctly adjudicating particular situations." (1999, 3). He constructed his central concept of "ethical know-how" on the basis of the link between ethics and wisdom, drawing upon cognitive science discourses, philosophical literatures of phenomenology and pragmatism, and three wisdom traditions of the East: Confucianism, Taoism, and Buddhism (1999, 4).

His central proposition said: "Ethical know-how is the progressive, firsthand acquaintance with the virtuality of self." (1999, 63). Although his language seems to lean more to a traditional cognitivist lineage—Varela did not use the language of self-other differentiation—I found that the exploration of this proposition through his line of argument deepened my appreciation of a view on ethics that seemed closely related to soft self-other differentiation. That is why in the following I will first explore in more detail his central concept of "the virtuality of self" (see quote above), connecting it with other literatures / "narratives" (Kohler Riessman 2008). The next section will return to his central proposition and will focus on "ethical know-how" (see quote above).

Concerning the role of the self, Varela (1999) stated that in the discourse of cognitive sciences, and as far as cognition processes of human beings are concerned, it is asserted that we cannot find a solid central self. Incidentally, this is in line with many areas of social science that do not assume a unified and stable self either[260]. Varela concluded that in the language of cognitive sciences a unitary self or center is not even needed for cognition. He acknowledged that this may come across as quite a counterintuitive conclusion. That is the reason why Varela spoke of "the cognitivist challenge" (1999, 41). We typically suppose we are (or have) a coherent self that is the vantage point from which to act and think.

260. See, for example, Hermans, H.J.M., Kempen, H.J.G., van Loon, R.J.P. (1992). *The Dialogical Self. Beyond Individualism and Rationalism*. American Psychologist, Vol. 47, no. 1, 23-33.

Regarding the felt reality of a central self, the theoretical physicist David Bohm suggested something similar. He seemed to refer to the common notion that "there must be some essential innermost 'me' that sort of looks at everything." (Bohm 2004, 82). Bohm, however, suggested that "thought is a system belonging to the whole culture and society, evolving over history, and it creates the image of an individual who is supposed to be the source of thought." (Bohm 2004, 82). In other words: "Thought has come to attribute itself to an image of an observer, a thinker" (Bohm 2004, 81).

Where Bohm spoke of "an image of an observer, a thinker" (see quote above), Varela seemed to arrive at something very similar. To return to his line of thought, Varela elaborated on the lack of (the need for) a solid central self by using various metaphors and biological examples. In this way he elaborated on his 'alternative' to a solid central self, which he called "the virtuality of self" (1999, 63). He first explained this notion in the language of cognitive science: Human cognition processes do not need central supervision. They are a collection of competing behaviors on a micro-level: "There are a myriad of possibilities available until, out of the constraints of the situation and the recurrence of history, a single one is selected." (1999,52). In order to explain more clearly what he meant by "the virtuality of self" (1999) he used an example from a particular biological experiment with a "social insect colony":

> *"What is particularly striking about the insect colony is that we readily admit that its separate components are individuals and that it has no center or localized "self". Yet the whole does behave as a unit and as if there were a coordinating agent present at its center. This corresponds exactly to what I mean by a* selfless *(or virtual) self: a coherent global pattern that emerges from the activity of simple local components, which seems to be centrally located, but is nowhere to be found, and yet is essential as a level of interaction for behavior of the whole." (1999, 53; emphasis by Varela).*

This quote seems helpful in order to appreciate what Varela meant by "virtuality of self". The construction of a "*selfless* (or virtual) self" seems to point to cognitive patterns that seem "to be centrally located", but are "nowhere to be found".

In addition, Varela discussed "the constant rising and subsiding of neuronal ensembles underlying behavior" (1999, 52) as seen from a cognitive science point of view. He concluded that from the viewpoint of biology and cognitive science the self is "a non-substantial self that acts as if it were present, like a virtual interface" (1999, 61). In other words, it seems that the virtuality of self is a kind of self that is effectual, but present only in appearance.

Varela then added the significant word "empty"[261] connecting it to the "virtual self" in his conclusion of the perspective of biology and cognitive science: "Modern Western science teaches us that the self is virtual and empty" (1999, 63).

While this perhaps counterintuitive conclusion may sound slightly otherworldly, yet, interestingly, the construction of 'empty self' seems to relate to the language of 'emptiness' which I found in relational constructionist and related literatures. Examples from three contexts follow.

First, Hosking asserted that, for her, relational constructionism focusses on 'the how'—the process—of constructions, rather than on the what or content. She suggested that this approach illustrates "a post-modern (and indeed Buddhist) recognition of, and turning towards, emptiness" (Hosking 2011, 57). Thus, she sometimes found herself referring to relational constructionism as "empty theory". Although she asserted that she did not want these terms to be pushed too far, she argued that "talk of emptiness does give a flavour of what is meant". One of the ways in which relational constructionism differs from other positions in social science is this "relative emptiness" (Hosking 2011, 57).

Second, two examples can be taken from Gergen's work. In the context of the ethical call for care of the self and care for the other and ways to balance these, Gergen pointed to "relational responsibility", arguing that "One might draw sustenance here from the concept of *kenosis*, in this case the emptying of self into the process out of which the very possibility of the self is created."[262] (Gergen 2011, 218). And in the context of a concern for practices that may contribute to individual, societal and global well-being, Gergen and co-author Hosking emphasized the importance of finding ways to view self and other "as 'empty' of independent existence" (Gergen & Hosking 2006).

A third example of the language of emptiness in relation to the self can be found in the book *On Dialogue,* in which David Bohm said: "There may be a limited kind of attention, such as concentration, as well as an unlimited kind—the fundamental kind." (Bohm 2004, 107). Bohm proposed to consider the necessity of reaching or contacting what he calls "the unlimited" kind of attention, which he stated requires a silence, a lack of occupation, or leisure. The word leisure, Bohm then explained, "has a root meaning "emptiness"—an empty space of some sort—an empty space of time or place, where there is nothing occupying you." (Bohm 2004, 108).

These examples of emptiness construction—going beyond the usual limits of self and other as separate, bounded entities—helped me to get a broad, and at the same time subtle feeling of what Varela might have intended when he said that "the self is virtual and empty" (1999, 63). I discussed Varela's argument that a "virtual" self seems

261. There seems to be a subtle difference between *empty* and *vacant*.
262. Kenosis is a concept of Christian theology.

to be a kind of self that is effectual, but present only in appearance. I will now connect a "virtual and empty" self to the language of relational constructionism that shifts focus from bounded and independent 'entities', self and other, to relational processes.

Reminding the reader, when relational processes go on in soft self-other differentiation, they would include orienting towards openness, to listening and being present, and to suspending judgement. In this sense it is possible to say that these 'entities' are empty of meaningful content, as soft self-other differentiation opens up to "what transpires between them" (Sampson1993, in McNamee&Hosking 2012, 42). It seems to me that this kind of attention—"unlimited" (Bohm 2004), broad but alert, non-judgemental and open—allows for a shift in the direction of understanding self (and other) as a kind of vessel, so to speak, 'carrying' relational processes.

A fourth example can be added to the three examples of construction of emptiness of self given above. It originates in a Hindu wisdom tradition and is called Nisarga Yoga[263], after the teachings of Sri Nisargadatta Maharaj (Maharaj), a 20th century Indian wisdom teacher. This tradition refers to an 'empty self' by teaching: "The 'I' and the 'mine' are false ideas" (Dikshit 1973, 369). It is every human being's goal and destiny to be liberated, or enlightened, and this is called the well-being of self-realisation, closely connected to wisdom. Self-realisation is said to mean that one has realised one's true nature as Awareness, or Consciousness. The recognition of not being a separate person is a core tenet of this approach. Therefore, Maharaj advised to dwell on the sense of "I am" in order to arrive at the conclusion that it is a false idea. In his words:

> *"When you recognize the 'I' as it is, a bundle of desires and fears, and the sense of 'mine', as embracing all things and people needed for the purpose of avoiding pain and securing pleasure, you will see that the 'I' and the 'mine' are false ideas, having no foundation in reality. Created by the mind, they rule their creator as long as it takes them to be true; when questioned, they dissolve." (Dikshit 1973, 369).*

What remains when one sees that "the 'I' and the 'mine' are false ideas" cannot be conveyed by words but in this tradition is said to be waiting for anybody to experience for themselves. Similarly, according to Varela, Buddhist terminology says: "The self is *empty of self-nature,* void of any graspable substantiality", a truth which Varela asserted "can be verified by direct observation" (Varela 1999, 36; emphasis by Varela)[264].

Maurice Frydman, translator in English of Maharaj's conversations, elaborated on this notion of dwelling on "I am": "It is through grasping the full import of 'I am', and going

263. Nisarga: natural state, innate disposition (Dikshit 1973, 513); Nisarga Yoga is said to belong to an Advaita Vedanta subtradition, although opinions seem to differ concerning the question whether or not Sri Nisargadatta Maharaj belonged to or represented any of the Advaita Vedanta traditions.
264. It seems possible that Varela's "direct observation" pointed to meditation practices.

beyond its source, that one can realize the supreme state, which is also the primordial and the ultimate." (Dikshit 1973, 514). Interestingly, this Hindu Yoga tradition taught that at the so-called level of Brahman (the so-called supreme state), the self is Awareness. At that level there is no difference between self and other. One simply knows: The self in me is the self in other. Moreover, the self in me is the self in all. At that level, there is no longer any differentiation between self and other.

Thus, in the language of self-other differentiation the Nisarga Yoga process of self-realisation may be constructed as the process to arrive at no self-other differentiation at all. This construction seems to link no self-other differentiation with the wisdom and well-being that characterize the self-realisation or enlightenment Maharaj spoke of, because the main obstacle is said to be the false concept of a separate, individual self (Dikshit 1973). Within the framework and language of self-other differentiation a separate individual person would be represented by a construction of fairly hard self-other differentiation. Clearly, Nisarga Yoga proposes another way, as Maharaj explained:

> *"Since time immemorial you loved your-self, but never wisely. Use your body and mind wisely in the service of the self, that is all. Be true to your own self, love your self absolutely. Do not pretend that you love others as yourself. Unless you have realized them as one with yourself, you cannot love them. […] When you know beyond all doubting that the same life flows through all that is and you are that life, you will love all naturally and spontaneously. When you realize the depth and fullness of your love of yourself, you know that every living being and the entire universe are included in your affection. But when you look at anything as separate from you, you cannot love it for you are afraid of it. Alienation causes fear and fear deepens alienation. It is a vicious circle. Only self-realization can break it. Go for it resolutely." (Dikshit 1973, 204).*

The path to self-realisation, which is the path of wisdom in Advaita Vedanta traditions, seems to coincide with the path of practising soft (or even no) self-other differentiation as an ethics in practice.

Returning to Varela's ethical know-how as stated in his central proposition: "Ethical know-how is the progressive, firsthand acquaintance with the virtuality of self" (1999, 63), the next section will deepen the concept of "empty" self, while also exploring different ways of knowing, including ethical know-how.

9.3 "Ethical know-how": a process, a learning path to "intelligent awareness" and "emptiness"

Up till now this chapter has explored non-conceptual language—using Wittgenstein's *Lecture on Ethics* (1965)—and, in the last section, various views on the so-called emptiness of self. This section will continue to explore this notion, while also attempting to illuminate the relational constructionist shift from knowledge to ethics, from 'knowledge that' to practice, and from 'knowledge that' to know-how. In short, it will develop different ways of knowing opened up by soft self-other differentiation that seem to include Varela's ethical know-how (1999).

To remind the reader, the relational constructionist focus on attentiveness to relational processes would lean towards the how rather than the what of relationships (Hosking 2011). In other words, one significant relational constructionist orientation appeared to be a reflexive attention to relational processes, concerned with the here-and-now unfolding of relational processes rather than with certain outcomes such as decisions. This seems to have implications for how knowledge may be constructed. We have seen that knowledge, from a relational constructionist perspective, can be understood differently (Gergen 2009; Hosking 2011; McNamee & Hosking 2012). For example, and as others have said, all ways of relating can be thought of as part of the "knowledge-power nexus" (McNamee & Hosking 2012, 74). We have discussed "aboutness-knowledge" (Hosking 2011, 54) involving 'power over' other (McNamee & Hosking 2012, 62) in hard self-other differentiation. Soft self-other differentiation appears to open up different ways of power construction and different ways of knowing. In addition to an emphasis on 'know-what'/'knowledge that' in harder self-other differentiation, relational constructionism allows attention to be directed towards 'know-how' in softer self-other differentiation. The following discussion will explore the relationship between know-how and soft self-other differentiation as a relational constructionist ethics, drawing on Varela's text *Ethical Know-How* (1999).

Varela's central proposition—"Ethical know-how is the progressive, firsthand acquaintance with the virtuality of self" (1999, 63)—seemed to emphasize ethical know-how as a process of becoming more and more acquainted with spontaneous, skillful action. He grouped spontaneous coping and skilled behavior under know-how. He contrasted that with rational judgement and deliberate, intentional analysis, creating the label "know-what" (1999, 6; 23). Varela argued that, although philosophers and scientists have generally focussed on rational judgment and deliberate, intentional analysis (know-what), a focus on spontaneous coping and skilled behaviour (know-how) would be far more interesting from a cognitive point of view. Varela appeared to demonstrate that skilled behaviour occurs far more often in daily life compared to

intentional analysis. What is more, he called it the more advanced way of coping with situations. The immediate spontaneous responding to the needs of a given situation is in fact the way of an expert (1999, 18).

In addition, Varela constructed ethical know-how as ethical behaviour of the immediate coping kind in daily life experiences, which would include responding to the needs of others (1999, 4-5). He illustrated this kind of spontaneous ethical behaviour with an example of ethical know-how in an ordinary day-to-day situation. During a lively group conversation in an office a topic comes up that embarrasses one of the participants. One of the others immediately perceives this embarrassment and by a humorous remark steers the group's attention away (1999, 5).

Varela used this anecdote to show that in this ethical reaction hardly any analyzing or deliberating seemed to be involved. This situation cannot at all be characterized as a situation "in which one experiences a central I performing deliberate, willed action." (1999, 5). Rather, it is a significant example of what Varela constructed as ethical know-how: the spontaneous responding to the need of the other in a way that could be called ethical[265].

As I was pondering the case conversations in terms of know-how and know-what, it seemed to me that know-what played a significant part. The duty placed on the client managers to arrive at a resolution of a given case clearly pointed to know-what. Their accountability seemed to lean on deliberate, intentional analysis and rational judgement. The case meetings were set up as a kind of communal learning/developing journey with the explicit aim of "participants reflecting on their own acting" (Internal document: Set-up Case Meetings; Appendix 3). The focus was on an exchange of case deliberation and argumentation, which in Varela's text would be called know-what. On the other hand, spontaneous skillful action, Varela's know-how, seemed to play a major part in the case conversations as well. When it comes to working towards ethical forms/ways of 'doing' case conversations, as is our aim, it seems possible to see both concepts as interrelated. To illustrate this I found Varela's citing of Confucian Mencius and his view on developing ethical expertise quite illuminating.

According to Varela, the teachings of Mencius, or Meng-tzu, a Confucian authority from around the fourth century B.C. (1999, 26-32), appear to center three interrelated notions: "extension", "attention", and "intelligent awareness" (Varela 1999, 27), which together make up the learning path to wisdom.

First, "extension" is used in a learning path that starts from a simple situation in which it is clear how to act, and then extends this understanding to situations that are increasingly complex. Second, "attention" is the basic ability to attend to situations and

265. In its spontaneous component this response seems reminiscent of Michael Polanyi's idea of "tacit knowledge" (Burbules & Smeyers 2002, 250). Varela's example seems to make the quality of ethics more explicit.

perceive clearly all relevant aspects. When attention is sufficiently trained, it ensures natural appropriate extension. Thus, the ability of attention may sustain the learning path. "Intelligent awareness", finally, is the ability and willingness to "attend to what needs to be done"(1999, 28). In order to "extend feelings" from a familiar situation to a new one, one must both be able "to see that one situation resembles another, and to have these feelings 'break through' into the new situation." (Varela 1999, 28). To cultivate intelligent awareness is apparently the crowning learning dimension.

Mencius's teaching sheds more light on the intermingling of know-how and know-what in "truly ethical behavior" (Varela 1999, 31) in the following way. According to Varela Mencius taught that human action might arise in four different ways. It might arise (a) from a desire for gain; (b) from habitual response patterns; (c) from following rules; and (d) from extension (1999, 30). These four are seen in ascending order of excellence. Acting out of habitual response patterns is viewed as failing to perceive situations accurately. People who act out of adherence to rules are seen as beginners. For Mencius, only the "truly virtuous" person is said to act from extension, by attending carefully to a given situation in highly trained intelligent awareness (1999, 30). And although truly ethical people act spontaneously in a given moment, afterwards they may reconstruct the intelligent awareness that sparked their actions. This reflection may then function as another "stepping-stone for continued learning" (Varela 1999, 32). This sort of deliberate analysis can be a way to improve intelligent awareness.

It seems to me that an application to the case conversations of client managers is feasible. In Mencius' teachings acting from extension is more highly valued than acting based on the adherence to rules, and this in turn is more highly appreciated than acting from habitual response patterns or from a desire for gain. Part 2 showed that in the case meetings a widespread question appeared to be to either use a form of tailor-making or abide by regular rules. I will shortly discuss these two modes in the light of Mencius' stages.

First, regarding tailor-making, client managers seemed ambivalent in their assessment of discretionary space for tailor-making. In many cases it was used to alleviate the dire circumstances of clients. However, they also seemed inclined to assess discretionary space for tailor-making as, for example, a difficult choice; an extra risk; something to better be denied or diminished by more regulation[266]. Thus, they seemed to tend to 'defend' themselves against these various forms of besiegement they saw themselves as facing. Would this qualify as acting out of a desire for gain—the first stage?

Strictly speaking, acting from a desire to 'defend' oneself is not the same as acting from a desire for gain. It would, in fact, precede that mode. I suppose a management

266. See (Conclusion of) Part 2.

that would value possibilities of an ethics in practice, would—and should, according to Mencius—be alert to (perhaps defensive) response patterns on the part of their professionals. In addition, an alertness to any form of habitual response patterns may seem wise—as it (only) refers to Mencius' second stage of ethical development. Taking these patterns seriously could perhaps be one of the benefits of professionals meetings such as case meetings. Explicitly establishing shared values within the structure of communal processes might raise a general awareness of habitual response patterns, and stimulate an adequate cooperative response. I feel that one very practical way to establish the sharing of values in a community—such as a department of public welfare—could be the organization of regular case meetings.

Second, abiding by regular rules seems to fit Mencius's third mode: acting from following rules. It is called the stage of beginners. It seems possible to see this as aligned with an ethics of law, of which Mencius was not the most appreciative, apparently. Notably, there seems to be a connection between the fourth mode, acting from extension, and following rules seen in the way I spoke of earlier. To remind the reader, in Part 1[267] I introduced French philosopher Jacques Derrida speaking of the necessity of an act to *re-establish* the law when applying the law to a specific situation, calling it "a re-instituting act of interpretation" (Derrida 1992, 22). After, in Part 2[268], returning to Derrida's view on law application in a perhaps ethical, or just, way, in Part 3 I drew attention to the relational processes that make and re-make local-cultural, local-historical realities (Hosking 2008, 676; see also McNamee & Hosking 2012, 40). This is the relational constructionist perspective, which implies that each time a rule is executed, it is re-constructed. Moreover, how this is done appeared an ethical interest. This viewpoint seems to emphasize Derrida's point, using different language.

So, when I construct following rules to include an act of re-construction, then this seems to need attention to the particulars of a situation, as well as to the particulars of a rule of law (including jurisprudence and policies that may focus it). The particulars of the rule—a fairly general, simple, 'situation'—must be extended to the specific situation of application. I conclude that in this respect following rules needs extension. Thus, in my view, Mencius' third and last stage are intertwined.

A third point linked to Mencius' learning path seems to be noteworthy. Extension—starting from a simple situation in which it is clear how to act and then extending it to situations that are more and more complex—seems to be the actual way of learning communally. It seems to be a way to learn to work with individualisation in difficult cases such as client managers regularly come across.

267. See 2.2
268. See 5.4

Thus I conclude that case meetings—such as the ones I have been attending in Stededam—might function as development platforms for client managers to improve their ability of intelligent awareness. By attending carefully to particular cases they may re- and co-construct communal values, for example by way of using extension.

According to Varela, next to Confucianism by the voice of Mencius, the two Eastern wisdom traditions Taoism and Buddhism, each in their own way, seem to view ethical know-how as an ongoing apprenticeship as well. These traditions offer a particular concept of self. All three propagate ethical expertise as a learning path of practising the "empty" self in day-to-day experiences. As Varela put it: "Taoism, Confucianism and Buddhism teach us that ethical expertise is progressive in nature and grounded in the ongoing realization of this empty self in ordinary life and action." (1999, 63).

Varela's account of Taoism and Buddhism and their learning paths towards ethical know-how seemed to relate to the language of soft self-other differentiation in a clarifying way. That is why the following paragraphs will go into Varela's view on the teachings of these traditions (1999), linking it to soft self-other differentiation.

In the teaching tradition of Taoism (Varela 1999, 32-33) the learning path appears to find its highest achievement in a paradox[269]. In his *Tao Te Ching* Lao-tzu expressed the paradox thus: "The wise man deals with things through wu-wei", wu-wei meaning: not-doing. "Less and less is done until wu-wei is achieved. When wu-wei is done, nothing is left undone." (1999, 33).

Dealing with things through not-doing (wu-wei) seems, to me, hardly possible. However, Varela suggested a way to resolve the seeming paradox by clarifying wu-wei as follows: "It points to the process of acquiring a disposition where immediacy precedes deliberation, where nondual action precedes the radical distinction between subject and object." (1999, 33).

In this quotation the term immediacy seems reminiscent of Varela's ethical know-how as "spontaneous responding" (Varela 1999, 18). Preceding "the radical distinction between subject and object" seems to relate to the language of soft self-other differentiation, when, for example, the importance of embodied here and now is discussed (Hosking 2008; Shotter 2010). By choosing the verb "precedes" Varela made clear that an immediate response to a situation, precisely because of its immediacy, does not leave room for the construction of a separate actor separated from his action. In other words, the action as an immediate response to a situation appears in its first spontaneous outcome to be unified and nondualistic, while the construction of an actor ("subject") and his 'acted upon' "object" as separate units may follow (as it usually does). Varela then resolved the Taoist paradox as follows: "The paradox of non-action in action vanishes when the actor becomes the action, that is to say, when the action

269. In essence, this paradox seems to be found in Buddhist traditions as well (Varela 1999, 33).

becomes nondual." (1999, 34). "When the actor becomes the action" seems to relate to the orientation of attending to relational processes in soft self-other differentiation. A "nondual" action seems to point to relational processes that are soft(er) self-other differentiated. Thus, this view on "the paradox of non-action in action" (see quote above) seems comparable to relational processes of soft self-other differentiation.

Lao-tzu praised "wu-wei" as the highest form of action. This is all the more interesting since "wu-wei", explained by Varela as "nondual action" (1999, 33), seems comparable to what was raised in the context of Wittgenstein's *Lecture on Ethics* as well. In one of the previous sections I suggested a link between Wittgenstein's construction of absolute ethical value and the practice of softer (or even no) self-other differentiation. Trying to talk about ethics Wittgenstein reported to have come to the boundaries of conceptual language (1965, 12). In this section softer self-other differentiation seems connected to the Taoist highest achievement of ethical expertise, "wu-wei". The texts of both Wittgenstein and Lao Tzu can thus be connected to soft self-other differentiation; one by going beyond conceptual language, the other by going beyond the separation of subject and object, which may be called going beyond hard self-other differentiation.

As part of the teaching traditions of Buddhism Varela presented the Buddhist doctrine that teaches that the self is "empty of self-nature, void of any graspable substantiality" (1999, 36). In all Buddhist traditions, "the practice of recognizing the emptiness of the self is the very foundation of training, including ethical training." (1999, 65/6).

Again, the phrase "empty of self-nature" may initially come across as rather negative or distanced where relationships and commitments are concerned. However, Varela's explanation counters this initial impression. Varela explained that in Buddhist thought the highest state of knowing/realizing the emptiness or "groundlessness" (1999, 67) of self inevitably results in the arising of warmth and unconditional compassion ("karuna"). He quoted Nagarjuna, a Mahayana Buddhist authority as saying "Emptiness (sunyata) is full of compassion (karuna)" (1999, 67). In addition, when discussing emptiness, Varela stressed "the enormous openness contained in this sunya (emptiness) of self" (Varela 19991, 36).

How can we realize this kind of emptiness in practices of daily life? According to Varela we can do so by forgetting one's self in action (1999, 34). Here we are reminded of the Taoist wu-wei: "The paradox of non-action in action vanishes when the actor becomes the action." (1999,34). To give a down-to-earth illustration of this phenomenon Varela called to mind the Western expert: the athlete, artist or craftsman who is completely dedicated and committed to his task, and who knows that "self-consciousness interferes

with optimal performance" (1999, 35). For our context this would raise the question: Would it be possible for client managers to show a similar dedication and commitment while discussing each other's difficult client cases?

Another concrete example of realizing the emptiness of self might be the practice of mindfulness, which focusses on "recognizing emptiness in every moment" (Varela 1999, 66). Mindfulness practice consists of "watchful self-interest" that gradually turns into an interest in others, and then on to the so-called stage where the action consists of such an immediate appropriate response to the situation, that the actor's sense of self coincides with the action (1999, 66). In Varela's words, these types of action are: "actions that embody and express the realization of the emptiness of self in a nondual manifestation of subject and object[270] " (1999, 69). The phrasing "a nondual manifestation of subject and object" seems reminiscent of soft self-other differentiation. When we would raise the question: How would socio-legal professionals orient towards "actions that embody and express the realization of the emptiness of self " (see quote above, Varela 1999, 69), it now seems possible to see that this can point to relating in soft self-other differentiation, which includes the five orientations mentioned before.

To conclude the Buddhist learning path according to Varela, it is said to aim at spontaneous compassion, which follows no rules or habitual patterns. Rather: "Its highest aspiration is to be responsive to the needs of the particular situation." (1999, 71).

In summary of this section, relational constructionism leans towards know-how rather than know-what. In the practice of case conversations these two approaches seem intermingled. In Varela's line of thought, ethical know-how centred the learning path to become acquainted with the virtuality or emptiness of self. In order to explain what he meant by this Varela first introduced Confucianism through the voice of Mencius. This Confucian authority drew attention to the training of intelligent awareness to meet every situation anew, resolving it by extension, not by merely following rules. Here I explored the notion that following rules can be seen differently, involving extension. Varela then introduced the Taoist learning path to wisdom/ethics by pointing to the paradox of wu-wei as the highest form of non-action in action. Finally he discussed Buddhism by highlighting various aspects of realizing the empty self, which is called the essence of Buddhist (ethical) training.

In conclusion, Varela's ethical know-how can be seen as the expertise of immediate ethical coping, grounded in the ongoing realization of the empty self. The development of ethical know-how is a journey that involves everyday actions in ordinary, everyday life. It is about a learning path that culminates in ethical expertise.

270. In relational constructionist discourse, the language of subject-object is one way of speaking about hard self-other differentiation. Varela, not familiar with relational constructionist language, does not use these terms in quite the same manner.

The student gradually moves from an interest in self to an interest in other, and then on to a realization of self as virtual or empty. The journey culminates in wisdom and compassion that arise spontaneously and directly, obviating the need for any rules or habits.

9.4 An interim wrap up

The last three sections explored different contexts and traditions, all of which, each in their own way, helped to contribute to a more nuanced and detailed conception of soft(er) self-other differentiation. I was pleased to discover that, though the wording might differ, similar ideas were presented and explored by Wittgenstein and Varela. For example, my exploration of Wittgenstein's *Lecture on Ethics* included the notion of a state of mind beyond language. In my exploration of Varela's *Ethical Know-How*, I found that, for example, forgetting self in action (1999,34) brought about the concept of the actor and the action coinciding in non-duality. In terms of self-other differentiation, both ideas seem to indicate the quality of no self-other differentiation. In moments when we are completely absorbed in a particular (relational) experience, there no longer appears to be an actual experience of self as separated from other, as the examples of Wittgenstein's experience of ethics also seem to indicate. Instead, in these moments, whatever happens is experienced as undivided[271]. In other words, both the state of mind Wittgenstein described (1965, 8) and Varela's notion of non-dual ethical know-how (1999) seem reminiscent of softer or even no self-other differentiation.

The previous explorations all added to a more sophisticated conception of soft self-other differentiation as a relationally engaged and sensitive ethics in practice, thus addressing my search for relational constructionist kinds of ethical forms or ways of 'doing' case conversations in a socio-legal context. The link between ethics and soft self-other differentiation seems to be supported by various resources in different contexts each emphasizing their own aspects. Thus, I believe to have indeed accomplished a broader and deeper appreciation of soft self-other differentiation as a summary term (par excellence) for a relational constructionist ethics. The considerations in this chapter up till now have brought me a deeper, more encompassing and more subtle notion of what it actually is that I would like to invite.

At this point I would like to revisit the question posed earlier (8.1): Would the strong link between ethics and soft self-other differentiation—now made stronger by the previous explorations—imply that we should strive for softer self-other differentiated

271. Martin Buber's "Versenkungslehre" (absorption doctrines) may apply here (Buber 1995, 79 et seq.) In my own experience, this can occur quite naturally when absorbed in meditation, music, or nature.

relations as a means to bring us closer to ethics in practice? The conclusion of my exploration of softer self-other differentiation from various directions seems to suggest it. However, feeling somewhat hesitant, I would like to offer a few considerations.

First, striving towards softer self-other differentiated relations as a means to achieve some objective seems easily to become a contradictio in terminis when it functions as predetermined goal setting. To remind the reader, this kind of ethics ultimately is based explicitly on one basic value: "Ethics concerns the relational processes at play when diverse forms of life are coordinated, requiring something beyond a dominance of one set of values and beliefs over the other." (McNamee & Hosking, 2012, 106). This seems to invite a critical reflection on any predetermined goal that might be in the process of developing into a dominant value. In other words, focus remains with the relational processes that (re-)construct local-social, local-historical real and good (Hosking 2008; McNamee & Hosking 2012).

A second consideration would be that relational ethics "requires adopting a way of **being** as opposed to a specified (codified) way of **doing**." (McNamee 2015, 423; emphasis in original). Or, as McCown put it slightly differently: "The ethical is found in *being* mode rather than *doing* mode." (2013, 173; emphasis in original). In other words, the shift to a relational understanding of ethics "is more of a stance one assumes than a technique or method one employs." (McNamee 2015, 423). Put differently, soft self-other differentiation—including its five orientations—seems to call for a more radical change than just putting a method to work.

As a final point, and perhaps most significant, trying to identify any given fragment of interaction as hard or soft self-other differentiated seems a perilous endeavor, because the multiplicity of acts and supplements—texts and con-texts—and of relationships makes such defining on a micro-level quite an arbitrary expedition. Indeed, how can one sensibly take out a small fragment in the complex interplay of relations and determine: soft (or: hard). Such an approach simply does not seem to do justice to the complexity of interactions and situations.

Nevertheless, one can imagine how a gathering of people dedicated to relational sensibility and responsiveness would start to lean towards softer self-other differentiation. They might try to develop softer self-other differentiated relations on the basis of their awareness and understanding of the importance and relevance of softer self-other differentiation with regard to ethical relations. This specific development seems to have been McCown's focus in his book *The Ethical Space of Mindfulness in Clinical Practice. An Exploratory Essay* (2013). As one of the few authors who have published on this matter, he did not use the language of soft self-other differentiation. However, it seems to me that his essay centred around developing softer self-other differentiated relations on the basis of an awareness and understanding of the importance of ethical

relations in a gathering of people. In the context of mindfulness practice he developed the concept of "ethical space". His way of inviting the participants, including himself, to co-construct an ethical space appears to be a concrete example of practising soft self-other differentiation. This is the reason why I decided to explore his example in more detail.

10

Dialogue in the Practice of Ethical Space

Looking for literatures that could deepen and enrich a view on how the practice of soft self-other differentiation might work out in case meetings in a socio-legal context, I came across McCown's essay *The Ethical Space of Mindfulness in Clinical Practice. An Exploratory Essay* (2013). This chapter will use McCown's practice example of ethical space, including its seven qualities, which he based on his experience of mindfulness gatherings (2013). It will provide a more concrete hold on how to invite Dialogue in case conversations in a socio-legal context and will lead to an array of questions[272] developed to suit the structure of case conversations. His concept of ethical space seems a real contribution to the search for ways of inviting soft self-other differentiation as an ethical form/way of 'doing' case conversations in a socio-legal context, which this chapter will illustrate.

To remind the reader, practising soft self-other differentiation was identified as a very special kind of Dialogue that would include the five interrelated orientations of (a) openness to other and otherness; (b) listening, being present; (c) suspending judgements; (d) reflexive attention to the relational processes; and (e) power to/with other rather than power over other. Exploring the qualities of McCown's ethical space will involve making connections with these interrelated orientations as well as with some of the related concepts of other literatures encountered earlier.

272. Drawing on Pluut's work on discursive struggles (2017, 146-7).

10.1 Qualities of ethical space

McCown (2013) proposed a clear, concrete and enriching conception of ethics in practice from a relational constructionist perspective. In fact, he employs a perspective that I would re-construct as a learning process of striving for soft(er) self-other differentiation, although he does not use this term, nor the term relational constructionism. His model is an elaborately developed example of what I would call inviting Dialogue into a shared practice of "collaborative learning" (Anderson 2014). His metaphor of ethical space reminded me of discretionary space. Its qualities seemed helpful to develop and transform case conversations into a communal learning process that could open up to the orientations of soft self-other differentiation.

Admittedly, McCown's context of a clinical practice of mindfulness is quite different from a socio-legal context such as public welfare. The purpose of promoting health and well-being in McCown's practice seems very different from the purpose of enhancing professional skills by way of case conversations. However, while the differences may be obvious, I feel that essential elements can be compared. Both include (a) the gathering of a group of people who (b) aim at learning from the proceedings of the meeting and from each other in an effort to (c) enhance the quality of their (professional) life. These similarities may allow for a tentative exploration of McCown's concept of ethical space. I will not specifically elaborate on a re-construction of McCown's use of the model in his context, but rather focus on its potential usefulness for case conversations in a socio-legal context.

McCown's model of ethical space has seven qualities grouped in three dimensions. This section will link them to the five orientations of soft self-other differentiation and to other relevant literatures. However, in order to have a nuanced discussion of ethical space we must heed McCown's finding that an ethical space is more than just a model:

> *"The ethical space is all the qualities of this model, a theory, and it is also, concretely, a room and the people in it. Of course, the ethical space is not "made up of" the seven qualities I've presented; they are simply attempts to bring into words the situation in the room. The seven qualities are a way of talking; the ethical space is a way of being together." (McCown (2013, 173)*

This quotation makes clear that McCown used his model as a way to talk about what was actually occurring: "to bring into words the situation in the room". In addition, he used the model to step out of it and into the here-and-now process, so to speak, of the gathering, emphasizing ethical space as "a way of being together".

McCown's model speaks of "the doing dimension" (142) and "the non-doing dimension" (155), each containing three qualities. The doing dimension of the

ethical space would comprise qualities that "shape the spoken and unspoken work of the gathering, moment-by-moment" (142). The non-doing dimension would be "characterized by absences rather than actions" (155).

First is the quality of "corporeality" (143-7), which points to a way of embodied engagement with the experience of the moment (143-7). McCown links this to what Shotter called "joint action" (McCown 2013,144-5; see also Shotter 2010). It seems to relate to an embodied appreciation of "the here and now" (Hosking 2008, 678), which is a way of "opening space for now-ness" (McNamee & Hosking 2012, 73). It seems to relate to the first two orientations of soft self-other differentiation as earlier identified: openness to other(ness), and an awareness of being present in the here-and-now. In addition, it may bring to memory Varela's suggestion as discussed in Chapter 9, that forgetting self in action may be a moment of typical nondual experience (Varela 1999, 34). Thus, this quality may relate to moments when we are completely absorbed in the here and now of a particular (relational) experience. There no longer appears to be an actual experience of self as separated from other, or, thinking in terms of corporeality I might now add, as separated from the body. In these moments, whatever happens is experienced as undivided.

In other words, I am re-constructing the quality of corporeality as comparable to absorbed attention in the here and now. In addition, it may be similar to the notion of a kind of state of mind beyond language (Wittgenstein 1965), as discussed in Chapter 9. Thus, the quality of corporeality seems reminiscent of a practice of softer or even no self-other differentiation, thickening its construction[273]. A question that may help to co-construct this quality in case conversations might be: *How can we be fully committed to engage in the relational processes of this case and this case conversation?*

The second quality in McCown's model of ethical space is called the quality of contingency. It points to the way in which "everything is in transition, all the time" (148). As we have seen in Chapter 1, the aspect of change in many respects appeared to be a well-known daily reality in current public welfare practice. This quality allows for a spontaneous unfolding of experiences as they occur in the gathering. Thus, it seems to direct appreciative awareness to the flow of relationships in continuous co- and re-construction (McNamee & Hosking 2012). In the context of case meetings this could mean a recurring reflexivity, reflecting the orientation of reflexivity in Dialogue. For example, it would imply taking time to reflect in between the steps of the structure

273. I am aware that corporeality in the context of clinical mindfulness might denote the awareness of bodily experiences more than could be imagined easily in case meetings in public welfare. Nevertheless, in a case meeting participants could easily be invited to be committed and fully attend to the particular challenge of a client case being discussed because, after all, the topic of discussion is usually a difficult situation that is relevant and of interest to all participants.

by asking one another: *How are we doing? Is this still the way we want to proceed? How can we ask questions that "help to enlarge possible worlds and possible ways of being in relationship"?* (Hosking 2008, 683; emphasis added)

The third quality is called "cosmopolitanism" (2013,152-5): "the acceptance of meaning as it emerges" (2013,171). This quality allows meaning to emerge from the dialogue without the need to evaluate it as good or bad. The first lines of a poem by the great poet Rumi, quoted by McCown in his essay, read:

> *"Out beyond ideas of wrongdoing and rightdoing, there is a field. I'll meet you there." (McCown 2013, 150).*

On the one hand, this seems to reflect the non-judgemental step in the structure of the case meetings. Suspending opinions and propositions would allow space for multiple views to unfold (in relative silence). On the other hand, this quality of "the acceptance of meaning as it emerges" (2013,171) seems to include appreciation of possibly transformative relationships, as they might develop among participants when they move from a passive acceptance to a more active embracing of the other and of otherness. This quality seems reminiscent to what Benhabib and Zanetti called a "moral conversation" in the sense that its goal is "not to reach a rationally motivated consensus but rather to demonstrate the willingness and readiness to seek understanding with the other in an open and reflexive manner" (Zanetti 2008, 65).This discourse seems a far cry from the common impulse to search for an acceptable solution right away. The art of staying with uncertainty and of having the patience to defer judgement seems to echo the "art of ambivalence" (Zanetti 2008, 71) I spoke of earlier, in the context of the Dialogue orientation of suspending judgement. A question that may help to co-construct this quality in case conversations might be: *How can we suspend judgement? How does this story invite multiple local realities?*

The second dimension in McCown's model, the non-doing dimension, comprises three qualities that refer to absences, in the sense that "participants *don't* put other in categories, *don't* take a place above others, and *don't* try to fix others" (155; emphasis in original). Some of these qualities might seem to challenge, for example, the common practice in public welfare to categorize incoming clients in order to select a suitable approach. However, discretionary space—identified earlier[274] as the professional freedom to decide within a given legal framework—allows for tailor-making by, for example, a communal exploration of new ways in a Dialogue. Incidentally, a relational

274. See 1.1

constructionist thought style sustains the concept of discretionary space, because it always allows space to re- and co-construct differently within a given local-cultural and local-historical form of life (McNamee & Hosking 2012).

The first non-doing quality, "*don't* put other in categories" (see quote above), is called "non-pathologizing" (McCown 2013, 157-161; 172). Drawing on Foucault, McCown pointed to "discourses of power/knowledge" (160), and argued that ethical space involves a sense that "no-one is being measured, compared, and found lacking" (172). The non-pathologizing quality includes "a quality of freedom—from imposed identity" (161). Rather than an approach of measuring other, emphasis shifts to acceptance and appreciation of what Kabat-Zinn, progenitor of mindfulness, called the "*intrinsic wholeness*" of participants (157; emphasis in original).

In the context of case discussions this non-pathologizing quality may perhaps reflect the phase in the structure in which the client managers are asked to refrain from voicing opinions. Holding judgement I identified as a major practice of Dialogue. However, I am aware that in the context of public welfare practice this suggestion may come across as slightly otherworldly. After all, in their usual practice client managers "are charged with the process of assessing those who come seeking for help", because "the traditional discourse of individualism tells us that once we know what is wrong with a person, (…) we can focus attention on remedial treatments" (McNamee & Hosking 2012, 87). Notably, drawing on McCown this may be called a pathologizing kind of 'power over' other which seems to make clear to the clients "that they are not in a position to judge for themselves" (McNamee & Hosking 2012, 87). In contrast, McCown called it "a fact that the participant is the only expert on her grief " (2013, 156).The non-pathologizing quality of ethical space suggests that relationships should be built on the appreciative recognition that the client is in fact the expert on their own context and situation. Reflecting the Dialogue orientation of power to/with other, questions that may help evoke this quality might be: *How can the story allow the client to be the expert of their situation? What power relations are we (re)producing or stimulating by this conversation?*

The second non-doing quality, "*don't* take a place above others" (see quote above), is called "non-hierarchical" (2013, 161-172). This quality may be expressed in case meetings by gathering in a circle, in order to avoid establishing any hierarchy within the group. This includes not only a formal hierarchy, but also, for example, a hierarchy of "the more extroverted and less extroverted participants" (2013, 161). The quality of non-hierarchical relations aligns with relational theory and soft self-other differentiation which, as we have seen, quite clearly offers "no basis for privileging any 'one form of life'

(Wittgenstein 2009) over others" (McNamee & Hosking 2012, 6). This quality touches the issue of power in relation to the task of client managers to execute the law, thus imposing legal norms.

To bring back to memory the earlier discussion, from a relational constructionist point of view power is seen as "an ongoing, relational construction, able both to open up and to close down possibilities" (Hosking 2008, 671). The relational constructionist perspective allows the co-construction of softer self-other differentiated relationships, inviting us to be attentive to the relational processes as they construct "possibilities for participants to go on in different but equal relation" (McNamee & Hosking 2012, 67).

In addition, an attentiveness to language can come into play when orienting towards a non-hierarchical quality of relations. For example, the language of knowing may easily tend to confine space. Rather than an approach and tone of "I know how to do this", the language could be one of shared exploration: "Let 's try this route for this client together and see what happens" (McCown 2013, 162).

The client manager who is accountable for the case under discussion will eventually decide what course to take. Yet, the initial conception of the case might change when the language of the conversation reflects a relational responsibility, an engagement in joint action (Shotter 2010). In order to reflect a non-hierarchical quality, allowing space for the unfoldment of "multiple local realities in different but equal relation" (McNamee & Hosking 2012, 73), the following questions may help to co-construct non-hierarchical relations in the context of a particular case discussion: *How do we use our 'legal authority' in this case? How can we propose options that allow opening up rather than closing down possibilities? How can we co-create relational responsibility in this case?*

Concerning the third, and last, non-doing quality of ethical space, "*don't* try to fix others" (see quote above), McCown speaks of "non-instrumentality" (163-172) as "a way of stating the basic orientation towards participants—no one needs to be fixed, because no one is broken" (2013, 163). As we have seen, client managers were specifically talking about client cases that were stuck and were brought into the conversation for this reason. McCown's third non-doing quality points to the possibility of being inspired to new ways of going on together by resisting "a technique or strategy for fixing" (172) the client. As Hosking affirmed: "Processes in which soft differentiation is (re)constructed (…) do not construct Other as potentially instrumental for self." (Hosking 2008, 678). By realizing that a non-instrumental approach offers an alternative for so-called Subject-Object constructions (McNamee & Hosking 2012, 25) in hard self-other differentiation, as discussed before, the emergence of ethical space becomes a possibility.

The quality of non-instrumentality seems a subtle distinction, particularly regarding the relationship of professional and client (as discussed in case meetings).

Essentially, this non-instrumental quality seems to emphasize "the possibility of "OKness" in the midst of "not-OKness" " (McCown 2013, 165). In relation to a particular client's situation discussed in a case meeting, this quality may "work to subvert a strong internal and external tendency to look for certain (sometimes quite fixed) kinds of improvement or resolution of difficulties" (165). Rather, it supports the awareness of the opportunity to be curious about the unfolding of the co-constructed experience of the moment (165), allowing creative new ways to go on together. This can be recognized as the basic orientation of Dialogue to be open to other(ness) in acceptance and appreciation. *How can we appreciate "OKness" in the midst of "not-OKness"* (165) *?*

Apart from the two dimensions and their three qualities, McCown presented a third dimension: the pervasive dimension of friendship. He stated that on the basis of the other two dimensions "the space may be perfumed, infused, with a quality of well-wishing" (172). This evokes two considerations. First, in the context of relating amongst client managers this may translate into warm collegiality. Second, in the context of the relationship between client manager and client the term friendship may seem a little out of place. The basic professional assignment, however, of supporting the client in their needs may well be linked to the term well-wishing. After all, the whole purpose of welfare law is said to be a supportive one[275]. Indeed, it seems that an awareness of well-wishing would generate a space of relational responsibility without which an ethical space seems hardly imaginable.

In summary, McCown's model of ethical space including its interrelated dimensions and qualities seems an enrichment when it comes to considering the possibility of inviting the five interrelated orientations of Dialogue into case conversations. In the so-called doing dimension it seems possible to distinguish (a) corporeality as an embodied appreciation of the here and now; (b) contingency as an awareness of recurring reflexivity; and (c) cosmopolitanism as an appreciation of the art of staying with uncertainty in possibly transformative relationships. The non-doing dimension of the model was presented by (d) the non-pathologizing quality which suggested that relationships should be built on the recognition that the client is the expert on their context and situation, emphasizing power to or with, rather than power over the client; (e) the non-hierarchical quality which gave space to the unfolding of multiple local realities in different but equal relation (McNamee & Hosking 2012, 73); and (f) the non-instrumental quality which emphasized the basic orientation that no

275. To illustrate the supportive nature of welfare law: "Every Dutch citizen in this country is assumed to be able to independently earn a living through labour. When this is not feasible and no other provision is available, it is the government's duty to help them find employment and to offer financial assistance for the period that independent livelihood through employment is not yet possible" (*Kamerstukken II* 2002/03, 28 870).

one needs to be fixed by apparent Subject-Object constructions. Finally, the pervasive dimension of friendship seen as a quality of well-wishing completed this conception of ethical space.

To conclude, McCown's practice example of co-creating ethical space has contributed to the underpinning of my supposition that client managers in public welfare, in their discussions of their cases, will in fact be able to co-create an ethical (sacred) space, ultimately transcending limiting dualities.

10.2 Final thoughts

Part 1 and 2 of this study evolved around discretionary space and (ethical) dilemmas in public welfare practice. My explorations developed into launching the question central to Part 3: *How might ethics as soft self-other differentiation be theorised and practiced in a socio-legal context?* This has been the mission of the chapters of Part 3. This last chapter summarizes my answers to the question how to invite Dialogue—practising soft self-other differentiation—into case meetings of a socio-legal practice like public welfare.

At the beginning of Part 3 I explained how I came to the conclusion that I needed a change in perspective. From a thought style that favours separate entities in an objective world 'out there', I turned to a completely different thought style, that emphasizes ongoing relational processes constructing their local-cultural, local-historical real and good. This shift to a relational constructionist meta-perspective offered new ways of inviting ethics into professional practice. Softer self-other differentiation appeared the key to inviting ethics. Practising soft self-other differentiation brought about a very special kind of Dialogue. This was identified as a relational practice that focusses on particular orientations: openness, here-and-now listening, (temporary) suspension of judgement and a reflexive attention to the relational processes, while looking for ways to construct power with/to other.

Incidentally, in the practice context of public welfare as I have come to know it, this is not a style that people in the field are used to. Reflexively attending to relational processes would open up a space between participants by transcending the dualities of self and other. It is a relational space that is thus co-constructed, which can be seen as an ethical space: "When self and other are theorised as co-constructed, care of the other is also care of the (moral) self." (Hosking 2008, 684).

Some elements in the structure of case meetings as used in Stededam seemed to support certain elements of Dialogue. These included a light structure, a phase of suspending judgement and allowing an exchange of opinions without pressing for

consensus. However, this study has reached the conclusion that in Dialogue it is the *how* of relating that needs much greater emphasis. A step into this direction would be a communal striving for soft(er) self-other differentiation in case conversations.

An exploration of McCown's "ethical space" (2013) helped to sustain this effort as it gave rise to particular questions. These reflexive questions may support the evaluation of case discussions. In line with the Dialogue orientation of reflexivity, evaluation is not restricted to the end phase of the conversation process. Rather, participants are invited to communally and continuously reflect on the local realities they are making (and not making) (Pluut 2017). In this way reflexivity may help to reach an awareness of ethical space in Dialogue.

The following table shows the reflexive questions developed above, which are based on McCown's qualities of ethical space and can be posed during the phase in the structure of case conversations indicated.

Phases in the structure of case conversations in Stededam:	**Questions …**	**…based on McCown's quality:**
Client manager sketching a client case	1. How can we be fully committed to engage in the relational processes, the here-and-now, of this case and this case conversation? 3. How does this story invite multiple local realities?	1. corporeality 3. cosmopolitanism
Questions in order to clarify the case	2. How can we ask questions that help to enlarge possible worlds and possible ways of being in relationship? (Hosking 2008, 683) 3-How can we suspend judgement? 3. How can we sustain the ambivalence in this situation ? 6. How can we appreciate "OKness" in the midst of "not-OKness" (McCown 2013, 165) ? 6. How can a commitment to be open about our various concerns stimulate an appreciation for otherness?	2. contingency 3. cosmopolitanism 6. non-instrumentality
Writing down approaches in silence	4. How can the story allow the client to be the expert of their situation? 4. What power relations are we (re)producing or stimulating by this approach/conversation? 5. How do we use our 'legal authority' in this case?	4. non-pathologizing 5. non-hierarchical
Offering options and how to account for it	2. How are we doing? Is this still the way we want to proceed? 3. How can we refrain from jumping to conclusions and be patient ? 5. How can we propose options that allow opening up rather than closing down possibilities?	2. contingency 3. cosmopolitanism 5. non-hierarchical
Concluding the conversation	5. How can we co-create relational responsibility in this case?	5. non-hierarchical

FIGURE 4: Reflexive Questions for Dialogue

A choice of some of these questions can be used in each case conversation. I believe they may open up a potential of creative new ways to go on together by co-creating an ethical space of Dialogue.

I also believe that specific training is essential[276]. It needs to be based on a commitment of the participants to enhance the quality of their work. During the training/workshop, the trainer guarding the Dialogue principles would have to look for opportunities (a) to invite coherence with Dialogue and its orientations into the relational processes as they unfold; (b) to co-create a space that allows multiple voices to emerge and co-exist while at the same time holding judgements and holding a space of not-knowing; and (c) to entertain an awareness to take up any 'power over' emergence and translate it into just another of the multiple expressions, laying it out in the open and inviting each other to look at how this would affect self and other—including other who is not present.

This study reaches the conclusion that the challenge in socio-legal practice would be to develop new ways to engage in co-constructing (local) real and good. One possible way would be to co-construct soft self-other differentiation in regular case meetings. This would imply communal reflection on the five interrelated orientations of soft self-other differentiation. A basic value underlying these orientations seems to be equal participation, the kind of participation Bohm talked about: "Participation is taking part, which means everybody is partaking of whatever is going on, and also maybe making a contribution." (Bohm 2004, 102).

The challenge of how to realise ethical space in Dialogue in a socio-legal context can be seen as an excitingly new collaborative learning path of "bringing together multiple voices, through dialogue, constructing power to go on *with and through our differences*, rather than despite them" (Crowther & Hosking 2009, 12).

276. During the process of writing this thesis several opportunities to practise my ideas emerged. First, in 2017, together with my colleague Klaas van der Horst, I developed and conducted two pilot workshops *Integriteit door Intervisie (Integrity through Intervision)* at the Public Welfare Department of Utrecht. After a positive evaluation ten workshops followed at this Department in 2018 that were positively evaluated as well. Second, my Bachelor education activities at the University of Applied Sciences Utrecht (HU) also provided space and opportunity to work with classes in ways that emphasize the orientations of Dialogue. Third, in 2018, the university's Executive Board instigated close cooperation with some of my colleagues to bring about a discussion platform of how to improve 'integrity' awareness of professionals at the university. This resulted in pilot workshops called *integriteitsgesprek* (*integrity conversation*)—or: *moreel beraad (moral deliberation)*—for three particular HU-teams, to be conducted in the winter of 2018/2019.

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Short summary

As a lecturer of ethics in a socio-legal context I am interested in the ethical development of professionals in these fields, in which both executing the law and care for the client are central. As a research focus I chose the practice of public welfare professionals (client managers). On the basis of selected literatures I constructed a basic dilemma between ethics of law and ethics of care. My initial research question read as follows: *What do client case discussions reveal about the dilemmas that public welfare professionals face, and does the distinction between law and care illuminate these dilemmas?* This is the subject of the first part of this thesis.

For the empirical part of the inquiry I selected a middle sized city in the middle of the country and studied its welfare practice from this juxtaposition. Public welfare law (in the *Participatiewet) provides for discretionary space for tailor-making of solutions. From the analysis of the client managers case meetings it soon became clear that the very discretionary space that allows tailor-making leads to a problematic situation for the client managers, creating additional risk for them in an already complex and tense context. This is laid out in the second part of this thesis.*

At the same time the analysis caused me to draw a conclusion of an entirely different order: It started me off to call into question my inquiry and main research question regarding the dilemmas between law and care. The reasons for this were (a) increasing doubt as to the practicality of the dualistic construction of law versus care; (b) the emerging insight that interacting in a relationally responsive way during a case conversation seemed to encourage the exploration of new solutions in a deadlocked situation; and (c) the growing realization that my way of inquiring into ethics in subject-object relationships seemed to have to do with maintaining inequality of power more than I liked. It seemed to me that I had the incontrovertible professional duty to search for a new vantage point to explore ethics in professional welfare practice that would do justice to these three notions. However, I hardly found a starting point in the empirical material, as the case discussions offered little explicit proof of an ethical perspective.

In the third part of this thesis I develop an alternative for "hard" subject-object relations by exploring "soft" self-other constructions and "relational symmetry" as an ethical principle in welfare practice. The metatheory of relational constructionism, viewed as a form of social constructionism, appeared to allow me to do justice to the three newly emerged notions and to consider them from a new perspective specifically geared towards relationships. My inquiry into relational constructionist literature reconstructed "soft self-other differentiation" as a central ethics concept. Therefore, the question central to the third part of the thesis is: *How might ethics as soft self-other differentiation be theorised and practiced in a socio-legal context?*

Ethics as soft self-other differentiation is characterized by five orientations that are interrelating in Dialogue. They are: (a) openness to other and otherness; (b) listening, being present; (c) suspending judgements; (d) reflexive attention to the relational processes; and (e) power to/with other, rather than power over other.

I further develop the concept of soft self-other differentiation by comparing it with Wittgenstein's *Lecture on Ethics (1929) and with Varela's concept of ethical know-how, in Ethical Know-How (1999).* Wittgenstein's concept of absolute ethical value supports the exploration of how ethics as soft self-other differentiation relates to a space beyond conceptual language. Varela's concept of ethical know-how adds to that the importance of ethical development, culminating in the paradox of "non-action" on the basis of the awareness of the self as an "empty, virtual self".

Lastly, I compare my findings as well as the orientations of Dialogue with McCown's concept of "ethical space". As a practical elaboration of my conclusions I formulate a set of questions that fit within the structure of case meetings. This way I am convinced that ethics as soft self-other differentiation can be introduced into the practice within a socio-legal context.

Samenvatting

Mijn interesse in een mogelijke ethische ontwikkeling van sociaaljuridische professionals komt voort uit mijn functie van docent ethiek in de sociaaljuridische dienstverlening. Hier speelt zowel uitvoering van de wet alsook zorg voor de klant. Als focus van onderzoek koos ik de praktijk van bijstandsambtenaren (klantmanagers). Op basis van gekozen literatuur construeerde ik een basisdilemma tussen rechtenethiek en zorgethiek. De onderzoeksvraag luidde: *Wat onthullen casusbesprekingen van klantmanagers over de dilemma's die zij tegenkomen, en is het onderscheid tussen recht en zorg daarbij behulpzaam?* Dit is het onderwerp van het eerste deel van deze dissertatie.

Voor het empirische deel van dit onderzoek onderzocht ik vanuit deze tegenstelling de bijstandspraktijk in een middelgrote Nederlandse stad in het midden van het land. De regels voor de bijstand in de Participatiewet voorzien in discretionaire ruimte voor maatwerk. Uit een analyse van casusbesprekingen van klantmanagers kwam onder meer naar voren dat juist discretionaire ruimte voor maatwerk een (te) lastige keus lijkt te zijn die in deze spanningsvolle en complexe context extra risico's voor de klantmanager met zich meebrengt. Dit wordt uiteengezet in het tweede deel van deze dissertatie.

Tegelijk leverde de analyse een conclusie van een heel andere aard op: het noopte mij mijn onderzoek en hoofdvraag naar dilemma's tussen recht en zorg ter discussie te stellen. Redenen hiervoor waren (a) de opkomende twijfel aan de praktische waarde van de dualistische constructie van recht versus zorg; (b) de opkomende notie dat *relationeel responsieve* interactie in een casusbespreking nieuwe oplossingen in een vastzittende situatie leek te bevorderen; en (c) de opkomende notie dat mijn manier van onderzoek naar ethiek in subject-object relaties meer te maken leek te hebben met het in stand houden van machtsongelijkheid dan mij lief was.

Het zoeken naar een nieuw uitgangspunt voor ethiek in de bijstandspraktijk die deze drie noties serieus nam leek mij een onontkoombare professionele plicht. Ik vond daarbij echter geen duidelijk aanknopingspunt in het empirisch materiaal, want de casusbesprekingen leverden weinig direct bewijs van een ethische invalshoek.

In het derde deel van deze dissertatie ontwikkel ik een alternatief voor 'harde' subject-object relaties door onderzoek naar 'zachte' zelf-ander constructies en 'relationele symmetrie' als een ethisch principe in de bijstandspraktijk. De metatheorie van het relationeel constructionisme, te zien als een vorm van sociaal constructionisme, bleek het mogelijk te maken de genoemde opgekomen twijfelpunten serieus te nemen en te beschouwen vanuit een nieuw perspectief, speciaal betrokken op relaties. Mijn literatuuronderzoek naar ethiek vanuit relationeel constructionisme reconstrueerde

'zacht zelf-ander onderscheid' als een centraal ethiekconcept. Daarom is de vraag die in dit derde deel centraal staat: *Hoe zou ethiek als 'zacht zelf-ander onderscheid' getheoretiseerd en in de praktijk gebracht kunnen worden in een sociaaljuridische context?*

Ethiek als 'zacht zelf-ander onderscheid' wordt gekenmerkt door een vijftal met elkaar in Dialoog samenhangende oriëntaties. Deze zijn: (a) open zijn naar de ander en het andere; (b) luisterend aanwezig zijn; (c) het opschorten van oordelen; (d) reflexieve aandacht voor de relationele processen; en (e) macht naar of met de ander, in plaats van macht over de ander.

Het concept 'zacht zelf-ander onderscheid' ontwikkel ik verder door een vergelijking met Wittgenstein's *Lecture on Ethics* (1929) en door een vergelijking met Varela's concept van ethische know-how (vaardigheid), in *Ethical Know-How* (1999). Wittgenstein's concept van absolute ethische waarde helpt te onderzoeken hoe ethiek als 'zacht zelf-ander onderscheid' zich verhoudt tot een ruimte buiten conceptuele taal. Varela's concept van ethische know-how voegt daar het belang van een ethische ontwikkeling aan toe, die culmineert in de paradox van 'niet-handelen' vanuit de realisatie van het zelf als een 'leeg, virtueel zelf'.

De gevonden uitkomsten en Dialoog oriëntaties vergelijk ik tot slot met McCown's concept van 'ethische ruimte'. Als een praktische uitwerking van mijn conclusies formuleer ik vragen die passen binnen een structuur van casusbesprekingen. Daarmee kan naar mijn overtuiging ethiek als 'zacht zelf-ander onderscheid' in de praktijk gebracht worden binnen een sociaaljuridische context.

Words of thanks

The development of this entire PhD process is a precious web of multiple relational processes, like the 'web of gems' that Indian philosophy refers to. Relational processes co-create meaning, and the relational process of reading these words (at this particular moment) is not an exception. So, I would like to thank you, reader, for co-creating meaning.

I feel fortunate and grateful to all the contributors who have made this process possible. Dian Marie Hosking, you and your marvellous work are at the heart of this entire co-created project. In addition, you taught me Dialogue in practice. Thank you so much for everything! Hugo Letiche, thank you for all your time, energy and inspirational insights. Lia van Doorn, thank you for your continuous support. Sheila McNamee, you are a great inspiration; thank you so much for your work and for the many relationally connected conversations. I thank you, as well as Gaby Jacobs, Annelies Knoppers, James Day and Alexander Maas, for your work on the assessment committee.

I thank Eric van de Luytgaarden, Thea van Rooyen and Huib de Jong for putting their trust in this project early on. In addition, I want to thank the tutors and PhD candidates of cohort 7 at the University of Humanistics DBA-course, as well as Sander Toby and Stijn Bollinger, for all our inspirational conversations. Vicky Aartsen, I thank you for your teachings of wisdom. For continuous support of this project I thank Peter Kosterman and Ard Bottelier.

Pim van Heijst, thank you so much for being such an outstanding example to me of warm connectedness as a colleague, co-traveler, companion and friend. Bettine Pluut, thank you for your clarifying insights and warm support. Colleagues at SJD: thank you for being such a wonderful, warm community. Special thanks to Klaas van der Horst on whom I can count for Dialogue by way of endless conversations that are a challenge and a joy, always. Thank you, and also Rozanne van Donkersgoed, Anke van Donkersgoed, Jolien Companjen, Caroline Oosterhof, and Lex van Almelo, for your interest, critical reading and constructive remarks.

Eddy Karrenbelt, I thank you sincerely for your practical support and continuous interest throughout all these years, and particularly for the many enlightened conversations we shared. Thanks to you I was able to inquire into the everyday experience of public welfare professionals. A sincere thank you to all the client managers who let me in on their case conversations so graciously; and to the policy managers who supported this inquiry.

Johanna, dear sister, your continuous support over the years, both very practical (translating and editing) and very cordial, have been a great pleasure of connectedness; thank you so much.

I am very grateful to be part of a warm family that has been supportive of me and of my project in the most loving way possible: Rozanne and Anke ('paranimfen'); Wouter and Steven; Joost, Nora, Lars, Maurits, Bodhi; thank you all so much for being part of our shared stories. Herman, my life companion, thank you. I am running "against the boundaries of language" as words fall short to describe my gratitude towards you.

I am sure I failed to mention many contributors to this project and thesis. If that includes you, please accept my apologies as well as my thanks.

About the author

Lizet van Donkersgoed–van Zwet studied piano and completed her bachelor's degree at Tilburg Conservatory in 1984. She combined piano teaching with studying musicology at Utrecht University. Her study of social science (at Open University) and philosophy (at Radboud University Nijmegen) awakened a profound interest in ethics. This led to her exploring spiritual (western esoteric) knowledge as well as eastern wisdom traditions.

Feeling the need to adopt a more practical approach to life, she decided to study law at Radboud University Nijmegen, completing her master's degree in 2002. After having been a notary-candidate for several years she switched back to teaching, this time as a lecturer of ethics in socio-legal practices at the University of Applied Sciences Utrecht.

Teaching and researching ethics in these fields inspired Lizet in many ways. Through attending the DBA (Doctorate Business Administration) course at the University of Humanistics, led among others by Hugo Letiche, she became excited about starting a PhD project as a 'reflexive practitioner': seeking to bridge the distance between classroom and practice. She was introduced to Dian Marie Hosking and through her to the social science meta-theory of relational constructionism. This started her on a parallel trajectory. She explored ethics from a new point of view, one that appealed to her more and more because it seemed to embrace core concepts of many of the wisdom traditions she had been involved with. The present thesis witnesses to this ongoing development.

Appendix 1: Functiebeschrijvingsformulier (Assignment Specification Form)

Functiebeschrijvingsformulier Gemeente

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1e Org.Laag	2e Org.Laag	3e Org.Laag	4e Org.Laag	Funtiebenaming
MO	SZ	KB1	T1	Klantmanager

Functienr: 030.000.000.835 **Datum beschrijving:** 01-01-2005 **Datum waardering:** 01-01-2005

Doel van de functie.
Verantwoordelijk voor de rechtmatigheidsaspecten (hoogwaardig handhaven) en de regie inzake klantmanagement van een eigen groep cliënten, waaronder bewaking van de voortgang en volledigheid in het kader van doelmatigheid. Is het aanspreekpunt voor derden (in- en extern).

Deeltaken + korte uitwerking.

a. *Informatie en aanvraagbehandeling voor de WWB en aanverwante wetten en regelingen*
Geven van informatie aan bezoekers en cliënten. Innemen en beoordelen van aanvragen van cliënten. Beoordelen van het recht op uitkering (inclusief frauderisico) en afhandelen van aanvragen en voeren van dienstverleningsgesprekken. Eventueel voorstellen doen voor betalingen in noodsituaties. Opvoeren van werkopdrachten en signaleringen in het werkbeheersingssysteem.

b. *Verantwoordelijk voor handhaving rechtmatigheid van het eigen cliëntbestand*
Contactpersoon voor eigen cliëntenbestand. Voert voortgangs- en signaal onderzoeken uit om de rechtsmatigheid te waarborgen. Is verantwoordelijk voor de fraudepreventie en - bestrijding: op basis van een controle systhematiek inschatten frauderisico, beoordelen wel- of niet intensieve controle, n.a.v. signalen acties entameren, uitkeringen beeindigen e.d.. Regie nemen in het kader van gemaakte keuzen en dit afstemmen met de andere betrokken collega's zoals trajectbegeleider, fraudeconsulent.

c. *Signalering en vaststelling van problemen en verwijzing*
Signaleren en onderkennen van schulden- of immateriële problematiek bij cliënten tijdens de intake- of vervolggesprekken en verwijzen.

d. *Overdracht naar Activering en voortgangsbewaking van de trajecten*
Uitvoeren van het eerste doelmatigheidsonderzoek waarbij de fasering van het CWI gelegd wordt naast de cliëntinformatie. De fasering van het CWI is bepalend; bij vragen over de indicering wordt overlegd met het CWI. Cliënt informeren over en motiveren voor het activerings- of toeleidingstraject. Indien van toepassing overdragen van de cliënt aan Activering. Aan de hand van periodieke rapportages vanuit Activering volgen van het doelmatigheidstraject waarbij gelet wordt op de rechtmatigheidaspecten. Bewaken van de voortgang van trajectbemiddeling of activering. Uitvoeren van doelmatigheidsonderzoeken bij cliënten met indicering fase 1 en afstemmen van de bevindingen met het CWI.

Kennisvereisten.
Bekwaamheid op Hbo-niveau, kennis van de sociale wetgeving en van het sociaal recht, en kennis van voorliggende voorzieningen en van de sociale kaart.

Contact- en overige functievereisten.
Beschikt over goede communicatieve en sociale vaardigheden

Motivering.
D-3d

Schaal.
9

Functiegroep.

Appendix 2: Competentieprofiel (Competence Profile)

datum: 06-03-2013 pag: 1

1e Org.Laa	2e Org.Laag	3e Org.Laag	4e Org.Laag	Funtiebenaming
MO	SZ	KB1	T1	Klantmanager

Competentieprofiel

A - Integriteit
Op een open, betrouwbare en transparante wijze handelen. Zich houden aan de gedragsnormen die horen bij de positie van ambtenaar van de gemeente (zie ook nota integriteit 05-04-2000) . Op die normen aanspreekbaar zijn en anderen daar ook op aanspreken.
- gaat zorgvuldig met persoonlijke en /of gevoelige informatie om
- vraagt geen onmogelijke inzet/handelingen van anderen
- houdt zich aan afspraken, ook als het persoonlijk belang hier niet bij gediend is
- voorkomt mogelijke belangenverstrengeling
- benadert een andere partij op een open en duidelijke wijze
- bouwt controlemechanismen in op het eigen handelen zodat verantwoording afgelegd kan worden
- weegt belangen en verschillende zienswijzen zorgvuldig tegen elkaar af
- expliciteert eigen normen en waarden
- maakt normen en waarden bespreekbaar, spreekt anderen hierop aan
- blijft consistent in zijn/haar handelswijze, ook als hij/zij onder druk wordt gezet

B - Handelen in relatie burger-bestuur
Zich bewust zijn van de specifieke verantwoordelijkheid en houding als overheidsmedewerker (relatie burger-bestuur) en dit op een consistente en normbewuste wijze in woord en gedrag tonen.
- heeft een duidelijk beeld van de taken van de overheid in het algemeen en van de locale werksituatie in het bijzonder en geeft er in het handelen blijk van dat het werken voor de stad, voor de burgers en voor het gemeentebestuur uitgangspunt is
- in het handelen en bij de te maken (beleids) keuzes staat het bijdragen aan het democratisch functioneren van de lokale gemeenschap voorop
- weet op een evenwichtige manier om te gaan met de spanning die vaak bestaat tussen publieke en private belangen
- gaat met respect om met burgers, bedrijven en instellingen
- geeft blijk van servicegerichtheid in de dienstverlening
- voert de opgedragen overheidstaken op rechtmatige en rechtsgelijke wijze uit
- stelt zich in woord en daad loyaal op ten aanzien van gemaakte politieke en beleidskeuzen

17 - Samenwerken - 2 Uitwisselen en terugkoppelen
Draagt bij aan een gezamelijk resultaat, ook wanneer dit niet van direct persoonlijk belang is. Zet zich in om samen met in- en/of externen doelen te bereiken.
- wisselt argumenten, informatie en ideeën uit met in-en/of externe partners anderen en vraagt reacties
- geeft ruimte aan de ander om een mening te geven, doet zonodig concessies
- streeft gezamenlijke doelen na en koppelt tijdig terug
- haalt en brengt actief kennis bij anderen.

23 - Resultaatgericht handelen - 2 Plannen en toetsen
Formuleert doelstellingen/opdrachten helder, concreet en uitdagend en maakt duidelijk afspraken. Voert regie en houdt zicht op de voortgang en rapporteert en informeert daarover.
- plant zelfstandig het eigen werk om gewenste resultaten te realiseren, houdt hierbij rekening met beheersaspecten (tijd, geld, kwaliteit, informatie en organisatie)
- toetst activiteiten (tussentijds) op hun bijdrage aan het te bereiken resultaat
- spreekt anderen aan op het nakomen van hun afspraken, bedenkt samen oplossingen voor knelpunten of stelt planning tijdig bij.

2 - Prestatiemotivatie - 2 Energiek, streeft naar successen
Gedrag dat getuigt van energie en gedrevenheid ten aanzien van eigen werk, prestaties en kwaliteit in eigen vakgebied

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1e Org.Laa	2e Org.Laag	3e Org.Laag	4e Org.Laag	Funtiebenaming
MO	SZ	KB1	T1	Klantmanager

- is voortvarend in zijn/haar optreden, is niet snel tevreden; stelt hoge eisen aan eigen prestaties en kwaliteit van geleverd werk
- toetst eigen gedrag, producten en processen aan geldende standaards
- spoort anderen (medewerkers / collega's) aan tot betere prestaties; is in staat tegenslag snel te verwerken
- weet wat zij/hij wil in haar/zijn vakgebied

4 - Stressbestendigheid - 2 Rustgevend en doeltreffend handelen
Effectief blijven presteren onder tijdsdruk, bij complicaties, tegenslag, teleurstelling of tegenspel.
- geeft bij tijdsdruk voorrang aan bepaalde zaken in het eigen werk en blijft doeltreffend handelen
- accepteert tegenwerpingen als onvermijdelijk, ziet het betrekkelijke hiervan in en laat zich niet meeslepen in emotionele meningsverschillen.

11 - Probleem oplossen - 3 Anticiperen, analyseren
Signaleren van problemen en het opsporen van mogelijke oorzaken. Zelfstandig of in samenwerking met anderen oplossen.
- anticipeert op mogelijke knelpunten; reageert snel en doeltreffend bij problemen en onverwachte gebeurtenissen
- analyseert problemen, achterhaalt de werkelijke vraag achter het probleem zonder over inhoudelijke kennis of volledige informatie te beschikken
- formuleert meerdere passende alternatieven of oplossingen
- lost langer durende problemen op wanneer anderen er niet uitkomen.

16 - Schriftelijke communicatie - 2 Stemt stijl en vorm af op de lezer, toetst
Ideeën, meningen, voorstellen en concepten in voor de lezer begrijpelijke, correcte en beknopte taal op schrift stellen.
- drukt zich schriftelijk goed uit bij doelgroepen van verschillend niveau, toetst of de boodschap is overgekomen
- formuleert tactvol; schat in hoe de boodschap zal vallen
- redigeert interne documenten en schrijft documenten voor extern gebruik.

19 - Klantgericht handelen - 2 Klantrelaties ontwikkelen
Herkent de wensen en de behoeften van zowel interne als externe klanten en handelt hiernaar; overtuigd zijn van het belang van een goede duidelijke en optimale dienstverlening voor de klant.
Besteedt aandacht aan nazorg en doet suggesties voor mogelijke verbeteringen in de dienstverlening.
- verdiept zich in de situatie van de in en/of externe klant; onderhoudt bestaande relaties en signaleert kansen om nieuwe klanten te binden
- verleent service, is proactief en speelt flexibel in op wensen van de klant denkt mee met de klant
- neemt, wanneer de klanttevredenheid onvoldoende is, acties om deze te verbeteren
- herkent uitgesproken klantwensen binnen het werkterrein.

20 - Plannen en organiseren - 1 Plannen eigen werk
Bepalen van prioriteiten en aangeven van benodigde acties, tijd en middelen, om gegeven doelstellingen te kunnen bereiken. Zaken conform planning in beweging zetten.
- plant de eigen werkzaamheden en stemt de planning af met anderen(in en/of externen); werkt volgens deze planning
- stelt prioriteiten, heeft overzicht over eigen werkzaamheden
- werkt ordelijk en systematisch volgens plannen die vooraf opgesteld zijn.

24 - Besluiten nemen - 1 Beslissen binnen eigen taakgebied
Beslissingen nemen door het ondernemen van acties; zich vastleggen door het uitspreken van meningen op basis

1e Org.Laa	2e Org.Laag	3e Org.Laag	4e Org.Laag	Funtiebenaming
MO	SZ	KB1	T1	Klantmanager

van een inzichtelijke afweging en eigen oordeel, ook als kennis en/of informatie beperkt is.

- neemt beslissingen op grond van relevante informatie en duidelijke feiten waarbij de gevolgen van de besluiten voorspelbaar zijn
- neemt en motiveert beslissingen binnen het eigen werkterrein
- blijft achter gemaakte keuzen staan.

Appendix 3: Opzet casuistiekbespreking (Set-up Case meetings)

Opzet casuïstiekbespreking Klantbeheer in het kader van het Herijkte Minimabeleid

Aanleiding
Per 1 januari 2012 wordt het herijkte minimabeleid ingevoerd. Daarmee gaan we van het verstrekken van generieke inkomensaanvullende voorzieningen naar maatwerk. We verstrekken wat nodig is in het individuele geval. Dit betekent een andere werkwijze en vraagt andere vaardigheden van de klantmanager. Bovendien is het van belang dat binnen dat maatwerk in gelijke gevallen, gelijk wordt gehandeld. Maar ook dat de klantmanager de ruimte leert nemen om gemotiveerd af te wijken van de regels als dat in het individuele geval nodig is. Daarom is ervoor gekozen casuïstiekbesprekingen te gaan voeren. Kern van de methode is dat de deelnemers op voet van gelijkheid het beroepsmatig handelen bij het ondersteunen van onze klanten met elkaar bespreken.

Vorm en invulling van de casuïstiekbesprekingen
Het is de bedoeling om één keer per drie weken in groepen van 6 klantmanagers, een 1ste medewerker en een kwaliteitsbeheerder en/of een gast, in ongeveer 1,5 uur twee cases te bespreken. Een 1ste medewerker of een medewerker kwaliteitsbevordering ( ) is voorzitter. Aan twee klantmanagers wordt ruim van te voren gevraagd een casus voor te bereiden en op papier te zetten (max. een half tot één A-4tje).

Er moet een format worden ontwikkeld, waarin we de casus en de conclusies vanuit de casuïstiekbespreking kunnen samenvatten en inzichtelijk/toegankelijk kunnen maken voor alle betrokken uitvoerders.

Het bijwonen van de casuïstiekbesprekingen is in principe verplicht.

Het is goed om de vorm, invulling en het effect/ de beleving van de casuïstiekbesprekingen na een aantal keer of kort aan het eind van iedere bijeenkomst te evalueren.

Doelstelling
De doelstelling van casuïstiek bespreken is reflectie op het eigen handelen en leren van elkaar. Binnen deze doelstelling kunnen de accenten per bijeenkomst verschillen naar de volgende subdoelen:
1. Het uitwisselen van inzichten
2. Het met elkaar scherp krijgen hoe te handelen in specifieke situaties binnen de gegeven kaders
3. Het vertalen van nieuwe inzichten naar verbeteringen in het handelen

Het bespreken van de casus bestaat uit de volgende stappen
Stap 1: inbrengen van de casus (5 minuten)
Stap 2: verhelderen van de casus (10 minuten)
Stap 3: individueel vaststellen aanpak (5 minuten)
Stap 4: bespreken individuele aanpak in groep (15 minuten)
Stap 5: conclusies (5 minuten)

Stap 1 Inbrengen van de casus (5 minuten)
De 'casusinbrenger' presenteert alle relevante gegevens tot aan de stap van de focus. De relevantie van de gegevens is afhankelijk van de doelstelling en focus. Als de focus bijv. het al of niet verstrekken van bijzondere bijstand voor medische kosten is, vraagt dit om gegevens, die een helder beeld geven van de (financiële) situatie van de klant.

Stap 2 Verhelderen van de casus (10 minuten)
Nadat de casus is gepresenteerd krijgen de andere groepsleden de gelegenheid om vragen te stellen over onduidelijkheden en/of aanvullende informatie. De voorzitter bewaakt dat er alleen om verheldering wordt gevraagd en dat de groep nog niet met elkaar in discussie gaat en/of suggestieve vragen stelt. Discussiepunten kunnen in stap 4 of 5 aan de orde komen.

Aandachtspunt voor de voorzitter:
- Verhelderende vragen zijn wat-, hoe- en wanneer-vragen.

Stap 3 Individueel vaststellen aanpak (5 minuten)
Dit is een 'stille' stap waarbij de deelnemers voor zichzelf nagaan hoe zij in dit geval zouden handelen. Op basis van de gepresenteerde gegevens en de eigen voorbereiding beschrijft ieder kort voor zichzelf wat de kernpunten van zijn aanpak zouden zijn bij deze klant. Dit wordt het uitgangspunt bij het vervolg van de bespreking.

Aandachtspunt voor de voorzitter:
- De voorzitter bewaakt de duur van deze stap. De duur hangt af van de hoeveelheid gegevens en het tempo in de groep.

Stap 4 Bespreken individuele aanpak in groep (15 minuten)
In deze stap wisselt de groep ideeën over de aanpak uit. Het groepsgesprek kan verschillend vorm gegeven worden. Twee veel gebruikte werkwijzen zijn:

1. Eén groepslid (niet de inbrenger) vertelt zijn aanpak. Daarna krijgen de overige leden van de groep de gelegenheid hierover verhelderende vragen te stellen. Er vindt nog geen discussie plaats. Vervolgens vullen de overige groepsleden hun aanpak aan voor zover deze nog niet ter sprake is gekomen. Als alle informatie op tafel ligt, bespreekt de groep de overeenkomsten en de verschillen in de diverse handelswijzen met de mogelijkheid tot discussie en/of dialoog. Ter afronding van deze stap worden de voornaamste aandachtspunten van de discussie benoemd.
2. De voorzitter houdt een inventarisatieronde waarbij de groepsleden om de beurt één of twee aspecten van de eigen werkwijze aangeven. De deelnemers vullen elkaar daarbij steeds aan. De inventarisatie gaat door totdat er geen aanvullingen meer zijn. Daarna wordt dezelfde procedure gevolgd als bij de eerste werkwijze: verhelderen, overeenkomsten en verschillen inventariseren, discussie en/of dialoog, aandachtspunten benoemen.

Aandachtspunt voor de voorzitter:
- Doel van de casuïstiekbespreking is dat de deelnemers reflecteren op het eigen handelen. Streef daarom niet in eerste instantie naar consensus, maar zorg dat overeenkomsten en verschillen duidelijk worden, evenals de argumenten voor een bepaalde handelswijze.

Stap 5 Conclusies (5 minuten)
In deze ronde vat de voorzitter de aandachtspunten uit stap 4 samen. De groep formuleert de conclusies over de noodzakelijke en/of gewenste aanpak t.a.v. de betreffende klant. De groep kan deze ronde ook benutten om een aantal aandachtspunten verder te concretiseren.

, 23 november 2011

Appendix 4: Signed commitment paper

Verantwoording uitvoering empirisch onderzoek bij gemeentelijke sociale dienst
Januari 2012
Lizet van Donkersgoed

Verantwoording uitvoering empirisch onderzoek bij gemeentelijke sociale dienst
Lizet van Donkersgoed

In deze verantwoording haak ik aan bij de Gedragscode Praktijkgericht Onderzoek voor het HBO van de HBO-raad (2010), te downloaden van de website www.hbo-raad.nl.

Voorbereidend empirisch onderzoek in de vorm van een 20-tal open interviews met klantmanagers is in 2010 uitgevoerd bij gemeentelijke Sociale Diensten in de regio Utrecht. Hierop gebaseerd zal in 2012 empirisch onderzoek plaatsvinden in de vorm van bijwonen van casuïstiekbesprekingen van klantmanagers, van observatie en van documentanalyse. Dit alles valt binnen het kader van een promotieonderzoektraject bij de Hogeschool Utrecht en de Universiteit Utrecht naar het proces van besluitvorming in de praktijk van klantmanagers IN DE Sociale Zekerheid.

Hoe ga ik met gegevens om:

Dit is een onafhankelijk wetenschappelijk onderzoek. De verzamelde gegevens worden niet voor een ander doel dan voor dit onderzoek en het proefschrift gebruikt.

Geluidsopname tijdens casuïstiekbesprekingen:

Een geluidsopname is voor een onderzoek als dit gebruikelijk, en ook onontbeerlijk om zorgvuldig te werk te kunnen gaan en dus een en ander zo veel mogelijk in de door professionals zelf gebruikte woorden te kunnen weergeven.

De data:

- De schriftelijke uitwerking van het besprokene zal alleen geanonimiseerd gebeuren, en ook de gemeente zal enkel globaal worden aangeduid, zodat gegevens niet terug te voeren zijn op hun herkomst.
- Mogelijk schriftelijke uitwerking en gebruik van data voor studiedoeleinden door derden gebeurt uitsluitend onder mijn verantwoordelijkheid en onder de verplichting van geheimhouding van alle persoonlijke en overige privacy-gevoelige gegevens.
- Geluidsopnames en uitwerkingen worden uitsluitend opgeslagen op een computer in een beveiligde omgeving, en op aparte usb memory sticks.
- Na voltooiing van het onderzoek zullen alle geluidsopnames vernietigd worden.

Mijn rol tijdens de bijeenkomst:

Mijn deelname aan de casuïstiekgroepen zal inhouden dat ik aanwezig ben en notities maak. Ik zal dus niet deelnemen aan het gesprek. Daarnaast is voor het verwerken van de gegevens een geluidsopname van de bijeenkomst zeer gewenst. Dit laatste zal slechts gebeuren met toestemming van alle aanwezigen.

Achtergrond van het onderzoek:

De (voorlopige) onderzoeksvraag luidt:
Hoe gaan klantmanagers binnen het kader van hun discretionaire ruimte te werk bij toepassing van de Wet Werk en Bijstand [bij de afdeling Sociale Zekerheid van een middelgrote gemeente in het midden van het land] ?

OVEREENGEKOMEN OP ..... 01-2012 TE.....

Handtekening Eddy Karrenbelt

Handtekening Lizet van Donkersgoed

Appendix 5: Raadsinformatiebrief 7-10-2011 (Letter to the local council 7-10-2011)

RAADSINFORMATIEBRIEF

Van	: Burgemeester en Wethouders	Reg.nr.	: 3918723
Aan	: Gemeenteraad	Datum	: 7 oktober 2011
Portefeuillehouder	: Wethouders	Programma	: 4 en 11

TITEL
Voortgang uitwerking van besluiten over bezuinigingen op minimabeleid en WMO-beleid.

KENNISNEMEN VAN
De uitwerking van de besluiten over de bezuiniging en de herijking van het minimabeleid, de bezuinigingen WMO en het invulling geven aan de moties en amendementen.

AANLEIDING
- Wens tot inzicht van de raad in de consequenties van de bezuinigingen en de herijking van het minimabeleid en de bezuinigingen WMO.
- De voortgang met het geven van een vervolg aan de moties en amendementen over het minimabeleid en het WMO-beleid. Zie de bijlage voor een overzicht.

KERNBOODSCHAP
Wij gaan zorgvuldig om met de effecten van bezuinigingsmaatregelen op kwetsbare burgers.
De gemeente biedt een vangnet – het maatwerkvangnet - voor mensen die het op eigen kracht niet redden. Wij doen daarbij eerst een beroep op de eigen kracht en op de draagkracht van de stad. Wij passen maatwerk toe om te bepalen of ondersteuning van de gemeente nodig is en welke ondersteuning dat in het individuele geval moet zijn: een WMO-voorziening, individuele bijzondere bijstand dan wel andere vormen van ondersteuning.
Kwetsbare cliënten nodigen wij gericht uit voor een gesprek.

Toelichting

1. Vormgeving maatwerkvangnet
De gemeenschappelijke noemer van het herijkte minimabeleid en het WMO beleid is: aandacht en zorg voor kwetsbare burgers en het bieden van een vangnet. Onder kwetsbaarheid in dit kader verstaan wij : kwetsbaar voor wat betreft de (financiële) zelfredzaamheid en participatie. Daartoe geven wij vorm aan het nieuwe instrument het maatwerkvangnet.

De gemeente biedt een vangnet voor mensen die op eigen kracht het niet redden. De vangnetfunctie van de gemeente is belangrijk, maar voordat het gemeentelijke vangnet in beeld komt, moet eerst duidelijk worden dat er geen maatschappelijke vangnetten zijn, want dat heeft de voorkeur (subsidiariteit). Vaak zijn die vangnetten aanwezig in de civil society (familie, vrienden, kennissen, kerken etc.) of bij professionele maatschappelijke organisaties.
Wij doen een beroep op de eigen kracht en op de draagkracht van de stad. We stimuleren dat mensen voor zichzelf, voor elkaar en voor hun leefomgeving verantwoordelijkheid nemen. Centraal hierbij staat: wat is er nodig in iemands leven om te kunnen participeren, wat is daar in brede zin aan ondersteuning voor nodig, hoe kan iemand vroegtijdig anticiperen op gewijzigde omstandigheden, wat kan iemand zelf doen? Voor sommige mensen zal dat betekenen dat zij steun nodig hebben in de vorm van een individuele WMO-voorziening, in andere gevallen toekenning van individuele bijzondere bijstand dan wel andere vormen van ondersteuning. Het bepalen wat iemand nodig heeft, het bepalen welk vangnet wordt ingezet, is maatwerk.

Om dit maatwerkvangnet te kunnen leveren, gaan wij als volgt te werk: we organiseren gesprekken met een groot aantal cliënten: bij het Servicebureau waar de ingang een WMO-vraag is en bij SZ waar de ingang een financiële vraag kan zijn. In dit gesprek worden de beperkingen en de mogelijkheden van de cliënt besproken. De stappen daarin zijn:

- We maken met de cliënt een zo volledig mogelijke inventarisatie van zijn situatie, zijn mogelijkheden en onmogelijkheden, zijn individuele specifieke kenmerken en de problemen die om een oplossing vragen.
- Op basis hiervan kijken we welke mogelijkheden er zijn om dit resultaat te bereiken met oplossingen die al voorhanden zijn, zoals eigen mogelijkheden, (wettelijk) voorliggende voorzieningen, voorzieningen in de stad, algemeen gebruikelijke voorzieningen of collectieve voorzieningen.

Na deze stappen wordt duidelijk op welke punten nog individuele ondersteuning nodig is. Na het gesprek volgen bijvoorbeeld een aanvraag voor individuele WMO-voorzieningen, het bieden van hulp bij het vinden van vrijwilligerswerk, begeleiding (bijvoorbeeld een maatje), het bieden van een vergoeding van kosten voor bijvoorbeeld sport, voor openbaar vervoer, het bieden van andere financiële ondersteuning via de bijzondere bijstand.
Waar nodig kunnen we ook ondersteuning bieden bij het krijgen van 'grip op eigen leven' door de inzet van coaching: tijdelijke intensieve begeleiding gericht op het hervinden van eigen kracht en het versterken van de zelfredzaamheid. Het gaat niet uit van de beperkingen maar van de mogelijkheden van een cliënt (empowerment).

Samenloop van maatregelen minimabeleid en WMO beleid
In de gesprekken in het kader van het maatwerkvangnet hebben wij aandacht voor de samenloop van maatregelen minimabeleid en WMO beleid. De raad heeft in de moties en een amendement aandacht gevraagd voor deze samenloop. Wij nodigen iedereen die zowel cliënt WMO als bijzondere bijstand ontvangt uit voor deze gesprekken.

Financiering maatwerkvangnet
Het grootste deel van het maatwerkvangnet wordt gefinancierd door de Bijzondere Bijstand. Daarnaast heeft de Raad heeft bij amendement 4.1 een reserve van € 310.000 beschikbaar gesteld (Sociale Reserve).
Wij houden rekening met de regels die de WWB stelt aan vermogensvrijstelling en daarmee aan de ruimte om te kunnen anticiperen op kosten van het ouder worden. De raad heeft hiervoor bij motie 11.9a aandacht gevraagd.

2. Uitvoering van bezuinigingsmaatregelen en effecten van de bezuinigingen op burgers die kwetsbaar zijn.

Wij gaan zorgvuldig om met de overgang naar het herijkte minimabeleid.

Beëindiging van regelingen minimabeleid
Met ingang van 2012 beëindigen wij de volgende regelingen:

- De plus toeslag.
- De regeling voor sociale participatie.
- De schooltasregeling.
- De verstrekking van bijzondere bijstand voor extra medische kosten.

Gevolgen van de beëindigingen voor de cliënt
Wij voeren individuele gesprekken met kwetsbare cliënten. Daartoe nemen wij de volgende stappen:

- Wij filteren ons minimabestand op het criterium kwetsbaarheid. Met cliënten die binnen dit criterium vallen gaan wij individuele gesprekken voeren. Daarbij kijken wij ook naar de financiële kant en zetten waar nodig bijzondere bijstand in.
- In de voorlichting aan de overige minima over de wijzigingen van het minimabeleid wijzen wij op de mogelijkheid zich te wenden tot de helpdesk SZ voor deze gesprekken.

- In de voorlichting aan en de contacten met tal van vrijwilligers- en professionele instellingen in de stad wijzen wij op deze aanpak.

Wij starten met de gesprekken in november 2011.

Overige maatregelen in het kader van de herijking van en bezuinigingen op het minimabeleid

Nieuwe regeling voor kinderen

Zie hiervoor de peilnota 'Nieuwe regeling sport en cultuur voor kinderen: het Jeugd Sport en Cultuur Fonds' (zie agenda voor de Ronde van 11 oktober).

Netwerkontwikkeling

Wij doen een beroep op de kracht van de stad. Voor de netwerkontwikkeling heeft de raad structureel een bedrag van € 50.000 beschikbaar gesteld.
Wij hebben de samenwerkende instellingen, gericht op het armoedevraagstuk, gevraagd een gezamenlijk plan voor netwerkontwikkeling aan de raad toe te lichten. Dit staat gepland voor november 2011.

Vergroten van de toegankelijkheid van informatie over recht op inkomensvoorzieningen.

Ter uitvoering van de aangenomen motie 11.14, ingediend door de VVD-fractie, hebben wij de mogelijkheden geïnventariseerd om de financiële uitgangspositie van 3 groepen huishoudens (alleenstaanden tot 65 jaar, echtparen tot 65 jaar en gezinnen met oudere kinderen) te versterken. Concrete vraag van de motie is: welke andere dan de nu geboden maatregelen zijn mogelijk? Wij komen tot de conclusie dat, naast de bestaande maatregelen (maatwerkvangnet en nieuwe regeling voor kinderen), de financiële uitgangspositie kan worden versterkt door meer te investeren in de voorlichting aan minima over het maximaal gebruik maken van alle financiële mogelijkheden om het inkomen te vergroten en de uitgaven te beperken, zoals huur- en zorgtoeslag, belastingteruggave en bespaartips.
Veel informatie over landelijke en regelingen is beschikbaar, zoals de website www.berekenuwrecht.nl . Toch is het met toegankelijke informatie soms niet gemakkelijk om in het woud van regelingen de juiste weg te vinden. De raad heeft € 50.000,- extra beschikbaar voor het bevorderen dat maximaal gebruik wordt gemaakt van de inkomensvoorzieningen waar men recht op heeft (amendement 11.11). In overleg met werken we aan een plan voor de uitbreiding van de dienstverlening op dit punt. Het plan bevat onder meer de volgende onderdelen:

- neemt deel aan een landelijke pilot over onafhankelijke financiële voorlichting. Via het financiële loket kan direct aan de doelgroep financiële voorlichting worden gegeven.
- De 'bespaarkalender' van . wordt doorontwikkeld en breed gecommuniceerd.

Aan het plan worden meer onderdelen toegevoegd, gericht op een maximaal bereik van de doelgroep.

3. Monitoring

Wij zijn bezig zijn met het uitwerken van de wijze waarop we de effecten van bezuinigingen op en wijzigingen van het minima- en WMO-beleid monitoren.

Consequenties
In een volgende raadsinformatiebrief (november 2011) gaan wij in op de monitoring van de effecten van bezuinigingen op en wijzigingen van het minima- en WMO-beleid.

Burgemeester en wethouders van Amersfoort,

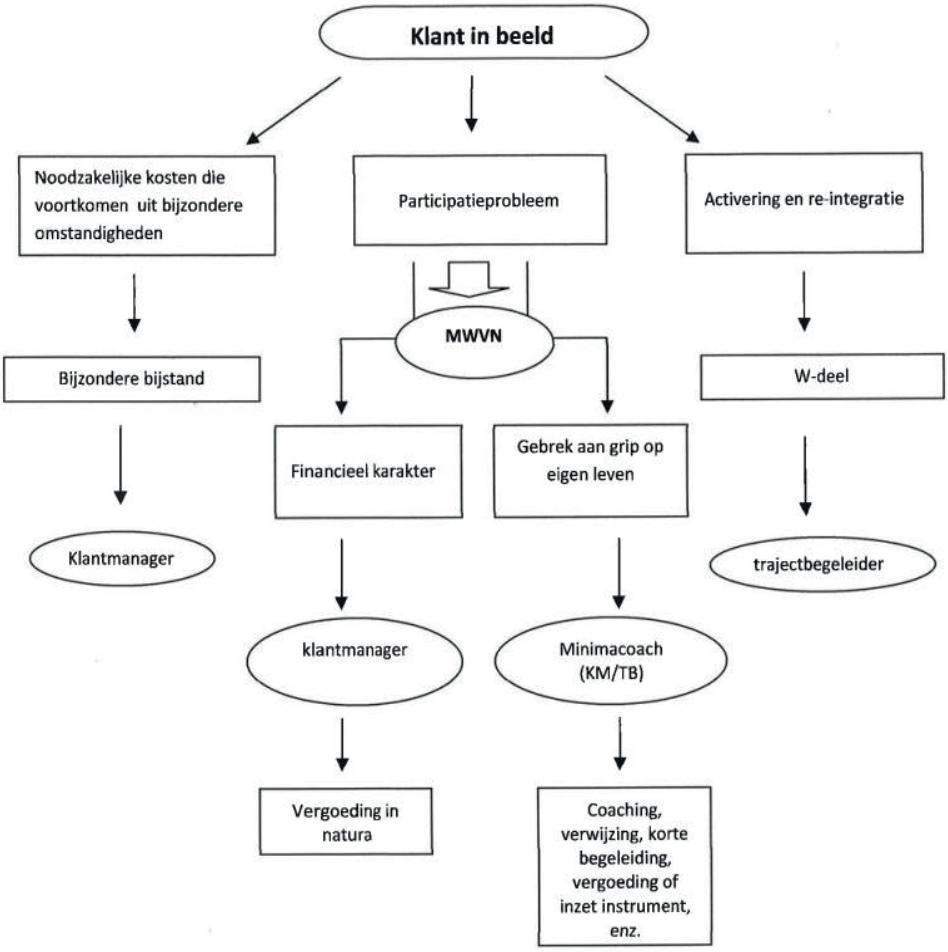
de secretaris, de burgemeester,

Bijlage 1

Motie / amendement	Uitvoering	Toelichting
Motie 11.5: nader onderzoek naar de mogelijkheid de nieuwe voucher regeling voor kinderen uit te breiden naar alle minima ().	Het onderzoek is uitgevoerd.	In de Peiling nieuwe regeling sport en cultuur voor kinderen.
Motie 11.14 inventarisatie van mogelijkheden om de financiële uitgangspositie van 3 groepen huishoudens (alleenstaanden tot 65 jaar, echtparen tot 65 jaar en gezinnen met oudere kinderen) te versterken. Welke andere dan de nu geboden maatregelen zijn mogelijk?	Uitvoering door vergroten van de toegankelijkheid van informatie over recht op inkomensvoorzieningen	In deze raadsinformatiebrief onder 2.
Amendement 11.11 preventie schuldhulpverlening; € 50.000,- extra beschikbaar voor het bevorderen dat maximaal gebruik wordt gemaakt van de inkomensvoorzieningen waar men recht op heeft.	Uitvoering in overleg met	In deze raadsinformatiebrief onder 2.
Amendement 4.1: ongewenste effecten van bezuinigingsmaatregelen voor kwetsbare groepen, zoals stapelingseffecten, compenseren / reserve van € 310.000	Vormgeving maatwerkvangnet.	In deze raadsinformatiebrief onder 1.
Motie 11.15 monitoring en evaluatie stapelingseffecten maatregelen minimabeleid en WMO	Volgt nog..	In de komende raadsinformatiebrief over monitoring
Motie 11.9a: maatwerk voor minima i.v.m. de regels voor beperkte vermogensvrijlating.	Vormgeving maatwerkvangnet.	In deze raadsinformatiebrief onder 1.

Appendix 6: Klant in beeld (Model of the client)

This picture shows in what situations the new MWVN, maatwerkvangnet (tailor-made net), can be used.



Appendix 7: Juryrapport Beste sociale dienst van Nederland 2011 (Jury Report Best social services department in the Netherlands 2011)

JURYRAPPORT BESTE SOCIALE DIENST VAN NEDERLAND 2011

De jury voor de Beste Sociale Dienst van Nederland 2011, bestaande uit:

- Dhr. F.J. Paas: voorzitter Divosa en tevens voorzitter van de jury
- Dhr. F. Visser: manager Philips Employability Center
- Dhr. O. Fisscher: professor of Organization Studies and Business Ethics, Universiteit Twente
- Dhr. E. van Hijum: Tweede Kamerlid en fractiesecretaris CDA (portefeuille sociale zaken)

heeft de

GEMEENTE [redacted]

uitgeroepen tot de Beste Sociale Dienst van Nederland 2011.

Namens de Jury,

F.J. Paas

(voorzitter)

De beste Sociale Dienst is georganiseerd door Interwerk BV in samenwerking met DIVOSA.

Algemene toelichting

Sociale diensten worden door de overheveling van taken en verantwoordelijkheden - in combinatie met afnemende budgetten - geconfronteerd met steeds grotere financiële en bedrijfsmatige risico's. De sociale dienst ondergaat zodoende een metamorfose van een bureaucratische uitvoeringsmachine naar een moderne, klantgerichte, resultaatgerichte en innovatieve sociale publieke onderneming.

De verkiezing van de Beste Sociale Dienst van Nederland is dan ook niet alleen bedoeld als een klopje op de schouder van de winnaar. De verkiezing heeft met name tot doel Sociale diensten te stimuleren te (blijven) investeren in verbetering van de kwaliteit van dienstverlening en bedrijfsvoering. Daarnaast beoogt de verkiezing een stimulans te zijn voor sociale diensten om gebruik te maken van elkaars kennis en kwaliteiten.

Dit vraagt echter dat sociale diensten zich kwetsbaar op durven stellen waarbij zij aanspreekbaar zijn op hun resultaten. De jury waardeert dan ook de moed die de deelnemers dit jaar wederom hebben getoond door hen een kijkje "in hun keuken" te gunnen. Naast moed getuigt dit ook van de bereidheid van de organisaties om te willen leren en verbeteren. De jury stelt vast dat de organisaties actief investeren in de verbetering van hun bedrijfsvoering. En is in zijn algemeenheid onder de indruk over de kwaliteit van de deelnemende organisaties.

De verkiezing van de Beste Sociale Dienst van Nederland richt zich niet alleen op de uitstroomresultaten maar heeft een brede scope gericht op de gehele bedrijfsvoering van de organisaties waaronder klantgerichtheid, doelmatigheid, innovatie, bedrijfsvoering, rechtmatigheid en duurzaamheid.

De deelnemende organisaties zijn in eerste instantie beoordeeld aan de hand van antwoorden op de vragenlijst en een vooraf bepaald objectief waarderingssysteem. Vervolgens hebben de vijf Sociale Diensten met de hoogste scores de mogelijkheid gekregen om tijdens een presentatie het innovatieve karakter van hun organisatie toe te lichten.

Oordeel van de jury over de gemeente [redacted]

a. Algemeen

Naar de mening van de jury bewijst de score uit de eerste ronde en het feit dat de gemeente [redacted] de afgelopen jaren reeds twee keer eerder de verkiezing heeft gewonnen, dat de gemeente [redacted] op een systematische en consistente wijze haar strategie doorvoert in haar beleid en bedrijfsvoering en op een innovatieve wijze werkt aan het verbeteren van de kwaliteit, beperking van kosten en verhoging van de effectiviteit.

Een van de sterke punten is dat in de aanpak van [redacted], het "naar vermogen mee kunnen doen" van de burgers centraal staat. Zowel waar het de werkgeversbenadering betreft als ook de aanpak in het kader van armoedebeleid en schuldhulpverlening heeft [redacted] een actieve en innovatieve aanpak. Een sterk innovatief punt daarbij is de aanpak in het kader van de Sociale Return on Investment.

Innovatie is echter een belangrijk onderdeel van de dagelijkse bedrijfsvoering. Dat blijkt onder andere uit de veelheid aan pilots, proeftuinen en nieuwe ontwikkelingen die gepresenteerd zijn. Een punt van aandacht bij de beoordeling was wel dat door de veelheid aan innovatieve projecten, niet helemaal duidelijk werd wat de onderlinge verwevenheid is tussen de verschillende projecten.

Een ander sterk punt van [redacted] is de kritische houding naar de eigen organisatie, het commitment van het personeel en het feit dat de gemeente teamspirit en energie uitstraalt. Het feit dat deze aanpak vervolgens ook nog cijfermatig onderbouwd wordt, versterkt het beeld van een consistente innovatieve organisatie die in "control" is.

Vandaar dat de jury van mening is dat de gemeente [redacted] de terechte winnaar van de verkiezing van de Beste Sociale Dienst van Nederland 2011 is.

b. Totaalscore

Op basis van de score uit de eerste ronde en de juryscore komt de totaalscore op 562 punten hetgeen recht geeft op de eerste plaats.

Aspect	Maximale score	Behaalde score
Klantgerichtheid	110	110
Doelmatigheid	110	100
Bedrijfsvoering	170	147
Rechtmatigheid	145	105
Duurzaamheid	30	30
Presentatie	80	70
Totaal	**645**	**562**

Appendix 8: Transcript notation

Initial transcripts were made of the twenty audiotapes of the case conversations, which captured only the words said in the meeting. Particular extracts of these early verbatim transcripts in Dutch were then retranscribed using a simplified version of the notation found in Silverman (2010, 430-1), which is "the notation developed by Jefferson (1984) for conversational analysis" (Silverman 2010, 200).

Symbols:

(1)	yes (2) yeah	Numbers in parentheses indicate elapsed time in silence in seconds.
__	<u>What's up?</u>	Underscoring indicates especially loud sounds relative to the surrounding talk.
( )	risks of ( ) and	Empty parentheses indicate the transcribers inability to hear what was said.
(( ))	((continues))	Double parentheses contain author's descriptions rather than transcriptions.

In the quotations and the English translation I added some basic punctuation marks for readability.

Appendix 9: List of early "in-vivo" codes (based on Boeije 2008, 92; Silverman 2011, 68)

The following phrasings were relatively frequently used in the transcripts:

85 x advies
23 x bezwaar
203 x bijzondere bijstand
14 x bijzondere omstandigheden
152 x coach-
40 x grip (op eigen leven)
216 x hulp/help-
694 x kost(en)
88 x maatwerk
84 x noodzakelijk
59 x noodzaak
82 x participatie
58 x regel/regelgeving/-regeling
26 x zelfredzaam
232 x zorg/-zorg/zorg-

Appendix 10: Used quotations in Dutch (original)

4.1

A-als het die kinderen niet lukt op school doordat de bril kapot is, en ze hebben geen bril, dan heb je ook een probleem natuurlijk.
B-ja dan heb je wel, dan heb je wel
A-ik weet niet in hoeverre ze versterkt zijn die brillen
B-maar dan heb je een participatie probleem
A-ja dat bedoel ik, dan heb je wel een participatie probleem
(Transcript 10, 673-8)

4.2

First quotation
E-ja, als dit door fraude komt, ja dan heeft ze dus ja
A-ja maar als ik dit zo lees dan kan het haast niet anders dan dat is, zeker zo'n bedrag niet, moet wel fraude zijn
((Tegelijk sprekend))- ((instemmende ja ja geluiden))
E-dat kan haast niet met verkeerd invullen van, en dat is meerdere jaren, dat is niet over één jaar, denk ik hoor, maar dat weten we dus niet helemaal zeker
(Transcript 10, 801-4).

Second quotation
C-en en even los van van hoe dat allemaal is gegaan, wat ik nu meekrijg is dat er een situatie is dat die € 80.000 echt niet ergens op een bankrekening geparkeerd is en beschikbaar is of zo, en er is gewoon sprake van van behoorlijke armoede (3 seconden stil) ja
(Transcript 10, 644- 646)

Third quotation
E-maar de vraag is wat ze er dan mee gedaan heeft
C-((aarzelend)) jaaa, maar goed, wil je dat (1) weten?
E-dat zou ik wel willen weten ja
C-voor?
F-ik neem aan dat het gewoon opgegaan is, want dat komt druppelsgewijs binnen over 16 jaar verspreid, misschien wel (1) als het over 10 jaar is (1) het is wel veel 8000
E-80.000 is het
C-maar stel, dat geld is op, dat is opgegaan desnoods aan ( ) en dat geld dat is er nu niet meer
E-nee
C-maar ze moet 't terugbetalen
E-ja maar, je zegt nu: ze leeft in armoe. Ja dat zal best, maar wat heeft ze dan met al dat geld gedaan?

C-ja maar in hoeverre zou dat dan je oordeel nu anders maken ? wil je er wat verwijtend in leggen dat je zegt van go, ze is er van naar de Bahamas geweest dus dan doe ik niks aan de brillen, of ze heeft de operatie betaald ervan dus (beetje lachen)
E-(lachend) nou van die Bahamas dan weet ik het nog niet! ((lachen))
(Transcript 10, 647-662)

4.3

First quotation
B- (naam H) heeft informatie nodig, die heeft vragen. Om het recht op bijstand vast te kunnen stellen , die heeft vragen en dat kan nu niet, nou en
E-en als (naam H) haar belt neemt ze dan wel op?
H-nee nee zij heeft haar telefoon continue op uit staan totdat ze zelf moet bellen, en dat is naar iedereen behalve naar de gemeente, dan zet ze hem eventjes aan. Nou en e-mails worden niet beantwoord, ze reageert nergens op
B-nou ik denk als je haar gaat oproepen dan komt ze toch niet
H-nee precies, we hebben haar samen opgeroepen toen kwam ze ook niet.
(Transcript 10, 300-307)

Second quotation
"Had je daar een bepaalde reden bij om op te schorten, of was het gewoon ze voldoet niet aan de voorwaarden dus ik schort op?"
(Transcript 10, 348-9).

Third quotation
"Ja. Dat doe ik bij iedereen dus bij haar ook."
(Transcript 10, 350).

Fourth quotation
" Want dit is namelijk, vind ik persoonlijk, een uh, een mevrouw die hulp nodig heeft (1) hulp weigert (1) en er toch een oplossing gevonden moet worden om uh, om haar een fatsoenlijk bestaan te kunnen garanderen of waarborgen of hoe je het ook zegt." (Transcript 10, 20-22).

4.4

A-die moeder daarvan wordt hier in de rapportage gezegd dat die het ontzettend druk heeft dat die alles doet, boodschappen en het huishouden en koken en voor de man zorgen en
B-ja maar dan heb ik wel een beetje zoiets van uhuh hoe moet ik dat zeggen, ik heb zoiets van als je slechtziend ben dan wil dat toch niet zeggen dat je niks kan?
A-Mmm
B-weet je ik heb er zelf geen ervaring mee maar ik bedoel je ziet toch vaak zat mensen die gewoon wel mobiel zijn, neem een voorbeeld aan uh(1)
(Transcript 20, 86-92).

4.7

First quotation

"Client doet erg haar best om haar leven weer op de rit te krijgen"
"Ze laat een hele positieve instelling zien."
(Transcript 6, casus 1).

Second quotation

"We doen in principe geen bijstand voor schulden. Maar dit is wel (1). Ik vind dit wel een uitzonderlijke situatie. Als ik zeg maar vanuit mijn eigen positie zou ik het wel aandurven om te zeggen: ik doe eens een keer dat."
(Transcript 6, 335-339).

Third quotation

A-Ik heb wel eens eerder iets met schulden gedaan. Eigenlijk zie je dat het niet mag, niet kan. En dan doe ik het zeg maar, omdat ik gewoon zelf een beslissing mag nemen, en dan word ik niet teruggefloten door, omdat mijn mijn uh, mijn aanvraag nergens boven komt. Zeg maar.
B-Nee precies
A-Maar feitelijk is het iets dat je eigenlijk oneigenlijk doet, zeg maar.
B-Ja ja
A-Maar als je zo eens een keer een doorbraak mee kan bereiken, dan durf ik dat wel aan, dus.
(Transcript 6, 408-413).

4.8

First quotation

"mmm lastig gevalletje"
"ja he, vooral als je de mensen niet goed kent"
"nee precies ja dat is meestal zo"
(Transcript 20, 813-16).

Second quotation

"Waarom ken ik mijn bestand niet?"
(Transcript 18, 873-4)

5.1

First quotation

"Het is typisch zo'n voorbeeld waarin je als klantmanager aan handen en voeten gebonden bent vanwege het feit dat je er weinig voor kunt doen omdat de wet die ruimte niet geeft."
(Transcript 10: 17-19).

Second quotation
"Door haar opstelling maakt belanghebbende het voor de gemeente onmogelijk om haar te helpen."
(Transcript 10, informatiemail 1e casus)

Third quotation
"We zijn bij haar aan de deur geweest ennuh toevallig was ze thuis, kwam ze net thuis, ze had net haar drie hondjes uitgelaten en ze kwam er net aangereden in haar scootmobiel ennuh, nou ja dan ben je niet zo snel binnen dus wij waren redelijk snel bij de deur alleen die gooide ze net voor onze neus dicht, ennuh, toen hebben we later aangebeld en toen zag ze dat wij voor haar kwamen is ze toch nog even naar buiten gekomen al was het alleen om vast te stellen wie of het waren want ze kende me nog niet, en ik stelde me dus voor als haar nieuwe klantmanager met de vraag of we wat voor haar kon betekenen, ennuh, daar gaf ze niet eens antwoord op, we moesten maken dat we weg kwamen !"
(Transcript 10, 61-67)

Fourth quotation
F- wat me opviel is dat je schrijft van: 'niets doen betekent dat haar omstandigheden en de rol van de gemeente voer voor de pers wordt'.
H- jaah
F, citeert uit informatie mail – 'Daar zit niemand op te wachten'
H- t is een gehandicapte vrouw met drie hondjes en op het moment dat je d'r onder een boom uh laat slapen dan haal je de krant
B- ja dan staat SBS uh RTL uh de hele mikmak op de hoek
C- of ze loopt zelf naar de wethouder want dat kan ze dus ook nog doen
F- maar dat lijkt een argument om wel iets te doen terwijl je het eigenlijk misschien niet wil (2) Dat vind ik interessant.
((verschillende stemmen))- Dat is het ook
H- maar op een gegeven moment is er hier intern gewoon gezegd: van ja, uh, pomp d'r maar bijstand in dan ben je d'r af. Maar da's da's een oplossing voor …
F- maar ook uit angst voor media?
H - nou ik denk dat dat meespeelt ja
D - maar dat is al gebeurd dus, dat heeft zich al voorgedaan, er is al pers aan te pas gekomen?
H - in het verleden ja
D - in het verleden, zoals
A - dus dit speelt al heel lang
H - ja het speelt al heel lang, er moet gewoon iets gebeuren met die mevrouw (Transcript 10, 108-127).

5.2

First quotation

"F- stel iemand heeft vierduizend euro op zijn rekening en die heeft die kosten. Dan ga je toch ook zeggen van, ja, je kunt het zelf voldoen.
C- ja
F- ook al zit je onder het vrij te laten vermogen
B- ja maar dat is dus waar ik een beetje over zat te denken weet je wel. Ik denk van, ik kan daar zoveel uh, verschillende oplossingen voor hebben.
C- ja
B- dat je kan afvragen hè, dat je als gemeente zegt ja maar je moet ook, hè, in het gelijke, het gelijkheidsbeginsel moet je in principe wel een beetje toepassen.
D en C- ja
B- dus je kan daar zo…
F- ja je kan heel breed, ja
B- …breed in uitwaaieren dat ik dacht van, ja, moeten we daar niet met z'n allen daar gewoon iets meer invulling aan geven. Ja
D- ja(2) ( )
C- maar dat blijft natuurlijk ook zo lastig dat je kijkt naar de persoonlijke situatie van iemand…
((D en A praten door elkaar, onverstaanbaar))
C- …dat iemand schulden heeft en al, en er ligt beslag op de uitkering dan is dat een andere situatie dan wanneer iemand eigen vermogen heeft. En dat blijft. Dat is altijd zo geweest en dat is nog steeds zo. Je kijkt naar de persoonlijke situatie van iemand
B- nou maar vergeet het gewoon effe die schulden, weet je wel
C- ja
B- ik bedoel, laten we uitgaan van geen schulden, maar gewoon, iemand heeft, gewoon, meerdere kosten waarvan we zeggen dat vinden we eigenlijk wel noodzakelijk
C- noodzakelijk
B- waar is een beetje het omslagpunt? Kijk, het komt niet op een tientje aan, denk ik?
C- nee, het komt niet op een tientje aan
D- nee
((D mompelt iets, onverstaanbaar))(4)
B- niemand weet het!
D- nee
A- neehee. Dat is lastig want er wordt steeds gezegd, individueel bekijken
C- ja
A- en wat is, wat vind jij bij dat gezin passen. Aan opstapeling. Hoe hoog. En dat is dus volgens mij niet één lijn. Dat er een bedrag genoemd is."
(Transcript 15, 822-859)

Second quotation (5.2)
"A- Ja maar goed, maar als iedere klantmanager voor zich gaat bedenken nou, ik vind 300 euro wel een mooi drempelbedrag en de ander zegt 400, krijg je natuurlijk ongelooflijke willekeur …
((Twee stemmen)) - ja
A-…dat volgens mij moet je dat niet willen
E- Ik denk dat je dat met deze situatie sowieso krijgt want als er alleen fysiotherapie is, dat de een zegt van nee je krijgt het niet want we doen het niet meer, en de volgende zegt nee hoor ja ik vind het zoveel, je krijgt het wel
A- Ja daarom dus ik vind het heel on-, on-, ik vind het ongelijkheid."
(Transcript 13, 1022-1028)

Third quotation (5.2)
"Maar goed, kijk het hoeft niet zo, het hoeft niet te zijn dat het heel veel voorkomt, maar het komt wel voor, en als al zullen het er maar twintig zijn in het hele jaar en als in die twintig er zo ongelooflijk verschil zit dat iemand op een gegeven moment zegt oh wanneer heeft (naam A) helpdesk want dan dan wil ik graag bij (naam A) en ik wil niet bij (naam B) want bij (naam B) krijg ik het niet en bij (naam A) krijg ik het wel." (Transcript 13:1116-1119).

5.3
First quotation
"Bovendien is het van belang dat binnen dat maatwerk in gelijke gevallen, gelijk wordt gehandeld. Maar ook dat de klantmanager de ruimte leert nemen om gemotiveerd af te wijken van de regels als dat in het individuele geval nodig is. Daarom is er voor gekozen casuïstiekbesprekingen te gaan voeren. Kern van de methode is dat de deelnemers op voet van gelijkheid het beroepsmatig handelen bij het ondersteunen van onze klanten met elkaar bespreken."

Second quotation
"A- Nou ik vind dat wel een belangrijke eigenlijk hoor
B- ja maar je
A- dat iedereen daar wel een beetje hetzelfde mee om zou moeten gaan
B- Ja nou maar daarom hebben we daarom hebben we in die zin natuurlijk deze bijeenkomst
A- jawel maar dan maar
B- dus het zal niet meer zo zijn, (naam A), dat het allemaal in werkinstructies staat bij
( ) euro of bij 200 euro dan gaan we wel wat doen. Het is steeds meer zoeken naar wat vind jij nog reëel.
C- Maar wat is nou wat is nou reëel?
B- Ja nou dat is moeilijk maar als ik hier kijk dan denk ik dat we wel tot een eind conclusie komen want dat is helemaal niet zo verschillend en iedereen vindt het bij die fysio op een gegeven moment te gek worden"
(Transcript 13, 1178-1186)

Third quotation
"D-Ja maar wat is dan hoog, ik bedoel, is 500 euro dan ook hoog?".
"E-Ja daar zou je dan een richtlijn voor moeten hebben."
(Two client managers in Transcript 13, 1063-4).

6.1
First quotation
"Voor beiden hebben diverse pogingen een activeringstraject op te zetten tot niets geleid.... Ik zie daar ook geen enkele mogelijkheid meer in."
(Introducerende mail, Transcript 21).

Second quotation
"B - Je ziet volgens mij een patroon van vervuiling, aanschaf van nieuwe spullen maar weer gewoon totale verwaarlozing dat is een beetje het patroon
A - Ja, dat
B - En en je zit nu dus eigenlijk weer voor voor de aanvraag van moet er weer geld in. En wat verwacht je voor de toekomst? Hoelang gaan ze het doen, één jaar twee jaar drie jaar of? Eigenlijk is dat het beeld."
A - Dat is het, dat is gewoon het hele moeilijke"
(Transcript 21, 234-9)

6.2
First quotation
"D - Wil je nog een toelichting geven, (naam c), op het verhaal van de familie?
A - de familie W. ((full name))
D - de familie W. ((full name))
A - Uhm ja ik merk aan mijzelf dat ik uh, da gaat even over de emotie erbij,
D - Ja
A - Uhm dat ik een beetje uh uhm, in de weerstand schiet, uhm, aan de ene kant denk ik oh wat is er allerlei hulp wel nodig
D - Ja
A - En aan de andere kant uhm, dat merk ik ook van de hulpverleners van K. en de M. (andere hulpverleners), dus dat er wel heel makkelijk allerlei hulp wordt geconsumeerd zonder dat er iets tegenover staat. En, d.. ik ben dat eigenlijk wel een beetje zat ((lachend)) Merk ik. Want zij stuurt ook altijd, en ((naam aanwezige collega)) is ook ooit klantmanager geweest van mevrouw W. ((geritsel van papier))–ze stuurt ook altijd van die hele uh in mijn beleving dwingende brieven -((meerderen tegelijk)): zo, nou dat zijn meer boeken joh!
A - Maar goed ze heeft natuurlijk ook psychische klachten, dus dat is ook wel weer verklaarbaar maar goed ((met een Duits accent)) "heel extreem totaal super binnenkort extra help help help vlug vlug!" ((bladert snel door brief heen; men lacht)) en dan denk ik: oh
-((meerdere reacties lachend door elkaar))

A - Maar goed..
B - Ik zou het terugsturen en vragen om een samenvatting
C - Kunt u een uittreksel maken? ((lachend))
A -En dan neem ik dat ook niet meer serieus, maar goed dat is dus een beetje uhm wat je er van binnen allemaal een beetje bij denkt en voelt
D - Ja
A - Feit is dat er er is natuurlijk wel zorg om deze mensen (2) en uh (2) ik weet eigenlijk niet zo heel goed wat ik ermee aan moet."
(Transcript 21, 110-130)

Second quotation
"Vraag: wat zouden jullie doen met de uitkering van mevrouw? En wat zouden jullie doen met de aanvraag BB?" (Introductiemail, Transcript 21).

6.3
First quotation
" ik had gewoon moeten blokkeren huppekee ja (2) dat lukt me niet bij hun."
(Transcript 21, 341-2)

Second quotation
A - hij zegt dat hij er niets mee verdient;
B - ja maar dat is natuurlijk, hij doet het niet voor niks, kijk een verslaafde die iets voor niks doet daar heb ik nog nooit van gehoord dus die die
A - gevoeglijk kun je zeggen, er zullen neveninkomsten zijn
(Transcript 21, 220-223)

Third quotation
G - kijk daarom vroeg ik zelf naar, go is er een auto en rijden ze rond en dat soort dingen maar dat is niet, daar is geen sprake van
B - je stelt eigenlijk zelf al vast dat het gewoon eigenlijk niet anders is dan heel marginaal
A - ja
B - en ik denk dat je dan in de omstandigheden van dit gebeuren zeg maar, hè, dan
A - moet je het loslaten zeg je
B - ja dat denk ik wel. Kijk als-tie het niet verdient met oud ijzer dan verdient ie het wel met ergens iets weg te halen, weet je, formeel mag het niet maar dat is natuurlijk wel de omstandigheden dat je daar in mee kunt nemen
(Transcript 21, 814-822).

6.4

First quotation

"Het zijn het zijn mensen met een tik daar kun je heel ja daar kun je van alles van gaan verwachten maar die doen dat toch niet"
(Transcript 21, 405)

Second quotation

"Nee maar gewoon zo van: dit is dit is wat wij vragen en als je daar niet mee komt, gebeurt er dat. Punt. En dan is er geen ruimte meer dan kunnen ze niet dit of dat, nee dit gebeurt er gewoon. Dat is voor hen duidelijk. Oké dan weten ze hoe ze daarop moeten reageren. Want je kunt ze ruimte geven en dan gaan ze steeds verder en dat gaat steeds verder en je verzandt weer in he, wat moet je vervolgens doen, het begint te stapelen, ik zou zeggen heel duidelijk, heel helder, net als kleine kinderen, dat gebeurt er, dat."
(Transcript 21, 766-770).

Third quotation

"Ik denk dat uhm verslaafden over het algemeen de taal van geld goed begrijpen en dat je die macht die je hebt zeg maar hè feitelijk zeg maar aan de ene kant kunt gebruiken om ze zeg maar in een bepaalde richting te krijgen waarin ze gewoon moeten gaan, aan de andere kant zit er natuurlijk veel meer problematiek gewoon ook bij en daar moet je denk ik wel oog voor hebben"
(Transcript 21, 496-499)

Fourth quotation

"B - Hè maar ik denk dat je wel voor jezelf goed moet afvragen van wil ik inderdaad verder met die klanten? (3) uhm of kun jij je je verwachtingspatroon misschien bijstellen van wat je van ze mag verwachten of uh, maar ook in de zin van stel dat ze daar nu niet mee komen en de uitkering wordt beëindigd? Dat is dan ook gewoon zo. Weet je, dan gaat het wel rollen, ze komen wel weer terug en dan uhm ik denk dat het wel goed is om meer zo'n houding er in te hebben van
A - Laat het maar klappen dan als ze zelf niet komen
B - Als ze, ja, want, dat is aan de ene kant wel wel lastig en is misschien aan de ene kant misschien ook niet wat je wil maar aan de andere kant hoort het wel bij denk ik een stukje duidelijkheid die je ze geeft en ze toch een stukje eigen verantwoording daarin geven, omdat je anders altijd maar blijft ageren en blijft geven en blijft..
A - Ja
B - Hè, als je duidelijkheid geeft moet je ook een keer zeggen van nou ja goed dit hoort erbij, klaar. Ik heb je toch de duidelijkheid verschaft?"
(Transcript 21, 590-601).

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