Queen Margaret University
EDINBURGH

School of Arts, Social Sciences and Management

QMU Working Paper Series – 2020/1

Complaint handling and fair decision making in the financial industry[1]

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Introduction

This exploratory research, based on a small case study with complaint handlers (CHs) employed within a major UK financial institution investigates how complaint handlers in the financial industry interpret the requirement to resolve complaints. This research highlights the role individual CHs play in terms of deciding the outcomes of complaints, and how their fair decision making is facilitated and constrained by the institutional framework and a team environment which encourages dialogue and empowers CHs to act with the moral agency to act fairly. Constructions of fairness can vary between complaint handlers with some adopting an explicit ethical and moral focus. In practice, the difference may be rhetorical since both groups adopted similar tests when making decisions on how to treat customers fairly.

Since 2001, the financial industry in the UK has been under a duty to "pay due regard to the interests of its customers and treat them fairly" (Principle 6 of the Financial Conduct Authority's (FCA) Handbook (FCA, 2001)). The requirement to treat customers fairly is pivotal at the point of complaint and a firm's approach to complaints is seen by the regulator as a good indicator of whether a culture of treating customers fairly exists (FCA, 2010). Customers who are

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[1] This working paper has subsequently been developed further and will be published as WILLIAMS, J., GILL, C., McBURNIE, G. 2020 [in print] "It's the most ethical job I have ever had": Complaint handling and fair decision making. *International Journal of Business Governance and Ethics.*

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unhappy with the outcome of their complaint also have free access to the Financial Ombudsman Service (FOS) who apply a "fair and reasonable test" to resolve complaints.

Internal CHs in the finance industry, therefore, are under an obligation to resolve complaints fairly.   While the concept of fairness has received much attention in the academic literature across a range of disciplines relatively little literature has looked at this from the perspective of individual complaint handlers.   Existing literature tends to look at fairness from the perspective of how those on the the receiving end of decisions such as employees or customers experience fairness (Letwin et al., 2016; Barclay et al., 2017) or from the perspective of the broader corporate actors (e.g. Burdon and Surour, 2018, Gilad, 2011; Parker and Gilad, 2011).   This contrasts to the literature on ethical decision making where there is an extensive literature written from the perspective of the *individual* decision maker (for reviews of the various literature see Craft, 2013; O'Fallon and Butterfield, 2005; Islam, 2019; Lehnert et al., 2015).

Literature Review

The key points from the literature which influenced this research were that:

- Fairness is strongly associated with the concept of justice and only recently has the literature started to differentiate them (Barclay et al., 2017; Fortin et al., 2016).
- In relation to *fair decision making,* justice theory emphasises the different types of justice that underpin perceptions of fairness. Different disciplines approach this differently. Organisational justice scholars and service recovery literature primarily use a three construct model of fairness that includes distributive justice, procedural justice and interactional justice (for a review of the organisational justice literature see Colquitt et al., 2001; 2013; Rupp et al., 2014; Pattnaik and Tripathy, 2019. For service recovery see Gelbrich and Roschk, 2011 and Orsinger, et al. 2010).
- *Distributive justice* is concerned whether the outcome is perceived as fair. *Procedural justice* relates to whether the individual perceive the procedures used are fair e.g. whether they are timely and give them an opportunity to voice their complaint. *Interactional justice* relates to the whether the individual perceives the quality of the interpersonal treatment as being fair.
- Socio-legal research in contrast instead combines interactional justice and procedural justice within the same construct when exploring user experiences of fairness.   Based on work by Thibaut and Walker (1975) and Lind and Tyler (1988) this body of research is referred to as "procedural justice".   There is an extensive literature to support this in

a variety of contexts, including: courts, the police, arbitration, mediation, negotiation, and local government decision making.

- In the context of consumer ombudsman schemes, including the UK's Financial Ombudsman service research has found that while procedural justice is important in explaining whether consumers are willing to accept the decisions of consumer ADR schemes as legitimate, substantive outcomes may be of much greater importance than has traditionally been found in other dispute contexts (Creutzfeldt 2014; Creutzfeldt and Bradgate 2016).

- Overall the literature suggests that while fairness is associated with global perceptions of the fairness of a decision the way individuals perceive and experience fairness is largely subjective (Barclay et al., 2017; Finkel, 2001; Fortin and Follenz, 2008; Fortin et al., 2016; Wilson and Wilson, 2007).

- This subjectivity, when combined with the managerialism ethos of much of the literature, has led to criticism that there is a gap between a normative standard of fairness (what is objectively fair) and perceived fairness (Barclay et al., 2017; Fortin and Fellenz, 2008; Fortin et al., 2016). The emphasis on customer satisfaction therefore can help foster a perception that employees are concerned with customers' problems (Gelbrich and Roschk 2011) that fails to take account of the broader moral or ethical dimensions. The regulator, the Financial Conduct Authority has been keen to stress that there is a difference between satisfying consumers and treating them fairly (Gilad, 2014).

- There is an extensive literature on ethical decision making written from the perspective of the individual decision maker (for reviews of the various literature see Craft, 2013; O'Fallon and Butterfield, 2005; Islam, 2019; Lehnert et al., 2015). This is of interest because a sense of fairness is grounded in basic ethical assumptions regarding normative treatment (Folger et al., 2005). Fairness and ethical decision are also both considered to be subjective and context dependent and both make assumptions about people's ability to "do the right thing" (e.g. Cova et al., 2018; Fortin et al., 2016; Folger et al., 2005; Trevino, 1986; Rupp et al., 2014).

- Ambrose and Schminke (2009) are one of the few examples of scholars who have attempted to integrate the literatures on fairness and ethics. Key questions they raise include whether individuals can be schematic for fairness, arguing that fairness and being fair may be central aspects of some individual's self-concept. They also consider the impact of justice climate, and whether fair decision making is more likely in organisations and departments with strong and positive justice climates

- The research on justice climates complements scholarly work on moral agency which is also relevant to the context of complaint handling and the ability of CHs to act fairly. Moral agency requires two preconditions: first, a capacity for self-reflection and the critical examination of social and contextual structures; and second, a sense of accountability to others (Macintyre, 1999). Wilcox (2012) argues that institutional structures can widen the scope for moral agency, when they provide reflective relational spaces which provide opportunities for critical questioning of organisational approaches.

- Chalmer's (2016) reflexive model of ethical fairness for complaint handling in financial services, which is one of the few examples of a conceptual model that combines fairness and ethical perspectives and applies them to complaint handling. It does this by conceptualising CHs as "boundary spanners." Drawing on Williams (2011, 2013), Chalmers argues that CHs work across internally and externally across organisational boundaries to resolve complaints requiring a range of networking, entrepreneurial, interpretation and organisational skills. As a result CHs are subject to complex power dynamics, both internally and externally, in terms of the influence of the organization over fair decision making as well as the wider external regulatory environment.

Methodology

The case study selected is a long established major financial institution incorporating a number of well-known high street brands with an international presence. It has been subject to a high degree of public scrutiny as well as enforcement action for poor complaint handling in the past. It has reported significant efforts in recent years to improve its complaint handling and adopt a more customer focused approach. The research was undertaken with CHs working within two specialist teams dealing with 'executive complaints'. These teams were selected on the basis that they dealt with a diverse range of customer complaints and have a high degree of discretion on how to resolve them. In addition to complaints sent to senior executives they also deal with 'VIP' complaints referred via members of parliament or the media, and particularly complex and sensitive cases. The majority of the team members are based at the UK headquarters of the organisation. The method that was adopted was thirteen semi-structured interviews (Stage 1) and two focus groups (Stage 2). Stage 1 consisted of thirteen individual interviewees that took place in March / April 2018. The focus groups took place following on from the initial data analysis as they were a helpful way to test whether the findings were "ringing true" (Smith 2018, p. 140).

Results

Based on qualitative clustering the following 4 influences emerged relating to how CHs approached fair decision making: (a) institutional structures supporting fairness; (b) conceptualisations of fairness; (c) individual approaches to decision making; (d) importance of the team in empowering individual CHs to act fairly

Institutional structures

It was clear that there were a number of institutional structures, policies and processes that supported this group of CHs in their decision making. There was a strong sense of pride in working within these complaint teams as they represented an elite group of CHs who provided the "*most sophisticated complaint handling in the bank"*, doing, *"the most ethical job in the bank*". (CH11) and the, "*last bastion of fairness before [a complaint] goes to the Financial Ombudsman*" (CH4).   The case load was seen as being more varied and complex than other complaint handling teams. They also noted that they had more time and more contacts which allowed them to resolve complaints.   CHs were called complaint "managers" and they agreed that this gave them a status that other CHs did not have.   CH7 noted that despite the relentless nature of the workload that, *"at the end of the day, you're probably doing the most important job in the bank."*

There was strong consensus that they had more autonomy to resolve complaints than CHs in other teams and were able to make decisions that went against company policy, if it was the right thing to do. Other complaints teams within the organisation were likely to find it more difficult to, "*step outside the process*" (CH1 and CH3) and were more, *'soaked in that culture'* (CH2). .

All had experienced challenges, "*pushback*" (CH10) internally but nonetheless were encouraged to identify problems and to challenge where appropriate which became easier with experience. They did not feel there were any barriers to doing the right thing including acting fairly and felt well supported in making that decision.

In terms of culture, reference was made to the changes that had taken place in terms of complaint handling. 'Doing the right thing,' a company value, appeared to be clearly embedded within the team as CHs repeatedly mentioned it, and reference was made to other organisational tools such as checklists to support fair complaint handling. The burden of proof had also shifted to the organisation and where evidence was no longer available the consumer's word would be taken.

Despite the fact that they had more autonomy to override policy a number of CHs commented that the executive complaint teams were now seen as part of the complaints structure and this had led to some changes not all of which were seen as positive, "*now, we're part of the complaints world, there's definitely a change in that where we're starting to see that sameness, same rules, same approach and things like that.*" (CH2). The impact of QA and reporting mechanisms were commented on negatively in terms of an increasing emphasis on numbers.

In relation to being impartial, CHs recognised that as employees they could not be 100% impartial but saw themselves as having the *ability* to act impartially. In order to help them act impartially they adopted a number of strategies. CHs tried to think about the banks as a "*separate entity*" and to "*almost distance*" themselves (CH7) from the bank.   The fact their teams sat outside any particular department helped as did not having direct knowledge of the subject matter.   They regularly accessed the FOS helpline for business if they needed an external perspective. The CHs did not feel they needed to defend the bank, "*we don't ever feel like we're …….needing to defend the bank's honour or reputation. We're more focused on doing the right thing for the customer". (CH1)*

Philosophical and problem solving conceptualisations of fairness

One of the areas the research was interested in exploring was how CHs conceptualised fairness. Two distinctive approaches to fairness emerged from the interviews.   These approaches resonated strongly within the focus groups who clearly identified with these conceptualisations. The first of these groups we have labelled as 'philosophers'. Unprompted, they saw a clear ethical and moral dimension to their complaint handling , *"I am passionate about always doing the right thing and doing the moral thing and it's probably the only job in the bank where you've got the opportunity to actually do that and make a difference"(CH9).* They felt that that the role was more ethical than other positions in the bank and were highly reflective,*" It does feel like the most ethical role I've had in the bank*" (CH11). They were more likely to have sleepless nights over their complaints and to comment they found it difficult to make decisions reflecting the complexity of the cases they were dealing with. This group very much saw their role as putting themselves in the consumer's shoes and to take a pro-consumer stance if they could, "But *I would always err on the side of the customer, no matter what." (CH7).* Ambrose and Schminke (2009) suggest that fairness and being fair may be central aspects of some individual's self- concepts and there were some suggestions of this in terms of the way this group of CHs referenced the need for a strong moral compass

The second group we characterised as 'problem solvers'. 'Doing the right thing' was perceived as being the primary test for deciding fairness and, while some cases were complex, most were straightforward. Putting themselves in the shoes of family and friends was important (this test was also used by some of the philosophers) as well as ensuring they were happy within themselves with the outcome of a complaint, *"I kind of look at it as – well, if it was me"* (CH5, 8). They were keen to understand what had gone wrong and provide an explanation. Resolving complaints did not give them sleepless nights although one recognised that it had done in in the early days of complaint handling. When probed they thought that being ethical was the same as being fair and doing the right thing, *"I think that if you are doing the right thing, then it should be fair and it should be ethical"* (CH5). While some cases could be complex they were confident in their decision making and in most instances did not find resolving complaints difficult. Restoring the reputation of the bank was also seen as important.

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Subjectivity of fair decision making

In accordance with the literature, there was widespread recognition that working out what is fair is difficult due to the subjective nature of complaints, "*So with complaints– they can be subjective and a lot of it is interpretation"* (CH13*).* Many found it hard to articulate exactly what they did in terms of ensuring their decision making was fair. The interactional and procedural elements of fairness were seen as important, but when it came to making a judgement on what the final outcome should be, CHs referred to the fact that it was a, "*personal judgement*" (CH5), *"judgement call"* (CH8) or "*gut instinct*" (CH6 and 10)

They did not reference formal approaches such as analysing evidence but started from an awareness of procedural and interactional justice. Cases that caused particular difficulties with fairness were scams particularly if they included the elderly or the vulnerable. Philosophers were more likely to refer to these as, *"morally complex"* (CH11). Other cases mentioned as causing fairness issues were those that ignited biases – a number mentioned bias training they had received – and those where the evidence was finely balanced. Ensuring that customers are treated consistently was also flagged by two CHs. CHs commented on the need to be mindful of external audiences when resolving complaints since their decision making was closely scrutinised by the executive. This was an added pressure as CHs did not want their decisions to be overruled.

In terms of how often they experienced problems in working out what was fair, this varied from most cases are difficult (CH6) to 1 – 2 a month (CH11). This issue was further explored in the focus groups who commented that the variation reflected the different types of cases that individual CHs were dealing with – some CHs specialising in more complex cases.

Supportive team environment

One of the key themes emerging from the data was the importance of team and colleagues in supporting CHs to resolve complaints. The team environment was perceived as their primary support mechanism and there was a strong sense of camaraderie. Informal conversations took place up to a couple of times a day to "*check understanding*", *"bounce off colleagues"* (CH5) or to *"get a second opinion"* (CH13). The subjective nature of complaints, pressure of QA or checking inherent bias were all given as reasons for engaging in these informal conversations. The need to check with colleagues was not limited to the less experienced staff and all CHs valued the importance of those informal conversations and support mechanisms. 'Sense checking' with colleagues also fulfilled an important function in terms of helping CHs let off steam and deal with stress.

In addition to informal support mechanism more formal mechanisms existed to facilitate this where a formal invite would be sent to 3 to 5 colleagues to meet and their views sought on the complaint they are dealing with. They were used for more complicated cases where the CH wanted a wider pool of views and the CH wanted to check they were *"on the same page"* (CH7) and had not missed anything or as a check on their own bias They were also useful if the CH wanted to formally document the reasons for a decision or to highlight at an early stage to a manager that a complaint may lead to a high pay out or be heavily resisted by another department. The diversity of approaches within the teams was seen as a significant strength

"I always tend to choose quite different people" (CH4) and the focus groups confirmed that this was a tactic used throughout the teams. Despite the importance of these discussions the final decision rested firmly with the individual CH.

> *"so that's the worst time when you're asking for a wee bit of help so to speak and a different of opinion and then you get 6 people, 3 of one opinion and 3 of the other and then it really just comes down to you …… I just think, right, you've just got to go with your gut here and there's maybe no technically a right or wrong answer, it's just gonna be a difference of opinion."(CH6)*

DISCUSSION AND CONCLUSIONS

This research set out to explore how individual CHs interpret fairness, and in this part of the article we discuss the findings of our case study and draw a number of conclusions about how fairness is embedded in practice. First, our findings highlight how, even though CHs are responsible for the final decision, their individual constructions of fairness were influenced by an organisational framework which pushes CHs towards a particular approach to fairness. The regulatory requirement to act fairly is supported therefore by substantial institutional mechanisms for giving effect to these regulatory provisions. Organisational structures which appeared to support CH decision making included locating these teams outside the usual structure, giving them the status, space and time to explore what the fair thing to do is and an ability to step outside policy. In terms of culture, organisational values such as doing the right thing were embedded and this was reinforced by recent policy changes such as reversing the burden of proof in favour of the customer. Our research suggests that a climate for fairness appears to be closely linked with providing effective institutional structures and frameworks to support this.

Second, the evidence from our study was that a managerial approach to fairness was embedded in the teams we studied which have primarily adopted a customer satisfaction model of fairness, consistent with the service recovery literature which emphasises the importance of delivering customer satisfaction and restoring the reputation of the business (Gelbrich and Roschk, 2011; Orsinger, et al., 2010). It is also consistent with literature on financial regulation which suggests that the financial industry adopted a managerial approach to treating customers fairly based on improving customer experience (Gilad, 2011, 2014; Parker and Gilad, 2011). The evidence from this group of CHs was that this emphasis on company values provided them with the agency to act fairly and they felt supported to do so

by the organisations. At the same time the CHs indicated that other CHs within the organisation may not have the same discretion.

The third area our data points to is the active role teams play in constructing and reinforcing a shared understanding of fairness and the internalisation of cultural norms. In the context of our data, the importance of group dialogue and support emerged as a strong theme. While respecting individual decision making, the CHs repeatedly highlighted the importance of their colleagues in terms of developing their thinking on their complaint practice. These discussions facilitated the development of team norms around the tests used and embedded them particularly around 'doing the right thing'. In this context individual differences were celebrated and sought out. This may help to explain why two different approaches to complaint handling were identified as teams embraced employees who offered complementary approaches to complaint handling. The team space became "reflective relational spaces" (Wilcox, 2012, p. 93) and informal conversations and formalised processes facilitated candid discussion of what the fair thing to do was. In turn this led to the collective and mutual reinforcing of professional norms, the third element of Wilcox's model of moral agency. These structures did not prescribe or determine what decision to make (decision making remained firmly with the individual CH) but by providing critical and relational spaces for these discussions to take place, the CHs were supported to exercise their moral agency. These spaces, therefore, appeared to provide the "moments of reflexivity" that Chalmers' (2016, p.582) model of ethical fairness in complaint handling suggests is essential for fair decision making and extends it by emphasising the importance of the team safe space.

Finally, despite the importance of the organisational context our data also showed that there was some scope for different constructions of fairness between individuals. Schminke et al., (1997) suggest that an individual's ethical framework is important for understanding how recipients respond to the fairness of a decision, and our assumption was that CHs ethical framework may also be important when making fairness decisions. Two approaches were detected, and we tentatively suggest that those who, unprompted, identified a moral and ethical element to their decision making reflect a deontological approach to ethics. O'Fallon and Butterfield's (2006) literature review of ethical decision making found that deontology is positively related to ethical decision making. In contrast those who adopted a more problem solving and pragmatic approach reflected a more utilitarian approach to fairness, where actions are ethical to the extent they improve the outcomes of the individual complaint being considered (Forsyth, 1980). Our methodology means that we were unable to reach any conclusions on whether the decisions were fair *per se*. In practice the difference may be rhetorical since it also appeared that both groups adopted similar tests when making the final

decision on fairness highlighting the importance of being empathetic and using interpersonal skills to build a relationship with the complainant consistent with justice theory (Gelbrich and Roschk, 2011; Orsinger, et al. 2010). The empathetic approach taken by CHs is also consistent with Gilad's (2008) work at the Financial Ombudsman Service.

Limitations

In reaching these conclusions we are mindful that there are several limitations to our current exploratory research which include: (1) its case study methodology and its focus on a select group; (2) the fact it has only explored fairness from the perspective of CHs and we did this retrospectively without reference to specific cases; and (3) the inherent difficulties researching issues relating to ethics and fairness since simply asking about ethics or fairness introduces a moral dimension that may not have been perceived otherwise (O'Fallon and Butterfield, 2005) and is likely to influence the answers received, as interviewees will be motivated by a desire to be seen as fair (Greenberg, 1990).

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