

WestminsterResearch

<http://www.westminster.ac.uk/westminsterresearch>

Procedural justice in Alternative Dispute Resolution: Fairness judgments among users of Financial Ombudsman services in Germany and the United Kingdom
Bradford, B. and Creutzfeldt, N.

This is the accepted author manuscript of an article published in the Journal of European Consumer and Market Law (EuCML), 7 (5), pp. 188-200, 1 October 2018, with permission of Kluwer Law International.

The final definitive version is available from the publisher:

<http://www.kluwerlawonline.com/abstract.php?area=Journals&id=EuC...>

The WestminsterResearch online digital archive at the University of Westminster aims to make the research output of the University available to a wider audience. Copyright and Moral Rights remain with the authors and/or copyright owners.

Whilst further distribution of specific materials from within this archive is forbidden, you may freely distribute the URL of WestminsterResearch: (<http://westminsterresearch.wmin.ac.uk/>).

In case of abuse or copyright appearing without permission e-mail repository@westminster.ac.uk

Procedural justice in Alternative Dispute Resolution: Fairness judgments among users of Financial Ombudsman services in Germany and the United Kingdom

BEN BRADFORD and NAOMI CREUTZFELDT¹

Abstract

This article uses the lens of procedural justice theory to explore peoples' experiences of an alternative dispute resolution (ADR) model: ombudsman services, focussing on two services that deal with complaints about financial services in Germany and the UK. We ask two key questions: is the complaints process more important than its outcome; and does the importance of process and outcome vary between countries? In both countries we find a strong association between perceptions of procedural justice and outcomes such as overall perceptions of fairness, confidence in the ombudsman service, and decision acceptance. Against expectations, these associations are broadly invariant across the German and UK samples; but, despite this, all else equal German respondents expressed consistently more positive views. Our data add some nuance to the existing literature on procedural justice and suggest that the national context also plays a role. We suggest that national legal cultures provide for a framework of rules that guide people's perceptions and behaviours in legal, quasi-legal and related environments.

INTRODUCTION

Ombudsman services are a well-established model offering alternative dispute resolution (ADR). Swedish in origin, the ombudsman model has evolved over time and taken on many different forms.² Originally providing a service of accountability for citizens in relation to state institutions, ombudsmen can now be found providing ADR in the private sector (transport, telecommunications, energy, financial services, for example) as well as the public sector.³ Ombudsman services provide a way of resolving disputes that does not involve recourse to formal legal processes, which may be lengthy, expensive and often out of the reach of many ordinary citizens.

¹ Ben Bradford, UCL Jill Dando Institute of Security and Crime Science, 35 Tavistock Square, London WC1H 9EZ, ben.bradford@ucl.ac.uk. Naomi Creutzfeldt, Westminster Law School, N.Creutzfeldt@westminster.ac.uk. This work was supported by the Economic and Social Research Council [grant number ES/K00820X/01]. We are grateful to the anonymous reviewers for constructive feedback on an earlier version of the paper.

² Linda Reif, *The Ombudsman, Good Governance, and the International Human Rights System* (Martinus Nijhoff Publishers 2004)

³ Christopher Hodges et al, *Consumer ADR in Europe* (Hart 2012)

European legislation on consumer ADR (2013/11/EU) has made the availability of ADR providers redressing consumer complaints mandatory in all EU member states. This has produced a rapid expansion of ombudsman services throughout Europe. Thus far this expansion has not been matched by empirical studies exploring what users think of these bodies. This paper aims to address this omission. We seek to understand how the users of the ombudsman model experience the process, and whether the ways in which judgments are formed vary across users of similar services in two different jurisdictions, Germany and the UK. We ask, what shapes service-user's willingness to accept decisions: is the process more important than the outcome; and does the relative importance of process and outcome vary across countries?

Why does this matter? Little is known about users' expectations and perceptions of ADR providers. Whilst legislation has been implemented⁴ in EU member states, it is important to understand what users of the system experience, which can be fed back into the dispute resolution process design to provide the most effective and accepted pathway to redress for consumers.

The ombudsmen we discuss in our paper provide ADR for consumers who have unresolved disputes with financial service providers. Our focus is on Financial Ombudsman Service (FOS), in the UK, and the *Versicherungsbundsmann* (VO), in Germany. Both are regulated through the national transposition of the EU consumer ADR directive. The FOS was set up in 2001 by law as an independent public body that aims to resolve individual disputes between consumers and financial service providers. The process is free of charge for the consumer. In the words of the ombudsman herself, the process aims at *fairness*, which "isn't only about making sure our answers and decisions are *technically* right. It's also about wanting to make what we do *feel* right. And we do this by listening, thinking and explaining."⁵ The FOS has legal powers to provide redress when it decides that someone has been treated unfairly. In 2015/2016 it received 219,996 new complaints about insurances – including payment protection insurance (PPI). This was slightly lower than the previous year and represented 65 per cent of all new complaints received by the FOS. The primary issue resulting in complaints remains the quality of communication between insurers and their customers.

The VO⁶ is an independent and accredited ADR provider that is free of charge for the

⁴ Naomi Creutzfeldt, 'Implementation of the consumer ADR directive' [2016] EuCML 169

⁵ <<http://www.financial-ombudsman.org.uk/about/aims.htm>>.

⁶ <<http://www.versicherungsbundsmann.de/home.html>>.

consumer, and was set up in 2001. The VO helps consumers navigate and understand disputes resulting out of complex insurance contracts. Unlike the FOS it was set up by German insurance companies for two reasons: first to protect consumers, and second to prevent disputes with their customers being brought to a court. In 2015 the VO received 20,827 complaints.⁷

While clearly very different in scale – the FOS is the biggest ombudsman in Europe⁸, and possibly the world – both organizations deal with very similar types of problems, are governed by the same European legislation, and use procedures that are, generally speaking, also very similar. At first contact, via telephone, letter or online, the consumer is asked a series of questions to decide if her case is admissible. An assessment team or case handlers identify cases that can be resolved without a full investigation, and those that have to be escalated through the complaints process. Most cases are resolved at an early stage, and only a few go through to a full investigation and receive a concluding adjudication by the ombudsman. While the outcome is binding on the financial service providers, consumers can still resort to a court.

FORMING JUDGMENTS ABOUT OMBUDSMEN

There is now a considerable amount of evidence suggesting that when forming judgements of authority figures in legal contexts, such as policing and the criminal courts, the effects of procedural justice – concerns about the quality of formal and informal decision-making processes, and about the quality of formal and informal personal treatment⁹ – outweigh those of distributive fairness and outcome favourability.¹⁰ People tend to care more, that is, about the fairness of the process than about the outcome it delivers. What is less clear, however, is how these different elements, procedural justice as well as outcome-related concerns, come together in ‘quasi-legal’ settings such as ombudsmen to shape overall perceptions of fairness

⁷ Life insurance, legal protection, car insurance, building insurance, accident, home, general, work, credit.

⁸ See: Sharon Gilad, ‘Juggling Conflicting demands: The case of the UK Financial Ombudsman Service’ [2009] JPART 661; Daniel Schwarcz, ‘Redesigning Consumer Dispute Resolution: A Case Study of the British and American Approaches to Insurance Claims Conflict’ [2009] Tulane Law Rev 735

⁹ Steven Blader and Tom Tyler, ‘A Four component model of procedural justice: Defining the meaning of a “fair” process’ [2003a] Personality and Social Psychology Bulletin 747; Steven Blader, and Tom Tyler, ‘What constitutes fairness in work settings? A four component model of procedural justice’ [2003b] 13 Human Resource Management Review 107; see Lind and Tyler, *The Social Psychology of Procedural Justice* (Springer Science1988)

¹⁰ Tom Tyler and Yuen Huo, *Trust in the law: encouraging public cooperation with the police and courts* (Russell Sage Foundation 2002); see Lind and Tyler (n 9)

and outcome acceptance.¹¹ More precisely: how does the idea of procedural justice translate into the context of a financial service dispute, in which money is the main driver? Moreover, research on the dynamics of procedural justice has often lacked a clear cross-cultural comparative element – although there are of course exceptions, including Kim and Leung in the organizational literature¹², and Staubli and Jackson and colleagues in the criminological literature.¹³ One possible reason for this is that different legal, social and political regimes can often seem to make such comparisons difficult. It can be difficult to explore cross-cultural perspectives on what constitutes ‘fair process’ when the processes involved are themselves often culturally contingent.

While Germany and the UK have very different legal histories and cultures¹⁴, the individuals in our sample had all gone through a very similar process – making a complaint about a financial service provider to ombudsman services overseen by the same EU legislation. Our data therefore allow us to explore not only how people in Germany and the UK experienced this process, and how their overall judgments about it came together, but also to make some tentative inferences about the extent to which differential legal socialization, within dissimilar legal cultures, might shape their justice-related concerns and thus the ways they experience and understand this form of dispute resolution.

1. Procedural justice in ADR

To date, procedural justice research concerned with legal processes has concentrated primarily on policing and criminal justice (although procedural justice effects have been identified in a very wide range of settings, from parent-child relations to employment¹⁵). Ombudsman services therefore provide a relatively unexplored *legal* context for exploring questions of procedural justice.

The differences between a financial service ADR procedure and a formal court hearing, or an interaction between police officer and member of the public, are, in their very

¹¹ Naomi Creutzfeldt & Ben Bradford, ‘Dispute resolution outside of courts: procedural justice and decision acceptance among users of ombuds services in the UK’ [2016] LSR 985

¹² Tae-Yeol Kim & Kwok Leung, ‘Forming and reacting to overall fairness: A cross-cultural comparison’ [2007] OBHDP 83

¹³ Silvia Staubli, *Trusting the Police: Comparisons across Eastern and Western Europe* (Transcript Verlag 2017); Jonathan Jackson, Ben Bradford, Mike Hough, J. Kuha, S. Stares, S. Widdop, R. Fitzgerald, M. Yordanova and T. Galev, ‘Developing European indicators of trust in justice’ [2011] *European Journal of Criminology* 267

¹⁴ Eberhard Blankenburg, ‘The Infrastructure for Avoiding Civil Litigation: Comparing Cultures of Legal Behavior in the Netherlands and West Germany’ [1994] LSR 789

¹⁵ Tom Tyler, ‘Procedural justice and policing: A rush to judgement?’ [2017] *Annual Review of Law and Social Science* 2.1

basic nature, threefold. First, this is for most people a novel legal context, and expectations of it are unlikely to be influenced by personal, vicarious or mediated experience of the same or similar processes. Second, there is typically no legal representative that manages expectations and guides an individual through the process (indeed there might be no identifiable human figure, akin to a police officer or court official, involved at all). Third, and relatedly, the process is usually managed entirely via telephone and online, with hardly any face-to-face interaction. It seems plausible to suggest that these factors will have an effect on the justice perceptions of people going through the ADR process, and we turn first to the extant literature on this issue.

a. When is a legal process fair and acceptable?

For decades, research has considered the question of what makes legal processes fair and acceptable to those involved. Two distinct components are commonly identified. First there are outcome-related concerns. On this account, people who have been involved in a legal process or procedure ask themselves “did I get the outcome I wanted” (outcome favourability) and/or “do I think I received the same outcome as others in my situation” (perceptions of equal treatment). If the answers to these questions are positive they are likely to: feel that the process concerned was itself fair and appropriate; be satisfied with both it and the decision maker; be willing to accept the decision reached; and be more likely to obey the (future) instructions of the authority figure and the institution they represent.¹⁶

Second are process-related concerns. Here, the argument is that assessments of legal processes and decision-makers (and indeed many other formal and informal processes and decision-makers, e.g. in the workplace) are not driven by outcomes but by the nature of the procedures themselves and, in particular, the process of interaction with the decision-maker. Research across a wide variety of contexts has shown that ‘procedural justice’ is a more important predictor of outcomes such as those outlined above than either outcome favourability or perceptions of equal treatment.¹⁷

¹⁶ Gerald Leventhal, ‘What should be done with equity theory? New approaches to the study of fairness in social relationships’ in Gergen, K. Greenberg, M. and Willis, R. (eds), *Social exchange: Advances in theory and research* (New York: Plenum 1980) 27; Robert Folger, (ed) *The Sense of Injustice: Social Psychological Perspectives* (Springer 1984)

¹⁷ See Lind and Tyler (n 9); Dale Miller, ‘Disrespect and the experience of injustice’ [2001] 52 *Annual Review of Psychology* 527; see Tyler and Huo (n 10); Robert MacCoun, ‘Voice, control, and belonging: the double-edged sword of procedural fairness’ [2005] *ARLSS* 171; Tom Tyler *Why People Obey the Law* (Princeton University Press 2006); Jonathan Jackson, Ben Bradford, Mike Hough, Andy Myhill, Paul Quinton, Tom Tyler, ‘Why do people comply with the law? Legitimacy and the influence of legal institutions’ [2012] *BJC* 1051; J. Colquitt, A. Scott, J. Rodell, D. Long, C. Zapata, ‘Justice at the millennium, a decade later: a meta-analytic test

Procedural justice research presents two different ways of categorizing the underlying concept. On the one hand, specific behaviours on the part of authorities are categorized, with a particular focus on: offering participation or voice, behaving neutrally, treating people with dignity and respect, and displaying trustworthy motives.¹⁸ Research finds that people's *perceptions* of the behaviour of authority figures and decision-makers across these criteria tends to collapse into a general sense of procedurally fair (or unfair) treatment – they do not distinguish between these different components but rather take a general position on the encounter as whole.

Other research distinguishes between the 'quality of decision-making' and the 'quality of treatment'¹⁹, with a further distinction sometimes drawn between formal and informal levels (i.e. those relating to codified rules and procedures and those relating to the quality of interpersonal interaction and the behaviour of individuals²⁰). Quality of decision-making refers primarily to openness, consistency, neutrality and a lack of bias – the ability to make the right decision), while quality of interaction relates primarily to issues of respect, dignity, voice and trustworthiness, and therefore to the good intentions and 'quality' of the decision-maker.

We follow the latter approach in this paper. Limiting analysis to the informal level²¹, we do so primarily because these *do* appear to be distinct aspects of people's experiences²², which may have practical and policy implications. It may be useful for a legal or other authority to know whether people using its services place particular importance on the way they are treated by staff, for example. However, we also note that in the current context there is likely to be a close relationship between these different components of procedural justice. There are two complementary reasons for suggesting why this might be the case. First, the unfamiliarity of the ombudsman process may create uncertainty about even informal

of social exchange and affect-based perspectives' [2013] *Journal of Applied Psychology* 199; Kate Murphy, Ben Bradford and Jonathan Jackson, 'Motivating compliance behavior among offenders' [2015] *CJB* 102

¹⁸ Tom Tyler and Steven Blader, *Cooperation in Groups: Procedural Justice, Social Identity, and Behavioral Engagement* (Philadelphia, PA : Psychology Press 2000); Tom Tyler & Jeffrey Fagan, 'Legitimacy and cooperation: Why do people help the police fight crime in their communities?' [2008] *Ohio State Journal of Criminal Law* 230; Lorraine Mazerolle, Sarah Bennett, Emma Antrobus and Tom Tyler 'Shaping citizen perceptions of police legitimacy: a randomized field trial of procedural justice' [2012] *Criminology* 1; Tal Jonathan-Zamir, Stephen Mastrofski and Shomron Moyal 'Measuring procedural justice in police-citizen encounters' [2013] *Justice Quarterly* 845

¹⁹ See Tyler and Blader (n 18); see Tyler and Huo, (n 10); Michael Reisig, Jason Bratton and Marc Gertz 'The Construct Validity and Refinement of Process-Based Policing Measures' [2007] *CJB* 1005

²⁰ See Blader and Tyler (n 9)

²¹ Since ombudsman services are a relatively new feature of the legal landscape, particularly in terms of public knowledge and experience, we reason that judgements about formal rules will be less important and indeed less meaningful in this context, primarily because most users will be unclear as to what these rules are.

²² See Tyler and Blader (n18); Steven Blader and Tom Tyler (n 9); but see: Reisig et al (n19)

decision-making processes, because for example complainants lack the knowledge to form expectations about how decisions should be reached. They may thus make inferences about the nature of decision-making from something they *do* have experience with – the quality of the personal interaction between themselves and the people working at the ombudsman service. This is therefore a version of the *justice substitutability process* described by Van den Bos and colleagues²³; the idea that people use aspects of a process about which they do have knowledge as heuristics for aspects of the process of which they have little or no knowledge. Second, since most of the interactions represented in our data will have occurred entirely in writing, on-line and over the telephone, decision-making processes will likely have been even more opaque to the individual concerned than might otherwise have been the case. When judging the quality of decision-making, this may lead, again, to inference from the quality of interaction. We therefore expect a strong correlation between these two components of procedural justice.

b. What explains the pre-eminence of procedural justice concerns?

Why then should procedural justice be more important than outcome-related concerns when it comes to predicting overall fairness judgements, decision-acceptance and other outcomes? There are three common, inter-related and mutually compatible answers to this question, all of which have implications for the ombudsman context.

The first answer revolves around a cognitive account of the normativity of fairness. Here, people evaluate the behaviour of authority figures against commonly held norms concerning how power-holders should behave²⁴ – when such behaviour is found to be fair, they reward those authorities with obedience and support. One way to envisage this process is therefore via a version of Social Exchange Theory.²⁵ Two parties involved in an exchange follow a specific set of rules that provide a ‘normative definition of the situation’²⁶, and when one party abides by these rules the other feels normative pressure to do the same. The procedural justice literature suggests that in many contexts norms concerning process fairness are likely to loom large in such considerations.

²³ Kees Van den Bos, ‘Uncertainty management: The influence of uncertainty salience on reactions to perceived procedural fairness’ [2001] JPSP 931; Kees Van den Bos and Allan Lind, ‘Uncertainty management by means of fairness judgments’ in M. P. Zanna (ed), *Advances in experimental social psychology* (Elsevier Science 2002)

²⁴ See Tyler and Huo (n 10); Tyler (n 17); Tom R. Tyler and Rick Trinkner, *Why Children Follow Rules. Legal Socialization and the Development of Legitimacy* (OUP 2017)

²⁵ See: Russell Cropanzo and Marie Mitchell, ‘Social Exchange Theory: An Interdisciplinary Review’ [2005] *Journal of Management* 874

²⁶ Richard Emerson, ‘Social exchange theory’ [1976] *Annual Review of Sociology* 333

It is here, however, that the potential for cross-cultural variation comes into focus. Norms of fairness, and the extent to which they activate reciprocal behaviour, may vary across jurisdictions. Different cultures generate different normative expectations concerning appropriate behaviour, and embrace different ‘systems of values’²⁷ that influence the relationships people form with legal institutions: legal culture is a “socially derived product encompassing such interrelated concepts as legitimacy and acceptance of authorities, preferences for and beliefs about dispute arrangements, and authorities’ use of discretionary power”.²⁸

For the purpose of this paper we understand legal culture, functioning at a national level, to be an informing and driving force in people’s relationships with authorities. These relationships are founded in a particular set of values and attitudes, inculcated via legal socialization, which provide the social and cultural tools people use to make sense of their experiences.²⁹ Legal culture(s) may help explain how ordinary people come to their assessments of the decisions reached and procedures used by an ombudsman. There is much to suggest that people socialized in different legal systems will place more or less emphasis on particular aspects of a process – and/or its outcomes – in ways that reflect the norms of the particular legal culture within which they are embedded.³⁰

The attitudes framed by different legal cultures, and the norms and values upon which they are founded, may provide heuristics for those socialized within them when they are confronted by a novel procedure such as ADR. In particular, civil law systems inculcate norms concerning consensus and deference to the decisions of properly constituted authority, while common law systems promote a more adversarial and hence transactional viewpoint, which is both more alive to the idea that decision-makers can be challenged and places greater emphasis on their role as a neutral arbiter. We therefore expect, first, that German respondents will, assuming they believe the ombudsman authority is properly constituted, place relatively less emphasis on procedural justice, because German legal culture emphasizes the form of authority and the correctness of decisions. As it happens, the German insurance ombudsman is a retired judge, which gives him a ‘legal authority’ within a process that is explicitly

²⁷ Geert Hofstede, *Culture's Consequences: International Differences in Work-Related Values* (Sage Publishers 1980)

²⁸ Guenter Bierbrauer, ‘Toward an Understanding of Legal Culture: Variations in Individualism and Collectivism between Kurds, Lebanese, and Germans’ [1994] *Law & Society* 243

²⁹ Rick Trinkner, Jonathan Jackson and Tom Tyler ‘Bounded Authority: expanding ‘appropriate’ police behaviour beyond procedural justice’ [2017] <https://osf.io/preprints/socarxiv/nezm6/>

³⁰ Stephanie Law, ‘From Multiple Legal Cultures to One Legal Culture? Thinking About Culture, Tradition and Identity in European Private Law Development’ [2015] *UJIEL* 68

positioned as an alternative to a court based process. In addition, all of his staff are lawyers and the procedural language used in communicating with the public is very formal and legalistic. This may increase the resonance between this form of ADR and more explicitly formal legal processes, and enhance the extent to which ‘cultural’ knowledge of the latter acts as a heuristic for the former. By contrast, UK respondents should place relatively more emphasis on procedural justice, because they have a higher expectation of voice from legal processes and because they expect decision-makers to be neutral. Second, and symmetrically, while we suggest below that in the ADR context most participants will be more outcome focused than seems to be the case in other legal contexts, the focus in civil law jurisdictions on the correctness of decisions reached by power-holders should make German respondents (even) more focused on the outcome than their British counterparts.

The second answer to the question as to why fairness judgements are so important for outcomes such as decision acceptance relates to perceptions of process control and the subjective reduction in uncertainty associated with a sense of procedural justice. When an individual feels that decisions have been reached in a fair, balanced and neutral fashion, when they have ‘had their say’, and when they trust the decision-maker, they may be more confident that the *right* decision was made and that it was arrived at appropriately, even if they are unclear as to its implications, are unsure how exactly it was reached and/or it went against them.³¹ This idea seems particularly salient in the current context, given the relative novelty, and as we describe below opacity, of ombudsmen services to many of those using them.

The third potential reason for observed associations between fairness judgements and outcomes such as decision acceptance relates to the relational aspects of procedural justice. Here, the argument is that authority figures such as police officers, judges, and employers are important representatives of social groups to which those interacting with them (as suspects, victims, appellants or employees) feel a sense of affiliation. This makes the behaviour of the authority ‘identity relevant’ to the individual and, in particular, the extent to which they feel procedurally fairly treated provides them with important information about their inclusion, status and worth within this group. Feeling that one belongs, and is recognized as belonging,

³¹ Kees Van den Bos, Riel Vermunt and H. Wilke, ‘Procedural and distributive justice: What is fair depends more on what comes first than on what comes next’ [1997] *Journal of Personality and Social Psychology* 95; Allan Lind, ‘Fairness heuristic theory: Justice judgements as pivotal cognitions in organizational relations’, in Greenberg, J. and Cropanzo, R. (eds) *Advances in Organizational Behavior* (Stanford University Press 2001); see Blader and Tyler (n 9); John Hildreth, Don Moore and Steven Blader, ‘Revisiting the instrumentality of voice: Having voice in the process makes people think they will get what they want’ [2014] *Social Justice Research* 209

by group authorities motivates one to trust them on the basis of shared group membership, accept their decisions, and indeed legitimize the institutional framework within which they are operating.³²

This explanation seems *prima facie* less likely to hold in the ombudsman context, for the simple reason that it is unclear whether the figure of the ombudsman carries the same affective charge as that of the police officer, judge or even employer. It is far from certain that the ombudsman is a ‘proto-typical group representative’³³ in the same way as these other figures can be. While identity processes certainly cannot be ruled out in this context, we therefore rely in this paper on the first two explanations of procedural justice effects outlined above.

2. The ombudsman process

There are other reasons to suggest that some of the most commonly identified aspects of procedural justice theory will be altered in the ombudsman context. Can, for example, core aspects of procedural justice such as voice and respect be provided via telephone and particularly via online interaction? Previous research has called this into question. Balmer et al³⁴, for example, found that at the most basic level people are generally more satisfied with an interaction on the phone than online. Wells³⁵ went one step further to consider perceptions of fairness where there was no human interaction at all – and found that people caught speeding by automated camera systems often experienced the process as unfair and unjust. She argues that while the ‘techno-fix’ provided by speed cameras

“is guaranteed to be fair in one sense [since it is always ‘right’] ... a machine is unable to demonstrate respect, respond politely or provide the ears necessary for an individual to feel that their voice has been heard. [T]hese additional criteria implicitly necessitate the involvement of human beings in procedurally just encounters” (p. 801).

³² Ben Bradford, Kristina Murphy and Jonathan Jackson, ‘Officers as mirrors: Policing, procedural justice and the (re)production of social identity’ [2014] BJC 527; see Tyler and Blader (n 18); see Tyler and Huo (n 10)

³³ Jason Sunshine & Tom Tyler, ‘Moral Solidarity, Identification with the Community, and the Importance of Procedural Justice: The Police as Prototypical Representatives of a Groups Moral Values’ [2003] *Social Psychology Quarterly* 153

³⁴ Nigel Balmer, Marisol Smith, Catherina Denvir, and Ash Patel, ‘Just a Phonecall Away: Is Telephone Advice Enough?’ [2012] *JSWFL* 63

³⁵ Helen Wells, ‘The Techno-Fix Versus the Fair Cop: Procedural (In)Justice and automated speed limit enforcement’ [2008] BJC 798

Although the ombudsman context offers some form of interpersonal interaction, the bulk of this does not happen in real-time.³⁶ The process is largely mediated through a virtual platform that does not allow immediate responses and which may have an impact on the experience of interpersonal treatment and perceptions of the quality of decision-making.

The nature and role of the human actors involved in the ombudsman process also differs from those in more ‘traditional’ legal contexts. An encounter with a police officer or judge is an interaction steeped in the authority and power that attaches to these institutions. The individual is not only subordinate to these figures but is at substantial risk of their potential malfeasance. It is not surprising that in such situations people want the powerholder to make fair, unbiased and neutral decisions. An ombudsman process, on the other hand, may involve other types of relationships, generating different sets of expectations. The ombudsman is certainly an authority, but one that has been established to protect the consumer and help them negotiate their complaints with companies. An individual approaches an ombudsman to seek help in addressing a problem they have with a business (a financial service provider, for example). They may be supplicants, but they are less clearly subordinates. And the worst that can come of the interaction is that the case is not found in their favour – the extent to which the ombudsman can actively do them harm, by omission or commission, is far less than is the case when, for example, a person is arrested by the police. The issue of neutrality, for example, may therefore be less salient when people are dealing with ombudsmen.

Yet, despite this, and despite what does seem to be a stronger emphasis on outcome favourability among ADR service-users compared with people involved in criminal justice contexts, procedural justice concerns still appear important. In a recent paper we explored whether procedural justice could explain, as it does in other contexts, why people accept decisions handed down by ombudsmen.³⁷ We found that outcome favourability and procedural justice both shaped decision acceptance; however, outcome favourability has a more important weighting in this context than is often the case in other studies, for example of policing. We concluded that while staff procedural justice did have a significant statistical effect on people’s overall perceptions of fairness of the ombudsmen, and therefore on decision acceptance (marking a similarity with other more overtly ‘legal’ contexts), it may simply be that in the ombudsman context people are more outcome-focused than seems to be

³⁶ Naomi Creutzfeldt, *Ombudsmen and ADR: A comparative study of informal justice in Europe* (palgrave Macmillan 2018)

³⁷ See Creutzfeldt and Bradford (n 11)

the case elsewhere (which is not to claim that people being dealt with by police and courts do not care about outcomes, too).

Based on our previous findings within one country, we take the inquiry to a specifically regulated context and across countries. For this purpose, we formulate the following five hypotheses.

3. Hypotheses

H1 is that, as in many previous studies, procedural justice (measured as quality of treatment and quality of decision-making) will be an important predictor of overall assessments of fairness, confidence in the decision-maker, and decision acceptance. **H2**, however, is that outcome related concerns will also be important.

H3 is that procedural justice will be more important a predictor of confidence in the decision-maker and outcome acceptance for UK compared with German residents. **H4** is that, contrariwise, outcome favourability will be more important to German residents. Finally, **H5** is that perceptions of equal treatment, as an outcome related concern, will similarly be more important in Germany than in the UK.

DATA, CONTEXT, AND MEASURES

The survey used here was fielded in 2014/15. It was specifically designed by the authors to gauge views of ombudsman services in cross-cultural context (in France³⁸, Germany and the UK). To preserve users' anonymity, the ombudsmen themselves sent out surveys between September 2014 and February 2015. The total number of responses from the three countries was just over 3,000. For this paper we are looking at the responses from the VO (n= 519) in Germany and the FOS in the UK (n= 196).³⁹

Sampling was complicated by the nature of the complaints processes involved and the views and practices of the ombudsmen. The VO sent out 1,500 paper forms to individuals who had (a) had significant interaction with the ombudsman concerning their complaint (i.e. excluding those whose initial enquiries were dealt with very quickly – typically those who turned to the ombudsman before they contacted the company they are complaining about) and (b) whose case had recently been finalized (i.e. the ombudsman had made a recommendation or decision). Essentially all those who met these criteria were contacted, and

³⁸ The French database only consisted of telecoms and energy ombudsmen user data.

³⁹ The data was collected as part of an ESRC funded project [grant number ES/K00820X/01] and can be found in the ESRC data repository.

the response rate was 35 per cent. Over the same period, the FOS ran two large online customer satisfaction surveys as part of their own regular consumer feedback process (n=22,924). Criteria for inclusion were consumers who had been through their complaints procedure: the FOS has to collect user data as part of the reporting requirements to the regulator (FCA⁴⁰) and for publication in their annual reports.⁴¹ After each survey was completed, a random sample of those who had taken part and who had indicated a willingness to engage in further research were re-contacted to ask if they would participate in the current study; n=1,334. Links to an on-line survey were emailed to those who responded positively (n=343), 196 responded, resulting in a response rate of 15 per cent based on first contact and 57 per cent based on links provided. Neither sample was therefore a random probability sample, although within the criteria set the VO method is likely to have resulted in greater representativeness than the FOS method.

1. Response variables

Three response variables were used to capture respondents' judgements about the complaint process.⁴² Descriptive statistics for all three can be found in Table 1. First, overall assessments of the fairness of the process (*Overall fairness*) were gauged using a single survey item that asked "how fair are the procedures the ombudsmen used to make the decision in their case"; responses were on a five-point scale ranging from 'very fair' to 'very unfair'

Second, respondents' confidence in the ombudsman service at the end of the process (*Confidence*) was also measured by a single survey item, which read "I have confidence in the ombudsman". Responses were on a five-point scale ranging from 'yes', 'very likely', 'not sure', 'probably not', to 'no'.

Third, to assess respondents' sense that they were willing to accept the decision reached (*Outcome acceptance*), a single item measure was taken from a survey question that asked "Were you willing to accept the outcome?". Responses were on a five-category scale ranging from 'Very willing' to 'Very unwilling'. Remarkably, not a single German respondent indicated one of the intermediate responses ('fairly willing' or 'fairly unwilling'). Perhaps these appeared nonsensical responses: it may be that they felt one either accepts the

⁴⁰<https://www.fca.org.uk>.

⁴¹ <http://www.financial-ombudsman.org.uk/publications/ar15/resolved.html>;
<http://www.financial-ombudsman.org.uk/publications/annual-review-2017/index.html>.

⁴² We had to negotiate the content of the surveys with the ombudsmen involved, that inevitably meant some compromise. Therefore, we chose to have some independent variables measured at dichotomous level and others at scale level.

decision of an authority or not, or indicates that one is unwilling to go either way at the present point in time – one cannot *partially* accept such a decision (UK respondents appeared happy to tick the intermediate categories). Responses on this item were therefore collapsed to generate a new binary variable, *outcome acceptance*, coded one if the respondent indicated they were ‘very’ or ‘fairly willing’ to accept the outcome and zero if they were ‘neither willing or unwilling’, ‘fairly unwilling’ or ‘very unwilling’.

Table 1 near here

2. Explanatory variables

Descriptive statistics for all explanatory variables are shown in Table 1. Two scales represented respondents’ perception of Ombudsman procedural justice: *Quality of treatment*; and *Quality of decision-making*. The first scale was derived from four items (with binary yes/no response categories) probing how respondents felt they were treated by the staff they initially dealt with at the Ombudsman service, while the second was derived from five items exploring perceptions of the way Ombudsman staff made decisions (responses were on 5-point agree/disagree scales). Item wordings are shown in Table 2.

Confirmatory Factor Analysis (CFA) in the statistical package Mplus 7.2 was used to derive and validate these measures.⁴³ CFA is a statistical technique that, among other things, allows one to understand the ‘dimensionality’ of a set of survey questions, i.e. the extent to which variation in answers to a particular set of items is explained by one or more underlying ‘latent’ variable or factor.⁴⁴ Latent variables are so called because they are not observed, but are rather inferred from the effect they exert on variables that are observed (i.e. the survey items). CFA allows estimation of the form and content of these latent variables, and has many desirable features, such as reduction in the measurement error associated with single survey items.

To deal with the issue of measurement equivalence – with the question as to whether the latent constructs of interest, treatment and decision-making, were similar in nature across the German and UK contexts – the following procedure was applied. First, a multiple group CFA model was estimated, which specified a two-factor solution with no cross-loadings, and which constrained factor loadings and thresholds of the observed indicators equal across the

⁴³ Using Full Information Maximum Likelihood estimation means that cases with some missing values were not dropped from the analysis.

⁴⁴ Barbara Byrne, *Structural Equation Modelling with Mplus* (Routledge 2012)

two groups (i.e. Germany and the UK). Observed indicators were defined as categorical, while the latent variables were set as interval/ratio. Results from this model are shown in Table 2. Model fit was good, according to the approximate fit indices (RMSEA = .03; TLI = .99; CFI = .99), and item R^2 values are almost uniformly high (and above .4 in every case). Next, similar models which allowed first the factor loadings, and second the thresholds, to vary across the two groups were estimated. These did not improve model fit according to the exact fit statistics; there was also little change in the approximate fit statistics. Group invariance in factor loadings and thresholds is generally considered sufficient to assume measurement equivalence in the social sciences⁴⁵, and we therefore extracted factors scores from the model shown in Table 2 for further analysis. Note that, as expected, the two measures of procedural justice were highly correlated ($r=.79$). However, a model that combined both into one construct was a significantly worse fit to the data, so we decided to continue with the two as separate indicators. A correlation of .79 is also just below the conventional cut-off point used to identify poor discriminant validity (.80)

Single item indicators were used to assess respondent's judgements of other aspects of the process. While multiple-item scales would perhaps have been preferable here, too, we had limited space for items in the survey, and in any case the use of single items does at least provide a pragmatic answer to the question of measurement equivalence. First, a survey item that asked whether the outcome of the case was, in the respondent's view, decided in their favour was included as a binary indicator (*Outcome favourability*). This measure was coded 1 if a respondent felt the outcome was favourable to them, and 0 if they felt it was not, it was only partially in their favour, or were unsure. A second binary indicator (*perceptions of equal treatment*) was derived from an item that asked "Do you think that others with a similar complaint to yours receive the same outcome from the ombudsman?". Responses were on a five point Likert-type scale, and were coded to 1 if the respondent felt that others would get the same outcome, or were likely to, and 0 if they were not sure or felt that others would not get the same outcome as themselves.

3. A note on control variables

We have not included socio-demographic control variables in our models for the simple reason that the German ombudsman refused to include such measures in the survey. Unlike in the UK, such questions are not common in German surveys. However, few consistent

⁴⁵Linda Muthén and Bengt Muthén, *Mplus User's Guide* 7th Edition (2012 Los Angeles, CA: Muthén & Muthén)

associations between socio-demographic variables and key measures have been identified in the procedural justice literature⁴⁶, and many psychologically oriented contributions largely ignore such factors.⁴⁷ Omission of control variables is therefore unlikely to have introduced significant bias to our analysis, at least in comparison to other extant research. We did, of course, include a dummy variable in each model representing the country of the respondent concerned (coded 1 if it was Germany and 0 if it was the UK); we also controlled for how the respondent initiated contact (in a letter, online, or by telephone).

4. Analytic strategy

To assess the relative contributions of procedural justice, perceptions of equal treatment and outcome favourability to overall fairness judgements, trust in the ombudsman, and decision acceptance, a series of regression models was estimated for each outcome variable. The first included the country indicator, method of contact, perceptions of equal treatment, outcome favourability and two components of procedural justice. Subsequent models tested interactions between country and the other explanatory variables, to explore the key question of whether the association between process judgements and outcomes varied between Germany and the UK.

RESULTS

An important initial question is whether attitudes toward the ombudsman and the ADR process varied between Germany and the UK. The column marked ‘Sig. Diff.’ in Table 1 indicates whether there was a significant difference in views across service users in the two countries (assessed via t-tests or z-tests, as appropriate). Considering first specific process- and outcome-related concerns, views were generally more favourable in the UK. Users of the UK service scored higher on both measures of procedural justice, and on outcome favourability, while users of the German service scored higher on perceptions of equal treatment. By contrast, *summary assessments* of the ombudsman were uniformly more positive in Germany, where respondents tended to have a better impression of overall fairness, trusted more, and were more ready to accept the outcome. These findings are intriguing, as they suggest that respondents in Germany tended to be less positive about the

⁴⁶ Compare for example: Michael Reisig, Jason Bratton, Marc Gertz, ‘The Construct Validity and Refinement of Process-Based Policing Measures’ [2007] *Criminal Justice and Behavior* 1005; Justice Tankebe, ‘Viewing things differently: the dimensions of public perceptions of legitimacy’ [2013] *Criminology* 103; see Jackson et al (n 17)

⁴⁷ See: Tyler (n 17)

ombudsman *process* but have more positive *overall* views of the authority – a point we return to below.

Table 3 near here

Table 3 shows results from a series of ordinal logistic regression models predicting assessments of overall fairness. We find, first, positive conditional correlations between the response variable and perceptions of procedural justice, perceptions of equal treatment *and* outcome favourability. It seems that judgements about the overall fairness of the ombudsman process among service users are ‘built up’ from a range of factors, and are not dominated by procedural justice concerns alone. Second, it is the quality of decision-making that appears to be the most important component of procedural justice – in fact, given the latter, the coefficient for personal treatment became negative and verged on significance at the ‘conventional’ level ($p < .1$), a seemingly anomalous result that probably reflects little more than the high correlation between the two procedural justice measures. Note, though, that in models that excluded quality of decision making, not shown here, quality of treatment was positively correlated with assessments of overall fairness. Third, none of the interaction terms tested were significant at conventional levels ($p > .1$ in every case) – the association between all four explanatory variables and overall fairness was similar in Germany and the UK. Fourth, and finally, the coefficient for the country variable was significant and positive throughout. Holding constant concerns about process fairness and outcome favourability, German respondents tended to have more positive views of the overall fairness of the ombudsman than their UK counterparts. The extent of the difference can be illustrated by fitted probabilities generated from model 1 in Table 3 – holding all other variable constant (at their mean), the probability of a German respondent indicating they thought the process overall was fair was .66 – for UK respondents it was .56.

Table 4 near here

Moving on to confidence in the Ombudsman, Table 4 shows results from a second series of ordinal logistic regression models predicting this outcome variable. The results are strikingly similar to those outlined above. Positive conditional correlations between the response variable and perceptions of procedural justice, perceptions of equal treatment *and* outcome favourability were again identified; all three seemed to contribute to overall

confidence. Quality of decision-making again seemed to be the dominant aspect of procedural justice (although absent quality of decision-making, quality of treatment was positively correlated with confidence). And the coefficient for the country variable was again significant and positive throughout. Holding constant the other variables in the model, German respondents tended to have more confidence in the ombudsman than their UK counterparts. Fitted probabilities from model 1 in Table 4 again illustrate the extent of the difference – with all other variables again held at their mean, the probability of a German respondent indicating confidence in the ombudsman was .73, while for UK respondents it was .57.

One difference from the previous models, however, is that two of the interaction terms tested verged on significance at conventional levels (i.e. $p < .1$). There is some evidence to suggest that perceptions of equal treatment tended to a more important predictor of trust among German respondents, while against expectations judgements about outcome favourability tended to be a less important predictor.

Table 5 near here

Finally, Table 5 shows results from a series of binary logistic regression models predicting outcome acceptance. Because almost all respondents (99 per cent) who indicated that they received a favourable outcome said they were ready to accept it, only those who indicated an unfavourable or mixed outcome are included in this model. In this particular context, and presumably many others, people are unsurprisingly very ready to accept decisions that are in their favour even if, as we saw above, outcome favourability did not dominate perceptions of the process or and confidence in the decision-maker.

The results in Table 5 are consistent with previous models. Respondents who felt procedurally and distributively fairly treated were more likely to accept the outcome of their case (even though it was not favourable to them). Quality of decision-making was be the dominant aspect of procedural justice (and absent quality of decision-making, quality of treatment was positively correlated with outcome acceptance). None of the interaction terms tested were significant – the association between all four explanatory variables and outcome acceptance was similar in Germany and the UK. Finally, the coefficient for the country variable was significant and positive throughout. Holding constant fairness concerns, German respondents tended to report greater willingness to accept the Ombudsman decision than their UK counterparts. The extent of the difference can again be illustrated by fitted probabilities,

generated this time from model 1 in Table 5. With other variables held at their mean, the probability of a German respondent indicating they were ready to accept the outcome was .45 – for UK respondents it was .26.

DISCUSSION

Returning to the five hypotheses that motivated our analysis we found, then, strong support for H1 and H2 – procedural justice was a strong predictor of all three outcome variables tested, but so was outcome favourability. Our remaining hypotheses were not supported by the data, however. We found little or no evidence that procedural justice was more important to UK compared with German respondents (H3), or that the outcome or perceptions of equal treatment were more important to the German compared with the UK respondents (H4 and H5). It seems that across these different legal contexts people place a broadly similar weight on process and outcome related factors when forming their overall view of the ADR procedure.

Our models also threw up a very consistent and arguably unexpected finding. Conditioning on process- and outcome-related concerns, German respondents were more likely to judge the overall process fair, more likely to have confidence in the ombudsman service, and more likely to accept unfavourable decisions. Independent of judgements about the nature and quality of the process, German respondents were more positive about and more acquiescent toward the authority managing that process. The extent of this statistical effect was often quite large – for example, given the same perception of procedural and perceptions of equal treatment, a German respondent was nearly twice as likely to accept an unfavourable decision as a UK respondent.

In sum, our original general hypothesis that the relative weight of justice concerns would vary between Germany and the UK was not supported. But there remained important differences between the two sets of respondents in terms of overall views of the ombudsmen. This leads to two connected conclusions, one about procedural justice and the other about national context. First, this study adds to the general thrust of the procedural justice literature, which is that (broadly the same) procedural justice concerns are important to people across multiple jurisdictions and cultural contexts. Yet, second, our data add some nuance to this general picture, and suggest that national context also plays a role. Holding constant justice related concerns, German respondents had consistently more positive views of the ombudsman.

This second conclusion, we suggest, indicates that attitudes toward this particular legal authority are embedded in culturally mediated orientations towards legal authority in general. A number of authors have argued that socialization in the German legal system predisposes people toward a greater willingness to accept and validate structures of authority.⁴⁸ In ideal-typical terms, the ‘cultural form’⁴⁹ of legal process in Germany continues to be one of deference toward properly constituted authority, while in the UK it has taken on a form of de-subordination.⁵⁰ Milliband⁵¹ described, in the late 70s, a phenomenon that has arguably continued to this day. ‘De-subordination’ implies that people who find themselves in subordinate positions are increasingly prepared to do what they can to ‘mitigate, resist and transform the conditions of their subordination’ (p. 402), fostering a desire for voice in the face of authority, face-to-face interaction, and the questioning of authority. Hofstede⁵² argues cultural forms find their articulation in the social behaviour of human actors – people develop ways to think about and relate to authorities within a particular (in this case national) culture. This includes forming opinions and understandings about how authority figures should function in institutional settings (and it seems procedural justice is consistently one such norm). But it also involves understandings about what is the proper relationship with authorities, which shapes interactions with authorities and the ways in which people react to them. What we are picking up in this data, then, may be that the UK respondents were simply more willing to dispute and question the decisions handed down, and were generally more sceptical about the ADR process, because they had a different idea about how people should relate to legal authority.

This is of course a contingent process: our claim is simply that it just so happens in this case that these cultural norms promote greater acceptance of the ombudsman and its decisions among the Germans in our sample. It could well be that in other circumstances different norms might have promoted less acceptance among the German respondents, or some other set of responses entirely. But based on our reading of German legal culture, we argue that a German service user will be more likely to follow an ombudsman decision if they feel that decision came from an authority that is part of a hierarchical structure. As noted

⁴⁸see Blankenburg (n 14); Oscar G. Chase, ‘Legal Processes and National Culture’ [1997] 5 CARDOZO J. INTL & CaMP L1; Geert Hofstede, *Culture’s Consequences: Comparing Values, Behaviors, Institutions, and Organizations Across Nations* (Sage 2001); Nicola Lacey & Lucia Zedner, ‘Community in German Criminal Justice: a Significant Absence?’ [1998] SLS 7

⁴⁹ Clifford Geertz, *The Interpretation of Cultures* (Basic Books Inc. 1973)

⁵⁰ Following a similar argument see: R. Reiner, ‘Policing a Postmodern Society’ [1992] MLR 761; Ian Loader and Aogan Mulcahy, *Policing and the Condition of England: Memory, Politics and Culture* (OUP 2003)

⁵¹ R. Miliband. ‘A State of De-Subordination’ [1978] The British Journal of Sociology 399

⁵² see Hofstede (n 49)

the German ombudsman ‘fits’ this pattern, and perhaps, therefore, with people’s normative expectations of authority, thus producing the generally more accepting and positive views of our German respondents. By contrast, the generally abstract and mediated nature of the ombudsman process may have been contrary to the expectations of the British respondents, brought up as they were in a legal culture that prioritizes the idea of ‘having one’s day in court’ and the importance of being able to question authority and its decisions.

A further important contextual issue in relation to FOS is the political context surrounding financial services organizations and mis-selling scandals. The FOS deals with one of the most competitive and aggressive financial B2C markets in Europe. Financial mis-selling has been a politically salient issue for many years. Financial complaints, certainly in relation to complaints that the FOS was dealing with at the time of research, are not one-off incidents, but part of a large-scale scandal. There is also an institutionalized industry of semi-legal firms that specialize in submission of financial complaints to firms and the FOS, which publicize their success in achieving redress for complainants. Consequently, consumers in the UK may approach the FOS with greater confidence that they should and are in fact likely to succeed, and are therefore more disappointed if their complaint is rejected. What is more, British consumers’ general distrust towards the financial industry in the UK may extend to the FOS.

Absent a much fuller evaluation of people’s experiences of these two ombudsman services the above remains, of course, conjecture. It may well be that the observed differences between the German and UK respondents were not due to differing orientations toward authority, or the public scandal in the UK, but rather some variation between the services provided in the two contexts. Or perhaps the different sampling methods generated samples that differed substantively on some important, unobserved, variable. In our defence, the idea that process- and outcome-related concerns together dominate people’s overall perceptions of particular legal procedures is well-established, and our models included variables that covered procedural justice, perceptions of equal treatment and outcome favourability. The country-level statistical effect identified above, independent of these fairness and outcome concerns, is therefore striking; but much more work will be needed to explore these questions.

A further limitation of our study is that it relies on cross-sectional data generated by non-random sampling. Given the paucity of research on ombudsman services, though, we feel that our survey in this hitherto largely unexplored area is a useful place to start, and will hopefully provide, again, a springboard for future research.

Finally, we note that of the two measures of procedural justice used in this study it was quality of decision-making that seemed to be more important, albeit that the two were strongly correlated. This may relate, at least in part, to the idea that *fair* decision-making processes lead people to believe the *right* decisions are being made, which they should in turn accept. Yet, we suggested above that the extent of the correlation between the two components of procedural justice may be due in part to inferences being made from quality of treatment (of which respondents had direct experience) to quality of decision-making (of which they may have had very little direct experience). The relationship between these two aspects of procedural justice, as predictors of various outcomes, may thus warrant further investigation, particularly in contexts such as ADR where people might be expected to be more certain about one compared to the other. We might suppose, for example, that there is an indirect effect of quality of treatment on outcomes, mediated by quality of decision-making.

CONCLUSION

This paper considered ombudsman providing consumer ADR. It adds to the extant literature on procedural justice, offering more support to the idea that procedural justice effects can be identified across multiple social, political and cultural contexts. Both German and UK respondents in our sample seemed on average to attend closely to the fairness of the procedures used by ‘their’ ombudsmen. Yet, our findings also push that literature in new directions. Unlike in some other legal contexts, users of ombudsman services in both Germany *and* the UK were closely attuned to the outcome they received, and to the idea of equal treatment. Further, while the nature of our data means we have only hints of the wider processes involved, we suggest that national legal cultures provide for a framework of rules that guide people’s perceptions and behaviours in legal, quasi-legal and related environments. The formally structured way of disputing that is encoded in legal cultures teaches us how we are expected to relate to authorities within such settings; and legal culture is therefore one of the sources that we draw upon when encountering a legal process (or figure) like an ombudsman. The limited evidence we have presented here suggests that the effects of legal culture run alongside the more commonly studied phenomena of procedural justice.

This may have important consequences. One factor motivating ombudsmen to participate in our study was a concern that they lack legitimacy among potential client groups. If our speculation above is correct, the ombudsman model in a particular country should be implemented in such a way as to tap into culturally rooted expectations about how

legal authorities should be constituted and behave.⁵³ Ombudsmen can translate the findings into improving their dispute resolution system.⁵⁴

Table 1
Descriptive statistics

	Min	Max	UK		Germany		Sig. Diff?
			Mean	Std. Dev.	Mean	Std. Dev.	
Procedural justice							
Treatment	-3.68	1.98	-0.14	1.66	-0.76	0.84	*
Decision-making	-5.37	2.36	-0.17	2.15	-0.53	1.18	*
Perceptions of equal treatment	0	1	0.66	.	0.78	.	*
Outcome favourability	0	1	0.51	.	0.40	.	*
Fair procedures	1	5	3.65	1.53	3.93	1.15	*
Confidence in ombuds	1	5	3.65	1.63	4.19	1.15	*
Outcome acceptance	0	1	0.62	.	0.68	.	+

* p<.05; + p<.1

⁵³ see Creutzfeldt (n 37)

⁵⁴ Jane Williams & Chris Gill, A dispute system design perspective on the future of European consumer dispute resolution. In: Cortés, P. (ed.) *The New Regulatory Framework for Consumer Dispute Resolution* (OUP 2016)

TABLE 2**Multi-group CFA model: Procedural justice concerns**

Factor loadings and thresholds constrained to be equal

	Germany			UK		
	Unstandardized factor loading	Standardized factor loading	R ²	Unstandardized factor loading	Standardized factor loading	R ²
Quality of treatment						
What was your impression of the staff when you first contacted (the ombuds)						
Helpful	1.00	0.86	0.74	1.00	0.91	0.83
Treated me with respect and courtesy	2.34	0.82	0.68	2.34	0.98	0.96
Seemed trustworthy	0.38	0.80	0.64	0.38	0.65	0.42
Seemed interested in hearing my story	0.59	0.82	0.68	0.59	0.80	0.63
Quality of decision-making						
Would you say the people dealing with your complaint ...						
Always did what they said they would	1.00	0.74	0.55	1.00	0.94	0.87
Had the authority to deal with your problem	0.66	0.92	0.84	0.66	0.87	0.75
Were easy to get in touch with	0.60	0.73	0.53	0.60	0.85	0.72
Knew what they were talking about	1.70	0.93	0.87	1.70	0.98	0.95
Seemed to be impartial	1.20	0.87	0.76	1.20	0.95	0.91
Chi ²	99.0					
D.F.	70					
P	0.01					
RMSEA	0.03					
CFI	0.99					
TLI	0.99					

Table 3**Ordinal logistic regression models predicting judgement of the overall fairness of the procedure**

High scores = more fair

	Model 1	Model 2	Model 3	Model 4	Model 5
	β (se)	β (se)	β (se)	β (se)	β (se)
Country (ref: UK)					
Germany	0.79*** (0.20)	0.95*** (0.23)	0.92*** (0.23)	0.45 (0.31)	0.78** (0.25)
Mode of first contact (ref: telephone)					
Letter or fax	0.19 (0.20)	0.23 (0.21)	0.21 (0.20)	0.15 (0.20)	0.19 (0.20)
Email or online	-0.16 (0.22)	-0.13 (0.23)	-0.15 (0.22)	-0.17 (0.22)	-0.16 (0.22)
Other	1.82+ (1.05)	1.90+ (1.07)	1.90+ (1.06)	1.76+ (1.06)	1.82+ (1.05)
Perceptions of equal treatment (ref: no)					
Yes	0.74*** (0.18)	0.74*** (0.18)	0.74*** (0.18)	0.33 (0.34)	0.74*** (0.18)
Outcome favourable? (ref: no)					
Yes	2.43*** (0.20)	2.46*** (0.20)	2.46*** (0.20)	2.46*** (0.20)	2.43*** (0.37)
Quality of treatment	-0.22+ (0.12)	-0.31* (0.14)	-0.2 (0.12)	-0.21+ (0.12)	-0.22+ (0.12)
Quality of decision-making	1.17*** (0.11)	1.17*** (0.11)	1.08*** (0.13)	1.17*** (0.11)	1.17*** (0.11)
Interactions					
Treatment * country		0.22 (0.16)			
Decision-making * country			0.15 (0.13)		
Perceptions of equal treatment * country				0.57 (0.40)	
Outcome favourability * country					0.01 (0.42)
N	709	709	709	709	709

+ p<.1, * p<.05, ** p<.01, *** p<.00

Table 4**Ordinal logistic regression models predicting confidence in the ombuds**

High scores = more fair)

	Model 1	Model 2	Model 3	Model 4	Model 5
	β (se)	β (se)	β (se)	β (se)	β (se)
Country (ref: UK)					
Germany	1.21*** (0.22)	1.26*** (0.27)	1.22*** (0.26)	0.83** (0.31)	1.47*** (0.27)
Mode of first contact (ref: telephone)					
Letter or fax	0.2 (0.22)	0.21 (0.22)	0.2 (0.22)	0.14 (0.22)	0.2 (0.22)
Email or online	-0.12 (0.24)	-0.11 (0.24)	-0.12 (0.24)	-0.14 (0.24)	-0.08 (0.24)
Other	1.79 (1.28)	1.81 (1.28)	1.79 (1.28)	1.71 (1.28)	1.8 (1.26)
Perceptions of equal treatment (ref: no)					
Yes	0.47* (0.19)	0.47* (0.19)	0.47* (0.19)	-0.05 (0.37)	0.47* (0.19)
Outcome favourable? (ref: no)					
Yes	1.21*** (0.20)	1.21*** (0.20)	1.21*** (0.20)	1.23*** (0.21)	1.77*** (0.39)
Quality of treatment	-0.03 (0.13)	-0.06 (0.16)	-0.03 (0.13)	-0.02 (0.13)	-0.03 (0.13)
Quality of decision-making	1.30*** (0.12)	1.30*** (0.12)	1.29*** (0.15)	1.31*** (0.12)	1.29*** (0.12)
Interactions					
Treatment * country		0.07 (0.19)			
Decision-making * country			0.02 (0.16)		
Perceptions of equal treatment * country				0.70+ (0.42)	
Outcome favourability * country					-0.74+ (0.44)
N	709	709	709	709	709

+ p<.1, * p<.05, ** p<.01, *** p<.001

Table 5**Binary logistic regression models predicting willingness to accept outcome**

High scores = more fair

	Model 1	Model 2	Model 3	Model 4
	β (se)	β (se)	β (se)	β (se)
Country (ref: UK)				
Germany	1.13** (0.37)	1.14** (0.39)	1.15** (0.39)	0.49 (0.53)
Mode of first contact (ref: telephone)				
Letter or fax	-0.01 (0.30)	-0.01 (0.30)	-0.01 (0.30)	-0.07 (0.30)
Email or online	0.19 (0.35)	0.19 (0.35)	0.19 (0.35)	0.16 (0.35)
Other	0.58 (1.45)	0.59 (1.46)	0.6 (1.46)	0.51 (1.45)
Perceptions of equal treatment (ref: no)				
Yes	0.79** (0.27)	0.79** (0.27)	0.79** (0.27)	-0.13 (0.64)
Quality of treatment	-0.08 (0.20)	-0.1 (0.26)	-0.08 (0.20)	-0.08 (0.20)
Quality of decision-making	0.92*** (0.16)	0.92*** (0.16)	0.89*** (0.23)	0.93*** (0.16)
Interactions				
Treatment * country		0.02 (0.28)		
Decision-making * country			0.04 (0.24)	
Perceptions of equal treatment * country				1.12 (0.71)
Constant	-1.08** (0.40)	-1.09** (0.40)	-1.09** (0.40)	-0.54 (0.50)
N	402	402	402	402

+ p<.1, * p<.05, ** p<.01, *** p<.001