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Thinking holistically about procedural justice in alternative dispute resolution: a case study of the German Federal Ombud Scheme

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## *Abstract*

*This paper examines data collected from users of the German Federal Ombud Scheme. The data was collected as part of a research project to understand how the German Federal Ombud Scheme operates in practice and how its procedures and outcomes are accepted by its users. We begin from the premise that experience of procedural justice during this alternative dispute resolution (ADR) process will build institutional legitimacy, and the paper makes three contributions to the literature on procedural justice. First, we extend evidence of the link between procedural justice and legitimacy to a novel institutional context that is different in many ways to the criminal justice focus of much of the extant literature. Second, we consider the motivations of service users to engage with ADR as potential moderators of that link. Third, we analyse the relationship between procedural justice, subjective outcomes, and the actual outcomes provided to service users. Overall, we conclude that the link between procedural justice and legitimacy can be identified among those with very different motivations for using the German Federal Ombud Scheme.*

*Key words: procedural justice, ADR, German Federal Ombud Scheme, dispute resolution outcomes*

## INTRODUCTION

This paper draws on two bodies of literature to explore how people experience alternative dispute resolution (ADR) process: procedural justice theory and the empirical legal literature on ADR. The central argument of procedural justice theory is that people who engage with authorities – for example to resolve a dispute of some kind – care about the process through which decisions are reached as well as whether those decisions are favourable to them (Blader & Tyler 2003 p.747). Research on procedural justice has established that, in many different settings, people who encounter an authority (e.g., the courts, tribunals or the police) pay close attention to how they are treated by that authority, and that this treatment is experienced and judged independently from the outcome they receive. Crucially, people who experience fair treatment are more willing to accept an outcome even if it is not in their favour (Tyler 2006). As a consequence, studies on procedural justice have focussed heavily on how courts, tribunals, police, and other authorities treat people – or, at least, on the policies intended to govern how they treat people (Presidents Commission 2015; NPIA 2010).

In everyday practice, the way in which procedures are carried out (e.g., being treated with respect, being heard, having a voice in the process and building trust) makes a difference to people's justice perceptions (Bies 1987; Tyler and Bies 1990). In turn, legitimacy is awarded to an institution as a consequence of people feeling that they have been treated fairly by it (Tyler 2003, 2006; Jackson *et al* 2012). It is this legitimacy that, at least in part, makes people more likely to accept outcomes delivered by those authorities, and more likely to follow their orders, instructions and/or decisions (Murphy *et al.* 2016; Tyler 2006; Tyler and Huo 2002).

All this implies that people's behaviours are shaped by the perceived fairness of the process an authority offers to them. While it has been suggested that improving upon the

*objective* performance of legal authorities may not enhance perceptions of fairness and legitimacy (Nagin and Telep 2017; 2020), there is strong evidence that the *subjective* impression of a process influences how people perceive an institution and how they act in relation to it (Bolger and Walters 2019; Mazerolle et al. 2013; Tyler 2003; 2017; Walters and Bolger 2019). Moreover, research from a variety of contexts tends to show that procedural justice is a more important predictor of outcomes such as trust, legitimacy and cooperation than broadly instrumental concerns with effectiveness and outcomes (Jackson et al. 2012; Tyler 2006; Tyler and Huo 2002); although this is of course not universally the case (see, for example, Tankebe 2009; Cheng et al. 2020).

The authority we are concerned with in this article is the *German Federal Ombud Scheme*, which provides ADR for consumers and businesses. The regulatory framework for its establishment can be found in the European consumer ADR directive (2013/11/EU) that was implemented in 2016 into German law by way of the *Verbraucherstreitbeilegungsgesetz* (VSBG) (Creutzfeldt 2016). The directive requires member states to provide ADR bodies for most consumer to business (c2b) disputes (Creutzfeldt 2016). Part of the success of the Ombudsman model is that it is able to operate in different legal settings and perform different roles and functions (Heede 2000; Kucsko-Stadlmayer 2009, Reif 2004). ADR ‘is not, an entirely separate legal order, rather it is an enclave within a broader culture in which liberal legal ideology is well institutionalised’ (Sarat and Garth 1998: 17). ADR, as a form of dispute resolution in America, Europe and the UK, was introduced to help ease the caseload of the courts and to divert cases into a parallel system to reduce cost and backlog (Burger 1976, Woolf 1996, Menkel-Meadow 2015, Creutzfeldt 2016).

Despite ADR bodies being a permanent feature of justice systems, not much is known about how or why people use their services, judge their processes or accept their outcomes. It is important to explore these perceptions to be able to improve the ADR process and to

provide access to justice. As research on procedural justice effects has expanded into different contexts and settings, studies have started to look at the relevance of this paradigm for ADR (Hollander-Blumhoff & Tyler 2008, 2011; Creutzfeldt & Bradford 2016). These studies have found that, empirically, procedural justice matters to people in this particular context, and that it influences their readiness to accept outcomes offered to them. Yet, in a study on perceptions of ADR procedures in the United Kingdom, Creutzfeldt and Bradford (2016) found that whilst ‘outcome favourability *and* procedural justice are key factors in shaping decision-acceptance’ (p.1013; *emphasis added*); it may be that in the ADR context outcome favourability has a more prominent weighting than it seems to have in other justice contexts.

In this paper we expand consideration of procedural justice in ADR to the question of legitimacy. While previous studies have explored outcomes such as decision acceptance and satisfaction with the process, none to our knowledge have focussed on what is arguably the fundamental question – is the legitimacy of ADR and, specifically, of the organisation ‘delivering’ it, associated with perceptions of procedural justice? In addressing this central question, we also contribute to the wider literature and debate on procedural justice. Procedural justice in justice settings has often been studied in one of two ways: lab-based (and increasingly also on-line) experiments, where people’s perceptions are measured in a context arguably far removed from ‘real life’ (e.g., Lind *et al* 1990, Lind & Tyler 1988); and large scale population surveys that probe general experiences and perceptions of, for example, the police, which arguably do not attend sufficiently to the specificities of people’s interactions with authorities (see, for example, the studies included in the recent meta-analyses of Bolger and Walters 2019; Walters and Bolger 2019).

This twin focus has a number of implications. These include, first, that the motivations for people engaging with an authority are often obscured, or simply not salient.

While some studies have considered the experiences of victims of crime, who clearly have a range of often complex motivations for engaging with the police or courts (e.g., Van Kemp and Wemmers 2013; Murphy and Barkworth 2014; Koster et al. 2020), few have considered the equally wide set of motivations others may have for engaging with other legal authorities. At the threshold this would appear an important omission because, put simply, what one wants and expects from an interaction seems likely to influence how one perceives it.

A second implication arising from the focus of previous research is that we know little about how what actually happens during particular interactions affects the key propositions of procedural justice theory. It has often been hard to tie the ideas and experiences reported by research participants to concrete institutional processes and, in particular, the objective processes involved and the actual outcomes achieved (the recent growth in randomized controlled trials and other field experiments is an important exception here: see, for example, Mazerolle *et al* 2013; MacQueen and Bradford 2015; Tyler *et al* 2019). Frequently, *all* we have is the perceptions and subjective judgements of those encountering or simply thinking about a particular authority. As Worden and Maclean (2017) have argued, the gap between how people experience an interaction with authority and ‘the facts of the case’ can differ substantially. Our study accounts for both the perceptions of the users of the *German Federal Ombud Scheme* and the official outcomes the *German Federal Ombud Scheme* awarded in their case. This puts us in the unusual empirical position of being able to explore people’s perceptions of procedural justice, and their perceptions of the outcome they received, given knowledge of the *actual* outcome of their case – which was, moreover, a real case that involved issues of significant importance to them (often financially).

Against this background, our paper can inform ongoing debates about dispute system design (Blomgren Amsler et al 2020, Gill et al 2016), institutional design (Sandefur 2009,



Taylor Poppe 2021), consumer law (Eidenmueller 2014, Cortes 2017) and jurisprudential questions (Menkel-Meadow 2000, Steffek et al 2013). All of these are vast fields, which we do not have the scope in this paper to discuss, However, we return to these themes in the conclusions with recommendations for future research that can build upon our paper. Before turning to our conceptual and theoretical contribution, the next part introduces the research context.

## Research context

The examined process is that of the *German Federal Ombud Scheme*, an ADR provider situated in the German legal and cultural context (Creutzfeldt 2016, Blankenburg 1998). This paper draws from a rich dataset collected for a study commissioned by the federal German government between 2017-2020.<sup>1</sup> The study, through empirical data collection, analyses how users (individuals and businesses) perceive a specific ADR provider, the *German Federal Ombud Scheme (Universalschlichtungsstelle des Bundes)*.<sup>2</sup>

The *German Federal Ombud Scheme* was established in 2016 as an ADR body responsible for resolving disputes arising from a contractual relationship between a consumer and a business. Its jurisdiction and framework is laid down in the German Act on Alternative Dispute Resolution in Consumer Matters.<sup>3</sup> Only consumers – and not businesses – are entitled to contact the ADR body with a complaint. The consumer can be the resident of any European Union or European Economic Area Member State, but the business complained about has to be located in Germany. The *German Federal Ombud Scheme* solves conflicts mainly by way of conciliation. Compared with mediation, this means that the ombuds assume a stronger leadership role in the process and take more influence on the result of the procedure, in particular by way of a non-binding conciliation decision (Steffek et al 2013, XXXX 2013).

The *German Federal Ombud Scheme* is the federal residual ADR body (European Commission 2019, Greger 2019) and is available to consumers who have complaints about goods and services that are not covered by other sector specific ADR providers in Germany.<sup>4</sup> Some examples of specialised ADR entities are the Ombud Scheme for Private Banks (*Ombudsmann der Privaten Banken*), the Conciliation Body for the Legal Profession (*Schlichtungsstelle der Rechtsanwaltschaft*), the Conciliation Body for Energy (*Schlichtungsstelle Energie*), the Conciliation Body for Public Transport (*söp\_Schlichtungsstelle für den öffentlichen Personenverkehr*), the Insurance Ombud Scheme (*Versicherungombudsmann*) and the Conciliation Body for Telecoms (*Verbraucherschlichtungsstelle Telekommunikation der Bundesnetzagentur*).<sup>5</sup>

As specific ADR bodies have priority over the *German Federal Ombud Scheme*, it will reject a complaint for which a specific body is competent. However, the *German Federal Ombud Scheme* supports the affected consumers by signposting them to the competent ADR body. In some cases a parallel competence can arise, as there are a limited number of competing responsibilities between the *German Federal Ombud Scheme* and other ADR providers. In these cases, the consumer can choose who to turn to (Hirsch 2020).

Considering the aforementioned restrictions, the competence of the *Federal Ombud Scheme* includes the following areas, according to the *Federal Office of Justice: Consumer goods* (food, cars, information and communication technology products), *education* (language courses, driving lessons), *energy and water* (water, other energy sources), *financial services* (mortgage loans, travel insurance), *general consumer services* (house building, moving, child care), *health* (retirement homes and home care, but excluding health services), *leisure services* (hotels, package tours, services related to sports and hobbies), *postal services and electronic communication* (postal and courier services, fixed line and mobile phone services), *transport services* (taxi, sea and inland waterway transport, rental services) and a

limited responsibility in the area of *insurance* (if outside of the remit of the Insurance Ombud Scheme). These classifications have received some criticism for a lack of precision and resulting confusion among consumers (Hirsch 2020).

The *German Federal Ombud Scheme* is free to use for the consumer, it is independent of the businesses complained about (including independent funding), and it offers alternative dispute resolution to the consumer and the business. Its decisions are not binding on the business. As per end of 2020 the *German Federal Ombud Scheme* has 11 fulltime employees (one director, two ombud persons, four lawyers, two assistants, one office assistance and one public relations officer), and three freelancers (a journalist, an IT administrator, and a data protection officer).

A consumer can bring a complaint to the *German Federal Ombud Scheme* after they have tried to resolve the matter with the business directly but remain dissatisfied with the outcome. If a consumer approaches the *German Federal Ombud Scheme* before attempting to solve the dispute with the counterparty, the application will be rejected. The *German Federal Ombud Scheme* is usually contacted by the consumer through an online portal on their website, or via email. There the consumer finds a generic form to complete and can upload further supporting documents. Since the *German Federal Ombud Scheme* started its work on the 1<sup>st</sup> April 2016, up to 31<sup>st</sup> July 2020 it had received a total of 9,394 applications (Creutzfeldt & Steffek 2021).

A dispute brought to the *German Federal Ombud Scheme* can lead to five different types of outcomes for consumers that we explore empirically below. These are: (1) claim inadmissible or discontinued; (2) amicable solution reached outside of official proceedings (usually by way of settlement); (3) amicable solution reached within an official proceeding (by way of settlement or by accepting the ombud's non-binding recommendation); (4) proceedings concluded without amicable solution; and (5) the business does not participate.

Next, we outline the conceptual and theoretical contribution this paper makes, and then move on to the methodology of our study.

## CONCEPTUAL AND THEORETICAL CONTRIBUTION

### *Legitimacy*

Our primary contribution in this paper is threefold. First, we introduce measures of legitimacy to the study of relations between Ombud schemes and service users (consumers). Within the procedural justice literature, the empirical legitimacy of legal institutions (that is, their legitimacy from the perspective of those governed by them) can be defined as a set of judgements people make about the moral appropriateness of these institutions and about the reciprocal duties they have toward them – legitimacy involves recognition of the properly constituted right to command and the resultant right to be obeyed (Jackson 2018; Tyler and Jackson 2014). One common measure of legitimacy, therefore, is the extent to which people feel a subjective sense *moral duty to obey* authorities; other common measures of legitimacy cover, broadly speaking, perceptions of moral appropriateness – judgements of the extent to which an authority complies with people’s expectations of how it *should* behave, their sense that its actions align with their own values, and/or their sense that it ‘plays by the rules’ (Tyler 2006; Jackson and Bradford 2019).

It is easy to see how such a definition applies to the courts or the police, institutions centrally concerned with wielding state power and obtaining compliance; and indeed it is equally easy to see why procedural justice – making decisions in a fair, neutral, unbiased way, respecting legal and substantive rights, allowing people a voice in the interactions that affect them – should be so central in convincing people that power is being used appropriately and that they have a reciprocal duty towards that authority based on a set of common shared values (Jackson 2018; Sunshine and Tyler 2003; Tyler 2006; Tyler and Huo 2002). On this account, procedural justice is vital to securing and maintaining consent-based

relationships between citizens and legal authorities precisely because it generates legitimacy, and thus deference towards those authorities and compliance with their instructions, orders and decisions.

However, the relationship between procedural justice and legitimacy has not been tested in the literature on Ombud schemes. While previous studies have covered issues of trust and confidence (Donner et al 2015, Murphy et al 2014), none have included direct measures of legitimacy, as we do here. This may be important, not least because generally Ombud schemes and specifically the *German Federal Ombud Scheme* rely on the willing consent of those subject to their decisions.<sup>6</sup> Indeed, if compliance with such decisions was not widespread – if users frequently rejected outcomes, withdrew from further engagement, and/or turned to alternate authorities (e.g., the courts) to seek redress – then the position of the Ombud scheme would, in the long-run, be under threat. As Meyer and Rowan (1977) have argued, all organisations require legitimacy to survive, and those that lack legitimacy “are more vulnerable to claims that they are negligent, irrational or unnecessary” (ibid: 50).

### *Motivations to engage*

The second contribution of the current paper is to consider service users’ motivations for engaging with the Ombud scheme. Most iterations of procedural justice theory – for example the Group Value Model (GVM – Lind and Tyler 1988) and Group Engagement Model (GEM – Tyler and Blader 2003) – rely on the idea that people look for procedural justice in the behaviour of authorities because it carries relational information. On these accounts, people value their membership of social groups, and look for evidence and affirmation of their status and inclusion within groups in the behaviour of group authorities such as legal officials (Blader and Tyler 2009; Bradford et al. 2014; Kyprianides et al. 2021). Being treated with procedural justice indicates that one is included and has status, and this is

one important reason why people value this aspect of interactions with authorities (and respond so strongly to procedural *injustice*, which they tend to experience as denigrating and exclusionary). While the precise formulation of models such as the GVM and GEM varies slightly (according to the GVM, procedural justice should be most important to people with a strong affiliation to the group because their membership means more to them, while according to the GEM it those on the margins of the group who are more ‘attuned’ to procedural justice precisely because their membership is in question), they converge on the idea that the sense of shared group membership, status and belonging that is generated by procedural justice is one of the ‘causal mechanisms’ linking fairness perceptions to legitimacy. People are more inclined to view group authorities as aligned with their own values, and to feel a sense of obligation towards them – i.e., to judge them legitimate – if they feel a sense of identification with the authority and the group it represents.

According to the GVM and GEM, therefore, the value that people ascribe to procedural justice stems from two important and inter-related sources: (i) the extent that the authority concerned represents, in a general sense, a group the individual feels some sense of affiliation or potential affiliation with; and (ii) that the individual interacts with the authority in ways that are attuned to the relational content of its behaviour. When one is dealing with legal authorities the first assumption appears likely to be valid, in many cases at least: the courts and police are important representatives of a variety of social categories in most contexts; categories often associated with ideas of nation, state and community (Bradford 2014; Bradford et al. 2014). Recent work offers some provisional evidence that people may view Ombud schemes in a way similar to more formal legal institutions (Creutzfeldt 2018). People ascribe to the Ombud schemes, that is, a certain representativeness – a sense perhaps that this is a figure, like the judge, who represents ‘the law’ and the social group whose rules the law encodes.

The second assumption might, on the face of it, be more difficult to meet in the present context. It is almost self-evidently the case that people enter interactions with legal authorities for a wide variety of reasons, and their relationship with the authority and the group may not always be uppermost in their minds. Most obviously, they may be deeply invested in the *outcome* of the process. In the immediate context of Ombud schemes, it would appear that the primary motive for engagement is often financial; and if one is primarily concerned with whether one will get one's money back, perhaps procedural justice will be relatively less important because one is less interested in whether the Ombuds' behaviour provides a sense of status or inclusion. Indeed, while many encounters people have with the police, in particular, do not involve outcomes of direct personal interest to themselves (because they are a witness, attending an event where police are present, and so on), interactions with Ombud schemes are, viewed from one perspective, almost *entirely* about outcomes. This perspective links our research to the distinction between outcome- and procedure-control in ADR settings (Steffek et al 2013; Cohen & Cohen 2003).

If the outcome matters most to a party, the fairness of the process may simply be less relevant, and legitimacy judgements may become more instrumental in nature as people view the moral appropriateness of authorities in terms of the goods and benefits those authorities are able to provide to them. There is some evidence to suggest, for example, that in policing contexts marked by low levels of efficiency and effectiveness, and where concerns about the ability of police to deliver goods of security are correspondingly more salient, judgements of effectiveness outweigh procedural justice in shaping legitimacy (Tankebe 2009; Bradford et al. 2014). Similarly, policy debates concerning ombud schemes are often dominated by the argument that in cases of lower financial value, parties are most interested in the outcome (cf Civil Justice Council 2022).

Yet, procedural justice can be of concern to people for non-relational reasons. Indeed, decades of procedural justice research have suggested that “voice is seen as fair because it increases the probability of either a favourable outcome (Leventhal, 1980) or an equitable outcome (Thibaut & Walker, 1978)” (Lind et al. 1990: 952); and Lind and Tyler (1988: 240-241) long ago concluded that fairness judgements – and the consequences that flow from them – are likely to be driven by instrumental (self-interested) *and* non-instrumental (relational) concerns. It is striking, though, how rarely procedural justice research in law-related fields has engaged with people’s motivations for engaging with legal authorities, and considered whether procedural justice is more or less important to people with stronger or weaker relational motivations when (or indeed for) entering into a procedure. While a wealth of studies that have examined why people choose to voluntarily cooperate with police, and have consistently found procedural justice to be an important antecedent of such cooperation (Bolger and Walters 2019), there has been little consideration of whether and how the importance of procedural justice is moderated by *motivations* for engaging with police.

This may be an important omission. A series of papers by Kristina Murphy and colleagues have adapted Valerie Braithwaite’s (2009) notion of ‘motivational postures’ to show that people’s stances toward authorities – the extent of their social and psychological closeness to or distance from them – can shape perceptions of procedural justice (Sergeant et al. 2018), and can both moderate and mediate the association between procedural justice and compliance (Murphy 2016; Barkworth and Murphy 2018). On this account, people with ‘disengaged’ stances towards authorities, for example, place less importance on procedural justice because they are motivated to avoid contact and do not look to the authority to provide them with outcomes they value (neither identity-relevant information *nor* solutions to problems they face).



Murphy and colleagues have thus far, however, only been able to infer motivations for engaging with authorities from the various postures they describe, whereas in the current study we are able to directly assess respondents' stated aims for using the Ombud scheme. Specifically, we are able to distinguish the extent of respondents' (self-assessed) relational motivations for engaging with the service – their sense that they wanted to repair a broken relationship with the company concerned and indeed with wider society (for example by making sure others would not experience the same problem in the future), and to gain in non-financial ways from engaging with the Ombud scheme. This allows us to provide insight for those interested in designing dispute resolution systems and, in particular, ombud schemes on the basis of the interests of the parties to the dispute (Poitras & Le Tareau 2008; Rowe 1991).

It follows from the above that we draw on a model of relational motivation closely associated with that proposed by the literature on restorative justice, which stresses that victims of crime are often motivated to engage in restorative practices because they look for recognition of their status, the harm done to it by the crime, and for re-instatement or validation of their inclusion in society (Van Camp and Wemmers 2013; De Mesmaeker 2014). Interestingly, Van Camp and Wemmers (2013) also note the existence of pro-social motivations among victims; a desire to 'make things better' in a general sense by, for example, persuading the offender to refrain from committing more crimes (see also Van Camp 2017). As we show below, 'making things better' was one reason people had for engaging with the *German Federal Ombud Scheme*. In addition, we are able to compare and contrast respondents' relational motivations for engagement with what might be seen as their primary motivation – financial recompense. This would appear to be a primarily instrumental concern; it would also appear fundamental to the motivation of participants in the current study, all of whom contacted the *German Federal Ombud Scheme* because they had lost out financially in some way.

One reason for the paucity of studies considering peoples' motivations for engaging with legal authorities may be that consideration of the relational aspects of procedural justice has predominated in much research and analysis (Heuer et al. 2002; Heuer and Stroessner 2011), resulting in its instrumental or 'resource-based' (Heuer et al. 2002) elements being rather downplayed. This is again surprising, since another important aspect of the theory is that a sense that the process was fair can provide reassurance that subjectively unfavourable decisions were reached in the correct manner, thus making those involved more likely to accept them (Thibaut and Walker 1978; Lind et al 1993; Tyler 2003). One important implication is that procedural justice may be a particularly important predictor of people's reactions to decisions and decision-makers when they feel those decisions have not been in their favour (Kwong and Leung 2002; de Cremer and Knippenburg 2003; Grootelaar and van den Bos 2018).

Public acceptance of their decisions is vital for legal authorities if they are to retain legitimacy in the face of their frequent inability to secure positive outcomes for those who engage with them (e.g., police usually fail to catch and convict offenders when crimes are reported to them by victims, while the courts by definition act against the subjective interests of the party losing the case). This is no different for Ombud schemes, who are frequently unable to provide the outcomes consumers desire, and previous research in Ombuds contexts has indeed shown that service-users are more likely to be satisfied with and subsequently accept unfavourable decisions if they feel that the process was fair (Creutzfeldt & Bradford 2016). But this work was again unable to examine whether the strength of this association varied according to the motivations of the service users involved. Most obviously, if an individual is strongly motivated by the financial aspects of their case (i.e., they want their money back), they may place less emphasis on the fairness of the process when judging the quality of the process as a whole, or when they assess the legitimacy of the decision-maker.

Again, shedding light on these motivations can improve the policy debate on designing dispute resolution systems (OECD 2021, Department for Business, Energy & Industrial Strategy 2021).

### *Subjective experience vs. objective outcome*

Our third contribution in this paper is to consider what actually happened in the case. The potential importance for procedural justice theory of a gap between subjective experience and objective ‘reality’ has been highlighted by a number of authors over the years (e.g., Nagin and Telep 2017; 2020; Worden and McClean 2017; Vidmar 1992). To be sure, we cannot here address the primary concern of many of these authors, which is that judgements of procedural justice may be only relatively weakly correlated with the actual content of the behaviour of justice institutions.<sup>7</sup> But we are able to consider the outcome in the ADR context of consumer’s cases as recorded by the *German Federal Ombud Scheme* itself. This means we can explore the extent of any correlation between the objective outcome and satisfaction with the ADR process and legitimacy, and whether any such correlation is mediated by subjective experience. We can consider, that is, the extent to which the facts of the case matter.

Perhaps more importantly, though, knowing what the outcome was means we can control for this outcome when considering the association between perceived procedural justice and our response variables. Researchers have long stressed that people’s views on the fairness of a process are formed from multiple components, and in often complex ways. People draw on what information they have to form specific and general views, for example, such that judgements of distributive fairness are often made on the basis of procedural or interactional information (Lind and van den Bos 2002; van den Bos 2003). The quality – or favourability – of outcomes can also shape judgements of specific aspects of procedural or

distributive justice (Nicklin *et al* 2011; Skikta *et al* 2003). People may judge a process fair if it provides them with a favourable outcome, and if it is the case that favourable outcomes shape perceptions of procedural justice, then it may be the outcome, not the quality of the process, that accounts for satisfaction, trust in the decision-maker, legitimacy and so on (Doherty and Walak 2012; Esaiasson *et al* 2019). While a large body of justice research suggests that this is not, in fact, the case – it seems people do distinguish between process and outcome, and judgements of the former do seem to have an effect independent of the latter (Brockner 2002; Tyler 2006, 2017) – as noted, much of the extant research in justice arenas has been unable to take into account the actual outcomes provided to people acting in real world situations. Instead, it has relied heavily on perceptions of both process *and* outcome, leaving open the possibility that it is, in effect, the ‘real’ outcome, and in particular its favourability to the individual concerned, that underpins subjective judgements of both procedure and outcome. If this were the case it might, among other things, inflate the apparent importance of procedural justice as a predictor of the outcomes of interest in this paper, and therefore in the ADR context (cf Vidmar 1992).

## **Research Hypotheses**

Drawing on the discussion above, in this paper we test the following six hypotheses in the context of the Ombud scheme in Germany.

H1: When outcomes are *not* subjectively favourable, greater procedural justice will be associated with greater satisfaction with the decision reached.

H2: Subjective outcome favourability will be associated with the legitimacy afforded to the Ombud scheme.

H3: Procedural justice will be associated with the legitimacy afforded to the Ombud scheme.

H4: Respondents' motivation for engaging in the process will be associated with the weight they place on procedural justice concerns. Specifically:

H4a: Those who entered the process with stronger relational concerns will attend *more* to procedural justice than those who had weaker relational concerns.

H4b: Those who entered the process with stronger instrumental concerns will attend *less* to procedural justice than those less interested in instrumental concerns.

H5: Procedural justice will be a more important predictor of satisfaction and legitimacy among those who feel they received less favourable outcomes.

H6: Procedural justice will be correlated with satisfaction and legitimacy even when the *objective* outcome of the case is taken into account.

## **METHOD**

The data that informs this paper was collected in a three-year period between August 2017 and July 2020. As part of a larger research project, data was collected from consumers and businesses engaged with the Ombud scheme via surveys, interviews, and the administrative data of the *German Federal Ombud Scheme*. In this paper we focus on the consumer survey results.

### ***The survey***

The consumer survey measured service users' satisfaction with the outcome they received, and their perceptions of its fairness, the ease of process, the neutrality of those administering the process, their competence, trust in the people / process, the transparency of the process and the acceptability of the cost and duration of the process.

After piloting, surveys with 35 questions were sent to consumers by the *German Federal Ombud Scheme*. The online survey was hosted on a secure server and a domain created for the project. The survey was sent out with the last correspondence from the *German Federal Ombud Scheme* to the consumer. A short paragraph explaining the purpose of the study and survey, together with a link to the survey was sent. If a consumer communicated with the *German Federal Ombud Scheme* by post, a paper based survey was sent to them. To maximise the response rate the *German Federal Ombud Scheme* sent a reminder that was accompanied by a letter of support from the Federal Ministry of Justice and Consumer Protection who commissioned the project.

An invitation to complete the survey was sent to all consumers who started a case with the *German Federal Ombud Scheme*. In the relevant three-year project time frame 5,533 questionnaires were sent to consumers, of whom 1,188 (21.5%) made some sort of response. However, many individuals did not come close to completing the entire survey, and the analysis presented below is based on an effective sample size of 660, where cases with missing data on the ordinal and categorical variables described below were excluded (cases with some missing values on items used in scale construction were retained).

### ***Representativeness***

Regarding the representativeness of our sample, we can compare the structure of the sample with the records of all service users retained by the *German Federal Ombud Scheme*.

Although the *German Federal Ombud Scheme* only collects a limited amount of information about their users, we are able to state the following. Over the period 1.8.2017 to 31.7.2020, the gender of consumers engaging with the *German Federal Ombud Scheme* was 66% male and 34% female; the composition of the dataset used here is 67% male and 33% female. The distribution of service users across the federated states of Germany (*Länder*) was also nearly identical in the administrative and survey data. For example, 15% of all users were from Baden-Württemberg, as were 15% of survey respondents; for Bayern these figures were 16% and 16%, respectively; for Nordrhein-Westfalen 20% and 17%; and for Berlin 7% and 6%. The similarity continues in relation to the types of products involved in the case (71% services in the administrative data versus 76% in the survey data) and the disputed value (on average, EUR 2,106 in administrative data and EUR 1,869 in the survey data).

## **Constructs and measures**

### *Response variables*

There were three response variables in the analysis, all represented by single item measures. *Overall satisfaction* with the Ombud scheme was represented by a binary variable generated from the survey item (*Overall, how satisfied were you with the procedure?*), coded 1 if the response was ‘rather’ or ‘absolutely’ satisfied and 0 if the response was ‘rather not’ or ‘not at all’ satisfied, or ‘not sure’. We chose to dichotomise this item largely on the conceptual basis that, at some level at least, one is either satisfied overall or one is not.

Two further items measured the legitimacy of the Ombud scheme in the eyes of consumers. *Perceived duty to comply* with the Ombud scheme’s decision was measured by a single item (*I have a moral obligation to follow the recommendation of the Ombud*). To represent a respondent’s sense of the moral appropriateness of the Ombud scheme, we used a single item tapping its *perceived lawfulness* (*The Ombud acts according to the law*). Both

items were scored on 5-point Likert type scales where higher scores equalled greater legitimacy, and were modelled as such on the basis that legitimacy is properly conceptualised on a continuum – one grants more or less legitimacy to an organisation, but this is not a binary distinction. Note that these measures were only moderately correlated ( $r=.37$ ), and in line with other studies, we proceed on the basis that legitimacy is multi-dimensional (i.e., we treat duty to comply and lawfulness as separate and distinct aspects of the underlying construct) (Tyler and Jackson 2014; Jackson 2018).

### *Explanatory variables*

There are four key explanatory variables. First, subjective *outcome favourability* (i.e., the favourability of the result of the Ombuds process from the perspective of the respondent) is represented by two binary variables created from the same four category item (*Was the outcome in your favour?*), which are used in separate analyses below. The first measure of outcome favourability is coded 1 if, ‘yes’, they felt the outcome was in their favour and 0 if they answered ‘no’, ‘partially’ or ‘not sure’. The second measure excludes those who answered yes to the original question, and is coded 1 if the respondent received a ‘partially’ favourable outcome and 0 if otherwise.

Second, *instrumental motivations* for engaging with the process were represented by a dummy variable recoded from a single five category variable (*What were your expectations from the Ombud? – To get my money back*), coded 1 if the respondent ‘absolutely agreed’ or ‘agreed they wanted compensation from the company involved’, 0 if not.

The third and fourth explanatory variables were generated via Confirmatory Factor Analysis (CFA) in the statistical package Mplus 8.4 (see Appendix Table for item wordings, factor loadings, and fit statistics). In the CFA modelling all indicators were set to categorical, there were no cross-loadings, and Full Information Maximum Likelihood Modelling was



used, such that cases with partial missing data on the items used were retained in the analysis.

*Procedural justice* was measured by seven items covering the key elements of procedural justice: voice, respect, consistency, neutrality and unbiased decision-making. *Relational motivations* were measured by five items that referred to respondents' motivations for using the Ombud scheme, specifically, whether they wanted: to have their problem taken seriously; an apology; to change the behaviour of the business involved; to prevent something similar happening to someone else; and to gain respect.

A 2-factor solution fitted the data well; factor loadings were all above .5, and item  $R^2$  values all above .3 (and most over .7). We therefore extracted the two factors *Procedural justice* (mean = -.08; Std. Dev. = .57; min = -2.10; max = .54) and *Relational motivations* (mean = -.02; Std. Dev. = .46; min = -1.2; max = .75) for further analysis.

The final explanatory variable comes not from the survey but from the records of the *German Federal Ombud Scheme*, which we were able to match to the survey respondents. *Case outcome* was a five category variable represented by a set of four dummy variables: 'inadmissible or discontinued claim' (when a claim is not within the jurisdiction of the Ombud or withdrawn by the consumer); 'amicable solution outside of official proceedings' (when the consumer and the business find a solution private solution even though an official proceeding has been commenced); 'amicable solution within an official proceeding' (when the consumer and the business find a solution within the Ombud scheme's process); and 'concluded without amicable solution' (when a case is closed without the parties being able to settle their dispute). The reference category was 'business does not participate' (when the business ignores or refuses to take part in the Ombud procedure). The important distinction here, therefore, is between the two 'amicable solution' categories, where the consumer received some sort of outcome (usually their money back or another form of compensation, and the others, where they definitively did not.

### *Control variables*

Included as controls were measures of: respondents' perceptions of the time it took to process the case (a dummy variable coded 1 if they felt the time taken was appropriate); respondents' perceptions of the costs of the case (a dummy variable coded 1 if they felt the costs were appropriate); respondents' previous experience of this service or another consumer Ombud scheme (a dummy variable coded 1 if they had such experience); and whether they got the outcome they expected (a dummy variable coded 1 if this was indeed the case). This latter measure is perhaps particularly necessary as research has shown that expectations can shape perceptions of procedural (and distributive) justice (Tyler 1984), and it seems almost certain that consumers will have entered into their interaction with the Ombud with a variety of different expectations.

### *Descriptive statistics*

Table 1 shows descriptive statistics for the variables used in this study. Note that perceptions of lawfulness and procedural justice were skewed to the positive, albeit with some variation, while perceived duty to obey and relational motivations were more evenly distributed across the scale ranges. Overall, around two thirds (68%) of respondents were satisfied with the service they received, but only just over a third (37%) felt they had received a favourable outcome.

Table 1: INSERT TABLE 1 ABOUT HERE

We found a strong correlation between the outcome of the case, as recorded by the *German Federal Ombud Scheme*, and respondent's perceptions of procedural justice.

Specifically, mean levels of procedural justice were significantly higher for those whose case reached an amicable solution – either within (mean = 0.14) or outside of (mean = .10) proceedings – than for those who received other, less positive outcomes, notably those where a claim was ruled inadmissible or discontinued (mean = -.40) or when the business involved did not participate in the scheme (mean = -.21).

We also found a strong, although not perfect, correlation between objective and subjective outcomes. For example, 85% (203 respondents) of those whose case reached an amicable solution outside of proceedings felt that their outcome was favourable; for amicable solutions within proceedings this figure was 70% (31 respondents). It is notable, though, that other respondents with the same outcomes experienced these as unfavourable, in some cases presumably because the solution reached involved financial loss. Conversely, among those whose cases were ruled inadmissible or discontinued (91%, or 34 respondents), or where the business did not participate (98%, or 317), there was very consistent agreement that these outcomes were unfavourable.

## **Results**

### *Overall satisfaction with the Ombud scheme*

Turning first to the correlates of overall satisfaction with the Ombud scheme, Table 2 shows results from a series of binary logistic regression models predicting the satisfaction measure described above. Since respondents who received a fully favourable outcome were overwhelmingly satisfied, they are excluded from this model, and we are thus looking here at the correlates of satisfaction among those who felt they received a less than fully favourable outcome.

Table 2: INSERT TABLE 2 ABOUT HERE

Model 1 in Table 2 includes only the objective outcome of the case as a predictor. We find the respondents involved in a case where an amicable solution was reached – either within or outside of proceedings – were unsurprisingly more likely to be satisfied than those for whom the business they were dealing with did not participate in the scheme. Model 2 adds perceived outcome favourability (measured on a binary basis: ‘no/not sure’ vs. ‘partially’). Respondents who felt the outcome was at least partially in their favour were much more likely to be satisfied than those who felt it was not, or were not sure. Note also that the coefficients for the amicable solution dummies shrink in size once subjective favourability is included. Model 3 adds procedural justice; conditioning on both measures of outcomes, procedural justice had a strong, positive association with the probability of satisfaction. Finally, Model 4 adds the motivation and control variables, only one of which, outcome expectation, was significant in the model. All else equal, respondents who got the outcome they expected tended to be more satisfied. Note that in this final model all the dummy variables representing objective case outcomes have lost significance, although many remain relatively large in size.<sup>8</sup>

To illustrate the strength of the association between procedural justice and satisfaction, Figure 1 plots fitted probabilities generated from Model 4 in Table 2. Holding constant the other variables in the model, the probability of satisfaction rises from just 0.07 at the lowest values of procedural justice to .74 at the highest values.

Figure 1: INSERT FIGURE 1 ABOUT HERE

We also tested three interactions – between procedural justice and relational motivations; procedural justice and instrumental motivations; and procedural justice and outcome favourability – adding each in turn to Model 4 in Table 2. None of the interaction

terms were significant (results are not shown, but  $p > .10$  in every case). It seems that when it came to satisfaction with the Ombud scheme, procedural justice concerns were of broadly equal weight to those who had strong (or weak) relational motivations; those who had strong (or weak) instrumental motivations; and those who had felt they received a partially favourable or unfavourable outcome.

### *Legitimacy of the ombud scheme*

Turning to the legitimacy of the Ombud scheme in the eyes of respondents, Table 3 shows results from a series of ordinal logistic regression models predicting perceived duty to obey the Ombuds' recommendations.<sup>9</sup> As before, Model 1 includes just the outcome of the case, and we find that respondents involved in cases where an amicable solution was reached were more likely to feel they had a duty to obey the Ombuds' recommendations. Once subjective outcome favourability was added in Model 2, though, the objective indicators lose significance,<sup>10</sup> and when we add procedural justice in Model 3 we find a strong, positive conditional correlation between procedural justice and duty to obey. Outcome favourability had no independent association with this component of legitimacy. Finally, little changed when controls and motivations were added in Model 4, none of which were significant except for relational motivations, which were quite strongly positively correlated with perceived duty to obey.

Table 3. INSERT TABLE THREE ABOUT HERE

Model 5 in Table 3 also shows there was a significant, positive, interaction between relational motivations and procedural justice, such that the statistical effect of procedural justice on duty to obey was stronger when relational motivations were stronger. The nature of the interaction between procedural justice and relational motivations is illustrated by the

predicted probabilities shown in Table 4. When relational motivations were low (1 standard deviation below the mean), moving from low to high procedural justice (from 1 standard deviation below to 1 standard deviation above the mean) was associated with a decreased probability of the lowest score on the duty to obey measure, .22 compared with .11, and an increased probability of the highest score, .12 compared with .23. But when relational motivations were high (1 standard deviation above the mean) these differences increased: here, moving from low to high procedural justice was associated with a slightly greater *decrease* in the probability of the lowest score on the duty to obey measure (.15 compared with .04) and in particular a greater *increase* in the probability of the highest score (.18 compared with .48).

Table 4. INSERT TABLE 4 ABOUT HERE

We also tested interactions between procedural justice and instrumental motivations, and between procedural justice and outcome favourability, but neither were significant (results are not shown, but  $p > .1$  in both cases). It seems that the association between procedural justice and this component of legitimacy did not vary much according to respondents' instrumental motivations, or according to their assessment of outcome favourability.

Finally, Table 5 shows results from a series of ordinal logistic regression models predicting the second component of legitimacy, lawfulness.<sup>11</sup> Model 1 includes just the outcome of the case, and we find that respondents involved in cases where an amicable solution was reached tended to rate the Ombud scheme as more lawful. Once subjective outcome favourability was added in Model 2, though, the objective indicators shrink in size and lose significance, while there was a strong, positive association between subjective

outcome and perceived lawfulness. Model 3 adds procedural justice, which is a strong and significant predictor of perceived lawfulness; note also that the coefficient for subjective outcome shrinks and loses significance. Little changes on addition of the motivation and control variables in Model 4, none of which are significant – with one exception, in that there is a positive association between perceptions of the costs involved and perceived lawfulness.

Table 5. INSERT TABLE FIVE ABOUT HERE

We also tested interactions as before. The interactions between procedural justice and relational motivations and instrumental motivations were non-significant ( $p < .10$  in both cases; results not shown). That between procedural justice and outcome favourability was however significant at the 10% level ( $p = .06$ ) – see Model 5 in Table 5. To illustrate, Table 6 shows predicted probabilities estimated from this model. The interaction effect can be interpreted in two ways. First, when the outcome was not subjectively favourable procedural justice had a bigger effect on lawfulness judgements: the probability of giving the highest score on the lawfulness scale rose from .34 when procedural justice was one standard deviation below to the mean to .91 when it was one standard deviation above the mean (when the outcome was favourable the equivalent probabilities were .57 and .91, such that with a positive outcome procedural justice seems less important). However, there is also a strong suggestion that outcome favourability itself was much less important when procedural justice was high than when it was low. When procedural justice was one standard deviation above the mean the probability of scoring 5 on the lawfulness measure was essentially the same regardless of whether the outcome was favourable or not (.91 in both cases). But when procedural justice was one standard deviation below the mean, outcome favourability made quite a big difference, with the probability of scoring 5 on the lawfulness measure rising from

.34 when the outcome was not favourable to .57 when it was. As ever with interaction effects, it is difficult to know which of these interpretations is correct (although they are not mutually incompatible).

Table 6. INSERT TABLE SIX ABOUT HERE

### *Additional analysis*

The ‘facts of the case’ were therefore quite strongly correlated with respondents’ perceptions of the Ombud scheme. Those who received ‘amicable solutions’ were more satisfied with the process, and granted more legitimacy than those who received other (less positive) solutions. In all cases, however, these associations lost significance once perceptual variables were entered into the models, strongly and perhaps unsurprisingly suggesting that facts are filtered by perceptions: we have some evidence, that is, that perceptions of the process mediated the effect of its *actual outcome* on satisfaction and legitimacy. In Table 5, for example, objective outcome favourability loses significance when subjective outcome favourability is added. Moreover, subjective outcome favourability loses significance when procedural justice is added, suggesting that procedural justice may mediate the statistical effect of perceptions of outcome favourability.

To explore this issue further we estimated a path model using Mplus 8.4. In this model, subjective outcome favourability was regressed on objective outcome favourability, procedural justice was regressed on subjective outcome favourability, and the two measures of legitimacy were regressed on subjective outcome favourability and procedural justice. Results are shown in Figure 2, and correspond closely with those presented in Tables 4 and 5 above. First, subjective outcome was strongly predicted by objective outcome favourability; second, procedural justice was moderately strongly predicted by objective outcome



favourability; third, duty to obey was predicted by procedural justice but not subjective outcome favourability; and fourth, lawfulness was predicted by procedural justice *and* subjective outcome favourability (this is the only difference from the regression analyses presented in Table 5, and likely arises because the relationship between objective and subjective outcomes is better specified in the path model). There are also significant indirect statistical effects of objective outcome favourability on procedural justice, via subjective outcome favourability (for example, for the path starting at amicable solution no proceedings  $IE=.29, p<.0005$ ); and of subjective outcome on legitimacy, via procedural justice (for example, for the path ending at duty to obey  $IE=.13, p<.0005$ ).

Figure 2: INSERT FIGURE TWO ABOUT HERE

These findings support the idea that respondents were indeed inferring the fairness of the process from the outcome they received to at least some extent – although note that the model only explains 13% of the variation in procedural justice, indicating that other sources of information were more important when it came to respondent’s views of procedural justice; including, we assume, the way they felt they were treated Ombuds staff and how they judged such treatment.

## DISCUSSION

Returning to our original hypotheses, H1 proposed that when outcomes are *not* subjectively favourable, procedural justice will be associated with greater satisfaction. We found strong support for this hypothesis; among respondents who did not feel they received a favourable outcome, procedural justice was strongly and positively associated with satisfaction.

By contrast, we found less support for H2 – subjective outcome favourability was associated with only one measure of the legitimacy afforded to the Ombud scheme, perceived lawfulness, and only in the path model shown in Figure 2. As expected, though, procedural justice was positively associated with the legitimacy afforded to the Ombud scheme, on both measures (H3).

H4 and H5 received mixed support. On the one hand, procedural justice was a significantly stronger predictor of perceived duty to obey among those with strong relational motivations (H4), and a marginally significantly weaker predictor of the perceived lawfulness of the Ombud scheme among those who felt they received a favourable outcome (H5). On the other hand, the relative weight of procedural justice as a predictor of satisfaction and legitimacy did not significantly vary according to whether a respondent had a broadly instrumental motivation or not; nor did the statistical effect of procedural justice vary by subjective outcome favourability in the satisfaction or duty to obey models. Overall, it would seem that the importance of procedural justice among those using the Ombud process was broadly similar across different motivations and outcomes, although there was also *some* variation.

Finally, H6 was supported – controlling for the actual outcome of a case, the association between perceived procedural justice and our response variables persisted. It seems there is indeed an association between procedural justice and legitimacy (and satisfaction) that is independent of the material outcome of a procedure; from which it is reasonable to infer that assessments of the fairness of the process are not determined by its outcome.

Indeed, what is perhaps most striking here is the consistency of the ‘procedural justice effect’. Even in a context often driven by instrumental concerns, legitimacy was very strongly founded in procedural justice, while the outcome had less independent effect (although there

seemed to be some association between subjective outcome favourability and perceptions of lawfulness which, moreover, may have been moderated by procedural justice). And while we found some evidence that the association between procedural justice and legitimacy varied by motivation for using the Ombud procedure, this was hardly over-whelming, and in most cases the interaction effects we tested were not significant.

These findings seem therefore to speak to the idea that procedural justice is important to people for multiple reasons (Heuer et al. 2002). Those who did not get the outcome they desired may well have been using a sense of procedural justice to infer that at least the process was appropriately conducted, and likely to have achieved an appropriate outcome (which may explain the consistency of the association between procedural justice and perceived lawfulness, for example). But even when respondents did receive the outcome they desired, procedural justice was still important for legitimacy; it seems procedural justice was equally as important a predictor of duty to obey among those who felt they received a positive outcome and those who did not, for example (Vidmar 1992). This seems to underline the relational aspects of procedural justice as something that strengthens the bond between individual and authority and that operates separately and in distinction from instrumental concerns.

In the context of regulating ADR and, in particular, the *German Federal Ombud Scheme*, our findings support the strong emphasis that lawmakers, regulators, providers of dispute resolution services and research have put on improving the elements that determine procedural justice. Taking a closer look at these building blocks of procedural justice in ADR more generally and the Ombud scheme specifically reveals a complex web of interrelated aspects. Essential procedural principles and rules of the *German Federal Ombud Scheme* are determined by Federal law.<sup>12</sup> These high-level rules empower the Ombud Scheme itself to lay down further procedural guidelines that determine the details of the procedure.<sup>13</sup> These

legal procedural rules, however, only constitute a fragment of what the users experience in terms of procedure. What matters is how the Ombud Scheme implements the procedure in practice, and key aspects of this are not regulated by law. Examples in this specific context are response times of the Ombud Scheme and the frequency, with which the users are kept up-to-date as regards the progress of the procedure (for details see Creutzfeldt & Steffek 2021).

Further, it is clear that providing consumers with positive outcomes will not in and of itself maintain high levels of legitimacy. While an Ombud scheme that *never* met the desires of the consumers would seem very likely to suffer a legitimacy crisis, those who do use the service base their legitimacy judgements less on the outcomes of the process than on its quality. As suggested by the ‘classic’ procedural justice treatments of the courts, the police and dispute resolution (e.g., Tyler 2006; Tyler and Huo 2002; Vidmar 1992), this is good news for an organisation only sometimes able to provide positive outcomes for those who engage with it. For services such as the *German Federal Ombud Scheme*, treating clients procedurally fairly would on this basis seem imperative, and it seems those involved in running such schemes are aware of this. The empirical study commissioned to evaluate the Ombud Scheme revealed a strong emphasis on procedural fairness in the governance of the Scheme (Creutzfeldt & Steffek 2021).

All that said, it was another important finding of this paper that the ‘facts of the case’ also mattered. These seemed to be mediated by, unsurprisingly, perceptions of outcome favourability – but also by procedural justice (see Figure 2 above). There are two potential explanations for these findings, both of which warrant further consideration. The first is that receiving a negative outcome was associated with a sense that there was something wrong with the process: people were indeed inferring the fairness of the process from the favourability of the outcome they received. Further consideration is, in particular, warranted

for those situations where the business simply declines to participate in the proceeding, with the consequence of a negative outcome for the complaining consumer.

The second explanation for the association between outcome favourability and perceived procedural justice is that the process involved in reaching an ‘amicable solution’ was itself perceived to be procedurally just. As mentioned above, this process can take two different forms. One is for the parties (consumer and business) to agree upon a settlement after starting the Ombud proceedings, but coming to an agreement privately, i.e., outside of the formal proceeding (and in particular, without a formal recommendation by the Ombud scheme). The other is to go through the formal process of the Ombud proceeding, with the Ombud recommending or recording the settlement. Both options involve the Ombud guiding (facilitating / mediating) the process of interaction, communication and exchange of information between the parties. It may be this process of engagement and feedback that contributes to consumers feeling that they are treated fairly – thus enhancing their perceptions of procedural justice.

In sum, our findings suggest that procedural justice matters in the Ombud/ADR context. The data revealed that if the Ombud is seen to provide procedural justice by the outcomes it provides or mediates are more likely to be accepted. We argue further that there are a variety of explanations for perceptions of legitimacy of an ADR body, which we hope might be expanded in further studies of ADR providers.

### *Limitations*

Our study is marked by a number of limitations. First, we have only cross-sectional data. We cannot estimate causal processes, and equally importantly given the discussion above we have respondent’s assessments of, for example, their motivations for engaging with the Ombud scheme captured only after the procedure was completed. Second, while our

sample seems to be broadly representative of the population of service users over the study window, survey non-response was plainly an issue, and it is possible that those who chose to respond to the survey varied systematically from those who did not. This raises questions about the generalisability of our results, as does the fact that we deal only with one particular Ombuds scheme from one European country. Third, due to the need to keep the survey relatively short we are restricted to single-item measures of key constructs, such as the different components of legitimacy, meaning that measurement of these constructs was sub-optimal.

## CONCLUSION AND OUTLOOK

In this paper we analyse consumers' interactions with the *German Federal Ombud Scheme* through data collected in a three-year research project. Building on previous research on Ombud schemes (that in the ADR context outcome favourability has a more prominent weighting than it seems to in other justice contexts) we expanded on questions of satisfaction and legitimacy. This paper also adds methodologically to consideration of procedural justice theory. We do not only have the *perceptions* of users but also the *actual outcomes* of the Ombud proceedings. We are thus able to explore people's perceptions of procedural justice, and their perceptions of the outcome they received, given knowledge of the *actual* outcome of their case. In short, our research shows that procedural justice matters in the examined ADR context.

We found a strong correlation between procedural justice and satisfaction, the experienced duty to obey the Ombud scheme and perceived lawfulness. As the perceived duty to obey and lawfulness are measures of legitimacy, procedural justice, in other words, is strongly correlated with satisfaction *and* legitimacy. When the users of the *German Federal Ombud Scheme* experienced a just procedure, then they were likely to be satisfied with, and grant legitimacy to, the Ombud scheme whether or not they received a positive outcome.

Moreover, the association between procedural justice and perceived duty to follow the suggestions of the Ombud scheme was even stronger for those consumers that started the proceeding for relational – as opposed to instrumental – reasons. The subjective perception of the outcome – as opposed to the objective outcome recorded by the Ombud scheme – becomes even irrelevant for satisfaction and legitimacy if the process is just.

However, we also found strong associations between positive outcomes, satisfaction, the experienced duty to obey and the perceived lawfulness of the Ombud scheme. This is true for both objective results as recorded by the Ombud scheme and subjective results from the perspective of the parties as the objective outcome strongly predicts the subjective perception of the outcome. In other words, it is not only procedural justice that matters, outcomes matter, too.

This raises the question of the relationship between outcome and procedural justice. We found that procedural justice was moderately strongly predicted by the objective outcome. Users of the *German Federal Ombud Scheme* were more likely to consider the procedure they have experienced to be just if the outcome they received was in their favour. However, our research also shows an association between procedural justice and legitimacy, as well as satisfaction, that is independent of the outcome of the procedure. We can, therefore, infer that there are relevant aspects of the fairness of the process that are not determined by its outcome.

Also, where the outcome for the consumer was not positive, procedural justice was still positively correlated with perceived lawfulness. Indeed, it may be that if the procedure was just, the result was less relevant, at least when it comes to judgements about the lawfulness of the Ombud Scheme. This is of significant relevance for institutions of justice, as they are often in a position where they cannot at the same time fulfil the wishes of both parties. We also found that if there was less procedural justice, then the outcome matters

more to the parties. Finally, our analysis shows the relevance of the costs of the procedure for perceived lawfulness. For lawmakers this means that cost rules matter for the design of conflict resolution mechanisms.

Our findings have practical implications for the *German Federal Ombud Scheme*. The collected data shows that its customers are, generally speaking, content with the way they are treated and, overall, they experience the processes as fair. Partly as a result of the favourable outcomes they receive, but perhaps as a consequence of the just process they experience. Further, our research suggests that clear communication throughout the process can help build and maintain consumers' perception of a just process. Ultimately, this will encourage them in accepting the outcome reached. This is, in particular, relevant for the larger number of parties that do not receive the outcome they desire from the *German Federal Ombud Scheme*.

We close by briefly suggesting further work in relation to themes that seem to be important in this context but which require greater consideration than we were able to provide here. The importance of procedural justice raises the question what specific aspects of a dispute resolution mechanism create a sense of procedural justice and how they should be 'designed in'. While the ADR and dispute resolution design literature provides valuable qualitative guidance for the design of fair dispute resolution, it seems important to gather further empirical evidence on the structures and factors that create the experience of procedural justice. When embarking on such research, care needs to be taken to distinguish the characteristics that constitute a certain type of dispute resolution (e.g., whether the parties or a third-party neutral controls the procedure) from the way in which procedural aspects are implemented in practice.

As regards the consumer law perspective, our research supports those lawmakers that have introduced and strengthened ADR and, in particular, Ombud proceedings as a further



way to solve disputes between consumers and businesses. A good example is European consumer legislation, which has added consumer ADR in many regulatory consumer contexts and is currently embarking on further improving key instruments on alternative dispute resolution and online dispute resolution.<sup>14</sup> While challenging to design, such reform endeavours would tremendously benefit from a better understanding of the relative potential of different dispute resolution mechanisms as regards procedural justice and, in turn, decision acceptance. Currently, there is little empirical knowledge on the relative strengths of key proceedings such as mediation, conciliation, ombud schemes, arbitration and litigation.

Finally, our research adds relevant insights for the jurisprudence of conflict resolution. Our results can be interpreted to support deontological as opposed to consequentialist approaches to dispute resolution, as they show that it is not only the outcome that matters but also how this outcome has been achieved. This may be useful for current research projects that aim at defining justice principles for the use of emerging technology such as artificial intelligence in dispute resolution. A key question that arises in this context is how to ensure procedural justice in the context of results provided by algorithms. Our results clearly show that a fair process is vital for people to accept decisions and decision-makers that do not provide them with favourable outcomes, and this may be even more so when the decision-maker is effectively a machine.

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**Table 1. Descriptive statistics**

					Std.				
	n	Mean	Min	Max	Dev.	1	2	3	4
Overall satisfaction	660	0.68	0.00	1.00					
Outcome favourability	660	0.37	0.00	1.00					
Instrumental motivations	660	0.88	0.00	1.00					
Prior user	660	0.14	0.00	1.00					
Time appropriate	660	0.90	0.00	1.00					
Costs appropriate	660	0.89	0.00	1.00					
Outcome expected	660	0.48	0.00	1.00					
Perceived duty to comply (1)	660	3.33	1.00	5.00	1.34	1.00			
Perceived lawfulness (2)	660	4.45	1.00	5.00	0.89	0.37	1.00		
Procedural justice (3)	660	-0.08	-2.10	0.54	0.59	0.34	0.67	1.00	
Relational motivations (4)	660	-0.03	-1.20	0.75	0.46	0.20	0.00	0.07	1.00

**Table 2. Binary logistic regression models predicting overall satisfaction (cases with subjectively favourable outcomes excluded)**

Unexponentiated coefficients

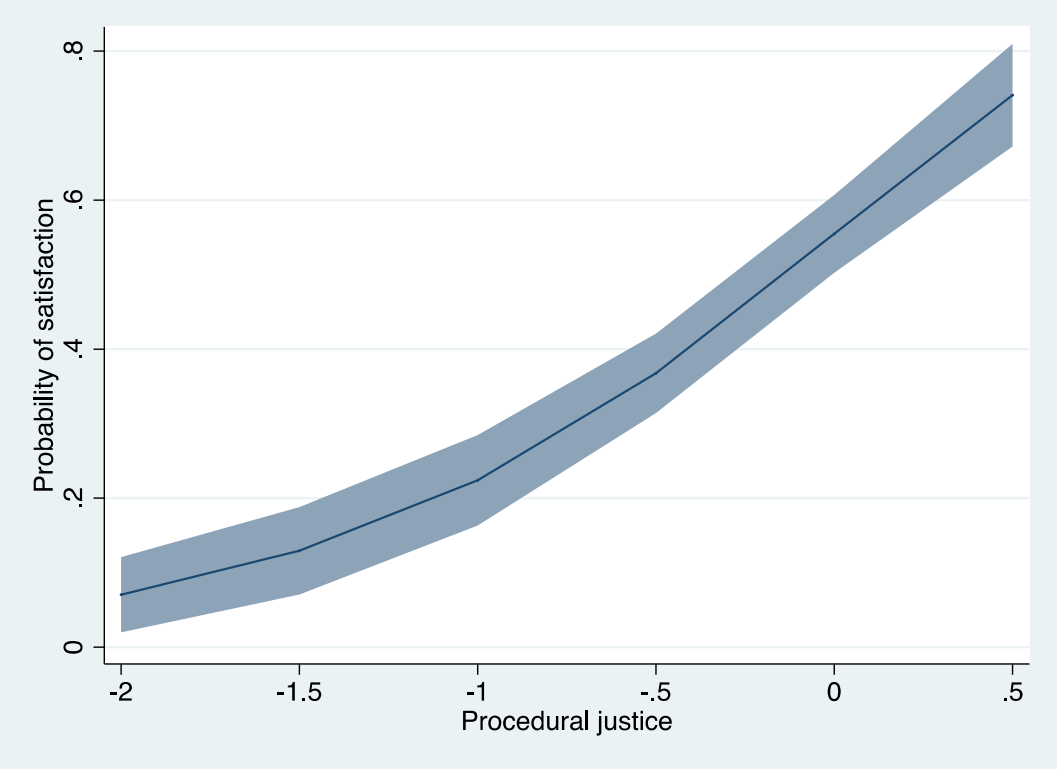
	Model 1		Model 2		Model 3		Model 4	
	b	se(b)	b	se(b)	b	se(b)	b	se(b)
	Case characteristics (ref: business does not participate)							
Claim inadmissible or discontinued	0.16	0.33	0.06	0.34	0.52	0.39	0.78	0.41
Amicable solution outside of proceedings	1.63***	0.44	1.08*	0.47	1.25*	0.53	0.85	0.58
Amicable solution within proceedings	1.91*	0.78	1.64*	0.8	1.66	0.92	1.81	0.98
Concluded without amicable solution	-0.89	1.16	-0.77	1.16	-0.83	1.31	-1.17	1.58
Outcome favourable (ref: no/not sure)								
Partially			2.58***	0.62	2.78***	0.65	2.40***	0.67
Procedural justice (high=more)					1.98***	0.23	1.93***	0.25
Prior user of Ombud scheme (ref: no)								
Yes							-0.14	0.35
Time to process case (ref: not OK)								
Time OK							0.66	0.45
Costs involved (ref: not OK)								

Costs OK							0.06	0.41
Relational motivations (higher=more)							0.08	0.28
Financial motivations (ref: did not want money)								
Wanted money							-0.19	-.4
Outcome as expected? (ref: no)								
Yes							1.37***	0.34
Constant	-0.21	0.11	0.1	0.13	-0.04	0.14	-0.76	0.68
n	415		415		415		415	

\* p<0.05, \*\* p<0.01, \*\*\* p<0.001

**Figure 1: Association between procedural justice and overall satisfaction**

Predicted probabilities generated from Model 4 in Table 2



**Table 3. Ordinal logistic regression models predicting perceived duty to obey Ombud scheme**

Unexponentiated coefficients

	Model 1		Model 2		Model 3		Model 4		Model 5	
	b	se(b)	b	se(b)	b	se(b)	b	se(b)	b	se(b)
Case characteristics (ref: business does not participate)										
Claim inadmissible or discontinued	-0.25	0.27	-0.27	0.27	-0.06	0.27	0	0.28	-0.02	0.27
Amicable solution outside of proceedings										
Amicable solution within proceedings	0.38*	0.15	0.22	0.26	0.06	0.26	0.25	0.27	0.24	0.27
Concluded without amicable solution	-0.64	0.92	-0.64	0.92	-0.53	0.86	-0.66	0.88	-0.86	0.88
Outcome favourable (ref: no/not sure/partially)										
Yes			0.19	0.25	-0.07	0.26	0.05	0.28	0.06	0.28
Procedural justice (high=more)					1.18***	0.14	1.11***	0.15	1.12***	0.15
Prior user of Ombud scheme (ref: no)										
Yes							-0.1	0.2	-0.09	0.2
Time to process case (ref: not OK)										
Time OK							-0.08	0.26	-0.17	0.26

Costs involved (ref: not OK)											
Costs OK								0.33	0.24	0.32	0.24
Relational motivations (higher=more)								0.76***	0.16	0.82***	0.17
Financial motivations (ref: did not want money)											
Wanted money								0.39	0.23	0.42	0.23
Outcome as expected? (ref: no)											
Yes								-0.24	0.2	-0.23	0.2
Interaction											
PJ*Relational motivation										0.61*	0.27
Thresholds											
cut1	-1.62***	0.13	-1.61***	0.13	-2.02***	0.14	-1.52***	0.38	-1.59***	0.38	
cut2	-0.89***	0.11	-0.88***	0.11	-1.24***	0.12	-0.71	0.38	-0.77*	0.38	
cut3	0.16	0.11	0.16	0.11	-0.1	0.11	0.45	0.38	0.39	0.38	
cut4	1.36***	0.12	1.36***	0.12	1.20***	0.12	1.78***	0.38	1.73***	0.38	
n	660		660		660		660		660		

\* p<0.05, \*\* p<0.01, \*\*\* p<0.001

**Table 4. Predicted probabilities from Model 4 in Table 3**

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	Low relational motivations		High relational motivations	
	Low procedural	High procedural	Low procedural	High procedural
	justice	justice	justice	justice
Lowest duty to obey	0.22	0.11	0.15	0.04
2	0.17	0.11	0.13	0.04
3	0.28	0.25	0.27	0.14
4	0.22	0.30	0.27	0.30
Highest duty to obey	0.12	0.23	0.18	0.48

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**Table 5. Ordinal logistic regression models predicting perceived lawfulness of Ombud scheme**

Unexponentiated coefficients

	Model 1		Model 2		Model 3		Model 4		Model 5	
	b	se(b)	b	se(b)	b	se(b)	b	se(b)	b	se(b)
Case characteristics (ref: business does not participate)										
Claim inadmissible or discontinued	-0.29	0.29	-0.35	0.29	0.04	0.32	0.15	0.33	0.14	0.33
Amicable solution outside of proceedings										
Amicable solution within proceedings	1.17***	0.19	0.51	0.29	0.35	0.35	0.34	0.36	0.35	0.36
Concluded without amicable solution	1.37***	0.4	0.82	0.45	0.76	0.51	0.8	0.52	0.76	0.51
Outcome favourable (ref: no/not sure/partially)										
Yes			0.85**	0.3	0.2	0.35	0.14	0.38	0.06	0.38
Procedural justice (high=more)					2.96***	0.2	2.80***	0.21	3.00***	0.24
Prior user of Ombud scheme (ref: no)										
Yes							0.31	0.26	0.26	0.26
Time to process case (ref: not OK)										
Time OK							0.42	0.31	0.37	0.31



Costs involved (ref: not OK)										
Costs OK							0.64*	0.28	0.62*	0.28
Relational motivations (higher=more)							0.08	0.21	0.1	0.21
Financial motivations (ref: did not want money)										
Wanted money							0.31	0.3	0.28	0.3
Outcome as expected? (ref: no)										
Yes							0.09	0.26	0.06	0.26
Interaction										
PJ*outcome favourability									-0.9	0.48
Thresholds										
cut1	-3.36***	0.26	-3.35***	0.26	-5.51***	0.36	-4.37***	0.54	-4.66***	0.57
cut2	-2.93***	0.22	-2.92***	0.22	-4.85***	0.31	-3.66***	0.51	-3.93***	0.54
cut3	-1.58***	0.14	-1.57***	0.14	-2.89***	0.19	-1.57**	0.48	-1.79***	0.5
cut4	-0.12	0.11	-0.1	0.11	-0.76***	0.15	0.6	0.48	0.42	0.5
n	660		660		660		660		660	

+ p<.1 \* p<0.05, \*\* p<0.01, \*\*\*

p<0.001

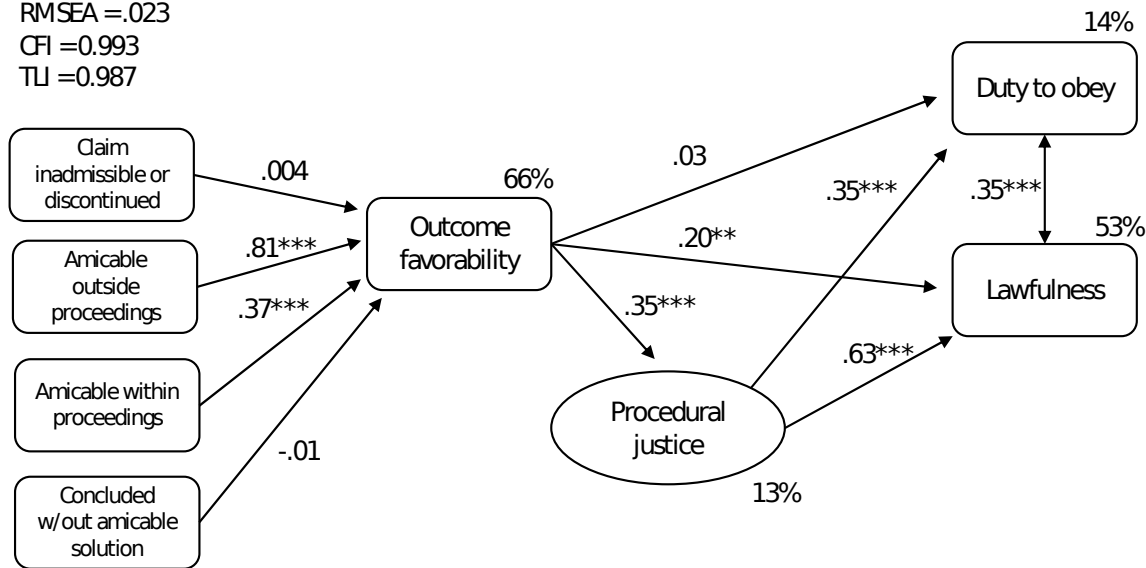
**Table 6. Predicted probabilities from Model 6 in Table 5**

	Outcome not favourable		Outcome favourable	
	Low procedural	High procedural	Low procedural	High procedural
	justice	justice	justice	justice
Lowest	0.01	0.00	0.00	0.00
lawfulness				
2	0.01	0.00	0.01	0.00
3	0.16	0.01	0.07	0.01
4	0.47	0.08	0.35	0.08
Highest	0.34	0.91	0.57	0.91
lawfulness				

**Figure 2: Results from a path model with the measures of legitimacy as the ultimate response variables.**

Standardized coefficients

Chi-Square =16.279\*  
 Degrees of Freedom =12  
 p-Value =0.1788  
 RMSEA =.023  
 CFI =0.993  
 TLI =0.987



## Appendix Table: Latent constructs and measures

Results from a two-factor solution with no cross-loadings

	Factor	
	loading	Item R <sup>2</sup>
<i>Procedural justice (Would you agree to the following statements about the process?)</i>		
My opinion was heard	0.72	0.52
Taken seriously	0.94	0.89
Ombud was neutral	0.91	0.82
Ombud respected me	0.89	0.79
Staff were consistent	0.84	0.70
Staff understood my problem	0.91	0.83
Staff were impartial	0.92	0.84
<i>Relational motivations (What are your expectations of the Ombud service?)</i>		
Someone to take my problem seriously	0.55	0.30
Get an apology	0.58	0.34
Change the process in the business	0.78	0.60

Prevent others from having the same problem	0.84	0.71
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Be treated with respect	0.68	0.47
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*Fit statistics*

Chi-Square	199.90
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Degrees of freedom	13.00
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p-value	<.0005
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RMSEA	0.06
-------	------

CFI	0.99
-----	------

TLI	0.99
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<sup>1</sup> <https://www.law.ox.ac.uk/trusting-middle-man-impact-and-legitimacy-ombudsmen-europe/project-reports>

<sup>2</sup> For details, see the website of the scheme at <https://www.verbraucher-schlichter.de>; from 1 April 2016 to 31 December 2019 the scheme was referred to as *General Consumer Ombud Scheme (Allgemeine Verbraucherschlichtungsstelle)*.

<sup>3</sup> Verbraucherstreitbeilegungsgesetz, VSBG; an English translation is available at [https://www.gesetze-im-internet.de/englisch\\_vsbg/index.html](https://www.gesetze-im-internet.de/englisch_vsbg/index.html).

<sup>4</sup> A list of ADR entities is provided by the federal government:

[https://www.bundesjustizamt.de/DE/Themen/Buergerdienste/Verbraucherstreitbeilegung/Verbraucherschlichtungsstellen/Uebersicht\\_node.html](https://www.bundesjustizamt.de/DE/Themen/Buergerdienste/Verbraucherstreitbeilegung/Verbraucherschlichtungsstellen/Uebersicht_node.html).

<sup>5</sup> <https://www.law.ox.ac.uk/trusting-middle-man-impact-and-legitimacy-ombudsmen-europe/project-reports>

<sup>6</sup> In this article, the term ‘Ombud scheme’ refers to a type of dispute resolution that – without further actions – does not result in an enforceable title. Instead, the solution is amicable and performance is legally voluntary. In practice, there are sometimes other types of ‘Ombud scheme’ that are binding (at times only for one party). For a functional taxonomy of dispute resolution services, see Steffek et al 2013: chapter 3.

<sup>7</sup> Such that, for example, efforts to train police officers to behave more fairly would have limited or no impact, since any improvements in behaviour are unlikely to be ‘picked up’ by the public.

<sup>8</sup> As a check, we re-estimated Model 4 in Table 2, this time using ordinal logistic regression to predict responses to the full five-category satisfaction variable. This had similar results. In particular, the associations between subjective outcome, procedural justice and outcome expectation, and satisfaction, replicated across the two models. The ordinal model did suggest a significant association between time to decision and satisfaction ( $p = .15$  in the model shown in Table 2), and between amicable solutions and satisfaction. However, model diagnostics indicated some issues with the ordinal model (for example, given then specification shown in Model 4, Table 2, a Brant test could not be calculated), so we proceed with the binary logistic regression model.

<sup>9</sup> The Brant test indicated a violation of the proportional odds assumption for this model. However, comparison of information criteria (BIC) values for the ordinal logit model 4 in Table 3 versus a multinomial logit model with the same predictors (using the `fitstat` command in Stata) suggested the former was preferable. Comparison of fitted probabilities generated from the two models furthermore suggested little substantive difference between them. We therefore proceed with the ordinal model, not least for ease of presentation.

<sup>10</sup> Note that subjective outcome favourability is not significant in Model 2 or Model 3. To check that this was not an issue of multicollinearity (i.e., due to the strong correlation between the objective and subjective outcome measures) we also estimated a model with just subjective outcome favourability as a predictor, which was on its own associated with perceived duty to obey ( $b=.43$ ;  $p<.01$ ). However, when we added procedural justice to this model the coefficient for outcome favourability shrunk to

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essentially zero ( $b=.02$ ;  $p=.9$ ); this model was therefore functionally equivalent to Model 3 in Table 3. We therefore proceed with the presentation of models show in Table 3 to maintain consistency with those presented elsewhere in the paper.

<sup>11</sup> A Brant test could not be calculated for this model due to zero values in some binary models. However, as before comparison of information criteria (BIC) values for the ordinal logit model 4 in Table 5 versus a multinomial logit model with the same predictors suggested the former was preferable; and comparison of fitted probabilities generated from the ordinal and multinomial models suggested little substantive difference between them. We therefore proceed with the ordinal model.

<sup>12</sup> Verbraucherstreitbeilegungsgesetz, VSBG; an English translation is available at [https://www.gesetze-im-internet.de/englisch\\_vsbg/index.html](https://www.gesetze-im-internet.de/englisch_vsbg/index.html).

<sup>13</sup> These rules are available (in German language) <https://www.verbraucher-schlichter.de/schlichtungsverfahren/verfahrensordnung/verfahrensregelung>.

<sup>14</sup> See, e.g., the consultation concerning the ADR Directive and the ODR Regulation at [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13417-Au%C3%9Fgerichtliche-Beilegung-von-Verbraucherrechtsstreitigkeiten-Bericht-/public-consultation\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13417-Au%C3%9Fgerichtliche-Beilegung-von-Verbraucherrechtsstreitigkeiten-Bericht-/public-consultation_en).