COURSE SAMPLE

The University of Manchester

Online and Blended Learning

FINANCIAL CRIME AND COMPLIANCE IN DIGITAL SOCIETIES

ONLINE | PART-TIME

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FINANCIAL CRIME AND COMPLIANCE IN DIGITAL SOCIETIES

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Introducing Financial Crime (and the Need for Advanced Theory)

THE NEED FOR ADVANCED THEORY IN THE WORKPLACE

SECTION INTRODUCTION

Welcome. In this section we introduce the concept of financial crime and explain the ways in which criminological and other social scientific theories can be of use for understanding and analysing compliance risks.

LEARNING OBJECTIVES

- **Recognise the benefits of using advanced social scientific theories and perspectives to help you to analyse and explain financial crimes by, against, and through business organisations**
- **Think critically about the concept of 'financial crime' and understand how it can be applied and understood in a business context**

THE NEED FOR ADVANCED THEORY IN THE WORKPLACE

Advanced Theory
To help us analyse and explain financial crimes and compliance, we need to draw on theories and perspectives from a range of disciplines including criminology, sociology, regulatory governance and organisational psychology/behaviour.
We also need to make connections between individuals such as employees and executives; business organisations and their internal environments and pressures; and the conditions of society more generally, such as political-economic contexts and regulatory landscapes.

Non-compliance is multi-faceted, and this needs to be reflected in our research and policies.

Theories help us make sense of particular manifestations of financial crime and (non-)compliance, the factors that create them, and the conditions that make them possible. Theory can be defined as **'a supported explanation of some phenomenon through a series of relational statements, called propositions. Propositions connect concepts, which are abstract ideas, such as crime, poverty, or self-control'** (Severson et al., 2020: 160). Theories require empirical evidence to confirm or corroborate their explanatory power.

Advanced social scientific and criminological theories are important for understanding financial crime and (non-)compliance as they (1) provide simplified models of complex human behaviour, (2) set up the conditions against which we can test an explanation's accuracy, and (3) inform which explanations can be the most useful for financial crime and compliance policies. (Severson et al., 2020: 160)

Throughout this unit, we consider **four interrelated themes across individual, organisational and societal levels of analysis** that help us to understand financial crimes and (non-)compliance in business (see Parker and Nielsen, 2011: 3):

1. Firms' and individuals' substantive motives to respond to regulation in different ways;

2. The internal characteristics and capacities of firms as organisations to respond to regulation;

3. The influence of different regulatory enforcement strategies and styles on how firms respond to regulation;

4. How regulation and responses to regulation emerge from regulators' and businesses' interactions with their broader social, economic and political environments.

These themes are interweaved throughout the analysis in the subsequent sections.

"This course has helped me think about my work differently and has helped me to apply what I have learnt in the workplace."

Proximal Factors

INDIVIDUAL MOTIVATIONS AND SITUATIONAL COMPONENTS OF FINANCIAL CRIME AND COMPLIANCE RISKS

SECTION INTRODUCTION

Financial crimes and non-compliance are multi-faceted and cannot be reduced to any single factor. Instead, to develop a fuller explanatory account of compliance violations, we need to think about how societal factors produce situations, conditions and motivations that can come together to lead financial crimes or other forms of non-compliance to take place (or not).

LEARNING OBJECTIVES

- **Understand different perspectives and theories that can be drawn on to make sense of financial crimes and non-compliance at the proximal level.**
- **Identify the 'opportunity structures' of financial crimes and non-compliance within your business and use this analysis to develop policies that can reduce crime events and increase compliance.**

PROXIMAL FACTORS

Proximal Factors

In this section we focus on what we can refer to as 'proximal' factors.

We will look at:

- The situational components of financial crime and non-compliance, including how opportunities emerge within business organisations.
- Theories that seek to explain why individuals might be motivated to make the most of these opportunities.

By looking at the particular situations and individuals involved, **we are analysing the proximal aspects of financial crimes.**

We will also look at proximal factors as precursors to the commission of financial crimes or non-compliance. We will focus specifically on **opportunities for crime events, rather than the behavioural dispositions** of those involved.
The materials in this section will enable you to identify where opportunities for financial crimes or non-compliance could occur within your organisation.

For financial crimes or intentional non-compliance to occur, an opportunity must be present. This is self-evident. However, whilst it is a necessary requirement, an opportunity alone is not sufficient – many other factors determine whether a financial crime or non-compliance will occur. Of significance for understanding financial crimes or non-compliance is identifying the particular characteristics of the opportunity - **every financial crime will have a specific 'opportunity structure'** (see Benson et al., 2024):

"An opportunity structure refers to the set of conditions or elements that must be in place in order for any crime, and in our case, financial crimes or other forms of financial non-compliance, to be able to take place."

Different business settings naturally create different opportunities, which vary in accessibility and attractiveness to potential offenders.
A key question then is **what exactly does a financial crime opportunity structure consist of?**

ROUTINE ACTIVITIES THEORY

To explain this, we can draw on **Routine Activities Theory** (RAT). **RAT** is one of the main theories within what is referred to as 'environmental criminology', a line of thinking that focuses on the specific places where crimes or acts of noncompliance occur. RAT explains crime events by focusing on the necessary **convergence of motivated offenders, suitable targets and the absence of capable guardians** in particular places and at particular times (Figure 3.1).

Figure 3.1 Visualisation of the RAT components showing their convergence in time and space.

In other words, the focus here is on how financial crime opportunities are formed by immediate business environments and discovered and evaluated by potential offenders during the course of their occupational roles and duties. RAT says that if motivated offenders and suitable targets are present, then a financial crime will happen in the absence of an effective controller or guardian (Cohen and Felson, 1979), (Felson, 1986), (Eck, 1994).

For example, a business executive who diligently monitors access to information about an upcoming merger and acquisition; a compliance officer who watches over the communications of particular employees; a middle manager who observes employee interactions in the office.

Interventions by these controllers/guardians can lead to crime prevention **even when a suitable target and motivated offender are present.**

RAT also incorporates analysis of how social structures and patterns of social activities produce these convergences (Cohen and Felson, 1979; Felson and Eckert, 2018). For instance, the nature of financial markets, the ways of operating in different industries and sectors, the societal structures that provide access to occupations for some but not others, amongst other factors, all shape the routine, daily activities of business actors.

FINANCIAL CRIME OPPORTUNITY STRUCTURES

If we think of financial crimes by business employees, for instance, we can see that, in general terms, core features of the opportunity structure include:

1. Motivated or likely offenders usually have legitimate, 'specialised access' to victims and targets, and the offending environment, by virtue of their employment.

2. Motivated or likely offenders remain spatially distant from victims at the time of the offence or non-compliance, particularly when clients or customers are targeted.

3. Deception or concealment enables offenders to hide the offence, as does their status and respectability within the business, indicating the absence of sufficient oversight.

4. Criminal intent is often ambiguous as the acts may closely resemble routine, legitimate activities. This makes identifying non-compliance difficult, as 'guardians' look for 'out of the ordinary' behaviours.

(See Benson and Madensen 2007: 613-4; see also Madensen, 2016)

Financial crime opportunity structures can be understood, therefore, as a **combination of motivated offenders, suitable targets and a lack of capable guardianship.**

THEORY INTO PRACTICE:

Identifying the different elements of the opportunity structure for a particular form of financial crime or noncompliance (e.g., embezzlement, bribery, money laundering, etc.) in your organisation, can enable you to identify whether potential controllers are in place, and if so, assess their levels of effectiveness.

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Distal Factors

ORGANISATIONAL CONTEXTS AND STRUCTURAL CONDITIONS

SECTION INTRODUCTION

This section analyses the organisational and societal, or distal, factors that enable businesses and employees to respond to, and comply with, regulation.

LEARNING OBJECTIVES

- **Understand the ways in which organisational structures, strategies and cultures shape motivations for compliance and non-compliance.**
- **Appreciate the multi-faceted relationship between individual decisions and actions in particular organisational environments and the ways in which structural factors drive compliance behaviours.**

DISTAL FACTORS: ORGANISATIONAL CONTEXTS AND STRUCTURAL CONDITIONS

As we analysed in Section 2, we might explain individual financial crime offending behaviour in relation to:

1. The situational contexts of financial crime or non-compliance events including the structures of financial crime opportunities;

2. The rational choices that those with opportunities make in pursuit of personal (or organisational) gain, as the lure of offending - together with a lack of restraint or oversight - becomes more tempting (Shover and Hochstetler, 2006);

3. How individuals might rationalise or 'neutralise' their offending behaviour (e.g., 'everyone is at it', 'I was protecting the business'), or

4. The lack of attachments that such individuals have to society (e.g., perceiving there to be no direct victims as is the case of most 'conventional' crimes).

However, **individual level explanations do not sufficiently account for the influence of organisational cultures or wider political-economic/cultural structures** and, a ...

"... preoccupation with individuals can lead us to underestimate the pressures within society and organizational structures which impel those individuals to commit illegal acts."

(Schraeger and Short, 1977: 410)

Thus, contextualised theories of rational choice, and the dynamics between choice, organisation, opportunity and context (Benson et al., 2016), are most promising for explaining financial, white-collar and business crimes.
Such theories 'build from a rational actor framework that shows how offending decisions are affected by instrumental and normative considerations ... but take into account micro-, meso-, and macro-level influences' (Simpson, 2013: 325; see also Vaughan, 2007).

"The networking part is very important to me. I am studying alongside professionals from different jurisdictions, providing me with insight into the best practice across various industries."

DISTAL FACTORS: ORGANISATIONAL CONTEXTS AND STRUCTURAL CONDITIONS

Organisational Pathologies and Pre-Dispositions

As we saw in Section 2, it might be argued that some individuals who engage in financial, white-collar and other business crimes are psychopathic (see Babiak and Hare, 2007). **However, can business corporations also be said to be in some way psychopathic or predisposed to committing financial crimes?**

Slapper and Tombs (1999) have referred to the **'pathology of corporations'**, arguing that corporations have characteristics that create tendencies favourable to **seeking out or taking advantage of criminal opportunities to advance organisational interests.** With this in mind, if we applied the characteristics of personality disorders such as psychopathy, could we say that business corporations possess any of these features:

- **callous unconcern for the feelings of others?**
- **incapacity to maintain enduring relationships?**
- **reckless disregard for the safety of others?**
- **deceitfulness: repeated lying and conning others for profit?**
- **incapacity to experience guilt?**

While some business organisations may exhibit pathological characteristics, any associations and internal linkages between businesses and psychopathy are difficult to test empirically, particularly due to the social complexity of business and organisational activities. Claiming that businesses are pathological is subsequently problematic beyond the symbolic. That said, the idea of organisations having criminogenic properties and dynamics is widely accepted (Huisman, 2016: 438).

Organisational Environment (Culture, Characteristics and Capacities)

If it is difficult to establish pathological characteristics in businesses, might it be possible to examine the ways in which particular occupations or organisations are in some way criminogenic? That is, whether the organisational or corporate form possesses features that are conducive to financial crimes or non-compliance.

Drawing on theories of organisational behaviour, strategic management and institutional change and their criminological implications, we can begin to understand the business conditions and factors that enable financial crime opportunities to emerge or incentivise, or enable, non-compliance to arise. There is a longstanding body of literature that suggests that the 'business organisation' provides the means, setting, rationale and opportunity for non-compliance (Punch, 1996, 2011). Furthermore, academics have argued that:

"... crime and misconduct are **endemic to business** and ... the key to understanding lies in recognizing the **structure** that the business environment gives to misconduct, both in terms of **opportunities** and in terms of how misconduct is **managed.**" (Clarke, 1990: 8)

DISTAL FACTORS: ORGANISATIONAL CONTEXTS AND STRUCTURAL CONDITIONS

This line of argument implies that misconduct within business is simultaneously 'normal' and 'deviant'. 'Normal' as such activities often represent a rational response by employees and executives to the nature and pressure of business, and may actually be little different from many licit business activities. 'Deviant' as these activities nonetheless violate rules, regulations, norms and often laws.
As Jordanoska (2018: 15) notes, 'the normalization of criminal practices can appear simultaneously as both a push (immoral context) and a pull (neutralization) to white-collar crime'.

Punch (1996) identifies a range of variables, relating to features of organisations and businesses, that may explain why some companies and managers turn to deviant solutions and practices (see Newburn, 2017: 398-9):

STRUCTURE the circumstances or conditions within which companies work	**CULTURE** cultures that sponsor rule-breaking mentalities	**PERSONALITY/IDENTITY** the social/psychological factors associated with corporate misconduct
1. Markets (competitive pressures can lead to misconduct) 2. Size and complexity (oversight and control can be difficult) 3. Goals (pressure to achieve particular objectives can lead to deviance if cannot be achieved through legitimate means) (cf. 'strain theory' (Agnew et al., 2009)) 4. Opportunity structures and rewards (temptations increase as the rewards increase)	1. Fun and excitement (some managers actively enjoy excitement of rule-breaking (cf. 'seductions of crime' (Katz, 1998))) 2. Risk-taking (cultural encouragement of risk-taking and idealisation of the 'successful gambler' in some environments) 3. Corporate heroes (the veneration of those who will do whatever it takes to succeed) 4. Dirty workers (some environments need dirty tricks, e.g., corporate espionage)	1. Depersonalisation (managers cut-off from the consequences of their actions) 2. Ideology and rationalisations (the 'vocabularies of the motive' that provide a set of reasons for neutralising the harms (see Section 2))

THINK:

With regard to the above variables identified by Punch (1996), are you able to relate them to your workplace?
Are you aware of any steps undertaken by your company to mitigate these?

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Get in touch
studyonline@manchester.ac.uk
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The University of Manchester,
Oxford Road,
Manchester,
M13 9PL

www.manchester.ac.uk
studyonline@manchester.ac.uk

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