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**The Moral Case for keeping Furlough Money: An Ethics of Duty Analysis of Penguin Random House**

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**Abstract**

When the UK Government introduced the Coronavirus Job Retention Scheme, in 2020, to support businesses during the financial downturn, there was no legal obligation for companies to repay the Treasury at any given point. Nevertheless, many businesses have repaid or declined their furlough grants, as they experienced soaring profits. There remains a question whether companies, that retained furlough grants, despite witnessing healthy profits during the pandemic, were morally right in doing so. The case of Penguin Random House is explored in this essay through a Kantian ethics of duty approach to calculate the moral permissibility of the decision. An in-depth discussion of the framework, duty towards shareholder and society, as well as criticism of other companies’ is conducted. The analysis heavily focuses on the differences in perfect duties, towards shareholders, that are fulfilled and wider imperfect duties. The findings suggest a simple U-turn, like other companies, would not correct the ethics of the decision and further recommendations are provided.

**1 Introduction**

The Coronavirus Job Retention Scheme (CJRS) played an elemental role in the UK Government’s support package to save businesses, when the Covid-19 pandemic caused the global economy to shrink by 4.4% in 2020 (IMF cited in Jones, Palumbo and Brown, 2021). The scheme allowed employers to claim a grant covering 80% of employee wages - or £2500 a month, whichever was lower - for “furloughed” staff. Almost two years since the introduction of the CJRS, the scheme has officially phased out and several large employers **voluntarily** returned a total £1.3 billion in “furlough cash” (Sunak cited in HM Treasury, 2021). Penguin Random House (PHR) claimed £1 million from the scheme between April and June 2020 – but it is unknown how much staff was placed on furlough (BBC News, 2021a). Although there is no legal obligation to return the grant, PHR’s competitors labelled the retention of taxpayer’s money, despite witnessing soaring profits as  “morally indespensible” (The Bookseller News Team, 2021). As the question extends beyond legal requirements, it becomes one of ethics and can be phrased as (Crane et al., 2019):

“ *Should Penguin Random House have retained the money claimed under the Coronavirus Job Retention Scheme?”*

**2 Analysis through a Kantian Ethics of Duty Perspective**

A normative approach was prescribed to the act in question, in particular applying an ethics of duty perspective, as information on the intrinsic functioning within the company was too limited for a descriptive perspective. Kant’s ethics of duty builds on the belief that all humans possess free will, making them rational agents with duty to uphold the moral law. The **categorical imperative,** as developed by Kant, identifies if an act is moral or not, based on principles of ‘universality’, ‘human dignity and ‘consistency’ (Crane et al., 2019; Jankowiak, n.d.). With the backdrop of record state borrowing during the pandemic, alongside public scrutiny of PHR’s decision across media outlets, this ethical question arises at a time of extreme relevance - especially given the difference in public opinion regarding the matter. In this analysis, if PHR’s decision passed all three formulations of the categorical imperative, it would be considered ethically right. To clarify, this analysis does **not** explore the categorical imperative of *whether PHR should have claimed CJRS from the treasury* but rather *whether the CJSR claimed should have been returned.*

**2.1. The First Formulation of the Categorical Imperative**

Kant’s test of ‘universality’ instructs to “act only on that maxim through which you can at the same time will that it should become a universal law” (Kant, 1785, p.431); that an act would be deemed morally permissible if there is logical coherency in all moral actors behaving in the same way. As PHR did not return the furlough money claimed from the Treasury, the maxim to be universalised in the first formulation of the categorical imperative can be described as:

*“Firms should* ***retain*** *claimed CJRS money, regardless of their profits during the pandemic”***(A)**

Upon first thought, this appears logically coherent, as the CJRS grants were distributed to support firms in paying its furloughed employees, without reference to repayments - unless overclaimed (Her Majesty’s Treasury, 2020).  Thus, the unconditionality in the above maxim is non-contradictory, and as per the formulation of ‘universality’ *does* appear morally permissible. To further explore the applicability of ‘universality’ within the context of Business Ethics, Langvardt’s (2012) *‘New York Times test’* can be applied, whereby decisions are morally judged by the comfort in “ justifying the decided upon action…in an interview for an investigative reporter’s story in the Times” (Perry, 2011). As observed on social media, negative consumer response towards the decision suggests challenges in justifying the decision despite the maxim logically passing the conditions of ‘universality’ (BBC News, 2021b). Furthermore, although PHR defends its choice as appropriate (BBC News, 2021a, p. 4), corrective actions by other firms suggests general unease in defending such decisions. For instance, BDO changed its initial judgement of retaining the grants upon backlash for prioritising shareholder bonuses over voluntary repayments to the Treasury (Jones, 2020). Therefore, it appears fair to assume that any profit-making business, during the pandemic, would find difficulty in justifying passing dividends and bonuses to their shareholders, whilst keeping state-funded help. On such premises, the maxim would fail the “*New York Times test”.* It can therefore be deemed more ethical, to introduce the maxim:

**“***Firms should* ***retain*** *claimed CJRS money, if they did* ***not*** *experience profits during the pandemic”* **(B)**

The universalisation of this maxim may appear moral within perspectives of distributive justice, but in this Kantian ethical analysis fails to meet the basic clause of unconditionality (Jankowiak, n.d.). Maxim **B** excepts some moral agents, making it morally impermissible in itself. However, further expounding of this maxim allows an explanation that *does* appear morally permissible within Kantian ethics. If the initial maxim proposed was:

“*Firms should* ***return*** *claimed CJRS, regardless of profits during the pandemic”*

it would be observed,  that many firms would financially struggle to return the grants. The contraposition of Kant’s principle of “ought implies can” would suggest that “moral judgement disappears if the agents involved are not able to act as proposed” (Frankena, cited in Stern 2004). Therefore firms unable to  repay the grants would not hold a moral obligation to do so - it would not be their duty (Gracyk, 2008; Kohl, 2015). Therefore the previous maxim **B** appears a clarification of **C**,incorporating the inability of moral actors to do the proposed, and arguably can be universalised; making maxim B morally permissible and the actions of PHR morally *impermissible*.

**2.2 Second Formulation of the Categorical Imperative**

Kant believes that humans should be treated with dignity and  “always as an end” and never as means only (Johnson and Cureton, 2004). Given the moral worth of all rational agents, the autonomy of their actions needs to be respected. Hence, in the second formulation of the categorical imperative, the moral worth of individuals needs to be explored. As per Kant, contractual rights attached to a transaction are considered “morally binding”. Therefore, a breach contradicts the categorical imperative, as it removes human autonomy, treating contractees as a “means” only rather than an “end”. In Mansell (2013) contract fulfilment without deception is considered as a *perfect* duty - duty, which respects others’ independence to see their ends. At present, no evidence, indicative of PHR committing fraud or deception, has been found[, supporting the idea that grants were used righteously to support furloughed staff at PHR. Moreover, Friedman (1970), argues that a firm’s foremost duty lies in “maximising profits for its shareholders”. Furlough grant retention ensures that employee retention did not interfere with profits for shareholders, whereas a repayment would deduct from the profits. As the company has contractual obligations to its shareholders, the decision appears ethically right under the second formulation of the categorical imperative. In fact, it can even be argued, that if PHR returned the grant, without shareholder support, the contractual moral obligation would be violated, rendering the act immoral.

Nevertheless, the role of the manager should still encompass widening of shareholder’s enthusiasm beyond monetary profits, with regards to societal well-being and happiness. Mansell (2013) describes this as *imperfect* duties, that companies hold towards society, reiterating the Social Contracts Theory in Hasnas (1998), in which firms hold an ethical obligation to create societal benefit. However, Friedman (1970), explains that “corporate” social responsibility cannot exist, as an organisation is not considered a rational agent (Reich cited in Berkert, 2010; Mansell, 2013); similarly, as owning property is an individual right, that cannot be exerted by a firm (Paul, 1998;). Subsequently, the owner of the firm - the stockholder - possesses free choice over the usage of its assets, including profits. This argument furthers the idea that as no deception occurred in the retention of the CJRS grants, the profits should be controlled by the shareholder. Combining these scholarly points concludes,  that indeed, the firm itself acted in a moral way, prioritising its *perfect* duties over *imperfect* ones, but rather it is the shareholder as a moral agent that should have returned - or encouraged the return - of the CJRS money, given the profits are his/her property. In criticism of the firm acting morally, when aligned to stockholder theory (Hasnas, 1998), it can be argued that actually long-term shareholder profit was not maximised. With contemporary investors seeking to divest into ethically run companies, ESG tools, such as Sustainalytics, include the number of controversial news stories within their rating calculation for a firm (Sustainalytics, n.d.; Mansell, 2013). Hence, the act in question could actually decrease long-term shareholder value, as public controversies could discourage investor interest and consumers have threatened to “no longer buy Penguin Books” (Clark in Penguin Books, 2021). Consequently, it remains unclear if the duty to shareholders was fulfilled.

Moreover, PHR’s retention of the grants can imply using the taxpayer as a ‘means’ to hold profits, rather than fulfilling its ‘end’ of creating meaningful work for its employees (Bowie, 1999). It is likely, that without government support employees would have been made redundant, rather than retained, as paying for their salaries would interfere with profit maximisation. Returning the CJRS would indicate actual intent to retain employees. Therefore treating its employees as an “end” rather than a “means”, by valuing their needs at the same level as of shareholders. Even so, a counterargument can be presented in the fact that those companies, who made U-turns due to public scrutiny on retaining CJRS grants have publicly paid out bonuses to executives and dividends to shareholders. However, no dividend payments were made from Bertelsmann SA & Co. KgaA in the year 2020 (Bertelsmann, 2021). Consequently, their decision appears more respectful towards the taxpayer, suggesting that they were not a  “means” in dividend preservation for shareholders.

Ultimately, Kant’s application of the “moral code of duty” applies to individuals, so there is difficulty in deciphering who the moral duty of the firm lies towards.

**2.4 Third Formulation of the Categorical Imperative**

Kant’s philosophy of a “Kingdom of ends” depicts a utopian situation in which every rational agent is both a follower of the law, but also a lawgiver. This follows on from the second formulation, in that all rational agents should treat each other as “ends”, only acting on principles that would make common law (Johnson and Cureton, 2016). Although shareholder duty was upheld, it can be argued that duty to other rational beings was not PHR’s priority.

Within a “just” society, maxim **A** could not be applied when expanding the case to a wider range of rational agents. Under a parallel scheme, supporting the self-employed, individuals were expected to repay grants in the event of witnessing improved profits during the pandemic. Therefore, CJRS grant retention by PHR would be classed as immoral, as it cannot be legalised for all rational agents. However, such legislative differences can relate to self-employer individuals being deemed rational agents, and thus having moral obligation to return CJRS, whilst organisations are not. (Altman, 2007).

To further expand the ethics behind the decision, it is important to acknowledge that repayment of the CJRS grant is *imperfect*, and should be viewed as an act of virtue, rather than a duty of right. Notably, the duty of virtue, in particular duty of beneficence, is *voluntary*, and there should be no moral judgement on its *extent*, as this depends on the “sensibilities” of the benefactor, and beneficent needs. Duties of virtues cannot be legalised, as their adoption is *voluntary*, essentially suggesting that the legalisation of maxim B would be morally impermissible itself. Consequently it can be argued that if the grant was truly necessary, returning it as per the law would sacrifice the firm’s happiness at the expense of promoting social happiness, which - according to Kant - is conflicting if universal law (Mansell, 2013).  Moreover, this dismisses   the purity of motive, in which Kant argues that “good will” prevails all moral actions. Thereby, expecting PHR, or rather any firm, to return grants would strip its autonomy and eliminate any opportunity for good intentions (Bowie, 1999; Downs, 2004). Resultingly, shareholders should foster societal benefit, whereas managers doing so on their behalf is hindered by conflicting shareholder priorities and would violate their profit maximisation duties.  Contrary to the duties of rights of the manager towards shareholders, the duty of beneficence, as a virtue, holds wider boundaries of morality, in which one maxim is often limited by duty to another. This can be adapted into the statement: “the firm’s love for society, in general, is limited by its love for its shareholders”. This once again encompasses the notion that *perfect* duties prevail over *imperfect* duties (Mansell,2013).

However, Mansell (2013) also argues that, as per  Kant, for a person’s action to display morality, they must have the capacity to chase “ends” that aren’t defined by appetites and impulses - such as in the hypothetical imperative. These ends are not dependent on empirical experiences, but rather on moral reasons, and therefore apply as a duty not only for single rational agents but all rational agents. Therefore, without the presence of empirical evidence regarding the consequences of returning CJRS grants,  and other firms having pure intentions, this act itself is classified as ‘duty’ for all rational beings, including PHR. Subsequently, PHR’s decision becomes morally impermissible.

Under the third formulation, PHR’s decision appears morally impermissible but is still supported by the findings that a corrective U-turn would still not satisfy the categorical imperative.

**3. Conclusion and Recommendations**

**3.1 Conclusion from ethical analysis**

A superficial Kantian analysis suggests that PHR’s retention of the CJRS grant was ethically right, as per the first formulations, but fails the categorical imperative overall.. Most importantly, PHR upheld its primary duty to its stockholders, supporting the argument that the decision was ethically right. Additionally, the decision is further deemed morally correct, as “human dignity” has not been violated and lines of law have not been crossed. Furthermore, given shareholder dividends were not passed out for FY 2020, witnessing profits does not de-dignify taxpayers, as superficially observed (Bertelsmann, 2021). Corrective action, given initial retention, also poses moral questions. The repayment of the CJRS grant itself should be a *voluntary* act, falling within the duty of virtue bounds, that has no *extent* - repaying even 10% of the CJRS is deemed equally moral as repaying it all. Therefore, returning the grants is not a *perfect* duty, implying that shareholder wishes should take priority. Universalisation of grant repayment would make it a moral obligation, but also remove the autonomy of the firm to engage in an act with purity of motive, stripping moral judgement from the act itself.  Nonetheless, as competitors have returned or refused these grants, discussions arise whether repayment should have been their duty.

More significantly, use of this analysis itself can be criticised, as Kant’s theory is applicable to rational agents only (Altman, 2007; Mansell, 2013). As the company itself cannot be regarded as a rational agent, the analysis argues that although the company may have made a decision that should be ethically correct, its shareholders have not. Perhaps, PHR’s decision would be deemed more ethical had it not made profits during this period, ultimately negating all the arguments that this act was ethically wrong. Perhaps, it is therefore more appropriate to conclude the decision was *not ethically wrong* rather than stating it was ethically right.

**3.2 Recommendations from ethical analysis**

With the ethical analysis strongly pointing at the importance of shareholder involvement in the decision, it is recommended that shareholders take a stance on this matter. As previously outlined, making a U-turn, such as done by BDO, would merely remove the “good will” from the act itself (Jones, 2020; Mansell, 2013). Therefore, the ethical judgement under a duty framework, would not change. The analysis demonstrates that the company should engage in an act of virtue, as the company benefitted from society when needed and should generate societal gain in return (Bowie, 1999). Therefore, it would seem appropriate for PHR, or rather its shareholders, to act with “good will” for society, unrelated to this issue, rather than merely returning the furlough money.  One form of such could involve repaying more than claimed, but with higher tax rates to be introduced to offset Treasury spending on the CJRS, this appears contradictory. Instead, direct societal benefit could be created by PHR through launching a programme, whereby self-publishing authors can apply for a grant to support the costs of self-publishing. This could be based on a competition or needs-based assessment. Traditional publishing often presents an upfront payment to the author that serves as a form of income. During the pandemic, self-publishing authors may have faced financial difficulties, bereavement, or struggles of multiple national lockdowns causing closure of spaces in which they work best. As they are also not traditionally employed, their access to governmental financial support would be compromised, in comparison to PHR(HMRC,2020; Haysom, 2020). To ensure this act remains moral, the claimant should owe no royalties to PHR itself and shareholder approval is gained. Such a hardship fund would not directly benefit PHR but present a genuine “good will” and duty of beneficence to wider society, whilst maintaining reference to the industry.

Future controversies of this nature could be actively avoided by involving shareholders in decision-making. For most public companies this may be difficult, given the plethora of shareholders, but PHR only has one shareholder - Bertelsman SA & Co. KgaA. Therefore the owner of Bertelsman SA & Co. KgaA should have representation in the decision. Furthermore, government outlets did not specifically state that the money did not need to be returned. As an external stakeholder, clarifying this intention could ensure clearer communication and increase the acceptance of firms retaining the grants, so long they are used rightfully.  In addition, the lack of published data surrounding how the £1 million was allocated, such as number of employees in furlough, reduced transparency and creates issues of trust between the firm and external stakeholders. Thus greater transparency should be adopted on such matter by including this in annual reports.

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**Appendix 1**

Assignment Brief:

Select any real-life business decision made in the last 10 years that is of interest to you and evaluate the organization’s decision from a business ethics perspective. Thus, you are being asked to *critically evaluate* a particular decision that has been made by a particular organization using business ethics theory and concepts, either normative, descriptive, or stakeholder specific. That is, use your analysis to conclude whether the decision was ethical or unethical, and/or why it occurred, or who was to blame, etc.

**Appendix 2**

**Additional information for Coronavirus Job Retention Scheme**

Unlike traditional human resource management approaches in the UK, that focus on redundancy during times of economic decline,  the novel scheme successfully protected 11.7 million jobs, paid for 30% of total UK employees during its peak, whilst costing the UK Treasury £70 billion (Francis-Devine, Powell and Clark, 2021; Stuart et al.,2021). These CJRS grants were available to employers, presuming that they met furlough, payroll and tax return pre-requisites, without the requirement to repay the amount when able to. Companies were able to claim the scheme, based on furlough requisites. Furlough refers to the act of retaining an employee on payroll, but not working or contributing to firm profits in any way (Her Majesty’s Treasury, 2020). Major retailers, like Asda, Ikea and Hotel Chocolat returned the grants, whilst large publishing firms, such as Harper Collins and Hachette UK furloughed staff without claiming grants, in light of strong profits in the publishing industry (BBC News, 2021a; Thomas, 2021).

**Additional information on Penguin Random House**

PHR itself was founded through the merger of the Penguin Group and Random House in 2013 and was fully acquired by the German media conglomerate Bertelsmann SE & Co. kGaA in April 2020. It employs over 10,000 employees worldwide (Penguin Random House, n.d.). During 2020, the lockdown sparked increased book sales, resulting in 4.6% larger global profits for PHR.

**Additional Case Information**

Public opinion regarding the matter is split. A scan of Twitter comments on the BBC’s and other media outlets’ post on Twitter appeared balanced, with some supporting the decision and other’s threatening to boycott. A scan of the Twitter site, with the search “ Public Random House Furlough money” was conducted for this. See comments under BBC News  (2021b). Exemplar negative comments, suggesting future financial damage for the firm included “ I will no longer buy any Penguin Books” (Clark in Penguin Books, 2021). It was assumed no contractual breaches, fraud or deception occurred, as this would have been published on BBC News or found more generally through a Google search – which was not the case.