

Some reflections on the Police Complaints System

Professional Standards Duty Officers
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As Professional Standards Duty Officers, you spend a good deal of your time caught up in the minutiae of the processes around the police complaint system. I thought it might be useful today to try and step back from these process issues, and take a more birds eye view of the complaint system and reflect on why we have it, reflect on what the complaint system should be trying to achieve, and to kite fly a few provocative ideas and questions about what the logical next steps for development of the system should be.

In doing so I also want to put those reflections in a wider context of what some of the current international developments in complaint handling are.

If we look at recent trends in the public services around the Western World, one of the key things you see is the further strengthening of accountability and transparency mechanisms enabling citizens to better hold government services to account.

One feature of this is making it clearer to citizens what their rights and entitlements to government services are, also making clear their reciprocal responsibilities. We have seen a major service standard initiative in Canada, you have France's Service Charter, a Public Sector User's Charter in Belgium a Charter of Services in Italy and a Quality Observatory in Spain to name a few. More recently these have been backed up with simple but strong redress to empower people to help bring about improvements in services.

Here is an example from the Netherlands where the government through its e-Citizen Charter has made it clear that it expects citizens to make complaints and sees them not as an irritation but as a useful form of feedback to improve services. It recognises that citizens have a right to be taken seriously and that sensitivity to customer perception and complaints helps to improve performance in the long run.

- As a citizen I know which services I am entitled to under what conditions. Government ensures that my rights and duties are at all times transparent
- As a citizen I can file ideas for improvement and lodge complaints. Government compensates for mistakes and uses feedback information to improve its products and procedures

Two of the key entitlements from the e-Citizen Charter
The Netherlands Government 2005

Here in NSW, the 2006 State Plan made customer friendly services one of its key initiatives. It stated that:-

Services must be designed around the needs of customers with complaints taken seriously and used to improve service quality

State Plan : A new direction for NSW
NSW Government November 2006

The Customer Service initiative of NSW Police Force is a direct response to this.

In 2008, the UK Government issued a White Paper on citizen empowerment called **Communities in Control: real people, real power**¹. It aimed to put citizen customers at the heart of the design and delivery of local public services, including policing. One of its main themes was redress, which includes having effective complaint mechanisms. This is what the White Paper had to say about complaints:-

‘The principles that underpin complaints procedures should be that:

- The citizen is the most important person in any transaction, and has a right to decent, agreed standards of service and care
- everyone should have easy access to clear information
- both sides should have a clear understanding of what is expected from each other
- systems of redress and compensation should be clearly explained and understood
- services should learn from the complaints received and make sure that this learning influences delivery next time’

The UK Government in December last year also issued a White Paper on policing called **Protecting the Public: Supporting the Police to Succeed**² which set out the governments future program for putting the public at the centre of policing and creating a framework for effective delivery. One of its main chapters is titled ‘Meeting the Public’s expectation and putting things right’. It picks up the general empowerment principles and outlines some specific proposals to get police authorities to play a more active role in considering complaints, legislating to streamline the complaints process further, and among many other initiatives enabling the independent Police Complaints Commissioner to uphold complaints and make recommendations even where there has been no individual misconduct.

So governments all over the world are forcing their public servants to become more focussed on, and more responsive to the needs and complaints of their citizens. This is because citizens are not simply customers of public services, but as citizens, they are also political stakeholders who are entitled to fair and reasonable treatment, and as taxpayers are the ultimate owners of public services.

Now I’ve mentioned these international developments, particularly the developments in the United Kingdom because many of the major policy strategies of the NSW Government over the past decade have been very similar to developments initiated by the Labor Government in the UK. So if we see strong international trends that are strengthening accountability and complaint systems, you can be certain that the collective wisdom of the professional policy advisers in government will also support further strengthening of complaint and accountability mechanisms in NSW in the long terms, even if we march down that path at a slightly slower pace.

So my take on that is that the police complaint system is here to stay, the oversight of that system by the Ombudsman and the role of PIC are here to stay – and our joint responsibility is to try and make it work better.

¹ UK Government White Paper : Communities Real People Real Power 2008

² Home Office; Protecting the public : Supporting the Police to Succeed, December 2009

So, what is a complaint system for?

It's interesting to note that the Complaint Handling Guidelines don't address this issue at all – they are just 100 pages or so of process instruction.

Well, I think effective complaint systems serve four important functions:-

Firstly, they are an important tool of accountability by providing a mechanism for citizens to have government agencies review their actions and decisions when they are thought to be wrong, or unfair or unreasonable. This provides accountability to not only the persons directly affected who make complaints but the very existence of the complaint system also provides an assurance to the wider public that the agency is accountable and because of that is more likely to act in a responsive and proper way.

Secondly, they provide an internal quality control mechanism for agencies to check that the individual conduct and decisions of their employees are proper and correct.

Thirdly, they are a mechanism for providing redress and corrective action when things have actually gone wrong – in this sense, the complaint process is a second chance to provide good customer service to ensure legal rights and entitlements of the individual complainant are honoured,

'The most effective systems use redress not only to compensate people if entitlements are not met, but to restore the service or resolve the problem.'

HM Treasury Cabinet Office, **Power in People's Hands: learnings from the World's Best Public Services**, London July 2009

Fourthly, at a higher level, a good complaint system provides data that can be used as an insight into the effectiveness of an organisation's policies and programs which can lead to system and organisational improvements.

So, do we have the balance right?

In the last decade or so, we have been pretty successful at developing complaint systems and polices that largely achieve the first two functions of providing accountability and a form of internal quality control. We have been less successful at using complaints as customer feedback and learning from them to improve business systems and processes, and less successful at providing meaningful redress in justified cases.

And I think that is a fair assessment of the police complaints system too. I think all of us are pretty confident that it does function well as an accountability and internal control mechanism. If an officer has done something illegal or has misbehaved rather badly and someone complains about it or reports it, generally it will be properly investigated and appropriate criminal or other management action taken. The fact that roughly 35% of all notifiable complaints are made by police themselves, is also an indication of a healthy accountability system that has the confidence of a large proportion of officers. Even where complaints are not sustained, it still functions as an important accountability tool because if the investigation or resolution process is done well, it provides citizens with an assurance that they have been fairly treated and that the decisions or actions taken have been correctly made under relevant rules and laws, even if they initially didn't think that was the case.

However, the system is still VERY process oriented and narrowly focussed.

If its an LMI (local management issue complaint), generally people are concerned about how quickly you can dispose of it. If it's a CMT (Command Management Team) managed matter, the issue is basically 'is there any misconduct' and if so, how should the subject officer be punished.

There is still a strong tendency to see all issues as the fault of individual officers who need to be punished for wrong conduct or have their failings fixed in some way. We seldom ask why and how such conduct was allowed to develop or allowed to happen. We still look for rotten apples and pay little attention to the structural integrity of the barrel in which they operate.

Also, when you take into account all the time and resources that are allocated to investigating and reporting on the more serious matters, very little of that is dedicated to providing feedback and redress to the complainants and victims and in many cases we only pay lip service to the issue of customer satisfaction of both complainants and subject officers.

We don't spend too much time, if any, on what is ultimately more important

- how can we restore relationships;
- how can we restore professionalism, and
- how can we learn from what happened and reduce the likelihood of similar things happening again for the persons concerned and the organisation as a whole.

What we are now seeing in this latest round of citizen empowerment initiatives by governments in many countries is a recognition that we must pay more attention to providing redress and using complaints to make service and process improvements.

One of the commitments made by the UK Government in their Real People Real Power White Paper was to review the practicality of introducing and extending the idea of redress or remedy for citizens complaints and grievances. A high level task force was set up which published a report and tool kit called **Getting it Right and Righting the Wrongs**³. One of the key things they reported on was - what citizens expect when making complaints.

This is what the report had to say:-

'Focus group and other research evidence shows for most people, when making complaints about public service, the key things sought are:-

- an acknowledgement of the wrong done
- confirmation that they were right
- an understanding of why things went wrong
- an acceptance of responsibility and a meaningful and timely apology
- reassurance that the problem has been addressed and will not happen again
- a reconciliation of a relationship
- the restoration of the customer's/service user's reputation'

In summary, the **Getting it Right, and Righting the Wrongs** review found what we at the Ombudsman's office have known for many years through our general complaint handling and investigation work involving the hundreds of other government departments and authorities we deal with, that is, when it comes to remedies for things that have gone wrong, the overwhelming desire of complainants' is for an acknowledgement of and apology for the problem, and a correction of the error or omission.

Now, I realise that when you look at this list of what complainants want you are probably thinking 'some or most of the complainants I have dealt with don't deserve all those things', or 'it's just never going to happen in the Police Force that I know'.

³ Communities and Local Government, **Getting it Right and Righting the Wrongs**, United Kingdom, June 2009.

'Complaints handling has not improved in the last decade despite huge investment in IT; the issue is about culture'
Ben Page – Ipsos MORI

Member of the redress review team quoted in **Getting it Right, and Righting the Wrongs**,
Department of Communities and Local Government, UK June 2009

Well, I must admit that you would not be alone responding that way. Being more responsive to the needs of citizens, designing services around their perspectives and being more open and accessible to them when things go wrong or fall short is still a major cultural change for the whole public sector not just NSW Police Force. But we are starting to see some good initiatives that take redress and customer focus more seriously that can inspire us. Let me give you a couple of examples:-

Dr Rick Iedema the Professor of Organisational Communication at the University of Technology has been doing a lot of research in the health system and now has good evidence to show that proactive reporting and disclosure of problems and mistakes, then following that with explanations and apologies, actually limits complaints and litigation. He has also found that involving patients and families in asking questions about what went wrong can actually strengthen the investigations that get carried out into medical mishaps. Also, and psychologically, this is one of the most interesting findings, Rick Iedema has found that involving patients who have suffered from mistakes in process improvements is critical to producing constructive outcomes for aggrieved patients who find that ordinary counselling does not help them recover from the trauma of medical mistakes.

This links to other research that shows that making sure complainants are aware of actions taken to prevent future problems for others is an important factor in determining their satisfaction with the complaint handling outcome.

The Health Department has also been making significant process improvements in a variety of fields by making 'patient journeys' – that is, literally going through each step of various medical and administrative procedures and reviewing them from the patient's perspective, not the doctors and hospital administrators' perspective.

In Patient Journey exercises, a review team maps the process, runs tag along exercises where they follow patients through the process, and supplements that with stakeholder interviews, focus groups and so on to diagnose the current journey. They then use the results of these observations to re-design the process so that it is more accessible and user friendly for the patient. What they have found, is that the processes actually become more efficient when they do this.

We have a guideline available on our website on how to make a good apology⁴ and have been encouraging public agencies to use them more to de-escalate and resolve disputes because we have learnt from long experience that they are a critical factor in effective redress. The guideline reminds people that the NSW Parliament changed the Civil Liability Act in 2002 so that an apology no longer constitutes an admission of liability and is inadmissible as evidence and not relevant to the determination of fault or liability in connection with most civil liability matters.

So we should be making much greater use of this valuable complaint resolution tool.

⁴ NSW Ombudsman : Apologies – A practical guide (2nd edition) March 2009

Any why should we be doing that, well it has two principal drivers:-

- Firstly, explanations, apologies and promises to fix systems seem to be the critical factors that effectively de-escalate disputes and help restore relationships and get people working productively again. So as professional complaint handlers (and that is what part of your job is) we must get better at utilizing those tools of complaint resolution
- Secondly, ongoing disputes and investigations eat up lots of money and resources and divert us from our core business. So, we should also be doing everything in our power to deal with complaints effectively in the quickest possible time and the most informal and appropriate ways possible.

So, can we do more to ensure effective Complaint handling within the NSW Police Force.

Well of course we can. The two areas where I think we need to make more gains are those of meaningful redress and organisational learning from complaints.

I think it is timely to remind ourselves about a couple of the underlying principals of the current complaint system that were first enunciated when Justice Wood came down from the mountain of the Royal Commission and delivered his tablets of wisdom in 1997. I think these principals are still as relevant today as they were in 1997.

Wood said⁵:-

- ... a presumption should exist that all members of the Service are inherently capable of performing to the standard required, and that individual shortcomings can be addressed by counselling, monitoring and learning from mistakes
- mistakes and conduct failing short of the standard should be dealt with openly and fairly, not only from the stand point of the police officer the subject of the inquiry, but also from the point of view of any person who brought the problem to notice
- a presumption should exist that having expended considerable resources in recruiting and training each member, the first recourse will be to remedial rather than punitive action, but that in return officers whose behaviour has grossly offended against proper standards of integrity and honesty should not expect anything other than an early exit from the Service

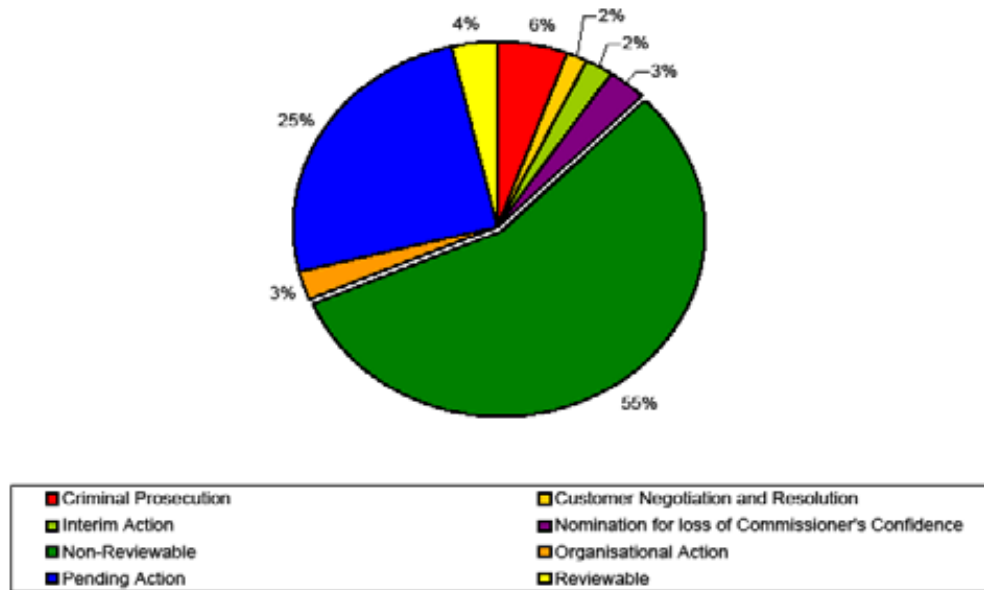
[and because of that, Justice Wood went onto say]

- ... the managerial process needs to include a disciplinary component, although resort to the latter should occur only when the Local Commander is satisfied that simple remedial intervention is insufficient.

Now, the Professional Standards Command kindly provided me with data which shows the breakdown of some 28,000 management action taken during the 2008/2009 financial year in respect of approximately 5,300 complaints received by NSW Police Force. This should be a reasonable indicator of how well the system is following Justice Wood's principles.

⁵ Royal Commission into the New South Wales Police Service. Final Report Volume II : Refer, May 1997

**NSW Police Force
Actions Taken**
12 months to end June 2009
(where an action was taken)



These actions relate to 53% of all the complaint issues which required some action. What it shows is that of the actions completed, 55% were non-reviewable and about 13% fell into the serious disciplinary category of reviewable action, criminal action or Commission' loss of confidence. That percentage may be a little higher assuming some of the interim and pending actions also fell into those categories.

What I think is significant about this graph is that it shows only 2% of all actions were about customer negotiation and resolution and only 3% of actions related to organisational improvements.

We cross checked this data against our own records for notifiable complaints where all action was completed in the financial year 2008 – 2009. Those records showed that some form of managerial action was taken in 65% of those cases. Remembering that by definition, these are the more serious complaints dealt with in the system, we found that approximately 76% of management action in notifiable matters were non-reviewable – 20% were reviewable or loss of confidence, but again, only a very small percentage of cases - just 2% - had outcomes that could be fairly described as involving some form of redress for the complainant or some demonstrable learning based improvement for the organisation.

So if two of the core aims of an effective complaints system are to provide appropriate redress for the 'person who brought the problem to notice' (to use Justice Wood's term) and to make system improvements following problem identification through the complaints process, this data shows that we are not doing very well at all.

While we can be encouraged to think that the presumption in favour of remedial actions is being generally followed, except on an ad hoc, impressionistic basis, we don't know whether those non-reviewable actions really work to modify officer behaviour. It would be interesting to do some research on the actual effectiveness of non-reviewable versus reviewable management actions on ongoing conduct.

In the short term, what we could productively do is to concentrate a bit more on ensuring that we properly consider the issues of fair redress for affected parties and the implications complaints may have for command culture, procedures and practices and management styles.

What if at the end of an investigation and consideration of management action, you also had to meaningfully report on your consideration of appropriate redress for the citizen or officers who initiated the complaint. For instance, you had to go through a checklist like this:

Given all the circumstances (whether matter is sustained or not), would it be desirable and just to:-

- confirm that the person was right to report/complain
- provide an acknowledgement of the wrong done
- ensure they have a full understanding of what went wrong
- confirm that we accept responsibility
- provide a meaningful and timely apology
- give them reassurance that the problem has been addressed and steps have been taken to prevent its repetition
- take some actions to reconcile the relationship
- take some action to restore their reputation
- pay some form of compensation

If you thought any of these actions were justified, good complaint handling principles would expect you to actually make sure that such action happened - it is a critical part of the proper management of complaints.

Now these things may not be appropriate in every case, but in many some of them will. So the question we all need to think about is - how can we change the guidelines and culture to encourage greater use of such dispute resolution techniques?

What if it was also mandatory to report on the consideration of organisational learning at the end of a complaint investigation or resolution process. The Complaint Handling Guidelines at page 76 say 'The investigator may also make recommendations about ... organisational actions, such as improvements to policies or systems at corporate and local units'⁶ – but this is a discretion – what if it was mandatory to consider these issues? You had to answer a question like this:-

- Does this investigation suggest any useful changes or improvements that could be made to existing policies, procedures, training, communication or management practices at the command?

Again, many complaints will not have systemic or organisational implications, but I dare say a lot more of them do than is currently considered to be the case by investigators.

I think this is where the quality reviews conducted by PSDO's and Commanders can really add some value. As well as checking the adequacy of the investigation and the soundness of the conclusion that have been drawn, you should also be turning your mind to the issue of what can be learnt from each matter – is it just about an individual officers conduct OR is it also about how we run the Command in some way?

As PSDO's you have a particular duty to raise the professional standards in your commands. This is not just about taking corrective action with officers who go off the rails in some way, it is also about constantly nurturing and reinforcing the good conduct of all the other officers who you are responsible for.

⁶ [NSW Police Force Complaint Handling Guidelines](#), September 2009 update.

Learning from the cases where things have gone wrong and using those examples to fine tune and tighten up procedures, clarify directions and other communications, conduct training, and so on is one way of doing that.

At another level, just as we analyse crime trends, we should also be analysing the complaints we receive looking for trends and patterns. Large organisations who value complaints do this all the time and dedicate staff resources to it. They encourage complaints because they see them as a part of good customer services and as a way of alerting them to problems that should be fixed – they use the data in complaints to do that system level problem identification and take steps to fix problems. What they are trying to achieve is not an overall drop in complaint numbers, because they see complaints as a valuable and essential part of the ongoing relationship they have with their customers and stakeholders.

Rather, they look for a reduction in repeat complaints about specific issues. If you continually get complaints about the same issues, it simply means you are not doing your job as managers and you are failing to fix systemic problems in your organisation.

You may be punishing the individual transgressors along the way, but you are not addressing the underlying systemic causes that allowed them to transgress in the first place.

Now, to do that analysis job properly, you have to have good data. And this is the reason why effective organisations log all the complaints they receive from the most minor to the most serious – so they can have a full picture of what the public or their customers are telling them about their service. Only if you have that complete picture can you confidently be sure you are responding to all the problems your customers are identifying. Now logging all complaints can be painful in terms of time and resources – but good organisations set-up simple processes to make it easy for front line workers to do that. Even the ones you resolve on the spot.

Now this presents a challenge for NSW Police Force. I think its fair to say that historically complaints have been considered by most police to be bad things. They usually mean work or trouble or both. Commanders generally don't like to see high complaint numbers in their patch and this can be informally conveyed down the line so that there is sometimes a reluctance to record verbal complaints if you can get away with not recording them. This might have some short term advantages but in the long run it undermines the capacity for the organisation to improve at a management level.

We have recently conducted an investigation into compliance with certain provisions of the Police Act which bears this observation out. Some of you will remember that late last year you were required to send in copies of various documents and records relating to decisions that certain matters were not complaints under Part 8A of the Police Act.

We will be issuing our provisional statement on this investigation in the next week or so for comment by the Commissioner – but suffice to say we identified hundreds of matters which were complaints under Part 8A of the police Act but were not treated as such. We also identified hundreds of complaints that were not recorded on Catsi pursuant to the requirement under Section 129 of the Police Act or Condition 3 of the Section 122(2) Class and Kind Agreement in respect of 'not notifiable complaints'. As well, we identified over one hundred complaints that were not notified to the Ombudsman in accordance with Section 130 of the Police Act.

These findings shocked us a bit. They indicate that some things generally taken for granted may not be necessarily true – things like people generally knowing what a complaint is when they see one - and- people knowing what their responsibilities are about what needs to get recorded and notified. It may be that we have lost some of the essential corporate knowledge with turnover of staff and/or that the training and current guidelines are not giving sufficient guidance on these basic elements of the complaint system. These will be the issues we will be exploring in our final report on the investigation and during some hopefully productive discussions with our colleagues at Professional Standards Command in the near future because we have to get these basic administrative arrangements right if the system is to work properly.

So to summarise this point – if you consider yourselves professional complaint handlers which I think you should, your next professional challenge is to do more about contributing to organisational improvements through analysing complaint data and identifying learning's from individual complaints and being more proactive in putting suggestions for improvement forward. It's not someone else's responsibility to do this – its our collective responsibility to be doing this on a day to day basis.

The greatest moments of professional satisfaction I have obtained in my years working with the Ombudsman are where my efforts have helped put things right – facilitating appropriate redress for individuals, and by bringing about improvements and changes to laws and public policy that put things right for all other citizens. I encourage you to also seek professional satisfaction by identifying problems and wrong doing and helping put things right!

So thank you for the opportunity to talk to you today. I think it is fantastic that the Professional Standards Command has created this opportunity for you all to get together and be briefed on a range of issue that hopefully will assist you further in performing your PSDO duties well. The performance of public services cannot exceed the quality of the professionals working in these services. You play a really central part in the performance and effectiveness of the Police Complaint System. The Commissioner depends on you doing that right, the Ombudsman depends on you doing that right and the public has a great stake in you doing that right. So let me leave you with one finale quotation to underscore the point:-

In the perfect world we deliver right the first time, on time, every time and every contact has value for the customer. But we all live in a real world where all human endeavours contain error. Even the best public services, therefore, will fail. What distinguishes the best organisations is the quality of the solution and the people putting it right.

From Forward to **Getting it right, and right the wrongs.**

Practitioner Tool Kit

Department of Communities and Local Government, UK 30 June 2009

Thank you

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