



ABOUT THE AUTHORS

Dr Andrew Ede is a Research Officer at the Crime and Misconduct Commission.

Mr Michael Barnes is Head of the School of Justice Studies at the Queensland University of Technology.

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Crime and Misconduct Commission
140 Creek Street, Brisbane
GPO Box 3123, Brisbane Qld 4000
Telephone: (07) 3360 6060
Toll Free: 1800 06 1611
Facsimile: (07) 3360 6333
Email: mailbox@cmc.qld.gov.au
Website: www.cmc.qld.gov.au

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2002

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Making the Response Fit the Complaint

Alternative strategies for resolving complaints against police

Andrew Ede and Michael Barnes

Introduction

Police organisations are increasingly looking for better ways of dealing with complaints against police. They are turning away from the traditional investigative approach towards such methods as 'informal resolution', 'mediation' and 'managerial resolution'.

This paper describes the main features of these different methods, explains their rationales and discusses their advantages and disadvantages, using surveys of police and complainants. It argues that it is crucial to adopt the approach that best suits a particular complaint, and raises for discussion a set of criteria for deciding which approach is best in which circumstances.

Background

When the 1987–89 Fitzgerald Inquiry exposed what little accountability for misconduct Queensland police officers had, the official reaction was to increase the rigor with which complaints against police were investigated. Commissioner Fitzgerald was particularly scathing about the 2 per cent substantiation rate of investigations conducted by the Internal Investigation Branch and supervised by the Police Complaints Tribunal.

The Inquiry's report recommended the setting up of an independent body to deal with complaints against police (Fitzgerald 1989). That body was the Criminal Justice Commission, now known as the Crime and Misconduct Commission.

The rate at which complaints against Queensland police are now substantiated has increased dramatically since the pre-Fitzgerald-Inquiry days. Depending on how complaints are counted, and what is included in the category of 'substantiated', the rate ranges between 5 and 10 per cent (CJC 1997).

This rate is common in many jurisdictions

and might contribute to a deterrent effect on potential misconduct by police.¹

However, a substantiation rate of 10 per cent might translate, in a police officer's mind, into a low perceived probability of suffering a penalty for engaging in misconduct.

In fact, a CJC study in 1995 found that a sample of 65 experienced officers gave consistently low ratings to the chances of being caught for a variety of disciplinary offences. For example, on a scale of 1 indicating 'not at all likely' to 7 indicating 'very likely', in response to the hypothetical scenario of an officer assaulting an arrestee in a jail cell, the average perceived likelihood of detection was 3.7.

But investigating the large number of complaints received each year may not be the best response. Homel (1997, p. 43) has summarised the criticisms of the investigative model thus:

predominantly reactive, relying on third parties to lodge a complaint; it has an individualistic, 'bad apple' focus that makes it difficult to attend to systemic issues; it seeks culpability rather than explanation and must negotiate formidable legal, evidentiary, and procedural hurdles; it invokes the notion of deterrence while delivering rates of detection and punishment that are generally below the threshold of effectiveness.

The scope for increasing the 'deterrent power' of complaints investigation systems also appears limited. Putting more resources into investigating complaints is unlikely to lead to a marked increase in the probability of a complaint being

¹ This substantiation rate seems common in many jurisdictions worldwide. For example, the 1996 Report of the Independent Police Complaints Council [of Hong Kong] reported a substantiation rate of 9.7%; a Home Office Statistical Bulletin (Issue 21, 1997) reported a rate (excluding those matters informally resolved) of 7.7% in 1996–97 and 8.7% in 1995–96; and the NSW Ombudsman 1998–99 Annual Report stated 'adverse finding' rates for police complaints between 1994–95 and 1998–99 ranging from 5.9% to 9.2%.

substantiated and a sanction imposed, because of the difficulty of obtaining sufficient evidence. So, while the quality of formal investigations has undoubtedly improved in jurisdictions such as Queensland, this type of response may not always be the best one and, for at least some complaints, may not be appropriate at all.

Response options

Recognition of the limitations of the investigative response has prompted some police services to look for alternatives. However, when considering options, it is essential that the limitations of the various methods are also recognised.

One can begin this process of evaluation by going back to a basic question: *What should a police complaints system do?* The short answer is: detect and prevent misconduct. But, of course, a police complaints system can do much more. It can:

- enable individual members of the public to express their concerns about police actions (or inaction), thus contributing to better policing
- dispense 'justice' by ensuring that allegations against officers are properly investigated and, where appropriate, proper sanctions imposed
- deter future misbehaviour by the officer concerned and by other officers
- inform the service about the performance of individual officers, their supervisors and the organisation, so that remedial action can be taken
- maintain public confidence in the integrity of police.

In considering the advantages and disadvantages of different complaints-handling systems, it is important to be aware of these various functions and to

accept that it is unlikely all functions can be covered by a single response. For example, if responding to a complainant's concerns about an officer's conduct is the priority, then mediation or conciliation processes may be more satisfactory. In these processes, the complainant plays a major role in determining how a matter is handled and helps decide the outcome.

If, however, the allegations raise concerns that the subject officer may be unfit to serve, then the response must focus on establishing the truth of the allegations in a manner that will enable the dismissal of the officer if the complaint is substantiated. In these circumstances, the satisfaction of complainants cannot be a priority. Their prime role will be as witnesses whose testimony will be relied upon when deciding the matter.

The four systems of complaint resolution currently used in Queensland are formal investigation, mediation, informal resolution and managerial resolution.

Investigation involves the systematic gathering of evidence to verify an accusation made against someone or to identify the person responsible for an offence. Evidence-gathering can be very complex and scientifically sophisticated, and can involve controversy about the evidentiary value of material. Evidence can include such things as witness statements, incriminating documents, or videotape footage.

Mediation, sometimes called 'conferencing', is an alternative method of dispute resolution that involves trained neutral mediators. (For example, in Queensland these can be provided by the Dispute Resolution Centre in the Department of Justice and Attorney-General, and thus are independent of the QPS.) Mediation aims

to assist the parties to discuss the events and resolve the matter in a way that is mutually satisfactory. Mediators do not take sides, decide who is right or wrong or tell people what to do. Mediation may be used whether complaints come from police or members of the public.

This method originally required voluntary participation. However, in recent years compulsory mediation has become more common, and studies show that many of the benefits of voluntary mediation are not lost when the parties are required to participate (Lancken 2001).

Informal resolution, sometimes called 'conciliation' in other jurisdictions, is a process where an 'Authorised Member' of the service, with the oral or written agreement of the complainant, attempts to resolve a complaint made against a police officer, informally.

Generally speaking, complaints are considered to be informally resolved when the complainant acknowledges satisfaction with the outcome of the process. The process also aims to deal with the inappropriate conduct of erring members without the risk of formal punishment or threat to promotional prospects. The process is not designed to establish fault. The Authorised Member takes on the role of a conciliator rather than an investigator. The Member speaks to the complainant on behalf of the police service to determine the basis of the complaint. The complaint is then discussed with the subject officer in an attempt to obtain one or more of the following outcomes:

1. an explanation of the incident, where the conduct of the officer appears to have been both lawful and reasonable
2. an apology from the officer to the complainant if the officer admits the conduct and such apology is warranted

Statistics on complaints against police

On average, about 1700 'misconduct' complaints and 1200 'breach of discipline' complaints are recorded against members of the Queensland Police Service (QPS) every year.*

While 'misconduct' is more serious than 'breach of discipline' it does not usually involve serious criminal activity or corruption.

Primarily, misconduct allegations pertain to officers performing their

duties inadequately or inappropriately. For example, over the 10 years from 1991–92 to 2000–01, approximately 26 per cent of allegations related to assault, excessive force or other arrest issues; 9 per cent to custody or search-related matters; 8 per cent to an officer's demeanour or attitude; 12 per cent to inadequacies in investigations, evidence handling or prosecutions; 7 per cent to harassment or victimisation; 6 per cent to information breaches; and 10 per

cent to duty failures or non-compliance with procedures. Only about 14 per cent of allegations involved serious criminal conduct or corruption. (The remaining few per cent were spread across a variety of 'other' categories.)

Thus, it can be seen that only a small proportion of the large volume of complaints passing through the system involves allegations of serious criminal conduct or corruption.

**Misconduct* (including official misconduct), which is more serious, is defined by section 1.4. of the *Police Service Administration Act 1990* as conduct that:

- (a) is disgraceful, improper or unbecoming an officer; or
- (b) shows unfitness to be or continue as an officer; or
- (c) does not meet the standard of conduct reasonably expected by the community of a police officer.

Breach of discipline matters typically involve incivility, rudeness, intimidation, inappropriate behaviour, inaction or failing to comply with procedures.

(the apology may be given by either the Authorised Member on the officer's behalf or the officer)

3. an apology from the Authorised Member to the complainant on behalf of the service, if inquiries establish that the complaint has substance and no apology is forthcoming or is warranted by the subject officer
4. where there is no substantiation of either version of the incident, to explain that fact to the complainant and invite acceptance that nothing further shall be done by the service.

Managerial resolution, a relatively new process being trialled in two of the eight Queensland police regions, is a flexible process for the efficient and expeditious resolution of complaints against police involving breaches of discipline and less serious misconduct. It is designed to encourage and empower managers and supervisors to deal with complainants' concerns relating to an officer's competence or conduct through remedial strategies such as guidance, coaching or specialised training. It can include an apology by the officer or by a police service representative. It asks managers and supervisors to take responsibility for staff performance, rather than assuming that responsibility for complaint resolution lies solely with an internal investigation unit or an external agency.

The main goal of this process is to improve the conduct of police and prevent reoccurrences of similar complaints. To this extent, managers are not required to apportion blame or record detailed information about what happened.

Research findings

Surveys of complainants have consistently shown much dissatisfaction with traditional complaints investigation processes, regardless of whether the complaint was dealt with through internal police systems or by an external oversight agency.² For example, Perez (1994) studied three United States jurisdictions with different oversight arrangements (by police internally, by total civilian oversight, and by civilian review after the internal police investigation). In all three cases, complainants held negative perceptions of the thoroughness, fairness and objectivity of the complaints systems.

In Britain, Maguire and Corbett (1991) found that respondents whose complaints investigations were supervised by the Police Complaints Authority held slightly

better views of the process than complainants of unsupervised investigations. However, the majority of both groups were critical of the system.

In 1993, the QPS introduced informal resolution as an option for dealing with minor complaints. As part of a CJC evaluation of the effectiveness of the new system after its first year, complainants who had been involved in a formal investigation and complainants who had participated in informal resolution were surveyed (CJC 1994). Table 1 compares complainants' satisfaction with the outcome and table 2 compares their satisfaction with the way the investigation or resolution was handled.

It is evident that the informal resolution sample was far more satisfied than the formal investigation sample on both measures. For both samples, there was greater satisfaction with the process than with the outcome. Surveys conducted in Britain also confirmed that citizens whose complaints were informally resolved were more likely to be satisfied with both the outcome and the way in which the matter was handled (Maguire & Corbett 1991).

Similar results were found in a telephone survey conducted as part of the evaluation of the trial of managerial resolution (see table 3). This survey revealed that a majority of complainants experiencing managerial resolution were 'very' or 'fairly' satisfied with the outcome and the process, whereas a minority of those whose complaint was formally investigated were 'very' or 'fairly' satisfied with the outcome and the process.

In the earlier study (CJC 1994), two-thirds of complainants in the informal resolution sample felt that they had 'definitely' or 'perhaps' achieved their aims by complaining (see table 4). This contrasted with just under half (48%) of those in the formal investigation sample who felt they had 'definitely' or 'perhaps' achieved their aims.

Another part of the informal resolution evaluation involved surveying 'Authorised Members' (the senior police officers who conducted the informal resolutions). Ninety-three of the 188 Authorised Members (49 per cent) who responded to the questionnaire had conducted both formal investigations and informal resolutions. The great majority of these officers thought that informal resolution was a better system for dealing with minor complaints than formal investigation (see table 5, page 5).

The informal resolution evaluation also involved the examination of file data to examine the length of time taken to resolve an issue (see table 6). This information revealed that, for cases received between 1 July 1993 and 30 June 1994 that were classified as suitable for informal resolution, the average (mean) time to process the complaint was 55 days. A comparison was conducted with completed minor allegations not resolved via informal resolution. These allegations were of a similar type and seriousness as those matters that had undergone the informal resolution process. For these allegations, the average time taken to deal with an allegation was 142 days. It can be seen that for minor allegations informal resolution took only about half as long as the formal investigation procedure.

There is also little doubt that informal resolution is considerably cheaper than the formal investigation process.

In 1995, the QPS Professional Standards Unit (now Ethical Standards Command) conducted a costing survey of investigator time involved in the resolution of complaints. The figures produced did not include time frames and costings for regional office staff or personnel at the Professional Standards Unit and the then CJC; only costs based upon the time invested by QPS investigators.

All officers conducting investigations were requested to complete one survey form for each investigation or informal resolution worked on for the period 1 July to 30 September. Information was sought on the time spent and distance travelled for each task, and the investigators were asked to make a costing of their time based on hourly salary costs. A total of 212 survey returns were received. Of these, 106 matters were identified as investigations, 77 as informal resolutions, 14 as resulting in no further action, and five as discipline hearings (10 of the surveys gave no indication as to action taken).

The figures show that informal resolution was much less time-consuming and much less expensive than formal investigation (see table 7).

The above findings indicate the value of alternatives to formal investigation according to such criteria as complainant

2 Complainant satisfaction surveys have often had methodological limitations, such as low response rates, small sample sizes, and no explicit comparative framework.

satisfaction, timeliness and cost. However, it is necessary to remain aware of other potential drawbacks to the different complaint responses.

Limitations

The potential benefits and drawbacks of the four response options for complaints against police are summarised in table 8, page 6.

A prosecution-focused investigation, in which all witnesses are closely questioned and independent corroborating evidence is sought, can leave complainants feeling that they were not believed and subject officers believing that they were presumed guilty. If the allegation is not substantiated, as is often the case, it is sometimes difficult to see what benefit flows from the process. If the allegation was true, does the fact that the subject officers were able to avoid being held accountable embolden them to act with less restraint in future? If the allegation is baseless, does the investigation leave the subject officers feeling unsupported? This could undermine their loyalty to the service and commitment to the job. Investigations, especially lengthy ones, can also be extremely stressful.

Mediation may help complainants convey their personal perspective of the incident to the subject officers and may even result in the officers becoming more self-aware and so improving their behaviour. But traditionally, it provides little or no information that the service can use to determine whether any monitoring of subject officers or their superiors is warranted, nor whether any changes to work practices are necessary.

Informal resolution may provide speedy and simple relief to complainants in minor matters, but there must be doubt about its impact for good on the behaviour of subject officers, let alone its ability to deal with systemic issues.

Managerial resolution has an inherent danger that supervisors will try to minimise the seriousness of allegations or cover up evidence they discover in order to avoid negative implications for their management evaluations. They may also try to dissuade complainants from persisting with a complaint or appealing against an unsatisfactory outcome.

Table 1: Complainants' satisfaction with outcomes

	Formal investigation % (n = 144)	Informal resolution % (n = 241)
Very satisfied	9.0	17.4
Fairly satisfied	18.8	42.7
Fairly dissatisfied	18.8	19.5
Very dissatisfied	53.5	20.3
Total	100	100

Notes:

- Eight complainants in the formal investigation sample and four in the informal resolution sample declined to answer this question.
- Chi-square = 26.91, df 3, p <.01.

Table 2: Complainants' satisfaction with how the investigation or resolution was handled

	Formal investigation % (n = 148)	Informal resolution % (n = 243)
Very satisfied	16.2	34.6
Fairly satisfied	23.6	41.6
Fairly dissatisfied	18.2	13.2
Very dissatisfied	41.9	10.7
Total	100	100

Notes:

- Four complainants in the formal investigation sample and two in the informal resolution sample declined to answer this question.
- Chi-square = 30.74, df 3, p <.01.

Table 3: Complainants' satisfaction with managerial resolution compared to investigation

	Managerial resolution % (n = 39)	Formal investigation % (n = 20)
Very or fairly satisfied with outcome	57	30
Very or fairly satisfied with process	58	40

Note:

Caution should be used with these results as the sample sizes are very small. Because of these small sample sizes chi-square tests were not conducted.

Table 4: Complainants' achievement of aims

Aims	Formal investigation % (n = 151)	Informal resolution % (n = 242)
Achieved	21.2	32.6
Perhaps	26.5	34.7
Not	52.3	32.6
Total	100	100

Notes:

- One complainant in the formal investigation sample and three in the informal resolution sample declined to answer this question.
- Chi-square = 11.33, df 2, p <.01.

Table 5: Comparison of Authorised Members' views of formal investigation and informal resolution in dealing with minor complaints

Response	% (n = 92)
A lot better	89.1
A little better	8.7
A little worse	1.1
A lot worse	1.1
Total	100

Notes:

1. Table shows responses only of Authorised Members who had conducted both an informal resolution and a formal investigation.
2. One respondent declined to answer this question.

Table 6: Time taken to process allegations

	Mean (days)	Median (days)	90th percentile (days)
Informal resolution (n = 452)	55	47	111
Formal investigation of minor allegations (n = 3416)	142	99	293

Note:

The comparison group of minor allegations comprise allegations from the following categories: Behaviour — Incivility/Rudeness/Language (n = 912), Behaviour — Inappropriate (n = 650), Duty Failure — Inaction (n = 1050), Harassment — Victimisation/Intimidation (n = 506), Traffic — Manner of Vehicle Use (n = 298).

Table 7: Comparative costs in processing allegations

	Average time (hours)	Average cost (\$)
Formal investigation (n = 107)	18.3	500
Informal resolution (n = 77)	4.9	138

Guidelines for matching responses to complaints

An **investigation** may be called for if the allegation is so serious that, if substantiated, it would indicate that the subject officer is unfit to serve or unfit to remain at current rank. In the most serious cases, the nature of the allegation alone may dictate that an investigation should proceed. In all other cases, an investigation (with all its attendant negative effects) can only be justified if there are good prospects of the allegation being substantiated, and none of the other mechanisms can satisfy the needs of the stakeholders. This involves considering such matters as the:

- subject officer's complaints history
- likely available evidence
- complainant's views as to what is warranted
- prevalence of allegations similar to the matter under consideration
- subject officer's initial response to the allegation
- likely time and cost of an investigation.

As the seriousness of the allegation decreases, the weight to be given to these considerations varies.

Mediation can include agreements to pay compensation and so can be used where a complainant is seeking this remedy. As no formal sanction can be imposed, mediation would not be suitable if the conduct concerned indicated the subject officers were unfit to remain in the service or unfit to remain at their current rank.

One of the problems of mediation is the difficulty in maintaining confidentiality while at the same time satisfying the service's need to record the outcome of complaints. However, this can be overcome if both parties agree to waive confidentiality. There is no reason for the proceedings to involve only the officer complained against. If the officer maintains that work practices or policies contributed to the complaint-generating behaviour, more senior officers could participate — including those whose lack of supervision or training contributed to the behaviour that led to the complaint.

Therefore, the process may be suitable for use in more serious complaints than informal resolution and is particularly useful in circumstances in which the parties might have continuing contact.

Informal resolution is primarily suitable for minor complaints that raise no concern about the subject officer's ongoing behaviour. Many complainants just want to be heard and acknowledged. When no other interests of the service need to be considered, informal resolution may be an entirely suitable response. In addition, if more information can be provided about the circumstances of the complaint, this can feed into data used to develop prevention initiatives. At a minimum, the complaint would be entered into the officer's complaint history, which would be considered when future complaints were assessed.

Managerial resolution offers considerable flexibility in tailoring responses to fit offending behaviour or the circumstances in which a complaint arose. It is particularly suitable for responding to complainants who have no strong wish to meet with the officer concerned. As it does not usually involve the gathering of evidence suitable for a disciplinary or criminal proceeding, it is unlikely to be the right choice for serious matters — that is, those matters that indicate the subject officer should be dismissed or demoted if the complaint is true. There is little information about how satisfied complainants are with this method of resolution. However, provided sufficient care is taken to explain what is being done and why, there seems to be no reason it would be any less effective than informal resolution.

Applying these guidelines requires information and the best way to obtain it is to work systematically through a set of questions. In many jurisdictions the decision about how to proceed with a case might be made internally by the police service, externally by an oversight agency or by a combination of both (depending upon the seriousness of the matter). Irrespective of who is making the decision, trained officers should ask the following:

1. How serious is the complaint? As the seriousness of the allegation is an important determinant, this must be ascertained as soon as possible. Initial inquiries need to be made by a trained complaints assessment officer.

Table 8: Comparison of formal investigation, mediation, informal resolution and managerial resolution

	Formal investigation	Mediation	Informal resolution	Managerial resolution
Primary purpose	Determine if disciplinary or criminal offence committed	Resolve conflict to parties' mutual satisfaction	Ensure complainant is satisfied that complaint has been dealt with appropriately	Address behaviour of subject officer that gives rise to complaints
Currently used in QPS	More serious allegations	Mainly minor allegations	Minor allegations only	Mainly minor allegations. Can be part of resolution for more serious matters
Conducted by	Experienced investigators	Neutral qualified mediators	Authorised Members (commissioned officers and senior sergeants)	Subject officer's supervisor
Outcome	Complaint substantiated or not substantiated Criminal or disciplinary sanction	Written or oral agreement (if successful) No sanction	Flexibility allowed, but mainly an apology, 'explanation accepted' or 'agree to differ' No sanction	Wide range of strategies available, e.g. remedial training, apology, change to supervision No sanction
Benefits	Justice by way of criminal or disciplinary sanction 'Clearance' for the accused Possible specific and general deterrence	High complainant satisfaction Possible specific deterrence	High complainant satisfaction Quick and cheap Reduced negative impact on subject officer's performance Benefits complainant and service when subject officer is uncooperative	Customised response Addresses systemic issues Moderately quick and cheap
Limitations	Costly and time-consuming Low substantiation rates Low complainant satisfaction Limited systemic improvement (when outcomes are not linked to research) Negative impact on subject officer	No finding No sanction No general deterrence	No sanction No general or specific deterrence Minimal remedial effect	Possibly low complainant satisfaction Limited general and specific deterrence No sanction

2. What is the complainant's objective?

As complainant satisfaction is an important outcome, it is necessary to find out what complainants want to see happen as a result of making the complaint. Usually they will have little knowledge of the various responses available, and so these need to be explained in a manner that enables them to understand that there are other options apart from formal investigation that can satisfy their concerns. This can be done face-to-face or via telephone. Care must be taken not to influence complainants to accept a 'soft option'.

3. What is the subject officer's complaints history?

To avoid repeated use of ineffective responses it is essential to review the subject officer's complaints history to see if there is a pattern of complaints and remedial responses that have already been tried. It may also be useful to consider the complaints history of the unit in which the subject officer works and that of other officers who have been supervised by the subject officer's supervisor. These data need to be comprehensive and should not be limited to the outcome of previous matters.

4. What is the subject officer's version of events? Traditionally, the subject officer was not officially spoken to about a complaint

until all of the evidence available from other sources had been gathered. It may well be that if spoken to immediately the incident comes to notice the officer will make concessions that will help decide how the matter should be dealt with. Concerns about induced confessions have no application in circumstances where officers can be directed to answer questions. Officers can be re-interviewed if the matter proceeds to investigation.

Conclusion

Each complaint made against police can be looked at as an opportunity to pursue one of the various objectives of the complaints-resolution system to a greater or lesser extent. When deciding which particular objective will be pursued, it is necessary to consider the advantages and disadvantages of the available options and seek a balance that best meets the interests of all stakeholders. Before deciding which process will be embarked upon, it is essential to gather sufficient information to enable the likely consequences of each of the various processes to be accurately gauged. The aim of this paper has been to stimulate discussion on how to improve these 'selection decisions' so that the most effective resolution process for any given circumstance is the one selected.

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