

**Holding to Account seminar  
31 March 2010  
Discovery Point, Dundee  
Speech by Fraser Sampson, Chief Executive  
West Yorkshire Police Authority**

YOU CAN TELL A LOT ABOUT AN ORGANISATION BY THE WAY IT HANDLES ITS COMPLAINTS. YOU CAN TELL SOMETHING ABOUT ITS VALUES, ITS CULTURE AND ITS PRIORITIES; WHAT MATTERS TO THE ORGANISATION AND WHY THE ORGANISATION MATTERS.

SOME WOULD SAY THAT YOU CAN TELL A LOT ABOUT A *SOCIETY* FROM THE WAY IT DEALS WITH COMPLAINTS ABOUT ITS POLICE.

POLICE AUTHORITIES SPEND AN INCREASING AMOUNT OF TIME EXPLAINING HOW WE HANDLE POLICE COMPLAINTS. IF WE LOOK AT HOW THE POLICE SERVICE IN ENGLAND & WALES HANDLES ITS COMPLAINTS WE WOULD SEE SOME INTERESTING THINGS

ON THE ONE HAND WE'D SEE A WIDELY PUBLICISED, WELL ESTABLISHED AND HEAVILY RESOURCED SYSTEM THAT APPLIES EQUALLY ACROSS ALL FORCES AND THEIR AUTHORITIES AND CATERS FOR EVERY EVENTUALITY, A SYSTEM BACKED UP WITH THE FULL FORCE OF THE LAW

WE WOULD ALSO SEE A RULE-BOUND STATUTORY SYSTEM THAT CAN PUT DEFINITION AHEAD OF DETERMINATION, PROCESS BEFORE PRUPOSE AND ADMINISTRATIVE COMPLIANCE ABOVE THE PEOPLE AND THE ISSUES INVOLVED.

AS THINGS STAND IT'S POSSIBLE TO HAVE:  
A COMPLAINT THAT IS NOT A COMPLAINT  
A COMPLAINT *IS* A COMPLAINT BUT NOT COMPLIANT  
A COMPLAINT THAT IS BOTH A COMPLAINT *AND* COMPLIANT BUT NOT THE COMPLAINANT  
AND A COMPLAINANT WHO'S COMPLIANT BUT NOT THEIR COMPLAINT.

IF OUR RIGID, FAULT-BASED SYSTEM FOR HANDLING COMPLAINTS IS UNSUITED TO THEIR SATISFACTORY RESOLUTION, WE SHOULDN'T REALLY BE SURPRISED - THAT'S BECAUSE *ANY* RIGID, FAULT-BASED SYSTEM IS UNSUITABLE FOR RESOLVING WHAT ARE COMPLEX AND EMOTIVE PROBLEMS ARISING FROM COMPLEX AND EMOTIVE HUMAN INTERACTIONS

THE REGULATIONS GOVERNING POLICE COMPLAINTS AND CONDUCT WERE REFORMED IN 2008 - BUT THEY'RE STILL LITIGIOUS IN ORIGIN AND ADVERSARIAL IN NATURE. SOME OF THE FORMALITIES MAY HAVE BEEN REMOVED BUT THE METHODOLOGY STILL RUNS ALONG

PROCEDURAL TRAMLINES, LEAVING LITTLE ROOM FOR INNOVATION, NEGOTIATION OR ACCOMMODATION.

AS OF A WEEK AGO THE LAW CHANGED AGAIN. NOW POLICE AUTHORITIES HAVE A LEGAL *DUTY* TO INTERVENE IN COMPLAINTS – BUT ONLY THOSE COMPLAINTS CASES THAT DON'T MEET THE DEFINITION OF 'COMPLAINT'. LEGALLY IN THIS CONTEXT "INTERVENE" CAN MEAN PRETTY WELL ANYTHING - AS LONG AS IT STOPS SHORT OF INTERVENTION. AND IN ANY EVENT POLICE AUTHORITIES STILL HAVE NO POWER TO DO SO

THE WHOLE ARCANE PROCESS IS ACCOMPANIED BY VARIOUS AVENUES OF APPEAL AND PROCEDURAL CHALLENGE - MANY OF WHICH I HAVE USED IN PRACTICE AND ALL OF WHICH RESULT IN SOME FORM OF '*FINDING*' IN RELATION TO THE COMPLAINANT, THE OFFICER OR BOTH.

ALL OF WHICH ALSO RESULT IN SOME FORM OF *DISSATISFACTION* BY THE COMPLAINANT, THE OFFICER OR BOTH – ALONG WITH THEIR EMPLOYERS AND STAFF ASSOCIATIONS.

DESPITE – OR PERHAPS BECAUSE OF - THE MOST RECENT TINKERINGS, CONTINUING SHORTCOMINGS OF OUR COMPLAINTS SYSTEM REMAIN. THEY INCLUDE:

- **COMPLEXITY AND FORMALITY** – PROCESSES HAVE BEEN SHORTENED AND FORMALITIES REDUCED - BUT THE REFORMS INTRODUCED IN 2008 HAVE BEEN TO POLICE COMPLAINTS CASES WHAT 20:20 MATCHES WERE TO TEST CRICKET: THEY SIMPLIFIED AND SHORTENED THE SPECTACLE BUT RETAINED THE CONTEST
- **RIGIDITY AND COUNTER-INTUITION** – THE METHODS FOR 'RESOLVING' COMPLAINTS DO NOT ALLOW FOR EXPRESSIONS OF DISSATISFACTION (WHICH MOST PEOPLE AND COMMERCIAL ORGANISATIONS WOULD UNDERSTAND AS A 'COMPLAINT') AND WE ATTRIBUTE ARTIFICIALLY RESTRICTED MEANINGS TO WORDS SUCH AS 'COMPLAINT' AND 'GRIEVANCE'
- **EMPOWERMENT AND INVOLVEMENT** - RESPONSIBILITY FOR RESOLUTION OF THESE TECHNICAL MATTERS RESTS ALMOST ENTIRELY WITH THE POLICE THEMSELVES IN ONE FORM OR ANOTHER, RAISING PERCEPTIONS OF PARTIALITY, FRUSTRATING EXPECTATIONS AND LEAVING THOSE AGGRIEVED WITH A FEELING OF IMPOTENCE AND LACK OF INVOLVEMENT
- **TIME AND DELAY** – DESPITE ATTEMPTS TO REDUCE THE TIMESCALES THE COMPLAINTS PROCESS IS FAULT-BASED AND ADVERSARIAL WHICH MEANS IT HAS TO BALANCE EXPEDITION WITH EVEN-HANDEDNESS AND INFORMALITY WITH DILIGENCE, ALL OF WHICH NECESSARILY TAKES TIME

- **EXPENSE** – THE AMOUNT OF TIME INVOLVED, PARTICULARLY THAT OF PROFESSIONAL STAFF, MAKES THE COMPLAINTS SYSTEM EXPENSIVE. WHEN WE CONSIDER THE RETURN ON COMMUNITY INVESTMENT IT IS DIFFICULT TO ARGUE THAT THE CURRENT SYSTEM OFFERS VALUE FOR MONEY<sup>1</sup>
- **INDIVIDUALITY AND STANDING** – THE SYSTEM RELIES ON THE IDENTIFICATION OF AN INDIVIDUAL WHO CAN BE BLAMED AND A PERSON WHO CAN SHOW THAT THEY HAVE BEEN DIRECTLY AFFECTED – THIS MAKES NO ALLOWANCE FOR COLLECTIVE EXPRESSIONS OF DISSATISFACTION OR COMMUNITY GRIEVANCE
- **UNSUITABILITY OF REDRESS** – EVEN AFTER THEY HAVE NAVIGATED THE FORMALITIES OF THE PROCESS, ABSORBED THE COMPLEXITIES AND ENDURED THE DELAYS AND EXPENSE OF THE SYSTEM, COMPLAINANTS ARE OFTEN FRUSTRATED BY THE REMEDIES OFFERED WHICH ARE OFTEN INCOMPATIBLE WITH WHAT IS BEING SOUGHT. MANY (IF NOT MOST) COMPLAINANTS ARE NOT SEEKING DAMAGES, DECLARATIONS OR DIRECTIONS; THEY ARE PRINCIPALLY LOOKING FOR AN EXPLANATION AND AN APOLOGY, NEITHER OF WHICH CAN BE ENFORCED THROUGH FORMAL LITIGATION.

IT IS IMPORTANT TO NOTE THREE FURTHER THINGS ABOUT THESE SHORTCOMINGS.

THE FIRST IS THAT THEY ARE NOT PECULIAR TO THE POLICE AND WILL BE FAMILIAR TO ANY LITIGATOR AS THEY MIRROR MANY OF THE GENERIC LIMITATIONS OF LITIGATION.

THE SECOND IS THAT THEY ARE NOT PECULIAR TO COMPLAINANTS AND APPLY WITH ALMOST EQUAL FORCE TO *THE POLICE THEMSELVES*. OFFICERS WHO RECEIVE COMPLAINTS THAT ARE GROUNDLESS OR MOTIVATED BY MISTAKE/ MALICE/ MISUNDERSTANDING WOULD OFTEN LIKE AN APOLOGY AND/OR EXPLANATION, FROM THE COMPLAINANT OR THEIR EMPLOYER.

THE THIRD IS THAT THEY ARE NOT PECULIAR TO OUR JURISDICTION AND CAN BE FOUND IN EVERY POLICING SETTING I HAVE LOOKED AT.

FOR ANY SYSTEM TO MEET THE NEEDS AND EXPECTATIONS OF THE COMMUNITIES WE SERVE IT NEEDS TO OFFER MORE. IN PARTICULAR, IT NEEDS TO OFFER:

- SIMPLICITY

---

<sup>1</sup> See the annual reports of the Independent Police Complaints Commission showing how most complaints by members of the public against police officers in England & Wales were found to be 'unsubstantiated' and how historically fewer than 5% result in disciplinary sanction.

- FLEXIBILITY
- INFORMALITY

IT ALSO NEEDS TO OFFER:

- EXPEDITION - IT NEEDS TO BE PROMPT
- EFFICACY – IT NEEDS TO WORK
- VALUE FOR MONEY
- PARTICIPATION

THAT'S AN INTERESTING LIST – IS THIS ASKING TOO MUCH?  
NOT ACCORDING TO THE MANY PEOPLE AND ORGANISATIONS INVOLVED IN MEDIATION AND ADR BOTH HERE AND ACROSS THE WORLD. MAKE A LIST OF THE BENEFITS OF *MEDIATION* AND YOU PRODUCE ONE REMARKABLY LIKE THIS ONE.

NOR IS IT ANYTHING NEW - COMMUNITIES HAVE BEEN USING MEDIATION TO SETTLE THEIR DISPUTES FOR AS LONG AS THERE HAVE BEEN DISPUTES TO SETTLE.

IF WE ARE TO GET FROM WHAT WE'VE GOT TO WHAT WE NEED THREE THINGS MUST HAPPEN

#### 1. THE LAW HAS TO CHANGE

THE REVISED IPCC GUIDANCE IS LAUNCHED TODAY AND WILL, HOPEFULLY PRODUCE FURTHER IMPROVEMENTS - EMPHASISING THE NATURE OF COMPLAINTS AS “CONSIDERED GRIEVANCES”, PLACING MORE FOCUS ON THE NEEDS OF THE COMPLAINANT THAN THE NEED FOR COMPLIANCE.

BUT THIS IS STILL TEST CRICKET - MOST PEOPLE SEEM TO BE AGREED THAT A MORE SUBSTANTIAL SHIFT IN APPROACH IS NEEDED WE NEED TO CHANGE THE RULES TO MAKE ROOM FOR SOME LATTITUDE, SOME DISCRETION WHICH, AS LORD SCARMAN ONCE SAID IS THE ART OF SUITING ACTION TO CIRCUMSTANCE AND IS THE POLICE OFFICER'S DAILY TASK – AND THAT MEANS CHANGING THE PRIMARY LEGISLATION.

#### 2. GRIEVANCES HAVE TO BE HEARD AND HEDED

THE REALITY IS THAT WE CAN'T CURE EVERYTHING, WE CAN'T 'UNDO' ANYTHING BUT WE CAN HEAR WHAT OUR COMMUNITIES ARE TELLING US AND HEED WHAT THEY SAY. WE HAVE TO LISTEN, LEARN AND TRY TO IMPROVE.

WE'RE ALL CONCERNED WITH 'PUBLIC CONFIDENCE' – WHATEVER THAT MAY MEAN - SURELY A KEY PART OF THAT MUST BE THAT OUR COMMUNITIES HAVE CONFIDENCE IN THE WAY THINGS ARE BEING DONE IN THEIR NAME AND AT THEIR EXPENSE?

THE WAY WE HANDLE THEIR COMPLAINTS AND GREIVANCES CAN -  
AS WE NOTED – SAY A LOT ABOUT US ALL IN THAT RESPECT

3. THE RESOLUTION MUST BE ALLOWED TO FIT AND FIX THE  
PROBLEM

THE CURRENT COMPLAINTS PROCESS IS STILL GROUNDED IN  
LITIGATION – AND LITIGATION IS NOT ABOUT FINDING OUT WHAT  
HAPPENED: IT'S SIMPLY ABOUT WHO CAN PROVE WHAT

PEOPLE INVOLVED IN COMPLAINTS OFTEN SAY THAT THERE ARE  
TWO SIDES TO EVERY STORY - LAWYERS SAY THERE ARE FAR MORE  
THAN TWO SIDES TO ANY STORY AND MORE THAN TWO STORIES TO  
EVERY SIDE – PRESENTING THE ONE THAT IS IN THE BEST  
INTERESTS OF THE CLIENT IS A KEY PART OF THE GAME

THIS APPROACH IS ENTIRELY UNSUITED TO EFFECTIVE RESOLUTION  
OF MOST COMPLAINTS ABOUT POLICING AND THE POLICE.

TO BE EFFECTIVE WE MUST HAVE A SYSTEM THAT IS AT LEAST  
CAPABLE OF IDENTIFYING WHAT MATTERS TO WHOM AND WHY AND  
THEN AGREEING WHAT CAN REASONABLY BE DONE ABOUT IT WITH  
THE RESOURCES AVAILABLE

WHICH BRINGS ME BACK TO MEDIATION - IT IS AGAINST THIS  
BACKGROUND THAT I MADE AN APPLICATION FOR A WEINSTEIN  
FELLOWSHIP EARLIER THIS YEAR. THE FELLOWSHIP IS OFFERED TO  
LAWYERS AND LEGAL ACADEMICS ACROSS THE WORLD TO  
PROPOSE NEW WAYS OF USING MEDIATION FOR COMMUNITY  
IMPROVEMENT. I PROPOSED – IN MUCH GREATER DETAIL THAN  
WE'VE ROOM FOR HERE – THAT WE TRY IT AS AN ALTERNATIVE TO  
THE SYSTEM I'VE DESCRIBED AND THE JAMS BOARD IN THE US SAID  
YES

THIS MEANS I'LL BE VISITING A NUMBER OF POLICE ORGANISATIONS  
ON BOTH SIDES OF THE US, MEETING WITH COMPLAINANTS, POLICE  
OFFICERS, MEDIATORS AND OTHERS WHO HAVE HAD EXPERIENCE IN  
TRYING TO BRING ABOUT THE THINGS I'VE TALKED ABOUT HERE. I'LL  
ALSO BE WORKING WITH THE HARVARD MEDIATION PROGRAM AND  
OTHER ACADEMIC INSTITUTIONS TO FORM THE BASIS FOR SOME  
PILOT PROJECTS IN THE UK. ONCE THE INITIAL RESEARCH IS  
COMPLETE I WILL BE PLANNING SOME PILOT SITES WITH PARTNER  
ORGANISATIONS IN THE UK THAT HAVE ALREADY EXPRESSED  
SUPPORT.

AS A TASTER FOR WHAT THIS MIGHT REVEAL I WOULD TURN TO RAY  
PATTERSON, THE ARCHITECT OF THE CIVILIAN COMPLAINTS REVIEW  
BOARD INTRODUCED TO RESOLVE PUBLIC COMPLAINTS AGAINST  
THE CITY OF NEW YORK – INCLUDING THE POLICE DEPARTMENT –  
RAY SAID IN HIS REPORT OF 2008:

*“OVER AND OVER AGAIN, WE WERE ABLE TO SEE THE POSITIVE RESULTS OF A SUCCESSFUL MEDIATION. EVEN IN THOSE CASES MEDIATORS WERE UNSURE WOULD SETTLE, CERTAIN BEHAVIORS OCCURRED REPEATEDLY. THE MOST COMMON ACT WAS A HAND EXTENDED ACROSS THE TABLE, OFTEN COUPLED WITH THE WORDS, “NO HARD FEELINGS.” NEITHER CIVILIAN NOR OFFICER HAD A MONOPOLY ON THIS ACTION, BUT IT WAS CLEAR TO THE MEDIATORS THAT IT REPRESENTED AN AFFIRMATIVE DEVELOPMENT.”*

THAT IMAGE OF AN EXTENDED HAND IS A POWERFUL SYMBOL FOR WHAT MEDIATION CAN ACHIEVE IN COMPLAINTS RESOLUTION;

IT IS ALSO A METAPHOR FOR CONFIDENT, COMMUNITY-BASED PUBLIC SERVICE DELIVERED BY PROFESSIONAL PEOPLE THAT HAVE THE MATURITY TO DEVELOP AND DETERMINATION TO IMPROVE.  
THANK YOU FOR INVITING ME TO SPEAK