

S 438 SEALES, L. A. An examination of the police complaints process.

LECRETIA ANNE SEALES

**AN EXAMINATION OF THE
POLICE COMPLAINTS PROCESS**

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*Te Whare Wananga
o te Upoko o te Ika a Maui*



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TABLE OF CONTENTS

I	INTRODUCTION.....	1
A	<i>The Previous System</i>	2
B	<i>Background to the Establishment of the PCA</i>	2
II	THE LEGISLATION.....	5
A	<i>Office of the PCA</i>	5
B	<i>Functions of the Authority</i>	5
C	<i>Proceedings of the Authority</i>	6
D	<i>Procedure on Completion of Investigation</i>	6
III	THE COMPLAINTS PROCESS.....	7
A	<i>Lodging a Complaint</i>	7
B	<i>Vetting Procedure</i>	9
C	<i>District Complaint Resolution</i>	9
D	<i>Police Investigation</i>	11
E	<i>Conciliation</i>	13
F	<i>Review</i>	14
1	<i>District level</i>	14
2	<i>Internal affairs</i>	14
3	<i>PCA</i>	15
G	<i>Oversight of Police Investigation</i>	16
H	<i>PCA Investigation</i>	17
I	<i>Result of the Investigation</i>	17
IV	COMPLAINTS DATA.....	19
A	<i>New Zealand Data</i>	19
1	<i>Number of complaints dealt with each year</i>	19

2	<i>Percentage of complaints sustained each year</i>	20
3	<i>Areas of complaint</i>	20
4	<i>Expressions of dissatisfaction</i>	22
B	<i>Explanation of Complaints Data</i>	22
V	OBJECTIVES OF A COMPLAINTS SYSTEM.....	23
A	<i>Providing the Right Result in a Fair Manner</i>	23
1	<i>Assumptions</i>	24
2	<i>Case construction</i>	24
3	<i>Effectiveness of review</i>	26
B	<i>Appearance of Credibility in the Eyes of the Community</i>	27
C	<i>Satisfaction of Complainants</i>	28
D	<i>Capable of being Perceived as Legitimate in the Eyes of the Police</i>	30
E	<i>Accessible</i>	31
1	<i>Middle class</i>	31
2	<i>Monocultural</i>	31
F	<i>Influence on Police Policy and Practice</i>	32
G	<i>Provisions for Conciliation</i>	33
V	RESOURCES.....	34
VII	CONCLUSION.....	35
	BIBLIOGRAPHY.....	36
	TABLE OF LEGISLATION.....	38
	INTERVIEWS.....	39

I INTRODUCTION

Throughout the 1980s interest surged in police complaints procedures among the Commonwealth countries. The police investigations of their own behaviour and subsequent decisions on any action to be taken were called into question. In Britain, violent confrontations between the police and the public such as the Brixton riots and the subsequent report by Lord Scarman,¹ thrust the issue of police complaints into the public and political arena.² In New Zealand, events in the 1980s, especially the violent confrontations between the police and protesters during the South African Rugby tour of 1981, led to a decrease in public confidence in the police. The environment was such that public criticism of police autonomy and lack of accountability could not be deflected by the police as it had in the past.³ This change, combined with the international trend towards external elements in the police complaints process, prompted an examination of the New Zealand complaints system and the creation of the New Zealand Police Complaints Authority.⁴

A police complaints process must aim to produce the right result. It must do this in a manner which is fair. To maintain public confidence in the police service, the complaints process must appear to be credible in the eyes of the public and should not leave complainants feeling dissatisfied with the manner in which their complaints have been handled. The process must also be capable of being perceived as legitimate by the police and influence police policy to prevent recurring complaints. Effective conciliation of complaints must be provided for. The New Zealand system should reflect these principles.

This paper will examine the practical operation of the police complaints process, within the legislative boundaries. A summary of the complaints data will be given, followed by an analysis of the objectives of a complaints system and whether the present New Zealand system meets these objectives.

¹ *Report of an Inquiry by the Rt Hon The Lord Scarman The Brixton Disorders 10-12 April 1981* (HMSO, London, 1982). The report recommends the creation of an independent element to the police complaints process: "If public confidence in the complaints process is to be achieved any solution falling short of a system of independent investigation available for all complaints...is unlikely to be successful", 118.

² A Goldsmith (ed) *Complaints Against the Police The Trend to External Review* (Clarendon Press, Oxford, 1991) vi.

³ W Young "Investigating Police Misconduct" in N Cameron and W Young (eds) *Policing at the Crossroads* (Allen & Unwin, Wellington, 1986) 108.

⁴ Hereinafter referred to as the PCA.

A *The Previous System*

The previous police complaints system was firmly controlled by the police. Wherever a complaint was first lodged,⁵ the case would be referred to the local District Commander, who would be responsible for its classification as serious or non-serious and investigation.⁶ The nature and extent of the investigation was determined by the police. Outcomes of investigations were also largely decided by the police. Following very serious incidents, some cases were referred to the Solicitor-General for review.⁷

The lack of data kept by the police meant that it was difficult to monitor their effectiveness under the old police controlled system. The police did not keep statistics on how many complaints were received that did not become the subject of formal disciplinary procedures.⁸ The outcome of these procedures was also unclear.

If a complainant was dissatisfied with the outcome of the investigation, there was the option of further complaining to the Ombudsman. Section 13(7)(d) of the Ombudsmen Act 1975 effectively prevented any person complaining directly to the Ombudsman.⁹ The jurisdiction of the Ombudsman is limited to "matters of administration", which meant the Ombudsman could only review the police investigation, and assess whether as a matter of administration the manner in which the police handled the complaint was satisfactory.¹⁰

B *Background to the Establishment of the PCA*

Problems with the old complaints system were highlighted by the number of complaints which the Ombudsman received regarding the police investigation of complaints in relation to incidents arising during the protests against the South African rugby tour to New Zealand. Following the confrontations, the police investigated 362 complaints about police behaviour. The office of the Ombudsman received 173 complaints from 74 complainants, who were dissatisfied with the police

⁵ Complaints could be lodged with the police themselves, the Minister of Police, a Member of Parliament, the Ombudsman, the Commissioner of Police or the Governor-General.

⁶ Above n 3, 113.

⁷ Above n 3, 115.

⁸ Auckland District Law Society Public Issues Committee *Police Complaints Procedures* (Auckland, 1983) 3.

⁹ New Zealand Office of the Ombudsman, *Report of the Chief Ombudsman on the Investigation of Complaints against the Police from the South African Rugby Tour of New Zealand in 1981* (Wellington, June 1983) 3.

¹⁰ Above n 8. This meant assessing whether the police carried out a thorough and speedy investigation.

investigation of their complaints.¹¹ Reviewing these complaints was a difficult task for the Ombudsman because the police investigations took months and a long period of time lapsed between the actual events and the involvement of the Ombudsman.¹²

In his report on the investigation of complaints against police following the South African Rugby tour, the Chief Ombudsman commented that in general the police investigations were thorough and conscientious.¹³ However, the Ombudsman did criticise some areas of the police handling of complaints, including senior officers publicly defending police actions, which could be viewed as prejudging complaints.¹⁴ The Ombudsman felt that some investigations were too narrow and focused on the actions of individuals, rather than deficiencies in training or instructions. If particular individuals could not be detected from the videos or photographic evidence, then the investigations were not continued. The Ombudsman noted that "[i]n some other cases a decision not to prosecute or charge was made without adequate effort having been made to resolve important inconsistencies in the evidence."¹⁵

The area where the Ombudsman most criticised the police was in advising complainants of the result of their complaint. The failure to give complainants adequate details of the investigation gave the impression that an enquiry had not been conducted thoroughly. In the opinion of the Ombudsman, in replies to complainants, the basis for conclusions reached should be stated plainly, notwithstanding any effect on pending litigation.¹⁶ Taking advantage of their position as investigators by withholding information which might influence a complainant in deciding whether to commence civil action, was held to be inconsistent with the police role as impartial investigators.¹⁷

The fatal shootings of John Morgan in 1982 and Paul Chase in 1983 provided further opportunity for criticism of the police complaints procedure. The government bowed to media and public pressure for a public inquiry into the latter shooting. A senior barrister was appointed as an independent examiner to oversee the police investigation.¹⁸ This signalled the end of fully internal investigations of police complaints.

11 Above n 9, 5.
 12 Above n 9, 4.
 13 Above n 9, 6.
 14 Above n 9, 6.
 15 Above n 9, 7.
 16 Above n 9, 8.
 17 Above n 9, 8.
 18 Above n 3, 109.

The election campaign of the Labour Government elected in 1984 included a promise to establish an independent civilian authority with jurisdiction over public complaints against the police.¹⁹ The new Minister of Police distributed a discussion paper outlining the concept and received submissions. After considering the submissions, Cabinet appointed an officials committee chaired by Sir David Beattie to undertake a detailed examination of the proposed legislation.

The committee was acutely aware that the new legislation should reflect a balance with regard to public confidence in the system and fairness to the police.²⁰ The committee appear to have drawn on a wide range of resources in compiling their report²¹ and considered at length whether the new office should be part of the jurisdiction of the Ombudsman or a separate authority. The police objected to the extension of the jurisdiction of the Ombudsman office on the ground that it would result in a decrease in police morale, as there were doubts that the Ombudsmen's staff had the ability to handle an enlarged practical investigative role.²² These doubts stemmed from the approach taken by the Ombudsman under the existing procedure. The fact that the British model included a separate authority was also taken into account in the committee's decision to recommend that the new authority should have a jurisdiction autonomous from that of the Ombudsman. The committee recommended that all complaints be notified to the PCA, rather than just those classified as serious. Most of the recommendations of the committee are reflected in the current legislation.

When the Bill was introduced in Parliament it was met with vehement opposition. The Bill was cited as being a reflection of the Labour Party's supposed hatred and mistrust of the New Zealand police.²³ National Members of Parliament declared their allegiance to the police and gave emotive speeches about the difficulties of police work and the integrity of the force.

Neither the Police Association nor the Police Guild²⁴ supported the Bill. The Police Guild was of the opinion that the system did not need to be changed and it could handle matters.²⁵ The Police Association thought the powers given to the PCA were

¹⁹ NZPD, vol 477, 6734, 3 February 1987.

²⁰ D Beattie *Report of the Committee on an Independent Examiner of Complaints Against Police* (Wellington, 1986) 2.

²¹ Above n 20, 3-4.

²² Above n 20, 16.

²³ Above n 19, 6740.

²⁴ The body that looks after the interests of the commissioned officers of the police.

²⁵ NZPD, vol 486, 2010, 16 February 1988.

too wide and that the body should only be involved in complaints relating to police shootings and other serious police matters.²⁶

II THE LEGISLATION²⁷

A *Office of the PCA*

The Police Complaints Authority Act came into force on 1 April 1989. The long title of the Act states that its objective is to "make better provision for the investigation and resolution of complaints against the Police by establishing an independent Police Complaints Authority". Section 4 of the Act creates the PCA and provides for appointment of the Authority to be made by the Governor-General on the recommendation of the House of Representatives. The office must be filled by a qualified barrister and solicitor of the High Court, who is suitably experienced for the position.

The term of appointment of the Authority will be at least two years and no more than five years in accordance with section 5 of the Act. An Authority may be reappointed. Under section 8 the establishment of a Deputy Authority is made possible. Other staff members may be appointed by the Authority by virtue of Section 10, but the number of staff that may be appointed is to be determined by the Minister of Justice.

B *Functions of the Authority*

Under section 12(1) the Authority shall receive complaints "alleging any misconduct or neglect of duty by any member of the police" or which concern "any practice, policy, or procedure of the Police affecting the person or body of persons in a personal capacity." The Authority may also investigate incidents involving death or serious bodily harm if it believes that it is in the public interest to do so.²⁸ Section 12(2) enables the Authority to investigate related matters not covered in the original complaint. The terms and conditions of service of any police members are outside the jurisdiction of the PCA. The Commissioner of Police is obliged under section 13 to notify the PCA of any incidents involving police members on duty, where the member appears to have caused death or serious bodily harm to any person. There are

²⁶ Above n 25. It should be noted that today the Police Association do support the PCA.

²⁷ Police Complaints Authority Act 1988.

²⁸ Above n 27, section 12(1)(b).

reciprocal duties imposed on the Police Commissioner and the PCA to notify each other of any complaints received.²⁹

Section 14 provides that complaints may be made orally or in writing, although oral complaints should be reduced to writing as soon as practicable. Section 17 provides that on notification of a complaint, the Authority may investigate the complaint itself, defer action until it has received a report on a police investigation of the complaint, oversee a police investigation, or decide to take no action as the Authority is entitled to do under section 18. Section 19 gives the Authority power to give specific directions in relation to an investigation.

Section 20 imposes a duty on the Commissioner to report to the Authority the result of an investigation and action proposed to be taken. The Authority is to be given access to all relevant information regarding a complaint under section 21.

C Proceedings of the Authority

Section 23 requires the Authority to inform complainants and the Commissioner if it intends to investigate any matter. Investigations are to be conducted in private. The Authority is entitled to "hear or obtain information from such persons as it thinks fit".³⁰ The Authority has power to summon persons and conduct examinations under oath.³¹

D Procedure on Completion of Investigation

Section 27 provides that when the Authority conducts an investigation it shall decide whether the "decision, recommendation act, omission, conduct, policy, practice or procedure which was the subject-matter of the investigation was contrary to law, unreasonable, unjustified, unfair, or undesirable." The Authority is to advise the Commissioner of its conclusions and may make recommendations as it sees fit.³²

Procedure following police investigation is governed by section 28. A report on the police investigation and its conclusions must be given to the Authority at the

²⁹ Above n 27, sections 15 and 16.

³⁰ Above n 27, section 23(3)(c).

³¹ Above n 27, section 24(2).

³² Above n 27, section 27(2).

conclusion of a police investigation. The Authority will decide whether or not the matter under investigation was "contrary to law, unreasonable, unjustified, unfair, or undesirable."³³ The Authority shall inform the Commissioner whether or not it is in agreement with the proposal of the Commissioner in relation to the complaint. If the PCA disagrees with the decision of the Commissioner, it may make its own recommendations.

Following a recommendation by the Authority, the Commissioner shall inform the Authority of the action to be taken and any reasons for departing from the recommendation. If the Authority considers that this action is inappropriate, it may send a copy of its recommendations and the comments of the Commissioner to the Minister of Police.³⁴ The Authority may also give the report to the Attorney-General for tabling in the House of Representatives.

Section 30 provides that the PCA must conduct its investigation expeditiously and inform the parties involved in a complaint of the result of the investigation. The Authority may not make any adverse comment about any person unless that person has been given a reasonable opportunity to be heard.³⁵

III THE COMPLAINTS PROCESS

A *Lodging a Complaint*

People who are dissatisfied with the behaviour of a police officer, or a police policy or practice which affects them, may complain either to the police directly at their local police station, the PCA, the Ombudsman or a registrar of the District Court.³⁶

The general instructions provide the police with guidelines for receiving complaints.³⁷ These state that all complainants are to be treated in a courteous manner, regardless of their character.³⁸ If a person is expressing dissatisfaction³⁹

³³ Above n 27, section 28(1).

³⁴ Above n 27, section 29(2).

³⁵ Above n 27, section 31.

³⁶ Complaints made to the District Court must be in writing.

³⁷ The general instructions are guidelines governing the way the police manage themselves. They are made by the Commissioner and are authorised by the Police Act. Although they are guidelines, the general instructions must be followed by police personnel.

³⁸ New Zealand Police "General Instructions Internal Affairs Complaints, Discipline and Procedure-IA 100- IA 132" *Ten-One*, Wellington, New Zealand, 90b, 28 April 1995, 5.

³⁹ An Expression of dissatisfaction means "any request for information, or inquiry or expression of dissatisfaction, which is not intended by the person making the request or inquiry to be received

rather than complaining, then an immediate effort should be made to resolve the matter by explaining it to the inquirer. On occasions, what might initially look like a complaint, may become an expression of dissatisfaction once the police officer has discussed the matter and provided an explanation.⁴⁰ No further action will be taken if the person is satisfied at this point and no record is kept.

Oral complaints should be converted to written, signed complaints when this is practical. Complainants must be dealt with when they arrive at the police station. No person should be told to come back at a later date or asked to see another police officer. There are provisions for people who do not wish to be interviewed at the station, and it is permissible for the complainant to have a third party present. It is not routine for complainants to be warned of the consequences of making a false complaint, although this may be done if the officer receiving the complaint believes that there are reasonable grounds for believing that the complaint is false.⁴¹

Complainants are to be advised of the procedure that will be followed once they have made their complaint. There is no standard explanation of the procedure. The reason given for this is that each complaint differs, and an explanation is given which is appropriate for the particular complaint that is made.⁴² Complainants are not given an estimation of the time that it might take for their complaint to be dealt with.

Wherever the complaint originates, both the police and the PCA need to be informed of its content. Complaints received in the districts will be forwarded to internal affairs at police national headquarters, who forward them to the PCA.

The Commissioner of Police is also obliged to inform the Authority of incidents where a police officer causes or appears to cause death or serious injury in the execution of duty. This does not require the trigger mechanism of a complaint. Recently, a Memorandum of Understanding was signed between the police and the PCA, whereby incidents of serious misconduct or neglect of duty that are internally reported to the Commissioner will be treated by the same procedure as externally generated complaints.⁴³

by the police as a complaint, and which is resolved to the satisfaction of that person by way of explanation." Above n 38, 4.

40 Interview with Senior Sergeant Jim Hamill, Internal investigations, Wellington District, July 1995.

41 Above n 38, 5.

42 Above n 40.

43 Above n 38, 18. There is a legal issue as to whether an officer who is the subject of an internally generated complaint could challenge the validity of the PCA involvement as ultra vires, but word constraints prevent an analysis of this.

B Vetting Procedure

Once the PCA receives a complaint, the Authority must decide how to treat it. The first decision is whether the complaint should be classified as minor and dealt with under the district complaint resolution scheme, which was implemented in April 1995. There is no definition of minor.⁴⁴ It is viewed that a definition would be unhelpful.⁴⁵ "It is better to take each case on its merits and if it looks like it is obviously minor, then it will be treated as minor."⁴⁶

If a complaint is not minor, then there are four main ways that the Authority might treat it. The first avenue open to the Authority is to investigate the matter, which has never been done from beginning to end. Every complaint is assessed separately and there are no hard and fast rules for determining what the Authority will elect to investigate. The Authority nearly always has some input where there have been incidents of death or serious bodily harm. In high-profile matters, the Authority would usually oversee the police investigation. The vast majority of complaints are sent back to the police to investigate themselves, and these will be reviewed by the Authority. The Authority has always been primarily considered a reviewing authority and it was intended from the outset that most investigations would be passed back to the police. The Authority may also decide that the complaint is not worth taking any further.⁴⁷

C District Complaint Resolution

In April 1995 a new system for dealing with minor complaints was implemented, giving districts control of the process of resolving minor complaints. The aim of the procedure is to achieve local resolution of minor matters, in a manner which is speedy, economic and consistent with the Police Complaints Authority Act.

When complaints are categorised as minor, the PCA write to the complainants and inform them that their complaints will be dealt with under the district complaints resolution process and that the police will write and inform them of the result of the investigation. Internal affairs are also notified when a complaint is deemed suitable

⁴⁴ Interview with Maggie Flynn, Executive Officer, Police Complaints Authority, Wellington, August 1995.

⁴⁵ Interview with Superintendent Les McCarthy, Head of Internal Affairs at Police National Headquarters, Wellington, July 1995.

⁴⁶ Above n 45.

⁴⁷ Above n 27, section 18.

for district complaint resolution. The PCA may indicate that it is prepared to liaise where necessary with the police on matters arising from the complaint.⁴⁸

Once a complaint comes back to the district, the complainant is seen personally to discuss the matter. Conciliation may be achieved here, but the primary objective is to fully discuss the matter and obtain all of the details over and above the original complaint. It is fair to say that investigation in minor cases is less rigorous than in cases of a more serious nature. Fewer details are sought from complainants.

Following the completion of an investigation into a minor complaint, the complainants are written to by the District Commander, informing them of the outcome of the complaint and proposed resolution. Complainants are advised that if they are dissatisfied with the result that they can inform the PCA of this dissatisfaction within two weeks of receiving the letter. The letter states that the PCA is entirely independent of the police.

Currently, only a small proportion of complaints are categorised as minor. There is no available data.⁴⁹ It is estimated that statistics will be able to reflect the proportion of minor complaints by next year's annual report. At the moment, approximately two to three out of every ten complaints are allocated for district resolution.⁵⁰ This number will gradually increase, but at the moment the Authority is being cautious in allocating complaints to be dealt with this way.

It is concerning that there are no set criteria for determining whether or not a complaint is minor. This gives the PCA an enormous discretion and could lead to inconsistencies in the way in which complaints are handled. Criteria need to be developed. The fears of the PCA and internal affairs that any criteria would be unworkable are unfounded.

48 Interview with Maggie Flynn, Executive Officer, Police Complaints Authority, Wellington, July 1995.

49 Above n 48.

50 Above n 48.

D *Police Investigation*

Complaints not dealt with at district level go through the ordinary complaints process. The PCA usually decides the police should investigate the complaint themselves. The PCA sends the file to internal affairs, who send it back to the district. The investigation is not commenced until the PCA decides how the complaint should be dealt with.

In appropriate circumstances, the District Commander considers appointing an investigator from outside the section or the district of the officer complained about. The PCA has been critical of past police practice of allocating the internal investigation to a supervisor of the member complained about.⁵¹ The police rationale for this was that a supervisor would be in the best position to assess the officer's performance. It was argued that the supervisor would be the most critical of the member's behaviour to protect the reputation of the section. The PCA did not accept this logic and took the view that there is temptation to excuse a member in an officer's own section. According to the PCA, there were a number of instances where this was occurring.⁵² It seems that it is now usual to employ an investigator from outside the section, unless there is a shortage of staff, but it is less likely that an investigator would be appointed from another district.

District Commanders must also ensure that a staff member of the appropriate rank is appointed to conduct the inquiry.⁵³ There is no set definition of what the appropriate rank is. Under the New Zealand system, most districts do not have full time internal investigators. Throughout the country there is a total of about nine full time internal investigators.⁵⁴ All other officers investigating complaints against the police would do this in addition to their normal duties. A staff member may not investigate a complaint in which he or she was personally involved or review his or her own decisions.⁵⁵

Investigators are to be guided by the philosophy that the reputation of the police force is paramount and must be promoted and defended by "setting high professional standards for ourselves and demonstrating to the public, through our willingness to be

51 *Second Annual Report of the Police Complaints Authority for New Zealand for the year Ended 30 June 1991* [1991] AJHR G.51, 8.

52 Above n 51.

53 Above n 38, 6.

54 Above n 45.

55 Above n 38, 7.

held accountable for breaches of those standards, that we deserve their trust and confidence."⁵⁶ According to the general instructions, the purpose of an internal investigation is to "reach a reliable position of knowledge from which informed decisions can be made in respect of complaints against Police or alleged disciplinary offences by Police members."⁵⁷ The primary objective is to ensure that both the officer complained about and the member of the public believe they have been treated fairly.

All correspondence with the PCA is channelled through internal affairs. Once an investigator has been appointed to a complaint, that investigator must follow standard procedure, which includes ensuring that all of the administrative filing matters have been attended to⁵⁸ and that the officer who has been complained about is advised on the subject of the complaint. Before the investigation is undertaken, the investigator will visit the complainant in person to substantiate the circumstances of the complaint, acquire any additional details, clarify the grievance and examine the option of conciliation.⁵⁹ The complainant is not told how long the investigation will take, but is told of the manner in which the investigation will be conducted, for example that all the witnesses involved need to be seen and the officer under investigation must be interviewed. The functions of the PCA are also explained.

The investigation is to be undertaken in the same way as an ordinary criminal investigation. The staff member who is complained about must be interviewed and given the opportunity to respond to allegations made. It is preferable if the interview is recorded as a signed statement. If the officer refuses to be interviewed, then internal affairs should be contacted for advice.⁶⁰ Officers have access to counsel and if they are the subject of a criminal investigation, they will be advised of this right.⁶¹

In the 1991 annual report the PCA indicated that where a member refuses to be interviewed, the PCA considers the option of conducting a separate investigation and exercising the more extensive powers given to the PCA under the Act to compel the officer to attend for an interview.⁶² There have been attempts to use this power but they have not been successful. The powers in the Police Complaints Authority Act do

⁵⁶ Above n 38, 3.

⁵⁷ Above n 38, 3.

⁵⁸ Above n 38, 7.

⁵⁹ Above n 38, 7.

⁶⁰ Above n 38, 8.

⁶¹ Above n 44.

⁶² Above n 51, 7.

not work in practice.⁶³ The PCA acknowledges that the manner in which the police conduct their investigations is largely a matter for the police.⁶⁴

There is an obligation on officers to report things that occur while they are on duty.⁶⁵ With regard to police witnesses, "[f]ailing to report promptly anything which the member knows concerning an offence or offender, or to disclose any evidence which the member or any other person can give for or against any defendant" is a disciplinary offence.⁶⁶ It is therefore possible to compel a member to give evidence that is not self incriminating.

Every four weeks, the investigating officer must provide progress reports to internal affairs, or more frequently if requested to do so. These progress reports should outline the current position of the investigation, what inquiries still need to be made and an estimation of when the investigation might be completed.⁶⁷ Copies of these reports must also be given to the District Commander and the PCA.

Once the investigation has been completed, the investigator should visit the complainant and inform the complainant of the investigation, evidence obtained and any proposed action to be taken.⁶⁸ A report must be made outlining the issues of the complaint, the evidence, conclusions and responses in respect of each issue.⁶⁹

E Conciliation

There is no provision for conciliation of complaints by the Authority. At district police level conciliation should be considered in all complaints if it is appropriate.⁷⁰ There are no clear guidelines as to when it would be appropriate, only that the process must be based on good judgement and a mutually acceptable resolution of the complaint must be reached.⁷¹ The consent of the staff member complained about is not essential, but the consent of the investigating officer and the complainant is vital.⁷² Conciliation does not usually involve a meeting of the complainant and the

⁶³ Above n 48.

⁶⁴ Above n 51, 7.

⁶⁵ Interview with Inspector Tony Annandale, Internal Affairs, Police National Headquarters, Wellington, August 1995.

⁶⁶ Regulation 9(24) of the Police Regulations 1992.

⁶⁷ Above n 38, 8.

⁶⁸ Above n 38, 8.

⁶⁹ Above n 38, 8.

⁷⁰ Above n 38, 8.

⁷¹ Above n 38, 8.

⁷² Above n 38, 8.

officer complained about. Instead, it seems to be an informal mechanism, whereby the police talk to the complainant to discover the details of the complaint and may give an explanation for the procedure adopted. If the complainant is satisfied with this explanation, the complaint will be categorised as conciliated.⁷³ No totals are kept of the number of complaints which are conciliated.⁷⁴

F Review

1 District level

Review of the police investigation is undertaken at various levels. In Wellington, once an investigation is completed, the file is forwarded to an inspector to look at it. The file is then read by the District Commander, who may require something more to be done on it. The file will include the clearance for each individual complaint.⁷⁵

2 Internal affairs

The final police review of the complaint file occurs at the internal affairs section of police national headquarters in Wellington. Currently, this team is comprised of one superintendent, four inspectors and two clerical staff. The primary objective of internal affairs is to organise and manage the disciplinary code within the department. Everyone in internal affairs does full time complaints work. All of the staff have over twelve years experience in the police service and most are ex-detectives. Internal affairs do not conduct any investigations.⁷⁶

Internal affairs read all of the four weekly reports of the investigating officers to ensure that the investigations continue to be carried out. It may be necessary to contact an investigator if the investigation is lagging. This encourages investigators to complete the investigation as soon as possible.⁷⁷

⁷³ Above n 40.

⁷⁴ Above n 40.

⁷⁵ Above n 38, 6.

⁷⁶ If internal affairs were to investigate the complaints themselves, it is estimated that they would need approximately 80 more staff members. This is not a model that the police and the PCA wish to follow, as the regional management of complaints is seen to be more effective.

 Above n 45.

⁷⁷ Above n 65.

When reviewing a file the reviewers must satisfy themselves that the investigation has been done properly, according to established investigative procedures. The conclusions reached must be sustained by the evidence uncovered. There are times when internal affairs decide that the conclusions reached are not substantiated. When this occurs they have a choice between overruling the conclusion, or sending the file back to the district to tidy up certain aspects of the investigation, so that the conclusion can be assessed again.

When internal affairs are satisfied that there are no more matters that need to be investigated, they examine the file in detail and come up with their own recommendations as to what should happen on that complaint file. Internal affairs receive the full investigative file, rather than a report on the incident. Officially, internal affairs deals with the District Commanders and they deal with the local investigators, but on a day to day basis, investigators are encouraged to ring internal affairs directly with regard to matters concerning the investigation.⁷⁸

If a file is an emergency, it will receive immediate attention at internal affairs level. An emergency would be if serious injury or death had occurred or if there was a serious crime discovered internally.⁷⁹ There is a considerable backlog at this stage of the process however, and it can take about four months for a file to be reviewed here. When internal affairs have concluded their review of the file, it is then sent to the PCA. There is daily contact between internal affairs and the PCA.

3 PCA

There are six staff members at the office of the PCA: the Authority, the deputy, a senior investigating officer, an executive officer and two support staff. There are two stages to review in the office of the PCA. One of the staff members will review a file, summarise it and make a recommendation. The Authority is in charge of the whole office and must make the ultimate decision regarding a file and whether to accept the recommendations of the reviewer. The authority may read the whole file through and will often ask questions of the person who did the initial review.⁸⁰

The reviewer looks to see that the investigation has been executed properly. This would include examining what questions have been asked, and whether there are any

78 Above n 45.

79 Above n 65.

80 Above n 48.

avenues of investigation that still need to be explored.⁸¹ When review is undertaken at the PCA the entire file is read, rather than just a report from the investigating officer or internal affairs.

The length of time it takes to review a file is entirely dependent on the nature of the complaint. When resources are stretched it may take up to two or three weeks for a file to be looked at, but most of the time a file would go with in ten days of entering the office. Major inquiries take a lot longer. The wait for files to be dealt with at internal affairs level is frustrating for the PCA, as it has a statutory obligation to act expeditiously.⁸²

The annual reports state that "not infrequently" the PCA sends the file back for further investigation.⁸³ There is no data kept on how often this occurs but it seems that this would average out as a weekly occurrence.⁸⁴ A file is sent back for further investigation if the PCA does not think that the right questions were asked or that the evidence gathered did not match the conclusions reached.⁸⁵ Often there is a debate with the police over what the evidence gathered actually means. Sometimes a file might be sent back to seek clarification of certain matters.

G Oversight of Police Investigation

Supervised police investigation is always given consideration in the vetting procedure. This method is most frequently used for the few incidents of death and serious bodily harm caused by members of the police service. It is difficult to precisely define oversight, as it can mean variety of things. It may involve the PCA actually being there on the spot while investigations are carried out, but it is acknowledged that this could result in real difficulties in impartially reviewing the investigation later on.⁸⁶

Sometimes oversight means that the office wants to keep a close interest in the file and require reports every seven days on what progress is being made and what witnesses have been seen. Oversight in this sense seems to involve outside monitoring

81 Above n 48.

82 Above n 27, section 30.

83 *Third Annual Report of the Police Complaints Authority for New Zealand for the Year Ended 30 June 1992* [1992] AJHR G.51, 5.

84 Above n 44.

85 Above n 48.

86 Above n 48.

of an investigation. The office ensures that it knows what is going on with the investigation, rather than hearing about it six to eight weeks later. When overseeing an investigation the PCA may give directions as to what it wants done throughout the course of the investigation. However, a complaint does not need to be classified as an oversight case for the PCA to give directions. Oversight does not involve sitting in on police interviews with witnesses.

Complainants are told when the PCA is overseeing an investigation and receive written updates every few weeks to let them know that they have not been overlooked. Complainants are also able to telephone the PCA for an update on how the investigation is progressing on their new 0800 telephone number.

H PCA Investigation

Sometimes the Authority carries out a separate inquiry while the police are undertaking their own investigation. This usually involves interviewing complainants and witnesses. The police and the PCA may interview the same witnesses, but if the PCA consider that the police information from a witness is unequivocal, then they will rely on the police information obtained from that interview. When undertaking an investigation, the complainant will be seen immediately and a statement will be obtained. Arrangements will be made to travel to another location to interview the police officers involved.

The Authority is now taking a much more hands on role in reviewing, so it is difficult to determine the boundaries of review and investigation. Where someone has been killed as a result of police involvement, someone from the office would be on the spot within hours, assessing the situation and giving directions as to how the enquiry should be carried out. The former Authority held hearings but the present Authority does not.

I Result of the Investigation

Once the PCA have completed the review of the file, the final recommendations for the disposal of the complaint are made. There are instances where the final decision reached by the PCA differs from that reached by internal affairs, but there is no present data on the rate of this occurrence. One PCA staff member estimated that after correspondence she had disagreed with the police over a final decision about three

times this year.⁸⁷ The PCA is beginning to collect data on instances where they disagree with the final police decision. When this occurs the file is sent back to internal affairs, who may or may not agree with the recommendation of the Authority. When internal affairs do not agree with the Authority, agreements are negotiated.⁸⁸ There are a few circumstances where the police and the PCA do not find a common ground and have to agree to differ.⁸⁹ The final decision on the disposal of a complaint rests with the police.

The PCA has the power to go to parliament if the police do not agree with its recommendation. Since the opening of the office of the PCA this power has never been utilised. It seems that there has not been any major disagreement that has made it necessary for the Authority to use this power, although the present Authority would if he had to.⁹⁰

Complaint clearance classifications are as follows: upheld, not upheld, conciliated, or withdrawn. Where a complaint has been investigated and reviewed in the normal procedure, it is the PCA who write the final letter to the complainant, which formally disposes of the complaint. Initially, this task was the responsibility of the police, but the current Authority feels that it is more appropriate if the PCA reply to all complainants. If there is action being taken the PCA would advise the complainant that, for example, "some neglect of duty is disclosed here and the officer will receive an adverse report." That would not necessarily be explained any further unless a complainant telephoned the PCA for more information. If a complaint is upheld in part, then the complainant is told which parts have been upheld.

If a complaint is found to be upheld, there are various forms of action that can be taken. The most serious of these is the formal criminal charge. If it is apparent that a criminal offence has been committed, the normal criminal procedures should be activated unless there is good reason not to.⁹¹

There is also the possibility of formal disciplinary charges being laid under the Police Regulations 1992. After being served with the appropriate documents, a staff member facing disciplinary charges has seven days to enter a plea. If a not guilty plea is entered, internal affairs appoint a tribunal in accordance with section 12 of the police Act 1958. The tribunal conducts a hearing and reports its findings to the

87 Above n 48.

88 Above n 45.

89 Above n 48.

90 Above n 48.

91 Above n 38, 12.

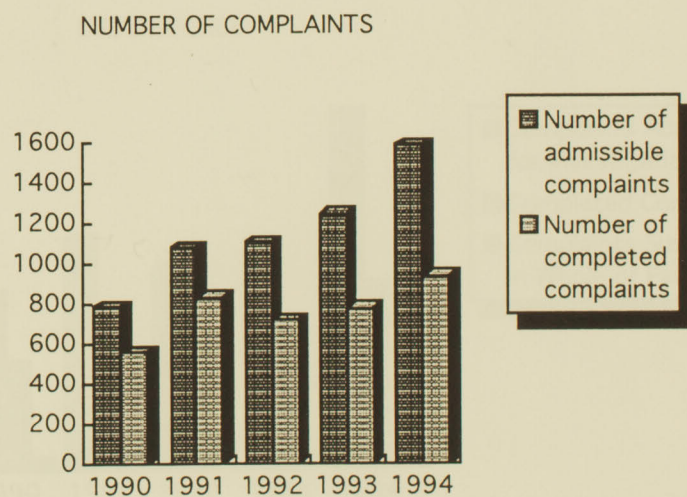
Commissioner, who is ultimately responsible for imposing any penalties on an officer found guilty.⁹² Penalties include dismissal, reduction in rank, seniority or pay or a fine not exceeding 500 dollars.⁹³

A reprimand authorised by the Commissioner, Deputy Commissioner or Assistant Commissioner may be given if a serious breach has occurred, but charges would be inappropriate in the circumstances. It is also possible for an officer to receive an adverse report or counselling.⁹⁴ No retrievable data is kept on the action which is taken on every complaint which is upheld.⁹⁵

IV COMPLAINTS DATA

A *New Zealand Data*

I *Number of complaints dealt with each year*



⁹² Above n 38, 16.

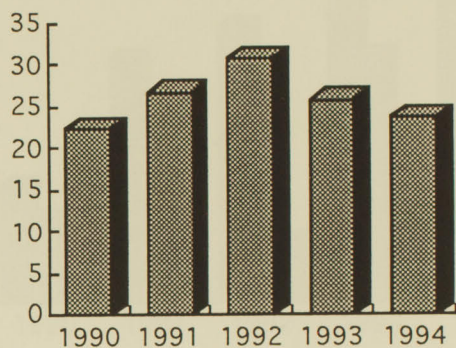
⁹³ Section 5(7) of the Police Act 1958.

⁹⁴ Above n 38, 13.

⁹⁵ Above n 45.

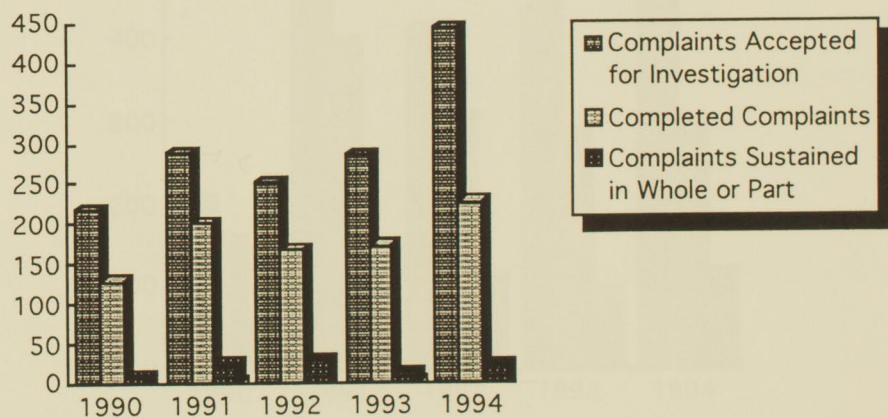
2 *Percentage of complaints sustained each year*

PERCENTAGE OF COMPLETED COMPLAINTS SUSTAINED IN WHOLE OR PART

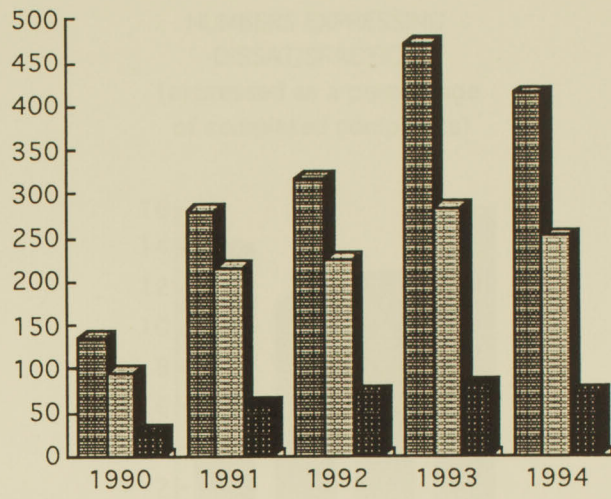


3 *Areas of complaint*

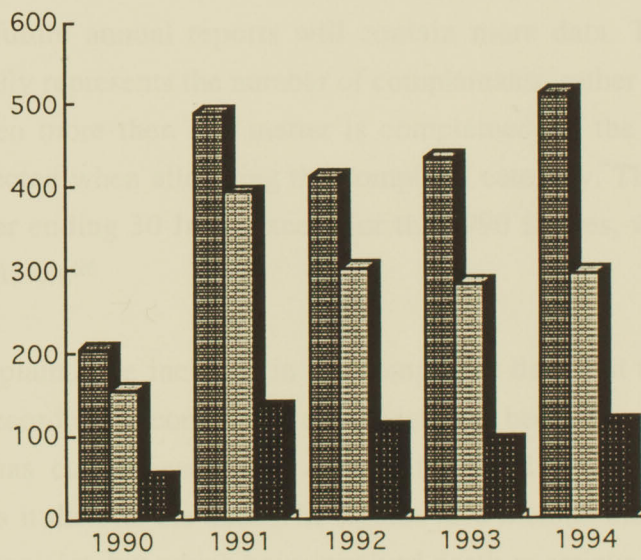
USE OF FORCE



ATTITUDE

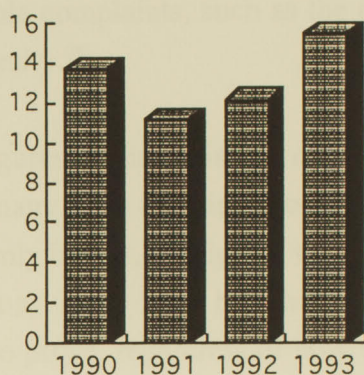


NEGLECT OF DUTY



4 *Expressions of dissatisfaction*

NUMBERS EXPRESSING
DISSATISFACTION
(expressed as a percentage
of completed complaints)



B Explanation of Complaints Data

There are few areas where adequate New Zealand complaints data is collected. It is envisaged that future annual reports will contain more data. The data recording complaints actually represents the number of complainants, rather than the number of complaints. When more than one matter is complained of, the principle cause of complaint is selected when allocating the complaint category. The dates in the data represent the year ending 30 June, except for the 1990 figures, which represent the year ending 31 March.⁹⁶

Conciliated complaints are included in the complaints data, but they have not been separated. The recording of conciliated complaints has been an area of debate. In the past the PCA has categorised them as either upheld or not upheld, which is unsatisfactory, as it distorts the data. The figures also include matters which are not the subject of complaint, but which have involved death or serious injury of a member of the public by a police person.

It can be seen that the number of complaints admitted for investigation has risen markedly. It is unlikely that this represents a decrease in police discipline. Rather, it

⁹⁶ As a result of the change in dates, the 1991 figures actually represent a 15 month period.

shows that people are more aware of their right to complain and are prepared to exercise it.

The three main areas of complaint are attitude, neglect of duty and use of force. Over the years these areas have been expanded to include 27 different categories of complaint.⁹⁷ The large increase in use of force complaints in 1994 may reflect incidents resulting in multiple complaints, such as the confrontation between police and students at Otago University.⁹⁸

One problem with these figures is that it is not clear how many complaints were sustained in full and how many were sustained to a minor degree. If most of these complaints were sustained only in part, the figures will appear misleading. The rate of substantiated complaints may seem low, but this reflects the reality that many complaints are impossible to prove, regardless of how thorough the investigation is. The number of substantiated complaints may also reflect a number of untrue complaints and errors made by complainants. The effectiveness of the system cannot be judged solely by the number of substantiated complaints.

V OBJECTIVES OF A COMPLAINTS SYSTEM

In order to assess the success or otherwise of the introduction of the PCA, it is necessary to consider the objectives of a complaints system and whether these are achieved. The system must aim to produce the right result in a manner which is fair. It must maintain the appearance of credibility in the eyes of the public and be capable of being perceived as legitimate by the police. Complainants should be satisfied with the way they are treated. Access to the system should be available to all people. A proper system should feed back into police policy and practice and provide for effective conciliation of complaints.

A *Providing the Right Result in a Fair Manner*

To fulfil this objective, the system must use appropriate ways of obtaining and assessing the evidence and reaching a conclusion which is justified on the facts.⁹⁹ The

⁹⁷ See *Police Complaints Authority Annual Report for the Year Ended 30 June 1994* [1994] AJHR G.51, 47.

⁹⁸ See *Police Complaints Authority Student Demonstration at Otago University on 28 September 1993* (Wellington, 19 December 1994).

⁹⁹ Above n 3, 118.

evidence must be gathered and examined impartially and in accordance with the law. There should not be any bias, prejudgement or selective treatment.

It is impossible to assess whether the present system in fact provides the right result. An assessment of the impartiality of the system must bear in mind that the entire complaints system is based on a process of case construction.

1 Assumptions

The idea that the police complaints process provides the right result is based on a number of conventional assumptions. The first of these is that the investigating officer conducts the investigation in the knowledge that it will be reviewed by internal affairs and the PCA and will try to be objective. The process of scrutinising files is assumed to enable the reviewer to pick up on bias and defects in the investigation. "Slovenly, biased or soft investigations are quite apparent on the face of the file"¹⁰⁰ It is assumed that the right conclusions can be reached on this basis and that the PCA thereby act as a credible control.

2 Case construction

The above assumptions ignore the existence of case construction, which produces problems for both internal affairs and the PCA. Case construction is a process whereby files are built to present a picture. Facts are always subject to interpretation. The manner in which both the complainant and the investigating officer view facts will be affected by the assumptions each has, based on individual experiences. The police are in a unique position in terms of the resources available to them and their strategic position in the police complaints system. Therefore, it is their construction which dominates the system.¹⁰¹

The entire complaints process is based on the construction of files, which will be affected by assumptions officers have about the process. Any conclusions reached during the police investigations will be the product of viewing policing through the eyes of the police culture. Assumptions inherent in the police culture may determine whether a complaint is categorised as serious, who will be a credible complainant, who should be interviewed and even what the outcome of the complaint should be.

¹⁰⁰ Above n 97, 17.

¹⁰¹ A Sanders and R Young *Criminal Justice* (Butterworths, London, 1994) 222.

An essential characteristic of the police culture is the isolation experienced by police officers due to the hours of work, disciplinary code and hostility of some members of the public. This creates an attitude of "us and them", although there may be several distinctions between each of these groups.¹⁰² There is a natural tendency for police officers to be affected by feelings of loyalty and protection in relation to their fellow officers and therefore make less effort to find incriminating evidence.¹⁰³

Where the incident complained of resulted from direct conflict with the police, it is natural, in light of the police culture, to view the complainant with a degree of hostility. When assessing the attitudes of junior officers to the complaints process, Maguire and Corbett found the existence of a confident attitude that investigating officers understood the "pressures on the street" and therefore roughness in relation to aggression directed at police was not likely to result in an assault charge.¹⁰⁴ While it may be appropriate to take these factors into account in some circumstances, it is likely that reasonable force in the eyes of police officers will differ from that which the ordinary person would classify as reasonable.

There may be characteristics of the complainants which discredit their version of the facts. Blaming the complainant is one way of neutralising police rule breaking.¹⁰⁵ Arrest, prosecution, or previous convictions of complainants may make it less likely that they will be taken seriously. Past mental illness, substance abuse or gang membership may also discredit complainants.¹⁰⁶

According to Box, the nature and extent of police crimes is obscured by justifying them in the context of police work.¹⁰⁷ The technical rules of due process are seen as hindering the capture of criminals. "Bending" these rules is seen as necessary to protect the public. Studies on the prevalence of police violence show that it is far from an exceptional occurrence, but is a regular and frequent occurrence in police work.¹⁰⁸ Police crimes such as corruption¹⁰⁹ or gratuitous violence are either denied

¹⁰² R Reiner *The Politics of the Police* (Wheatsheaf, Brighton, 1985) 93-97.

¹⁰³ Above n 9, 7.

¹⁰⁴ M Maguire and C Corbett *A Study of the Police Complaints System* (HMSO, London, 1991) 70. This British study was conducted from 1986 to 1988. Research was based on file analysis, observation and interviews with investigating officers, complainants and officers complained about. Questions were also included in the British Crime Survey 1988.

¹⁰⁵ Above n 101, 404.

¹⁰⁶ Above n 3, 122.

¹⁰⁷ S Box *Power, Crime and Mystification* (Tavistock Publications, London, 1983) 80.

¹⁰⁸ For a review on the literature on the prevalence of police violence see above n 107, 82-90.

¹⁰⁹ Corruption is defined as "departure from correct procedures in exchange for goods, services, or money". Above n 107, 91.

by the police, or seen as the actions of a few "rotten apples".¹¹⁰ Corruption is difficult to quantify because the civilians involved will not usually have cause to complain about the police. While there are serious problems with corruption in overseas police forces, it seems that the New Zealand police is not plagued with this to anywhere near the same extent.

When investigating complaints, the assumed outcome on behalf of the police is likely to be exoneration. Files may be constructed to justify no action being taken in police complaints cases, either because there is insubstantial evidence or because the behaviour is justified in the circumstances. It is also possible that the investigating officer may decide early on that the officer complained about is guilty and construct the file to make that officer a scapegoat.

The more overt forms of case construction are able to be detected by a reviewer. The most obvious form is the creation of facts, which was done in the infamous case of the "Guilford Four".¹¹¹ A more subtle way of constructing cases occurs during the interrogation process and the nature of the questions that are asked. Questions will not be asked if they encourage answers contrary to the police assumptions.¹¹² Potential witnesses may be ignored. Forensic evidence can also be manipulated.

3 *Effectiveness of review*

A flaw in the police complaints process is that only in rare cases are the facts of incidents complained of assessed at the outset by the PCA. There are no available figures for the number of complaints which involve some PCA investigation or supervision. However, on the basis that only the most serious complaints are treated in this way, it can be estimated that supervision or PCA investigation occurs in less than five percent of complaints. Most oversight could be labelled "passive", so will not involve any first hand assessment of the facts.

What the PCA and internal affairs usually assess are reports of the facts, which have been collected by the police investigators. The task of the investigators is to present a case. It is arguable that these fact summaries can be selective and misleading, with the inaccuracies being detrimental to the position of the complainant. Even when

110 Above n 107, 81.

111 Above n 101, 223.

112 Above n 101, 402.

interviews are purported to be verbatim, there is no way of ensuring that this is actually the case.

Ordinary and moderately serious complaints are still investigated entirely by the police. The manner in which the police conduct investigations of complaints against other police members is therefore the most vital aspect of the police complaint process. It is also the area most vulnerable to abuse and to public misperception.

The existence of the PCA will not have a significant effect on the outcome of most cases. Neither the PCA nor internal affairs are in a position to influence or identify case constructions and thereby ensure the impartiality of the system. If the PCA is not involved in a complaint case at an early stage, it seems that it is only possible for it to rubber-stamp the police investigation. Unless a file shows that an investigation is blatantly inadequate, it is unlikely that the PCA will be able to pick up on any bias or witnesses who have been excluded. Experienced investigating officers are able to construct cases in a manner which could not be detected by anyone reviewing the file.

The PCA needs to become involved in all serious complaints as early as possible. As the PCA is based solely in Wellington, it will not always be able to direct the conduct of investigations in other areas of the country. Additional PCA members based in other areas could help to alleviate this.

B Appearance of Credibility in the Eyes of the Community

The maintenance of public confidence in and support for the police service is vital to its legitimate existence.¹¹³ To maintain public support, the police complaints process must have the appearance of credibility in the eyes of the public. There have been examples of a lack of confidence in the complaints system leading to poor relations between police and the public.¹¹⁴

To maintain public confidence in the complaints system, justice must be seen to be done. Even if a police investigation is flawless, the fact that the police are investigating themselves creates an image of impartiality in the minds of members of the public and raises doubts about the integrity of the system.

¹¹³ Above n 3, 118.

¹¹⁴ Above n 3, 118.

It has been shown that the vast majority of police complaints are in fact investigated by the police, with little opportunity for effective independent investigation. However, it is the appearance of credibility, rather than its actual existence that is the crucial factor in maintaining public confidence. It is in this area that the PCA is likely to have made the most significant impact on the police complaints system. The mere existence of the PCA, which is always reported to be independent of the police, helps to maintain the appearance of credibility.

C Satisfaction of Complainants

The need to have a credible complaints system does not mean that every complainant must be satisfied with the procedure. Invariably, there will be complaints which are impossible to prove, regardless of how thorough and independent the investigation is. However, even if complainants are not completely satisfied with the outcome, they should not have cause for dissatisfaction in the process which achieved it.

Research on the British complaints process has found that from the perspective of complainants, the complaints process is clearly unsatisfactory. In Brown's study 60 percent of the respondents rated their overall experience of the complaints procedure as unsatisfactory, about 20 percent had mixed feelings and 20 percent were satisfied.¹¹⁵ Those whose allegations were not substantiated were the most dissatisfied group. In interviews with 100 complainants in three police force areas, Maguire and Corbett found that over two thirds of the sample were dissatisfied with the outcome of their complaint.¹¹⁶ The bulk of the dissatisfaction arose among complainants whose cases were fully investigated, rather than informally resolved or withdrawn. It was also found that satisfaction was not related to the outcome of the investigation.¹¹⁷

In both of these British studies reasons for the dissatisfaction included the time it took for complaints to be dealt with, the lack of an apology, inadequate explanations given

¹¹⁵ See D Brown *The Police Complaints Procedure: A Study of Complainants' Views* (HMSO, London, 1987) 9. This study was conducted just prior to the implementation of the Police and Criminal Evidence Act 1984 (UK), which established the British PCA. The primary form of data collection used in the research was an interview survey. It must be noted that only 30 percent of people written to agreed to take part.

¹¹⁶ Above n 104, 58-59.

¹¹⁷ Above n 104, 59.

about the investigation and outcomes and the pressure to withdraw complaints. A high proportion of complaints are withdrawn in Britain.¹¹⁸

It appears that New Zealand complainants do receive more information on the complaints process than their British counterparts. However, it is impossible to gauge what the complainant is told by the investigating officer or an officer taking a complaint. There is no standard explanation of the procedure, so it is likely to vary from district to district. Unlike their British counterparts, New Zealanders who complain directly to the PCA are not advised to contact their local police station, which can be intimidating for some complainants.

The new arrangement whereby the PCA inform all complainants of the outcome of their complaint is an improvement. Clearly, there has been a vast improvement in the information complainants receive since the criticisms of the Ombudsman in 1983. The establishment of an 0800 telephone number for the PCA also provides a means for complainants to inquire about their complaints. As the PCA is centred in Wellington, an 0800 number is a necessity. Complainants are not given details of what the outcomes actually mean, unless they specifically request it. There was some feeling that most people are not really interested in more details than they are given, but a lack of people requesting more information could be due to people not being aware they may receive this, and people wanting to put the complaint behind them. The idea that complainants are not interested in details is contrary to the findings of the British research.

The district complaints resolution scheme should make the process far more expeditious for minor complaints. However, the majority of complaints will still take months to be completed. The backlog of complaints at internal affairs is largely responsible for the delay. Internal affairs is central to the complaints system. The large backlog of complaints there needs to be remedied. One reason given for files not being dealt with promptly at internal affairs is that there has been a problem with staff turnover.¹¹⁹ Reasons for this need to be determined and the problem resolved, in order to achieve public satisfaction with the process.

The level of withdrawn complaints in New Zealand is significantly lower than in Britain. Where complainants have withdrawn complaints during the course of an investigation, the PCA has required the completion of that investigation, at least to the

¹¹⁸ Maguire and Corbett found that over 40 percent of complainants withdraw their complaints. Above n 104, 35.

¹¹⁹ Above n 48.

extent where the PCA is satisfied that the withdrawal was not a result of pressure on the complainant.¹²⁰ There is opportunity for complainants to be talked out of complaining if they initiate it at the police station and for it to be regarded as an expression of dissatisfaction.

During the first years of the existence of the PCA, there was an arrangement that whenever the police notified a complainant of the result of an investigation, they should inform the complainant of the right to refer the matter to the PCA if they were dissatisfied. The material in Part IV(A)(4) shows that the levels of dissatisfaction are relatively low. The actual levels of dissatisfaction are likely to be higher than these figures, as it requires a degree of effort to write to the PCA. If a complainant has experienced long delays in having the initial complaint dealt with then it is likely that the complainant may feel that there is no point in complaining further, particularly when the PCA would have already reviewed the file.

D Capable of being Perceived as Legitimate in the Eyes of the Police

In order to function properly and receive the vital support of the police, the police complaints system must be seen to treat officers in a manner which is fair and uphold their rights. Obviously groundless complaints should not be given too much credence. A fully independent complaints process may not be fair to police and may be regarded with suspicion and hostility by the police.

The involvement of overseas civilian review boards in the police complaints process has not been consistently successful or straightforward.¹²¹ Greater independence brings with it a host of other problems such as the obstruction of investigations by police and an uncooperative relationship with the police force. Police may regard civilian review as biased against them in favour of certain political groups and criminals.¹²²

The present complaints process does seem to achieve the aim of being perceived as legitimate in the eyes of the police. The police still have significant control of the system and the PCA seems to operate with police cooperation.

¹²⁰ Above n 51, 6.

¹²¹ See D Brown "Civilian Review of Complaints against the Police: a survey of the United States Literature" in K Heal, R Tarling and J Burrows *Policing Today* (HMSO, London, 1985).

¹²² Above n 121, 147. There have also been allegations that civilian review boards identify with the problems the police encounter in a manner which is overly sympathetic. Above n 101, 413.

E Accessible

The complaints system must be accessible to all people and aim to conduct investigations in a manner which does not alienate sectors of society. Avenues open to people for lodging complaints must include alternatives to the police themselves. Some people may not feel comfortable complaining directly to the police. This may be because they have had little previous police contact, they have a criminal record and think they will be regarded with suspicion, or fear of recrimination. An important criticism of the present system is that it favours the white middle class.

1 Middle class

The complaints procedure favours the educated middle class. Although there are provisions for complaints to be received orally, these must be reduced to writing as soon as possible. An articulate and polite complainant is more likely to present a "good character" to the investigating officer and make it seem more plausible that the truth is being told. Since most of the crimes that are investigated by the police¹²³ are committed by working class citizens, it is these people who have the most contact with police and therefore the greatest need to complain.

2 Monocultural

It seems that from a Maori perspective the police complaints process is inappropriate. Jackson has even gone so far as to say that the police complaints process "seems to embody the most monoculturally confined strictures operating within any bureaucracy."¹²⁴ The establishment of the PCA has not reduced the barriers to legal justice, which intimidate many Maori. There seems to be a general reluctance among Maori to officially lodge complaints about the behaviour of officials. According to Jackson, a central problem with the existing structure is that the procedure excludes Maori and community participation.¹²⁵

The Beattie Report found that individual Pacific Island communities viewed and treated criminal and anti-social behaviour differently. It was also noted by the

¹²³ As opposed to crimes investigated by bodies such as the serious fraud office.

¹²⁴ M Jackson, *The Maori and the Criminal Justice System A New Perspective: He Whaipanga Hou Part 2* (Policy and Research Division Department of Justice, Wellington, 1988) 226.

¹²⁵ Above n 124.

Committee that there were grounds for complaint with regard to police involvement. Pacific Islanders tend not to formally complain about police actions. Reasons given for this were feelings of shame, a reluctance to confront people in authority and an absence of knowledge of the police complaints system.¹²⁶

Jackson advocates a system which links communities and the police complaints process together.¹²⁷ The suggested means of achieving this is the establishment of police advisory committees in each police district. These bodies would be comprised of an equal number of Maori and Pakeha representatives and would hear initial complaints regarding police behaviour. It is suggested that minor matters could be dealt with completely at district level.¹²⁸

It was initially desired that either the Authority or the Deputy Authority should be Maori.¹²⁹ This has not materialised. It appears that there has been some effort to recruit Maori members to the office, but there has not been interest by qualified persons.¹³⁰ While it is desirable that the office is culturally diverse, having one Maori member is unlikely to change the way the system is perceived. An office presided over by a high court judge is likely to be seen as too close to the police. There are no plans to set up bicultural committees of the nature Jackson envisages. However, it would be appropriate to have community delegates who are able to receive complaints and refer these to the PCA, because complaining to the PCA is likely to be equally as intimidating as the police.

F Influence on Police Policy and Practice

A proper police complaints procedure needs to prevent the recurrence of the behaviour complained about, as well as deal with the individual incident of misconduct. To prevent the recurrence of the behaviour, it is necessary to look to the root of the problem and determine whether general policies, administrative strategies or training procedures need to be modified.

The present system seems to be relatively successful in achieving this objective. An example of this can be seen in the early years of the operation of the PCA, when it received a large number of complaints relating to the execution of search warrants.

¹²⁶ Above n 20, 4.

¹²⁷ Above n 124.

¹²⁸ Above n 124.

¹²⁹ Above n 19, 6735.

¹³⁰ Above n 48.

The PCA recommended that the police adopt the standard practice of having a copy of the warrant to hand over to the occupier.¹³¹ The Commissioner accepted this. As a result, a source of recurring complaints was reduced. An important area where the PCA has recently influenced policy has been in police vehicle pursuits.¹³² Following the recommendation of the PCA, the Commissioner established a multi-disciplinary committee to examine high speed police vehicle pursuits, with a view to making recommendations. The PCA has also had input in the areas of cell suicides and training of police dogs.

G Provisions for Conciliation

A successful complaints procedure must provide for effective conciliation of complaints. The costs of investigation, the long delays and the exclusion of complainants could be eliminated by an effective conciliation process. The mainstreaming of what was originally termed alternative dispute resolution procedures indicates that informal resolution of grievances has widespread support.

In a true conciliation process the complainant and the officer complained about should meet. The parties themselves should decide whether an independent and impartial mediator should be appointed, or whether they wish to negotiate the outcome themselves. The direct party involvement and flexibility resulting from this are essential. The parties should work together to bring about a solution that everyone is happy with. Emotions can be expressed.

Although the present system purports to provide for conciliation of complaints, what is labelled "conciliation" actually bears little resemblance to a true conciliatory process of dispute resolution. Rather, it could more appropriately be labelled "pacification of the complainant". The fact that the consent of the officer who is the subject of the complaint is not essential for conciliation violates the very notion of conciliation. Conciliation under the present system occurs on an ad hoc basis and involves the complainants accepting a police explanation, rather than expressing their own views and coming to their own solutions.

¹³¹ Above n 51, 8.

¹³² See *Police Complaints Authority Report by the Police Complaints Authority on the Investigation into the Death of Simon Keith Wright in Auckland on 27 April 1994* (Wellington, 1 August 1994).

To do more than pay lip service to the notion of conciliation, there needs to be a change in the focus of the complaints system. Provisions need to be established to bring about the meeting of the complainant and the officer and the appointment of a mediator, if necessary. The possibility of conciliation must be explored as early as possible, and in all situations not involving the direct input of the PCA.

VI RESOURCES

A major problem for the office of the PCA is the level of funding it receives. In its first year of operation the office received 664 000 dollars by way of grant from the Department of Justice. This sum has remained relatively constant over the years of the operation of the PCA, although it dropped to 650 000 for the year ending June 1994. This level of funding allows only moderate first hand investigation of complaints. In January 1994 the Authority took the issue of funding up with the Minister of Justice and successfully increased the PCA budget to 725 000 dollars.

In light of the fact that the number of complaints have more than doubled since the establishment of the PCA,¹³³ it is unlikely that this increase will be sufficient to enable the PCA to actively supervise or investigate more complaints. The district complaints resolution scheme introduced earlier this year should provide the Authority with more resources to allocate to investigations, but the level of complaints referred to the districts is not sufficiently high to create the amount of resources necessary.

There is a small staff at the office of the PCA. Predictably, the largest number of complaints come from the greater Auckland area. With the PCA situated in Wellington, it is expensive to have the PCA travel to different centres to interview witnesses and conduct its own analysis of the complaints on a first hand basis. Although an increase in staff members would greatly increase the budget of the PCA this would be offset to some degree if members were situated in each of the main centres .

¹³³ See Data Part IV (A)(1).

VII CONCLUSION

The PCA was established to introduce an independent element to the police complaints process and build public confidence in the complaints system. The complaints system must be fair to the police and the complainants and must maintain public confidence that the system is in fact fair and thorough. The system should be easily accessible and provide for effective conciliation. It is difficult to assess whether these objectives have been met in the absence of relevant data.

It has been shown that there are inherent biases in the police investigation of themselves. The PCA review all files that are not deemed minor. It appears that this process is thorough but without first hand assessment of facts, the picture which emerges from a file may be misleading. There is no data on the number of times the PCA send the file back for more investigation. For the most part, the PCA is not able to ensure the impartiality of the system. With recommendatory powers only, the PCA lacks force.

For the truly serious cases of complaint there must be full independent investigation. The process of gaining initial assessment of the facts needs to be extended. This may involve extending the office of the PCA to include members in Auckland and Christchurch. This will require more resources and will no doubt create opposition.

There is no data assessing public satisfaction and confidence in the system. Improvements in the area of complainant information are commendable, but could be extended to give more detail. The delay in the handling of complaints needs to be rectified to achieve complainant satisfaction. Places where minority groups do not feel threatened could be established to receive complaints. The conciliation process need a thorough re-examination.

The PCA is an important development in achieving the aims of a proper complaints system. At the moment, the PCA is limited in the extent to which it can influence the investigation of most complaints. This remains the domain of the police. The PCA can, however, create an image of legitimacy.

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