

## **Lesson-learning not Blame: Realistic or Optimistic?**

**By Rob Heaton and Steve Tong.**

### **Introduction**

The British model of policing has been based on local accountability, community engagement to activate the community in presenting and responding to crime and enhance confidence and legitimacy. At the same time the dual roles of policing of reassurance and law enforcement reflects two contradictory roles of support and problem solving through to targeting and use of coercion. Measures of public confidence have become more important in measuring police performance. However, criticisms of an ineffective complaints process pointing to early retirements of police officers, lacking independence in investigating police misconduct and wrong doing and a lack of public trust in the system has resulted in reform with the introduction of the IPCC (now the IOPC) and significant changes to regulation. Despite these changes the police still investigate a large proportion of complaints against them, a high proportion of unproven misconduct cases remain and criticisms remain about the effectiveness of the police complaints system.

Recent years have seen widespread acceptance within police and political circles, that the complaints system is, if not broken, at the least in need of reform. The subject was addressed by the Home Affairs Select Committee 'Policing for the Future' report, published in October 2018. The various contributions of the Police Federation, Police Superintendents' Association and National Police Chiefs' Council were united in advocating a less personal blame-seeking approach, in order to promote the learning of lessons and service improvement. In one important respect, the police appeared to be pushing at a recently-opened door. The Director General of the newly-formed Independent Office for Police Conduct (IOPC), Michael Lockwood, had told the Federation in May that he supported the use of genuine mistakes as opportunities to learn, with disciplinary sanctions being reserved for the most serious cases. In June, a Police Foundation/KPMG report 'How do we move from a blame culture to a learning culture in policing?' addressed the topic. Contributed to by representatives of the police, academia, police scrutiny bodies and others, the report made several recommendations aimed at fostering learning from mistakes.

This show of unanimity was overtaken by events. It was reported in October that proposed amendments to Police Regulations, including the redefinition of misconduct and gross misconduct, had been shelved indefinitely due to governmental Brexit pressures. The aim of this article is to assess how realistic the aim of replacing a negative culpability-seeking culture with a more positive alternative, might be. Does the grass merely seem to be greener on the other side of the fence? It is suggested that that a 'lesson learning' model has inherent difficulties which are seldom articulated, and lacks an evidence base which could be addressed by means of targeted research.

### **Complaints - Some Context**

The ambition of lesson-learning is not so much new, as a long-repeated theme. Current disciplinary procedures are prescribed by the Police (Complaints and Misconduct) Regulations 2012. The accompanying Home Office Circular 23/12 states that 'The procedures are intended to encourage a culture of learning and development for individuals and/ or the organisation' (Para 2.3). Identical aspirations were expressed in relation to the earlier Police (Conduct) Regulations 2008 and the Police (Conduct) Regulations 2004. The implication is that in practice this encouragement has failed, although the reasons are unclear.

IOPC figures provide a sense of the scale of the complaints system. The last decade has seen a fairly steady rate of 30-35,000 complaints against police per year. Although the figure may appear substantial, it amounts on average to fewer than three complaints per force, per day or put another way, about one complaint per officer, every four years. Moreover, the proportion of 'neglect of duty' allegations has risen from 19% of the total in 2004-5, to 39% in 2015-16. The complaints landscape is increasingly dominated by concerns which amount not so much to police acting badly, as failures to meet rising public aspirations.

As Peter Waddington reminds us, policing is in large part about the exercise of authority with the aim of achieving order and provisional solutions in a plethora of situations. Arrests alone amount to over 1 million per year in England and Wales, illustrating that policing is in large part, inevitably confrontational and contentious within an adversarial system. In the context of a fractious and non-deferential world, the number of complaints may be viewed as surprisingly low.

In common with disciplinary processes in other professions and the criminal justice system, a key problem of the complaints system is its effects upon individuals in an already stressed workplace. The Superintendents' submission to the Select Committee pointed to 'lengthy and costly investigations which are often entirely disproportionate to the original issues or behaviour complained of'. The investigations averaged 8-12 months, against the backdrop that in a recent resilience survey, half of its members had reported anxiety symptoms whilst a quarter exhibited signs of depression. These concerns about excessive timescales and disproportionality were echoed in a 2016 Federation members' survey into demand and welfare.

### **Causes of Disproportionality**

Two related factors drive maximal investigations: accountability and risk aversion. The recent consultations around the subject have produced strong responses that whilst reflex blame-seeking should be avoided, clear cases of disciplinary breaches should be dealt with firmly. The likelihood is also that disciplinary decision-makers would wish to avoid any perception of an ambiguous stance towards standards and probity. The consequence of this risk aversion is clearly seen in the PSAEW's submission to the Select Committee in respect of the 38 complaints against its members in 2015.

Again, the context is that these are not common events, amounting to fewer than one complaint against a superintendent per police force, per year. Nonetheless, there appears to be a case for some reform. We might reasonably expect that as in criminal matters ranging from speeding to assaults, the greatest number of cases would be at the lower end of seriousness. In the event, 26 of the 38 cases were assessed as being of gross misconduct – potentially dismissable matters. The perception of this finding as routine preliminary 'overcharging' is strengthened by the outcome that of the 22 cases resolved by the end of the year, 16 saw no further action and just one dismissal had taken place.

This approach appears to be at odds with the Home Office guidance on police officer misconduct:

- 'The investigation into the complaint must be proportionate having regard to the nature of the allegation and any likely outcome' (Para. 2.46)
- 'Assessments of conduct which are unnecessarily severe serve only to undermine an investigation, or increase any perception of unfairness on the part of an officer subject of investigation' (Para 2.129).

The guidance also makes it clear that initial assessments can be properly revised upwards or downwards at a later stage.

It is not clear whether 'overcharging' occurs routinely in relation to the bulk of cases which affect lower ranks. Research would be required in order to establish whether this is the case.

### **Learning not Blame? Some Challenges**

*Can the seriousness of an allegation be accurately assessed from the outset?*

The culture of the police complaints system is sometimes compared unfavourably with that in the aviation industry, where 'near misses' in flight are said to be treated as learning experiences. In reality, this is hardly a valid comparison. The aviation examples relate to the interaction between a person and a mechanical system or a closely-prescribed set of procedures. There is no complainant and transgressions are relatively clear.

In contrast, police complaints normally relate to interactions between two or more human beings, who may have completely different perceptions of the same set of events. 'Confirmation' or 'myside' bias means that opinions readily become entrenched. A more realistic comparison with the aviation industry might be passenger perceptions of their treatment in the event of airport disruption.

In the policing sphere, a recent example of the difficulty of complaint categorisation, was provided by a recent IOPC report. In summary, a custody officer struck a violent detainee on an arm, to encourage its withdrawal from a cell flap. The officer was charged with assault and found guilty at court, but cleared on appeal. A subsequent disciplinary tribunal found that the use of force was proportionate and necessary. Different interpretations of the evidence reached very different conclusions.

*Could an effective 'learning from mistakes' system be implemented?*

No organisation could assimilate even a small fraction of lessons which might be learned from several thousand complaints, per year. Moreover, many complaints may relate to an individual complainant-officer interaction, producing little by way of transferable learning. This raises the question of how successful a learning model for individual officers might be.

*Can 'mistakes' be readily identified?*

Officers are sometimes described as 'overly defensive' in relation to their actions. However, defensiveness does not imply wrongdoing, nor that in a less adversarial system, they might for example, apologise and agree to modify their behaviour. The most obvious reason for defensive reactions is that officers simply do not believe that their actions were wrong, and are liable to the same confirmation bias as anyone else. The extent of officer unwillingness to take part in lesson-learning is unclear, but it is potentially a substantial barrier. According to the IOPC, 42 per cent of complaints were dealt with by way of local resolution in 2016-17. This extent of this method of disposal means that there is potentially a significant proportion of 'agreements to disagree' although research would be required to confirm this or otherwise. The majority of investigated complaints are not substantiated and this provides an additional pool of potential unwillingness to engage with a lesson learning process.

*Would there be public acceptance of moving away from a 'blame culture?'*

This question was discussed by contributors to the Police Foundation/KPMG report in June 2018. No definitive conclusion was achieved. The point was made that a key part of the police role is to identify transgressors and hold them to account. It is not surprising that a similar mentality applies to internal transgressions. Not to do so, might seem to amount to an inconsistency of accountability standards.

In general, public expectation was considered to be poorly understood and not necessarily equivalent to journalistic hyperbole.

Frank Furedi has written about how society has become obsessed with risk aversion, with the media and politicians identified as key risk-mongers. This has led to a blame culture where trust in authority is scarce and people's thinking is dominated by complaints and litigation. According to Furedi, even natural disasters see finger-pointing and the attribution of blame. If this perspective is even partly correct, there is some consistency between media and public perceptions. The current public reflex of searching for blame in the name of accountability, may be very difficult to negate.

### **Some Conclusions**

In September 2017, the North Yorkshire PCC Julia Mulligan described the police complaints system as 'largely broken', failing both the public and the workforce. This diagnosis echoed concerns expressed within and outside the service, but appears to be overstated. Complaints handling is an arena where popularity is not synonymous with effectiveness and it is easier to identify problems than answers. Although officers are undoubtedly concerned about attracting complaints, they are on average, actually subject of complaints fairly seldom. A key aim of any system of accountability and sanctions is deterrence, and the system seems to be relatively effective in this respect. Moreover, it deals with highly contentious interactions where the protagonists may have opposing viewpoints and where no independent and objective evidence exists. Overall, the complaints environment is one which is unlikely to achieve high satisfaction ratings and its achievements may be under-appreciated.

A wholesale move to a mainly lesson-learning approach is likely to encounter resistance from the public and certainly from a combative media. Greater readiness to accept of error in contested cases might trigger more civil claims and undermine public perceptions of officers' authority.

The nature of police disquiet about the complaints system also gives rise to questions about the need for radical reform. The main perceived problems are of disproportionality and excessive timescales. Existing Home Office guidance stresses the importance of proportionality and timescales are substantially within police control, but these levers appear to be trumped by risk aversion, perhaps in the face of ambiguous circumstances. Moreover, lesson learning is already encouraged and it is unclear whether a move in this direction under a different complaints regime, would be substantial or marginal. Risk aversion generates considerable inertia against change. Further inertia is added by the large aggregate number of complaints and their contested nature. The current system which is able to accommodate disagreement, albeit to the limited satisfaction of the parties involved. A lesson-learning system might find considerably difficulty in accommodating these problems.

New legislation to encourage a move towards lesson-learning in place of individual blame is to be welcomed. However, the answers to some of the problems of the current system lie in the police's own hands and it is not apparent that the service is ready to capitalise fully upon renewed regulations. The delay in implementation gives the service an opportunity to debate the nature of a lesson-learning system and how it would merge with current practice. New approaches towards risk-averse decision making and the implementation of lesson-learning need not necessarily wait for legislation. Experience suggests that if and when it is enacted, police commentators may still find themselves revisiting the subject a decade later.