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RESTORATIVE JUSTICE AND POLICE COMPLAINTS

A REPORT BY

**THE INDEPENDENT POLICE COMPLAINTS
AUTHORITY**

Prepared for the PCA by Josephine Dobry

MARCH 2001

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My thanks also go to the Thames Valley Police officers who posed for the photographs on the front cover.

Jo Dobry March 2001

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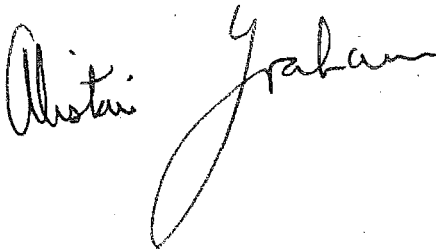
FOREWORD

SIR ALISTAIR GRAHAM, CHAIRMAN, PCA

Restorative Justice has been welcomed as an effective way of making offenders face their victims and others directly affected by their misbehaviour. It has underpinned traditional methods of justice in Australasia and was dramatically used in South Africa by the Truth and Reconciliation Commission.

If it can be used by the police service with offenders why can't it be used when officers have themselves offended? It is from this starting point that our member Jo Dobry has collaborated with Sir Charles Pollard and Thames Valley Police. In turn they have been guided by Terry O'Connell from Real Justice in New South Wales.

I thank them for their work and hope that this report will fuel a debate both inside and outside of the police service. With legislative changes planned we have the perfect opportunity to bring restorative justice and other techniques such as independent mediation fully into the police complaints system.

A handwritten signature in black ink, reading 'Alistair Graham'. The signature is written in a cursive style, with the first name 'Alistair' and the surname 'Graham' clearly legible.

ALISTAIR GRAHAM

RESTORATIVE JUSTICE AND POLICE COMPLAINTS

INTRODUCTION

At the beginning of the year 2000 an officer was sacked after 18 years service with a police force for saying "sit down you black bastard" to a 14 year old black youth. This was as a result of a complaint made by the boy's mother who had been present during the police's legitimate dealings with her son and who had been understandably outraged by the officer's use of language. Twelve months later, having successfully appealed and been fined 13 days' wages, he was back at work.

At the time, some people may have felt that the sacking of the officer was the right and proper outcome for the mother's complaint. Certainly in the wake of the Stephen Lawrence Inquiry it was probably the only possible outcome.

However it is a fact that the boy's mother never wanted the officer to be dismissed. Indeed she welcomed his re-instatement, making the following forceful point:

"If he was really racist, sacking him wouldn't solve the problem. It wouldn't help me or my son. Just sacking them [police officers] breeds hate. You have to make those kind of police realise why they can't say and do these things."

Daily Telegraph, December 23 2000

It is arguable that the "disciplining" of the officer, whether by sacking or the less Draconian fine, did nothing to meet the needs or expectations of the key stakeholders involved in the process: the complainant, the officer, the police force and the community it polices.

The boy's mother certainly wanted the officer's superiors to be aware of what he had said and to do something about it. But she clearly wanted more than that. She wanted that police force as a whole to think about the words that he used and why he had used them, and then to look behind the use of language at the harm and damage that those words had caused and why they should cause such offence and then, most importantly, set about repairing that damage, learning and moving on from that experience in a constructive way.

From the point of view of the police force they had certainly been seen to take robust action initially. But their first decision would have lost them 18 years' investment in the officer's experience as a police officer. The "punishing" of the officer –whatever form it took - may have sent a clear message to other officers to learn from his example, but how deep will that learning go? Might they be wondering whether, if their colleague had simply said "sit down you bastard" he would not have nearly lost his job?

As for the officer, he is no doubt a sadder and wiser person. He may have learnt to keep his mouth shut under provocation, but at what personal cost, after a process which will have lasted nearly two years. Moreover what chance has he had of making amends to the mother or the boy, or of recognising the compassion shown to him. He may well also justifiably feel embittered by a process which from his point of view has treated him as a scapegoat for an offence which could easily have been committed by another officer.

The object of this paper is to show that there are alternative ways - more searching, more constructive - of dealing with police complaints. The paper will focus mainly on Restorative Justice, explaining what this is and how it has been shown to be effective in dealing with victims and offenders before making a case for applying the principles of Restorative Justice to the police complaints process. The paper will detail the experience of using Restorative Justice with police complaints in New South Wales and also in Thames Valley Police. Finally the paper will pull together the experience of other police forces in England and Wales in terms of less formal, more creative and more responsive ways of responding to police complaints.

The object overall is to show how these alternative ways of responding to police complaints, all linked to the principle of Restorative Justice, could be used not to replace but to *complement* the existing complaints system based as it is primarily on blame and punishment.

CHAPTER 1 – RESTORATIVE JUSTICE – THE BACKGROUND

What is Restorative Justice?

Restorative Justice, in simple terms, is to do with restoration, restoring the harm done by a criminal act. Restoration of the victim so that he or she can accept what has happened to them and move on from that experience. Restoration of the offender to a law abiding society having seen and understood the damage caused, together with his or her responsibility for that damage. Restoration also to the community for the damage caused to it or its members.

If traditional justice is about establishing blame and delivering punishment, Restorative Justice is about individuals taking responsibility for their own actions and finding their own solutions to repairing the damage that has been caused. Key elements of Restorative Justice are:

- participation of the victim and the offender
- community involvement (whether this is community in the widest sense or the more particular sense of individuals associated with either the victim or the offender and who also have a stake in the harm that has been done)
- problem solving
- flexibility/creativity¹

Where traditional justice separates the victim from the offender, Restorative Justice brings them together. Where traditional justice quantifies the degree of culpability of the offender and meets out punishment in terms of financial penalty or prison sentence accordingly, Restorative Justice allows the victim and offender to decide how and what reparation should be made. Punishment is not excluded but it is not the main focus. Crucial to the victim is that the reparation may be nothing to do with money or repairing physical harm, but everything to do with repairing emotional damage. Where the victim can see that the offender understands the psychological harm done and has taken responsibility for this, the victim is freed from the damage of their experience, not to forget about it but to be able to recover and move on. Restorative Justice is an essentially forward looking process. Having explored and recognised all the damage caused by an event which can of course include not only the victim

¹ Marshall, T F (1999) *Restorative Justice: an Overview*. HMSO

but the offender and members of their close communities as well, Restorative Justice then looks to the future in the hope of avoiding what has happened in the past. You could say that Restorative Justice begins where traditional justice ends.

It may be helpful here to explain the distinction between Restorative Justice and mediation or conciliation. Tony Marshall of the Restorative Justice Consortium, and former head of Mediation UK, explains simply that Restorative Justice is a principle whereas mediation is a technique. In other words Restorative Justice is a philosophy, a way of doing things, of resolving problems. There are any number of alternative ways and techniques for achieving this including mediation and conciliation.

The History of Restorative Justice

In one sense the history of Restorative Justice is as old as civilisation in that the principle of showing genuine remorse and making meaningful reparation is fundamental to civilised human relationships. Restorative Justice also has deep roots in a number of tribal cultures which have developed their own forms of community justice. Native American sentencing circles in North America and Maori justice in New Zealand are two examples.

However Restorative Justice in its current form emerged in the late 1970's, and over the last two decades has increasingly established itself as a way of dealing particularly with young and first time offenders.

Much of the groundbreaking work was done in Australia and in New Zealand, and also in North America during the 1980's. Thames Valley Police pioneered the use of Restorative Justice in England when they began a number of pilots in 1995. Other forces, and partner agencies such as social services were also exploring alternative approaches. The Crime and Disorder Act 1998 introduced Youth Offending Teams, many of whose members have been trained in restorative justice.

It is important to stress that there is no one single theory of how Restorative Justice should work in practice. Many different models have been, and still are, evolving in different parts of the world. In understanding how Restorative Justice can work, what we are effectively doing is drawing on a number of individual practitioners' experiences of what they have

found to be effective. As Tony Marshall puts it² "Restorative Justice is not a single academic theory of crime or justice but represents in a more or less eclectic way, the accretion of actual experience in working successfully with particular crime problems."

How does it work?

The centre and catalyst of the Restorative Justice process is normally a meeting or "conference" where all those who have a stake in what has happened come together. A typical conference would involve both the victim and the offender together with any friends or family who may be relevant and who have been involved and/or are affected. In the case of the offender for instance there might be a social worker or a probation officer or in the case of a juvenile perhaps a school teacher.

It is essential to understand that these conferences can only take place with the consent of all those involved. It is not impossible for a conference to take place without either the victim or the offender but the ideal is for all relevant people not only to be present, but to be present in a spirit in which they are prepared to listen to each other and to move forward. The role of the facilitator is crucial. The effectiveness of the conference may depend very much on the amount of time spent in advance by the facilitator with each of the parties to the conference exploring their experiences and preparing them for what may happen at the conference.

During the conference each person will talk in turn about what has happened and how it has affected them. The object is to identify the different aspects of harm done to each person, not only the victim but also the friends and family of the offender, and indeed the offender as well will have suffered or been affected in different ways. By talking about their experiences face to face both the victim and the offender may begin to see each other as individual people, and while the victim may be able to come to terms with what has happened to them, equally the offender may be able to take responsibility, and importantly be seen to be taking responsibility, for the damage that he or she has caused.

A typical conference will end with an agreement between the parties in terms of any reparation that may be done. This might involve for instance an apology, the repayment of some money which had been stolen or perhaps some voluntary work for the community. The

² Marshall, T F, (1999) *Restorative Justice an Overview*. HMSO

real reparation, however, may be more psychological, with the victim having been able to separate the offender from the offence, gained an understanding of how the offence to them came to be committed and in this way move on from the damage that has been caused to them. The offender plus family and friends, will have had a chance to show remorse and make real amends to the victim.

Is it effective?

It is easy to be enthusiastic about the concept of Restorative Justice, but does it really work? Research in this country and elsewhere³ has shown a consistently high level of victim satisfaction with the process as compared with traditional forms of justice, ie going to court. If one accepts that a victim would be unlikely to agree to a meeting in the first place unless there was a prospect of a successful outcome, one can see that a high level of satisfaction – typically in the region of 75% - is likely. Research has also shown that there is a higher level of completion of the reparation agreements⁴ which conclude the conferences as compared with reparation ordered by a court.

It is more difficult to assess and evaluate the effects of Restorative Justice on offenders. Research in this country⁵ has shown a small positive effect on re-offending rates and certainly a common comment from offenders is that the Restorative Justice process is a much more painful one (and therefore a more effective one) than going to court.

In terms of costs, there may well be short term savings by using the Restorative Justice, as opposed to the court, process even though the time spent by the facilitator in preparing the conference may well be considerable and therefore expensive. However the real saving would be by removing offenders permanently from the criminal justice system with all the many benefits that that would bring. It is too early yet for there to have been any long term research in this area.

³ eg Umbrecht & Coates (1992) *Victim Offender Mediation an Analysis of Problems in Four States of the US*. Minneapolis: Minnesota Citizens' Council on Crime and Justice; Umbrecht, M (1994) *Victim Meets Offender*. Molsey, NY: Criminal Justice Process; Umbrecht, Coates & Roberts (1997) *Cross – National Impact of Restorative Justice through Mediation and Dialogue*. ICCA journal on Community Corrections.

⁴ Marshall, T F (1999) *Restorative Justice an Overview*. HMSO

⁵ eg Dignan, J (1992) *Repairing the Damage*. University of Sheffield; Warner, S (1993) *Making Amends*. Aldershot: Areburg

Limitations

Any restorative process can only take place if the parties to it are willing to do so. By definition the conferences have to take place by consent. A good facilitator will not impose a meeting on victims or offenders who clearly do not wish to take part in or benefit from the process.

The success of the process and the conferences depends very much also on the individual facilitator. While there are the beginnings of guides and models and some supervision of the conferencing process by those who are using it, it can still perhaps be a somewhat arbitrary process where one cannot necessarily be sure of the expertise and impartiality of the facilitator.

As compared with the open court process, a restorative conference can be a very private form of justice. There is a risk here to both the victim and the offender where the conferences are not facilitated sensibly and in an even-handed way.

Summary

Overall, Restorative Justice practitioners would never set out to argue that this process should replace the existing traditional criminal justice process. For all the reasons given above, Restorative Justice must remain an available alternative, a *complement* to the traditional justice system.

CHAPTER 2 – RESTORATIVE JUSTICE FOR COMPLAINTS?

Restorative Justice and Public Complaints Generally

While Restorative Justice for victims and offenders in a criminal context has become well established, as detailed in the previous chapter, the idea of applying these principles to a complaints process is relatively new. Mediation is becoming more commonly used in resolving internal and workplace complaints and disputes, but initiatives taking these principles forward in terms of dealing with complaints from the public are extremely rare.

One such project has been run by Leicestershire Health Service. This was a conciliation project where members of the public were invited to meet with medical practitioners against whom they had made a complaint. A meeting would take place with a conciliator and a medical advisor present.

In terms of applying Restorative Justice principles to the **police complaints process** the projects in New South Wales and in Thames Valley Police outlined in the two following chapters are, as far as I know, unique, although there is one project in the States where the local Police Review Commission have used mediation to resolve complaints.

Restorative Justice and Police Complaints

In order to make the case for applying the philosophy of Restorative Justice to the police complaints process it is important to look in detail at some of the needs and expectations of the key stakeholders in this complaint process: the complainant; the officer, and the police force concerned. The public also has an interest in seeing that a complaint is effectively resolved.

The Complainant

A complainant's needs and expectations when making a complaint are varied and can be quite complex. Most complainants want an effective response to their complaint and many would like it to be immediate. While some are looking for retribution others merely seek an

apology and some reassurance that their bad experience will not be repeated for others, that lessons will be learnt. Some complainants will be straightforwardly seeking compensation.

Most complainants, if asked, would say that they want a complaint process which is open and fair. But what does "fair" really mean? Common sense and experience suggests that most complainants, having made their complaint, would want that complaint upheld. Already there is a conflict here since under the current formal, legal, evidence-based system, the majority of complaints cannot be substantiated. (For readers unfamiliar with the complaint process and the role of the PCA, a flow chart is provided at Appendix A.)

Over the last ten years the proportion of complaints where some form of disciplinary response was made has increased so that by 1988/99 29% of investigated complaints produced a "result" in terms of action taken and therefore supported the complaint made. It is integral to the operation of the PCA that the outcomes of complaints are both fair and based on evidence. However what these figures mean in practice is that in the region of 70% of complainants see no obvious result from their complaint and therefore feel often extreme dissatisfaction with a process which from their point of view has been unfair.

At the PCA those five or six Members dealing with the discipline review of cases spend many hours a week talking to complainants after the outcome of their case has been decided. Sadly, complainants only tend to contact us when they are dissatisfied. Particularly where their complaint has not been substantiated, a common theme to the dissatisfaction is that because their complaint has not been supported, we do not believe them and that they are accused of being liars. There is a feeling that the genuinely bad experience that many people have had is being denied, is being invalidated. We try and explain that this is not the case but simply that the current, formal, legal complaints process aimed at establishing blame and delivering punishment, based only on evidence which will stand up in court or at a hearing, does not lend itself to addressing or resolving the issues around the bad experience that they have had.

Many complainants even at this late stage, are grateful for the time spent listening to them and are reassured by being able to explain in their own words to someone in authority what they have actually been through.

A complaints and discipline officer in one of the rural forces, now long since retired, explained his approach to resolving complaints in this way. "I listen", he said "and if it takes all morning, if it takes all day, I listen because they have had a hard time and they deserve it". For some people just listening is enough. But for many listening is just the beginning.

It is in the nature of complaints against the police that they often arise out of desperately sad situations where the police involvement is secondary. Extreme examples are when a family member has died violently or in a road crash and a complaint is made about the way the police have handled this. A mother may complain that she was not allowed to kiss her dead son goodbye because he was being "treated as a crime scene". The expectations of such a mother in making her complaint are unlikely to be met under the current blame/punishment process, irrespective of whether the officer's actions were legitimate or not. Probably they were, he was only "doing his duty".

Members of the public can be confused about why they have made a complaint and what they are expecting. The following example is typical of many:

Mrs Adams' 15 year old daughter Julie had been arrested one evening for a burglary she could not possibly have committed. Her description matched the suspect and she was wrongly identified by an eyewitness. Julie spent over 5 hours in custody before the situation was cleared up and she was released. Both Julie and her mother having had no previous experience of the police in this context, were traumatised by what happened.

There had been some irregularities in Julie's arrest and the officers concerned were disciplined accordingly. Mrs Adams remained angry and frustrated, saying she simply wanted "this whole thing never to have happened." She also blamed the eyewitness who had wrongly identified Julie and a lot of her anger was aimed at this person. Further Julie who was now 16, had left school and was applying for jobs. She felt confused and awkward about her experience in custody and did not know whether this should be declared in any job application or at interview. The Authority arranged for a senior officer within the police force concerned to write personally to Julie explaining to her that she had no criminal record and apologising to her and her mother for the obvious distress that this whole incident was still causing them.

In this example, the punishment of the officers was almost irrelevant to Mrs Adams. While some complainants feel that nothing short of the dismissal of an officer will do, many others talk about wanting to meet officers face to face so that they can bring home to them what police action has meant to them as individuals. Like Mrs Adams they are more interested in a direct, personal acknowledgement of their experience in a way which would be meaningful to them.

Overall it would be fair to say that most complainants are looking for an open, fair and speedy process. A process in which their wishes, their needs and their experience is listened to and responded to.

The Officer

In many ways the officer's needs and expectations of a complaint process are a mirror image of the complainant's. They too are looking for an open, fair and speedy process. It is important to recognise that they also can feel like the victim of a complaint. There are many situations in which they are complained about simply because they are doing their jobs. The receiving of complaints is an inevitable result of policing the streets.

Some officers are robust about the process of being complained about and take complaints in their stride, while others feel hurt and sometimes angry when a complaint is made against them. This is particularly the case where an officer has been trying hard to deal with a difficult situation. There are also some complaints which are felt to be malicious and certainly many where the officers feel that criticism is unjustified.

Like complainants, officers need to be listened to so that they can give their explanation of what happened and to fill in the human details around the bare facts. This can be the case equally where the officer has done wrong, has neglected his or her duty or handled a situation badly. Under the current system, the underlying reasons for what happened will only ever come out, if at all, in formal interview. The complainant will never get to hear that the officer concerned was, for instance, having problems at home, or was working overtime, or had just come from a very difficult and violent situation.

Officers, like complainants, often feel left out in the cold by the current complaint process. At the beginning of the process they are served with a notice giving them details of the complaint made against them. It may be months before they are offered the opportunity of giving an interview about the allegations made against them. It may be many more months still until the officer finally learns of the PCA's decision on the complaint. Where there are sub-judice considerations, the complaint can "hang over" an officer for over a year and overall the problem of delays in resolving complaints for officers as well as complainants is one that the PCA is painfully conscious of. A relatively minor matter can sometimes delay the transfer of an officer from one force to another, where the receiving force will not accept that officer until the complaint has been resolved.

The Force

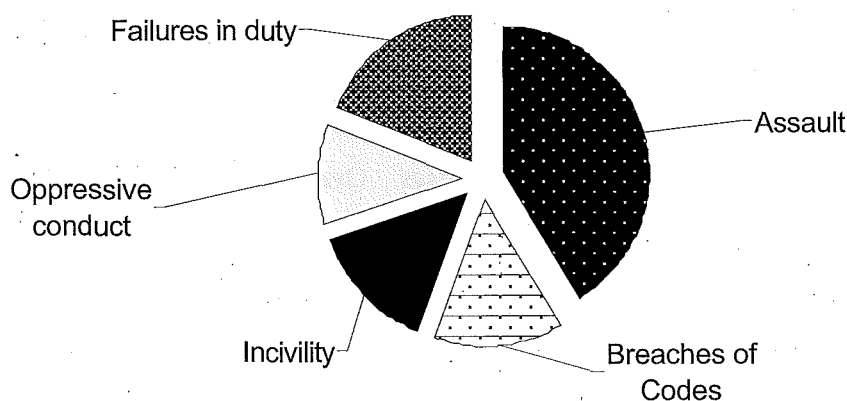
Again a quick and effective way of resolving complaints at source, can only be of benefit to individual police forces. The police force as a manager of a service needs a process which will not only satisfy its customers (the complainants) but also be acceptable and supported by its employees (the officers). Crucially the force needs a process which will enable it to manage as effectively as possible, to improve practice generally as well as the performance of individual officers. The current punishment-based misconduct process with its ultimate sanction of dismissal is sometimes talked about in terms of a way of getting rid of the "bad apples". But what if the apple is not rotten to the core? And just how effective as a learning process are lesser sanctions to a substantiated complaint or following a guilty finding at a misconduct hearing? Will the fine of a few days pay, a caution or simply "advice" from an officer's superior really make a difference to future behaviour?

Above all perhaps the individual police force needs a complaints process which will build trust and confidence between itself and its public.

Restorative Justice for all Complaints?

In theory there is no situation which might not lend itself to some form of restorative intervention. In practice some constraints would have to be imposed, particularly where a complaint involved criminal allegations. In addition there are some types of complaint which lend themselves much more to the restorative approach than others. For instance complaints where it is the “system” that is at fault rather than individual officers, complaints of attitude or unprofessional or oppressive behaviour, complaints of incivility which on their own constitute the fourth largest category of complaint received by the PCA.

5 largest areas of complaint 1999/2000



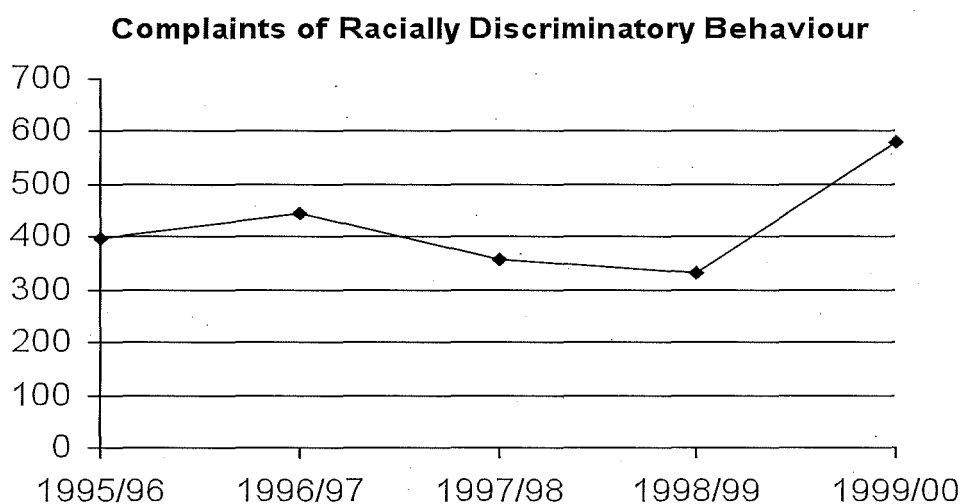
It is important to stress that transposing the “victim” and “offender” roles onto the complainant and the officer respectively, need not act as a straightjacket. Although the complainant will always be in some sense the victim, the police officer will not necessarily be the offender. One of the strengths of the various Restorative Justice conference models used by a variety of practitioners, is that they are infinitely adaptable to the needs of the particular people and situation which the conference is dealing with. The Restorative Justice process is better suited to deal with the emotional and psychological issues of complaint as opposed to the physical or factual, for instance, in an assault or a straightforward breach of one of the Codes of Practice which govern police action.

Complaints about attitude and behaviour are notoriously difficult to prove under the current formal legal evidence-based system. If a complainant feels that an officer’s behaviour has

been rude, oppressive or indeed racist, then that experience is real to them. The fact that the current process cannot prove that real experience for the complainant unless there are physical words or actions which have been witnessed by other people, does not make that experience any less real. The result is frustrating not only for the complainant but also for those investigating the complaint. A common reaction of complainants when told that their complaint cannot be supported on evidence is that we are telling them that they must be lying.

Even when these sorts of complaint can be proved it is not at all clear that simple punishment, be it advice, reprimand or even dismissal, is the answer. The example of the officer dismissed, and subsequently re-instated, for saying "sit down you black bastard" to a young black youth has already been cited in the introduction to this paper. The point was made that whether the officer was dismissed or fined, the "punishment" can have achieved little in a constructive sense other than showing the police to be taking robust action.

It is perhaps in the area of complaints about racism and discrimination that the greatest opportunity and challenge to a restorative approach arises. Over the last 18 months, and since the publication of the Macpherson Report, the Authority has seen the number of complaints of racism rise dramatically.



Few of these complaints are substantiated. Many recorded complaints of racism are not fully investigated because the complainant fails to follow up an initial complaint or provide a statement. It is worth adding that many officers when told of the complaint deny vehemently

that they are racist or hold racist attitudes. This is hardly surprising, since the likely outcome of an admission would be dismissal. If it were possible for officers and complainants to meet face to face, to explore each other's attitudes and experiences, to see each other as individuals rather than stereotypes, to consider an apology as a strength rather than a weakness, then maybe society could move forward.

Finally it is essential to continue to stress two things. Firstly, restorative intervention will only work if those taking part are prepared to give the process a go. It is a process that cannot be imposed. It follows secondly, that there will always be a need for a more traditional complaints process, not only for those complaints which are not of themselves suitable for the restorative process such as serious criminal matters, but also for those complainants and officers who do not wish or are not able to entertain the idea of restorative intervention.

CHAPTER 3 – RESTORATIVE JUSTICE AND COMPLAINTS IN NEW SOUTH WALES POLICE

Terry O'Connell has spent over 30 years as a serving police officer and has only recently retired from the New South Wales Police in Australia. He is a pivotal figure in the development of theory and practice in Restorative Justice. Pioneering work done by O'Connell in the 1980's and early 1990's, has provided the foundation for much of what is being done in Australia, this country and many other places in the world. It is important to acknowledge that much that is in this paper and indeed the Thames Valley project itself owes an enormous amount to the training, guidance and information provided by O'Connell.

In the mid 1990's by which time the use of Restorative Justice in dealing with the victims and offenders was well established, certainly in Australia, O'Connell embarked on a pilot project to explore the potential for applying Restorative Justice principles to police complaints. O'Connell's working practices in New South Wales have formed the basis of the Thames Valley project which is detailed in the following chapter. It is therefore worth looking in some detail at how O'Connell himself explains how he works.

Fair Process

It will have been seen from the previous chapter that the need for "fairness" is central to the needs of all those people who take part and have a stake in the complaint process. It will also have been seen that fairness itself is quite a complicated notion, and what may seem fair to the officer for instance may seem unfair to the complainant. O'Connell focuses on the concept of fairness or "fair process" and how this can be achieved. He defines the central idea of Fair Process as follows:

"individuals are most likely to trust and co-operate freely with systems – whether they themselves win or lose by those systems – when Fair Process is observed."⁶

O'Connell explains that there are four different ways of dealing with conflict, in our case the conflict between the complainant and the police encapsulated in the complaint: -

⁶ Kim and Mauborgne, Harvard Business Review, 1997

- the punitive approach where punishment is imposed and something is done TO the offender
- the neglectful approach, where the conflict is ignored
- the permissive approach, where you do something FOR the offender in terms of training, advice, rehabilitation, in effect apologising for the offender and doing little for the victim
- and the restorative approach, where the conflict is resolved WITH and BY the victim, the offender and all those involved.

O'Connell expands on this by spelling out both what Fair Process is and what it is not. The following tables are taken from Kim and Mauborgne, Harvard Business Review, 1997.

**The Three Principles of:
Fair Process**

- **Engagement:** Involving individuals in decisions that affect them by asking for their input and allowing them to refute the merit of one another's ideas and assumptions.
- **Explanation:** Everyone involved and affected should understand why final decisions are made as they are. Creates a powerful feedback loop that enhances learning.
- **Expectation Clarity:** Once decisions are made, new rules are clearly stated, so employees understand new standards and penalties for failure.

What Fair Process Is Not

- Decision by consensus
- Does not set out to achieve harmony
- Does not set out to win people's support through compromises that accommodate every individual's opinions, needs or interests.
- Democracy in the workplace
- Managers forfeiting their prerogative to make decisions, establish policies and procedures.

Finally, O'Connell spells out what Fair Process can achieve.

What Does Fair Process Achieve?

- Fair Process Builds Trust and Commitment,
- Trust and Commitment Produce Voluntary Co-operation
- Voluntary Co-operation Drives Performance, which
- Leads People to go Beyond the Call of Duty,
- By Sharing Their Knowledge and Applying Their Creativity.

The Probationary Officer and the Hotelier – Conference Case Study

It is easiest to imagine the process working by focusing on an actual case study. What follows are the details of a conference conducted by Terry O'Connell in New South Wales.

Case Study

A male 22 year old probationary constable (18 months' service) was off duty with a group of male friends (non-police) staying at a seaside hotel.

They consumed a lot of alcohol and got involved with a group of women staying at the same hotel.

Later in the evening one of the women complained to the hotel manager about the conduct of some of the men.

When management tried to intervene they were verbally abused by some of the men.

Hotel management later found that a window had been broken and other property damaged, which they suspect was caused by the men.

Management was further verbally abused when they challenged the men about the damage, so they called the police.

Police investigations found that the probationer played a significant part in the abuse, but could not determine who from the group caused the damage.

One woman made a specific complaint about the conduct of the probationer.

There was insufficient evidence to justify criminal proceedings.

O'Connell explains how this complaint would have been dealt with under the normal complaint procedures and how it actually was dealt with.

As in England & Wales (see Appendix A for a complaint process flow chart), the normal “adversarial” approach contrasts with the approach actually taken :-

ADVERSARIAL APPROACH (Normal procedures)

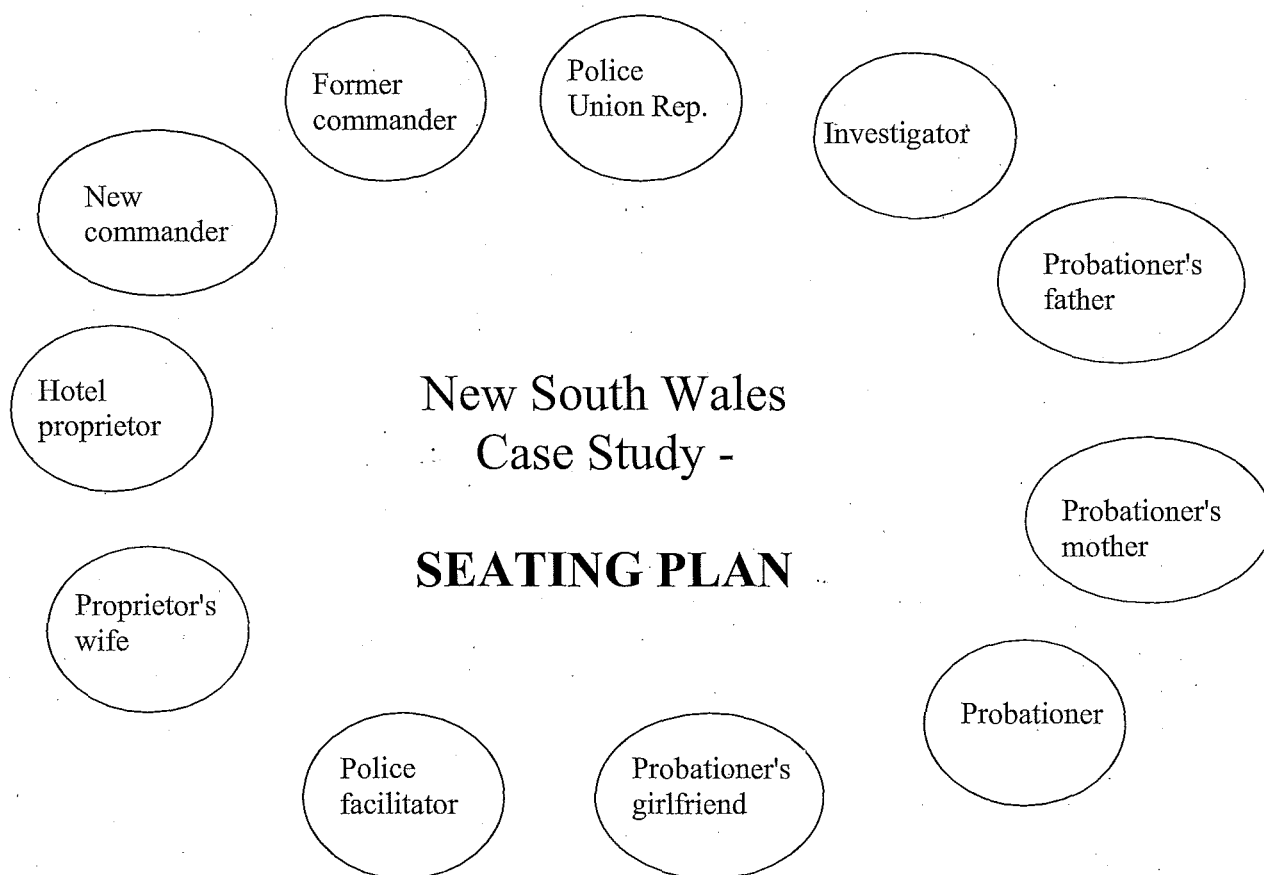
- complaint recorded and investigated by Internal Affairs
- advice sought re preferment of criminal charges
- decision made to proceed using disciplinary processes
- show cause to retain officer
- officer asked to respond
- decision made by Commissioner – officer dismissed

RESTORATIVE APPROACH (Actual procedure)

- complaint recorded and investigated by Internal Affairs
- advice sought re preferment of criminal charges
- decision made to proceed using disciplinary processes
- show cause to retain officer
- officer asked to respond
- restorative conference conducted
- decision made by Commissioner – officer retained, fined and confirmation of appointment deferred. Reparation made to hotel

Having established that all the relevant people were willing to attend a conference and were open to the possibilities that it might present, the following people were invited to attend: the probationer, his mother and his father, and his girlfriend; the hotel proprietor and his wife; the complaint investigator who had already completed his inquiry as to the role played by the probationer and established that there was insufficient evidence to bring criminal proceedings; a representative from the police union (the equivalent of our police federation); and finally the probationer's former Commander for whom he had been working when the incident happened and his new Commander who had taken over subsequently.

In order to imagine the dynamic of a conference it is helpful to be able to visualise it. The parties to the conference would normally sit in a circle in a room large enough to hold the requisite number of people and importantly perhaps, no central conference table or physical barrier between those taking part. The seating plan for the probationer's conference that we are dealing with is shown below.



It will be seen that the probationer and his girlfriend and family are grouped together. They are seated to the right of the facilitator while the complainants, the hotel proprietor and his wife are seated to the facilitator's left. The four police representatives are placed between the probationer's family and the complainants with the new Commander sitting next to the complainant, the hotel proprietor.

O'Connell's model of a restorative conference tends to start with the offending officer as it did in this case. The probationer was invited to talk about his behaviour, to comment on it and to assess how it had affected other people. The probationer was very embarrassed about what had happened. He had been very drunk and could not remember much about it. He deeply regretted the incident and was painfully conscious that his career was now on the line. He knew that his parents were very upset and disappointed in him, as was his girlfriend who was also a probationary police officer.

The probationer's parents and his girlfriend in different ways explored their reactions to what had happened. A common theme was that the probationer appeared to have acted totally out of character. He had been focussed on joining the police service and both he, and his parents in supporting him, had worked hard to this end. His family were more upset for him than for themselves, fearing that he might not be able to fulfil his ambition of being a police officer.

At an early stage in the conference the complainants, the hotel proprietor and his wife, talked through their experience. The hotel proprietor's wife particularly had been angry and upset about the language used and the incident as a whole. The hotel proprietor made the point that their views of the police, who they relied on to deal with the occasional problem at the hotel, had been considerably undermined by discovering that a police officer was actually at the centre of this particular incident. There had also been considerable damage done to hotel property.

The police investigator who had looked into the proprietor's complaint had talked to the officers who had arrived at the hotel on the night in question to deal with the incident. These officers, he said, were embarrassed at having to deal with a colleague and disappointed to see such behaviour in the probationer. This theme was picked up by the probationer's old Commander who had picked up quite a lot of bad feeling on the division amongst the probationer's colleagues. Having said this he had been keen to support the idea of a

restorative conference, because having seen the probationer develop over a period of 18 months he felt that the officer had great commitment and potential and like his family felt that he had on this one occasion acted out of character.

The union representative emphasised this point and stressed the probationer's previous good record and behaviour. His view was that dismissal in the circumstances would be unfair and also a waste.

Towards the end of the conference the probationer's new Commander was asked for his perspective. He explained that he had been extremely concerned about the image of the police under his command within the local community. His instinct had been that behaviour such as the probationer's should be firmly stamped on to send a clear message both to the local community and to other officers. He had been reluctant to take part in the conference but had been interested in the different perspectives given. He found it painful but very important to hear for himself how the incident had affected the hotel proprietor and his wife.

During the course of a typical conference each person is encouraged to speak fully and uninterrupted. The facilitator has to strike a balance between stopping untimely and repetitive interruptions, explaining that each person will be allowed time to speak in turn, and allowing spontaneous and sometimes emotional expressions of views and feelings to take place where these are actually part of the healing and moving forward process.

In this conference it was clear towards the end that the probationer and his parents were very affected by the experiences of the hotel proprietor and particularly his wife who had suffered perhaps more psychologically from the incident. The hotel proprietor and his wife in turn responded to this. They could see that the probationer had perhaps acted out of character and listening particularly to his parents about the prospects of his career. They definitely did not want him dismissed. It had also been important to them to hear from the two Commanders particularly the new one. They felt reassured that their complaint had really been taken on board.

This last, was crucial to the new Commander who eventually decided, though not during the course of the conference, that the probationer should keep his job.

At the end of the conference all those present were invited to stay for a cup of tea or coffee and some biscuits. This is all part of the restorative process and while a reparation agreement can provide physical proof of the conference and its conclusion, often what happens over a cup of tea when all the parties to the conference can talk to each other less formally is just as important.

The O'Connell model and Changing Police Culture

In understanding O'Connell's work it is important to stress that his conferences are given structure by following a flexible script of key questions which are put to the various parties in a specific order during the course of the conference. The key questions for the offending officer will be:-

- Tell us what happened?
- What were you thinking at the time?
- What have you thought about since?
- Who has been affected by your actions?
- How have they been affected?
- What do you think you need to do to repair the harm or regain some trust?

The victim/complainant and other parties will be asked similar questions allowing them to explain their initial and subsequent experience, to reflect on how they and others have been affected, and to consider a way forward.

O'Connell sees this open-ended approach - exploring and inquiring rather than judging and condemning - as the key to overcoming what he identifies as the main problem and challenge in introducing restorative practices into the police complaints process. This is effectively to do with changing police culture where, as he puts it, "normal behaviour is strongly influenced by blame and punishment and reinforced by command and control management styles".

O'Connell feels that if police supervisors were able to adopt this approach, using the key questions in his model where there was a need to challenge inappropriate behaviour, this would have a considerable impact on the level of complaints. "It provides supervisors with an effective way of challenging problematic behaviour through early intervention, rather than

recording a series of incidents and then relying on formal disciplinary processes to respond. I have little doubt," he continues," that an analysis of complaints against police would reveal that a significant number would involve police officers with some history of problematic behaviour." For O'Connell the key to a successful and sustainable application of restorative practices to police complaints will be the "degree to which supervisors and managers integrate restorative elements in their day to day working practices".

In other words, a restorative approach cannot be applied in isolation to a misconduct process. It needs to be an integral part of the management and running of the organisation as a whole. It is only in this way that the full potential of restorative justice and the necessary change in police culture can be achieved.

As the following chapter shows, this is precisely how Thames Valley have approached the introduction of restorative justice to the misconduct process, with a series of management workshops, run by O'Connell to back up the transition.

CHAPTER 4 – THE THAMES VALLEY PROJECT

History

In 1995 Thames Valley Police first introduced the principles of Restorative Justice in dealing with victims and offenders. By the end of 1997 a number of projects focusing particularly on young and first-time offenders had been set up and were working well. The force had become actively involved in training not only their own officers and those from other forces, but also people from many walks of life interested in using the restorative conference methods. They had also started to explore the potential for introducing Restorative Justice principles into their own internal complaints procedure. This development came as a consequence of having trained police and civilian staff in the use of restorative practices on workplace tensions, conflicts and grievances. A number of workplace conferences were run to resolve often difficult and complex issues.

The obvious next step was to look at the potential for translating the Restorative Justice principles into the external police complaints process. At the PCA's suggestion, a number of informal meetings were held during the course of 1998 and 1999 involving Chief Constable Sir Charles Pollard, representatives from the local branch of the Police Federation, Terry O'Connell from New South Wales, and key representatives from the Professional Standards unit and the Restorative Justice Consultancy. As a result, in November 1999, a Restorative Justice and Police Complaints project was formally set up and Inspector Jackie Keyser was appointed as project manager.

Initially the project group sought to find a way of piloting Restorative Justice as a straightforward alternative to a formal complaint investigation. In the PCA's view this remains one of the key potential uses. However the problem was how to do this without compromising the public's right to a formal investigation which is after all the cornerstone of the police complaint's legislation as embodied in the Police and Criminal Evidence Act 1984 and subsequently the Police Act 1996. The issue, put simply from the point of view of the Police Federation, was that if officers were to be expected to co-operate with restorative intervention in resolving a complaint, it would be a major disincentive to know that following a restorative conference there would be nothing to stop a complainant pursuing a formal investigation, effectively having two bites at the cherry. (Interestingly, our limited experience

to date with the pilot project is that officers do not view this as being as big a problem as anticipated.)

In February 2000 members of the project group met with representatives from the Home Office and their legal advisor. It was accepted that under the current legislation it was not possible to proceed with a pilot involving restorative intervention as a straightforward alternative and final resolution to a formal complaint investigation. However, it was agreed that the legislation did allow for restorative intervention in the following four distinct situations:

Model 1 – Restorative intervention as an alternative to formal investigation of a minor complaint suitable for Informal Resolution.

In this situation restorative intervention (RI) has to work within the confines of the Informal Resolution process as defined by section 69 of the 1996 Police Act. It can only be used where the conditions of section 69(3) are satisfied, ie that the complainant consents and the chief officer is satisfied that the conduct complained of, if proved, would not justify criminal or disciplinary proceedings. In line with the legislation the complainant maintains the right to proceed to a formal investigation should the Informal Resolution not proceed or fail for some reason.

Model 2 – Complaint from a member of the public, following an investigation as an alternative/additional closure to advice, written warning or a misconduct hearing.

In this situation the complaint, which by definition will not be suitable for Informal Resolution, is investigated in the normal way. If, as a result of the investigation, there is a recommendation for some form of disciplinary response then RI can be used either as an alternative to the advice or written warning or indeed misconduct hearing which might normally follow or indeed as part of that process. For instance the force and the PCA might agree that the best way of giving an officer advice would be for him or her to take part in a restorative conference where officers, managers and complainant(s) could all take part in the process.

Model 3 – Following an internal investigation, as an alternative/additional closure to advice/written warning or misconduct hearing.

This process is exactly the same as Model 2 except that it deals with internal complaints or investigations into officers.

Model 4 – RI as an available disposal at a Misconduct Hearing.

Here RI would follow either a full misconduct hearing or a guilty plea, and again can be used as an adjunct to the sanction or indeed as a way of determining what the sanction should be.

Following the Home Office approval of the parameters within which the pilot could operate there was further consultation with senior police officer organisations and the Police Federation nationally before Thames Valley were in the position to proceed with the pilot project in April 2000.

Also, and importantly, in the run-up to introducing the pilot project, Thames Valley undertook a training programme of all senior managing officers so that there was an understanding of how Restorative Justice was going to be applied to external complaints and also an understanding of the potential for the police as managers in resolving and improving poor performance. For a period of six weeks Terry O'Connell and Jackie Keyser conducted an intensive programme of workshops with managers and also including police federation representatives. The following case study shows how the restorative approach was being encouraged to integrate into the operation of the force management structures.

Case Study

A Superintendent attending a workshop had explained that he had just taken command of a specialist unit. He mentioned that he was having difficulty working with and motivating his new team who were resistant to changes he felt were essential to the better running of the unit. At the end of the 2hour workshop he asked whether a restorative conference might be appropriate to resolve his problem. A conference was duly arranged and held within a matter of weeks. The Superintendent was provided with a forum in which he could explain his commitment to the changes and the rationale behind them. Equally the officers were able to address their concerns and explain the tensions that had arisen. Both sides were able to talk openly about the adverse effect that the situation had had on them and to agree a way to minimise this in future.

Overall, it has been and still is, absolutely crucial to the working of this project that Thames Valley as a force have a familiarity and commitment to Restorative Justice principles in general. Individual officers already had a body of experience showing that Restorative Justice worked with victims and offenders. The force needed to take that one step further in order to embrace and support its potential for dealing with individual officers.

The Pilot Project

Since April 2000 then, Thames Valley Police have been actively looking to use restorative intervention within the parameters agreed with the Home Office as set out above. It is necessarily a learning process in many ways.

Considerable thought has been given to who should be the facilitator and whether complainants and officers would respond better or worse to a civilian rather than a police facilitator. In March 2000 a facilitator training programme was held for the project with a mix of police and civilian staff and including a member of the PCA. This was run, like the workshops, by the project manager Jackie Keyser and Terry O'Connell.

One issue that was raised was the degree to which the traditional model of conferencing, based on dealing with victims and offenders, and as outlined in the previous chapter, might need to be adapted for dealing with officers and complainants. The point here is that in the criminal justice context there is obviously a victim and an offender. In the complaints field

however, while the complainant is clearly a victim, it does not necessarily follow that the police officer is an offender. One of the main reasons that the majority of complaints made by members of the public are unsubstantiated by the PCA is that the officer complained of was "simply doing his job". It was felt by the trainers however that the restorative conference model, though structured, was easily adapted to allow for the lack of an obvious "offender". Thames Valley's experience in running restorative conferences to resolve neighbourhood and community disputes - where both "sides" will be in a sense both victim and offender - have proved to be relevant and helpful.

Although the facilitator training programme was a useful catalyst for focussing on the practical details of adapting conferencing to the complaints process, it was felt that in the initial stages of the project the conferences would be best facilitated by those with the most experience. To date some twenty conferences have been conducted including both internal and external complaints. The bulk of these have been conducted by the project manager Jackie Keyser, with a few facilitated by other experienced members of the Thames Valley Restorative Justice Consultancy.

Although the project manager has necessarily worked in conjunction with Thames Valley's Professional Standards Department - since it is this department which is the main source of identifying suitable cases - it was felt important that the project itself should be located separately from the Department. This was to emphasise to complainants and perhaps particularly to officers that the project was genuinely distinct from the traditional misconduct process. Possible cases for restorative treatment have also been referred to the project manager by the PCA, and officers outside the Professional Standards Department.

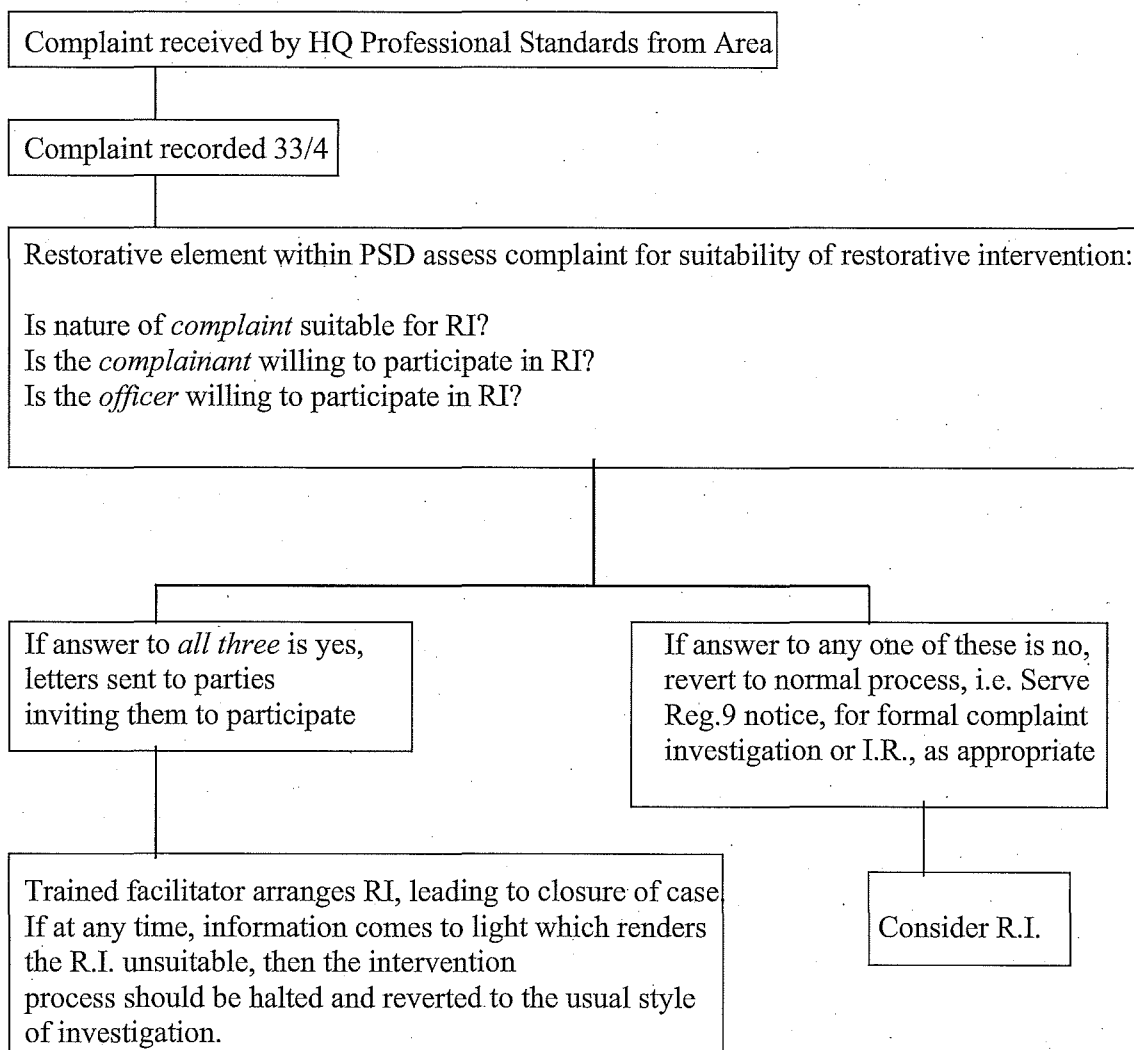
Not all referrals have led to a conference. As explained in previous chapters a conference should only take place if both parties genuinely understand what the process involves and are prepared to take part. Where a referral has not resulted in a conference, the reason has normally been that either the complainant or the officer - there is no particular pattern - has been either unwilling or unable to take part.

The best way to illustrate the experience of the Thames Valley Project to date is to give a series of case histories selected from the twenty conferences which have been run over the last twelve months. Where possible these have been chosen to illustrate the four different

models for applying the process as outlined above. In the pages that follow the case histories are set out, facing a flow chart which shows how the model fits into the complaint process. (For those unfamiliar with the complaint process itself, a separate flow chart is provided at Appendix A).

Restorative Interventions in the police complaints process

Model 1 - RI as an alternative to Formal Investigation of minor complaint suitable for Informal Resolution (which has not been successfully resolved at Area level)



© Courtesy of Thames Valley Police

Case Study 1

A woman suffering from mental health problems attended the police station to seek medical help. She was detained under the mental health act and committed to the local psychiatric

hospital. On release, she complained about the way she had been dealt with. She attended with her father and solicitor, also present were the officer and his inspector. The officer was happy to attend 'because I've done nothing wrong'. This is such a common response, and technically correct. However, the conference gave the lady an opportunity to say how she really felt, and the officer gained an insight that he would not have otherwise had, and felt he might do things differently in the future. He himself, and agreed by the others present, felt that police training on mental health was insufficient. As a direct result of this conference, a paper was sent to the chief constable to request additional training for staff, which is under consideration. The woman and her father offered to help with that. Feedback from the family was positive, feeling that this was the best way to resolve the complaint. Her solicitor also wrote to express confidence in this approach.

Case Study 2

An officer used excessive force whilst restraining a juvenile who had spat on him in the custody suite. This was witnessed by police and the juvenile's social worker, who was present as appropriate adult. The social worker and the officer then had an altercation before the officer was removed by his supervisor. The officer had 20 year's exemplary service, but lately had become overwhelmed with work load and constant verbal abuse from juveniles on his beat. The juvenile did not make a complaint against the officer, but the officer's supervisors realised that action needed to be taken to prevent a reoccurrence. There were health issues for the officer. There was an expectation from other officers that 'something should be done'. The officer went sick and agreed that he should not return to his beat. The supervisors wanted a restorative conference with him and the social worker, but he felt too unwell at that time. On his return to work he was given protected duties. Some five months later the social worker asked the sergeant if a meeting could still be arranged. It was held, and present were the officer, his sergeant and inspector and the social worker. The social worker felt comfortable enough in the police station not to have anyone else present, although this was offered.

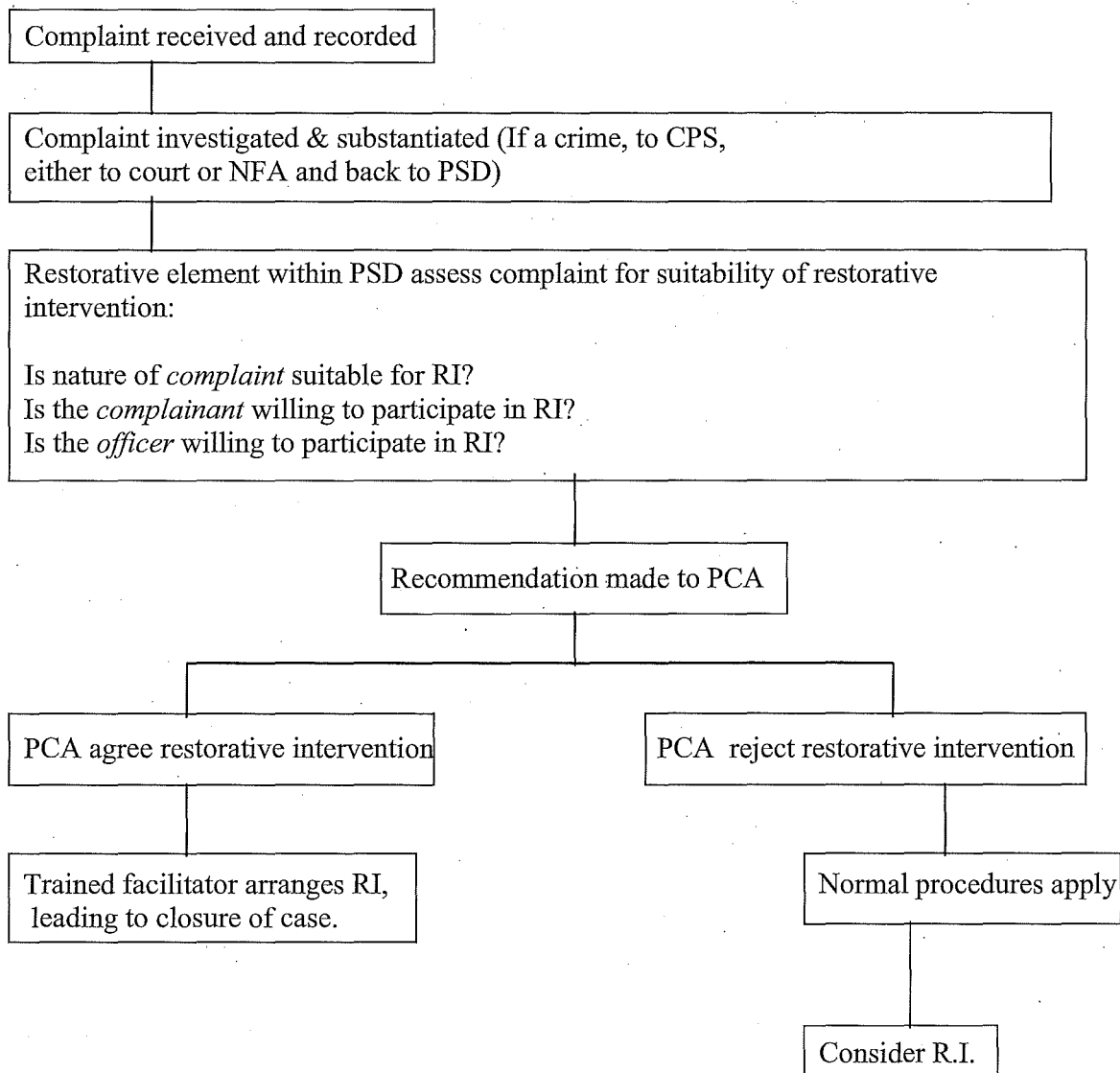
The officer spoke about the circumstances, and his feelings since the incident. He was very remorseful and expressed surprise that he should be the one in this situation. He also said how he had put the incident behind him, whilst he did attend voluntarily, he didn't really see the need for this conference.

The social worker spoke about her role as appropriate adult and the difficult situation he had placed her in. She identified common ground between the two organisations and shared frustration with the system. She also explained that she had asked for the conference because a week previously she had met the officer for the first time since the incident, when he visited her office, and she had felt embarrassed. (The officer had not recognised her). The sergeant and inspector spoke of their difficulties in maintaining the balance between providing support in a welfare context for the officer, taking steps to ensure that the real causes were tackled, whilst acting to ensure others did not see him 'getting away with it'. All this was considered against 'are we doing the right thing?'.

The officer concluded by saying how he now realised that there were others who had needs as well as himself, and how the conference had been of value in putting forward his explanation. The social worker expressed satisfaction that this case had been taken seriously, that the police were sincere in putting things right, and hadn't conducted a cover up, which she thought might have happened.

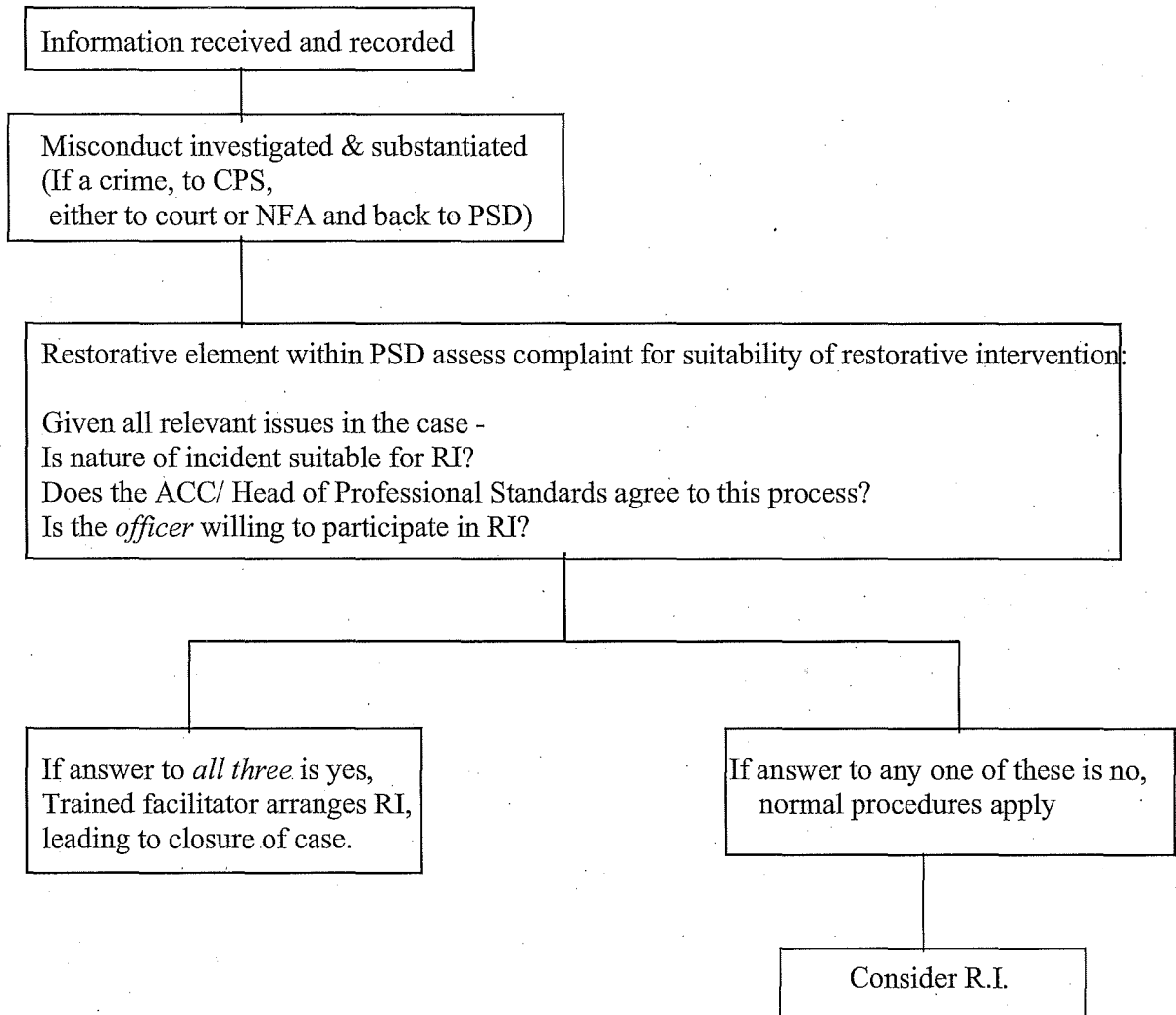
Subsequent feedback from all participants showed they all felt this was the best way to resolve this situation.

Model 2 - complaint from member of the public, not suitable for Informal Resolution following completed investigation and substantiated complaint - RI as alternative closure to Advice/Written Warning or Misconduct Hearing



© Courtesy of Thames Valley Police

Model 3 - internal investigation, not suitable for Informal Resolution following completed investigation and substantiated complaint - R.I. as alternative closure to Advice/Written Warning or Misconduct Hearing

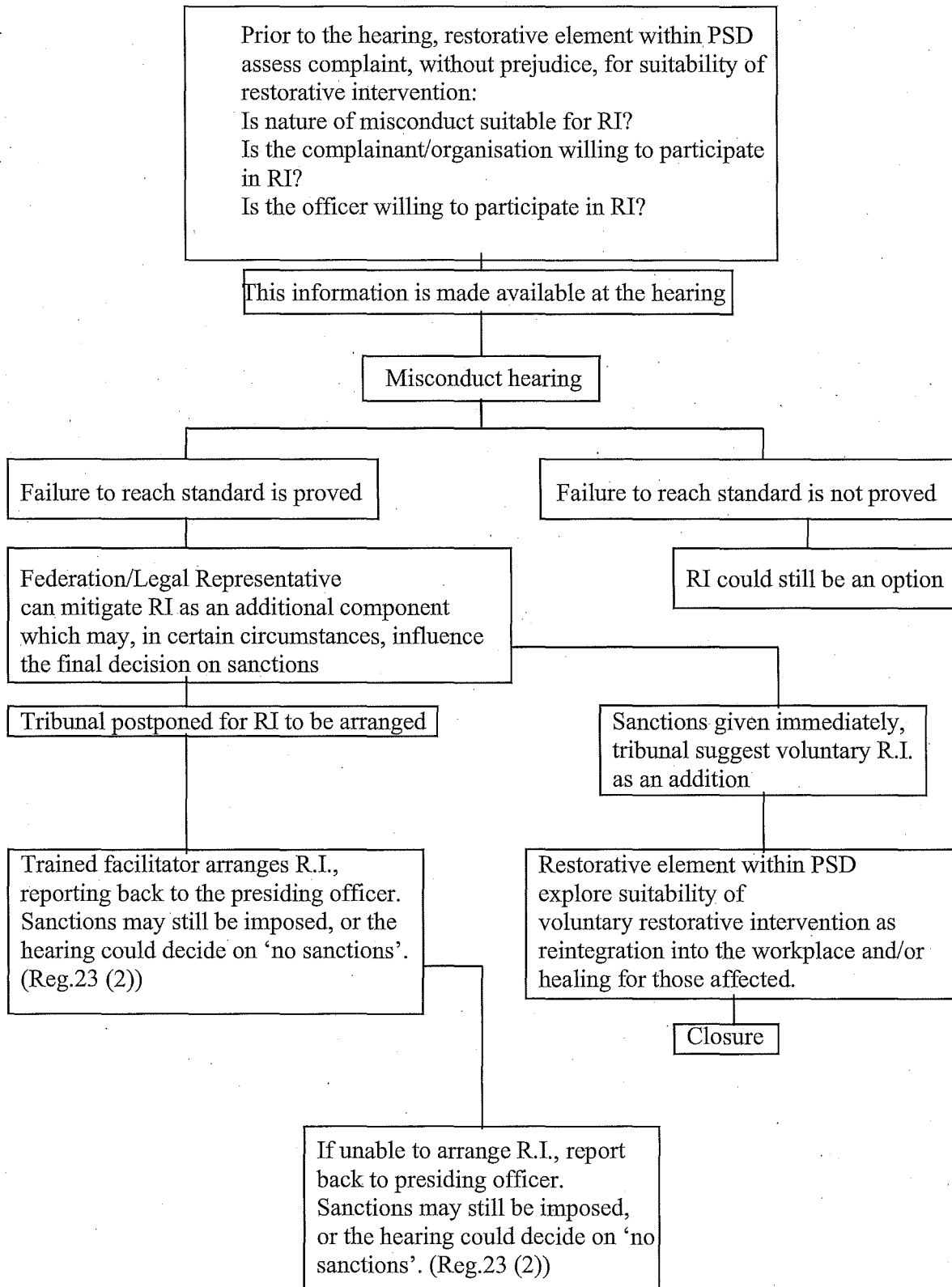


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Case Study 3

The officer had been involved in and affected by structural changes in the way policing services were to be delivered in her area. She voiced these concerns publicly in a robust and rather tactless way. This caused serious embarrassment to the local senior police managers. One of these initiated a full misconduct inquiry, alleging discreditable conduct on the part of the officer. Following a full investigation there was sufficient evidence to show that the officer had behaved inappropriately and the case would normally have been dealt with at a misconduct hearing. However it was felt that a more constructive way forward would be to hold a conference. Those involved were the senior officer most affected, the officer and her Police Federation "friend". During the conference the officer moved from a position of never having previously accepted responsibility for her actions to one where she recognised that her actions had been ill advised and offered an apology. At the same time the officer was able to explain her frustration at the change process and how she felt it would undermine her ability to do well a job she was extremely committed to. The senior officer was grateful for an honest explanation and accepted for the first time that no malice had been intended. Both agreed a future action plan which would reassure local communities. Both officers also agreed that none of the above would have been achieved in the context of a formal misconduct hearing.

Model 4 - RI as an available disposal at a Misconduct Hearing



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Case Study 4

A police officer attended a misconduct hearing, pleading guilty to an internal charge of neglect of duty (not a complaint from a member of the public). Prior to sentence, his case was adjourned for a restorative conference to be arranged. Present were the officer, his Federation representative, his inspector and his area commander (the latter two being the most affected by his neglect). The officer was able to give a personal explanation and apology to the others. The others talked about a breach of trust and how that might be repaired. After much discussion he agreed to do some work in his own time for the benefit of the police area. The Hearing was reconvened and the officer was given a lighter sanction than had previously been envisaged. Subsequent feedback from his supervisor showed that not only did he perform the extra work, but he did so willingly and with enthusiasm, making suggestions on ways to improve the service.

The Restorative Approach without the Conference - Flexibility

Flexibility and lateral thinking are very much part of the restorative approach. What we are talking about is finding creative solutions to individual problems which may not necessarily fit into the specific models we have described or indeed necessarily involve a restorative conference as such.

While the recommendation for a restorative approach to a complaint may come from the force itself, it could equally come from the Police Complaints Authority. This happens increasingly now that the restorative approach is a real option.

It can also be particularly helpful in trying to resolve continued dissatisfaction from a complainant even after the complaint has been finalised. Sometimes just the offer of a face to face meeting with the officer concerned is enough to reassure a dissatisfied complainant. For instance the father of one young Asian man had been deeply upset by unsolicited contact from the police with the object of giving some well-intentioned advice. The young man's father simply wanted an apology face to face from the officer whose actions had had an unintentional bad result. He was surprised and pleased to find this could be arranged. The officer proved willing to meet the young man and his father. Unfortunately the father was too unwell to take part in a meeting but nonetheless his son appreciated the gesture that had been made and the matter was resolved to his satisfaction.

Flexibility in restorative justice is about finding the right solution for each individual. On a number of occasions the PCA has been asked to talk to complainants at the beginning of the process where members of the public are having difficulty in deciding whether to make a complaint and to what extent a restorative intervention might resolve their particular conflict. In one case a woman had had a devastating experience involving the death of a close relative. For understandable reasons the death had been treated as a "suspicious" death and the woman had been traumatised to find herself treated as a suspect. In addition to the obvious distress this caused, she felt that she had been unjustifiable stereotyped and her own behaviour unreasonably criticised. Although she could understand the logic of the police action she was still, many months on, deeply angry at the way she had been treated and stereotyped. She felt, however, that she could not face a "face to face" meeting with the officers. Nor could she face a formal investigation which she felt would be stressful and also in her terms would

not be “worth it”. We could not promise her that a formal investigation would lead to discipline and encouraged her to try and think of the least distressing way that this anxiety could be resolved for her. Eventually it was agreed that a simple letter of apology from a senior officer within the force, setting in context comments that had been made about her and apologising for the obvious distress that these had caused and recognising the unjustness from her point of view, was the best way of resolving the matter. She replied to the letter saying that it made her feel better, and had enabled her to put the matter behind her.

Another complainant had had his complaint fully investigated. A year after an incident in which he was wrongly and forcefully detained as a result of mistaken identity, he and his wife who was present at the time were still distressed by what had happened and dissatisfied with the outcome of their complaint. Following a meeting with the head of the Professional Standards Department, the couple are considering making a video to help in training officers about the psychological effect that the incident had on them as innocent members of the public. Although the meeting was not a restorative conference in the strict sense, it contained many of the key elements: the couple were able to talk directly to a senior representative of the force concerned; he was able to explain the police perspective and apologise for their distress; he was so affected by their description of their experience that he suggested making the video; the video would be a way forward both for the couple to move on from their bad experience and for the Force to learn from it.

The Learning Curve and Mediation

From the outset, both Thames Valley Police and the PCA were conscious that in transferring the restorative approach from the criminal justice context where it has evolved, into the complaints context, we were creating something new. In running the conferences, we have been anxious to avoid taking a model designed for victims and offenders and simply imposing it on complainants and officers. While the complainant is always in some sense a victim, there are often situations where it would be wrong to cast the officer as offender. We have and continue to be conscious of a real opportunity to adapt the restorative conference to its full potential in the context of a complaint.

Because of this, much thought has gone into the planning and structure of each conference, and how the various parties and issues should be introduced, so that an even handed approach can be achieved. We are also looking at other forms of conflict resolution to see whether there are other models or techniques which would improve what we are doing.

In particular we have looked at the process of mediation - there has been some discussion about whether restorative justice and mediation are different words for the same thing. In fact, although a formal mediation may achieve the same result as a restorative conference, and although many of the fundamental techniques such as listening and asking open-ended questions are the same, we feel that the structure and dynamic of a formal mediation is different in a number of significant ways. Mediation is structured to resolve a specific dispute. The catalyst for bringing the parties together is the facilitator going between them. The essential ingredient of the restorative conference is that all parties are present throughout. The catalyst for change is the open and communal confrontation of issues and emotion.

There is certainly room for both mediation and conferencing in the complaint process. The first year of the Thames Valley project has reinforced our view that the strength and originality of the restorative conference lies in its ability to focus specifically on emotional issues, bringing them out into the open and defusing them in a specifically structured and forward moving way. It should perhaps be stressed that complaints are very emotional entities. They may ostensibly be about facts or physical loss or damage. But all too often they are actually about anger. People complain because they are angry about something that has happened to them. The conference setting allows them to deal with that anger in a constructive way.

Equally formal mediation may have much to offer where there is a specific dispute between parties and where a face to face confrontation is either not necessary or desirable. The following chapter explores some of the ways in which mediation is already being used in forces other than Thames Valley.

Evaluation and the Way Ahead for the Project

It has always been the intention of the project group that the pilot project should be the subject of an in-depth and independent evaluation. If funding is provided it is hoped that an evaluation will begin in October 2001. The evaluation will involve a comparative study of complaints dealt with by restorative intervention in Thames Valley and a control group of similar complaints dealt with under the normal processes in another force.

When the pilot project was launched in April 2000, a conscious decision was made to limit the amount of conferences to those which could be handled by the project manager and a few of those experienced in restorative justice and familiar with the aims and objectives of the project. It has also been important to allow some time for officers to become familiar with the concept of restorative justice and complaints both in terms of referring matters to the project and most importantly feeling able to take part in conferences if asked. It is hoped that the 18-month run up to the beginning of the formal evaluation will be time well spent, allowing the evaluation to assess a process which is becoming established, accepted and expanded.

It is a matter of some regret to the PCA, that for legal reasons explained at the beginning of the chapter, the evaluation will not include the use of restorative justice as a straightforward alternative to the formal process. Nonetheless it is hoped the evaluation would support a change in legislation which would allow restorative justice to become an integral part of any new complaint process.

In the meantime Thames Valley are continuing to explore and improve on the various ways of introducing Restorative Justice to police complaints. It is necessarily a learning process.

CHAPTER 5 – FORCE EXPERIENCE

Although the focus of this paper has been primarily on Restorative Justice, the Thames Valley project and the background leading to this, the Authority was anxious not to exclude the wealth of experience accumulated by other police forces in England and Wales after years of dealing with the current complaints process.

We were conscious of some initiatives, particularly in the north of England, involving the use of trained mediators and arbitrators in both internal and external police complaints. A considerable amount of work has been done by barrister Stephen Twist of York Chambers in York, in exploring the potential for alternative dispute resolution methods with police forces.

Consultation

In order to provide a mechanism for Forces to tell us about experiences they felt were relevant to alternative and less formal ways of dealing with police complaints, a simple form was devised. This was done with the assistance and support of Chief Constable George Hedges of Durham Constabulary, in his capacity as Chairman of the Professional Standards Committee of the Association of Chief Police Officers (ACPO). The form, which is attached at Appendix B, simply asked forces whether they had any relevant experience of using Mediation, Arbitration or any other form of Alternative Dispute Resolution in resolving internal external misconduct matters. The form encouraged forces to provide further details of relevant experience should they wish to do so, and was sent to the 42 Home Office and 6 Non Home Office forces in October 2000.

Results

Although 23 of the Home Office forces said they had no specific experience of the methods asked about, nearly half felt that they had some relevant experience of less formal ways of dealing with police complaints or internal grievances. Thirteen of the Home Office and one of the Non Home Office forces mentioned mediation and a total five of referred to the use of ADR (Alternative Dispute Resolution) in resolving internal grievances. Two forces referred to the use of arbitration, but it became clear that the term was being used as synonymous with mediation. It also became clear that of those forces who mentioned mediation, many were

referring to experience of the “general principle” rather than the specific use of trained mediators to resolve complaints. While an amount of relevant experience was focussed in resolving civil matters and internal disputes, many forces made the link between the informal resolution process and the principle of mediation. Some of the most interesting comments and examples fell into two main areas: mediation and conciliation as part of the informal resolution process, and mediation as a way of resolving internal grievances. The information gathered is necessarily anecdotal and represents the views of individuals. What follows is an attempt to capture the essence of what forces wished to share with others.

Mediation as part of the Informal Resolution Process

It is important here to underline the difference between mediation using trained, professional, mediators and “mediation” in the sense of one person going between two individuals in an attempt to resolve a conflict. It is in the less formal sense that the Forces saw the connection with informal resolution. One force, Wiltshire, put it succinctly:

“We see attempts at informal resolution *as* mediation – where the officer attempting IR acts as a “go between” between complainant and the officer complained of. This may involve face to face meetings or a written explanation or apology from the officer.”

Where forces had made the link between mediation and the informal resolution process, we probed a little further to see how mediation was being interpreted, whether it was felt to be effective and in particular whether face to face meetings were being attempted. The latter was important because research with Restorative Justice has shown that the actual meeting of offender and victim is key to the success of that process.

Also interestingly, in research on the informal resolution process when it was first introduced, Claire Corbett⁷ found that although meetings between complainants and officers were the exception rather than the norm, over 50% of complainants when asked would have liked such a meeting: “many of these [complainants] wanting either to talk through the incident, express

⁷ Corbett, C L (1991) “Complaints Against the Police: the New Procedure of Informal Resolution” Policing and Society, 1991, Volume 2

how they felt about it or to get the officer's explanation or views on the matter." Overall, in 1991, Corbett came down in favour of the newly introduced process.

"It would seem that the locally-based informal resolution procedure not only better achieves the objective of satisfying the customer than withdrawal or formal investigation, but also fairs relatively well in serving the other functions of the complaints systems ... by shifting complaints away from the formal adjudication mechanism characterised by its 'winner take all' approach, both complainants and those complained against may, with IR, experience less alienation and less antagonism. Further in some cases – arguably it should be more – they are given a rare opportunity to try to understand and appreciate the others viewpoint."

Ten years on it is clear that many forces see the underlying principles of mediation as an integral part of the informal resolution process. We know from experience that the use of informal resolution varies enormously from force to force. Where forces volunteered information for this particular paper the use of informal resolution ranged from two forces with a 50% and a 60% resolution of complaints by this process, to a majority of forces putting forward figures in the region of the national average of about 35%.

Where forces had made the link between informal resolution and mediation it was clear that they found this process constructive. One example given was as follows:

A potential complainant, who was subject of a Sex Offenders Order, contemplated a complaint against officers required to check on his compliance with that order. 'Informal mediation' resulted in both the man and the police officers having a better understanding of the terms of the order itself. This informal mediation was carried out by a member of the Professional Standards Department.

Face to face meetings however between the complainant and the officer, were still very much the exception rather than the norm. The reasons for this varied. The implication from many forces was that in the majority of cases a meeting simply was not necessary. One Force

commented that such meetings “often degenerate into conflict”. However some Forces had positive experience of facilitating face to face meetings. In Cumbria for instance a number of successful meetings had been facilitated by a senior member of the Professional Standards Department. They provided the following example:

The complainant was a farmer who had rented part of his farm to others who had used it for criminal activity which had resulted in police action. The farmer had very strong views about the intrusion on his property, but during the course of a meeting gained an understanding of why the officers had acted in the way that they did. The officers concerned also appreciated his feelings about the way he was treated during the search of his property. The farmer had had no previous dealings with the police and the officers were able to equate his position with their own or members of their own family.

Mediating informal resolution is not of course the exclusive responsibility of Professional Standard Departments, since much resolving of complaint matters can be done at source, when the complaint is first made, for instance, at a police station. Staffordshire Police reminded us of this: “a training package aimed at sergeants and inspectors on local policing units encourages supervisors to consider mediation through the informal resolution process. The training packages also emphasise the need to listen to the complainant and take every opportunity to address their concerns and reassure where appropriate, as this often is all that is needed.”

Mediation and Resolving Internal Grievances

Five forces specifically mentioned the use of mediation in resolving internal grievances. Two forces were able to give some examples:

The grievance was a complicated and sensitive one involving sexual harassment. The process took place at a neutral venue and was conducted by a qualified mediator specialising in employment law. The mediation lasted over two days and resulted in a compromise agreement and mutually accepted settlement. The cost of the process and the final settlement were significantly less than the cost of a tribunal and potential liability payment as well as the cost of legal opinion and witness time. The process was seen as positive, appropriate and beneficial to both parties. Subsequently however, the complainant suggested that a less beneficial settlement had been accepted than might otherwise have been obtained because of the stress and pressure of the two day mediation. This view was contrary to that expressed by all the other participants including the complainant's own legal/advisory team.

Two constables and their wives had been friends for a number of years. The wives however had fallen out with each other and the dispute had affected the two constables' professional relationship which in turn was affecting others at work. Mediation by a civilian member of staff was able to defuse the situation and allow the officers to work together amicably.

Two women officers had complained of sexual harassment on the part of two male colleagues. The complaints were of a minor nature, involving attitude and stereotyping, and the women did not want the matter to be formally investigated. The two male officers were indignant at being singled out from a group of some 20 other male officers all working on the same section with the two women. Because of this a group mediation was held involving all members of the section. The mediation was conducted by a civilian member of staff. The majority of the officers were surprised and concerned to hear the view and experiences of the women. Also, problems emerged which were actually to do with the management and running of the section concerned. An action plan was drawn up involving a management focus group and being more sensitive to the views of the women officers. The success of the mediation was qualified by the fact that the two officers originally complained of remained

indignant at being singled out and felt that the problem was actually with other people.

We were only given one example of a trained mediator from outside the organisation being used. This is in line with some ongoing research being conducted by a member of the Human Resources department of one police force. This suggests that, while the “concept” of mediation is becoming more and more attractive in resolving workplace disputes, formal mediation using specifically trained professionals is still relatively rare.

Mediation in the place of a Misconduct Hearing

As far as we are aware only one force has experimented with this enterprising way of dealing with the issues normally addressed at a misconduct hearing. The mediation was conducted in confidence and it is not possible to give details of the subject matter. However an outline of the process is instructive in understanding the potential for mediation in this context.

The case itself followed an internal investigation (i.e. not following a complaint from a member of the public) into the conduct of a small number of officers. The mediation lasted three days and was conducted by a QC who is a trained mediator. The parties to the mediation were the force and the individual officers, together with their respective legal representatives. In preparation for the mediation all parties submitted a case summary. The mediator had access to all the normal documentation which supports an investigation. At the beginning of the mediation all parties met together and each one in turn gave an opening presentation outlining the issues from their perspective. As in any case, the issues were not just about matters of fact. In any misconduct proceedings the force may have concerns about the conduct of officers, irrespective of a guilty finding, and looking for the best way to learn from and move on from whatever has happened. Equally the officers may feel aggrieved by the way they have been treated during the course of an investigation and will want this to be addressed.

Following the initial presentations the mediator worked with each of the parties in turn, honing down the individual issues and needs for each and looking to see how these might be

met. At the end of the three days, the mediator had been able to negotiate a settlement which the parties were able to agree to.

Arbitration as an alternative to a Misconduct Hearing

Having talked about mediation as a possible alternative to a misconduct hearing, it is well worth considering the further alternative of arbitration. Some work in this area has been done by former Metropolitan police officer and barrister Stephen Twist. The arguments in favour, as with any arbitration, are that it is cheaper, quicker and less divisive than a formal, legalistic, long drawn out court hearing. All parties to the dispute or complaint can be present throughout the arbitration so that each person can hear the evidence of others. In addition the fact that the hearing would be conducted by an independent arbitrator might well be attractive to members of the public and inspire more confidence, than in the current system. Twist explains that the relevant legislation does not preclude such a course of action, although to date this has not been tested.

However with major legislative change to the complaints process as a whole, now a real possibility, it is worth raising the issue of framing any new regulations relating to the misconduct process in such a way as to specifically cater for a more flexible approach to misconduct hearings including arbitration and indeed mediation.

Mediation and Civil Claims

A few forces mentioned the use of mediation in resolving civil claims against police. This is relevant to the extent that civil claims often go hand-in-hand with a complaint against police. One force gave an example of such a case, which in this event was unsuccessful. However the reasons for the failure of this mediation perhaps provide a learning point.

The claim involved a custody sergeant and a legal representative and took place at a police station. The legal representative had initially made a formal complaint which resulted in a full misconduct hearing. Following this the complainant commenced a civil claim. Mediation was introduced with the object of both resolving the claim and building some bridges between the custody sergeant and the complainant. Unfortunately the mediation

hearing dealt purely with compensation and this had a negative effect on both parties. The legal representative saw the Chief Constable as the “defendant” and therefore had very little regard for the individual officer. There was no bridge building.

Those involved in this civil claim said that had the mediation taken place shortly after the actual incident, and had the mediation been able to deal both with the complaint and matter of compensation, a more successful outcome would have been achieved.

Under the current system complaint and misconduct issues are kept entirely separate from compensation. However, with the prospect of major legislative change it is worth considering whether a new system could be made flexible enough to allow complaint and compensation issues to be dealt with in appropriate cases by some less formal process such as mediation.

Other Aids to Resolving Complaints

In addition to the above, a number of forces reminded us of simple ways in which complaints can be resolved or at least eased and all of which operate in the spirit of conciliation and Restorative Justice. Hampshire is one of a number of forces where the Assistant Chief Constable will offer to meet a complainant whose continued concerns cannot be dealt with by the complaints process. In Hampshire’s case an informal meeting with an ACPO level officer has been an effective way of putting a line under some long running complaints.

A simple apology whether in person or by letter is also often the route to closure of a complaint. Historically forces have been reluctant to apologise for fear of liability to civil claims. In recent years some forces have asked us to pass on their apologies to complainants for distress caused when writing to the complainant with the outcome of their complaint. However, where forces feel able to write direct to the complainant the impact is on the whole much greater. The Authority feels that it is not for us to apologise for actions of officers.

Other strands to mediation that were mentioned were the involvement of community groups or leaders in resolving complaints particularly where racial and discrimination issues were at

stake. Two forces mentioned the role of the PCA as informal mediators in dealing with serious complaints and deaths in custody.

Other Initiatives undertaken by Forces

A number of forces have expressed an interest in the current Thames Valley Restorative Justice project with a view to doing something similar. In particular exploratory meetings have been held both with the Metropolitan Police and West Mercia Constabulary.

West Mercia are taking this forward with a restorative justice training programme initially involving eight officers with a view to introducing the process into internal grievances and misconduct. It is hoped that the project may extend to complaints from the public at some stage in the future.

The Metropolitan Police are exploring the potential for both restorative justice and mediation in the context of their "Learning Lab" which is looking at ways of restructuring and improving the complaint process. Both the PCA and the CPS are involved in the Learning Lab.

Merseyside Police are also looking at the feasibility of using workplace mediation to resolve internal matters of grievance or misconduct. A senior member of their Professional Standards department is receiving mediation training specifically to this effect and is also liaising with the PCA with regard to restorative justice.

Summary

Overall, it is fair to say that there is a significant awareness within forces of the potential role of mediation and other less formal ways of resolving disputes within the complaints process. Having said this, where mediation is being practised it is on the whole in the sense of a general principle. The use of trained external mediators was rare and limited to internal grievance or misconduct cases.

While the principle of mediation is clearly seen by many forces as part of the Informal Resolution Process, the sort of face to face meetings between officer and complainant which

are central to the restorative justice models were extremely rare and treated with some suspicion.

CONCLUSION

The object of this paper has been to set out the case for introducing Restorative Justice and other less formal ways of resolving conflict into the complaints process. We believe that these could provide crucial building blocks within the structure of a new complaints system where police forces would be encouraged to deal with a majority of complaints effectively and quickly at source.

The Government's white paper, "Complaints Against The Police - Framework for a New System" already envisages restorative justice and mediation as part of a new, strengthened Informal Resolution process, renamed "local resolution". However, as in the current legislation, this would continue to be limited to "allegations which, if proved, would not lead to criminal or disciplinary proceedings".

We feel any new legislation should go further than this and allow for restorative justice, or indeed mediation, as a real alternative to formal investigation in appropriate circumstances despite the possibility of discipline or minor criminal proceedings. This would be with the consent of the parties and subject to an appeal process.

Because of the current legislation, the Thames Valley Restorative Justice and Complaints project has been limited to piloting the restorative approach either within the confines of the Informal Resolution process or following a formal investigation as part of the sanction or response to a complaint. It is hoped however that an in-depth evaluation of the project due to start in October, will provide sufficient support for the process as a whole, to justify any future Government fully embracing the potential for restorative justice in the complaint process. Only then will it be possible to "rescue" the many complaints - particularly those of attitude and behaviour, and also those to do with the "system" and the way the police work - from the lengthy, legalistic, closed and distancing formal process and place them in a context where they can really be resolved.

In the context of future legislation, we also believe that thought should be given, both by government and by forces, to making the misconduct process and specifically the misconduct hearing more readily adaptable to resolution by mediation or arbitration. We would like to see the public complaint process as flexible as the internal misconduct process.

It is clear from our consultation with forces that many are operating in the spirit of Restorative Justice using mediation and conciliation in a number of formal and mostly less formal ways. However where a significant proportion of forces referred to the general “principles” of mediation as part of the Informal Resolution Process we identified a reluctance to initiate a face to face meeting between complainant and officer. It is fair to say that the reluctance is more likely to come from the officer than the complainant, but also that the fear of civil litigation is a factor. There is a feeling that simply saying “sorry” to a complainant - which is often all that is required - is not only a sign of weakness, but could also constitute an admission of liability and lead to a financial claim.

Our experience with the Thames Valley project has already shown us two important things. Firstly the face to face meeting of complainant and officer in what we call a “conference”, using a clearly structured but flexible model to work through and resolve conflict is central to its success. It deals with emotion in a way that a more formal and separate process cannot.

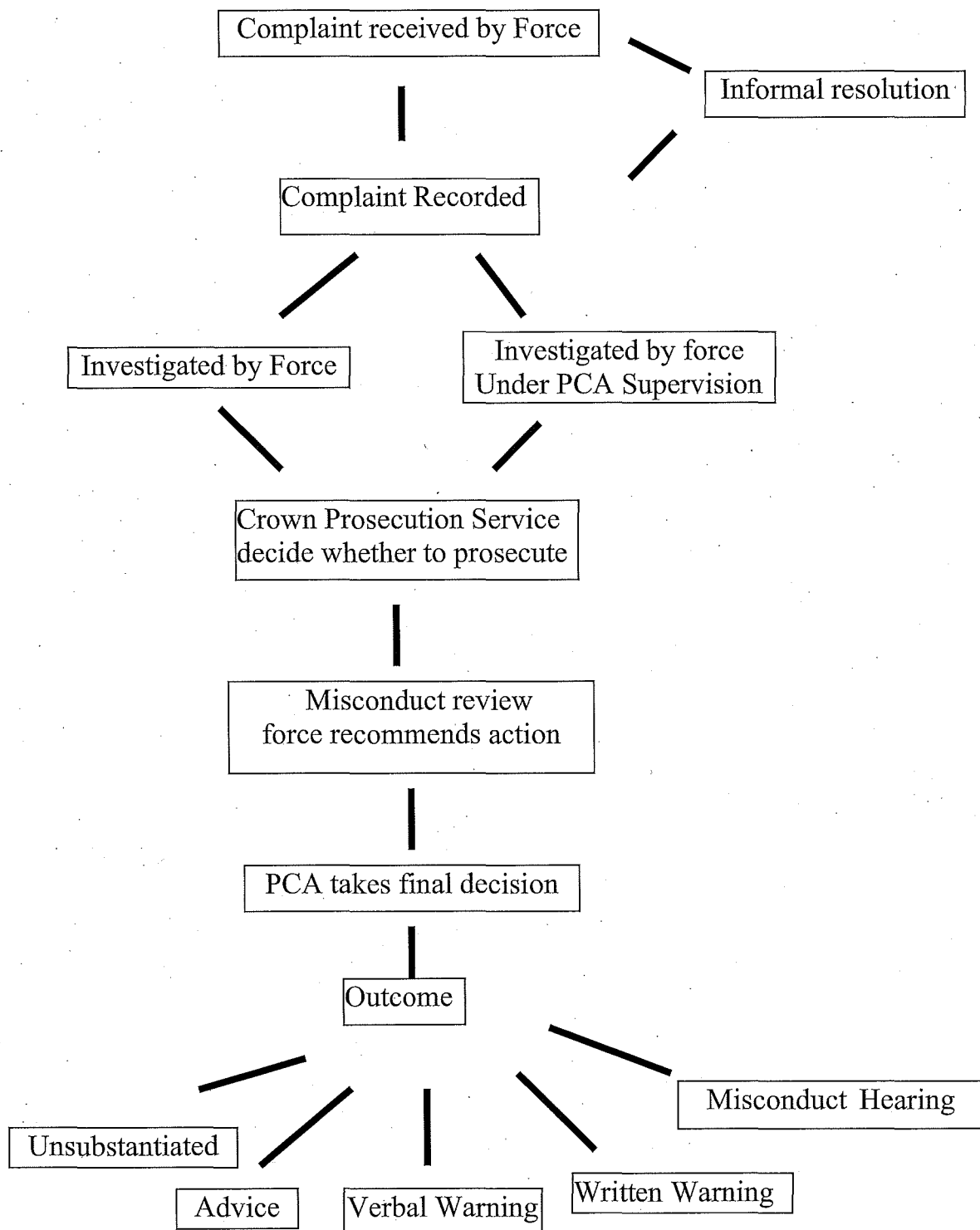
Secondly the application of Restorative Justice to the police or indeed any complaint process, will only work to its full potential if the restorative approach is endemic to the organisation as a whole. It is not enough to superimpose a process designed for victims and offenders onto complainants and officers. The restorative approach must be integrated into the fabric of the organisation, into the management and culture of the individual police force and its officers.

The Thames Valley project is based on over six years familiarity with the restorative approach, backed by on-going training for managers. It is a gradual process which is essentially to do with changing police culture, learning that it is a sign of strength, not of weakness, to look someone in the eye and say “sorry”.

While we await the considered evaluation of the Thames Valley project with interest, we would urge all forces to take from this paper any ideas which they might find useful with a view to preparing the way for a more effective complaints process as envisaged by the government. We look forward to working with the increasing number of forces who have expressed an interest in the restorative approach and wish to develop their own initiatives.

APPENDIX A

The Current Police Complaints System



APPENDIX B

“RESOLVING COMPLAINTS – ALTERNATIVES TO THE FORMAL PROCESS”

FORCE :

CONTACT :

TELEPHONE NUMBER :

This force has experience of using the following processes in resolving internal or external misconduct matters.

Restorative Justice

☐

Mediation

☐

Arbitration

☐

Other form of
Alternative Dispute
Resolution

☐

.....

None of the above

☐

If you have got relevant experience you would like to tell us about, please give brief details here so that we can contact you for further information.

PLEASE RETURN TO: JO DOBRY, POLICE COMPLAINTS AUTHORITY,
10 GREAT GEORGE STREET, LONDON SW1P 3AE
TELEPHONE: 0207 273 6465 – FAX: 0207 273 6401