Dysfunctional accountability in complaint systems: the effects of complaints on public service employees

Key words: accountability, complaints systems, therapeutic jurisprudence

This article examines the effect that being complained about has on public service employees. The volume of complaints about public bodies is significant: an estimated 543,000 complaints a year are made about central government,[1] while the English NHS was subject to 208,415 complaints in 2016-2017.[2] Despite the significant expansion of complaint procedures following the Citizen's Charter reforms in the 1990s, there has been no empirical research into the way in which complaints affect employees outwith the healthcare sector.[3] Most scholarly debate has focused on whether complaints procedures within government have improved customer service or been useful for service improvement.[4] Little attention has been paid to the experience of being subject to a complaint and the influence this has on work practice.[5]

In this respect, the public accountability literature suggests that significant dysfunctional effects may result from accountability regimes, including: defensive practices, tick-box compliance, excessive formality, and reduced innovation.[6] In the healthcare setting, negative effects arising from being complained about include defensive medical practice,

[1] P. Dunleavy, S. Bastow, J. Tinkler, S. Goldchluk and E. Towers, "Joining up Citizen Redress in UK Central Government" in M. Adler (ed), *Administrative Justice in Context*, (Oxford: Hart, 2010), pp. 421-56

[2] NHS, "Data on Written Complaint to the NHS", https://files.digital.nhs.uk/pdf/l/a/data_on_written_complaints_in_the_nhs_2016-17_report.pdf [Accessed July 15, 2017]

[3] T. Bourne, L. Wynants, M. Peters, C. Van Audenhove, D. Timmerman, B. Van Calster and M. Jalmbrant, "The Impact of Complaints Procedures on the Welfare, Health and Clinical Practise of 7926 Doctors in the UK: A Cross-sectional Survey" (2015) 5 (1) *BMJ Open*, 1-12

[4] J. Gulland, "Taking Complaints Seriously: The Role of Informality in Complaints about Public Services" (2011) 10 (4) *Social Policy and Society*, 483-493

[5] L. Mulcahy, *Disputing Doctors: The Socio-legal Dynamics of Complaints about Medical Care* (Oxford: OUP, 2003)

[6] A. Halachmi, "Accountability Overloads" In M. Bovens, R. Goodin and T. Schillemans (eds), *The Oxford Handbook of Public Accountability*, (Oxford: OUP, 2014), pp. 560-572

avoidance behaviours, wariness towards service users, and reduced wellbeing.[7] While some positive effects have been reported,[8] the thrust of healthcare studies is that complaints have harmful effects on professionals. To date, however, the effects of complaint systems outwith the healthcare context remain uncharted: we do not know whether other public services are affected in similar ways.

In general, the operation of public service complaint systems has been narrowly considered from the perspective of complainants. Here, conclusions have been damning, with Dunleavy *et al.* stating that complaint systems provide a 'lousy service at high cost'.[9] There is a widespread view that systems are confusing and inaccessible, representing a 'complaints maze'.[10] It is not surprising, therefore, that the effects of complaints on employees have been absent from debates. However, as Johnston and Michel argue, ignoring 'employee recovery' (the welfare of employees) and focusing only on 'customer recovery' (providing customer satisfaction) or 'process recovery' (improving services) provides an incomplete account of complaint systems.[11] This article, therefore, contributes to a more balanced discussion, by exploring the hidden effects of complaints on those subject to them.

In doing so, the article draws on the analytical framework of therapeutic jurisprudence.[12] This is a field of inquiry that draws attention to the anti-therapeutic effects that dispute resolution systems have on actors within them. It provides a framework within which negative effects can be identified and – to the extent compatible with other values of these

[7] Bourne et al, "The Impact of Complaints Procedures on the Welfare, Health and Clinical Practise of 7926 Doctors in the UK: A Cross-sectional Survey" (2015)
[8] J.J.M. Bruers, B. A. F. M van Dam, R.C. Gorter and M.A.J. Eijkman, "The Impact of a Formal Complaint on Dutch Dentists' Professional Practice: A Survey Study" (2016) 16 *BMC Oral Health*, 104
[9] Dunleavey et al, *Administrative Justice in Context*, (2010)
[10] LGSCO, "Complaint Maze", https://www.flickr.com/photos/110744519@N03/ [Accessed July 15, 2017]
[11] R. Johnston and S. Michel, "Three Outcomes of Service Recovery: Customer Recovery, Process Recovery and Employee Recovery" 2008 28(1*) International Journal of Operations & Production Management*, 79-99
[12] D. Wexler and B. Winick, *Essays in Therapeutic Jurisprudence* (Carolina Academic Press, 1991)

systems – minimised.[13] Therapeutic jurisprudence is part of a wider movement in legal scholarship concerned less with legal rights and more with human and emotional wellbeing.[14] The value of applying therapeutic jurisprudence as a lens through which to study complaint systems, is that it calls attention to the real-world effects of dispute resolution systems, and seeks to complement existing values – such as due process or accountability – with a new emphasis on the lived experiences of actors in these systems.

The article, therefore, addresses a significant gap in the literature on accountability and complaint systems. It does so by presenting data from an exploratory study, including a survey of 132 respondents and 16 follow-up interviews. The field setting was Scottish local authority planning departments and housing associations. While exploratory in nature, the data presented below suggest that, as in the healthcare sector, complaints can have a significant effect on the wellbeing and work practice of housing and planning employees. At the same time, the data suggest differences compared to the healthcare sector, with effects on work practice being: more moderate; less prevalent in such areas as defensiveness and avoidance; and more likely to include positive effects. Our data also suggest that the likelihood of negative or positive effects is linked to service delivery contexts and the design and operation of complaints procedures. The article ends by considering the potential for developing more therapeutic complaint systems.

[13] D.B. Wexler, "New Wine in New Bottles: The Need to Sketch a Therapeutic Jurisprudence Code of Proposed Criminal Processes and Practices" (2013) 7 *Arizona Summit Law Review*, 463

[14] D. Johnson, "Mainstreaming Therapeutic Jurisprudence in Criminal Courts with a Focus on Behavioural Contracting, Prevention Planning, & Reinforcing Law-abiding Behaviour" (2016) 1(1) *International Journal of Therapeutic Jurisprudence*, 313-336

Theoretical context

This section has four sub-sections: the first analyses developments in UK public service complaint handling; the second provides a critical overview of accountability systems and dysfunctional effects; the third discusses the concept of therapeutic jurisprudence; the fourth summarises studies examining the effects of complaints in the healthcare sector.

The development of UK complaint systems

Up until the 1990s, the processes through which citizens could challenge bureaucratic action were largely external and legally-focused.[15] This changed with the introduction of the Citizen's Charter in 1991 and the subsequent work of the Charter Unit's Complaints Task Force.[16] Unlike in the earlier part of the century, where developments were informed by concepts such as due process and the rule of law, the Charter reforms were based on managerial values associated with New Public Management (NPM).[17] Inspiration was drawn from the private sector, where complaint handling was a means of satisfying unhappy customers and providing management information to improve services.[18] Allsop and Jones refer to this as the managerial complaint handling model, emphasising internal resolution, consumer satisfaction, and service

[15] J. Allsop and K. Jones, "Withering the Citizen, Managing the Consumer: Complaints in Healthcare Settings" (2008) 7(2) *Social Policy and Society*, 233-243

[16] J. Allsop and L. Mulcahy, "Dealing with Clinical Complaints" (1995) 4 *BMJ Quality & Safety*, 135-143

[17] J. Clarke, J. Newman and M. McDermont, "Delivering Choice and Administering Justice: Contested Logics of Public Services" in M. Adler (ed), *Administrative Justice in Context*, (Oxford: Hart, 2010), pp. 25-46

[18] P. Birkinshaw, "Grievances, Remedies and the State – Revisited and Reappraised" in M. Adler (ed), *Administrative Justice in Context*, (Oxford: Hart, 2010), pp. 352-382

improvement.[19] The major provisions of the Charter were to require the publication of service standards and complaints procedures through which breaches of standards could be reported.[20]

Despite being founded on consumerist concerns with customer service and managerialist concerns with service improvement,[21] the resulting complaint handling landscape has been subject to criticism.[22] The lack of prescription in the Charter reforms resulted in a system which was confusing, complex, costly, and not serving the interests of complainants (*ibid.*). Such concerns have been echoed by both consumer groups[23] and parliamentarians.[24] The emphasis of these criticisms has centred on perceived failures of the Charter's reforms to achieve either of its aims: complaints procedures were neither providing customer satisfaction nor were they used to provide better public services.[25]

As noted above, absent from debate has been discussion of the effects that the growth in complaints procedures has had on public service employees. Johnston and Michel note that this dimension, which they term 'employee recovery', has been largely ignored, with the result that accounts of complaint handling have been incomplete.[26] This oversight is important due to the interconnection between customer, service, and employee recovery. In other words, a failure to consider negative effects of complaints on employees may lead to sub-optimal behaviour on their part, thereby reducing the potential for achieving either customer or process recovery, and potentially having a consequential adverse effect on service delivery.

---

[19] Allsop and Jones, "Withering the Citizen, Managing the Consumer: Complaints in Healthcare Settings" (2008)
[20] C. Brennan and A. Douglas, "Complaints Procedures in Local Government: Informing your Customers" (2002) 15(3) *International Journal of Public Sector Management*, 219-236
[21] B. Brewer, "Citizen or Customer? Complaints Handling in the Public Sector" (2007) 73(4) *International Review of Administrative Sciences*, 549-556
[22] L. Crerar, *Independent Review of Regulation, Audit, Inspection, and Complaint Handling* (Edinburgh: Scottish Government, 2007); Dunleavey et al, *Administrative Justice in Context*, (2010).
[23] Which?, "Make Complaint Count", https://www.staticwhich.co.uk/documents/pdf/make-complaints-count-report---march-2015-397971.pdf [Accessed July 15, 2017]
[24] PASC,"More Complaints Please!", https://publications.parliament.uk/pa/cm201314/cmselect/cmpubadm/229/229.pdf [Accessed July 15, 2017]
[25] PASC,"More Complaints Please!", 2017
[26] R. Johnston and S. Michel, "Three Outcomes of Service Recovery: Customer Recovery, Process Recovery and Employee Recovery" 2008

From deficit to overload? The dysfunctional effects of accountability

Traditionally, public administration scholars have been concerned with accountability deficits.[27] The bureaucratic state was seen to have outstripped accountability mechanisms, so that bureaucracy was imperfectly controlled.[28] The NPM reforms deepened and challenged this narrative. On the one hand, decoupled government increased concern with not being able to hold semi-autonomous and networked bureaucratic actors to account.[29] At the same time, increased disaggregation and the transformation of the state from provider to commissioner led to a significant growth in 'regulation within government'[30] and claims that an 'audit society' had developed.[31] This resulted in an 'accountability industry'[32] involving independent audit, inspection, and regulatory bodies[33] and direct means of holding bureaucrats to account through complaint mechanisms.[34] Schillemans argues that this growth in accountability has been anarchic and that in consequence concerns now exist with the cost, efficiency, and perverse effects of accountability.[35]

At the heart of debates about accountability deficits and overloads lie questions about discretion and the degree to which effective administration lies in enhancing or confining it. Proponents of the deficit position argue that bureaucrats have too much unchecked power,

[27] R. Mulgan, "Accountability Deficits" In M. Bovens, R. Goodin and T. Schillemans (eds), *The Oxford Handbook of Public Accountability*, (Oxford: OUP, 2014), pp. 545-559.
[28] C. Scott, "Accountability in the Regulatory State" (2000) 27(1) *Journal of Law and Society*, 38-60
[29] A. Gamble and R. Thomas, "The Changing Context of Governance: Implications for Administration and Justice" in M. Adler (ed), *Administrative Justice in Context*, (Oxford: Hart, 2010), pp. 3-24
[30] C. Hood, O. James, C. Scott, G.W. Jones and T. Travers, *Regulation Inside Government: Waste Watchers, Quality Police, and Sleaze-busters*, (Oxford: OUP, 1999)
[31] M. Power, *The Audit Society: Rituals of Verification*, (Oxford: OUP, 1997)
[32] M. Bovens, T. Schillemans and P.T. Hart, "Does Public Accountability Work? An Assessment Tool" (2008) 86(1) *Public Administration*, 225-242
[33] C. Scott, "Accountability in the Regulatory State", 2000
[34] S. Kerrison and A.M. Pollock, "Complaints as Accountability? The Case of Health Care and the New NHS in the United Kingdom" 2001 *Public Law*, 115-133
[35] T. Schillemans, "Calibrating Public Sector Accountability: Translating Experimental Findings to Public Sector Accountability" 2016 18(9) *Public Management Review*, 1400-1420

while proponents of the overload position contend that too much accountability produces negative effects. Here, the notion of the accountability paradox has been advanced to describe how increased accountability does not necessarily lead to improved performance.[36] Bovens notes that the dysfunctional effects of accountability include rule-obsession, proceduralism, and scapegoating.[37] Increasingly, in the context of pressures on public finances, questions are being raised about the costs and benefits of accountability.[38] In the complaints context, the UK 'redress industry' in central government is now estimated to cost £1.5 billion annually.[39] Partly in response to concerns about costs and potentially dysfunctional effects, there has been a new emphasis on 'learning' as a key goal of accountability mechanisms. However, at present, the evidence that accountability prompts learning and reflection in public services is scarce. In addition, it remains the case there has been little attention paid to the relationship between individual level effects of accountability and institutional level effects. The point here is that negative individual level effects have the potential to undermine the accountability goals of complaint systems and to decrease, rather than enhance, the potential for complaints to lead to reflection, learning, and improvement in public services.

Therapeutic jurisprudence: a framework for analysis

Therapeutic jurisprudence describes a field of inquiry developed by Wexler and Winnick,[40] which has been defined as:

[36] P.H. Jos and M.E. Tompkins, "The Accountability Paradox in an Age of Reinvention: The Perennial Problem of Preserving Character and Judgment" 2004 36(3) *Administration & Society*, 255-281; C. Hood and R. Dixon, "What We Have to Show for 30 years of New Public Management: Higher Costs, More Complaints" 2015 28(3) *Governance*, 265-267

[37] M. Bovens, "Analysing and Assessing Accountability: A Conceptual Framework 1" 2007 13(4) *European Law Journal*, 447-468

[38] A. Halachmi, Accountability overloads, (2014)

[39] Dunleavey et al, Administrative Justice in Context, (2010)

[40] D. Wexler and B. Winick, Essays in Therapeutic Jurisprudence, (1991)

> '…an interdisciplinary field of philosophy and practice that examines the therapeutic and anti-therapeutic properties of laws and public policies, legal and dispute resolution systems, and legal institutions'.[41]

Therapeutic jurisprudence is not a theory,[42] but an empirical guide.[43] It draws attention to the dysfunctional effects of systems and seeks to build up an empirical body of knowledge about these in order to maximise the likelihood of therapeutic outcomes.[44] The focus of therapeutic jurisprudence literature is on the effects that rules, procedures, and roles within legal and dispute resolution systems have on the people who come into contact with those systems.[45] Recently, Wexler has used a wine bottle metaphor to explain therapeutic jurisprudence: the bottle represents structures, while the wine represents specific contextual practices.[46] This metaphor is useful in distinguishing systems which are designed with the intention of producing therapeutic results, from those where therapeutic practices are deployed to mitigate the effects of structures that pay insufficient attention to producing therapeutic outcomes.[47]

Therapeutic jurisprudence literature does not advocate that therapeutic values should trump other values, such as due process or accountability. Instead, it argues for a consideration of the therapeutic effects of systems to the extent that such a consideration is compatible with

---

[41] International Society for Therapeutic Jurisprudence. International society for therapeutic jurisprudence website. Retrieved from https://www.intltj.com/

[42] E. Jones and A. Kawalec, "Dissolving the Stiff Upper Lip: Opportunities and Challenges for the Mainstreaming of Therapeutic Jurisprudence in the United Kingdom" 2018 *International Journal of Law and Psychiatry*, online first.

[43] A. Campbell, "A Case Study for Applying Therapeutic Jurisprudence to Policymaking: Assembling a Policy Toolbox to Achieve a Trauma-informed Early Care and Learning System" 2018 *International Journal of Law and Psychiatry*, online first.

[44] P. Spencer, "From Alternative to the New Normal: Therapeutic Jurisprudence in the Mainstream" 2014 39(4) *Alternative Law Journal*, 222-226

[45] M. Herzog-Evans, "Release and Supervision: Relationships and Support from Classic and Holistic Attorneys" 2016 1(1) *International Journal of Therapeutic Jurisprudence*, 23-58

[46] D.B. Wexler, "New Wine in New Bottles: The Need to Sketch a Therapeutic Jurisprudence Code of Proposed Criminal Processes and Practices" (2013)

[47] P. O'Byrne, "Therapeutic Jurisprudence and the Sentencing of Family Offenders: Does the Sentencing 'Bottle' in Victoria Need to Change?" 2016 1(1) *International Journal of Therapeutic Jurisprudence*, 147-190

other values.[48] This has been referred to as using therapeutic practices within the interstitial spaces left open around legally shaped rules, procedures, and roles.[49] One of the central tenets of therapeutic jurisprudence is that therapeutic practices vary from area to area,[50] however, common examples include: system actors becoming aware that they act as therapeutic agents and developing an ethic of care; dispute resolution processes allowing active participation and a solution-focused approach; systems providing parties with a voice in proceedings; and decisions being taken in a manner that feels fair to the parties.[51]

Therapeutic jurisprudence has yet to be deployed in the complaint handling context, despite there being considerable potential to do so. Research examining the effects of coroners' investigation processes on professional actors has found, for example, that anti-therapeutic effects can be produced by various aspects of investigation procedures, including: delays, lack of communication, unclear decisions, lack of ability to comment on decisions, and a lack of emotional sensitivity.[52] There is significant congruence here with effects identified in the literature on healthcare complaints, which indicates that the therapeutic jurisprudence framework is likely to be of value in this context. Overall, the value of applying the therapeutic jurisprudence framework in this study is that it provides a more sophisticated framework and language within which to discuss the positive and negative effects of accountability. Indeed, Jones and Kawalec argue that therapeutic jurisprudence validates concerns with emotional

[48] A. Campbell, "A Case Study for Applying Therapeutic Jurisprudence to Policymaking: Assembling a Policy Toolbox to Achieve a Trauma-informed Early Care and Learning System" (2018)
[49] D.B. Wexler, "New Wine in New Bottles: The Need to Sketch a Therapeutic Jurisprudence Code of Proposed Criminal Processes and Practices" (2013)

[50] P. Spencer, "From Alternative to the New Normal: Therapeutic Jurisprudence in the Mainstream" 2014
[51] P. O'Byrne, "Therapeutic Jurisprudence and the Sentencing of Family Offenders: Does the Sentencing 'Bottle' in Victoria Need to Change?" 2016
[52] I. Freckelton, "Therapeutic Jurisprudence Misunderstood and Misrepresented: The Price and Risks of Influence" 2008 30 *Thomas Jefferson Law Review*, 575-596

wellbeing and draws attention to important issues that tend to be ignored in the traditional legal and bureaucratic emphasis on neutrality, impersonality, and rationality.[53]

The value of drawing on therapeutic jurisprudence in this context is also that it allows connections to be made between the individual effects of accountability mechanisms and institutional responses. There is potential, here, to extend existing understandings of therapeutic jurisprudence, by considering not only whether accountability mechanisms produce anti-therapeutic effects at the individual level, but also whether anti-therapeutic effects emerge at the institutional level. This results in the adoption of a more systemic take on therapeutic jurisprudence which seeks to link individual level anti-therapeutic effects with aggregate, systemic effects that might influence organisational culture and practice and result in institutional, as well as individual, dysfunctions. Thus, a *systemic therapeutic jurisprudence* might allow for a broader range of concerns to be encompassed, including the potential for achieving therapeutic and anti-therapeutic outcomes around learning, reflection, and improvement at a systemic level.

Empirical literature on the effects of complaints

Empirical studies of the effects of complaints are largely limited to the healthcare sector. Results from these studies suggest that receiving a complaint is associated with feelings of anxiety, depression, and reduced job satisfaction, although the impact varies from moderate to severe.[54] In a survey of UK doctors, those that had been complained about were 77% more

[53] E. Jones and A. Kawalec, "Dissolving the Stiff Upper Lip: Opportunities and Challenges for the Mainstreaming of Therapeutic Jurisprudence in the United Kingdom" 2018

[54] Bourne et al, "The Impact of Complaints Procedures on the Welfare, Health and Clinical Practise of 7926 Doctors in the UK: A Cross-sectional Survey" (2015); Bruers et al, "The Impact of a Formal Complaint on Dutch Dentists' Professional Practice: A Survey Study" (2016); W. Cunningham, "The Immediate and Long-term Impact on New Zealand Doctors who Receive Patient Complaints" 2004 117 (1198) *The New Zealand Medical Journal* (Online).

likely to report moderate to severe depression compared to those who had not.[55] In a study of Dutch dentists, 29% were affected strongly by a complaint, 42% to some extent, and 29% not at all.[56] A qualitative study of general practitioners' experiences of complaints in England also found that the impact of complaints varied.[57] Some reported that the complaint had negatively affected their mental health, making them less confident in their clinical competence. However, a few reported only a minimal impact and said they had become immune to complaints. In most cases, the effects of complaints diminish over time,[58] although for a minority they are long-lasting.[59]

Complaints can lead to defensiveness. For example, Bourne *et al.* found 84% of doctors reported increased defensiveness as a result of receiving a complaint and 46% reported avoidance behaviours.[60] Bruers *et al.* found that 44% of dentists reported seeing every patient as a risk and 20% started double-checking their work.[61] Other negative effects on practice include offering a more limited service and practising by the rules.[62] Complaints also have the potential to damage the doctor-patient relationship. In a survey of New Zealand doctors, around 1 in 3 reported reduced trust, and around 1 in 5 a reduced sense of goodwill toward patients.[63] Adams *et al* found that in almost all cases complaining was seen as disruptive and damaging

[55] Bourne et al, "The Impact of Complaints Procedures on the Welfare, Health and Clinical Practise of 7926 Doctors in the UK: A Cross-sectional Survey" (2015)
[56] Bruers et al, "The Impact of a Formal Complaint on Dutch Dentists' Professional Practice: A Survey Study" (2016)
[57] A. Jain and J. Ogden, "General Practitioners' Experiences of Patients' Complaints: Qualitative Study" 1999 318(7198) *BMJ*, 1596-1599
[58] W. Cunningham, "The Immediate and Long-term Impact on New Zealand Doctors who Receive Patient Complaints" 2004
[59] A. Jain and J. Ogden, "General Practitioners' Experiences of Patients' Complaints: Qualitative Study" 1999
[60] Bourne et al, "The Impact of Complaints Procedures on the Welfare, Health and Clinical Practise of 7926 Doctors in the UK: A Cross-sectional Survey" (2015)
[61] Bruers et al, "The Impact of a Formal Complaint on Dutch Dentists' Professional Practice: A Survey Study" (2016)
[62] A. Jain and J. Ogden, "General Practitioners' Experiences of Patients' Complaints: Qualitative Study" 1999
[63] W. Cunningham, "The Immediate and Long-term Impact on New Zealand Doctors who Receive Patient Complaints" (2004)

to the professional and potentially to other patients too. [64] However, some studies have shown that for a minority complaints act as a 'wake-up call', leading to better record keeping, consultations, and communication.[65]

Finally, the complaints procedure may influence the extent to which negative effects are reported. In the Bruers *et al.* study, dentists who had been through a formal investigation process were more likely to report only negative or mixed effects, compared to those whose complaints had been dealt with *via* mediation.[66] This difference was mainly due to the fact that formally investigated respondents felt the process was more likely to impact negatively on their reputation. Casey and Choong examined General Medical Council procedures and found them stressful, leaving doctors feeling neglected, abandoned, and lacking support.[67] In terms of how complaints procedures could be improved, Bourne *et al.* argue for: improved transparency, neutrality and time-efficiency; a policy for vexatious complaints; an open dialogue between doctors and complainants; support for physicians; and a less formal approach.[68]

The research setting

The research below examines the effects of complaints in two Scottish public services: local authority planning departments and housing associations. This setting was chosen because: complaints procedures in Scotland have been recently reformed; the Scottish Public Services

[64] M. Adams, J. Maben, and G. Robert, (2018). " It's sometimes hard to tell what patients are playing at': How healthcare professionals make sense of why patients and families complain about care" 2018 22 (6) *Health*, 603–623

[65] Bruers et al, "The Impact of a Formal Complaint on Dutch Dentists' Professional Practice: A Survey Study" (2016); A. Jain and J. Ogden, "General Practitioners' Experiences of Patients' Complaints: Qualitative Study" 1999; L. Mulcahy and M. Selwood, "Consultants' Response to Clinical Complaints" 1995 310(6988) *British Medical Journal*, 1200.

[66] Bruers et al, "The Impact of a Formal Complaint on Dutch Dentists' Professional Practice: A Survey Study" (2016)

[67] D. Casey and K.A. Choong, "Suicide whilst under GMC's Fitness to Practise Investigation: Were Those Deaths Preventable?" 2016 37 *Journal of Forensic and Legal Medicine*, 22-27

[68] Bourne et al, "The Impact of Complaints Procedures on the Welfare, Health and Clinical Practise of 7926 Doctors in the UK: A Cross-sectional Survey" (2015)

Ombudsman (SPSO) showed an interest in the research; and housing and planning are subject to high volumes of complaints and represent contrasting examples of service delivery. The following paragraphs provide additional details on the setting.

Following a critical review of complaint handling in Scotland, the SPSO was given the role of simplifying complaints procedures.[69] This has resulted in most Scottish public services now being subject to a standardised process involving two stages: early resolution and investigation. As part of the reforms, the SPSO has a duty to facilitate the development of best practice in complaint handling. The SPSO has taken an interest in the effects of complaints on staff, co-organising a conference on this topic with the researchers and facilitating access to organisations to conduct the study.

Housing associations and planning departments were selected using purposive sampling. Sampling aimed to select areas outwith the healthcare sector, with significant complaint volumes. After the healthcare sector, local authorities are subject to the highest volume of complaints to the SPSO, with planning the third most complained about department.[70] Housing associations are the fourth most complained about sector. While figures on the number of complaints directly received are not available, we estimate that for every 1 complaint to the SPSO, 44 are made to public bodies. This provides a rough estimate of 7,040 complaints a year being made about planning departments and 15,620 about housing associations.[71]

[69] L. Crerar, *Independent Review of Regulation, Audit, Inspection, and Complaint Handling* (Edinburgh: Scottish Government 2007)

[70] SPSO "Cases Received by Sector" https://www.spso.org.uk/sites/spso/files/communications_material/statistics/2016-17/ReceivedbySubjectandAuthority2016-17.pdf [Accessed July 15, 2017]

[71] The ratio of SPSO complaints to complaint made directly to public bodies is based on a comparison of complaints about local authorities to the SPSO and local authority data. This ratio may not hold true in the sub-set of planning complaints. Due to a lack of data, a similar comparison could not be made for housing associations and the local authority ratio has been used instead. As a result, these estimates must be treated with caution.

In selecting this setting, we also wanted to study contrasting areas of service provision, drawing on advice from the SPSO. A summary of variations between the sectors is shown in table 1.

Table 1: Contrasting service delivery contexts

Variation	**Planning**	**Housing**
Service users	Mixed	Predominantly lower socio-economic groups
Relationship with service users	Mostly one-off	Long-term relationships
Regulatory context	No regulator	Regulator
Governance	Local authority, public	Independent, not for profit

Methodology

Research aim and design

The study aimed to investigate the effects of being complained about on the wellbeing and practice of public service employees and used a mixed methods sequential design: quantitative

data were collected in an online survey and follow-up telephone interviews were conducted with a subset of respondents.[72]

Online survey

An online questionnaire was distributed to all local authority and housing association chief executives in Scotland. Chief executives were asked to circulate the survey to their staff. The main participation criterion was that employees had been complained about.

There were 141 responses, with 9 excluded due to missing/incorrect data, resulting in a sample of 132 respondents. 64.4% of respondents (n =85) were from housing associations and 35.6% (n = 47) from planning departments. The survey included 26 questions about demographics, the complaint that had been made, the complaints process, and the effects of the complaint. Questions about effects were adapted from a study investigating the impact of complaints on Dutch dentists.[73]

Telephone interviews

61 survey respondents volunteered for interview. 16 were selected to provide a balanced quota in terms of gender, complaint outcome, work practice effects, and whether the employee felt supported. Interviews lasted between 20 and 40 minutes, and were digitally recorded and transcribed. There were 9 planning interviewees and 7 housing interviewees.

[72] J.W. Creswell and V.L. Plano Clark, *Designing and Conducting Mixed Methods Research*, (London: Sage 2011)
[73] Bruers et al, "The Impact of a Formal Complaint on Dutch Dentists' Professional Practice: A Survey Study" (2016)

Analyses

Descriptive statistics were used to analyse the online survey and interviews were analysed using thematic analysis.[74]

Limitations

The sample size limits the generalisability of the findings. However, other successful studies have relied on small samples (for example, 221 doctors were surveyed in Cunningham, and 16 healthcare professionals were interviewed in Verhoef *et al*.).[75] Self-selection means it is possible that those most negatively affected would have been more willing to take part. However, this seems unlikely, as a significant proportion of respondents reported positive effects on their practice. Overall, given the exploratory nature of the research and the difficulty in accessing organisational settings, the data are considered useful in providing initial insights into an under-researched area which can be built upon in future research.

[74] V. Braun and V. Clarke, "Using Thematic Analysis in Psychology" 2006 3(2) *Qualitative Research in Psychology*, 77-101

[75] W. Cunningham, "The Immediate and Long-term Impact on New Zealand Doctors who Receive Patient Complaints" (2004); L.M. Verhoef, J.W. Weenink, J. W., S. Winters, P.B. Robben, G.P. Westert and R.B. Kool "The Disciplined Healthcare Professional: A Qualitative Interview Study on the Impact of the Disciplinary Process and Imposed Measures in the Netherlands" 2015 5(11) *BMJ Open*

Findings

Quantitative results on the prevalence and type of effects experienced

The survey data show that being complained about affects the wellbeing and work practice of employees. Table 2 shows the strength of effects on practice: those who reported their practice being affected (either positively or negatively) were most likely to report that effects had been moderate. For 14.5% (n=18) of respondents, however, the effect on practice was stronger. Housing respondents were twice as likely as planning respondents to report that they had not been affected at all. This was the only finding where a statistically significant difference between the housing and planning sectors was identified ($X^2(2) = 6.45$, $p < .05$).

Table 2: strength of practice effects

Did the complaint affect your practice?	**Housing n (%)**	**Planning n (%)**	**Total n (%)**
Not at all	29 (36.2)	7 (15.9)	36 (29.0)
Somewhat	39 (48.8)	31 (70.5)	70 (56.5)
A great deal	12 (15.0)	6 (13.6)	18 (14.5)

Total n = 124 (80 housing and 44 planning) due to missing data

Table 3 summarises the more detailed responses featured in table 4 and shows that respondents reported both positive and negative effects on their practice. 17.6% (n=22) reported only positive effects, 17.6% (n=22) only negative effects, and 57.6% (n=70) a mix of positive and negative effects. Only 7.2% (n=9) reported no effects from having been complained about. [76]

[76] The proportion of respondents (7.2%) reporting no effect on their practice in table 2 is significantly lower than the proportion of respondents reporting that their work practice had 'not at all' been affected in table 1 (29%). It is common for prevalence rates to differ depending on the measurement method used (i.e. single-item question versus multi-item scales; see Bruers *et al.* 2016).

Table 3: summary of practice effects

Type of effect	**Prevalence** **n (%)**
Only positive effects	22 (17.6)
Both positive and negative effects	72 (57.6)
Only negative effects	22 (17.6)
No effect reported	9 (7.2)

Total n = 125 due to missing data

Overall, the findings indicate that, for most, complaints give rise to positive and negative effects on practice, while in a smaller number of cases complaints have wholly positive or negative effects. Table 4 provides a detailed breakdown of positive and negative effects.

Table 4: types of negative and positive effects

Type of effect	**Prevalence nagreed / ntotal (%)**
Positive effects	
I try to communicate better with service users	61/126 (48.4)
I felt more secure because I knew even if someone complained, it would be handled well	51/127 (40.2)
The complaint has taught me to recognize dissatisfaction of service users earlier	40/126 (31.7)
My confidence improved because I knew I would be supported by my organisation	35/127 (27.6)
The complaint was a wake-up call	28/127 (22.0)
Negative effects	
I am now more wary when dealing with (certain similar) service users	84/127 (66.1)
I have started frequent checking and double checking	40/127 (31.5)
I am more distrustful, cautious, insecure towards service users	37/126 (29.4)
I became unsure in my practice	34/127 (26.8)
I have started seeing every (new) service user as a possible risk	33/126 (26.2)
I became unsure when completing certain tasks	32/124 (25.8)
I try to avoid/no longer do certain tasks	20/125 (16.0)
I leave dealing with certain service users if possible to colleagues	15/127 (11.8)
I have less patience in contacts with service users	11/127 (8.7)
I have become less caring towards service users	9/125 (7.2)

Improvement in communication with service users (48.4%, n=61) was the most frequently reported positive effect, with a smaller number (22%, n=28) reporting that the complaint had a more substantive effect and constituted a ‘wake-up call’. Other positive effects emphasise the importance that a well-operated complaint process can have: 40.2% (n=51) felt more secure and 27.6% (n=35) felt more confident as a result of good complaint handling and feeling supported by the organisation. Recognising situations that might turn in to complaints at an earlier stage was reported by 31.7% (n=40) of respondents.

In terms of negative effects, the most frequently reported was wariness in dealing with certain service users (66.1%, n=84). Some respondents also felt more distrustful towards service users (29.4%, n=37) and started seeing service users as a risk (26.2%, n=33). A loss of self-confidence was another frequently reported negative effect, with 31.5% (n=40) reporting increased double-checking and 26.8% (n=34) reporting becoming unsure in their practice. Respondents also reported some avoidance behaviours: 16% (n=20) avoided certain tasks and 11.8% (n=15) left certain service users for others to deal with.

Effects on respondents’ wellbeing are shown in table 5 and were most likely to be reported as moderate (51.6%, n=66), with a significant minority affected ‘a great deal’ (15.6%, n=20).

Table 5: strength of wellbeing effects

Did the complaint affect your mental/ physical wellbeing?	**Total n (%)**
Not at all	42 (32.8)
Somewhat	66 (51.6)
A great deal	20 (15.6)

Total n = 128 due to missing data

Finally, table 5 shows the extent to which respondents agreed with the statement 'I felt well supported by my organisation during the complaint process'.

Table 6: extent to which respondents felt supported

I felt well supported by my organisation during the complaints process	**Total n (%)**
Agree	69 (57.0)
Neither agree nor disagree	23 (19.0)
Disagree	26 (21.5)
Not applicable	3 (2.5)

Total n = 121 due to missing data

Qualitative descriptions of the complaint experience

Qualitative data show emotional effects were common, with interviewees reporting feeling upset, shocked, hurt, angry, anxious, and attacked: *"I was quite shocked, and a bit hurt by it… And then I just felt a bit angry" (P8).*[77] For some the response was physical, feeling tearful, feeling something hanging over them, or feeling sick. For a minority, the experience was traumatic: *"It was dreadful, it was one of the worst things that's happened to me as an employee" (P5).* The experience was described as dislocating and undermining interviewees' confidence: *"I thought… did I mess up, basically? So it does make you question your own judgement" (P3).*

Some interviewees felt complaints were due to attempts at *"going the extra mile"* (P8) and the effect was to reduce the service they provided. This went in tandem with employees seeking to shield themselves from complaints over time, with more experienced staff developing coping mechanisms: *"That was horrible… just having that conversation reminded me how I felt when I was more junior" (P1).* The process by which the effects of complaints reduced with experience was described as developing a *"thicker skin"*, becoming *"battle worn"* (P1), and *"immune"* (P2). This involved re-conceptualising complaints as impersonal: *"…even though it is personal I don't take it personally"* (P1). In most cases, the negative emotional effects of complaints were short-lived: *"…nowadays I don't think about it too much"* (H2).

As noted above, quantitative data show planning staff reported effects on practice more frequently than housing staff. The qualitative data also reveal differences between how planning and housing staff described the complaints they receive: planning staff emphasised the professional nature and effects of complaints, while housing staff emphasised interpersonal

[77] Planning interviewees are referred to as P1, P2, etc. and housing interviewees as H1, H2, etc.

aspects. Complaints in the planning area were driven by austerity, educated and demanding service users, and the divisive subject matter being decided by planners. By contrast, housing interviewees emphasised their ongoing relationships with service users, the interpersonal nature of complaints, and the social challenges facing their service users. Context seemed to be important, therefore, in determining the issues that might be raised and how they would affect employees (an issue returned to below).

In common with the quantitative data, interviewees reported positive effects. Commonly mentioned effects were improved communication, becoming more sensitive to service user needs, and being better equipped to meet them. For most interviewees, their experiences of having been complained about did not result in them feeling negatively about complaints, which were opportunities to *"shine a mirror in your face"* (H6): *"… it's only by listening to other people that sometimes [you find out] your view of the world is not shared" (P4).*

Qualitative factors influencing the likelihood of effects resulting from complaints

Interviewees reported two factors exacerbating the effects of complaints: how the complaint was perceived and how the complaint process operated. Where complaints had a negative impact, the fact that were perceived as being personal was important: *"The complaints where I felt most under pressure were… personal attacks" (P7).* The personal element also related to how personally invested the employee had been in helping: *"Those are the ones that probably do sting…" (H6).* As noted above, housing interviewees were more likely to discuss the effects of complaints in personal terms.

A strong theme amongst planning interviewees, was that effects were particularly severe where complaints were perceived as an attack on professionalism: *"So when someone's*

obviously questioning your professional territory, it does concern you" (P3). This could result in interviewees' self-worth and reputation being undermined: *"…the reputation that I'd built up over the years in that particular role I felt was all for nothing" (P6).* The strong professional identity amongst planners was seen as raising the stakes when complaints were made.

In describing the negative effects of complaints, interviewees often referred to the perceived motivation of complainants. This was more prevalent among housing interviewees than planning interviewees, again reflecting contextual differences. The language used to describe complainants included terms such as difficult, tenacious, vexatious, malicious, pedantic, aggressive, stubborn, resistant, and unreasonable. In a very few cases, behaviour by complainants was seen as harassment: *"And I think that's the thing that we find, generally, most frustrating… there's nothing we can do" (H3).* In housing, serial complaints were mentioned more due to ongoing service provision. In contrast, planning staff tended to describe complaints as one-off events.

A theme somewhat more prevalent among housing interviewees (perhaps reflecting he need to maintain long-term relationships) was that their organisation used a "customer is always" right approach: *"I got told obviously that I had upset the [complainant] and because that's how the [complainant] felt, the complaint had to be upheld (H1).* Some interviewees perceived complaint processes as having the aim of satisfying the customer rather than "*actually get to the root cause of what actually happened" (H5).* Those few interviewees who had been subject to serial complaints felt that there was a lack of balance: *"Everybody's got the right to complain, but I do have the right to work in a nice atmosphere."* (H7).

In relation to the complaint process, access to information and involvement emerged as an important theme, with employees wanting to tell their side of the story:

"I think the thing that worked the best was when we actually had to sit down, in a discussion… There was opportunity to give my side of the story." (H5)

H2 emphasised that poor complaint handling was the part of her experience that was troubling: *"I don't think the tenant was the one that was in the wrong… I think it was my line managers"* (H2).

Being kept informed was important, but some interviewees felt that "*communication can be shut down slightly"* (P6): *"[I was] not necessarily fully aware about what's going on" (P3).* Poor communication extended in some cases to not being told the outcome or not being given explanations: *"I think probably I'd like, if it was upheld especially, for the line manager to talk through it… just more interaction" (H2).* Good explanations were key for helping staff accept decisions, especially if they were adverse (P4). Finally, several interviewees mentioned difficulties arising from colleagues being involved in investigating complaints: *"The complaint was as much to do with [manager's] attitude towards me as [the complaint itself]…" (P5).*

Support perceived to be required

Reflecting the survey results, some interviewees suggested that support was not required. Instead, being complained about was part of the job: *"So I wouldn't say I got a huge amount of support, but I wouldn't say… I asked for it either, or needed it" (P8).* P3 distinguished between support for junior and experienced staff: *"For less experienced staff or newer staff, I think it's absolutely critical" (P3).*

Interviewees tended to focus less on the need for additional support and more on ensuring a fair complaint process. An important factor was ensuring that they were given information and communicated with during the process:

"I think for me it's just communicating, keep supporting the person who the complaint has been made against. Keep everybody appraised of the information that you receive… so they're not hearing information second-hand either." (P6)

Listening to staff and allowing them to feel heard was key: *"I think the biggest thing is to have someone listen to what their side of the story is" (H5).* Interviewees also noted that an organisation's culture around complaints was important. A number of interviewees said avoiding blame allocation and making the focus of complaints about organisational improvement was important. One interviewee commented that a more positive approach could involve celebrating positive feedback rather than only focusing on complaints: *"We don't get told… well done with that case" (H1).*

Discussion

The prevalence, type, and severity of effects arising from complaints

The findings show that the effects of complaints on the practice and wellbeing of employees are substantial for a minority, and moderate for most. For 17.6% (n=22) of respondents in our sample the effects of complaints on employees' practice were wholly negative, while for 15.6% (n=20) there were severe effects on their wellbeing. The fact that 21.5% (n=26) felt inadequately supported by their organisation also indicates that, for a minority, effects are substantial and not currently well accounted for. These data are broadly congruent with studies in the healthcare sector and demonstrate that dysfunctional effects are present in other public

service contexts.[78] Indeed, where the measures in our study are directly comparable to other studies, the prevalence of effects is strikingly similar. For example, for effects on practice, our study and Bruers *et al.* found that 71% of employees had been affected at least to some extent.[79] In relation to wellbeing effects, results were also similar: 67.2% of our respondents reported an effect on wellbeing, compared with 60% in Bruers *et al*. The types of effects reported in our study and in healthcare studies are also broadly comparable and include stress, anxiety, shock, self-doubt, double-checking, avoidance behaviours, and wariness towards service users.

There are, however, important differences between our findings and the healthcare studies. Bourne *et al.*, for example, found more extensive evidence of effects on practice, with 84% of doctors reporting increased defensiveness following a complaint.[80] While differences in measurement do not allow direct comparison with our study, significantly fewer respondents reported defensiveness: for example, only 31.5% reported frequently double-checking work and only 29.4% reported feeling more cautious in dealing with service users. In relation to avoidance behaviours, Bourne *et al.* (*ibid.*) found that 46% of doctors reported these, whereas in our study respondents reported fewer such behaviours: only 16% reported avoiding certain tasks and only 11.8% reported leaving certain service users for colleagues to deal with. Consequently, while the likelihood of being affected by a complaint was broadly comparable in the housing and planning contexts compared with the healthcare context, in key areas of work practice such as defensiveness and avoidance, effects are likely to be more significant in the healthcare setting.

[78] Bourne et al, "The Impact of Complaints Procedures on the Welfare, Health and Clinical Practise of 7926 Doctors in the UK: A Cross-sectional Survey" (2015); Bruers et al, "The Impact of a Formal Complaint on Dutch Dentists' Professional Practice: A Survey Study" (2016); W. Cunningham, "The Immediate and Long-term Impact on New Zealand Doctors who Receive Patient Complaints" 2004 117 (1198) *The New Zealand Medical Journal* (Online).
[79] Bruers et al, "The Impact of a Formal Complaint on Dutch Dentists' Professional Practice: A Survey Study" (2016)
[80] Bourne et al, "The Impact of Complaints Procedures on the Welfare, Health and Clinical Practise of 7926 Doctors in the UK: A Cross-sectional Survey" (2015)

Another important difference relates to the intensity of effects on practice. While the Bruers *et al.* study exactly matches our overall findings, there is a significant distinction between those reporting moderate and severe effects.[81] Half as many respondents in our study (14.5%) reported being affected 'a great deal', compared with 29% in Bruers *et al.*[82] A tentative conclusion, therefore, is that effects in the housing and planning sectors – while similar in overall prevalence – are likely to be more moderate compared with effects in the healthcare sector. A further area where our findings stand out is the prevalence of positive effects within our sample. Although some of the healthcare studies have noted positive effects, this has not been a significant area of discussion.[83] Again, Bruers *et al.'s* study contains measures which are directly comparable: there, 48% of respondents reported either wholly positive (6%) or mixed effects (42%), whereas 75.2% of respondents in our study reported wholly positive (17.6%) or mixed effects (57.6%).[84] These findings were supported by qualitative data, with interviewees reporting improved communication and better recognition of service user needs. Interviews tended to also show that effects were short-lived and that coping mechanisms developed with experience could limit negative effects. In comparison to existing studies in the healthcare sector, therefore, our findings show: higher levels of positive effects; fewer effects on work practice in some key areas; and more moderate effects overall.

[81] Bruers et al, "The Impact of a Formal Complaint on Dutch Dentists' Professional Practice: A Survey Study" (2016)
[82] Bruers et al, "The Impact of a Formal Complaint on Dutch Dentists' Professional Practice: A Survey Study" (2016)
[83] Bruers, et al, "The Impact of a Formal Complaint on Dutch Dentists' Professional Practice: A Survey Study" (2016); A. Jain and J. Ogden, "General Practitioners' Experiences of Patients' Complaints: Qualitative Study" 1999; L. Mulcahy and M. Selwood, "Consultants' Response to Clinical Complaints" 1995.
[84] Bruers et al, "The Impact of a Formal Complaint on Dutch Dentists' Professional Practice: A Survey Study" (2016)

The importance of bureaucratic context and the complaint process

Our findings suggest, therefore, that service delivery context is important in explaining the type and extent of effects produced by complaints. Our data show housing respondents being twice as likely as planning respondents to report that their practice had been unaffected by receiving a complaint. Housing interviewees were also much more likely to discuss complaints in terms of personal attacks, including vexatious and serial complainants. A hypothesis that explains these differences is that complaints perceived as personal attacks are likely to lead to fewer effects on practice, because they can be rationalised as arising from inappropriate behaviour on the part of a service user, as found in previous research conducted with healthcare professionals.[85] While these complaints might have significant emotional effects, therefore, they are less likely to affect practice. In contrast, where complaints are perceived in professional terms, effects on practice are more likely as a result of them being seen as relating to an aspect of professional identity and reputation.

Despite these contextual differences, the design and operation of complaint processes was a theme across the board. For example, well-operated and supportive complaint processes could lead to employees feeling better able to fulfil their roles: 40.2% (n=51) felt more secure following a complaint because they knew it was well handled, while 27.6% (n=35) reported improved confidence as a result of being supported by their organisation. The qualitative data also emphasised the link between poor complaint handling and negative effects. Interestingly, the data here show that the design of the complaints process is key: this implies that in the complaints context, the issue may be less one of 'overload' and more one of the correct calibration of complaints mechanisms.[86] The features of complaints processes that led to

[85] M. Adams, J. Maben, and G. Robert, (2018). " It's sometimes hard to tell what patients are playing at': How healthcare professionals make sense of why patients and families complain about care" (2018)
[86] A. Halachmi, "Accountability overloads" 2014

negative outcomes included: favouring the complainant; not offering the employee a chance to state their case; poor communication; and not providing information during the process. This strongly echoes findings in the therapeutic jurisprudence literature regarding the way in which poor processes and emotional insensitivity can lead to anti-therapeutic outcomes,[87] as well as existing recommendations on ways to improve complaint systems (e.g. Bourne *et al.*).[88]

Reducing dysfunctional effects and promoting therapeutic outcomes

The fact that our study suggests that effects in the housing and planning sector are less prevalent and severe than in the health sector, and that more positive effects have been identified, does not mean that there is no need to consider how negative impacts might be minimised and how therapeutic outcomes could be maximised. Indeed, the negative effects of complaints identified in our study – while needing to be considered in balance with positive effects – should prompt reflection on ways in which complaint systems might be reformed. This is particularly important given the potential for aggregate effects to lead to reduced organisational performance and to undermine the aims of accountability, especially around learning and service improvement. Indeed, effects relating to greater caution in dealing with service users and undermined professional confidence will clearly hamper the achievement of better and more responsive public services. More broadly, even where effects appear confined to emotional harms, these have the potential to negatively influence individual and organisational perceptions of complaints and hamper the potential for using them as opportunities for reflection, learning, and improvement. This article, therefore, advances two suggestions for

[87] I. Freckelton, "Therapeutic Jurisprudence Misunderstood and Misrepresented: The Price and Risks of Influence" 2008; P. O'Byrne, "Therapeutic Jurisprudence and the Sentencing of Family Offenders: Does the Sentencing 'Bottle' in Victoria Need to Change?" 2016

[88] Bourne et al, "The Impact of Complaints Procedures on the Welfare, Health and Clinical Practise of 7926 Doctors in the UK: A Cross-sectional Survey" (2015)

reform: shifting the paradigm on which complaint systems are built or deploying new practices within the existing paradigm.

Designing a new 'bottle': changing the complaint handling paradigm

The current system for complaint handling in the UK remains based on the Citizen's Charter model. Its emphasis is on complaints procedures providing a means by which service providers can be held to account for breaches of service standards. In its outlook, this system is antagonistic, involving the submission of allegations of service failure and the subsequent objective determination of those allegations with a view to allocating blame and assessing redress. Even where 'informal resolution' is used, this largely provides case disposal using curtailed investigation procedures, rather than representing more consensual approaches.[89] Using Wexler's metaphor, then, the 'bottle' or structure within which complaint handling takes places imposes limits on the therapeutic practices, 'the wine', that might be deployed.[90] One approach to creating a more therapeutic complaints system, therefore, is to reform the bottle itself.

What might this look like? Drawing on ideas from the therapeutic jurisprudence literature, complaint handling could shift towards a non-adversarial paradigm, involving techniques such as mediation that are solution-focused and oriented towards positive future outcomes.[91] Rather than setting up citizens and administrators as actors whose interests do not align, a new model for complaint handling could emphasise common interests in improving services through more ameliorative processes of discussion, deliberation, and consensual

[89] C. Gill, J. Williams, C. Brennan and C. Hirst, *Models of Alternative Dispute Resolution*. (Birmingham: Legal Ombudsman 2014)
[90] D.B. Wexler, "New Wine in New Bottles: The Need to Sketch a Therapeutic Jurisprudence Code of Proposed Criminal Processes and Practices" (2013)
[91] M.S. King, "Restorative Justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice" 2008 32 *Melbourne University Law Review*, 1096

agreement, with this model being described provisionally as 'Therapeutic Complaint Resolution (TCR). This approach would also shift perceptions of the citizen as a selfish actor with narrow consumer interests,[92] towards a broader notion of complaining as active participation in public governance.[93] Such a paradigm shift would fit within conceptions of the 'relational state' and the creation of less hierarchical and more egalitarian relationships between citizens and the administration. For employees, the benefits of such a system might include the development of more positive and trusting relationships with service users, enhanced wellbeing at work, and a more human and sensitive means through which issues of public concern can be aired.

Such an approach, however, would require a significant reconceptualization of the relationship between citizens and the administration and, on that basis alone, is likely to be rejected as unrealistic. There are also practical objections to applying this approach, for example, in areas of complaints involving fundamental rights where mediation may not be appropriate or where the issues being complained about are transactional and a more discursive process for resolving concerns would be disproportionate.[94] More fundamentally, the approach could be seen as undermining the accountability function of complaint systems, by moving them away from objectively evaluating whether standards have been delivered to a more nebulous and subjective process of deliberation. This approach would fit well with the more expansive notion of *systemic therapeutic jurisprudence* suggested in section 1 above, where the concern becomes to connect individual level effects with the achievement of broader therapeutic outcomes.

[92] B. Brewer, "Citizen or Customer? Complaints Handling in the Public Sector" (2007)
[93] N. O'Brien, "What Future for the Ombudsman?" 2015 86(1) *The Political Quarterly*, 72-80
[94] V. Bondy, L. Mulcahy, M. Doyle, V. Reid, *Mediation and Judicial Review: An Empirical Research Study* (London: Nuffield Foundation 2009).

New wine in an old bottle: applying therapeutic practices within the current paradigm

A more realistic approach – at least in the short term – might be to consider ways in which aspects of the present system can be softened using therapeutic techniques. Here, the antagonistic character of complaint systems would remain, but with attempts to soften their edges. This is where the suggestions for reform of the complaint system from individuals in our study largely lie, concentrating on procedural fairness and communication: being given an opportunity to respond to a complaint and state one's case; and being provided with information and updates through the complaints process. These suggestions fit well with key therapeutic practices identified by Freckleton in his exploration of the experiences of professional actors in coroners' investigation processes.[95]

Another key therapeutic approach would be, as O'Byrne suggests, for those operating complaint systems to recognise their roles as therapeutic actors and to approach those complained about with an ethic of care for their wellbeing.[96] Such recognition could be complemented by a range of emotionally intelligent and empathetic communication practices.[97] Such shifts in communication and procedural fairness in complaint handling are fairly uncontroversial and – in fact – conform to aspects of good practice already recognised in the complaint handling literature. Indeed, suggestions about enhanced procedural fairness and interpersonal treatment fit strongly with prescriptions for improving satisfaction levels among

[95] I. Freckelton, "Therapeutic Jurisprudence Misunderstood and Misrepresented: The Price and Risks of Influence" (2008)
[96] P. O'Byrne, "Therapeutic Jurisprudence and the Sentencing of Family Offenders: Does the Sentencing 'Bottle' in Victoria Need to Change?" (2016)
[97] M.S. King, "Restorative Justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice" 2008

complainants.[98] The novelty of the suggestion lies in applying these approaches to employees rather than only complainants. Of course there may be increased costs in terms of time, effort, and complexity resulting from greater engagement of employees and enhanced communication. In particular, offering enhanced procedural protections – such as formal rights to reply or automatic rights to discuss a complaint – could slow complaint processes down leading to increased administrative costs and dissatisfaction among complainants.

Conclusion

Our study suggests that negative effects on practice and wellbeing arise as a result of being complained about for employees in Scottish housing associations and local authority planning departments. For a minority these effects are substantial, but for most they are moderate. Negative effects on work practice are balanced by some positive effects and also mitigated by coping strategies. While broadly comparable to studies in the healthcare sector, our study suggests that effects are: less prevalent in key areas of practice; less severe; and that positive effects are more prevalent. Our findings also suggest fewer effects on practice among housing respondents compared to planning respondents. The importance of the design and operation of complaints processes appears to be important across sectors.

The research presented in this article is exploratory and provides four initial insights that can be followed-up in future research. The first is that complaints have negative effects outwith the healthcare sector and that dysfunctional effects in complaint systems are likely to be a feature of other public service settings. The second is that context appears to be a significant influence on the prevalence and types of effects resulting from being complained

[98] C. Orsingher, S. Valentini, and M. de Angelis,"A Meta-analysis of Satisfaction with Complaint Handling in Services" 2010 38(2) *Journal of the Academy of Marketing Science*, 169-186

about, so that we can expect complaints to have different effects in different areas of public service delivery. The third is that effects on employees are not wholly negative, and for most are likely to be mixed, which presents a more variegated picture than that suggested in the traditionally dichotomous discussion of accountability systems. The fourth is that the types of complaints arising in particular sectors and the design and operation of complaints procedures appear to be significant factors in helping to explain the likelihood of negative effects resulting from a complaint.

In concluding, we emphasise that our data does not provide a basis for saying that the negative effects of complaint systems are 'too much'. Leaving aside methodological limitations, there is simply no objective yardstick through which such assessment can be made. Complaint systems – in common with other accountability mechanisms – will always produce some negative outcomes, and the real question is, therefore: what is the appropriate balance of positive and negative effects in any system? It is too soon to be able to answer that question, but this article contributes to scholarly debates by providing data and analysis which begins to reveal the hidden effects of complaint systems and the factors driving them. Future research should build on the insights outlined above to provide a stronger evidence base for more balanced discussions of the value delivered by complaint systems.

Finally, we have drawn on the therapeutic jurisprudence literature to support the pragmatic suggestion that, insofar as possible, negative effects should be minimised. In both proposals discussed above – paradigm change or adjustments in practice – we have identified benefits and costs. Our discussion of therapeutic practices should not, therefore, be seen as a set of recommendations. Rather, it is a starting point for thinking about what a 'Therapeutic Complaints Resolution' (TCR) system might look like and a prompt for reflection amongst scholars and practitioners. Here, the article has sought to develop therapeutic jurisprudence scholarship by seeking to connect individual level effects with the achievement of aggregate

level, systemic therapeutic outcomes. Given the ultimate objectives of complaint systems around better individual treatment and improved public services, there is a real need to probe further the relationship between individual encounters with complaints and broader, institutional responses to complaint systems. The article ends with a call to ensure that both future research and proposals for reform should pay closer attention to: the employee perspective; the effects of complaint systems; and the potential for enhancing therapeutic outcomes.