

The Case for Empathy by Regulators

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What is the primary purpose of the complaints process of a regulator of a profession? A likely answer would be: to protect the public from an incompetent or unethical practitioner. Most regulators might also say that the nature of the process is such that participants are rarely happy with the outcome.

However, an important purpose of the complaints process should also be to inspire public confidence in the regulator's oversight of the profession. If that is true, a key aspect of the process should be to create as positive a complaints experience as possible. Two recent sources emphasize the importance of empathy for regulators in achieving that goal.

In the first, a major survey of over 1,200 complainants and 1,600 respondents in Australia was analyzed in an article by Susan Biggar and others and was recently published in the *Journal of Medical Regulation*. The research was based on records available from the Australian Health Practitioner Regulation Agency (AHPRA).

The research indicated that most complainants and respondents found that it was easy to locate information about the process. Most complainants also found it easy to initiate a complaint and, where phone contact was made by complainants, they found the interaction helpful. However, beyond that, most complainants felt the fairness of the process, the level of communication (e.g., updates) and timeliness was unsatisfactory. Except for where cases were

summarily closed without a full investigation, most practitioners had similar perceptions of the process.

A major concern of complainants related to the fairness of the process. Many complainants felt that the process was not impartial and protected the practitioner. Complainants also felt that they had not been heard, that reliance was placed on inaccurate information provided by the practitioner and that they did not have an opportunity to respond to the outcome.

Many complainants had concerns about the outcome. Many did not understand the outcome:

Complainants commonly mentioned a lack of clarity in the outcome letter. The wording in the letters was considered "vague," "bureaucratic," "impersonal," "insensitive," with "inappropriate assumptions." Fifty complainants said they did not know that an outcome had been reached, yet due to the anonymous nature of the surveys the reason for this cannot be verified.

Many complainants also did not agree with the outcome. This was the major difference in perception between complainants and practitioners:

Conversely, most practitioners (70%) were satisfied with the outcome of their matter, yet many felt the regulatory threshold for even considering the notification [complaint] was too low.

For practitioners, the greatest dissatisfaction seemed to relate to the stress created by the complaints process:

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When asked how stressful the notifications process was on a scale of 1 to 10 (with 10 being extremely stressful), 89% selected ≥ 7 , with 51% selecting 10. Many practitioners felt this stress was not adequately acknowledged by [AHPRA]. Practitioners noted that the negative effects were often long-lasting and impacted on both their personal and work life. Timeliness and the lack of useful updates often heightened their stress levels.

In their discussion of the results, the authors suggest that regulators should develop “service principles that include respect, listening, transparency, updating, timeliness, apology, improvement and fairness”. This includes managing expectations:

... clarifying public knowledge around three key aspects of health regulation: (1) the role of the regulator, the complainant and the practitioner; (2) the purpose of the regulatory process and greater transparency around the process; and (3) the limitations of regulatory outcomes and reasons for outcomes

As a result, AHPRA:

... has introduced ongoing staff training in effective communication strategies, including active listening skills, the capacity to respond to people in distress (including threats of suicide and self-harm), managing expectations, communicating outcomes and responding to complaints about the process.

More fulsome reasons for decision is also recommended.

This emphasis on empathy was also highlighted by Professor Kieran Walshe from Manchester

University. In a recent podcast he discussed the concept of regulation as being a social discourse. He said that activities, such as investigations, are shaped by the behaviour of the people who do them. The reputation of the regulator is also significantly affected by the behaviour of the people who perform those activities. For example, if the representative of the regulator (e.g., staff or investigator) is directive, rude, dismissive, bureaucratic, and employs the assertion of authority, complainants and practitioners will respond accordingly and develop a resentful view of the regulator.

However, if the representative of the regulator demonstrates compassion, empathy (without showing favouritism), respects the dignity of the complainant and practitioner, listens to them, and treats their concerns seriously, the complainant and practitioner will respond more cooperatively and favourably and will have a more positive view of the regulator.

Regulators who develop policies, form letters, and train and recruit staff and investigators to act with empathy as a priority will be more effective and will also become more respected.

The AHPRA study can be found at: <https://meridian.allenpress.com/jmr/article/106/1/7/435351/How-Can-We-Make-Health-Regulation-More-Humane-A>.

Professional Walshe’s podcast can be found at: <https://player.whooshkaa.com/episode?id=665839>.