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A voice for change? Trust relationships between ombudsmen, individuals and public service providers

The ombudsman, tribunals and administrative justice section

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ABSTRACT

There has been a debate for years about what the role of the ombudsman is. This article examines a key component of the role, to promote trust in public services and government. To be able to do this, however, an ombudsman needs to be perceived as legitimate and be trusted by a range of stakeholders, including the user. This article argues that three key relationships in a person's complaint journey can build trust in an institution, and must therefore be understood as a system. The restorative justice framework is adapted to conceptualize this trust model as a novel approach to understanding the ombudsman institution from the perspective of its users. Taking two public sector ombudsmen as examples, the paper finds that voice and trust need to be reinforced through the relationships in a consumer journey to manage individual expectations, prevent disengagement, and thereby promote trust in the institution, in public service providers, and in government.

KEYWORDS: ombudsmen, administrative justice, restorative justice, external accountability, voice, and trust

Introduction

In the UK, as in most other countries, there are public sector ombudsmen (dealing with grievances people have about public bodies) and private sector ombudsmen (dealing with grievances consumers have with companies). These bodies offering out-of-court (alternative) dispute resolution (ADR) have seen significant growth in recent years.

Despite the importance of ombudsmen to our constitutional and civil justice landscapes, there is little known about both users' perceptions of the fairness of procedures, and the impact of those perceptions for levels of public trust and legitimacy in the ombudsman office. Much existing literature focuses on institutional set up and comparisons (Seneviratne, 2002; Buck et al, 2011). A recent growth of the institution of the ombudsman has been matched by a growth of interest in ombudsmen within socio-legal studies. Although ombudsmen have traditionally received much less research attention than the courts or tribunals (Halliday & Scott, 2010), important work has begun to emerge (Hertogh, 2001; Seneviratne, 2002; Buck et al, 2011; Gill, 2011; Kirkham, 2016). However, despite the importance and promise of this work, the question of how users perceive these institutions - and the significance of these perceptions for levels of trust - remains unexplored. Ombudsmen invest a lot of attention to get a better understanding of their users' needs through satisfaction surveys and research, but these efforts are confined to the individual institutions and vary in methodology and content. There is no independent review process that brings a uniform approach to a variety of ombudsmen, and which allows us to study the differences and similarities in a consistent manner. This is a curious oversight given both the significance of ombudsmen for our legal systems and the attention from socio-legal scholars on exploring perceptions of fairness and trust in relation to the

courts and tribunals (Tyler, 2001; Genn, 2006). More research, then, is needed to explore the significance of peoples' expectations in relation both to ombudsmen and exploring trust in ADR.

This piece developed out of a larger socio-legal inquiry about trust and legitimacy of ombudsmen (Creutzfeldt, 2016b). It builds upon some of that study's empirical findings and explores them in their broader context. For instance, 588 survey responses from recent users of public sector ombudsmen reported low levels of satisfaction and trust (Creutzfeldt 2016c). These 588 respondents were made up of 316 users of the Local Government Ombudsman (LGO) and 272 that had gone through a procedure with the Parliamentary and Health Service Ombudsman (PHSO). In the LGO sample 79.8% strongly agreed and 11.8% agreed that they had spent a lot of time and effort trying to sort out their problem with the service provider before they could contact the ombudsman. The figures for the PHSO sample were 84.5% strongly agreed and 10.1% agreed. These results imply that people reach an ombudsman with high levels of frustration due to incomplete complaints and unresolved issues. This, amongst other findings, suggests that if we understand the individuals' complaint journey as something that starts before the ombudsman gets involved and as part of a system of interactions and relationships, then one can start to disentangle these complex relationships by applying a framework to analyse the relationships between an individual, the public service provider and the ombudsman. I suggest a restorative justice approach can provide a helpful framework for such an examination.

The lens of restorative justice is applied here as a novel approach to understanding the ombudsman institution in context, from the perspective of its user. From this perspective, the ombudsman is part of a system to repair wrongs, resolve

complaints, and to build trust. Restorative justice approaches recognise the cycle of a user's journey and its institutional connections. Some scholars have discussed the relevance of restorative justice to the civil justice system and ADR (Menkel-Meadow, 2005). However, the connection to the administrative justice system and ombudsmen in particular has not been the subject of any detailed study as yet. Through the lens of restorative justice, this paper explores notions of trust in the relationship individuals have with an institution of the administrative justice system. The relationships this paper focuses on, guided by the user's interaction with the public service provider and ombudsman, are illustrated in figure 2.

One of the ombudsman's tasks is to promote trust in government, institutions, or processes (Behrens, 2015). To be able to do this, the ombudsman needs to retain the loyalty of its users to ensure they value the decisions. This, I argue, can be encouraged by understanding the complaint journey an individual follows as a set of trust relationships that need to be seen as a system.

Here, the qualities of voice and public trust are discussed; then the PHSO and LGO are introduced; followed by an exploration of the theoretical framework through which trust relationships operate. After exploring the identified system of trust the paper concludes that voice and trust need to be reinforced at every stage of the customer journey, ideally as a joint effort of the actors, to build confidence in the system.

Trusting the system: voice and public trust in ombudsmen

My recent ESRC funded study on *impact and legitimacy of ombudsmen* has shown that users have insufficient trust in existing public sector ombudsman schemes, as a public body (Creutzfeldt, 2016). One of the factors contributing to this phenomenon

might be the performance of the ombudsman organisations that I studied. The exit / voice model can capture the disengagement that users report.

Exit and voice

There are a number of factors that could illustrate a decline in performance, one being the response of users of the service. Hirschman (1970) described two possible user reactions to a decrease in the quality of an organisation's performance. The first is *exit*, in which the person withdraws from the relationship. The second is *voice*, in which the person attempts to repair the relationship by addressing the grievance. For example, a person upset by a service might choose either not to return or to raise a complaint. The distinction between exit and voice is that exit provides warning signs of a difficulty, whereas voice can provide the reasons surrounding and leading to that issue.

Hirschman was describing exit and voice through examples of the market place; although this piece is not focusing on the marketplace the notions of exit and voice can present interesting elements to help understand the trust relationship in the ombudsman context. Translated into the ombudsman context, exit can be seen as giving up, leading either to no citizen engagement with the system (Clarence & Gabriel, 2014; PASC, 2013/14), or pursuing other channels. There is a whole other discussion to be had about what happens to those people who choose not to engage with the system. The focus here is on voice, on people who are engaging with the system. Having a voice enables people not only to engage with the service provider but also to bring a complaint to a public service provider and / or ombudsman. The premise of this article is that people's satisfaction with a system is influenced by the quality of their engagement with that system. For those who feel they have voice

(amongst other things) in the process of dealing with an institution, they are more likely to be satisfied (OECD, 2013; Bovaird, 2007).

Hirschman (1980), in a reflection upon his previous work, argued that he had not paid enough attention to the significance of voice. ‘Voice can and should complement exit [...] as a recuperation mechanism when business firms, public services, and other organizations deteriorate’ (p.431). Voice includes people having a say and thereby feeling part of a system, it also means having mechanisms in place to facilitate people to use their voice, such as complaint bodies, for example. Simmons et al (2011) found that ‘giving users a more effective say in the direction of services, by means of representative bodies, complaints mechanisms and surveys of individual preferences and views’ included them in the process. This is especially relevant in the realm of public services, which is an area where many people still perceive themselves as possessing a legitimate voice (Simmons et al, 2009; Birchall et al, 2004). The authors found in their research, that ...

... over 70% of survey respondents reported they had expressed their views at some point in time about the service in question. Voice is therefore extremely commonplace, reflecting people’s sense of attachment to public services. Why do people feel this way? In short, it is because they often see public services as being important and care about them being done well. Evidence for people caring about their public services was widespread in our interviews with both users and providers (ibid, p 67).

An explanation for public attachment to, and expectations of, public services is the development among taxpayers of a sense of ownership or entitlement (Creutzfeldt & Bradford, 2016). However, the current landscape of bodies providing help for people who encounter a problem with the provision of public service is in transition.

Generally, a lack of accessibility and satisfaction has been described. A study by Dunleavy (2010) about the future of joined up public services, questioned their lack of accessibility.

Why aren't public services easily accessible, all in one place, in a location everyone goes to on a regular basis? Why do citizens have to make several phone calls and visits to different government agencies over several days, weeks or even months to solve a problem? (ibid, p.6).

The report highlights the importance of putting citizens at the heart of public service, and the benefit of including them in shaping outcomes and decisions. The provision of public services to citizens would benefit greatly, especially in light of the digital era, from the gathering and sharing of information from all parts of a service. This would not only give a system a sense of ownership by the citizens, but could also provide a solid learning and improving exercise.

Public service users can easily be disengaged when the service providers are not hearing their complaints and grievances. By contrast, research has shown that those groups show better results in the use of the services and decision making, that are more able to express voice and exercise choice and, as a result, tend to obtain a more satisfactory dispute outcome than others (Jilke et al, 2013). Amongst other measures, being heard and having a voice enhances people's trust in an institution (Tyler, 2001; Harrison, 2004).

Public trust in ombudsmen

Studies (Van de Walle et al, 2008; Hertogh, 2013) have found that ombudsmen, in their role to help citizens redress their grievances with government bodies, do not

assist in building trust. Why is the ombudsman's role in fostering trust limited? There is no easy answer to this question as there are many complex contexts to take into account.

As noted above trust is important to the ombudsman because it is essential to the delivery of its role in accountability, promoting public services and the government. Essentially, taking the ombudsman's function as an agent existing between the government and the people depends on its users' trust not only for its own legitimacy but also because it influences the system as a whole. Further, trust is also important because users who do not trust the ombudsman will not accept the decisions (Creutzfeldt & Bradford, 2016).

Scholars have described the ombudsman's role in promoting trust in government in Belgium, the Netherlands and the UK. Interestingly, these studies share the conclusions that the ombudsman has no noticeable effect on helping people trust the government and that only a distinct group of people uses an ombudsman. Van Roosbroek and Van de Walle (2008) studied people who seek help from ombudsmen in Belgium. They inquired as to whether an ombudsman's intervention has a noticeable effect on citizens' confidence in public administration and government. They found that whilst ombudsmen can function as 'change agents', the role of strengthening trust in government is limited (ibid, p.300). Further, they found that the socially disadvantaged are less likely to use the ombudsman. Hertogh comes to similar conclusions in his paper based on studies in Belgium and the Netherlands, finding that ombudsmen do not have much of a role in strengthening or restoring people's confidence in government (Hertogh, 2013). He offers two explanations for this – firstly, that people feel alienated from the ombudsman and secondly, that the ombudsman is only used by highly educated, white-collared, politically interested

men (ibid, p.246).

A recent report on public trust and the ombudsman in the UK suggested four key elements to public trust (Behrens, 2015); (1) Perceived honesty and independence; (2) demonstrating service to its users and the wider public; (3) developing a strong internal culture fostering standards; (4) manifesting active trust and trustworthy behaviour. These findings resonate with findings of my recent research project on people's satisfaction with ombudsmen (Creutzfeldt, 2016). Based on measures of procedural justice (Tyler, 2006) and legitimacy (Beetham, 1991), my project found that people are more likely to accept a decision that an ombudsman made if they feel they have been treated fairly by the people they deal with and this has an effect on their trust in the institution. In short, users of a system expect to be taken seriously, be engaged, and have a voice. Voice is especially important when things go wrong. This brings us back to the notion of voice and satisfaction.

Having a voice (Hirschman, 1970) and trusting the system are essential measures for people who bring grievances to this system. Here then the question arises of whether trust and voice are expectations or predictors of satisfaction within an institution or system. Do people value an ombudsman *because* they have voice or do people *expect* voice and become disappointed when they do not experience it? Further, under what circumstances are people more or less satisfied and trusting of the ombudsman?

This article starts to unpack these questions by exploring overarching trust relationships from a user's perspective. These trust relationships, I discuss below, are between an individual and public service provider; between an individual and an ombudsman; and between a public service provider and the ombudsman. Before offering the conceptual framework for making sense of the trust relationships, the

ombudsmen studied are presented.

Public sector ombudsmen

Originally a part of constitutional accountability systems (Seneviratne, 2002), ombudsmen are now firmly embedded in the private civil justice realm (Hodges et al, 2012). As such, they perform an important independent complaints-handling function and cover a wide range of complaints. This positions the ombudsman as an important ADR pathway, separate from the courts. The rapid expansion of the *ombudsman enterprise* (Buck et al, 2010) across the public and private sectors, which Rowat (1968) and later Harlow and Rawlings (2009) have termed *ombudsmania*, has brought with it a variety of institutional and jurisdictional models, operational styles and decision-making. It has also encouraged more research into the provision of informal justice and created evidence for change (Kirkham & Martin, 2014). Research has shown that the ombudsman institution has come under close public scrutiny by users (Creutzfeldt & Gill, 2015) and is suffering from a growing trust deficit (O'Brien, 2015).

For the broader picture, the question of public trust and ombudsmen is an important one to explore, as Behrens (2015) explains, one of the roles an ombudsman has is to create and sustain public trust in institutions and government. The topic of loss of public trust is widely recognised and identified as a cliché of our times (O'Neill 2002, p 9). This article is interested in exploring wider trust relationships and arguing for a rounded approach to understanding the interaction of different relationships. It achieves this through an empirical study into two ombudsman schemes the Local Government Ombudsmen (LGO) and the Parliamentary and Health Service Ombudsman (PHSO). Both bodies handle complaints from the public about the provision of public services and they see it as part of their role to create

opportunities for users to raise their voice. Although we are in the midst of a change in the general structure of public ombudsmen in the UK (Kirkham, 2016), I will outline the current setup during the period of this study.

Parliamentary and Health Service Ombudsman – a voice for change

The PHSO states in their annual report (2013/14) that they ‘give people a voice and power in their relationship with the state’ (ibid, p. 2). The PHSO investigates complaints of individuals who have received poor service or have been treated unfairly by government departments, public organisations and the National Health Service (NHS) in England. The PHSO can make final adjudications on complaints, and make remedial recommendations. They are accountable to Parliament.

In 2013/14 the PHSO completed 2,199 investigations. The annual report states that ‘most people who come to us want their complaint to make a difference for others’ (PHSO 2013/14 p.2). This recognition that users see the ombudsman, at least in part, as an opportunity to secure change relates directly to the notion of voice and to user involvement and participation in services, as mentioned in the Public Administration Select Committee (PASC) report (Cabinet Office 2005). Voice concerns giving ‘users a more effective say in the direction of services, by means of representative bodies, complaints mechanisms and surveys of individual preferences and views’ (ibid, p.5). The user’s voice can ideally be translated into institutional learning and feedback for understanding service failures and improving existing approaches. The mission of the PHSO is to realise this goal, as stated in the annual report 2013-14 and website:

Our research tells us that two thirds of people who would complain don’t because they think their complaint won’t make a difference. We are working to bring about a

complaints system that listens to and addresses people's concerns and uses the learning from their complaints to improve public services. We now have a once-in-a-decade opportunity to make these changes happen (PHSO, aim 4).

Local Government Ombudsman – changing the relationship between the people and the state

The LGO was created by legislation in 1974. It holds public services accountable if they have treated their users unfairly. The LGO is also the Social Care Ombudsman, providing a one-stop-shop for complaints about the service provided by all registered social care providers. Its powers to investigate extend to complaints about both publicly and privately funded social care.

In 2013-14 the LGO registered 20,306 new complaints and enquiries. Many of the queries that people raised were seeking advice and information, rather than a formal complaint. However, 11,725 complaints and enquiries required further consideration and were referred to the assessment team. Following from what is mentioned above, the LGO accepts the importance of user voice, as stated in the 2013/14 annual report:

... [we aim] to provide an independent means of redress to individuals for injustice caused by unfair treatment or service failure by local authorities, schools and care providers and use our learning to promote good public administration and service improvement (LGO, 2013/14, p. 5).

The changing landscape

Both ombudsmen facilitate communication and offer support for people who have grievances about public service providers. Public service providers under the LGO remit are local authorities, schools, and care providers. The PHSO has the remit for

government departments, public organisations, and the National Health Service (NHS) in England.

The hypothesis is tested here that peoples' expectations of public sector ombudsmen - institutions that are an intermediary between the individual and the state - do not map onto what they can actually provide (Creutzfeldt, 2016). This outcome might be connected to what Hertogh (2013) described as people feeling alienated from the ombudsman process. It can also be mapped onto a larger analysis/theory as to the dependence of institutions, such as the ombudsman, on establishing legitimacy, something which is partially dependent on an ability to create trust amongst its users. The mismatch between users' expectations and what institutions of accountability can deliver creates a rupture in the trust relationship. Literature on trust in justice, relating to the UK criminal justice system, supports the argument that ...

... public confidence in the Criminal Justice System has been found to be relatively low compared to public confidence in many other institutions. This lack of confidence has been attributed, in part, to low public understanding of how the courts work. Greater experience with the justice system is often suggested as a way to increase confidence in its fairness, efficiency and effectiveness (Van de Walle, 2009).

Sherman (2002) correspondingly finds in the US context, that 'public trust and confidence in the criminal justice system is low, and change is demanded.' The European Social Survey in round 5, examining the importance of public trust and institutional legitimacy, states:

Trust, we assume, is revealed in public assessments of the trustworthiness of institutions along three dimensions: effectiveness, procedural fairness, and distributive fairness. Legitimacy, we

assume, is revealed in people's consent to power and their sense of the normative justifiability of power (ESS, 2011).

This analysis of the way that the trust / legitimacy relationship works is equally relevant to the ombudsman sector, because to be successful they must be trusted by those who are most affected by these mechanisms (Behrens 2015). The main actors in this system are the public, public service providers, and ombudsmen (see figure 2). It is argued that, although the trust relationships between these institutions are complex in and of themselves, it is worthwhile taking a step back to see the wider relationships that contribute to trustworthy engagement.

One role of the ombudsman is to promote trust in the organisations that it investigates. To perform this role (amongst others) it needs to be trusted by its stakeholders. The claim is made that for the ombudsman to promote trust not only does it have to retain the loyalty of its users but also attention needs to be paid to the relationships of trust of the wider system. Literature on the users of public services highlights the importance of putting users at the heart of public services (Clarke et al., 2007). This can be related to a hypothesis that a problem with the ombudsman might be that the user is not at the heart of the model. That evidence of disengagement can be captured by the exit / voice model.

In the following part the models of administrative and restorative justice are considered to provide a conceptual framework to engage with the trust relationships.

Models of justice: administrative justice and restorative justice

This section offers a framework for placing the trust relationships into context, informed by the models of administrative justice and restorative justice. In the

following I shall set out the models separately to then show how they offer a framework within which to place the various trust relationships being studied.

Administrative justice

The ombudsman is part of the administrative justice system; a system made up of courts, tribunals, internal complaints review, and ombudsmen. The administrative justice system (in its widest sense) can be defined as the ‘combination of (1) initial decision-making by public bodies affecting peoples’ rights and interests, including the substantive rules under which decisions are made, the procedures followed in making decisions; and (2) systems for resolving disputes relating to such decisions and for considering citizens’ grievances’ (Consumer Focus Scotland, 2009).

The final report of the Administrative Justice Steering group in 2009 states that the benefits of this broad definition of administrative justice are that it delimits a coherent field of inquiry and enables discussion of administrative justice to respond to the full range of citizens’ concerns about their interaction with public services (ibid, p.2). This study adopts this wide conception of the administrative justice system in its understanding of trust relationships between some key actors of the ombudsman process, the people and public service providers. The report goes on to state that the ‘general idea of the administrative justice system should be focused on the needs of users.’ This involves delivering a high quality of public services (getting it right), providing effective redress (putting it right) and learning from mistakes (ibid, p. ii).

The ombudsman plays a crucial role in translating the aims of the administrative justice system into everyday practice. Although it is the primary responsibility of the body making decisions that affect the public to *get them right the first time*, an ombudsman can provide public bodies with information of complainants’ views and

types of complaints to encourage more efficient decision-making. The ombudsman's role in the administrative justice system is to *provide effective redress*, which relies on a good two-way relationship in the trust model (figure 2). One of the main factors in providing an efficient administrative justice system for its users, as outlined above, is to *learn from mistakes*. The ombudsman can provide redress and potentially repair relationships in the trust model (figure 2).

Within the system of administrative justice, public sector ombudsmen typically recommend a course of action with a 'win-win' outcome in mind, a friendly solution. However, there are also occasions where the remedy will not yield any new insights for the relevant institutions but rather produce cost, in terms of reputation and money. Here an ombudsman system can help by collecting complaint data, detecting systemic problems and providing feedback to the local authorities to keep them in check. Ideally, an ombudsman becomes a moral authority by being fair, independent and accepted by institutions and users. Trust, then, relies on reciprocity and takes time to build, but can also be broken in a moment (Llewellyn, Brookes, and Mahon 2013). Both people and institutions engage with the ombudsman, and a key element of this relationship is that institutions need to want to change and therefore see value in the ombudsman's recommendations. Ombudsmen are only as effective as they are seen to be, a follow-up on public service providers' compliance with the recommendations is therefore a crucial component.

Typically, institutions of the administrative justice system are studied separately, focusing on how they work (Genn, 1993; Halliday & Scott, 2011). For people who engage in this system it can be a confusing experience. Despite the institutions of the administrative justice system offering various pathways, these seem to be poorly designed from the user perspective. This article suggests looking at the system from

the view of the users' engagement with it. In other words, the user's grievance journey, and as part of this, voice and trust, needs to be understood and studied. To achieve this, the lens of restorative justice is suggested.

Restorative justice – an accountability system of repair

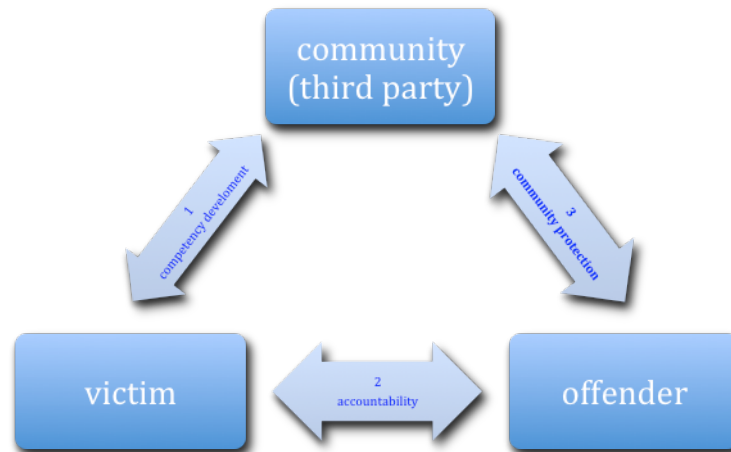
We give trust to others, but as a requirement of social interaction this trust is always conditional. Trust might be seen as glue for social relations (Aertsen, Daems, and Robert 2013, p.248). The concept of restorative justice, applied to the ombudsman context, helps explain how trust can be achieved in a system of relationships. A system that is experienced by its users to be a collective effort in repairing wrongs and being procedurally fair will help build trust.

Braithwaite found that, 'for informal justice to be restorative justice, it has to be about restoring victims, restoring offenders, and restoring communities as a result of participation of a plurality of stakeholders' (Braithwaite, 1999). Originating in the criminal justice context, restorative justice is taken here to emphasise the relationships of actors and the importance of collective engagement in a system of repair, to a different context. Hence, the paper makes use of restorative justice as 'more of an idea, philosophy, set of values, or sensibility than a single concrete uniform set of practices or processes' (Menkel-Meadow, 2007). There are challenges that come with borrowing a concept that is used more often in criminal justice to the administrative justice setting. But various restorative justice movements share the vision of a more flexible and dialogic, conversational, and authentic means of engagement. Indeed, the very notion of restorative justice - to create a situation in which all affected parties have a chance to communicate, listen and repair relationships - resonates with the ADR approach of an ombudsman, within the administrative justice system.

Ombudsmen investigate cases that involve victims of crime (LGO, 2013) where authorities fail to provide restorative justice, as set out by the Victims Code (Youth Justice Board for England and Wales, 2015). This paper, however, does not focus on the individual cases the ombudsman deals with under his/her jurisdiction; rather, it looks at the wider system of relationships between ombudsmen, citizens and service providers. These relationships are important for the system to work efficiently and provide outcomes that people accept, for service providers to learn from their mistakes, and for ombudsmen to make informed and fair decisions. This produces a system that fundamentally requires trust to continue functioning.

A further concept explored here is the role of trust in institutions for the three relationships. The fields of criminology and social psychology have provided an influential body of literature, linking trust to user satisfaction and perceived fairness of procedures (Hollander-Blumhoff & Tyler, 2008; Tyler, 2006; Creutzfeldt, 2014). Similarly, scholars have found that satisfaction rates are high when partaking in restorative justice (Poulsen, 2003). This paper explores the relationships of trust and voice, based on the original model of restorative justice (see below) as an alternative framework for thinking about wrongdoing (Zehr, 1990; Strang, 2002).

Figure 1: Restorative justice model



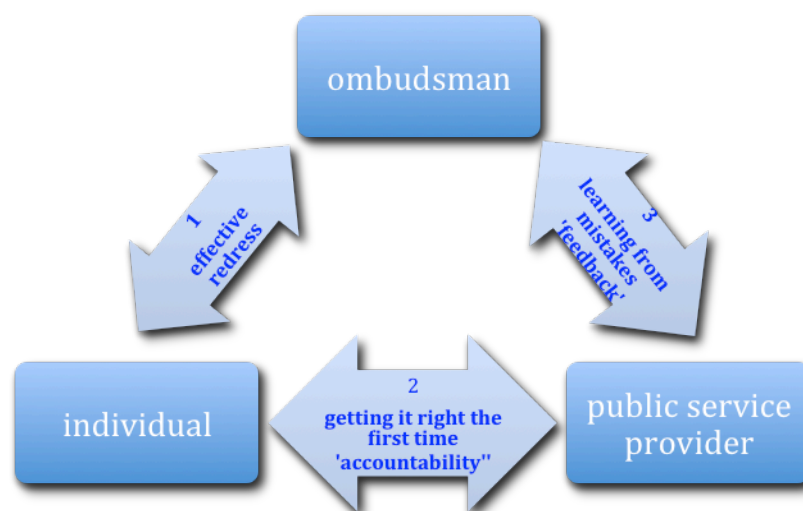
The original model draws connections between the relationships of victim, offender and a third party, focusing on: competency development, accountability and community protection (Bazemore & Umbreit, 2001; Pope & Feyerherm, 1995). In this context, the three relationships aim to establish an accountability system for repair. This means that the offender is accountable to the victim and the community, not just the state, and should take responsibility for their behaviour and take action to repair the harm caused to the victim and community, echoing the importance of a system of accountability and repair. Here, this general idea is applied to the relationships in the administrative justice context: the citizen, the public authority and the ombudsman. The three relationships are thus translated into: competency development = effective redress; accountability = getting things right the first time; and community protection = learning from mistakes & feedback (see figure 2 below). A paper by the Administrative Justice and Tribunals Council (Thompson, 2009) takes a similar approach to this piece, by examining the administrative justice system from the point of view of ordinary people. It argues for an understanding of the concept of administrative justice as a system, including fair treatment and transparency to

address the imbalance of powers. My article, in a similar fashion, looks at specific relationships within institutions of the administrative justice system and highlights the interconnectedness of trust relationships.

The trust relationships

Applying the notion of restorative justice to explore conceptions of trust in some institutions of the administrative justice system, the following model is developed to illustrate trust relationships explored in this paper.

Figure 2: The adapted model: Ombudsman trust-model



The *ombudsmen trust model* allows examination of the following three relationships: (1) *individual-ombudsman*; (2) *individual-public service provider*; and (3) *public services and the ombudsman*. These relationships resonate with the above-

mentioned aims of an administrative justice system: *effective redress*; *getting things right the first time*; and *learning from mistakes*. These relationships form the conceptual framework of a user's complaint journey. The relationship between the individual and ombudsman is determined by effective redress. This means that a person is more likely to trust an ombudsman if they experience a fair procedure (Tyler, 2006). However, it is important to note here, that this can also cause operational problems for ombudsmen whose users are interested in the outcome of the complaint above the procedural fairness applied. The relationship between the individual and the public service provider is marked by a strong sense of accountability and getting things right the first time. The individual expects for the providers of public services to act in their interests and sort out problems fast (Hirschman, 1970). Finally, the providers of public services and the ombudsman can work together closely to learn from their mistakes and feedback information to each other (Hodges & Creutzfeldt, 2015).

A wide body of research into perceived trust and fairness in ombudsman institutions has proven that the user's voice is an important factor. If a person feels that he/she has been heard and treated in a respectful manner by a person who is competent and neutral, it will increase the perception of fairness and trust in the institution. In light of this, the following discusses the three relationships further.

1. Individual – ombudsman relationship

For relationship one, *users' voice and the ombudsman*, the desire for effective redress is linked to expectations of fair procedures. My research has shown that users of ombudsmen, generally speaking, do not quite know what to expect from this procedure (Creutzfeldt 2016). It is important to undersatnd that the three relationships in this model are inter-related. As mentioned above, arriving at the ombudsman in a

disgruntled mind-set, increases the need for clear messages on what to expect as well as clear procedural steps. Some of the quotes from my study show that people do not distinguish the different institutions as obviously separate from one another.

I expected nothing. I knew they (LGO) would side up with the council. The council use the LGO as a get out of jail card. The council know they are covered. They can do as they please. They can lie and cheat with no reprimand [Male, 56 years old].

Other complainants are asking for a systemic change, providing evidence of others being affected by the same problem.

I expected the Ombudsman to uphold my complaint as it agreed with most aspects. I would have liked to see all complaints acted upon and then prevented from reoccurring so others do not have to suffer the same stress and extended illness as I have...What is the point of having laws, regulations and charters if there is no policing of the organizations by government civil servants who are paid by our tax [male, 56 years old].

Despite the vast variety of types of complaints, jurisdictions and complainants the LGO and PHSO cover, there are similarities in users' expectations of being heard, helped and taken seriously. This resonates with criteria of procedural justice as well as findings of the Financial Ombudsman Service (Financial Ombudsman, 2015), which state that customers expect: active listening, journey confidence, demonstrated expertise, effective communication, and timely service. Hand in hand with these expectations, my project's empirical data suggests that users' expectations of the ombudsmen system are built around four different normative roles of ombudsmen: interpreter, advocate, ally and instrument (Creutzfeldt, 2016).

2. Individual – public service provider

The second trust relationship focuses on the interaction between the individual and the public service provider. The role and importance of users' voice and involvement in (UK) public services has been explored and supported as part of engaging in the public sphere (Marquand, 2004). Within this, the realm of public services provides a platform where people perceive themselves to have a legitimate voice (Simmons et al, 2009; Simmons et al, 2011; Birchall & Simmons, 2004). Both users and providers agree that voice is important, as it reflects people's sense of attachment to public services. However, if this voice is not heard, the result can be disengagement and loss of trust. The process of involvement and voice are necessary for taking consumers' interests into account (Simmons et al, 2011).

Ipsos Mori (2002) conducted a study seeking to understand what people want, need and expect from public services. According to Mori, citizens generally feel that public services help level the playing field in an unequal society. 'The public like the idea of people from whatever geographical or social back-ground being free to access support from public services, without privilege or prejudice.' On the other hand, the two main areas of importance and improvement the report found citizens to have expectations of were fairness, uniform standards, outcomes and help for those in 'legitimate' need, and customer service standards (ibid, p.12).

Nine years later, a study of the Boston Consulting Group (2011) found that people did not feel they got what they ought to from the public sector. The majority of the surveyed 9,000 people in nine countries felt they got better quality service from the private sector than from the public sector.

The research shows that the picture in the UK is slightly less bleak than elsewhere: 37% of people are satisfied or very satisfied with the overall quality of government services. Furthermore, 48% think the quality of government services is better than services provided by the private sector - the best-rating government of all countries polled. But that still leaves a small majority (51%) who think the reverse is true.

The study found that the driver for low satisfaction levels in public services is a lack of timeliness of service – an observation that also rings true for the administrative justice system. Dunleavy (2010) in his study on the future of public services in the UK argues for a joined up public service. He advocates a system where public services are easily accessible, a system that is all in one place, easy to contact and that deals with issues in a speedy manner. In other words, his proposal puts citizens at the centre of this joined up approach. Likewise long-standing proposals to merge several ombudsman schemes might allow for a “simplified, improved and more accessible final tier of redress for customers of public services who have complained and who do not feel satisfied by how their complaint has been handled” (The Cabinet Office, 2015).

To sum up, people expect public services to be of a high quality, which means: fair, accessible, high standards, and predictable outcomes. When these expectations are not met, the ombudsman can get involved and new trust relationships are put to the test.

3. Public service providers–ombudsmen

The third trust relationship between public service providers and the ombudsman is initially showcased from the LGO’s point of view, based on interviews I conducted with LGO employees, asking about three aspects of this relationship - the willingness

of public authorities to deal with an ombudsman, the compliance rate of public services with ombudsman recommendations, and variations in the compliance rate.

The LGO has a good working relationship with the bodies under its jurisdiction. It achieves this through a link officer in each authority who acts as a conduit for each complaint about that authority. Each authority also has a link relationship with an Assistant Ombudsman so that any issues can be raised. LGO reports back to authorities annually in their Annual Review Letter. If the LGO has any problems with an authority - response times for information, for example - they can report it in this letter, which is sent to the Chief Executive and Leader (LGO website).

The compliance rate with the LGO's recommendations to remedy is high. The bodies within LGO's jurisdiction almost always comply. However, the LGO does not currently collect figures on this; one of the aims for the next business year is to follow up and confirm whether recommendations were implemented. Occasionally an authority or provider rejects the LGO's recommendations, as they are entitled to do, and the LGO is monitoring the situation to identify whether this reflects an increasing trend, such as a link to reduced resources to pay financial recommendations, for example. The LGO does not have powers to issue binding recommendations ('no teeth'). Here, the LGO believes that the local authority has the democratic mandate to make its decisions and that an unelected ombudsman should not be able to insist upon an action that elected members disagree with.

The individual compliance rate is not easy to measure. Indicators are the additional comments in the annual letters published on the LGO website. For instance, an excerpt of a letter to York City Council in 2014, signed by the ombudsman states:

I am concerned that on several occasions the Council has provided late responses to enquiries. This included a school admissions appeals case which should be treated as urgent. The Council did not respond to enquiries for over a month, despite reminders. In one planning complaint, the response was slightly late and incomplete. The Council then delayed the case by several months whilst resolving a matter of disclosure on certain documents. [...] I hope that you will review the way the Council has dealt with complaints this year and take the opportunity to deliver improvements in your complaints handling (LGO, 2014).

The relationship between public service providers and the ombudsman is highlighted in part three of the PHSO annual report (2013/14) it focuses on

... working with others and using what we learn from complaints to help them make public services better...We use the insight from our casework to help public services improve. Where we find big or repeated mistakes, we work with others to develop system-wide solutions. We engage with public service leaders to secure their commitment to make improvements. We share our work with Parliament so that they can hold the providers of public services to account (PHSO, 2013/14).

This is one example of how ombudsmen can take an active role in improving administrative decision-making by helping public officials to learn from their mistakes (Gill, 2011).

The PHSO report states further: 'In 2013-2014 we published 22 reports, six of which were joint investigations with the Local Government Ombudsman. The public sector organizations we investigated complied with over 99% of recommendations we made' (PHSO, 2013/14). A collaborative approach is being developed between the PHSO and LGO on matters that they share mandate over, or where the mandate is not clear to their users, as in some aspects of healthcare, for example.

The LGO states in its special report on local accountability in a multi-agency environment (2014):

With increasingly complex models of public service delivery, it is more important than ever that local services remain accountable to the people that use them. The need to learn from complaints, the role of local scrutiny, and the relationship with the regulatory landscape, are all key to ensuring effective local public accountability is embedded in future reforms and innovations in public service delivery (LGO, 2014).

Both statements demonstrate the dual role that ombudsmen play in the relationship with public service providers. Firstly, they hold them to account by helping people voice their grievances; secondly, the ombudsmen can help improve service standards by collecting the complaint data.

All three relationships considered above share the significance of peoples' engagement, voice and trust. If there is such a complex set of expectations in each one of the relationships, it will have an impact on the other trust dynamics.

Only if people can trust authorities, rules, and institutions can they believe that their own long-term interests are served by loyalty toward the organization ... it is being unfairly treated that disrupts the relationship of legitimacy to compliance, not receiving poor outcomes (Tyler, 2006, p.172).

A system of trust

This section draws together the relationships of trust and puts forward the central argument: if we see an individual's complaint journey as a system of trust relationships (within models of justice) then user loyalty can be retained and trust in the system built.

User satisfaction is a function of performance relative to expectations

User expectations of an institution, or an outcome that an institution can deliver, contribute to their perceptions of trust in that institution. The previous parts have shown that, for all three relationships, user voice plays a big part in developing and maintaining trust in an institution. We can argue that voice and being heard are the main drivers of user dis/satisfaction and trust. Here, several questions arise. Are ombudsmen veneers of accountability without *real* accountability in the eyes of their users? What role does learned behaviour play in individuals' expectations, described as 'learned resignation' by Sandefur (2007)?

A variety of factors contribute to the trust relationship between people and the ombudsman. Individuals' expectations of what an ombudsman can do are frequently mismatched to reality. Ultimately, users expect too much in the delivery of outcome and remit. Further, expectations and satisfaction levels seem to decline the longer a complaint procedure lasts. These factors might be interlinked. A person who contacts an ombudsman will have dealt with the public service provider's internal complaints system before qualifying to contact the ombudsman. This means that the person is upset with the service provider not dealing with the problem they had, and arrives at the ombudsman with a (typically) complex set of complaints. As such, the first contact with the ombudsman will be an important contributor to meeting and setting expectations, which might just be to be heard. Once the complaint procedures become complex and cumbersome, the satisfaction rates decline (Gilad, 2008). Gilad describes the importance of users' emotional management throughout the ombudsman procedure, concluding her article by stating that

... expectations management is likely to enhance complainants' trust in complaint handlers' adverse decisions, and moderate complainants' emotional distress ... expectations management encourages citizen consumer voice, albeit within the restrictions of a bureaucratic arena dominated by professionals' knowledge and norms (ibid, p. 250).

People feel that they have a legitimate voice and influence in provision of public service. This is a delicate relationship, as public service providers do not always get things right and are not always able to sort problems out to the satisfaction of the citizen. Public opinion polls have found that fairness and a high level of customer service are the main expectations citizens have of a public institution (Ipsos Mori, 2010).

The third relationship, between the public body and the ombudsman is, to some extent, more regulated. The ombudsmen have mechanisms in place to communicate directly with those bodies under their jurisdiction and to publish their recommendations to each of them on their website. Despite the ombudsman not having teeth to enforce change in the public body, the compliance rate with the ombudsman recommendations is high.

The question remains as to why people seem to expect 'too much' of the ombudsman. Is it because of what they have experienced before they contact the ombudsman? Looking at the whole customer journey, which starts with the individuals' problem with the public service provider, might shed some light on this question. The notion of trust in institutions is connected to individual expectations and reinforced through experiences (Sandefur, 2007; Gilad, 2008).

One option to encourage more reasonable expectations would be clearer communication at first contact, from both the public service provider and the

ombudsman. This would help to align the expectations of the users of a service with the actual scope of that service. It relates to Gilad's (2008) findings, and is empirically substantiated through my research project on peoples' expectations of ombudsmen: people's expectations of what an ombudsman can do for them are not aligned with the reality (Creutzfeldt, 2016). In other words, if expectations were managed early on in the complaints journey then there may be a higher chance of users having realistic expectations and being more willing to accept the procedure's outcomes.

Why are expectations important at all? They contribute to individuals' perceptions of a service and form the basis for future interactions. They are an important element in building and maintaining trust in an institution. An ombudsman can only be effective and responsive to addressing concerns of public accountability if people turn to them and if the public bodies follow their recommendations.

How, then, can expectations be managed and trust created? There is no recipe for managing individual expectations, as they are influenced by so many uncontrollable factors. On an institutional level, trust can be built by working towards a simplified, overarching approach of best practice for establishing *trustworthy behaviour* amongst the three trust relationships. Here, the plans to unify the public sector ombudsmen in the UK could provide the necessary stage.

Some of the elements to encourage *trustworthy* behaviour for ombudsmen and public service providers alike are to provide clear communication at initial contact to set expectations, to give people the chance to voice their story, to keep people informed along their complaint journey, to resolve matters efficiently, quickly and reliably, and to feed back information to help improve the system. There are, of course, other factors that play a role in creating user trust which can be as bold as to claim that the administrative justice system is poorly designed from a user perspective

and that it needs to be improved to meet expectations more. Procedures can be made more transparent, consistent and efficient (Thomas, 2011).

This article highlights the importance of approaching trust in an institution not only from the institutional level, but also from the user perspective, looking at the whole journey of a complaint process. Taking this approach might build lasting trust in the system as a whole. What this also means, of course, is that the institutions (ombudsman and public service providers) establish a working relationship to ensure users' trust is built and maintained.

Conclusion

This piece has identified relationships of trust that play a role in the administrative justice system. With the focus on exploring citizens' expectations, the theoretical starting point for identifying these relationships was the idea of restorative justice. This produced a trust model that was examined throughout the paper.

Understanding the trust relationships from the user's perspective and journey through the system sheds light upon the potential value of a joint approach to enforce trustworthy behaviour. Expectations of an individual who turns to an ombudsman after having tried to solve the problem with the public service provider are high. He/she wants to be heard, have their problem solved and not waste more time and energy. The question posed at the outset then, of whether user's value ombudsmen *because* they have voice or people *expect* voice and become disappointed when they do not experience the opportunity to express a voice, is best answered through the model of trust relationships above. The expectation of voice is very high when people approach the ombudsman. This means, in turn, that it is easy to disappoint. Voice and trust need to be reinforced at every stage of the customer journey, ideally as a joint effort of the actors to provide voice and establish trust. Theoretically it works the

other way too; if the actors in the model apply a consistent and predictable pattern of behaviour and outcomes then people will be more satisfied and trusting of the system as a whole.

Through ‘giving a voice to all parties affected, it reaffirms the moral and ethical aspect of the state and its institutions – it affirms the individual’s relationship with the state not only on a rational level but also on a social and emotional level’ (Gilad, 2008). This approach, I propose, needs to be reliably applied and reinforced through all institutions of a system to have an impact on their users.

Finally, I hope that this restorative approach to a trust relationship model offered here for the administrative justice system may be operationalized for future empirical work and therefore be helpful for other researchers.

Notes

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 - For a discussion on trust, see: Centre for Construction Innovation 'Trust in Construction: Achieving Cultural Change'. Retrieved from: http://www.earthshinesolutions.com/docs/Trust_Const1.pdf
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