

COMPLAINTS: THE SEARCH FOR RESTORATIVE JUSTICE

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Complaints are invariably about the breakdown of relationship, the sense of something gone wrong between two people and within at least one person, trust being broken, and betrayal.

Complaints also evoke feelings of fear, often in both parties. For when it happens that someone who has been seeking emotional, psychological help and healing, feels moved to complain about their 'healer', then it is always going to be a painful experience for *all* concerned. Unlike the complaint about faulty goods that can be easily resolved by apology and repair or exchange of the goods, a complaint against a therapist, as I painfully learnt some six years ago, is not so easily resolved and healed. Which is precisely why professional therapy complaints procedures need to be very well fashioned to take account of the particular emotional and psychological factors involved.

This article has been long in its thinking and feeling gestation, after such a hasty and ill thought out conception of the therapeutic work that ultimately led to a rightful complaint. It seeks to assist at the birth of a 'third way' to hear, sometimes uphold, resolve and learn from complaints. It seeks to add to a discussion of ideas, as yet unfashioned in their practical application.

So who currently fashions complaints procedures? There is the rub, for currently they are principally designed, implemented and executed by fellow therapists. The same people, colleagues at least in title, as those therapists who are complained against.

The fact that therapists adjudicate on each others' therapeutic practices is, in itself, a possible problem. Not only from a public credibility view point, nor even from the sense of 'judge not, lest ye be judged'. Who has not sometimes transgressed, if only in detail, the now very proscribed, detailed and precise BAC Code of Ethics and Practice for example? It could therefore be argued that it is inappropriate for people in glass houses to throw the first or any stone at their fellow glass house dwellers. Perhaps the biggest problem with therapists judging other therapists is the high level of mistrust between therapists, as witnessed surely at almost any conference of therapists (at

the very least in the bar room gossip) and certainly in the machinations of the well reported rows within the UKCP.

Perhaps this mistrust of each other is something to do with the similar backgrounds from which so many of us therapists come. Like many who do not become therapists, there are backgrounds of early woundings, broken, damaged and/or abusive relationships. For us, we went into counselling to express the resultant feelings and a search for meaning. So often, in the backgrounds of therapists, something went wrong in relationships and resulted in a mistrust of others.

It seems therefore, we are often a profession of mistrustful people. Like many people, we probably don't trust human beings very easily, let alone

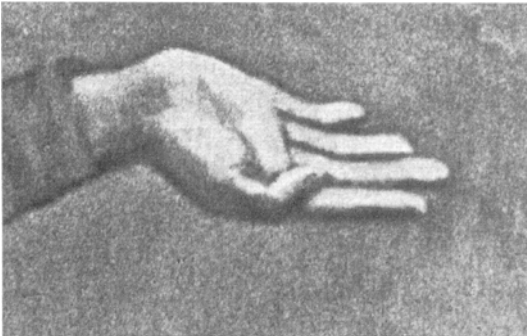
or her wounds. Or who might not, at least adequately enough to be the safe and competent therapist, have looked into themselves to resolve and heal old wounds. I own my own projections here, but at the same time invite readers to check them out for their own ownership.

But counselling and psychotherapy are founded upon confidentiality, a cornerstone of why and how therapy works, if it does. So when therapy goes well, both therapist and client are pleased and well served.

But what happens when it goes wrong? When the client is dissatisfied, feels not helped, or worse, abused or exploited; and encouraged by our increasingly complaining and blaming society, registers a complaint. What happens then?

As I have already said, a complaint against a person whom we wanted to trust, as someone to help us feel better about ourselves and others, to heal old wounds, is no ordinary complaint. Indeed, I would argue that in registering such a complaint, however well deserved or 'righteous', if it attacks our 'healer' – our projected healing energy – then we as complainant, in the understandable effort to free ourselves of shame and pain, actually often attack a part of ourselves, our own sense of transferred healing, vitality and physis. This is how I have heard and understood the pain and anguish that clients, long after complaining, and being believed by others, continue to experience. I also felt that sense of something unresolved and therefore not healed, in Rosie Alexander's account 'Folie a Deux'.

Which is precisely why the architects of complaints procedures need to be



fellow therapists. Which of course could be why we enjoy the confidential, private and closed world of the therapeutic relationship. For it both addresses our sense of comfort in alone-ness and the desire for intimacy, on our terms. As such, it is an enticing and seductive world to the hurt, perhaps archaically betrayed and mistrustful therapist; indeed the wounded healer, who might like the Greek god Chiron, have addressed his

far more cognisant of what it is to be complained against, as well as what it is like to complain, than apparently they have been up to now. Quasi legal systems of complaints, such as that operated by the BAC, seem in their formalities and scant attention to feelings to lack support for both the complained against and the complainant. In a scrupulous desire to be fair, which is honourable in itself, attention is primarily focused upon enquiry and assessment; a 'did you or didn't you do ...?' whatever is being scrutinised. And in the brevity of the adjudication process, little time is allowed for why, how and even less for the expression of resultant feelings on either side.

Which brings us to scrutiny, and the willingness or not of us therapists to open the doors to our confidential, intimate and private therapeutic closets (see my article 'Out of The Closet' – *Self and Society* Vol. 27, No. 4). If complaints are to be acknowledged, admitted to, resolved, healed and learnt from, then a willingness by therapists to 'open the closet doors' is of paramount importance.

Evidence seems to indicate that therapists have not in the past been very willing to open our practice to scrutiny, perhaps using the tenet of confidentiality to protect us from examination. Many of us are not only unwilling to self-disclose or have our practices observed, but very resistant to such ideas. Witness the arguments against tape recording our work; the resistance amongst some to undertaking our own therapy, let alone reports on our suitability to practice as therapists from therapists, trainers, even supervisors. In such debates we can quickly meet the view that is saying 'who is he or she to comment

or adjudicate upon *me*'. I find such (probably fearful and mistrustful) arrogance disturbing, especially when met in the personality of a therapist.

So there is often a resistance to therapeutic practice being observed, if it entails *our* practice being examined. Until someone is complained against. Then, as I have experienced, there is almost a rush amongst some to cast opinion about another. Invariably then, the observer, in an illustrative example of Jung's shadow, often quickly becomes judge and jury, criticising sometimes unmercifully and with little if any evidence of either compassion or humility: sometimes even pillorying the therapist complained against.

From being so careful about our collective therapeutic endeavours that extol the virtues of acceptance and being non-judgemental, a therapist is singled out for rejection and eviction from the club! Complaints seem to bring out the worst in us, the suppressed shadow-side of many therapists, in ignorance of the facts, let alone the nuances and complexities of the therapeutic relationship.

When this happens a double standard is operating, reminiscent of some passive-aggressive psychology. A sense of a sudden about-turn in opinion and feeling, rather like the manic-depressive or borderline personality who 'flips' from one way of being to another.

Complaints then have a tendency to bring out the 'shadow-side' of many therapists which, through a form of either projective identification or suppression, is suddenly given legitimate permission to be expressed. Now the most gentle of therapists can unleash – with legitimised cause – a vindictive sub personality.

Complaints will and do need to be made. Some therapists, in the course of their work, do make horrendous mistakes, do become entangled in their clients' and their own distress, especially when previous abuse is the issue, and can become abusive themselves, even exploiting the client who seemingly invites such a response. This is unethical and extremely harmful to the client, the relationship and the therapist. The work of all therapists needs regular and rigorous scrutiny, and wise and authoritative assistance from a supervisor/consultant/trainer/fellow colleague.

Complaints therefore raise the issue of how rigorous and well conceived/executed are our supervisory arrangements. Then, when things go wrong, as they will from time to time when we become over involved, and lose our ethical selves in the art of healing, how will both parties be adequately and sensitively heard, helped and the complaint resolved and learnt from so that the complainant can 'move on' in their life and the complained against be assisted towards better practice.

Once again then, it's back to the fundamental issue of scrutiny and our willingness or not, as therapists, to be open to it. A culture of secrecy, an activity that takes place behind closed doors by people, many of whom are themselves nursing archaic wounds and, as a result are thus mistrustful of others, surely militates against some kind of open, honest, third way of conflict resolution and thorough healing of even abusive and exploitive therapeutic practice.

We have to ask ourselves then, as therapists, for what purpose do we challenge, scrutinise and sometimes

support, or even ourselves make complaint against a fellow therapist?

For the answer or answers to that question will undoubtedly predicate how we conduct those activities, including designing and implementing complaints procedures.

A complaint is not just about but is often against someone's behaviour. If the organisation hearing and adjudicating upon the complaint starts from a wish to eradicate from the status of a profession, those therapists thought to have contravened a set of rules, practices and ethics, and therefore to be acting unprofessionally, then a complaints system will necessarily be set up along the lines of an adversarial, conflictual model, a quasi-legal system like the one I encountered through the BAC.

If the reason either for complaining or hearing a complaint is to seek to resolve conflicts, to assist a process of healing by way of conciliation or reconciliation, and/or to promote an honest revelation and resolution so that learning, apology, restitution and possibly forgiveness may be encouraged, then we might look at a complaints system along the lines of the South African Truth and Reconciliation Commissions' recent hearings, as described by the former Archbishop Desmond Tutu in 'No Future Without Forgiveness'.

For as the title states, there is little hope for a new future if no attempt at forgiveness is made. And in so saying, Desmond Tutu recognises the enormity of inviting victims of oppression, cruelty, abuse and exploitation, to attempt forgiveness. What so many clients telling me of their experiences most wanted was

not retribution or punishment, but acknowledgement, an admission of wrong doing by the complained against, and an apology.

'... retributive justice in which an impersonal state hands down punishment with little consideration for victims and hardly any for the perpetrator - is not the only form of justice. I contend that there is another kind of justice, restorative justice Here the central concern is not retribution or punishment, but in the spirit of *ubuntu*, (Nguni for the essence of being human, generous, caring, compassionate and the sense of 'my humanity is caught up, is inextricably bound up, in others; I am human because I belong, I participate, I share'), the healing of breaches, the redressing of imbalances, the restoration of broken relationships. This kind of justice seeks to rehabilitate both the victim and the perpetrator who should be given the opportunity to be reintegrated into the community he or she has injured by his or her offence. This is a far more personal approach, which sees the offence as something that has happened to people and whose consequence is a rupture in relationships. Thus we would claim that justice, restorative justice is being served when efforts are being made to work for healing, for forgiveness and for reconciliation.' Desmond Tutu.

Nelson Mandela, who invited his white gaoler of 27 years as an honoured guest to his inauguration as President is quoted by Desmond Tutu as saying that what is necessary to repair very deep wounds, is that both pain and sorrow, as well as hope and confidence in the future, need to be expressed if we are not simply to repeat the past. In other words, each unprofessional, ill-thought out and sometimes deliberately

abusive, cruel or exploitative action, needs to be grasped by all of us, in a constructive way that encourages the future to evolve in a growthful, developmental way. This rather than a judging and dismissing of such perpetrators and their acts that may be repeated by succeeding therapists.

In this latter scenario, it is little wonder that students of repeating patterns are likely to be inclined towards cynicism and pessimism, when regarding what is often called 'human nature' from such a hope-less view point. Little wonder either that such people, if architects of complaints systems along judicial lines will inadvertently continue the repeating behaviours they claim to abhor.

In the language of therapeutic psychology, this way of conceiving of and resolving complaints is most likely to be located in the Rogerian humanistic philosophy, rather than the more analytical with its Freudian roots in a victim/persecutor tradition of seeking retribution that inclines towards making judgements.

Increasingly those who complain or are complained against find that a blaming, litigious culture, however understandable and sometimes warranted, can actually subvert both the idea and practice of conciliation and conflict-resolution. It can also militate against the open disclosure by the complained against, robbing the complainant of what they most desire and need: for some form of healing to occur, an admission of wrong doing.

Dr Edwin Borman is quoted in a Sunday Telegraph article (16 January 2000) as saying 'we should not pander to the blame culture that appears to be developing'. He quotes R Syal and J

Thornton saying that the General Medical Council's decisions about complaints are '... sometimes distorted because they were based on how the media would perceive them.'

In order to discourage defensive reactions to complaints, alleged perpetrators need to be assisted to address and meet their feelings of fear, in an encouraging atmosphere of complaints procedures that seeks acknowledgement, learning and resolution of the complaint. This is how medical complaints are now increasingly handled, with resolution at local level being sought first. Health Authorities also, unlike many therapy organisations, separate out bad practice from ethics wherever they can. This assists the possible identification of poor practice as separate from an attack against the integrity of the complained against.

Legal processes too, through the Family Mediation Service, seek to promote conciliation rather than adversarial posturing. To assist this, it is therefore important that those complained against can be encouraged to disclose mistakes 'without prejudice'. In other words, such disclosures cannot be encouraged and then used by the complainant in an adversarial manner. This parallels the South African Truth and Reconciliation Commission's granting an amnesty to those perpetrators who were prepared to admit to horrendous acts provided, as with the case of Steve Biko's killers, they did not excuse themselves at the same time: his killers were refused amnesty. If complainants are not prepared to attempt such a resolution, this needs to be made clear and a different path, probably adversarial, sought.

Synchronistically, in April 1994 when South Africa was liberating itself from fifty years of apartheid, a former client of mine was seeking to liberate herself from the yoke of shameful feelings she experienced as a consequence of my ill-conceived, transferentially confused and hurtful practices as a therapist. There, sadly, for both of us, the parallel process ends.

South Africans wisely went on towards an evolutionary future, through an admission of crimes, an acknowledgement of often very wrong doings and an attempt at forgiveness by the victims of the perpetrators of such dreadful deeds, through the process of the newly established Truth and Reconciliation Commission. My former client and I were subjected to an adversarial system of a tribunal hearing. Separated by our individual pains and the quasi-legal process of investigation and adjudication, I have no knowledge of how, if at all, my former client was healed by the process that led to my punishment.

From my experiences of counselling victims who have successfully sought and gained retribution after being victimised by the perpetrators of such assaults as rape, abuse and violence to their person, I have little confidence that my former client gained emotional healing. I hope I am wrong.

The biblical story of Salome leaving Herod's court with the head of John The Baptist on a plate, does not inform us of either what she did with the head or indeed how her life continued to evolve. I have often wondered whether, with this act of beheading, both John's and Salome's lives were arrested. What I do know is that the entire experience of the complaints process continues to haunt me, being both unresolved and

still, (some would argue I expect, why not?) an open wound awaiting healing. I am concerned the same may be true for my former client.

'.....the past, far from disappearing or lying down and being quiet, is embarrassingly persistent and will return and haunt us unless it has been dealt with adequately. Unless we look the beast in the eye we will find that it returns to hold us hostage.'
Desmond Tutu

My reason for writing this article, rather than attempting to seek healing for myself, is to openly acknowledge that an unhealed wound will enter, along with so many other wounds, the collective conscious/unconscious of us all. In my experience, and perhaps my ex-client's, the wound is still open. Retributive justice has occurred, and I hope helped my ex-client. I have learnt enormously from it. But restorative justice has not been served and until it is, I know my mistakes and hurtful actions *will* be repeated, not by me, but by others, enticed into what the Buddha called 'idiot compassion' through both love and wanting to care for someone, as well as the therapist's transference need for healing of self.

Again I quote the words of Desmond Tutu:

'The adoption of this Constitution (the Truth and Reconciliation Commission and granting of amnesty to promote the hearings) lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past ... These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimisation'.

So what is 'adequate' and what could be an appropriate way of hearing, sometimes upholding, resolving and learning from complaints? And can such South African procedures that were of course a particular attempt to heal very deep, open wounds transfer in an appropriate way to a professional system of receiving and processing complaints?

I think yes, and in these ways.

First, no professional organisation should *alone* be police, detective, prosecuting (or defending) counsel, jury and judge as so many still are. As in common law, these are discreet roles



that only oppressive systems seek to blur. In an understandable swing to the opposite, the oppressiveness that complainants formerly experienced when trying to complain is now exerted against the complained against, hence the swing from a secretly repressive society, to the open and blaming culture that in its turn encourages the

practice of defensiveness and thus a return to secrecy. And so it will go on until we break out of this cycle. That is what the South African experience has attempted to do, by implementing an alternative, to profoundly face the wounding experiences of victims, not only of bad practice, but also unethical, abusive and exploitive practices.

I would propose that formalised independent panels of both professional and lay members of the community, be instituted around the country, to hear the testimonies, the stories of clients and therapists who are aggrieved. And that all these people are themselves supported in what is inevitably an emotionally traumatic and fearful, shaming experience, by independent conciliators and mediators.

Such mediators and the panel members will need to possess, in abundance, the qualities of empathy, compassion, a deep sense of understanding people and the actions they embark upon. They will need to combine these with a rigorous search for the truth or truths, if learning, healing, reconciliation and conciliation are to be gained.

The members of the independent panels and the mediators, will need to be trained and supported in these humanly difficult tasks, if they themselves are to transcend the more primitive focus of hatred and vengeance.

The panel should have the power to recommend and in some more extreme cases, sanction appropriate courses of action for any therapist who, by their own admission, has done wrong; to undertake if they wish to continue practising with the approval of their professional organisation. Punishments should not be a prerogative of such

panels. The hearing in itself will undoubtedly prove to be shaming and humbling to almost any wrong doer who has had the honesty and humility to admit to their wrongful acts. Therapists not willing to make such admissions, should be refused the opportunity of such attempts at conciliation and their aggrieved clients will therefore have to seek or pursue other adversarial ways of complaining.

The panels could also be empowered to instruct the complained against to make reparation to the complainant, along the lines, for example of a repayment of any fees taken from the complainant, costs incurred in making the complaint, and some reasonable contribution towards the complainant's costs of further restorative therapy.

The granting of an amnesty (the 'without prejudice' agreement) against civil prosecution or litigation, is essential, if the complained against is to be encouraged to admit to the truth. Any complainant who is not prepared to sign such an 'amnesty' agreement in return for the admission of the wrong perpetrated against them, is clearly thinking of a possible action through law. They therefore should also, like the unwilling therapist, be refused recourse to an attempt at conciliation or reconciliation via such panels.

Again, some professional organisations muddle conciliation attempts with investigations. Police detectives, investigating 'crimes' are not expected, nor would it be appropriate so to do, to act as possible conciliators. And that is as it should be.

The practice of publishing the names of therapists successfully complained against through such panels would be counter-productive. For as is becoming

more obvious, therapists complained against, with their reputations and livelihoods at stake fearing such publication, will not admit to unethical and/or poor practice.

Researchers (e.g. Rutter and Russell) estimate that the currently known complaints represent only the tip of a mighty iceberg. Publishing the names of therapists found to have acted unethically will simply maintain that iceberg.

What is the purpose of publishing the names of those complained against? It panders to the idea of a public flogging in societies' stocks, perhaps to scare others into ever more defensive (mal?) practices. Is the eleventh commandment: thou shalt not get found out? Is the intention to make everyone else in the profession feel a lot better about themselves, an inverted feel good factor that the purveyors of bad news know to be successful in popular story telling and the selling of newspapers.

This archaic practice should, along with town stocks, be consigned to the psychological dustbin or museums.

Therapists need to be confronted by those whom they have hurt and wounded through their 'bad practices'. They need to hear in a humbling and appropriately shaming way, the hurts suffered and endured by their 'victims'.

Equally, the 'victims' need to be heard by compassionate and 'truth-seeker-panels who will not mince their words in reflecting these wounds to the perpetrators. They (the victims) also need to be heard by those perpetrators. We therefore need a particular system for hearing and resolving complaints,

along the lines of the South African Truth and Reconciliation Commissions hearings. Not a system to protect perpetrators, nor a system to vengefully prosecute them, but a 'third way' of restorative justice that encourages honest, open disclosure of wrong doing, and by admission and apology, then to effect healing, forgiveness and a reconciliation. This could repair broken relationships and mistrust and serve both the victim and the perpetrator.

What is most clearly lodged in my mind, indeed I can evoke it as clearly today as when it happened six years ago, is seeing and hearing my former client tell me, in front of my supervisor, how deeply hurt and wounded she was by my particular words and actions. I will never forget that moment, and in my heart, will continue to apologise to her for the rest of my life.

Further Reading:

Desmond Tutu, *No Future Without Forgiveness*, Rider 1999

Rosie Alexander, *Folie à Deux*, Free Association Books, 1995

Peter Rutter, *Sex In The Forbidden Zone*, Mandala 1990

Janice Russell, *Out Of Bounds* Sage 1993)

John Sivyver, 'Out Of The Closet?', *Self & Society* Vol. 27 no 4, 1999

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