

Systems for Dealing with Conflict and Learning from Conflict—Options for Complaint-Handling: An Illustrative Case

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The phone rings in the Ombuds Office.¹ A Ms. Lee is telephoning the ombudsman from far away. Lee is a department head in our organization who is temporarily assigned overseas. She says that a colleague, Ms. Dula, insisted that Ms. Lee call the ombudsman immediately. Ms. Lee says that Ms. Dula noticed her crying in the bathroom. Ms. Dula listened for a while, and then insisted that Ms. Lee must consult with someone. The ombudsman seemed to be the least threatening option.

In the Ombuds Office we do not know what we will hear. A case introduced in such a way might be about any very delicate issue. The central concern could be cruel, closed-door humiliation by a supervisor or mentor. It could be racial or religious hatred or sexual abuse or someone with an obsession. It might be suspicion or knowledge that a powerful person has misused resources, embezzled money, or committed fraud. It could be fear of violence or gross safety violations. Most delicate cases include several different issues; perceived humiliation, intimidation, and conflicts of interest are often part of a complaint, and so are allegations of multiple infractions of policies and rules.

It is also possible that we will hear perceptions of fact that turn out not to accord with reality. (One of the reviewers for this article, Dr. Howard Gadlin, who is Ombudsman of the National Institutes of Health, wrote, “If an organization has an Ombuds Office that is really trusted, and whose confidentiality is actually believed in, then you

1. In these articles, we use the term “ombudsman” for the practitioner and “Ombuds Office” for the office. Like our professional association, the International Ombudsman Association, we respect the use of various forms of these terms.

get people coming forward who have ‘no case’ at all.”²) So we try hard to maintain professional discipline and due caution.

The caller is often afraid, very upset, and feeling trapped in her or his situation. For example, the alleged offender may be powerful and charismatic, with many connections. The alleged offender might be a senior leader, a major donor or customer, or someone who controls the future of the complainant. A complainant may be afraid to let her family know about her problem if it seems to reflect on her own behavior—for example, her chastity. A complainant might be a temporary worker or contractor who risks his visa and his family’s future if he loses his job.

A caller may believe that she cannot realistically make a formal complaint, because she lacks conclusive proof of the offense. Or a caller may feel humiliated even to talk about what happened, if he thinks he should have been able to deal with a problem on his own. Many callers blame themselves. Many callers can see no way out, and can feel things getting worse and worse. “I have let this go on far too long,” says one or another caller, and sometimes the ombudsman silently agrees.

Ombudsmen know that people are often puzzled that they or others have not taken action in apparently egregious circumstances. Our experience is that only a relatively small proportion of the population is comfortable with formal actions (although, importantly, some in this group are satisfied *only* by formal investigations and formal action). But most people, most of the time, are quite reluctant to act on the spot, or report unacceptable behavior, if they believe this will result in formal action. This is one of the reasons why options are needed in a complaint system.

What might the ombudsman do? We would be as empathic as possible and set aside whatever time was necessary to listen and talk with Ms. Lee. At whatever moment we begin to speak—sometimes one simply listens for a period of time—we would often begin by explaining confidentiality, neutrality, the informal nature of the Ombuds Office. We explain that we almost never make management decisions, and about the independence of the office.

Typically, we make a major point about confidentiality with a caller, and we think a lot about it ourselves. The International Ombudsman Association’s Code of Ethics states: “*The Ombudsman*

2. E-mail from Howard Gadlin, Ombudsman, Nat’l Insts. of Health, to Mary Rowe, Ombudsperson, Mass. Inst. of Tech. (July 29, 2008, 14:33:40 EDT) (on file with author).

holds all communications with those seeking assistance in strict confidence, and does not disclose confidential communications unless given permission to do so. The only exception to this privilege of confidentiality is where there appears to be imminent risk of serious harm.³ We will always be thinking about whether there may be imminent risk of serious harm to the caller, or to someone else. And we will always be thinking about the options that exist within our particular conflict management system

Whatever Ms. Lee's concern may be, we would try to help her to consider that she does in fact have options and some hope. However insufficient to her account of fear and perhaps injury, there may be some options to help her, at least a little, in dealing with her situation. Together with her, we would look for ideas, perhaps including:

1. Possibly Ms. Lee does not have to take any immediate action. She may be able to find informal support from Ms. Dula or others—perhaps from a member of her family back home; from social workers, health care, legal, and religious advisers; or a mentor in the organization. We would ask if she has consulted anyone else, and will try to develop ideas about other trustworthy people who could help her if she wants time to think about her options.
2. Ms. Lee and the ombudsman might discuss possibilities for her to get a little time off, if that would be helpful, or to come back home if she is away from home. If she says her situation is untenable, and also is unwilling to choose another option below, Ms. Lee and the ombudsman could discuss options for a transfer, in case that is possible, perhaps to another department or another country. In some situations Ms. Lee might consider a formal complaint after she has safely left the situation. (If the complainant feels strongly about having to leave, the ombudsman may be mentally adding this issue to the list of concerns to consider in the case. That is, is it possible that the complainant is being driven out? Or that she is fleeing a situation where she herself has behaved badly? Or both?)
3. In some situations, the ombudsman may be able to help by explaining relevant policies or procedures to Ms. Lee that she

3. The International Ombudsman Association provides the Code of Ethics and Standards of Practice for an organizational ombudsman. See IOA CODE OF ETHICS (2007), available at <http://www.ombudsassociation.org/standards/>; IOA STANDARDS OF PRACTICE (2007), available at <http://www.ombudsassociation.org/standards/>.

had not known or understood. In our experience very few managers and employees actually know the rules and policies of their organizations. In addition, many do not understand the local cultures and cross-cultural “common laws” that exist in most organizations. Thus a discussion of norms, expectations, and rules may be helpful in affirming her feelings, and perhaps helping her understand why some kinds of supervisory behavior *are* in fact considered acceptable. (Please see also the accompanying article by David Miller on the importance of codes of conduct.)

4. In some situations, the ombudsman—with permission—may be able to help by making a quick phone call to a relevant compliance office. (See, as examples, Audit, Ethics/Compliance, HR/IR/Human Capital, Equal Opportunity, Legal Counsel/General Counsel, Environmental Hazards/Waste Hazards, and other compliance offices on the accompanying Chart.) It may be possible to alert the relevant compliance office to the facts of the concern, without any mention of Ms. Lee.

5. Ms. Lee might be able to write the facts of a situation or call a Hotline, without betraying who she is. Anonymous complaints can sometimes bring attention to safety problems, financial misbehavior, and other issues, and the ombudsman or Hotline will know which person in the organization might do some fact-finding and take action, and where Ms. Lee might direct a factual letter. Some organizations say that they do not act on anonymous complaints. However, in our experience most organizations do take note of truly serious, anonymous communications, at least with respect to issues where investigation is compulsory.

6. We might help Ms. Lee to think about drafting a formal letter to the person she sees as the offender. She might set forth relevant facts as she sees them, and the effects of relevant events. She might state whatever she thinks should happen next, or ask for a remedy, if there is anything for which she would wish to ask. (An example might be to ask for setting things right in the situation she describes.) Just *drafting* such a letter may help her to deal with grief, think through her possible options, and prepare for any formal option that she may choose.

7. We might also help Ms. Lee to think about writing a letter to her supervisor, if this is not the same person as the offender, setting forth the facts as she sees them, the help she needs, and also any concerns about her work. Drafting such a letter might help

her to prepare if eventually she wishes to talk with her supervisor. Discussing such a draft with Ms. Lee may provide the ombudsman with a chance to explore gently how others might view the situation. And of course, if Ms. Lee is willing to communicate with her supervisor, this may help that person and the organization; supervisors can act much more effectively if they have the information they need.

8. Ms. Lee might also consider drafting a formal complaint to appropriate senior managers or compliance officers. This process often takes a little while. As noted above, this may be useful both for collecting the facts, and for enabling Ms. Lee to cope emotionally with what has been happening. From the ombudsman's point of view this is also a process that may help Ms. Lee see other sides of the story in cases where that would be appropriate.

9. Ms. Lee and the ombudsman might also discuss what she would wish to say to the (alleged) offender, her own supervisor, or relevant senior managers—if she were to meet with any of them. We could help Ms. Lee to consider what she might want to accomplish at any such meeting and the possible things that the other person might say or do. We might role-play the meeting, with the ombudsman playing the role of the other person. Ms. Lee might consider, at such a meeting, handing in the letter described above. If the organization permits an accompanying person, we might talk about whether she wishes to ask a workplace associate to accompany her.

10. In some cultures and with respect to certain problems, it is possible that Ms. Lee would wish to think about some form of mediation. If Ms. Lee wants to make a request, mediation may be helpful. She might choose the ombudsman as a neutral, or some other person, like a mentor, a revered older person, or a designated mediator from a Mediation Office.

11. In some situations it might be helpful for the Ombuds Office to ask an appropriate office for an immediate training program in the region or department where Ms. Lee is working. There might be training about relevant codes of conduct. The training might be about harassment or safety policies; about relevant laws of the country; about resources available for people who perceive unacceptable behavior; or about options for bystanders. Generic actions like these may stop inappropriate behavior. Generic actions sometimes make it easier for people to act on the spot, or

come forward, and may thereby help to prevent harm in the future.

12. In some situations the ombudsman might offer to talk with the alleged offender, with Ms. Lee's supervisor, or with a relevant senior manager.

13. In some situations, Ms. Lee could register a formal, written complaint with the most senior organizational leader or manager in the country where she is working.

14. We could seek relevant resources that might be available in the country that Ms. Lee is in—for example, resources for women—to see if she wishes to consult with them.

15. Ms. Lee could go to relevant organizational security or outside police officers. Ms. Lee might register a formal complaint with the relevant judicial system.

16. While considering the options above, Ms. Lee might decide to "wait and see if anything else happens." In such a case, we might suggest that she consider keeping a careful log, with dates and times, noting witnesses, if any, and any additional evidence of events that cause concern. As with option five above, a log of this kind might help Ms. Lee assess what is happening, may contribute to her having enough "evidence," and may help her regain some sense of control over her life.

17. Occasionally a person will ask about "how to make a formal record" without using any of the formal options above. The Ombuds Office keeps no case records for the organization, but a person like Ms. Lee could mail a securely-sealed letter herself, or even send such a letter by registered mail to herself. This might later serve as a record.

18. If Ms. Lee mentions other parties in her discussion of concerns, the ombudsman might explore with Ms. Lee what the options might appear to be for these other stakeholders—and to try to think ahead about what they might choose to do under various circumstances. In relevant cases, the ombudsman might also ask whether Ms. Lee would want her own call to be disclosed, if another stakeholder were also to call—or whether Ms. Lee would prefer not to give such permission.

Usually it will appear that there are shortcomings for every possible action. It may take Ms. Lee a little time to reach a decision on how to proceed. Ms. Lee might choose more than one option, or plan

to try several options sequentially if needed. Maybe none of these options will do, and we are likely to continue to search for another. Especially if Ms. Lee chooses to “wait and see,” the ombudsman may follow up and . . . follow up again.

Complex cases are often challenging for an ombudsman. We would constantly be trying to maintain objectivity since we often cannot be sure about any of the facts of a situation. We would try to think if we were affirming Ms. Lee’s feelings enough for her not to feel alone, or in despair, without actually being drawn so far into the situation that we have lost objectivity about the facts. Such objectivity is needed both to help her and to consider the rights and interests of others and of the organization itself. There are many questions to consider, especially if different nationalities, religious groups, and cultures are involved.

The ombudsman must think about whether, if Ms. Lee’s story is true, there may be risk to any other person, and if so whether there is *imminent* risk of serious harm. We must also think, whether the story is true or not, about the rights and interests of the alleged offender. What needs to happen in the very rare case that the alleged offender does not exist, or has been in another country entirely, and the alleged offense cannot have taken place? It will be clear that we must listen with great care.

The ombudsman will likely consider the role of Ms. Dula—is her knowledge important in a formal sense, for example to back up Ms. Lee? Does she know more than we know she knows? Does her having heard Ms. Lee’s story constitute “notice” to the organization? Will she make trouble or be helpful, if Ms. Lee gets back to her, and ought the idea of getting back to Ms. Dula be discussed with Ms. Lee? Are there others like Ms. Dula with whom Ms. Lee has spoken? Does Ms. Lee know of others who have faced the same kinds of issues? We will try to be thinking about everyone whose interests in our organization (and perhaps outside it) might be affected, and any possible options for meeting those interests.

It is likely to be important to Ms. Lee that our organization provides *options* for dealing with conflict within our conflict management system. As mentioned above, there are likely to be compliance offices. And, like most organizations, our system has an internal grievance channel that is available to deal with formal complaints, so Ms. Lee has rights-based options available. Although Lee may have little trust in formal grievances against persons of high rank, the high rank of an (alleged) offender will not necessarily influence an investigatory procedure—people in high positions have been brought

to justice in the past. However, if Ms. Lee believes that she lacks “enough” evidence, this may deter her from lodging a formal grievance. And even if more evidence is forthcoming, she may feel she will be faced with fallout afterwards.

Although she may have little trust, a rights-based option may in fact *protect* Ms. Lee, especially if it turns out that other people share Ms. Lee’s concerns. And a rights-based option may help to protect the interests of others, which may matter to Lee. And of course, on the other side of the picture, if the alleged offender is innocent, his or her name might get cleared, a fact that is important to a neutral observer.

Ms. Lee’s interest-based options may seem limited if she fears loss of privacy, loss of relationships, and retaliation. However, writing a factual letter to deliver privately to the alleged offender may appeal to her, especially if she wishes to ask for a remedy. Being able to prove that she delivered such a letter may also add a little to “evidence.” In some situations, she might decide to do this by sending the letter to the apparent offender, and a copy to herself the same day, perhaps even by registered mail; she would of course not open her own copy but keep it, sealed as possible evidence. In a less formal mode, she might just hand the letter to the apparent offender and keep a copy for herself. Having more evidence might prove helpful to management if Ms. Lee were later to need to bring a formal complaint.

Ms. Lee’s power-based options may seem risky to her. What if the apparent offender’s boss sides with the offender? What if the superior asks Ms. Lee for evidence and Ms. Lee tells him or her there is not any, beyond her own word and the fact that she spoke with Ms. Dula? But there is also the possibility that Lee’s own supervisor, and the people who know her, may be a source of power for her. She may not have to face her situation alone—others may be able to support her.

Whatever options Ms. Lee chooses, we must also think about the systems implications of her complaint. Presumably we will follow up. Sooner or later there will be an opportunity to address the issues raised above, either through the immediate option chosen by Ms. Lee; through a training program; or via 360 performance evaluations, organizational surveys, and focus groups. It is also possible that an ombudsman could get permission from Ms. Lee, after she is safely out of the situation, to talk with a relevant supervisor or a relevant compliance manager.

Multi-issue, multi-cohort, cross-gender, cross-culture, multi-jurisdictional cases require great care. Imagine a few facts changing

either way, or imagine the case in a different context, and a conflict may change or the options may change.

Organizations need to have a way to let the facts emerge, if only privately, while different actions are considered. This task is, realistically, daunting in modern organizations; many managers are very insulated. However, the complexity of the modern workplace has fortunately led to complaint systems that provide *options*—to provide care, fairness, and justice—for complainants, for respondents, and also for managers.

Just “having a choice of options” seems to help people to come forward. Brian Bloch’s accompanying article illustrates an example of developing various options, how they may be used, and how they may help individuals and groups.

The existence of an Ombuds Office that is independent and neutral, and off the record, and which knows all the components of the conflict management system, may be able to help people in distress take a responsible first step. The accompanying article by Mary Rowe develops these ideas in greater detail.

