



CHRE

Enhancing confidence in fitness to practise adjudication

Research Report May 2011

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1. SUMMARY OF THE RESEARCH

To date CHRE has worked stringently to ensure regulation amongst healthcare professionals has remained reliable and trustworthy. Through public-focused principles, CHRE works towards health professional regulation that is fair, transparent and unbiased. However in 2011, it has been suggested that practice delivered by regulatory bodies might be improved, based upon feedback from individuals who have experienced the fitness to practise process as a witness. A qualitative research study has been undertaken in order to examine the experiences of complainants and witnesses in fitness to practise cases.

In terms of broad findings, communication seems the key component in creating greater transparency and a better understanding of the procedure and possible outcomes.

Telephone or face-to-face 'human' contact (as opposed to purely written advice) was considered vital throughout the complaints procedure, in particular when completing paperwork and prior to a hearing. Currently, a majority of the support on offer seems to be provided by legal representatives, rather than regulators, with many respondents in this research study reporting that they had little interaction with the regulator.

It seems that, in order to establish better practise in the area of fitness to practise adjudication, CHRE will need to ensure that:

- time frames are created and maintained for individual cases
- paperwork is simple, clear in terms of language and non-repetitive in nature
- regulators are available for witnesses to contact in case of queries
- hearings are conducted in a fair and unbiased manner
- witnesses are made to feel comfortable and that their evidence is accepted as valid.

2. BACKGROUND

The Council for Healthcare Regulatory Excellence (CHRE) oversees the work of nine health regulatory bodies. With guidance from the Health and Social Care Act 2008 and the NHS Reform and Health Care Professions Act 2002, CHRE has the authority to refer cases to court if decisions from hearings are considered too lenient; CHRE also advise on policy and most relevant to this project, audit the initial handing of fitness to practise cases.

CHRE want to be able to develop high-level principles and recommendations for creating a '*modern, cost effective and efficient fitness to practise adjudication system*'. Subsequently research was commissioned to understand the experiences of people who are appearing as 'witnesses' in fitness to practise cases.

2.1 Research objectives

This research sought to understand people's experience of fitness to practise across a spectrum of health regulatory bodies. In particular, it looked at adjudication (i.e. the hearing to decide if a health professionals' fitness to practise is impaired).

The research investigated experiences at each stage of the process - such as the pre-hearing preparation, experiences on the day, communication throughout the process, how the decision was communicated as well as overall satisfaction with the final outcome. Ultimately, this project was intended to inform CHRE about how adjudication can be improved to reaffirm public confidence in the regulatory system.

3. RESEARCH METHOD AND SAMPLE

A qualitative approach was employed, because of the need to explore and understand the variety and nature of information provided by individuals in relation to experience of the fitness to practise process.

Twenty-five one-to-one depth interviews were undertaken (1 hour duration, 12 face-to-face and 13 by telephone) with those who had participated in a fitness to practise hearing as a witness. There was also representation of those who did not complete the fitness to practise process.

A range of representation was achieved in the sample:

- respondents from England, Scotland and Wales
- respondents participating in fitness to practise proceedings carried out by the GMC, GDC, GPhC and NMC
- representation of complainants and those providing evidence on behalf of the complainant, as well as the defendant.

During these interviews, individuals were asked a range of open-ended questions that allowed the conversation to flow freely, guided by the participants' own situation and comments.

The focus was on experience, communication and feelings about the overall process, as well as upon reactions to each specific stage of the process.

A purposive sampling approach was adopted (i.e. the sample was designed to meet a particular specification and was therefore non-random).

Individuals were pre-tasked to ensure the criteria was met; this involved the application of a telephone screening questionnaire in order to ensure that all had actually embarked upon the fitness to practise process, rather than merely complaining directly to the professional or their employer.

3.1. Ethics

At the most basic level, all participation in social or market research is voluntary (based around informed consent) and respondents are assured of complete confidentiality and anonymity. Care is taken to ensure that research is positioned in a manner that enables potential respondents to curtail their participation at any point if they wish.

Similarly, by following the requirements of the Data Protection Act 1998, we seek to reassure participants that their views and personal information will be used appropriately and not unlawfully.

3.2. Analysis approach

Qualitative analysis is based on evidence of recurring themes – and the identification of exceptions to these themes. The following qualitative findings therefore indicate a range of views of individuals that have entered the fitness to practise process.

Since qualitative approaches do not measure research issues quantitatively, the findings are not statistically representative.

A content analysis approach was employed in order to ensure a consistent and robust approach to analysis. Researchers listen back to the audio recordings of their interviews and write detailed notes, including quotes that highlight points of interest.

Listening to audio files (rather than reading transcriptions) generates much richer detail in terms of the tone and temperature of the discussion and therefore allows a deeper understanding of the context of the interviews.

Each researcher collates the findings in their notes under headings mirroring the question areas in the topic guide. The analysis process responds to participant feedback: as new themes emerge, additional headings are included.

The findings under each heading are assessed in terms of: frequency of mention, content, tone and emphasis and then key themes are drawn from the findings.

This report draws together the findings, highlighting significant themes.

4. MANAGEMENT SUMMARY

It is clear that, at the point of wanting to make a complaint, individuals need to be made aware of their options and, subsequently, what will happen once a decision has been made. Examples of critical questions that must be addressed include:

- to whom can I complain?
- what will I achieve?
- is there an order in which I should use different complaints processes?
- what other processes may be instigated by a complaint being made? (i.e. employer and defendant processes).

At the point of formalising a complaint, complainants typically required support (ideally telephone-based support) to complete what was perceived as a large amount of complex paperwork. Many suggested having direct telephone access to a specific, relevant department or individual in order to provide advice when this is needed in relation to documentation.

Participants also felt that regular communication is needed in order to provide a full, broad, understanding of the complaints process and to clarify what is expected of them, as well as the level of detail required in responses. It was believed that regulators should provide process 'maps' and a clear description of all potential outcomes.

In future, witnesses wanted more information to help them prepare for the hearing itself. This is typically an unfamiliar experience for the ordinary person, which can be unnerving and may lead to the witness being intimidated and disadvantaged during the hearing.

Amongst participants who did not achieve the outcome they were hoping for, there were perceptions that the process seems to be biased in favour of protecting the registrant, to the detriment of the complainant's interests.

Some respondents stated that, throughout the whole process, they were fighting to be believed; some even felt as though they were themselves on trial, rather than the health professional concerned.

Similarly, there was a general perception of lack of empathy on the part of regulators towards complainants and witnesses - both during the investigation process and at the fitness to practise hearing itself. The experience of some witnesses was clearly very upsetting and it was felt that, too often, they were treated as a 'case' to be examined, rather than as a person who has suffered a traumatic situation.

Overall, undertaking a complaint from investigation through to a fitness to practise hearing was typically viewed as daunting and unpleasant. Witnesses generally felt that strong resolve is needed to see a case through from start to finish; while the process itself can become all-consuming, stressful and frustrating.

The length of time taken to complete the full process, as well each individual stage, was seen as overly long and a major driver for the high stress levels reported by respondents. There was no evidence of people receiving initial assessments of how long cases might take to complete – and, indeed, where initial notional completion dates for cases were given, these timings were typically not met.

5. STAGES OF THE PROCESS

5.1 Finding the correct complaints procedure

The general public witnesses reported a lack of information about who to complain to and how to make the initial complaint.

"I was lost. I didn't know what to do or what to look at."

"I didn't know who to complain to specifically, so I sent a letter to the hospital. I didn't know anything about regulators at the time. I'm more clued up now though!"

"I had to do quite a lot of surfing on the net and quite a few phone calls. I wouldn't say it's very easy to find out...Having more guidance on what to do and how you go about the process would be a lot easier."

It became clear that complainants do not typically know where to go to initiate the process of making a complaint. Most witnesses were referred to regulators by NHS entities such as hospitals or GP surgeries; others searched the internet for possible contact organisations and numbers. There is a level of awareness of the GMC that is not typical for other regulators, with two respondents immediately seeking advice from them on how to progress with a complaint.

Generally, it seemed that people need to be actively directed to the relevant regulators, since there is a clear lack of understanding of the different regulatory bodies and what their function may be. This information should be made proactively available by health services, as well as through the GMC, given its level of recognition relative to other regulators.

It also became evident that the different channels for complaining can appear confusing to members of the public. For example, respondents struggled to differentiate between NHS channels (local hospital or primary care trust, and Ombudsmen), private legal processes and finally the various regulators. One witness thought she needed to complete the complaints process with the NHS before she contacted the regulator. It is clear that the order in which complainants should approach the complaints procedure requires detailed explanation, so as to minimise confusion.

"They [the regulator] said you've got to approach the PCT first. The way that I interpreted it was that I couldn't come immediately to the regulator. They didn't really give me an option to say, we'll start a complaint now."

Similarly, participants suggested that the links between different channels for complaining also need clarification. For example, two witnesses (one of whom was a complainant) were unaware that the NHS organisation involved had taken up their complaints with the regulator. In another case, a witness found out that a regulator's decision had been overturned by the High Court because of an appeal by the health professional - and yet the respondent was offered no way to participate in the appeal process. As a consequence, it is important that complainants are able to understand the ways in which different complaints processes may interact with one another as well as what their rights are in regard to these interactions.

"I had no idea that I was entering this fitness to practise thing. I thought I was just making a complaint. I thought it was still within the hospital. No one told me that."

"He took it to the High Court... and the decision was quashed and I was gutted."

5.2 Starting the Complaints Process

Having found out who to complain to, complainants then often experienced difficulties with completing the detailed paperwork involved.

"On the website you can see procedures of what has happened with other cases. I basically used this as the basis. I was extremely surprised that this information was not immediately obvious...it's poor."

"I didn't know how much to cover. How gory do you make it? I didn't know."

"It didn't say, if you have any problems, please contact us."

"You want to talk to someone when you're emotional and frustrated and ill. The last thing you want to do is put things in writing, at least not straight away."

In one case, a complainant was asked to describe the medical procedures involved in detail, which he was unable to do. He rang to ask for help but was told that the regulator had explained everything in writing and that he needed to respond in writing too.

A minority raised queries regarding the level of literacy required to complete this detailed paperwork, since the density and volume of the documents involved was clearly daunting for those with lower levels of literacy. Often, there were problems understanding written communications from regulators:

"Some people, if they are not literate, sometimes it can be easier if they are called. I really struggled with the documents they sent..."

"It was explained to us, but there were so many stages... eventually I became really confused and the paperwork was very complicated"

Ideally, respondents believed that regulators need to provide complainants with additional support (beyond simple written guidance) in order to assist with the documentation completion process. Many suggested that the best option would be telephone advice and support. If this is not possible then alternative channels for providing support should be indicated. One complainant had sought advice from the Citizens Advice Bureau (CAB), although two others had rejected this option, believing that CAB is unlikely to offer the level of specific expertise needed.

Some complainants did report that the relevant regulator had outlined the general process for them. However, the generic information provided by the regulator was not positively received, with many respondents feeling that it was not specific enough to their own situation. Most felt that a more personalised approach to giving information should be adopted and that, by offering a named contact within the regulator's office, a better understanding of the individual's case would be achieved, leading to quicker and more satisfactory completion of the process.

It seemed extremely important that all regulators provide complainants with a clear understanding of the complaints process and potential outcomes. This process map needs to be supported by communication options with a personal 'human' aspect, such as a named telephone contact.

"They just wrote me out one of their sheets of paper which I could download anyway saying this is the process."

"I did receive a small leaflet outlining the process, but it was generic rubbish, very impersonal."

It was clear that complainants generally lack an in-depth understanding of the range of fitness to practise hearing outcomes.

Ideally, individuals need to understand the range and depth of possible outcomes for their specific case – beyond the simple perception of ‘winning’ (i.e. health professional being struck off) or ‘losing’ (health professional is allowed to continue practising).

"I just wanted the midwife to grasp that what she had done was fundamentally wrong. I wouldn't want to necessarily take someone's career away from them, but at least some kind of reprimand."

"The outcome was in the doctor's favour. It was on his name for 5 years and he got a warning. Basically, if he applied for a job, people would know he'd been involved in a negligence claim. But he should not be working..."

5.3 Waiting for the investigation

A lack of regular communication during the initial investigation stage was identified - with witnesses reporting that they had needed to ‘chase’ regulators for progress.

A year after the complaint was made: *"I wrote back and said it was disgusting and I wanted my expectations managed a little better than that. I wanted to know what sort of deadline they were putting on this matter."*

"You'd have weeks of silence. I kept having to ring up to try and find out what was happening."

"They took two weeks to reply, which I thought was fairly fast...but that's only because I rang them up every single day."

In contrast to this, respondents reported that regulators typically communicated much more effectively during the hearing phase of the investigation:

"They seemed, after the investigation, to accelerate their findings and they gave us a procedure...now we've suspended him, what we're going to do is, we're going to have to go through a hearing and he will be there."

"They started an investigation. It seemed to be a bit half-heartedly. After the investigation they took it a bit more seriously, but only because I phoned and wrote a number of letters."

Regulators who communicated proactively during the hearing phase were very positively rated. The most satisfied complainant had a named contact who was accessible by phone and email:

"I can't knock that part of the process [the hearing]. They were amazing."

"They were very proactive. They really were very good."

Complainants were clearly surprised by the apparent lack of obvious 'customer service' and typically only felt that they were being taken seriously if regularly acknowledged by the regulator. Therefore, respondents believed that regulators should be encouraged to communicate with complainants consistently, throughout the complaints process - and not just during the actual fitness to practise hearing. This, it was felt, would allow individuals to feel respected and properly involved in the process.

5.4 Preparing for the hearing

Witnesses typically received support to prepare for giving evidence at the fitness to practise hearing from legal representatives but not regulators. For

example, one witness was taken to another fitness to practise case by her solicitor as a way of preparing for her own forthcoming case.

"I was only prepared because my friend's wife is a solicitor and she prepared me. She took the time to get me ready..."

"I don't think I'd have been quite as confident as I was being thrown questions by the solicitor on the other side as well as the panel."

In future, respondents felt that witnesses should be given more information in order to prepare more fully for the hearing. Those appearing as a witness need to be signposted towards different support options, such as legal representation or voluntary groups.

"I would have wanted them to tell me how the hearing is going to be ... the sort of people going to be at the hearing, how many doctors are going to be at the hearing, what sort of questions they're going to ask me, can I refuse to answer any of the questions."

There were several examples of witnesses finding it difficult to cope with the process. For example, one complainant decided not to attend the fitness to practise hearing because her family and friends advised her that it would most likely be overly traumatic. Another attendee had to leave the room because the details of the case were too upsetting. Another witness found that their health deteriorated during the time of the case, as a consequence of stress.

Generally, the lack of 'aftercare' offered by regulators was noted as disappointing. There were reports of little contact, if any, from regulators following the hearing or conclusion of the case.

5.5 Finishing the process

Amongst those who did not get the adjudications they wanted, there were clear perceptions of bias in terms of protecting the registrant to the detriment of the patient.

"You feel like you're not going to get very far."

"It's a cosy arrangement – close."

"It just makes you feel like it's a real boys club."

I felt I was up against them to be honest. They're all going to stick together because they're all health professionals."

"They look after their own."

6. COMPLAINANT CONCLUSIONS

Overall, there was a perceived lack of empathy for witnesses on the part of regulators throughout the investigation and for some, especially during the fitness to practise hearing.

"I wouldn't say they're very empathetic towards people's needs."

"It was all made clear, but I didn't feel very supported."

It would have been nice if someone had offered some support or guidance after the decision. There was no sort of aftercare."

"There was no, I'm very sorry to hear this. They didn't offer us any counselling. They just seemed very cold."

Overall, undertaking a complaint from the initial investigation right through a fitness to practise hearing was seen by the sample as daunting and stressful. Witnesses explained that strong resolve is needed to persist with a case, which can be time-consuming, as well as intimidating.

"Taking on a regulator is a really difficult thing to do. It's not an easy process."

"You've got to be very strong."

"I found it all quite daunting."

"Luckily, I had a sympathetic manager at work."

Overall, the research findings indicate that complaining to a regulator is often experienced negatively, particularly because of the length of time that the process takes, as well as the perceived lack of empathy and support for witnesses. Two complainants gave up during the process; one reached the fitness to practise stage, but saw this as too stressful since she was pregnant.

"I was extremely angry, and still am. It was quite a process."

"I'm gutted in a way that I didn't carry on. It made me a bit cynical. But, I've got two healthy children."

Another respondent gave up because of simple frustration. After four months without communication she contacted the regulator and learned that they had closed her case, claiming to have written to her explaining this.

Others wondered whether the process was worthwhile in any way:

"It's not healthy...every time you open a letter it makes your blood boil. Even if they eventually decide it was misconduct, it was so long ago, it defeats the object of what I was initially trying to make a point of."

"I almost regret why I first complained."

The overall length of time taken to complete the process, as well as the specific challenges attached to the various stages of the process, were seen as factors which generated significant levels of stress.

"There's so many steps. There has to be something like half a dozen steps before you get to the final panel stage. We just thought, 'can I be bothered? What are we going to get out of this anyway?'"

"I probably wouldn't do it again to be quite honest. The time involved, the inclination and the result."

"It took a long time to get from my complaint to 'we have a case' ..."

7. RECOMMENDATIONS

Clear guidance is needed about who to approach to make a complaint, how to make that complaint and how all different channels for complaining may interact:

"It's not very clear...but as long as I could find the right address and I had an idea where to go then I just did what I thought. It needs a template of the procedure that explains how it all happens when you make a complaint"

A process map and clear explanations of potential outcomes is also required.

Additional support is needed to help witnesses complete initial paperwork. Although guidance exists, witnesses obviously struggled with this and telephone support was suggested as a useful additional support resource. Ideally, some level of consistent personal contact would be appreciated:

"I think that they should put the phone number of one person that you can actually ring up and say, 'look, I'm not sure about this'. Not a help line, somebody who understands your case, who has got your case notes, who is working on your case."

"You need someone who is a middle man who supports you through the process, what is going to happen and when, and what I need to bring with me. Those sorts of things."

Good customer service is expected in terms of timely communication and relevant information throughout the process (not just during the fitness to practise hearing itself). All material should emphasise that the regulator is taking the complaint seriously.

"We've had internet communication and email for how many years now? It really doesn't take long to get documents to each other."

Expectations of the time needed to complete each case also need to be stated at the beginning and updated throughout the process. Many suggested that, in hindsight, if they had known that their case would take so long, they might have been less likely to initially pursue the complaint.

A degree of empathy on the part of regulators is expected. Respondents expected regulators to consider how to express empathy with complainants and witnesses without comprising their regulatory position:

"It was dealt with properly, but I think there are things that could be improved...I think if they were a bit more empathetic. As I said, my case was not a serious case, but you could have people with much more serious cases."

The fitness to practise hearing itself was typically seen as intimidating. For the future, it seems right that all witnesses should be properly prepared and to feel that they will be able to cope with the hearing.

Respondents felt that there needs to be a clear formal process in place to support witnesses and allow them to prepare adequately for the hearing. A personal approach to this support was preferred to a literature or text-based approach.

"If I could turn the clock back, I'd have gone to that hearing. But I just was not prepared. I was scared and thought that I couldn't cope"

APPENDIX A.

CHRE: FITNESS TO PRACTISE TOPIC GUIDE

- **Introduction:** introduce self and RWL, independent market research agency, confirm that survey being completed on behalf of CHRE. Establish permission to record interview in accordance with the requirements of Data Protection Act and MRS Code of Conduct
 - **Warm-up:** respondent status, specifically work and family
 - **How the FtP process began** – please describe the incident that inspired the complaint. *NB: Moderator needs to strike a balance between paying enough attention to the incident that inspired the complaint, but moving respondent on to the FtP procedure which is the main focus of the interview.*

Explain to respondents that we are keen to go through their experience of the process in detail so we can understand what happened and how the regulator communicated with them during different parts of the process.

- **Process timeline**

Ask respondent to map out their own milestones and experiences on our 'timeline' – the researcher would have a calendar to hand to help visualise and identify key moments and recall critical stages, decision points, key contacts etc. The researcher will ensure that the key chapters in the story (initial decision, investigation and hearing) are clearly noted.

- How did you become **aware** of the regulator to begin with? Why did you decide to raise your concern with them? Did you raise your concern with **anyone else** e.g. NHS hospital, the Ombudsman?

- **Looking at the point on the process timeline when they first made their complaint and the regulator was deciding whether to investigate the complaint:**
 - How did you **feel** at this stage? *Probe: why was that? What factors were important in shaping your response? Probe: did you feel comfortable to be entering into the complaints process? Why/not?*
 - Did you know what the **process** would be at this stage?
 - Were the potential **outcomes** made clear to you at this point?
 - Did you know what would be **expected of you** when you first made your complaint?
 - What **contact** (if any) did you have with the regulator? Please note on timeline the points at which the individual had contact with the regulator. *Probe: did you have a case manager? Did they contact you? If so, how often? What did they tend to contact you about?*
 - What **support or information** did you receive from the regulator (if any)? How useful was this support or information? Was it relevant? Was it helpful? If so, how? If not, why not?
 - Did you **seek support or information from elsewhere e.g. advocacy group, citizens advice**? If so, from who and why? *Probe on whether emotional support was needed?*
 - Looking back, **what support or information would have been useful** to you at this point?
- **Explain that there is a point in the process when the regulator investigates the allegations to decide if they should be heard by a panel.** Repeat questions as above.

- **For those who did not pursue their complaint through a fitness to practise tribunal:**

- Was your case closed before the hearing stage or did you decide not to pursue the complaint any further?

If case was closed:

- Were you aware that this was a potential outcome?
- Was this decision expected or unexpected?
- How was the decision communicated to you?
- *Probe: channel of communication*
- *Probe: content of communication*
- Did you understand why the decision had been made? Why/why not?
What did you want to know?
- How did you **feel** about the decision? *Probe: why was that? What factors were important in shaping your response?*
- What **dialogue** (if any) did you have with the regulator about this decision?
- What **support or information** did you receive from the regulator (if any)? How useful was this support or information? Was it relevant? Was it helpful? If so, how? If not, why not?
- Did you **seek support or information from elsewhere e.g. advocacy group, citizens advice**? If so, from who and why? *Probe on whether emotional support was needed?*
- Looking back, **what support or information would have been useful** to you at this point?

- **If decided not to pursue the complaint:**

- Why did you make this decision?
- How did you communicate this decision to the regulator?
- *Probe: channel of communication*
- *Probe: content of communication*

- How did you **feel** about the decision? *Probe: why was that? What factors were important in shaping your response?*
 - What **dialogue** (if any) did you have with the regulator about this decision?
 - What **support or information** did you receive from the regulator (if any)? How useful was this support or information? Was it relevant? Was it helpful? If so, how? If not, why not?
 - Did you **seek support or information from elsewhere e.g. advocacy group, citizens advice**? If so, from who and why? *Probe on whether emotional support was needed?*
 - Looking back, what support or information would have been useful to you at this point?
- **For those who pursued their complaint through a fitness to practise tribunal. Let's look at the hearing stage:**
 - How did you **feel** at this stage? *Probe: why was that? What factors were important in shaping your response? Probe: did you feel comfortable to be entering into the hearing process? Why/not?*
 - Did you know what the **process** would be at the hearing stage?
 - Were the potential **outcomes** made clear to you at this point?
 - Did you know what would be **expected of you** during the hearing?
 - Did you feel **adequately prepared** for the hearing? Did you have access to all the information you needed? Why/why not? *Probe: looking back, what in particular would have helped you to feel more prepared?*
 - Did you have any concerns about the **practical arrangements** for the hearing? *Probe: looking back, what in particular would have helped you to feel more confident about the practical arrangements?*

- What **level of support** was available to you before the hearing? *Probe: looking back, what in particular would have supported you through the questioning stage of the hearing?*
- How did you feel about being questioned during the hearing?
- Did you feel **comfortable** during the hearing? If not, why not? How could complainants be made more comfortable in future?
- What **level of support** was available to you during the hearing? *Probe: looking back, what in particular would have supported you through the questioning stage of the hearing?*
- How was the final decision communicated to you?
- Do you feel that the decision-making process was transparent? Why/why not? How could transparency be improved in future?
- What **level of support** was available to you after the hearing? *Probe: looking back, what in particular would have supported you through the questioning stage of the hearing?*
- **Summing-up: thoughts on the experience overall**
 - Overall, how **satisfied** were you with the process? *Probe: identify points on the timeline when you were more and less satisfied by drawing rising and falling satisfaction curve*
 - Overall, how satisfied were you with the **time taken to resolve your case?** *Probe: what is an appropriate timescale?*
 - Overall, how satisfied were you with the **communication** you received during your case?
 - Do you feel confident in the process, and the way that decisions are made? *Probe: are you confident that the process was independent?*
 - In hindsight, are there any aspects of the process that would put you off raising or following through a complaint with a regulator in the future?
 - In future, what could regulators **do to improve the process?**