

4 July 2018

NSW Ombudsman's response to questions concerning the complaint of Susan Browett

It is difficult to make comprehensive comments about actions taken by this office more than 30 years ago.

The answers below are based on a review of the file and knowledge of the Ombudsman's police conduct jurisdiction in 1985.

The Ombudsman's jurisdiction over police conduct

The Ombudsman's police jurisdiction in 1985 enabled the Ombudsman to make certain decisions as to how a complaint should be actioned:

- The Ombudsman could request the Police Commissioner undertake preliminary inquiries into a police complaint. The Ombudsman could not compel police to take any particular steps in making these inquiries, and had no power to oversight or monitor the conduct of such inquiries or to directly communicate with the police officers undertaking the inquiries.
- The Ombudsman could request the Police Commissioner to undertake a formal investigation. This might be a decision made on receipt of a complaint based on the seriousness of the matters alleged and the supporting evidence provided, or based on the outcome of preliminary inquiries. Again, the Ombudsman had no power to oversight or monitor the conduct of such investigations, or to directly communicate with the police officers undertaking such investigations. The Ombudsman staff had to base their assessments on the information provided in the police report.
- The Ombudsman could decide to conduct a formal investigation of the complaint. While the Ombudsman presided over any hearings held in the course of that investigation, the investigation itself could only be undertaken by police officers seconded to the Ombudsman's office. As such hearings and investigations were very resource intensive and time consuming, few of the police complaints received each year could be dealt with in this way. Civil Ombudsman officers were not permitted to play any role in formal investigations into the conduct of police.

The primary focus of the Ombudsman's complaints handling role was complaint resolution: that is, seeking to satisfy the complaint that his or her complaint had been responded to adequately.

Nature and timeline of investigation into Mrs Browett's complaint

The handling of Mrs Browett's complaint took the form of a preliminary inquiry. The timeline was as follows:

5 February 1985	The Ombudsman received Mrs Browett's letter
12 February 1985	An officer of the Ombudsman contacted Mrs Browett by telephone about her complaint
18 February 1985	As required by law, the Ombudsman referred the matter to the Commissioner of Police requesting that preliminary inquiries be made
20 March 1985	A report prepared by police in response to the Ombudsman's request noted that "the police investigation ... [had] not at any time indicated that there has been either foul play or suspicious circumstances involved."
23 March 1985	At the direction of the officer making preliminary inquiries, Mrs Browett was interviewed as was a work colleague of Mrs Dawson, nominated by Mrs Browett.
9 April 1985	The Ombudsman wrote to Mrs Browett enclosing material received from police in relation to their preliminary inquiries
2 July 1985	The Ombudsman received a further report from the office responsible for making preliminary inquiries in response to Mrs Browett's complaint.
8 July 1985	The Ombudsman wrote to Mrs Browett enclosing additional material received from police in relation to their preliminary inquiries. That letter requested that she provide comments on that material within 4 weeks, and noted that "In the absence of a reply from you within that time, it will be assumed that the matter has been resolved to your satisfaction and that you do not wish any further action to be taken."
9 August 1985	Ombudsman officer attempted to phone Mrs Browett (unanswered)
15 August 1985	Ombudsman's office sent a telegram to Mrs Browett asking her to contact the case officer in the Ombudsman's office
19 August 1985	A file note of the phone call made to Mrs Browett by the case officer records that Mrs Browett said that "Police told her that the husband was still 'The no 1 suspect' but they could do nothing without evidence."
4 September 1985	Ombudsman's office sent another letter to Mrs Browett noting that a reply had not been received and, in view of this and a review of the circumstances, the Ombudsman had decided that no further action would be taken.

1. Why did the Ombudsman's investigators not satisfy themselves that police detectives had thoroughly and independently checked, at the very least, into the assertions by two women close to Lyn - her mother, and Mrs Browett - about the school girl relationship?

In 1985, Mrs Browett, alluded to a suspected affair three years before between Mr Dawson and a 16-year-old school student he had since married. Mrs Dawson's mother

mentioned, in a document dated 21 August 1982, that Mr and Mrs Dawson's had been having marital problems and that these were "complicated by the taking in of a teenage student seeking help." She mentioned that Mr Dawson had "introduced the teenager back into the house as early as 6 February" but this was in the context of the student assisting with the Dawson's children.

At that stage Mrs Dawson's mother had not made any suggestion of foul play or suspicious circumstances. She had relayed to police information about reported sightings of her daughter, and the use of her daughter's Bankcard, in the days and weeks following her disappearance.

Mrs Simms further informed police, in November 1983, that she believed that Mr Dawson had obtained a divorce from her daughter in July, and 'was about to marry a Joanne Curtis who had been the baby sitter at the home'.

The Ombudsman was aware that police interviewed Mrs Browett and Mrs Dawson's mother in 1985 as part of their preliminary inquiries into Mrs Browett's complaint. It would have been reasonable for the Ombudsman to assume that both women would have relayed any concerns about possible foul play and provided police with information about the grounds on which it was based.

2. There is no record of any attempt to interview the girl, Joanne Curtis, or her parents and friends. Why was this not raised by the Ombudsman as an obvious and possibly urgent line of inquiry?

As noted above, the Ombudsman did not conduct a formal investigation into Mrs Browett's complaint or request that the Police Commissioner do so. In the absence of a formal investigation, the Ombudsman could not inquire into the lines of inquiry pursued by police or demand that they take any particular steps.

The decision not to conduct a formal investigation was presumably influenced by the fact Mrs Browett did not provide the Ombudsman with any comments or feedback on the preliminary inquiries that had been made.

The office at that time was struggling under the burden of a large number of complaints with limited resources, as evidenced in Annual Report 1984-1985. This meant its primary focus was on resolving complaints to the satisfaction of the complainants.

It is also fair to say that there was, at the time, a degree of hostility within the NSW Police Force to the Ombudsman's police jurisdiction and it is likely that police would have challenged any purported direction by the Ombudsman for police to pursue a line of inquiry which was not the subject of a complaint.

3. Putting aside the suspicions of foul play over Lyn Dawson, why did the Ombudsman's investigators not concern themselves from the outset with the clear assertion in Mrs Browett's letter of a possibly unlawful sexual relationship between Mr Dawson, a school teacher, and a 16 year old female student?

The Ombudsman's office did not, at that time, have any jurisdiction to pursue investigations into alleged sexual misconduct, or any misconduct, by teaching staff employed by the Department of Education. The Ombudsman's reportable conduct scheme, which does permit the Ombudsman to investigate such matters, came into effect in 1999.

Nor did the Ombudsman have any power to direct police to take any particular steps in relation to that allegation. The Ombudsman did not have an 'own motion' power in relation to allegations of this kind.

- 4. If the Ombudsman's office were to receive a similar letter of complaint alleging that a teacher and his 16 year old student were in a sexual relationship, what would be the probable next steps? What should have happened in 1985?**

If such a letter were received today the Ombudsman's office would have no jurisdiction to deal with the complaint alleging police inaction but would deal with the allegation of the improper relationship between the teacher and his female student under its Part 3A reportable conduct scheme. This scheme came into operation in 1999.

- 5. Does the Ombudsman's Office hold the view that its actions in 1985 in response to Mrs Browett's complaint were satisfactory and should not be fairly criticised? Or is it fair to conclude there appears to have been a very significant lapse by police, compounded by a significant failure by the Ombudsman's staff to investigate the police inaction properly in 1985?**

Based on a review of the file, and given the limited jurisdiction and resources of the Ombudsman in 1985, and the apparent acceptance of the outcome by the complainant, the response was satisfactory.

- 6. If these last two points are conceded, is it a matter of regret all these years later - and what would the office like to say about it?**

Given that the above two points are not conceded, it is not necessary to address this question.

However, with the benefit of hindsight, it is easy to see that a more proactive investigation by police of the missing person report was warranted.