



Prosecuting Sexual Offences and the use of Restorative Justice

Why me? response to the JUSTICE Working Party Prosecuting Sexual Offences report
11th June 2019

About this paper

This is an interim position paper on the use of Restorative Justice for domestic and sexual violence, prompted by our contribution to the JUSTICE Working Party report on Prosecuting Sexual Offences, which was published on 10th June 2019¹. While this report is on sexual violence, we understand that sexual violence cannot be addressed without assessing for the presence of domestic violence. Therefore, we address both in this paper.

Why me? Will be preparing a full policy document on the use of RJ for domestic and sexual violence in Autumn 2019, in consultation with our Board of trustees.

About Why me?

Why me? Is the national charity which is dedicated to obtaining all victims of crime the legal right to access Restorative Justice. Why me? has raised the profile of Restorative Justice through working alongside and with victims of crime who have told their stories and lobbied to change hearts and minds. Why me? lobbying and influencing has contributed to a £29 million government investment in Restorative Justice in 2013-2017, the inclusion of Restorative Justice in the September 2018 National Victim Strategy and Police and Crime Commissioners' being held to account by the Ministry of Justice for delivering Restorative Justice entitlements to victims. Why me? runs a national service for any victim of crime who cannot get access in their area, and the service pioneers good practice with specific crimes and specific victim needs. The current focus is on the use of Restorative Justice with people who become victims of hate crime.

Why me?'s approach to restorative practice is genuinely victim-led: the victim's wishes, safety and wellbeing come first in our RJ service. We are not driven by concerns about expediency or the wishes of the perpetrator.

Background

There has been increased interest in the use of Restorative Justice since the publication of the Victims Code in 2013, updated in 2015¹, which entitles victims to receive information about Restorative Justice and, if the offender is a young person, to be offered it. Current

¹Prosecuting Sexual Offences, Justice, 2019. <https://justice.org.uk/our-work/criminal-justice-system/prosecuting-sexual-offences/>

guidance from the Ministry of Justice and from the Restorative Justice Council does not preclude the use of Restorative Justice in cases involving sexual violence, but it does suggest that it should be carried out by trained practitioners and for precautions to be taken to ensure that the process is safe.

Why me? understands that there are concerns about the use of Restorative Justice with domestic and sexual offences, particularly around potential re-victimisation. However, we have seen from our extensive experience in this area that Restorative Justice can, and for many victims does, represent a rare healing opportunity for domestic and sexual violence victims. According to a talk given by Dr Nadia Wager,² Restorative Justice can support victims in five key areas: validation, vindication, a sense of safety, regaining a sense of control over one's life, and reclaiming the narrative over what happened to them.

Introduction

Consequently, Why me? is supportive of victims of any crime who want to access Restorative Justice, and this includes victims of domestic or sexual violence. On top of existing prosecutions for these crimes, we believe it is the victims' right to know and be informed about the RJ process. This does not necessarily mean a face-to-face meeting will take place. Trained RJ practitioners will listen to and assess the situation and then facilitate a Restorative Justice process, usually involving other professionals who are working with the victim and offender. During the 10 years the charity has been running, we have been approached by many individuals, often women who have been victims of domestic or sexual violence, who have either been refused or blocked from access to Restorative Justice. It is therefore legitimate to ask, as per Dr Nadia Wager's research, how these refusals are justified. Whilst acknowledging and respecting the deep knowledge and experience that domestic violence professionals bring, she asks whether they understand the impact of trauma better than the victim and know what can help them recover.

Dr Angela Marinari's research identified that sexual violence victims have been marginalised through the criminal justice system, and that they needed additional paths to justice to be able to express themselves about the crime and its impact. Crucially, this process must take place when they feel ready to do so.³

Historical child sex abuse

Restorative justice can also be used by victims of historical child sex abuse who have been failed by institutions. As one victim told the Independent Inquiry into Child Sex Abuse (2015): "I would like to see a restorative justice approach to be considered for institutions, for them to face up to and consider the harm they have caused."⁴

Sexual harassment in the workplace

² Dr Nadia Wager, "Using Restorative Justice in the context of Sexual Victimisation," a talk given at the University of Bristol, 27th January 2016.

³ Angela Marinari, "Designing a survivor-oriented restorative justice programme for use in cases of sexual abuse." University of Portsmouth, 2018.
https://researchportal.port.ac.uk/portal/files/10938825/Thesis_Angela_Marinari.pdf

⁴ Jon Collins, "Victims of child sex abuse and Restorative Justice," Restorative Justice Council, 5th December 2016. <https://rjc.org.uk/blog/victims-child-sexual-abuse-and-restorative-justice>

Restorative justice should also be embedded into the HR practices of employers, as a response to sexual harassment in workplaces. We note that Surrey County Council has had significant success with this approach.⁵ This may run alongside disciplinary action and in all circumstances should be carried out by trained RJ practitioners and monitored and evaluated for as long as the participants need..

Coercive control

Victims of sexual offences can often know the offender and therefore any Restorative Justice approach must take into account the danger of coercive control and the complications of previous knowledge and other complex aspects of an existing relationship between the victim and the offender and with relatives, friends or neighbours. The victim's wishes and safety are paramount.

Risk-led approach

Why me? Believes that any use of Restorative Justice should be embedded within a risk-led approach and should not be seen as a standalone alternative to longer-term criminal justice system or other intervention measures. Restorative justice is unlikely to be suitable for those victims at the highest risk of harm, as there is potential for revenge, witness intimidation, vulnerability, power imbalance, and re-victimisation. It is likely that successful RJ approaches will be resource and time intensive. Restorative practice must encompass the following concerns: being genuinely victim-led, not driven by concerns about cost, expediency or the wishes of the perpetrator. It is important to provide robust and medium-long term wraparound professional support for the victim, to help them recover and increase their resilience. Equally, the perpetrator must be prepared and listened to by restorative facilitators, checking in for motivation, remorse, and an understanding and commitment to answering questions and listening to the victim's story.

RJ should be a meaningful process, rather than a quick fix (for example an apology by the perpetrator) or, even worse, a means of the perpetrator regaining access to the victim, children or having other safeguards lifted. As participation is voluntary, either party can withdraw at any time, which provides a safety mechanism if someone changes their mind. The facilitators can also stop the process if they believe it is impossible to progress restoratively.

Safeguarding the victim must be paramount and the perpetrator should not be participating in a restorative process simply because it leads to a 'reward' or helps to avoid further scrutiny from statutory agencies.

Restorative justice is an opportunity for victims to ask questions and tell their story. If this cannot happen, it can't go ahead. A referral process should be based on a detailed understanding of the ongoing risk to the victim's safety and wellbeing. This includes the consideration of other interventions which could support them in their recovery and protect them from harm. Other considerations which should be taken into account when referring a victim to an RJ process, according to Safer Lives and the Thames Valley Restorative Justice

⁵ Jon Collins, "Should there be a restorative response to sexual harassment?" Restorative Justice Council, 13th February 2017. <https://restorativejustice.org.uk/blog/should-there-be-restorative-response-sexual-harassment>

Service, might include: the nature and severity of crime, the degree of trauma, repeat violation, power imbalances and the age, maturity and intellectual capacity of the victim.⁶

The Restorative Justice process has a standard structure, but bespoke outcomes depending on the individuals involved. It can be an opportunity to get answers to questions, for both sides to understand the other better, to establish a dialogue, for example, about the practical application of custodial arrangements. It can also be an emotional release. For perpetrators, it can be the first time they realise the damage which has been done by their actions and the impact of the crime they have committed.

We advocate safe and competent practice which is proven to be effective, and which is led by qualified professionals in an accredited setting. We advocate the establishment of a structure similar to Multi-Agency Risk Assessment Conferences for the management of cases and risk where Restorative Justice is being used. Sufficient time should be allotted to the preparation of Restorative Justice cases involving sexual offences, due to the inevitable complexity and sensitivity of these cases.

Out of court disposals

Why me? hold the view that any offence, including sexual offences, can be considered for an out of court disposal which should include Restorative Justice as an option. We suggest that the consideration is split into three parts:

The victim needs to be given information about Restorative Justice and how it works so they can make an informed choice about whether to participate, in a timely and sensitive manner.

If a victim expresses a wish to seek justice through a Restorative Justice process and this is supported by the charging authority then the final decision on prosecution rests with the charging authority, but the victim's views should be taken into account.

The individuals carrying out the RJ intervention, whether police or a third party restorative justice service, must be trained in RJ and domestic and sexual violence.

Testimony from an anonymous domestic violence survivor, who had successfully used RJ, to the Justice Select Committee on Restorative Justice in 2016:

“When I walked out of that meeting, I felt as if I could knock out Mike Tyson. I could have taken on anything or anyone. In the days and weeks afterwards, it was as if a massive weight had been lifted off my shoulders. I had been carrying it for so long that I did not even notice it anymore, so when it disappeared it was amazing. I felt completely empowered.”⁷

Testimony from Rosalyn Boyce, a sexual violence survivor, who had successfully used RJ:

⁶ Thames Valley Restorative Justice Service. www.tvrjs.org.uk

⁷ House of Commons Justice Committee: Restorative Justice. Fourth Report of session 2016-2017 <https://publications.parliament.uk/pa/cm201617/cmselect/cmjust/164/164.pdf>

“I realised the attack was about power and control. Now I am the one who has the control.”⁸

Conclusion

We understand that the current prioritisation of Restorative Justice for domestic and sexual violence is partly driven by budget constraints and proposals for the increasing use of out of court disposals⁹. However, Why me? strongly believes that the main motivating factor behind the use of Restorative Justice in domestic and sexual violence should be the victim’s wishes, safety and wellbeing.

Here are some considerations which should be taken into account by statutory agencies.

- Informed choice offered to victims in the appropriate context
- Delivered by trained Restorative Justice professionals who have knowledge of work in sexual violence
- Supported by Sexual violence professionals with restorative training and awareness
- The Restorative Justice process has to follow Restorative Justice Council standards and RJ basic principles in full¹⁰
- Multi-agency cooperation to ensure best results i.e. between Police, Independent Sexual Violence Advisor, probation, youth offending services, regional victim service and/or RJ agency.
- Senior leadership buy-in and support in all these agencies
- Central monitoring and evaluation of RJ delivery through the Police and Crime Commissioners Victims’ Services Performance Indicators Framework
- National Police Chiefs’ Council Charging and Out of Court Disposal working group to adopt the above recommendations for guidance to all Police Forces
- College of Policing to have as standard training in RJ and use in OOC
- ISVAs and IDVAs trained in RJ and application in SV and DV cases

⁸ Woman who was viciously raped at knifepoint in her own bed: “I met attacker in prison and forgave him.” The Mirror, 11th July 2015. <https://www.mirror.co.uk/news/uk-news/woman-who-viciously-raped-knifepoint-6048535>

⁹ NPCC Charging and Out of Court Disposals Strategy 2017 - 21 <https://www.npcc.police.uk/Publication/Charging%20and%20Out%20of%20Court%20Disposals%20A%20National%20Strategy.pdf>

¹⁰ RJC Principles <https://restorativejustice.org.uk/resources/rjc-principles-restorative-practice>