

Making Restorative Justice happen for hate crime **across the country**

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Why me?

Victims for Restorative Justice

This is one of two papers written following our project: ***“Access to Justice: Delivering Restorative Justice for hate crime.”*** It is aimed at those who make national policy. This includes the Ministry of Justice, The Home Office, The Crown Prosecution Service and others.

We have also produced ***“Making Restorative Justice happen for hate crime in your police area”*** - aimed at Restorative Justice providers, police staff, victim and witness staff and Police and Crime Commissioners.

Why me? is the only national charity fighting for victims of crime to have access to Restorative Justice. We raise the profile of Restorative Justice by working with people affected by crime, who tell their stories and lobby to change hearts and minds.

Why me? runs a national service for anyone affected by crime who cannot get access to Restorative Justice in their area. The victim’s wishes, safety and wellbeing come first in our service.



Victims for Restorative Justice

About hate crime

The Crown Prosecution Service defines hate crime as *“any criminal offence which is perceived by the victim or any other person, to be motivated by hostility or prejudice”* against five protected characteristics - race, religion, sexual orientation, disability or transgender identity.¹

Over 103,000 hate crime offences were recorded by the police in England and Wales last year. This is a **10% increase on the previous year.**² Just **15% of hate crimes were prosecuted** in 2017/18.³ This makes troubling reading for victims of hate.

Restorative Justice and hate crime - our policy

People affected by hate crime should have the same access to Restorative Justice as anyone else. This means that they should be given information about Restorative Justice, and made aware that it is an option they can consider.

If someone expresses an interest in Restorative Justice, then a conversation takes place with a trained Restorative Justice facilitator, who will work through their questions and feelings, and provide a safe space for them to consider their options. The facilitator respects the wishes of the victim and is flexible with the type of restorative process which they offer. They only tell them that a restorative process is not possible if there are practical barriers which make it impossible to proceed, or serious safety concerns which cannot be overcome.

Facilitators are mindful of the specific needs that victims of hate crime may have, and make adjustments for this. A restorative process can still go ahead in a safe and secure way despite these needs, if that is what the person affected wants.

Rationale

Not only is hate crime rising, but hate crime victims are more emotionally affected than other victims⁴ and less satisfied with police handling of the incident.⁵ Victims of hate crime should have access to all of the tools possible to aid their recovery. But the reality is that Restorative Justice is often not presented to them as an option.

Despite its potential to address harm, there has been little debate about the use of Restorative Justice for hate crime.⁶ For this reason, Why me? developed a two year project to explore the subject. We worked with police and restorative providers in Lancashire, Cambridgeshire and Avon & Somerset to get a picture of how Restorative Justice operates for hate crime in these areas.

We give four key reasons for supporting the use of Restorative Justice for hate crime below:

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1) Education

Restorative Justice can challenge prejudice. For example, one victim of LGBT+ hate crime told us that he would relish the opportunity to meet the offender through Restorative Justice, so that he could challenge their views about his sexuality and discourage them from inflicting hate again. Restorative Justice encourages empathy and understanding, making many people affected by hate crime feel it is worthwhile.⁷ This can be uniquely beneficial for hate crime victims, as the crimes committed against them are often motivated by prejudice. Challenging this prejudice and showing their humanity can undermine the beliefs which drive people to commit hate crime.

In his paper "Contextualizing Restorative Justice for hate crime" Theo Gavrielides concludes that winning the battle against hate crime requires a breakdown of the stereotypes, attitudes, and world views that foster it in the first place.⁸ We agree with his conclusion that Restorative Justice can make a vital contribution to this.

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2) Support, empowerment and voice

The importance of taking victims seriously is emphasised across the discussion about hate crime. Victim Support highlights that "a quarter of hate crime prosecutions collapse because the victim thinks the justice system won't support them."⁹ People affected by hate crime want to be listened to and taken seriously, but this is often not the reality.

⁴ Levin, B. (1999), "Hate Crimes: Worse by Definition." Journal of Contemporary Criminal Justice. Volume 15, Issue 1, Page 6–21.

⁵ Corcoran, H., Lader, D. and Smith, K. (2015) "Hate Crime, England and Wales, 2014/15". Home Office. [Online]. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/559319/hate-crime-1516-hosb1116.pdf

⁶ Walters, M. and Hoyle, C. (2010) "Healing harms and engendering tolerance: the promise of restorative justice for hate crime." In: Chakrabarti, N (ed.) Hate Crime: Concepts, policy, future directions.

⁷ Walters, M. (2014), "Hate Crime and Restorative Justice." Clarendon Studies in Criminology.

⁸ Gavrielides, T. (2012), "Contextualising Restorative Justice for hate crime." Journal of Interpersonal Violence. Volume 27, Issue 18, pages 3624-3643

⁹ Victim Support, "Hate Crime Services." [Online]. Available at: <https://www.victimsupport.org.uk/more-us/why-choose-us/specialist-services/hate-crime-services>

Kushminder Chahal's book *"Supporting victims of hate crime"*, outlines the key needs which victims of hate crime have, including the following:¹⁰

- 1) Social acknowledgement and support.
- 2) Establishing a sense of power and control over their lives.
- 3) Having an opportunity to tell their stories in their own way.

Restorative Justice can meet these needs. A restorative meeting allows victims to have their voices heard in a controlled, secure environment, which has the potential to be deeply empowering. Speaking to a supportive facilitator about the impact of the crime can be beneficial in itself, even if it doesn't lead to a Restorative Justice conference.

Victims of hate crime should be able to choose Restorative Justice if that is what they want. This can give them the empowerment, control and support which they require.

3) Healing serious crime

The benefits of Restorative Justice can be most powerful for victims of serious crimes, as they are often experiencing the greatest long term harms. Hate crime is a serious offence which can have a lasting impact on the people affected. This means that Restorative Justice is a particularly important option for them, as it has the potential to address this lasting harm by allowing them to seek answers about why the incident happened, explain how it made them feel, and regain a sense of power and control.

Some professionals see Restorative Justice only as a way of disposing of minor crimes. This does not capture the full scope of Restorative Justice. It can be used for all types of crime, including cases where someone is serving a long prison sentence. Indeed, our charity was formed following a Restorative Justice conference with someone who was serving time in prison.

Why me? works with victims of domestic violence, serious assault, rape and those who have lost family members to murder, all of whom have benefitted from Restorative Justice.¹¹ Victims of hate crime deserve the chance to choose this option too.

4) A victim's right to choose

The best person to decide if Restorative Justice is suitable for someone who has experienced hate crime, is that person themselves.

It is true that victims of hate crime can be vulnerable and need to be protected from further emotional harm. But this is the role of the facilitator in a Restorative Justice process. The facilitator speaks to both parties extensively before a potential meeting, preparing them for what to expect from the interaction. A restorative meeting only goes ahead if the facilitator thinks it is safe to do so. It is also important that facilitators understand the context of hate crime against the community that they are working with, so that they can appreciate the kind of stereotypes which could be revictimising.

Some people are sceptical about using Restorative Justice for hate crime, due to fear that the

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¹⁰ Chahal, K. (2017), "Supporting victims of hate crime." Policy Press.

¹¹ Why me? "Stories". [Online]. Available at: <https://why-me.org/ambassadors/>

process could upset victims further.¹² But these fears are not reinforced by evidence.

In his book *Hate crime and Restorative Justice*, Professor Mark Walters carries out many interviews with victims of hate crime who have been through a restorative process. The overwhelming majority of them said that they did not feel revictimised at any stage of the process.¹³ We also received anecdotal feedback about this during our project. Some people who had experienced hate said they would have welcomed the chance to have Restorative Justice, while others said that they would not have accepted it. Some people were concerned that they would find the process upsetting, but none of them said that victims of hate crime shouldn't be able to decide on this matter for themselves. Restorative Justice is always a personal choice, and is not forced on anyone.

The facilitator speaks to both parties extensively before a potential meeting, preparing them for what to expect from the interaction. A restorative meeting only goes ahead if the facilitator thinks it is safe to do so.

¹² Gavrielides, T. (2007), "Restoring relationships: addressing hate crime through Restorative Justice." *Race on the Agenda*. [Online]. Available at: https://www.rota.org.uk/sites/default/files/webfm/rota_report_on_hate_crime_rj_july_2007_-_final.pdf

¹³ Walters, M. (2014) "Hate Crime and Restorative Justice." *Clarendon Studies in Criminology*.

Existing Guidance

Many different bodies have given guidance on the use of Restorative Justice for hate crime. We explain the most up to date guidance at the time of writing below:

Home Office

An update to the Home Office's Hate Crime Action Plan in 2018 said that "evidence from stakeholders and academics indicates that we should further explore Restorative Justice options."¹⁴

They have subsequently supported three "hate crime community projects utilising Restorative Justice" in Derby, Manchester and Bradford.

These projects are being used to further build the evidence base for Restorative Justice and hate crime, and we look forward to hearing more about the results of these interventions.

Crown Prosecution Service

The Crown Prosecution Service (CPS) is independent of the police and Government, and has the duty of bringing offenders to appropriate justice.

CPS guidance says that "conditional cautions are generally inappropriate in hate crime cases, and can only be given in exceptional circumstances with the authority of a CPS prosecutor."¹⁵ This has the unintended consequence of discouraging Restorative Justice in some cases, as Restorative Justice can form part of a conditional caution.

But there are many other ways to utilise Restorative Justice for hate crime without using conditional cautions. The CPS does not discourage this action.

Ministry of Justice

The most recent action plan on Restorative Justice from the Ministry of Justice covered the period from November 2016 until March 2018.¹⁶

This plan states that the Ministry of Justice's "vision is for good quality, victim-focused Restorative Justice to be available at all stages of the Criminal Justice System in England and Wales".

It goes on to say that their aim is for victims to have "equal access to Restorative Justice at all stages of the Criminal Justice System irrespective of their location, the age of the offender, or the offence committed against them."

This objective suggests that victims of hate crime should have the same access to Restorative Justice as victims of any other crime.

Victims' Code

The Victims' Code is published by the Ministry of Justice, and gives a list of key entitlements for victims of crime.

The current Victims' Code, published in October 2015,¹⁷ says that "Restorative Justice can take

¹⁴ Home Office (2018), "Action against hate: The UK Government's plan for tackling hate crime two years on." [Online]. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748175/Hate_crime_refresh_2018_FINAL_WEB.PDF

¹⁵ Crown Prosecution Service (2019), "Cautioning and Diversion." [Online]. Available at: <https://www.cps.gov.uk/legal-guidance/cautioning-and-diversion>

¹⁶ Ministry of Justice (2017), "Restorative Justice action plan for the criminal justice system for the period to March 2018". [Online] Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/596354/rj-action-plan-to-march-2018.pdf

¹⁷ Ministry of Justice (2015), "Code of Practice for Victims of Crime." [Online] Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF

place while criminal proceedings are ongoing, as part of a sentence, after criminal proceedings have finished, or as part of an out of court disposal.”

It then says that: “If the offender is an adult, [victims] are entitled to receive information on Restorative Justice from the police or other organisation that delivers Restorative Justice services for victims.”

“If the offender is under the age of 18, [victims] are entitled to be offered the opportunity by the Youth Offending Team in [their] area to participate in Restorative Justice where appropriate and available.”

National Victims’ Strategy

The National Victims’ Strategy, published by the Ministry of Justice in 2018, sets out how the Criminal Justice System can offer better support to victims of crime.¹⁸

It acknowledges that too many victims are not made aware of Restorative Justice, and proposes changes to deal with this.¹⁹ For example, it pledges to “require Police and Crime Commissioners to make sure that Restorative Justice services are available in their areas, victims know how they might access them and the services they commission are safe.”

The strategy includes a case study where local Restorative Justice staff meet a Muslim Welfare Association to discuss using Restorative Justice as a method of dealing with hate crime.

All Party Parliamentary Group on Hate Crime

The All Party Parliamentary Group on hate crime brought cross-party MPs, academics, specialist support agencies and civil society together to improve understanding of hate crime in the UK, and find suggestions for addressing it.

They published a paper in March 2019 “*How do we build community cohesion when hate crime is on the rise?*”²⁰

This made many suggestions about how to address hate crime, one of which was Restorative Justice. The Executive Summary included this passage:

“One area where charities, civil society groups, and community organisations can make a valuable contribution to the fight against hate crime is through supporting the provision of Restorative Justice. Research has shown that use of a restorative approach can bring tangible benefits to all parties and reduce the risk of future offending by perpetrators.”

National Police Chiefs’ Council

The National Police Chiefs’ Council brings together police forces in the UK to help them coordinate, reform, improve and provide value for money.

They reference Restorative Justice in their national strategy on charging and out of court disposals, saying that it “can be used alongside any outcome, either as a condition for an out of court disposal or separately.”²¹

¹⁸ Ministry of Justice (2018) “Victims Strategy.” [Online]. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746930/victim-strategy.pdf

¹⁹ Office for National Statistics (2019), “Restorative Justice, year ending March 2011 to year ending March 2019: Crime Survey for England and Wales”. [Online]. Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/adhocs/010238restorativejusticeyearendingmarch2011toyearendingmarch2019crimesurveyforenglandandwalescsew>

²⁰ APPG Hate Crime (2019), “How do we build community cohesion when hate crime is on the rise?” [Online]. Available at: <http://www.appghatecrime.org/wp-content/uploads/2019/02/APPG%20on%20Hate%20Crime%20Report%20Hate%20Crime%20and%20Community%20Cohesion.pdf>

²¹ Glen, S. (2017), “Charging and out of court disposals: A national strategy.” National Police Chiefs’ Council. [Online]. Available at <https://www.npcc.police.uk/Publication/Charging%20and%20Out%20of%20Court%20Disposals%20A%20National%20Strategy.pdf>

The NPCC released a review of out of court disposals managed by the police in 2018,²² which found that the effectiveness of out of court disposals for hate crime was inconclusive and required further research and evidence.

It further argues that testing Restorative Justice approaches for hate crime is “an important area of future research”.

College of Policing

The College of Policing is the professional body for people working for the police in England and Wales. Their stated aim is to “provide those working in policing with the skills and knowledge necessary to prevent crime, protect the public and secure public trust.”²³

They produced a document: “Developing Restorative Policing”, alongside the Universities of Leeds and Sheffield in 2017.²⁴ This focuses on how to increase the use of Restorative Justice, which is described as having “direct benefits for both parties and the police organisation more generally, especially with regard to victims’ needs.”

This demonstrates the College of Policing’s support for Restorative Justice, and while it doesn’t discuss hate crime in detail, it does reference an anonymised area where restorative work helps the community, particularly where hate crime is common and “consistent micro-aggressions need to be dealt with better.”

This example indicates that they see the benefits of restorative approaches being used for hate crime.

European Union

The European Parliament and Council of Europe published the European Union Victim’s Rights directive in 2012 aiming “to take significant steps forward in the level of protection of victims throughout the Union.”²⁵ This led to the UK publishing the Victims’ Code in 2013.

Article 4 states that member states should ensure that victims are given information about the available Restorative Justice services “without unnecessary delay, from their first contact with a competent authority.”

Article 12 emphasises that Restorative Justice is “based on the victim’s free and informed consent” after they are “provided with full and unbiased information”.

No exception is made for victims of any particular crime type, including hate crime.

The Council of Europe published further guidance about Restorative Justice to member states in 2018.

The recommendation “aims to encourage member states to develop and use Restorative Justice” and “promotes standards for [its use]”.

22 Neyroud, P. (2018), “Out of Court Disposals managed by the Police: a review of the evidence”. National Police Chiefs’ Council. [Online]. Available at <https://www.npcc.police.uk/Publication/NPCC%20Out%20of%20Court%20Disposals%20Evidence%20assessment%20FINAL%20June%202018.pdf>

23 College of Policing (2019), “About Us”. [Online]. Available at: <https://www.app.college.police.uk/about-app/>

24 Shapland, J. Crawford, A. Gray E and Burn, D. (2017) “Restorative justice at the level of the police in England: implementing change.” Centre for Criminological Research, Universities of Sheffield and Leeds.

25 European Parliament and Council (2012) “DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.” [Online]. Available at: <https://restorativejustice.org.uk/sites/default/files/resources/files/EU%20victims%27%20directive.pdf>

Conclusions and recommendations

The existing guidance highlights the fact that Restorative Justice is already considered an appropriate intervention for hate crime, and that it is sometimes enthusiastically encouraged.

But in reality the vast majority of people affected by hate crime are not told about Restorative Justice. Policy changes are needed to unlock Restorative Justice for more people affected by hate crime.

We recommend the following actions:

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Actor	Action
Ministry of Justice	<ul style="list-style-type: none"> - The Minister of Justice to produce an up to date Restorative Justice Action Plan, with clear steps which will be taken so that entitlements in the Victims' Code regarding Restorative Justice are met. - The Minister of Justice to give clear inter-departmental guidance on using Restorative Justice for hate crime. - The new Victims' Code and any future Victims' Law to retain the entitlement for all victims to have access to a restorative process if they want one.
Home Office	<ul style="list-style-type: none"> - To report on progress from the pilots in Derby, Manchester and Bradford, setting clear goals for what these projects are aiming to demonstrate, and consulting with Restorative Justice and hate crime organisations on evaluation. - The Home Office Action Plan on hate crime for 2020-2024 to publish a report on the initial findings from the projects in Derby, Manchester and Bradford, and to issue clear guidance on the Home Office's position on the use of Restorative Justice for hate crime.
Crown Prosecution Service	<ul style="list-style-type: none"> - To write to police services clarifying CPS guidance on the use of out of court disposals for hate crime. - To amend CPS guidance on the use of conditional cautions for hate crime, so that conditional cautions for hate crime do not need CPS authorization if they include an element of Restorative Justice.
National Police Chiefs' Council	<ul style="list-style-type: none"> - To issue guidance on Restorative Justice and hate crime.
Probation Services	<ul style="list-style-type: none"> - To produce clear guidance about using Restorative Justice for hate crime and to support its increased use in rehabilitation programmes.
Victims' Commissioner	<ul style="list-style-type: none"> - To ensure that the right for victims to have access to Restorative Justice for all crimes, including hate crime, is enshrined in the future Victims' Code, and any future Victims' Law.
Restorative Justice Council	<ul style="list-style-type: none"> - To support the use of Restorative Justice for hate crime victims, and to promote education, training and recruitment of Restorative Justice professionals in working with people with protected characteristics.
The College of Policing	<ul style="list-style-type: none"> - To educate all police officers on Restorative Justice and how to use it effectively in hate crime cases.

Why me? intends to work with policy makers to support the implementation of these recommendations. Please email info@why-me.org to get in touch.