



The right to choose Restorative Justice

Ben Andrew, June 2020

The problem

The 2019 Crime Survey for England and Wales showed that only 4.8% of adult victims of crime with a known offender recalled being given the option of Restorative Justice in 2018/19.¹

This shows that the vast majority of people affected by crime are not getting the chance to consider whether Restorative Justice would be beneficial for them.

This paper looks at the potential benefits of every victim of crime having this opportunity.

Evidence on the impact of Restorative Justice

The British Government funded a seven year research programme into Restorative Justice in 2001, which found that 85% of victims of crime who go through a restorative conference are satisfied with it.² Most of them said that the experience gave them a sense of closure, and that it made them happier with the way that the criminal justice system handled their case. Further analysis from the Ministry of Justice concluded that Restorative Justice led to a 14% reduction in repeated offending.³

¹ Office for National Statistics, 2019. "Restorative Justice, year ending March 2011 to year ending March 2019: Crime Survey for England and Wales, 2019." Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/adhocs/010238restorativejusticeyearendingmarch2011toyearendingmarch2019crimesurveyforenglandandwalescsew>. Accessed 20 May 2020.

² Shapland, J., Atkinson, A., Atkinson, H., Chapman, B., Dignan, J., Howes, M., Johnstone, J., Robinson, G. and Sorsby, A. 2007. "Restorative Justice: the views of victims and offenders." Ministry of Justice Research Series 3/07. London: Ministry of Justice.

³ Ministry of Justice. 2010. "Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders. Green Paper Evidence Report."

Why me?'s *Valuing Victims* research looked at the reported outcomes for Police and Crime Commissioner Restorative Justice providers in 2018/19.⁴ It found significant benefits for victims across the four service measures, showing that they experienced:

- Improved health and wellbeing.
- Being better able to cope with aspects of life.
- Increased feeling of safety.
- Being better informed and empowered.

The impact of Restorative Justice can be most significant for people affected by serious offences, as they often suffer the greatest long term emotional harm from the incident. Restorative Justice has been found to reduce the likelihood of people developing Post Traumatic Stress symptoms after a crime,⁵ and can reduce symptoms of avoidance and intrusive thoughts in people suffering such symptoms already.⁶

Restorative Justice saves money for the criminal justice system, the NHS, and other public services by reducing repeat offending. An evaluation of the Government research into this subject found that £9 of public money is saved for every £1 invested in Restorative Justice.⁷

The initial restorative conversation with a trained facilitator can be helpful, even to those who don't go on to meet the perpetrator. Indeed, multiple studies have shown that victims of crime feel better knowing that they have the option of Restorative Justice, even if they don't wish to take it up.^{8 9}

Why me?'s *Evidence for Restorative Justice* paper outlines the further benefits Restorative Justice can have for people affected by crime, people who have offended, and the criminal justice system as a whole.¹⁰

Who can benefit from Restorative Justice?

⁴ Watson, T. 2020. "Valuing Victims: A Review of Police and Crime Commissioners' Delivery of Restorative Justice 2018/19". Why me? Available at: <https://why-me.org/wp-content/uploads/2020/03/Why-me-Restorative-Justice-Valuing-Victims-Report-2020.pdf>. Accessed 20 May 2020.

⁵ Angel, C.M. et al. 2014. "Short-term effects of Restorative Justice conferences on post-traumatic stress symptoms among robbery and burglary victims: a randomized controlled trial." *Journal of Experimental Criminology*. 10, pp. 291–307. In Sherman, L. and Strang, H. 2007. *Restorative Justice: The Evidence*. London: The Smith Institute.

⁶ Lloyd, A. and Borrill, J. 2019. "Examining the Effectiveness of Restorative Justice in Reducing Victims' Post-Traumatic Stress." *Journal of Psychological Injury and Law*.

⁷ Restorative Justice Council, 2011. "What does the Ministry of Justice RJ research tell us?" Available at: <https://restorativejustice.org.uk/sites/default/files/resources/files/Ministry%20of%20Justice%20evaluation%20of%20restorative%20justice.pdf>. Accessed 20 May 2020.

⁸ Bolívar, D. 2012. "Victim-offender mediation and victim's restoration. A victimological study in the context of Restorative Justice." PhD diss., Leuven: KU Leuven.

⁹ Wemmers, J. and Van Camp, T., 2011. "The Offer of Restorative Justice to Victims of Violent Crimes: Should it be Protective or Proactive?" Montréal: CiCC, Université de Montréal.

¹⁰ Why me?, 2019. "Evidence for Restorative Justice." Available at: <https://why-me.org/wp-content/uploads/2019/11/Evidence-for-Restorative-Justice-3.pdf>. Accessed 20 May 2020.

There is no golden rule outlining which people affected by which crimes will be interested in Restorative Justice. Deciding to take part in a restorative process is a personal choice, and the benefits of doing so can be different in different cases. Moreover, the restorative process itself is flexible around the needs of the people taking part. The process will only go ahead if it is judged to be safe by a trained Restorative Justice facilitator.

Why me? has developed a network of Restorative Justice ambassadors over several years. These are people who have been affected by crime, been through a restorative process, and chose to speak out about the benefits of the process. Their stories demonstrate not only how powerful Restorative Justice is, but how varied the benefits can be for different people.¹¹ Some see Restorative Justice as a way to get answers. Some want to hold the person responsible accountable. Some want to regain their sense of power and perspective. Some want to forgive the perpetrator and help them not to commit a similar crime again. There is no single reason that people choose Restorative Justice, but it has transformed many lives for the better.

Here are some of the stories from our ambassadors who have been through Restorative Justice:

- When Rob's son was robbed and assaulted in his local town, Rob was left with "anger and no direction in which to channel it." For him, Restorative Justice allowed "all of the unwanted negativity [he] had held to finally and permanently go."
- Paul was left severely wounded after a group of men broke into his property and assaulted him. When he met one of the men again through Restorative Justice, he wanted to know why they had done it. Finding out that he had not been personally targeted for any significant reason helped Paul to move forward from the attack.
- Lucy was violently attacked by her ex-partner, leading to her "spending six years locked indoors when he was behind bars." For Lucy, the best thing about the meeting was "seeing him as just one person." Restorative Justice was transformational for her, and she described walking out of the meeting as "the beginning of the rest of my life."
- When Janika was stabbed eight times by her ex-partner, she was eager to meet him again through Restorative Justice. "I wanted him accountable to me, not to a judge, not to prison officers, but to me," she explained. The night after the Restorative Justice meeting was the first time in three and a half years that she slept through the night without waking. Janika describes Restorative Justice as "the key that unlocked my future."
- Rosalyn was raped and tortured by a stranger in her own home. Restorative Justice allowed her to regain her personal sense of "power and control," and she has felt "lighter, less afraid and happier" since the meeting.
- Ray and Vi met with one of the people who murdered their son as a teenage boy, and they chose to forgive him. "That Restorative Justice meeting made a real difference to us," they said, "and we are now hoping to have meetings with the other young men."

¹¹ Why me? website, "Stories." Available at: <https://why-me.org/ambassadors/>. Accessed 20 May 2020.

These stories demonstrate the wide-reaching impact that Restorative Justice can have. Some people have had to battle for the right to commence a restorative process, as they were confronted with statutory services blocking referrals on the grounds that the crime committed against them was too serious for Restorative Justice to be appropriate. But, as these stories show, Restorative Justice can transform the recovery of people affected by any level of crime, including the most serious.

Who is getting Restorative Justice?

Most victims of crime aren't being told about Restorative Justice. Our work with restorative providers throughout the country found that victims of crime face a lottery system, only being told about Restorative Justice if their case is handled by someone who supports it, and who thinks it is a good fit for them.¹²

Research from Rebecca Banwell-Moore at the University of Sheffield shows that Victim Witness Care Officers - who are often the single point of contact for victims of crime - are frequently selective about when they raise Restorative Justice.¹³ There are certain crimes, such as burglary, which staff are inclined to see as the "ideal RJ offence." There are also certain behaviours from victims of crime, such as appearing engaging, open, or "understanding that we make mistakes" which make staff more likely to raise Restorative Justice with them. This is problematic, because assuming that certain people will not be interested in the process without asking them will inevitably lead to missed opportunities, and potentially discrimination. Police and victim services need to judge the right moment to give people information about Restorative Justice. Most evidence points to victims wanting better communication about their entitlements.¹⁴

While burglary may be seen as the "ideal offence" for Restorative Justice, there are other crimes which some people see as off-limits. For example, Why me? has worked extensively on increasing the use of Restorative Justice for hate crime through our *Access to Justice* campaign.¹⁵ Our work has consistently found that, even though there are instances of Restorative Justice being used well in hate crime cases, many police officers and victim support workers do not see it as an appropriate tool to offer in these circumstances.

The role of the facilitator

¹²Andrew, B., 2019. "Making Restorative Justice happen for hate crime in your local area." *Why me?* Available at: <https://why-me.org/wp-content/uploads/2019/11/Why-Me-Making-Restorative-Justice-Happen-for-hate-crime-in-your-police-area.pdf>. Accessed 20 May 2020.

¹³ Banwell-Moore, R. 2018. "The 'ideal restorative justice victim.'" Available at: <https://why-me.org/2018/the-ideal-restorative-justice-victim-how-professionals-prevent-victims-from-making-an-informed-decision/>. Accessed 20 May 2020.

¹⁴ Rossetti, P, Mayes, A, Moroz, A. 2017. "Victim of the system" *Victim Support*. Available at: <https://www.victimsupport.org.uk/sites/default/files/Victim%20of%20the%20System%20report.pdf>. Accessed 20 May 2020.

¹⁵ Why me? website, "Our Campaigns." Available at: <https://why-me.org/campaigns/>. Accessed 20 May 2020.

Restorative Justice facilitators are experts in the field, who communicate with both parties in advance, and discuss their options with them.

Safety and flexibility are at the heart of the process. Restorative Justice facilitators undertake significant preparation with both parties before a meeting takes place, and are able to address and assess safety concerns as part of this process. In complex and sensitive cases, such as domestic violence, sexual abuse and hate crime, it is important to work in a multi-agency context where possible. This means that support for the people participating is available, and that the facilitator is able to fully assess any risks before proceeding towards a restorative meeting.

Both parties need to consent for a Restorative Justice conference to go ahead, and the facilitator needs to confirm that it is safe to proceed. This means that a meeting between the victim and offender will not always be possible, even if this is what the victim asks for. There are adjustments to the restorative process which can be made in cases where a meeting is not possible. This could include the parties communicating via video shuttle, writing letters, or using a proxy where appropriate.

Even where no involvement from the perpetrator is possible, the person affected may still benefit from restorative interventions such as writing an open letter, or recording a video about the impact of the crime. The story of Ann-Marie, a person with learning difficulties who was the victim of a hate crime, is a good example of this.¹⁶

If this sort of intervention is not possible or desirable, just having an initial restorative conversation with a facilitator can be a helpful part of some people's recovery.

Conclusion

Restorative Justice has helped many people to move forward from the impact of crime. It allows them to communicate with the person who harmed them, talk about how it affected them, and seek answers about why it happened. Many people say that this is empowering and helps them to move forward.

We believe that all victims of crime should be informed about Restorative Justice, and offered a referral to their local restorative provider. Restorative Justice facilitators will respect the wishes of participants, be flexible with the type of process which they can offer, and only proceed with an intervention which they judge to be safe. If both parties consent, then a meeting should go ahead unless there are serious safety concerns which cannot be overcome.

There are a number of changes which need to be made for victims of crime to be empowered in this way. We give our key recommendations below:

¹⁶ Why me? Website. 2020. "Anne-Marie's story: 'it's about what you are inside that counts.'" Available at: <https://why-me.org/ann-maries-story-its-about-what-you-are-inside-that-counts/>. Accessed 20 May 2020.

Recommendations

- 1) For the **Ministry of Justice** to include the right for victims to be informed about Restorative Justice and referred to their restorative justice provider in the Code of Practice for Victims' of Crime. This should be available regardless of whether a case goes to court, and should not vary based on the age of the offender.
- 2) For the **Ministry of Justice** to produce a Restorative Justice action plan which manages restorative activity across the criminal justice pathway and provides a strategic approach to improving access to Restorative Justice, like the one which expired in March 2018.
- 3) For the **Ministry of Justice** to require Police & Crime Commissioners to collect and publish data on their actual spend on Restorative Justice. This would allow the benefit of this spending to be scrutinized, and would help to develop the effectiveness of restorative services in PCC areas.
- 4) For **Police & Crime Commissioners** in England and Wales to include a commitment to offer all victims a referral to their restorative provider in their Police and Crime plans for 2021-2025.
- 5) For **The Youth Justice Board** to promote Restorative Justice to Youth Offending teams and Referral Order Panels, and provide them with guidance, training and examples about how to deliver it effectively. This would include a commitment to refresh the 2018 Referral Order Guidance, which incorporates restorative principles, and to integrate Restorative Justice into their long term strategy and annual business plans.
- 6) For **Youth Offending Team Managers** to ensure that all YOT staff are familiar with their duties under the Victim's Code of Practice regarding informing victims about Restorative Justice. Referral Order Panel members should be made aware of and trained in restorative principles so that they can deliver their duties against the 2018 Referral Order Guidance.
- 7) For the **HM Inspectorate of Probation** to conduct a review on the use of Restorative Justice by Youth Offending Teams, and their duties under the Victim Code of Practice.