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PROJECT



HANDBOOK

USING RESTORATIVE JUSTICE IN CASES OF LGBTI HATE CRIME (ENGLAND AND WALES)

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1. INTRODUCTION

Restorative Justice has been used for a number of years in cases of LGBTI hate crime, although it is only recently in the United Kingdom that it has gained visibility in academic and institutional circles. With the drive to use Restorative Justice more with this type of crime, and to standardise policies around it, it is particularly important to develop practice in this area. There is a need to make Restorative Justice accessible and appropriate for LGBTI people who have experienced hate crime.

The purpose of this article is to map out the considerations that need to be taken to conduct Restorative Justice for cases of LGBTI hate crime. It includes key points as they arise at each stage of the Restorative Justice process – from before initial contact has been made, through to debrief and beyond. Whilst core Restorative Justice processes tend to remain unchanged regardless of the crime or participants, additional measures may need to be taken to increase accessibility for certain groups and adapt to individual requirements.

The content within this article is derived from Why me?'s work on Restorative Justice and hate crime. Why me? is a charity that campaigns for victims to have greater access to Restorative Justice across England and Wales. Why me? also operates a service that delivers Restorative Justice for those who are harmed by crime and those responsible for harm. Over the past three years, Why me? has conducted work addressing all types of hate crime, releasing two papers on how to increase access to Restorative Justice for anyone affected by hate crime. Why me? also received two year's funding to develop a LGBTI hate crime and Restorative Justice

project across London. One of the purposes of this project was to develop good practice in facilitating Restorative Justice with LGBTI hate crime. The article draws on the results of both projects, LGBTI hate crime casework, carried out by Why me?'s national Restorative Justice service, and from wider research on the subject. This article will use data gathered through interviews with practitioners and LGBTI services conducted in December 2019.

Disclaimer: Some of the findings in this article are the product of conversations Why me? had with people and organisations who belong to specific minority groups. Their feedback is informative, but not necessarily representative. Why me? was not able to speak to representatives from every minority group that can be affected by hate crime.

2. TERMINOLOGY

The terms 'harmed' and 'harmer' are used throughout this article to describe those harmed by an incident and those who are responsible. These terms cover people involved in a criminal incident, as well as incidents, which were not criminal, but caused harm.

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The term 'Restorative Justice' is also used, although 'restorative practices' can describe methods of addressing harm outside of the criminal justice system. Restorative practice facilitates dialogue between people to address the impact of harm. It can be used in a number of settings including schools, the workplace and in the criminal justice system.

LGBTI is used as an umbrella term to describe people of all minority sexual orientations and gender identities, including lesbian, gay, bisexual, pansexual, trans, non-binary, queer, asexual and intersex.

The difference between hate crimes and hate incidents is that hate incidents do not meet the threshold for criminal behaviour. In England and Wales, when a hate incident becomes a criminal offence it is defined as a hate crime (Citizens Advice website). The Crown Prosecution Service will need sufficient evidence to convince the court that the crime was motivated by or demonstrated hostility (Crown Prosecution Service website). Whilst 'hate crime' is the term used in this article, Why me? advocates that Restorative Justice can also address hate incidents.

3. WHAT IS RESTORATIVE JUSTICE?

Restorative Justice is a process that gives someone who has been harmed the chance to communicate with the person who caused the harm about the real impact of the incident. It empowers them by giving them a voice and can help them to move forward and recover. For harmers, the experience can be incredibly challenging as it confronts them with the personal impact of their actions. Restorative Justice treats all participants with respect. The practice ensures that all parties are kept safe and that no further harm is caused.

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A restorative process can be used for all types of crime, including cases where someone is serving a long prison sentence. Why me? works with victims of domestic violence, serious assault, rape and those who have lost family members to murder, all of whom have benefited from Restorative Justice.

Restorative Justice conferences, where the harmed person meets the harmer, are led by a trained facilitator who supports and prepares the people taking part and makes sure that the process is safe. Sometimes, when participants do not want a face to face meeting or it is not safe to do so, the facilitator can arrange for the two parties to communicate via letters, shuttling information between them, recorded interviews or video. Restorative Justice is voluntary, meaning that both parties must be willing to participate for it to go ahead.

4. LGBTI HATE CRIME IN THE UNITED KINGDOM

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The police and the Crown Prosecution Service for England and Wales have agreed to define hate crime as “any criminal offence which is perceived by the victim or any other person to be motivated by hostility or prejudice” (Crown Prosecution Service website) against race, religion, sexual orientation, disability or transgender identity. In England and Wales, examples of hate crimes can include assaults, murder, criminal damage, sexual assault, burglary and harassment. Hate incidents could include verbal abuse, bullying, threats of violence and online abuse (Citizens Advice website).

Bachmann's and Gooch's 2017 research, conducted on behalf of Stonewall, indicates the level of LGBTI hate crime in the United Kingdom. Their key findings include:

- One in five LGBTI people have experienced a hate crime or incident because of their sexual orientation and/or gender identity in the past 12 months.
- Two in five trans people have experienced a hate crime or incident because of their gender identity in the past 12 months.
- The number of LGB people who have experienced a hate crime or incident in the last year because of their sexual orientation has risen by 78 percent since 2013.
- Four in five LGBT+ people who have experienced a hate crime or incident did not report it to the police.
- One in ten LGBT+ people have experienced anti-LGBT+ abuse online directed towards them personally. This increases to one in four for trans people directly experiencing transphobic abuse online (6).

LGBTI hate crime is also significantly underreported. Most LGBTI people who have experienced a hate crime do not report it to the police or other agency/support organisation (Bachmann and Gooch 12). Evidence collected as part of the National LGBT survey identifies a number of reasons for the lack of reporting. They include: fear of the reaction victims may receive from the police, a perception that the crime was not serious enough, the repeated

frequency of hate crime incidents across a person's life trajectory or reporting would not lead to any change (Government Equalities Office 13). Older LGBTI people can be less trusting of the police due to previous criminalisation of their sexuality. The Sexual Offences Act 1967 first legalised homosexuality in England and Wales. Further legislation applied across the United Kingdom culminated in 2000 with the age of consent set at 16 for both heterosexual and homosexual acts.

5. THE BENEFITS OF USING RESTORATIVE JUSTICE TO ADDRESS HATE CRIME

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Restorative Justice can provide an alternative way to address LGBTI hate crime as it is an independent process, addressing the harm experienced by an individual. It also can take into account the recurrent nature of hate crime. The benefits of Restorative Justice can be most powerful for those harmed by serious crimes, as they often experience 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.

Restorative Justice can challenge prejudice. For example, one victim of LGBTI hate crime told Why me? that he would relish the opportunity to meet the harmer through Restorative Justice, so that he could challenge their views about his sexuality and discourage them from inflicting hate again (Why me? "Making Restorative Justice happen for hate crime across the country" 3). The act of education empowers people affected by hate and can help them to recover from the incident.

Restorative Justice also encourages empathy and understanding, making many people affected by hate crime feel it is worthwhile (Walters, Chapter Seven). This can be uniquely beneficial for those harmed by hate crime, 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 (Why me? "Making Restorative Justice happen for hate crime across the country" 3). Restorative Justice humanises the harmed to the harmer. It is much easier for someone to shout obscenities at a gay couple walking down the street, hand in hand, than it is to sit with them and hear that they are suffering from panic attacks as a result.

The long-term impact of Restorative Justice could reduce the number of hate crimes committed, although further research is required. Evidence has shown that Restorative Justice reduces reoffending by 14% (Ministry of Justice "Green Paper Evidence Report" 64).

6. ESTABLISHING PARTNERSHIPS AND REFERRAL PATHWAYS

The key to the success of Why me?'s London LGBTI Restorative Justice hate crime project has been the close collaboration with specialist agencies, such as Galop, the anti LGBT+ anti-violence charity. The first stage of the project was to consult and cooperate with LGBTI organisations to understand their and the LGBTI community's needs, issues and barriers. Organisations that Why me? contacted included Galop, Elop, Metro, Mosaic, the Peter Tatchell Foundation, Stonewall and Stonewall Housing.

During 2019, Why me? delivered a series of awareness sessions, including a pan London event to 17 organisations with presentations from Galop, the Metropolitan Police Service and the London's Major's Office for Policing and Crime. This has resulted in case discussions with Galop, and further work is to be carried out with Stonewall Housing to offer their clients the opportunity to engage with Restorative Justice.

It can take time to establish partnerships between restorative services and LGBTI organisations and referrals rates are likely to be slow at first. Considerable investment is required to ensure that referral processes are clear and safe. It is also essential that communication and data-sharing protocols are understood by all parties. Having single points of contact in each organisation who will manage the referral process helps with this.

Between July and November 2019 Why me? received five referrals from Galop. One case has resulted in a restorative meeting. Why me? found that the presence of a Galop representative to support the person affected by hate at this conference was extremely beneficial. They were also able to see how Restorative Justice works in practice and deepen their understanding of its benefits. Restorative services should provide opportunities for LGBTI partner agencies to observe restorative conferences so they are better able to explain what happens when making the offer of Restorative Justice.

Restorative services should provide regular feedback to the referring agency on the progress of a referral or at the very least after the restorative intervention has completed with details of the outcome and any feedback from the participants. Regular updates to the referrer means, for example, that they can follow up with a service user if the restorative service has lost contact. Consent to update the referring agency is obtained at a first meeting with a service user. It is important to provide case updates to the referring agency so any behavioural patterns can be identified.

7. TRAINING IN RESTORATIVE JUSTICE AND LGBTI ISSUES

A key element to ensure success of any project to increase the use of Restorative Justice with LGBTI hate crime cases is to deliver appropriate training to both Restorative Justice professionals and those working with the LGBTI community. It is suggested that restorative services and LGBTI organisations set up reciprocal arrangements for the delivery of training. Why me? has only allocated cases to their facilitators who have completed LGBTI awareness training. All Why me?'s facilitators are volunteers with two members of staff managing the restorative service and who also provide support to the facilitator team.

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Ideally, training for Restorative Justice professionals working with LGBTI communities should be carried out before referrals for LGBTI hate crime are accepted. Why me? commissioned Galop to deliver a customised package for staff, board members and facilitators. Any such training should cover a number of areas including understanding what hate crime is, barriers to and reasons for reporting hate crime and its impact on people and communities. Restorative facilitators should be made aware of different sexualities and gender identities and appropriate terminology for each as well as LGBTI culture. It is important for facilitators to know that hate crime can be intersectional and is linked to other crimes. For example, disabled LGBTI people may be victims of hate not only because of their sexuality but also their disability. Training programmes can also cover the potential benefits and risks of using restorative approaches with LGBTI people.

A half day Restorative Justice awareness training should be delivered to all staff and volunteers who may refer hate crime cases for Restorative Justice. The content of such training could include a description of Restorative Justice, how the process works, the different models of delivering it and how Restorative Justice can help people affected by LGBTI hate crime. Case studies, how to make the offer of Restorative Justice and how to refer to a restorative service should also form part of the training.

To gain a greater insight into how Restorative Justice services and LGBTI organisations work, it may be beneficial for staff and volunteers to shadow each other. It is also suggested that in addition to awareness training, that at least one member of staff from a LGBTI referring agency should undertake restorative facilitation training to help their understanding of the process. A longer-term goal would be to train more frontline workers in specialist agencies to deliver Restorative Justice themselves. There is also a need to recruit and train more people from the LGBTI community as Restorative Justice facilitators.

8. PERCEPTIONS OF THE SUITABILITY OF RESTORATIVE JUSTICE

Some professionals see Restorative Justice only as a way of disposing of minor crimes. This does not capture the full scope of Restorative Justice. (Why me? "Making Restorative Justice happen for hate crime across the country" 4). Restorative Justice can be used for all types of crime, including cases where someone is serving a prison sentence. It can be used in conjunction with a court sentence or in place of a prosecution. Hate crimes are complex and sensitive but this should not necessarily preclude a victim of hate from being offered the opportunity of taking part in Restorative Justice.

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Why me?'s research found that perceptions differ as to whether Restorative Justice is suitable for hate crime cases. Some people are sceptical about using Restorative Justice for hate crime, due to the fear that the process could cause further upset (Gavrielides 21-24). There is a potential reluctance to expose them to people with potentially very different ideological beliefs and hateful attitudes. Anecdotal feedback received by Why me? found that some people who had experienced hate said they would have welcomed the chance to have Restorative Justice, whilst others said that they would not have accepted it. There was concern that they would find the process upsetting, but none of them said that someone affected by hate should not be able to make this decision for themselves (Why me? "Making Restorative Justice happen for hate crime across the country" 4-5).

In a paper delivered to Why me?'s "How to use Restorative Justice for Hate Crime Conference" (October 2019), Mark Walters presented evidence of LGBTI people's perceptions of the use of Restorative Justice and enhanced penalties (such as longer prison sentences for hate crime). A survey carried out as part of the Sussex Hate Crime project found that LGBTI people perceived Restorative Justice as more likely to reduce reoffending, help harmers' understand the impact of their crime, help victims of hate to recover and gives them a greater say than enhanced penalties.

People who have experienced identity-based crimes may have a series of complex needs such as mental health or substance misuse problems. They may also have increased vulnerabilities because of their experience of previous LGBTI hate crime and the

nature of hate crime itself. With hate crime, the person hates you because of who you are which can impact on people's sense of safety. Many people harmed by hate crime, not just LGBTI hate crime, experience siege mentality, where they are constantly on edge looking for the next incident of abuse. However, such needs may not necessarily constitute a barrier to taking part in Restorative Justice. The people affected can be worried about being seen to be vulnerable, so it is important for facilitators to be respectful, and that their priority is to keep them safe. Restorative facilitators will adapt their practice to manage such needs and where possible engage with relevant agencies that are also supporting an individual. Facilitators will discuss with service users if they identify a potential need and will refer/signpost to another agency including LGBTI services. It is, therefore, important for restorative facilitators to be aware of services in the local area.

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9. EMPOWERING THE HARMED TO ACCESS RESTORATIVE JUSTICE

Professionals working with those harmed by hate crime have a vital role in enabling them to learn about Restorative Justice. This includes the police, those providing victim support services and LGBTI agencies.

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Why me? campaigns that all victims of crime must be offered information and the opportunity to take part in Restorative Justice. People affected by LGBTI hate crime should have the same access to Restorative Justice as anyone else. It is important that the offer to take part is made throughout a victim's journey within the criminal justice process. Those affected by hate crime should be empowered to make decisions about Restorative Justice themselves. People affected by hate crime have a variety of reasons for wanting to take part in Restorative Justice; they may have questions such as 'why me?', 'why was I targeted?' or they may wish to explain the impact of the hate crime to the perpetrator. The best person to decide if Restorative Justice could be suitable and a referral is made to a restorative service, is that person themselves.

It is important that where individuals do report, they are made aware of their right to information about Restorative Justice (Ministry of Justice "Code of Practice" 35) and when they do not feel able to report, they are able to contact Restorative Justice services directly.

10. INFORMING PEOPLE ABOUT RESTORATIVE JUSTICE

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For many people, who experience hate crime all their life, they only tend to report after a number of incidents. This means that they may not be well placed to take part in Restorative Justice at that point. If there is greater awareness of the use of Restorative Justice for LGBTI hate crimes, then more people may come forward to take part. Those affected by crime often feel side lined by the criminal justice process and Restorative Justice can help with this.

Research has demonstrated that where possible the offer of Restorative Justice should be made by a trained restorative practitioner, preferably in a face-to-face meeting and any prior contact, for example by telephone, should aim to secure a face-to-face meeting. It is also recommended that the term 'Restorative Justice' is not used in early conversations with participants as it can be off-putting and perhaps confusing. It is beneficial to explain the process first without giving it a label (Restorative Justice Council "Improving victim take up" 15).

However, the initial offer to take part in Restorative Justice may come from the police, a victim services' agency or other support agency. It is often a police officer who makes first contact with a victim of hate crime, followed by a victim support officer where required (Why me? "Making Restorative Justice happen for crime in your police area" 6).

Some police officers see Restorative Justice only as a way of addressing a crime, using as part of or an alternative to an out of court disposal, such as a community resolution or caution. This can prevent them from discussing restorative options for anything other than minor crimes. Their high workloads also put pressure on them to clear cases quickly meaning that clear referral routes to Restorative Justice are important to encourage the option to be considered (Why me? "Making Restorative Justice happen for crime in your police area" 6). However, care should be taken to ensure that people who have been harmed do not feel pressurised into taking part in Restorative Justice.

Victim support staff can also be selective about when they raise the option of Restorative Justice. There is a tendency to only raise Restorative Justice when they think the person is likely to accept it, rather than letting the person make that decision for themselves. Banwell-Moore's research on the barriers to participation in Restorative Justice found that victim staff considered "whether the victim engaged with them; whether they were upset or angry; and whether or not they expressed pro-social motives or displayed altruistic tendencies" when deciding whether to raise Restorative Justice (Why me? "Making Restorative Justice happen for crime in your police area" 6).

Many victim support staff never give those affected by hate crime the option to consider Restorative Justice. This may be due to a misconception that Restorative Justice is only suitable for minor crimes and a lack of confidence on the part of staff to make an offer (Why me? "Making Restorative Justice happen for crime in your police area" 6).

People working with those harmed by LGBTI hate crime could use a process called 'virtual conferencing' to help them explain Restorative Justice. The method uses a series of questions:

1. Imagine that person who caused the harm is in the room with you now. What would you say to them?
2. How do you think they will respond to that?
3. What questions would you ask?
4. Do you think you could actually say these things to them face to face? (Brian Dowling and Why me? 2)

Why me?'s collaboration with Galop has shown the benefits of the Restorative Justice offer made by professionals who are already engaged with people affected by hate and have in-depth understanding of their needs. It is essential that such professionals have a good understanding of Restorative Justice, including its benefits, to be able to recognise when the process may be of value. Considering the potential mistrust of the police, if the offer of Restorative Justice is made from elsewhere, this could encourage more people to engage with Restorative Justice.

10.1 TAKING FORWARD A REFERRAL

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Either the harmed or harmer can initiate Restorative Justice. However, referrals may not be considered by restorative services if they involve domestic violence and/or sexual abuse and are initiated by the harmer. In England and Wales, restorative services are funded by the local Police and Crime Commissioners and the criteria for acceptance of referrals can differ across restorative services. Restorative facilitators will continually assess throughout a restorative process to ensure that it remains safe for all parties to take part. They will consider motivations for taking part, the level of responsibility that the harmer takes for their actions and whether any restorative process will lead to an increased risk of harm. Restorative Justice is voluntary for everyone to take part and either party can withdraw from the process at any time.

Restorative facilitators always consider and manage referrals on a case by case basis, led by the needs and the wishes of the person who was harmed. One of the guiding principles of restorative practice is that facilitators remain neutral and "ensure their restorative practice is respectful, non-discriminatory and unbiased towards all participants," (Restorative Justice Council, "Restorative Practice Guidance" 8). As the LGBTI community includes a wide of variety of people, it is vital that all interventions are tailored to the individual. Restorative Justice can offer this personalised approach and provides people with another option if they feel they cannot pursue a crime in the traditional way.

Restorative Justice can take place at any point during the criminal justice process although generally it is after a decision has been made on the outcome, for example, after sentencing or an out of court disposal (caution, community resolution) has been delivered. It can be carried out alongside a court sentence whether the harmer is in custody or the community. Restorative Justice can take place if the police have decided to take no further action in response to an incident, for example, if it did not meet the criminal threshold, and all parties agree to take part.

Why me? and Galop's experience has found that people harmed by hate crime may want to take part in Restorative Justice with an individual/organisation who was not directly responsible for an incident, but still caused harm. For example, if an assault took place in a public space, such as a pub, club or gym, and the person responsible cannot be identified, the person affected may benefit

from a restorative process with the staff at the venue, if they feel that what happened was not taken seriously. This gives the person harmed the opportunity to explain the harm that they have experienced. Similarly, Restorative Justice could be used to build relationships with agencies such as the police when an individual or group feels misunderstood, even if they were not directly responsible for a crime. With any such case, facilitators should explore with the feelings of the person affected towards the person responsible for the crime to check that they are not transferring their anger at what happened to the other party in the process.

11. THE RESTORATIVE JUSTICE PROCESS

Once a restorative service has received a referral, the Restorative Justice process will include a number of distinct steps which can be summarised as follows (for harmed-initiated referrals).

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1. Initial contact made by the facilitator either by telephone or letter.
 2. An initial meeting with the harmed to explain Restorative Justice, explore their feelings about what happened and discuss what they would like to achieve.
 3. The facilitator makes contact with the harmer, whether they are in prison or in the community, to have a similar conversation about Restorative Justice and their motivations for taking part.
 4. If both parties agree to Restorative Justice, a series of preparation meetings will be carried out until everyone is ready to proceed.
 5. A face-to-face meeting or other form of Restorative Justice (see below) takes place.
 6. Follow up will take place with all parties and feedback gained on what they thought about the restorative intervention.

11.1 DIFFERENT MODELS OF RESTORATIVE JUSTICE

Research has shown that participants think that restorative meetings (or conferences) are the most effective way of delivering Restorative Justice (Atkinson et al 48). These meetings involve a harmer and harmed meeting face-to-face, with a restorative practitioner facilitating the meeting. Restorative conferences generally take a scripted approach with the first part focussing on what happened and thoughts and feelings relating to what happened. The second part of the meeting allows the participants to discuss how the harm can be put right. A restorative meeting allows the person who was harmed to have their voice heard in a controlled, secure environment, which has the ability to be deeply empowering.

However, participants may not wish to communicate in this way or it may be unsafe for them to meet. Restorative Justice can be carried out by letters, shuttle mediation (where the facilitator passes information between the participants) or by video/audio conferencing. These are known as indirect restorative processes.

A letter exchange, for example, may be offered to those harmed by LGBTI hate crime. In some cases, a face to face meeting could be traumatising for people affected by hate, if there is a concern that the harmer could say something that revictimizes them. A letter could be less daunting and more therapeutic in such cases. All letters are checked by the facilitator to ensure they do not contain inappropriate content, for example, the wrong use of a pronoun, and it is good practice for the facilitator to be present when the recipient reads the letter, in line with their wishes. However, Why me?'s interviews with LGBTI services suggested that restorative letters not be a popular approach. This could be because potential participants prefer to meet with their harmers face to face.

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Why me?'s research has identified that the use of proxy victims, where appropriate, may be a positive adjustment to the restorative process for hate crime (Why me? "Making Restorative Justice happen for hate crime in your police area" 9). This can be arranged when the person affected does not want to take part in a face to face meeting themselves but would like another person to step in on their behalf. This would usually be someone from the same community as them. The proxy speaks directly to the person who has been harmed to learn their views and feelings, and represents them in a restorative meeting.

Many people Why me? spoke to were positive about the idea of proxy victims. Some people, who did not think that they would have the time or the emotional resilience to go through Restorative Justice, said they would gain comfort from knowing that someone who had experienced similar discrimination was making their case for them.

Using proxies for a restorative process in hate crime cases is common practice in some police forces. It can be a useful tool when using restorative approaches as part of a conditional caution. Securing the consent of the person affected and preparing them properly is not always possible in the time available, so having a proxy that can relay their feelings can allow a restorative process to go ahead where it would not otherwise have happened. However, the benefit

for the directly harmed person is sometimes not as significant in such cases. It is also important for restorative services to consider the welfare of the person acting as the proxy.

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Speaking to a supportive facilitator about the impact of a crime can be beneficial in itself even if it does not lead to a face-to-face meeting or other type of restorative process. This is known as a restorative conversation. Due to the voluntary nature of Restorative Justice, harmers have the choice not to take part. Whilst this can be disappointing for the person affected, it can provide a sense of closure. The opportunity for them to talk about their thoughts and feelings can be healing itself. Restorative conversations can lead to the harmed changing their minds about wanting to take part in a face to face meeting, as they feel that a restorative conversation has provided them with what they needed.

11.2 GENERAL CONSIDERATIONS FOR REFERRERS AND RESTORATIVE SERVICES

Referrers should provide as much detail as possible to restorative services about a person's preference as to who they would feel comfortable with as acting as their restorative facilitator – male/female, gay/heterosexual, cisgender/transgender. Other relevant information could include gender identity and their preferred pronoun if the person is happy for this information to be shared. Restorative services can then be mindful about their needs when allocating facilitators to a case.

Any preferences should be rechecked by the restorative service when they make first contact with the harmed. For some small restorative services, it could be problematic to find a person from a limited pool of facilitators with a similar background to the harmed, particularly if the process will be managed by two facilitators. Good practice is for two facilitators to be allocated to complex and sensitive cases, such as hate crime. This is one reason why it is essential for all facilitators to undertake LGBTI+ awareness training prior to managing LGBTI hate crime cases. LGBTI people want to know that they are understood without having to explain to the practitioner what it feels like to be gay, trans etc. Restorative facilitators must ensure that they remain neutral and be able to recognise that their own experiences may affect their impartiality, particularly as they will need to build rapport with people who have caused significant harm. This is another reason why a co-facilitation model for hate

crime processes is so important as well as to have a supportive case supervision structure in place. Case supervisors provide advice and oversight to individual cases and there is a strong argument for case supervision to be provided in LGBTI hate crime cases jointly by an experienced restorative practitioner and a professional working in the LGBTI field.

Why me? has found it invaluable to have support from an organisation such as Galop that can be called on to provide advice and guidance on facilitating LGBTI hate crime cases. Ad hoc advice has been given by Galop to the restorative facilitators to clarify understanding about a participant's needs.

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It is important that the restorative facilitator understands the context of the hate crime against the community that they are working with, so that they can appreciate the kind of stereotypes which could be re-victimising. The harmed may not fully understand what a hate crime is and the facilitators may need to explain this. They may also feel reassured if the facilitator emphasises to them that what happened was not acceptable and, if appropriate, is a crime. Taking them seriously, even if the facilitator does not think a hate crime has been committed, will help to build a rapport.

It is essential at the start of the restorative process, that facilitators discuss with participants the appropriate terminology, such as which pronouns, to use. There may be circumstances where a person's gender identity changes during the restorative process so facilitators may need to recheck with a participant their preferred pronoun on a regular basis. If a facilitator does use the incorrect pronoun, the best approach is to apologise briefly and move on.

Facilitators should be sensitive to the possibility that a person may not be 'out' to everyone. In order for the harmed to be supported appropriately, it is important that such issues are handled sensitively and an individual's wishes for privacy and confidentiality are respected. Particular care should, therefore, be taken when making initial contact with a LGBTI person, as well as when communicating throughout the restorative process. Introductory letters, for instance, should not make reference to the fact they were a victim of a hate crime. When making contact by telephone, facilitators will always check that it is safe for the person to talk. It may be helpful to send a text message prior to making a call. Facilitators should also be

mindful of who may listen to any voicemail messages. Throughout the restorative process facilitators will check with all parties what information can be shared and with whom.

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Care should be taken when selecting interpreters who may be involved in a restorative process and they should be fully briefed prior to any contact with participants as to the purpose of Restorative Justice. Is the interpreter from the same community as the harmed and are there any risks from 'outing' them? Is there the potential for them to hold any prejudicial views?

Facilitators should consider whether a professional from the LGBTI community should be present at any meetings with the harmed, including at the face to face meeting with the harmer. This could be, for example, the person who referred the case to the restorative service who has established a rapport with the person who was harmed. Facilitators should ask, when they first make contact, who the harmed person would like to be present at any meeting. This could also include a friend or family member who may act as a supporter (see below).

11.3 RISK ASSESSMENT

Every restorative intervention will be risk assessed before it can go ahead. Facilitators will identify and record all risks and how they will be managed. Risks can include, for example, the mental health needs of a participant or whether there is a danger of further harm. Risks will be assessed on an ongoing basis. A restorative process can still go ahead in a safe and secure way if appropriate adjustments are made. A restorative intervention will only not go ahead where there are practical barriers which make it impossible to proceed or there are serious safety concerns which cannot be overcome.

All restorative facilitators will assess the extent to which the harmer accepts responsibility for what happened, whether they deny that they caused harm and their level of remorse. For example, if the harmer denies that they carried out an offence then there is a serious risk of re-victimised during any restorative process. A harmer who does not see that their actions or words have consequences, particularly, in LGBTI hate crime, may not be suitable to take part in a restorative conference. There is an added level of complexity if the harmer admits to the primary offence but does not necessarily

acknowledge that there was also an element of hate. The facilitator must address this with the harmer during preparation phase for a restorative intervention and with consent, the facilitator can explain the perceptions of the person who was harmed. Restorative facilitators will make the harmed aware of these risk factors, and help them to come to their own conclusions as to whether they would wish to continue with a restorative process in such circumstances.

11.4 PREPARATION FOR ALL INCLUDING SUPPORTERS AND OBSERVERS

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All participants, including supporters and observers¹, must be fully prepared for a restorative process prior to it taking place. Thorough preparation will manage everyone's expectations about what the restorative process can and cannot do including the potential that the other party can withdraw at any time. Preparation for a restorative process is likely to involve difficult questions for both parties as the facilitator works with them to help them decide on what they want from the process, what they want to say to the other party and potentially confront long held values and feelings. It is important to be honest with the harmed that Restorative Justice may not focus on all of their needs and can only address the issues arising from the particular crime/harm for which they have been referred to Restorative Justice.

Preparation meetings should take place in a space where the harmed feels safe. Preparation meetings take place in the harmed's home or a public space, such as a quiet area of a café. However, such venues may not be appropriate when working with LGBTI people if, for example, they are not 'out' with other members of their family or they live/socialise/work in close proximity to the harmer. Many incidents of LGBTI hate crime are neighbourhood based. A potential venue for a preparation meeting could be the office of the referring agency. Facilitators will be guided by the participants' choice in the venue.

1 Supporters can be family/friends or professionals who support the emotional or physical welfare of a participant. Observers may have an interest in attending a restorative meeting for their professional development but will take no part in the meeting.

At the time of writing, facilitators are adapting their practice in light of the restrictions imposed by the Covid-19 situation. There has been an increase in the use of both telephone and virtual methods to engage with and prepare participants. There are a number of risks involved in using technology to facilitate restorative processes, such as whether participants can talk safely, or whether the conversation is recorded, that facilitators must consider if participants choose to engage in this way. It is envisaged that there may be an increased use of virtual preparation following the easing of Covid-19 controls.

As part of the preparation, facilitators should agree in advance with the harmed about how to approach situations where the harmer commits a perceived micro-aggression, such as 'dead-naming' (using someone's birth-name when this has since changed) or 'mis-gendering'. Some trans and non-binary people would want the facilitator to call out these behaviours, while others would prefer to do it themselves or not address it at all. How micro-aggression is dealt with could form part of the ground rules for a face to face meeting, according to the wishes of the person affected.

During the preparation phase for a restorative process, the facilitator will discuss with harmers their own and other's attitudes, thoughts and feelings about the hate crime as well as their motivation for taking part in Restorative Justice. It is important for facilitators to ascertain if the harmers have taken part in any programmes to address their understanding of hate crime; such programmes may be available for those serving a prison sentence, for example. The facilitator will challenge inappropriate comments and help them to reflect on their behaviour. During the preparation, the facilitator will ascertain whether the harmer is likely to make any prejudiced comments during a face-to-face meeting. The facilitator should explore the potential for such views being aired during a restorative meeting with the person who was harmed and discuss the impact this may have on them. A meeting should only go ahead if the person affected appreciates that such comments may be expressed and the risk of potential re-victimisation has been managed.

There is also a risk that the harmed, their supporters or the harmer's supporters may hold or share prejudicial views. Again, it is the role of the facilitator to explore these views during preparation. It is good practice for the facilitator to meet face to face with supporters and observers prior to the day of the restorative meeting. Why me?'s facilitators have experienced an occasion when a supporter, who they had not previously met, accompanied the harmed on the day

of the meeting. It may not be possible for supporters to be present during the restorative meeting as this may impact on the power dynamics between the participants. The facilitator will have to make a judgement call as to whether adequate preparation is possible in the time available. This may involve an honest conversation with a participant as to why the supporter cannot be present. In the case example given, the supporter did take part in the meeting although the feedback from the facilitators indicated that this affected how the harmed presented themselves.

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Participants in a restorative process may perceive that the process takes a long time. For example, it can sometimes take time to access a person who is in prison. Facilitators should agree with participants when and how regularly they will update them on their case and there may be occasions when there is no progress to report.

11.5 THE RESTORATIVE MEETING

Restorative meetings can take place in a wide range of locations, including community centres, schools and prisons. Ideally two rooms should be available to accommodate space for a break out area if a time out from the meeting is required. With the exception of prisons, restorative meetings should be held in a neutral venue which may mean that venues such as police stations, probation offices and supporting agencies' offices are not appropriate for the facilitation of LGBTI hate crime conferences. Consideration should be given as to whether it is appropriate for the meeting to take place at the place where the incident occurred.

Restorative services are currently considering the appropriateness of holding restorative meetings virtually in light of the Covid-19 restrictions. This is emerging practice and how risks of facilitating a meeting in this way will be managed are still being discussed.

The use of ground rules for a restorative meeting creates a respectful environment and can mitigate against the possibility of inappropriate remarks or behaviour during the conference. Facilitators will discuss and agree ground rules with participants during the preparation phase and these will be stated at the start of the meeting. If a participant breaches a ground rule, then the facilitator

will address it during the meeting, for example, by calling out the behaviour or suggesting a time out. How a potential breach is managed will be agreed with the person harmed during the preparation phase. Restorative meetings usually also start with a description of the harm and this may be an opportunity to emphasise to all participants that the harmed perceives the incident as a hate crime.

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Apologies or forgiveness are not pre-requirements for a restorative meeting to take place. Harmers often feel that if they say “sorry” then the word may not have meaning and does not adequately express what they want to say. Similarly, many people who have been harmed may not wish to forgive the person responsible for the harm that they have caused.

Restorative meetings may result in a deepening understanding of why certain actions were taken. For example, in one *Why me?* case example, the harmers were able to explain company policy for the management of incidents to the person who was harmed. The harmers apologised for their actions which was accepted by the harmed. The harmed reflected that the restorative meeting gave them the opportunity to speak to the people who they felt harmed by, in way that was not influenced by bias.

Restorative meetings may end with an outcome agreement which all parties have signed up to. Outcome agreements reflect the wishes and the suggestions of the participants and not of the restorative facilitator. Examples of actions that form an outcome agreement could include the harmer undertaking a programme to address their harmful behaviour, or agrees to the harmed being updated on their progress through their sentence (in criminal cases). Outcome agreements for hate crime cases could include the harmer carrying out reparation activities for the local LGBTI community, for example.

If all parties are happy, after the formal part of the meeting, there is an offer of refreshments. Often this can be the most restorative part of the meeting as it is an opportunity for everyone to communicate in a more relaxed manner.

11.6 AFTER THE INTERVENTION

It is good practice for restorative facilitators to follow up participants after a restorative process, in line with their wishes. This can include a check in telephone call a few hours after a restorative meeting to a face to face meeting a week later. The purpose of follow up is to discuss with the participants their feelings and to check whether they achieved what they wanted from the process. Follow up may also consider if there is a need for further restorative work, such as a letter exchange. The amount of follow up required is very much on a case by case basis, depending on the needs of the participants and whether any outcome agreement actions require monitoring. Facilitators will have discussed with participants during the preparation phase their exit strategy for ending their involvement.

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Once the restorative process has finished, formal feedback is usually sought from all parties. Why me?'s policy for the collection of feedback is that a staff member who has not been involved in the case will request the feedback. Feedback is important to enable organisations to evaluate their service to continuously improve.

12. EMPOWERING PEOPLE WHO HAVE BEEN HARMED TO SPEAK OUT ABOUT RESTORATIVE JUSTICE

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Why me? has found that an effective way to promote Restorative Justice is by empowering those who have been through the process to speak out about their experience. Restorative Justice ambassadors carry out a range of activities from telling their stories on the Why me? website to working with Why me? to influence policy makers. They also help to raise the profile of Restorative Justice within the criminal justice sector. By creating better awareness of Restorative Justice among 'need to reach' communities, we foster a better understanding of its benefits and encourage more people to seek it. Feedback on the training that Why me? provided to LGBTI groups indicated that it would be of benefit for a LGBTI ambassador to be part of any presentation.

Gareth Thomas is the first professional rugby union player to come out as gay. His case is probably the most famous example of someone using restorative justice to address a homophobic hate crime. Gareth was punched in the face in a homophobic attack in Cardiff. In a video, he explained that he had been the victim in his own city of a hate crime for his sexuality and that he had requested that police take the course of restorative justice because he thought the person responsible could learn more that way than any other. South Wales police reported that a 16-year-old boy not only admitted to the attack, but apologised to Gareth following a successful restorative justice process. At the time, the case received significant media attention, demonstrating how Restorative Justice can be used effectively to deal with a LGBTI hate crime (The Guardian online).

There may be risks for LGBTI people becoming ambassadors as the role may be public. Why me?'s ambassadors have the choice as to whether they wish to remain anonymous or not. When speaking to a prospective ambassador, Why me? will explore with the person their thoughts and feelings about the role and any potential implications it may have for them.

13. CONCLUSION

A common theme throughout this article is that any Restorative Justice process should be tailored to individual needs. Restorative facilitators work on the basis that one-size does not fit all. Restorative Justice can be a powerful tool to address LGBTI hate crime when it is facilitated well. Whilst much of this article explains good practice for any Restorative Justice intervention, it should always be delivered in the context of the client group it seeks to help.

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There is a need for further research into what works well in Restorative Justice and LGBTI hate crime based on the facilitation of cases. Currently, there are relatively few examples, such as Gareth Thomas, that restorative services can draw upon to demonstrate the benefits of a restorative approach. With more people willing to speak out, even anonymously, then more people are likely to come forward wanting to take part in Restorative Justice.

ABOUT WHY ME?

Why me? is the only national charity campaigning for victims to have access to Restorative Justice in England and Wales. We run campaigns, conduct research, influence policy, and support organisations which deliver Restorative Justice. Why me? also runs a national Restorative Justice service.

Further information about our work can be found at www.why-me.org and we can be contacted by email at info@why-me.org.

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