

Using restorative approaches for domestic and sexual abuse: A personal choice

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Why me?



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Why me?

Introduction

In 2014, the Ministry of Justice shared their vision for good quality, victim-focused Restorative Justice to be made accessible for all victims, regardless of the type of crime committed against them.¹ We welcome the fact that Restorative Justice is successfully used throughout the country as a response to crime and conflict. However, survivors of domestic and sexual abuse are much less likely to access Restorative Justice services compared to victims of other crimes.² This is despite the entitlement in the Victims' Code of Practice 2020 for all victims of crime to receive information about Restorative Justice and how to access restorative services in their local area.³

As research and standards of best practice continue to improve, the benefits that a restorative process can have for survivors of domestic or sexual abuse are becoming increasingly recognised and appreciated. Acknowledging the risks and emphasising the benefits this paper builds on academic research, expertise from our own practitioners and the experience of survivors who have been through the process themselves, to argue for the wider availability of Restorative Justice for survivors of domestic or sexual abuse. Our conclusion is that Restorative Justice should be just as widely available for survivors of domestic and sexual abuse as it is for people affected by other crimes, and that trained restorative facilitators are best placed to work with the individuals involved and manage the risks.

However, the use of any restorative process in such contexts requires a thorough risk-assessment, and close joint-working with professionals in the domestic and sexual abuse sector. This paper expands on these concerns, and outlines the considerations that practitioners should be aware of when working in this area. Many restorative services are not currently well equipped to understand and address the concerns associated with domestic and sexual abuse, and better training and risk management for services across the country is needed.

Content warning: This paper contains discussion of sexual and domestic abuse throughout, including details of individual experiences.

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- 1 Ministry of Justice (November 2014), "Restorative Justice Action Plan for the Criminal Justice System for the period to March 2018". Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/375581/restorative-justice-action-plan-2014.pdf
 - 2 Rebecca Banwell-Moore (September 2019), "Restorative Justice: understanding the enablers and barriers to victim participation in England and Wales". Available at: <https://etheses.whiterose.ac.uk/26923/>
 - 3 Ministry of Justice (November 2020), "Victims' Code 2020". Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/974376/victims-code-2020.pdf

Key Definitions

1. Restorative Justice

Restorative Justice encompasses a wide variety of practices that aim to resolve the harm caused by crime or conflict. It involves the person who was harmed communicating with the person responsible, in order to give them the chance to talk about the incident, explain its impact on them and agree how to put things right moving forward. It can also help the person who has caused the harm to change their behaviour, and not offend again. This communication can take place face to face – in what is called a **restorative conference** – or by other indirect means, such as letter writing or video shuttling, if these are considered safer or more appropriate.

The process is managed by two trained **restorative facilitators/practitioners**. The trained professionals speak to both parties multiple times to help them understand their needs, manage expectations, and prepare them for what to expect from a potential meeting. This starts with a **restorative conversation** with a facilitator, who goes through core restorative questions such as – “Can you describe what happened?” “What were you thinking at the time?” “What were you feeling at the time?” and “What could be done to put things right?”. In some cases, this fulfils the needs of the harmed person, and there is no need to pursue a restorative conference. In other cases, there is still a need for communication between the two parties. Restorative conferences are carefully managed, with a pre-agreed plan for the order in which people speak, where they sit, and how the participants may respond to what the other person says.

In addition to the formal practice of Restorative Justice, there are a wider range of interventions which build on restorative principles but do not involve a restorative conference. The phrase **restorative approaches** is sometimes used to describe any process which incorporates restorative principles, including in schools and workplaces, or to address many other types of non-criminal harm.

Restorative Justice can be used effectively alongside formal criminal sanctions, ranging from an out of court disposal to a prison sentence. Informed consent from all parties is a core principle of restorative practice, and no one can be forced or pressured to take part. The process should be victim-led, and aim to be as flexible as possible to accommodate the needs and desires of the participants.

2. Domestic and sexual abuse

We use **domestic abuse** and **sexual abuse** as umbrella terms to encompass a wide range of different offences and behaviours. These terms are defined separately below, but there can be overlap between the two, and offence types may not fit neatly into a single category. Where an argument in this paper refers to a more specific kind of offence that falls under domestic and/or sexual abuse, more specific terminology is used and clarification of definitions is provided where necessary.

Domestic abuse involves an attempt to control, coerce, threaten or harm a family member, intimate partner or ex-partner. This can involve psychological, physical, sexual, financial and/or emotional harm. Such behaviours are referred to as “abuse” as opposed to violence, in order to recognise the varying nature of harm that people can be subjected to.⁴

Sexual abuse encompasses a wide range of sexual crimes which may occur between family members, (ex-)partners, friends, colleagues or strangers. Again the term “abuse” is used as opposed to violence to acknowledge that sexual abuse does not always involve physical violence; revenge porn or indecent exposure, for example, may be extremely traumatising, even if physical violence does not occur. While significant research on such abuse has focused on violence perpetrated against women and girls, anyone can be a victim of domestic and/or sexual abuse regardless of their sex or gender.

4 Crown Prosecution Service, “Domestic Abuse”. Available at: <https://www.cps.gov.uk/crime-info/domestic-abuse>

The term 'survivor' is also used frequently throughout the paper as it is considered to acknowledge the strength of people who have experienced a traumatic crime.⁵ Not all people affected by these crimes identify with the term, therefore it is not used exclusively throughout the paper. However, it can provide an important sense of autonomy and reflect the courage of those who have experienced domestic or sexual abuse, which is empowering to many.

Most of the evidence and examples in this paper relate to female survivors who were harmed by men – the most common type of sexual and domestic abuse⁶ – but we recognise that male and non-binary people can also be harmed by these offences. While there are some unique considerations affecting male and non-binary survivors, we do not explore these in depth in this paper. There are many other characteristics which can bring about specific considerations – such as the race, faith, sexuality and any mental or physical disability of either the perpetrator or survivor. We do not explore specific considerations relating to survivors with these characteristics either, but recognise that a restorative practitioner working with people affected by sexual or domestic abuse needs to appreciate how the participants' identity could impact their experience of the restorative intervention.

5 Clare McGlynn, Nicole Westmarland and Nikki Godden (2012), "I Just Wanted Him to Hear Me: Sexual Violence and the Possibilities of Restorative Justice", *Journal of Law and Society*, 39(2), 213-240, 229.

6 Crime Survey for England and Wales (CSEW) (2021) "Domestic abuse victim characteristics, England and Wales: year ending March 2020."; Crime Survey for England and Wales (CSEW) (2021) "Nature of sexual assault by rape or penetration, England and Wales: year ending March 2020.".

Benefits of Restorative Justice in cases of domestic and sexual abuse

Restorative Justice has the potential to offer many benefits to survivors of domestic and sexual abuse. This section highlights some of these benefits, based on the literature available on the subject, expertise from *Why me?*, and the lived experience of people who have taken part in Restorative Justice processes.

a) Empowering survivors

Many victims of crime do not get the opportunity to be heard when going through criminal justice processes.⁷ Restorative Justice on the other hand, gives survivors the chance to contribute meaningfully to the process,⁸ talk about the impact of the harm on them, how they have moved forward, or in some cases what can be done to help repair the harm.⁹ These benefits can be particularly important in response to crimes like sexual or domestic abuse, where the survivor may have felt silenced or controlled by their abusers. By providing survivors with an opportunity to have their voices heard, and enabling them to take a more active role in responding to the impact of the crime committed against them, Restorative Justice can help to empower them.¹⁰

Rosalyn's story:

Rosalyn was repeatedly raped and tortured by a serial offender who broke into her home while her two year old daughter slept next door. He received three life sentences for his crimes, and Rosalyn felt strongly that she wanted to meet her attacker again, something which she had to push hard to be allowed to happen.

Fourteen years after the crime she met him face to face through Restorative Justice.

"I didn't recognise the man sitting opposite me as the monster who had attacked me. He looked nervous, sad and weak. I had carried an image of him in my mind for 14 years and he wasn't the same man."

"Meeting the man who raped me gave me a chance to voice the harm caused. I realised that the attack was about power and control. Now I have regained my sense of personal power and control."

Rosalyn's experiences highlight the way in which Restorative Justice can be empowering, and allow survivors to interact with their attacker in a context in which they are the one with power and control.

Giving survivors the ability to have their voices heard can also be particularly important in cases of Intimate Partner Violence, as survivors can often be left feeling vulnerable or powerless during and after an abusive relationship. Through letting their voices be heard as active participants, some of the power that was taken away in their relationships can be partially reinstated, as the process gives them the time, space and opportunity to speak freely and be heard. Restorative Justice can therefore help to transform the dynamic between the abuser and survivor to one that is more equitable.¹¹

7 S Curtis-Fawley and K Daly (2005), "Gendered violence and restorative justice: The views of victim advocates", *Violence Against Women*, 11(5), 603-638.

8 *ibid.*

9 Yvon Danduran and Annette Vogt (March 2020), "United Nations Office on Drugs and Crime: Handbook on Restorative Justice Programmes", United Nations (2nd edition) 7.

10 C Hoyle and A Sanders (2000), "Police response to domestic violence", *British Journal of Criminology*, 40(1), 14-36.

11 J Braithwaite (2000), "Restorative Justice and Social Justice", *Saskatchewan Law Review*, 63, 185-194, 188; J Braithwaite and K Daly (1994), "Masculinities, Violence and Communitarian Control" in Tim Newburn and Elizabeth Anne Stanko (eds.) "Just boys doing business?: men, masculinities and crime", Routledge 189-213.

Janika's story:

Janika was stabbed eight times by her ex-partner while she was pregnant, including once in the heart. Open heart surgery saved Janika's life, and her attacker was convicted for attempted murder. But the psychological impact on Janika continued for many years. She knew that she wanted to meet with him again as only he could answer the questions that she had. She later learned that this could be possible through Restorative Justice, but continued to be told that it was not appropriate for her.

"I wanted him to be accountable to me – not to a judge, not to the police, not to prison officers, but to me. I felt my voice wasn't being heard – the police, the courts and victim support were all making assumptions about what was best for me. It drained my energy to feel those who could help were putting barriers in my way instead."

Over three years later, through her own research, Janika found out about Why me?, who facilitated a Restorative Justice conference between her and her ex-partner.

"The meeting absolutely changed my life. It lasted three hours, and I showed him pictures of my injuries and of our children so that he could see the consequences of his actions and what he had lost. I sobbed harder than I ever had after the meeting, but that night I slept until morning without waking for the first time in over three and a half years."

"I did not want to stay a victim, I wanted to acknowledge what happened but not be defined by it – I wanted to look to the future. Taking part in Restorative Justice was the key that unlocked the door to my future."

Janika's experience shows how powerful Restorative Justice can be in helping a survivor of serious intimate partner violence to recover. The meeting made her feel empowered, allowed her voice to be heard, and gave her the ability to move forward with her life.

These two stories are examples of the profound therapeutic benefits of Restorative Justice in helping some victims of domestic and/or sexual abuse. Allowing survivors to express themselves and explain the trauma and harm they have experienced in their own words, directly to those who have caused the harm¹² can be a huge turning point for some people in helping them to move on, sometimes many years after the abuse has occurred.¹³ Therefore, not only can Restorative Justice help them to understand and process the trauma they have faced, the experience may be integral in empowering them to shift their own narrative from that of a 'victim' to a 'survivor'.¹⁴

b) Feeling safe

Many people harmed by sexual or domestic abuse feel ongoing fear and anxiety following the incident(s). A restorative process can help to reduce the anxiety which they feel towards the person who harmed them. This is important, as it can lessen any fears about coming across them in public, if they live in the same community or have mutual friends. Moreover, some ongoing contact can be needed for practical reasons, such as if the parties share childcare duties¹⁵. Some survivors may feel more satisfied by an apology or assurances that the abuse will not occur again, than they would just from a prison sentence.¹⁶ Restorative Justice can make the prospect of having to see the person who harmed them again less daunting, and can allow for a degree of flexibility in responding

12 Barbara Hudson (2002), "Restorative Justice and Gendered Violence: Diversion of Effective Justice?", *British Journal of Criminology*, 42, 616-634, 625.

13 McGlynn, Westmarland and Godden (n 5) 228.

14 *ibid* 229.

15 Marie Keenan and Ailbhe Griffith (2019), "Two Women's Journeys: Restorative justice after sexual violence", Eleven Publishing.

16 C Hoyle and A Sanders (2000), "Police response to domestic violence", *British Journal of Criminology*, 40(1), 14-36.

to such abuse which many other criminal justice interventions do not provide. The fact that this flexibility in processes and outcomes is led by the survivor means that their individual needs can be acknowledged and properly addressed.¹⁷ Of course, a Restorative Justice process should not encourage survivors to make contact with the person who harmed them, outside of a restorative process, unless this is already a necessity. It is important that facilitators are trained to recognise and address the risks of abusers using the restorative process as a form of coercive control.

Lucy's story:

Lucy went through a Restorative Justice process after being left hospitalised with life-changing injuries following a sustained attack from her ex-partner. He was sentenced to a lengthy prison sentence, and the impact of the assault continued to affect Lucy while he was in prison. She lived housebound for many years, with her young daughter caring for her, as she wasn't able to properly take care of herself. The potential of her ex-partner having an upcoming parole hearing increased Lucy's anxiety, and in that context she decided to meet him again through Restorative Justice. The experience transformed her life for the better.

"That was the turning point for me. That was the beginning of the rest of my life. The best thing for me was seeing him as just one person. It was like a massive black cloud consuming my life had lifted. If someone had said 'no' to me having Restorative Justice, I would be indoors, a nervous wreck, panicking about everything. I don't know if I'd even still be alive to be honest."

Demythologizing Lucy's attacker allowed her to overcome her anxiety towards him and move forward. She and her ex-partner discussed how to approach avoiding one another after he was released from prison, and they agreed to avoid going near one another's homes. This practical assurance also gave Lucy some additional peace of mind.

Lucy's case is an example of how Restorative Justice can help survivors to feel safe, and how it can allow for practical arrangements to be made which strengthen this feeling of security.

c) Getting questions answered

A restorative process can also provide clarity and answers to survivors, which can in turn lead to a greater sense of justice having been achieved.¹⁸ A restorative process gives people harmed by crime the opportunity to ask questions directly to the perpetrator about what happened and why. Many people are haunted by questions after the incident, such as 'why did they do that to me?'. For some people, getting answers to these questions can transform their recovery.

Wendy's story:

Getting questions answered can be particularly important for survivors of historic child sexual abuse, such as Wendy, whose father sexually abused her when she was 14 years old. She met him over 40 years later in a Restorative Justice conference. It was important for Wendy to have proof for herself that the abuse took place, as her father had always denied it to the outside world. No one spoke about the abuse at the time. Wendy was removed from her home, and left feeling as if she had done something wrong. So many years later, it was important to Wendy to get an apology or admission from her father about what happened.

"The facilitators made it clear to me that there was no guarantee that I would get what I wanted, but they would do all they could to help me. The fact that Restorative Justice was victim-led made me feel that for once I was actually being listened to. I was concerned that the meeting may not go ahead, as I'd been warned that my father could pull out at any time."

¹⁷ McGlynn, Westmarland and Godden (n 5) 220.

¹⁸ McGlynn, Westmarland and Godden (n 5) 221.

But the meeting did go ahead, and it transformed Wendy's life. Her father tried hard not to admit most of what had happened, but eventually he did accept it and apologise.

"Once the meeting finished I felt elated. There was a lot going on in my head but I got the apology and I ran with it. I also recognised the importance of the facilitators. They had both made notes of the conversation with my father, which gave me their insight of what was said. Once the weight had been lifted from me, it helped so many more around me. My nearest and dearest had suffered alongside me for as many years as I had. Once that darkness had gone from me, it was and still is a far brighter day for all of us."

Wendy's case is a good example of not only the power of Restorative Justice, but the importance of the facilitators' role in expectation setting and preparing the participants for all eventualities. Wendy's facilitators were clear with her that there was a risk that her father would pull out of the meeting, and she appreciated that that would be upsetting. But in her case, she still wished to pursue the meeting that she felt could make such a difference to her life.

Whilst a face to face meeting can be life changing for some, in other situations, an indirect restorative intervention can be the best way to address the harm caused and help the survivor to move forward.

Teresa's story:

Teresa was sexually abused by her father when she was very small. He never admitted the crime, which caused rifts in her family. After her father had passed away, Teresa sought answers through Restorative Justice. The facilitators met with Teresa several times before they made first contact with her mother. They talked to Teresa's mother on her behalf, and fed back her responses to Teresa.

"I was really worried about contacting my mother to get answers, and she had never believed me. The facilitators showed that they were going to be the safety barrier I needed to be able to have contact with her, without risking further damage to my mental health. I liked that they drafted the letter to my mother, doing the hard bits for me. I was very scared but, unusually, I was trusting someone to do something for me."

Teresa had hoped that her mother would believe her and rebuild their relationship, but this didn't happen.

"She downplayed and denied things in order to cope. This was such a hard truth and I was really disappointed, because I had hoped to get a different picture of her. Restorative Justice confirmed the picture I had always had: that she would protect herself, even if this harmed me. As the hard truth of this settled, it acted as an antidote to the shame of having been used for sex. I found a different picture of myself and this benefits my whole life."

The facilitators continued to meet with Teresa after their two meetings with her mother, and the focus was on moving forward. Restorative Justice enabled Teresa to reconnect with other members of her family, and she has attended family gatherings that she had previously avoided, finding support that she didn't know was there.

"I am so grateful for the facilitators' work, skill and experience. I am much stronger now, and not an outcast of the family anymore. This all happened because of Restorative Justice."

Teresa and Wendy's experiences show the flexibility of the restorative process, and the way that facilitators have many options available to them in order to adapt to the needs of the people they are working with. Even when participants are unable to get everything they were hoping for, or don't

end up meeting with the person who harmed them face to face, there can still be significant benefits of taking part in the process. Getting answers to questions about the crime is one of these benefits, especially for people who are trying to move forward from traumatic experiences which happened many years ago.

d) An alternative form of justice and accountability

In some contexts, Restorative Justice can provide survivors with an alternative route to achieving justice, as opposed to relying on the traditional criminal justice system alone.¹⁹ For example, victims of groping, indecent exposure, upskirting or other forms of sexual harassment are often not able to achieve justice through the court system. There are many reasons for this, such as a lack of evidence, incidents being perceived as low level offences, or not being legally considered an offence at all (upskirting and revenge porn have only recently been considered criminal offences, and sexual harassment is still not a crime in its own right).²⁰

Many survivors of sexual and domestic abuse are dissatisfied with and/or re-traumatised by the criminal justice process,²¹ and some choose not to pursue justice through traditional routes for this reason, regardless of the severity of the crime committed against them. Even in cases where an offender is prosecuted, survivors can be left feeling that their needs were not met.²² Restorative Justice may therefore be a viable alternative if certain conditions are met. Generally speaking, Restorative Justice could be appropriate in cases where the perpetrator has admitted some level of responsibility for the crime, where both parties are willing to take part in a restorative process, and the harmed person does not want to go through the court system – or has tried but been rejected by it. However, Restorative Justice in this context still needs to be facilitated by Restorative Justice providers, who are trained at working with cases of sexual and domestic abuse. If there is no service which is willing or able to work with the participants, then Restorative Justice cannot go ahead.

As it is driven by the voices and needs of survivors, the flexibility over the outcomes of a Restorative Justice conference can be a significant benefit. This focus on survivors' needs and emotional well-being provides a greater opportunity to explore reparations related to psychological harm or reputational damage than the criminal legal system traditionally provides.²³ For example, victims of revenge porn may be most interested in requesting that the images be deleted or that an apology be offered.²⁴

Restorative Justice can also take place after court proceedings, which can provide an additional opportunity to address the needs of survivors which may not have been met by the court process. The court process does not provide survivors with the opportunity to hold the perpetrator directly accountable by asking them questions about the incident and expressing the harm that they caused. Existing mechanisms for victims to have their voices heard in the court process – such as the Victim Personal Statement – are not offered to all victims, and are more limited in their scope. Restorative Justice conferences provide the opportunity to challenge the victim-blaming narrative²⁵ and hold perpetrators accountable for the harm they have caused. Such benefits can be valuable to many survivors, whether or not the person responsible was prosecuted by a court of law.

e) Changing offender behaviour

Many survivors are eager to do what they can to ensure that the perpetrator does not reoffend. Restorative processes can allow survivors to request that the perpetrator undertake certain responsibilities or commitments that are reparative in nature. The Restorative Justice process can assist either party in accessing services and support networks that they otherwise may not have

¹⁹ Hudson (n 13) 622.

²⁰ Ashlee Hamilton (2018), "Is Justice Best Served Cold?: A Transformative Approach to Revenge Porn", *UCLA Women's Law Journal*, 25(1), 5.

²¹ McGlynn, Westmarland and Godden (n 5) 231.

²² Baroness Stern (2010), "The Stern Review – An Independent Review into How Rape Complaints are Handled by Public Authorities in England and Wales" Government Equalities Office 11; L Kelly et al. (2005), "A Gap or a Chasm? Attrition in Reported Rape Cases" 87-89 in McGlynn, Westmarland and Godden (n 5) 231.

²³ Hamilton (n 21) 31.

²⁴ *ibid.*

²⁵ *ibid.*, 8.

been able to. For people who have committed sexual or domestic abuse, these may be services that could help them lead improved lives going forward and desist from further offending. For survivors, these could be counselling from trained therapists, or a range of other professional services.

The preparation for a restorative conference can also be an opportunity for any victim-blaming narratives or minimising tactics being used by the perpetrator to be challenged by the facilitator. Some have argued that this can be an important first step in encouraging offenders to change their perspectives,²⁶ and support them in desisting from re-offending in the future.²⁷

The points made above demonstrate the benefits which Restorative Justice can bring to people affected by domestic and sexual abuse. Why me? and other advocates of this approach appreciate that many survivors would not be interested in going through a restorative process, but believe that a blanket ban on them accessing Restorative Justice regardless of their wishes is disempowering and potentially harmful.²⁸ Survivors of domestic and sexual abuse are not a homogenous group; they have different experiences and needs. It is therefore important to allow a range of options and processes by which these needs can be attended to.²⁹

²⁶ Hudson (n 13) 627.

²⁷ Keenan and Griffith (n 16) 306.

²⁸ C Quince Hopkins and Mary P Koss (2005), "Sex Offending: Current Practice and Problems, and the Potential of a Restorative Justice Alternative", *Violence Against Women*, 11(5), 693-723, 697; Keenan and Griffith (n 14) 309.

²⁹ K Daly (2011), "Conventional and innovative justice responses to sexual violence", *ACCS Issues*, 12, 1-35, 26.

Common concerns about the use of Restorative Justice in cases of domestic and sexual abuse

Despite the above benefits, there are also reasons to be cautious about the use of Restorative Justice for domestic and sexual abuse.

a) Safety

Survivors of sexual and domestic abuse can be vulnerable to further harm from the perpetrator, and Restorative Justice must not add to these risks.

There are two types of harm which are relevant concerns in this context:

- Physical harm
- Revictimisation or other emotional harm

i) Physical harm

Ensuring survivors' physical safety throughout the restorative process is paramount.³⁰ Bringing the survivor into contact with the person who harmed them brings about considerable concerns about physical safety which need to be addressed. Survivors are at particular risk from abusive partners after or during separation, and restorative practitioners who are facilitating such cases need to be aware of these risks and how to handle them. If the facilitator and survivor decide that a face to face meeting is not safe or desirable, they may pursue forms of Restorative Justice which do not involve face to face contact, such as through video calls, video messages being passed back and forth, or letters. In other cases, an initial restorative conversation between the person who was harmed and a trained facilitator may be the extent of the intervention, with no communication possible or desirable between the person who was harmed and the perpetrator. The restorative practitioners remain responsible for conducting thorough risk assessments, both prior to and during the restorative process, whether it involves direct contact between the two parties or not.

If a face to face meeting does take place, this would always need to be closely supervised, and personal details of the survivor would not be given to the person who had harmed them. A Restorative Justice conference in this context would not be an open door to further communication if this is not appropriate.

ii) Revictimisation or other emotional harm

Even if a survivor's physical safety is not endangered, restorative processes need to be handled appropriately to avoid contributing to further emotional harm. The power dynamics between perpetrators and survivors of domestic and sexual abuse can exacerbate these risks, and facilitators handling such cases need to have a good understanding of coercive control. Whilst most commonly raised as a concern for cases of domestic abuse due to the pre-existing relationship between the participants, this can also be relevant in sexual abuse cases.³¹ There is a risk that perpetrators could seek to manipulate the survivor into believing that they hadn't really been assaulted, or that they had deserved it, building on victim-blaming and minimising messages which are prevalent in society.

Practitioners who are working with cases of sexual or domestic abuse therefore require extensive knowledge, experience and training of how to manage these particular kinds of power imbalances. Significant preparation would take place before a restorative intervention could go ahead, including facilitators working with professionals such as Independent Domestic Violence Advocates (IDVAs), Independent Sexual Violence Advocates (ISVAs) and other relevant third sector organisations. If these risks meant that a face to face intervention was not possible, the facilitator and survivor could explore other indirect restorative interventions if desirable.

³⁰ Vince Mercer and others (2015), "Doing restorative justice in cases of sexual violence: A practice guide", Leuven Institute of Criminology, 17.

³¹ A Cameron (2006), "Stopping the Violence", *Theoretical Criminology*, 10, 49-66, 59 in McGlynn, Westmarland and Godden (n 5) 214.

There is also a concern that survivors may be manipulated or pressured into participating in a restorative intervention or accepting certain outcomes as part of the process.³² However, Restorative Justice is a voluntary practice, and informed consent is central to the process. It is driven by the needs and wants of the person who was harmed, and significant, multi-agency preparation happens before any communication between the perpetrator and the harmed person, especially for serious crimes such as domestic or sexual abuse. Of course, bad practice is not impossible, but every police area in the country has a professional restorative service to handle cases where the offender is an adult, and Local Authorities employ Youth Offending Teams to handle cases where the offender is a child.

b) Punishment

Some critics fear that Restorative Justice works in the interest of offenders as opposed to victims,³³ as there are some contexts in which Restorative Justice is used as a diversion from more serious sanctions administered by the justice system. The appallingly low rates of prosecution for sexual and domestic abuse exacerbate these concerns, and can lead to scepticism about any alternative approach to addressing the harm caused by sexual or domestic abuse. Some critics fear that using Restorative Justice for such crimes could lead to a potential trivialisation or reprivatisation of domestic abuse, particularly intimate partner violence, sending the message that it is not worthy of formal, legal sanction.

However, someone who has committed sexual or domestic abuse could still receive punishment from the justice system, regardless of whether they took part in Restorative Justice. While Restorative Justice can be explored alongside out of court disposals, it is only usually considered post-sentence when a case is going through court (there is a provision for it to be used between the verdict and the sentencing, but this is rarely utilised because of pressures on court time).

c) The debate around evidence

Restorative Justice is better established as a response to less serious crimes, which means that there is less data about its use for sexual and domestic abuse. Some are therefore concerned that the effectiveness of restorative approaches for domestic or sexual abuse is speculative.³⁴ Almost all advocates for the possible benefits of Restorative Justice for victims of sexual and domestic abuse agree that more research to develop knowledge about these best practices is important.³⁵ However, some of the evidenced benefits of Restorative Justice for victims of other types of crime can be applicable to survivors of sexual and domestic abuse.³⁶ Ministry of Justice data analysed by Why me? shows that victims of crime who experience a restorative process are likely to report improved health and wellbeing; being better able to cope with aspects of their lives; having an increased feeling of safety; and feeling better empowered and informed.³⁷ These findings apply to people affected by a whole spectrum of offences, from minor to the most severe. While there are of course specific concerns which apply to people affected by sexual and domestic abuse, it is still relevant

32 It is worth noting that some activists and scholars have also raised concerns that allowing victims increased power and input into the processing of the offence committed against them could be detrimental to offenders. Whilst the interests of offenders are not the main focus of this paper, it is important to note that Restorative Justice is not designed or intended to be a zero-sum game, whereby the victim gains reparation at the expense of the offender. In fact, the process can support the rehabilitation of offenders, which benefits not only the offender but also the wider community, and sometimes the victim. The process of Restorative Justice is meant to be re-integrative in nature, and whilst it aims to meet the needs of victims, it is not presumed that the offender must suffer to achieve this. Many Restorative Justice practices in cases of sexual or domestic abuse happen alongside or after the criminal justice proceedings have occurred, and Restorative Justice is not designed to be an extension of any punitive responses administered by court proceedings. F Zimring (2001), "Imprisonment Rates and the New Politics of Criminal Punishment", *Punishment and Society*, 3(1) 161-166 in Hudson (n 11) 626.

33 A Duff (1992), "Alternatives to Punishment – Or Alternative Punishments?", *Retributivism and Its Critics*, 44 in McGlynn, Westmarland and Godden (n 5) 217.

34 McGlynn, Westmarland and Godden (n 5) 214

35 *ibid.*

36 Mercer and others (n 31) 11.

37 Why me? (March 2020) "Valuing Victims: A review of Police and Crime Commissioners Delivery of Restorative Justice 2018/19". Available at: <https://why-me.org/wp-content/uploads/2020/03/Why-me-Restorative-Justice-Valuing-Victims-Report-2020.pdf>

to note that people affected by other forms of victimisation often experience these benefits from taking part in Restorative Justice. Moreover, there are practitioners and survivors who have worked restoratively following sexual or domestic abuse, and their experiences help to demonstrate best practice, and show the benefits which some survivors have gained from the process.

d) Resource intensive

Due to the level of facilitator training required, the amount of preparation needed to ensure that a restorative process is safe and effective, and the support provided post-conference, the upfront cost of Restorative Justice can be high. However, the long term benefits of a restorative intervention can bring savings which greatly outweigh the initial cost. Restorative Justice can provide a sustainable solution to serious crime, helping survivors to get answers and move forward, reducing their dependence on victim services or other state support.

Moreover, the effect of Restorative Justice on potential perpetrators can recoup the financial investment it requires. The Government funded Shapland reports show that £8 is saved for every £1 that is invested in Restorative Justice,³⁸ due to the impact it can have on reducing repeat offending. While this finding did not look specifically at domestic and sexual abuse cases, it is important to recognise that Restorative Justice can bring this benefit.

In any case, supporting survivors of domestic and sexual abuse should be a priority which merits Government investment. When considering the wide range of services which are funded to address the harm of crime, and the significant cost of the justice system as a whole, a greater investment in Restorative Justice for survivors of sexual and domestic abuse is worthwhile, given its evidenced benefits.

³⁸ Joanna Shapland et al. (2008), "Does restorative justice affect reconviction?", Ministry of Justice. Available at: <https://restorativejustice.org.uk/sites/default/files/resources/files/Does%20restorative%20justice%20affect%20reconviction.pdf>

Good practice when using a restorative process for sexual and domestic abuse

As we have seen, Restorative Justice can bring significant benefits to people affected by sexual and domestic abuse. However, there are a number of measures which need to be put in place before any restorative process can go ahead. Some of the considerations apply to all Restorative Justice processes, but may be particularly important for cases involving sexual and domestic abuse. Others are additional concerns specifically linked to these kinds of offences.

It is important to highlight again that sexual and domestic abuse are broad terms that cover a large number of different categories of offence, with each case bringing their own nuances and complexities. This is an emerging area of practice, and there may be other considerations needed in particular types of cases which are not covered in this paper.

General considerations and principles

Voluntary: A key principle of restorative practice is that it only goes ahead with consent from all parties. Survivors and perpetrators of sexual or domestic abuse could only go through a restorative process if they choose to do so freely and without coercion.

Accepting responsibility: A Restorative Justice conference will rarely take place if the person who has caused the harm accepts limited responsibility for their actions (though this acceptance doesn't necessarily have to be through a guilty plea in court). A conference would only go ahead in these circumstances if this was something which the harmed person was prepared for, and if the facilitator had talked through all of the potential risks and benefits with them.

When the perpetrator doesn't accept responsibility for their actions, but the person harmed is interested in exploring restorative practice, they can still have restorative conversations with a facilitator. Having the chance to explore their options, think about how they are feeling and what they need to move forward can help them to understand their own needs and wishes, even if no further restorative intervention follows.

Safety ensured: Restorative Justice only goes ahead if it has been judged to be safe by a trained restorative practitioner. This is a particularly important consideration for serious crimes, especially sexual and domestic abuse. The facilitator will speak with both parties to help them understand the risks and benefits of taking part and will discuss any safety concerns at this point. The facilitator will also prepare with all parties in advance, so that they understand what they want to gain from the intervention, and assess any physical or emotional risk to either party's personal safety, including the risk of revictimisation.

It is good practice for an enhanced risk assessment to take place for cases of sexual and domestic abuse during the preparation stage. The facilitator will explore attitudes towards the incident as part of this assessment. For example, they will explore whether the perpetrator blames the harmed person for what happened, whether the survivor blames themselves, and how they have responded to the impact of what has happened. Facilitators with training in handling cases involving sexual and domestic abuse will be aware of the need for these conversations to be handled sensitively. For example, they will avoid encouraging the survivor to replay the incident, as retelling experiences can cause further harm. The risk assessment could lead to a number of possible conclusions. For example, it might conclude that a restorative conference is not safe, but that the harmed person's needs could be met by an indirect process, such as letter writing or video messages.

A court ordered no-contact order or licence conditions could prevent perpetrators from making contact with survivors. If Restorative Justice was desired in such circumstances, facilitators would need to work with survivors to apply to the court or probation service for the order to be amended so that this could take place.

Expectation setting: A restorative process should only take place when the people affected have a clear understanding of what to expect from that process. Facilitators will discuss participants' thoughts and feelings about any potential outcome that could come from the process. They will talk through different scenarios with the harmed person, such as how they would feel if the perpetrator denied responsibility. When the harmed person has a clear understanding of the needs that they

think Restorative Justice could help them meet, and particularly when those expectations are not contingent upon the response of the perpetrator, it is more likely that the meeting will lead to a positive outcome.³⁹ For example, someone who wants to tell the person who harmed them about the impact of their actions may have better prospects of getting what they want from the meeting than someone who is seeking an apology – something which they cannot control.

Supporters: During a restorative intervention, participants are able to have “supporters”, such as friends, family or professionals, who can provide a range of support and advice to them throughout the process. This support may be required during the preparation phase or at a restorative conference, and could be in the form of practical guidance or emotional support.

In cases of sexual and domestic abuse, it may be beneficial for that supporter to be trained in working with people affected by these crimes, and for them to be able to provide mental health support before and after the conference;⁴⁰ though this, of course, depends on the wishes of the harmed person. Follow up support for the person who has caused the harm should also be considered.⁴¹

Facilitators will assess the emotional resilience of any supporters prior to the conference, as they may have to hear detailed or graphic information about what happened and the impact that this has had. They will take the time to understand the supporters’ attitude to the person they are assisting and ensure, for example, that they do not consciously or unconsciously blame the harmed person for the incident.

Availability outside the justice system: Restorative Justice does not have to take place within the context of the criminal justice system, and can be explored without a crime having been reported. This could be important for survivors of domestic and sexual abuse who may not wish to report their case to the police (which is some people’s preference due to the low prosecution rate for these sorts of crimes, the difficulty of survivors having to testify in court, or other reasons relating to their relationship with the harmer) or who may wish to pursue a restorative process after criminal proceedings have concluded.⁴²

Survivors can also experience harm by others who were not directly responsible for the crime, and restorative practice can be beneficial in this context. For example, a restorative process could take place between the survivor and a family member who refused to believe that the abuse took place, an institution which allowed the abuse to take place, or any other participant who caused secondary harm. This could be a particularly important consideration in cases of historical child sexual abuse, where the actual perpetrator may not be able or willing to take part in the process. In such cases, a restorative process between the harmed person and other members of their family who may have witnessed the abuse could be beneficial (see Teresa’s testimony above).

If there is no funding available for a case to be taken on by a restorative service with the necessary skills and knowledge about sexual and domestic abuse, participants and sympathetic professionals can be tempted to “do it themselves” – going ahead with an informal restorative process without the help of a restorative practitioner. We would advise strongly against this, especially for offences as complex and sensitive as domestic and sexual abuse.

Considerations specific to sexual and domestic abuse

“Offender-initiated” Restorative Justice: Restorative Justice is often categorised as being either “victim-initiated” or “offender-initiated”. Offender-initiated Restorative Justice comes with particular risks in cases of sexual and domestic abuse. These risks include the possibility of an abusive partner seeking to restart the relationship through this communication, or to further entrench negative beliefs which survivors may have, for example that the abuse was their fault. Moreover, due to the power-imbalances present in abusive relationships, the harmed person may feel obliged to agree to take part, even if they do not want to.

³⁹ Keenan and Griffith (n 14).

⁴⁰ McGlynn, Westmarland and Godden (n 5) 237.

⁴¹ *ibid* 230.

⁴² *ibid* 237.

In the event of an offender-initiated request for Restorative Justice, it would be appropriate to have an initial restorative conversation with the perpetrator to explore their motivations for asking for this. This conversation can bring benefits of its own, even if no further restorative intervention follows. In the majority of cases, Why me? would not recommend going further with a restorative intervention for this kind of offence which was “offender initiated”. There are some situations where the risks may be less severe, such as where a child has been violent towards their parent and wants to have a restorative conversation to move forward. And in some cases it could be worth exploring whether Restorative Justice could go ahead with ‘secondary victims’ such as the friends and family members of the survivor. But direct restorative conferences which are ‘offender-initiated’ would very rarely be appropriate in these circumstances.

If such a request is made, the practitioner may wish to consider how to tell the survivor that the person who harmed them is interested in Restorative Justice. It is important that they are informed, even if facilitated communication is not possible, as they may feel betrayed if they find out at a later date that Restorative Justice was requested but they were never told about it. However, the facilitator should be careful that their expectations about the prospect of such a meeting are managed, and be prepared to support the survivor if they are upset or triggered by the request.

Special facilitator training and support: In addition to the training which all restorative facilitators receive, facilitators handling sexual and domestic abuse cases should have training, experience and specialist knowledge about these specific offence types and the unique challenges presented by the dynamics of sexual or domestic abuse.⁴³ Part of the facilitator’s role is to ensure that all participants are safe, including from the risk of revictimisation. With this in mind, it is important for facilitators to understand the specific ways in which sexual and domestic abuse can have long-lasting effects on people, and how to avoid any minimisation tactics from the perpetrator or their supporters.⁴⁴ It is therefore important for facilitators to be able to intervene at appropriate times, and challenge any attempt to undermine the person who was harmed, even if such attempts are subtle.⁴⁵ It is also important for the facilitators to have access to support and supervision from another appropriately experienced restorative professional, and other professionals working in domestic or sexual abuse where possible.

More detail about the extra training and skills needed when facilitating domestic and sexual abuse cases is given in the United Nations *Handbook on Restorative Justice programmes*.⁴⁶

Multi-agency approach: With the complexities of sexual and domestic abuse, it is particularly important for any restorative process to take place in a multi-agency context. This means that the restorative providers should work closely with other agencies supporting both the harmed person and the perpetrator. These may include, but are not limited to, the National Probation Service Victim Liaison Officers, Independent Domestic Abuse Advisors/Independent Sexual Violence Advisors, specialist domestic/sexual abuse support organisations, Prison Offender Managers and Community Offender Managers.

Where participants are still in an intimate relationship: Facilitating Restorative Justice for cases of domestic abuse where the two participants are still in a relationship can be particularly complex. When assessing the complications of such a case, practitioners should consider a number of factors.

- **Expectation setting:** This can be a particular challenge in these cases. Both parties need to appreciate that this is not a form of couples counselling, and that the scope of the conversation may be limited to specific incidents.
- **The context of the abuse:** The nature of the incident or incidents may impact the judgement about whether a restorative process is safe. A one-off case of violence may pose fewer risks than a more sustained pattern of abuse, for example.
- **Other support:** The facilitator should consider whether the survivor is already receiving support from other agencies, such as counselling or a domestic violence service. What is the

⁴³ Mercer and others (n 28) 10; Hamilton (n 18) 42.

⁴⁴ McGlynn, Westmarland and Godden (n 5) 226.

⁴⁵ Hamilton (n 18) 8.

⁴⁶ Yvon Dandurand and Curt T Griffiths (2006), “United Nations Office on Drugs and Crimes: Handbook on Restorative Justice programmes” United Nations.

specific need which a restorative intervention could address?

- **Preparation:** The facilitator should consider the risks of communicating with two parties who are in a relationship, and whether these conversations can happen confidentially.

Facilitator case study

Below is a case study showing how an experienced facilitator managed a restorative process with a survivor of serious domestic abuse and her ex-partner.

This case was facilitated by the Kent and Medway Restorative Justice Service (Restorative Solutions and Salus Group). Why me? thanks the service for supporting this case study.

"In spring 2018 the restorative service I was working for received a referral from a National Probation Service Victim Liaison Officer (VLO). A survivor of a serious assault from her ex-partner wanted to meet him again through Restorative Justice, to help her let go of the past and move forward with her life. The VLO's knowledge of the case was invaluable, especially as they had worked with the survivor over a number of sometimes difficult years.

It was clear from the first time my co-facilitator and I met with the survivor that she was determined to get the answers she wanted by whatever means possible. She needed closure and only meeting her ex-partner again could give her this. The assault had taken place about seven years previously and she did not show any will to resume the relationship, or any urgent safety needs which we needed to consider. From our first meeting we were convinced of the very valid reasons as to why she needed Restorative Justice.

A lot of the preparation time was spent helping her to work out what she wanted to say. Often when we would ask this question, she would reply 'I don't know, but I know I need to meet him.' Through the preparation process, she was able to conclude that she didn't have any specific questions to ask, but did have things she wanted to tell him about herself and his future. We had to manage her expectations about how long the preparation process would take, as it can be frustrating for people to have to go through such a long preparation process when they want to get on with the meeting.

My co-facilitator and I met with the participants and their supporters on at least eleven occasions in the three months before the meeting, and communicated with phone calls and emails as well. We also facilitated a letter exchange prior to the conference as part of the preparation. Case supervision from another facilitator was helpful for me in this process, and this is essential for facilitators when working on complex and sensitive cases of this nature.

Carrying out an enhanced risk assessment was an important part of the process. On the surface the assessment questions for complex and sensitive cases such as domestic abuse may not look dissimilar to those for standard cases, but they can take on a deeper meaning in such cases. When working with the person who has caused the harm, it is important to explore the acceptance of responsibility, attitudes towards the offence, understanding of the impact of what happened and their levels of victim empathy. Risk assessment with the survivor should focus on a number of areas, such as their views on what happened (such as to what extent they may blame themselves), any motivation they may have to re-enter a relationship with the person who harmed them, and their vulnerability to manipulation by the harmer and his or her family and community. Going through these questions with my co-facilitator helped us to pick up areas that we may not have asked the participants about and where we needed to do further work before the restorative conference could go ahead. We also had an added risk factor that there was to be a parole hearing in the future and participants were conscious of how the restorative process may impact on the hearing.

Minor details were so important to how the conference was run. The seating plan, the need for a table, the role of the supporters and the script were all carefully planned. Neither the survivor nor her ex-partner wanted to talk about the incident itself, and both appeared to be frustrated

at the need to have a script. I took this on board, and have taken forward the learning that a detailed script needn't always be critical. In the conference itself, there wasn't much need for us to follow a script after the initial introductions, apart from one occasion when I had to remind the participants that they had agreed not to speak about the incident itself. But every case is different, and in other cases, participants have a greater need to follow a script.

The image that stays with me was the reaction of the survivor in the car park immediately after the conference. I could already see a different person from the one that had walked into the prison a couple of hours earlier as the fears that she had of meeting her ex-partner again had lifted and the conference represented part of a new start. One of the immediate consequences was that she no longer saw the harmer as the monster she had built up in her mind. It is unusual to remain in contact with survivors after a restorative process ended although in this case I am. Three years after the conference I can see how Restorative Justice has had a lasting impact on not only her, but also her close family. It was a shining example of how important it is to discuss the option of Restorative Justice with survivors of domestic abuse."

Conclusions and Recommendations

Conclusions

Restorative Justice is a tool which helps many people to heal from the harm which they have experienced and move forward. It is important that survivors of domestic and sexual abuse are able to make their own decisions regarding participation in a restorative process, just like people who have been harmed by other crimes. They should be treated as unique individuals, with the agency to make their own decisions about their recovery, and not as a homogenous group. This means that they should be given the option of a referral to their restorative provider, so that they can learn more about restorative approaches, and decide whether such an approach may be beneficial for them. Referring someone to a provider does not give them any guarantee that further interventions will be possible. For example, a face to face restorative meeting is only possible if the perpetrator and survivor both want to take part, and if a trained facilitator agrees that it is safe to go ahead.

While all types of crime have their own unique dynamics, there are specific considerations for sexual and domestic abuse which should be taken especially seriously. A thorough and robust process of safeguarding and risk assessment is crucial when facilitating a restorative process for survivors of such crimes. This should include facilitators having special training and supervision, working in a multi-agency context, and being aware of the particular risks posed by coercive control, victim blaming, and revictimisation in this context. The expertise of professionals working in domestic and sexual abuse is an essential part of this safeguarding process. Only once these risks are considered and appropriately mitigated, should a survivor of domestic or sexual abuse be able to communicate with the person who harmed them through a restorative process.

The Victims' Code of Practice already entitles survivors of domestic and sexual abuse to be given information about Restorative Justice and how to access it – just as it does for all victims of crime. But very few survivors are able to access this service in reality because of a series of barriers which have been placed in their way. Our recommendations below outline how to ensure that more survivors of domestic and sexual abuse receive improved access to restorative providers, and that these restorative providers have the skills, training and support necessary to manage such cases. Putting these changes into place and widening the availability of Restorative Justice for survivors would give them the potential to transform their recovery for the better.

Recommendations

Actor	Action
Ministry of Justice	<ul style="list-style-type: none"> - To provide funding for restorative providers to train facilitators appropriately for work with survivors and perpetrators of domestic and sexual abuse. - To release guidance for police services clarifying that restorative services should be available to any victim of crime, including survivors of sexual and domestic abuse.
Police & Crime Commissioners	<ul style="list-style-type: none"> - To require restorative providers to receive specialist training for domestic and sexual abuse cases as part of the tendering process. - To fund organisations with expertise in sexual and domestic abuse to work with the restorative provider in the region, enabling a multi-agency approach. - To design a monitoring and evaluation framework to ensure that people affected by domestic and sexual abuse are being offered Restorative Justice by their restorative provider. This would include working with staff to ensure that the offer is made, and scrutinising data to see whether cases are going ahead. - To publicly promote the option of Restorative Justice for people affected by domestic and sexual abuse.
Restorative Justice providers, including Youth Offending Teams	<ul style="list-style-type: none"> - To ensure that all facilitators have an understanding of the complexities around consent and coercive control, and some facilitators have the specialist training needed to manage a case involving domestic or sexual abuse. - To ensure that facilitators are supported through case supervision from suitably experienced practitioners. - To work in partnership with the specialist sexual and domestic abuse professionals and organisations supporting those taking part in Restorative Justice. - To implement ongoing and enhanced risk assessments for cases involving sexual and domestic abuse.
Statutory and voluntary organisations working in domestic and sexual abuse sectors	<ul style="list-style-type: none"> - To inform service users about the option of Restorative Justice, and how they can seek a referral. - To work in partnership with the PCC-funded restorative service in their area, and with the local Youth Offending Team, to facilitate direct referrals and maintain a multi-agency approach for dealing with cases.
National Police Chiefs Council (formerly Association of Chief Police Officers)	<ul style="list-style-type: none"> - To review guidance on Restorative Justice for sexual and domestic abuse, highlighting that Restorative Justice can be used for any type of crime, including domestic and sexual abuse. - To give police officers clear guidance on using Restorative Justice for these crime types and how and when to refer.
College of Policing	<ul style="list-style-type: none"> - To provide resources to support proper Restorative Justice training for police officers, including for cases of sexual and domestic abuse.
National Probation Service	<ul style="list-style-type: none"> - To have a national policy about the use of Restorative Justice in cases of domestic and sexual abuse, which puts the wishes of the survivor first, while taking into account the relevant safety considerations.
Restorative Justice Council	<ul style="list-style-type: none"> - To ensure that all lead facilitators who facilitate Restorative Justice for domestic and sexual abuse cases are registered at Advanced or Intermediate practitioner level. - To consider including standards relating to the delivery of sexual and domestic abuse into the Restorative Service Registration Framework.

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