

Restorative justice in cases of sexual offending

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In August 2022 the Department of Social Sciences at the University of the West of England 'UWE' Bristol held an in person one-day conference to consider the role that restorative justice can play in cases of sexual offending. The event was a part of UWE's Emerging Research Excellence (ERE) programme and was funded by the University. Over fifty delegates with backgrounds in academia, government, policy, and charity attended.

The day began with UWE's Dr Paul Gavin (Senior Lecturer in Criminology) and Ms Charlotte Kite (Research Associate) presenting findings of a literature review that had been undertaken as a part of the ERE programme. Some of the key discussion points included the role that restorative justice can play in intra-familial sexual abuse, especially in cases of sibling sexual abuse. In such cases families may often be reluctant to report the offending, and restorative justice has been found to be a useful means by which to afford the victim / survivor a voice and to provide some much-needed structured conversation regarding the abuse. The benefits of restorative justice for victims / survivors were discussed, as were some of the potential risks. Safeguarding was highlighted as being of vital importance to avoid revictimisation especially in cases where sexual violence was used as a form of domestic violence. A major area for concern is that power imbalances may exist between the victim/survivor and the perpetrator. This is especially important as a power imbalance can continue from the offence into the restorative justice proceedings if proper precautions are not taken. Gaps in the literature relating to the use of restorative justice of online sexual offending and online image-based abuse were highlighted.

Vicarious restorative justice, where victims / survivors are part of restorative panels (not related to their own victimisation) were also emphasised as an area that deserves further investigation.

The first keynote of the day was delivered by Professor Beth Weaver, Professor of Criminal and Social Justice, at the University of Strathclyde. Professor Weaver is an expert in the field of desistance and the focus of her presentation was on desistance from sexual offending. Professor Weaver explained the general theories of desistance and how they related to sexual offending. Factors which can help contribute to desistance include strong ties to family and community, employment that fulfils them, feelings of hope and self-efficacy and a sense of meaning in their lives. She noted that social relations that are most influential in the desistance process are characterised by solidarity and subsidiarity, or in other words, a sense of 'we-ness'. This is often forged through mutual-aid groups which are premised on the exchange of help - so the group member is both provider and recipient of help for the purpose of achieving collective and individual goals. From a sexual offending perspective, a good example of such groups includes Circles of Support and Accountability (COSA). Professor Weaver noted that such groups provide social support and role modelling. Other outcomes include increased confidence, a more positive self-perception and outlook on life, improved self-regulation and enhanced relational and social skills, the development of a wider social circle and improved relationships with statutory agencies (Richards et al, 2020).

The second keynote was delivered by Dr Ian Marder, Assistant Professor of Criminology, at Maynooth University. Dr Marder is an expert in the field of restorative justice and his presentation focussed on the use of restorative justice to help empower victims / survivors of sexual offending. Dr Marder stated that there is growing consensus at the international and domestic levels that restorative justice should be accessible for all types of crime and at all stages of the justice process. Despite this, however, for cases of sexual violence, a generic response will not do and there needs to be a more nuanced approach taken with restorative justice when used in cases of sexual violence. This should incorporate a more flexible approach to ensure that victim / survivor needs are met, and re-traumatisation is avoided in the process. He noted that the Council of Europe (2018) legal framework has called for a "broader shift in criminal justice across Europe towards a more restorative culture and approach within criminal justice" and that restorative justice principles "may be used as a framework with which to underpin broader reforms to criminal justice". Dr Marder also argued that there is a need for a wider cultural change, whereby restorative practices are used beyond the criminal justice system, for example, in the workplace and in educational settings.

After each keynote there was a panel discussion. Themes that emerged from these discussions were based on language; perception; process; safety; and clarity (Also see McCartan et al, 2022).

Language: The language used in the field of restorative justice can sometimes be problematic as it can explain one aspect of the work, but it does not always fully encapsulate it all. There are challenges around the words "restorative" and "justice" because while the process may be restorative, it might not result in justice. Restorative processes can be as much about communication and understanding, as they are about forgiveness and redemption.

Perception: Restorative justice can sometimes be perceived as challenging for parties involved. While this is true on occasion, this perception ignores the skills, training, and ability of restorative justice practitioners to mitigate the risks involved. Restorative justice is a long process with many of those involved putting the victim / survivor at the centre of the process. It must never be a process which is undertaken lightly.

Process: Restorative justice has several paths that it can take, for example, written testimony, victims' panels, and circles. In deciding to further the use of restorative justice techniques, decisions are based on what the best approach for all parties involved will be. Restorative justice is thus best conceptualised as a collection of practices rather than a single prescribed approach.

Safety: The safety of the victims / survivors is crucial when using restorative justice. This is evidenced through the preparation done with victims / survivors in advance about what to expect, what to do if things do not go to plan, and the role that everyone plays in the process. One way of averting harm is to ensure that the restorative process can be stopped at any point, with no consequences.

Clarity: Understanding of the process and the potential outcomes is of vital importance. It is essential for all parties to recognise that although they might go into the process with one set of expectations this may not be what they get out of it. The process may provide a sense of closure, understanding, insight or restoration; but, equally, it may not. Such clarity is important for all parties involved in the process.

Restorative justice is not a new concept, and it is used throughout the criminal justice system. It has, however, often proved controversial in the field of sexual offending (Daly, 2006) as it can be perceived as revictimising and even retraumatising the victim / survivor (Marsh and Wager, 2015; Koss, 2006). Restorative justice fits within the trauma informed, strengths-based approach to desistance from sexual offending that currently in use the United Kingdom (McCartan, 2022). Sexual abuse impacts all aspects of the victim / survivor, and it plays a role in their development and social functioning. It is, therefore, important to contemplate on and process the impact of this abuse. This is what restorative justice does.

At the end of the conference, delegates were invited to complete a survey around the topic of restorative justice and sexual offending. In total we received 25 responses. All respondents, regardless of profession or locality, supported the use of restorative justice in a criminal justice setting and agreed that restorative justice is suitable for all cases of sexual offending. The majority (92%) also agreed that restorative justice is suitable for all offending types. Interestingly from a practice perspective, 84% of respondents agreed that restorative justice is available in their locality, yet only 36% agreed or strongly agreed that the public understands what restorative justice is. Overall, 68% of the respondents had been involved with restorative justice proceedings at some level. The day's events showed that there is an appetite for restorative justice in cases of cases of sexual offending throughout the UK as it can bring wide ranging benefits for victims/ survivors which the traditional criminal justice system often cannot. It also, however, highlighted that there is currently a lack of public awareness of restorative justice and that more needs to be done to make the public aware of its benefits.

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