Restorative Justice

in Cases of Domestic Violence

Best practice examples between increasing mutual understanding and awareness of specific protection needs.

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1. Introduction

*Restorative Justice in cases of domestic violence: Best practice examples between increasing mutual understanding and awareness of specific protection needs*; is a two year European Commission funded project that began in February 2014 with a primary emphasis on the European Directive on Minimum Standards of the rights, support and protection of victims of crime (particularly *Articles 12 and 25*). This project aims to generate and pilot new knowledge on practices of Restorative Justice and domestic violence and to identify criteria for offering Restorative Justice to such cases, in accordance with the Directive.

The main objective of the project is to investigate regulations of restorative justice and mediation in their practical approaches concerning domestic abuses (be this gender specific or interfamilial), as well as understanding under what conditions restorative justice is appropriate. The result will be a guide, with a set of recommendations based on evidence-based research and practice. The guide aims to improve the knowledge of practitioners working in the field and will be written in English, Finnish, German, Dutch and Greek. Project activities will include; preparatory research that will look at existing evidence, culminating in a comparative literature review and interviews with victims, perpetrators and professionals that will inform the practical guide as well as in-depth meetings to discuss results at a European-level.

Independent Academic Research Studies (IARS) will represent the UK in the project which is led by the Verwey-Jonker Institute, a national, independent institute for applied research into social issues, supervised by Dr. Majone Steketee. The project will be assisted by five European partners namely Institut für Konfliktforschung (IKF) Austria, Landsorganisationen for Kvindekrisecentre LOKK Denmark, European Public Law Organization (EPLO) Greece, Department of Criminal Policy of the Ministry of Justice Finland, and European Forum for Restorative Justice (EFRJ).

Constructing a clear account of the development and current status of restorative justice and Domestic Violence (DV) in the UK is not an easy task for at least three reasons; firstly, as it will be evidenced by this paper, in the UK, restorative justice developed organically and in the shadow of the law without any formal structures that would mainstream it as a consistent option especially within the context of sensitive cases such as domestic violence. However to some extent, this is still the case as the restorative justice practice is chosen on an ad hoc basis by agencies in the public, private and voluntary sectors as implementation depends on contractual tenders.

Secondly, the UK consists of multiple legal jurisdictions, which have not experienced a unified and consistent view and application of restorative justice. There are 4 key sub-systems of criminal justice: (1) Law enforcement (Police & Prosecution), (2) Courts, (3) Penal System (Probation & Prisons) and (4) Crime Prevention. The Youth Justice System (YJS) is significantly different in all three judiciaries with separate legislation, courts and sentencing systems. See Table A.

Thirdly, because there is no DV crime and its punishment, including rehabilitation is not widely discussed. This is especially apparent in cases of using restorative justice, where there has been an open call to legally ban the practice and any training or guidance of DV should incorporate domestic violence screening to ensure that RJ is not being advertently used even where domestic violence is not presenting issue (Women’s Aid 2003).

We would like to formally thank those who participated in our interviews and helped us to collate this information. Due to our practitioners expertise in prison, probation, police and community organisations we are grateful to them for the ability to produce research that is truly representative and reflective of the use of restorative justice in cases of domestic violence.
Specification of definitions used in the nationals context for Restorative Justice and Domestic Violence

There is no official definition of Restorative Justice. However, Marshall’s (1999)\(^1\) definition can be understood as the most closely aligned with the recent political implementation of RJ;

“Restorative Justice is a problem-solving approach to crime which involves the parties themselves, and the community generally, in an active relationship with statutory agencies”

“Restorative Justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implication for the future”

This is compared to the Directive’s guidance at:

“Any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party”.

In March 2013, the Government revised its definition of domestic violence to;

‘Any incident or pattern of incidents of controlling coercive or threatening behavior, violence or abuse between those aged 16 or over who are or have been intimate partners or family members, regardless of gender or sexuality. This can encompass, but is not limited to, the following types of abuse; Psychological Physical Sexual Financial Emotional

The definition is supported by an explanatory text: ‘This definition is not a legal definition, includes so called ‘honour’ based violence, female genital mutilation (FGM) and forced marriage, and is clear that victims are not confined to one gender or ethnic group.’ The working definition of domestic violence is used by the police to identify cases of domestic violence referred to the CPS. However, it should be noted that the CPS is currently holding a review of this definition which IARS is included in\(^2\). We will update the partners of this review as it progresses.

2. Domestic Violence in the country

There is currently no specific statutory offence of domestic violence. Most commonly, domestic violence results in a charge of assault or grievous bodily harm (Liebmann and Wootton: 2010). However, it is acknowledged by the CPS (2014) that many other offences that fall under the definition of domestic violence will be difficult to distinguish due to not being immediately evident at the time of reporting, particularly in the cases of controlling and coercive behavior and psychological abuse. Therefore, prosecutors are advised to consider evidence of such conduct alongside determinable criminal offending. Prosecutors should also note that there may not always be a trigger for the abuse; advising that there may be several events that led up to the start or escalation of abuse.

In England and Wales the responsibility for the development of domestic violence policies as well as the coordination of domestic violence and Violence Against Women and Girls initiatives across all

departments of the government sits with the Home Office. The Home Office is also responsible for the police response in dealing with cases of domestic violence. The Ministry of Justice is accountable to ensure that perpetrators of domestic violence are brought to justice, cases are reported and victims of domestic abuse are supported.

The last two decades, both policy and legislation on domestic violence in England and Wales were focused in the implementation of measures based on prevention, protection and justice as well as provision of support for victims of domestic abuse. These directions were set out and defined in the publication of the “The summary of Responses to Safety and Justice: The Government’s Proposal on Domestic Violence, following consultation with various agencies and victims of domestic violence (Hague, 2005 as stated in Matczak, Hatzidimitriadou, & Lindsay, 2011). The latter direction was mainly assigned and implemented by partnerships of service providers at local and national level. In these developments the government refused to take a leading role in tackling domestic violence while remaining supportive at both local level and national level. (Matczak, Hatzidimitriadou, & Lindsay, 2011).

The summary of Responses to Safety and Justice: The Government’s Proposal on Domestic Violence, led to the introduction into Parliament of the Domestic Violence, Crime and Victims Bill that receive Royal assent in November 2004 and was deemed the most important piece of legislation on domestic violence in the last three decades (Home Office, 2005). In 2010 the current Coalition government recognised the necessity for a more broad gender based approach that is reflected in the ‘Call to End Violence against Women and Girls’ Action Plan that was published (Home Office, 2010). Since then, the Action Plan has been reviewed three times in order to reflect on achievements and set out future pledges and objectives for tackling domestic violence. In the latest Action Plan it has highlighted the government’s position to support a more localised approach in tackling domestic violence. To achieve that it pledged to provide support to the voluntary sector to build capacity as well as to develop the expertise needed in dealing with domestic violence. Furthermore, multiagency approach and partnership working across the sector and various government departments were also promoted (Home Office, 2014). The Ending Violence for Women and Girls Action Plan is backed with nearly £40 million of funding until 2015 that is allocated to specialist local support services and national helplines (Home Office, 2014) and developed a framework on the protection of children of domestic and gender based violence in various settings while recognize that men and young males can be also victims of domestic abuse.

Despite the government’s efforts to eliminate domestic violence, statistics remain rather disappointing. Domestic violence accounted for 15% of all violent incidents in 2011/12. Nearly one third of women and nearly one fifth of men say they have experienced domestic abuse since the age of 16. In 2012/13 there were 88,110 domestic violence cases in England and Wales that were referred to the CPS. This is not the same as the total number of people arrested for the offence. Between arrest and referral to the CPS the police may decide that no crime has been committed or that there is insufficient evidence to proceed. Of the cases referred to the CPS the decision to charge was made in 64.6% of cases. In 2012/13 70,702 defendants were prosecuted, a fall of 11.1% on 2011/12, but a 42.0% increase on 2005/06.


A victim of domestic violence under civil law could seek protection by applying for a non-molestation or occupation injunction from the civil court. In particular, an application could be submitted to a
family proceedings court by the victim or his legal representative. The injunction is issued after the completion of the hearing process by the magistrates court and is enforced from the moment that the injunction is “served” (delivered) to the abuser. Under the Family Law Act 1996 (Family Act Law IV, (42)) as amended by Part 1 of the Domestic Violence Crime and Victims Act 2004 a non-molestation order is aiming to protect the victim or a relevant child from being molested from the perpetrator. This amendment addressed the inefficiencies of the current legislation to offer protection to victims through non-molestation orders. According to this new provision under section 1 of the Domestic Violence Crime and Victims Act (DVCVA) 2004 breaches of civil injunctions by the perpetrators are treated as criminal offences with a maximum penalty of 5 years that is dealt by the criminal courts and not by the magistrates’ court or the county court.

In the case of breach of a non-molestation order the victim becomes a key witness in the criminal case and the Crown Prosecution Services (CPS) is responsible to prosecute the breach and charge with an offence. Although this provision has many advantages it has been criticized for disempowering the victim by taking the case out of their hands. The CPS could proceed with a prosecution in conjunction with the police and consequently criminalization of the defendant against the victim’s will (Women’s Aid, 2007).

The Act was amended in 2007 in order to extend availability of injunctions to same sex couples and those who never cohabited (Section 4) and place joint responsibility to all members of a household aged 16 and over, in case of death of a child or vulnerable adult (Section 5). It also introduced a statutory Victims Code of Practice and Commissioner for Victims and Witnesses and made provisions for Statutory multi-agency domestic homicide reviews when anyone over 16 years dies of violence, abuse or neglect from a relative, intimate partner or member of the same household (section 9) (Women’s Aid, 2007).

**The role of the Police**

The Police are the key agency where a domestic violence case is reported. The role of the police is crucial as it is responsible for ensuring the safety and well-being of victims and other members of the household that face domestic abuse. Most police stations have their own Community Safety Units, where the victims could be supported by specially trained police officers. The Police are also working in partnership with third parties such as NGO’s and Independent Domestic Violence Advisors (IDVAS) (sometimes based in police stations) in order to ensure victim’s access to the appropriate supportive agencies and services.

In the 2013 Call to End Violence against women and girls Action Plan there is a provision that allows the police to issue Domestic Violence Protection Orders (DVPOs). DVPOs are implemented in England and Wales since 8th March 2014 and enable the police and the magistrates to accelerate the process of issuing non molestation and occupation orders. Under a DVPO the perpetrator is prohibited from returning to a residence and having any contact with the victim for up to 28 days in the aftermath of the incident (Home Office, 2013).

Furthermore, a Domestic Violence Disclosure scheme known as Clare’s Law has been implemented since 8th March 2014. Under the scheme an individual can refer to the police in order to identify whether a new or existing partner has a violent record “Right to Ask”. However it is in the police’s discretion to whether they wish to disclose any information. Under the same scheme an agency could also apply for disclosure in cases where there are reasonable grounds for suspecting that an individual is at risk of domestic violence from their partner “Right to know” (Home Office, 2013).
Although the role of the police is crucial in dealing with domestic violence cases, a review of the police response to domestic violence by Her Majesty’s Inspectorate of Constabulary, commissioned by the Home Secretary in September 2013 and published in March 2014, revealed the Police’s “alarming and unacceptable weaknesses” (Home Office, 2014) in dealing with domestic violence and abuse. The report entitled “Everyone’s business: Improving the police response to domestic abuse”, revealed that police officers lack the necessary knowledge, skills and leadership in tackling domestic abuse. These inefficiencies are also related to poor attitudes when they were called to the scene (HMIC, 2014).

This was supported by recent evidence from the Paladin, Sara Charlton Charitable Foundation and Women’s Aid (2014) research titled ‘Domestic Violence Law Reform- The Victims’ Voice Survey: Victim’s Experience of Domestic Violence and the Criminal Justice System’ which found that 81% of respondents indicated that the history or pattern of abuse was not taken into account by the Criminal Justice System and 88% stated that the controlling behaviour was not taken into account. Others found that the Police were only interested in the physical aspect and asked no questions about the psychological (Paladin, 2014).

CPS

Nevertheless domestic violence is not criminalized; it can be prosecuted for a variety of other offences instead such as murder, rape or indecent assault, grievous bodily harm and unlawful wounding. Following the report of an incident or a complaint to the police, a decision should be made on whether the CPS will get involved in the case. Due to the intimate relationship between the victim and the perpetrator and the emotional attachment that such a relationship involves, it is not unusual for the victims to opt to withdraw the case at the evidential stage. However, prosecutors might deem necessary to continue with prosecution especially in cases where the offence is serious — children and young people were present or where the threat to the victims or others is on-going. In such cases the prosecutor is called to make a decision whether the case should be prosecuted in the “public interest” taking into consideration the evidence that was collected during the investigation by the police as well as the victim’s statement to the police when appropriate. Independently of the decision made, the victim is informed in writing and where appropriate the CPS provides information to the victim for further support from victim services and third parties.

According to the CPS domestic violence policy guidance (CPS, 2009) the priority in domestic violence cases is first and foremost the protection and safety of the victim. Therefore the CPS is aiming to advise the victim on all available options and routes either via civil or criminal law and ensure that in all cases both routes are available to the victim. The safety of victims is also ensured by the provision of specialist emotional or infrastructure support. This support is provided to them by referring them to the Independent Domestic Advisors (IDVAs) and other support third sector organisations. Other initiative to protect victims of domestic violence include the Witness Care Units that are staffed by CPS and police personnel (CPS, 2009).

For the safety of the victims and any vulnerable individuals who are involved, prosecutors are seeking cross party information ranging from the police to Multi Agency Risk Assessment Conferences (MARACs), Multi Agency Public Protection Arrangements (MAPPAs) or Multi Agency Safeguarding Hubs (MASH) (CPS, 2009).

A recent development in the way the CPS deal with cases of domestic violence will come into force in July 2014 following public consultation (CPS, 2014). Recognising specific support needs that different groups might have, the new guidance takes into consideration the implications of domestic
abuse on different groups, including young teenagers and abuse over social media as well as older people who are in abusive relationships (CPS 2014). For first time the new guidance addresses other types of violence within the family environment that have been overlooked in the past. These types of violence will include child to parent violence or violence within same sex or transgender relationships.

Furthermore, factors such as ethnicity, age, sexuality, disability, immigration status, and religion or belief are taking into consideration in the way that victims are experiencing violence and the barriers to access justice are also being recognised (CPS, 2014). In the guidance there is also specific mention to restorative justice where its inappropriateness for cases of intimate partner relationship is highlighted. However, restorative justice could be considered and delivered by trained and experienced facilitators in other cases “after cautious consideration and advice from experts” provided that victim’s participation is voluntary and fully consent has been given (CPS, 2014).

In 2001 the CPS did not even monitor domestic violence cases. That only started in 2004. But the figures since then indicate progress. In 2004/05, we prosecuted 35,000 defendants for domestic violence. That figure has been steadily rising. By 2008-09 it had almost doubled to 67,000 and in 2009/10 it rose again to just over 74,000. The conviction rate has also risen dramatically. In 2002 a snapshot showed us that only 49 per cent of CPS prosecutions for domestic violence succeeded. That rose to about 65 per cent in 2006/07 and the conviction rate for domestic violence in 2009/10 now stands at 72 per cent.

Domestic violence now accounts for 14 per cent of violent crime whereas in 1997 it accounted for 23 per cent. But that figure is still far too high and the level of violence is disturbing. A recent study showed that 76 per cent of domestic violence victims supported by IDVAs had experienced severe abuse, by which I mean violence causing injuries, strangulation, rape and other sexual abuse, stalking, extremely controlling behaviour, and threats of harm to children. 91 per cent of victims supported by IDVAs through the criminal justice process experienced physical abuse; in 67 per cent of cases that meant strangling or choking (Crown Prosecution Service: 2011).

It should also be noted, that although there is no a specific punishable crime of domestic violence, at sentence stage a crime committed within the domestic arena is an aggravating factor to the sentence. As the Sentencing Guidelines (2006) state in Overarching Principles: Domestic Violence ‘Indeed, because an offence has been committed in a domestic context, there are likely to be aggravating factors present that make it more serious’. These include; abuse of trust, victim is particularly vulnerable and a proven history of violence or threats by the offender in a domestic setting . Also, that as a matter of general principle, a sentence imposed for an offence of violence, determined by the seriousness of the offence, not by the expressed wishes of the victim. This is due to the role of power and control in the relationship affecting the sentence.

Specialist Domestic Violence Courts (SDVCs)

The Specialist Domestic Violence Courts (SDVCs) were set up in 1999 in order to combine an holistic and more effective approach in cases of domestic violence as well as to offer tailored services to victims of domestic violence (Matczak, Hatzidimitriadou, & Lindsay, 2011). They represent a partnership approach to domestic violence by the police, prosecutors, court staff, the probation service and specialist support services for victims (CPS, 2008). At the end of the Court Estate Rationalisation Programme it is anticipated that there will be 137 SDVC systems across England and Wales (CPS, 2013). The courts are operating once a week within the Magistrates Court and all cases of domestic violence are prioritised on this day and are heard by specialist trained Magistrates.
Apart from specialist support the courts are prioritising victims’ emotional and physical safety by providing separate entrances, exits and waiting areas for victims and defendants in order to protect the victims from meeting the defendants before and after the hearing process. Evaluation of the SDVC showed increased victims satisfaction. High levels of satisfaction were related to the specialist support that victims received in the framework of SDVCs (Cook et al., 2004). Moreover, according to the CPS review of the SDVCs, (CPS, 2008) data indicated SDVCs showed improved prosecutions, engagement and support for victims both in and outside of the Criminal Justice System.

Other support bodies and schemes for victims of domestic abuse

Other types of independent support to victims include the Independent Domestic Violence Advisors (IDVAs). The IDVAs are defined as the victim’s primary point of contact that are working with victim from the point of crisis. Their responsibilities range from discussing options and developing safety plans to support with application for sanctions and remedies available through the criminal and civil courts including housing options (Home Office, 2011). IDVAs’ are usually highly trained professionals that are working in close partnership with the police and third sector organisations in order to ensure the short and long term safety of the victims of domestic abuse. Despite the fact that their value is highly recognised, their implementation across the country is currently inconsistent (Robinson, 2009).

The Independent Sexual Violence Advisors (ISVA) hold a similar role to the IDVAs as they are working exclusively with victims of sexual violence in order to provide them with practical support through the criminal justice process. They are trained support workers that work closely with criminal justice and statutory partners, and may be based in many different settings.

Another initiative in the interest of the victims is the implementation of Multi – agency Risk Assessment Conferences (MARAC). MARAC are regular local meetings of several frontline agencies (police, health, health and housing practitioners, shelter workers and other government or non-governmental agencies that are providing services to high – risk, domestic violence survivors (Virtual Knowledge Centre to End Violence against women).

Due to the complex implications of domestic violence on the victims MARAC ensure that cross party communication is established and their role is integral in identifying and addressing the multiple needs of the victims of domestic violence.

The voice of victims in those meeting is represented by the Independent Domestic Violence Advisors (IDVA). Among their key activities is the development and implementation of a risk management plan that aims to address key factors in reducing harm and revictimization while protecting victims and their families. Despite the fact that MARAC are not mandated by legislation over 270 MARAC are taking place across England, Wales and Scotland that are managing more then 64,000 cases a year (Virtual Knowledge Centre to End Violence against women). The Home Office funds the Coordinated Action Against Domestic Abuse (CAADA) to provide training places for IDVA and ISVA and run a quality assurance program for MARACs.

Another multi-agency initiative for the treatment of the victims of sexual abuse are the Sexual Assault Referral Centers (SARC) which supported by the Inter-Departmental Ministerial Group on Sexual Offending and aim to offer support to female and male victims of rape and serious sexual assault. SARC are usually located in hospitals where victims can receive medical care and counselling from health providers and support workers in the aftermath of the incident. Most SARCs are “joint
ventures” between the police and PCTs, with close involvement of the voluntary sector and assist the police investigation (eg forensic examination).

3. Restorative Justice in the country

In the UK, significant governmental interest began in restorative justice in 2002-3 when the Home Office opened the ‘Restorative Justice Unit’ and launched a consultation on whether RJ should be included more formally into the adult criminal justice system. Despite overwhelming support the interest soon waned and along with it the Home Office Unit and their policy and legislative plans.

This interest was revived soon after the current coalition government took power. In December 2010, their Green Paper “Breaking the Cycle”, announced their intentions for key reforms to the adult and youth justice sentencing philosophy and practice. The Ministerial Foreword noted: “There is much work to do in a criminal justice system which is so badly in need of reform ... We will simplify and reduce a great mass of legislation ... We will put a much stronger emphasis on compensation for victims ... I think it is right to describe these reforms as both radical and realistic” (Ministry of Justice, 2010: 2). It soon became clear that the current government wanted to see the development of RJ at three key stages of criminal justice:

- First, as: “a better alternative to formal criminal justice action for low level offenders ... This is a more effective punishment than a simple caution, and builds on local approaches already used by the police” (Ministry of Justice, 2010);
- Second, as a diversion from prosecution (an out-of-court disposal) for cases where prosecution would be likely to lead to a fine or community sentence;
- Third, as a pre-sentence diversionary option for offenders who admit guilt, stating: “They could, therefore, inform the court’s decision about the type or severity of sentence handed down ... Greater use of RJ can prevent the feeling of powerlessness which often results from being made a victim. Increased use of compensation and reparation will benefit victims directly while establishing the principle that offenders must take personal responsibility for their crimes.” (Ministry of Justice, 2010).

In December 2012, the Ministry of Justice published its revised Referral Orders Guidance to courts, Youth Offending Teams (YOTs) and Panels (Ministry of Justice, 2012). This followed the first national strategy on RJ. Titled “Restorative Justice Action Plan for the Criminal Justice System”, the strategy makes a number of short and long term commitments around four areas: access, awareness, capacity and evidence. The responsible Minister noted during the launch of the document: “Many victims of crime get to see sentences being passed, but it’s not always enough to help them move on with their lives. We know that around 85% of victims who participated in restorative justice conferences were satisfied with the experience. That’s why I want restorative justice to become something that victims feel comfortable and confident requesting at any stage of the criminal justice system. Victims deserve access to a high standard of restorative justice no matter where they are in the country and at a time that’s right for them.”

What also followed was investment (and commitment for further investment) of funds in RJ. As the Minister of Justice, Damian Green announced in November 2019; at least £29 million is being made available to Police and Crime Commissions and charities to help deliver Restorative Justice for victims over the coming three years. The money is part of a wider allocated funding for victims of at least £83 million through 2015-16. PCC’s will receive the victims’ services and Restorative Justice funding in a single allocation so it is their decision about which services best meet local needs. At
present PCC’s have used the money in varying ways, including training, increase of RJ services and further research of capacity-building across forces. It is also noted that national funding for Restorative Justice will also be provided to Restorative Justice Council, Restorative Solutions and the Youth Justice Board.

Most recently, the biggest development is said to be the passing of the Crime and Courts Act 2013 that inserts a new section 1ZA into the 2000 Act which makes it explicit that the courts can use their existing power to defer sentence post-conviction to allow for RJ activity to take place, by imposing restorative justice requirement. The Act was enacted in December 2013 and courts now have the power to defer the passing of a sentence provided that all parties (i.e. both the offender and the victim) agree. The Act also requires that anyone practicing restorative justice must have regard to the guidance that is issued by the Secretary of State. No other formal requirement is stated. In May 2014, a pre-sentence restorative justice guidance was issued by the Ministry of Justice that provides an overview of the processes involved in the delivery of pre-sentence RJ in accordance with section 1ZA (6) of the Powers of the Criminal Courts (Sentencing) Act 2000.

This has enabled a selection of pilot schemes to be undertaken as ‘pathfinders’, the National Offender Management Service has provided funding to three probation trusts to enable them to develop local models for the delivery of pre-sentence restorative justice in magistrate’s courts. The pathfinders will inform the development of the tool-kit which will be available for other areas to apply when adopting these processes locally. Separately to this, Restorative Solutions has formed a delivery partnership with Victim Support to establish a pre-sentence restorative justice pathfinder in 10 Crown Courts across England: with expected capacity to deliver 100 interventions per area per annum (MOJ 2013).

It is our prediction that the amendment to the Crime and Courts Act 2013 will have a significant impact on the use of RJ, especially concerning adult offenders. The increase use of RJ as a diversion (at the judges discretion) will see the judiciary taking an active part in enforcing RJ, it therefore signifies a logistical shift from community to state in its implementation and the process being used as a pre-sentence solution.

Until the passing of the Crime and Courts Act 2013, the provision of RJ in the adult sector has been mainly on a non-statutory basis. There was some provision for restorative and reparative activities within a Community Sentence, as part of an Action Plan Order, or Suspended Sentence (see The Criminal Justice Act 2003, Sections 189 & 201). However, RJ at a post sentence stage has been successfully used by various agencies and practitioners for many years, generally without serious challenge.

**Organisation**

Mediation is the primary RJ practice for adult cases, including those of domestic violence nature. Five distinctions can be made, none of which are mutually exclusive. The first is between programmes that are primarily oriented towards the needs of the offender, and those that also take account of the needs of the victim. The second distinction is made between projects where victims meet their offenders and projects where groups of victims take part in discussions with unrelated offenders. Although this type of mediation does not preclude bringing the individuals together to consider how offenders can make amends, their main goal is to help both victims and offenders to challenge each other’s prejudices. The third distinction concerns mediation programmes that may include face-to-face meeting of the victim with the offender and those that have mediators act only as go-between. The fourth category depends on the cases that the mediation programmes accept.
For instance, a project may take cases below or above a certain level of seriousness, or only juvenile cases. Lastly, there are full Victim-Offender Mediation programmes that are designed to meet the needs of both parties, and their community, according to the permission and agreement of both parties, and to carry out any outcome agreement that might be forthcoming. These processes are usually carried out by paid professional staff or by trained volunteers. Other practices include conferencing and neighbourhood resolution panels (or neighbourhood justice panels).

**Key players**

Identifying current RJ service providers as well as those who we know will be expected to become RJ providers due to statutory or other reasons is a key step for any future strategy in the UK. It is important to note that there are no state-run organisations of practitioners. There is also a mutual understanding that a “restorative movement” exists, across all backgrounds and agencies (Gavrielides, 2008). The situation is complicated by the open market culture and provision, which can lead both to opportunity and creative tensions on one hand – and competition over influence, funding and contracts on the other.

- **Community mediation schemes**: Mediation providers divert cases from prosecution and latterly undertake casework for the CJS agencies e.g. Southwark Mediation Centre, CALM, Maidstone Mediation, Scheme.
- **Police**: Here, RJ provision is dependent upon local policy and Police Crime Commissioner objectives
- **Crown prosecution services / procurators fiscal**: The prosecuting authorities are critical to any matters related to the discontinuance of cases related to RJ.
- **Youth offending agencies**: These multi agency teams (YOTs) provide the great majority of restorative input in England and Wales. Some services outsource casework.
- **NGOs and Third Sector**: There is a long and successful tradition of RJ provision by third sector agencies but no mapping exercise has ever been attempted.
- **Youth Conferencing Service**: This is the Northern Ireland statutory agency for RJ conferencing.
- **Courts and Judiciary**: There are separate youth courts who have worked with RJ related youth law for the last ten years (UK). Adult courts and sentencers have shown a reluctance to engage with RJ involved sentences.
- **Probation Services**: Probation officers write the pre-sentence reports that advise judges as to the most effective sentence. They are also responsible for the supervision of offenders on community sentences, which can include RJ input. The Victim Liaison Service has a fine record of victim-initiated RJ in serious cases.
- **Prison Services**: A recent mapping study by Gavrielides (2012) identified a number of RJ projects that are currently run in the UK. While some are delivered by the prison themselves (and their chaplaincies), others invite local RJ service providers to provide ad hoc services to them. Most of these projects are run with surrogate victims and they are based on key paradigms such as the Sycamore Tree project and SORI.
- **Judiciary**: The judiciaries of all three countries are independent of government. Any increase in the use of RJ will need precise guidance to enable their consideration.
• Ministry of Justice (MOJ) and Home Office: The Government ministries involved in the forming policy, the drafting of legislation and regulation of RJ matters. The MOJ has recently taken over the role of the former Youth Justice Board, and is responsible for regulation and support of RJ provision.

• Northern Ireland Office Northern Ireland Assembly & Scottish Parliament and Scotland Office: Much legislative power has been devolved to the Scottish Parliament and the Northern Ireland Assembly respectively. Any RJ development in the UK will be carried out under the auspices of each independent CJS.

**RJ in DV cases**

UK research published in 1995 looked at the use of restorative justice with spousal abuse (Carbonatto 1995) while Strang and Braithwaite (2002) provided a theoretical analysis of the arguments for and against restorative justice in cases of domestic violence. This research commentary has continued to deliberate its usage and although despite the absence of legislation, community-based organisations provide RJ services for Domestic Violence independently and on some occasions with the support of agencies such as the police, probation, housing associations and healthcare services (Gavrielides 2011).

For the government, the view is strongly polarised. As stated by the Home Office (2003) ‘Domestic violence specialists were strongly against their use in any such cases, while proponents of restorative justice thought they could be beneficial in some cases.’ The arguments against the use of restorative justice centred round the risk of re-victimisation, the power imbalance and the seriousness of domestic violence. Those involved in restorative justice cited the right to choose, the use of highly skilled facilitators and a multi-agency approach. The government conclusion was that more evidence was required on what works for victims.

Accordingly, the subsequent publication Best Practice Guidance for Restorative Practitioners (2004), says: ‘The use of restorative processes in domestic violence cases is not agreed; the government’s forthcoming paper on domestic violence will address this issue.’ Meanwhile the Domestic Violence, Crime and Victims Bill was passed in November 2004, providing new powers for courts to deal with perpetrators of domestic violence, closing some anomalous loopholes and giving victims statutory rights (Home Office 2004). These are enshrined in the Code of Practice for Victims of Crime, launched in April 2006 (Home Office 2006). However, restorative justice is not included.

For the Police there has been official guidance to dissuade officers from practising restorative justice. This was also highlighted in our interviews with practitioners, in that the police, as a statutory agency, were clear of their boundaries and role when it came to domestic violence. It was highlighted that for victims to contact the Police, in the first instance, would be a significant milestone in their recovery and that they should not be the agency to dissuade the victim from taking punitive action; “When a victim has finally built up the courage to report DV, they have finally taken control of the situation. It would be massively inappropriate for the Police to offer RJ”.

However, as stated by the Association of Chief Police Officers (2012: 6) *Restorative Justice Guidelines and Minimum Standards* ‘we do recognise that RJ is a customer focussed methodology and if a victim of such offence demands RJ then it is for the individual officer to consider, in line with their respective force policy and the guidelines already issued by the ACPO DV as to whether furtherance under RJ is appropriate’. This suggests that bodies, such as the Police, recognise the potential for using RJ in the cases of DV, however the risk of these practises for such a body is high.
This aversion to using the process for such cases is all reciprocated in a 2003 consultation response to Restorative Justice, Women’s aid that clearly stated that RJ was not suitable for DV cases;

“Restorative Justice implies a position of equality and an equal bargaining power between two parties. Yet fear is a significant factor influencing the behaviour and decisions made by women experiencing domestic violence. Domestic violence is characterised by an imbalance of power so any intervention that encourages conversation or mediation will result in further attempts to manipulate, dominate and threaten the victim. Women are likely to be pressurised into participating in a restorative justice process if it is available. They will inevitably not be able to participate or speak freely and may be subject to very subtle signals (such as a particular look or gesture) that serve as a threat, which often go unnoticed by a third party”.

This is supported by the Greater London Domestic Violence Project’s (2003) response to ‘Safety and Justice’ (Mayor of London);

“We are alarmed at the recently published Government paper on Restorative Justice that includes the possibility of it being used in domestic violence cases. We are implacably opposed to the use of Restorative Justice in all domestic violence cases and strongly recommend that the Government issue an explicit statement to this effect. Any intervention which attempts to refocus responses to domestic violence away from the state, and towards the victim’s role in the offender’s rehabilitation are unacceptable and perhaps more importantly, ineffective.”

For the Restorative Justice Council the use of restorative justice has been particularly controversial due to fears of further victimisation. There is no ban on the practice of restorative justice in such cases. However, they offer warning that further complications include the potential for restorative practitioners to be unaware of messages/threats that could be exchanged within a meeting due to the intimate nature of the participants’ relationships and the subtle communication that could take place as a result. Although, they do highlight that low prosecution rates from domestic violence and the potential for a conciliator approach to be more effective in addressing the harm caused mean there is plenty of potential for the use of restorative justice in cases of domestic violence.

Nevertheless, there have been and still are projects in the UK where restorative justice and mediation occurs in situations of domestic violence. Examples of these are Plymouth Mediation, Warwickshire Domestic Violence Support Service (Rugby), The Daybreak Dove Project, Victim Liaison Units (Liebmann and Wootton: 2010). As part of the overall RJ process, it is acknowledged that cases of DV have been discussed as part of the wider restorative dialogue where good practice is used but often not discussed in the wider political arena.

As suggested by practitioners, the process of restorative justice in the context of domestic violence cases should be paramount rather than a direct conference. This was supported by one, suggesting that conferencing should never happen and that indirect restorative justice was the only method that should be used. “it was always better because of the power imbalance, messages of intimidation that can happen that can re-victimise people will work”. it was giving victims a service in relation to information and putting their views before court and trying to make them safer and a lot of them saw restorative justice/mediation was relevant to that process or that they genuinely wanted to discuss things with their ex-partner. G: And they felt the CJ hadn’t allowed them to do that? In fact it’s increasingly locking them away, increasingly it’s doing that more and more by saying the CJ must prosecute, it must be harder, it must take over control of the victim more and more because such people are weak and vulnerable and we must show that we’re protecting them. This good practice that evidently goes unknown to legislative, criminal justice practitioners and charitable organizations would be recommended as suitable for such cases especially as stated
previously in the acknowledgement of victim’s wishes within the criminal justice system and wider political sphere.

As clearly shown in practitioner’s interviews, a clear potential of using restorative justice is the ability to address the victim’s needs and wishes, with this acting tool for empowerment. “I think it could be powerful for the victim in the sense that they feel empowered to be able to speak their minds and say “what you did was not acceptable”. It is suggested that by ignoring the needs of victims, especially in the context of domestic violence, risks extracting ownership from the victim about their closure of the case and future decisions made in relation to this. To some extent, as explored in the legislative and policy literature, this is being rectified in alignment to the victim. However the choice of service would be decided by the victim. So, on the whole we do want to have the flexibility really on a case-by-case basis, because as far as we’re concerned the victim is the most important, so it should largely be down to their choice, but we’d want to work with them to make sure it’s safe and appropriate to do that, if they really requested it.

In conclusion, I think with a lot of RJ cases it’s not having the issues into categories– saying ‘we won’t do X’. It’s looking at the individual circumstances and trying to consider, well is there anything we can do to help and would it be safe and appropriate? And if people are accepting responsibility- is it possible to go ahead? That’s’ the stance we try to take. And yes, I do think that RJ should be used for DV cases.

Again, we would be led by the victim. We would let them know that all of those options are available, and be led by their preference and what they felt would be most appropriate in their circumstances and what they would like.

For her the likelihood was that a meeting would always reduce the risk, and that’s a question we should always ask ourselves – as well as what is the risk of having the meeting, what is the risk of not having the meeting? Certainly for the victims that we’ve engaged in the process, I think they wanted us to consider the risks of not having the meeting, but I think they also really wanted us to prioritise the benefit to them of being able to communicate, and have their say, and have a sense of empowerment.

The others have been very helpful – the victim has been highly satisfied, with more peace of mind, a greater feeling of empowerment, inclusion and respect. In all of those cases, I think, the victim was of the opinion that the communication had really helped them to understand the impact and effect it had had. In all the cases I’m aware of, I don’t think there was a further case of violence after the conference.

This can sometimes be problematic and depending on which agency/agencies the victim has contacted, or been in contact with. As with many other restorative services, there are gate-keepers. This is particularly prevalent in victims of domestic violence as the risk of secondary victimisation is high. This can also be due to domestic violence being, historically, a private matter. As signified in the change of rape within the martial relationship. Therefore, as good practice, to ensure that not one contact has the primary ownership on a victim’s decision and access to rights there should be a continual support and offer for restorative justice. Specifically, Victim Support was highlighted as a good channel for victim referrals to come through. **Certainly. I think that if victims are told about it as early as possible but not for services to be pushed on somebody, so if they’re a victim of a serious offence- I don’t think it should be pushed on them by practitioners at that point, just so they know it is an option that they can take up if they want to at a later point. So, ideally when victims are told about Victim Support it would be useful if they could be made aware by the Police or Victim Support of RJ.**
A suggestion for this and as highlighted good practice guidance by the practitioners the offering ongoing follow-up support with similar organisations should be paramount in the practice. This is, in essence, seeing restorative justice and its practitioners as one tool of the justice system, but not its only in terms of offering rehabilitation for both the offender and victim.

A: The referrals would have come from the police or the court, and it would have been our responsibility as RJ officers to speak to both parties, but we’d usually meet with the harmener first, to get a sense of their willingness to engage and get a sense of what they were willing to do, and then go and visit the victim to explain the services that we offer, because we would not only offer restorative services but we would offer to keep them updated during the person’s order, we explain what order they were on, and ask them how frequently they would like to be updated on the work of the harmener, and the programmes they are engaged in, so we would give them updates at various stages of the process. There are several things that we offer the victims, but one of the offers definitely is just to explain RJ and the options available, the communication either directly or indirectly – and indirect could be receiving a written communication from the harmener.

You shouldn’t undertake this kind of work unless you can offer ongoing support afterwards.

First thing they should have one of the facilitators that they are working with that they contact and that they can use as long terms support, if they have a key worker then that key worker should be the means of their support but they should never be left alone, either party in fact, should be left alone ongoing.

Despite many practitioners initially stating that they didn’t use restorative justice in the context of domestic violence, with further investigation it was found that this original stance was informed by a constraining definition and understanding of the term. Most often, gender specific violence was referred. However, although this type of domestic violence is extremely serious it is not the only type of violence that occurs in the domestic setting. For example, when participants were asked to consider their experiences of restorative justice in sibling or parent-child violence the results were revealing to the fuller extent of the practice. Where advantages like the formality of the conference, the opportunity for safe and controlled dialogue and the affect this had on the agreement were cited. Practitioners were often open to using restorative justice with young people, in the cases of a new relationship and where the offender has started becoming violent towards the partner, this service was offered more readily than that for adults.

In addition to this, in cases of gender-specific violence it was often good practice for the micro community of family to be present. This was because it was acknowledged that family members avn be affected by the violence, sometimes even condone it. It would be an opportunity for the victim, with the support of other professionals to make it clear that this was unacceptable behaviour. This, as one practitioner highlighted allowed for shame- whereas violence may be part of someone’s behaviour, in the wider community it is deemed as unacceptable “Yeah, absolutely, certainly. I think it’s really important. Most people don’t offend not because they it’s wrong but they have a fear of getting caught. And there is a breakdown in starting to how we fully remember. There is that shame aspect that stops a lot people from doing things they might otherwise do. So yeah I think that’s really really important, that the community is involved”.

It is worth noting that the UK College of Family Mediators has a Domestic Abuse Screening Policy whose principles require that mediators routinely screen for domestic abuse before a decision is taken to proceed with mediation; screening must take place separately with each participant; in reaching a decision about whether to proceed, priority should be given to the individual’s perception of abuse over any judgment about levels of severity or types of abuse; if in doubt about the appropriateness of mediation the mediator could consult with his/her supervisor and if doubt still
remains, must not proceed. Also, whether or not domestic abuse emerges as an issue at an initial screening, continued screening must take place throughout mediation and a written record made of all such screening. In cases where the abused person has made an informed choice to mediate, the mediator's responsibility is to ensure that appropriate arrangements are agreed which so far as possible guarantee that relevant safety issues are addressed and reviewed. Such issues will include for example the exploration of safety matters, implications for children, safe termination, voluntariness and informed consent. If mediation does not proceed, mediation must be terminated safely, other alternatives to mediation explored, and appropriate advice and referral possibilities should be considered, if possible (College of Mediators 2014).

As in any practice, the safety of the victim must be the first priority in every intervention from any part of the system. This means addressing the concern in all immediate interactions as well as understanding the long term impact on their safety and future lives whether this is with or without the offender. In deciding what action might be taken, there are obvious safety precautions for practitioners to take in these types of sensitive and complex cases. However, only the victim can really know the true extent of harm, both physical and mental and while some may not articulate this sense or the right to do so, it is our hope that restorative justice can provide a means of this advocacy and empowerment.

4. Conclusion
In conclusion, it is clear that there is a lack of legislative and sentencing position on the dealing of domestic violence cases. There is, as we can see from the analysis, a clear recognition and ongoing dialogue between the criminal justice agencies concerning the complexity of domestic violence. This includes highlighting its systematic nature and emotional and psychological trauma of primary and secondary victims within the domestic environment. It also highlights the problematic nature of prosecution and subsequent punishment for the offence. With a clear concern of using restorative justice in such cases, advocacy groups in particular have been concerned over re-victimisation.

Despite apprehension of using such practices, as part of the overall RJ process, it is acknowledged that cases of DV have been discussed as part of the wider restorative dialogue. The field of professionals addressing domestic violence understands, after many years of practice, service, research and other experience, that the only safe and effective approach to domestic violence is to hold the abuser accountable. However, it is acknowledged that the victim should be a part of this disapproval and accountability and should be empowered to do so, in a way that is safe, controlled and addresses the needs arising from the harm that has been caused.

From the interviews held by practitioners, the domestic violence arena is evidently highly politicised. This stemming from domestic violence being of a private nature and a controversial one. Official bodies, such as the Government and Police should be externally dissuading any action that is not punitive. This is from fear that any alternative would be seen as condoning the practice. However, there is a clear realisation that restorative justice has its place in the rehabilitative agenda and has already made significant impact on the lives of victims, offenders and the community.

5. Bibliography


Asian Criminology


