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Restorative Justice and Harmful Sexual Behaviour (RJHSB): A Commentary

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Restorative Justice (RJ) has been practiced around the world in various settings, including criminal justice, for many years (Shapland et al., 2004; 2006). In the UK, there has been a long history of its use with the intent to allow those who have committed offences and victims of crime to interact with one another via letters or direct meetings (known as a restorative justice conference). These processes enable the person who has caused the harm to apologise for, or at least acknowledge, the crime they committed, and the victim-survivor to express what the consequences of the offence were for them. The intention is to achieve a constructive outcome from which each party can move forward positively with their life.

While RJ is widely recognised as a suitable response to criminal behaviour, it has often proved controversial in the field of sexual violence (Daly, 2006; 2012). It can be perceived as revictimising, and even retraumatising for the victim-survivor (McGlynn et al., 2012; Marsh and Wager, 2015), and concerns have been raised by victim-survivors and practitioners about the impact of power imbalances between the parties (Curtis-Fawley and Daly 2005; Gavrielides, 2015; Jeffries et al., 2021).

In general, RJ takes place when a person who has committed an offence agrees to take part following a suggestion, usually by a probation officer, during an interview for a Pre-Sentence Court Report (Jones and Creaney, 2015). In such cases, the victim-survivors' views about involvement are later sought through organisations such as local Police Services, some of which were accredited with pioneering RJ in England and Wales in the late 1990s. From 2015, many Police and Crime Commissioners (PCCs) commissioned providers to deliver RJ which was victim-initiated rather than through a suggestion to the person who had caused the harm. Practitioners from the RJ

services informed their local probation Victim Liaison Units (VLU) about the availability of this service, as it is the VLU who maintain contact with the victims of crimes where the person who has harmed them received 12 months imprisonment or more.

As a result of this many victim-survivors of sexual offences came forward, seeking an RJ interaction with the person who sexually offended against them. Some were adults who had been abused as children while others were assaulted in adulthood. Low rates of prosecution and high attrition strengthened the case for the use of RJ for these crimes of sexual violence (Curtis-Fawley and Daly 2004).

The impact of child sexual abuse

Finkelhor and Browne (1985) outlined four factors which help understand the particular impact of sexual abuse. These are:

1. **Powerlessness:** probably the most universal negative impact of child sexual abuse stems from the victim-survivor being rendered powerless by

the abuser, either through grooming, manipulation, threat or actual violence, to give up something extremely personal to them i.e., sexual contact. This feeling of powerlessness can become particularly toxic and impact on the victim-survivor's wider worldview, so they feel disempowered and therefore vulnerable in general. Victim-survivors are particularly vulnerable to feelings of powerlessness if they are living with the person who is abusing them (e.g. if it is a family member) and is unable to leave. Their feelings of powerlessness may deepen further if, when they tell others of the abuse, they are not believed.

2. **Betrayal:** this may be particularly felt by children abused by adults who have a general obligation to care for and protect them, most especially if that person is in a parent or carer role.
3. **Stigma:** Victims of sexual abuse often feel different and 'marked out' from others due to having experiences which others may not be able to relate to or understand. The stigma may come from feeling dirty, damaged and ashamed - often due to misplaced self-blame and negative public perceptions of victims of child sexual abuse.
4. **Traumatic sexualisation:** in children, having a sexual experience without consent may psychologically and physically impact their sexual development so that they become confused and disorientated about their developing sexuality.

Similarly, adults who are subjected to sexual assaults can also experience a profound sense of powerlessness (Hilberman, 1978) and social betrayal. Powerlessness might manifest both at the time of the assault (as evidenced by the tendency for experiencing tonic immobility or freezing (Möller et al., 2017, Gbahabo & Duma, 2021)) and in the aftermath, due to the lack of control they have over their emotional reactions to the assault. Social betrayal is more likely where the person who harmed them is someone known to and trusted by them (Gómez, 2022).

How restorative justice can help

RJ conferences can be particularly powerful and effective when the offence in question is sexual, as it seeks to address and rectify these feelings of powerlessness experienced by the victim-survivors. A vital part of this process involves careful preparation on both sides (e.g., with the victim-survivor and the person who has harmed them) by highly skilled, trained and experienced specialists (Keenan and Zinstaag, 2014). Only those with such levels of training and experience should be involved in the process, although there is currently no standardisation or professional regulation of this role except by the Restorative Justice Council (RJC). The RJC offer registration at Foundation, Intermediate and Advanced level, however this registration is voluntary, although some PCCs require registration of their services by providers.

Victim-survivors have often reported a strong positive effect from the RJ conference (Batchelor, 2019). In particular they reported:

- Positive outcomes with regard to being able to express themselves clearly and openly to the person who offended against them during the RJ conference. This provided the opportunity to voice their story and be heard (Daly, 2002) and in doing so they often report regaining of a sense of control in their lives (Batchelor, 2023).
- Having the chance to humanise the person who sexually offended against them, such that they were better able to come to terms with the abuse. They could see that the person who harmed them was not a 'monster' which they had considered them to be in the past, but was often revealed as a fallible human being who had experienced negative consequences of their behaviour, even if they did not overtly apologise for, or even fully acknowledge it.
- That the RJ experience often had a more significant positive effect than psychological counselling they had previously received in relation to the abuse. Engaging with the person who harmed them directly in a restorative context, rather than engaging in a professional process with someone who may not have expertise in the area of sexual violence, and certainly did not have knowledge of the offence itself when it was committed (Batchelor 2023), was found to be helpful.

It would be unrealistic to assume that all such RJ processes will have the positive outcomes described above, and there remains a need for further review and evaluation of RJ in cases of harmful sexual behaviour to build a more substantial evidence base. Less still is known about the psychological and risk-related impact of RJ on those who sexually offend (Palmer, 2023 PhD work in progress).

While some research has claimed that people who commit sexual offences often show very little concern for the impact of their actions (Seto, 2005) it has also been noted that concepts of shame and guilt, both of which are central to the restorative process, can help boost empathy development (Howells and Day, 2003; Hanson, 2003; Greenwald and Harder, 1998). Furthermore, a study with RJ practitioners in England and Wales (Cawley, 2023) found no evidence to support the belief that some people with sexual convictions display negative attitudes in relation to their offending when taking part in restorative events. It has been suggested that victim-survivors of sexual offences find difficulty in having their 'voice' heard (Curtis Fawley and Daly, 2005; Jeffries et al, 2021) and accessing effective psychological support (Herman, 2005). Many initiatives have been established since the early 1990s to address the needs of people who have been convicted of sexual offences (e.g., Sex Offender

Treatment Programmes in prison, hospital and community settings; probation and police supervision; Circles of Support and Accountability; Personality Disorder pathways, etc.). Government agencies may have felt pressure from strong media and public concern to be seen to be acting to address sexual offending because of the high level of anxiety and concern it arouses in the public.

Services for victim-survivors have, however, been more limited, perhaps because this issue is not so much at the forefront of public anxiety and concern regarding ongoing risk to vulnerable members of society. A study of victim-survivors' views (Marsh & Wager, 2015) reported that 56% felt that RJ should be available as an option within the criminal justice system. There is a strong argument that victim-survivors should be provided with these opportunities, particularly given the evidence that significant psychological healing and progress can be made when such interactions are carefully managed by involved agencies.

An evaluation of the RESTORE Programme in Arizona, (Koss, 2017) provided the first published empirical evaluation of the application of RJ to cases of sexual violence. The results revealed at intake, 82% of victims met diagnostic criteria for post-traumatic stress disorder (PTSD) compared with 66% post-meeting, and 83% reported a sense of justice had been achieved through participation in the programme. Whilst the study was limited due to the relatively small sample size, and the falls in levels of PTSD did not attain a level of statistical significance, the results are still encouraging.

February 2023 saw the publication on an HMPPS Policy Framework on Restorative Practice' to 'February 2023 saw the publication of the HMPPS Policy Framework on Restorative Practice (which incorporates restorative justice services) can, when delivered effectively, result in improved victim satisfaction and reduced reoffending, bringing benefits to victims, perpetrators and their communities. Under the Code of Practice for Victims of Crime (www.gov.uk) all victims who report an offence have the right to be referred to support services, including restorative justice services. HMPPS play a role in enabling access to these services".

The challenges

There is expressed anxiety that an RJ conference might reactivate memories of the abuse for the victim-survivor (McGlynn et al, 2012). However, victim-survivors often report that the abuse they experienced is not 'in the past' for them but an ongoing experience, thus not something which is reactivated by the RJ experience. Furthermore, the RJ process is always a fragile one because either party can withdraw from the conference at any time. Not only does this mean that resources could be put into a conference with no outcome, but there may also be an assumption that the

person who has harmed could 're-abuse' the victim-survivor by cancelling the conference and thereby further re-exerting control over them, although in reality there is no evidence to support this happening (Cawley 2023). Indeed, victim-survivors have reported that they can still feel empowered (Gavrieleides, 2015) if there was such an outcome as they consider that they were prepared to face the person who harmed them and made preparations to this end, even if that person felt unable to proceed.

Another problematic issue is that victim-survivors of sexual offences lack a general advocacy service available to them and therefore may not know about the possibility of RJ when it is available. Probation victim liaison services do excellent work in conveying information to victims around licence conditions and other matters relating to the offence, but they do not represent the views of the victim per se. RJ in cases involving sexual offending cannot be initiated by the person who has harmed and it is for the victim-survivor to have control over the situation by requesting the input if they wish.

In all RJ conferences both the person who has harmed and the victim-survivor must give informed consent to attend, though their motivation for attendance may vary. Concerns about the motivation or attitude of the person who has harmed (for example that they only wish to engage in RJ to demonstrate progress in the sentence and impress a parole board) may in fact be misplaced as, once again, this focus denies the significance of the voice of the victim-survivor (Curtis-Fawley and Daly, 2005). Ideally in such a conference the person who has harmed would be wishing to apologise and use the process to take responsibility for their abusive behaviour and thereby make amends (Campbell et al., 2006). However, if this is not the case and even they maintain adversarial attitudes to the victim-survivor, the victim-survivor may still wish to meet to express their own views about what was done to them and thereby take back control which was denied to them when they were victimised. Risk assessments of the likely impact on both victim-survivor and the person who harmed them are a significant part of preparation carried out by RJ practitioners, who should not allow a conference to proceed if they believe that the experience would be psychologically harmful to either participant.

The following diagram (Batchelor, 2016) usefully sets out some examples of a victim-survivor's needs in seeking an RJ interaction with the person who offended against them. It clarifies the kinds of outcome that might be reached and the level of input that is, accordingly, required from the person who has sexually offended.

Victim-survivor need...	Minimum requirement from person who harmed
<ul style="list-style-type: none"> To participate To get support To get information To be taken seriously by “the system” To have a voice in the process To have their needs recognised To be listened to (by someone) To put offence in the past To get perpetrator out of their life To express emotions (e.g. anger) 	<p>Nothing – the victim-survivor could meet all these needs through meeting the RJ facilitator, telling their story, being asked their opinion, being reassured etc.</p>

Victim-survivor need...	Minimum requirement from person who harmed
<ul style="list-style-type: none"> To help the person who harmed them (e.g. quit drugs) To make agreement with the person who harmed them about future relationship To hear the person who harmed them say they will not be a target in future To prevent the person who harmed them reoffending To get rid of self-blame/ guilt 	<p>To attend and offer something specific (could be achieved without admission of guilt)</p> <ul style="list-style-type: none"> Willing to go to rehab/ education/ etc. Willing to discuss future (e.g., I will not speak to you if we pass in street etc). Willing to say they will not target victim-survivor. Willing to say they will reduce/stop offending.

Victim-survivor need...	Minimum requirement from person who harmed
<ul style="list-style-type: none"> To face the person who harmed them/ confront their fears/ remove “monster” image of that person To talk about what happened To talk about the impact of the offence To express emotions to perpetrator To regain control To show the perpetrator they are no longer a victim/ survivor or vulnerable as such. To show the perpetrator they have moved on 	<p>To attend and to listen – the victim-survivor needs the person who harmed them to be there and listen to them, but they don't require a response..</p>

Victim-survivor need...	Minimum requirement from person who harmed
<ul style="list-style-type: none"> To understand what happened To understand why it happened To get answers to questions about what happened To get an apology To get reparation 	<p>Admission of guilt and willingness to offer something specific – These needs cannot be met if the person is denying the crime. However, they could be partially met by the person taking partial responsibility.</p> <ul style="list-style-type: none"> Willing to explain what happened Willing to explain thoughts & feelings Willing to answer questions Willing to apologise Willing to agree & carry out reparation

Preventing further harm

While the benefits of RJ for victim-survivors directly impacted by crime are great, there are secondary benefits in that RJ might serve as a preventative solution, reducing the likelihood of sexual recidivism by promoting the desistance process for those convicted of crime (Claes and Shapland, 2014). An investigation into desistance amongst a group of men with sexual convictions found that the biggest group of those desisting attributed their desistance to cognitive

transformations or changes in thinking, one being recognition that they had caused harm (Harris, 2014). A restorative meeting with the victim could provide a person convicted of crime with the opportunity to achieve this recognition. 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 can impact all aspects of the victim-survivor's life, and it plays a role in their development and social functioning. It is, therefore, important to contemplate and process the impact of this abuse. This is what the restorative justice process can facilitate (Gavin et al, 2022). Further research and evaluation of the initiative is required to expand on the existing evidence base. However practice this far has demonstrated that RJ in sexual offending contexts is a process which enables the voice of the victim-survivors of sexual offences to be heard when they are often not, and for those who have harmed to be able to take constructive responsibility for their behaviour with a view to reducing its negative impact.

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Useful websites

<https://www.thamesvalley-pcc.gov.uk/victims-first/victims-services/restorative-justice/>

The Code of Practice for Victims of Crime in England and Wales and supporting public information materials - GOV.UK (www.gov.uk)