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Title: Restorative Justice for Sexual Violence Offences in England and Wales: The Challenges ahead.

Abstract

While an increased number of restorative justice (RJ) cases involving sexual violence is observed across England and Wales, the extent and scope of its use, remains unclear. This article presents findings of a brief survey distributed amongst RJ practitioners across England and Wales which aimed to understand the use of RJ in cases of sexual violence. We found that while RJ is widely used in such cases, a comprehensive national picture remains unknown. We found problems both collating and analysing the data because of definitional differences, varying organisational recording mechanisms (within and between organisations and geographical boundaries) plus a lack of national direction across the criminal justice system (CJS). We call for the development of a sound evidence base that will promote and support the use of RJ for cases involving sexual violence.

Key Words

Restorative Justice, Sexual Violence, Criminal Justice, Data Recording

What is Restorative Justice?

Despite academic debate regarding an agreed definition of RJ, it is principally based around dialogue between the person who has caused harm and the person who has been harmed. RJ is a non-adversarial process with an emphasis on repairing harm and relationships through a

mediated encounter¹. RJ practice is diverse in the contexts in which it is delivered across the criminal justice system and other areas such as schools, prisons, and the health sector. It is also diverse in its methods of delivery, often delivered in face-to-face meetings, it can also be applied where parties do not meet directly, for example, through the exchange of letters or 'shuttle mediation'.

Across England and Wales, an RJ intervention can be triggered at the request of victims, offenders, or persons acting on their behalf. This request is generally made to one of the RJ service providers and is usually directed to the geographical area where the offence was committed. Thames Valley Police pioneered RJ in England and Wales in the late 1990s and as other police forces later embraced RJ, other providers also started to deliver it. There is now a range of providers delivering RJ and as well as the police, others include victim service organisations, organisations working alongside prisons many of which are commissioned by Police and Crime Commissioners (PCCs). PCCs are a major source of funding for RJ providers and in addition to these, others receive monies from the third sector, local authorities and grant funding. Across England and Wales, RJ is also used for a wide variety of offence types meaning that RJ, as an intervention, is flexible, responsive, and versatile.

However, since its introduction, anecdotally whilst we know the use of RJ has increased, no governing body has been established to monitor or centralize information about providers.

¹ Dan Van Ness & Karen Strong, *Restoring Justice*, (5 ed. Routledge 2014)

Despite the bulk of RJ delivery (across England and Wales) receiving public funds, the operationalization and reporting of outcomes is contained at a local level; as such providers of RJ operate in silos making it difficult to interrogate the national picture and scale of RJ across England and Wales, particularly in cases of sexual violence. Yet whilst its use is not clear in cases of sexual violence, the diversity of contexts and methods of delivery, present practitioners with a range of options for use in these cases.

Sexual Violence and Restorative Justice

Several studies highlight the benefits of engaging in RJ for victims. One frequently cited study by the Ministry of Justice (MOJ)², found in a randomised control trial of three RJ programmes in England with adult offenders, that 85 per cent of victims who took part were satisfied with the process. Whilst this fails to identify specific benefits, one study in New Zealand³ helped address the vague notion of ‘satisfaction with the process’ in that they found the majority (75 per cent) of respondents were able to name at least one way that RJ had benefited them. Twenty-five per cent felt benefit in having their say and telling the offender how the offence affected them. Other benefits include hearing the offender’s point of view and their understanding of what happened (21 per cent) and a feeling of closure for victims and that they could move on (17 per cent). Evidence has also been presented in support of the view that an RJ intervention can

² Ministry of Justice evaluation: implementing restorative justice schemes (Crime Reduction Programme). Final Report (2008)

³ Restorative Justice Victim Satisfaction Survey. Research and Evaluation, Ministry of Justice. New Zealand Government (2016)

lower levels of post-traumatic stress disorder (PTSD) for burglary and robbery victims.⁴ A study examining adult robbery and burglary victims, prior to sentencing, in London, concluded that post-traumatic stress symptom (PTSS) scores were significantly lower among victims assigned to an RJ intervention when compared to the customary criminal justice processing alone. However, while RJ as an intervention has been delivered across criminal contexts in England and Wales since the late 1990s, from the first authors own experiences as an RJ practitioner, only across the last 6 years has it become a more visible option for sexual violence cases. There has been and is disagreement over the use of RJ for sexual violence cases represented by differing views from the opposing protagonists. Debates around the use of RJ for cases of sexual violence are well documented, and it is not the aim of this article to re-present in detail the arguments here, many have done this effectively already^{5 6}.

⁴ C. Angel, *Victims Meet Their Offenders: Testing the Impact of Restorative Justice Conferences on Victims' Post-Traumatic Stress Symptoms*. PhD dissertation, University of Pennsylvania. (2005)

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

⁶ F. Marsh & N. Wager, *Restorative Justice in cases of sexual violence. Exploring the views of the public and survivors*, 62(4) *Probation Journal* 336-356 (2015)
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The case for its use for sexual violence is hampered by a paucity of research in the field ⁷ ⁸ and this is evidenced by a systematic review of peer-reviewed literature that globally found only one eligible study ⁹.

An evaluation of the RESTORE Programme in Arizona, ¹⁰ provided the first published empirical evaluation of the application of RJ to cases of sexual violence. The results revealed at intake, 82 per cent of victims met diagnostic criteria for PTSD compared with 66 per cent post-meeting and 83 per cent 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 PTSDs did not attain a level of statistical significance, the results are still encouraging. The use of RJ for these offences is also supported by the anecdotal positive experiences of RJ practitioners across England and Wales, including two of the authors of this paper and this concurs with the feelings of people who have been victimized by sexual violence that have

⁷ M. Keenan & E. Zinsstag, *Restorative Justice and Sexual Offences Can »changing lenses« be appropriate in this case too?* 97(1) [Monatsschrift für Kriminologie und Strafrechtsreform](https://doi.org/10.1515/mks-2014-970113) 93-110 (2014) <https://doi.org/10.1515/mks-2014-970113>

⁸ S. Jülich & N. Thorburn, *Sexual Violence and Substantive Equality: Can Restorative Justice Deliver?* 2(1) *Journal of Human Rights and Social Work* 34-44. (2017)

⁹ D Gang et al, *A Call for Evaluation of Restorative Justice Programmes*, 22(1) *Trauma, Violence, & Abuse* 186-90 (2021) <http://dx.doi.org/10.1177/1524838019833003>

¹⁰ M.P. Koss, *The RESTORE program of restorative justice for sex crimes: Vision, process, and outcomes.* 29(9) *Journal of Interpersonal Violence* 1623-60 (2017)

shared their own positive experiences of an RJ intervention in or on public platforms ^{11 12}.

Acknowledging these experiences, we then set about identifying the potential for its use.

To begin this, we examined Crown Prosecution Service (CPS) data for cases of sexual violence across a 12-month period ending March 2022 in England and Wales¹³: Successful prosecution of sexual offences found 9,409 convictions in this period, with 57 per cent of people convicted of rape pleaded guilty and 87 per cent of those convicted of ‘other sexual offences’ also pleaded guilty. Given that RJ often takes place with those who have pleaded guilty to the crime and accepted some level of responsibility, the rates of guilty pleas amongst those convicted of a sexual offence indicates significant opportunity to offer an RJ intervention to victims and people convicted of a sexual offence. However, there are a number of factors that can limit the number of potential RJ interventions. Figures from the Crime Survey of England and Wales ¹⁴ suggest that only 5.5% of victims (including those for sexual offences) could recall the offer being made, this will limit the number of people putting themselves forward for RJ.

Additionally, experiences of practitioners identifies that whilst an offer could be made, parties

¹¹ BBC News, Rape Victim Meets attacker to forgive him. (9th January 2014)
<https://www.bbc.co.uk/news/uk-25666416>

¹² Emma’s Story, Restorative Justice Council Publication Spring Edition (2016)

¹³ . Crown Prosecution Service. Data Summaries: Quarterly reports. (2022)
<https://www.cps.gov.uk/sites/default/files/documents/publications/Prosecution-Crime-Types-Data-Tables-Year-Ending-March-2022.xlsx> (Tab 2.1, 2.2, 4.1, 4.2)

¹⁴ Office for National Statistics Restorative Justice, year ending March 2011 to year ending March 2020: Crime Survey for England and Wales (2022)
<https://www.gov.uk/.../crime-in-england-and-wales-year-ending-march-2021>

may not want to meet, offenders may not accept full responsibility or proffer answers not to the satisfaction of the victim.

Whilst we have noted anecdotal observations, while interesting, they are of course insufficient, and an understanding of the actual scale and use of RJ in this context is required. This commentary, therefore, reports on an exploration of the recorded nature and scale of RJ in sexual violence cases across England and Wales between 2017 and 2020.

Examination of the Issues

The Study

The aim of the study was to garner an understanding of the scale and scope of RJ interventions used for offences of sexual violence in England and Wales.

Methodology

An online questionnaire targeting RJ practitioners across England and Wales was developed and the data was collected using Qualtrics an online survey software package. The absence of a central register across England and Wales, made distribution of the survey problematic. However, as an experienced practitioner, the first author was aware of two organisations who could assist and who together have access to the largest number of RJ providers and practitioners across England and Wales. The first and largest was the Restorative Justice Council (RJC) who are an independent membership body that promote quality in restorative practice, provide quality

assurance in setting clear practice standards and offer a national voice in advocating awareness, accessibility and public confidence in the delivery of restorative justice. The second organisation, Why Me? are a national charity delivering and promoting RJ <https://why-me.org/what-is-restorative-justice/> for everyone affected by crime and conflict.

Through these organisations, a questionnaire was circulated via their monthly bulletins in August 2020 and received $N = 49$ responses, 53 per cent of which would appear to be from unique organisations. This was a good representation of RJ providers in operation. However, two of the larger providers, Remedi and Restorative Solutions, operate over several geographical areas and where the respondent had only indicated the name of the provider, it was not possible to identify where they had responded from. This impacted on our ability analysing results comparing responses from the same providers at the same location.

The questionnaire consisted of 10 questions in relation to the experience of the RJ practitioner and their organisation in terms of sexual offence cases. Respondents were asked to quantify referrals and interventions and where they were not able to do this, state why. We asked some detailed questions in terms of what types of offences they had used RJ for and what types of interventions had they used. To answer these, respondents were presented with several options to select, as well as for some questions, an opportunity to provide free text.

The government's offence classification ¹⁵ for England and Wales was used to identify if RJ had been used for what could be classed as the more serious sexual offences and this included eight

offences of: rape of female and males aged under 16, rape of females and males aged 16 or over, sexual assault on females and males aged under 13 and sexual assault on females and males aged 13 or over. A further option of 'other' sexual offence was presented and where selected, respondents were invited to state what the offence was.

Furthermore, we made a Freedom of Information (FOI) request asking for the latest returns from PCCs and the RJ data for 42 Forces was received for the period 1st April 2019 to 31st March 2020.

What we found

We set out to understand the scale and nature of RJ interventions being delivered in cases of sexual violence across England and Wales. From the questionnaire distributed to RJ practitioners, where we were able to identify participants within the same providers at the same location, we found inconsistencies in answers, rendering some data unreliable. For example, when asked how many people were employed by your provider; one respondent answered one, whilst two other respondents, answered six and 10. Likewise, when asked how many sexual offence referrals, if any, received an intervention; one respondent answered one, whilst the other two respondents answered five and 25. We concluded these inconsistencies were likely a result of at least two issues. The first may be a genuine lack of knowledge of the organisation, whereas the second is likely an issue relating to differing interpretation of terms such as 'referral' or 'intervention.'

¹⁵ Offence Classification Index – Gov.Uk (2021)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/977202/count-offence-classification-index-apr-2021.pdf

We also found that not all respondents were able to supply accurate data. When asked how many cases of sexual violence had received an intervention within the last three years, only 31 per cent of respondents could provide a specific number, whilst 62 per cent were unable to quantify this, and so stated unsure or provided an approximate, and seven per cent did not provide an answer. The results of this initial examination of RJ delivery across England and Wales, presents a significant challenge in our ability to with any accuracy, map the scale of RJ delivery in cases of sexual violence. Practitioners' failure to provide complete and consistent responses was disappointing.

Despite the issues noted, some insight into RJ delivery was possible. First it is important to note that from all the providers who responded, only one indicated they do not deliver RJ in cases of sexual violence. Second, of those who were willing to deliver cases involving sexual violence, 80 per cent responded that they were active in their delivery of RJ. Third, responses revealed that across all providers, interventions were delivered for all sexual offence types as presented from the government's offence classification index.

In summary, this survey highlights a) RJ is being widely considered for use in cases of sexual violence across England and Wales; b) RJ is being used across the majority of RJ providers; and c) RJ is being applied to a variety of sexual offences including rape and sexual assault of females and males.

Commentary

Our aim was to make sense of the scale and nature of RJ delivery in sexual violence cases. While we found RJ is indeed being used widely and for a range of sexual offences, a comprehensive picture could not be concluded. Combining this and our knowledge of the field, we note two key issues regarding the delivery of RJ in relation to sexual violence cases. The first being an inconsistent approach across England and Wales regarding how and what data is captured and/or measured in terms of RJ activities. Second, are the variable definitions of key terminology, resulting in providers adopting local interpretation, contributing to the unreliability of the data collected. In 2004, a *Best Practice Guidance for Restorative Practitioners* was produced by the Training and Accreditation Policy Group.¹⁶ This guidance, in common with later guidance from other documents from the Association of Chief Police Officers ¹⁷ and the Restorative Justice Council, ¹⁸ omits suggestions regarding data capture, management and measurement. It is, therefore, perhaps unsurprising we reach these conclusions when there is a lack of national direction and co-ordination of RJ provision across England and Wales, and this reflects how the RJ provision across England and Wales has developed over recent decades.

With a lack of national direction and coordination, no centralized, or at least coordinated approach to data collection exists. This means it is not possible to fully understand what RJ provisions are being delivered and who they are being delivered to on both a local and national scale. Whilst our initial examination of this issue did not ask a question about data capture

¹⁶ Criminal Justice System, *Best Practice Guidance for Restorative Practitioners and their Case Supervisors and Line Managers. Conclusions and Recommendations of the Training and Accreditation Policy Group.* (2004)

¹⁷ ACPO *Restorative Justice Guidance and Minimum Standards.* (2011)

¹⁸ Restorative Justice Council *Restorative Practice Guidance.* (2020)

systems, anecdotally we are aware that there are differing systems in use. While the MOJ do not intend to mandate or standardize RJ data capture, as ‘a new system would increase administrative burdens’;¹⁹ without agreed national standardized performance measurements of outcomes it is difficult to compare the effectiveness of interventions and providers. This may not serve the victims' or the offenders' best interests. Whilst one provider may appear to be delivering a high number of quality interventions, this may not be the case if standard comparisons could be made against other providers. Without a national direction on engagement with the process, for a number of reasons including funding and logistical, victims generally approach their local RJ provider, doing this unaware of the quality of the RJ provision. If victims were able to access standardized data on all providers, we would suggest they would seek to engage with ones outside their local area, particularly in cases where interventions would appear to be of a higher quality than from their local provider. This is most pertinent for more serious and complex cases, such as sexual ones. Whilst we accept that where funding comes from PCCs, providers will be unlikely to take cases that have no link to their area, under current arrangements and without national guidance, this practice will continue, and victims will have to accept the service they are offered.

We accept that there has been some national direction in the production of the Victims Code of Practice (VCOP)²⁰, and this highlights the victim's **Right** to receive information about RJ after

¹⁹ Ministry of Justice Restorative Justice Action Plan for the Criminal Justice System for the Period to March 2018. (2014)

²⁰ Code of Practice for Victims of Crime in England and Wales (Victims Code) (2021)

they have reported a crime. Victims have been let down by the inadequacies of court processes that lead to secondary victimization and re-traumatization for many of them, leaving them feeling frustrated with many questions unanswered ²¹. The RJ engagement though can facilitate victims to tell their story, in their own words and without interruption, which is so often desired by them ²². The VCOP outlines the victim's **Right** to receive information from the police about RJ following the report of a crime and how to access RJ services in their local area. Police forces who are in prime position to make the offer as they are generally first to receive the report of a crime by a victim, fulfil their obligations in differing ways. Examples include; crime victims being made aware of RJ by a letter with the crime number (Lancashire and North Wales), or by sending a text to victims with the crime number and a link to further information including RJ (Greater Manchester). Whilst the code does provide direction, that only 5.5% of victims can recall being made aware of RJ, clearly reflects the ineffectiveness of these approaches. The police are not alone in informing victims of their **Rights** and a greater effort is required from all service providers who have responsibility for meeting the **Rights** under the code at any stage of the criminal justice process.

Finally, while the benefits of RJ for victims 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 ²³. An investigation into desistance amongst a group of men with sexual convictions found that the

²¹ Supra 6

²² Supra 6

²³ B. Claes & J. Shapland, Desistance from Crime and Restorative Justice. 4(3) Restorative Justice, 302-322 (2016)

biggest group of people desisting, attributed their desistance to cognitive transformations or changes in thinking, one being recognition that they had caused harm ²⁴. A restorative meeting with the victim could provide a person convicted of crime with the opportunity to achieve this recognition. It is possible that the lack of national direction has resulted in policies being produced for the prison and probation service ²⁵, that have failed to identify RJ as a promotive factor to reduce recidivism.

Conclusion

Our examination of the scale and scope of RJ provision for victims of sexual violence across England and Wales provided an unclear picture. This in the main was due being unable to identify all RJ providers, there being a lack of standardised data collection as well as incomplete and conflicting responses to our request for information. There is some encouraging progress, however, and the work of the All-Party Parliamentary Group (APPG) Inquiry in England and Wales into RJ in September 2021 ²⁶ presented an opportunity to begin to address some of these issues. As part of its initial report the APPG were concerned to learn that currently there is no accessible national picture of the quality and quantity of RJ ²⁷ and it recommends further investigation

²⁴ D. A. Harris, Desistance from sexual offending: Findings from 21 life history narratives, 29(9) Journal of Interpersonal Violence 1554-78 (2014)

²⁵ Her Majesty's Prison and Probation Service. The HMPPS Approach to the Management and Rehabilitation of People Convicted of Sexual Offences. (2021)

²⁶ Restorative Justice APPG Inquiry into Restorative Practices in 2021/22 (2021)

²⁷ Restorative Justice APPG Inquiry, *supra* 26

should be undertaken by the MOJ in consultation with partners to develop guidance for gathering, standardising and using data²⁸. We believe this is a positive step forward and is much needed given our experiences in attempting to understand the scale and scope of RJ delivery in cases of sexual violence. We support an approach that will help produce a sound evidence base that will help promote and support the testimonies of those people who have experienced sexual violence and who have shared their life changing 'stories' having engaged in RJ.

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²⁸ Restorative Justice APPG Inquiry, *supra* 26

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