

What did we conclude?

Despite significant improvements in the treatment of rape victim-survivors and important legal and procedural reforms, it remains the case that so many victim-survivors feel betrayed by a criminal justice system which marginalises their interests and affords them such little justice.

While it is essential that we continue to reform the criminal justice system, this need not be the sole focus of change.

The Stern Review into the treatment of rape complaints called for changes which 'honour the experience' of rape victim-survivors⁴ and Sara Payne as Victims' Champion called for a 'redefinition' of justice to take greater account of the needs of victim-survivors.⁵ To take these points forward we need more debate as to what constitutes justice for victim-survivors, and the different ways of securing such justice.⁶

Restorative justice is one possibility to be debated. It may have a role to play in meeting some of the needs and expectations of some victim-survivors, by giving them a voice by which to tell of their harm, by granting a measure of control over the treatment of their complaint, by helping to ensure that their experience is honoured, treated seriously and with respect; such that they gain some measure of justice.

We must recognise the challenges of offering restorative justice in cases of sexual violence as they do demand greater scrutiny, greater preparation and risk assessment and therefore greater resources. But if we are to be attentive to the needs and expressed wishes of victim-survivors, we must be open to new developments and opportunities.

Contact

Dr Nicole Westmarland
School of Applied Social Sciences
32 Old Elvet
Durham
DH1 3HN

Nicole.westmarland@durham.ac.uk

Professor Clare McGlynn
Durham Law School
50 North Bailey
Durham
DH1 3ET

Clare.McGlynn@durham.ac.uk

sass.enquiries@durham.ac.uk

Every effort has been made to ensure that all information is accurate at the time of going to press in November 2011. However, changes may occur and Durham University reserves the right to amend or change any information contained in this leaflet at any time.

Copyright © Durham University 2011

Durham University and the Durham University Logo are registered trade marks of the University of Durham trading as Durham University. All rights reserved. ©

Design and Print by **hpm**group.

References

- 1 The full results of this research project will be published as "‘I just wanted him to hear me’: sexual violence and the possibilities of restorative justice' in 2012 in the *Journal of Law and Society*. [http://onlinelibrary.wiley.com/journal/10.1111/\(ISSN\)1467-6478/issues](http://onlinelibrary.wiley.com/journal/10.1111/(ISSN)1467-6478/issues).
- 2 Joanna Shapland *et al*, *Restorative Justice in Practice – Findings from the Second Phase of the Evaluation of Three Schemes* (2006) London, Ministry of Justice, *Restorative Justice: The Views of Victims and Offenders* (2007) and *Does Restorative Justice Affect Reconviction? – The Fourth Report from the Evaluation of Three Schemes* (2008) London: Ministry of Justice.
- 3 Shirley Jülich *et al*, *Project Restore: An Exploratory Study of Restorative Justice and Sexual Violence* (2010), available at: http://aut.academia.edu/documents/0121/2233/The_Project_Restore_Report.pdf.
- 4 Baroness Vivienne Stern, *The Stern Review – An Independent Review into how Rape Complaints are Handled by Public Authorities in England and Wales* (2010), London: GEO.
- 5 Sara Payne, *Redefining Justice: Addressing the Individual Needs of Victims and Witnesses* (2009), available at: www.justice.gov.uk/sara-payne-redefining-justice.pdf.
- 6 See further Clare McGlynn, 'Feminism, Rape and the Search for Justice' (2011) 31(4) *Oxford Journal of Legal Studies*; Nikki Godden, 'Claims in Tort for Rape: A Valuable Remedy or Damaging Strategy?' (2011) 22 *Kings Law Journal* 157-182.

Authors

Clare McGlynn is a Professor of Law in Durham Law School and co-editor of *Rethinking Rape Law: international and comparative perspectives* (2010). **Nicole Westmarland** is a Senior Lecturer in Criminology in the School of Applied Social Sciences and co-editor of *International Approaches to Rape* (2011). **Nikki Godden** is a doctoral student in Durham Law School.

Is restorative justice possible in cases of sexual violence?

Professor Clare McGlynn, Dr Nicole Westmarland and Ms Nikki Godden

Despite significant legal reforms, the criminal justice system continues to fail victim-survivors of sexual violence and, consequently, it may be time to consider additional and alternative means by which to provide justice. Restorative justice is one such possibility. However, there is significant scepticism as to its suitability for cases of sexual violence and such cases are generally excluded, meaning there is little empirical research in this area. We interviewed participants of a

restorative justice conference which addressed a case of historic child rape and other forms of sexual abuse.

The results of our case study provide good grounds for considering afresh the possibilities of restorative justice in cases of sexual violence. We suggest that for victim-survivors who wish to pursue this option and are properly supported to do so, restorative justice may offer the potential to secure some measure of justice.¹



What is restorative justice and when is it used?

The term 'restorative justice' describes a wide range of different practices which bring together offenders, victims and other members of the community to consider the impact of criminal wrongdoing and how the offender should make amends.

It relies on the offender acknowledging responsibility for the crime so the victim and offender roles are clearly established, distinguishing it from civil mediation which is about fact-finding and compromise. In a restorative justice meeting (known as a 'conference'), the victim and offender meet face to face with a trained facilitator and often other supporters or criminal justice personnel.

Restorative justice can be part of the formal criminal justice process, for example as part of sentencing or punishment. It can take place after conviction, for example while an offender is in prison, or alternatively

in cases where there has been no report to the police.

Empirical research illustrates high rates of victim satisfaction with restorative justice, showing that the process is considered fair and 'procedurally just' by most participants and also that it can reduce reoffending.²

From the perspective of victim-survivors, restorative justice may enable us to hear victim-survivors' stories more holistically, giving voice to the real harms of sexual offences. It may empower victim-survivors by giving them greater control. It may encourage admissions of offending, offering validation and, in focussing on the offender, may reduce victim-blaming. Nonetheless, sexual violence is often excluded from restorative justice programmes because of legitimate concerns that its use may trivialise violence against women, re-victimise and increase trauma and endanger the safety of

victim-survivors. However, the fact remains that the criminal justice system already marginalises victim-survivors' interests and fails to do justice in all but a few cases. Consequently, it is time to re-consider the possibility of restorative justice for cases of sexual violence.

Project Restore in New Zealand illustrates the possibilities of restorative justice for cases of sexual violence. It is a 'survivor driven organisation' which aims to 'support offenders to understand the impacts of their behaviour and facilitate the development of an action plan which might include reparation to the victim and therapeutic programmes for the offender'. A recent evaluation of the project found that restorative justice processes 'can provide a sense of justice in cases of sexual violence'.³

What did we do?

In early 2010 a restorative justice conference was held which involved a woman called Lucy – the name she has chosen to be known by in this research. Lucy is an adult survivor of rape and other forms of sexual abuse which took place several decades ago. The offender was a male family

member who was also a young person at the time.

We investigated the experiences and expectations of four of the conference participants in order to explore the conference process, its outcomes and to understand any

lessons which could be learnt from this experience for other victim-survivors. We interviewed Lucy, her Rape Crisis counsellor, the conference facilitator and the senior police officer involved in the case. The offender was invited, but declined, to participate.

What happened and what were the results?

'I just wanted him to hear me'

A few years ago Lucy reported the rape and sexual abuse to the police who issued a caution which Lucy learned of through a third party. She felt 'completely discounted' by this experience. It was during sessions with her Rape Crisis counsellor that the possibility of restorative justice arose. Lucy had got to the stage where she wanted to confront the offender and the counsellor was very concerned

with the risks this posed. A restorative conference was therefore planned. Lucy's motivations were clear: 'I just wanted him to hear me, without him twisting it really.'

'Having the last word'

The conference lasted about an hour and started with the offender acknowledging responsibility and explaining why he committed the offences. This stage was difficult for Lucy, and she recalled wondering 'why are you letting him talk so much?'

However, on reflection she realised 'how important that bit was, because it was the first time he admitted that he had deliberately created harm and that he knew that having sexual intercourse with me would be harmful.'

Lucy then explained the impact of the abuse which 'enabled me to say exactly how it had affected me, and he obviously hadn't realised that it had had such far reaching effects on me. Before that, he and some other

members of the family assumed that it had had more impact on him, his getting into drugs etc’.

After Lucy had spoken, the offender apologised. Lucy says: ‘I had the last word and said that I didn’t accept his apology’. The main outcome Lucy requested was that the offender was to stop trying to make contact with her through other members of the family. At the time we interviewed

her, the offender had made no such attempts.

‘A really big turning point’

For Lucy the conference ‘was a really big turning point for me actually. Instead of having this whole episode of my life that I couldn’t do anything with, I could stop hating myself and put the blame where it should be’. Nonetheless, it took some time after

the conference for her to reach this understanding. The conference itself left her ‘drained’ and it ‘dangerously unhinged me at the time because it was like reliving it’. However, ‘in retrospect’, she said, ‘it was more important to have my say and have him listen than for him to go to prison’: ‘it’s made me understand my position as a victim and see him as the offender, which has enabled me to resolve a lot of conflict’.

If another woman is considering restorative justice, Lucy said that if she is at the right stage of her recovery and has the necessary professional support and careful planning in place, she should ‘take a deep breath and do it’.

What lessons can we learn from this case study?

Preparation is key

For approximately three months before the conference, Lucy met with her counsellor on a weekly basis to prepare. The counsellor says: ‘it was all about looking at every eventuality; what was the worst case scenario, what was the best case scenario, how to prepare her ... we discussed power dynamics, we discussed all the potential things that she could feel in that room with him, so that she had considered everything.’ Both Lucy and her counsellor saw this preparation as absolutely essential.

Support for victim-survivor

The support of the Rape Crisis

counsellor was crucial. As well as preparing Lucy, she went into the conference ‘very prepared that if I thought there was going to be a power shift that we would address that’. So, she says, it is essential that ‘you’ve got the right people in there who are looking for the right things to protect the victim’. Similarly, Lucy said that support was vital and that ‘someone like [the counsellor] would be the ideal. She was stunning.’

Never under-estimate the strength of victim-survivors

The counsellor recognises that restorative justice can be ‘fraught with dangers’ in these situations

because of the ‘power dynamics’.

However, she continued that:

‘I think we can’t underestimate the power of the women or the men that we work within in these situations and ... that’s why I think with the proper preparations and proper risk assessment that giving somebody an opportunity to help themselves can only be a positive thing’. Similarly, the senior police officer we interviewed felt that people should be given the option of restorative justice and that failing to do so was patronising and implied that individuals were ‘not able to make a rational choice’.

Ways Forward

This was an exploratory study which considered the possibility of restorative justice in cases of sexual violence, especially from the perspective of a victim-survivor. There are a number of ways to take this issue forward:

Further information and research urgently needed

We know that in Northern Ireland there are many examples of restorative justice with young sexual offenders, and there are a few examples in England and Wales. But there is no official data on exact numbers, or details of the offences, offenders or victim-survivors. It is unknown whether there is the

necessary support and help in place for victim-survivors and offenders in all cases. Full disclosure of this data is essential if we are to tap into this knowledge-base, followed by evaluations specifically focussing on the use of restorative justice in cases of sexual offending.

Knowledge sharing is necessary

We need more discussion between the different professional communities engaged in this work, such as restorative justice practitioners, people working with offenders, and organisations such as Rape Crisis working with victim-survivors. To the detriment of victim-survivors, there is

not enough transfer of knowledge and experience amongst these different groups about what restorative justice is, the ways in which it can be used, and the experiences and harms of sexual violence.

A victim-centred approach must be taken

If a victim-survivor wishes to pursue restorative justice, and there is the necessary support and expertise available, then we must be open to the possible use of restorative justice on an ad hoc basis. If carefully and thoughtfully undertaken, restorative justice – as in this case study – may offer positive outcomes and a sense of justice to victim-survivors.