

Restorative Justice: the way ahead?

Rob Allen charts the progress of developing restorative justice work within the criminal justice system.

Supporters of restorative justice (RJ) sometimes claim its underlying philosophy and practical application represent a wholly distinctive paradigm within which to deal with crime and its consequences. Making an offender face up to the harm they have caused and put matters right through compensation, reparation or work in the community can certainly offer an alternative to retributive punishment – but how realistic is it to expect such an approach to grow over the next few years? A recent report by legal reform group JUSTICE funded by Rethinking Crime and Punishment argues that much more use could and should be made of RJ, provided that the leadership, resources, standards and safeguards are put in place.

Restorative Justice The Way Ahead reports that victim-offender mediation, restorative conferencing and sentencing circles are widely used in New Zealand, Australia, the US, Norway and Austria. Such programmes can help both to reduce reoffending and increase victim satisfaction. In the UK, RJ is so far largely limited to the early stages of the youth justice system. The JUSTICE report concludes that there is room to expand RJ's use in the adult system and explore its application with more serious cases, including domestic violence. What are the prospects for such expansion?

Work with young offenders

Thanks largely to the pioneering work undertaken by Thames Valley Police, RJ is already widely used with children subject to final warnings, who hear directly about the effect of what they have done and are given a chance to make good. Similarly, Youth Offender Panels dealing with under 18's who plead guilty for the first time in the Youth Court can enable victims to meet the offender. The panel's decision takes the form of a contract agreed by the participants rather than a sentence imposed by the court. Panels display the other key elements of RJ – community involvement in the form of the volunteer panel members and a highly participative process. JUSTICE considered it important to avoid “net widening”. Drawing in minor young offenders who would have ceased offending anyway is not the best use of scarce RJ resources. These might better be targeted at the juvenile secure estate, where recent research for the Youth Justice Board found little RJ intervention of any kind taking place.

Progress in the development of RJ has been slower with adult offenders. Of course, more than 8 million hours of unpaid work is carried out in the community each year, but this rarely involves direct benefit to the victim. The Home Office is proceeding cautiously following last year's consultation paper on the expansion of RJ. Conscious of the need for careful implementation, their strategy is being taken forward in 11 strands of work covering the various stages of in the criminal justice process. In parallel, there are proposals to improve

support for victims of crime – through a new victims fund and increased use of compensation orders (currently made in fewer than one in six cases). The *Criminal Justice Act 2003* has created more possibilities for RJ; not only is reparation one of the statutory purposes of sentencing, a new conditional caution will enable RJ to be used as an alternative to prosecution. The Justice Research Consortium (JRC) is evaluating the role of RJ in diverting offenders from court which should complement their existing Crown Court study of RJ with convicted offenders.

The higher courts have also been positive about RJ. In *R v. Collins* (Times Law Report 14th April 2003), the Court of Appeal reduced a sentence for unlawful wounding and robbery from seven years to five for an appellant who had taken part in an RJ conference (which was organised as part of the JRC research project in the London Crown Courts). The victim and members of her family attended, along with members of the offender's family. The Court of Appeal concluded that RJ was by no means a soft option, and was designed to ensure effective sentencing for the better protection of the public – “As it appeared to be going at least some way to achieving its purpose, it should be encouraged”.

Implementation

A recent Home Office report on the implementation of three pilot RJ schemes has found that this is very much easier said than done. Operating within a criminal justice culture has meant that procedures and timescales do not often lend themselves to a restorative approach. All of the pilot projects encountered practical problems in achieving suitable referrals and in contacting victims, with the result that the number of cases has been lower than anticipated. There is no doubt that done properly, RJ is labour intensive, time consuming and full of numerous communication challenges.

It seems that three issues need to be resolved if RJ is to assume a more central role. First, there is a need to provide the necessary leadership at the *national* level. The *Way Ahead* report calls for a new national restorative justice body to promote RJ, and formulate and monitor standards – the Youth Justice Board is a possible model.

Second there is a need to build up capacity at local level. In terms of practitioners, the report notes the key role played by the police so far but argues that in the longer term they should not play a role as facilitators. There are important questions about whether they are a sufficiently independent and cost effective agency to assume responsibility.

Finally there is a need to bring about a cultural change, which makes criminal justice more compatible with the values underlying RJ. Victims participate directly in fewer than one in six youth offender panels and diversion conferences for juveniles – in Australia the rate is 2 in 3. While there is scope for indirect involvement – by letter, or proxy – much of the impact of RJ

flows from the face-to-face contact and the expression of feelings about the crime. Developing a model in which victims want to take part must be a priority. With proper judicial oversight, and effective infrastructure victims are likely to feel more confident in taking part.

Whether the government's policy will help achieve this is open to question. Paying greater attention to the needs of victims and communities could further restorative justice. But the Prime Minister's commitment to "toughen up every aspect of the

criminal justice system to take on the criminal and support the victim" sounds less than restorative.

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Restorative Justice: the way ahead is available from Justice, 59 Carter Lane, London E14 5AQ, price £15.

Justice for all

Debra Clothier describes the benefits of restorative justice work for both victims and offenders.

When crimes are committed a number of people are involved: offenders, victims and communities. Why then is attention after the event usually focused only on the offender? When offenders are in court, they generally are not asked to speak on their own behalf but have others to speak for them, often in a jargon that they do not understand, months after the incident. What happens with regard to 'punishment' frequently appears to bear no relation to the original offence or the harm that was caused. Victims do not get their needs met; for example if the offender pleads guilty, victims have no further involvement in the process, on occasion leaving them frustrated and angry. Victims have told us that the criminal justice system does not meet their needs and in fact can cause them more harm; no wonder many witnesses do not attend court or even report crimes.

Restorative justice can go some way to resolve some of those issues without causing further harm to either victim or offender. It is not a panacea and cannot be fully applied in every situation, but it can be of great value. It is based on repairing the harm done, it gives the opportunity for some form of communication between those who have been harmed and those who have caused the harm, and it enables the community to be involved. It looks to the future rather than the past. What this usually means is that the victim can say to the offender (face to face or indirectly) what impact the crime had on them and their family, have that acknowledged, and ask questions. This may help to dispel some of the anger or frustration that can still be present some time after an incident, and reduce their fear of being revictimised. Offenders can tell their story (which the conventional process often does not allow for); they usually apologize and understand, often for the first time, the real consequences of their behaviour. An agreement is usually reached which looks to the future, including some form of reparation or compensation to the victim and/or an agreement from the offender to address some of the issues which may have contributed to the offending.

Victims have said things like "my fear and anger disappeared the minute I saw him, he looked so small and scared" and "I feel I can move on now, I know he won't come back". Offenders have said "I had no idea that this

was what I had done, I didn't mean to" and "I feel that I have done the right thing for once".

If RJ is so good, why is it not used throughout the criminal justice system? There is still a lack of understanding about what it is, and particularly about the change of ethos that is required in order for it to be effective. It is not another form of punishment but a process aiming to repair harm as far as possible. *The Crime and Disorder Act 1998* states as its aim 'reducing offending', and most agencies carrying out criminal justice work take this as their starting point.

Traditionally agencies have worked with either one party or the other, promoting an adversarial environment. In a number of YOTs, victim liaison officers have been employed to do victim contact work. This move I feel, is a negative one, as it potentially side-lines restorative work. All YOT staff need to be properly trained in restorative work, including understanding victims' needs; this also should include Youth Offender Panel members, who have very limited restorative training and in some areas have been taking the role of magistrates rather than facilitating a restorative process.

There are some encouraging developments, which may start to address these problems. A Training and Accreditation Group set up by the Home Office, involving practitioners and trainers, has published *Best Practice Guidance*, which will form the basis for a recognised qualification in restorative practices. An organisation called the Association for Restorative Practitioners is being formed which hopes to safeguard the quality of work taking place and offer support. There are many heartening stories about victims who have found the restorative process helpful, and offenders whose attitude was changed by the encounter. If the principles proposed by the Restorative Justice Consortium are maintained, more people will benefit, and we can begin to move from a retributive to a restorative system of justice.

Debra Clothier previously managed a number of restorative justice pilot sites for Nacro before becoming the Chief Executive of the Restorative Justice Consortium.