

Is Restorative Justice Appropriate for Domestic Violence Cases?

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Abstract. *The applicability of restorative justice with cases of domestic violence remains to be a grey area of research, policy and practice. In fact, there is a general consensus among feminists that restorative justice is not appropriate for these cases due to the power imbalance that exists between the parties in conflict. This paper aims to test the specific limits of using restorative justice with domestic violence cases. The paper uses data that was collected in 2014-15 through a qualitative, in-depth EU funded study that was conducted in the UK with a sample affected by domestic violence, as well as practitioners. Recommendations are produced for policymakers, social workers, practitioners, educationalists, healthcare professionals and researchers.*

Keywords : restorative justice, domestic violence, violence against women, mediation

Introduction

Restorative justice (RJ) is discussed in various international fora and has attracted the interest of many worldwide. These debates are complemented with numerous evaluations of restorative practices (e.g., Miers et al., 2001). However, the appropriateness of RJ with domestic violence (DV) remains largely unexplored (Cook et al., 2006). There is a general consensus among feminists that RJ is not appropriate for these cases (Stubbs, 1997, 2002 ; Acorn, 2004 ; Hopkins, Koss, 2005). Consequently, this area of practice remains under-researched and in the shadows of the law and policy (Gitana, Daly, 2011 ; Gavrielides, Artinopoulou, 2012).

Nevertheless, this has not hindered dedicated practitioners from piloting conferences, mediation and other RJ practices without any government support or funding (e.g., Hudson, 1998, 2002). That is why advocates and opponents of RJ have called for further research into this grey area of limited practice (Coker, 1999 ; Stubbs, 2002 ; Gavrielides, 2007). Based on the premise that research should focus on the development of RJ's processes and principles and not on the superiority or inferiority of its paradigm, this paper aims to test the appropriateness of restorative practices with DV cases.

The paper uses findings from the project 'RJ in cases of DV: Best practice examples between increasing mutual understanding and awareness of specific protection needs'¹ carried out by the IARS International Institute in partnership with seven other EU based organizations.² The project was co-funded by the European Union (EU) as part of its efforts to help member states to prepare for the implementation of the 'Directive 2012/29/EU of the European

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Parliament and of the Council establishing of minimum standards on the rights, support and protection of victims of crime' (Victims' Directive). In fact, through this Directive, for the first time, RJ is explicitly regulated at a regional legislative level so that victims who chose to be involved are safeguarded. The most important parts pertaining to RJ are Article 12 (the right to safe guards) and Article 25 (training of practitioners). The Directive, which treats RJ both as a complementary as well as an alternative route to criminal justice, gives direct rights to victims. The Directive pays particular attention to protecting the rights of victims of domestic violence and gender based abuse. Infringement by a member state may constitute a base for a claim to the European Court of Justice.

The paper is divided into 5 sections. The first attempts to reach some key definitional agreements for the purposes of the paper. The second presents the methods that were used to collect and analyze our data. The third section engages with descriptive accounts of the current policy and legislative UK environment for DV and RJ, while the following section proceeds with an analysis of the fieldwork data. Finally, the paper provides some concluding thoughts and recommendations for future policy, research and practice.

Definitional agreements

A glance at the extant literature will render a number of definitions for RJ (e.g. see Marshall, 1999; Gavrielides, 2007, 2008). For the purposes of this paper, we will accept the definition of the Victims' Directive. 'RJ is 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' (Article 2, para 1.d).

Gavrielides (2007) understands RJ as 'an *ethos* with practical goals, among which is to restore harm by including affected parties in a (direct or indirect) encounter and a process of understanding through voluntary and honest dialogue' (139). Furthermore, he understands the term 'ethos' as; 'A way of living. It is a new approach to life, interpersonal relationships and a way of prioritising what is important in the process of learning how to coexist' (Gavrielides 2007, 139). For Braithwaite (2002) and McCold (1999) the principles underlying this 'ethos' are: victim reparation, offender responsibility and communities of care. McCold argues that if attention is not paid to all these three concerns, then the result will only be partially restorative. In a similar vein, Daly (2006) said that RJ places '...an emphasis on the role and experience of victims in the criminal process' (7), and that it involves all relevant parties in a discussion about the offence, its impact and what should be done to repair it. The decision making, Daly said, has to be carried out by both lay and legal actors. According to Gavrielides, 'RJ adopts a fresh approach to conflicts and their control, retaining at the same time certain rehabilitative goals' (2007, 139).

According to the Victims' Directive, victim means: (i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence; (ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.

The UK Government defines DV as: 'Any incident or pattern of incidents of controlling coercive or threatening behaviour, 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'.

Research methods

The central hypothesis underlying the UK research, which we set off to validate through empirical and theoretical testing, suggests that *RJ practices are being conducted in the country successfully with DV cases*. Our research aim was twofold. First, we wanted to understand what shapes and forms these practices take, where do they operate and what makes them successful. Second, we wanted to explore the reasons that keep RJ for DV cases under the radar of research, policy and mainstream practice.

We started our investigation with a review of the extant literature by paying particular attention to local and national material including policies, legislation, third sector publications and academic writings. From the outset, it became clear that although there are volumes of writings on DV and an extensive literature on RJ, when the two concepts were brought together, the information was scant. Therefore, it cannot be stressed enough here that the limited scope of this paper does not allow us to present a review of the extant literature on the concepts of RJ and DV in isolation. Here, we will make an attempt to summarize the policy and legislative context within which RJ is applied for DV in the UK.

Following the theoretical review we proceeded with fieldwork. When considering our research strategy for the fieldwork, qualitative research was thought to be the most appropriate method. It was not our intention to paint a quantitative picture of RJ with DV cases. If such a study were ever possible, it would require an incredible amount of resources and time. In fact, some have argued that it is highly unlikely that such a scientific analysis can ever be achieved due to an array of factors such as: sampling limitations, movement in the sample population, definitional confusion, access barriers, agreement on outcomes and issues of confidentiality and ethics (Marshall, Merry, 1990; Gavrielides, 2007).

Therefore, acknowledging this limitation our research design aimed to combine various qualitative methods with a view to ensuring that the results were as accurate as possible. These included: focus groups, in-depth, semi-structured and unstructured interviews and case study analysis. According to Miles and Huberman, qualitative research can 'persuade through rich depiction and strategic comparison across cases, overcoming the abstraction inherent in quantitative studies' (1994, 41). The qualitative approach also demanded that an adequate level of freedom was left to the respondents, allowing them to discuss and think at length and in their own terms about issues that are important to them and are related to the discussed topic. This could not have been achieved through the application of a quantitative design mainly because this would have approached the investigated matters not through the examination of the substance of the sample's responses but of the variants. In addition, this small-scale project had to allow the possibility of issues emerging spontaneously from the data without being forced through fixed theoretical frames.

We applied the aforementioned qualitative methods over a period of two years and through 6 phases (see Table 1).

Phase 1 involved 5 in-depth, semi-structured interviews with experts in the area of RJ and/ or DV. 'Experts' were defined as professionals who had at least 5-10 years experience in either RJ or DV practice, research or policy.

Phase 2 involved a large focus group that ran for three hours with 22 experts in the area of RJ and DV. 'Expert' was defined as having worked in either the area of RJ or DV for at least 5 years in policy, research and practice. In fact, six out of the 22 participants had been working in the joint area of RJ and DV for over 8 years.

Phase 3 involved a focus group that ran for three hours with 5 victims of DV. This was conducted by a partner organisation that specializes in DV services. The focus group included questions on RJ and other criminal justice issues impacting on DV victims.

Phase 4 attempted to interview DV victims and individuals who had been convicted for the same crime. This proved difficult and as a result 8 proxies were interviewed. Proxies were defined as the practitioners who had worked with these victims and offenders and who were given permission by them to speak on their behalf. All victims underwent an RJ processes in the last two years and were still in receipt of victim support such as therapy, counseling and other forms of treatment. All the offenders had received a sentence and had been released from prison. Given the vulnerability of these individuals, neither the probation officers responsible for the offenders nor the victim support workings responsible for the victims allowed us direct access to them.

Phase 5 involved working with two RJ practitioners who took on a DV case. The cases were analyzed and the practitioners were able to work alongside the researcher to provide insights and feedback on the preparation, conduct and outcome of the case. Both practices involved mediation in indirect and direct form. The offenders had been convicted and the case was diverted to RJ as part of sentencing.

Finally, Phase 6 involved one to one and group in-depth unstructured interviews with key service providers of DV services. Five providers from the public, private and voluntary sectors took part.

Table 1. *Research phases and methods used (2014-15)*

Research Phase	Sample contacted (original)	Sample reached (final)	Research Method employed
Fieldwork – Phase 1	20 experts contacted through IARS' existing contacts	5 experts interviewed	In-depth, semi-structured interviews
Fieldwork – Phase 2	25 experts contacted through IARS' existing contacts	22 experts attended	Focus group
Fieldwork – Phase 3	10 victims contacted through a referral organisation working with DV victims	5 victims attended	Focus group
Fieldwork – Phase 4	24 victims and offenders contacted through criminal justice and victim support agencies, social media and IARS' contacts	8 proxies attended	In-depth, semi-structured interviews
Fieldwork – Phase 5	2 RJ and DV cases	2 RJ and DV cases	Case study
Fieldwork – Phase 6	10 DV services providers reached through IARS' database	5 DV services attended	In-depth, unstructured interviews

Source : The IARS International Institute.

In terms of our sampling strategy, the research adopted the 'non-probability sampling' methodology and the rules governing 'convenience sampling' more specifically. Therefore, it was essential that the limitations surrounding this approach were acknowledged. Bryman (2004), for instance, warns that the generated data cannot be used as the only basis for generalised conclusions. The yielded information, he said, 'will only provide an insight into the sample's views and attitudes towards the discussed topics' (Bryman, 2004, 100). However, concerns about external validity and the ability to generalize do not loom as large within a qualitative research strategy as they do in quantitative research.

According to Shaw (1999), studies that are carried out with non-probability sampling are not interested in working out what proportion of the population gives a particular response,

but rather in obtaining an idea of the range of responses regarding ideas that people have. More importantly, according to Shipman (1997), the dangers inherent in any generalization of data derived from the responses of a non-probability sample will be minimized if analyzed in conjunction with evidence from the extant literature. To achieve this, a ‘triangulation’ of the collected information will have to be attempted (Bryman, 2004 ; Shipman, 1997).

Our sample groups were selected using an array of routes (see Table 1) including IARS extensive (over 3,000) victim support, restorative justice and domestic violence providers, referral organizations such as Victim Support, two websites (www.iars.org.uk and www.rj4all.info), social media, practitioners affiliated with IARS, third sector newsletters and emailing lists.

Content analysis was undertaken by pre-formed codes, which were defined by the wider EU project coordinator. These included : Reasons for choosing RJ for DV, Victim Satisfaction, Victim attendance, Rehabilitation, Restoration and Safety. However, as many of our interviews did not fit within these codes due to the fact that some respondents had not undergone a restorative process, these codes were adjusted and added to. It is felt that these newly-revised codes still sufficiently answered the research objective. These included: the reasons for needing an alternative (or in addition to) criminal prosecution, the ability to have increased dialogue and communication in RJ, the non-judgmental approach and the fact-finding and restorative nature of such processes.

While conducting the research, we paid particular attention to research ethics. Conforming to the IARS International Institute requirements, we sought a research ethics approval. Several applications were made to the Research Ethics Committee of the International Editorial Board³, which were approved prior to fieldwork.

The policy and legislative context

Domestic violence in the UK

Before we proceed with an analysis of the research data, we contextualize restorative justice (RJ) and domestic violence (DV) within the current legislative and policy context of the UK. It must be stressed that this paper is not interested in reviewing the extant literature on either domestic violence or restorative justice. This literature is vast and any analysis of what has already been covered about the two notions in isolation would add nothing to this paper’s objective.

It is well known that there is no statutory offence of DV per se. Most commonly, DV results in a charge of assault or grievous bodily harm with a twist (Liebmann, Wootton, 2010). It is also worth noting that the Crown Prosecution Service began monitoring cases of DV only after 2004. The responsibility for the development of DV policies and initiatives sits with the Home Office. The Ministry of Justice is accountable for ensuring that perpetrators of DV are brought to justice, cases are reported and victims of domestic abuse are supported. Over the last two decades, both policy and legislation on DV in England and Wales have been focused on the implementation of measures based on prevention, protection and justice as well as the provision of support for victims of domestic abuse. These directions were set out and defined in the publication of ‘The summary of Responses to Safety and Justice : The Government’s Proposal on DV’ (Hague, 2005, as cited in Matczak, Hatzidimitriadou, Lindsay, 2011). The latter direction was mainly assigned and implemented by partnerships of service providers at local and national level.

Consequently, the Domestic Violence, Crime and Victims Bill received Royal assent in November 2004 and was deemed the most important piece of DV legislation of the last three decades (Home Office, 2005). Following on from this, in 2010 the Coalition Government

recognized the necessity for a broader gender based approach that is reflected in the ‘Call to End Violence against Women and Girls Action Plan’ (Home Office, 2010). Since then, the Action Plan has been reviewed three times in order to reflect on new achievements. The latest Action Plan has highlighted the government’s position to support a more localized approach in tackling DV. To this end, it pledged to provide support to the voluntary sector to build capacity as well as to develop the expertise needed in dealing with DV. Furthermore, a multi-agency approach and partnership building across the sector and various government departments were also promoted (Home Office, 2014).

However, despite the government’s efforts to eliminate DV, statistics remain rather disappointing. DV 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 DV cases in England and Wales that were referred to the CPS. 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.

If we look outside of the criminal justice system, under civil law, a DV victim could seek protection by applying for a non-molestation or occupation injunction from the civil court. In particular, the victim or their legal representative could submit an application to a family proceedings court. 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 (as amended by Part 1 of the DV Crime and Victims Act 2004), a non-molestation order aims to protect the victim or a relevant child from being molested from the perpetrator. This amendment addressed the inefficiencies of the legislation to offer protection to victims through non-molestation orders. According to this new provision under section 1 of the DV Crime and Victims Act (DVCVA) 2004 breaches of civil injunctions by 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 CPS is responsible for prosecuting the breach and charging with an offence. The CPS could proceed with a prosecution in conjunction with the police and consequently criminalization of the defendant against the victim’s will. The DVCVA was amended in 2007 in order to extend the 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 as a result of violence, abuse or neglect from a relative, intimate partner or member of the same household (section 9).

Restorative justice in the UK

RJ has always been practiced in the UK in the shadows and in its vast majority by community based organizations. However, significant governmental interest began in RJ in 2003, when the Home Office opened the ‘RJ 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 (Gavrielides, 2003).

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 (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 and investment of funds (and commitment for further investment). As the Minister of Justice announced in November 2013 at least £29 million is being made available to Police and Crime Commissions and charities to help deliver RJ 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 RJ funding in a single allocation so it is their decision about which services best meet local needs.

Most recently, the biggest development is 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 a sentence post-conviction to allow for RJ activity to take place, by imposing a RJ requirement. Since December 2014, the courts 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 RJ must have regard to the guidance issued by the Secretary of State. No other formal requirement is stated. In May 2014, a pre-sentence RJ 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 change in legislation 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 RJ in magistrate's courts.

Mediation is, at this moment, the primary RJ practice for adult cases, including those of DV nature. Five distinctions can be made, none of which are mutually exclusive. The first is between programs 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 programs that may include a face-to-face meeting of the victim with the offender and those that have mediators acting only as go-betweens. The fourth category depends on the cases that the mediation programs 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 programs 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 neighborhood resolution panels (or neighborhood justice panels).

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 (Gavrielides 2011, 2014).

Restorative justice and domestic violence : a review of the scarce literature

When looking at RJ and DV as a topic, the extant literature is scarce. Braithwaite and Daly opened the debate in 1995 and proposed a model based on communitarian control to empower victims, viewed as a pyramid with escalating steps. Their model promised to be able to : make men more accountable for violence against women because women may be less likely to drop the case ; expose the fact that men may have been violent many times, not just once ; less likely to re-victimise the victim than the court process. They noted :

We are suggesting that community conferences open an avenue for addressing the failures of contemporary justice processes, which leave misogynist masculinities untouched by shame and victims scared by blame. (Braithwaite, Daly, 1995, 244)

The only book we found which focuses exclusively on this topic is *Restorative Justice and Family Violence* (Strang, Braithwaite 2002). It is largely theoretical, consisting of chapters debating the arguments for and against restorative justice in cases of domestic violence. An article by Block and Lichti (2002) revisits Howard Zehr's comparison of retributive and restorative justice, and takes into account the power dynamics of domestic violence. An overview of research in domestic violence (Hoyle, 2007) notes the potential of RJ to offer tailored responses for different situations.

Some of the most thorough evidence so far has been produced in Austria where 'Out-of-court-offence-resolution' (AußergerichtlicherTatenausgleich) has been used in cases of partnership violence since the 1990s. In 1999, qualitative research led to the conclusion that the potential or strength of mediation with these cases lies in reinforcing processes of empowerment or liberation (Pelikan, 2000). The study was repeated ten years later focusing on female victims. Approximately 900 questionnaires were sent out to those who had undergone victim-offender mediation, 33 victim-offender mediation sessions were observed and 21 qualitative follow up interviews were carried out. According to results, 83% of all DV victims who had undergone direct mediation reported no further violence. 80% of those who reported no further violence contended that this was due to the RJ meeting. They reported that RJ helped to bring about direct or indirect empowerment. 40% of those women who remained in a relationship or who were still in contact with the offender but had not experienced further violence stated that their partner changed as a result of mediation. This theoretical support for using RJ in such cases, whether within the wider community or as indirect practice, continues.

Like many governments around the world, the current UK administration remains divided over its view of the RJ practice for DV cases. In anticipation over the official support of RJ, the Home Office conducted a consultation, 'RJ : The Government's strategy' (2004) and as Leibmann and Wooton (2010) highlighted, that although a question about RJ and DV was asked within the consultation, views were strongly polarised. Subsequently, the publication 'Best Practice Guidance for Restorative Practitioners' (2004) stated : 'the use of restorative processes in DV cases is not agreed. There are also other sensitive and complex cases where adequate risk assessment will show that the work needs to be particularly led by the victim's needs and wishes to avoid further harm' (35). As a follow up, 'Best Practice Guidance for Restorative Practice' (2011) does actually not specifically mention DV cases, rather it uses the example of co-working in as best practice in cases of gender violence. Additionally, RJ and its use with DV is mentioned in the Code of Practice for Victims but only for victims of youth crime.

In regards to police usage, there has been official guidance to dissuade officers from practising RJ in cases of DV. 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 DV. It was emphasized 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. However, as stated by the Association of Chief Police Officers (2012, 6) ‘we do recognise that RJ is a customer focused methodology and if a victim of such an 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’.

Fieldwork findings

The analysis of our fieldwork findings was guided through our central research hypothesis : i.e. there are existing RJ practices in the UK that are successfully dealing with domestic violence cases either in conjunction or in parallel with the current criminal justice system and the available top down policy and legislative remedies. Based on this hypothesis, we wanted to understand the circumstances and prerequisites of those practices, the measurement of their success, the barriers that they encounter and the implementation limits that they face given that DV has traditionally remained a grey area of research, policy and practice both within the RJ and criminal justice fields.

Finding 1: central hypothesis confirmed

Based on the evidence that we collected mainly by word of mouth, we were in a position to confirm our initial hypothesis confirming that there are indeed a number of community based voluntary RJ projects dealing with DV cases.

Table 2. RJ with DV cases

Project/ Organisation	Nature of work	Sector
Plymouth Mediation (with Plymouth Probation Service)	Mediation carried out in conjunction with the CJS (post sentencing)	Community based
Silence the Violence and Milestons (Khulisa UK)	Conferencing (surrogate victims) and mentoring with offenders of DV either in prison or post release	Community based
The Daybreak DOVE Project (with the Hampton Trust)	Family Group Conferences in conjunction with the CJS (post sentencing)	Voluntary
Circles UK	Circles (surrogate victims) with perpetrators and their families in conjunction with the CJS	Voluntary
The Forgiveness Project	No encounter – victim awareness through surrogate victims working with perpetrators in prison or post release	Community
Victim Liaison Units, National Probation Service	Mediation with victims and perpetrators who receive a prison sentence of one year or more for a sexual or violent crime	Statutory
UK College of Family Mediators	Family mediation – non criminal justice based (preventative)	Voluntary
Connect (with NACRO)	Mediation and group conferences in conjunction with the CJS (post sentencing)	Voluntary
Fair Process	Direct and indirect conferencing in conjunction with the CJS (post sentencing)	Community based
SORI (Cardiff Prison)	In prison conferencing with surrogate victims	Statutory
Warwickshire Domestic Violence Support Service, Rugby	No direct encounter – counseling and dialogue with victims and offenders (in support of CJS)	Voluntary

Source : Theo Gavrielides

These seem to exist despite expressive concerns from politicians, lack of state support and funding and suspicion from a number of women's and victims' groups. Consequently, these projects tend to remain in the shadows of research, funding, policy and evaluation. Examples include: Milestones and Silence the Violence (programs run by Khulisa UK), independent practice by Brian Dowling (Fair Process), SORI program, Plymouth Mediation, Circles UK, Warwickshire DV Support Service (Rugby), The Forgiveness Project, The Daybreak Dove Project and Victim Liaison Units (also see Liebmann, Wootton, 2010).

Finding 2: key barriers faced by existing RJ and DV practice

According to the interviewed practitioners, the biggest challenge to the use of RJ in DV cases in the UK appears to be public perception.

We are dealing with two concepts that are challenged, not only by their own obscure definitions, but also by how the public understands them. In the case of RJ, I doubt how many victims who are asked to take part know what it means. This is why preparation is important. (Practitioner)

The biggest obstacle is victims and offenders knowing about RJ. If you don't know about it how can you ask for it? (Practitioner)

In the field of RJ, there is a certain kind of confusion around its principles, and what they might mean... For instance, in the youth justice system there are a lot of agencies that do not necessarily deliver RJ, but do need to have a good understanding of what it is, and how it works, and this demands a lot of work. (Practitioner)

In the outside field of RJ, that is the general public, there is little understanding of RJ. Although I do know that there are some very interesting research results, which showed that when certain concepts are explained to people the response is very good. (Practitioner)

I think RJ is a term that people get easily confused with, especially when trying to understand what it is as a practice... It is a multi-layered and multi-dimensional concept, and depending on which type of practice you engage with, or which bit you are looking at, it can mean different things to different people. (Practitioner)

Furthermore, it also becomes clear to us that even practitioners may misunderstand what RJ and DV encompass. For instance, despite many practitioners initially stating that they didn't use RJ in the context of DV, with further investigation it was found that this original position was informed by a constraining definition and understanding of the term. Most often, gender specific violence was referred to. However, although this type of DV is extremely serious it is not the only type of violence that occurs in the domestic setting. For example, when the interviewed practitioners were prompted to consider their experiences of RJ in sibling or parent-child violence, the results were revealing to the fuller extent of the practice.

I have been working as a victim liaison officer for 29 years ; I have seen terror and violence to take all shapes and forms including teenagers becoming violent against their parents and especially mothers. I had one mother who was bitten up by her 14 year old son so many times and still she would not report him. (Practitioner)

Finding 3: RJ for DV has strengths, but also caveats

Demonstrated in the practitioner's interviews, a clear potential benefit of using restorative justice is the ability to address the victim's needs and wishes, with this acting as a tool for empowerment.

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. (Practitioner)

Another practitioner stated :

In fact, it's increasingly locking them away, increasingly it's doing that more and more by saying the CJS 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. (Practitioner)

Therefore, it is suggested that by ignoring the needs of victims in the context of domestic violence, criminal justice practitioners risk taking ownership, especially in regards to the victim's personal closure of the case and future decisions made in relation to this. This is important to remember as Liebmann and Wootton (2010) highlight that many victims drop criminal charges and return to their abusive situations, and thusly there is a need to provide alternative to prosecution for those who want it.

It was also made clear that the choice of which restorative justice service appropriate to these needs would be decided by the victim and that by not putting the emphasis on a direct conference, this flexibility would allow the practitioner to carefully evaluate and discuss with the victim suitable options. This again, gives options to the victim where they may have been none prior in the criminal justice system.

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. (Practitioner)

I think with a lot of restorative justice 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. (Practitioner)

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. (Practitioner)

By thinking of restorative justice as a process, whereby direct conferencing is just one outcome of this, as highlighted by the practitioners we spoke to, the benefits of this can be to minimize secondary victimization and repeat offending and most importantly address the needs and wishes of the victim. However, this position is juxtaposed with the current demand of services to 'deliver' restorative justice to the confines of 'successful outcomes' e.g. direct conferences. If RJ DV is to be seriously considered as an option in the current climate there would be issues of funding and 'target hitting'.

Finding 4: risk assessment is key when applying RJ for DV

Based on our findings, there is not complete agreement about the risk factors for domestic violence. This is reflected not only in the different understanding that different practitioners have of what is a risk, but also in the stark differences that we noticed while reading the various risk assessment forms that criminal justice practitioners were required to complete. This created fears of some 'high risk' victims getting a good service, while some 'low risk' victims feel they are not taken seriously.

However, we have to stress that the two practices that we observed included most safety precautions in their risk assessments. This included the preparation stages, where parties were met with on average 2/3 times before the conference. Looking at the case studies that we analysed, in one case, the practitioner mentioned that they went through the whole conference detailing the questions that would be asked of each party (in a ‘mock conference’ style). This was done to assess participant’s trigger words, giving the practitioner an indication of what may upset the parties during the conference. This was perceived to be a ‘good preparation’ by the victim.

Mr. X, worked with me over several sessions to prepare every single question that I could be asked by Y. I also pretended that I was there and he helped me ask my questions in the right way so that I do not risk myself to get hurt again. I knew that I could go in that room and get my power back when we finished the sessions. (Victim)

However, in another case it was highlighted by the victim, that the preparation stages would be traumatic as victims would have to ‘re-live’ their experience, suggesting that specifics could be avoided.

I didn’t want to go through it again. I had enough. Nothing was going to change and the meeting and all those questions were just reminding me everything. (Victim)

In another case, the victim did not want to participate in a restorative conference because they did not feel safe with the offender, and the Police had previously recommended that the victim have no contact with the offender.

I didn’t want to take part. I made that clear. He was never going to change. If I believe there was any hope I would see him. But it is all done now. That doesn’t mean that this could not work for someone else. (Victim)

Therefore, it is not only safety precautions that have to be addressed but also previous expectations of the criminal justice system as a whole, in particular the assumption that the victim will only be safe if they are not in contact with the offender. Furthermore, focusing the preparation stages on one specific incident was found to be problematic as all the victims had experienced systematic patterns of violence.

Co-facilitation and co-working were all used in the cases that we observed. This was to achieve ‘gender balance’ deemed to be important by practitioners. One practitioner noted that this gave the opportunity for the female colleague to do some of the more practical emotional work, for example physical contact (hugging).

Gender balance is very important and that is why I always co-facilitate with a female colleague. I have been doing RJ with DV cases for 22 years and when things go well or emotion, the women always hug my co-facilitator, not me, and why would they if they have been abused by a man. (Practitioner)

Another case, which did not go to conference, was co-worked with two female practitioners – a RJ expert and victim-liaison expert (who also had knowledge of DV), as mentioned by the practitioner this specialized knowledge was important in making the correct risk assessments for both the victim and offender. In another case that didn’t go to conference, the victim specified that they would rather the case was co-facilitated. Furthermore the gender of the facilitators were of no importance to the victim, but because of the offender’s past experience of child abuse, the victim felt that it was imperative that there be a female facilitator present in the event of a conference.

In two cases that involved children, the conference allowed the children to gain further understanding into the relationship between victim and offender. In one such case, as the children heard first-hand from the offender the extent of violence conducted against the victim, they gained better understanding of the victim's decision to leave the family home. In addition to this, in a case where the male was originally labeled as the sole offender, the restorative conference allowed others to witness the abusive behaviours of the victim. Furthermore, as the practitioner noted, it was the first time the victim's aggression towards the offender had been acknowledged by other parties. This case was particularly instructive as to the role of pre-defined gender stereotypes.

Finding 5: an RJ encounter is not enough for DV

All the cases that we investigated involved prolonged use of violence. We found that violence was exacerbated by certain contexts (for instance when the victim was pregnant or driving in the car with children). If children were present, although there was no admission of involving children in the violence, it was often reported that children had witnessed the violence. All but one of the cases that we observed and researched as part of the proxy interviews included both situational violence and coercive control (psychological, financial etc.). One case included just coercive control and this was in relation to access to family and communication difficulties with their partner. Many of the cases cited problems stemming from drugs, alcohol or mental health needs (interestingly, drugs and alcohol were referenced in connection with male offenders whereas mental health issues were connected to female offenders).

Furthermore, in one case it was highlighted that although the woman had been described as the victim of the DV, the offender reported that she had been the one to initiate coercive control although he had never reported it. This was seen to be something of a theme throughout our research, particularly when speaking with one male practitioner who had been referred cases where the victim was female and offender male, however during the restorative process it emerged that both parties had participated in the violence.

DV is not a clear cut crime. Violence often happens in cycles ; you do not know who is the abuser and who is the victim. I had a case where it became clear the offender was also the victim. (Practitioner)

A victim liaison officer who took part in the focus group said :

I was appointed to support a female victim only to discover that she was actually the abuser. The police got it wrong and I was not sure what to do as the system was not flexible. I reported it and it was substantiated but I found out later that they were both suspected for acting violently against each other. (Practitioner)

It became clear that due to the complexity of these cases, the vulnerability of victims, the journey of the offenders and the continuous violence, an RJ encounter or process would never be enough. However, as pointed out by our interviews and focus groups with professionals, providing a holistic service to those touched by DV can be problematic as with many other justice provisions. In a similar vein, as with many other restorative services, there are gatekeepers. This is particularly prevalent in victims of DV as the risk of secondary victimization is high, further engagement with additional services is discouraged. Therefore, as good practice, offers of RJ and other such support services should be continually given. One practitioner said :

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. I think it should be available all the way through the process and not just when we think someone is ready. Because we can't make that judgment and we shouldn't. Again, this should be victim initiated and should not be an attempt to 'restore' the relationship but allow for restorative processes to take place. (Practitioner)

Contrary to political opinion, all practitioners interviewed were not averse to punitive punishment. In fact, many advocated the use of DV RJ post-sentence where it would be one of the many mechanisms used to assist in the offender's rehabilitation. However, this was not risk-averse, as secondary victimization of the offender was highlighted as a potential outcome. Again, as the contentious issue that DV presents and the depth of harm caused by perpetrating and witnessing such abuse.

But for me I think that there is the aspect of, if we start doing work with DV in the prisons, it will be a massive can of worms. To men who have witnessed and been victims of that when they are younger. And that's going to have a huge emotional cost and financial cost. And open some floodgates I think. That's my fear and feeling. And there need to be some real safeguards built in for that. (Practitioner)

A suggestion for this, and as highlighted good practice guidance by the practitioners, the offering of on-going follow-up support with similar organizations should be paramount in the practice. This is, in essence, seeing RJ 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.

You shouldn't undertake this kind of work unless you can offer on-going 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. (Practitioner)

Finding 6: benefits of using RJ for DV

It is generally believed that apology and the return of the two parties home are the expected outcomes in an RJ meeting for DV. This is not the case. In fact, for all the cases that we researched, getting an apology from the offender or reconciling the relationship wasn't the main reason for using a restorative process (this is not to say that apologies were not offered). Mostly, it was to gain greater understanding (for themselves or for the benefit of the children), or to gain a sense of safety and closure with practical steps to ensure this.

I don't want him back. I just want him to stop doing it to others. We are finished, but he will do it again to someone else. Does he know what he did to me? (Victim)

I have been working with Ms. Y for 14 months as her mediator. When she felt ready we proceeded with a meeting. Throughout this time her feelings were made clear. She did not want to restore the relationship and in fact she had moved on. However, she wanted reassurances that her children were going to be fine. (Practitioner)

Another practical outcome related to accessing psychological and medical attention for the violent behavior (this was discovered in the follow-up when it became clear that the victim had sought medical attention and was being treated). However, when the practitioner contacted the parties to re-engage for the purposes of this report, the relationship had broken

down due to reasons identified by the offender (the support worker had lost contact and the victim was no longer taking medication).

Another key outcome was the opportunity for the victim to come to equal terms with the abuser and be able to ask questions. The process of empowerment and the holistic support that were observed in our cases led to victims feeling more in control and respected.

When they told me about RJ, I was already finished with the relationship. I didn't want to go back to the dark places. But I wanted him to know what happened. I don't think he did. So, if I was going to ask questions, I wanted to ask them directly to his face and make him feel that we are equal and I am not a victim anymore. We are human beings. (Victim)

During the focus groups, one practitioner noted :

Most victims whose RJ case concludes successfully understand this success to mean regaining power and their old status as free women ; but the offender needs to be ready to allow them to feel in this way. (Practitioner)

The understanding and bias of the abuser towards gender equality were key in making true progress in balancing power and gaining respect. Victim awareness, education, psychological and therapeutic services were key as complementary services alongside RJ encounters.

Concluding reflections

Recently, the interest in RJ has been revived internationally. Its application with complex cases such as DV remains in the shadows of research, policy and legislation. Many have highlighted the systematic nature and emotional and psychological trauma of primary and secondary victims within the domestic environment. With a clear concern for using RJ in such cases, advocacy groups have been concerned about re-victimisation and the power relationship that exists between victims and perpetrators of DV. Political parties wanting to show their willingness to protect victims have taken a hard line. DV and RJ are now becoming more politically significant in the UK, albeit separately. We feel that by widening the discussion of RJ and DV, progress is being made about its usage and place within the rehabilitation of both victims and offenders. By having a more open dialogue with groups who we perceive to be un-supporting of the practice, we invite practitioners to become more open about their practice, especially in helping researchers highlight cases with successful outcomes.

We set off to test our hypothesis that despite this negative environment, RJ is applied in the UK with DV cases. We have been able to identify pockets of practices. This was very difficult and mainly through word of mouth. Although our hypothesis was indeed true, we wouldn't say that RJ for DV is an extensive practice in the UK. We then proceed to understand the barriers and circumstances that these selected practices face. We also wanted to understand their limits and what they have to offer.

Our research also suggests that when appropriately applied, RJ can empower victims while enabling offenders to engage in dialogue based solutions to the problems that DV has caused to them. However, the discussion of RJ in the context of DV and the consequent implications of the issue of power cannot be separated from questions around gender inequality, women's position within traditional judicial systems, and whether RJ procedures can practically change the judicial stereotypical treatment of victims. DV is violence that typifies our relationship with the criminal justice system whereby, traditional justice seeks to punish the offender on behalf of the state in somewhat of a disregard to the needs of the victim, it is a breakdown of relationship that the case for RJ is no more apparent. This is

not to deem the state and its corresponding justice system as irrelevant but rather to promote dialogue of its inadequacies to directly address harm of all parties in a process of reparation and restoration. Professionals addressing DV understand that the only safe and effective approach is to hold the abuser accountable, whether this be restoratively, punitively or both. However, it is acknowledged that the victim should be a part of this accountability, if they wish to do so, and should be empowered in a way that is safe, controlled and addresses the needs arising from the harm that has been caused.

Notes

1. <http://iars.org.uk/content/RJandDV> (accessed August 2015)
2. Further on the project <http://iars.org.uk/content/RJandDV> (accessed October 2015).
3. <http://www.iars.org.uk/content/EditorialBoard> (accessed August 2015).

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