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A qualitative exploration of the challenges faced by police and a community Restorative Justice (RJ) Service in engaging victims and offenders with mental disorder in restorative initiatives.

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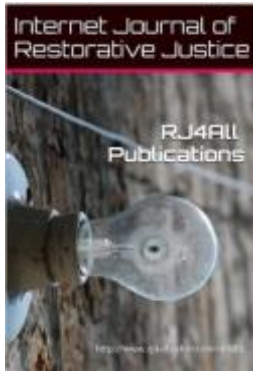
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A qualitative exploration of the challenges faced by police and a community Restorative Justice (RJ) Service in engaging victims and offenders with mental disorder in restorative initiatives

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Abstract

Purpose – This research aims to explore the issues facing staff when facilitating RJ with victims and offenders who have a mental disorder (MD) such as problems, recommendations for policy and further research. As this report is being written, the researcher is not aware of any research specifically examining RJ with victims and offenders with MD.

Design/methodology/approach – This was an exploratory study employing a qualitative methodology. Thematic analysis was used to analyse the data. There were six participants in total, two managers and four facilitators from the police and an independent RJ Charity. These participants completed a semi-structured interview or a questionnaire.

Findings – Five main themes were drawn from the data; Challenges, Policy and Procedure, Preparation with sub-themes Psychological Preparation and Management and Risk, Professional communication and Working Agreements which included sub themes of Confidentiality, Multi-Agency Working and Sharing of Information and finally Solutions and Future Directions.

Research limitations/implications – The findings offer areas for further research. The use of the qualitative approach and small sample means that replication with other RJ organizations may be limited.

Practical implications – The paper includes implications for further research and policy development

Key words: Restorative Justice, mental disorder, policy implications

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Literature Review

Restorative Justice (RJ) is a process where parties with a stake in a particular offence collectively resolve how to deal with the aftermath of the offence and its implications for the future (Marshall 1999). In RJ conferences, a victim or person harmed and an offender discuss any harm that has been caused, the wider impact the harm has had and collectively decide how the harm can be repaired. It is a process that holds offenders to account and enables them to see the consequences of their actions and victims are empowered by having a say in the criminal justice process. For the purpose of this report, learning disability and mental illness are referred to as mental disorders (MD) using the Mental Health Act 2007 definition.

'What Works in Reducing Reoffending' literature (Ministry of Justice 2013) states that to date, research into RJ effectiveness has had mixed results. The Ministry of Justice (MOJ) cite research across multiple sites that show a reduction of 14 percentage points in the frequency of reoffending compared to a matched control group who did not participate in RJ as well as finding high levels of satisfaction for victims (Shapland et al., 2007). The What Works literature also claims that face to face conferencing works better than indirect forms of RJ such as a letter of apology between the victim and offender. They also claim that RJ works better for crimes where there is a clear victim and where there is a medium to high risk of conviction for the offender (Shapland et al., 2008).

Wager et al. (2013) have conducted a piece of research, delivered at the 2013 Division of Forensic Psychology conference, examining the effectiveness of three different types of RJ initiatives. The three initiatives were RJ conferencing, letter of apology and victim empathy work with the emphasis on the victim being able to choose which of the three they felt would be best. The ability to choose was associated with a likelihood of reduction in harm for the victim. For offenders it was found that the effectiveness of the type of RJ depended on the level of risk involved for example face to face conferencing was more effective for high risk offenders whereas a letter of apology was more effective for the low risk group and victim empathy work was more effective for the medium risk group

generating a significant difference between predicted and actual reoffending for the high and medium risk groups but not for the low risk group. However, Miers et al. (2001) in a Home Office research report into the effectiveness of RJ, found only one site in the research into adult RJ that resulted in a significant effect on reconviction rates with high risk offenders.

A recent study by the Revolving Doors Agency (2013) has indicated that currently 72% of male prisoners and 71% of female prisoners suffer from two or more MDs (including personality disorder, psychosis, neurosis and substance abuse). Furthermore, up to a quarter of the current prison population are understood to have difficulties processing new or complex information whilst not meeting the diagnostic criteria for a learning disability. The Prison Reform Trust's 'No One Knows' paper debates the issue of the prevalence of learning disabilities amongst offenders with prevalence estimates ranging from 1% - 10% of the prison population. Problems with the estimates arise from the requirements of a diagnosis and differences in assessment tools being used to identify learning disabilities. For example, Harrington et al. (2005) used the WASI test on 301 young offenders in custody and in the community, finding that almost a quarter had IQs lower than 70 and a further third had borderline IQs of 70 - 80. Average scores on the WASI are usually 100 with the majority of scores being distributed 15 points above or below this (115-85); scores of 70 denote possible learning difficulties. However, the authors comment that commonly used measures of intellectual functioning, including the WASI, cannot easily differentiate between people with intrinsic learning disabilities or difficulties and those with low scores due to lack of education.

At the same time, victims who have a MD may also request RJ. A report by Pettitt et al. (2013) used questionnaires and interviews with 361 individuals randomly selected from community mental health services in London and who were assessed as having severe mental illness. They found that 45% of the sample had been the victims of crime in the last year with one in five of those having experienced violent assault and a third were the victims of personal crimes. Wood and Edwards (2005) conducted a study to investigate the crimes committed against mentally ill patients living in the community. They interviewed a group of 40 (22 females; 18 male) patients from community based

mental health services and a comparison group of 80 (46 females; 34 male) students. They were asked questions derived from the British Crime Survey about the number of times they had been a victim of crime. They found that female mentally ill patients reported the highest levels of victimization but both male and female patients reported higher victimization levels than students. Furthermore, Teplin et al. (2005) found that individuals with severe mental illness were four times more likely than the general population to experience violent crime.

Research in this field has expressed the benefits of RJ for people with learning disability, however there have also been articles citing obstacles to RJ where there are instances of learning disability². At the time of writing, the researcher is not aware of any research specifically examining the effectiveness of RJ with victims and offenders with learning disability or MD, nor is there any literature examining the ability of individuals to fully participate in the RJ process. It is therefore, important to consider the issues around capacity for offender and victims with MD who want to participate in a form of RJ.

Van Staden and Kruger (2002) wrote a paper exploring the capacity of those with a MD to consent to treatment, clinical examination and research. They concluded that as long as the conditions³ for giving informed consent are met at the point in time that they are required, then capacity should be assumed regardless of the MD. Adshead and Brown (2003) support this in the case of personality disorder, where the personality disorder is the only presenting issue, these patients are considered in clinical settings to be competent to control their actions and are therefore legally responsible for them. However, in criminal law, defendants have successfully claimed that the presentation of the disorder has reduced their capacity to make decisions and therefore impaired their criminal responsibility. In the case of learning disability, many people are capable of

² <http://www.learningdisabilities.org.uk/content/assets/pdf/policy/breaking-cycle-response.pdf>

³ A mental disorder should not prevent a patient from *understanding* what they consent to; a mental disorder should not prevent a patient from *choosing* decisively for themselves; a mental disorder should not prevent a patient *communicating* their consent; a mental disorder should not prevent a patient from *accepting* the need for medical intervention.

understanding verbal or written information and deciding for themselves whether or not they wish to participate. Others may struggle to understand some of the vocabulary used in spoken explanations or may be unable to read or write.

Decisions about capacity to consent are situation specific and while an individual may not understand or have the capacity to consent to participation in one situation at one point in time, they may understand and choose to consent to participate in another (Department of Health 2008). Capacity to consent to participate when a person has a MD needs to be assessed at the time; it is fluid and the situation can change. For RJ, this means that consent to participate at the start of the process may be agreed but in the time it takes to prepare both victim and offender, the situation may have changed and consent may be withdrawn creating unexpected challenges for the RJ facilitator.

If we use the Revolving Doors research above, we can say with some certainty, that when preparing RJ, the issue of mental health in the perpetrator will be relevant and need to be considered for example personality disorder or psychosis. Theories of personality disorder postulate that the link between personality traits and experience could lead the individual to perceive a situation in a distorted way. Cognitive and Behavioural theories postulate that a complex blend of factors derived from both "nature" and "nurture" are thought to drive the formation of people's core beliefs. Cognitive theory assumes there are certain inherited dispositions such as temperament, which interact with children's environments, to influence the development of their personality, and their characteristic interpersonal strategies. Cognitive theory emphasizes the importance of social learning with respect to personality development. Childhood experiences, including childhood trauma and abuse, are seen as important factors that establish these core beliefs about the world. These core beliefs will later colour, and potentially distort, people's perceptions and interpretations of subsequent experiences.

Attachment theory refers to a person's characteristic ways of relating to 'attachment figures', such as one's parents, children, and romantic partners. The attachment types that have been

identified are secure, anxious/resistant/ambivalent, avoidant and disorganized. Lorenzini and Fonagy (2013) believe that many of the features of insecure attachment resemble the symptoms of personality disorder. For example, people with an insecure attachment style are more sensitive to rejection and anxiety whereas those who have an ambivalent attachment style might be associated with antisocial or schizoid personality types. This can present a dilemma as victims may want a particular response from the offender and may be upset when they don't receive that response or find that the offenders' body language doesn't present as remorseful. On the other hand, the offender will feel attacked or rejected by the victim and respond accordingly. The cognitive, behavioural and attachment theories seem to imply that RJ may not be suitable where there are severe personality disorders present. This is because the RJ meeting itself may be disrupted due to their core beliefs or attachment style and they may respond negatively to the RJ conference.

Psychotic disorders may present a similar problem for RJ if the person is experiencing negative symptoms, they may be unable to use facial expressions to present any understanding of the victim and positive symptoms may mean that the person may be preoccupied with intrusive thoughts, voices and visual hallucinations and unable to fully participate in the meeting. There may be difficulties with mentalization; the ability of an individual to understand the mental state of oneself or others that underlies overt behaviour. This suggests that despite the victims' wishes for RJ and their right to it, there may be a point when a disorder is so severe that even if there is capacity, the offender may not be able to empathise with the victim or fully participate in the meeting.

This pilot research aims to explore the issues facing staff when facilitating RJ with victims and offenders who have an MD. The research aims to investigate what staff consider as possible ways of solving some of the problems identified and make recommendations for policy and further research.

Method Section

Research Design

This was an exploratory pilot study which employed a qualitative methodology. As yet there have been no research projects exploring the ability to deliver RJ conferencing with individuals who have a MD in the community. A qualitative approach has been selected for this exploratory research as it can gather preliminary information about a phenomenon or issue which has not yet been defined and lead to the development of more definitive hypotheses which can be investigated by more powerful qualitative research methods (Stebbins 2001). Thematic analysis is flexible and independent of themes and epistemology so it can respond to newly developing themes and theories (Braun & Clarke 2006). Thematic analysis can be an essentialist or realist method, which reports experiences, meanings and the reality of participants, or it can be a constructionist method, which examines the ways in which events, realities, meanings, experiences and so on are the effects of a range of discourses operating within society.

Participants

The participants were two female managers, one from the police and one from the RJ service and 4 RJ staff, 3 females and 1 male. All, had worked in the RJ field for over a year and all had experience of preparing and conducting RJ conferences.

Materials

A semi-structured interview was conducted with the police manager and RJ manager with a set interview schedule that could be replicated by others. A semi-structured questionnaire was used with the 4 RJ staff. Originally, all participants were going to be interviewed however, in the process of this research the interviews with managers had been conducted prior to a number of RJ conferences starting that required staff to be working off site the majority of the time. As staff were often unavailable, preparing RJ conferences and the researcher was unable to arrange times to conduct the

interviews within the time constraints of the research. The staff were instead offered the same interview questions as part of an online questionnaire which they could complete in their own time.

To achieve validity in the study, questions were developed using the challenges exposed by the literature review, discussions with managers and discussions with RJ staff (Stebbins 2001). These were then reviewed by a chartered forensic psychologist to ensure the questions were not leading, and were relevant to exploring challenges to conducting RJ when one of the persons has a MD. Questions asked were about policies for supporting people with MD to participate in RJ, procedures for assessment and selection of people for RJ and why knowing about MD is important to the RJ process.

Procedure

- Data were collected via interview with managers and using Survey Monkey (an online survey tool) with staff. Survey Monkey was data checked in order to be certain of how participant data was kept and used and whether participant data could be accessed by third parties.
- Qualitative data was analysed using Thematic Analysis (Smith 2008) which took an inductive approach to analysing the data; as previous research in this area has not been conducted, we are reliant on the responses of the participants to help us to start developing theory.
- As the questions to staff were drawn from themes in the literature and from discussions with participants, the first codes set were based on the questions asked. These made up the 'key themes' attempting to address the research aims; policy and procedure, challenges, solutions and future directions.
- Responses coded to these key themes needed to be prevalent in the discourse and prevalence was defined as the use of a key theme within a response initially identified by a key word (explicit discussion of a theme). Where a key word was not there then sentences which addressed the issues that could be described by one of the key words and determined if there was a clear link between the discourse and a particular theme (implicit discussion of a theme).

As this was an exploratory study, the beginning and ending of an instance of a prevalent key theme in the response was not set, so as to allow for as much relevant data as possible needed to be captured as there are only 6 responses in total. Furthermore, as this was an inductive analysis, it was open to other key themes emerging if they were also prevalent.

- Through the course of exploring the data, the key themes of Future Directions and Solutions were combined as there was significant overlap in the discourse relating to these themes. Additionally, a key theme of Professional Communication and Working Agreements was developed to encompass issues around multi-agency working, confidentiality and sharing of information as these all shared a link with how information is shared with other agencies, the impact of confidentiality and the support needed from other agencies involved in the care of a victim or an offender.
- Another key theme which emerged from the data was Preparation. This encompassed discourse related to the sub-themes of Risk and Psychological Preparation and Management which encompassed issues on reassurance, support, understanding, empathy and expectation management.
- Themes were defined by the content related to them as evidenced by the data. Where there is overlap, a sub-theme has been generated to evidence the underlying issues that are creating overlap within 1st level themes (Smith 2008).

Results and Discussion

Five main themes were drawn from the questionnaire and interview responses:

1. Challenges – relates to all discourse that discuss current challenges to RJ with victims and offenders with MD.
2. Policy and Procedure – relates to current policies and procedures to help staff work specifically with MD whilst conducting RJ.

3. Preparation – encompasses discourse relating to how staff prepare for RJ and is made up of two sub-themes:
 - a. Psychological Preparation and Management – This theme includes any discussion about the benefits of preparation and having information to support victims, understanding mental disorder, expectation management and empathy.
 - b. Risk – This relates to any discussion of how preparation and information are required to manage risk when lone working to prepare RJ.
4. Professional Communication and Working Agreements – this theme includes any discourse relating to how professionals can work together to support the RJ process and is made up of three key themes:
 - a. Confidentiality – any discourse about the understanding of and the challenges of confidentiality.
 - b. Multi-Agency Working – any discourse about the need for or benefit of multi-agency working. This sub-theme is also linked to Solutions and Future Directions (Freeday & Muir-Cochrane 2006).
 - c. Sharing of information - This theme includes all material referring to the benefits and challenges to sharing, receiving and using information regarding MD in victims or offenders for RJ. This is linked to the Preparation theme above (Freeday & Muir-Cochrane 2006).
5. Solutions and Future Directions – This theme was developed from any references that were made about suggestions for future policies and future strategies.

Preparation

The main theme with the most data coded to it, that emerges, is the need for information for the preparation of RJ. Preparation is central to the effectiveness of RJ as it allows for the management of expectations of the parties involved. The participants argue that the more prepared victims and RJ staff are, the better they can understand the process in the meeting and why it is happening.

“Value in the meeting comes from the preparation in order to ascertain the needs of the victim.” – Police Manager

This is further explained by the sub-themes of Psychological Preparation and Management and Risk. These sub-themes demonstrate the importance of information for risk assessment for staff who are lone working to prepare RJ and the importance of information to preparing the meeting and enabling staff to adequately support victims and offenders in what can be a highly emotive process. One of the respondents describes how knowledge of an offender’s MD can help manage the victim’s expectations of the meeting process:

“If the victim is prepared for this then it can help them understand what is happening during the RJ process and not get upset if they don’t see evidence of the emotion that they want.”
– RJ Manager

Underlying these comments there appears to be a motivation to protect the victim in order to avoid secondary trauma, to reassure them, manage their expectations and prepare them for the difficult emotions that may arise in the meeting.

“There is also an issue with determining level of empathy from the offender. Understanding the process and the content is more important as they can then prepare the victim for the fact that the offender might not show a great deal of empathy.” - RJ Manager

“Knowing about it can help explain some of the behaviours in the meeting.” – RJ Staff

Knowledge and awareness can be helpful to allaying fears of the unknown and reducing anxiety in victims (MOJ 2015). Knowledge and preparation in general, can increase individuals’ self-efficacy to complete a future task and effect decision making to participate in a task (Bandura 1977, Miller et al., 2013). In this instance, preparing the victim adequately may enable them to participate by increasing their self-efficacy for completing the meeting with the offender and may increase the likelihood of them deciding to participate.

There is a suggestion from the data that the additional knowledge isn’t just about preparing the victim and the offender but also preparing the staff, allaying their fears and allowing them to

exert some control over the meeting. This can be explained using attribution theory (Heider 1958) in particular how the staff perceive the events and how this effects their own perceptions of their ability to manage a meeting in which a victim or an offender has an MD. The three factors that make up attribution are locus of control, stability and control. If staff feel prepared and have all the information then they can feel that they have an internal, which factors might change in the course of the meeting and they can exert some control over those factors which would increase their self-efficacy for completing RJ meetings with this client group.

Professional Communication and Working Agreements

Numerous times throughout the discourse, participants mentioned their need for information from other agencies in order to prepare for the RJ meetings. When discussing sharing of information, the issue of confidentiality was close at hand. It is agreed and understood by all participants that how information is shared needs to be subject to consent and individual sharing agreements were suggested as a solution to this.

“Any information is important but we understand the boundaries of confidentiality” – RJ Manager

Arguments are made for greater multi-agency working in RJ as not only would that have the benefit of information sharing but also knowledge and expertise could be shared to help prepare RJ staff and participants better when they have a victim or an offender with MD.

“Multi-agency working. Support from the therapist or mental health workers to be engaged in the process with a view to continuing support throughout treatment or therapy.” – RJ Staff

This seems to suggest, that for RJ staff it is important not only to have the information during the assessment of individuals for RJ but also to be able to contact experts and access support from services to enable them to provide a successful RJ intervention. This has connotations for assessing capacity with individuals who have a MD. Discussions with mental health teams, prison inreach teams and others could help the RJ facilitator build a picture of the victim’s or offender’s ability to consent to the process (Mental Capacity Act 2005), their ability to empathise with the victim and their ability to

understand and engage with RJ at various points in time which links back to the sub-theme of Psychological Preparation and Management as understanding and consent are vital to the process. Support from other professionals can play a role in protecting victims and enhancing victim outcomes but also helping and preparing the RJ facilitator from unexpected challenges during the RJ conference. It seems that with greater multi-agency working, consent and confidentiality could be achieved as well as sharing of information.

Challenges

Demonstrating the benefits of RJ for victims continues to be the greatest challenge for the police:

“The biggest barrier has been the victims not wanting to participate.” – Police Manager

Within this, ascertaining the importance between mental health of the victim and crime “remains a challenge” for the police who acknowledge that:

“There are lots of challenges presented, more on the victim side of things. Does LD make people more susceptible to crime? If they have an MD are they more vulnerable? Are people with LD and MD more prone to be victims of certain types of crime?” – Police Manager

Police are still to decide how best to engage victims in discussions about mental health and about prospective RJ participation at a time of high emotions and in a sensitive and empathic manner. From a victim perspective there may be cost-benefit process to their decision making about whether to participate in RJ. Does the emotional pain and fear carry more valence than the perceived benefits of “closure”? Frijda’s (1986) valence theory suggests that emotions are linked to the perceived positive or negative valence (attractiveness/aversiveness) of an event or object. Emotions such as anger and fear are linked to perceived negative valence. In the case of victim participation in RJ, the fear of the meeting and anger towards the offender could lead to greater perceived negative valence in the situation and therefore a perception that the cost of participating outweighs the benefits.

Policy and Procedure

The most surprising aspect of this theme was that there is currently no policy, or strategy for the inclusion of people with an MD in RJ and no guidelines for how to conduct RJ with this client group.

The starkest responses were those of “I don’t know” or “none” in response to questions about policy. Current procedures rely heavily on RJ staff having sufficient information with which to prepare the RJ meetings. Including preparing victims and offenders.

Future Policy/Strategy

RJ staff expressed little knowledge about specific policy related to working with or assessing MD for RJ apart from the RJ Victim’s Code. However, there are plenty of suggestions for future developments:

“[...] subject to individual sharing agreements. If services are commissioned to provide services, then the sharing of information has greater flexibility but all depends on information sharing directives [...]” – Police Manager

Within the police service, a number of measures are coming into effect in the spring of 2015, including the provision of RJ in Liaison and Diversion services as well as new screening measures for offenders on entry into prison which will screen for mental health issues and offering RJ more widely to victims. Further to this, there are a number of suggestions for improvements in the dissemination of information about RJ to victims.

“More officers need to know more about the victim code and about RJ as they are able to ask the initial question [would you like to participate in RJ?] but not always able to answer the victim’s follow up questions. More training will be done on this now.” – Police Manager

Understandably, there will still be issues around victim engagement and providing victims with information about the RJ process and what is in it for them. There will also be issues about the nature of the offence and the meaning this has for the victim.

“A lot depends on the type of crime that has been committed. Victims of low level crime might be less bothered than those of high impact crime but impact is the key [...]” – Police Manager

Moving forward, sharing of information and multi-agency working could benefit from an agreement to help RJ and police services access other support services such as primary and secondary care and probation services in supporting people with MD who participate in RJ. Support in this sense is not

only for the victim or offender but also to the police officers and RJ staff working in a customer facing role who need information or guidance in working with MD.

Conclusions

From the responses given to the interview and questionnaire, it seems that underlying the key themes and sub-themes is the linking issue of information sharing. It is apparent across the respondents, that everyone is aware of confidentiality and consent and the right for individuals to retain some privacy with regards to their mental health however in order to conduct RJ safely and effectively, some discussion about sharing of information needs to be had.

A further conclusion is that the RJ field could be further supported by the development of either policy or guidelines to enable police and staff to work with victims and offenders with MD. The respondents suggested that the guidelines could also include information about other services to refer on to or to contact for information. Again this feeds into the themes of multi-agency working and sharing of information relevant to RJ preparation.

Limitations

The limitations of using a qualitative approach for exploratory research are that replication with other RJ organizations may be difficult. As the data collection method is different for both staff groups, it leaves the research open to bias. For example, both an interview and a questionnaire can be impacted by demand characteristics however, as the questionnaire is anonymous, it is likely responses here may have been more honest and responses in the interviews with managers may have been subject to socially desirable responses as they may perceive that they need to respond to questions as representatives of their organisation. A way of avoiding this would be to negotiate longer time for all the interviews to be conducted or to complete questionnaires with both the staff groups. The validity of the study is limited as the questions were not tested beforehand this was due to the time limitations of the study; with adequate time, questions could have been tested with staff beforehand allowing for questions to be refined and address the key issues more precisely.

Future Research

It became apparent during the project, that the research question had been raised before the services were equipped to answer it. This has served to have the organizations question the assessment and screening procedures of RJ organizations and prisons. In response to this, screening for mental health issues is being piloted at a number of prisons in the area and the RJ service has altered its referral form in order to request information about MD diagnoses. This should mean that future research could benefit from replicating this research with the additional assessment and screening information that will now be available.

Future research into this area could benefit from the following:

- A project exploring the feasibility of RJ with victims and offenders where one or both have a MD, exploring cost, training required by staff and information sharing.
- Deeper analysis into the concerns of RJ staff working with victims and offenders with a MD.
- Development of guidelines for RJ staff with the combined expertise of the agencies involved in the care and support of victims and offenders.
- Use a quantitative approach to explore the constructs elicited in this study with psychometrics and a quantitative approach to evaluate the effectiveness of RJ pre and post an RJ conference.

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