

Justice Committee Inquiry into Restorative Justice

Evidence submitted by [Professor Clare McGlynn](#) and [Professor Nicole Westmarland](#), Durham University

Executive Summary

Key Research Findings:

1. Domestic Abuse and Restorative Justice:

- 1.1 Our FOI study currently being completed is revealing that the vast majority of police forces use restorative approaches in cases of domestic abuse;
- 1.2 Our in-depth study of one police force found a concerning number of 'Level One' (street level) restorative approaches in domestic abuse cases;
- 1.3 The lack of openness among police forces regarding their use of restorative approaches is hindering an open exchange of experiences and development of best practice.

2. Sexual Violence and Restorative Justice:

- 2.1 Our case study investigating the experiences of 'Lucy', an adult survivor of child rape who undertook a restorative justice conference, provides good grounds for considering the possibilities of restorative justice in cases of sexual violence.
- 2.2 With appropriate safeguards, specialist support for survivors (and perpetrators), appropriately trained facilitators and with the consent of all those involved, restorative justice may enable us to hear survivors' stories in their own words, giving voice to the real harms of sexual violence. It may empower survivors by giving them greater control. It may encourage admissions of offending, offering validation, and in focussing on the offender, reduce victim-blaming.
- 2.3 Our research with sexual violence survivors found that few survivors feel a sense of justice from their engagement with the conventional criminal justice system. While we must continue to reform the criminal justice system, this need not be the sole focus of change and we should consider additional justice mechanisms such as restorative justice.

3. Key Recommendations:

- 3.1 Street level (Level One) restorative approaches should not be used in cases of domestic abuse or sexual violence;
- 3.2 Greater openness about the use of restorative approaches in domestic abuse cases is needed to enable police forces to develop best practice and share experiences – positive and negative;

- 3.3 More consideration should be given to the opportunities for survivors to undertake restorative conferences in cases of sexual violence where they wish to do so and there are appropriate safeguards, training, expertise and support;
- 3.4 Partnerships with organisations supporting survivors of domestic and sexual violence are vital to ensure that their specialist expertise and experience is fully integrated into any further development of restorative approaches in cases of gendered violence and abuse.

4. Expertise

- 4.1 [Professor Clare McGlynn](#) is a Professor of Law at Durham University and an expert on sexual offence and pornography laws. Her research investigates the use of restorative justice for gendered violence, as well as working with survivors to better understand their ideas of justice. She is a regular media commentator on issues relating to sexual violence and has worked closely with policy-makers, governments and NGOs to introduce new laws on image-based sexual abuse ('revenge pornography') and to criminalise the possession of rape pornography. She is co-editor of *Rethinking Rape Law: international and comparative perspectives* (2010).
- 4.2 [Professor Nicole Westmarland](#) is Professor of Criminology at Durham University and Director of the [Durham Centre for Research into Violence and Abuse](#). She has conducted around 40 research projects into men's violence against women and held a number of advisory positions. She is author of [Violence against Women. Criminological perspectives on men's violences](#) (2015).
- 4.3 Four of our joint research projects have particular relevance to this inquiry:

Study 1: Restorative Justice and Domestic Abuse Case Study - an evaluation of the practices of one police force of its use of restorative approaches in cases of domestic abuse;

Study 2: Restorative Justice and Policing Domestic Abuse UK Study – FOI-based research into the extent to which police forces across the UK use restorative approaches in cases of domestic abuse.

Study 3: 'I Just Wanted Him to Hear Me' – a case study investigating the experience of 'Lucy', a survivor of child rape and other forms of sexual abuse, who undertook a restorative justice conference;

Study 4: Kaleidoscopic Justice: Sexual Violence Survivors Ideas of Justice - based on interviews and workshops with twenty sexual violence survivors into their understandings of justice.

Restorative Justice in Cases of Domestic Abuse

Study 1: Restorative Justice and Domestic Abuse Case Study

- 5.1 The use of RJ in cases of domestic abuse has long been controversial, with the HMIC, the College of Policing, and ACPO/NPCC discouraging its use. Many women's organisations are also concerned about risks of re-victimisation and minimisation of the harms of this form of abuse. As a result, there is little discussion, let alone empirical evidence, on the effectiveness or otherwise of RJ for domestic abuse. This climate of concern has also meant that the use of restorative approaches is taking place under the radar, with little explicit acknowledgement of current practice or sharing of experiences – positive or negative.
- 5.2 Durham University evaluation of police use of restorative approaches for domestic abuse:**
We undertook a study which investigated the use by one police force of restorative approaches in cases of domestic abuse over a 9 month period in 2015.
- 5.3 Key findings of this study are:**
- 5.3.1 Of the 62 restorative approaches taken in domestic abuse cases, 42% (26 cases) related to family members and 58% (36 cases) partner and ex-partners. Traditionally, the most concern has been raised on the role of restorative justice in cases of partner abuse and this was the most common in our sample.
- 5.3.2 Despite police training indicating that Level One restorative approaches (street level apologies, financial agreements etc.) were not to be used in domestic abuse cases, these were the most common type of restorative approach used across the sample – in 54% of cases.
- 5.3.3 When we look across the sample at the type of restorative approach used, we see that the two most common outcomes were an 'apology' or a 'financial agreement' (accounting for 28% of the sample each). 'Other' types of outcome was the next most common, and a restorative justice conference – what most people think of when they hear the term 'restorative justice' – was the least likely to be used, in just one in five restorative approaches (21%).
- 5.3.4 We coded the restorative approach as 'other' if the case was marked as being dealt with by use of restorative approach but did not consist of an apology, financial agreement or conference. We would question whether some of these outcomes actually were 'restorative approaches' or whether a level of police 'cuffing' was taking place.
- 5.3.5 We expressed concerns particularly about the use of Level One and 'other' restorative approaches in a multi-agency conference co-hosted with the police force in question. We also expressed

concerns about approval channels, risk assessments, and support for victims, especially in cases of partner violence. These were taken on board by the police force in question and a new domestic violence and restorative approaches policy was implemented.

- 5.3.6 At the multi-agency conference, attended by around 100 local practitioners and policy makers, there was broad support for further consideration of the use of Level Two (restorative conference) and Level Three (post-sentence) restorative approaches in cases of domestic abuse; but little support for the continuation of Level One or 'other' types of restorative approaches because of safety concerns – especially in terms of partner violence.

5.4 Lessons learned:

- 5.4.1 The terms 'domestic abuse' and 'restorative justice/approaches' are broad ones and are used in different ways by different people.
- 5.4.2 Until police forces are able to be open about their use of restorative approaches, as this one was, it is difficult to have an open and honest discussion about the risks and opportunities different forms of restorative approach can have for different forms of domestic abuse. These discussions need to be had on a wider scale, bringing key stakeholders together across a range of offender and victim-survivor orientated organisations.

Study 2: Restorative Justice and Policing Domestic Abuse across the UK

- 6.1 We are currently completing a study into the police use of restorative approaches for domestic abuse across the UK. Drawing on FOI responses from nearly all police forces, we will be able to provide – for the first time – details on the nature and extent of restorative approaches in domestic abuse cases.

6.2 Preliminary indications:

- 6.2.1 The vast majority of police forces are using restorative approaches in cases of domestic abuse.
- 6.2.2 In most cases, the 'restorative approach' involves an apology or payment of compensation or other outcome, with few restorative justice conferences.
- 6.2.3 Some outcomes are clearly inappropriately being labelled as restorative approaches, for example the police officer giving 'words of advice' to a perpetrator.
- 6.2.4 Serious questions are raised regarding the use of restorative approaches without appropriate risk assessments, training of officers in relation to domestic abuse, and support for survivors.
- 6.2.5 We will be able to provide the committee with further findings around Easter time if required.

Restorative Justice in Cases of Sexual Violence

7. Little evidence on use of RJ in cases of sexual violence

- 7.1 Despite the growing use of restorative justice for a wide range of crimes, there remains concern over its use in cases of sexual violence due to the risks of minimising the harm of sexual violence and of re-victimisation. Such concerns have led to sexual violence being excluded from many RJ projects which has resulted in a significant research gap in our knowledge of its effectiveness.
- 7.2 Across England & Wales, there are examples of RJ being used in cases of sexual violence, though these are ad hoc and often under the radar due to their public sensitivity. This piecemeal approach has hindered a broader knowledge-sharing of experiences in this field.

Study 3: 'I Just Wanted Him to Hear Me': Lucy's experiences of a restorative justice conference

- 8.1 We have undertaken one of the few studies in this field, investigating the experiences of those involved in a restorative conference which addressed the experiences of Lucy, an adult survivor of childhood rape and other forms of sexual abuse, whose perpetrator was cautioned for his offending.¹
- 8.2 Lucy found the experience extremely valuable:
- It 'enabled me to say exactly how it [the abuse] had affected me'
 - The conference 'was a really big turning point for me actually. Instead of having this whole episode of my life that I couldn't do anything with, I could stop hating myself and put the blame where it should be'.
 - While the conference left her 'dangerously unhinged' at the time, she says that 'in retrospect, it was more important to have my say and have him listen than for him to go to prison'.

8.3 Lessons to be learned:

- 8.3.1 Preparation and support are vital: Lucy received weekly support for approximately three months from a rape crisis counsellor to prepare for the conference;

¹ McGlynn, C, Westmarland, N & Godden, N (2012) 'I Just Wanted Him to Hear Me': Sexual Violence and the Possibilities of Restorative Justice. *Journal of Law and Society*, 39(2): 213-240. Briefing Available at: <http://claremcglynn.com/restorative-justice/restorative-justice-briefing-papers/>

- 8.3.2 Trained facilitators essential: facilitators must have extensive knowledge and understanding of gendered violence and the dynamics at play between parties in order to facilitate such conferences.

Study 4: Kaleidoscopic Justice: Sexual Violence Survivors' Ideas of Justice

- 9.1 In a further study with twenty women survivors of sexual violence, women expressed a vision of justice we have called 'kaleidoscopic justice', referring to justice as a constantly shifting pattern and as being a lived, ever-evolving experience.² The survivors in this study were clear that their understandings of justice extend well beyond conventional criminal justice systems and could encompass RJ.
- 9.2 RJ may offer the 'recognition' sought by survivors with early admissions of guilt by perpetrators. Survivors also want an active voice, seeking more ownership and control within a justice process in order for them to feel empowered which RJ can offer. Finally, survivors wanted perpetrators to face more meaningful consequences to better underline the significance of the harm caused. While this is not always possible with RJ, where there is such a low conviction rate within the conventional criminal justice system, RJ may offer some consequences.
- 9.3 Restorative approaches, therefore, offer the potential to meet a variety of the justice interests of sexual violence survivors.³ Nonetheless, survivors' understandings of justice extend beyond RJ. In our study, survivors' kaleidoscopic vision of justice also included their interests in social and cultural change, the prevention of sexual violence, the need for support, and the demand for dignity.

Key findings on RJ in cases of sexual violence

10. Despite significant reforms, few survivors feel a sense of justice from their engagement with the conventional criminal justice system. While we must continue to reform the criminal justice system, this need not be the sole focus of change and we should consider additional justice mechanisms such as restorative justice.
11. Our research provides good grounds for considering the possibilities of restorative justice in cases of sexual violence. With sufficient safeguards, support for survivors (and perpetrators), trained

² McGlynn, Clare & Westmarland, Nicole (2014) 'Kaleidoscopic Justice: making sense of the lived complexities of justice for sexual violence victim-survivors', paper presented at University of Leuven, November 2014
<https://www.law.kuleuven.be/iinc/english/conferencesexualviolence>

³ McGlynn C, Westmarland N, Downes, J, 'Seeking Justice for Survivors of Sexual Violence: recognition, voice and consequences' in Zinsstagg & Keenan (eds), *Restorative Justice and Sexual Violence* (forthcoming 2016).

facilitators and with the consent of all those involved, restorative justice may enable us to hear survivors' stories in their own words, giving voice to the real harms of sexual violence. It may empower survivors by giving them greater control. It may encourage admissions of offending, offering validation, and in focussing on the offender, reduce victim-blaming.

12. The expertise and support of organisations working with survivors, such as Rape Crisis, must be integral to developing the use of RJ in cases of sexual violence.

13. Relevant research publications

McGlynn, Clare, Westmarland, Nicole & Godden, Nikki (2012). ["I just wanted him to hear me": sexual violence and the possibilities of restorative justice](#). *Journal of Law and Society* 39(2): 213-240.

McGlynn, Clare, Westmarland, Nicole & Godden, Nikki (2012) [Is Restorative Justice Possible in Cases of Sexual Violence?](#) Research Briefing. <http://claremcglynn.com/restorative-justice/restorative-justice-briefing-papers/>

McGlynn, C (2011). [Feminism, Rape and the Search for Justice](#). *Oxford Journal of Legal Studies* 31(4): 825-842.

McGlynn, Clare & Westmarland, Nicole (2014) 'Kaleidoscopic Justice: making sense of the lived complexities of justice for sexual violence victim-survivors', paper presented at University of Leuven, November 2014 <https://www.law.kuleuven.be/linc/english/conferencesexualviolence>

McGlynn C, Westmarland N, Downes, J, 'Seeking Justice for Survivors of Sexual Violence: recognition, voice and consequences' in Zinsstagg & Keenan (eds), *Restorative Justice and Sexual Violence* (forthcoming 2016).

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29 January 2016