

A middle way? Restorative justice and domestic violence

Clare McGlynn is a professor of Law at Durham University. She has undertaken studies into the use of restorative justice in cases of sexual and domestic violence and gave evidence to the recent Justice Select Committee inquiry into restorative justice. She is currently in the process of completing two studies on the use by police of restorative approaches in cases of domestic abuse.



But as well as such vital pre-requisites, we also need to consider the different forms of domestic violence. While the term ‘domestic violence’ is closely associated with male violence against partners (former or current), the definition used by the government and police includes family violence, for example between siblings. These different familial circumstances require different responses. Blanket references, therefore, to the use or abuse of restorative justice in cases of ‘domestic violence’ can do more to obscure than illuminate debate.

At a very general level, restorative approaches are more likely to be suitable in cases of familial violence than those of intimate partner violence. And while restorative approaches are likely to be rarely used in such cases, if we are to listen to the voices of victim-survivors, we must be open to the possibility.

In response to Theresa May’s speech, one survivor of intimate partner violence whose experience of a restorative justice conference was empowering, commented: “I have heard people say that restorative justice isn’t suitable for cases like mine. All I can say is talk to me, talk to women like me, be honest and be open and listen to what we say.

“I agree it isn’t for everyone but please don’t just automatically take that choice away. There’s a lot of talk about putting victims at the heart of things. Well if you truly believe that please don’t exclude them from making choices.”

Thinking about this polarised debate, I am reminded of the philosopher John Stuart Mill who once commented that: “Conflicting doctrines, instead of one being true and the other false, share the truth between them.”

Clearly, police should not use on the street restorative disposals in cases of domestic violence. But, properly planned and supported restorative justice might be suitable for some cases of domestic abuse. And, with the right professional support in place, victim-survivors should be given a chance to explore it as an option.

More information and research is available at claremcglynn.com and @McGlynnClare

When is it suitable – if ever – to use restorative justice in cases of domestic violence?

This question has been the subject of heated argument for many years with some restorative justice practitioners emphasising potential benefits for victim-survivors, while others respond that using restorative justice in such situations is to ‘gamble’ with women’s lives. The debate continues, largely because there is little detailed evidence on which to base discussion.

Understandably, many might wish to avoid this controversial terrain, waiting until the evidence emerges and consensus develops. Not so the new UK prime minister, Theresa May. A few months ago, as home secretary, she spoke to the Police Federation about their poor record on policing domestic abuse and took aim at restorative practices.

While acknowledging that restorative justice is ‘victim-led’, she declared: “I simply do not believe it follows either the evidence or common sense to sit vulnerable victims across from perpetrators who for months and years may have destroyed their confidence, manipulated their mind, and beaten their bodies.”

Such a forthright critique is echoed by many people who work with victim-survivors of domestic abuse. The organisation Refuge, for example, welcomed this intervention, suggesting that restorative justice in cases of intimate partner abuse is ‘dangerous’.

Others cautioned against the blanket approach of the home secretary, with the RJC identifying the potential benefits for victim-survivors of appropriately planned restorative interventions.

With such a divergence of views, where can we go from here?

Theresa May was rightly critical of police action labelled as ‘restorative justice’ but that is because it bears little resemblance to what most people reading this will understand as restorative justice. In a study I’m currently completing with Nicole Westmarland and Kelly Johnson at Durham University, we are finding that all police forces in England, Wales and Northern Ireland are using restorative justice and community resolutions (and very often these terms and practices are used interchangeably) to tackle domestic abuse. However, these are mostly on-street disposals, not restorative justice conferences, victim-offender mediation or other substantive and planned restorative justice approaches.

The full results of this study will be published soon, but our recommendation will be that police should not be undertaking what they term Level 1 restorative justice – on the street disposals – in any case of domestic violence or abuse.

But what about other forms of restorative justice? Any case of domestic violence being considered for restorative justice must be victim-survivor driven and requires expert facilitators, specialist support for victim-survivors and perpetrators and extensive planning and preparation.