

Policing domestic abuse - what are 'out of court resolutions' and when are they being used?

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In stark contrast to official police guidance, every police force in the UK - except Scotland – used 'out of court resolutions' to respond to over 5,000 domestic abuse incidents (including intimate partner abuse) in 2014. Some of these incidents related to offences with sentencing tariffs of up to life imprisonment. Such widespread use of community resolutions and restorative justice - what we are calling out of court resolutions - has been taking place under the radar and contrary to best practice.

Our research findings have immediate implications for policy and practice: first and foremost, the police must stop using these street-level resolutions in cases of domestic abuse and College of Policing and National Police Chief Council guidance needs to be strengthened. We need an open and informed public debate about the role of restorative justice and other alternatives to the criminal justice system for cases of domestic abuse.



What are 'out of court' resolutions?

An 'out of court resolution' is the umbrella term we use to refer to community resolutions and a range of police-led restorative justice practices. They differ from other out of court penalties such as cautions and fixed penalties as they seek a 'resolution' to an individual or community level dispute or conflict. Community resolutions and restorative justice are not the same thing, but there are a lot of overlaps between them and some police forces treat them as though they are the same.

What is a community resolution?

Community resolutions are generally used for first time offenders where the victim does not wish to pursue any more formal action through the criminal justice system. They were designed to be used for less serious offences where an offender has been identified – so that police officers can respond to lower level crimes proportionally and be 'resolved' by police officers, rather than the criminal justice system.

What is restorative justice?

Although many think of restorative justice as planned, face to face meetings between offenders and victims (often referred to as 'conferences'), there are different 'levels' of restorative justice that the police can use:

Level 1: an instant or on-street disposal, where police officers or police community support officers use restorative skills ... to resolve conflict in minor crimes and incidents ... as an alternative to a formal criminal justice process.

Level 2: measures such as restorative justice conferences, and may involve more participants, risk assessments and seek longer-term solutions. A Level two restorative justice response can occur either as an alternative to criminal justice proceedings, or in addition to criminal justice proceedings, as part of a formal crime disposal. (ACPO 2012)

What's the problem?

Most people assume that restorative justice and community resolutions are rarely, if ever, used in cases of domestic abuse. So, there's been little research on this topic. In fact, College of Policing guidance is that these out of court resolutions are 'rarely appropriate' in domestic abuse cases

and not recommended for intimate partner abuse. The Independent Police Complaints Commission has stated that 'restorative justice should not be used in cases of domestic abuse' (IPCC 2013). Her Majesty's Inspectorate of Constabulary (HMIC) has said the same, warning of 'unacceptable risks'. Nonetheless, we became aware through our research partnerships with some police forces that out of court resolutions were being used in cases of domestic abuse and so undertook this research study.

What did we do?

Our aim was to investigate the nature and extent of police use of out of court resolutions in responding to domestic abuse in the UK. We used the Freedom of Information Acts to ask all police forces about their use of restorative justice and community resolutions in cases of domestic abuse. We got a 100% response rate – all replying at least in part. However, there are some inconsistencies in our data and a large proportion of missing data (dealt with in our journal article).

What did we find?

How often were out of court resolutions used?

- Every police force except Police Scotland had used out of court resolutions – either restorative justice or community resolutions (or a regional equivalent in Northern Ireland) to respond to domestic abuse in 2014 (the year we asked about).
- The proportion of domestic abuse cases dealt with using out of court resolutions varied significantly across the forces. Some forces – including Northumbria, North Wales, Thames Valley, Dyfed-Powys and Avon & Somerset – were using them rarely (in under 100 cases each).
- Some police forces were using them more routinely – for example Greater Manchester used out of court resolutions to respond to 837 domestic abuse offences and West Midlands to 751 offences in 2014. This equates to as many as 1 in 20 domestic abuse offences.
- The total number of domestic abuse cases (crimed and non crimed incidents) dealt with using out of court resolutions across the 45 forces was 5,466. We consider this the minimum number of cases due to data issues such as not always applying the domestic abuse 'flag'.

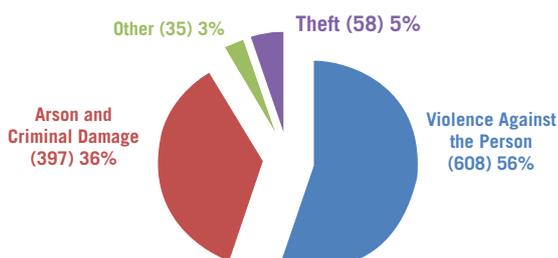
In what sort of domestic abuse cases were out of court resolutions used?

- All of the forces that recorded the relationship between victims and offenders (39 forces) said that they had used out of court resolutions for intimate partner abuse. Therefore, out of court resolutions were not restricted to familial forms of domestic abuse.
- There may have been an over-representation of same sex cases and of cases involving male victims and female offenders in terms of how frequently out of court resolutions were used.

How were out of court resolutions used in the intimate partner cases?

- Very serious crimes were being dealt with by means of out of court resolutions. They were used for a broad range of serious criminal offences which, if prosecuted, have potential sentencing tariffs of up to life imprisonment.
- Most often, out of court resolutions were used for violence against the person (in 56% of the 1,098 cases where we had this information). This included 131 cases of common assault and battery, 101 cases of actual bodily harm, and 100 cases of harassment. Particularly serious in terms of sentencing tariffs were one case of threat to kill (up to ten years imprisonment) and seven cases of malicious wounding (up to five years imprisonment).
- The second most frequent use was for arson and criminal damage (in 36% of cases). This was mainly for criminal damage (338 cases) but did also include one case of arson endangering life (which in court could lead to life imprisonment).
- While restorative justice can be used alongside a criminal justice prosecution, in practice it almost never was in the cases we looked at. Out of all the criminal justice prosecution data we were given for intimate partner violence (data from 34 forces relating to 1,227 cases) only one single case was recorded as involving any form of criminal prosecution (and this was a police caution).

FREQUENCIES OF OFFENCE CATEGORIES RECORDED FOR INTIMATE PARTNER ABUSE



What actions were involved in out of court resolutions?

- We found that out of court resolutions covered a very broad range of responses - many of which had no clear 'restorative' or 'community' elements. We had information on 346 cases and most common (43% of cases) was an apology – either verbal or written, or apology to the police officer. The second most common action, 27% of cases, was reparation, such as the damage paid for or replaced.
- In all cases, including intimate partner abuse, the traditional restorative justice conference was rarely used – with street level responses far more common. Out of the 12 forces that recorded the 'level' of restorative justice used (1,190 cases), 76% were recorded as Level 1. However we suggest this is higher in reality, as when we looked at the description of some of the Level 2 responses, we found them very similar to Level 1.

- We were very concerned about descriptions in intimate partner abuse cases where the action had more in common with a 'no further action' disposal, such as: 'parties separated'; 'no formal complaint made'; 'now separated'; and 'victim wanted no further contact'.
- Some actions had distinct overlaps with criticisms of pre-1990s policing of domestic abuse, for example: 'words of advice given', 'note signed to effect that offender will behave, or '[advised to]seek marriage guidance'.

Parliament's Justice Committee Report on Restorative Justice

Following our written and oral evidence to the Justice Select Committee on this research, the Committee's Report endorsed our recommendation that the police should not be using out of court resolutions in cases of domestic abuse:

'It is a matter of great concern to us that "Level One" restorative justice is being used by police forces in cases of domestic abuse. This risks bringing restorative justice into disrepute. It is crucial that frontline police officers are fully informed of the risks for vulnerable victims in such cases. We recommend that it be reaffirmed that "Level One" restorative justice is not appropriate for cases of domestic abuse and the Ministry of Justice work with police forces to ensure officers have proper guidance to avoid using restorative justice in inappropriate circumstances.' House of Commons Justice Committee, Restorative Justice, Fourth Report of Session, para 34, available on www.publications.parliament.uk/pa/cm201617/cmselect/cmjust/164/164.pdf.

What are our conclusions?

Our research has revealed the widespread use of out of court resolutions in domestic abuse cases across England, Wales and Northern Ireland. These police actions have been taking place 'under the radar', with most people assuming that restorative justice and community resolutions are not used in domestic abuse situations. We now need to move beyond theoretical debates over 'whether' we should use community resolutions or restorative justice, and discuss what is actually happening.

Overall, 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 – both positive and negative.

What should be done next?

We recommend that street level (Level One) restorative approaches and community resolutions that consist of similar interventions should not be used in cases of intimate partner domestic abuse. Therefore, we urge the College of Policing and National Police Chief's Council to revise and strengthen their guidance on the use of both community resolutions and restorative justice in cases of intimate partner domestic abuse.

Further research is needed into the safety and effectiveness of restorative justice conferences (Level Two) for all forms of domestic abuse, particularly as they are used in relation to policing. We recommend that police and restorative justice organisations develop specialist advice and training from organisations supporting survivors of domestic abuse to ensure that their expertise and experience is integrated into any further developments.

References and Further Reading

Nicole Westmarland, Kelly Johnson, Clare McGlynn (2017)

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Guidelines on the use of Community Resolutions Incorporating Restorative Justice available online at www.app.college.police.uk/app-content/prosecution-and-case-management/justice-outcomes/#restorative-justice

Independent Police Complaints Commission (IPCC) (2013)

Mrs Susan Anne Forster: the Appropriateness of Restorative Justice in a Domestic Abuse Case
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About the Researchers

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