

Daphne III - JUST/2011/DAP/AG/3350

*Doing restorative
justice in cases of
sexual violence:
A practice guide*

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Edited by Marie Keenan & Estelle Zinsstag



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Colophon

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Acronyms

| | |
|------|--------------------------------|
| CJS | Criminal Justice System |
| FGC | Family Group Conference |
| FGM | Family Group Meeting |
| RJ | Restorative Justice |
| PTSD | Post-Traumatic Stress Disorder |
| SV | Sexual Violence |
| VOM | Victim-Offender Mediation |

Doing restorative justice in cases of sexual violence: A practice guide

1. Introduction

1.1 Style and content

Producing a restorative justice (hereinafter RJ) practice guide sets a number of challenges, let alone one which addresses a contentious and complex area such as the application of RJ in cases of sexual violence (hereinafter SV).

One possibility would be to adopt a ‘what to do’ style, giving sage advice and stern warnings about certain practice necessities and potential dangers. We discounted such an approach right from the beginning. The range, nuance and complexity of the varied manifestations of SV preclude such a fixed and prescriptive approach, and more fundamentally it did not reflect our approach to restorative work or indeed the limits of our knowledge and experience.

Instead we choose to think about the ‘audience’, what would be their needs, concerns and expectations.

We envisage experienced restorative practitioners who are considering and reflecting upon the challenges of extending their work to address cases of sexual violence. These might be cases between adults, or adolescents or even children or a combination of the two. The behaviours might take different forms: rape, sexual assault, indecent exposure, creation of indecent imagery etc.

The context might be within a criminal justice process, pre- or post-conviction or indeed without having had a formal report or investigation.

The main body of the report of the DAPHNE two year study into RJ in cases of SV details a wide range of situations in which this harm occurs, between individuals, in institutions, in times of conflict and war, in relation to other gendered violence, in a familial context. Moreover how SV is ‘defined’ in a legalistic sense is equally varied and culturally determined. It is therefore impossible to provide a restorative practice guide which encompasses all of these variations and differentiations.

Consequently we have limited observations to a more ‘typical’ situation. We focus on a facilitated encounter between a person harmed by SV and the person responsible for that harm. We reflect upon the contextual nature of practice and encourage the reader to apply the same consideration in their particular circumstances.

1.2 Background

The two principal authors of this guide are RJ practitioners in Western European countries, who have undertaken RJ in cases of SV between adolescents and adults, where there is an ongoing familial relationship or where the parties are strangers to each other, in cases within or outside of the criminal justice system, and in cases where the offender has been incarcerated. Restorative models such as mediation, conferencing and family group meetings have all been used. This guide draws on the experience of the international team with whom we worked on this project.

1.3 Structure

In envisioning the potential audience for this guide - **experienced and reflective RJ practitioners** - we asked what questions would be asked if they were to extend their restorative practice to cases of SV? We also independently surveyed RJ practitioners in Denmark and the UK to further enhance our approach to the guide.

A series of questions that are important to this task were then established and the question and answer format of the guide was developed. In the guide we aim to capture the differences as well as the similarities in practice in order to suggest and offer an authentic portrayal of the reality of practice dilemmas, allowing for the genuine expression of doubt and uncertainty that often arises in practice. Our intention is to avoid prescriptive formulae for a way forward.

This guide is advised for practitioners who are well trained in any of the restorative methods conventionally employed, have experience of facilitating a range of sensitive and complex cases and are well supported and familiar with the practice of both co-work and multi-agency practice. Consequently we do not offer a generic set of basic questions about RJ or its principles and values. Whilst this guide stands alone and is available in both paper and digital format, we hope that it is read in conjunction with the final findings of the DAPHNE two year investigation into the application of RJ in cases of SV (Zinsstag et al., 2015). Such a double reading will give the reader a broad consideration of issues related to RJ, such as definition, typologies, explanations, ranges of impacts, cultural contexts and legalistic considerations; all of which are essential when considering practice implications.

2. Why do restorative justice in sexual violence cases?

It is easy to understand why some people may have reservations about the application of RJ in cases of SV. Yet our practice experience indicates that

the very same reasons which prompt victims and offenders to engage more generally in RJ in non- sexual cases also apply in cases of SV – perhaps even more so. These are to enable their voice to be heard, for the impact and aftermath of the harm to be more profoundly and widely considered, to ask questions and hear answers and create a more meaningful level of accountability to those affected and harmed. Victims of SV want to be heard and like victims of other crimes they also seek an acknowledgement of the harm caused to them.

‘How could you do this to me?’ is the question asked by most victims who have been raped, the ‘you’ referring of course to the person who committed the assault and hence the only one who can provide the answer. ‘Why did you do this to me?’ is also a question that many who have been sexually harmed in childhood want to ask of the person who abused them.¹

But it is not an easy question to ask and it is not an easy question to pursue. Some years ago in the Centre for Victims of Sexual Assault in Copenhagen (Denmark) we were taken by surprise when a young woman who had experienced rape told us that what would help her most was to talk to the man who had raped her. She had to know why he did it. She wanted to know if we could help her do that. We had never imagined that anyone would want to sit down face to face with the man who had raped her and ask that question directly. We had no idea how to help her but we had to learn. At the time the RJ services ‘didn’t do sexual violence’ and the sexual assault unit for victim/survivors ‘didn’t do offenders’. In the end we learned and found a way to offer that young woman and other victims the opportunity to enter into dialogue with their offenders. We cautiously adopted Mary Koss’s mantra: ‘No crime victim should be forced to confront her perpetrator, but neither should she be denied the opportunity if she desires it’ (see generally Koss, 2000).

There is now a growing body of research evidence which supports the application of RJ in cases of severe harm, such as SV (Angel, 2006; Koss, 2013). Conventional criminal justice processes can be especially difficult for victims of SV and many victims report dissatisfaction with criminal justice processes. RJ offers an additional approach which can be moulded to the needs of the individual victims.

While there is a growing body of literature on the benefits of RJ for victims of sexual crime (see main findings of this project for this literature) to date there is little research on the benefits of RJ for sex offenders. However,

¹ For more information, see <http://www.restorativejustice.org/editions/2006/july06/denmark>

there is growing interest in how RJ in cases of SV can contribute to offender rehabilitation through supporting desistance from further offending. This is covered in more detail in the main report of this project, in the section on the relationship between RJ and offender therapy.

The central focus of this practice guide is on creating safety in practice for victims of SV who wish to meet with their offender. We accept that RJ is not desired by all victims of sexual crime. However, for those who do desire RJ every opportunity for safe practice ought to be afforded to them in responding to their need. That is the aim of this practice guide. We offer guidance on how to engage with the parties to RJ in SV cases safely and in a manner that meets the psychological and emotional needs of all, most especially of the victims and offenders.

3. What are the benefits of restorative justice in sexual violence cases?

In addition to the benefits of RJ experience by victims of crime in general, there are additional benefits that can accrue to victims of SV.

Sexual violence is different from other offending behaviours in the degree to which it occurs in a relational context. In most cases there will be some form of past and perhaps present and even future relationship between the victim and the offender.

The difficulty of reimagining a safer and positive future relationship is often one of the primary concerns of victims and others indirectly affected by the sexual harm. Very often the perceived 'safe' approach to 'manage' this tension is to separate the parties and remove the potential for ongoing contact. However, frequently this is not sustainable, or even desirable, especially for the victim. RJ offers a methodology to bring together the parties in such circumstances to address such relational dilemmas.

Another specific benefit of RJ for SV victims is the chance to reclaim their voice – not as a victim but as a survivor. Victims often speak of their need to re-narrate their life stories as 'survivors' of SV rather than 'rape victims'. Victims report that this allows them to challenge the perception that their lives have been ruined and that the change in the self-narrative of the effects of the rape event in their lives is one of the primary benefits she identified in the post-meeting evaluation.

RJ interventions can also assist in the rehabilitation of sex offenders. RJ processes encourage a genuine acceptance of accountability, sincere expression of remorse and a personal journey or transformation. RJ can support desistance in offenders and is congruent with the focus of many

intervention approaches with sex offenders, such as the 'Good Lives' model described by Ward and Fortune (2014).

Finally, RJ in SV cases has a profound transformative effect on the experience of shame for SV victims, offenders and their families. Properly applied, restorative processes enable the articulation of the intense sense of shame in a rehabilitative and non-stigmatising manner which can be part of a process of personal transformation.

4. What are the risks of restorative justice in sexual violence cases?

One of the factors that may have inhibited RJ practice in the field of SV is the perception that it is inherently a more risky practice in SV cases than other cases of crime. The nature and intimacy of the harm, the power imbalances often associated with SV, which are also commonly linked to relational connections between victims and offenders, the perceived menacing characteristics of offenders and the particular vulnerabilities of victims, in some cases the young age and immaturity of victims, the inadequacy of support services for participants, and the anxieties and responses of communities are some of the reasons why this is believed to be the case.

For these and other reasons it makes sense for practitioners to proceed with caution in SV cases, to gradually build up their case load involving complex cases and to develop the confidence and skills required to answer the question 'How do we deliver safe practice in a risky operational environment?' rather than simply complying with the view that 'RJ doesn't do SV...'.

The starting point for safe practice is an appreciation of exactly what is meant by risk, how it is measured and how it can be addressed. It is a necessary first step to draw a clear distinction between what is meant by 'restorative risk' and how this differs from 'criminogenic risk'. A restorative risk is any factor or consideration from a restorative practice perspective that would have the potential to create further harm for either party. A 'criminogenic risk' is primarily focused upon the factors that led the offender to commit the offence and may influence the potential for it or a similar offence to be repeated (recidivism). It is not accepted universally whether criminogenic risk is relevant to offender participation in the restorative process as some practitioners argue that regardless of the criminogenic risk that influenced the offender's offending, the decision as to whether the victim should meet with the offender is rather one for the

parties, with of course adequate preparation and adequate safety protocols being applied.

Some factors in offenders, such as lack of victim empathy and denial of the full extent of the violence are often considered as restorative risks, and can be of lesser value in assessing criminogenic risk. On the other hand, some factors that are highly relevant to the evaluation of criminogenic risk (such as the choice of a stranger/adult victim by juvenile sex offenders), may be largely inconsequential in evaluating restorative risk.

Thus a RJ practitioner in the field of SV must avoid the widely held ‘myths and stereotypes’ which are frequently associated with SV. Restorative justice practitioners in SV cases however must acquire an evidence-based knowledge of the phenomenon of SV and the criminogenic factors that are linked to sex offending as essential practice knowledge. They should be able to understand the distinctions between restorative and criminogenic risk and interrogate the wider concept of ‘risk’ to have a much more precise understanding of what it means and how it is to influence any potential restorative process.

There is strong debate within RJ practice and academic fields regarding how far a formal assessment will enhance the work or whether it merely ‘strengthens’ the professional control over the process at the cost of weakening the participants’ ownership and control of the process. Regulations and standards of practice in some jurisdictions may stipulate that formal assessment is required.

When we talk about restorative risks from a victim’s point of view we are primarily concerned with physical and emotional safety, not only during a meeting with the offender but also before and after a meeting.

Often a meeting with an offender can trigger strong emotions on the part of victims. Some emotions like anxiety, tension and mild distress are situational in that they are linked to the upcoming meeting. They are predictable and foreseeable and must be dealt with during the preparation process. A face to face encounter with the offender can however also trigger emotions that are associated with the sexual assault and there may be a risk of what is called re-traumatisation (a reliving of the situation and dynamic of the sexual assault and the reactions and traumatic feelings associated with the assault). If during preparation a facilitator is concerned that there is a risk of re-traumatisation, a facilitator would be wise to involve others with a knowledge of trauma reactions, and with the victim’s consent it may be necessary to refer the victim to a trauma therapist before the preparation is concluded.

The social consequences of a victim-offender mediation (hereinafter VOM) must also be considered in evaluating the benefits of RJ in SV cases. A sexual assault provokes strong feelings in all people who are touched by the incident – referred to as the ripple effects of the crime - and the decision to meet with an offender may not be approved by the family, partner or peer group of the victim. Disapproval and lack of support for engaging in RJ can leave the victim lonely and compound a sense of isolation. It is important therefore to involve in the preparation process and in the meeting if the victim so wishes - to the degree possible - support persons to ensure that the victim feels supported and safe. If a support person is involved in the preparation and the meeting for the victim, the same offer of support should be afforded to the offender.

As with other crimes of serious violence, the expertise of the facilitator and those involved in the pre-conference phase of the process will largely be drawn upon in consultation with the victim to determine whether the risk of further harm is elevated. All possible safety measures and protocols must always be implemented to minimise harm to participants in RJ, whilst at the same time recognising that the risk of harm can never be completely eliminated when victims and offenders participate in a restorative meeting or a restorative conference.

5. Why is the harm caused by sexual violence different from other types of crime?

In many ways the differences in harm caused by SV and other types of crime are not as profound as many RJ practitioners might imagine, especially as neither victims nor offenders of all types of crime represent homogeneous groups.

However, there are aspects of SV which make it different from other types of harm and which must be taken into account by RJ practitioners. Rape myths are found in most cultures and are profoundly and fundamentally gendered. They underscore the reality that sexual violence against women is to a large extent condoned, normalised, denied and recast as acceptable, and rest on the assumption that men have sexual rights and privileges that allow submission of women and children. The net result is the social and cultural stereotyping, marginalisation and silencing of victims of SV.

Rape myths impact the common understandings of sexual assault which are deeply embedded in most cultures, sublimely influencing most adults. Rape myths also impact on victims who sometimes blame themselves for not having been able to prevent the assault or to defend themselves. This

thinking can sometimes be found in the thinking of partners, parents and peers who also may find it difficult to completely ignore the rape myths. We know also that male dominated systems like the police and the judicial system can be steered by gendered perceptions of sexual violence. It is essential that RJ practitioners are mindful of these issues.

A sexual assault most often takes place between two people who know each other. Some are related, some are acquainted, some are friends. So often there is an important issue of betrayal of trust. When the victim and the offender know each other the ripple effects of SV may be considerable so that many people may be affected when sexual abuse is revealed or an assault takes place. Families may break up, peer groups may be divided. The reactions of the 'communities of care' of the victims and offenders may be strong and sometimes uncompromising and can have far-reaching consequences for family relations and for the social life of the family.

The context of SV is different from other harms and varies from case to case. This requires a nuanced and sensitive adjustment of the restorative process informed by knowledge and awareness of sexual trauma. So for example, in constructing restorative meetings it is important to be aware of the sensitivity that needs to be applied to any account of the assault. In facilitating a VOM in the aftermath of a robbery the dialogue might begin with an account of what happened, who was hurt, by whom and how. In a case of SV the reality/actuality of the assault should not be avoided but the facilitation process can be amended in order to give the victim control and choice over how and when the account of the harm is presented, rather than simply adopting the format that is used in other encounters involving non-sexual crime. The intimate nature of sexual assault demands that the process is managed carefully and with sensitivity and that a standard format is not replicated without carefully thinking through all the possible implications of the approach for the parties.

In facilitating RJ in SV cases as in other complex and sensitive cases there are other issues that also require specific consideration and attention and these include: the age of the victim, the nature of the relationship between the victim and the offender, the betrayal of trust, the power imbalance, the frequency of the assaults, the blame placed upon the victim, offender ambivalence regarding acceptance of responsibility, the offender's levels of denial, specific participant vulnerabilities such as understanding/learning difficulties or mental health challenges, high levels of associated shame, gender entitlements, cultural perspectives on gender/sexuality, media/community interest, multi-agency co-operation, need to co-work and detailed preparation.

6. Why is restorative justice in cases of sexual violence so contested?

Some of the most commonly voiced concerns about RJ and SV relate to specific anxieties about victim safety, manipulation of the process by offenders, pressure on victims, conflicting loyalties, and the potential for RJ to position SV as a private crime rather than an issue which has to be resolved in the public sphere. Each of these concerns drawn from Hudson (2002) is outlined below.

Victim safety: There are concerns that the informal nature of RJ compared to the more formal criminal justice processes may place victims at risk of re-victimisation. In particular there are concerns that unchallenged power imbalances may be perpetuated or made worse and patterns of abuse may be reinforced.

Manipulation of the process by offenders: It has been contended that offenders may use the RJ process to minimise or diminish their responsibility for the offence or indeed trivialise the abuse or shift the blame to the victim.

Pressure on victims: Some victims may not be effective self-advocates. This is likely to be especially the case when victims have particular vulnerabilities or are minors. Moreover if the RJ intervention seeks to arrive at a community or group/family consensus then the victim's interests may be minimised or marginalised. In such instances victims may come under pressure to accept certain outcomes, such as an apology, even if it is felt to be insincere, to offer forgiveness, or even to accept an offender back into the home.

Conflicting loyalties: in some forms of intra-familial SV, parents, siblings and other family members and friends may have unclear and conflicting loyalties. This can result in victims being vulnerable to manipulation.

Public interest not served: RJ has been positioned as being incompatible with the long-standing goal of women's rights activists to move violence against women from the private to the public sphere and establish it as a public crime. This concern is especially relevant if RJ for SV is used as a means of diverting sexual crimes from the formal criminal justice system.

Power imbalances: Power imbalance is often mentioned as one reason for not doing RJ in cases of sexual violence. It is always important to bear in mind the following as quoted by the Project Restore as initially practiced in New Zealand (Julich et al., 2011: 227).

In the case of sexual violence one person (the offender) has demonstrated absolute power over another (the victim-survivor).

The imbalance of power typically persists through any justice process, including restorative justice. While a power imbalance can be addressed within a restorative process, it is more effective to accommodate it within the design of the programme which emphasises the preparation of the participants.

Project Restore also uses a Dispute Assessment Officer who will assess whether the chosen support person is suitable and will be helpful in the mediation and not escalate the conflict (Julich et al., 2010).

All situations of harm and abuse have the potential for the replication of imbalanced power relationships in a restorative dialogue or encounter; but this is not unique to cases of sexual violence. At the European level, standards have been adopted in the field of victim assistance and victims' rights, which fully recognise the possible benefits of restorative justice for victims of crime in general, but also warn for the possible risks. The most important guiding documents in this respect are:

- Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime (art. 12 on safeguarding from secondary and repeat victimisation, intimidation and retaliation, when providing restorative justice services);
- Council of Europe Recommendation Rec(2006)8 on assistance to crime victims (art. 13 on mediation);
- Council of Europe Recommendation Rec(99)19 on mediation in penal matters.

Restorative practitioners must through sound core practice identify and take account of the relational dynamics and the potential they present for the victimisation of the harmed person. This can be done through careful preparation and thorough assessment; being mindful about the past, present and any future relational context between the parties, being aware of the particular features of a 'grooming' type of relationship and the sometimes subtle and covert pressures that might be applied to victims by the offender or indeed others in an intra-familial context.

RJ assessment will pay attention to the following factors: how new safety rules have been agreed, the degree to which victims are able to voice a concern with regard to their safety, how others reacted to the victim on disclosure of the harm, how blame is allocated and any particular other vulnerabilities such as age, learning difficulty, economic dependences etc. which might place the victim in a position of potential further harm. It asks for consideration of how are power imbalances made apparent, how are

they maintained, what are the often subtle and non-explicit means by which they are maintained and most importantly what are the implications for avoiding potential future victimisation?

Some projects such as the Project Restore outlined above would see the role of the offender/victim specialist working with the RJ practitioner and the team work being overseen by a clinical psychologist as being a safeguard against the re-establishment or continuance of abusive power relationships.

The model outlined by the Australian Centre for Innovative Justice also sees a role for appropriately trained and accredited RJ/SV staff to work alongside other specialists in an 'assessment panel' to determine suitability (as opposed to eligibility). This is because it believes 'Specialisation is critical ... as sexual offending is markedly different to other types of offending and often involves patterns of shame and isolation, complex power dynamics, patterns of denial and repression; long term trauma and distorted notions of appropriate behaviour' (Centre for Innovative Justice, 2014: 43).

Many RJ practitioners have considerable experience in managing power imbalance and being able to avoid the pitfall of seeking 'neutrality' through the pathway of ignoring/colluding with abusive power relationships. Restorative Justice practitioners should however adopt 'balanced partiality' and never lose sight of the potential for replication of a harmful relational context.

Some of these issues represent valid concerns that RJ practitioners must recognise and address; however some are based on widely held assumptions about the capacity and nature of both offenders and victims. Assumptions that cast all sexual offenders as manipulative and controlling by default and all victims as vulnerable and in need of 'protection' deny them the opportunity to exercise agency and choice.

These 'myths' enable the space between victim and offender to be colonised by 'strong professional' voices since offenders must be controlled and victims must be protected. The irony being of course that this profound disempowerment of those who 'own' the conflict replicates the disempowerment often experienced in the reality of the experience of the harm perpetuated. RJ seeks to create a different space which enables those harmed, affected by the harm, or indeed harming, to articulate their own perspectives.

In reality, whatever the 'official' ambivalence about the application of RJ in cases of SV, it is happening in discreet but widespread programmes

covering a range of different contexts and ages (adults and minors), within and outside the criminal justice system, in conjunction with therapy, in connection with victim recovery, in cases which involve strangers and intra-familial cases. The two year DAPHNE study details many examples of these practices and as Zinsstag et al. (2011) noted this is one area where practice is leading research and policy.

7. How is case suitability and case screening determined?

The issue of determining case suitability is a somewhat problematic and contentious issue from a RJ perspective since it has the potential to take choice and control from those at the centre of the conflict and place them instead in the hands of those responsible for the delivery of the process, the RJ practitioner, manager or other professional specialist. It represents a fundamental dilemma. How do we empower those affected by the harm to make choices and decisions for themselves yet ensure that we deliver safe, sensitive and appropriate practice? Clearly, this is an especially prominent concern when dealing with sensitive and complex RJ case work.

There is inevitably a degree of discomfort around the notion of assessment being applied to the victim of SV. The victim did not choose the harm to be inflicted and they are entitled to particular sensitivity and respect. Conversely, the same unease may not apply to the assessment of offenders as they have perpetuated serious harm and considerations regarding risk are therefore more natural and acceptable.

In essence what is in question is prioritising suitability rather than eligibility. Many may be eligible but which cases are suitable and why? The different meaning applied to these terms is important. Whilst the first might be laid out in primary legislation or national guidance, the second is often determined through a process of formal assessment which may include specialist multi-agency panels composed of forensic staff, offender and victim specialists and of course the voice and desires of the victims themselves. Varying criteria will be applied to determine offender suitability; common criterion include acceptance of responsibility, remorse, functioning level of the offender, unmanageable power imbalances and circumstances specific to the offence such as prolonged grooming patterns.

It seems clear that most RJ practitioners do make decisions about suitability and very few, if any, operate on a wholly 'open door' eligibility basis. Therefore some form of 'assessment' takes place, either formally or informally. A more formalised assessment process enables decision making

to be open, transparent and accountable, and amenable to review and challenge if appropriate.

An additional argument in favour of formal assessment for RJ is that the existence of such can assist in establishing referral pathways. Formal assessment of risk is used extensively in relation to SV, particularly with regard to sex offenders. Most of the time practitioners will be working in a complex multi-disciplinary environment where they will be required to demonstrate that they are paying attention to safe processes and the potential vulnerabilities of participants. Formal restorative risk assessment procedures can also boost the credibility of RJ practitioners without which many cases of SV may not be referred.

However as RJ in the area of SV is an emerging practice, structures of formal assessment may not be fully in place for practitioners who have to put appropriate procedures in place as he or she proceeds with the case and has to introduce assessment formats, and screening and safeguarding procedures.

The victim and offender are not always equally motivated and willing to meet. We know that offenders' unwillingness or insincerity may constitute an additional offence in the eyes of the victim and it is important to ensure that no further harm takes place. But unequal motivation and willingness does not exclude the possibility of a meeting. For some victims it is important and empowering to be given a voice regardless of how it is heard and received by the offender. If we ensure that the safety of the victim is not jeopardised such a case can be suitable for a RJ process

8. Should the case be led from a victim referral or an offender referral?

This question is not only of relevance to cases of SV but could be asked of any meeting between a victim and an offender, especially when dealing with serious offences that have caused grave harm and have had long lasting consequences.

In 'offender led' referrals there is the danger that victims' experiences will merely be used as 'rehabilitative material' for the benefit of offenders, or that offenders will be motivated to participate in the RJ process because they expect that some benefit will accrue to them as a result. For these reasons some projects will only accept referrals from victims of SV.

In a situation where both parties have been informed of the option of a VOM it may be more appropriate that the initiative should come from the victim. She/he is the one who has been wronged by being forced into a

harmful sexual encounter with attendant physical, psychological and social consequences. She/he has the right to choose whether to take up the option of a meeting or not to take up the option and perhaps should not be confronted with (burdened by) the wish/need of the offender to meet in a VOM.

Therapy and counselling in the aftermath of a sexual offence aims to give victims back a sense of safety and control. It is possible that a request from the offender to meet could jeopardise the victim's healing process and rekindle the traumatic experience; however on the other hand an approach with acknowledgement of the harm done from an offender can make a lot of difference to the healing of the victim.

A request from an offender to meet with the victim can bring forth new strengths and renewed sense of control as the victim has the opportunity to consider whether to accept the request or not and under what conditions a possible meeting should take place, what questions should be put, what statements made. Or whether the proposition to meet should simply be turned down. Either way there is a potential for empowerment.

Is it thus paternalistic to withhold information from the victim that the offender has made a request to meet? Should we not inform the victim and assist her/him in making the decision that is right for her/him?

Some will say that a severely traumatised person is in a state of mind that calls for protection not confrontation. However not all victims of sexual assault are equally traumatised and the level of traumatisation is not static. Careful consideration of timing is essential.

We can see from the above that there are a variety of perspectives on this issue. Our answer has not sought to be prescriptive but rather to encourage RJ practitioners to adopt a careful, thoughtful and flexible approach so that each case is dealt with safely and appropriately.

9. Is a victim of sexual violence more vulnerable than victims of other types of crime?

This is a complex question to answer.

Before addressing the question it is useful to make the following observations. Each victim has their own unique experience of the harm that SV causes. A multitude of intersecting factors shape the experience of the harm caused: the age of the victim, the age of the offender, the nature of the offence, the circumstances of the offence, the relationship with the offender, the response of others to the offence, the issue of responsibility,

the need to be believed and vindicated, the issues of blame and associated shame, the nature of support available, the individual and collective resilience of the victim and those around them, the response of criminal justice actors, the outcome of criminal proceedings - to name but a few.

So there is no standard victim of SV and no expected or normal level of vulnerability which can be used to measure or compare against victims of other types of crime and harm.

There are certain contextual differences that are associated with cases of SV but even these are not *defining* characteristics since they are not present in all cases. So the experience of victims of SV should not be viewed as being always totally different from that of victims of other types of harm.

SV is a complex and varied phenomenon; it includes behaviours which are contact and non-contact and penetrative and non-penetrative. The wide disparity in the characteristics of victims of SV together with the range of offences ensures that victims' experience of SV varies considerably (for a more detailed account of the impact of SV on victims, see Woessner, 2015). It should also be remembered that not all victims of SV experience serious harm and their highly subjective response to this crime must be accepted by practitioners.

The presumption of the presence of post-traumatic stress disorder (hereinafter PTSD) in victims of sexual violence is widespread although not all victims of SV will exhibit a traumatic response to a level consistent with a diagnosis of PTSD. Restorative justice staff working in this field must therefore be sufficiently knowledgeable of the range of individual responses and be competent to recognise the symptoms of PTSD and where necessary to direct victims to appropriate services. It is important for RJ practitioners to be mindful of the context in which sexual assaults take place and which shape the meaning that victims ascribe to the assault. Vulnerability is not entirely determined by the trauma, what comes after the incident that can add to the vulnerability of the victim, such as the response to the disclosure. Victims are not a homogenous group; both the sexual assault and the aftermath can affect victims differently.

The sexual assault is an attack on parts of the body that are regarded as private, intimate and sensitive. A common bodily reaction is that the victim can feel soiled and dirty by the touch or penetration of the offender. Young women especially talk about something valuable having been taken away from them. And even when the sexual assault is understood as an act of power it is still experienced as a violation of the victim's sexuality.

Many sexual assaults are perpetrated by someone known to the victim. This is of course always the case when intra-familial sexual abuse is being considered, but also most sexual assaults against adult women or men are perpetrated by someone known to the victim. The question many victims struggle with in the aftermath is therefore one of *why?* Why was there such a breach of trust? Who can they trust going forward? And when they were assaulted by a person close to them, one's own judgement is often put under doubt as victims are concerned about their judgement and whether they can in fact trust themselves.

In disclosing a rape or sexual assault some victims find that they are still not believed, are accused of having brought it on themselves or of dramatising the event. They can also come under pressure to report the assault to the police, even before they are ready to do so. Victims report also that their relatives can either dramatise or trivialise the assault as they flounder with their own feelings and responses. Both extreme responses can be experienced by the victim as lacking in understanding, hurtful and as problem-creating. The sexualised nature of sexual violence adds a shame dimension to this problem for some that often prohibits victims from disclosing.

In addition the forensic process (including intimate examination), medical examination and treatment can still be experienced as a prolongation of the initial traumatic event by victims, no matter how benign the intervention of the assessors and the care and sensitivity with which this process is undertaken. Even when the victim is fully aware that the forensic assessment is performed for their benefit, the process itself can be experienced as traumatic. Similar experiences are reported in victims' interactions with the police. Victims report that the police interview has similarities with an interrogation since the purpose of the interview is to gather evidence and the sexual assault almost always takes place without witnesses, behind closed doors and without forensic evidence. In such an adversarial environment victims can also question their own behaviour and actions as they begin to doubt their actions at the time (I should have tried to get away ... I couldn't stop him).

The RJ practitioner should thus bear in mind that prior to the RJ process the victim has often been faced with situations in which s/he may have felt re-traumatised and that her account and credibility has not been fully accepted or validated.

10. Does the offender fully accept responsibility and demonstrate appropriate remorse?

Victims of severe violence often have feelings of unreality in the aftermath of the assault. When the offender takes responsibility he confirms the reality of the crime in a way that is important for victims.

One of the significant differences in RJ with SV cases is that it demands a sophisticated and complex approach to issues of acceptance of responsibility and layers of denial or minimisation than is the case with regard to other offences. In RJ with other types of crime the issue of acceptance of responsibility is more straightforward than in many SV cases. For young offenders denial by them of the offence or the impact of the offending can be a real challenge. It is possible that the young offender has not yet reached the developmental threshold for accepting full moral responsibility as he fails to see the full impact and reality of his behaviour.

It is also the case that minimisation of offending and its impact serves a self-protection function for the offender from feeling shame associated with wrongdoing and from the consequences of being labelled a 'sex offender'. The toxic levels of shame associated with SV can lead to resistance to fully accept responsibility, and this can be even more pertinent when the victim is known to the offender, especially in intra-familial sexual violence. The reaction of known intimates to the offender, such as parents, carers and extended family, may be such that an initial expression of denial becomes compounded by fear of rejection. In therapeutic work with offenders in these circumstances practitioners are trained to be mindful of these and other factors. They will approach the offender in ways which facilitate acceptance of responsibility and which address denial in positive rather than merely challenging and confrontation ways, recognising the many and powerful social consequences of being labelled a sex offender. For these reasons the therapeutic journey is often a progression from initial denial to gradual acceptance of responsibility and planning to avoid recidivism.

From a restorative position, practitioners need to ensure safety and reduce risk of re-victimisation by the offender and recognise the dangers of victim blaming. Acceptance of responsibility for the offence by the offender is a prerequisite for involvement in RJ. Learning difficulties and levels of social functioning can also have an impact on the ability of an offender to fully accept responsibility and constrain the degree to which understanding of the harm is gained or remorse experienced.

The question can be asked 'Is it a hindrance to mediation if there is not a full confession?'

For some victims a core issue is to hear the offender admit, take responsibility and show that s/he feels remorseful. When done in a sincere way it can help relieve the feeling of guilt and complicity that many victims feel.

For some victims this is however not always as important. Their motivation to attend a VOM may not be to primarily hear the offender take responsibility but to get an explanation of what happened, why it happened and to have their say. When that is the case not taking full responsibility need not be a hindrance for a meeting.

11. Should a victim be in therapy before engaging in restorative justice?

This is a question that cannot be answered unequivocally. Victims are different and they react differently to the prospect of being face to face with the offender. Many adults and children who are victims of sexual crime have had the opportunity for therapeutic treatment prior to a restorative meeting but this does not apply to everyone.

Anticipating a meeting with the offender can evoke strong feelings of fear and anxiety and feelings and sensations that arose in connection with the assault can be revitalised regardless of prior therapeutic treatment.

Therefore, it is important to talk with the victim about the emotional pressure s/he experiences in the course of preparation for RJ and to prepare victims for the face-to-face meeting. In some cases the victim will be referred to therapeutic treatment before or concurrently with the RJ process. In other cases therapy will not be indicated. What is important is that the RJ practitioner continuously evaluates how the victim is dealing with the emotional pressure and not hesitating to consult others when in doubt. It is the victim who owns the process but it is the responsibility of the RJ practitioner to keep the process safe.

Whilst the process is primarily owned by the participants, the facilitator has a duty of care to ensure that no further harm is done. It is useful for RJ practitioners to be aware of locally available victim support services and their referral criteria so as to make smooth referrals for victims where appropriate.

12. Must the offender be in therapy before engaging in restorative justice?

For many people the answer to this question is yes; most acutely for the reasons relating to acceptance of responsibility expressed above. To use RJ in cases of SV to force acceptance of responsibility is fraught with danger. However, it is the experience of many practitioners that acceptance and understanding of the harm done is greatly enhanced by participation in RJ.

The RJ worker must engage with therapeutic services for offenders when an offender is in therapy and work in parallel to it. RJ in SV often requires a high degree of multi-disciplinary work that also considers safeguarding, child protection and therapeutic goals and concerns.

The availability of the wider professional multi-disciplinary work will influence the RJ approach practice and will be part of the assessment and preparation for the RJ process and will be part of the evaluation and follow up.

13. What are the various motivation and expectations for restorative justice?

The motivation of people harmed by sexual violence for participation in RJ following a sexual assault is not unlike the motivation of victims who have experienced other kinds of harms. Victims want to be heard, have a say, ask questions, and receive an explanation. Some want revenge, some want an apology, some want to see justice done by confronting the offender with the consequences of the harm done. Others want to know about the impact of the offence on the offender and how s/he will prevent further offending. Some victims have no interest in what the offender has to say but merely want to meet him in a safe environment before accidentally meeting in some other context. All want to add another narrative to the story of the assault and restore their dignity.

As previously asserted, victims are not a homogenous group and they react to the harm they have suffered differently. Their motivation for participation in RJ is often full of complex and even opposing feelings (*I want to do it, I don't want to do it. I want to see him, I don't want to see him*). During the preparation for RJ the facilitator can help the victim accept the ambiguity and normalise what feels difficult or even wrong while helping the victim to clarify motivation for participation.

Being clear about one's motivation for meeting an offender is helpful not only in respect of the possible RJ meeting but when facing opposing views

and even scepticism from family and peers. Sexual assault creates strong feelings in everyone close to a person being sexually assaulted and the motives of the victim to meet the offender will often be challenged or opposed. The victim's credibility can be questioned (*if she/he wants to meet the offender then maybe she/he is not fully innocent of the offence*) and the victim can lose support from family, partner and peers.

Some victims hope to achieve closure by entering into a restorative process. Others do not use the word closure but express a hope that they will be able to move on once they have faced the offender.

From an offender's perspective the main concern of a restorative practitioner is to ensure that the motivation of the offender is not to inflict further harm or exert some other form of power or control over the victim. An understanding of the complexity of the power dynamics of the relationship and of sexual violence, and of the nature of trauma, the factors which predisposed it and the factors which might sustain it, are essential for RJ practitioners of SV cases. Offenders do also express genuine and sincere motivations for participation in RJ and therefore restorative practitioners have a duty to be mindful of the powerful nature of labels, such as sex offender, which often condemn and categorise individuals rather than see their individual interests or capacities.

Exploration of motivation is a key part of both the assessment and preparation process of RJ in SV cases. A crucial aspect of the initial engagement and preparation stage of RJ is facilitating the participants to identify the motivations, benefits and challenges of RJ for themselves and others.

Motivation for participation in RJ can be influenced by a number of factors:

13.1 Shame/remorse

The first and often most difficult to talk about is the intense sense of shame associated with SV. Experience of facilitating RJ in other serious cases shows that offenders are often shameful about the harm they have caused and sometimes the degree of that shame will vary or influence denial/minimisations. However it is in the field of SV that the sense of offender shame is most acute. Thus a process which acknowledges and allows expression of this in a non-stigmatising way can offer significant benefit to a young offender. Anne-Marie McAlinden (2007: 46) observed that 'in the emotional and relational dynamics of restorative conferencing, emotions like empathy, remorse and guilt become merged with feelings of shame and it is ultimately the successful management and resolution of these emotions that is critical for successful restorative interventions'.

Thus the potential to be able to articulate the sense of shame in an environment which is non-stigmatising and focusing upon re-integration and repair as opposed to further marginalisation and labelling is a very positive potential outcome of a good restorative process in cases of SV.

13.2 Renewal of relationship

As many child adolescent cases of SV are in a familial context the sense of shame is heightened and shared beyond the offender but may include other family members. Indeed the relational context is often a significant motivator for a potential restorative process. Often the relational context is severely damaged and altered but often endures albeit in a forever altered form. The need to renegotiate and redefine the future is a common motivation for engagement in a restorative process. Whilst RJ takes account of the harm caused (past), looks to current needs and concerns (present) it is also clearly talking about how things could be (the future). For many an essential element of that future focus is a re-establishment of fractured and damaged relationship.

That this motivation is a positive one, not characterised by a desire to continue or extend patterns of harm is a core restorative assessment task that demands wider safeguarding perspectives.

13.3 Motivation to desist

As many offenders will encounter an intense sense of shame, many will be motivated to end the patterns of abuse/harm that they are responsible for. The desire for self-understanding and creation of safe and positive alternatives to offending underpins much of the therapeutic work in SV with offenders. Thus the author of the 'Good Lives Model' (GLM) Tony Ward notes in the recent volume of *Restorative Justice: An International Journal* 'Our suggestion is that RJ, rehabilitation, and desistance ideas and practices are conceptually linked' (Ward et al., 2014: 26).

Research into offender desistance identifies a number of significant variables which assist the desistance from further offending, these include: employment, education, social support, self-agency, re-creation of self-narrative and positive relational experiences. For some offenders a restorative approach may well enable progress with regard to the last four of these factors. It may not be articulated in the language of academic research but we should never underestimate or be cynical about the offenders' desire to make a significant change.

There are more problematic motivations which require a more circumspect examination. These could include a desire to be merely compliant and to

agree to co-operate to demonstrate willingness to be seen with the terms of supervision. Often the prospect of influencing the criminal justice system outcome may complicate and confuse issues in relation to motivation, this is especially the case with regard to either pre-sentence or diversionary RJ. For this reason the AIM Project, working in England providing restorative work in cases of adolescent with harmful sexual behaviours, chose to work only post-conviction and post-sentence (Mercer & Henniker, 2007).

If the case is intra-familial there may well be considerable expectation of compliance from other family members whose primary objective may well be the prospect of a return to 'normality' and family integration.

Most concerning of all would be a wish to resume a relationship in order to facilitate further harm or abuse. The 'Best Practice Guidance for Restorative Practice' published by the UK's Ministry of Justice and Restorative Justice Council notes 'Participants may well have the motivation and/or ability to intentionally cause further significant harm (e.g. where an offender exercises manipulative, controlling or threatening behaviour with a view to increasing the vulnerability of the other participants' (Restorative Justice Council, 2011: 22).

Clearly RJ practitioners would need to have some insight into and understanding of the offence motivations/characteristics of the offender. There will be some offenders who employ sophisticated grooming patterns to control and manipulate victims and those circumstances a real danger that they may see the restorative process as another opportunity to resume or extend that control. In terms of child and adolescent SV this is a pattern of abuse much less common than in the adult offender context.

Finally, it would be useful to acknowledge that offender motivations seldom exist in isolation. Indeed many of the reasons for wanting to participate are shared or mirrored in the experience of the victim. Indeed part of the process of preparation or building towards a restorative meeting is the identification of areas of common ground. Without that the prospects for dialogue and encounter are greatly reduced.

Examining motivation and exploring it in connection with expectation is a crucial part of the preparation process and this is applicable to both the victim and offender perspectives.

14. Does the age of the victim matter in restorative justice?

One of the challenges of RJ in SV is the difficulty around the involvement of young victims.

One hundred and nine (109) direct victims were identified in the Greater Manchester study of 75 young people who committed sexual offences and were subject to AIM Offender Assessments between July 2001 and October 2003 (Griffin, 2003). They ranged in age from 1 to 75 years (6 cases not recorded). However when broken down into peer abusers (less than 4 years age difference between offender and victim) 43 per cent fell within that category. Those who had harmed a victim of 4 years or more younger than themselves also accounted for 43 per cent, meaning that of the total population of adolescent offenders 7 per cent has sexually harmed an adult (7 per cent were unrecorded). When the victim is a young child special concern needs to be given to the appropriate involvement and engagement of the child in the restorative process. It may be that restorative model's such as Family Group Conferencing can be employed that are better modulated to be inclusive of young children and at the same time more robust in their consideration of safeguarding and child protection concerns.

In other contexts, such as Copenhagen (Denmark), where institutions specialise in treatment of either sexually abused children and adolescents or in treatment of children and adolescents with sexually harmful behaviour, RJ meetings between the offender and the victim take place as part of the treatment. The meetings between the child victim and the adult/adolescent offender are arranged entirely to meet the emotional and psychological needs of the child.

In cases involving child victims a prerequisite to a restorative meeting is that the offender has admitted guilt, agrees to see a therapist as part of the preparation and agrees to the conditions of the meeting. The victim will be thoroughly clinically assessed prior to any preparation to minimise the risk of re-traumatisation.

During the preparation questions that the victim wants to ask the offender are passed on to the offender through his therapist. Answers are prepared and returned to the child's therapist.

At the meeting the victim and the offender are escorted by their therapists and support persons. It is up to the child if s/he wants to sit at the table, on the floor, to have eye contact with the offender or just listen. The victim does not speak for her/himself, but rather her/his questions are spoken by her/his psychologist while the offender gives direct answers as prepared. When questions and answers have been exchanged the child can ask additional questions which will be answered by the offender. A meeting usually lasts 10 – 20 minutes and is followed up by individual sessions with the respective therapists.

This model has since been implemented in institutions in Copenhagen as part of the therapeutic treatment of young victims and adult offenders. These institutions often work in partnerships with one institution preparing the victim, another institution preparing the offender. A less directed and structured model is used when there is little age difference between the victim and the offender but with both parties still prepared by their respective therapists and with the therapists present when the children/adolescents have a face to face dialogue.

15. Are timing issues relevant to restorative justice?

Restorative Justice practitioners must be mindful of many factors which can facilitate and progress a possible restorative opportunity or work in opposition to it. The question of timing has the potential to be influential in both directions.

The best time to deliver RJ is often beyond the control of the RJ practitioner, such as referral processes, criminal justice system needs, therapeutic needs of victims and offenders and professional resistances. Moreover 'the best time' is often to determine and may differ for the victim and the offender. Should practitioners attempt to define the 'best time' or merely leave those choices to the potential participants?

In practice, every RJ practitioner will reach the best working compromise with regard to these concerns.

While there is great variation in both the impact of sexual victims and their recovery trajectory, and there is no prescription regarding the right time for RJ for every victim, if at all, many victims often wish to recover from the initial trauma of the offence before engaging in RJ.

With regard to the timing of participation in RJ from an offender's perspective, the critical issues relate to acceptance of responsibility, remorse, empathy and shame acknowledgement. Sex offender therapy can often help with this. Some programmes, such as Project Restore in New Zealand, require that the offender has completed a therapy programme before any restorative work can be considered and an 'Offender Specialist' will advise on therapeutic progress with regard to determining a suitable time for participation in RJ, if at all (Julich et al., 2010).

16. How long does it take to prepare for a restorative justice meeting in cases of sexual violence?

It is difficult to estimate exactly how long preparation for RJ takes in SV cases as individual case factors are so varied, such as the vulnerabilities and needs of core participants, the number of supporters, the degree of other professional involvement, the choice of restorative model and the availability of and access to both the victim and offender. Koss (2013: 1641) reports that Project Restore cases preparation time averaged 67 days, and ranged from as little 25 to a maximum of 156 days.

Evidence from the AIM Project in the UK, which used FGC for sensitive and complex cases such as robbery, burglary and arson suggests that an average of 29 hours preparation was involved in such cases when a meeting was held.

The SV case below (case illustration 1) took 37 hours in total from the time of referral to evaluation of the outcome of the RJ meeting. The case involved a large number of professionals involved in the case as well as the victim and offender. In general taking any shortcuts with regard to the necessary time to engage with professionals involved in complex cases represents a false economy and leads to further complications in relation to professional resistance (see point 17 below).

Cases involving sexual violence can often take longer to prepare than cases involving other types of crime and they are labour-intensive. Time and money are interrelated and many RJ services are subject to tight budgets. The time it takes to conduct RJ is therefore both an ethical and a financial issue particularly when it comes to cases involving severe violence. If a time is highly curtailed for economic reasons, one must consider whether it is ethical to shorten or accelerate a preparatory process, or whether the risk of doing more harm than good is accelerated

Case illustration 1

Darren was convicted of a rape against an adult. He had received a substantial custodial sentence. At the request of the victim the AIM Project was exploring a restorative meeting. Four other professionals were working with Darren: the Secure Unit in which he was placed, his Youth Offending Team Worker, a child Protection Social Worker and a therapeutic caseworker contracted to undertake work with him. We engaged with all these other professional perspectives and especially with the case worker. We

undertook regular meetings to share (confidentiality respected) issues relating to Darren's preparation for the meeting.

Jo was a victim of rape in 2002. She first requested a meeting with Darren, the offender, shortly after the conviction and sentencing of Darren. There were many unresolved issues she wanted to ask Darren that were not addressed by the court. For many years her requests were either ignored or dismissed by the multi-agency panel responsible for the supervision of Darren. Eventually a change in her Probation Victim Liaison Officer led to the request for a meeting to be taken forward. In the meantime she had received a very minimal formal victim support service but was well supported by family and friends. Darren throughout his sentence received intensive work to address his offending behaviour.

When AIM received the referral it was clear in the exploratory meetings that Jo was very anxious for the meeting to progress and initially felt that a very short timescale of preparation would be sufficient. Darren however was very cautious about a rapid progression to a meeting and a great deal of work needed to be done with him and his wider family to enable him to feel secure in attending the meeting and managing the anticipated emotional consequences of the dialogue. AIM balanced the preparation to work at the appropriate speed for each participant, recognising their anxieties and vulnerabilities as well as working to maximise the strengths and capacities of each.

Just prior to the RJ meeting it was clear that the CJS wished to consider Darren's outstanding parole application and wanted to include evidence of his co-operation with the restorative process in support of this. The timing of these two processes was unfortunate and potentially problematic in our attempts to secure the optimum restorative outcome. After consultation with both Jo and Darren it was clear that the restorative meeting should not be delayed until after the parole application but the two processes should remain completely independent of each other with no reference to the restorative work in the parole application. Darren was very clear about this separation but on at least one subsequent occasion the legal representatives for him tried to persuade the RJ practitioners to provide a 'progress' report to the parole board. This request was made despite very clear instructions from their client not to do so.

The details of time taken in the Jo/Darren case which demonstrate the time it took to deliver a VOM with a supporter for each party are presented below:

- The referral was received in December 2008 and the meeting was delivered in January 2010.

- A total of nine one hour meetings were held with the offender, six one hour meetings with the victim, three hours preparation time with the offender supporter and two hours preparation time was spent with the victim supporter. Because the case had extensive multi-disciplinary involvement (5 other professionals involved, 4 with the offender and 1 with the victim) 5 hours were spent in professionals meetings with this team and the RJ facilitators. A total of 26 separate pre- and post-meeting briefings were held between the co-workers and the RJ facilitators which amounted to 8.5 hours. The VOM lasted 90 minutes and the post meeting evaluations took 3 hours making a total of 37 hours work.

17. How can professional resistance be addressed?

In working in the field of SV and RJ it is necessary to work in close liaison with other professionals such as social workers, criminal justice personnel, psychologists and residential care and secure unit staff. As sexual violence and sexual abuse raises child protection and safeguarding concerns these issues need to be considered and carefully assessed and evaluated by other related professionals.

A failure to anticipate the importance of child protection and safeguarding can lead resistance on the part of other professionals who adopt a position of opposition to the restorative approach, which might ultimately lead to its failure.

Two significant challenges exist from allied professionals in relation to RJ in cases of SV. The first relates to the over estimation of risk posed by offenders which makes professionals cautious regarding any possibility of 'dialogue and repair'. The second challenge relates to the anxiety of the possible negative impact of RJ for the victim, which can lead to 'victim rescuing' and professionals making decisions on behalf of victims rather than being accountable to them.

RJ practitioners need to be mindful of the concerns of allied professionals and anticipate their concerns and possible resistance to RJ. Developing

strategies and techniques to respond to the concerns of colleagues is important and it can be useful to conceptualise the 'system' (in all of its manifestations) as part of the restorative process. The positions, needs and interests of allied professionals who are involved with the victim, the offender and their family members, need to be addressed as part of the preparation for RJ.

The outcome of good academic research allied with sound case work experience and practice can enable a greater sense of trust in what is often initially perceived to be a potentially damaging process as can robust formal RJ assessment processes in SV cases. Resistance towards RJ in SV cases can also be based on lack of knowledge or professional concerns about its potential benefits. Resistance on the part of allied professions can be overcome in the following manner:

- By delivering safe practice
- By informing on the process
- By involving them in the process
- By showing the good results
- By listening to their concerns
- By demonstrating the benefits of a restorative approach to meeting their objectives

18. How is preparation for restorative justice best done in sexual violence cases?

There is not ONE way to do preparation in cases of sexual violence. Preparation must be done on a case by case basis and can – (when done well) – empower the victim and the offender. What is most important is that the preparation process is flexible and adapted to the persons involved and their situations. As seen in other cases of severe violence the level of anxiety and emotionality can be high and sensitivity on the part of the facilitator is required so as not to force the pace of the preparation.

It is important not to cut corners or make compromises in the preparation phase of RJ. It is critical that the needs of the parties are met in the preparation phase in order to avoid unnecessary drop out. Drop out can be difficult for the parties who wish a restorative meeting, so a balance needs to be found that meets both the needs of the participants and the best practice requirements of safe and professional service delivery.

There are a number of factors to be borne in mind when preparing victims and offenders of sexual crime for RJ.

Many victims do not think they will be able to express what they want to say, and fear that they will get too frightened, too angry, too emotional to express their feelings and views. Here it can be useful to rehearse what is going to be said. Likewise some offenders can profit from rehearsing statements that they wish to make.

Language can be an issue that must be dealt with during preparation. Many victims find it both difficult and shameful to talk about what happened during the sexual act. The assault often happened without words and subsequent language does not seem to appropriately match the feelings that they experienced. It is important therefore to be sensitive to how the victim articulates what has happened, to listen to the expressions used when talking about intimate body parts and when needed to help find expressions and language that the victim feels comfortable to use.

It is good practice to consider the discussion of the intimacy of the act and how this is 'fitted in' to the structure of the meeting, if at all, with the victim during preparation. For example in cases of burglary it is quite common to begin the meeting with a discussion of the offence and what happened. In cases of SV this would usually be not appropriate. It might be that no discussion of the assault or sexual violence takes place, but rather that the meeting focuses on the consequences of the assault for them. However, there are no hard rules to apply, as flexibility is key and the choice is left to the victim as to what point the issue of the actual harm and the degree of detail of description of the assault are to be included.

Most victims want to ask the question: why did you do it? But very few offenders can give a straight forward answer to this question and this may cause disappointment for victims. Part of the preparation is to prepare for this situation or help the victim reframe the question into a question that is more likely to be answered.

If using a formal assessment framework, such as the AIM Adolescent Harmful Sexual Behaviour RJ model (Mercer, 2014) then elements of the issues addressed in the framework will be covered in the preparation. The preparation is the time to identify any issues which could limit the active involvement of the parties in a restorative process, assess the impact that such issues might have and agree strategies/actions to minimise their impact.

In general the process of preparation is a mixture of giving and gathering of information: as the RJ practitioner giving information about the nature of

the RJ process is an important task and gathering key information from the parties about their needs and interests, attitudes and beliefs are also significant components of the preparatory meetings. The use of phrases such as 'what would you like to hear and what you would like to say?' replicates the giving/gathering approach.

Many of the skills and approaches that are used in restorative work with other types of harm are applicable here.

It is not possible to be absolutely prescriptive regarding preparation for RJ in SV cases, either in terms of the structure, content or time taken as there are so many variables to be considered. It might be possible for example that the victim clearly wants an apology and this then would feature as part of the preparation with both parties. However research from the Restore Project in the USA suggests that the 'requirement' for an apology is not necessary in SV cases in RJ meetings (Koss, 2013: 1652). Thus a focus upon apology in preparation may be less appropriate; similar sensitivities extend towards the meaning and understanding of forgiveness and this too needs to be explored in the preparatory stage.

Small practical arrangements can help decrease the level of anxiety of parties in advance of the RJ meeting. The possibility of victim and offender arriving at the same time, or sitting in the same waiting room creates a feeling of unsafety and insecurity which can be addressed with clear planning in advance. Seating arrangements must also be talked about before the meeting. Any choice or decision given to the victim during the preparation will help enhance confidence and regain control.

Planning for the manner in which the parties will greet each other also decreases the level of anxiety of all participants. Will a handshake feel okay? Or will 'no touch' be preferable? Whatever the victim wants must be passed on to the offender to avoid awkward situations.

Agreeing ground rules which are owned and generated by the participants is a common task in preparation and the issues here do not differ so significantly from other arrangement with regard to non-sexual cases.

Involving the families and supporters in the preparation is also crucial. Ensuring that the victim and the offender have at least one person who supports them during the process is important, even if they are not present for the meeting. Victims and offenders may not want to have anyone present at the meeting itself but it is vital that they feel supported both before and after the meeting and that they have someone to have refreshments with following their meeting. If supporters are attending the meeting then they are entitled to a degree of preparation as part of the

process; to identify role and function and to gain clarity about the structure of the meeting as well as practical arrangements.

Despite the best of intentions it is important to remember that not everything can be prepared. Surprises do occur when new issues emerge when the victim and offender meet. Equally it is important not to 'stifle' the content of the meeting by over sharing the perspectives and views of each of the core participants in advance of the meeting itself. These are skilled professional judgements and are always case specific; hence our assumption that RJ staff undertaking this work will have good quality core skills upon which to draw.

19. What methods or models are best to use in sexual violence cases?

19.1 Face to face methods

It is clear that RJ practitioners need flexibility regarding the model of RJ to be used in any particular case. Some projects will employ only one method of facilitation such as VOM, while others exclusively use Restorative Conferencing and others will employ Family Group Conferences (FGC).

VOM involves a small number of participants, the focus being primarily upon victim and offender and a supporter each. The process is dialogue driven, preparation is key, and there may or not be an emphasis upon and agreement at the end of the process. VOM are ideally facilitated by two facilitators. Restorative Conferences are generally facilitated by two workers, using a more structured approach to the dialogue which can be guided by a pre-arranged scripted format. Restorative Conferences accommodate more participants than a VOM and often has an agreement as part of the outcome.

FGC's to address youth justice issues usually involve amendments to the 'classic' 4 stage FGC process (Haresnape, 2007). Best practice would indicate the use of two facilitators ideally of mixed gender.

In cases requiring extended family involvement, taking into account the need to engage wider professional concerns, FGC will often enable the 'professional voice' to be heard in a meeting, without it dominating and suppressing the voice of others. In these situations then the FGC process with its inclusion of a professional agenda allied to private family planning time may be best able to combine the twin needs of restorative dialogue with inclusive family/partnership planning.

Offering flexibility regarding the choice of methodology to be applied for RJ in SV cases means that the case and not the dogma drives the process,

which in turn is responsive to the particularities of the case. The mantra 'Processes for people... not people in to processes...' actually takes on some real meaning.

Case illustration 2

Lee aged 17 sexually assaulted his 15 year old half-sister Courtney. Courtney disclosed the assault to her mother Mrs Brown who rang the police and Lee was charged with a serious sexual assault. One immediate consequence was Lee's removal from home and the involvement of both criminal justice agencies (Youth Offending Team and Child Protection/Safeguarding Social Workers). Lee was subsequently convicted and sentenced to community supervision with a therapeutic SV programme to be delivered by the Youth Offending Team. He was engaged and motivated to do this work.

Mrs Brown contacted the Youth Offending Team and requested a restorative meeting involving the whole family, including Ella, Lee's and Courtney's younger sister and Mrs Brown's two sisters, Aunts to Lee, Courtney and Ella. The AIM Project in Manchester UK was contacted to begin exploration of a potential restorative process.

Ultimately the family, including Lee and Courtney identified two main objectives for the RJ meeting: (1) to talk as a family and individually about what had happened, the consequences of the harm and what they wanted for the future and (2) to make plans which included the safe return of Lee back into the family. The return of Lee is of course a core safeguarding issue and this was supported by both the Youth Offending Team and the Child Protection Social Worker as long as the family were able to demonstrate a willingness and capacity to work in partnership with professionals and provide safety and security for both Courtney and her younger sister.

After months of preparation a Family Group Conference was held attended by Courtney, Lee, Mrs Brown, Ella and the two aunts; each acting as a supporter to Lee and Courtney. The FGC also facilitated the direct involvement of the two core professionals in the 'information sharing' element of the meeting and the ratification of the family plan around Lee's return home. The family felt that this approach gave the best structure to enable a restorative dialogue about who had been harmed and how, for professionals to clearly express their concerns and issues and for the wider extended family

to come together to use their collective strengths and capacities to make a plan which both satisfied the professionals' requirements for safeguarding and demonstrate to themselves that they had the capacity to recover from the devastation of this event and face the future more positively.

Responsibility for monitoring the effectiveness of the agreement/plan and its continuing applicability lay jointly with the two child protection and youth offending agencies and the family and not with the RJ provider although it is also possible for review and follow up conferences to be arranged by the RJ provider if required (see 'Conferencing: A way forward - A Practical Guide' by Shapland et al. (2011) and for more information on the use of FGM in cases of SV, see Mercer and Henniker, 2007).

19.2 What is special about facilitating a meeting/conference?

The facilitation of a meeting is anticipated already during the preparation phase. As there is often a high level of anxiety about coming face to face it is important that as much as possible is planned and discussed in detail with the victim, the offender and their possible supporters in due time.

Give choice as much as possible. Being asked and having the possibility to make even small decisions and choices enhances the feeling of safety and being in control. So when possible let the victim:

- get acquainted with the room in which the meeting is going to take place before the meeting;
- let the victim choose where she wants to sit;
- let the victim decide the order of entering the room; does s/he want the offender to be present in the room when s/he enters the room or vice-versa?

In order to avoid the insecurity and discomfort that can arise from meeting each other outside the venue of the meeting or in a waiting room it is important to make arrangements for the victim and offender (and their supporters) to arrive at different times at the venue of the meeting. Also arrangements for leaving the venue should be in place and communicated.

To safeguard the victim and avoid insecurity and discomfort on either part the facilitator should anticipate the greeting ritual during the preparation phase and prescribe that greeting each other does not include any kind of touching. This also goes for the closing ritual of the meeting. If the victim or

the offender wants a different way of closing the meeting e.g. by giving a hug this must be negotiated in the meeting (or during a time-out) to ensure that no harm is done.

In constructing a restorative meetings one must be very aware of the sensitivity that needs to be applied to any account of the actuality of the assault. So there is a difference in terms of the intimacy of the type of assault, an understanding of the sensitivity that needs to be applied to ensure that we just do not replicate 'process as a standard response' without thinking through the implications

19.3 Indirect methods

Although face to face meetings have the potential for the best outcome for victims and offenders it is crucial that other options are also considered when necessary. If the victim does not feel safe being in a face to face meeting with an offender, an indirect meeting with the facilitator as a go-between can offer safety for the victim and facilitate a restorative event. The dialogue between the victim and the offender can also take place through an exchange of letters – with the mediator as a go-between to secure safety.

Example: an offender refused to meet the victim but was willing to respond if the victim emailed him via the facilitator.

When indirect methods are being considered it is important to be clear about the role of the facilitator and for the process to be as transparent as possible.

20. What are the complexities involved in restorative justice in cases of intra-familial SV?

When intra-familial sexual abuse occurs a whole family and sometimes several families are affected and the unveiling of an assault often creates very strong feelings of anger, sadness, distrust and sometimes disbelief. Feelings of guilt can also be predominant among family members.

Sometimes the wish of the victim to meet with the offender is not always understood by other family members or on the other hand family members can be too eager to see a reunion between the victim and the offender.

The motivations of family members and their attitude towards RJ are thus crucial to clarify.

If family members are ambiguous or hostile it will affect the motivation of the victim, especially a young victim. In cases involving young victims an

assessment of the parents' attitude towards RJ and their understanding, acceptance and support for the child's experiences and desires for a RJ meeting is crucial and as important as the assessment of the child and offender's suitability. This assessment of the parents should precede the agreement that their child can be offered a RJ meeting.

If the child is to gain anything from a meeting with the offender, it is necessary that the parent/parents are helped to support the child in the most appropriate manner and this will often not be possible before they have themselves come to terms with their own reactions.

The preparatory work in cases of intra-familial sexual abuse can involve mediations between the offender and members of the victim's family, between divorced parents, between members from different generations within the family and between members of the extended family.

It is important for RJ practitioners to have a good working understanding of the complexities and conflicting roles in families following disclosures of intra-familial SV. For example if the victim is a child within the family harmed by another child, the parent/carer of the victim may well be the parent/carer of the offender. Equally extended family may feel they have to make choices to believe and support one family member at the cost of condemning and marginalising another. Prof Simon Hackett from Durham University in the UK collected data in 117 British young people who had sexually abused others in order to investigate the nature and impact of their family responses (Hackett et al., 2012).

He noted that family responses could evolve from initial anger and shock into supportive roles, uncertainty and confusion or negative stigmatising reactions. From a restorative perspective families in the supportive position, who condemned the behaviour and did not collude with denial but were willing to support the child who perpetrated the abuse would represent the optimum response for a potential restorative meeting. However Hackett et al. (2012) note that these responses were not 'end states' but with external support families could progress and change still further as time went on. Thus in considering timing issues in relation for core participants in RJ such as the victim and the offender, RJ practitioners should extend the same considerations towards the wider family network in cases involving intra-familial sexual abuse.

Hackett et al. (2012) found further that in terms of ambivalent family responses, marked by confusion, uncertainty and inconsistency, families reluctantly acknowledged the harmful behaviour but were less likely to fully accept or acknowledge the full impact or seriousness of the abuse and

not fully confront it because it raised too much anxiety, pain and stress for them. In these circumstances 'ambivalent parents often attempted to control their anger and anxiety maladaptively, for example by labelling their child's victim or by blaming the co-parent for the abuse' (Hackett et al., 2012: 6).

In the cases where the family response was one of condemnation but without support, Hackett et al. described these as 'disintegrative shaming responses' (2012: 7), employing a term familiar to most RJ practitioners. In the majority of these instances the abuse had occurred between siblings. According to Hackett et al. 'the fact that the young person had abused a sibling was a key factor in explaining the parents negative responses. The young person's sexual abuse was viewed as a betrayal and transformed him into a deviant who had to be removed from the family (either literally or emotionally)' (2012: 7).

In terms of restorative interest it might be a little simplistic to merely suggest that engagement with families in the third, condemnatory position would be the least workable and reluctant to embrace a restorative approach; however it would seem reasonable to suggest they would present the most challenging and difficult to work with in partnership.

The response of these families indicates the wider impact of shame associated with instances of intra-familial SV in families. Just as an offender may seek refuge in denial as a maladaptive response to manage shame, so too do families unconsciously adopt a similar strategy. The difficulty in a therapeutic and restorative sense with intra-familial SV is to understand and facilitate an offender in freeing himself from a locked position of denial and minimisation and make a genuine admission of responsibility, enable the victim to find his or her power and safety again and to facilitate individual familial and collective expressions of shame, hurt and betrayal, where these are appropriate.

21. Do restorative justice practitioners need special training for facilitating sexual violence cases?

Facilitating SV cases requires the reflective application of core RJ skills to a high standard, combined with additional contextual knowledge and insight relating to the field of sexual violence and trauma work. This approach is reflected in both the New Zealand and the proposed Australian approach to ally the restorative specialist work alongside both offender and victim specialists in the field of sexual harm.

For restorative practitioners it is crucially important to have some insight into some critical restorative issues with regard to SV.

These include: the high levels of shame, the potential for blame and self-blame, the significance of a lack of clarity around acceptance of responsibility, the particular power of labels and crucially the relational context in which it often occurs.

It is recommended that facilitators involved in complex or severe cases have additional training to supplement their basic RJ training because the level of traumatisation is higher when the assault has been severe, there is a heightened level of emotional intensity in the case and the case can be difficult to handle because of the level of complexity. Essential for the RJ practitioner of SV cases is also knowledge of the impact of sexual offences, the impact of sexual trauma, and the feeling of guilt and shame that are specific for both victims and offenders of sexual violence.

Not only because the preparation phase is longer than in cases of less severe violence but also because of the painful nature of the preparation process it is inevitable that at times the process will become therapeutic and the boundaries between therapy and RJ will become porous. It is essential however that the RJ practitioner recognises the brief and the assignment which is to prepare for a RJ meeting and the boundaries between therapy and RJ should be clearly defined.

In addition to special training RJ practitioners would require specialist support and supervision, ideally from a source which is familiar with the types of issues and concerns that arise with regard to RJ in cases of SV. Line management and case supervision may not necessarily be provided by the same person. In practice the necessary level of knowledge and expertise may not be located within the agency/project providing the RJ service but instead be gained by access to local/national RJ networks.

The role of Managers with regard to Restorative Practice is covered in other practical guides, notably section 9 of 'Conferencing: a way forward for restorative justice - A practical guide' (Shapland et al., 2011). There are fewer additional items to be added to that other than to note that under some jurisdictions, the UK for example, Sensitive and Complex Cases Guidance (Restorative Justice Council, 2011) requires a guarantee of long term continuity of case facilitation, recognising the longer timescale and more detailed evaluation and accessing and making use of appropriate case supervision, including personal support when necessary.

22. Is the media interested in restorative justice in sexual violence cases?

As with many cases that are sensitive and complex it is important to consider that the media, print and digital as well as broadcast media, may well take a special interest in specific cases as well as the general application of RJ in such a contentious field as SV.

Individual projects would be well advised to have generic media policies agreed and working in advance of taking on such cases. However here we are specifically concerned with the case based practice issues that might arise with regard to media and RJ/SV cases.

The primary concern relates to exploring the reality and meaning of confidentiality with core participants during the preparatory phase.

What information is held?

How is it held?

On what basis is it shared?

How long is it held?

Consideration must also be given to the particular concerns/vulnerabilities of the core participants that require a more constrained approach to information sharing among agents such as particular vulnerabilities by virtue of age, community threat, gang violence, or the consequence of surrender of anonymity.

It may be that by agreeing a formal confidentiality agreement between the parties that sufficient safeguards are protected in certain cases so there is consistent and clear understanding of these issues from all parties. However, the limitations of such agreements that are by nature voluntary and therefore dependent upon the honesty and goodwill of all involved must be borne in mind.

Case illustration 3

The Jo/Darren Case

In the Jo/Darren case both participants had previously suffered a very abusive time at the hands of local and national print media regarding the offence and subsequent sentence. Neither party was aware of this but each wanted some clear guidelines in preparation that such an experience would not be repeated if they held a face to

face meeting. This and a number of other issues were covered through a formal confidentiality agreement.

However subsequent to the meeting one of the parties wanted to talk about the beneficial effects and outcome of the process and so the confidentiality agreement needed to be re-visited to enable this but protect the identity and confidentiality of the other party. In addition an agreement was made to be able to use the case information for training purposes.

23. What is national practice guidance?

Many national jurisdictions will have standards of restorative practice that will be applicable to restorative approaches in cases of sexual violence.

The UK Ministry of Justice first produced one in 2004 and it was subsequently revised in 2011. We will use that as an example (Restorative Justice Council, 2011).

Under the UK Best Practice Guidance for Restorative Practice restorative work is fundamentally divided into 'Core Restorative Practice' and restorative practice which is employed in cases defined as 'Sensitive and Complex'. Clearly the core practice is applicable in both instances but there are additional items/concerns in relation to sensitive and complex cases.

The first point in relation to sensitive and complex cases is that they should be identified during initial risk assessments. This clearly presumes that some form of formal risk assessment takes place in all restorative cases. In terms of criteria it begins with 'The crime or incident of harm may be of a serious violent or sexual nature, leading to risk of ongoing harm (e.g. cases of sexual or spousal abuse, cases involving death or loss) (Restorative Justice Council, 2011: 22).

So under the UK guidance all SV cases are by definition 'sensitive and complex'.

The guidance then continues to lay out the additional knowledge, skills and process that relates to working with sensitive and complex cases. Stating that cases of this nature should ideally be handled by senior practitioners and only by practitioners who can demonstrate the higher levels of skills outlined in the guidance. Moreover Managers of such cases should always have restorative experience and be able to provide specialist case work supervision.

In practice the guidance lays out very few additional skills and the primary emphasis is upon additional contextual knowledge and adjustments/amendments to process to adapt to the additional risks and needs associated with these cases. So for example there is a clear requirement to undertake formal written risk assessment in relation to 'sensitive and complex' cases and ensure that any relevant specialist risk assessment tool is applied. This is why the AIM Project created its Restorative Assessment framework for both sensitive and complex cases in general and specific to cases of sexual violence committed by adolescents (Mercer, 2014).

Any restorative practice in relation to SV must be compliant with national guidance on restorative practice where it exists; if practitioners find there is no such guidance in their particular jurisdiction then the UK Practice Guidance is a useful starting point. It can be obtained from the Restorative Justice Council.

24. How do we ensure safety?

In reality this question has been addressed in all of the previous items discussed.

It is a fundamental principle of restorative practice that it should 'do no harm' and thus ensuring safe and appropriate practice must be a core concern in relation to all restorative practice, not just in relation to perceived 'high risk' cases such as SV.

So this section is just a summary of what has previously been covered in more detail earlier.

The most fundamental 'guarantee' of safety relates to this area of work being only undertaken by skilful, knowledgeable, sensitive and experienced practitioners who are well supported in both casework and line management and can effectively function in a multi-agency environment.

There are some additional skills which extend the practice to cover cases of SV, but in reality there is not a wholly different box of 'special skills' in relation to SV. What it does require is high quality core restorative practice which holds true to the essential restorative principles.

Here is a summary of the various areas of difference:

- Requirement for additional contextual knowledge around SV and especially the impact on and experiences of victims of SV.

- Recognising that SV is located in the broader cultural perspectives of gender and sexuality; whilst some ‘universals’ may seem apparent it is impossible to remove these type of harm from the cultural context in which they are located.
- Sound process in terms of formal assessments that do not just identify risk but equally focus upon needs and strengths/capacities. The focus of this process is to maximise inclusion and explore the potential for suitability and applicability of process (face to face or not ... method of restorative approach to carry the dialogue ... supporters roles etc.).
- Good quality preparation for all parties that explores issues identified in assessment but is aimed at enabling the maximum benefit for all parties for participation in the process.
- Continuity in work and effective co-working with the time and space to work at the pace of the participants.
- Sensitivity to timing issues in relation to both victims, offenders and families and a recognition of the potential intrusion of the systems timing needs which might not coincide with the best interests of the core participants.
- Good quality support and case supervision consistent with existing national guidance.
- Doing what we do well in ‘other’ cases, but being mindful of the need to do it especially well in cases of SV.
- Working in a multi-agency environment which shares decision-making, encourages accountability and enables the restorative process to be congruent with any therapeutic work being undertaken with the victim, the offender of the family.

25. What is the role of supporters?

Clearly the use of supporters will be dependent upon case by case circumstances, as with other forms of RJ.

There are particular issues in relation to SV which need to be more specifically considered in relation to supporters. These include:

- The relational context of many SV cases, especially the intra-familial cases mean that supporters from within the family may have a conflict of role or find themselves in ambivalent and challenging roles in relation to others in the process.

- The complexities around denial mean that supporters might have an investment in colluding with the offender's denial or minimisation of the harm.
- The potential for 'victim blaming' in relation to SV is considerable and this needs to be considered in relation to issues around denial/minimisation.
- External 'support' organisations may exist but may not be sympathetic to the aims of a restorative process and like the potential for 'victim blaming' the equivalent of 'victim rescuing' is undermining of the opportunity for victims to speak their own story, ask their own questions and make their own choices.

People who have been exposed to a sexual assault often report that they feel alone with their experience and their next of kin report that they can feel unsure how to support the victim.

When the victim decides to meet the offender the feeling of loneliness can be enhanced. Not everybody will understand the need to come face to face with the offender and not many others have made the same choice.

That is why it is important to ensure that the victim has someone around who supports what s/he is about to do and the RJ practitioner - when possible - should include the supporter(s) in the preparation phase. This is of course especially important if the supporter will also be present during the meeting with the offender.

Who are the right supporters? Next of kin are naturally first in line but sometimes they can be so touched by the sexual assault that the victim is better off with someone less close. Because of the sexual nature of the assault and the shyness to talk about intimate details of the assault many – both adolescents and adults - prefer not to have supporters present in the room during the meeting.

With no support in the room it is important to make sure that the victim (and the offender) can be met by their supporter(s) soon after the meeting.

26. What is the role of follow up meetings?

As with other restorative processes there may be a necessity for a follow up meeting or more than one following the first restorative meeting. This can be necessary in many circumstances including in an intra-familial situation when it became clear during the VOM that relational issues in the family required a wider familial engagement to address issues such as potential return home. In other circumstances it can occur that a second meeting

between victim and offender is required at the completion of a programme of intervention/therapy. This is to demonstrate that the offender has been compliant with any requirement to participate in a therapeutic programme designed to reduce the risk of future sexual harm. In the American Restore Programme, after the conferencing stage (stage 3) victims were able to attend a meeting of the 'Community Accountability and Reintegration Board' at stage 4, some 12 months after the restorative meeting. At this stage the offender demonstrates his/her compliance with the Redress Agreement made in the Conference meeting, and reads 'a prepared reflection and clarification letter indicating his/her progress throughout the year. This is the formal apology and marks his/her reintegration back into society ...' (Koss, 2013: 1630).

Interestingly not a single 'survivor victim' in the Restore sample group chose to attend the stage 4 'final exit meeting' where the programme designers intended the formal apology would take place. (Koss, 2013: 1652) and despite the Restore programme design actively discouraging apology until the final stage 4 '... Nevertheless, many responsible persons (offenders) apologized at conferences' (Koss, 2013: 1652).

In general terms, the dynamics of RJ in SV does not require a greater use of follow up meetings than with other types of offences and the requirements, as always, are more case specific or may reflect the particular programme design rather than the interests and needs of the participants as the Project Restore experience seems to reflect.

27. What is the function of evaluation?

In general evaluation by core participants fulfils four functions:

- It offers a means of RJ practice standards being held accountable to the direct participants.
- It offers a source or practice information for practitioners to reflect upon to improve their practice and if necessary differentiate emphasis according to case characteristics.
- It offers an illustration of the benefits of engagement in the process which can be used to inform others thinking of potential participation/promote restorative work.
- It demonstrates that practice is accountable to national practice/management standards where they exist.

In undertaking case evaluation it is important not to merely focus upon the outcome of the process, i.e. just the meetings itself but to also include

participants views and experience of the initial engagement and preparation process.

Evaluation of RJ in SV cases does not differ in many ways from evaluation of RJ in other sensitive and complex cases apart from consideration of the potential for additional victim/offender vulnerabilities and their particular expectations or motivations for partaking in RJ. There are no specific 'measures' to be included in the case evaluation that are not case specific. However it is useful to capture information that illustrates some nuanced differences in terms of victim/offender expectations as was found in the research on the Restore Project in the USA (Koss, 2013), which indicated that less of an emphasis was placed upon formal apology from victims of SV in RJ when compared with victims who suffered other types of harm.

The other major difference in practice experience is the relationship of the restorative process to therapy for either the victim or the offender. As RJ in this context often takes place in a wider multi-professional environment it is important to include those professionals in any evaluation process and gather their views and opinions as well as those of the 'core participants'. This is especially important if RJ is to establish itself as part of the range of professional involvement in cases of SV and able to demonstrate its safety and effectiveness to other professionals who may have initial reservations or resistance.

Case illustration 4

The Jo/Darren Case

After the very successful mediation with the victim we asked the caseworker in the evaluation stage to indicate the areas of work that she felt the RJ process had assisted her with. She listed the following:

Emotional recognition

Emotional regulation

Emotional expression

Empathy

Perspective taking

Openness to victims feelings, thoughts and experiences

Family positions

Wider awareness of impact on family

Acceptance of responsibility remorse expression

Shame management

Appreciation of wider impact
Self-forgiveness
Understanding meaning and actuality of victimisation
Understanding why specific individuals were targeted
Facilitate embeddedness in family
Looking forward/planning for release

Following the VOM on a serious case of SV the project undertook a formal evaluation of the process based upon recorded individual interviews with all of the core participants at the meeting, consisting of victim, victim supporter, offender and offender supporter. The detailed framework consisted of over 50 items and tried to avoid generalised questions such as 'degree of victim satisfaction' with the meeting but rather focussed upon the specifics of what elements in the process, initial engagement, preparation and the meeting the victim found helpful and what was not.

Moreover the evaluation was extended to include the offender therapist, the referring agency and the Secure Unit where the offender was currently detained. There was no victim therapist involved. The emphasis here was to identify the benefits or otherwise that the restorative process had to offer the wider professional aims and objectives.

By agreement of all involved the summary was made anonymous and used to inform training and promotion of the work.

References

- Angel, C. (2006). *Restorative conferences reduce trauma from crime*. Restorative Practices Forum, International Institute for Restorative Practices (IIRP).
- Centre for Innovative Justice (2014). *Innovative justice responses to sexual offending- Pathways to better outcomes for victims, offenders and the community*. Melbourne: RMIT University.
- Griffin, H. (2003). *Supplementary report: Greater Manchester sample of adolescents who sexually harmed*. Greater Manchester Youth Justice Trust.
- Hackett, S., Balfe, M., Masson, H. & Phillips, J. (2012). Family responses to young people who have sexually abused: anger, ambivalence and acceptance. *Children and Society*, 28(2), 128–139.
- Haresnape, S. (2007). Youth Justice Family Group Conferences. In C. Ashley & P. Nixon (eds.), *Family group conferences - Where next?* Family Rights Group, accessible at www.frg.org.uk.
- Hudson, B. (2002). Restorative justice and gendered violence: diversion or effective justice? *British Journal of Criminology*, 42, 616-634.
- Julich, S., Buttle, J., Cummins, C. & Freeborn, E. (2010). *Project Restore: an exploratory study of restorative justice and sexual violence*, Auckland University of Technology.
- Julich, S., McGregor, K., Annan, J., Landon, F., McCarrison, D. & McPhillips, K. (2011). Yes, there is another way!. *Canterbury Law Review*, 17, 222-228
- Koss, M. (2000). Blame, shame, and community: justice responses to violence against women. *American Psychologist*, 55(11), 1332-1343.
- Koss, M. (2013). The RESTORE program of restorative justice for sex crimes: vision, process and outcomes. *Journal of Interpersonal Violence*, 29(9), 1623-1660.
- McAlinden, A.-M. (2007). *The shaming of sexual offenders: risk, retribution and reintegration*. Oxford: Hart Publishing.
- Mercer, V. (2014). *Revised assessment for restorative approaches to adolescent harmful sexual behavior*. The AIM Project. Accessible at www.aimproject.org.uk.
- Mercer, V. & Henniker, J. (2007). Restorative justice: can it work with young people who sexually abuse? In M. Calder (ed.), *Working with children and young people who sexually abuse: taking the field forward*. Dorset: Russell House Publishing.
- Restorative Justice Council (RJC) (2011). *Best practice guidance for restorative practice*. Accessible at www.restorativejustice.org.uk.

- Shapland, J., Aertsen, I., Doherty, K., Teunkens, M., Vanfraechem, I., Van Pagee, R. & Zinsstag, E. (2011). *Conferencing: a way forward for restorative justice – a practical guide*. Leuven: European Forum for Restorative Justice.
- Ward, T. & Fortune, C. (2014). The good lives model: a strength-based approach to offender rehabilitation. In D. Polizzi, M. Braswell & M. Draper (eds.), *Humanistic approaches to corrections and offender treatment* (pp. 115-130). Durham: Carolina Academic Press.
- Ward, T., Fox, A. & Garber, M. (2014). Restorative justice, offender rehabilitation and desistance. *Restorative Justice: An International Journal*, 2(1), 24-42.
- Woessner, G. (2015). Understanding sexual violence: victims, offenders and community. In E. Zinsstag, M. Keenan & I. Aertsen (eds.), *Developing integrated responses to sexual violence: An interdisciplinary research project on the potential of restorative justice – Project report*. On file with author.
- Zinsstag, E., Teunkens, M. & Pali, B. (2011). *Conferencing: a way forward for restorative justice – Final report of JLS/2008/JPEN/043*. Leuven: European Forum for Restorative Justice.
- Zinsstag, E., Keenan, M. & Aertsen, I. (eds.) (2015). *Developing integrated responses to sexual violence: An interdisciplinary research project on the potential of restorative justice – Project report*. Leuven: Leuven Institute of Criminology. On file with author.