



**Refuge response to Restorative Justice
- Government consultation -**

October 2003

Q2

What would be the benefits and disadvantages of developing more specific principles in particular areas - for example for sensitive offences such as hate crimes, sex crimes and domestic violence?

Refuge welcomes the government's work on restorative justice in the area of youth offending and its plans to extend evidence based good practice to other spheres. At the same time, Refuge expresses grave concern about the application of restorative justice practices to 'sensitive cases such as sex crimes and domestic violence'.

In recent years restorative justice solutions have been introduced in response to domestic violence offences, though this practice is by no means widespread. Arguments in support of this practice include

- the failure of the traditional criminal justice system to tackle this crime
- that it might be more appropriate where a couple decide to stay together, at least in the short-term¹
- that the use of sentencing circles and or family/community conferencing may be a stronger deterrent against re-offending than incarceration.²

Nevertheless, there are many arguments against. Whilst recognising the beneficial effects of restorative justice in providing victims with a forum to voice the impact of crimes perpetrated against them, it is naive to assume that for victims of sexual offences and those who have endured years of physical, emotional and sexual abuse, that healing and reparation can occur within this context alone. It is more likely that any such 'restorative' meetings between the perpetrator (of domestic violence or of a sex crime) and the victim would provide further opportunity for abuse and re-traumatisation within a legally sanctioned setting.

Over the years, many women will hear their partner 'apologise' for his behaviour, attempt to make amends and 'restore' their relationship. But in general, these attempts are part of a pattern of abuse, designed to gain her sympathy and maintain control. Most women, who have reached the stage of using the legal system to obtain protection and justice, have realised the emptiness of his remorse and the danger of believing his promises to change. By engaging abused women in the restorative justice process, we risk asking them to do precisely what their partner wants them to do – listen to his apologies and forgive him.

Issues of power and control lie at the heart of abusive behaviour and are likely to re-emerge within the context/process of mediation and or family group/community meetings. Research suggests that

"Women who had been abused were more likely than women who had not to feel that they could be "out-talked" by their partners. [They also felt that their partners were more likely to retaliate against them if they held out for what they wanted. Newmark et al reported that abused women were "afraid of openly disagreeing with [their partner] because he might hurt [her] or the

¹ Though it is vital to bear in mind it may take women several years to leave an abusive partner. Parallel supports in terms of counselling, legal advocacy, practical help and safe accommodation options must also be offered.

² Coward-Yaskiw (2002) Restorative Justice" what is it? Can it work? What do women think?

children if [she did]". This accords with comments made by some New Zealand women interviewed following their involvement in Family Court mediation and counselling"³

It is unrealistic to assume that victims of abuse will be able to advocate for their own needs/ rights and express their feelings freely and without fear when faced with their abuser. It may even be dangerous to place women in this position. We know that women are more at risk after they leave the perpetrator, and the presence of domestic violence is now recognised as a risk factor in Child Contact proceedings. The need for more supervised contact centres across the UK is well documented and accepted both within and outside government. Surely the risk to women and children during face to face meetings with the perpetrator during restorative justice processes must also be considered, particularly where she is expected to express herself as an 'equal'. To illustrate this point, a New Zealand study described how at a family group conference, the perpetrator was able to force his partner to leave the support of her family and sit beside him with a mere snap of his fingers. A year later he was found guilty of her murder⁴.

Family group conferences/ community conferences

These approaches are rooted in the principle that the group, the collective, will unite to bring shame and realisation of wrong doing upon the perpetrator and provide validation and support to the victim. In a society where attitudes about domestic violence have yet to be consistently challenged and changed, it is again naïve to presume that the victim will find all the support she may need via this process. Ironically, it may be that within this context a woman's individual power is actually reduced, as family and community pressure is brought to bear in either persuading her to return to the perpetrator or to assume responsibility for her role in provoking her partner's abusive behaviour.

Whilst it is important that the community is able to have its own voice within the justice system, this should not be at the expense of adequately protecting victims from community/family pressure. It is far more important that the perpetrator is made accountable for his actions and the best way to do this is via a strong criminal justice system response, involving arrest, charge and prosecution.

Restorative Justice as a diversion from traditional criminal justice system responses. It is policy within other jurisdictions to retain the possibility of diverting domestic violence cases, on condition that a risk assessment concludes, the offence is not serious and the perpetrator is a first time offender.⁵ It is proposed that referral to restorative justice alternatives in England and Wales would also be used as a diversion from prosecution, though whether this is to include domestic violence is not yet known. Refuge would urge government to develop clear guidelines which exclude domestic violence offences for the following reasons.

- domestic violence is rarely a one-off event. It is a crime known to escalate in both frequency and severity. 2 women a week are killed by a partner or ex-partner in England and Wales⁶

³ Stephen Hooper and Ruth Busch (1996) Domestic Violence and Restorative Justice Initiatives: The risks of a new Panacea.

⁴ Stephen Hooper and Ruth Busch (ibid)

⁵ Final report of the Ad Hoc Federal-Provincial –Territorial Working Group Reviewing Spousal Abuse Policies and Legislation

⁶ Homicide Statistics. Cited in Living without Fear (1999)

- a strong criminal justice system response with a stated commitment to arrest, charge and prosecute offenders would send a clearer message that domestic violence is unacceptable and will not be tolerated by society. Pre-charge diversionary programmes/measures which upon completion allow the perpetrator to escape conviction, send a message to both him and his partner that domestic violence is less serious and or is treated differently than other types of violent crime
- treating domestic violence differently or less seriously than other violent crimes, may result in decreased reporting.

In Canada the Criminal Code was amended in 1996 to permit the use of alternative measures (including restorative justice) for adult offenders; domestic violence cases were excluded in all but 3 jurisdictions. Although this remains the case today, there is anecdotal evidence that restorative justice measures are being used as a diversion from traditional court processes in a number of areas, even where there is a policy prohibiting such diversion.⁷

Criminalisation of domestic violence has been and will continue to be crucial in changing attitudes and most importantly behaviour in relation to domestic violence. Using restorative justice system alternatives as a diversion from traditional court processes would serve to undermine the seriousness of the crime, as well as the pro-arrest and charge policy currently promoted by government, the CPS and the police.

The need for more research

The government acknowledges the need to know more about the effectiveness of diversionary restorative justice for adult offenders and for its use with 'sensitive crimes' such as sex crimes and domestic violence. Refuge would urge the government not to create pilot projects with these populations. As yet, we do not have reliable or valid risk assessment measures, the facilities to allow safe contact between perpetrator and victim to take place, satisfactory training nor good practice protocols for those working within the field. Until these safeguards are in place it would appear dangerous to begin work with this population of vulnerable women and children.

Extensive and confidential consultation with victims, including children, should take place prior to programme design and development at local and national levels. The views of women from black, minority, ethnic communities, those with disabilities (particularly women with learning difficulties, as this group is often least represented) the LBGT community, elderly women and other 'hard to reach groups' should inform the implementation and evaluation of programmes.

Q3

Who needs what level of training for restorative justice within Criminal Justice System agencies and in voluntary sector providers?

- all personnel should receive training so that they are informed about the causes, dynamics and consequences of domestic violence and alert to the risks for children and their mothers
- the basis of this training should incorporate a socio-psychological perspective together with an understanding of the significant role of gender, power and control in the abuse

⁷ Final Report of the Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation.

- training should occur on two levels; it should feature in initial professional training and as part of on-going professional development.

Q4

Do you agree that there is a need for a range of training providers, with a shared approach to training and accreditation for restorative justice practitioners? If so, what might this look like?

In general, it is of value to have a shared approach to training and accreditation. In the context of domestic violence, however, an approach which incorporates a range of training providers, may serve to obscure a clear understanding of the issue and result in inappropriate or even dangerous interventions for victims. Training should be carried out by experts in the domestic violence field, preferably grass roots organisations with experience of working with women and children.

Q5

Over the next twelve months the government proposes to hold a series of regular meetings with key stakeholders to develop policy on training and accreditation. What are the key issues this process needs to consider?

How to design training which

- is mandatory and reflects a feminist analysis of violence
- contains 'good practice' elements and skill development components e.g. 'how to screen domestic violence cases out of the restorative justice process and strategies for responding to disclosures of abuse'

If restorative justice is to be applied to domestic violence cases then training should also include elements which address

- the victim's right to be consulted and to give agreement about involvement in the restorative justice process and its use as a diversion from traditional criminal justice system processes
- the specific difficulties facing women from black and minority ethnic communities, such as institutional racism and any additional community/family pressures which may make restorative justice inappropriate and or dangerous
- strategies for recognising and responding to abuse tactics within a restorative justice context
- the need for clear guidelines and protocols, including practical strategies for ensuring the safety of victims
- the need for minimum standards with clear performance indicators, systems for recording, monitoring, evaluation, accountability and compliance
- effective supervision for workers, including strategies for managing their own feelings, particularly if abuse occurs during a restorative justice session
- and recognise circumstances in which restorative justice is inappropriate and or dangerous
- the need for a validated risk assessment.

Q13**How can we involve victims and the community more, particularly communities damaged by crime, in deciding what reparative work offenders do?**

Refuge supports reparative work by offenders and recognises the efforts of the Inside Outside trust mentioned in the consultation document. Consulting with domestic violence victims is one way to find out what might be of use. It may be that for those who do not wish to have 'restorative' contact with the perpetrator, benefiting from the practical efforts of other offenders may be one way to make/experience some sense of reparation. For example, furniture renovation/replacement for women and children who had to leave their homes and belongings to escape domestic violence; building much needed outdoor play equipment for children in refuges etc.

Q23**What are the particular needs of different sections of the community, such as women and members of ethnic minorities, to which restorative approaches need to be sensitive?**

Women from black, minority ethnic communities may face difficulties in addition to those described above. For example

- they are likely to be more isolated and more reliant on community support than other women. To expect that they would be able to go against community leaders or elders within their family when advocating for their rights within a restorative justice context would be to work against the inherent respect generally given to such people within their culture. The consequences may be that such women are ostracised and further abused and or at risk of additional violence from other individuals (family members/community contacts) as well as her ex-partner.
- Where sessions do take place, the use of interpreters may be necessary to properly monitor communication during the session.
- The use of facilitators from a culturally appropriate background would also be desirable.

Refuge supports the draft principles set out in the consultation document, particularly those offering the victim choice about participating in restorative justice measures. However, if the decision about whether a perpetrator's case is diverted away from prosecution is influenced by the victim's agreement to participate nor not, this is likely to place unreasonable pressure on the victim to comply. Fear of further violence is a large factor in preventing women from prosecuting violent partners; it is likely to be a factor in preventing women from rejecting restorative system alternatives.

- ENDS -