



Editorial: restorative justice in cases of sexual harm

Dear All,

The EFRJ has dealt with the applicability of restorative justice in cases of sexual harm for a long time. To name just a few of the many activities of the EFRJ, it supported research into this sensitive area and published a brief on *Restorative Justice and Sexual Violence*.

Sexual violence is an injustice and an oppressive violation of human rights. Sexual violence differs from most other offending behaviours because it occurs in an intimate context, because of its dynamics and specific trauma and because it often occurs between people who are acquainted. The psychological harms and the invasion of privacy that survivors experience can hardly be adequately addressed by incarcerating or fining the perpetrators and, despite significant legal and procedural reforms, the criminal justice system remains largely unresponsive to the needs of survivors of sexual violence. There is a clear need to identify a different way to undo the injustice and repair the harm; restorative justice is an inclusive approach to addressing the harm and suffering experienced by survivors. However, sensitive cases of sexual harm present specific challenges to restorative practitioners to design a safe and effective process adapted to each case rather than using a standard 'one-size-fits-all' restorative process.

In the first article, which serves as an introduction to sexual harm, the authors Sofia Sideridou and Sofia Vasileiadou explore the specific characteristics of sexual crimes, what distinguishes sexual violence from other offending behaviours and debate the applicability of restorative justice as an alternative avenue to achieve justice, recognising both challenges and benefits.

The second article focuses on a very special sexual crime that is gaining more and more attention, namely stealthing, and explores a restorative approach to addressing this silent crime. The author of the article, Georgia Lagkadinou, clarifies the term stealthing and explores how restorative justice can become a valuable tool for tackling the alarming phenomenon of stealthing, while addressing the emotional and psychological impact of sexual misconduct.

With the next article, we begin a trip around the

world to look more closely at how restorative work in cases of sexual violence is actually done in practice. The team of *Project Restore* from New Zealand share the long history of the organisation which is specialised in solely working with cases of sexual violence. Their specific approach as well as the values underpinning their work are both outlined theoretically and illustrated along the lines of three case studies.

Just like *Project Restore*, the organisation *Thriving Survivors* in Scotland is exclusively dealing with cases of sexual violence in a restorative way. Ashley Scotland is not only author of the article but also founder of the organisation and she describes in her article how survivors of sexual violence have been and still are included in shaping the work of *Thriving Survivors* to be able to best respond to their specific needs.

The last contribution is an interview with a mediator in penal matters from Germany conducted by Kim Magiera. The mediator shares reflections of her work experience in cases of sexual violence, pointing to specific challenges, sharing the motivation of both survivors and offenders to participate in victim-offender mediation, detailing the options for working in such cases — and concluding how each case is so individual that it is hard to find common features.

This last aspect brings us back to the end of the first paragraph: the importance of individualised procedures that are adjusted to each and every person involved while being aware of the overarching societal dimension of sexual violence. We hope that the topics raised in this issue will provoke a fruitful discussion around sexual harm and contribute to the reflection of researchers and practitioners in the field of restorative justice. We always welcome any kind of feedback and hope to stay in touch with you! If you are interested in contributing to a future issue do not hesitate to contact any member of the EFRJ

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Unleashing the benefits of restorative justice for survivors of sexual violence

Despite significant legal and procedural reforms, the criminal justice system continues to fail to address the needs of victims of sexual violence. The following article, which does not intend to be an exhaustive literature review, explores the characteristics of sexual offences and debates the applicability of restorative justice as an alternative avenue to provide justice, recognising both challenges and benefits.

An introduction to sexual crimes

There is a range of crimes that constitute a sexual offence, including rape or sexual assault, crimes against children including child sexual abuse or grooming, and crimes that exploit others for a sexual purpose, whether in person or online. All those crimes cause distress and harm to those victimised, some of which can be lifelong (Jones and Cook, 2008). Those crimes can occur between strangers, acquaintances, current or ex-partners, friends or family members. Anyone — both female and male — can be a victim of a sex crime.

What is special about sexual violence?

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What distinguishes sexual violence from other offending behaviours and highlights its complexity is the intimate nature of the act; it often occurs between people who are acquainted and reinforces socially constructed gendered dynamics. It is widely recognised that the potential for harm exists in relationships where there is an imbalance of power. Sexual harm is no different, potentially resulting in serious psychological and physical trauma and changes in lifestyle and behaviour, while victims report that their lives are distinctively divided into 'before' and 'after' periods,

which indicates how deeply harmful and stigmatising these incidents might become (McGlynn et al., 2020).

A vast majority of sexual crimes indicate women as the primary victims and emphasise the gendered nature of this phenomenon, acknowledging the presence of major gender stereotypes in society, which place women in a discriminatory position (Marganski, 2020). According to McGlynn and Rackley (2017), this occurs due to the different standards society imposes on both genders. Males are often addressed dissimilarly from females regarding sexual violence: the latter are the ones who suffer from stigma, shame, and emotional distress, while the former tend to receive acceptance for their actions and lenient sentences.

Sexual offending: victimisation and the path through the criminal justice system

A crucial finding suggests that victims struggle with reporting incidents like these, due to fear of further harm and exposure and therefore do not seek legal advice or law enforcement interference (Scurich, 2020). Only a small percentage of sexual offences are reported to the police and only a very low percentage of cases of sexual violence eventually reach the criminal justice system (for example, in cases of intrafamilial violence victims prefer to keep private about the situation). In addition, there are ongoing and persistent concerns about the responses from the criminal justice system regarding sexual offences and, in particular, about the conviction rates (Cook, 2011).



Figure 1: Breaking the cycle of harm

Bringing the data together helps us to provide a more coherent picture of sexual harm, demonstrating the demand for services.

... the legislature should change its focus to the potential offered by restorative practices to address the traumatic impact of sexual harm, to engage with the relational context in which this harm is placed and eventually to provide 'emotional restoration' for crime victims.

The continued failure of the conventional criminal justice system to address the needs of victims who have been sexually harmed poses an extra risk of secondary victimisation. Victims might be remotely harmed by ineffective or non-existing responses, which contribute to the accumulation of harm, making an already traumatic experience further harmful (Scurich, 2020). There is a clear need to identify a different way to undo the injustice and repair the harm. The psychological harms and the invasion of privacy that victims experience cannot be adequately addressed by incarcerating or fining the perpetrators. Furthermore, there is a need for support for victims to help them recover from and overcome potential trauma as a result of a sexual offence.

Thus, instead of separating the parties, keeping them as far away as possible, and removing the possibility of ongoing contact, especially when the perpetrator is known to the victim, the legislature should

change its focus to the potential offered by restorative practices to address the traumatic impact of sexual harm, to engage with the relational context in which this harm is placed and eventually to provide 'emotional restoration' for crime victims (Strang, 2002).

In this direction, the Victims' Rights Directive (European Parliament and Council, 2012) establishes minimum standards on the rights, support, and protection of victims of crime. The Directive also recognises violence in close relationships as:

a serious and often hidden social problem which could cause systematic psychological and physical trauma with severe consequences because the offender is a person whom the victim should be able to trust. Victims of violence in close relationships may therefore be in need of special protection measures. Women are affected disproportionately by this type of violence and the situation can be worse if the woman is dependent on the offender economically, socially, or as regards her right to residence (European Parliament and Council, 2012, recital 18).

It also requires that EU countries ensure specialist support services based on an integrated and targeted approach, taking into account the specific needs of victims, the severity of the harm, as well as the rela-

tionship between the people involved and their wider social environment. Restorative justice has been acknowledged in the Victims' Directive as an important way to take into account the interests and needs of the victim and to repair the harm done to the victim as well as to avoid further harm (Lauwaert, 2013).

A restorative justice lens in sexual violence cases

... going through the conventional criminal justice system proves to be a form of secondary victimisation, creating additional barriers to victims ...

As stated above, on many occasions, going through the conventional criminal justice system proves to be a form of secondary victimisation, creating additional barriers for victims and a long journey to vindication and validation, if any. The problem of secondary victimisation has been officially identified and acknowledged by the European Union (European Parliament and Council, 2012, recital 53), which has strived through most of its initiatives to secure proceedings 'in a coordinated and respectful manner' and pushed towards alternatives. Nonetheless, despite certain progress, victims are still beyond full enjoyment of their rights, with restricted information and minimal support for their inherent needs (European Commission, 2020a, pp. 2–3).

Towards this direction, the Directive and the 2020–2025 EU Strategy on victims' rights (European Commission, 2020a, p. 3) bring to the table the concept of restorative justice and refute current controversies on it, explicitly recognising its benefits particularly on 'victim empowerment,' something that is called into question particularly by incidents of sexual assault. The whole second prong of the strategy has evolved around 'empowering victims of crime' and giving them back the chance to regain lost power, using also the paradigm of restorative justice (European Commission, 2020c). Additionally, it is worth mentioning in advance that both the EU Strategy and the Directive do not exclude any type of crime or category of victim from restorative justice practices but rather adopt a crime and victim symmetric approach.

Despite the textual efforts of EU for a more inclusive and generic approach to restorative justice, as in most criminological areas, this systemic approach particularly to sexual offences has justifiably found opponents. Amongst the many obstacles, privatisa-

tion of the crime, minimisation of seriousness, fear of re-victimisation and power imbalances dominate denial of the restorative justice approach. Accordingly, restorative justice is perceived as the 'easy way forward' for offenders. (Wager, 2013, p. 16; Marsh and Wager, 2015, p. 5).

Amongst the many obstacles, privatisation of the crime, minimisation of seriousness, fear of re-victimisation and power imbalances dominate denial of the restorative justice approach.

However, it has been proven that most of these arguments remain unfounded and arise from theoretical scepticism, while they have been amplified through an 'empirical vacuum' and without listening to the views of survivors (McGlynn et al., 2012; Wager, 2013, pp. 13–14). Ironically, evidence from Australia, New Zealand and the UK (McGlynn et al., 2012, pp. 5–6; Knowles, 2013, pp. 44–45; Chan et al., 2015, p. 234) proves its positive impact in serious cases and refutes this inexplicable discrimination against sexual violence victims, who stand ineligible to claim the proved benefits of restorative justice (Biffi, 2016, pp. 40–41; Zinsstag, 2017, p. 30). Additionally, we notice that the aforementioned contentions do not differ in substance from the real problems that can emerge through the unsuccessful delivery of the conventional criminal justice system for sexual violence victims. It was in response to these problems that the restorative justice movement, based on victimological research, initially arose for serious crimes like sexual violence, domestic abuse, terrorism and juvenile cases (Biffi, 2016, pp. 23–24).

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To this end, restorative justice has unfoundedly been displaced to the 'shallow end of criminal justice', offered mostly in less severe crimes (Wood and Suzuki, 2016, p. 166). What adds up to this debate is also the misuse of the Council of Europe Convention (2011b) on preventing and combating violence against women and domestic violence (the Istanbul Convention) to keep cases of violence against women away from restorative justice services (Article 48), which is intertwined with the blurred belief of feminist activists that restorative justice moves violence into the private realm and further victimises

women (Pali and Madsen, 2011, p. 49). We must admit that the same feeling implicitly derives also from the Directive, which presents restorative justice as a model from which we should be carefully 'protected and safeguarded.' While this is of course correct and much needed, it leaves the impression of something 'weak,' which is not the case. Contrariwise, the Directive should have been structured around ways for stakeholders to become more 'empowered' with restorative justice (Biffi, 2016, p. 14).

While there is a dire need to achieve higher report levels for victims of sexual violence, this is not enough if it comes along with victims remaining powerless, perpetuating a stereotypical idea of weakness. Instead, we should focus on securing a real sense of justice, empowerment and healing for victims, things likely to be elusive in forthcoming from the conventional arena. Based on empirical evidence and victim stories, restorative justice is a more efficient avenue for victims' justice and healing needs (Keenan and Zinsstag, 2014, p. 94). Many academics have formed solid sets of 'justice needs' for victims (Chan et al., 2015, p. 232; Wager, 2013, p. 21). However, our intention is to neither compromise them nor exhaustively scrutinise them but rather briefly overview those needs met for victims of sexual violence through restorative practices.

Meeting victims' needs

First of all, victims of sexual violence experience a profound and tragic sense of disempowerment and loss of autonomy and restorative justice can honour them back with power and self-dominance.

First of all, victims of sexual violence experience a profound and tragic sense of disempowerment and loss of autonomy and restorative justice can honour them back with power and self-dominance (Keenan and Zinsstag, 2014, p. 96; Burns and Sinko, 2021, p. 340). We must bear in mind that sexual violence victims might have different needs that go far beyond mere conviction but focus on desires for recognition, vindication and transformation from the status of a victim to that of a survivor (Burns and Sinko, 2021, p. 341; McGlynn and Westmarland, 2019; Keenan and Zinsstag, 2014, p. 100). Restorative justice can be quite successful in this, given the active role of the victim and the chance to raise their voices, to conquer and address all needed points telling the story as it stands for them (Hudson, 2002). A much-needed

form of validation comes through the story-telling, while victims have the opportunity simply to take it off their chests and gain answers that might help them to move forward, fill in gaps, feel safer or even get rid of self-blame (Achilles and Zehr, 2000, pp. 89, 91; Wager, 2013, p. 23). Also, the exposure of the offender is accompanied by accountability, which adds up to re-establishing a sense of safety. Most importantly though, restorative justice can facilitate the healing process of the victim, by storytelling, by getting some answers, by receiving support in getting rid of self-blame concerns and most importantly by having a word on what happened (Achilles and Zehr, 2000, p. 92).

Nevertheless, restorative justice is not a panacea and a 'one size fits all' solution and this holds particularly true for sexual offences.

Nevertheless, restorative justice is not a panacea and a 'one size fits all' solution and this holds particularly true for sexual offences. As described above, sexual violence can take different forms and shapes and it has a whole range of psychological effects. Therefore, it could be meaningful to distinguish between different types of sexual offences being eligible for a restorative justice journey. Furthermore, regardless the type of offence, it is always worth focusing on the individual characteristics of the victims and their coping mechanisms and taking into account which is the right moment after this specific crime has occurred to offer this potential solution. In short, it is indispensable to offer a case-by-case analysis.

No matter what, and as Koss (2010) teases out, 'restorative practices must be approached cautiously in cases of sexual violence' and all the more important, those delivering it should stick closely to its principles and values. To safeguard it from multiple pitfalls and especially re-victimisation dangers, the necessary risk assessment stage before any restorative justice meeting or conference must serve as a starting point. We should all secure that only cases which can benefit will take the restorative justice avenue, and this might depend on safety levels, existing power imbalances, admission of facts and potential for accountability. Additionally, of utmost importance is the rigorous preparation of the victim and offender and the particular attention to the subtle dynamics of power based on gender, race, social status, etc. Undoubtedly, this is intertwined with the facilitator's skills and competencies; he/she should be able to evaluate everything in advance, acknowledge and

handle the particularities of each crime and prepare the appropriate setting for each case (Keenan and Zinsstag, 2014, p. 97; Zinsstag, 2017, p. 31; Burns and Sinko, 2021, p. 346).

Conclusion

... the feeling of 'powerlessness' and 'lost autonomy' ... was overturned only after the restorative justice meeting.

In a nutshell, the evidence supports the role of restorative justice for cases of sexual violence, and definitely more and more empirical studies should uncover the benefits for victims but also offenders. Joanne Nodding is one of the first sexual violence survivors in the UK who decided to confront the man who had raped her. In her case, what really contributed to this meeting was the judge's comment in court that the offender had 'ruined this woman's life' (Williams, 2011). However, this statement perpetuated the feeling of 'powerlessness' and 'lost autonomy' in Joanne's life. And this was overturned only after the restorative justice meeting.

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Exploring restorative justice approaches in addressing stealthing: fostering healing and accountability

In recent years, the issue of ‘stealthing’ has gained attention as a concerning form of sexual misconduct. It should not be labelled as an emerging phenomenon though, as it consists of a practice that individuals have been engaging in for decades. The difference between then and now consists in the legal aspect of the act, now acknowledged in many countries as a crime.

Stealthing refers to the act of removing or tampering with a condom during sexual intercourse without the knowledge or consent of the partner, potentially exposing them to health risks, such as an unintended pregnancy or sexually transmitted diseases (STDs) (Latimer et al., 2018). The phenomenon gained pop-

ularity due to it being tackled in a BBC limited TV series called *I May Destroy You*, produced in 2020 by actress/filmmaker Michaela Coel.

Little academic research has been focused on this phenomenon, even if it belongs in the spectrum of sexual abuse, and more specifically that of rape. This

is the case because victims-survivors of rape and stealthing share similarities when it comes to psychological and physical effects in the aftermath of the act (Shapiro, 2021). Their bodies are violated, they are in danger of unwanted pregnancies and STDs, their trust, body autonomy and dignity are shattered. Moreover, the most obvious similarity between rape and stealthing is the lack of consent involved in both acts. This violation of trust, consent, and personal boundaries underscores the need for innovative approaches to address the sexual harm caused by stealthing.

This violation of trust, consent, and personal boundaries underscores the need for innovative approaches to address the sexual harm caused by stealthing.

The frequency of the phenomenon is also alarming. Latimer et al. (2018), through their research in a sexual health clinic in Melbourne, Australia, found that 32% of women and 19% of men who had had sex with men reported having experienced stealthing. One significant approach could be restorative justice, a process that focuses on healing, accountability, and dialogue. This article explores how restorative justice can be applied to cases involving stealthing, with a survivor-centred perspective.

Victim-survivors of stealthing often experience feelings of violation, confusion and emotional distress. Recognising the sexual harm is essential for crafting a comprehensive response that promotes both justice and healing.

Understanding stealthing

Stealthing is not just a breach of consent; it is a betrayal of the person's trust and autonomy (Brodsky, 2017). It raises critical questions about the boundaries between consensual and non-consensual acts, emphasising the importance of addressing this issue both legally and emotionally. Victim-survivors of stealthing often experience feelings of violation, confusion and emotional distress. Moreover, stealthing is and should be treated as a form of rape, as mentioned above. Recognising the sexual harm is essential for crafting a comprehensive response that promotes both justice and healing.

Stealthing could be characterised as an offspring of the rape culture that many individuals are still being brought up in, ...

Stealthing could be characterised as an offspring of the rape culture that many individuals are still being brought up in, a culture that does not acknowledge consent as a vital process of any sexual conduct, a culture that is not properly tackled due to improper or non-existent sex education towards children from an early age. This perpetuates the insignificance and indifference surrounding the phenomenon and, as a result, young people continue to begin their sexual lives without being equipped with the necessary knowledge of sexual intercourse boundaries and rules.

Another phenomenon that could be liable for this behaviour is the pornography industry. Rarely do the actors use condoms; there are also specific categories that praise stealthing as a practice, with videos that demonstrate individuals 'enjoying' and endorsing their lack of consent and privacy invasion by their partners.

Stealthing victim-survivors rarely converse about their experiences, as they are often manipulated and gaslighted by their sexual partners, that it is not a 'big deal,' that what happened is frequent and logical, that condoms do not offer the same sexual pleasure when put on and that they were being safe along the process. As a result, victim-survivors are getting involved in self-shaming and self-inefficacy thoughts (Jones et al., 2022). Nevertheless, being reckless towards one's health and jeopardising both STD transmission and pregnancy could result in serious conditions and emotional damage.

Stealthing may occur in a marital/relationship setting as well as in more casual or spontaneous circumstances. Some records of stealthing are mentioning partners taking off their condom during intercourse, with the intention of leaving their girlfriend/wife pregnant, in order to maintain their relationship which was going through rough times. Moreover, stealthing appears as a common phenomenon towards the sex workers' population, with professionals of this domain being at a higher risk (Latimer et al., 2018).

How can restorative justice actively contribute to tackling the phenomenon of stealthing?

It is important to underline that the phenomenon of stealthing has not yet been universally criminalised.

It is important to underline that the phenomenon of stealthing has not yet been universally criminalised. According to various academics, it falls under the spectrum of sexual abuse and it is considered rape; nevertheless it has not been acknowledged as such in many national legislatures. So far, a handful of countries across the world have criminalised stealthing, including Switzerland, Canada, Germany, Tasmania, New Zealand and Australia (Baker, 2022).

Therefore, restorative justice could function as a nursery to raise awareness and foster healing for victim-survivors and accountability among perpetrators. Moreover, it may function as a vessel towards national legislators embracing initiatives to criminalise stealthing.

Victim-survivors of stealthing are able to express the non-consensual invasion of their body autonomy, their sexual trauma, to pinpoint the exact moment of their victimisation and confront the perpetrator with their wrongful and pervasive behaviour.

As in cases of sexual abuse and rape, when in court, victim-survivors of stealthing could experience secondary victimisation, slut-shaming or/and self-blame (Marsh and Wager, 2015). Furthermore, the communication with the police could also result in disappointment for the victim-survivors, since the phenomenon is not yet fully acknowledged and criminalised. Restorative justice could provide fruitful processes — such as mediation, conferencing or circles — in addressing the sexual harm experienced by the victim-survivors, in acknowledging the accountability of the perpetrators and in tackling the problematic nature of the phenomenon in general, which is the rape culture (Koss, 2014).

Victim-survivors of stealthing benefit through shifting the blame from themselves towards the perpetrator.

Victim-survivors of stealthing benefit through shifting the blame from themselves towards the perpetrator. They are able to express the non-consensual invasion of their body autonomy, their sexual trauma,

to pinpoint the exact moment of their victimisation and to confront the perpetrator with their wrongful and invasive behaviour. It should be up to each victim-survivor's decision whether mediation or a broader participation would be most appropriate, as stealthing is a sensitive matter, full of private details. In conferencing or circles, a greater number of people could benefit, as the phenomenon is not yet commonly known as a rape practice; therefore awareness could reach a larger community. After all, stealthing is most commonly perpetrated out of ignorance and entitlement rather than malice. This means that it is preventable through public awareness about this specific type of consent.

Moreover, a conference or a circle could foster an environment for past victim-survivors to join and help the individual in need to process the emotional and psychological trauma. By building a community of individuals who have previously experienced stealthing, the practice is not seen as harmless any more but acknowledged as a problematic and malevolent strategy forced upon partners.

Before any mediation, conference or circle, the restorative justice practitioner should focus explicitly on the needs of the victim-survivor, on establishing who may join and who should be excluded, on receiving the consent of the victim and the reassurance that the perpetrator acknowledges and accepts their problem behaviour and wants to repair the situation.

This fact, of course, may pose some difficulties, as perpetrators of stealthing might not be aware that they are committing a crime or that their behaviour is insulting and harmful. The people who commit stealthing may even despise individuals like sexual assaulters, rapists, etc., and yet fail to acknowledge that their actions are causing the same emotional/physical distress and trauma. Therefore, a challenge for restorative justice would be to foster the perpetrator's admittance of wrongdoing. And it consists of one of the most important features of the process, as sexual abuse victim-survivors need to be reassured that the person who caused the harm understands clearly the suffering they caused.

By fostering empathy, accountability, and education, restorative justice offers a pathway towards healing and growth for survivors and offenders alike.

Conclusion

The issue of stealthing highlights the need for comprehensive approaches that promote healing, accountability and prevention. Restorative justice, with its survivor-centred approach and focus on dialogue and

understanding, holds promise in addressing the harm caused by stealthing. By fostering empathy, accountability and education, restorative justice offers a pathway towards healing and growth for survivors and offenders alike. As society continues to grapple with evolving understandings of consent and sexual boundaries, restorative justice provides a valuable tool for addressing the emotional and psychological impact of sexual misconduct.

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Restorative Justice following sexual harm

Restorative justice can provide a sense of justice to victim-survivors of sexual harm, but it needs to be specifically designed to meet the needs of individual cases. Aotearoa New Zealand’s Project Restore does just this.



Introduction

New Zealand’s Ministry of Justice has taken an innovative approach to restorative justice for victims of crime and has supported its development since the late 1990s.

Legislation introduced in the early 2000s enabled judges in the New Zealand court system to adjourn

cases so that a restorative process could be convened if both the victim and the complainant were agreeable.

This mainstream acceptance of restorative justice as an additional layer of justice was a catalyst for the establishment of Project Restore, a community-based provider group, whose founding members represent restorative justice, sexual harm helping agencies and academia, all of whom worked together to develop Project Restore.

The understanding that victim-survivors of sexual harm were typically re-traumatised and re-victimised within the legal system had been gaining momentum for some decades.

Aotearoa New Zealand has been seen as an international leader for restorative justice and equally so in the field of restorative justice addressing cases of sexual violence. The understanding that victim-survivors of sexual harm were typically re-traumatised and re-victimised within the legal system had been gaining momentum for some decades. To meet this emerging need, Project Restore developed a gold-standard restorative process that ensures a survivor has their voice heard and gets to define what 'justice' looks like for them. Project Restore's restorative processes find ways to ensure the victim-survivor is integral to the restorative process so that their justice needs are kept at the centre of court proceedings.

Statistics on sexual abuse

Aotearoa New Zealand's statistics relating to violence are amongst the highest in the world. The latest New Zealand Crime and Victims Survey (NZCVS) by the Ministry of Justice (2023) found that some 81,000 adults in Aotearoa New Zealand reported they have experienced one or more incidences of sexual assault. Not all these incidences of sexual harm are reported to an investigative authority. The NZCVS estimated that less than 10% of survivor-victims reported sexual violence to the police (Ministry of Justice, 2023).

The costs of sexual violence are extraordinarily high. In 2020 it was estimated that sexual violence cost New Zealand approximately \$NZ6.9 billion. This was comprised of \$NZ600 million to the State, \$NZ5.2 billion to individuals and \$NZ1.1 billion to the wider society (Schulze and Hurren, 2021). This includes the tangible costs only; it does not take into account intangible costs, the psychological impacts and negative effects on health for individuals.

Background to Project Restore

Project Restore is a restorative justice provider group specialised in addressing sexual violence in Aotearoa New Zealand's criminal justice system. The development of Project Restore was inspired by the research of Dr Shirley Jülich (2006), the RESTORE programme in Arizona (Koss et al., 2003) and the dissatisfaction of victim-survivors pursuing justice in the conventional criminal justice system of Aotearoa New Zealand. Victim-survivors had no voice, were unrepresented by legal counsel, and reported that they felt the legal system further re-traumatised and re-victimised them.

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Although Project Restore was officially launched in 2005 as a legal entity, it was preceded by a Restorative Justice Interest Group that met regularly for some twelve months to begin the difficult tasks of establishing a restorative process that would meet the justice needs of victim-survivors. From these early beginnings based in and alongside the Auckland Sexual Abuse [HELP](#) organisation and other organisations involved in either responding to sexual violence or supporting the rehabilitation of those who sexually harm, the Restorative Justice Interest Group gathered the expertise of these agencies.

In the early days of Project Restore, there was little money to develop the programme and systems essential for the operation of a community organisation applying for funding and recognition as a professional entity.

In the early days of Project Restore, there was little money to develop the programme and systems essential for the operation of a community organisation applying for funding and recognition as a professional entity. Project Restore existed from one small grant to another, but at the same time it was developing experience not only of delivering restorative processes but also of establishing a community-based organisation with the capacity to continue developing and growing into the future. After almost 20 years since its launch, Project Restore has developed significant experience in delivering restorative processes that are tailor-made to the cases referred by the New Zealand court system and currently holds contracts with New Zealand's Ministry of Justice and Ministry of Corrections. It is a national provider for restorative justice following sexual harm and to date is the only accredited agency in Aotearoa New Zealand that can receive referrals from the court system. In recognition that not all victim-survivors of sexual harm report their victimisation to the police, Project Restore has some funding to provide restorative processes to those who refer themselves directly to Project Restore, bypassing a formal report to the police. Currently, we receive approximately 90% of our referrals from the court system or from other

sources such as community agencies or from those who self-refer.

Legislation in New Zealand has been in place for some years which allows for a referral to restorative justice provider groups if the offender pleads guilty and both agree to enter into a restorative process. The provider group is responsible for determining if a restorative process should go ahead. Family violence cases are referred to family violence specialist groups, and sexual violence cases are referred to Project Restore. On completion of the restorative process, the provider group provides the court with a report advising the agreed outcomes of the restorative process.

Facilitators working in the court system have completed the restorative justice training provided by the Ministry of Justice and can then go on to become accredited to facilitate restorative justice for family violence cases. Restorative justice facilitators before joining Project Restore must be family violence accredited and have at least four years of experience as a restorative justice facilitator. Specialists working with Project Restore come from professional backgrounds, have extensive experience in their professional roles and have completed all qualifications necessary for these roles. In addition, they have experience in the field of sexual violence or family violence. Project Restore conducts extensive in-house training over a six-month period and maintains mentoring and ongoing training through case review meetings, seminars and the like.

Project Restore's model: the three-legged stool

The founders' aims were to develop a model for restorative justice that was suitable to the Aotearoa New Zealand environment. The resulting model, the three-legged stool, is based on a modified model of the generic restorative justice conferencing model used by restorative justice providers in New Zealand since the introduction of restorative justice in the adult criminal justice jurisdiction. Survivor Specialists and Accountability Specialists work independently with victim-survivor and the person responsible prior to bringing them and their supporters together in a restorative process facilitated by a specialist restorative justice facilitator.

Unlike generic restorative justice models, Project Restore does not work to restore relationships but rather to transform relationships.

Project Restore has developed several restorative processes that include conferencing, one-on-one facilitated meetings and a panel process where a victim survivor is represented by a surrogate victim-survivor. Unlike generic restorative justice models, Project Restore does not work to restore relationships but rather to transform relationships. The aim of restorative justice, typically, is to restore relationships that have been harmed. In the case of abusive relationships, there has been an imbalance of power enabling the abuse. The aim of Project Restore is to transform the relationship so that the victim-survivor can experience a sense of justice and co-exist with the person responsible in any shared community.

The Specialist Facilitator's role is focused on ensuring the ground rules are adhered to and that the values of restorative justice are upheld.

The Survivor Specialist works with victim-survivors and the Accountability Specialist works with the person responsible for the sexual harm. They aim to make the process psychologically safe for all parties throughout the preparation period and during the chosen restorative process. Their task is to identify desired outcomes and provide a realistic picture as to what is possible for both parties. They assess readiness and capacity to engage in the process. Further, they educate and inform participants of the dynamics of sexual offending, challenging any distortions, rape myths or other potentially harmful actions and statements by any participant. The Specialist Facilitator's role is focused on ensuring the ground rules are adhered to and that the values of restorative justice are upheld. They work collaboratively with the other specialists in the team to hold the person who caused harm to account and to ensure the needs of the survivor are driving the process while maintaining balanced impartiality and ensuring a fair process.

The process is not always right for everyone, and it should be noted that Project Restore's model is essentially a Western model. It is not based on any Te Ao Māori processes. However, the model is sufficiently flexible that Project Restore could work alongside other groups who are aiming to provide culturally appropriate restorative processes using the Project Restore model.

Restorative justice in action

The following case studies highlight the differences between the criminal court, the civil court and restorative justice. The first two cases, Paula and Robert, are taken from Jülich's (2001) research and the third, Daisy, is a composite case constructed from Project Restore's files. Paula and Robert are pseudonyms to protect their anonymity and we have their permission to use their stories and words. It should be noted that in Aotearoa New Zealand the burden of proof between the two justice systems, criminal and civil, are different. To be convicted of a crime in the criminal court it must be proven beyond reasonable doubt that the accused has committed the crime. By contrast in the civil court, the person who brings the action (or their legal representative) must prove their case to the balance of probabilities, that is it is more likely that their version of events is correct (Ministry of Justice, 2021). Each of the following case studies illustrate a different approach to justice, criminal, civil and restorative justice.

Consider Paula

Paula had been sexually abused by an uncle throughout her childhood, waiting some 30 years to make a disclosure. Her uncle had told her that, if the police found out, they would all be in big trouble. Paula would end up in an orphanage and he and her father would end up in prison. She became excellent at keeping the secret and grew up with the enormous responsibility of keeping every one safe.

Following Paula's disclosure her father convened a family meeting in which many members of the family were invited, some of them victims as well. Each of the people present were able to have their say and direct comments to the person who had sexually harmed them. Some he remembered and some he did not. He apologised to Paula's parents. Paula's uncle said he would attend counselling but the next day he decided against that and this initiated a complaint to the police.

In the year following her disclosure to family members and a formal complaint to the police, there were many hearings in the District Court. One blurred into another and she had little understanding of their purpose. At one of the court appearances she was told that her uncle would plead not guilty. His lawyer had made application to have the case moved to the High Court where he intended to enter an abuse of process argument — that the case was too old for her uncle to mount an adequate defence. If this ar-

gument was not successful, he would plead guilty to save the victim-survivors from a trial. However, the argument was successful, and it resulted in a stay of proceedings. Paula's uncle was not held accountable. Her family remains fractured and polarised into supporters of the victim-survivor and supporters of the person responsible for the sexual harm. Paula and her family continue to cope with the aftermath of child sexual abuse.

Paula's experience of the criminal justice system did not contribute to any sense of justice or as Paula said making her feel 'first best.'

Paula's experience of the criminal justice system did not contribute to any sense of justice or as Paula said making her feel 'first best.' The rights of her uncle appeared to be more important than her rights, not only from the perspective of the criminal justice system but also from the perspective of her uncle's family. She was still second best.

This is NOT justice.

Consider Robert

Robert was sexually abused throughout his childhood by his uncle, the same person who had abused Paula, and, with her, he too reported to the police. Despite the stay of proceedings in the criminal justice system he decided to pursue an experience of justice by taking a civil action in the High Court of New Zealand. He explained that 'in the absence of a sense of justice from the criminal justice system,' he sought a 'more symbolic compensation' for the sexual abuse he had been subjected to by taking a civil action in the New Zealand High Court. Despite his stance some years prior in the criminal case in which he pleaded not guilty, Robert's uncle admitted the charges and threw himself on the mercy of the court. The case was settled out of court and compensation was agreed by way of a mortgage over his uncle's matrimonial property. Robert could only benefit on the death of his uncle, but if the abuser were to predecease his wife — Robert's aunt — she would vacate her family home of more than 40 years.

This is NOT justice either.

Consider Daisy

Contrast these two cases with Daisy's experience. Sexually abused by her father throughout her childhood, she was referred to Project Restore by her therapist. The Project Restore team met individually

with Daisy, her father, her mother and various family members in preparation for the first of several restorative processes that included two restorative conferences. In the first restorative conference Daisy's father agreed to enter a treatment programme and his family agreed to support him. It should be noted that Daisy's therapy and her father's treatment programme were not provided by Project Restore, but rather by expert community agencies and a private provider.

Project Restore maintained contact with Daisy and her father as part of the on-going monitoring for possible adaptations to the restorative process that might better support Daisy, her father and their family. An initial restorative process was facilitated for Daisy and her mother at which they both agreed to begin repairing their relationship. At the same time pre-conference preparations were undertaken with other family members.

On completion of the offender treatment programme some 18 months later, the second restorative conference was convened. Daisy and other family members told their stories in a forum that minimised the risk of any re-victimisation. Daisy's father now had the capacity to discuss what had precipitated his offending and to demonstrate understanding of the impacts on all those harmed, including secondary victims (other family members). A profound mutual understanding, that enables the giving and receiving of a sincere apology, can be one of those magic moments of a restorative conference of which so many facilitators speak.

The conference concluded with the family discussing the management of their on-going relationship with each other.

The conference concluded with the family discussing the management of their on-going relationship with each other. Daisy's father demonstrated responsibility and accountability for the harm caused by working together with the family to develop protocols around future interactions and on-going relationship building activity between Daisy and her mother. There was discussion also regarding the implementation of the safety plan (relapse prevention) developed in the treatment programme should Daisy's father have contact with children.

This case took two years from beginning to end. Initial monitoring has indicated that the process was successful. Daisy's father continues to be committed to the action plans that were developed in the second

restorative conference, Daisy and her mother are still working on their relationship and the family remains supportive.

This is justice.

This could not have been achieved in the conventional criminal justice system. However, it would require a team of specialists who have developed expertise working in the field of restorative justice and sexual violence. If the specialists do not have an in-depth understanding of sexual violence and restorative justice, they could do more harm and re-traumatise the victim-survivor.

Conclusion

From small beginnings almost 20 years ago, today Project Restore is a highly respected organisation in Aotearoa New Zealand and has attracted significant attention from around the world. From a small team it now has a senior management team in place alongside a clinical management team who together manage a number of Facilitation Specialists, Survivor Specialists and Accountability Specialists. Associate Professor Shirley Jülich, Massey University, Kathryn McPhillips, Executive Director of HELP, Jennifer Annan, Senior Survivor Specialist, and Fiona Landon, Senior Facilitator Specialist, are founders of Project Restore and remain active in the organisation today. We invite you to read more about Project Restore on our [website](https://projectrestore.nz) or email info@projectrestore.nz.

Dr Shirley Jülich

Trust Board Member, Project Restore

Jan Clark

General Manager, Project Restore

Kerri Hurman

Clinical Manager, Project Restore

Lucy Tofield

Operations Manager, Project Restore

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Thriving Survivors Restorative Justice Sexual Harm Service

Thriving survivors is a charitable organisation that was established in 2016 to support survivors of sexual and domestic violence through a four-stage recovery pathway. Over time, our unique model of delivery has enabled us to support people who have experienced various and multiple types of traumas. This includes those who have been affected by sibling sexual abuse, and those affected by ill health and bereavement. We pride ourselves on the fact that we do not turn people away and we will work with anyone who has experienced trauma and needs support.

We have our own unique way of doing things and this is because we live and breathe a people led culture with lived experience, both past and present are at the heart of everything we do. From our board and senior management to our operational staff and volunteers, there is a first-hand knowledge of trauma and the impact this can have on an individual's day to day life, at every level of the organisation. This infrastructure allows us to ensure that the people we support are also embedded throughout our organisation, influencing our strategy, policy, service development and service delivery.

We currently offer a range of services that support survivors through our four-stage recovery pathway:

Stage 1: At Thriving Survivors this stage includes a Mentoring Service. All our mentors are trauma survivors themselves, who have gone through our services, and have gone onto completing our Stage 4 training programme to allow them to provide support to others. They offer their own understanding, experience, and insights, offering a safe space to engage with support.

Stage 2: At this stage we provide free high-quality psychotherapy and counselling for individuals over 16 years old, who are experiencing poor mental health. Our main objective is to make counselling and psychotherapy as accessible to as many people as possible. We provide

a caring and safe environment where people can feel supported to explore their lives and develop a sense of wellbeing.

Stage 3: In this stage we provide access to our post traumatic growth programme. The 'Discovering Me' programme offers survivors the opportunity to look inward and discover who they are after experiencing trauma. The sessions will support emotional growth and changes in mindset whilst offering an opportunity to find meaning in trauma.

Stage 4: This stage is where we offer individuals who have progressed through the previous three stages, the opportunity to engage with our training and volunteering programmes. This stage offers people the chance to live their life with purpose after finding meaning in their trauma by offering to support survivors who are just starting their recovery journey.

This unique pathway allows survivors to continue a journey of growth and empowerment, that leads to employment within our organisation. It has also seen our organisation flourish with a thriving culture that is underpinned by authenticity with survivors supporting other survivors at the heart of it.



Ashley Scotland

The History

In November 2020, we entered the world of restorative justice. I was chairing a meeting that was made up of survivor organisation representatives. During this meeting, restorative justice for survivors of sexual and domestic abuse was raised as an agenda item. This was the first time I had ever heard someone say that survivors shouldn't have a choice, they should not have access to such a service and that there should be a blanket ban. As someone who has lived experience of domestic and sexual violence, I felt as though even my choice was being taken away.

Probing further, I wanted to understand what survivors themselves thought about the subject and I decided to submit a proposal to the Scottish Government to carry out a national consultation with survivors, to gain their views, thoughts and ideas on restorative justice.

We were successful with our bid and carried out a national consultation between February and April 2021. We had three key aims.

- What is the level of awareness of restorative justice amongst survivors of sexual and domestic abuse?

- Is there a demand for restorative justice amongst survivors of sexual and domestic abuse?
- What do survivors of sexual and domestic abuse need from a restorative justice service?

We used several methods and activities throughout the course of the consultation that allowed survivors to engage as much or as little as they felt they comfortable with.

- We facilitated focus groups for survivors who felt comfortable to discuss all aspects of the consultation in a closed and supportive environment. The focus groups were attended by 38 survivors, over the course of the consultation period and an unintended outcome from this was the development of the 'Survivors Voices' group. This group have continued to be involved with our restorative developments and now function as our lived experience action group.
- We hosted five online weekly panel sessions with academics, professionals, and survivors, that were broadcasted live onto social media and allowed an open forum for views, comments and conversations about restorative justice to take place.
- At the core of the consultation was an anonymous survey that consisted of 21 open questions. This allowed survivors to give full and descriptive answers and views in an open and honest way. We had a total of 47 responses to the survey and the majority of respondents stating that accessing a restorative service should be a right of choice for the survivor, with 27 people stating that they would be disappointed if that choice was taken away.

For survivors who only wanted to inform the consultation on the one specific view of whether they would like to access restorative justice we formed a simple one question poll. We had 90 responses to this question with 75 people (83%) stating 'yes' and 15 (16.67%) stating 'no.'

Survivors voices must be heard and they must have the choice to decide what is right for them.

Some of the key findings

- Survivors voices must be heard and they must have the choice to decide what is right for them.

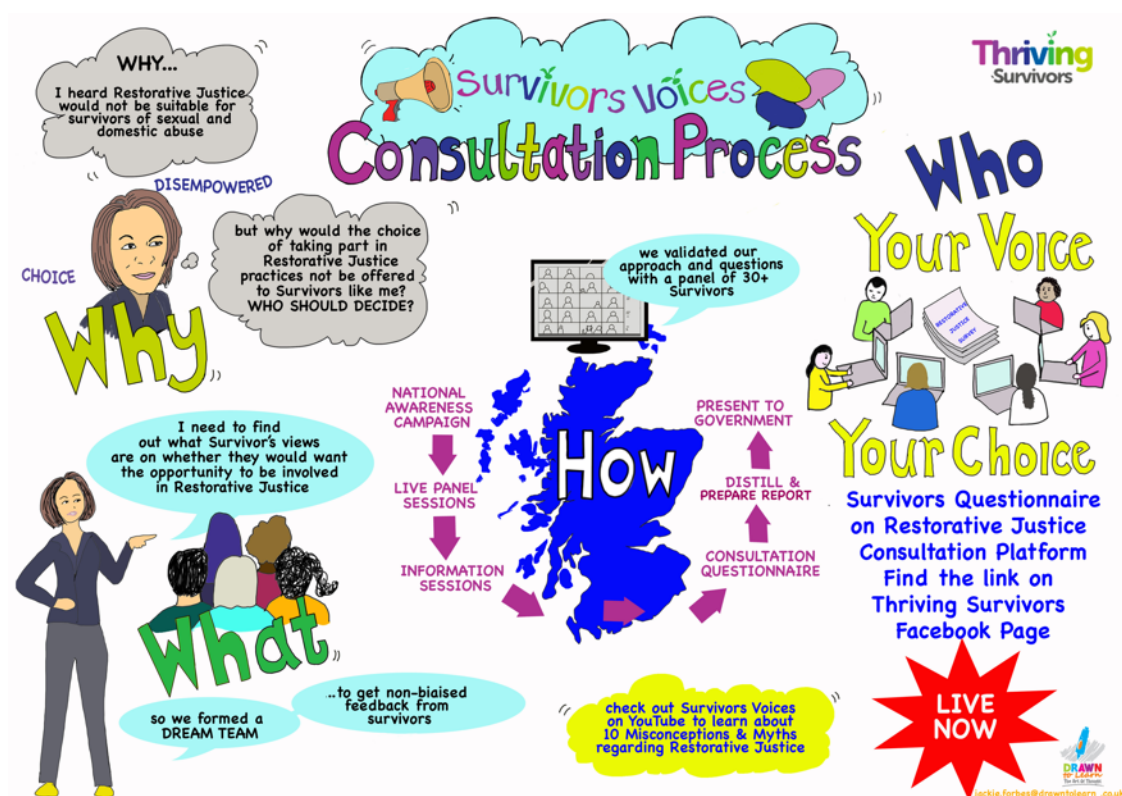


Figure 2: Consultation process

- The impact of trauma must be considered. Survivors of domestic and sexual abuse want access to restorative justice in Scotland.

There was a total of 14 recommendations and a full list can be found by accessing the [Survivors' Voices Consultation](#). However, I have selected several of those recommendations that we as an organisation felt compelled to act upon:

- Restorative justice should be made available as a right for all survivors of domestic abuse and sexual violence in Scotland, to be accessed based on an individual choice by any survivor who wishes for restorative justice.
- Restorative justice for survivors of domestic abuse and sexual violence should be trauma informed and jointly survivor and expert led.
- Restorative justice should be facilitated where and when it's safe to do so, if not safe to proceed alternative models of support should be made available.
- Alternative methods should be developed and made available to survivors of domestic abuse

and sexual violence who would like to take part in restorative justice, but who may not want or be able to engage in a direct face-to-face meeting with the person responsible.

To be told that even this process would not be for me is devastating ..., it draws me into feeling further victimised ...

Survivor 'A' provided an emotive narrative on the personal impact on their recovery if choice to access a service was removed from them, resulting in Survivor 'A' feeling re-victimised and disempowered.

To be told that even this process would not be for me is devastating and reinforces the responsibility I feel for what happened to me, it draws me into feeling further victimised and not seen as a powerful woman who has the capacity to speak out about such things. Let's not try to pretend, part of me died when I was raped as a child ... then more of me was left to the silence of dissociation,

part of me died again when as an adult I was raped ... still I persevere. I want the CHOICE to engage in a process (Survivor A).

This consultation offered a significant contribution to knowledge and is the very foundation of our sexual harm service developments.

After spending a significant amount of time listening to what survivors wanted to see happen with restorative justice in Scotland. I decided to establish a Lived Experience Action Group (L.E.A.G) and they were, and still are, an integral part of the machine, actively engaged in the design and development of services. The group consists of 15 members who have a range of different experiences, from sexual violence and domestic abuse to sibling sexual abuse and those who have been affected by secondary victimisation from institutions. They meet on a monthly basis and each member is able to choose which strands of work they would like to be involved in. For example, members have been involved with the development of risk assessments and screening tools, assisted with research and evaluation, and have got involved in our recruitment processes. This demonstrates the power and influence of the survivor and expert led approach that we have embedded within Thriving Survivors.

In April 2022, after months of preparation and planning, we were funded by the Scottish Government to design, develop and deliver a national hub for restorative justice service for cases of sexual harm, with initial work taking place in Edinburgh, Lothians and the Borders. Together with Dr. Estelle Zinsstag of Edinburgh Napier University, we put our plan into motion and began developing the specialist service. This included:

- The design of four bespoke services
- An accompanying wraparound support team, including mentors, counsellors and lived experience support.
- The establishment of three working groups made up of professionals, academics, practitioners and survivors, that would look at risk, monitoring and evaluation and service development.
- The recruitment and training of staff and a facilitation team

Restorative justice is not an alternative or substitute to the criminal justice system.

We launched our restorative justice services on the 31st of May 2022. The previous Cabinet Secretary for Justice, Keith Brown visited us to meet with five survivors who wished to access restorative justice. This was a huge success and ensured that the voices of survivors were heard and listened to.

Restorative justice is not an alternative or substitute to the criminal justice system. However, as part of the Scottish Government's vision for justice, it is vital that victims and survivors are given a voice, and that their needs and values are respected and supported (Keith Brown).

When asked if cases of sexual harm are not 'too sensitive' for restorative justice approaches to work, one survivor responded:

For me it is about choice. The victims have had the choice removed at one point so it's giving them power back to make that decision and it's not something that they have to commit to but it's all about, as I say, the choice and not someone else removing that cos they feel it's too sensitive. It's up to you what you disclose or divulge or how much you engage with it, so I think it's about giving someone that autonomy to make the decisions for themselves. But by removing it completely, you're again re-traumatising someone by removing their rights essentially (Survivor B).

Following the launch, work began on building our national to local partnership model. This model would see Thriving Survivors working closely with local organisations, to ensure that services are delivered in a way that meets the needs of the community they are there to serve. We created partnerships with several organisations including Community Justice Scotland, Midlothian Council and the Children's and Young People's Centre for Justice. As part of these partnerships, we have trained their staff and provided a suite of tools and a delivery framework, that will support the implantation of restorative justice within their organisation. Thriving Survivors will provide a led facilitator to the organisation, and they will coordinate and co-facilitate every case that comes in. This allows for a level of consistency both at a local and national level and enables us to have case and location specific facilitators available as and when we need them.

As a result of successful collaboration, meaningful engagement and hard work, we are now in the position of having developed four restorative services.

Restorative conversations and processes:

this service will address and tackle sexual and complex harm by bring together all affected parties involved with the purpose of coming to a common understanding and agreement on how the harm can be repaired and justice achieved.

Secondary Harm Service: this service will address and tackle secondary harm — additional trauma experienced by the victims/survivors of sexual harm caused not as a direct result of an offence, but via the responses to it (e.g. court, police, social works, NHS, third sector etc.).

Restorative Café: for those who have not engaged with the criminal justice process, are not yet prepared for the process or to whom traditional restorative justice is not suitable, this service offers an opportunity for survivors to start a process of self-development and self-restoration. This is done by creating a group of survivors who have a shared experience, facilitating a safe space for peers to have restorative conversation with each other. By doing this we can ensure that no survivor is turned away and that there is always a mechanism for restoration.

Healing spaces: this service is a family-led process of healing harm and offers a courageous space for communication and restorative conversations to discuss events and experiences between family members and other professionals such as the police and social workers.

With the creation of these new services, our restorative justice project has been at the forefront of innovation, with services specifically designed and developed for survivors of sexual harm and violence. Now, it's not that this is brand new practice, in fact there are many restorative services that support survivors of this community and cases have been facilitated across the globe for many years.

What makes our service different is that it has been authentically co-produced with those who will use them, we asked what they needed, expected, and wanted from a service and their voices have shaped our services and our organisation over the last 18 months.

Our lived experience action group have worked closely with our team of professionals and our collective partners, and they have displayed the gold standard for co-production by ensuring lived experience was at the heart of service development and policy. To do this, we follow a six-stage process of engagement.

1. Consult — We ask survivors, what they want, need, and expect from a service. What barriers there may be and what would make them feel safe.
2. Design — We take the results of the consultation process with survivors and begin a design process based on the findings from step one. Once we have a working draft of the tools, service outlines and documentation, policies and/or training, we will then return to the group with our proposals.
3. Review — The lived experience action group, at this step is asked to review the proposals submitted by the team and/or working groups and provide any additional comments they may have, before the team take it away and make any final adjustments.
4. Test — We will then seek to establish a small group of those survivors to test the final development, tool or policy, to ensure that it meets their needs and we have not missed anything.
5. Evaluate — Upon completion of the test phase, we will ask the group to anonymously evaluate the item/service for us, providing vital, open and honest feedback.
6. Refine — Using the evaluation from step five, we will make any necessary adjustments and ask the group if the item/service should be added as an addition to our organisation.

We have created a safe space for meaningful engagement and survivors have been willing to share their experiences, views and thoughts with us ...

We have created a safe space for meaningful engagement and survivors have been willing to share their experiences, views and thoughts with us to create and define a new way to experience justice in Scotland. This method of engagement has led to many opportunities being created for both the organisation and the survivors who have been involved within the developments.

As an organisation our staff team has increased 500% in a year, and we are in high demand, with people wanting to know more and buying into our innovative and progressive approach. There has been international interest in our work and the potential for growth is a rather exciting prospect.

For the survivors who are involved, they have ensured that a silent community are now being heard. Survivors' voices are at the forefront of influencing the innovation in this project and this is evidenced through the development of our secondary harm and sibling sexual abuse services.

The work we have carried out in the field of restorative justice has identified a gap in service provision for survivors of sibling sexual abuse. We ran a second, more focused consultation after this became evident to us. The consultation again, examined what a service would need to look like, what some of the barriers may be, and what current support already is in place. It became clear that this group of people didn't feel a sense of belonging with support organisations, as they were not designed for them. As a result of this, we as an organisation felt we had to respond. So, we have now begun the process of creating a safe space for survivors and their families that is dedicated to their needs and that offers a model of support and recovery that is currently unavailable in Scotland.

Thriving Survivors really have been paving the way in ensuring the voices of survivors are heard and that they influence the design, development and delivery of services.

Of course, for us to achieve all of this for our restorative justice service, we needed the support, expertise and knowledge from professionals across many different sectors. We created our Advisory Panel and two working groups to assist with the developments.

Here are some examples of organisations that are members of these groups:

- Edinburgh Napier University
- StopItNow
- Rape Crisis Scotland
- Midlothian Council
- KU Leuven
- Community Justice Scotland
- Scottish Prison Service
- Restorative Justice Council
- Victim Support Scotland.

As with any fledgling project, there have been many learning experiences throughout and the reality of that is they have changed who we are and how we operate as an organisation and who we are as individuals within this complex and challenging environment.

None more so than the challenges we have faced from those who oppose the use of restorative justice in cases of gender-based violence. The idea behind our consultation was to offer survivors a choice and it was hard in the early stages to fully understand why there was such strong resistance to this approach.

The current criminal justice process is dehumanising, fundamentally flawed and re-traumatising for survivors.

The current criminal justice process is dehumanising, fundamentally flawed and re-traumatising for survivors. Their voices are lost as soon as they enter into the process. So why would anyone or any organisation wish to remove that choice for them to access a service that could provide them a voice and an opportunity to ask questions that only one other person can answer.

On the 1st of September 2022, an [open letter](#) addressed to the former First Minister of Scotland, was published by BBC Scotland. The letter expressed the concerns of some violence against women organisations and professionals. The group urged the Scottish Government to withdraw the proposed implementation of restorative justice in cases of domestic abuse and sexual violence for several reasons, one of those listed was:

The main report on which plans are being progressed, is highly flawed. There is recognition that a very small number of women may seek restorative justice as a resolution to the harm they have experienced. However, we strongly contest this is sufficient to endorse a national process with substantial, well-acknowledged risks (Open Letter).

Even with recognition from the group that the Survivors Voices Consultation demonstrated a demand from survivors to access restorative justice, they still insist that no service should be made available. Don't get me wrong I fully understand where they are coming from, in some ways. This process is not risk free. However, with the robust safety and needs assessments and specialist training, there is a lot we can

do to mitigate risk and allow survivors to have the right of choice. We also must consider the risk of not going ahead with a process, people may decide to attempt a conversation that is not facilitated and unsafe.

This project has tested the resilience of both our organisation and our team and in the face of extreme adversity it has tested our resolve to the absolute limit.

We have lifted the lid on what is an emotive subject, not just here in Scotland, but in countries across the globe ...

We have lifted the lid on what is an emotive subject, not just here in Scotland, but in countries across the globe and of course with change comes challenges;

some that at times have felt completely unsurmountable. However, to ensure we remain dedicated to our mission, we always come back to our why. We are doing this so that survivors can define what justice means to them, offering power, choice, and control, back to those who have been harmed. Allowing a space for survivors to change the narrative and to finally be free of the painful questions that only the person responsible can answer.

To find out more about our organisation and the work we do have a look at our [website](#) and if you would like to collaborate or have any questions please get in touch. We welcome collaboration.

Ashley Scotland

Chief Executive Officer, [Thriving survivors](#)

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Victim-offender mediation in cases of sexual violence — a personal reflection from Germany

This interview was conducted with a mediator in criminal cases from Germany.¹ She has 27 years of professional experience in victim-offender mediation and reflects in this interview on her professional experience with sexual offences. She works in a Victim-Offender Mediation (VOM) office, where she specialises only in victim-offender mediation cases. The interview was conducted by Kim Magiera.

Kim: How often do you deal with cases of sexual violence in your victim-offender mediation practice?

Mediator: It's hard to say. In preparation for this interview, I looked at all the files from 2020–2023 that we handled in our victim-offender mediation office and there were 45 cases of sexual violence. Overall, these are rare. However, when I looked through them, I was surprised at how common they were. I would have estimated the number to be significantly lower.

Kim: Can you give us some characterisation of the 45 cases? What kinds of cases are they?

Mediator: Of these cases, very few concern objectively serious cases, if you go by the classification of the Criminal Code, i.e., rape or sexual abuse. Most cases concern objectively lighter offences, although I would like to note that here, too, the subjective consequences can be considerable. What is new and now

very common is the dissemination of intimate images of another person via social media.

Kim: Can you say something about the gender ratio in these cases?

Mediator: Actually, they are almost always cases in which the accused are men and the injured parties are women. There are other gender constellations, but they are the absolute exception.

Kim: How do these cases get to you and your colleagues in the victim-offender mediation office?

Mediator: Most of them are assigned by the public prosecutor's office during the preliminary proceedings or later by the court. There are also cases in which injured parties report themselves, but these are few — although I would like to point out that the percentage of self-reporters seems to be higher in sexual offences, compared to other types of offences.



Kim Magiera

Kim: What is the procedure in cases of sexual violence? Is it any different from the work you do in other cases?

Mediator: I would say that the time involved in these cases is significantly higher than in other cases. This is mainly due to the fact that injured parties are particularly affected and therefore require a very high level of sensitivity. If cases are referred to us by the prosecutor or the court, then, unlike in other cases, only the injured party is contacted at first. This is done primarily so as not to jeopardise any calming of the situation that may have occurred in the meantime — and, at the same time, to respect the wishes and decision-making rights of the injured party about how and whether to proceed with victim-offender mediation. We usually begin with an in-depth conversation with the injured party, which can easily last an hour.

It is important to me that the women have time to let the conversation sink in and think about their options and wishes.

But then I usually pause, because it is a lot for the women and I prefer to offer another conversation on a different day. It is important to me that the women have time to let the conversation sink in and think about their options and wishes. When working with such cases and before the women make a decision whether to continue with the mediation at all, I often have several long conversations with them.

Kim: Are there any other special features in working with cases of sexual violence?

Mediator: I see another special feature in the fact that we always try to work in pairs in such cases, where the injured party is highly affected. Victim-offender mediation is always an activity of high responsibility, but even more so in cases with far-reaching consequences. It is important to be able to support the injured party adequately, but also the accused. It is a relief when the responsibility for this can be shared and does not rest on the shoulders of one person.

Kim: Can you estimate how many injured parties and accused in cases of sexual violence agree to victim-offender mediation?

Mediator: No, I can't give a general answer to that. The case constellations and personalities are very different. Many defendants are not contacted by us at all because the injured parties cannot imagine mediation — in whatever form. Of those who are contacted, a surprisingly large number of the accused are willing to get involved. Often, the threat of criminal proceedings serves as a motivator. In Germany there is the possibility of a reduced sentence or termination of proceedings after participation in victim-offender mediation. These defendants then also rarely have insight into their transgression of boundaries and difficulties in admitting wrongdoing. Of course, it is important to discuss this with the injured party.

Kim: Why is it important to discuss that?

Mediator: I think in cases of sexual violence I approach the work a little more sensitively than usually. In any case, injured parties decide what to do and how quickly. But in cases of sexual violence, it is even more important to me to give the injured parties a sense of control over the mediation process. I also emphasise even more the aspect of voluntariness and that the mediation can be terminated at any time. The injured party should know that they can change their minds.

But in cases of sexual violence, it is even more important to me to give the injured parties a sense of control over the mediation process.

And transparency is very important to me. The injured parties should be informed about the risks and dangers. That's what I meant. I report back to them that a conversation with a defendant who is not

fully transparent is a threat in that it can hurt again and re-traumatise them. Of course, I assume that the injured parties can make their own decisions, but they should have all the available information to be able to base their decision on it. It is important to me to protect the injured party, but of course this must not be achieved by paternalism.

Kim: What options are there for mediation in cases involving a sexual violence?

Mediator: There is, of course, the possibility of preparing separately for and then conducting a joint dialogue between the injured party and the accused. However, this only takes place in very, very few of these cases. Most of the time, the injured parties want indirect mediation because they cannot imagine being near the accused again. Mostly, we mediators are used by injured parties as a mouthpiece. After one or more detailed conversations with the injured party, we convey their experience, their wishes and what is important to them to the accused. Some injured parties then want us to speak to them about our conversations with the accused; others wish to receive a direct response from the accused in the form of a letter.

If an accused has formulated something [accusatory or reproachful], we talk to them about it and give them a one-time opportunity to rephrase it.

We carry out a kind of ‘censorship’ and do not pass on anything that is accusatory or reproachful. If an accused has formulated something like that, we talk to them about it and give them a one-time opportunity to rephrase it. If this is not successful, we cannot pass on the letter to the injured party. But we discuss this openly with them and point out the dangers we see in handing them such letter.

Kim: What do injured parties expect from participation in victim-offender mediation?

Mediator: I think here it is important to distinguish between cases in which the people involved knew each other beforehand and those in which they are strangers. If the people involved don’t know each other, the injured parties are often less affected. The consequences can also be severe, but there is not the same personal dimension. Injured parties can often speak relatively soberly about what has happened and state that the accused has crossed a line. For this, the accused should receive a lesson in the form of financial compensation or a sentence. My experience is quite different in constellations in which the

parties involved know each other. In these cases, the feelings of dismay are often much, much greater. Not infrequently, there are distortions in the social environment, certain friends have to be avoided or show themselves to be disloyal. Something breaks down between the people involved, in their social environment, but also within themselves. They lose trust.

Kim: What do cases end with?

Mediator: In the case of strangers, it is often a financial settlement that is intended. In the case of acquaintances, there is often a regulation on how to deal with each other in the future: that the parties involved stay out of each other’s way, that an accused person no longer talks badly about the injured party in the circle of friends or that he sets something right for her rehabilitation. Ultimately, the important thing is that injured parties are satisfied and can come to a conclusion.

Kim: What did you notice when you reviewed the 45 cases from the last three years?

Mediator: I noticed that there is hardly anything typical. The cases are all totally individual due to their constellations and circumstances, as well as the personalities of the involved parties. For example, I remember a case in which a woman was raped by her ex-partner, who was now in a forensic ward. She wanted a letter of admission from him, but it didn’t happen despite preparations and an initial promise. I also remember a case of a young woman who offered her used underwear for sale and was sexually assaulted while handing it over. Here it came to an indirect mediation that helped them both to move on. Another case took place at a concert, in a public space, among strangers. Another case took place on the fringes of a Christmas party at work among colleagues. The cases are really very different. And that’s exactly what the mediation has to be adapted to.

Kim: Could you maybe give us a case example?

Mediator: Yes, of course. For example, I can think of the case of a woman who came to us as a self-reporter in her early thirties. She was sexually abused by her father when she was a child, around 5–10 years old. In the course of her therapy, she had realised that she would not be able to come to closure with this experience as long as she did not discuss certain things with her father. It was her wish that her father would show insight into the abuse, take responsibility and acknowledge his guilt and also her

suffering. I worked on the case with a co-mediator and we prepared both the injured party and the accused separately for a joint conversation. The injured party came to the dialogue session with her lawyer during which the accused talked down the deeds, talked around and played down what had happened. He also said that he was sorry, but in the totality of his statements it was too little for the injured party. The accused father did not want to agree to a compensation payment; however, he did agree to participate in a perpetrator training. However, he only went there a few times in the end and then dropped out. The injured party was disappointed both at the end of the dialogue and by her father's unwillingness to complete the training. She had hoped for more from him. However, she was determined to try, even being fully aware of this risk. The case shows once again the point that I have already mentioned. It illustrates why transparency and pointing out dangers and risks is so important to me.

On the one hand, she wanted justice for her daughter, but also that the perpetrator would not do something like that to any child again.

Another case also involved the sexual abuse of a child, but by an employee of the father. The child was nine years old when the crime was committed, and eleven years old when it was referred to victim-offender mediation. At the mother's request, I did not talk to the child because she was in therapy and had a space there to talk about what had happened. I had many conversations with the mother. On the one hand, she wanted justice for her daughter, but also that the perpetrator would not do something like that to any child again. So she imagined an apology; but that was not enough. In addition, she thought a compensation payment would be fair, as well as participation in training.

The accused came to talk to me together with a lawyer and admitted the crime and emphasised that he was sorry. He had already made a payment of 3000€ to the father — the parents lived separately. The father confirmed the payment to me, but insisted

that he would not give the money to the daughter until she reached the age of majority, because he feared that otherwise the mother would use it for herself. On the advice of his lawyer, the defendant paid another 2000€ to the mother for the daughter, in order to enable them to go on vacation. In addition, he completed training in awareness of and respecting the boundaries of others, especially children. In this case, it became apparent to me that there was the girl involved as the direct injured party, but the mother was also indirectly injured. While it seemed best for the girl to continue working on her injuries in therapy, the mediation was an appropriate space for the mother to move forward in her coping.

Kim: Do you think cases of sexual violence are generally suitable for victim-offender mediation?

Mediator: That is very difficult to say. I have emphasised how unique the case constellations and personalities of those involved are. The suitability depends on this. I think it's very important to keep access to VOM open. Even if there are only individual conversations between mediators and the injured party, the latter can find this empowering and encouraging because they are listened to empathetically and taken seriously — and because they are allowed to decide. In addition, we can refer them to other agencies, such as victim counselling, even if a mediation does not take place. But I think it is very important to make the offer of a mediation also in cases of sexual offences, so that the injured parties can decide.

Kim: Thank you very much for the interview!

Notes

¹ We respect the interviewee's wish to remain anonymous in the publication. The editorial team knows her name and has her contact details.

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Calendar

Restorative Justice Week 19–25 November 2023 *Repair and reform: restoring dialogue, solidarity & justice in today's society* Further details from the [EFRJ](#).

Winter Academy 5–9 February 2024 Leuven, Belgium

12th International Conference 29–31 May 2024 Tallinn, Estonia *Just times: restorative justice responses in dark times* Further details from the [EFRJ](#).

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Events

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The views presented in this Newsletter are the views of the authors and do not necessarily represent the views of the EFRJ.

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