


# Restorative justice in cases of sexual violence: Exploring the views of the public and survivors

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## Abstract

This study aimed to fill a gap in the debate regarding the application of restorative justice (RJ) conferencing to sexual offences. This gap is currently characterized by absence of views expressed by survivors of sexual violence (Wager, 2013). The debate has largely occurred in an ‘empirical vacuum’ (McGlynn et al., 2012) and without the necessary consultation. This study consisted of a web-based survey of 121 community members, 40 of whom identified themselves as survivors of sexual violence. The findings indicate that both survivors and non-survivors of sexual violence express positive attitudes towards the use of restorative justice in these cases.

## Keywords

restorative justice, restorative justice conferencing, sex offences, survivors of sexual violence, victims of sexual assault

## Introduction

It is evident that sexual violence, even when restricted to crimes committed against adults, has potential to cause harm to a significant number of men and women. Furthermore, the likelihood of both not feeling further victimized by the criminal justice system or of securing justice are typically far outside of the reach of many

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victims. Consequently, the potential for using restorative justice (RJ) as an option – either in addition to the traditional adversarial justice or as an alternative to going to court – have been considered by some (largely at a hypothetical level). However, strong views have also been expressed opposing such an application of restorative justice. In order to provide some background context to this debate the following issues will be discussed: the extent of adult sexual victimization in the UK; the likelihood of securing a conviction and evidence of a growing justice gap in relation to sexual crimes in spite of significant legal and practice reforms; and the impact of secondary victimization of survivors who were brave enough to begin the criminal justice journey. Next the key arguments both for and against the use of restorative justice in this context will be discussed, before presenting evidence to-date, albeit limited, of the survivors' experiences of meeting with their offender in a restorative justice conference.

## **Extent of adult sexual victimization**

With regard to the extent of adult sexual offending in the UK, in January 2013 the Ministry of Justice (MoJ), Home Office (HO) and Office for National Statistics (ONS) released a joint statistics bulletin on sexual violence. Using the figures from the Crime Survey for England and Wales, which is a self-report victimization survey, they estimated the yearly incidence rate of sexual victimization. This suggests that there are approximately 85,000 cases of rape and 473,000 cases of sexual assault each year in England and Wales. That is, 2.5 per cent of females experience a sexual assault each year and 0.5 per cent are subjected to rape. Similarly, 0.4 per cent of males experience a sexual assault and 0.1 per cent are subjected to rape each year. Furthermore, when considering life-time prevalence, it is estimated that 20 per cent of women have been a victim of sexual violence since the age of 16 and 5 per cent have been the victim of a serious sexual assault (rape or assault involving penetration) since the age of 16.

## **Victims gaining justice and the widening justice gap**

Despite the volume of sexual offences there are comparatively very few cases in which convictions are secured (MoJ, HO and ONS, 2013), and thus justice is rarely served to those who have been victimized. Indeed, only 15 per cent of women who have experienced serious sexual assault report the crime to the police. Thus, it is likely that those whose assaults were of a less serious nature will have an even lower rate of reporting. In addition, the conviction rates for reported rapes show a decline from 32 per cent in 1977, to 24 per cent in 1985, and dropping further to 5.6 per cent in 2005 (Kelly et al., 2005). This is notably lower than the conviction rates for all other crimes (Lea et al., 2003) and represents one of the lowest conviction rates for sexual offences in Europe (Burman, 2009; MoJ, HO and ONS, 2013). This is despite the fact that the identity of the alleged perpetrator is known in the about 90 per cent of serious cases and about 50 per cent of less serious assault (MoJ, HO and ONS,

2013) and thus the low conviction rate cannot be attributed to unsolved/undetected cases.

## Secondary victimization

In addition to the poor conviction rates for rape and sexual assault, the criminal justice system has been criticized for both re-traumatizing and causing secondary traumatization to the victims of sexual violence (Koss, 2006). Victims frequently report that their progression through the criminal justice system is fraught with unhelpful and often humiliating actions on the part of the various agents, which function as a form of secondary victimization (Shapland, Willmore and Duff 1995). The lived experience of this has been compared to being raped for a second time (Adler, 1987; Temkin, 2005). Ultimately, there is some evidence that suggests that where behaviours of the criminal justice personnel result in secondary victimization, the case is unlikely to result in a prosecution (Patterson, 2011).

The findings from studies of police officers' attitudes towards sexual assault complaints support the findings from self-reported studies of survivors' experiences. Jordan's (2001) investigation of female victims' experiences of the New Zealand police response to their complaint demonstrated that half of the women were dissatisfied with the way their case was handled. In particular they reported that they felt disbelieved, treated as though they were lying and that they were promiscuous. Similar findings were evident in Wheatcroft et al.'s (2009) more recent study conducted in the UK. The veracity of such perceptions were later ratified in both Jordan's (2004) and Kelly et al.'s (2005) examination of police officers' perceptions of rape complainants, conducted through police file analysis. In Jordan's (2004) study, in a third of cases the officers clearly marked the case as a false complaint and in only 21 per cent of the cases did they express a belief that the complainant was genuine. Consequently, many true victims are treated with contempt due to stereotyped ideals of an 'innocent' victim and their case never proceeds.

The consequence of secondary victimization for the survivor can be the manifestation of symptoms associated with poor psychological functioning (Frazier, 1991), exacerbated feeling of self-blame (Campbell and Raja, 2005) and negative adjustment (Ullman, 1996). For example, within the context of the encounter with the police officers, Campbell et al. (1999) found that responses by the police, such as saying that the case was not serious enough to pursue was positively associated with post-traumatic stress reactions. Similarly, Orth and Maercker (2004) found a relationship between the victim having the perception that the judge was issuing blame upon her during the trial and post-traumatic stress persisting, if not exacerbating, a month and a half after the trial (or nine months after the assault). Interestingly, this latter study only included victims whose cases resulted in guilty verdicts. Consequently, the findings were possibly an underestimation of the true effect since no account is taken of victims whose assailants were acquitted of the charge. Furthermore, not only are survivors who have experienced secondary revictimization more likely to experience poor psychological outcomes, but they are also reluctant to seek further help (Campbell and Raja, 2005).

## Restorative justice conferencing

The re-traumatizing nature of the criminal justice system in combination with the high levels of attrition and low conviction rates encourage the search for new approaches to address the justice and healing needs of people who have experienced sexual crimes. For these reasons, restorative justice could offer either an alternative or an additional form of justice. In either context, restorative justice might offer a more procedurally just approach that is flexible, provides care and support, creates dialogue and increases victim satisfaction (van Camp and Wemmers, 2013) and the active participation of victims (Doak, 2011).

## The anticipated benefits of RJ

It is postulated that when using RJ the survivor is given a more central role in the justice process, which could serve to rectify, or at least not replicate, the disempowerment experienced during the assault (McGlynn et al., 2012). Where RJ is used as an adjunct, it has been suggested that the process will address survivors' needs that are left unmet by, or go some way to ameliorate the harm done by the secondary victimization arising from engagement with the adversarial system. Such arguments stress that it would permit the victim to tell their story, in their own words and without interruption; a feature which is negated in the adversarial system, but which is so often desired by survivors. They contend that RJ could extend the potential for justice and healing to a wider array of victims than are currently served by the adversarial system. For instance, RJ could be extended to cases deemed unlikely to result in a conviction and thus dropped by the Crown Prosecution Service and the families/partners and friends of survivors and perpetrators who may feel equally harmed by the offence. An RJ has the potential to publically validate the victims' experience and provide assurances and recognition that they are not to blame for the assault. This is believed to be particularly pertinent in cases of sibling perpetrated child sexual abuse (McNevin, 2010), where the RJ process permits not only the victim, but also their parents to develop an appreciation of how the offending family member manipulated, coerced and maintained the secrecy of the victim. This can aid the parents to appropriately apportion blame and responsibility, and also this knowledge can inform their future efforts aimed at creating a safe environment for their children. Additionally, RJ more generally is believed to focus more on subjective, rather than legal, conceptualizations of crime; thus fostering a more holistic understanding of the offence, rather than one confined to legal relevancies (Curtis-Fawley and Daly, 2005; McGlynn et al., 2012). This fact may facilitate the condemning the violence in ways that are meaningful and consequential for all parties.

Arguments for RJ which seem more pertinent when it is used outside of the adversarial system, such as in the application of RJ principles to lawsuits against a Rhode Island church for clergy perpetrated child sexual abuse (Carroll, 2002) include: The process is more likely to encourage admissions of guilt by the perpetrator (McGlynn et al., 2012), rather than the more common denials inherent in the

adversarial setting; thus the perceived necessity of publically humiliating the survivor through attacks on her/his character and behaviour, in order to discredit her/his testimony, becomes redundant (van Wormer and Berns, 2004). Furthermore, this avenue for justice could also be available for survivors who did not wish to formally prosecute the offender.

## **Arguments opposing the use of restorative justice**

There is a plethora of objections against the application of restorative justice in the context of sexual assault. Some arguments are essentially opposing its use as an alternative to the conventional adversarial justice system; whereas others apply equally to cases where restorative justice might be used within the conventional justice system as an additional intervention. First, it is argued that diverting cases of sexual violence from the court system might serve to diminish the apparent seriousness of the crime (McGlynn et al., 2012) by demonstrating what might be perceived as a lenient or 'soft option' to the punishment of offenders (Roberts, 2002). There is some concern that this might have a detrimental impact on the hard won progress already made by the feminist movement in elevating the position of sexual violence on the political and public agendas (Schroeder, 2005, cited in Pali and Madsen, 2011). However, it must be remembered that currently only one place – South Australia – uses RJ as a diversion from the traditional justice system and this is only in cases where young offenders plead guilty.

Secondly, there are fears that such an informal process may serve to revictimize the victims, due to the power imbalance between victim and offender (Julich and Buttle, 2010), or by jeopardizing the actual safety of the survivors (Stubbs, 2002) and future potential victims (Cameron, 2006; McGlynn, et al., 2012; Pali and Madsen, 2011). Such proponents of this fear tend to emphasize that the harmful effects of this could be made worse in situations where there is a continuing relationship between the victim and the offender (e.g. sibling incest). However, others such as Wallace and Doig (1999, cited in Daly, 2002) suggest that in relation to young offenders, RJ – when combined with therapeutic intervention which partly serves to prepare the offender for the meeting – is most usefully applied in relation to offences where there are ongoing relationships. The specific issues raised in relation to the imbalance of power include the potential for revictimizing the survivor by: a) pressuring him/her into conference participation, reaching/accepting an unsatisfactory agreement (Coker, 2002; Schroeder, 2005, cited in Pali and Madsen, 2011), responding to the offender with forgiveness (Koss, 2006), and/or the offender being forced into offering an insincere apology (McNevin, 2010); or b) that offenders will use the opportunity to manipulate the survivor and further endorse the survivors' engagement in self-blame. Additionally, there is concern that the dynamics within conferencing which are ordinarily assumed to promote positive change in both parties (e.g. the telling of the harm done and igniting of empathy for the victim) may not be effective in the case of sexual assault. Some argue that sex offenders may experience inappropriate excitement on hearing their victim tell of the distress, which might reinforce their pro-offending attitudes (Rubin, 2003) rather

than promote feelings of empathy and remorse. This might be most likely when the RJ system has been developed on the basis of the offenders' needs (Mika et al., 2002). The potential for the imbalance in power between the survivor and victim is posited to be most likely to exert pernicious effects when the facilitator in the conference sees their role as defined by a position of neutrality and impartiality (Julich and Buttle, 2010). Thus others have proposed that experts in sex offending and victimization should be involved in the conference process to both adequately prepare both parties and to challenge attempts to blame or manipulate the victim. Additionally, the process could be revictimizing, where the victims are permitted to maintain, or inculcated with, unrealistic expectations of their potential experience during, and outcome from, meeting with their offender (Mika et al., 2002). Hence, assessment and management of survivors' motivations and expectations are essential, as is an honest indication of what RJ might offer.

Finally, there is concern over the resource intensive nature of restorative justice (Julich, 2010; Miers, 2001). It has been noted that even initiatives dealing with comparatively less serious and complex cases than sexual assault require resources to permit appropriate preparation of both the victim and offender and possibly their respective family members, follow-up support of both the victim and the offender, and adequate training of the facilitators. It would be anticipated that cases of sexual assault may require even more extensive preparation and follow-up support of the victim, offender and their families, more specialist training of the facilitators and the fees for the services of experts in both sexual offending and sexual victimization. It is argued that this might result in either the development of a system which is inadequately resourced to serve both the victims' and the offenders' needs, or that valuable and scarce resources will be diverted away from established victim services in order to support restorative justice initiatives.

With regards to criticisms of using RJ as an adjunct to conventional justice, victims of various crimes, who participated in the *Listening Project* (Mika et al., 2002) which aimed to explore their experience of engagement in restorative justice, feared that such a system would replicate the unsatisfactory treatment of victims of the adversarial system, which is particularly likely in a system that has been established with the welfare and rehabilitation interests of the offenders at its core (Herman, 2005).

## **Restorative justice and sexual violence: The reported experiences of survivors**

To date there is little by way of empirical evidence to either support or refute the claims of the proponents or opponents in the debate. What little support we have for the potential benefits for survivors largely comes from two sources: a few reported cases studies where a meeting with the offender has been requested ad hoc by the survivor and the first evaluation of a dedicated project in the US. In the UK there are less than a handful of publicized cases of survivors of sexual violence seeking out and engaging in a restorative justice conference. These have included two cases that were prosecuted in the conventional manner and another which failed to progress through the criminal justice system. An example of post-conviction

conferencing comes from the case of Joanne Nodding. She fought the authorities for five years to let her meet her attacker (Williams, 2011). Ms Nodding felt that although her assailant had been convicted she did not achieve a sense of resolution from the court case. One of her motivations for pursuing an opportunity to meet with her offender was because of the closing remarks made by the judge during her court case. The judge stated 'You've ruined this woman's life' (Williams, 2011). Ms Nodding did not want the offender to feel that the offender had this power over her. The outcome of the meeting is that she received an apology from the offender, who she in turn forgave. This was a response which she contends has allowed her to achieve closure so that both she and the offender could move on with their lives.

Kent Police report on another case in which the survivor, identified as 'Clare' sought restorative justice following the conviction of her assailant. Whilst 'Clare' did not gain the level of benefit reported by Ms Nodding in so much as she did not feel it gave her complete closure, she did believe that the process initiated a positive change in her thought patterns which was moving her towards a sense of closure.

McGlynn et al. (2012) report on a case in which restorative justice was used after the police decided not to proceed beyond cautioning the offender who had admitted guilt. The victim, known as Lucy, was an adult survivor of child rape and sexual abuse which had been perpetrated by a young male family member. Lucy had been disappointed with the police response to her case who, she felt, had not kept her informed, nor was she supportive of their decision not to prosecute. Lucy felt that the conference had helped her put the past behind her and allowed her to move on with her life. In particular, she reported that following the conference she felt able to stop hating herself for what had happened and to lay blame with the offender rather than herself. She proposed that having the offender explain why he had done it was a key part of the conference.

Koss (2014) provides the first published empirical evaluation of the application of restorative justice to cases of sexual violence. The evaluation is of the RESTORE project in Arizona, which offered restorative justice conferencing as an alternative to conventional justice in cases of felony and misdemeanour sexual crimes. The cases were prosecutor referred. In total 66 referrals were made during the period of operation, which resulted in 22 conferences (which represented 91 per cent of cases in which both the victim and offender consented to participate in the programme). The evaluation findings were generally favourable. Overall 90 per cent of participants were satisfied with the preparation, conference and redress plan (Koss, 2014). The majority of survivors (83%) felt that a sense of justice had been achieved through participation in the programme and 90 per cent of participants would recommend RESTORE to others. There was a decrease in post-traumatic stress symptoms from intake to post-conference, although this did not attain a level of statistical significance.

With regards to the motivations for agreeing to participate in the programme, all of the survivors reported it was to say how they were affected by the assault, to make sure that the responsible person did not do this to anyone else and to take back power. Additionally, 74 per cent of survivors wanted to participate in order to receive an apology and 80 per cent wanted an alternative to court.

Whilst there is considerable debate as to the applicability of restorative justice conferencing in cases of sexual violence (see Daly 2006; Jülich, 2006; Koss, 2006; McGlynn et al., 2012), currently this debate has proliferated without consultation with survivors themselves or without the benefit of systematic empirical exploration. Consequently, it is hoped that this study will offer the first exploration of survivors' views on this topic.

The principle aim of this study was to examine attitudes of the general public, some of whom were survivors of sexual violence, regarding the use of restorative justice in cases of sexual violence. The objectives were:

- a) To develop a scale to assess attitudes regarding the use of restorative justice in cases of sexual violence;
- b) To provide the views of the public in general and survivors in particular regarding the appropriateness of using restorative justice conferencing in this context;
- c) To ascertain whether there are differences in attitudes between survivors and non-survivors;
- d) To present the concerns and hopes of survivors in relation to the potential use of restorative justice.

## Methodology

### *Design*

This study was a mixed-methods, web-based, cross-sectional survey exploring and comparing survivors' and non-survivors' views of the application of restorative justice to cases of sexual violence.

The study was granted ethical approval by the appropriate academic ethics committee.

### *Respondents*

The respondents were recruited by means of convenience sampling. Social networking sites Facebook and Twitter were used to promote the study with the aim of reaching as wide an audience as possible. There were 131 participants in total comprising of 27 (20.6%) males, 93 (71%) females and 11 (8.4%) who did not specify their gender. Their age range was between 18–57 years with a mean age of 31 years. Ninety one percent of the sample reported their ethnicity. The majority (79%) described themselves as White British, 6.9% as other European, 2.3% as Irish, 1% as Asian, 6.8% as Black, 2% as mixed White and Black Caribbean or mixed multiple groups and 1% reported 'other' ethnicity. Almost 34 per cent ( $n = 40$ ) of the sample reported having been subjected to at least one instance of sexual victimization. With regard to the gender composition of the survivors six were male, which represented 22 per cent of the male sample and 34 were female which represented 37 per cent of the female sample. Of the total sample, 13.4 per cent reported childhood sexual abuse, 10.9 per cent reported a sexual assault in adulthood and



9.2 per cent reported experiencing both childhood sexual abuse and a sexual assault in adulthood. Of those who reported that they had experienced some form of sexual violence 40 per cent said that they had reported it to the police or Child Protection Services and of those who reported, 22.2 per cent said that their cases proceeded to court.

### *Measures and materials*

The survey respondents were presented with a brief one page, online information sheet about restorative justice and the different forms that this might take, which was devised from the Restorative Justice Council's (2012) document entitled 'What is Restorative Justice?' It outlined three possible variants of restorative justice practices: Restorative justice conferencing which allows for direct communication between victim and offender which is facilitated an independent third party; surrogate restorative justice, where the victim has an opportunity to meet an offender who has committed a similar crime to that which he or she has experienced, and in-direct dialogue as would be seen in the exchange of letters between the victim and offender. There were three measures used in this study. Firstly, a demographics questionnaire was administered that asked details of participants' age, gender, ethnic group and personal experience of sexual victimization including their relationship to the perpetrator, whether the assault was reported to the police or Child Protection Services and if this report resulted in the case progressing to court. These questions were then followed with an open dialogue box in which participants were invited to make any additional comments that they felt appropriate.

Secondly, respondents were asked to complete a newly developed 14-item questionnaire concerning the use of restorative justice in cases of sexual victimization. Each item was responded to on a five-point Likert-scale which used the anchors 'Strongly Disagree' and 'Strongly Agree'. The creation of a scale was necessary as it appears that there is no readily available tool to measure attitudes on this topic. A review of the literature was conducted to assist with the creation of the scale items. The majority of the items were positively worded with just three being negatively worded (items 5, 6 and 13).

Thirdly, respondents were asked a series of open-ended questions about what they thought the key motivations for the victim and offender were for taking part in restorative justice, what support should be offered to victims wanting to take part, at what point restorative justice should be suggested and take place during the criminal justice process and any concerns that they might have concerning the use of restorative justice in cases of sexual victimization.

### *Procedure*

Data was collected online through Qualtrics, an internet-based survey host. Participants were informed that the aim of the questionnaire was to assess current attitudes towards the use of restorative justice in cases of sexual victimisation. They were required to complete the demographic section of the questionnaire before being presented with

**Table 1.** Items loadings onto each of the sub-scales and internal reliabilities

| Item   | Factor 1<br>(Survivor<br>centred) | Factor 2<br>(Offender<br>centred) |
|--|-----------------------------------|-----------------------------------|
| I think it would be dangerous for victims to meet the responsible person in a restorative justice conference.  | -.838                             |                                   |
| I think it would do the victim more harm than good to meet the responsible person in a restorative conference setting.   | -.802                             |                                   |
| I think it would be unwise for victims to meet the responsible person in a restorative justice conference.   | -.799                             |                                   |
| I think that it would be beneficial for the victim to meet the responsible person in a restorative justice conference setting.   | .767                              |                                   |
| I would welcome the opportunity for victims to be able to choose to meet the responsible person in a restorative justice conference setting.   | .611                              |                                   |
| I would like the opportunity to be part of a restorative justice conference in addition to going to court.   | .559                              |                                   |
| I think that the person responsible for committing the crime would understand the harm that they have caused better by meeting their victim in a restorative justice conference.                   |                                   | .783                              |
| I think it is a good idea for victims who cannot meet the person responsible for their offence to meet other offenders of similar crimes in order to tell them about their experience as a victim. |                                   | .753                              |
| I think that the person responsible for committing the crime would be less likely to reoffend if they met their victim in a restorative justice conference.  |                                   | .724                              |
| I think it is a good idea for offender who cannot meet the victim of their offence to meet other victims of similar crimes in order to hear about other victims' experiences.                      |                                   | .719                              |
| I think it is a good idea to give victims the opportunity to ask the responsible person questions through indirect contact such as letters.  |                                   | .671                              |
| I think it is a good idea to give victims the opportunity to ask the responsible person direct questions in a restorative justice conference.  | .448                              | .593                              |
| I think it would be beneficial for the person responsible of committing a crime to meet their victim in a restorative justice conference.  | .483                              | .579                              |
| <i>I would like the opportunity to be part of a restorative justice conference instead of going to court.</i>  | Removed from the scale            |                                   |

some information about restorative justice conferencing, since it was recognized that the concept may be unfamiliar to a proportion of the general population. They were then presented with the 14-item attitude scale and eight open-ended questions

### *Ethical considerations*

With regards to the ethical issues, particularly regarding survivor-respondents, there were three main considerations which were informed by Wager's (2012) findings

from her previous study of survivor's experiences of completing an on-line victimisation survey. These included: 1) Forewarning of the subject matter so that people were free to decline the invitation to participate if they felt that this would be detrimental to their well-being. 2) Using open-dialogue boxes that permit respondents to offer more information and to have a voice in the study at frequent intervals throughout the survey. 3) Incorporating a debrief section at the end of the survey that signposted affected respondents to both organisations that offer support to survivors in the aftermath of sexual victimisation and to the Restorative Justice Council.

## Findings

### *Numerical results*

Since this was a newly developed scale it was important to initially conduct statistical analysis to ascertain its construct validity and internal reliability. This entailed conducting both a principle components analysis using varimax rotation and Cronbach's alpha analyses. (Details of this can be obtained from the authors.) The principle components analysis revealed that the scale consisted of two sub-scales; one assessed concerns in relation to the survivor and the other broadly assessed concerns in relation to the offender. The analysis indicated that one item (the last in Table 1) should be removed from the scale. This item asked respondents whether they would welcome the opportunity for restorative justice to be offered as an alternative to traditional justice. A positive score on each item is associated with a response that is concordant with a favourable view of using restorative justice in cases of sexual violence. The internal reliability analysis for each scale produced satisfactory scores (.879 and .877 respectively as per Table 1).

In order to ascertain whether there were differences in views on the basis of age or survivor status a MANOVA (multivariate analysis of variance) was performed. This revealed that there were no statistically significant differences between survivors and non-survivors in their views expressed on either sub-scale. However, there was a borderline finding indicating that overall men thought the experience would be less favourable for victims than did the women.

Next responses on the individual scale items were explored and a comparison was drawn between survivors and non-survivors responses. The results of this are presented in Table 2. This revealed a few differences between these two groups of respondents. Notably, the survivors were slightly more reserved in their optimism for the potential benefit to the victim of meeting with their offender. However, 35 per cent of survivors agreed with this statement. Whilst being slightly less likely to welcome the opportunity for victims to meet with their offenders in a conference setting, 71 per cent of survivors indicated that they would still endorse this opportunity. Although 56 per cent of survivors indicated that they would like the opportunity to have restorative justice in addition to going to court, the proportion of respondents selecting the 'disagree' options indicated that survivors were slightly more reticent about this (29% vs 16%). Survivors were twice as likely as non-survivors to indicate a desire to have the opportunity to have a conference as an

**Table 2.** Participants responses to each item: Overall and according to experience of SV.

| Item   | Answer*  | Overall % | % who have experienced sexual victimization | % who have no personal experienced of sexual victimization |
|--|----------|-----------|---|--|
| I think that it would be beneficial for the victim to meet the responsible person in a restorative justice conference setting.   | Disagree | 24.5      | 32.4  | 20.6   |
|  | Neutral  | 33.7      | 32.4  | 34.9   |
|  | Agree    | 41.9      | 35.3  | 44.5   |
| I would welcome the opportunity for victims to be able to choose to meet the responsible person in a restorative justice conference setting.   | Disagree | 12.1      | 17.6  | 9.4  |
|  | Neutral  | 7.1       | 11.8  | 4.7  |
|  | Agree    | 80.8      | 70.6  | 86   |
| I would prefer to have the opportunity to use a restorative justice conference instead of going to court.  | Disagree | 53.6      | 54.5  | 52.4   |
|  | Neutral  | 25.8      | 15.2  | 31.7   |
|  | Agree    | 20.6      | 30.3  | 15.9   |
| I would like the opportunity to be part of a restorative justice conference in addition to going to court.   | Disagree | 20.4      | 29.4  | 15.9   |
|  | Neutral  | 22.4      | 14.7  | 27   |
|  | Agree    | 57.1      | 55.9  | 57.9   |
| I think it would be unwise for victims to meet the responsible person in a restorative justice conference.   | Disagree | 19.4      | 29.4  | 14.3   |
|  | Neutral  | 36.7      | 29.4  | 39.7   |
|  | Agree    | 43.8      | 41.2  | 46   |
| I think it would be dangerous for victims to meet the responsible person in a restorative justice conference.  | Disagree | 21.5      | 29.4  | 17.5   |
|  | Neutral  | 37.8      | 44.1  | 34.9   |
|  | Agree    | 40.8      | 26.4  | 47.6   |
| I think it is a good idea to give victims the opportunity to ask the responsible person questions through indirect contact such as letters.  | Disagree | 9.3       | 11.7  | 8  |
|  | Neutral  | 9.3       | 14.7  | 6.5  |
|  | Agree    | 81.4      | 73.5  | 85.5   |
| I think it would be beneficial for the person responsible of committing a crime to meet their victim in a restorative justice conference.  | Disagree | 19.4      | 32.3  | 12.7   |
|  | Neutral  | 25.5      | 26.5  | 25.4   |
|  | Agree    | 55.1      | 41.2  | 61.9   |
| I think it is a good idea for victims who cannot meet the person responsible for their offence to meet other offenders of similar crimes in order to tell them about their experience as a victim. | Disagree | 21.4      | 26.5  | 17.5   |
|  | Neutral  | 22.4      | 23.5  | 22.2   |
|  | Agree    | 56.1      | 50  | 60.3   |

*(continued)*

**Table 2.** (continued)

| Item   | Answer*  | Overall % | % who have experienced sexual victimization | % who have no personal experienced of sexual victimization |
|--|----------|-----------|---|--|
| I think it is a good idea to give victims the opportunity to ask the responsible person direct questions in a restorative justice conference.                                    | Disagree | 11.3      | 17.7  | 7.9  |
|  | Neutral  | 15.3      | 20.6  | 12.7   |
|  | Agree    | 73.4      | 61.7  | 79.4   |
| I think that the person responsible for committing the crime would understand the harm that they have caused better by meeting their victim in a restorative justice conference. | Disagree | 16.9      | 27.3  | 11.4   |
|  | Neutral  | 24.2      | 21.2  | 24.6   |
|  | Agree    | 59        | 51.5  | 64   |
| I think that the person responsible for committing the crime would be less likely to reoffend if they met their victim in a restorative justice conference.                      | Disagree | 24.3      | 26.4  | 21.9   |
|  | Neutral  | 29.3      | 32.4  | 28.1   |
|  | Agree    | 46.5      | 41.1  | 50   |
| I think it would do the victim more harm than good to meet the responsible person in a restorative conference setting.   | Disagree | 23.3      | 29.4  | 20.3   |
|  | Neutral  | 42.4      | 41.2  | 42.2   |
|  | Agree    | 34.3      | 29.4  | 37.5   |
| I think it is a good idea for an offender who cannot meet the victim of their offence to meet other victims of similar crimes in order to hear about other victims' experiences. | Disagree | 21.4      | 23.5  | 20.7   |
|  | Neutral  | 18.4      | 17.6  | 19   |
|  | Agree    | 60.2      | 58.9  | 60.3   |

NB. Answers 'strongly disagree' and 'disagree' have been grouped into disagree in this table. Answers 'strongly agree' and 'agree' have been grouped into agree in this table.

alternative to going to court (30% vs 16% agreed with this statement). Interestingly, when comparing survivors who had reported their victimization with those who had not reported, 70 per cent of those who had entered the criminal justice system were against the idea of restorative justice as an alternative to court, in comparison to 45 per cent of those who had not reported their victimization. Survivors are slightly less in favour of indirect communication between the victim and offender, although a majority of 73 per cent agree that this is a good idea. Similarly, they were less in favour of the victim having the opportunity to ask questions directly of the offender than are their non-survivor counterparts (62% vs 79%). Survivors were also less optimistic regarding the beneficial impact that conferencing would have on the

offender's understanding of the harm they had caused. However, just over 51 per cent felt that the offender might benefit in this way.

Overall, whilst the survivors' attitudes towards the use of restorative justice in cases of sexual violence are slightly less enthusiastic than those of non-survivors, the results highlight that a significant proportion, indeed a majority of the survivors indicated that they felt favourably towards this notion.

### *Responses to the open-ended questions*

The responses to the open-ended questions and the open dialogue boxes were analysed using both content analysis and thematic analysis. The content analysis permitted the coding of responses in order to convert the quotes into numeric values. The key issues discussed here are related to survivors' own familiarity with and desire for restorative justice, their views on when they should be notified of the possibility of conferencing, whether they would have been offended by the offer of conferencing, at what point conferencing might be best delivered, and the support needs of survivors who choose to engage in a restorative justice process.

### *Responses to the open-ended questions*

The responses to the open-ended questions and the comments made in the open dialogue boxes were analysed using both content analysis and thematic analysis. The content analysis permitted the coding of responses in order to convert the quotes into numeric values. The key issues discussed here are related to survivors' own familiarity with and desire for restorative justice, their views on when they should be notified of the possibility of conferencing, whether they would have been offended by the offer of conferencing, at what point conferencing might be best delivered, and the support needs of survivors who choose to engage in a restorative justice process.

### *Familiarity with and own desire for restorative justice*

None of the survivors had taken part in restorative justice for the sexual crimes that they had experienced. When asked if they had ever considered conferencing in their own case of sexual violence most survivors answered no. The main reason given for this was that they had never heard of restorative justice before taking part in this study:

I've never been offered this option.

I only heard of it today.

Only two had considered restorative justice but had excluded it as an option. One had excluded it on the grounds that they felt the offender would fail to take responsibility and the other as they believed their case was ineligible since the case did not proceed to court.

Five survivors out of the 29 who responded to this question stated that now knowing about conferencing they would consider taking up this option. One of the five stressed that he/she would prefer indirect communication as opposed to conferencing:

I didn't know what it was or that would be available. I would definitely if I had the chance.

Sometimes I still want answers to my questions, but I know I will never get them. Something indirect might help, maybe letters.

### *When to notify about restorative justice as an option?*

Overall, survivors had fairly mixed views with regards to when they should be notified about the possibility of conferencing. The 12 out of the 27 of survivors who responded to this question indicated that they felt that the possibility of restorative justice should be highlighted to them when they have initial contact with any authority following their assault. Conversely, 7 out of the 27 respondents suggested that the offer should be made post-conviction. Other respondents suggested a number of different points along the criminal justice timeline including the point at which the offender is cautioned or they have confessed, at the court hearing, before the trial or after the case has gone to court. Interestingly, the key reason given for the option being raised post-conviction was related to the ability to conduct risk assessments of the offender and the personal belief that victims would be unlikely to consider this option until some considerable time after the assault.

Importantly, the majority of survivor stated that they would not have been offended if they had been offered restorative justice. Indeed, only three out of 29 respondents to this question stated that they would have been offended and one of these stressed that whilst she would have been offended at the time, on reflection now she would welcome the opportunity to present her offender with questions:

Yes [I would have been offended] when I was younger, now I think I would like to ask them the why questions.

Many of the survivors who said that they would not have been offended by the offer also stressed that whilst they appreciated being given a choice of options that they would have been unlikely to have taken up the offer:

I wouldn't have been offended, but I doubt I would have agreed to it. For me, I think it would do more harm than good to see the man who hurt me again. He is not someone I know (I don't even know his name), it would be unlikely that I would see him again otherwise.

I don't think I would have been offended, but I don't think I would have accepted as I was made to feel that I was at fault being so young and naïve and wouldn't have wanted to meet the men again.

### *When should restorative justice be delivered?*

Again there were mixed views as to when would be best to deliver this intervention. In total 27 survivors responded to this question. Of those, seven suggested that the best time would be before the trial, nine suggested that it should be post-sentencing, five said it would depend on either victim desire or readiness and a further two highlighted it would vary depending on the specific requirements of each case:

Before the court case so that the victim and offender are both as comfortable with a court appearance as possible.

After the trial and sentencing so that the victim can feel safe that the responsible person is in a secure place, that they are guilty in the eyes of the law and that the victim has been believed so that they don't have to worry about what others are thinking about them:

When the victim is ready, however long that may take.

### *Support needs*

The support that should be offered to victims wanting to participate in RJ can be split into three themes: individual support, preparation and safety. In terms of individual support, most survivors felt that victims should be offered counselling in order to help them come to terms with the crime:

Counselling/psychotherapy with a therapist who specialise in treating victims of sexual violence should be offered both before and after the conference to allow them to prepare for it and process it safely.

However, about a quarter of the survivors indicated that the victims would need support from someone else in addition to a counsellor. For some survivors this was specifically to provide information so as to add decision-making and risk assessment:

Both a counsellor . . . and a criminologist who might be able to give advice about what the offender might truly be meaning or experiencing . . . to protect against possible manipulation.

Several individuals also emphasized the need for a single point of contact that should be available throughout the process to support the victim and others suggested peer support from survivors who had already experienced a meeting with their offender:

Telephone support 24/7 or as much as possible with a 1–2–1 keyworker. Regular support meetings with a trained professional.

Perhaps a buddy system. People who have gone through the restorative justice conference before, and who can guide them through the different emotions that come with the experience, for both the victim and the responsible person.



In terms of preparation, it is notable that only one survivor and two non-survivors made any reference to the screening of victims by the professionals, in order to determine the suitability of their case:

Adequate psychiatric/psychological screening to check if the victim is strong enough in their belief that it was the perpetrator who was 100 per cent to blame, and that he/she is unlikely to be triggered into an episode of recurrent flashbacks. (Survivor)

The mental health of both parties needs to be thoroughly assessed first to make sure there isn't some other motive beyond justice. (Non-survivor)

Finally survivors felt that the victim's safety should be imperative throughout the whole process:

Provide a safe place and people to help the dialogue move forward in a constructive way.

Vetting the responsible person to try and ensure that they will not become a danger to the victim after meeting and that they will properly engage with the conference process.

Lack of safety was almost always expressed in terms of psychological harm to the victim that might emanate from finding the situation triggering and the offender using the opportunity to manipulate or intimidate the victim.

It may do more harm for the victim if they were traumatized by the original event and are unaware of the anxieties and memories, seeing the perpetrator in the flesh again could make them feel worse or to relive the suffering they felt before.

... [T]he offender might use the conference as an excuse to see the victim again and to make him/her feel threatened in some way rather than genuinely wanting to participate in restorative justice.

## Discussion

The discussion will develop taking each of the study objectives in turn. The first objective was to develop a scale to assess attitudes regarding the use of restorative justice in cases of sexual violence. The result was a 13-item scale assessing two different aspects of attitudes: one related to the victim's perspective and the other related to concerns regarding the offender. Both subscales demonstrate satisfactory reliability. Future studies might want to assess test–retest reliability and predictive validity.

The second objective was to present the views of the public in general and survivors in particular regarding the appropriateness of using restorative justice conferencing in this context. Overall, the public appear to hold very favourable views towards this issue. Eighty-one per cent of the respondents overall and 70 per cent of the survivors reported that they would welcome the opportunity for victims to be able to meet with their offender in a conference setting. Fifty-six per cent of survivors indicated that they would like the opportunity for conferencing in addition to the

conventional criminal justice system and 30 per cent said they would like the opportunity for conferencing as an alternative to going to court. Importantly, those who were the most likely to favour restorative justice as an alternative to court were survivors who had chosen not to officially report their own assault.

The third objective was to ascertain whether there are differences in attitudes between survivors and non-survivors. The rationale for this is that many people making decisions on behalf of survivors are not survivors themselves. Thus it is important to know how closely their views match those of survivors. Whilst using the total scores on each of the subscales from the attitude scale, no statistically significant differences were found on the basis of gender of survivor status; however, when comparing survivor and non-survivor respondents levels of agreement on individual items a few differences did emerge. Specifically, in relation to most questions survivors presented as slightly more conservative in their optimism for restorative justice. However, the notable exception were their views on their desire for conferencing as an alternative to going to court and their anticipation that conferencing might prove dangerous for the victim. The greater preference for conferencing as alternative justice might be explained through survivors' recognition of their own reticence for seeking an official resolution to their victimization. This would be concordant with Shapland et al.'s (2007) finding that victims in general appear to express a preference for greater informality in the justice process.

The final objective was to present the concerns and hopes of survivors in relation to the potential use of restorative justice.

There were a number of concerns raised by respondents. These included that conferencing might be re-traumatizing for the victim and thus present safety issues and that the desired outcomes may not be achieved. These are similar to the concerns that have been raised by academics in the literature (Daly, 2006; McGlynn et al., 2012). It is true that conferencing brings the victim and offender together in close proximity which may be traumatic for the victim; however, this has not been supported by the albeit scant, empirical literature. For example, Koss (2014) found that there was a decrease in post-traumatic stress symptoms for those who participated in conferencing. Additionally, Wager's (2013) scoping review of 10 survivors' experiences of participating in conferencing found that a number of survivors reported that the experiencing was empowering rather than traumatizing. The potential for not achieving the desired outcome is not exclusive to restorative justice; this is possibly more of a feature of engagement in the conventional justice system. However, unlike in the traditional justice system, survivors who participate in conferencing have the opportunity to tell their story, to be supported in preparing for the meeting with the offender, they are believed and their concerns are acknowledged. Good preparation and full support from counsellors, experienced peers and other professionals before, during and after the intervention, were seen as crucial to successful conferencing.

## Conclusion

The findings of the present study indicate that the general public, both survivors and non survivors of sexual violence, express fairly positive attitudes towards the use of

restorative justice in cases of sexual violence. However, high levels of support and preparation are considered to be essential to the success of the process. Survivors endorse the view that victims of sexual offences should be given the option to use restorative justice but that they should not be pressurized into participating in the process. With regards to the concerns expressed by survivors regarding the risks that victims might encounter when participating in this process, these appear to reflect the concerns expressed by the victim advocates and academics who oppose this application. However, notably survivors themselves, whilst generally less optimistic about the potential for conferencing than their non-survivor counterparts, are considerably less likely to see conferencing as dangerous for survivors. There appears to be little agreement as to when the best time is to make this offer to survivors or as to when a conference should be delivered. With regards to when to ask, it appears that maybe at the earliest point of contact since only a very small proportion felt that they would have been offended by the notification of this option. The latter is generally considered to be a choice best left to the victims. The Victims' Code of Practice, which was introduced in 2013, states that all victims should be informed of their right to choose restorative justice. Whilst currently there is a fairly widespread reticence among practitioners to consider cases of sexual violence for conferencing, this might have to change in light of the number of victims who come forward seeking this form of redress. Previously it was unclear whether survivors themselves would want a restorative solution or intervention in relation to their sexual victimization, and thus the debate about this application may well have been purely academic. Now for the first time the views of survivors have contributed to the different perspectives expressed.

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