

# How to make prison more restorative

## Restorative Justice and Prison Staff

Restorative Justice is to do with repairing the harm caused by a criminal act. Unlike conventional justice, which focuses almost exclusively on the offender, restorative justice places emphasis upon the victim and requires that the offender does also. It 'restores' victims by helping them come to terms with what happened and thereafter to move on. Too often the criminal justice system leaves the victims with their horrors, fears, anxieties of the crime unresolved. And too often the criminal justice system, even though it focuses on the offender does not deal at all with the harm the offender has caused and their responsibility for it.

Restorative justice does this, for the victim, for the offender and ultimately for the community, which also is a victim. Restorative justice can be seen as a means of restoring the balance, of reconciliation, of resolution rather than dissolution. It involves

- The participation of the victim and the offender in the process
- Community involvement in justice
- Problem solving approach to conflicts
- Flexibility and creativity in the process of exploration and decision making.

Restorative justice is not about going soft on offending - it is actually a lot harder for an offender to confront what they have done, to understand the full implications of their behaviour, than to be dealt with in the conventional way. Conventionally, the criminal justice system separates the offender - often literally - from the victim and the community. While this is sometimes important, if separation is all that happens, offenders can quickly distance themselves from the harm they have caused, forget it, deny it, or create elaborate justifications for why they did it which absolves them of all responsibility. Meanwhile the victim, denied a voice in the formal process of prosecution, is left with the experience of harm which can be deeply scarring.

Where the traditional justice system separates the victim and the offender, restorative justice brings them together. The victim and offender decide how and what reparation should be made and this is punitive too but punishment is not the main focus. Crucial to the victim is that reparation is mediated and may be nothing to do with money or repairing physical harm, but everything to do with repairing emotional damage. Where the victim can see that the offender understands the psychological harm done and has taken responsibility for this, the victim is freed from the damage of their experience, not to forget about it but to be able to recover and move on. Restorative justice is an essentially forward looking process. It begins where traditional justice ends.

## Process

A central feature of restorative justice is normally a meeting or 'conference' where all those who have a stake in what happened come together. A typical conference would involve both the victim and the

offender together with any friends or family who may have been involved or affected. The conference can only take place with the consent of all involved. The role of the facilitator is crucial and the effectiveness of the conference may depend on the amount of time spent by the facilitator with each of the parties to the conference exploring their experiences and preparing them for what may happen at the conference.

During the conference each person will talk in turn about what has happened and how it has affected them. The purpose is to identify the different aspects of harm done to each person, not only the victim but also the friends and family of the offender, and indeed the offender as well will have suffered or been affected in different ways. By talking about their experiences face to face both the victim and the offender may begin to see each other for who they really are and what has really happened. Clearly, not all offenders and nor all victims will want to take part for no one can be coerced into a conference.

A typical conference ends with an agreement between the parties in terms of any reparation that may be done. This might involve an apology, the repayment of some money or perhaps some voluntary work for the community. The real reparation may be more psychological, with the victim having been able to separate the offender from the offence, gained an understanding of how the harm they suffered came to be committed and so move on from the harm, not forgetting it but coming to terms with it. The offender plus family and friends will have had a chance to show remorse and make real amends to the victim. Offenders also, as experience has shown, understand in a humbling way, how responsible they are. Accepting that responsibility is something which conventional criminal justice neither encourages nor fully understands.

### **Effectiveness**

Research has shown a consistently high level of victim satisfaction with the process as compared with traditional forms of justice - going to court. There is a higher level of completion of the reparation agreements that conclude the conferences as compared with reparation ordered by the court.

The effect on offenders is more difficult to assess. Research has shown a small positive effect on re-offending rates and certainly a common comment from offenders is that Restorative Justice process is a much more painful one and much more effective than going to court.

In terms of costs there may be short term savings by using restorative justice, as opposed to the court, process even though the time spent by the facilitator in preparing the conference may be considerable and therefore expensive. However the real saving would be by removing offenders permanently from the criminal justice system with all the benefits that that would bring. It is too early yet for there to have been any long term research in this area.

### **Limitations**

Restorative processes can only take place if the parties are willing. The conference takes place by consent. A good facilitator will not impose a

meeting on victims or offenders who clearly do not wish to take part in or benefit from the process.

The success of the process and the conferences depends very much on the individual facilitator. There are guidelines and standards in place and some supervision of the conferencing process by those who are using it, but it is still an arbitrary process where one cannot be sure of the expertise and impartiality of the facilitator.

The restorative conference can be a very private form of justice, compared to the open court procedure. This represents a risk to both the victim and the offender.

The likelihood is that restorative justice procedures will continue as complementary to the traditional justice system.

### **Restorative processes in handling complaints**

Mediation is becoming more commonly used in resolving internal and workplace complaints and disputes. We could make good use of them in the Prison Service. Some piloting of the work in a formal manner is taking place but line managers are expected to be able to deal with issues daily without many guidelines or training. Some support in this way would prove valuable and would reduce the number of issues which emerge as much more serious because they have not been handled sensitively or seriously at an early stage.

Dealing with complaints through restorative processes is more rare although other public services are developing experience in the subject - the health service in Leicestershire, Lloyds Bank nationally, the police in New South Wales and the Thames Valley have experience of the subject.

### **Stakeholders**

The public have an interest in seeing that a complaint is effectively resolved.

### **The complainant**

Most complainants want an effective response and would like it to be immediate. Some look for retribution but many look for an apology and some reassurance that their experience will not be repeated for others and that lessons have been learned. Some complainants are seeking compensation.

Most complainants would prefer a fair and open process rather than an adversarial procedure in which their complaint may well not be upheld. And when a complaint is not upheld, the complainant feels they are accused of being a liar, their bad experience has been denied. The process does not give sufficient of a hearing to complainants, who often want to be listened to at length, some direct personal acknowledgement that would be meaningful to them.

### **The staff**

Staff want the same of a complaint process as the complainant - an open, fair and speedy process. They often feel the victim of a complaint, even though there are many situations in which they are complained about because they are doing their jobs. Working in a prison will inevitably bring complaints.

Some staff are robust about the process of being complained about and take complaints in their stride, while others feel hurt and sometimes angry when a complaint is made against them. This is particularly so when they have been trying hard to deal with a difficult situation. There are also some complaints which are felt to be malicious and certainly many where the staff feel that criticism is unjustified.

Like those who complain, staff need to be listened to so that they can give their explanation of what happened to fill in the human details around the bare facts. This can be the case equally where the member of staff has done wrong, has neglected their duty or handled a situation badly. Under the current system, the underlying reasons for what happened will only ever come out, if at all, in formal interview. The person complaining will never get to hear that the officer concerned was having problems at home, or was working excessively long shifts, or had just come from a very difficult and violent situation.

Staff feel left out of the current complaint process. At the beginning of the process they are served with a notice giving them details of the complaint made against them. It may be weeks before they are offered the opportunity of giving an interview about the allegations made against them. It may be more weeks until they learn of the decision of the person conducting the inquiry. Where there are further decisions to be made or a further inquiry to be carried out, the complaint can hang over the member of staff for even longer, affecting their career or movement.

### **The Service**

The Prison Service can only benefit from a quick and effective way of resolving complaints at source. We need to be able to satisfy prisoners and members of the public (the complainants) and we also need a process that is acceptable and supported by our staff. The Service needs a process which will enable it to manage effectively, to improve practice generally as well as the performance of individuals. The current punishment-based misconduct process with its ultimate sanction of dismissal is sometime talked of in terms of getting rid of the bad apples. But if the apple is not rotten to the core we are doing ourselves a disservice. How effective as a learning process are lesser sanctions to a substantiated complaint or following a proven finding at a disciplinary hearing? Will a warning, a small financial loss, or advice from a superior really make a difference to future behaviour.

Above all the Service needs a complaint process which will build trust and confidence between staff and prisoners.

### **Restorative Justice for complaints**

In theory there is no situation which might not lend itself to some form of restorative intervention. In practice some constraints would have to be imposed particularly where a complaint involved criminal allegations. There are some sort of complaints that lend themselves more readily to a restorative approach. For instance complaints where it is the 'system' that is at fault rather than individual members of staff, complaints of attitude or oppressive behaviour and complaints of incivility.

The restorative approach is infinitely adaptable to the needs of the particular people and the situation which the conference is dealing with. The process is better suited to deal with the emotional and psychological issues of complaint as opposed to the physical or factual in an assault or a straightforward breach of the Code.

Complaints about attitude and behaviour are notoriously difficult to prove under our current evidence-based system. If a complainant feels that a member of staff's behaviour has been rude, oppressive or indeed racist, then that experience is real to them. The fact that the current process cannot prove that real experience for the complainant unless there are physical words or actions which have been witnessed by other people, does not make that experience any less real. The result is frustrating for the complainant but also for the investigator. A common reaction when told that their complaint cannot be supported on evidence is that we are telling them they must be lying.

When complaints are proved it is not clear that simple punishment, be it advice, warning or even dismissal, is the answer. Often the 'punishment' can achieve little in a constructive sense other than showing the Service taking robust action.

It is in the area of complaints about racism and discrimination that the greatest opportunity and challenge to a restorative approach arises. There has been a dramatic rise in the complaints of such a nature in the past three years. Few such complaints are substantiated. Many staff when told of the complaints deny vehemently that they are racist or hold racist attitudes. If it were possible that staff and complainants to meet face to face, to explore each other's attitudes and experiences, to see each other as individuals rather than stereotypes, to consider an apology as a strength rather than a weakness, then the service could move forward.

Restorative intervention cannot be imposed, it must be entered into willingly by those taking part. There will thus always be the need for the more traditional process, not only for those complaints which are not of themselves suitable for a restorative process, such as serious criminal matters, but also for those complainants and staff who do not wish or are not able to consider the idea of restorative intervention.

### **Restorative Justice and complaints in the Police experience**

Much of the work involved in the widening of the application of restorative

justice principles has been pioneered by Terry O'Connell of the New South Wales Police.

#### Fair process

Central to the needs of stakeholders in the complaints procedure is the need for fairness. People are more likely to trust and co-operate freely with systems when fair process is observed - even though they may win or lose by those systems.

There are four ways of dealing with a conflict

- the punitive approach where punishment is imposed and something is done to the offender
- the neglectful approach, where the conflict is ignored
- the permissive approach, where you do something for the offender in terms of training, advice, rehabilitation, in effect apologising for the offender and doing little for the victim
- and the restorative approach, where the conflict is resolved with and by the victim, the offender and all those involved.

Fair process has principles of engagement, explanation and an expectation of clarity about it. It is not decision by consensus, it does not set out to achieve harmony, nor win support through compromises. It is not democracy in the workplace and not does it involve managers losing their prerogative to make decisions, establish policies and procedures. Fair process builds trust and commitment, which leads to voluntary co-operation and then to improve performance by people sharing their knowledge and applying their creativity.

The process is best seen by case history and studying the process of conferences.

The model of conferences involve following a flexible script of key questions which are put to the various parties in order during the course of the conference. The key question for the offending officer will be -

- Tell us what happened?
- What were you thinking at the time?
- What have you thought about since?
- Who has been affected by your actions?
- How have they been affected?
- What do you think you need to do to repair the harm or regain some trust?

The complainant and other parties will be asked similar questions allowing them to explain their initial and subsequent experience, to reflect on how they and others have been affected, and to consider a way forward.

It is this open-ended approach- exploring and inquiring rather than judging and condemning - that is the key to overcoming the main obstacle to introducing restorative practices into the complaints process. This

obstacle is the culture which normally is influenced by blame and punishment and reinforced by command and control management styles.

If prison service managers were able to adopt this approach, using the key questions in the model where there is a need to challenge inappropriate behaviour, this would have a considerable impact on the level of complaints. It provides supervisors with an effective way of challenging problem behaviour through early intervention, rather than recording a series of incidents and then relying on formal disciplinary processes to respond. The application of restorative processes will depend then on the degree to which supervising staff integrate restorative elements in their day to day working practices.

The process cannot be applied in isolation to a misconduct process. It need to be an integral part of the management and running of the organisation as a whole. In this way the full potential of restorative justice and the change in prison culture can be achieved. The process of change should take this holistic approach.

The Thames Valley Police have introduced this process of change within the service.