

RESPONSE

Sexual violence cases involving minors: what training can contribute to professionals and what professionals can contribute to training

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1. Introduction

I have read Mary Keenan's contribution to this volume with great interest and much agreement. The case for the need for specialist training for restorative justice facilitators working on sexual violence cases is well set out, and the need for such training to avoid becoming 'overly prescriptive or constraining in the professionalisation of standards' is made convincingly. I must confess, however, that I needed no convincing. My reflections on Keenan's piece are made from my position as a PhD candidate whose research explores the experiences of people who were, as a minor, sexually victimised by another young person from their family circle, and the potentials of restorative justice. Inevitably, my perspective is also shaped by my previous experiences as a practitioner in various Youth Offending Teams (England and Wales), working with young people who had been brought to police attention or who were thought to be at risk of being so. In this response piece, I offer some additional points to the argument already presented, by highlighting a particular subsection of restorative justice in sexual violence cases: cases where the victim and the perpetrator are both minors at the time of the sexual violence incident. Following this, I will consider the impact that type of training that is advocated by Keenan will have on increasing confidence in the use of restorative justice in sexual violence cases. I finalise this piece with a call to practitioners, researchers and other professionals working with restorative justice in sexual violence cases involving minors to document and disseminate their work in order to strengthen the evidence base. Such knowledge can contribute to a better understanding of the phenomenon which, in turn, can contribute to improved training for facilitators.

2. Restorative justice in sexual violence cases involving minors

Keenan's points about the importance of training facilitators of restorative justice in sexual violence cases are, in the round, also relevant for cases involving minors. For example, when Keenan states that specialist training is necessary due to '...

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Monique Anderson

the relational dynamic complexity of sexual violence, the specific power imbalances in that very offence and the highly charged emotional response that this problem elicits in civil society', this can equally be applied to sexual violence cases where the parties are young people. Indeed where minors are concerned, arguably more checks and balances are necessary. Therefore, if the facilitation of restorative justice in sexual violence cases deserves specialist training because it is a particular niche, then the facilitation of restorative justice in sexual violence cases where the parties are minors is a niche within that niche, and also requires special attention. But why should such cases be considered at all? The fact that children and young people are sexually victimised by adults is well recognised. However, the phenomenon of young people being sexually harmed or abused by other young people is much less widely recognised and sits largely outside of public consciousness. The lack of attention might lead to the assumption that this is an insignificant issue with respect to prevalence and impact, but this is not the case. It is estimated that a third of all instances of sexual harm or abuse are perpetrated by young people under the age of 18 (Hackett, Holmes & Branigan, 2016). Sexual offences reported to the police in England and Wales in which both the alleged victim and alleged perpetrator were both under 18 years old increased by 71 per cent¹ between April 2013 and March 2014 and the same time period in 2016/2017 (BBC, 2017). A similar upward trend was found in Scotland between 2011 and 2016² (COPFS, 2017). In one study, of the 700 young people who had displayed sexually harmful behaviour, 25 per cent victimised a family member (Hackett, Phillips, Masson & Balfe, 2013). Furthermore, of all sexual abuse occurrences that take place within the family setting, approximately 25 per cent involve a perpetrator aged 17 years old or younger (Children's Commissioner, 2015). In sexual violence cases involving minors, the proportion of victims who know their perpetrators is high (Gxubane, 2016). These figures should be set in the context that it is estimated that for every eight victims, only one ever comes to the attention of the authorities (Children's Commissioner, 2015). There is a small but increasing attention for the possibility and promise of restorative justice in sexual violence cases where the parties are young people (Anderson, 2018; Anderson & Parkinson, 2018; Gxubane, 2016). Just as restorative justice in sexual violence cases involving adults 'is already taking place "under the radar"' (Keenan, *IJRJ* 2018/02), this is also applicable in cases where the victim and perpetrator are minors. Young people respond to victimisation experiences in line with their developmental stage (Finkelhor, 2008) and their needs, which are often different to those of adults, should be understood by restorative justice facilitators who work on their case. For example, young people may be hindered in a restorative justice process because of the inexperience of talking in group settings (Gal & Moyal, 2011) or they may have other communication difficulties (Snow, Powell & Sanger, 2011). Furthermore, facilitators will need to manage the influence of any carers who are present in restorative meetings, to minimise any

1 From 4,603 reported offences to 7,866 reported offences.

2 The number of cases reported to the Crown Office & Procurator Fiscal Service (COPFS) increased by 34% between 2011/2012 and 2015/2016.

negative influence that they may have on the process (Hoyle & Noguera, 2008; Weijers, 2002). Just as is the case where the parties are adults, restorative justice will not be suitable in every sexual violence case involving minors. Such cases are often complicated and require a sensitive response (Ricks & DiClemente, 2015). The safety of the victims should always be prioritised in the process (Oudshoorn, Jackett & Stutzman Amstutz, 2015) and restorative justice should certainly not be a means through which to achieve perpetrator rehabilitation at the victim's expense (Cossins, 2008). However, if the absence of competent and confident facilitators was the only reason why a restorative justice process was unable to go ahead, that would be to deny the parties potential access to recourse, healing and justice.

3. Increased confidence in restorative justice

Keenan describes the role that comprehensive training for restorative justice facilitators will play '[i]n order to gain and secure public confidence and legitimacy for restorative justice in sexual violence cases'. Public and civil society support is definitely important for restorative justice (Pali & Pelikan, 2010). In addition to this, a well-respected training programme for restorative justice facilitators in sexual violence cases might also increase confidence amongst other professionals. This is particularly important in cases involving young people because their access to restorative justice is likely to be controlled or mediated by a third party, usually in the form of an adult carer or a professional. In practice, such gatekeepers may assume responsibility and make decisions regarding whether the young people are 'able' to participate in restorative justice processes. Where these gatekeepers are unconvinced of the effectiveness of restorative justice, young people may be prevented from participating. Similarly, and particularly where access to restorative services is mediated in some way by such actors, restorative justice needs support from judicial actors. One such example is the juvenile justice system in Belgium. Despite a 2006 law specifically mandating the use of restorative justice with juveniles, the proportion of cases referred for restorative processes – at least to conferencing processes – is low (Chapman, Gellin, Aertsen & Anderson, 2015). Where restorative justice does not take place, this is sometimes because judicial actors are reluctant to use the measure. Put, Vanfraechem and Walgrave (2012) found that youth judges and public prosecutors were more likely to use restorative justice measures when they had a good understanding of restorative justice and when they had confidence in the restorative justice service. Well-constructed training could enhance and improve the confidence that judicial actors have in the use of restorative justice in sexual violence cases. Currently, there is particular scepticism amongst the judiciary with respect to these specific cases, yet it is precisely from amongst these professionals that strong advocates for restorative justice in sexual violence cases might eventually be found (Zinsstag, Keenan & Aertsen, 2015). Additionally, if youth judges, public prosecutors and other professionals who have the power to refer to restorative justice processes were given training on the limits and possibilities of restorative justice in such

Monique Anderson

cases, and also given information about how to make appropriate referrals, this would be extremely beneficial in increasing their understanding and confidence in the process. Ideally, such training would include the professionals being exposed to testimonies from young people who had participated in restorative justice processes.

4. Call for increased information gathering

Keenan informs, ‘... claims about what is good practice or bad practice in restorative justice can rarely be evidence based, given the state of research in the field’. The pertinence of this statement is increased when it is applied to the use of restorative justice for sexual violence cases in general, and again increased where cases involving minors are concerned. Whilst the research base in both of these domains has increased over recent years (Zinsstag & Keenan, 2017), there is still much to be done. Particularly with respect to cases involving young people, the field will certainly benefit from detailed mapping exercises to document existing and emerging practices. More comprehensive documentation and dissemination of existing practices will provide a deeper and more complete understanding of the processes of restorative justice in sexual violence cases. Such a contribution to the knowledge base can be used to inform and enhance facilitator training. In addition to knowledge from practice, the field will benefit from a deepening of the theoretical understanding of the phenomenon of sexual harm and violence as it occurs amongst minors, and the development of theoretical frameworks with respect to how restorative justice might be applied to such cases. In this respect, much can be gained from practitioners and researchers combining their skills and experiences, particularly because research has revealed that the information that is currently reported in books and journals with respect to restorative justice for sexual violence cases often lags behind what is actually happening in practice (Zinsstag, Keenan & Aertsen, 2015). One strong example of how practitioners and researchers combined experience to produce training materials for facilitators is the practical guide on ‘Doing restorative justice in cases of sexual violence’ that was prepared as part of the project initiated under the European Commission Daphne fund (Mercer, Sten Madsen, Keenan & Zinsstag, 2015).

5. Conclusion

Mary Keenan has set out the case for why restorative justice facilitators in sexual violence cases need additional specialist training. Sound training can be expected to increase the benefits gained through restorative justice processes in sexual violence cases, and will also have a role in limiting any potentially negative effects of such a process. In response to her piece, I have introduced the topic of restorative justice as it is used in sexual violence cases where both parties are minors, and touched upon why similarly specialist training would also be required for the facilitation of those cases. One of the many benefits of recognised and respected training is that it will improve the confidence in the restorative justice process as

it is used in such sexual violence cases. This is particularly relevant where the parties are children and their access may be mediated by gatekeepers. Finally, I have issued a call for practitioners and researchers to work in partnership towards increased documentation of existing practice and on the creation of an evidence base to support and underpin the work.

I agree with Mary Keenan's opening statement, 'it is easy to understand why some people may have reservations about the application of restorative justice in cases of sexual violence' and can also understand why some may be sceptical of the application of restorative justice in sexual violence cases involving minors. The provision of sound training would go some way to address these reservations, and would ultimately lead to more victims and perpetrators being given the opportunity to experience restorative justice.

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Monique Anderson

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