Restorative justice at the level of the police in England: Comparative lessons

Presentation to the conference on ‘New advances in restorative justice theory and practice’, Leeds, 18-19 September 2017

Joanna Shapland
Adam Crawford
Emily Gray
Dan Burn
RJ and restorative practices: Comparative lessons from Northern Ireland

Study visit to Belfast May 2016 to meet key individuals from
• Probation Board of Northern Ireland
• Public Prosecution Service
• Police Service of Northern Ireland
• Youth Justice Agency
• Community RJ Ireland
• Northern Ireland Alternatives
• University of Ulster

In addition, a diversionary youth conference was observed, with the agreement of all the participants and facilitator.
Restorative context in Northern Ireland – Victim Focus

• Well established use of RJ both diversionary and from court with youth offenders.
• Community RJ – post Good Friday Agreement for criminal offences, anti-social behaviour and community relations (hate crime). Located in areas of historical tension.
• Police-led RJ - minimal.
• Third sector RJ – minimal.
• Probation Victim Liaison Services.
Criminal Justice Context Northern Ireland

- The relationship between Police (PSNI) and Prosecutors (PPS) is different to that in England and Wales.
- Police warnings and cautions need to be agreed by the PPS.
- All prosecutorial decisions taken by PPS.
- Police can issue a Community Resolution Disposal (introduced in 2016) without recourse to PPS.
- There have been evaluations of Youth Conferencing to monitor reoffending rates (Campbell, 2005) (2013-14 around 50% reoffended).
- Many facilitators in different criminal justice agencies and in community RJ schemes have been trained by the University of Ulster on its Certificate, Diploma and Masters courses in Restorative Practice.
Community Restorative Justice

Victim - Restitution
Offender - Responsibility
Community - Reconciliation
Community Restorative Justice
Community Restorative Justice

- Community-based RJ schemes were established to find nonviolent alternatives to paramilitary punishment attacks to ‘deal with’ criminal offences (McEvoy and Eriksson 2008).
- Based in Loyalist and Nationalist areas: ‘Northern Ireland Alternatives’ ‘Community Restorative Justice Ireland (CRJI)’.
- In the mid noughties, CRJI were working with around 700 cases a year, whilst Alternatives were working with about 400 (McEvoy and Eriksson 2008).
- Relations between criminal justice agencies and community organisations have sometimes been tense. Led to an agreed ‘Protocol’ in 2007.
- Protocol accredited schemes and opened an avenue for funding. In return, the schemes were to subject to the Criminal Justice Inspectorate, must have trained staff and volunteers and a complaints system. There is now a lengthy process of deciding who can take ownership of a case.
- There is been substantial high level support for RJ and community justice over recent years from the First Minister, the Lord Chief Justice and the Criminal Justice Inspectorate.
Diversionary RJ for young offenders

- Tradition of dealing informally with children and young people. Desire not to criminalise.
- A decision to divert from prosecution, which needs to be made by the PPS, may result in an informed warning, a restorative caution or a diversionary youth conference (administered by facilitators from the Youth Justice Agency, upon the decision of the PPS to divert).
- In 2010, of the 9,400 decisions on young offenders made by the PPS, about 35% were to prosecute, 28% were referred back to the police for a caution or informed warning and 7% were referred for a diversionary youth conference.
- There are considerable delays in the criminal justice process (Allardyce et al. 2016).
- ‘Triage’ – Youth Engagement Clinics.
Youth Conferencing in Northern Ireland
Diversionary Youth Conferencing

- Youth conferencing, both on referral from court pre-sentence and as a diversionary measure with referral from the PPS, was introduced by the Justice (Northern Ireland) Act 2002. Brings together victim, parent, offender, police and youth agency staff.

- It is voluntary on the part of victims and offenders and is available for all offences for which there is an identifiable victim (including corporate victims).

- Figures from 2014/15 Youth Justice Agency annual statistics show that there were 1,563 referrals to the Agency; 707 were court-ordered youth conferences, 661 were diversionary youth conferences, 64 were for community orders (post-sentence) and 131 were other referrals, including early intervention cases (Youth Justice Agency 2016).

- Challenges: Multiple conferences, serious offences, delays, victim participation, protecting voluntary nature of the conference, proportionality of conference plans.
RJ with Adult Offenders

- No current legislative framework for RJ in adult offender cases. Slow development.
- PBNI RJ strategy is broad, potentially included in community orders, enhanced community orders and victim work.
- Two post-court schemes administered by PBNI for victims. The Victim Information Scheme provides information to victims about an offender’s probation order. The Prisoner Release Victim Information Scheme provides information about offenders sentenced to custody. Services are provided on an ‘opt-in’ basis and in 2015/16 only 132 people registered for information.
- RJ work in prisons is rare.
Pointers in relation to the development of RJ in England & Wales

• RJ in Northern Ireland has had a unique role in political and neighbourhood relations.
• Almost all agencies are very supportive of restorative approaches and saw them expanding in the future (via the police, youth engagement clinics).
• Key leaders in Northern Ireland, including in government, the Lord Chief Justice and the Criminal Justice Inspectorate have consistently voiced their support.
• Austerity measures have thwarted funding opportunities and statutory agencies have had to focus on core duties.
• Provision is geographically patchy.
• RJ is primarily focused on young offenders (not limited to minor or first time offences) and communities and directly involves victims. But challenges remain.
Leuven Case Study

• Belgian Context
  – Complex federal/local administrative and political arrangements (and language communities)

• Domains of use:
  – Adult
  – Juvenile justice
  – Administrative sanctions

• Early developments since the 1990s.
• Period of innovation followed by more uniform phase due to legislative reforms – 2005 Act for adults & 2006 Act for juveniles.
• Consequently, restorative justice/mediation has become more routinely used for minor offences and mostly pre-court, whilst exemplary practices of mediation with serious types of crime persist, including post-sentence.
• Key role of the academic/research community in innovation in Leuven
Restorative Justice in the Police

• Police are required to inform victims of the offer of mediation according to the College of General Prosecutors and Ministry of Justice Circular.

• Police are vital first responders and gatekeepers in raising awareness among offenders and victims of the mediation ‘offer’, highlighting the possibilities and benefits of restorative justice.

• Police are subject to prosecutor oversight, but can encourage prosecutors (who make referral/diversion decisions) to use restorative justice where appropriate by highlighting this in the dossier.

• Police can also play important roles in face-to-face restorative justice encounters as representatives of the public and wider community, notably juvenile family group conferences, and as victims themselves.
Restorative Justice in the Police

• Police mediation in: Leuven
  – Consistency of personnel/approach (over a decade);
  – Scheme operates with a considerable degree of autonomy from the police and is delivered by civilian staff;
  – Benefit from its close relationship with the police, in terms of enhanced engagement.

• Police involvement in the delivery of restorative justice is seen by some prosecutors, judges and mediators to present challenges for principles of confidentiality, neutrality and voluntary participation.
  – Many feel that the police role in investigating crimes and their close relationship with the prosecutor means that they find confidentiality problematic:
  – ‘For the police, it’s not that simple … to work confidentially. He [the police officer] can write down everything he wants, he can report to the prosecutor what he wants. And I think that’s a threat to mediation.’

• There is little enthusiasm for police officers directly to deliver ‘street RJ’, whilst there is general support for problem-solving community policing.
Supportive environment

- Existence of policy ‘entrepreneurs’ and restorative justice champions who have helped implement new ideas into practice.
- Support/leadership from public prosecutors plus key senior police and judiciary.
- A sound legislative basis for restorative principles in law (Belgium/Flanders).
- A clear philosophy of restorative justice premised on defined values and principles of: voluntariness, confidentiality and neutrality.
- Widely accepted idea of restorative justice and mediation as an ‘offer’ or ‘service’ throughout various stages of conflict processing and the justice system.
- Explicit recognition and articulation that restorative justice has a role to play with more serious offences and is not restricted to minor crimes and public nuisance.
- Clear choice of various stages through the civil and criminal processes at which restorative justice can be accessed with established referral mechanisms/routes.
- High quality and well-trained mediation/restorative justice service providers:
  - Alba for youth and Mediator for adults in Flanders and Médiate in Wallonia.
- A reasonably secure level of resources to the mediation services which has increased as legislation has been introduced.
- Well-established and good quality inter-organisational partnerships.
- A supportive professional culture of organisational innovation and learning.
Leuven Case Study

Figure 1: Leuven Mediation District
BAL Bemiddelingsdienst arrondissement Leuven

- **Steering Group:**
  - City of Leuven
  - Public Prosecutor’s Office
  - Support Platform, Special Youth Care
  - Judicial Welfare, Leuven
  - Victim support
  - University of Leuven
  - Police zone of Leuven
  - Alba (juvenile mediation providers)
  - Moderator (adult mediation providers)
  - Bar of Lawyers of Leuven
  - Prisons of Leuven
  - House of Justice, Leuven

- **Restorative Mediation (Adults)**
  - **Provider:** Moderator (NGO) - 2 mediators
  - **Funder:** Regional Government

- **Mediation for Juveniles**
  - **Provider:** Alba (NGO) - 4 mediators
  - **Funder:** Regional Government

- **Prison Mediation**
  - **Provider:** Moderator (NGO) - 1 mediator
  - **Funder:** Regional Government

- **Police Mediation**
  - **Provider:** Civilian Police employee - 1 mediator
  - **Funder:** Ministry of Internal Affairs

- **GAS: Administrative Judicial Sanctions**
  - **Provider:** Civil servant employee of municipality (co-located with police)
  - **Funder:** City of Leuven
Stubbornness of change

- Relatively low take up of restorative justice – uneven/variable across judicial districts - dependent on the support of key individuals: police, prosecutors and judiciary.
- Use of restorative justice is lower than proponents/supporters expect or hope.
- Restorative justice more routinely used for minor offences and mostly pre-court, but exemplary practices of mediation with serious types of crime persist.
- Restorative justice has come to be used as an alternative to dismissing cases by the prosecutors where no further action would have occurred.
- Restorative justice increasingly used where no (direct) victims involved; forms of ‘damage mediation’ and administrative sanctions (diversion from court).
- Capacity is influencing the level of use; both the capacity of prosecutors to manage their case files and of mediation services to respond to the demand.
- Significant use of indirect mediation compared to face-to-face encounters.
- Administrative changes due to the relocation of competencies between levels of federal and local government have adversely impacted on services.
Contrasts

- Different competencies of police/prosecutors.
- Limited scope for police discretion.
- Prosecutors’ capacity and fears of giving up autonomy.
- Lengthy time of criminal process.
- Tends to be a greater reliance on professionals to facilitate restorative justice/mediation, with less involvement of trained volunteers.
- Less emphasis on managerialist performance measurement through specified goals and targets either imposed by government or from the courts/prosecutors.
- No obvious competition between service providers nor competitive tendering process which provides stability and continuity.
- Absence of a national body to oversee and guide improvements in the delivery of restorative justice and mediation and to commission research and practice guidance.
- Concerns about future political support for and funding of schemes, particularly given the lower than expected take up of restorative justice, and against a background in which political priorities are focused elsewhere.
Similarities with England & Wales

• The stubbornness of criminal justice institutional change.
  – More than one interviewee noted how the criminal justice system had remained ‘more persistent than we were thinking years ago’.

• Legal changes or formal requirements, of themselves, are not enough.
  – ‘it’s all about people and I think it’s not about a law, because we have the law now for ten years, and the law alone does not mean it is a success [in its implementation]. An restorative justice project does not depend just on the law. It’s a good structure and a basis, but to implement a law you need to have other factors...’

• The importance of embedding a culture of restorative justice.

• The pivotal role of leadership and key individual restorative justice champions.

• The challenges of establishing robust and effective referral systems and processes.

• The lack of public understanding and awareness of restorative justice.

• restorative justice requires reflection and a different mind set which is difficult to inculcate within organisational (time) constraints.

• Other priorities – do caseloads justify resources?
Further information

Stage 2 report:

Available at https://www.sheffield.ac.uk/polopoly_fs/1.714948!/file/Comparative-report-publication.pdf

*With many thanks to our international advisers from Belgium and Northern Ireland who helped facilitate our research visits and provided detailed feedback on the written report.*