

Applying a Restorative Approach within a Serious and Organised Crime Context - Can it be done safely in practice? A Case Study

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SUMMARY OF KEY FINDINGS

- There is no evidence of Restorative Approaches (RA) being used in the context of serious and organised crime (SOC) offending in the literature review. This single case study represents an effort to bridge this gap between the theory of applying RA to serious and complex criminality and its practical application, demonstrating that it is possible to undertake RA in the SOC context with similar impact in terms of offender and victim experiences to when RA is undertaken in non-SOC contexts. This case study which utilised a MAPPA-style multi-agency model increased staff and victim empathy with the offender and his situation, while enhancing the emotive impact on the offender.
- Consideration needs to be given to the participating offender in respect of risk assessments and safeguarding from other organised crime group (OCG) members as well as the usual focus on victim safety; risks to the community needs to be an integral risk assessment feature. Participating offenders need to be given the opportunity to raise concerns in relation to any perceived and real risks that may be heightened to them and their families due to their participation. There needs to be a recognition of the offender as a victim within the SOC context due to the way that offenders are recruited into OCGs. Not being able to control offenders and victims using social media platforms to talk about engaging in a restorative conference merited much debate, as sanctions cannot be applied and are not legally enforceable. Hence, some adaptations are noted to the established process when undertaking RJ in non-SOC cases.
- It becomes clear that in the SOC context, much consideration needs to be given to what is NOT known in terms of gaps in police and partner intelligence rather than a sole focus on what is known. A risk mitigation plan is necessary.
- Creativity, corporate motivation, time, resources and skilled staff are required to undertake RA in this context successfully, which raises issues in relation to upscaling the initiative. Despite the limitations inherent in deploying a single case study to test the concept from an operational perspective, this work resulted in excellent victim satisfaction and self-reported benefits for the participating offender. It signals the need for the model to be developed with bespoke risk assessment tools via further case studies including for non-fraud cases to test the applicability to other types of serious and organised criminality and for wider applicability in the SOC context.

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INTRODUCTION

This study is an attempt to bridge the gap between the theory of applying RA to SOC and the practice of actually doing so by exploring issues that are identified and applying a problem-solving model. It does this via the undertaking of a single case study, which involved one of the offender participants interviewed for a study undertaken by D'Souza and L'Hoiry (2017), who expressed consistent motivation to be considered for a RA, following his participation in the research. This paper describes the process undertaken, the model developed to facilitate the intervention and the short-term outcomes of utilising the process.

This study challenges prevailing police and partner agencies' (as well as some victims') assumptions that RA or restorative justice are not applicable to the SOC context due to the perceived and real risks which are apparent in such scenarios as well as assumptions of entrenched lifestyle-based criminality. The complexity arises from the nature of the offending, the multi-dimensional impact on numerous identified victims and the wide-ranging harm on local communities. This coupled with the practicalities of undertaking such an approach with multiple offenders in a group and typically multiple victims who may not all live in the same geographical location, due to the digital nature of some SOC offences, adds complication to the mix.

This case study has been pursued in the interests of not denying victims the choice to have a restorative intervention in line with legislative requirements and to ensure that there is equity in criminal justice service provision for both offenders and their victims.

LITERATURE REVIEW

Much literature exists in the field of restorative justice, which in itself is expanding at an exponential rate and it becomes immediately apparent that there are significant disparities between academics in respect of what constitutes RA (see Walgrave, 2008 for a discussion on the definitional discourse). A broadly accepted and enduring definition is the one adopted by the RJC in 2016². Multiple reported benefits of restorative justice for many participants include enhanced victim satisfaction (Shapland et al, 2011), reduced recidivism (Umbreit et al, 1997) and cost-effectiveness (compared with the costs of reconviction) in Shapland et al's (2011) study. In addition, there is indeed no academic consensus on what constitutes serious criminality, organised criminality and serious and organised criminality (see Verese, 2017 for a discussion on definitional issues).

The Serious Crime Act (2015: 39) describes organised crime as three or more persons who act or agree to act together for the purposes of carrying out criminal activities. The Home Office Serious and Organised Crime Strategy (2013) describes organised crime as serious crime (inclusive of bribery, corruption and violence) which is planned, co-ordinated and executed by criminals working together on a continuing basis.

Restorative justice has, in recent decades, been increasingly applied to new and challenging contexts such as serious violence and homicide (see Hudson, 2002) against the backdrop of central imperatives to increase the use of this disposal (Collins, 2015:129). However, there is no evidence in the literature that practice has extended to serious and organised crime, which is claimed to have a pervasive impact on local communities as a result of the activities of career offenders, at significant risk of re-offending, as detailed in the Home Office's Serious and Organised Crime Strategy (2013). The National Strategic

² RJ is defined by the Restorative Justice Council as bringing 'those harmed by crime or conflict and those responsible for the harm into communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way forward' (RJC 2016).

Assessment of Serious and Organised Crime 2018 undertaken by NCA states that SOC has a “daily impact on the UK’s public services, institutions, national reputation and infrastructure.” (2018:8). D’Souza and L’Hoiry’s (2017) is the first perception study gathering the views of offenders, victims and experts, and while broad enthusiasm for the idea was expressed across all three stakeholder groups, they detail the potential reasons why there may be some reticence about applying RA to SOC: complex victimology, safeguarding issues, specialist training implications and professional “nervousness” (p6) related to this innovation when applied in practice.

THE ORGANISED CRIME GROUP, THE OFFENDER AND THE VICTIMS

The case study involved an OCG who contacted (mostly elderly) victims by telephone, telling them that they were a bank employee and that there was an immediate risk of fraud to their accounts, requiring them to move their funds to a “safe account”. Fraudulently obtained funds were then routed through numerous accounts before being withdrawn as cash. Sophistication, planning and coordination were evident.

The participating offender (in his 20s, a student and of Asian origin) was serving a 2-3 year sentence for money laundering with a history of OCG involvement. He had been targeted by others within the established OCG prior to progressing to becoming a recruiter himself, targeting other students from “back home”.

Victims were distributed throughout the UK and all 8 of them were contacted, the age-range being from the mid-50s – late 80s, with almost £200K being stolen between the 8 victims. Three victims elected to take part, with the remainder citing time restraints, the considerable distance from where they lived to attend the RA, and it being too long since their experience to make this an attractive offer now.

METHODS/PROCESS FOLLOWED

In order to progress meeting the offender’s request to take part in the RA with his victims, intelligence was gathered on the offender, the other members of the organised crime group and their modus operandi from the North East Regional Specialist Operations Unit (NERSOU). Information related to the victims was also gathered, with particular attention paid to the specific vulnerabilities in order to inform subsequent risk assessments. A multi-agency multi-disciplinary team of professional volunteers was brought together (mirroring MAPPA models) with police, prison staff, probation staff, accredited RJ facilitators, OCG experts, the victim support agency and the lead Investigative Officer in attendance. At this forum, the above gathered information was shared with each agency, who in turn brought data from their respective agency’s databases. As a result, several gaps in knowledge emerged, which would impact on the risk assessment and the interventions which could be considered, e.g., the nature of the threats to the offender’s family who lived abroad, and the activities of the remaining OCG members and specifically of a co-defendant who was also serving a prison sentence at the time of the intervention.

The risk assessment discussion centred around the prospects of reprisals from other OCG members towards the participating offender, particularly if he was seen to be “helping police with their enquiries”, the potential use of firearms/violence which were used by some OCG members being utilised against the participating offender and his family and also the potential for the participating offender to use this intervention to gather intelligence on victims in order to facilitate further offending by others. It was decided that the over-riding principle which would guide any actions

undertaken in this case was a “duty of care” towards all participants, with professionals exercising their professional judgement and discretion.

Two facilitators undertook assessments (independently of each other) in relation to eligibility and suitability to participate in the RA in order to increase reliability. It was confirmed that the offender did not wish to bring a supporter to the event and that he knew that his participation would not earn him any enhanced privileges within the prison or support any appeals made to remain in the UK.

A somewhat cautious staged approach was adopted, owned by the multi-agency team, whereby in the first instance, it was decided that engagement would be between the offender and a corporate body such as a bank representing the victim perspective. This would afford the professionals more information on which to make informed decisions/revised assessments and potentially lead to a follow-up with actual victims, as the second stage. Approaches made to banking organisations, including the National Money Laundering Forum through the British Bankers Association proved fruitless and made it necessary for the team to consider designing a more bespoke innovative approach. A civilian police staff member who worked as a financial fraud investigator and was a former bank employee represented the corporate victim in the RA conference held at the prison. The RA event was videotaped, featuring the restorative conversation between the offender and the proxy victim. It was important to capture this conversation as this is the recording which was subsequently offered to victims for viewing.

A non-participating probation officer who was qualified as an accredited programmes supervisor and a member of the multi-agency team well-versed in giving staff feedback on performance post-event was also in attendance. Following an initial debrief (to ensure emotional wellbeing for the staff concerned), both written and verbal feedback was given by the probation officer to the two accredited facilitators. This ensured that good practice guidelines were followed and that a process was put in place which would stand up to scrutiny in relation to parity with what usually happened when restorative practices are undertaken. Follow-up support needs for the offender were also assessed by the supervising prison officer, post-event. A “lessons learned” event was followed by the reconvening of the multi-agency group and it was decided to progress to the second stage.

Victims who had been assessed by phone in relation to their voluntary consent, vulnerability and ability to engage (distance from the local area) were contacted by the researcher (all declined the offer of bringing a supporter) and a form of shuttle mediation took place with all three victims on an individual basis who attended to watch the videotape of the RJ event. Each victim was shown the videotape by the accredited facilitators.

A face-to-face evaluation was undertaken by the researcher with the offender 7 weeks after the event where comments made by victims were relayed to the offender and a telephone-based evaluation took place with each victim 3 weeks after the event.

FINDINGS

Experience of the Offender/Harmer

The offender found engaging in the RA intervention a highly emotive experience and was pleased to have taken part, with expressed hopes being that by engaging he would build up his confidence, stop offending and seek victim forgiveness:

“I hope that the video [of his RA event] helps victims – I want them to know that not only they suffered – I suffered too – but I deserved it – they didn’t deserve it. They will see my apology through that video.”

Some minimisation of his actions were apparent where he sometimes portrayed himself as the victim who had been recruited by other OCG members at a time when he was vulnerable:

“I knew I was doing something wrong, but I was smoking weed, was far away from home, fell out with my dad.”

Experience of the Victims/Harmed

All three participating victims were highly motivated to engage and travelled significant distances to take part in this initiative.

Victim 1: (in her 60s) described feelings of relief and closure, knowing that she had not been personally targeted but randomly selected for the fraud.

Victim 2 (in her 70s) stated that taking part has “helped to put the whole situation into perspective” and that she had found closure, but would wish to meet the offender face-to-face (this did not happen as the offender was subject to deportation proceedings).

Victim 3: (in her 80s) described her experience as an “uplifting experience”, expressing that she felt a sense of “real compassion” for the offender: She went on to report that “Just seeing his face and hearing his voice – he was still blame-worthy, but one could see that there were extenuating circumstances...”

Views of Staff Involved

All staff involved stated that they felt it had been a worthwhile experience with clear benefits for offenders and victims, while heightening their understanding of the offender as a victim. The Investigating Officer who had been extremely reticent at the prospects of the actual victims taking part in any shuttle mediation or RA interventions reported being very surprised at the “powerful” impact on the offender and his victims.

CONCLUSIONS

There are no previous published examples of RA being applied to the SOC context, as far as the author is aware, with this case study being the first published example of a practical application demonstrating how RA can be used in an imaginative and safe way in such a context. The study challenges (a) police and partner assumptions that this approach should not be tried in the SOC context as it is too risky, and that those risks cannot be safely mitigated or managed; (b) the prevailing public assumption that RA cannot apply to adults and to entrenched criminality, particularly if it is perceived that the criminality manifests itself as part of a sophisticated networked business.

Several limitations to utilising the single case study is noted: it is difficult to apply the learning here to other OCG cases, particularly for non-fraud cases/other offence types; no actual face-to-face conferencing took place between the offender and his actual victims; neither recidivism, long-term impact on victim satisfaction nor cost-benefits have been measured. All of these point to the need for further research. This has implications for upscaling on such an initiative on a nationwide basis, particularly as any model which has been developed will need professionals to engage on a voluntary basis, as there is no current legislative mandate for professionals across the partnership landscape to engage. More case studies need to be undertaken to develop this model and also consider the consequences of undertaking face-to-face RJ conferencing where appropriate. It will also be necessary to consider RJ in non-fraud cases to examine how the interventions could be undertaken. This may represent a significant step in realising the government's ambition to ensure that all victims (in line with the Victims Code, 2015) are afforded the opportunity to participate in a restorative intervention.

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