Written evidence from the Howard League for Penal Reform

About the Howard League and introduction

The Howard League for Penal Reform is the oldest penal reform charity in the world. We conduct and commission original research, review policy and practice across the penal system and, through our legal team, represent children and young adults in custody. We work towards less crime, safer communities and fewer people in prison. For more information about the Howard League please visit www.howardleague.org.

The Howard League welcomes the opportunity to submit evidence to the Justice Committee’s inquiry into restorative justice.

Our submission discusses the concepts underpinning restorative justice and suggests that the Committee considers talking about restorative approaches rather than restorative justice. We also outline our concerns about the implications of Transforming Rehabilitation for the delivery of restorative justice and the benefits of using restorative approaches for serious offences.

Restorative approaches

The Howard League for Penal Reform suggests that the concept of restorative approaches may be more helpful than the traditional term of restorative justice.

There is often confusion surrounding what restorative justice actually means and entails in practice. There are a number of unhelpful ideas that underpin the concept of restorative justice:

i) There is an implicit assumption that restorative justice is a tool of punishment and judgement for the person who has committed the offence, rather than a method of problem solving and reciprocal agreement between the people involved.

ii) The terminology associated with restorative justice can be mechanistic, emphasising an interaction which ‘delivers justice’ rather than an ongoing, mutual process between people.

iii) Restorative justice is predicated on the notion that the victim is the sole person who has experienced harm rather than analysing the often complex reasons why a person has committed an offence and the past harms they may have suffered.

In contrast, ‘restorative approaches’ is a more helpful term:

i) It suggests a deeper engagement with the process as it emphasises an attitude of engagement rather than simply the delivery of justice.

ii) Restorative approaches can be immediate, quick and non-judgemental in the right context. They can be used to help stem the flow of people into the criminal justice system by resolving low level offences and disputes in an informal manner before they escalate. An example of this is the police dealing with a low-level offence on the spot which promotes meaningful engagement and forgiveness, satisfies the victim and avoids needlessly criminalising the person who has committed the offence.

Transforming Rehabilitation (TR)

Restorative approaches are the most researched but least used responses to law-breaking. The Howard League is concerned that the new landscape of TR is not conducive to the provision of effective restorative approaches and could limit them further for the following reasons:
i) Fragmentation: Under TR the probation system has become fragmented as the system has been split and the new Community Rehabilitation Companies (CRCs), who are responsible for managing those classed as low and medium risk, are still bedding in. We have heard that who has responsibility for restorative justice varies from area to area so in some areas it's the CRCs and in others the NPS. The effective practise of restorative justice relies on strong cross-organisational collaboration. The Howard League is concerned that these key relationships have broken down as staff who used to work together have been divided into the private sector (CRCs) and the public sector (NPS).

ii) Financial: In some cases a restorative approach will take many months and may not always be the cheapest option. Some restorative approaches can be protracted and highly work-intensive. This requires suitably trained and qualified facilitators to lead restorative justice conferences and support and prepare the people taking part. There is a danger that CRCs will not commission this work because of the cost involved, especially when they are working to tight budgets and trying to make a profit. There is also the concern that restorative justice could become a tick-box exercise where CRCs overuse a basic restorative approach without careful consideration about whether it is appropriate in each individual case.

Serious offences

It is often assumed that restorative approaches are only appropriate for less serious offenses. Research shows that restorative approaches can be used effectively for people who have committed serious offences. Research undertaken by Professor Joanna Shapland, for example shows that restorative justice conferences are most beneficial for victims of more serious offences.

There are organisations that facilitate restorative justice conferences for serious offences. For a decade the Howard League has been supporting community and statutory organisations and the police in developing excellence and success. The charity’s annual Community Awards celebrate and showcase best practice. Remedi is an organisation working with serious offenders in Yorkshire and the Midlands.

Case study from Remedi

Background

A group of women were fighting outside a pub when Alan approached and attempted to calm down the situation. However, Duncan (husband of one of the woman fighting) also intervened and struck out at him with the handle of a pick-axe fracturing his skull and killing him. As a result Duncan was charged with murder but convicted of manslaughter.

Offender

Duncan told facilitators that he had arrived at the scene of the altercation having believed his wife and child were at risk and being attacked. Duncan said he just lashed out and had not intended to kill this man but was just doing what he thought was necessary in order to protect his family. With hindsight, Duncan realised that Alan was trying to break up the fight.

Victim

Kerry, the daughter of the victim was referred to the service by a Family Liaison Officer after she expressed a strong interest in meeting the man who killed her father. Kerry’s main reason for
taking part in a restorative process was to have the opportunity to express her sadness at losing her father. More than a year on from the offence she no longer felt a great deal of anger towards the offender, but was keen to get an opportunity to speak to him. Kerry felt she could benefit from meeting the perpetrator, as it would allow her to tell him how the crime had affected her family with a view to being able to put the incident behind her.

Process

Due to the sensitive nature of the case, the facilitators spent a great deal of time making preparations to bring both parties together. Several meetings were held with Duncan and Kerry separately. At all stages, the facilitators were aware that there would be many strong emotions between the parties. For that reason, ground rules were discussed and it was emphasised that respect must be adhered to through listening to what the other had to say during their uninterrupted time. The facilitators reinforced that if at any point either Duncan or Kerry felt uncomfortable, upset or the meeting just got too much for them, then they could take a time out.

Outcome

Both Duncan and Kerry expressed satisfaction with how the meeting had taken place. In fact Kerry’s overall reflection about the meeting was extremely positive. She fed back the following comments:

“With your help I have been able to gain a sense of closure to something that will always be the darkest time of my life. Whilst you have remained impartial and professional at all times you have done so in such a sensitive reassuring manner- a balance what most cannot reach”

Although all involved considered it a difficult meeting, the victim had the opportunity to find out answers to questions that she wanted which could help her find closure after a long and difficult period. Likewise, the offender had the chance to reflect on what had happened, explain his actions and apologise.

All too often we see traditional criminal justice processes which do not allow for resolution and transformation for either victims or offenders. Victims find traditional justice Byzantine, exasperating and upsetting. Too often politicians claim to be supporting victims by ratcheting up punishments but that is not what the evidence shows victims of crime really want. Research from the Commissioner for Victims and Witnesses in England and Wales found that, ‘on the whole, victims were not simply calling for tougher sentences and greater use of imprisonment.’ In these circumstances there is a clear danger of victims being exploited for simplistic combative party-political point-scoring when a more rational and evidence-based discourse could result in better outcomes, healing processes and cheaper interventions.

The Howard League would be happy to provide the committee with any further information to assist with its inquiry and to provide oral evidence.

References


Case studies from Remedi can be found at [https://remedisays.files.wordpress.com/2015/11/case-studies-master.pdf](https://remedisays.files.wordpress.com/2015/11/case-studies-master.pdf)


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