

Why is good restorative practice difficult to implement within referral orders and community based sanctions?

Introduction

Good afternoon, my name is Catherine Nicholson. I am a referral order community panel member with Lambeth Youth Offending Team. I trained three years ago as referral orders were first introduced to the Youth Justice System in April 2002. Could anyone who works for a YOT or with young offenders please raise their hand?

In this session I would like to start with the background to referral orders, describe some of the difficulties that we have found in achieving good practice, share ideas for change, leaving the last part of the session for discussion.

For those of you unfamiliar with the Youth Justice System a referral order is the primary disposal for young offenders pleading guilty and being convicted for the first time. The court will determine the length of the order depending on the seriousness of the offence. An order may last between 3- 12 months. Referral orders may be made for an enormous range of offences – from traffic to assault and burglary.

The referral order was the flagship of the 1998 reforms to the Youth Justice System. It was designed around restorative justice principles

Responsibility

Reparation

Reintegration

The order differs from other non-custodial alternatives in that a contract including reparation and interventions is drawn up between the offender and the panel, which comprises trained community volunteers and a YOT officer. Ideally where

appropriate a panel should also include the victim and their supporters, but more on this later.

The process is structured so that the young person should not feel that they are entering the courtroom for the second time. The aim is to work with the young person and their supporters.

The panel should aim;

To prevent further offending

To provide a forum for the young person, the family and the victim of the offence to consider the circumstances leading to the offending behaviour and for the young person to examine the effect of their crime upon the victim.

To agree a contract with the young person involving reparation and interventions as appropriate to the individual cases.

The case is supervised by a referral order officer. The panel is required to reconvene at various points for the duration of the order to review the young person's progress.

On completion of the order the young person has a spent conviction.

Lambeth YOT serves a multicultural inner-city population.

The referral order team currently comprises

A referral order practice co-ordinator

3 Permanent officers in post, with 2 to be recruited by December. 35 hr week, average case load 22

1 Reparation co-ordinator – new position, responsible for all reparation across the YOT, volunteer supervision, supervision of schemes and young offenders on reparation orders.

1 victim-liaison officer, not dedicated to referral orders, in post since September 2005.

40 panel members of whom about 15 are active

On average there are 110 active orders, with 45 referral orders being made per quarter. Officers currently have 35 active cases each. This will be reduced with the recruitment of two new officers. However the demands on the officer are currently totally unrealistic.

Before we look at some of the difficulties in integrating restorative practices into the referral order process, I would like to emphasise what we can do extremely well.

Interventions

As mentioned earlier interventions – for the rehabilitation and reintegration of the young person are a core part of their contract. Interventions may include referrals to EWOs, drugs and alcohol awareness training, life skills projects and extensive work with officers on victim empathy, consequential thinking and anger management where appropriate. It is evident from the outcomes – re-offending rates in particular, that interventions are well delivered, but this alone is not restorative justice.

Barriers to restorative justice in referral orders

On paper the referral order provides the perfect setting for initiating restorative practices, in reality there are some fundamental barriers. I would like to look at eight key issues, my concern being that these barriers may and often do undermine an extremely valid process.

Admission of guilt

To be sentenced with a referral order a young person must plead guilty in court to the offence.

There are two principle reasons for a young person to plead guilty;

1. He/she is, accepts and acknowledges this, - the young person may become a perfect candidate for restorative justice interventions.
2. He/she was advised to plead guilty by a barrister/solicitor in order to gain a reduced sentence or a spent conviction, and this link or collusion exists. The young person may not accept responsibility however, for the offence.

Getting young people to accept responsibility for their actions can be tough.

Responsibility remains core to the restorative justice process and while it may be possible to activate appropriate interventions from this position, engaging a young offender in suitable reparation and victim- empathy work becomes awkward. Last month at panel with a female convicted of assault, when examining the offence she indicated that she had been advised to plead guilty to the charge in order to gain a spent conviction. She took no responsibility for her action, believed she was provoked and at that stage had no remorse.

This is not the position from which to actively encourage victims of crime to enter the process, and an acceptable level of victim satisfaction will not be achieved.

Appropriate Sentencing

1. Referral orders are a tier 1 intervention. All young people pleading guilty to a first offence will receive a referral order or custody. It is mandatory for the court to sentence so.

Because the outcome of the court process is predictable, the offender's concern becomes the length of their order alone. They will receive a referral order. The only exception being when a case is sufficiently severe that the Court will consider all sentencing options. I am not sure that this certainty is the best way to engage all young people in the referral order process; we need to avoid a system which may encourage any cynicism in the court or justice process.

2. We are relying on one intervention to cover a wide range of offences. Murder is level 8 on ASSET. Level 6 offences, (Robbery, Attempted Robbery and Burglary – non-dwelling) made up 26% of the orders received by Lambeth in the last quarter. At the other end of the tariff level 2 offences made up 35% of orders received. My three most recent panels have involved assault, driving with no insurance and assault when challenged with fare evasion. It is recognised that restorative justice principles are more effective the more serious the offence. It is hard to incorporate restorative justice into a number of minor traffic offences or possession of drugs for personal use where there is no direct victim. It is not easy to set an appropriately restorative contract for these offences, reparation needs to be meaningful, and it will entail a high demand on resources.

3. Length of sentencing is frequently a barrier to engaging a young offender within the process. Three month orders do not allow panels or YOTs much time to work with young people. A young offender will see their supervising officer once every two weeks for the first half of their order and once a month for the second half of the order. So on a six month order there will be 9 meetings with a supervising officer. Occasionally reparation becomes

unattainable because the sentence is technically spent before the young person has an opportunity to take up a suitable placement. As reparation is key to the restorative justice triangle this is already breaking the framework; again it will not help levels of victim satisfaction or confidence in the process should they be receiving feedback. Many of the young people sentenced to referral orders have complex personal and social issues requiring a multi-agency approach – again this takes time!

4. The Court may make compensation orders alongside referral orders, however compensation orders do not tend to sit well with reparation; in some cases it may detract from it and be seen perceived as a double punishment. Compensation orders were made in 13% referral orders nationally. Most importantly compensation orders are not spent convictions for 2.5 years after, so the benefit of the referral order and an automatically spent conviction on completion is negated.

Making victims real

To make victims real there are two key issues; timeframes and contact procedures.

Time frames and the challenges they present

To understand the enormous challenges that timing presents we need to look at the process.

1. The order is made at court
2. The referral order officer is allocated to the case within 1 day of the order being made.

3. The referral order officer meets the young person within 5 days of the order being made. **Leaving 15 days to compile the report and make victim contact.**
4. **Referral to a victim liaison officer will not take place until after the order is received by the YOT. There is also delay in receiving orders made out of borough, a number are, but the YJB timeframe remains in place.**
5. **The initial panel meeting is held within 20 working days.**
6. **On a contract being agreed the case is allocated to a YOT officer who will oversee implementation of the agreement and maintain supervisory contact with the young person. An initial meeting must be made with the young person within 5 days.**

To maximise on impact and effect it is preferable that a victim's concerns may be raised at the initial panel, and a contract drawn up to reflect these at this stage.

Here we are presented with a dilemma in balancing both the needs of the young offender and their victim. There is a subtle irony in the YJBs statutory requirement that the young offender must attend panel within 20 working days of the order being made. The benefits to the young person are important; momentum is maintained, impact and conclusion of the justice process are swiftly reached.

However there is insufficient time in reality for the victim liaison officer to make the appropriate contact with victims, offenders and their supporters in cases where a conference would be appropriate to the referral order panel. It is unfortunate that in an order designed to promote restorative justice it is generally unrealistic to use

one of the most effective restorative justice tools because legislative guidelines do not permit.

Restorative justice needs to make victims real. The pressure on the victim liaison officers case load conflicts with the YOT officer's obligation to convene a panel. Appropriate and informative contact with a victim and their supporters and an offender and their supporters feels impossible at this stage. As a result victim contact never mind full restorative justice conferencing is virtually unheard of. Is a scheme not involving the victim at any stage effective restorative justice?

In the 100 + panels that I have sat on, there has only been an victim present in two cases. The impact of the victim's presence in both cases was enormous. A young person who had been stealing credit card slips to order was visibly distraught when she understood the effect that her sudden departure had had from the restaurant team that she was working with. Aspects of the offence that panel members would have no information on were raised; the meeting effectively illustrated the wide consequences of the young person's action; hearing from her former employer was more effective than anything that the panel members could have said.

Issues concerning victim contact

The Youth Justice Board aims for victim contact in 80% cases. Arguably it should be higher for referral orders. However not all cases are suitable and we clearly need to avoid prolonged engagement with a victim who considers it to be a big fuss over a minor offence.

On account of the data protection act all victim contact work must be carried out initially by a police victim liaison officer. This can have ramifications, putting up negative barriers to getting some victims and their supporters to panel. It would be helpful to look at alternative approaches to victim contact, using other support agencies once the initial victim contact has been appropriately made.

Most youth crime is conducted against other young people. It is apparent that some of the young victims of crime may also themselves have had contact with the justice system. Thus the victim may unwittingly provide a barrier to restorative justice through their on-going concerns about repercussions. Several reparation officers also had concern about the YOT as a suitable venue for an initial meeting to encourage victim's attendance at panel.

There is a clear need to develop a more imaginative approach to gaining victim's attendance at panel. The time allowances make it extremely unlikely that we will have a victim at the initial panel so perhaps we should consider victim-offender conferencing at a later stage in the order? (Using specialist facilitators to run the conferencing). The panel then has the authority to revoke and redraft a contract should restorative opportunities be offered. This would work best on longer orders but we need to consider any possibility of engaging the offender and the victim.

Holding conferencing away from panel is more sensitive to the offender's interests. This problem of victim contact is not specific to Lambeth but exists within the YOTs that I have had contact with. Another inner city YOT states that the restorative work that they successfully conduct takes place outside the panel process and usually after the order has been completed.

In the last quarter Lambeth received 54 new referral orders. Clearly not all offences would be suitable for restorative justice conferencing, on average it takes 18 hours to fully prepare individuals for a conference. This is a heavy demand on the victim liaison officer bearing in mind the case load, and it is unrealistic with these timeframes, to expect extensive victim contact prior to a first panel meeting. Victim representation in the panel process is essential, whatever forms the contact and engagement may take. If the victim, young offender and relevant professionals deem a restorative conference the appropriate way to progress there are not panel members who are suitably trained as facilitators. It is imperative that the victim does not participate in a poorly run panel conference; likewise panel members are not always prepared to incorporate a facilitator role. There is a marked difference between the two positions. The Youth Justice Board training for both restorative justice theories and communication skills is inadequate, but it is all that panellists are equipped with. There is a need to increase the training in restorative work with victims and offenders; recognising that one party has harmed the other, the wider community and often themselves.

Effective Reparation

Effective reparation is not community service; it must also re-address the balance with the victim

Referral orders are first tier interventions and by design heavily community based. Reparation is a statutory requirement within a referral order contract. Excluding

reparation orders, it is significant that reparation is not a statutory requirement in any other order in the Youth Justice System although the Youth Justice Board aims to incorporate reparation in 80% of sentences.

To improve reparation to the community, it would be beneficial if it were considered a main stream criminal justice system response to crime. The government states that it wishes that all offenders make some form of reparation for their crime where suitable and appropriate. For this to work the scope of schemes needs to be increased, to meet local community needs and the outcomes need to be highly visible to the local community. There are some highly successful long running projects within Lambeth for example the Cycle project where young people recondition bicycles which are then sold through charity shops, however the YOT is not the only user of all the projects available to us. A number of other youth organisations also send participants so the emphasis is not directed at the offence or reparation exclusively.

As a panellist your primary concern is to stipulate a meaningful reparation project for the young person; there are difficulties in achieving this because;

Places on meaningful projects are limited, there is little control over availability, and many projects are seasonal, so allocation becomes fraught.

Reparation schemes must be recognised by the victim for their appropriateness, where views are held; schemes should at least put back into the victim's community. Many of the schemes currently available in Lambeth are biased towards the offender, and present as something closer to an intervention. Whether a young offender is asked to carry out direct or indirect reparation there needs to be a focus on the victim and the community as a whole. The victim-focus remains stronger within interventions than in the reparation schemes available.

There is an issue over what qualifies as reparation. For example letters of apology written to the victim are a powerful tool in the restorative process, however they are not considered to be reparation if they are not sent. So in this vein a young person may undertake a reparation project, and using computer graphics produce a great piece of art concerning the offence but with no real victim content. This satisfies the YJBs qualifications for suitable reparation, whereas a letter of apology which remains unsent does not.

From the young offenders perspective any reparation must be meaningful and ideally provide a work or educative experience. So there is a delicacy in matching young offenders to suitable placements. Health and safety guidelines and appropriate supervision must be maintained. Reparation is resource intensive and expensive, but there must be a sufficient number of suitable places on schemes available at any one time. In the past young offenders have failed to undertake any reparation because the placement has not been available within the length of the order.

If reparation is to retain its value there needs to be a greater emphasis on its significance within orders; from a practical and resource perspective there needs to be a review of programmes available, if only because there are a significantly higher number of young people being given referral orders in Lambeth than was ever anticipated.

Perceptions of Reparation

I surveyed a number of young offenders on referral orders during the past 3 months to find out about their views on reparation; - the results were interesting.

Following interview with their supervising officer and an initial panel, young people were asked;

Why were you asked to carry out reparation?

In 80% responses the young person was “not sure”

There was clear concern by some young people about the purpose of their specified reparation and what it had to do with their offence.

Several responses suggest that the reparation is perceived to be a punishment and linked to their offence. There was rarely a connection being made between reparation and the victim of the offence or re-addressing the balance to the wider community. In 25% of responses a definite link was made between reparation and restorative justice.

How many hours reparation were you asked to complete?

Only 25% of responses were unsure of the hours specified at panel, however of those who gave their requirement some were wildly inaccurate. On a three month order one young person was expecting to do 90 hours of reparation

How are you going to complete these hours?

By just doing them was the standard response

So what is the best way to raise awareness of reparation by offenders?

Does reparation really re-address the balance, or is it still just community service?

Awareness of the Restorative Justice Process

Many of the barriers to implementing good restorative practice have the same origin, a lack of a co-ordinated approach to the principles.

If restorative justice is to remain at the heart of strategy for the criminal justice system, an improvement in communication needs to be made.

Restorative Justice and reparation are frequently confused, as are reparation and interventions. Clear definitions need to be made. The public needs a greater awareness of restorative justice principles and the aim to empower communities to find solutions to crime and anti-social behaviour. There is a lack of confidence (from practitioners as well as the public), about what restorative justice may be expected to achieve.

YOT officers and panellists from the Lambeth Referral order team were surveyed about their understanding of restorative practice and how they used best practice within a panel setting.

Survey information and conclusions

1. What is your understanding of Restorative Justice?

In 80% of responses the answer was text book perfect an encouraging start.

2. Do you use restorative practices at panel?

90% said they were, although limited by what they could achieve with no victim contact, and the process remains offence focused.

3. Do young people understand why they undertake reparation in the community?

60% of responses indicate that the yp neither understands nor possibly cares about why they have been asked to undertake reparation. No response indicated that young people regularly demonstrated an understanding of what they had been asked to achieve. It was also suggested that young people felt it was an attempt to embarrass them and reparation was perceived to be punishment.

4. What are the main issues faced by panel members?

A limited choice of appropriate reparation placements

The lack of victim contact or impact statements

Communication of the restorative justice process to young people

Working together as panel members and flexibility in approach

Appropriate questioning of the young person

Communication and training across organisations

Restorative Justice in the criminal justice system should support restorative approaches in wider society. It is being delivered by a combination of criminal justice and voluntary sector agencies for referral orders. The multi-agency approach is obligatory, but there is a need for co-ordinated targets and improved communications if we are to deliver a meaningful service to the victims and for young offenders to genuinely grasp the impact of their actions on others.

Standardised training in restorative justice for all practitioners would be beneficial, volunteers would benefit from an accreditation system and regular updates on best practice, the youth justice system and any relevant statistics in a drive to improve service.

Resources

Good practice is labour intensive. It introduces the victim to the criminal justice system and generates a work stream that did not exist previously. Although victim liaison work and victim support agencies are not new concepts in the youth justice system, the introduction of Referral orders has put a requirement on staffing that had not been anticipated.

Lambeth has had a dedicated victim liaison officer in post since September this year.

Managing an individual within the criminal justice system requires a multi-agency approach. Referral orders require professional YOT staff, case workers, reparation co-ordinators, victim liaison officers, community volunteers and reparation scheme staff. The process is labour intensive and may only be for 12 weeks. The system can only work if there are enough permanent staff in place, with realistic case loads, to operate efficiently.

There is not currently enough victim contact being made or communicated back to the panel to really effect good restorative practice. The need for a well resourced, co-ordinated approach lies at the heart of this.

To conclude I would like to look at five things that I would consider changing or implementing.

1. If victims are to be made real within this process, the timeframe required by the Youth Justice Board will always impede any contact that may be made. Therefore we need to increase the number of victim liaison officers available to make contacts within the 20 day period. Restorative practices have the ability to strengthen the impact of a referral order for the first time offender,

but it is apparent that restorative practices are not being implemented because there is negligible victim contact, we desperately need to improve this to make victims real. The feedback that I have from other YOTs echoes the same issues, so I am quite confident that these problems stem in part from the structure and timeframe of the order. A Youth Justice Board review of the order in view of the low level of victim contact is also required.

2. Accepting that victim participation is currently less than satisfactory it may be interesting to explore the possibility of developing business panels ie. representatives of retailers who were suitably trained in restorative justice principles and prepared to be involved in the panel process and emphasise the issues that they face with shoplifting. They may not be the direct victim but the impact they can provide is worth considering.
3. A review of sentencing is needed to assess whether low tariff offences with no direct victims are to be best served by referral orders. On average 35% of the orders received are for level 2 offences, possession of class c drug, public order/trespass, no insurance/traffic. Restorative practices are resource intensive and at this stage it would make sense to concentrate on the offences of higher gravity as referral orders and review the sentencing options available to courts for the short orders.
4. In part due to the high volume of orders which was never anticipated there is a need to review the reparation schemes available to ensure that there is a sufficient range of relevant projects; this is essential for the shorter orders. Schemes must be sufficiently victim and community focused, we do not need victim concern that the project is simply an intervention. Essentially young people must

5. results that I have clearly indicate that they do not.
6. Communication about restorative practices needs to be improved across the YOT. There is an urgent need to raise awareness and understanding of expectations. Restorative practices should be breaking down barriers not creating them. Communication is key to this because we are not operating with the same effectiveness that restorative practices have in schools or mediation projects. There is a need to improve delivery across the YOT, clearly starting with referral orders if we are to make use of these principles where they are most needed.

Thank you – are there any questions?

Questions

1. Are these the right barriers?
2. Assuming so, what can be done to overcome barriers?
3. How do you encourage victim participation in the process?