

Independent commission on youth crime and antisocial behaviour: consultation paper 2009

http://www.youthcrimecommission.org.uk/attachments/075_Youth%20Crime%20Commission%20Consultation.pdf

Response by Dr Martin Wright¹

Prevention and early intervention

1. The consultative document rightly begins with prevention, and it is important to recognise that the majority of pressures towards crime relate to social factors outside the criminal justice system. It is also arguable that measures to combat these forms of deprivation (such as poverty, inadequate housing and schools, and so on) should be taken for reasons of social justice, not merely because of their potential for crime reduction.

2. As regards influencing individuals towards acceptable behaviour, schools are the obvious place for the first intervention. This need not be yet another addition to the overloaded curriculum, but can be integrated into the whole ethos of the school, as has been shown for example in Collingwood Primary School, Hull, where the use of restorative discipline enabled the school to move from 'special measures' to a first rate Ofsted report in two years².

3. It is worth noting that this approach is applied to the whole school, and therefore involves no targeting, with the risk of labelling children as 'problems'.

Responses outside the youth justice system

4. Involvement in the youth justice system is itself a form of labelling, as was shown by West and Farrington's Cambridge Study of Delinquent Development, and it is therefore suggested that responses outside the youth justice system should be the 'default' measure. In a school which uses restorative discipline, for example, acts of bullying which could be classed as crimes can generally be dealt with through procedures such as mediation and conferencing. When an action takes place outside the school context, it may still be appropriate to deal with it as a dispute which can be resolved through mediation. In such cases it is not uncommon for both parties to be to blame in some way, for example when a child who has been bullied strikes the bully, and it is therefore inappropriate to criminalize one of them.

Youth justice responses to children and young people who commit crime:

5. Legislation states as if it were axiomatic that one of the aims of sentencing is punishment. Several other aims are listed in the Criminal Justice Act 2003: reduction of crime, reform of offenders, protection of the public and making reparation. The consultative document says that 'In practice, court-ordered sanctions give prominence

¹ For credentials please see last page

² Mirsky, L. 'Hull, UK: towards a restorative city.

www.safersanerschools.org/library/hull09.html. For more on restorative discipline, see Claassen, R and R. *Discipline that restores: strategies to create respect, cooperation, and responsibility in the classroom*. Fresno, California: Centre for Peacemaking and Conflict Studies, 2008.

to one or more of these underlying principles in different contexts' (p. 25). It does not recognise that they are often incompatible with each other. The tougher the punishment, the more difficult will be rehabilitation or reparation, and vice versa. the greater the emphasis on rehabilitation, the less punitive the regime. Restorative justice works on a different psychological principle: it does not inflict pain for its own sake, but leads the offender towards the painful realization of the harm caused to another human being and the satisfaction of achievement. Of course it doesn't always 'work', but neither does punishment.

6. It should be recognised that punishment has in fact only limited effectiveness and many unwanted side-effects³. In New Zealand, the Sentencing Act 2002, sec. 7(1), states that the purposes of sentencing (summarized) are:

- (a) to hold the offender accountable for harm done;
- (b) to promote in the offender a sense of responsibility for, and an acknowledgement of, that harm;
- (c) to provide for the interests of the victim;
- (d) to provide reparation for the harm.⁴

Punishment is not mentioned. Punishment only tells people what not to do, and makes them think of themselves; restorative measures show them what constructive actions they are capable of, and encourage them to think of the effect of their actions on others.

7. The consultative paper rightly stresses the importance of avoiding any intervention with children, young people and families that could cause them stigma or harm. Restorative justice gives them something to be proud of. If any labelling takes place, it is as a young person who has acknowledged the harm he caused and has made amends for it, including facing the victim where appropriate.

Diversion

8. It is proposed that the guiding principle should be that, if an incident cannot be dealt with entirely outside the criminal justice system, there should be consideration at each stage of the process as to whether the case can be diverted out of the system. The earlier this can be done, the less the labelling and the greater the savings of time and cost. In a system which recognises the needs of victims, this will include assessment of the suitability of the case for victim-offender mediation. This can take place at many stages, including final warnings, discontinuance of prosecution, youth restorative disposals (currently being piloted), and as a requirement under youth rehabilitation orders (since 30 November 2009). It is suggested that this should be routinely considered in all cases where there is an identifiable victim (and even some

³ Wright, M *Restoring respect for justice.*, 2nd ed, Winchester: Waterside Press, 2008, chapter 2.

⁴ Similarly, the Scottish Prison Commission (2008, recommendation 2) has recommended that: 'To move beyond our reliance on imprisonment as a means of punishing offenders, the Commission recommends that paying back in the community should become the default position in dealing with less serious offenders.'

where there is not, for example in drug-related offences where a family group conference can show the offender the pain he has caused to his own family).

9. The consultation paper contrasts diversion from legal proceedings and entitlement to due process. Restorative justice is only applicable where the offender has admitted at least some involvement in causing harm; but it is a voluntary process, and any accused young person who denies guilt can opt for a court hearing. Judge McElrea, in New Zealand, has argued that the restorative nature of the process makes offenders more likely to acknowledge the harm they have caused and to be willing to try to make amends for it.

Legal action and the courts

10. If the case is not diverted before it reaches court, the New Zealand juvenile system has again shown an interesting way forward: after a plea (or finding) of guilt, the case is referred to a family group conference, rather than a pre-sentence report (PSR), and its findings are endorsed by the judge in the great majority of cases.

11. However, where PSRs are still in use, they have an important role to play in recommending non-custodial possibilities, and report writers should be aware of the potential of a restorative process. This is only practicable, of course, where a service that provides restorative interventions is available locally. A primary aim of an integrated policy, therefore, should be to encourage the establishment of a nationwide network of such centres; experience in this country has shown that the Third Sector is well able to provide such a service, given adequate support.

Community-based sanctions

12. The consultative document asks about sanctions proportional to a particular offence, as against sanctions relating to past offences. Restorative justice is concerned with a different dimension: restorative actions agreed by the offender (which makes them more likely to be fulfilled) and by the victim (which makes them proportionate to the victim's needs). It has been found that what victims often want is action to make the offender less likely to re-offend, not only for the sake of crime reduction but for the offender's own future.

Restorative justice

13. The document contains several references to restorative justice, a 'restorative component' (p. 20), 'reparation' (p. 24) and so on, and it is to be hoped that this will be covered in more detail in the book that will accompany the final report. It is hoped that the report will spell out what restorative justice consists of. Although there are a number of definitions, it is generally agreed that a fully restorative process is much more than, say, community service, useful though that is. It would start with acknowledgement by the offender of his or her involvement. It would focus on victims' needs, and in particular would give them the opportunity for dialogue with the offender. Its value lies as much in the process itself as in the outcome, but in addition the offender would be enabled to agree to reparative action, whether towards the victim (compensation or work) or by co-operating with rehabilitative measures. When it takes the form of a 'conference' it brings in family members or supporters of the victim and the offender, who can often contribute to an action plan and even help to implement it. This is, in the words of the consultative document, 'involving parents and families in efforts to prevent children's offending and antisocial

behaviour', it is community-based, and can provide effective and safe alternatives to custody.(p. 26), and resettlement in the event of a custodial sentence. A restorative process offers one more advantage: the offender can speak openly, not defensively, about his or her background, and members of the community present (as participants or mediators) can gain understanding of the pressures that lead to crime. This could be passed to the agencies responsible for social policy; but so far this has been done only in isolated instances.

International conventions

14. The document makes repeated references to international conventions applicable to young people. Those relating to restorative justice, although they are also applicable to adults, are relevant and should be borne in mind⁵.

Custodial sanctions

15. A restorative process is also possible when an offender has been given a custodial sentence; for example when it takes place before the offender's release, it can lead to the removal of fear of retaliation on both sides.

16. There is evidence that young people are likely to give up crime if they set up home with a partner, find a job, and start a family; it therefore makes little sense to send them to a distant institution which makes those things difficult or impossible. Those who are excluded from a community are less likely to respect its norms than those who are included. The exception is when they come from a dysfunctional family and can go to an institution which is not punitive but restorative, and enables them to live their lives on restorative principles. An example is a remand hostel for girls at Falenica, in Warsaw, which encourages restorative ways of re-integrating the young women into their families and their home communities. Young people are treated as adolescents who need educating rather than offenders who should be punished. Not all have committed offences; some have shown 'behaviour causing concern', and often their home backgrounds are so bad that they would rather stay in the institution than return, because they feel safer. Conferencing is used to bring together people who could be helpful when the girl was released; so far they have not involved victims because of the time elapsed since the offence.⁶

Anti-social behaviour

17. Those who have had contact with neighbourhood disputes know that people, including young people, can often be accused of anti-social behaviour without being given the chance to explain their behaviour and unravel misunderstandings. It seems self-evident that mediation should be considered before an ASBO is applied for – not least because it costs considerably less.

⁵ Council of Europe (1999) *Recommendation No. R(99) 19 of the Committee of Ministers Concerning Mediation in Penal Matters*, Strasbourg: Council of Europe.

Council of Europe, European Commission for the Efficiency of Justice (CEPEJ) (2007) *Guidelines for a Better Implementation of the Existing Recommendation Concerning Mediation in Penal Matters*, CEPEJ(2007) 13PROV2, Strasbourg: Council of Europe.

United Nations. Economic and Social Council (2002) *Basic principles on the use of restorative justice programmes in criminal matters*. Annex to General Assembly Resolution 40/34.

⁶ International Co-operation on the Implementation of Restorative Justice in Poland and Great Britain . Final Report. Note by the British management team (January 2008)

Governance, administration and accountability

18. Facilitating a restorative process requires particular skills, which are not necessarily part of the training of criminal justice personnel. When they are trained, they may be isolated in a culture whose values are those of conventional criminal justice. There is therefore a case for contracting this work out to specialist third-sector services, whose whole ethos is a restorative one. Mediation services commonly use volunteers; it has been found that with relatively short training, and adequate supervision and support, they can deliver a professional service. This is of course dependent on adequate funding.

Costs and cost-effectiveness

19. The first point with regard to cost-effectiveness is that it should include measurement of effects on victims. Victims want answers to many questions besides the obvious ‘Who did it?’ – for example ‘Why me?’, ‘Can I recover any of my belongings?’ ‘Am I likely to be targeted again?’ In restorative meetings, unlike courts, there is a chance to ask these questions, and therefore the victim’s perspective, as well as the re-offending rate, should be a criterion for ‘effectiveness’.

20. The second main point with relation to cost is that restorative measures have been shown to have considerable potential for cost savings, in addition to other advantages⁷. But the savings are made elsewhere, in court costs (if the case is diverted early) or custodial ones, which account for some two thirds of the Youth Justice Board’s budget. What is needed is a mechanism for transferring the savings in one budget to meet the (much smaller) costs of the other. This is of course not as simple as this statement suggests, but it has been shown to be possible, and a way should be found to apply it to this country⁸.

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⁷ Shapland, J, et al (2008) *Does Restorative Justice Affect Reconviction? The Fourth Report from the Evaluation of Three Schemes*. (Ministry of Justice Research Series 10/08). www.justice.gov.uk/publications/research.htm

Sherman, L.W. and Strang, H. (2007) *Restorative Justice: The Evidence*, London: Smith Institute. www.smith-institute.org.uk

⁸ Wright, M *Making good: prisons, punishment and beyond*. 2nd ed. Winchester: Waterside Press, 2008. pp. 152-156.