An investigation into police compliance in respect of restorative justice rights within the Victims' Code (2021) at one police force in the north-east

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Introduction

This research project analyses the extent to which one north-east Police Constabulary fulfils the entitlement under the 2021 Victims' Code, for victims of crime to be informed about restorative justice. This question was looked at broadly by the research team which included three Senior Research Assistants and two Professors, and this report will have a focus suitable for the scope of the scholarship within the wider research project. The research team had ethical clearance from Northumbria University in partnership with Durham University. This exploratory research was conducted as a pilot project, with a view of extending it to a national analysis of the implementation of entitlements according to the Victims' Code in the future.

This report will introduce the topic of research by outlining the Victims' Code and how it has evolved; before describing the entitlement it presents for restorative justice. The concept of restorative justice will then be unpacked by further examining the relevant academic and policy literature. The report will then outline the methodology that the research team used and provide an overview of the subsequent findings.

The Research Context

We are witnessing a watershed moment for victims' rights in England and Wales. The Conservative Party's 2019 manifesto promised that it would pass a Victims Law which would guarantee victims' rights (Ministry of Justice, 2022) and the level of support that they can expect. In May 2022, following a public consultation "Delivering justice for victims: A consultation on improving victims' experiences of the justice system", the government published a draft Bill for pre-legislative scrutiny. The government is currently considering the feedback from the consultation before introducing the final Bill to Parliament.

Within professional discourses, a commitment to prioritising victims is central to the role and remit of the organisations and agencies constituting the justice system. However, debates and discussions about the most efficient and effective way of creating a victim-centred system abound. The policies, protocols, programmes, and practices designed to deliver this approach, are as diverse as the stakeholders involved in its delivery. Amidst the various measures created to support victims throughout the criminal justice system, the Code of Practice for Victims of Crime (Victims' Code) occupies a central role.

Under section 32 of the Domestic Violence, Crime and Victims Act 2004, the Secretary of State must issue a code of practice for services that those persons working in the criminal justice system must provide to victims. The first Victims' Code came into effect in 2006 and the latest revised code came into force in April 2021. It sets out the minimum standard of services that organisations in England and Wales must provide to victims. Ensuring that the victims' best interests are a primary consideration of service providers is a central pillar enshrined within the rights outlined in the code. Unfortunately, the extent to which victims' rights are upheld in practice is the subject of on-going concern. To date, there is a lack of evidence base examining the extent to which different organisations fulfil their statutory obligations under the Victims' Code. Given the pivotal role that this Victims' Code is likely to play in the Victims Bill, this must be addressed to improve service delivery.

Victim-centred approaches to restorative justice are integral to policing. Restorative justice provides the opportunity for victims' needs to be met and opens communication, with evidence accumulating for it successfully repairing the harm of crime (Strang and Sherman, 2003). It also has the potential to contribute to further decentralized community justice, treating crime seriously without being repressive or exclusionary (McEvoy *et al.,* 2002). Thus, restorative practices have been reported to have many overall benefits to different groups of people, with improved services to victims, offenders and communities and improved police-community relations (Clamp and O'Mahoney, 2019).

The Victims' Code

Before the formation of the Victims' Code, the first comprehensive attempts made on the part of the government to cater for the needs of victims in the criminal justice system was with the Victims Charter in 1990 (Wolhunter et al., 2008) which contained guiding principles on victim treatment, with no substantive rights and were not legally enforceable.

The Victims' Code imposes service obligations on criminal justice agencies (Wolhunter *et al.*, 2008) setting out the minimum standards that must be provided to victims of crime by organisations in England and Wales (Ministry of Justice, 2021). The Victims' Code binds the police; the Joint Police/CPS (Crown Prosecution Service) Witness Care Units; the CPS; Her Majesty's Court Service; and the Criminal Injuries Compensation Authority (Wolhuter *et al.,* 2008).

The first Victims' Code came into effect in 2006 (Ministry of Justice, 2022) with the latest revision coming into force on 1st April 2021 which set out 12 overarching 'rights' for victims. A victim is defined in the code (Ministry of Justice, 2021) as someone who suffered harm directly caused by a criminal offence, or a close relative of someone whose death was directly caused by a criminal offence.

The rights in the Victims' Code that this research focussed on are those involving restorative justice provision. For example, the right for information to be shared with the offender about restorative justice and for service providers to consider whether victims might benefit from restorative justice at any stage of the criminal justice process (Ministry of Justice, 2021). The police must now inform victims about restorative justice within 5 working days of reporting a crime (Clamp, 2022). It also includes the right of the person reporting a crime to be referred to a service supporting victims, including restorative justice (Ministry of Justice, 2021) within 2 working days of reporting the offence (Clamp, 2022).

Whilst there is no concrete external authority which checks how these rights are implemented, which questions the practical impacts of those rights, Clamp (2022) found that 70% of the 37 PCC (Police and Crime Commissioner) areas in their study said they had well-developed processes for compliance monitoring with the Code. However, 19% (Clamp, 2022) of the respondents said they were unsure if they could inform victims about restorative justice and refer them to a service in the new timeframes from the revised 2020 Victims' Code.

Restorative Justice

The definition of restorative justice that is most frequently adopted by practitioners is: "A process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future" (Marshall, 1999, cited in Paterson and Clamp, 2012, p. 3). Restorative justice is not easily defined as it encompasses various actions at different stages of the criminal process, such as meetings between victims and offenders and diversion from court prosecution (Daly 2002). Ultimately restorative justice refers to securing outcomes that contribute to dealing with the harm caused by crime and addressing the underlying causes of the behaviour which cause the harm (Clamp and O'Mahony, 2019).

Under the UK Coalition Government in 2010 restorative policing came to the fore (Paterson and Clamp, 2012). Restorative justice has since had increasing prevalence in many different settings, including schools, prisons and workplaces (Wood and Suzuki, 2016).

Victims have a desire to explore options of restorative justice with Gavrielides (2018) finding that 68% of victim respondents who were not offered restorative justice indicated that they would have liked to have been. In pursuing justice, 51% of the victims said that they most value having an opportunity to have their say and explain the impact of the crime, with 17% saying that they most value feeling that the offender is in some way making up for the crime, and 11% saying it is to ask the offender questions (Gavrielides, 2018).

Over the last 20 years, restorative justice has gained substantial ground in policy and law-making (Gavrielides, 2018). One pertinent issue is the differing levels of implementation of restorative justice across the country. According to Clamp (2022), the service provision across England and Wales is highly variable, leading to a postcode lottery of victims accessing information and undergoing restorative justice, rendering many victims unaware of restorative justice. This may be because restorative justice services are not sufficiently funded (Clamp, 2022). All PCCs invest in restorative justice provision, with funding varying between £50,000 and £250,000 across the different PCC areas (Clamp, 2022). However, the differing funding has resulted in the emergence of different models in the country, with some areas commissioning external providers for a restorative justice service (Collins, 2015). However, 91% of the 34 forces in Clamp and O'Mahony's study expect the provision of restorative practice to continually increase.

Restorative justice has featured in all versions of the Victims' Code; however, in 2006 only victims of offenders under 18 were eligible for restorative justice (Clamp, 2022). It was in 2013 that victims of adult offenders became eligible to receive information about restorative justice (Clamp, 2022).

Methodology

The research team used a range of research methods such as interviews, focus groups, surveys and quantitative data analysis to examine the compliance of one north east Police Constabulary to the entitlements of restorative justice as outlined in the Victim's Code. I focussed my analysis and reflections on the work and findings from the focus groups which analysed operational policing strata, as it provided a suitable focus for the scholarship.

In the research, there were two online focus groups with 6 participants from the host Constabulary in the first focus group and 7 participants in the second. The participants had a range of experience levels in the police including senior members, and they were from different areas of the force.

Within social research, online focus groups are increasingly used to complement or replace face-to-face interactions (Lobe, 2017), with such online research exploding from the COVID-19 pandemic (De Man *et al.,* 2021). It is more convenient for participants (Stewart and Shamdasani, 2017) and so it seems almost an assumption from various groups including the police for research to be done in an online format.

One of the main issues from online focus groups in this research was the participants and facilitators occasionally interrupting each other, as in online focus groups overlapping speech is common (Bryman *et al.*, 2021). This may have been heightened by the focus groups being online, which reduces nonverbal communication (Stewart and Shamdasani, 2017), which not only makes it more difficult to ascertain whether someone is about to speak but also renders the facilitators less able to analyse body language to discern whether a question has been understood. For example, in the second focus group, there was a long pause after the first question was asked, with no one responding. The facilitators were unable to visually interpret cues as to their reaction to the question, to understand if they were confused or just thinking about their response. This was heightened as in both focus groups many participants did not have their cameras on, with some participants saying that they did not have such a facility.

Another issue faced was that fewer respondents turned up to the focus groups than anticipated. Although this may have minimised people interrupting each other and gave individuals more opportunity to speak themselves, it led to smaller sample sizes. This may have occurred because online commitments to participate in a group are not as compelling as verbal commitments (Stewart and Shamdasani, 2017), so participants may have been more likely to turn up if it was a face-to-face focus group. However, it could also be because individuals in the police are particularly busy and may have been occupied; for example, in the first group, a participant had to leave during the focus group on a response. A gatekeeper was used to obtain the participants, which perhaps has an attrition issue, as there may have been a level of coercion due to his senior position. However, it may have led to more diversity in understanding of the victims' code, as it wasn’t necessarily just people who joined as they had a lot of knowledge to share.

One of the great benefits of focus groups is the interaction it facilitates between peers (Stewart and Shamdasani, 2017) which are still realised with online focus groups, although perhaps with less of a natural flow. In the focus groups participants would often state that they agreed or disagreed with the person who spoke before them, before expanding upon their argument, either building upon or providing an alternative point of view to someone else. The interaction between participants is the hallmark of focus group research (Grønkjær *et al.,* 2001) and the disagreements can function as a catalyst for continued discussion. Indeed, the disagreements in the focus groups often led to a focused discussion on talking points; for example, there were slight disagreements on questioning if restorative justice is appropriate for all offences with some arguing that they couldn’t see why it

wouldn't work for any offence, and others arguing it wouldn't be appropriate in some higher offences. Everyone ultimately reached the consensus that the choice to explore outcomes of restorative justice should be determined by the victim of that crime.

Another factor that must be considered when analysing the methodology is the factor of some people knowing each other in the focus group and others not knowing each other. For example, participant 6 in focus group 2 noted how they couldn't hear a participant that they knew 'down the corridor', but in that same group, it was questioned the office another participant worked in, as they didn't know this individual. This may impede internal confidentiality (Sim and Waterfield, 2019) as participants can't be anonymous to those they know within the group, which may have made them less likely to be honest, and under pressure to perform under other's scrutiny (Sim and Waterfield, 2019), especially within the pressure of the police force.

The diversity present from different perspectives is a great positive of focus group research (Grønkjær *et al.,* 2001), and was a benefit to this research as there was a variety of experience levels among the participants. Some participants had over 20 years of experience in policing, whilst others had a few months. Participants thus gave varying insights on the issue of restorative justice in the police force, as some participants could compare the host Constabulary's policing to other Constabulary's whilst others could compare current practice in the host Constabulary to years ago, increasing the richness and representativeness of the findings. However, as the foundation of the British police is hierarchical (Reiner, 1992) having people throughout the Constabulary at different levels may have made people feel uncomfortable and less likely to speak openly, due to the hierarchical relationships in the police.

Findings

One interesting finding from the focus groups was some participants lack of knowledge of the Victims' Code. In both focus groups the opening question, which asked for their general understanding of victims' rights under the victims' code, prompted great hesitation. In the first focus group this first question didn't generate deep insights into the rights themselves- more so a focus on how the code had been updated. The second focus group required prompting for any answer with one respondent even saying, "Can we go to someone else first?" (Participant 1, focus group 2). This indicates how some officers may not have had great confidence in their knowledge of the Victims' Code and may have been worried about saying something wrong in front of their superiors. This was also the first question in the surveys sent out which only had 6 responses. We discussed this as a research team, and on reflection thought that in the future the first question in both methods should be a more direct accessible question on the Victims' Code, potentially asking *if* they had any understanding of the victims' code. As this is a pilot study for potentially a larger national project this is something that can be considered in this future research.

Another interesting finding was the increasing victim support provided by the host Constabulary. For example, Participant 1 in Focus Group 1 could reflect on changes from 1998, saying specifically that the way they update and communicate with victims is so much better now than it used to be. Participant 5 in Focus Group 2 even said that before the Victims' Code came along "there was nothing for victims". This indicates the positive impact

that the implementation of the Victims' Code has been in the host Constabulary for providing victims support and making that a greater priority, as now as Participant 5 in Focus Group 7 noted, victim care is “part of daily conversation” in the organization.

A key finding was how prioritizing victims was unanimously expressed throughout both focus groups. This focus shapes their views on the implementation of restorative justice which participants said, “should be all victim led” (Participant 6 focus group 2). They see the main advantages of restorative justice as being “highly beneficial for the victim” (Participant 6 focus group 1), as the outcome is determined by the victims which better fulfils their needs and can also help to reduce their fear of crime. They also mostly see the choice of whether restorative justice is used in a case as down to the victim, although some question whether restorative justice can be appropriate for all kinds of offences, such as high-level domestic cases.

The focus groups also revealed that the main disadvantage and challenge the participants face in delivering restorative justice was the time it can take, as one participant noted "times precious in the police" (Participant 6 focus group 2) with the number of other things they are dealing with. For example, if there are low-level cases where restorative justice will be applied Participant 6 in Focus Group 1 remarked: “it would get put to the bottom of the pile”. The time constraint that these participants faced was also the reason they presented never using research to inform their policing practices, despite saying that it could be useful, but time would need to be allocated for it to be applied.

Communication issues were presented as a further challenge in providing victim support. Some victims do not want communication with the police, such as those who are not at all supportive of police action, but they may still receive unwanted automatic updates. Furthermore, it seems that officers must spend time filling out information, which is not relevant to that victim, just to fulfil the sections of the victim care plan. So, it seems that in an organization where time is so precious, time should be prioritized for officers to support victims and give the opportunities for restorative justice, and not filling out things to satisfy the automatic system where it’s not relevant. As participant 6 in focus group 2 noted “we just don’t wanna spend too much time with people that just don’t wanna talk to us”, especially if that then leads to a victim becoming dissatisfied, which could lead to them not reporting a crime in the future.

The last challenge expressed was the public perception of restorative justice. In the second focus group participants expressed the view that the public might view restorative justice as a light touch, so for more serious crimes it might be viewed badly if restorative justice was the outcome.

Conclusion

Overall, despite possible limitations from the focus groups being online, such as limited group interaction, overlapping dialogue and the low response rate, they were very useful in identifying the understanding of individuals in the host Constabulary. It revealed their focus on victims, in both choosing restorative approaches and them being prioritized in the processes. It also revealed the positive change in the provision of victim support, especially after the introduction of the Victims' Code. It also importantly found that many participants

are aware that restorative justice can be beneficial but may be limited in implementing it. The most prominent limitation they face appears to be the time constraints of police work and the view that restorative justice can be time-consuming.

Perhaps one of the most revealing aspects of the focus groups was a slight lack of understanding or hesitancy on the Victims' Code and restorative justice, with some participants struggling with the opening question on their general understanding. This potentially highlights the differing levels of understanding on the topic throughout the Constabulary and how in future research, perhaps a more focused opening question is necessary to elicit more response and ease in participants.

The findings of the focus groups greatly align and strengthen arguments found in the literature analysis on the Victims' Code and restorative justice; for example, the idea that victim support has increasingly become more of a focus in the police (Gavrielides, 2018). The focus groups uniquely highlighted those areas where officers struggle to always uphold the rights of the victims' code, elaborating on the struggles that they face in trying to provide restorative justice in quite a pressured environment.

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