“The image has been changed in my mind”: a case of Restorative Justice in a Forensic Mental Health Setting.

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Abstract

Purpose

To describe the process and outcomes of Restorative Justice (RJ) between a detained patient with autism and a person he harmed.

Design/methodology/approach

A descriptive case study design was used to provide a detailed and in-depth narrative of the process and outcomes of a RJ referral raised by a person who was harmed. The referral included an exchange of letters and a RJ conference.

Findings

Restorative outcomes that align with the theories of RJ, in particular trauma processing and emotional re-connection, were observed by RJ practitioners and reported by participants. The person harmed reported a 'safer' memory of the offence.

Research limitation/implications

The absence of outcome assessments limits the findings to observational data and self-reported experiences from participants. A triangulated outcome approach is recommended.

Practical implications

RJ practices can safely be applied within a secure hospital environment. The RJ process can also be followed by a person with difficulties in social and emotional processing.

Originality/value

The RJ process provides a safe framework within which forensic mental health services can respond to the needs of victims, which are not routinely addressed in standard clinical practice, and in worst case scenarios, may even be overlooked.

Keywords

Restorative Justice, reparation, forensic mental health, complex case, autism.

Introduction

Restorative Justice (RJ) is a theory of justice that promotes repairing harm (Zehr, 1990). Its origins are often said to be rooted in indigenous practices, worldwide that aimed to reintegrate individuals who had brought harm on a community through mediation (e.g. Haarala, 2004; Mbambo & Skelton, 2003). A number of different RJ practices that aim to communicate and repair harm have been described, such as payment of restitution and indirect (e.g. letter) or direct (face to face) communication between those responsible and those affected (Strang *et al*., 2013).

Some of the key theories of change that are thought to underpin these restorative practices are informed by: 1) understanding the impact of trauma (Arendt, 1958; Strang, 2002); 2), reintegrative shaming (Briathwaite, 1989) and 3) interaction ritual (Collins, 2014). From a trauma perspective, the experience of being harmed by another person can lead to a repeated distress or re-living of that event. Re-visiting a narrative of harm or conflict with the responsible individual, the person affected is empowered to ask questions about what happened, and this process can help to make [alternative] sense of the event and may make traumatic memories "safer" (Strang *et al*., 2006). For the person responsible for the harm, the consequence of committing a crime can be exclusion, socially and physically (e.g. imprisonment), which can lead to the development of an identity that stigmatizes the individual and complicates the task of re-integration. If a person no longer feels 'socially' connected, this may erode the social investment of adhering to rules or laws. Re-integrative shaming is a process whereby a person receives a clear message about the harm they have caused but they are invited to repair this in a way that allows them to rejoin society (Braithwaite, 1998). Finally, interaction ritual theory proposes that where people experience or share an intense moment of emotional interaction then they may become more committed to shared values and experience feelings of solidarity and group membership (Collins, 2014).

The ethos of RJ and its practices have led to it being adopted into the criminal justice field with the use of victim-offender mediation. Since this introduction, RJ practices have been applied to different stages of criminal justice, for example, as part of court diversion efforts, victim awareness and offending behavior programmes and community service work (see Dhami, Mantle & Fox, 2009). A range of outcomes from these uses of RJ have been investigated and a helpful review of them is provided by

Strang et al. (2013). Those harmed have reported: reductions in fear and anger of the person who harmed them; fewer thoughts about being re-victimised, improved sense of security, feelings of self-confidence, and reduced anxiety; and increased satisfaction in criminal justice. For those that have caused harm, reductions in re-offending have been demonstrated. When comparing the cost of RJ alongside other criminal justice options (e.g. diversion, court proceedings), the latter was significantly more cost effective. With an evidence base that supports certain benefits of RJ within criminal justice settings, there have been increasing applications of its practice and principles in settings where opportunities to repair harm can occur.

Forensic mental health hospitals in the UK provide care for people with mental disorders and forensic histories (Department of Health, 2008). Approximately 90% of patients in these services have been convicted of a serious offence, including homicide or violence (Harty *et al*., 2004). In addition to these reasons for admission, patients can carry out harmful actions whilst living in secure settings (Bowers *et al*., 2011). Given the historical and in some cases ongoing harm that can occur in these environments, restorative practices have begun to emerge as a response to these issues (Cook *et al*., 2015; Cook, 2019; Drennan *et al*., 2015).

Research into the use of restorative practices with this particular population has only recently been undertaken, but early views of experts by experience and professionals of these services would suggest that RJ principles overlap with models of mental health and offender recovery (Cook, *et al*., 2015). There are also cautious views shared about the issues of capacity and mental health state in the context of the readiness and ability of patients to be able to participate in RJ (Liebmann, 2007). The current case study describes a RJ referral that was raised by a person who was harmed whilst working in the community. The person who had caused the harm was admitted in a high secure hospital at the time of the referral. Both parties provided written consent to the use of anonymized referral information for this case study. Anonymization was done by changing the names of those involved and ensuring identifiers specific to location and any factors specific to the cultural or social identity of the persons involved were removed (Information Commissioners Office 2018).

RJ referral

The referral in this case came through the Victim Care Unit for the area where the offence had taken place. The harmed person, Sarah, was being supported by a member of the Victim Care Unit team, Emma, who put to her the possibility of undertaking RJ. Sarah felt RJ could help her move forward and had in fact requested RJ support soon after the offence had taken place. Sarah began working with a local RJ service, Make Amends.

Sarah talked to the coordinator at Make Amends whose task was to ascertain whether RJ would be appropriate for her. Her assessment indicated that it was, the coordinator assigned the case to an RJ practitioner who was trained in handling sensitive and complex cases. She accepted the case and worked alongside a colleague practitioner from Make Amends; cases are always handled by two Make Amends trained RJ practitioners. At the time of the referral the person who caused the harm, Joe, was admitted to a secure forensic mental health hospital, where a RJ service was established. Both Joe and Sarah provided written consent to further exploring RJ, which included their permission to share information with agreed partner agencies.

The harm caused: the facts of the offence taken from witness statements and an Index Offence report.

At the time of the offence Joe had been living in supported accommodation and had developed a good relationship with Sarah, who worked at the service. The difference in their ages, Sarah being older than Joe, was such that both described the relationship as being like that of a supportive mother and son, whilst remaining professional and boundaried. Six months prior to the offence, Joe had lost his paid work, which had caused him to worry about money. Staff at the service had noted Joe was worried and low and spoke to him about this. There were also concerns about how Joe was managing his finances, which further compounded his worries. Staff contacted Joe's mother about their concerns, and this frustrated him, as he felt he was being mothered, and he could look after himself and be independent.

One month prior to the offence, Sarah along with a fellow member of staff took Joe on a planned holiday. At the time he was still frustrated by how staff were being

involved in his day to day care and activities, as he felt people were imposing on his independence. After returning from his holiday with Sarah, Joe remembered feeling as though his luck was running out as he had no job, he was worried about his finances and staff were continuing to worry about him. Furthermore, a few days prior to the offence Joe had also been given a warning at his voluntary job for being late, and consequently some of his duties were removed and he was to have increased supervision when at work.

On the morning of the offence Joe reported that he woke up and drank a bottle of wine and took seven benzodiazepine tablets, to try and feel better. He then went to disclose to a support worker that he had done this. The support worker went to the staff office to get advice from Sarah, who being aware that his medication and alcohol could seriously affect him, called an ambulance. This had angered Joe who felt Sarah was 'nannying' him unnecessarily. The paramedics arrived and having seen Joe they assessed that he did not require any medical care, so they left the premises. Joe was being escorted back to his residence by two support workers when a struggle took place and he was restrained, but he was able to break free from this and return to his accommodation.

When Joe got there he was met by another resident, Paul, who asked if he (Joe) was alright. At this point Joe reported having an urge to hurt Paul and picked up an object and threw it at him. In response, Paul left the residence and was met by one of the support workers who had been escorting Joe. At the same time, Joe got a knife from his kitchen and followed after. Seeing that Joe had a knife, Paul went to the staff office and one of the support workers attempted to restrain Joe. However, Joe managed to break free and arrived at the staff office to see Paul and Sarah talking and started stabbing Paul. Seeing that Joe meant real harm to the other resident, Sarah stepped between them to intervene. At this point Joe stabbed Sarah several times during which her lung was punctured. She received several stab wounds to the head and to the hand which she had held up as she tried to fend off the attack. Police attended the scene and detained Joe. The paramedics who had recently been called were close enough to return and administer first aid to Sarah who was then taken to hospital. It was felt that had they not been so close, she may well have died from her injuries.

Whilst Sarah recovered from her physical injuries, the trauma had left her - a previously emotionally strong person - suffering flashbacks and constantly moved to tears. She was unable to work and was retired from her job by the supported living company. The distress she felt affected her family and those close to her which in turn caused her more anxiety. She said she knew she had to do something and RJ seemed to be the means by which she could confront her emotions, work through them and move on with her life. A brief discussion of the harm that Joe caused is provided.

A formulation of the harm caused

Joe valued his independence and autonomy and he reflected that this felt under threat when professionals worried about him. He also experienced supportive actions as sometimes overly-caring / controlling, which paralleled some of his memories of being looked after when he was younger. This is evident with his reaction to Sarah's intentions to help him by calling an ambulance, but Joe experienced this as being "nannied". Difficulties with these mentalizing processes could be explained by Joe's diagnosis of Autistic Spectrum Disorder (ASD) and have also been considered as a risk factor for violence both generally, and for people with autism (Clements, 2005). Historical assessments of Joe's functioning have identified that he can find it hard to articulate complex emotions and he is highly suggestible. He also has problems with his general decision making and generating solutions to challenges he faces, including tendencies to get fixed on details rather than consider wider contexts (central cohesion). Some of these difficulties for Joe appear evident in the context of the harm that was caused. From the loss of his job he made several bad financial decisions that increased his worries about money. With the discomfort of knowing that others were worrying about him, and the uncertainty of how they were going to act on their concerns, he felt his only option was to 'escape' his situation by harming someone. In Joe's mind at the time, this would physically remove him from others. This was an overly simplistic and concrete solution to his problems that did not incorporate the consequences for such actions, or alternative solutions. From previous psychological assessments completed as part of Joe's care, he reported that he can work hard to manage and control the outward expression of his feelings, including his anger. He may have been less likely to discuss his feelings with

others, particularly if concerned about losing his independence. He may have felt overwhelmed by distressing feelings, leading to a reactive expression of emotion through his actions. This is consistent with events that lead to the offence and an overspill of intense emotions; as has been described in other forensic case examples of people with autism (Attwood, 2006). Around the time of his job loss and staff expressing concerns, Joe also reported having thoughts of harming Paul. He described having a good relationship with Paul, but that he was also jealous of him as he had more visits and went on more outings. Prior to the offence Paul had also told Joe that he no longer wanted to go on outings with him, which made Joe angry. This loss of positive activities for him added to feelings that his luck had changed, and precipitated the assault on Paul, which led to the harm caused to Sarah. A further resemblance with Joe's history is of note here, where he remembered positive memories of trips with his father and being sad when his father left the family home, as he wouldn't get to go on these trips anymore.

Preparations for a Restorative Conference

With Sarah's permission the Make Amends RJ practitioners and Emma visited her at her home on several occasions. At the first of these preparatory meetings Sarah described what had happened and explained to them her feelings and thoughts at the time of the incident as well as those she experienced at that time. They asked her what she felt she needed to repair the emotional harm she had been caused. She said that when she felt ready, she would like to meet Joe so that he would understand the impact his attack had had on her and her life.

Sarah, having worked with Joe and knowing him, realised that it wouldn't be easy for him to understand the harm his actions had caused. She didn't want revenge, she wanted him to understand so that he wouldn't be a danger to others when discharged from hospital. She knew that he would hate being confined and she felt sorry for him and hoped he was able to handle the confinement without his behaviour worsening. When she was asked what outcome she would like to see, she said that she wanted him to know that although she bore him no grudge, she didn't want any contact or communication with him in the future after the RJ process had taken place. The RJ

practitioners explained to Sarah that Joe might not want to undertake RJ and asked if she was prepared for that disappointment. They pointed out that even if and when a meeting was arranged, Joe might decide not to proceed and his wishes would have to be honoured. They also explained that she could have a supporter present at the restorative meeting and she chose Emma who had been present at all these preparatory meetings and who had worked closely with her. Sarah said she understood the process and that she wanted to go ahead, even if it ended in disappointment. During the final preparation meetings, the practitioners explained the structure of an RJ meeting and, having been given permission to tell Sarah where Joe was a patient, they described to her what she could expect in both the process and the location. Sarah said she felt reassured, however, she felt that an exchange of letters before the conference might help her to gauge whether a meeting between them would achieve the desired outcome and help her to move on with her life. With Sarah's permission, these aspects were shared with a RJ practitioner at the hospital.

The Make Amends practitioners arranged to visit Joe. Prior to meeting him they were able to talk with a RJ practitioner based at the hospital and Joe's clinical team to understand his needs and how best to communicate with him. Joe then joined the meeting and was informed of the referral and asked whether he would agree to taking part in the RJ process, which he did and provided written consent to confirm this. For the initial meetings that followed Joe met with a RJ practitioner based at the hospital and drafted a letter to Sarah. He thought about how Sarah might have felt about the incident, what emotions she might have been feeling at the time and presently, what she might want to know about him. The process of reviewing the offence and considering the impact on all those involved was challenging for Joe in that he would describe events in a matter of fact way, and at times his emotions seemed incongruent with the content of his narrative of what happened. Joe could also be suggestible in terms of his thoughts and emotions about Sarah and events, so it was important to be aware of this and monitor the input from the RJ practitioner, to promote the genuineness of his letter. Make Amends provided information about what Sarah would like to know from Joe, and the letter incorporated this. RJ practitioners for both Sarah and Joe supported the writing of the letter, reviewing them before they were hand delivered to ensure that nothing within the letter could cause Sarah further harm and to ensure what Joe had

written was safely communicated. Joint agency working was useful in sharing knowledge and experience and bridging the gap between the secure environment and the community. This letter exchange was the first connection between Sarah and Joe since the offence.

Exchange of letters

On receipt of the letter, Sarah felt re-assured by Joe because prior to the incident they had a good relationship with one another. She also felt re-assured that he bore her no ill will for his confinement and that he was genuinely sorry about what had happened. Sarah's experience from the letter exchange relates to emotional restoration needs that have been voiced by victims of crime (Strang, 2002). In this case, the needs included 're-connecting' with Joe and knowing his feelings and thoughts towards her, in addition to hearing he was sorry for what he did. Sarah's thoughts that Joe might be angry at her may seem at odds with the more commonly reported victim experience of feelings of vengeance and anger (Orth, Montada & Maercker, 2006). This experience might be explained by the social and psychological distance likely to be created between a person harmed and someone responsible for that harm, particularly when the responsible person is removed from a community and detained. Social and psychological distance can lead to people having difficulty intuiting what others think (Eyal & Epley, 2010). In this case, Sarah's construal of Joe was that he may harbour feelings of anger (he did not say was the case), which was concerning for her. The indirect interaction through letters, provided an opportunity for this distance and uncertainty to be reduced.

Although she was told that there was no need for her to reply if she didn't want to, she said that she would like to reply but after having some time to think about what she might like to say in her letter. At a follow up meeting, Sarah showed the Make Amends practitioners the letter she had composed and they helped her finalise it so she felt ready for it to be given to Joe.

After receiving the letter, Joe was thoughtful about Sarah's reply. Specifically, that Sarah had not returned to work, as he knew how important her job had been to her. He was "sad" to learn of this. This aligns with the restorative processes of hearing about the impact of one's actions on another, which may generate feelings of shame or guilt,

interrelated with understanding the emotional experience of the person affected (Jackson, 2009). The idea of a restorative meeting was discussed with Joe, who seemed initially excited at the thought of seeing Sarah again. He did not seem to consider the focus of the conference, which would be on the harm that he had caused Sarah. Once Joe and Sarah indicated their wish to meet, the Make Amends practitioners began preparations.

Preparations included a full case review which was conducted during supervision, the completion of a full written risk assessment and the creation of a detailed plan which considered how the practitioners could enable effective communication given Joe's needs. In final preparation for the conference the Make Amends practitioners visited Joe and the clinical team to discuss the location and format of the conference and any safeguards that would be important for all parties involved. During this meeting some time was spent thinking how Joe might feel seeing Sarah being upset. He suggested it would be important to be able to stop the process if it became difficult for anyone at any time. Joe's clinical team was of the view that whilst it might be difficult for him to understand or connect with Sarah's feelings the meeting might be a positive experience for him, and importantly, for Sarah. Joe said he felt sad at the thought that Sarah would be upset during the conference. He identified some strategies to help support him through the conference, which were to watch his facial expressions in the event he was finding the meeting difficult, and to regularly ask him directly how he was feeling. He also shared a preference that the meeting be held away from the ward to ensure privacy. There was a sense it would feel safer for him to have distance between his peers and the meeting.

In the final preparation meeting with Sarah, it was decided that she would like Emma to be present and that she would like to travel together to the hospital. Although the journey would take 2-3 hours and involve a change of trains, Sarah felt that the visit could be achieved within one day. Arrangements were made for Sarah to have support from close friends when she returned home after the conference.

The conference

The Make Amends RJ practitioners facilitated the conference and began with a round of introductions, set guidelines and outlined the format of the conference. Joe was asked about what had happened on the day and he was able to recount the events, including what he had done to Sarah. He was asked to consider how both he and Sarah had been affected by what had happened and he thought about the impact it had on her, including not returning to work.

Sarah was then invited to talk about the events on the day. Whilst remembering these she became upset and reported feeling a pain where one of her injuries had occurred. Revisiting the traumatic memory had elements of both physiological and psychological distress (McFarlane, Yehuda & Clark, 2002). She requested to leave the room and was accompanied by Emma. Sarah returned to the conference and asked Joe if he understood why she had tried to help in the moment of the assault. She shared how this had been a life changing incident in that it had shaken her sense of safety in the world and her ability to protect herself, particularly when the assault was happening. At this stage the facilitators invited Sarah's supporter to comment and Emma directly asked Joe whether there was anything he wanted to say to Sarah. Joe became very emotional and tearful at this point and seemed to try hard to control these emotions. After a moment he said he was sorry to Sarah. Prior to this point Sarah had not looked directly at Joe, but both then began to look at and speak to each other. It seemed important to Joe to remember good times he had spent with Sarah whilst living independently and recalled a trip they had both been on, which struck up good memories for him. This change in the micro-dynamics between Sarah and Joe represents the restorative process of an interaction ritual (Collins, 2014; Rossner, 2011). Through being asked to directly address Sarah, Joe showed his emotions and what followed was a more connected and open dialogue between them both.

Sarah was asked what outcome she would like from the conference and she explained to Joe that although she wished him well with his life in the future, she wanted to have no further contact with him. Joe found this difficult because Sarah had provided him with care and support in the past and the thought that this would no longer be available to him was difficult for him to consider. However, he agreed and an outcome agreement to this effect was signed by both of them and by their supporters as

witnesses. It was also decided that if, by chance, they were to meet in the street they would say hello and move on without further conversation.

The follow up

The journey back on the train enabled Sarah to talk through her feelings with Emma and the Make Amends practitioners. She felt glad the conference was over despite the fact that she had requested it and never wavered from that resolve, nevertheless she had been understandably apprehensive about how it would go. She said she was glad of the support she had received and she said she felt it helped her through what could have been an upsetting experience coming face to face with Joe. On reaching her station she said she felt comfortable about driving back to her friends' house where she would be with people who understood her and would help with the emotions she might be feeling.

One of the RJ practitioners rang Sarah, as promised, a couple of days later to see how she was feeling. She said that although she still felt emotional, she also felt relieved and the overwhelming reaction was that her image of Joe now was of him sitting across from her in that comfortable room at the hospital instead of the image of him attacking her with the knife which had haunted her since the offence.

Some weeks later Sarah gave formal feedback and said;

'Afterwards…I felt relief, but I also felt mindful that there would be some processing going on for a few days. In terms of the RJ, I am really pleased I managed to do it. I can still get very upset about the situation, I can't pretend it was a magic wand, but it has helped. I can now see Joe sat opposite me having put on weight and looking different – which has changed from the image of him attacking me - and I now I feel much better because of that'.

When asked what change the RJ had brought about for Sarah, she replied;

> 'The image has been changed in my mind. Now I'm not really thinking about it and it is almost as if the book has closed. I can't say that it will never open again and I

might think about him, but now there is no anticipation and it is not so overwhelming'

Sarah was about to move to a new house several hundred miles away so she had much to occupy her mind after the conference. However, she returned to the area some two months later and met with the Make Amends practitioners and Emma. She took part in an interview about the experience and when it was completed, she suddenly smiled and observed; 'And I didn't cry once!'

For Joe, he returned to his ward after the restorative meeting and was supported by his primary nurse, who was working with him that day. One of the hospital RJ practitioners revisited him the day after the meeting and talked through what had happened. Joe stated he had been holding on to his emotions in the conference as he didn't want Sarah to see him upset, because he felt this would cause her more distress. He also felt disappointed with the outcome of the conference, in that he would no longer be able to speak to or see Sarah. This was also reflected in his formal feedback. But he was able to articulate why Sarah wanted this. In a further follow up meeting Joe expressed an interest in further restorative work with Paul, who was seriously assaulted on the same day. Joe has undertaken this work, which involved an exchange of letters.

Case study considerations and reflections

A number of considerations about this format of practice-based evidence warrant discussion. The narrative approach to this case study supports the task of describing the particularity and complexity of an issue in context (Merriam, 2009). The interplay between the needs of Joe and Sarah, the settings, and multiagency work (all of which represent complex case features) provides a source of information about how RJ might work with such parameters. Given the emerging status of RJ in this field, there is an absence of evidence about its application. Case studies, whilst ranked lower against other formats of evidence, still represent a facet of evidence-based practice. With an absence of evidence, perceptions about the suitability of RJ with a person with autism

may lead to a conclusion it may not work, but the current case study would not support this (Aveline, 2005). The naturalistic observations meant that outcomes were not confined to a set group of indicators of 'success'; which allowed the important to be observed rather than the measurable being made important.

A counter argument to the use of solely naturalistic observational data is that other methods could still have been integrated alongside the narrative of the case. This may fortify (or challenge) the conclusions that have been drawn and would also more closely represent the methods that case studies have evolved to using (Yin, 2014). It is also important to acknowledge the hermeneutic analysis of participant experience, and that these interpretations of impact are done by persons trained and invested in the objectives of RJ (to name one potential bias) (Creswell, 2014). The use of additional methods of data collection could triangulate information on what had worked and also inform reflections about the subjectivity of observations (Lincoln et al., 2011). Given these issues and the nuanced characteristics and circumstances of those involved in this RJ work, the adjustment considerations for practice presented hereafter need to include the caveat that these should to be used cautiously until further evidence, which may include additional case examples, emerges.

Adjustment considerations for Restorative Practices with people with Autism who have caused harm:

1. Consider the use of restorative language that may be complicated or difficult to understand – avoid metaphors and abstract terms (e.g. conference).

2. Be realistic about the limits of a person's autobiographical memory when exploring the harm caused, and how this may impact on the scope to explain what happened.

3. Monitor for suggestibility that might impact on the persons narrative about events that happened, or communications, such as with letter exchanges or a conference.

4. Prepare the person(s) harmed about the possible limits of the social and emotional capacity associated with autism and how these might present in communications about the harm caused e.g. letters, conference.

5. Discuss outcome expectations and consider these in the context of how a person with autism socially communicate and interact. For example, how a person harmed may feel if events are described in a matter of fact way, or without a sense of understanding the impact of the harm.

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