

Learning from Other Practices: Restorative Justice

What can mediators learn from the practice of other professionals?

By Adrienne Watson¹



Dave Pascoe



Roy Poyntz

Restorative Justice (RJ) practitioners bring together people who are linked by a harm, which has been perpetrated by one party upon the other, in a voluntary and confidential 'conference'. Unlike mediation, RJ practitioners do not aim to find a settlement which both parties are prepared to live with, but they work with the parties to try to address the impact of the harm on the 'victim', their loved ones or the wider community.

In mediation, we may use terms such as 'claimant' or 'respondent' to describe the parties, but we try not to imply any preconceived judgment of each party's role in a dispute. However, the parties in RJ are defined according to their relationship to the harm or crime. One party is the 'offender' or 'person who has harmed', while the other party is the 'victim' or 'person who has been harmed'. As mediators, we may wonder how this explicit categorisation of the parties affects their power and behaviour within the RJ process.

Last year, Dave Pascoe² (an RJ practitioner) and Roy Poyntz³ (a mediator) found themselves discussing their approaches to risk assessment and risk management. While their approaches had similarities, they discovered some interesting differences.

Adrienne Watson met with Dave to discuss RJ practice and what it might offer mediators who are working with particularly conflicted parties. Roy Poyntz has also shared his reflections on Dave's interview.

RJ and mediation at Restorative Solutions

I joined Restorative Solutions in North Yorkshire in 2019 as an RJ practitioner. RJ cases for assaults, burglary, theft, death by dangerous driving, manslaughter and murder cases were referred to us via the police,

probation, local authority and self-referrals to name a few. Community Safety Hubs (CSHs), which are multi-agency teams dealing with a wide range of community concerns such as anti-social behaviour, littering, shoplifting, underage alcohol sales and public order around sporting events, would refer to us but issues such as neighbour disputes and conflicts would generally be referred by the CSHs to the service run by Arch Mediation.

When the directors of Arch Mediation retired, I was given oversight of all the RJ and mediation cases. The mediators began to discuss their concerns about particular cases with me. For example, if a case involved an assault or criminal damage, the mediators might be uneasy about meeting the parties face-to-face.

Some cases referred to mediation seemed to be more appropriate for RJ because a crime had been committed, whether it had been reported to the police or not.

I'm not a trained mediator so we work closely with our volunteer mediators and the parties to assess whether each case is more appropriate for RJ, mediation or, if the wider community is affected, community conferencing. Ultimately, we need to ensure that our mediators are comfortable taking on a particular case.

We find that more people are familiar with the idea of mediation than RJ, some refer to an RJ meeting as 'mediation'. I make it clear to the parties that we are not going to mediate between them, and that RJ is a completely different process.

What Restorative Justice offers the parties

Victims and their loved ones often feel isolated and vulnerable when dealing with the criminal justice system. They may be left with feelings of rage and anger, and be tormented by questions which weren't answered in court. When we offer RJ to victims, they often see it as a chance to tell the offender about the impact of their actions or to get their questions answered. For example, a mother whose son was killed in a fight needed to know exactly how her son had been behaving before the fight, and the offender was able to explain the circumstances and give her some peace of mind.

For an offender, who might be feeling ashamed and angry at themselves, we might explain that the victim/family members could benefit from a conversation. Even if the harm cannot be undone, the one good thing the offender could do is to answer their questions, allowing them some closure and to move on from the harm.

RJ risk assessments

We talk about risk assessment from our initial meetings, safeguarding the practitioner, safeguarding the parties involved, and ensuring that future offenders or victims who might hear about RJ will feel they can trust us.

We have specific Risk Assessments for harmers/offenders and those who have been harmed/victims. These detailed forms are completed with the parties before any in-person meetings. Risk assessment is an ongoing process which is reviewed regularly throughout the RJ process. If any new risks emerge, appropriate control measures will be introduced to minimise the risk of harm to everyone involved.

Some of the risks we look at in RJ overlap with the risks that mediators also face, such as meeting with people who are in conflict, where any triggers during the process can create risks to the parties and practitioners.

We assess the needs, concerns and expectations of the parties, so we can manage any conflicts which arise from these.

From the risk assessment findings, we put appropriate controls in place so we can bring the parties together safely in a face-to-face conference, where everyone can engage with the difficult issues to be confronted.

Management of the risks includes practical steps such as ensuring we have a safe breakout room, replacing the in-person conference with an online conference or a shuttle exchange of verbal information or letters. Another essential stage is preparing the parties so they know how the conference will work, they are clear about what they want to achieve and they have confidence that the practitioners will keep them safe.

Risks to practitioners and parties

Initially the risk assessment is concerned with the practitioner's first meeting with a party, which is usually in the party's home. We look at the availability of safe parking nearby, the local crime rate, anti-social behaviour issues, the presence of potentially dangerous dogs or other people in the home who might present a threat to the practitioner. When visiting an offender, we would

check whether they are still on probation or on the sex offender register. If there are concerns about visiting a home, we would arrange to meet somewhere more public, such as a library or community centre. We would also send two practitioners to the meeting and put a plan in place to keep in contact with them and to take appropriate action if we don't hear from them at an agreed time.

When we are planning the in-person RJ conference, we will assess the potential physical risks to the parties and the practitioners. We would also consider the risk of emotional harm to the parties. In particular, we would assess the risk of a victim being re-victimised by the offender's words, attitudes and behaviours.

When can RJ take place?

The timing of RJ is important. Sometimes we get a case, and the risk assessment might indicate that it is too soon after the harm for a victim to take part in a conference. In that case, we would follow up a few months later to see whether the time was right. We don't believe it is ever too late for RJ to be used, in one case we supported a victim to obtain answers from the offender, then serving a prison term, who had harmed them 30 years previously. An individual's needs are our priority, and we will work with them to assess those needs and the opportunities for those needs to be met, however long it is since the harm was committed.

The impact of language

One important element of preparation for an RJ conference is helping the parties to consider how their words will impact on the other party. We encourage them to focus on what they are hoping to achieve from the process and whether their words will help or hinder them in this.

If an offender wants to apologise to a well-spoken victim, but the offender's language is full of choice words, we might ask them whether speaking in this way is likely to help the apology being accepted or may further upset the victim. We would then support the offender in choosing language that might be less offensive to the victim.

One example I had was when a family member had many questions they wanted the offender to answer. One question was "What is it like to be a paedophile?" We explained that the offender could perceive this as a direct attack and might walk out, leaving the person's other questions unanswered.

In these circumstances, we don't try to put words into people's mouths, but we might ask "Will the wording of your question help you to meet your overall needs?". In this case, the question was rephrased as "How do you feel about having to sign the sex offender register for the rest of your life?" which is more likely to result in the offender continuing to engage with the process and providing answers to all the questions.

Initially in this case, which related to child abuse, the family member was extremely angry and there was no way we would have put her in the same room as the offender. However, over a period of 13 months we spoke regularly to help her consider what responses the offender might make and how that would affect her. We also worked through many possible scenarios using virtual conferencing, over three or four sessions. Role-playing often helps the parties to feel more prepared and less stressed when they are brought together, which is a much better starting environment for everyone.

We kept updating the risk assessment and eventually we reached a point where there were sufficient measures in place to safeguard everyone and we went ahead with a face-to-face conference.

Building trust with the parties

When I meet a party for the first time, I'm very open about who I am and what my background is. I tell them that I used to be a police officer because, if people look me up, they will quickly find out my background and may assume I was hiding my police links. I will explain exactly what my current role is and that I am there to support both the offender and the victim. I have to be open, honest and transparent with people because, if I'm not, they will find out, and then the whole process can collapse. If this happened, I would feel that I'd let the victim down.

I also share a bit about myself, such as my general family circumstances or sporting interests. This starts to build a relationship of trust between us, where the parties feel more comfortable discussing very sensitive and emotive issues with me, which is essential to the success of the conference.

Preparing for strong emotions

If we ask the parties how they are feeling shortly before a conference, a victim may say that they are anxious and angry – when we speak to the offender, they might say they are frightened, angry at themselves and ashamed. The

emotions will reflect the original offence, as well as the parties' concerns about coming to the conference where they will meet the other party.

If a victim is extremely angry and will be very vocal in the conference, I will need to prepare the offender for this. For example, with a convicted offender who had caused a road collision in which two teenagers died, I told the offender that the parents would need to unload their emotions, but that I would ensure there wouldn't be any physical or verbal abuse. I also explained that, while the offender could not bring back the young people, they could provide answers to the parents which would help them to begin grieving properly.

If the offender has been properly prepared, they might come out of the conference saying "It was tough, but I was supported throughout the process and I'm glad I did it". However, if an unprepared offender is faced with an angry victim, they might leave the meeting and return to the prison landings telling others "Don't ever do RJ". This might then be failing other victims who could have been helped if their offenders had agreed to take part in RJ.

We need to manage those emotions and support the parties in getting to a place where the important questions can be asked and answered. So, being impartial and very non-judgmental helps us to facilitate people getting the answers they need - helping an offender to answer those questions is key to the success of the whole intervention.

By building a trusting relationship with the parties prior to a conference, it is easier for us to manage difficult emotions and behaviours when they emerge. We may need to take one party to a breakout room for a private chat, where they can calm down and get a drink until they are ready to return to the meeting. Usually, the practitioner who has built the strongest relationship with an angry party will take them out of the room, while the other practitioner stays with the remaining party.

When the parties should not be in contact

We always prefer face-to-face meetings as they can be the most impactful. However, if the risk assessment finds that it is unsafe for the parties to be put together face-to-face or online, we would facilitate a shuttle (we pass information verbally) or exchange of written communications between the parties.

However, the risk assessment may indicate that the risks are too great to facilitate any contact between the parties.

In this case, we will explain the reasons to the parties and will go back to them after a couple of months to see whether the circumstances have improved.

What successful RJ can achieve

The impact of RJ can be amazing. The victim I mentioned, who met their offender 30 years after the offence, came out of the meeting saying "I felt empowered, and I took back what he took from me. For the first time in my life, I feel like I've got a future..."

The impact of RJ isn't always immediately obvious, a few months down the line someone might contact us and say "Oh my goodness! I can't believe how different I feel... My life's changed... I'm not carrying that anger and emotion that I had prior to the RJ process."

A successful RJ conference, where the parties have communicated well, and we see the victims start to move on positively from the harm, is very rewarding for us. To see offenders change their ways and embark on a law-abiding future is equally rewarding.

Roy Poyntz' reflections on Dave Pascoe's interview

Having also done some RJ volunteering – with Restorative Solutions - I echo what Dave has written. Victims often feel let down by the criminal justice system, their voice unheard, explanations unforthcoming. I've seen the potential of the conference to enable victim and offender to have a dialogue with each other; in (transformative) mediation terms to be empowered and show recognition. The labels 'victim' and 'offender' are important in addressing the potential for harm but that does not preclude the potential for both sides to benefit from the interaction, to find their own healing.

In managing the risk of harm, Dave talks about preparing each party for what the other might say and their reaction to what might be said to them. That degree of coaching is something I might do in pre-mediation – particularly in a community mediation – but only if appropriate and not automatically.

The RJ process moves at a considered but slow pace which can be a challenge for the volunteer, especially when a case dwindles to a halt. In my (main) practice as an SEN mediator, cases are prepared, done and dusted within a two-week period.

Dave mentions shuttle and written processes as a fallback position if a conference is not tenable. Are these

techniques applicable in mediation? Shuttle is certainly deployed in commercial mediation. Indeed lawyers may expect caucus (private) sessions to be used in preference to plenary (joint) sessions. I've seen shuttle used as a last ditch effort in neighbour mediation, but with limited success. Why the difference? I suggest it is a choice between a transactional or a relational approach to mediation - which is fit for purpose? Which is the mediator offering?

I would certainly recommend mediators to consider volunteering for RJ. You have the core micro-skills to function effectively, it creates a rich opportunity for reflection (on both sides), and it is a socially useful service.

¹ **Adrienne Watson trained as an Accredited Mediator in 2016. She recently completed the MSc in Mediation and Conflict Resolution at the University of Strathclyde. Adrienne is a lead mediator with Strathclyde Mediation Clinic and is Assistant Editor of the Mediation Matters! newsletter.**

² **Dave Pascoe was a police officer for 27 years following service in HM Armed Forces. Much of his career was in the Firearms Unit. On transferring to a community policing role in 2007 and undergoing RJ training, he initially considered that RJ was just a soft option for offenders. However, as Dave started using the process and witnessed RJ's positive impact on the victims of crime and the wider community, he delivered more and more interventions to support both victims and offenders. Following his retirement from the police service in 2019, he joined Restorative Solutions in North Yorkshire where he is now their Service Delivery Manager ([Home | Restorative Solutions](#)).**

³ **Roy Poyntz has been a mediator since 2006, practicing in the fields of commercial, community and Special Education Needs mediation. He completed the Strathclyde MSc in Mediation and Conflict Resolution in 2012 and a PhD examining mediation as social interaction in 2018. He has volunteered with Restorative Solutions in West and North Yorkshire since 2016.**