Restorative Justice, Mediation and Relational Conflict Resolution in work with young people in Residential Care

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Acknowledgements

Abstract:
Conflict Resolution approaches such as Restorative Justice and Mediation are becoming increasingly important in policy and practice in work with children and young people, be this in relation to work with separating parents to minimise the difficulties and conflicts involved for their children, or in relation to youth justice. One of the main aims of such conflict resolution approaches in social work is to develop techniques and skills for workers and service users to enable them to deal with their conflicts and disputes in a more positive manner than is often currently the case.

This article examines these approaches in family disputes and youth offending areas, and then develops these considerations further to examine the possibilities for extending restorative justice approaches within a relational conflict resolution approach for young people's residential units, and more widely in group care settings.

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Introduction

Restorative interventions and mediation have become major areas of development within policies and practices for the resolution of family problems, and within youth justice services (Fox, 2005; Mirsky, 2003; Roberts, 2007). One of the main aims of conflict resolution approaches, such as restorative justice and mediation, is to enable service users to deal with their conflicts and disputes with others in a positive, developmental manner.

This article examines the advantages and disadvantages of using restorative justice and mediation approaches in work with children and young people in family dispute and youth offending areas, and then more widely in group care settings, where conflict and abuse have been noted as key problem areas (Barter et al., 2004). It will consider how there might be a synthesis of some of the elements of restorative justice and mediation techniques which can lead to new forms of conflict resolution in residential young peoples units and group care, taking into account the particular nature of the close group dynamics and affective relationships which are a feature of them, based on an evaluation of the introduction of restorative justice into a young person's residential unit (Littlechild, 2003; Littlechild Rees, 2004) .

There is evidence to demonstrate that conflict resolution and restorative approaches can be important in developing positive social and interpersonal attitudes within social work, social care, youth justice and education settings (Littlechild, 2003; van Wormer, 2008; Royal Society for the Encouragement of the Arts, Manufacture and Commerce, 2007).

Restorative justice, mediation and conflict resolution approaches

Restorative justice has been put forward as an effective means to work with young people who have offended, in developing their own understanding of their responsibility for, and effects of, their actions on others. Whilstretributive justice approaches within formal, adversarial criminal justice processes have been shown to be structurally unable to do this (Shaw and Jane, 1999), restorative justice has also been regarded as a valuable means of dealing with child welfare issues and criminal behaviour (Graef, 2000; Family Rights Group, 2003). Claims are made that restorative interventions can effectively divert young people away from the formal justice system, and better meet the needs and difficulties both of these young people and of their victims (Haines, 2000; Johnstone, 2003). Family mediation, it is argued, can reduce the conflicts and tensions which can often arise, and which negatively

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affect childen and young poeples well- being, security and development (Roberts, 2007).

The same arguments can be used for residential young peoples units, in relation to punitive based retributive justice versus conflict resolution based restorative justice and mediation methods. Such styles of intervention which incorporate more widely based mediation and conflict resolution approaches within a restorative justice paradigm can be effective in dealing with behaviour which is problematic in community and group care settings. Littlechild and Rees (2004) argue that restorative justice aims to ensure that offending and/or problem behaviours are challenged in a positive manner, usually involving some form of apology and reparation. It can be argued that helping young people to develop into responsible adults who can have mutually rewarding relationships is also part of what young people and the wider society should expect from those who care for them, and that this relates to three of the five domains of well-being set out in Every Child Matters (Department for Education and Skills, 2003) - physical and mental health; staying safe; and making a positive contribution.

Restorative Justice
Whilst the majority of restorative justice literature concerns, and is used within, the criminal justice system, Marshall (1999) states that restorative justice is based on a set of principles which can orientate the practice of a wide variety of agencies and services in relation to crime. Marshall (1999) states that these principles are:

- Making space for the personal involvement of those who are centrally concerned (particularly the offender and victim, and if required the families and community representatives).
- Seeing crime problems within their social context.
- A preventative or forward-looking problem solving orientation.
- Flexibility of practice.

These principles provide an orientation to extend the repertoire of restorative approaches and methods to settings- such as group care - where conflict and problematic behaviours may or may not be determined as criminal acts under the law.

Daly and Immarigeon use a definition that applies equally well to welfare and social work as to criminal processes, in that restorative justice:
".....emphasises the repair of harms and of ruptured social bonds resulting from crime; ...focus[ing] on the relationships between crime victims, offenders and society" (Daly and Immarigeon, 1998:22).

Wong maintains that in the area of young people's offending and anti-social behaviour, restorative justice is a near- perfect strategy to deal with this by increasing social responsibility and cohesion, by

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"sanctioning juvenile offenders through accountability, rehabilitating offenders through empowerment, and building a safe community through interdependency" (Wong, 2008:12).

van Wormer (2008) argues that restorative justice is a key area of concern for social work, in that it operates in the area between private troubles and public policy. The task of social work is to attempt to improve relationships between people, and between people and their local as well as macro systems, such as government agencies. Restorative justice is built on relationships; wrong doing and harmful behaviour is a violation against others in a restorative justice model, not against the State as in retributive models, and therefore to be repaired at the relationship level, not in the courts. Restorative justice thus includes strategies to restore the balance in relationships which have been disrupted and harmed; precisely the areas social workers are well equipped through their skills, knowledge and value base to contribute to, and in which to take a lead.

One example of the practical application of restorative justice is in Youth Offender Referral Panels, which administer Referral Orders made by the Youth Courts. Youth Courts are adversarial, involving legal representation for both parties (Haines, 2000). This process in essence excludes the victim, although there are now attempts to find ways to have the victims views represented ways (Angus, 2005). Such processes explicitly exclude the possibility of reparation and atonement processes.

Unless it is a very serious offence, the Youth Court will order a Referral Order of between 3 months and a year on a young person's first appearance , if s/he pleads or is found guilty. The purpose of the Panels is to provide a less formal, non-adversarial setting in order to engage with the young person who has offended, with their parents or carers, and where possible, with the victim of the offence. The Panel meeting is led by two local community members who are trained for the role, and who are assisted by a Youth Offending Team worker. If agreement between all parties can be reached, the meeting sets a contract with the young person, which it monitors by way of further meetings over the course of the Order.

An important purpose of the Panel meeting is to enable a discussion about the causes of the offending, and to determine what reparation should take place in order, as far as possible, to repair any physical or psychological damage created by the offence(s). The aim is to do this within a set of discussions and programme of sessions on the effects on victims of crime, which also address areas of risk identified in relation to the young person's offending; e.g. victim awareness, drug problems, mental health problems, education or employment and training needs, etc., as well as to set a number of hours of community service, or 'community payback' as it is sometimes known. The individualised programme also sets out to aid the young person to realise to a greater extent their social commitments and responsibilities to other possible

victims in the future, and others in their networks- e.g. families and friends- as well as themselves.

Mediation
Mediation is focused less on criminal behaviour than on more general dispute resolution between those who have a grievance or disagreement. It is utilised in resolving conflicts in situations such as divorce and separation and youth homelessness caused by conflict within the family, in neighbourhood disputes, and within schools (see Mediation UK website, www.mediation.org.uk). Mediation approaches, such as those occurring in the civil justice system for non-criminal matters, are frequently utilised where parents are separating, and there is dispute over the residence arrangements for the children and financial settlements, which can negatively affect children's feelings of security , trust, and emotional well-being and development (Roberts, 2007).

Mediation allows the different participants in a dispute to put forward their experiences and points of view, and to discuss and potentially resolve the conflicts between them in a safe environment with a facilitator who is independent from the dispute. Mediation gives all participants the chance to put forward potential solutions, and to talk without being interrupted. It encourages the different people involved to put forward their own suggestions and ideas for ways to overcome the hurt and harm produced in a situation, engendering ownership of agreements produced, as opposed to legal procedures which perpetrators and victims frequently experience as alienating, intimidating and disempowering. Participants speak for themselves in mediation meetings rather than having someone else such as a solicitor speak for them. These processes are very similar to those employed in restorative justice.

Similar advantages are also present as for restorative justice in terms of allowing a setting in which harm can be explored, shared and potentially, at least to some extent, to be repaired. As with restorative justice, potential participants should not be made to feel that they have to take part in the process if they feel uncomfortable or threatened by it (van Wormer, 2008).

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Recent work (e.g. Crimmens and Milligan, 2005) on young people accommodated by local authorities, often has little mention of issues of conflict and how to resolve them within residential units. Equally, restorative justice literature does not relate these methods to situations where people live together in close affective relationships, as evidenced in the views and experiences of residential workers in the study of 2003 (Littlechild, 2003). The potential for such conflict resolution approaches in such settings, and social work and social care more generally, given

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these omissions and the evidence from the evaluation presented in this article, seems clear.

Evaluation of the effectiveness and outcomes of the introduction of a restorative justice approach within residential young people's units in the Hertfordshire County Council demonstrates how mediation, conflict resolution and restorative justice approaches might be combined to good effect in such settings (Littlechild, 2003; Littlechild and Rees, 2004; Youth Justice News, 2005).

In the first phase of the evaluation, following introduction of restorative justice training for staff and the restorative justice process into the unit, police call out figures from the unit fell by 39%, and recorded incidents of problematic behaviour within the unit decreased by 54%. The restorative justice training which staff received changed the way staff dealt with conflict in the units. These were not just criminal situations; they also included bullying, arguments, and other non-criminal conflicts. The overall view of staff and young people was that restorative justice was valuable in focusing young people on considering their own responsibilities, and the effects on victims, with an opportunity for victims "to have their say". This innovative work in Hertfordshire demonstrated the value of using the concept and methods of restorative justice in order not only to divert young people from the formal criminal justice system, but also as a means to positively deal with conflict within situations, which whilst not criminal, might become such if not dealt with effectively, and significantly affecting the well-being of staff and young people. However, whilst the restorative justice approach worked well with a number of young people and situations, this was not always true for all forms of interpersonal conflict; the experiences of young people and staff were that bullying was the most difficult form of anti-social behaviour for staff and young people to deal with. It also demonstrates the need to take into account risk factors for those who are experiencing abuse or bullying, in order to protect the rights and interests of such groups in a proactive way by the professionals who use them (Littlechild, 2003).

In the second and subsequent phase of the evaluation in 2006, following introduction of restorative justice training for staff and the restorative justice restorative justice process into all of the County Council units, police call-outs from the units decreased by 23% during the three years following the implementation of restorative justice methods compared with the figures for the 3 years preceding the introduction. Numerically, there was a decrease from 433 call-outs to the police in November 1999-November 2002 to 340 in December 2002- December 2005. However, there was wide variation between the four units, with a small increase in one of the 4 units studied, the reasons for which were not identified within this study, but which would be valuable to explore in future such evaluations.

Formal conferences in the restorative justice arena require an independent facilitator who will prepare participants for, and chair, a formal meeting between the victim

and offender, with clear guidelines and agreements in place about behaviour, and the purpose of the meeting, which is to try to agree an acceptable resolution to the matter. This might include an apology, and possibly other forms of reparation, be this directly to the victim, or more usually, some form of community service or 'payback' as it is sometimes known (Fox, 2005).

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Participants - young people and staff- in both evaluations experienced that the restorative justice conducted in the units was largely informal. Staff utilized a mixture of mediation processes and restorative justice processes, dealing with criminal and non-criminal conflicts and problems, sometimes in formal restorative justice meetings, but more frequently in less formal meetings. This was the result of the need to apply restorative justice to the sets of relationships within residential group care which restorative justice in the criminal justice system was not designed to do. In group care situations, more immediate and informal systems are necessary to deal with problems as they arise. Setting up formal restorative justice conferences requires locating an independent facilitator, taking time during which the problem can exacerbate. The method was also used by staff to resolve conflicts between young people, and young people and staff, where situations were not necessarily criminal, often without a clear delineation between who was the perpetrator, and who was the victim.

The effectiveness of such informal restorative justice as practised in the residential units is dependent on staff following through the agreed outcomes, and monitoring any repercussions in the relationships between the victim and the perpetrator.

As a result of these findings in the 2 evaluations, we can start to look at the use of the terms 'restorative justice' and 'mediation' in a new sense. Johnstone (2003) states that the main aim of restorative justice and restorative approaches should be to help reinstate 'relational proximity'. In residential and group care settings, such processes are required to deal not only with criminal behaviour, but also to situations where people feel aggrieved about the behaviour of others, whether this is criminal or not- an approach more akin to certain forms of mediation processes.

This combination of such approaches for the particular needs of residential settings is more appropriately termed 'relational conflict resolution'. Developing such a mix of the strengths of mediation and restorative justice processes can be an effective means of dealing with the conflicts and potentially criminal behaviour found within the intense affective relationships within young people's residential units and other group care settings. It is therefore more similar to a domestic violence situation than the arguments and conflicts which are dealt with in the criminal justice process.

Indeed, the types of behaviour which are frequently dealt with are more akin to interpersonal conflict within other types of settings which can be termed anti-social

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behaviour, and dealing with this at an early if not immediate stage can prevent the build up of a situation into possible criminal acts.

The way conflict is   dealt with within the close sets of relationships of 'domestic' situations is   not the same as a situation where the victim and offender do not know each other well or are even strangers. Staff therefore believed that it was important that restorative justice /mediation was used soon after the event, otherwise   the impact of using restorative justice diminished. Informal meetings, facilitated by staff in the unit and   arranged shortly after the event, were found to be a very effective method of conflict resolution.

The victim can talk about the matter, ask for an apology, and/or ask the perpetrator to undertake restorative tasks by way of reparation.   In the 2 phases of the residential unit evaluation, very few formal restorative justice meetings had been arranged, as most situations were resolved satisfactorily in informal settings, and at appropriate times for the staff, perpetrator and victim. In addition, some young people reacted better to the informal mode of restorative justice use than formal meetings, which could make both or either perpetrator and victim anxious. Some young people had refused to take part in formal meetings. That stated, only one formal meeting had reportedly broken down. Others had worked well; these often concerned theft, where stolen items were returned, and apologies received. Another difficulty with formal meetings was that there were difficulties in finding a neutral, external person within an appropriate timeframe. However, in the use of informal restorative justice, it is more difficult to assess if the issues have been has dealt with for victims effectively and helped create `closure'. This then leads us to address some of the limitations of such conflict resolution approaches in group care situations.

Concerns and limitations
There are a number of areas of concern raised by commentators on restorative justice and mediation. One of these   criticisms concerns there being no legal representation for young people in restorative justice and mediation models (Haines, 2000). However, balanced against this, the presence of a solicitor in their traditional role within the English adversarial justice system in restorative justice processes can negate the young person's engagement, and their feelings of responsibility for any harm done. In family mediation, the presence of a solicitor who is there to 'defend' their client can also be damaging for resolution as blaming the 'other party' is prevalent in legal processes under the adversarial system in England and Wales in gaining advantage for oneself over that of the other party. Solicitors are increasingly, however, performing mediation functions in family breakdown situations, and going beyond their traditional adversarial role. The difficulty with traditional legal representation- in both family mediation and criminal restorative justice meetings- is that it frequently mirrors the adversarial approach of the courts; there is a search for blame, and discrediting the experiences and evidence of the 'other side'. Within the

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criminal justice areas, it can be argued that the real necessity for legal representation is in relation to findings of guilt; in dealing with and helping repair the difficulties arising from the crime/dispute, such adversarial approaches actively militate against taking responsibility for one's own actions and resolving the interpersonal problems created.

Resolutions and reparation agreements also need to take into account proportionality in relation to the amount of time the contract takes out of the young person's life (Haines, 2000), and the importance of ensuring that any reparation is not degrading- for example, in accordance with the United Nations Convention on the Rights of the Child concerning the prohibition of degrading treatment. This applies to curfews, types of reparative work undertaken, financial penalties, and victim involvement.

The involvement of the victim and her/his views in both residential units, as set out earlier in this article, and the Referral Panel's considerations also set out earlier, is a major move forward, but we know that victims require a good deal of support before, during and after such restorative meetings, due to their concerns at meeting the person who has offended against/caused hurt to them, and the possible repercussions of this (Williams 2005; Angus, 2005). This raises questions as to whether the participants are fully prepared and supported in relation to restorative justice meetings; an issue which is equally important in residential units, especially given the intense nature of the relationships which form within them. Johnstone (2003) maintains that restorative justice confronts offenders effectively concerning the effects of their actions. However, what has not been explored in the literature concerns the practical issues and power dynamics of using restorative justice within closer, affective relationships than most of those which the criminal justice system deals with.

In the 2 phases of the evaluation, bullying was viewed by both residents and staff as the most difficult type of conflict to deal with. Valuable though it is in many ways, introducing restorative justice, mediation or relational conflict resolution approaches without a full appreciation of the effects of such bullying in the first instance, and then the subsequent possible repercussions of trying to confront it, can have damaging and unintended effects on victims emotionally, psychologically and socially. One reason for this is the possibility that negative repercussions may occur for the victim from the perpetrator if they report it, as has been found to the case in domestic violence situations (Humphreys and Stanley 2006). The staff also felt that in some situations that they would not be able to create 'closure' for the young person, due to the young person's real or imagined fear of repercussions.

In 2005, there was widespread publicity about 13 year old Laura Rhodes, who was encouraged to take part in a 'circle time' meeting at her school with other students who were bullying her   as part of a 'no- blame' strategy which tried to avoid exclusion or punishment for the bullies. Laura took her life after the meeting, amidst concerns that this process had actually given more power to the bullies, by having her discuss the effects of the bullying on her with the perpetrators (Observer, 2005).

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Claude Knights of KIDSCAPE, an organisation which provides support for children and young people who are bullied, was quoted as saying that 'once the bully has said sorry, the victims are almost made to feel they must play their part, almost as if it's their fault'. She also expressed concerns that some 'socially skilled' bullies managed to convey a false impression that they understood the harm they were doing but then went on to use the information as fuel for fresh aggression, leaving the victim to feel the system had failed them, and therefore less likely to report further bullying. Proper preparation, protection, and choice need to be in place for the victim if further victimisation and distress is not to take place, requiring a full commitment within the agency policies and from its managers that training and ongoing supervision address these issues.

The evaluations of the introduction of restorative justice into the residential units studied found that restorative conflict resolution techniques can be effectively used for some bullying situations, but not others. There needs to be discrete assessment in the preparation and planning for restorative/mediation meetings between bully and victim to ensure that the former is engaged with the principles of the process, and also that the victim, who may be very afraid of the bully, is not just taking part in the process to appease the bully, or the staff organising it, or the staff organising it. Any work in this area needs to be based on a full understanding of how victims of abuse can find it difficult to be assertive about their own needs and rights due to the fear of reprisals in what can be very subtle ways which are not always obvious to the staff.

Conclusion
The introduction of restorative justice approaches into residential young people's units in Hertfordshire can be judged to have been successful from an examination of young people and staff experiences; they saw the introduction of this approach as positive, helping to reduce conflict between young people, and between young people and staff. It helped young people to realise the effects of their actions, and develop in ways which helped them to appreciate the experiences of others. A number stated that it was helpful to share feelings and thoughts about such situations in the restorative justice meetings to develop positive and trusting relationships. In addition, three out of four of those units in the second phase of the evaluation reduced the need for police call-outs.

Managers and staff stated that overall the introduction of restorative justice resulted in positive outcomes for the young people they worked with, including:

- Improved anger management skills
- A sense of responsibility
- More opportunities for residents to voice their concerns and feelings
- A feeling that they were part of the process

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- An understanding that actions have consequences
- Improved skills for managing conflict
- Greater empathy towards others
- Increased mutual respect.

Such approaches aim to achieve discussion of the nature of the dispute, and how best to resolve it, whilst also helping people learn to resolve disputes.

This is an area for social workers to develop, as happened in the residential units in Hertfordshire. Social work has the potential to make such conflict resolution approaches key features within its methods,, at personal, community and agency levels, based upon generic social work skills and values. . This fits with other developments in social work around the globe, with real potential to transcend the nation based specific forms and methods of social work so often noted by international commentators; restorative justice and mediation are methods which can be employed by social workers in different cultures and countries (van Wormer, 2008). By building upon a mix of restorative justice and mediation techniques, relational conflict resolution can be a valuable approach within many social work and social care situations where conflict and disputes are taking place.

However, social work also sets out to protect the most vulnerable in society; in the area of conflict resolution, this an important issue to address. Whilst restorative justice and mediation were considered to be effective if perpetrators were genuinely willing to take part, there were some concerns that some young people could purport to be "buying into" the process, but in reality were not. Victims may fear that they would be bullied further and not protected, if issues of power and control present within bullying relationships are not recognised and dealt with by staff carrying out restorative justice and mediation. Therefore workers need to be proactively aware of how those who are aggrieved/harmed will react to restorative justice and mediation approaches, and how to make victim participants feel protected in the meetings and after them. With this proviso, and the proper preparation of all participating, based on the knowledge there is of such processes as applied to social work and social care settings, such approaches have a potentially important part to play in both resolving conflicts more positively, and aiding service users to learn better ways to relate to others in current and future situations, increasing their chances of satisfying and stable relationships for the benefit of all concerned.

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