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The exclusion of serious and organised offenders and their victims from the offer of restorative justice: Should this be so and what happens when the offer is put on the table?

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Abstract

There is scarce research evidence of restorative justice being used in the context of serious and organised crime offending. This study sought to explore the feasibility of using restorative justice by canvassing the views of experts, serious and organised crime offenders and serious and organised crime victims in England. Offenders and victims were given the opportunity to engage in a restorative justice initiative and individual cases were pursued accordingly as a series of case studies. Case studies were limited to large-scale serious and organised fraud. Stark differences in views were apparent between serious and organised crime experts and restorative justice experts, the former doubting offenders' motivations and pointing to their dangerousness without fully considering victim perspectives. Despite high attrition rates among some offenders expressing an initial willingness to pursue restorative justice, where both parties wished to participate, sustained motivation was observed. This study highlights inequities in the way that police forces have implemented the 2015 Victims Code requirements for restorative justice in England and Wales, potentially blocking opportunities for closure, social integration and reduced reoffending.

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Keywords

Local policing, restorative justice, serious and organised crime, victims, victims code

Introduction

Restorative justice (RJ) interventions have grown in popularity globally, playing an increasingly larger role in resolving conflict in numerous sectors. Within the criminal justice sector, RJ has received much attention for low-level offending and its use has been extended to some serious and complex cases. Yet, there is one area it seems where RJ has not penetrated – the area of serious and organised crime (SOC). Many SOC offences do not have identifiable individual victims (such as drug trafficking) but others do, such as human trafficking with considerable harm suffered by victims. This raises the question of how the police make assessments about eligibility and suitability for RJ.

This study builds on previous research by D'Souza and L'Hoiry (2019) by undertaking attitudinal surveys with RJ and police SOC experts, SOC offenders and SOC victims. Offenders and victims were offered the opportunity to pursue RJ if they so wished. As SOC is a hotly contested term, this will be explored before considering the use of RJ in various serious and complex contexts to explore the relative successes and the specific aspects which trouble critics. The methodology will be outlined before presenting the findings and discussing the implications for local policing, offenders and victims.

Framed as an 'alternative paradigm of justice' (O'Mahony and Doak, 2017: 1), a globally recognised definition for RJ provided by Marshall (1999: 5) was adopted:

Restorative justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future.

RJ is more often used for more minor crime than serious crime. Shewan (2010) found that over 77% of police forces used RJ across England and Wales, mostly for low-level crime. Acton (2015) refers to a 'postcode lottery' in RJ usage, though RJ is increasingly deployed in some serious and complex contexts such as domestic violence and hate crime (Cunneen and Hoyle, 2010), terrorism (Bueno, 2013) and sexual violence (McGlynn et al., 2012). Within the context of organised criminality, Mannozi (2013) describes how, in Southern Italy, the presence of mafia subcultures inhibits the use of victim offender mediation. Mutual consent to take part is thwarted by the silencing of victims fearful of reprisals and intimidation into compliance by mafia leaders committed to retaining power but involved in resolving local conflict, often at the request of police. In Northern Ireland, Eriksson (2008) found scope for changing deep-seated violent cultures with the catalyst for change being the experience of using RJ values at an individual level and influencing conflict resolution practices at an organisational level. The role of former combatants at grassroots level promoted ownership of crime management. In addition, in post-conflict situations, the South African Truth and Reconciliation Commission (Jenkins, 2007) and the Gacaca Courts in Rwanda were deemed successful though controversial (Brehm et al., 2014). However, in such cases, the debate continues to rage, with cautions against its use due to perceived power imbalances between parties

(Busch, 2002), and the extremely complex nature of victimhood rendering this intervention more harmful (Stubbs, 2007). Despite this, numerous scholars assert that RJ is a feasible option and even desirable (Walters, 2014). However, there are no published studies exploring the use of RJ in the SOC context in England and Wales prior to 2015, with studies limited to exploratory research by D'Souza and L'Hoiry (2019), and a pilot case study (D'Souza, 2019). This is not a matter simply of entitlement to a service, but the denial of the opportunity for victims to potentially 'move on' from their experiences and lead a psychologically healthier life (Angel et al., 2014), as well as potentially becoming more satisfied with RJ outcomes than with either reparation or restitution, due to their greater involvement in the process (Beven et al., 2005).

The Victims Code 2015 (Ministry of Justice, 2015)¹ specifies an onus on police in England and Wales to inform victims about how they can participate in RJ where the offender is an adult and RJ is locally available. In addition, where victims request participation in RJ, they should not be precluded based on the crime perpetrated against them. It remains to be seen whether the difficulties in offering RJ within the SOC context are due to the conceptualisation of SOC or if there is something qualitatively different about SOC that it should not be used for RJ. This exclusion of SOC victims from RJ considerations may show a disparity with the stated values of fairness, impartiality and non-discriminatory services (College of Policing, Code of Ethics, 2014) in relation to marginalised communities with protected characteristics, and could be argued to apply to those with enhanced vulnerabilities.

Serious and organised crime – Conceptual and operational challenges

An exploration of how SOC has evolved on the international and domestic landscape will be followed by an analysis of definitional challenges and how this influences policing SOC. The nature and impact of SOC in England and Wales will be discussed, with a focus on organised fraud, as the research case studies were limited to this context.

The concept of 'organised crime' (OC) originated from the United States (Antonopoulos and Papanicolaou, 2018) in the 1920s. Italian-American organised crime evolved and focused mainly on the mafia as criminality based on familial ties (Wright, 2006), subsequently spreading to Europe in the 1960/1970s before its adoption worldwide (Hobbs, 2013). SOC imagery is often associated with connotations derived from the mafia (Antonopoulos and Papanicolaou, 2018), conjuring up a foreboding family akin to the brutality in Coppola's *Godfather* (Wall and Chistyakova, 2015)

Definitional conundrums have dominated scholarly debate for decades with little academic consensus about what constitutes SOC. However, the United Nations (UN) (2000) definition appears to be globally accepted by governments and police, though not recognising non-material benefits as motivation for committing SOC:

'organised crime group' shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit. (p. 60)

The Serious Crime Act (2015) Section 45(6) for England and Wales defines organised crime groups (OCGs) as three or more persons who act or agree to act together to commit offences. This underpins the basis on which police forces identify OCGs in order for them to be formally categorised as such for criminal justice purposes. The Home Office's SOC Strategy (2013) specifies that organised crime is that which is serious, planned and coordinated by offenders collaborating on a continued basis. These definitions are vague and over-inclusive (Sergi, 2017).

The definition is important as it underpins the basis on which police identify OCGs. This all-encompassing definition gives the police freedom to include/exclude offence types, for example, to match other operational priorities. Currently, there is an increasing focus on vulnerability, prioritising, for example, modern-day slavery and human trafficking, as well as fraud against the elderly. Previously, the main focus was on the distribution of illegal drugs, thus minimising the relevance of RJ as such offences do not typically have identifiable victims (D'Souza, 2020). Notably, victims and effects on victims are omitted from the official definitions (Clark, 2005) accentuating their offender-centeredness, marginalising the prospect for having identifiable victims with whom a restorative dialogue can take place.

There is a gap between the results of empirical research which focuses on the disorganised nature of organised crime with loose flexible networks committing those offences (see Sergi, 2017 for a description of policing organised crime as an activity model based on intelligence gathering) and law enforcement definitions which classify such activities as an enduring single national threat necessitating the resourcing of significant policing apparatus and ever-increasing intrusive investigative measures (Lavorigna and Sergi, 2016). In their study in Scotland, Fraser et al (2018) detail that the nature of organised crime has changed with the impact of dark web technologies, the advent of mobile OCGs (e.g. those drug distributors who take over vulnerable residents' homes to extend their reach) and the impact of labour exploitation in human trafficking.

British SOC has never easily fitted mafia-type descriptions. SOC tends to be perpetrated by agile groups of resourceful career criminals ready to exploit opportunities (Europol, 2015). However, it is worth noting that the illegal governance of communities via extortion, bullying, restricting competition, threats of violence and intimidation, particularly evident in areas with low trust levels in formal authority and characterised by mass migration, do have some similarities with mafia organisations in non-UK contexts such as the Sicilian Mafia (Campana and Varese, 2018). Here, the impact of SOC is deemed pervasive and corrosive (Crocker et al., 2017) with a 'daily impact on the UK's public services, institutions, national reputation and infrastructure' (National Crime Agency (NCA), 2018: 8). The NCA's framework for responding to SOC is outlined in their National Strategic Assessment of SOC (National Crime Agency (NCA), 2018) as the 4Ps strategy: (1) *Pursue* those that cause the greatest harm through successfully prosecuting and disrupting criminal activities, (2) *Prepare* for when SOC occurs by mitigating or reducing the impact to re-build levels of resilience, (3) *Protect* those who are vulnerable in order to build resilience and (4) *Prevent* individuals from engaging in SOC by early identification and support for those vulnerable to recruitment into groups. There appears to be no indication of the relative prioritisation of each strand other than in 'hard cash' terms which, so far, have privileged the Pursue strand (D'Souza, 2020). The House

of Commons Public Accounts Committee (2019) were damning of the government's response to SOC, highlighting that Pursue was being resourced at the expense of Prevent (79% and 4%, respectively). This diminishes the role that RJ may have in the overall fight against SOC by encouraging a focus on visible crime, rather than that which tends to be invisible such as SOC threats.

UK police forces use a Home Office tool to map each OCG. Utilising gathered intelligence, each individual who is mapped is attributed a role within the OCG to denote their level of involvement. A 'principal' is typically the head of the crime 'family' orchestrating criminal activities at a strategic level with 'significants' playing key roles within the business, typically directing activities, and 'peripherals' being transient individuals who often work at 'street level' and carry out the criminal activities, for example, as runners. As Wall and Chistyakova (2015) note, if OCGs are fluid networks rather than hierarchical, mafia-type organisations, then the UK policing model adopted is likely to be less effective. This mapping process is based on the all-encompassing official definition, which fails to account for emerging trends and current knowledge about such groups (D'Souza, 2020). The SOC strategy now in fact explicitly acknowledges that hierarchical models may not be the emerging norm. Large-scale organised fraud crime groups were the most referred form of case at the time of the research. May and Bhardwa (2018) refer to the unrecognised impact of such offending, given previous research has found that many victims do not confide in others about their experiences, due to their enduring feelings of being duped and acute embarrassment and shame (Button et al., 2014; Cross, 2015). Doorstep fraud was considered to have a particularly menacing element, as the offenders are physically present in front of victims.

Methods

A qualitative-dominant mixed-methods approach was adopted in order to explore whether RJ can be applicable in the SOC context. A perception study was undertaken involving RJ practitioners, SOC police experts, imprisoned SOC offenders, SOC (ex-) offenders living in the community and victims². Participants were asked about their views of the use of RJ in an SOC context, with offenders and victims being offered the opportunity to undertake RJ if they so wished. If they did this was pursued with a view to ascertaining if it could be done safely and how each party would reflect on their experiences. The research also sought to find out if the use of RJ with SOC offenders and their victims would indeed be an innovative prospect and to document any anecdotal examples of its use recorded by the police forces in England and Wales.

First, through the National Police Chief's Council (NPCC) intranet, forces were asked to provide recorded anecdotal examples of the use of RJ within the SOC context. Achieved responses represented a 76% response rate from the 42 police forces (excluding the first author's home force).

Using the same portal, SOC experts were asked to participate in a semi-structured interview via an e-survey or telephone interview. A 79% response rate (representing 36 experts comprising 19 middle managers and 17 senior leaders) was achieved. Staff were based in their specialist units and departments within their respective police forces or in the regional organised crime units taking part.

With the assistance of the Restorative Justice Council (RJC), a focus group of five RJ experts and an additional five members participated in online semi-structured surveys/telephone interviews. An additional seven responses were received from RJ experts based on the respective Office of the Police, Crime and Victims' Commissioner (OPCVC) referred by the police SOC experts.

Adult SOC offenders and victims (not matched) were identified by the police North East Specialist Operations Unit (NERSOU) and three police forces in the north-east; all offenders had been formally mapped as part of an OCG and had an OCG-related offence as their current or recent past offence with identifiable victims (hence, excluding drug dealers). In all, 12 prisoners from a total of 41 offenders agreed to take part from 7 different prisons across the north-east and north-west. Of the 12 prisoners who participated in this study, 5 prisoners were serving sentences of 1–5 years, 6 were serving sentences of 6–10 years and 1 was serving a sentence in excess of 11 years. Six had been convicted of mainly acquisitive offences and the remainder of mainly violent offences. Four were classed by police forces as principals, one significant, three peripherals and four were categorised as 'Not Known' in terms of hierarchy.

Five out of 15 community-based offenders participated. Data supplied by NERSOU, which detailed demographical information as a snapshot in time (1 March 2019), were also interrogated. Six out of 10 victims identified agreed to participate. All those interviewed took part in audiotaped semi-structured interviews and were given specially designed RJ briefing sheets and shown video clips (*The Wolf Within* for offenders and *Repairing the Harm* for victims). Thematic analysis was chosen to analyse the data. For those expressing a wish to pursue RJ when asked whether they would like to, as part of the initial research interview, a case-study approach was adopted, building on a small former study (D'Souza, 2019,) which used a multi-agency model. For offender-initiated requests to participate in RJ, the victims were traced and for victim-initiated requests, the offenders were traced with the help of professionals involved within the respective police forces and, where relevant, NERSOU. Following this initial expression of interest for pursuing RJ with their victim(s)/offender(s), a follow-up interview was offered by the researcher, who was accompanied by an accredited RJ facilitator where possible. The case studies involved a multi-agency approach to share information held by each agency and gather the views of professionals, combined with specialist RJ assessments being undertaken with both parties to determine eligibility and suitability. The RJ specialists then, if appropriate, facilitated the RJ intervention between the offender and victim with the researcher present as an observer. In all cases, the limits of confidentiality were explained and assurances of anonymity given.

Findings

The findings first explore the results from the national survey to ascertain the current uses of RJ in SOC contexts before exploring the views of the experts surveyed. The views expressed by offenders and victims are then explored, followed by details of the case studies which were pursued for those expressing a wish to engage in RJ.

To what extent do the police use RJ with SOC cases currently?

All participating police forces stated that they did not use and had not used RJ in the SOC context and could not cite examples of its use currently or historically, confirming that the use of RJ in this context was a novel idea. However, examples were given of referrals made to specialist RJ units by the police where the offender's membership of an OCG was suspected but unconfirmed, suggesting that some RJ practitioners may have been 'working in the dark' in terms of their knowledge of possible OCG involvement, bringing to the fore the issues of robust risk management and the design of bespoke interventions. This would appear to extend to sharing information. The Management of Police Information (MoPI), a legislative framework introduced in 2006, is designed to ensure that information is treated in accordance with proportionality, necessity and the management of risk on a consistent basis across all forces. One of the key factors is the prioritisation of information in accordance with perceived risk factors including access to others. As the gatekeepers of the necessary data, it would appear that the police have a tendency towards protecting such intelligence from those not perceived as having a 'need to know'. RJ experts who may be working with such cases unaware of the offender's membership of an OCG may be unable to accurately assess cases and put in place the necessary risk management plan, as they do with other serious and complex cases.

RJ and police SOC expert views

The research interviews focused on experts' knowledge of RJ, what prevented the use of RJ, which offenders/offences they considered RJ may be suitable for and whether they considered RJ was a suitable intervention in this context.

Consistent with D'Souza and L'Hoiry's (2019) preliminary findings, RJ experts demonstrated a high level of conceptual clarity in respect of RJ with explanations such as RJ being 'a restorative space to be heard' to 'help them come to terms with the incident or allow them to move on' (RJ8)³ and emphasising the importance of values such as listening and fair treatment of all parties. Changes in the use of RJ over time to include more serious and complex offences and central directives such as the Victims Code which place victims' voices more centre-stage appear to have shaped modern RJ practices:

Much like practice in relation to the use of Restorative Approaches within the contexts of Hate Crime, Domestic Abuse and Sexual Violence, I think professionals [in the past] have shared a reluctance to offer RJ and a fear that this is 'too serious' or an inappropriate intervention in this context. (RJ 11)

In contrast, a third of the police SOC experts (12 experts) reported either lacking knowledge of RJ or very negative experiences of using RJ or being involved in RJ as a police officer assaulted on duty and feeling 'disappointed' and even 'undervalued' as a result. These no doubt affected their responses to the question asked. Responses were also affected by SOC experts' view of SOC as largely victimless crimes due to the dominance of drug-related offending being mapped by forces. A further third (12 experts) conceptualised RJ as an alternative to the adversarial process and suitable only for diverting young

people for low-level crimes to prevent criminalisation. A minority expressed the view that assessments should be made on a case-by-case basis and that it may be a more economically viable option compared to the court process.

In relation to why RJ may not be used in this context, both sets of experts relayed the view that the right model to make referrals and assess cases was not in place and that cultural change and leadership were required to facilitate change. Risk was perceived to be unmanageable by SOC experts and in the main, consideration was not given to using this approach due to the perceived challenges of having multiple offenders, multiple victims dispersed widely (including across the globe), the size of OCGs, the lack of clear delineation between offenders and victims (e.g. in the context of County Lines drug distribution where OCGs use young people to transport drugs) and the difficulty of identifying victims due to the nature of mapped offending. The degree to which there was doubt among SOC experts about the appropriateness of using RJ in this context is typified by comments such as the following:

The orchestrators at the centre of organised crime groups are lifestyle career criminals. I think you'd be hard pushed to get them to pursue an RJ. I don't think it's likely or realistic to expect change. (SOC 25)

You didn't start out as a principal, but lower down, then you saw the profit, saw how lucrative it is. You saw the misery at some point climbing up that criminal career path. So, it's difficult to see the benefit of a direct intervention here. (SOC 36)

The clear focus on the Pursue strand of the 4Ps strategy is captured below, typifying numerous similar responses:

SOC 'jobs' are jobs which are complex and long-winded; it can go on for ten years. People get caught up in the loop of getting the file together in a format that can be understood. We're talking about 180 pages of an MG5⁴ and the complexity of a drug dealing operation. Restorative justice is the last thing the investigators are thinking about. (SOC 8)

RJ experts highlighted information-sharing difficulties with the police, their reticence with RJ referrals generally due to their lack of belief/faith in the disposal and both sets of experts alluded to the lack of knowledge and awareness of RJ that (SOC) police personnel have.

When asked about the SOC contexts in which RJ may be suitable, RJ experts were reluctant to specify offence types as being more or less suitable, believing that a case-by-case assessment was best, particularly in order to abide by the obligations in the Victims Code and give choices to both parties. The view below represented the view of the majority:

I am sure that there are factors that may preclude consideration from a restorative approach, but I have no experience of RJ with groups – but I do feel you could use this approach in such situations. (RJ 10)

Most police SOC experts thought that perhaps RJ may be suitable for 'significants' and 'peripherals', young offenders at the cusp of their offending careers who had been

convicted of low-level offending (particularly acquisitive crimes) and those who were vulnerable themselves, having been pressurised into offending by those higher up the chain. Views were expressed which suggest either complete reticence or the beginnings of a willingness to consider the possibilities in principle:

I cannot think of a scenario in my command where it would be appropriate (SOC 21)

I would find that quite abhorrent – I really would find that abhorrent' (SOC 27) [Comment made when referring to the application of RJ for any SOC offences]

We want to target low hanging fruit and starve those higher up the chain, those principals and significants who make significant amounts of money, we need to thwart their business model and their businesses by starving them of their peripherals. (SOC 27)

Addressing risk and vulnerability were core concerns expressed by the RJ experts, including risk stemming from group members not participating in the RJ, accentuating the need to work in partnership and carry out an evaluation of risk versus benefit. This would require RJ experts to learn more about SOC offending and the mapping process and police SOC experts to learn more about the transformative potential of RJ and the process involved in assessing groups and undertaking interventions.

Despite reservations, both sets of experts identified potential benefits to offenders, their victims and their respective agencies should RJ be used. This ranged from the potential for RJ to reduce SOC offending, to break entrenched cycles of behaviour and underlying attitudes while securing victim satisfaction in the form of closure, to paving the way for more inclusive services. While a small minority of SOC experts felt RJ did not provide any opportunities due to insurmountable challenges, some felt that national leverage was required to effect change, combined with marketing campaigns.

Exploring the extent to which experts believed that RJ should be trialled in this new context, RJ experts were united in their belief that RJ should be actively considered. Police SOC experts' views were more varied, with most expressing strong reservations, often because of a misunderstanding that RJ would be instead of a prison sentence:

It is hard to envisage many scenarios where it would be palatable set against this context and the threat, risk and harm posed and caused by these types of individuals and groups. (SOC 7)

I'm not really an advocate of RJ in this context because prison could be more of a deterrent. (SOC 17)

However, there were some SOC experts who believed that RJ should not be automatically dismissed, but with some caveats:

The evidence base for RJ is very strong. Theoretically, this should apply to SOC. However, the data or resources may not always make it practical to conduct RJ safely due to limitations on resources. However, the investment in resources may be justified where SOC offenders' behaviour is changed as a result of RJ. (SOC 9)

Definitely worth a try . . . because it's got to be the right person under the right circumstances that has to be under consideration. (SOC 4)

Senior leaders within the police were overwhelmingly more supportive of RJ compared to their managerial counterparts, with over a quarter of the middle managers expressing the view that RJ should be trialled and nearly 60% of the senior leaders advocating such an experimental approach. This finding corroborates with Stockdale's (2015) study which found similar differences in approach in relation to the implementation of RJ in a small force between senior leaders, middle managers and operational staff as well as Shapland et al.'s (2017) study which found differences between ranks of staff within police forces.

SOC offenders' and SOC victims' views

SOC offenders and victims interviewed were first asked what their understanding was of RJ. Offenders exhibited an understanding of RJ, which was limited by their experiences within prisons, that is, victim awareness work and proxy victims who had come into the prison to talk about their experiences of victimisation, but of offences dissimilar to the offender's own offending. The latter caused some confusion with, for example, one being perplexed by this: 'which I find a bit unusual because you're never gonna be able to relate to that are you?' (P004). Initial knowledge was limited to RJ being an offer involving indirect victims, which has implications for the extent to which offenders who are imprisoned or subject to community penalties are able to make informed choices about what RJ may be able to offer them. Victims interviewed understood the RJ concept as a victim-centred option where the primary aim was to induce shame/guilt through offenders learning about the impact that their actions had on victims.

In expressing views about the efficacy of RJ, offenders focused on its suitability where there were direct identifiable victims (but excluding DV and sexual offenders) while victims focused on its appropriateness for young offenders with prospects for rehabilitation – mirroring some of the views of SOC experts. Offenders and victims stated that they favoured the sequencing of staged RJ interventions commencing with letters of explanation and shuttle mediation and advancing to face-to-face interventions if previous dialogue had progressed well.

It appeared that prison may be a fruitful place to offer RJ interventions as those with addictions reported sobriety and being 'clean', that is, free from illegal drugs, enabling them to be more in touch with feelings:

When I'm like this . . . I do have feelings. I do care, I don't want people to be hurt . . . I don't want anyone to be worried or scared . . . but when I'm drunk, I just don't give a shit about anything, that's the only difference with me, but when I'm normal like this, I don't . . . I wouldn't hurt a fly, you know what I mean, Nikki? (P005)

Over half of all offenders felt that participating in RJ would result in reducing their reoffending, which is lower than in Shapland et al.'s (2011) study where 80% of offenders felt that RJ would have a similar impact when confronted with their victims.

Offenders (who had committed a variety of SOC mapped offences) believed that engaging in RJ would enable their victims to see them as they saw themselves – someone who had made mistakes, was essentially good and prepared to make amends. Victims (of

fraud) felt that engaging in RJ would confirm that they were duped fools and reinforce their own views about themselves. However, both parties expressed much empathy with each other when exploring what they may stand to lose or gain from engaging with the other party.

Case studies

Five prisoners gave an initial indication that they were 'very keen to pursue RJ' (with case studies pursued for all five cases), with another five saying they were 'prepared to pursue RJ' (which resulted in one case study). The remaining two prisoners were not very keen/not at all keen to pursue RJ. Using a multi-agency framework previously used for a pilot case study (D'Souza, 2019), case studies were taken forward, resulting in one letter of explanation followed by shuttle mediation (facilitators mediate between the parties without them needing to meet face to face) as part of a staged approach with a significant OCG member, a case of shuttle mediation with one principal, and one face-to-face conference which was preceded by a series of shuttle mediations with a principal (this was a victim-initiated intervention). While multi-agency forums were convened in all cases where the prisoner had initial willingness to pursue RJ, the attrition rate, in part, can be explained by an issue of timing – the wrong time to engage with their victims due to a myriad of personal problems such as serious mental health, fighting for child access, and so on. Timing for offenders is acknowledged as potentially playing a key part in the process involved in successful engagement with RJ (Crawford, 2015). Perhaps this is not surprising, as offenders too need to come to a point when they are emotionally ready for RJ. More research in relation to emotional readiness is required, with much of the existing literature focusing on victims' readiness (e.g. Morris et al., 1993).

Of the five community-based offenders (two principals, one significant and two peripherals), one case study with a significant resulted in a letter of explanation and a shuttle mediation.

Seven fraud victims ranging from their 50s to 80s (four women and three men) participated having experienced fraud-related offences, for example, doorstep fraud and online banking fraud. While three victims were not keen or did not know if they wished to participate, one was very keen (leading to a shuttle mediation with two significant from the same OCG) and three were prepared to pursue RJ. This resulted in RJ dialogue with the prisoners and community-based offenders described above, with the first author utilising NERSOU to assist in identifying the other party. RJ dialogue took place as part of a series of staged interventions, typically commencing with letters, progressing to shuttle mediation and one culminating in a conference.

Post-RJ, both offenders and victims reported emotional closure, with offenders detailing that their RJ participation acted as a trigger experience to reduce their reoffending potential and be part of society and victims specifying feelings of 'moving on', with increased social capital and mental health benefits. Victims also relayed that having felt unable to confide in others about their financial losses and the acute shame and embarrassment that they had felt, their emotional wellbeing improved. This may indicate that having experienced feelings of isolation due to victimisation, they too felt better integrated back into their local communities. The results are similar to the benefits expressed

by adult offenders and victims of other serious offences, such as robbery, assault and burglary (Shapland et al., 2011).

Potential areas of risk were seen as arising from non-participating OCG members towards the participating offender, particularly if they are perceived to be 'assisting the police with their enquiries', as well as participating victims and their sets of supporters. Risks included those from participating offenders to their victims (particularly, if the victim does not wish to participate in an offender-initiated request) and the community. Other considerations included whether participating offenders are motivated to engage in order to gather information about policing operations and victims, and also whether police use the process to gather intelligence on OCG operations in order to inform disruption activities (the latter contravening RJ values).

Discussion

Key themes that emerged relate to the differences in knowledge about RJ between the two sets of experts and SOC experts' focus on operationalising the 'Pursue' strand of the national strategy, while denying victims' agency, some of which points to the difficulties for reform within this area of policing. The concepts of closure, reintegration and timing were evidently relevant for both offenders and victims. Logistical challenges in using RJ in SOC cases are clearly significant.

While RJ experts self-confessed to a lack of knowledge about SOC and asked for more training, police SOC experts appeared to lack basic information about RJ as a disposal, for example, what the purpose of RJ is, at what points in the adversarial process it can be used and that it can be used in parallel with criminal justice.⁵ This has inevitably led to a lack of consideration of this option with SOC cases. Differences in views seemed to divide senior police leaders and their operational middle managers in relation to whether RJ should be trialled, signalling the pressures on frontline staff to deliver a high-level vision, which may not translate into how they work routinely. A dominant Pursue-driven, offender-orientated focus was evident at the expense of Prevent-focused victim-oriented⁶ consideration (D'Souza, 2020), though some believed that an experimental approach could be taken with low-level SOC offenders as new recruits to an OCG, were victims themselves and not heavily convicted (as part of a diversionary scheme).

The police focus on RJ for SOC has paternalistic undercurrents of denying victims' agency, leading to neglected aspects such as measures to ensure that victims can derive satisfaction from involvement with criminal justice, find closure from being victimised (repeatedly), and secure their emotional/mental wellbeing with its attendant health-related benefits. It is only relatively recently that policing in England and Wales has developed priorities in relation to vulnerability (e.g. child abuse, mental health and victims), as opposed to focusing primarily on investigation and prosecution of offences and emergency responses. It is possible that this change in values had not yet impinged on senior SOC detectives. However, this investigation/Pursue offender-oriented mindset, combined with officers' lack of knowledge about RJ and the obligations which form the backbone of the Victims Code (designed as an empowerment and entitlement framework), was ensuring that the status quo was retained.

A host of commonly held assumptions about RJ were evident which inhibited its use, ranging from a view that RJ is only available in lieu of prosecution and court processes (i.e. as diversion); SOC offenders and victims would be unwilling to engage with one another; to a perception of RJ as a 'soft option' with little public support for use with this type of offending and so should not be offered to principals and significant. There was a general view that preventive work was the job of other agencies while the police experts' role was mainly reactive. Of note was that RJ experts based in police-commissioned services and SOC professionals held different views and this has implications for how the overall vision of the police force was communicated and indeed, realised and mirrored by the differences described in the level of support for RJ between police senior leaders and middle managers. Set against this context, it is little wonder that Acton (2015) observed a 'post code lottery' in terms of RJ implementation across the UK. However, it would appear from the current research that there is some potential for change – that RJ and SOC experts believed that they have much that they can learn from one another with a view to resolving information-sharing difficulties and knowledge-exchange.

Many offenders, while communicating high levels of initial willingness to pursue RJ, withdrew at the point at which the follow-up interview took place. A host of explanations were offered, ranging from a lack of emotional readiness to have a dialogue with their victims to expending energies on being drug or alcohol-free. However, where motivation was evident, it was sustained over lengthy periods – the researcher engaged for nearly 2 years with one offender and some of his victims. Both offenders and victims reported benefiting from having communications with their harmer/harmed, comparable to that reported with non-SOC crime types. It would appear that offenders and victims have some aspects in common when RJ is used in the fraud context: the concepts of closure are relevant for both (not only victims), reintegration is relevant for both (not only offenders) and timing is of significance to both (with a need for 'emotional readiness' assessments).

This study has shown that there is potential for the use of RJ in SOC cases, even with some principals, at least for fraud cases. There is nothing qualitatively different about SOC cases in relation to the possible use of RJ, though it remains to be evidenced whether RJ has wider applicability in non-fraud cases. Its lack of use stems from preconceptions by criminal justice personnel as to how offenders and victims will feel and be affected, combined with mapping processes based on the vague official/police definitions of what constitutes SOC (D'Souza, 2020). Nonetheless, there is a need for caution and multifaceted risk assessment, as with other serious and complex cases.

Challenges of a significant magnitude need to be addressed before more widespread use of RJ can occur. The process, with its need for multiple risk assessments, is costly – including costs related to complex multi-agency collaboration, lengthy preparation phases, detailed intelligence gathering, specialist sources of support for vulnerable victims, training to ensure specialist knowledge, and the costs of staged interventions as favoured by SOC offenders and SOC victims, all exacerbated by the size of OCGs. However, the biggest challenge yet may be to shift the attitudes of police personnel in relation to their conceptualisation of SOC, due to a lack of consideration of the wide possible spectrum of SOC offences in their 'official' definition. Experts only thought of the

'high end' of criminality when discussing SOC in the main and this, no doubt, had an impact on RJ considerations.

This exploratory study is limited. However, despite small sample numbers and with case studies limited to fraud, the study attracted significant professional engagement. Offender and victim samples were not representative groups, nor were the SOC offences representative due to purposive sampling⁷. However, research with exceptionally hard-to-reach offender and victim groups may have smaller numbers and still be useful (Hobbs and Antonopoulos, 2014). The results may only hold for fraud, though this in itself has revealed the UK police biases in defining and operationalising the concept of SOC. In addition, the long-term impacts in terms of recidivism, reintegration and satisfaction for offenders and victims who pursued RJ could not to be measured, as this was a time-limited research project.

While the findings suggest possibilities, there are clearly challenges in translating the theory into practice. Perhaps the most important issue raised is a values-driven one: one of fairness, transparency, respect and equity to ensure that SOC offenders and victims are not discriminated against on the basis of the nature of the offence(s) committed, and victims by the age of their offender(s). This is part of the commitment by police forces to deliver inclusive services. Victims and offenders should not be denied agency to make informed decisions and exercise choices. Furthermore, it is likely that without a significant change in the funding formula for how the 4Ps are resourced (House of Commons Public Accounts Committee, 2019), individual police forces will not be enabled to redirect some of their focus towards preventive and early intervention work. The situation is also unlikely to change if SOC imagery (Antonopoulos and Papanicolaou, 2018) continues to be associated with untold threats masking unimaginable horrors, thus reducing the possibilities of using innovative preventive resolutions and reaffirming Pursue offender-oriented policies.

All of the above signal the challenges of translating the realities of how SOC is committed into a single legislative definition, which can assist the police in targeting offending and responding to it, from a law enforcement perspective. The vagueness of the UK police definition of SOC may give some clues about why SOC may be deemed inappropriate in relation to RJ. Police SOC definitions fail to capture the complexity and shape-shifting nature of organised crime and do not reflect the picture that emerges from research. The findings highlight the need to redefine/reform 'official' UK and English conceptualisations of organised crime and SOC, and hence how it is perceived it should be policed, allowing appreciation of victim needs. This then, may have implications for widening the net to consider those offenders/offences for RJ which are currently dismissed as inappropriate, so also enabling non-fraud cases which have had major effects in the community to be considered.

Currently, it would appear that victims become a victim of process in relation to agencies' failure to provide timely and accurate RJ information (with its attendant relationship with dissatisfaction, disengagement and inequity of service provision), in addition to being victims of SOC. This is compounded by a police definition of SOC, which overlooks the victim perspective (Clark, 2005) and compels police officers to follow an exclusively prosecutorial route to conclude the case.

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Notes

1. In force at the time of the research.
2. One victim was living in Scotland at the time of the interview and one restorative justice (RJ) practitioner was from Scotland.
3. All respondents have been given a code, hence 'RJ' as RJ expert, 'SOC' (serious and organised crime) as police SOC expert and so on.
4. The MG5 (Manual of Guidance 5) is a police report which can be disclosed to the defence and the court and is a case summary. Further information and a blank copy of the MG5 can be found at: <https://www.judiciary.uk/wp-content/uploads/2015/09/bcm-mg5-how-to-complete.pdf>
5. See similar findings among frontline and community police officers in Shapland et al (2017).
6. This is not to say that SOC police personnel were not protective of their victims; indeed, they were. All expressed deep concern and care in relation to victims and protecting them from organised criminals. However, police personnel believed that they should make the decisions as to what was best for the victims, hence denying them their own agency (a term used by O'Mahony and Doak, 2017) to make informed choices.
7. For more detail on how cases were sought and attained, see D'Souza (2020).

References

- Acton E (2015) Restorative justice a postcode lottery? – Availability and quality of service. *Safer Communities* 14(3): 120–125.
- Angel CM, Sherman L, Strang H, et al. (2014) Short-term effects of restorative justice conferences on post-traumatic stress symptoms among robbery and burglary victims: A randomized controlled trial. *Journal of Experimental Criminology* 10: 291–307.
- Antonopoulos G and Papanicolaou G (2018) *Organized Crime: A Very Short Introduction*. Oxford: Oxford University Press.
- Beven JP, Hall G, Froyland I, et al. (2005) Restoration or renovation? Evaluating justice outcomes. *Psychiatry, Psychology and Law* 12(1): 194–206.
- Brehm HN, Uggen C and Gasanabo JD (2014) Genocide, justice and Rwanda's Gacaca courts. *Journal of Contemporary Criminal Justice* 30(3): 333–352.
- Bueno I (2013) *Mass Victimization and Restorative Justice in Columbia: Pathways Towards Peace and Reconciliation?* PhD thesis, Katholieke Universiteit Leuven, Leuven.

- Busch R (2002) Domestic violence and restorative justice: Who pays if we get it wrong? In: Strang H and Braithwaite J (eds) *Restorative Justice and Family Violence*. Melbourne, VIC, Australia: Cambridge University Press, pp. 223–248.
- Button M, Lewis C and Tapley J (2014) Not a victimless crime: The impact of fraud on individual victims and their families. *Security Journal* 27(1): 36–54.
- Campana P and Varese F (2018) Organized crime in the United Kingdom: Illegal governance of markets and communities. *The British Journal of Criminology* 58(6): 1381–1400.
- Clark M (2005) Organised crime: Redefined for social policy. *International Journal of Police Science and Management* 7(2): 98–109.
- College of Policing (2014) *Code of Ethics 2014*. Available at: [Code_of_Ethics.pdf](#) (college.police.uk).
- Crawford A (2015) Temporality in restorative justice: On time, timing and time-consciousness. *Theoretical Criminology* 19(4): 470–490.
- Crocker R, Webb S, Garner S, et al. (2017) *Briefing 4: The Impact of Organised Crime on Local Communities*. London: The Police Foundation. Available at: <http://www.police-foundation.org.uk/publication/the-impact-of-organised-crime-on-local-communities/>
- Cross C (2015) No laughing matter: Blaming the victim of online fraud. *International Review of Victimology* 21(2): 187–204.
- Cunneen C and Hoyle C (2010) *Debating Restorative Justice*. Oxford; Portland, OR: Hart Publishing.
- D'Souza N (2019) *Applying Restorative Justice within a Serious and Organised Crime Context: Can It Be Done Safely in Practice?* Available at: <https://n8ppr.org.uk/wp-content/uploads/2019/03/Case-Study-N8-Report-January-2019.pdf>
- D'Souza N (2020) *The Feasibility of Utilising Restorative Justice within the Serious and Organised Crime Context*. PhD Thesis, The University of Sheffield, Sheffield.
- D'Souza N and L'Hoiry X (2019) An area of untapped potential? The use of restorative justice in the fight against serious and organized crime: A perception study. *Criminology & Criminal Justice* 21: 224–241.
- Eriksson A (2008) Challenging cultures of violence through community restorative justice in Northern Ireland. In: Ventura Miller H (ed.) *Restorative Justice: From Theory to Practice (Sociology of Crime, Law and Deviance)*, Vol. 11. Bingley: Emerald Publishing, pp. 231–260.
- Europol (2015) *Exploring Tomorrow's Organised Crime*. European Police Office. Available at: <https://www.europol.europa.eu/publications-documents/exploring-tomorrow%E2%80%99s-organised-crime>
- Fraser A, Hamilton-Smith A, Clark A, et al. (2018) *Community Experiences of Serious Organised Crime in Scotland*. Edinburgh: Scottish Government.
- Hobbs D (2013) *Lush Life: Constructing Organized Crime in the UK*. Oxford: Oxford University Press.
- Hobbs D and Antonopoulos GA (2014) How to research organized crime. In: Palo L (ed.) *The Oxford Handbook of Organized Crime*. Oxford: Oxford University Press, pp. 96–117.
- Home Office (2013) *Serious and Organised Crime Strategy*. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/248645/Serious_and_Organised_Crime_Strategy.pdf
- House of Commons Public Accounts Committee (2019) *House of commons committee of public accounts*. Serious and Organised Crime 119th report of Session 2017 – 2019 (HC 2049). Available at: <https://publications.parliament.uk/pa/cm201719/cmselect/cmpub-acc/2049/2049.pdf> (published 27 September 2019).

- Jenkins G (2007) They have built a legal system without punishment: Reflections on the amnesty in the South African transition. *Transformation: Critical Reflections in Southern Africa* 2007: 6475–6465.
- Lavorgna A and Sergi A (2016) Serious, therefore organised? A critique of the emerging 'cyber-organised crime' rhetoric in the United Kingdom. *International Journal of Cyber Criminology* 10(2): 170–187.
- McGlynn C, Westmarland N and Godden N (2012) 'I just wanted him to hear me': Sexual violence and the possibilities of RJ. *Journal of Law and Society* 39(2): 213–240.
- Mannozi G (2013) Victim-offender mediation in areas characterised by high levels of organized crime. *European Journal of Criminology* 10(2): 187–205.
- Marshall T (1999) *Restorative Justice: An Overview*. Home Office Occasional Paper. London: Home Office. Available at: <http://fbga.redguitars.co.uk/restorativeJusticeAnOverview.pdf>
- May T and Bhardwa B (2018) *Organised Crime Groups Involved in Fraud*. London: Palgrave Macmillan.
- Ministry of Justice (2015) *Code of Practice for Victims of Crime in England and Wales*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF
- Morris A, Maxwell G and Robertson J (1993) Giving victims a voice: A New Zealand experiment. *Howard Journal* 32(4): 304–321.
- National Crime Agency (NCA) (2018) *National Strategic Assessment of Serious and Organised Crime*. London: National Crime Agency.
- O'Mahony D and Doak J (2017) *Reimagining Restorative Justice Agency and Accountability in the Criminal Process*. Oxford: Hart Books.
- Sergi A (2017) Case study 4 United Kingdom and the activity model. In: Sergi A (ed.) *From Mafia to Organised Crime: A Comparative Analysis of Policing Models*. London: Palgrave Macmillan, pp. 177–215.
- Shapland J, Crawford A, Gray E, et al. (2017) *Restorative Justice at the Level of the Police in England: Implementing Change*. Sheffield: Centre for Criminological Research, University of Sheffield. Available at: https://www.sheffield.ac.uk/polopoly_fs/1.743733!/file/DevelopingRestorativePolicing3.pdf
- Shapland J, Robinson G and Sorsby A (2011) *Restorative Justice in Practice: Evaluating What Works for Victims and Offenders*. London: Routledge.
- Shewan G (2010) *A Business Case for Restorative Justice and Policing*. Available at: https://www.restorativejustice.org.uk/sites/default/files/resources/files/The_business_case_for_restorative_justice_and_policing.pdf
- Stockdale K (2015) Police understandings of restorative justice – the impact of rank and role. *Restorative Justice: An International Journal* 3(2): 212–232.
- Stubbs J (2007) Beyond apology? Domestic violence and critical questions for restorative justice. *Criminology and Criminal Justice* 7(2): 169–187.
- United Nations (2000) *The United Nations Convention against Transnational Organized Crime*. General Assembly resolution 55/25 of 15 November 2010, Palermo. Available at: <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>
- Wall DS and Chistyakova Y (2015) *How Organised Crime in the UK Has Evolved beyond the Mafia Model*. Available at: <http://theconversation.com/how-organised-crime-in-the-uk-has-evolved-beyond-the-mafia-model-40782>
- Walters M (2014) *Hate Crime and Restorative Justice*. Oxford: Oxford University Press.
- Wright A (2006) *Organised Crime*. Collumpton: Willan Publishing.

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