

NOTES FROM THE FIELD

Restorative justice during and after COVID-19

*Ian D. Marder and Meredith Rossner**

1 Introduction

Restorative justice services and practitioners have not stopped working during the COVID-19 pandemic. Rather, they have adapted their practices and training to be suitable for online, telephone and socially distant delivery. They are also using their skills to provide support for colleagues, students and community members and to offer a path towards healing in the aftermath of the pandemic.

This article outlines some activities of restorative justice services and practitioners during the pandemic. It is based on information gathered during Marder's monthly facilitation of a meeting of (mostly European) restorative services and practitioners and Rossner's one-on-one conversations with restorative practitioners across Europe, the US and Australia. The European meetings each involved around 30 persons from 12 jurisdictions, with more than 60 people from 19 jurisdictions attending the four meetings from April to July 2020 (Marder, 2020a, 2020b, 2020c, 2020d). They discussed various issues, including preparing for and facilitating victim-offender dialogue online, using restorative practices to support citizens and professionals during and following lockdowns, readying restorative services to return to face-to-face work, and the potential for transitional justice to help respond to societal trauma and grief. Rossner's one-on-one conversations with restorative services focused largely on delivering restorative justice training and practices online. This Note also draws on the reflections of restorative justice practitioners and leaders published by the European Forum for Restorative Justice.

We begin by describing some of the ways that restorative practitioners moved online, providing examples of evolving practices and considering the implications for future practice in the context of complementary research into online court hearings (Rossner, Tait & McCurdy, 2021). We then discuss the use of restorative practices to support citizens and professionals during and following lockdowns. Finally, we explore the need for truth and storytelling and reconciliation in the wake of the pandemic.

* Ian D. Marder is a Lecturer in Criminology in the Department of Law at Maynooth University, Ireland. Meredith Rossner is a Professor of Criminology at the Centre for Social Research and Methods at Australia National University, Australia.
Contact author: Ian.Marder@mu.ie.

2 Providing restorative justice online during the pandemic

Following the imposition of strict public health regulations requiring citizens to stay at home, in-person, face-to-face restorative justice work (e.g. victim-offender mediation and conferencing) generally ceased. As in many other professions, some practitioners pivoted to an online option, for both preparatory meetings and restorative justice encounters. This was notable because prior to the pandemic, it was largely accepted that in-person, face-to-face was the preferable mode of restorative communication, although shuttle mediation, letters and telephone restorative practice have also been used (Walker & Goldstein, 2020).

Many practitioners worked from home during this period, and the move online necessitated innovations in workplace and data management. Numerous organisations quickly developed operating procedures for online practice, and training and support mechanisms for their facilitators (Marder, 2020b; Millington & Watson, 2020; Restorative Justice Council, 2020). For example, the Longmont Community Justice Partnership (LCJP) in Longmont, Colorado, established an organisational e-mail account and a series of secure, web-based documents and forms to replace the traditional paper-based office and files. They also delivered one-on-one training to support volunteer facilitators adapting to online platforms and organised for staff to co-facilitate cases and debrief with the volunteers. These and other provisions enabled them to deliver dozens of conferences online during the first lockdown period (Conroy, 2020; Marder, 2020c).

Preparing and facilitating restorative justice online raises a host of issues, including participant safety and confidentiality, finding a private and safe space within the home, and the potential problems with information security on some platforms. Many practitioners quickly devised plans for initiation, preparation, facilitation and writing outcome agreements online. They modified the information and support given to participants during videoconferencing. Many of the practitioners we spoke to noted that participants needed extra advice and support when preparing to take part in restorative justice from home. For example, they would remind participants to bring water and tissues and find a comfortable location from which to speak and in which interruptions would be minimal. Some digitised existing materials such as needs cards, consent forms and outcome contracts.

The efforts of management at the LCJP demonstrate this additional preparation and support. They provided participants with a 'digital confidentiality' form and a 'technological preamble' to help them communicate the protective steps they took and introduce expectations for online practice (including the use of self-view, mute buttons and chat function). This allowed norms to be set and managed; for example, stating that a facilitator would check in with anyone who appeared distracted.

Technology was used to respond to new conflicts in innovative ways. Estonian practitioners facilitated virtual circles for small groups of young persons referred by police for breaching regulations that banned gathering in groups (Marder, 2020b). Their goal was to enable the young people to express their needs

and reflect on the purpose of the regulations, while diverting them from possible sanctions. Family and friends were invited to the sessions, which began with the participants getting to know each other and using the 'feelings scale' to express how they were. The groups then discussed what happened that led to the referral, their feelings about the virus, how they could avoid spreading it, what activities they could do at home and what they took from the circle. Practitioners found that the sharing of 'needs cards' on the screen helped the young people to reflect on and articulate their needs.

After the toughest elements of the lockdown were lifted, services in Northern Ireland and Australia restarted face-to-face community mediation outside on doorsteps and in back gardens, physically distanced (and often masked). This meant that they could help troubleshoot ongoing community problems and new issues arising from the pandemic, including police-referred community conflicts. At the height of the first lockdown, other relevant innovations included mediators attending emergency calls alongside the police in Finland when cases involved a suspected domestic dispute. As further waves of COVID-19 resulted in renewed lockdowns at the end of 2020 and beginning of 2021, enthusiasm for virtual restorative justice among practitioners has revived.

Online support circles and community work

In addition to using restorative justice conferences to deal with criminal and community conflict, restorative practices were widely used to support communities and professionals during the crisis. These generally took the form of online circle processes, in which facilitators asked questions designed to cultivate relationships, enable participatory decision-making, encourage respectful communication and ensure equal voice, before giving all participants an opportunity to respond to each question uninterrupted (Pointer, McGoey & Farrar, 2020).

Many practitioners used online support circles with colleagues, students and clients or other groups within their social or professional circles. For example, academics from universities in Ireland, the Netherlands and Poland offered online support circles to check in with their students. They aimed to help them make sense of the crisis and situate it within their (e.g. public safety and criminology) curricula and to support students to remain connected to each other and to staff who were concerned about student well-being and motivation. In later lockdowns, Irish and American academics developed a sustained restorative dialogue for postgraduate students. Based on work by Pointer and Giles-Mitson (2020), these involved monthly or bimonthly meetings of staff and students that aimed to build and maintain relationships, trust and a sense of community within cohorts.

Others used restorative practices in the context of youth and community work. In Finland, a service used social media for youth outreach, organising online restorative 'cafes' that young people could join to speak to each other and professionals. One Irish practitioner moved their local community of practice, composed primarily of youth workers, online. The trust and relationships they built among the group during the crisis permitted them to host a meaningful

conversation about racism and inequality in Ireland after the killing of George Floyd. The LCJP in Colorado continues to run weekly virtual circles for members of the community to support people returning from prison or jail.

A practitioner from England described coordinating the COVID-19 support group on Facebook for their local area. They used this group to offer online conflict resolution and mediation locally and to coordinate a local group of 'professional listeners' who could support people by providing a listening ear and helping to identify ways to meet their needs.

Practitioners and services also use online circles to support colleagues and other professionals with whom they worked. In Estonia, for example, a service delivered both online and face-to-face circles (with masks) for a range of public services. They adjusted their questions depending on the participants (who included police officers, social workers and care home workers), providing a space for practitioners to reflect on how the virus affected their work and lives, what was most difficult for them and whether they had any additional needs. In Wales, practitioners similarly used online circles in well-being sessions for school staff. These sessions gave teachers a valuable space in which to reflect and reset after such a busy and stressful period. In England, a practitioner trained local authority staff to establish 'listening hubs'. These aimed to create opportunities for colleagues, whether working remotely or back in their workplaces, to have a quick, confidential conversation about their anxieties or other issues they had about returning to the office. A key part of their (online) training involved using the restorative inquiry questions to help people access the emotional load they were carrying.

Perhaps most poignantly, one practitioner in Catalonia offered online restorative circles for groups of doctors and nurses, and for families grieving for the death of a loved one from COVID-19, many of whom were not able to attend a funeral. These were described as particularly intimate processes, involving people who were often in shock because of what had happened. They also offered circles to young people and students as a space in which to explore the sociological and psychological effects of the pandemic on their community.

3 Benefits and challenges of online facilitation

Practitioners and service managers reported a range of benefits, concerns and challenges with online practice. A consistent worry related to client access to technology, including smart devices and internet connections. For instance, Irish youth workers voiced concerns about engaging with young people online who most needed support. They noted that technologies were exclusionary: many did not have the devices or internet access to participate, and the barriers to engaging with hard-to-reach young people in 'normal' times were magnified, as practitioners could not use their offices or meet their clients in person.

When the technology was available, however, facilitators reported that they could engage some clients more easily, as geography had previously prevented participation. Moreover, seeing into people's homes created both issues around

privacy and opportunities to discuss the risks of bias with facilitators. Being at home could at times reveal a participant's humanity and add to the intimacy of the conference, such as in one American case when a police officer's child entered the room. Similarly, some practitioners reported that the physical distance prevented them from supporting clients with certain vulnerabilities, such as intellectual disabilities, while others found that it was easier to involve specialist supporters, who usually did not have the time to travel to multiple preparation meetings. Practitioners reported occasionally relying on support people who were co-located with parties, such as family members, to flag moments when additional support was needed.

Many practitioners had no experience of online delivery and reported initial anxiety that the experience of being face-to-face would be impossible to replicate. They voiced concerns that videoconferencing comes with a physical and visceral disconnect that makes it difficult to build relationships and impossible to shake hands or embrace. Some questioned whether emotional transformation, a core part of many restorative interactions, could be achieved without meeting face-to-face. Some facilitators believed that emotions such as empathy – key to building rapport in preparatory meetings with parties and part of the emotional exchange in conferences – are difficult to communicate across screens.

There was a general consensus that traditional techniques of facilitation needed adaptation to the online format. For instance, facilitators learned to switch to verbal cues in place of eye contact or body language, such as saying someone's name to indicate turn-taking. To assist with this, some services labelled participants on the screen or gave each person a number to indicate the speaking order. Restorative circles sometimes use a talking piece, which is physically passed from person to person to indicate turn-taking. Facilitators adapted this practice to a virtual format by asking each participant to hold up their own personal talking piece when it was their turn or to pass an imaginary talking piece between participants on the screen.

Restorative practitioners also use silence to indicate respect and reflection and encourage participation. The video environment presents a unique challenge in that one might conclude that an internet connection has been lost when people fall silent. Facilitators found they needed more verbal cues and directive action to replace silences. At the same time, those who experienced facilitating online conferences were surprised to learn that some emotions, such as curiosity, were easily communicated over video.

As these tactics were developed through practice, services integrated them into training. For example, one NGO in Israel established a phone line for remote mediation and ran simulations to train their practitioners. The British NGO *Why Me?* also developed a practice manual and recorded a mock online restorative conference to support facilitators (Millington & Watson, 2020).

Many described positive experiences with online practice. While some clients preferred to postpone their restorative justice meeting until the end of lockdown, practitioners found that those who engaged online or over the telephone still had a valuable experience. For some, it may even have been better: participants affected by high-impact offences seemingly felt protected because of the distance

between them and the other person, which helped reduce their anxiety. Some facilitators found that young offenders who are ‘digital natives’ were more comfortable communicating virtually. On the one hand, this may open up opportunities for restorative justice for reluctant participants. At the same time, there is a concern that participants may gravitate towards virtual restorative justice as a (seemingly) safer, more convenient option, potentially missing out on the further benefits of a face-to-face meeting. Practitioners were surprised to find that many clients were comfortable opening up and discussing private and sensitive topics online. Some, however, voiced concerns that the online medium may generate a false sense of psychological security. Participants may open up too quickly; others, engaging remotely, might not have immediate access to the follow-up support they require. These emerged as distinctive risk factors for online practice.

A key theme in this work was vulnerability. Practitioners wondered how to support people who, during an online meeting, express very serious vulnerability (such as self-harm) or become overwhelmed with emotion. After a stabbing, an Irish practitioner designed an online check-in circle for services working with young people locally. The circle framework required at least two facilitators, both of whom had previously built a positive relationship with the young people, per meeting. This meant that a facilitator could take a young person who became overwhelmed to a breakout room, while the other stayed with the larger group. Some practitioners developed a practice of checking in individually by phone with anyone who was visibly distressed during online group meetings.

The future of virtual restorative justice

It is unsurprising that restorative practitioners were able to reimagine a process that traditionally relied on face-to-face contact, as courts, tribunals and other justice spaces around the world have undergone a similar transition. Most common law countries suspended jury trials, before slowly reintroducing them in redesigned courtrooms, with social-distancing regulations in place (Rossner et al., 2021). In some jurisdictions, however, the bulk of court business moved to telephone or video during lockdowns. Recent research on video court and tribunal hearings in England and Wales suggests that judges adopted similar strategies as those previously mentioned to manage interactions and encourage participation, including providing an introduction that explains how the hearing will proceed, using parties’ names to facilitate turn-taking, and checking in with people who appear to have technological difficulties (Rossner & McCurdy, 2020). Echoing the concerns of restorative practitioners, initial interviews with judges indicated their anxiety and scepticism about introducing video into courts. Yet, feedback from judges and court participants suggests that, in certain cases, video hearings can be a suitable alternative to face-to-face hearings. While there is a growing acceptance of virtual justice and it is likely that after the pandemic courts and tribunals will continue to use video to hear certain cases, most legal practitioners continue to express a preference for face-to-face communication for hearings involving the examination of evidence or adjudication.

Restorative justice professionals have undertaken a similar journey. As months passed and successful online restorative practice continued, some reconsidered the belief that online engagement was necessarily inferior to face-to-face practice. Many services that did not offer an online option before the pandemic have committed to maintaining its availability and now see its place in their repertoire. Similar to the sentiments expressed by judges and other legal professionals, restorative practitioners are adamant that online work must not become a new norm simply because it is cheaper or more convenient. However, their experience over the past few months suggests that technology can play a role in restorative justice. Going forward, many felt clients could be empowered to determine the medium with which they are most comfortable and that is most likely to suit their needs, much as they were previously in terms of direct and indirect methods of communication.

4 Restorative practices in a post-lockdown world

At some point, we will return to regular face-to-face communication in restorative justice and other sectors. We see restorative justice and restorative practice as a crucial tool to help societies cope with this transition and heal the ongoing traumas of COVID-19. For instance, we would encourage prosecutors, courts and tribunal services to follow the lead of Jamaica and increase the use of restorative justice and mediation to deal with the significant backlog of criminal and civil cases due to lockdown-related court closures (Linton, 2020; St. Kitts & Nevis Observer, 2020).

Restorative practices can also be used to support educators, school staff and students as they transition back into physical buildings and playgrounds. The practitioner group Restore our Schools published a detailed restorative approach for the return to in-school learning from which organisations in other sectors might draw (Restore our Schools, 2020). Everyone has been affected by the pandemic in some way, and the skills that restorative practitioners bring to human interaction are crucial at this time. Restorative circles and restorative inquiry are ideal mechanisms to enable people to address their emotional and mental health needs that arise when returning to workplaces. All organisations must put in place sensitive, sympathetic processes to allow staff to make the transition, deal with loss and avoid repressing difficult experiences. Indeed, the next section discusses growing calls among restorative services and practitioners to make these types of practices widely available within communities as a way to cope with and recover from grief and trauma.

The need for truth, storytelling and reconciliation

There is a growing call for a restorative approach to deal with the traumas COVID-19 has wrought. In the US, public health professionals have suggested that restorative justice can help address the intertwined traumas of excess deaths, institutional racism and police violence in communities of colour (Cooper & Williams, 2020; see also Sered 2019). In Italy, there is a similar call for truth

and reconciliation in the Lombardy region, where COVID-19 engulfed the region, overwhelmed hospitals and led to 11,000 deaths in a short time frame (Marder, 2020d; Mazzucato, 2020). Overwhelmed by grief and loss, those who lost loved ones have been seeking legal remedies – suing or attempting to prosecute hospitals, local authorities and the national government. These efforts are likely to fail, as there is no obvious legal basis for responsibility or culpability in times of a pandemic. Mazzucato (2020) argues that criminal justice is neither a just nor an effective mechanism of responding to the collective trauma experienced by the population. Rather, spaces must be created in which people can tell their stories and feel heard and vindicated, in which accountability is not precluded by legal procedure and criminal sanctions, and which allows for collective decision-making about how to address and repair the harm done and prevent such harms from reoccurring as far as possible.

A restorative group in Northern Italy has illustrated the kind of restorative work that could occur (Marder, 2020d). In late June, they facilitated a series of circles for their community, including medical professionals, people who were hospitalised or who lost family members, and people who continued working in other front-line roles, such as in stores, during the crisis. The circles involved tears, stories of lost loved ones and doctors' memories of making impossible decisions daily. The facilitators aimed to avoid political debates, which they feared would take away from the storytelling objective. Victims who initially felt that they might direct their grief and anger towards medical professionals felt less angry after listening to the doctors' stories. Their initial circles revealed raw emotion and grief, while later meetings (each group met at least twice) enabled the participants, having expressed their emotions, to consider their longer-term needs.

The harm experienced in Lombardy was acute, but the need for such dialogue resonates the world over. People need an opportunity to speak openly about their experience of recent months and feel heard and validated by others; restorative practice gives us a way to design and structure this kind of dialogue.

5 Conclusion

The foregoing discussion highlights some positive examples of innovation and adaptation under a trying set of circumstances. This is not a comprehensive or exhaustive survey of restorative practice during COVID-19. We also acknowledge that there are significant hurdles to the widespread use of online restorative justice. For example, severe restrictions within prisons across the UK means little to no restorative justice has taken place within a prison since the pandemic began (European Forum for Restorative Justice, 2020). This is despite the fact that, in some instances, videoconferencing facilities within prisons have expanded for both personal and court visits (Fitzgerald, 2020).

The evolving work of restorative services and practitioners during and following the pandemic illustrates the need for restorative practice while demonstrating its flexibility and ability to adapt to ever-changing situations and

contexts. We have also seen a pressing need to create and maintain spaces in which to share ideas and challenges internationally. While much of the work described here was developed reactively and with people operating in ‘crisis mode’, we encourage continued global collaboration between restorative justice services, practitioners and researchers to advance, document and evaluate restorative practices as they unfold.

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