

# Restorative Justice, Policing and the Big Society

Tuesday, 22 Feb 2011

## **Transcript of a speech by The Rt Hon Nick Herbert MP Minister for Policing and Criminal Justice given on 16th February, 2011 at the joint Association of Chief Police Officers' and the Restorative Justice Council conference in Manchester**

Good morning ladies and gentleman and thank you very much for that kind introduction. I am very grateful to ACPO and the Restorative Justice Council for inviting me to this conference, which I was particularly keen to speak at, and also to Steria for facilitating the event.

Thank you also for those very powerful words of introduction from Gary Shewan, from the Restorative Justice Council, and then of Jo Nodding. Jo's words speak to us powerfully about the potential of restorative justice to provide a solution and deliver justice even in relation to the most serious crimes that can be committed.

This morning what I would like to do is talk about why I believe in restorative justice, and also believe that its potential in the criminal justice system is as yet unfulfilled. I'll explain why I think there is so much more to do and I'll set out the Government's commitment to make that happen.

### **Restorative justice at the heart of the criminal justice system**

I would like to talk about the principles which I think should govern the practice of restorative justice. I would like to take the opportunity, as the title of the conference invites me, to talk about the Big Society. In particular, why I think restorative justice is a reflection of what we are talking about when describing the Big Society and why it is such an important idea. Above all, I would like to talk about how I think we need to describe restorative justice, and how we embed it at the heart of the criminal justice system.

There has been much talk about restorative justice. We've seen encouraging pilots and there's talk about it not only in this country, but around the world. So why is it that something that offers such encouraging results should not have taken a greater hold in our system?

Well, I think it is because we've seen evolving over the last few years a criminal justice system that has been very much directed from the centre.

We've been through the recent era of targets and what has eloquently been described as 'deliverology'. The idea of managing from the centre, of close direction in order to try and drive up the performance of public services. This was done for benign reasons, but we all know what the consequences were.

One of those consequences was the erosion of professional discretion and a driving of activity in very prescribed forms. I think the consequence of this top-down culture was that we disempowered the frontline across the public sector, but certainly in relation to the criminal justice system. We robbed police officers of their discretion, and we divided criminal justice partners.

### **The Government's reform agenda**

I've talked before about the problem that we use the phrase "criminal justice system" where actually too often we don't have a system at all. And I think above all, we disenfranchise the public. We encouraged the notion that the criminal justice system should operate as something that is entirely

separate from the public, and that the public role in it was very limited. The Government's philosophy is to challenge all of those notions.

We want to do much more than simply abolish the target culture. This is about restoring professional discretion, and creating space for local innovation. It is about opening up public services to those who can deliver, irrespective of where they come from.

We want people to be much more interested in the outcome and less concerned about the process. To focus on what works rather than having a preconception of what works - to be evidence led, and to encourage partnerships across public services, partnerships with the private and third sector. Perhaps above all, partnerships with the public.

## **The interests of victims**

And it is into that new space that I think restorative justice presents such a huge opportunity. I'm not going to try to describe to you what restorative justice is because you know that much better than I do, and we've already heard some examples of the impact that it can have, both for victims and communities. But I do want us to take a step back and ask ourselves what the criminal justice system should be for.

Every crime has a victim, and what has happened in the way our system has evolved, is that when the state has taken responsibility for dealing with criminal offences, it has taken the remedy out of the hands of the individual and accepted collective responsibility for dealing with that crime.

The consequence of that is that we have built a criminal justice system which can be very removed both from the public and from the victim. A system that can be remote, can be opaque in terms of what it is delivering, and can be very complex. This system can be owned by people who are privileged within it, owned by the law, owned by the professionals in the system, owned by its own complex processes.

And it seems to me that what restorative justice is about is not just a new disposal or a new set of disposals. It is about looking at this system in an entirely different way. It is about saying that if every crime has a victim, then we ought to be interested in how victims are regarding the way in which that crime is dealt with. What I've said before is that we need a criminal justice system that never stops thinking about the interests of victims. And that is not just a statement of some new form of process; it is actually looking again at what it is we actually expect the criminal justice system to deliver.

More than that, I think we need a system that puts the notion of the responsibility of the offender back at the centre, too. Again it seems to me that restorative justice has the potential to do that.

## **The Big Society**

This is about taking justice out of the narrow confines of the courts and putting it into the community. That is why I think the notion of the Big Society is so relevant and so important here.

This is a week where the Big Society has been talked about a lot, but I am passionate in the belief that the Big Society is a truly big idea. It is a big idea because it is an answer to the problems of the broken society, and it is those problems that have of course caused the high crime that we heard about.

And we cannot, it seems to me, as a country, as a Government, as a nation, merely be focused on the importance of economic repair. We should also be talking about, as the Prime Minister said this week, about social repair too.

Social repair cannot come from the state alone; it must also come from how society is acting. I believe that by re-empowering the community, by opening up justice and the criminal justice systems to the community, by recognising the interest of victims and the power of community to effect restoration and sometimes reparation too, we are describing what the Big Society should be about.

I also want to talk about the importance of restorative justice being mainstreamed as a response to crime and antisocial behaviour, and so being absolutely capable of withstanding public scrutiny as an answer to the problems that people are concerned about. We've heard criticism before that restorative justice is some kind of soft option. Well, I don't believe that the case studies that we've heard about today, or the ones that you're involved with everyday in your work, or those I've been hearing about this morning, represent any kind of soft option.

## **Real justice**

And they can't be. What we must describe is not soft justice, but real justice: a justice that commands community support.

What that means, if it's going to win public support, is that it has to pass a number of crucial tests, tests that I think we should be applying across the criminal justice system, and ones that we cannot simply take as read or pass by.

Restorative justice must be robust and effective in terms of victim satisfaction, it must deliver reductions of re-offending, and contribute to the Government's key goal of breaking the cycle of crime and high rates of re-offending.

It must contribute to the better outcomes that we seek from the system. This cannot just be a process, something that is undertaken or fulfilled as part of a system. It must be satisfactory for the victim but importantly also fulfil the wider test of being effective in the criminal justice system, commanding public confidence and contributing to reduced re-offending.

What that means is that restorative justice has to be visible and it has to be transparent.

## **Reclaiming justice for communities**

I've talked about the fact that the criminal justice system is opaque, but I think we used to regard restorative justice as a process that was a private one, and of course in certain circumstances it has to be. But, for justice to be done it must be seen to be done. If we are to command confidence in a completely new way of delivering community justice, then there must be transparency in restorative justice and visibility about how it is being driven. An example of this that many of you will have seen, is the new police.uk website which we launched a couple of weeks ago. At the moment you can identify the crime or incident of anti-social behaviour that is committed in your neighbourhood. Now we have the ambition that in the future you will be able to find much more than that. You will be able to find out what happened in relation to that incident of crime and anti-social behaviour, and how it was dealt with. It is very important that we have a criminal justice system that is able to say "this is how it was dealt with" so that the public are confident in the way in which crime is being tackled in our society.

And more than that of course, as has been referred to already, restorative justice along with the criminal justice system as a whole must be able to deliver value for money at a time when resources are at a premium. The decade of rapidly rising public spending on the criminal justice system has of course come to an end. We are now in a process of fiscal retrenchment, and therefore value for money drives the whole system. Restorative justice can contribute to that drive.

Now I would like to say something else that I think is perhaps challenging.

I believe that we should stop talking about 'diverting' from the criminal justice system. Whilst I know exactly what is meant by this language, I think it's a problem because it implies that diverting people from the system is some kind of goal in itself, that that is what we aspire to do. It is a problem describing it in that way as we can lose the public and their confidence that crime is being dealt with.

Instead of talking about diversion from the system, what we should really be talking about is transforming the criminal justice system. Transforming it into a service and transforming the way it operates. What we should really be talking about is not diversion but reclaiming justice for communities and ensuring that the way in which justice is delivered is not remote and that the system is not opaque.

We should stop talking about diversion because what we want to do is not see restorative justice as some kind of alternative to the criminal justice system. What we want to see is restorative justice and restorative principles embedded in the criminal justice system as a whole and operating at every part of the criminal justice system.

## **Neighbourhood justice**

So we need to change the way in which we use our language about restorative justice and change the level of the ambition.

This is not just about a disposal, it's not about a diversion, this is about embedding a principle and a really important principle too, because it is built around the notion of doing justice, or right being done by the victim.

I'd like to talk now about the tiers in which we think the restorative principles could operate. I would like to focus particularly, because it's the theme of this conference, on policing. That is, it seems to me, the first tier - the neighbourhood resolution which I think shows such potential. I heard about it a little bit this morning when I met briefly with PC Lucy Tustin and PC Mike Pringle of the Greater Manchester Police. They were describing to me the way in which they exercise their discretion to apply restorative solutions in a school where Lucy works and out in the neighbourhood where Mike works.

What was powerful about their story was that it so clearly answered the desire which I have, that the Government has, to restore discretion to policing, to move away from the target culture.

Last Saturday, as part of national specials weekends, I was out with my local force in Sussex. I was talking with a sergeant who was passionate about the way in which applying these sorts of new practices is actually returning to officers the discretion they should naturally have to deal with things in the appropriate way.

He was equally passionate about wanting to ensure that there isn't an overlay of bureaucracy that would actually get in the way of the discretion which he was exercising. What we have to do is find a way to balance the need to ensure public confidence and transparency with the need to ensure that these disposals work. We want restorative justice to be delivered with the professional discretion and the space which officers need to make it work.

This is all about achieving the right balance, and I am working with ACPO at the moment to make sure that we achieve this.

We saw last week the Home Secretary announce a consultation on countering anti-social behaviour. We are working to make the informal out-of-court tools to deal with anti-social behaviour more rehabilitative and more restorative.

We really are seeking to apply restorative principles across the system, not just seeing them as an alternative, and we want to make sure that police officers are incentivised in the right way to use these disposals. I'm very encouraged by the way in which this is moving in policing. We know that at least three-quarters of police forces are already using restorative justice as part of their neighbourhood policing. I think there is a huge opportunity here to build on what I think has been such a positive development in the rediscovery of community policing. To build on neighbourhood policing and give officers this power and this discretion to effect this restorative justice.

I think there is immense potential here and I want to see this activity being driven across the country, but innovated locally without Government prescription. This is why I think the 'Restorative Justice Council: Best Practice Guidance for Restorative Practice' which has been published today is exactly the right approach.

The approach is to move away from a system where central government is always saying how things should be done, to a system where we are encouraging local innovation. This is an incredibly important first tier of community resolution and one that I think has immense potential. I want to emphasise though that it is not the only tier.

### **Applying restorative justice in other areas**

We are also looking at instances where a court case is likely to lead to a fine or a community sentence and as part of this we will explore how restorative justice can be used as part of an out-of-court disposal.

For example, it could be used as a condition attached to a conditional caution. This could result in the offender paying compensation to the victim or making good their offence in other ways determined by the victim. It could prevent distress to the victim and deliver a suitable punishment.

The notion of reparation here is powerful and will be an important means by which we build confidence in community sentencing. Not through some PR exercise where all we're doing is focusing on telling people that community sentences really are a good thing after all, but actually on looking carefully at these disposals and saying how effective are they at delivering what the victim wants. Also their effectiveness in reducing re-offending. This is a rigour that we want to apply to community sentencing across the piece.

Another area we are looking at is in relation to restorative conferences. These are carried out pre-sentence for offenders who admit their guilt and agree to participate. They could be reported to the court with the victims' consent as part of pre-sentence reports. They could inform the court decision about the type of sentence that is handed down, and they may allow the court to adjust its sentence according to the way in which that particular restorative process ran.

We have seen of course restorative principles trail-blazed in relation to the youth justice system and I would like to commend the work of Sir Charles Pollard in this respect, but there is more that can be done.

Strengthening the restorative element in referral orders across the youth sentencing framework, drawing on the experience of youth conferencing in Northern Ireland, is one of the ways in which we want to take this forward.

In the recently published 'Breaking the cycle' Green Paper which has been referred to by others today so positively – which I am so pleased about - we've talked about testing the capacity of neighbourhood justice panels to give local people the tools to share information on crime and anti-social behaviour in their communities.

It is about harnessing the power of communities to play a part in these resolutions. It is also about the principle of responsibility, not just about the offender's responsibility, but also the community's own responsibility. It goes back to what I was trying to describe when I talked about the idea of reclaiming justice at the community level and building on that potential within communities. We want local people to take on responsibility and to have some say in the way in which anti-social behaviour is dealt with. This again takes us to the heart of what we're talking about in relation to the Big Society.

This is all about putting the public back in the driving seat. Earlier I spoke about the example of the police.uk website which offers a real challenge and opportunity to us, about the way in which the public are going to view crime in the future and the type of information they want. What it also tells us is that there is great public appetite for information. We want the criminal justice system to be much more accountable and much more transparent in the future.

Since the crime mapping website was launched two weeks ago it has received 382 million hits. Those aren't all unique users but it nevertheless indicates the scale of the public demand for this information. We have had over two thousand pieces of individual feedback from the public. The feedback has in the main been very positive, but it's not the only way in which we want to open up the criminal justice system and drive accountability and transparency.

## Conclusion

We want to put the public back in the driving seat. We will do this through democratic accountability, through the election of police and crime commissioners, and through these restorative approaches. This is one of the reasons why I think that they are so exciting.

Let me finish by saying this. Offending must always have consequences, and those consequences should not just be punitive. They should also be about making good, about repairing, about paying back to the victim and to society. That is what it seems to me restorative justice can deliver, and that is why it should be a part of the whole system. This is about rethinking justice, and it's about ensuring that we have a criminal justice service, not a system, a service that never stops thinking about the interests of victims.

I would like to end my remarks with the words of somebody else, who also speaks powerfully in the way we heard at the beginning about the potential for restorative justice. These are the words of Brooke Kinsella, who the Prime Minister asked to investigate how we could deal better with knife crime. She recently published her report Tackling Knife Crime Together, and said this:

'After my brother was murdered and throughout my journey to understand youth crime, I heard about the idea of restorative justice, but didn't feel it was something that could be successful.

'As a victim myself, I knew that I would never want to meet the offenders who killed my brother, but I visited the Tees Valley project with an open mind and was prepared to listen to what they had to say. The project develops and delivers a range of restorative approaches, including family mediation, victim-offender mediation, and victim awareness and works alongside 10 to 18-year-olds in the criminal justice system.

'After visiting the project, I began to realise that maybe some good could come out of the restorative justice process. It will not work in every case, and when dealing with murder or very serious violent crimes, it will be a much more personal and complicated decision, but in tackling more minor crimes I believe it could have a massive impact in changing the attitudes of offenders and making them think twice about re-offending.

'I think it could also have a very positive effect on the victim, giving them closure, allowing them to express to the person who hurt them the damage they have done and helping them realise that they were in no way to blame.'

There we are ladies and gentlemen, that's the power of restorative justice. Thank you.