



## **PROMISING STRATEGIES OF RESTORATIVE JUSTICE IN ANTI- LGBT HATE CRIME CASES**



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# EXECUTIVE SUMMARY

The growing field of restorative justice has been exploring the potential of this form of conflict-resolution in cases of vulnerable crimes, for example those who have suffered from sexual violence or in cases where the victim may be a minor. The specific context of these crimes will have an impact on the experience of the victim and offender when participating in restorative justice procedures, and therefore these specificities need to be given careful thought. Victims of hate crime represent another particularly vulnerable group due to the attack on their identity, and in many cases, the ongoing discrimination and abuse they may have been facing over the years. At the same time, understanding why offenders perpetrate these forms of violence and discrimination is also crucial in better understanding which role restorative justice can play.

In short, restorative justice may be defined as, “any process which enables those harmed by crime, and those responsible for that harm, if they freely consent, to participate actively in the resolution of matters arising from the offence, through the help of a trained and impartial third party” (EU Victims’ Rights Directive, Directive 2012/29/EU). Restorative justice represents a response to criminal behaviour that is not only in violation of the law, but also addresses the harm caused to the victim. Crucial values include the facilitation of dialogue, focus on harms, participation, a sense of justice, truth, responsibility and respect of human dignity (Chapman & Törzs, 2018). For victims of (anti-LGBT) hate crime, such a platform provides an opportunity to engage in a dialogue to understand how one’s identity played a role, and re-balance or re-gain power that is likely to have been lost as a result of the criminal act.

The aim of this booklet is to synthesise promising strategies, and offer information that answers common questions. Furthermore, the booklet hopes to increase awareness for policymakers and key stakeholders by presenting evidence from different countries on how to approach restorative justice in cases of anti-LGBT hate crime cases. One clear outcome from the LetsGoByTalking project is the need for further collaboration among civil society or-

ganisations, restorative justice practitioners and criminal justice professionals, both to increase access to these procedures for victims of hate crime and to commit to an approach that is sensitive to the needs of those who have faced identity-based harms. For this reason, the target group of this booklet is wide, also as it provides first insights into the application of restorative justice to anti-LGBT hate crime cases, an area that still is underdeveloped and requires further attention.

In the following pages, we provide snapshots from six countries participating in the LetsGoByTalking project, with varying progress in the field of hate crime (i.e., Belgium, Bulgaria, Italy, the Netherlands, Poland and Spain). These snapshots offer a first look at what is occurring nationally, and what potential might exist. While practices and programmes may vary, several parallels can be drawn, in addition to identifying where improvement is still necessary. While reading this publication, we invite you to think along with us, as particularly the effort made towards bringing together restorative justice professionals on the one hand, and LGBT experts on the other hand still has a long way to go and can benefit from critical thought and feedback.

# INTRODUCTION TO RESTORATIVE JUSTICE AND HATE CRIME

# B

Restorative justice, both as a discipline and in practice, has substantially developed in the past 30 years. A better understanding has emerged on how this form of conflict resolution can also apply to even the most challenging contexts, for example in serious crimes such as sexual violence and homicide. In both of these instances, the specific context requires a deeper understanding of the complexities and characteristics of these types of crime. The same is true in cases of hate crimes, where the consequences are often more harmful for victims as a result of the link with the violence or harassment against their identity. While restorative justice might offer a new tool or approach to deal with these crimes, before applying it to these cases it is important to understand how best to approach victims and offenders of hate crime (including offender motives). Furthermore, a more concise understanding of the harm they suffered and caused, in addition to the root cause of this behaviour and the impact on larger society of these types of crimes is crucial. At this moment, due to the relative newness of this type of crime in relation to restorative justice, learning from existing practices can be extremely valuable.

Restorative justice programmes have the following elements: Dialogue that emphasises victim inclusivity; aim of restoration; prioritisation of the harm done to the victim; responsibility taking by the offender; and dialogue facilitated by an impartial mediator or facilitator. To be able to map other useful practices, we also included restorative-oriented programmes that may include more forward-looking initiatives such as victim awareness programmes for prisoners, victim support that enables victims to have their voices heard, educational programmes for offenders to understand more about the harm they caused, or other offender targeted programmes to emphasise responsibility and rehabilitation.

But what elements require consideration when applying these programmes

and potential benefits to victims and offenders of hate crimes? To what extent is it enough to adopt a victim-centered approach when applying restorative justice, and to what extent must we consider the complexities of identity-based harms? For victims, the impact is likely to run deep, as their identity and personality have been targeted. The violence, abuse or threat of abuse, exacerbated with the identity-nature of the act is likely to lead to a heightened sense of helplessness and sense of insecurity. Phenomena such as internalised homophobia or prejudice and the impact of ongoing discrimination cannot be overlooked. The victim's sense of self and place in society is questioned, and requires a response that addresses these consequences. For the offender, who may make attempts to neutralise responsibility, being confronted with his or her actions provides the space to build empathy.

Yet in most cases, restorative justice programmes specifically targeting victims of hate crime are lacking. At the same time, a truly victim centered approach is likely to ensure that the specific needs of those who suffered as a result of their identity will still feel justice has been achieved. The question, then, is how to ensure that the process takes this into account, and fully addresses the reality of the victim of anti-LGBT hate crime.

# VICTIM<sup>1</sup> STORY: IDENTIFYING THE NEED FOR RESTORATIVE JUSTICE



Mark\* suffered from a physical attack on his identity, leaving him in need of medical attention and long-term psychological support as a result of the mental consequences he faced. Besides the police, Mark was not aware of any organisation or institution that offers support to victims of anti-LGBT hate crime. According to him, the lack of access to support is due to a fear of not being taken seriously by those organisations meant to support victims.

Like many other victims of hate crime, restorative justice was not offered to Mark as an option. When asked about his own participation in such a process had it been offered to him, his most important incentive was related to recognition and gaining support. As he states, “I would have accepted [the offer] because I think it is important that I can tell my story and express my pain. The offender needs to understand what he did to me and the extent to which this had an impact on my life.”

In terms of promoting restorative justice, Mark indicated that it is extremely important to do so for the well-being for victims. When commenting on the criminal justice system, he believes that in theory, the system should indicate a crime with a hate motive has occurred; in other words, courts must recognise that someone was attacked due to their LGBT identity, but often this is not the case.

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<sup>1</sup> The above victim perspective originated from victim interviews that were carried out during the LetsGoByTalking project. The application of restorative justice to hate crimes must also be considered in relation to the offender, even though this was not the focus of the project. For the offender, having the ability to understand the specific harms caused by the attack on a person's identity can have positive effects on the offender, and in more successful cases, even lead to a less biased and discriminatory behavioural change. Fully understanding this process, however, requires more research and examination of promising strategies specifically related to the offender.

From Mark's perspective, entering into a conversation with the offender may lead to better understanding his motive for committing the crime. By engaging in such a dialogue, the offender might be able to shift his point of view. At the same time, however, Mark would be concerned that the offender will not show any sign of remorse, only causing him more pain.

Mark would like to see professionals provide proper treatment to victims, which would require that they have the skills to effectively listen to facts about the harm and suffering of the victim, and to judge this in the correct way so that any outcome will focus on the harm of the victim, and not only the punishment of the offender. According to Mark, “The victim should always be central within justice. They have to move on with their lives despite the consequences of the harm done. I think punishing the offender is less of a priority than helping the victim.”

While Mark shared his unique story, it resembles the situation of many victims of anti-LGBT hate crime, where they are interested in engaging with such a procedure, yet are not aware of their options. But the unique experience of hate crime victims cannot be overlooked – as was identified in the wider LetsGoByTalking research, where victims were not always convinced RJ would stop the abuse from recurring. Furthermore, Mark did in fact have contact with a local NGO that could have referred him to a mediation service – illustrating the potential of increasing access to restorative justice where collaboration among organisations and stakeholders is encouraged.

# PROMISING STRATEGIES: BELGIUM

# D

In Belgium, restorative justice programmes do exist but do not have specific guidelines for dealing with (anti-LGBT) hate crimes. Though many restorative processes can be found, such as police mediation, educational sanctions that aim to change attitudes of offenders and encourage rehabilitation, conferencing for juveniles (Hergo) and amicable mediation, we focus here on two that may address both restorative justice and LGBT or discrimination issues.

First, Mediante (Wallonia) and Moderator (Flanders) are the two restorative justice organisations in Belgium tasked with the local organisation of mediation for redress. Mediation for redress, a non-diversionary approach, can be requested by anyone, including the victim and offender, though most often the prosecutor sends files to relevant mediation services. Mediation is independent of criminal proceedings though it runs parallel to or after them. Mediation is considered to be a right at every stage of the procedure as a result of a 2005 law, including the post-sentencing stage. Though the law outlines values guiding the process such as active participation and communication, it does not stipulate a strict procedure for mediation. Rather, parties should determine how mediation will be carried out, in order to fully reflect their needs. In these procedures, there is a focus on dialogue over settlement, and may be implemented by the two organisations. Although judges are not required to take the outcome of mediation into account, they may do so.

Mediation for redress emphasises the importance of victim inclusivity and centrality of victim needs, which is crucial in responding to hate crime. Rather than outlining what restorative justice can mean for victims, it allows for a space where victims may indicate how they can best benefit, for example in terms of addressing the damage done to their identity. Only by taking such a victim-centred approach will victims of (anti-LGBT) hate crimes be able to engage in a dialogue that addresses the unique character of the harm they suffered and can the service be tailored to the different personal needs victims may have.

Second, the 2013 circular COL13 on discrimination and hate crimes issued by the Minister of Justice, the Minister of the Interior and the College of the prosecutor general also regulates cooperation among Unia (an independent public institution that combats discrimination and racism), the police, the public prosecutor's office and the Institute for Equality Between Women and Men. Restorative mediation must be considered by the public prosecutor's office in cases of discrimination, hate crimes or hate speech. A judge can also impose alternative sanctions. Organisations such as Unia can participate in a programme for offenders, though they are not required to cooperate. Unia has experimented with these restorative processes to better understand to which extent a process such as mediation could be applied. Here, Unia functions as a participant in the mediation, with the aim of obtaining a constructive, out-of-court settlement. In terms of alternative measures and not necessarily restorative justice as defined earlier, Unia aims to help both victim and offender by focusing on pedagogical learning. Such an outcome recognises the need for exchange in relation to the background, meaning and consequences of hate crimes and hate speech.

# E

## PROMISING STRATEGIES: BULGARIA

In Bulgaria, there are no restorative justice programmes addressing anti-LGBT hate crimes or hate crimes in general. Many civil society organisations have developed successful programmes throughout the last 20 years which implement different restorative practices in various fields (e.g., prisons, education, family), but most are project-based. Currently, however, there is a thriving restorative community of professionals that is creating ways to implement restorative justice, as well as pushing for legislative changes in the field. Anti-LGBT hate crimes are not classified or prosecuted as such, hence, access for such cases is limited. At the same time, however, it is important to note that many organisations do express their willingness for future collaboration with the LGBT community for addressing different LGBT-related issues, including anti-LGBT hate crimes. Here, we share the practice of the Crime Prevention Fund (IGA).

The IGA, based in Pazardzhik, works actively with prisoners and ex-prisoners, making up the only centre of this type for offenders and former prisoners in the country. The organisation's holistic approach uses cognitive-behavioural therapy programmes, which are structured in sessions on different topics, combining the development of social skills, communication skills and emotional skills. For minors in conflict with the law, there is a focus on developing empathy. In order to address recidivism, the organisation, among other activities, offers restorative approaches.

IGA implements programmes on direct mediation between victims and perpetrators, even though the number of these cases are limited as often one or both of the parties does not want to participate. Professionals assess the case to decide if direct mediation is the best approach and likely to result in a positive outcome. There are, however, cases where both parties want to participate, but a professional may make the decision not to carry out the mediation. Such a decision takes agency away from the victim and offender, which goes against a restorative perspective. More recently, IGA has also implemented family group conferencing as a method for rehabilitation and

reintegration of ex-prisoners back into society and with their families.

The experience of IGA-Pazardzhik in working with the families of perpetrators could provide insights into working with families of perpetrators of hate crimes, to help them confront their prejudices behind the hate crime and reintegrate their family members back into their community. When planning the process, the organisations ask the perpetrator for their consent to participate and if they agree, the organisation asks the victim. Perpetrators must admit that they are guilty before starting the mediation process. The assessment is done by a psychologist, as mediation is perceived to be a psychological process. The psychologist assesses if the victim and the perpetrator have adequate cognitive abilities, as well as emotional maturity. The process aims to encourage remorse and regret in the perpetrator, based on empathy. This empathy is awakened by bringing the perpetrator and the person who has suffered from the act together, a person who could be their relative or in some other way a close relationship. This empathy building may also be key in addressing underlying prejudices.



# PROMISING STRATEGIES: ITALY

# F

A lack of a normative framework for anti-LGBT hate crimes makes it difficult to identify concrete cases in which restorative justice has been applied to a crime motivated by homo- or transphobic hate. Even though there are no programmes that operate with specific regard to (anti-LGBT) hate crimes, promising strategies do exist that are characterised by a victim-centred and dialogue-based approach, aiming to offer services to victims, with a protocol that could be transferred to hate crimes. Because of the wide range of services at the local level, several of the most relevant are presented here.

COnTatto is a project which operates in social contexts where it is possible to solve conflicts by listening and dialogue, through the promotion of cultural change. COnTatto defines itself as a community-welfare project and creates restorative paths within the communities where it works. The project raises awareness about restorative justice, its methodologies and concrete usefulness to promote a new perspective of justice and sanctions. Though the COnTatto programme does not specifically target victims of hate crimes, the community component is particularly relevant as it could lead to a new sense of inclusivity and safety.

The Centro per la Giustizia Riparativa e per la Mediazione in the city of Milan has a longstanding tradition of restorative approaches, aimed at promoting restoration and reconciliation, as well as reinforcing a sense of safety. The Centre recognises and addresses both victims' needs and the consequences for the community where the crime occurred, offering a victim-centred approach. Restorative justice is the main objective. Though hate crimes are not the focus, crimes motivated by bias towards LGBT persons have been handled through mediation. The feasibility of each case works on an individualised evaluation, offering potential to deal with identity-based cases.

Centro Italiano per la Promozione della Mediazione is an NGO established in 1995 by a group of criminologists, sociologists, psychologists, judges and social workers and represents one of the first Italian experiences for trai-

ning and implementation of mediation. The association aims at promoting a dialogue-based resolution of conflict through mediation between parties, emphasising inter-agency cooperation and raising awareness.

Caritas Italiana is an organisation founded in 1971 with an aim to promote the values of charity, human dignity and development, as well as social justice and peace. Local departments, in the last decades, have given attention to the topic of restorative justice. There may be specific characteristics that could provide greater insights into mediating hate crime, for example through their focus on identity spheres, using narration as a tool to evoke common values.

Aleteia, established in Florence in 2010, aims to improve relationships in communities and tackle the needs of targeted groups of stakeholders. Aleteia has been managing the Centro Interdisciplinare di Giustizia Riparativa Minorile, which applies restorative justice in the juvenile justice system. Since 2016, together with Apab, Aleteia has been managing the project MeF, a new public co-funded project, dedicated to restorative and educational activities.



G

## PROMISING STRATEGIES: THE NETHERLANDS

In recent years, the Ministry of Security and Justice, various relevant criminal justice actors (the Council for the Judiciary, the Public Prosecutor's Office, the police), victim support and restorative justice organisations have expressed their support for the introduction of mediation in criminal justice. The Council on Criminal Justice and Child Protection advised the Minister in 2016 to embed restorative justice principles more firmly in legislation and policies. Restorative justice experts and LGBT advocacy groups, however, are not co-operating on this topic. In the Netherlands, restorative justice programmes and initiatives do not have specific expertise when dealing with the needs of victims of LGBT hate crimes. Two forms of victim-offender mediation are available in the Netherlands: One offered by the court during the criminal proceedings (Mediation in Court), and one offered by an NGO (Perspectief Herstelbemiddeling) outside the criminal proceedings. Both services are free and provided by trained mediators.

In Mediation in Court, mediators are independent professionals, working for the mediation bureau which is part of the court. This type of mediation is possible in all types of crimes, but only offered during the criminal process, when the case is handled by the police, the prosecutor or the court. Both victim and offender must agree to mediation, and the offender must acknowledge the impact of his act and take responsibility. Victims and offenders as well as their lawyers may request mediation, in addition to the public prosecutor or the judge. About half of the cases are violent crimes. During the process, the victim is able to tell the offender about the crime's physical, emotional, and financial impact; to receive answers to questions about the crime and the offender; and to be directly involved in developing a restitution plan for the offender to compensate for the harm done. The mediation can result in a written agreement between victim and offender about a formal acknowledgment of guilt, apologies, or future behaviour and reparation or compensation in case of material and immaterial damage. Both parties can decide (though it is not necessary) to send the agreement to the court. The judge can take

this agreement into account when deciding on the sentence.

The mediation scheme outside of criminal proceedings (by Perspectief Herstelbemiddeling) provides for victim-offender mediation, though without the possibility to influence the outcome of the criminal proceedings. The procedure may be applied to all types of cases, also with young suspects and/or victims in cases with adults. Offenders and victims can initiate the scheme either on their own initiative or through referral authorities (the principal referrers being the Probation Service, the After-Care Service and Victim Support). Participation is voluntary for both victim and offender. Mediation processes outside the criminal proceedings are not time restricted. They can take place before or after the trial and up to 10 or more years after the date of conviction. While the organisation has little experience with victims of anti-LGBT hate crimes (since these cases are rarely brought to their attention and services in these cases are rarely requested), the organisation has a keen interest in being informed and trained in dealing with anti-LGBT hate crimes. Given the serious and long-lasting impact on the victim, and the fact that hate crimes often are not properly dealt with in the justice system, a restorative approach is expected to support the healing of the victim, even if the crime occurred a long time ago.

# PROMISING STRATEGIES: POLAND



Victims' needs during Polish criminal proceedings are not adequately addressed. Awareness of victims' rights among victims and practitioners is insufficient. This situation is further complicated in cases of anti-LGBT hate crimes as they are not recognised in Polish criminal law and all the acts, guidelines, and policies do not treat these cases as particularly protected grounds.

There are, however, examples that illustrate progress in terms of restorative justice and hate crimes, as has been done in Wrocław. In pursuance of becoming a partner within the frame of the European Forum for Restorative Justice Working Group on Restorative Cities, a Team for Restorative Justice by the Mayor of Wrocław was established.

The restorative-oriented Work for Local Community programme at the Wrocław Centre for Restorative Justice (WCRJ) falls under the Wrocław Integration Center (WIC). The WIC provides assistance for people at risk of social exclusion with the purpose of social and professional integration. The WCRJ organises community service sentences that are to be performed by offenders. They may be involved in reintegration activities with the support of a psychologist and a career counsellor. They are also referred to specialised institutions to resolve the underlying problem that was linked to their criminal behaviour. Perpetrators might include those who have committed hate speech and hate crime. The target group furthermore includes the local community who reports vandalism, property damage and hate speech in public space. The penalty of restriction of liberty enforced by the WCRJ includes removing hateful symbols and inscriptions from public space. The WCRJ does not bring the victim and the offender together, though they do refer cases to other organisations that may carry out mediation. The WCRJ informally cooperates with the Culture of Equality Association, the major LGBT NGO of Wrocław.

The Conflict Management and Peer Mediation (CMPM) programme was established by the House of Peace Foundation (HPF), an NGO based in Wrocław,

which is currently working in three areas: Local development to revitalize the neighbourhood, peer mediation and conflict transformation. The CMPM is restorative-oriented, comprising a complex educational activity that targets schools and other educational institutions with the aims of positively changing relations in the community; training in the peaceful resolution of peer conflicts; and preventing peer violence. They are learning how to develop empathy, to analyse conflict situations, and to find solutions to difficult situations together. The programme does not target hate speech and other forms of discrimination specifically, but it can be applied to all types of peer conflicts that do not involve serious crimes. The CMPM can be used in peer conflicts related to sexual orientation, gender identity and expression, and sex characteristics and various forms of sexual harassment. The HPF does not work with victims of anti-LGBT hate crimes, but cooperates with the Culture of Equality Association, and supports them with their professional knowledge. Within a wider frame of anti-discrimination, civil and human rights education (including the CMPM), the HPF also touches upon LGBT-related issues.

# PROMISING STRATEGIES: SPAIN

Despite the lack of specific legislation that clearly outlines the application of restorative justice in Spain, important restorative initiatives and programmes have been developed across the country. In addition to mediation with minors in the criminal justice system, where restorative justice is broadly used and takes a victim-oriented approach that would make it suitable for victims of hate crimes, the Diversity Program should be highlighted. Furthermore, some regional governments have their own programmes on restorative justice, such as the Catalan government, which offers restorative justice services at any stage of the criminal proceedings. While these services do not have specific protocols or programmes for hate crimes, they are based on tailor-made interventions, which can be applied to (anti-LGBT) hate crimes.

The main objective of the restorative justice programme of the Catalan government, managed by the Area of Victims Compensation and Support (Department of Justice), is to work with the offender and the victim involved in a criminal act, as well as with other people who may be affected, in order to repair the damage caused and reach a solution from a fair and balanced perspective. Most often, restorative justice is requested by judicial bodies, and to a much lesser extent by the parties themselves. Outcomes may include restoration of the relationship between parties, apologies and recognition by the offender, and fulfilling a service that was agreed upon during the meeting. Where the victim does not want to be in contact with the offender, there is an option through this programme for an interview with the victim. During this restorative interview, conducted by professional mediators, victims have the opportunity to talk about their conflict and their needs as victims, with the aim of bringing a positive assessment to the harm that occurred. The interview takes the form of an active listening space so they can explain what happened to them, how they felt, and what they need and expect from justice. Very few hate crimes - at least those classified as such - are referred to this programme.

Looking at programmes that work with offenders, the Diversity Program (Programa Diversidad) is voluntary for people who are in prison, and mandatory for those sentenced to alternative penalties and measures for crimes related to hatred, hostility, discrimination or violence. The initiative is a pioneering psychoeducational program composed of about 50 sessions — first individual then group sessions — to combat xenophobia, homophobia and other hate crimes. The programme exists in seven Spanish prisons and aims to reduce recidivism rates through the promotion of re-education and reintegration. The first phase is an evaluation phase, followed by the second phase devoted to the therapeutic process. During this time, themes such as intolerance, low self-esteem and prejudice are addressed. The third phase entails the assessment of the process, and the final phase is where restorative justice may play a role through an encounter between victim and offender.

The Diversity programme targets those people convicted for committing a hate crime, according to article 510 of the Penal Code, as well as to those convicted for other crimes, but who have been punished with the aggravating circumstances of hate crime, namely for racist, anti-Semitic or other discriminatory reasons (amongst which sexual orientation or identity are included). Though hate crime offenders are the main target group, there is no data regarding specific interventions for anti-LGBT hate crimes. For the Diversity Programme, special attention was given to victims of hate crime as early as its development. According to the Ministry of the Interior, during the development of this programme, different groups of victims of hate crimes and social entities contributed with their experiences and opinions, reflecting on the harm caused and subsequent personal and social consequences.



# PROMISING STRATEGIES FROM A NON-PROJECT COUNTRY (UNITED KINGDOM)

## THE HATE CRIME PROJECT AT SOUTHWARK MEDIATION CENTRE, UNITED KINGDOM

The Hate Crime project was set up to primarily deal with reported conflicts in local communities where hate or prejudice played a role. Both indirect and direct forms of community mediation may be used. Cases may be referred by various agencies, including the police, housing associations, anti-social behaviour units, and the parties themselves. In many situations, cases that arrive at the mediation centre have been escalating for longer periods of time. The initiative has several aims: (1) Exploring the impact that inter-personal conflicts have on those who are involved through inclusive dialogues; (2) better understanding the role of prejudice in the conflict; and (3) agreeing on satisfactory resolutions. Often, written agreements result that stipulate what each party had to carry out following the mediation (often a promise to stop engaging in hate speech).

The process begins with separate meetings with each party for an initial conversation about mediation and what it could mean. Often mediators then follow up with a second call or meeting before the mediation takes place. Such a preparatory phase allows parties to talk about their expectations and willingness, taking into account potential benefits and risks. At this point, the mediator informs the parties that the goal is about resolution rather than discussion of the conflict.

Though there is a clear restorative focus in the Hate Crime Project, it is not fully considered restorative justice, namely due to its failure to encourage offender responsibility. This is due to the approach of not labelling parties, which also has benefits. As a result, however, the offender may not take responsibility

for alleged wrongdoing before a meeting. Such an approach also leads to less chance of the offender carrying out any measure of reparations. In hate crimes, however, referring to parties as stakeholders may better address the issues related to multi-layered disputes where the offender may have also been a victim, and vice versa. Such a possibility should always be checked when preparing parties for restorative justice processes.

Despite having no full offender accountability in some cases, and the recognition that restorative justice and restorative approaches may be described more as a helping factor in repairing the harms rather than providing full reparation, there are several positive outcomes of such work focusing on hate. Research found clear evidence of a decrease in fear and anxiety as a result of participation in the project.<sup>1</sup> Furthermore, the opportunity for expression helps offenders to see the impact of prejudice on the victim. An open dialogue also allows for the mediator to present a question of whether the issue of identity could be raised, and how this plays a role in the larger conflict. The need to hear that the offender will desist from future crimes is particularly important in hate crime cases, and tangible evidence was needed for victims to feel this way. Finally, the role of the mediator can also have a positive impact on the victim. Until the mediation process, many victims have dealt with authorities and others who do not take their experiences seriously. There was evidence that the Hate Crime Project helped victims feel recognised and no longer marginalised, which also assisted in their recovery.

## BRIGHTON AND HOVE POLICE: RESTORE DIVERCITY, UNITED KINGDOM

In 2015, Brighton and Hove committed to being a restorative city, implementing the Community Safety Partnership made up of local authorities, police, housing providers, and representatives from mental health and social care, among others. The partnership was a result of the successful victim-offender meetings that were taking place, and a desire to focus on early intervention and prevention work outside of the criminal justice setting. The principles guiding the restorative city are restoration, voluntarism, neutrality, accessibility, safety and respect. A pledge of the city ensures that all individuals and the larger community who suffered harm by crime or conflict will be offered an opportunity to engage in restorative services in order to repair the harm that was caused.

<sup>1</sup> Walters, M. (2014). Hate Crime and Restorative Justice: Exploring Causes, Repairing Harms. Oxford: Oxford University Press.

# STRATEGIES TO PROMOTE NETWORKING AND COOPERATION



Though the target audience extends beyond those who have suffered from hate crime, victims of this form of conflict have been given attention through this initiative. The community safety team that was set up conducted both direct and indirect interventions. As a result, it became evident that restorative circles may be very impactful for those who have suffered hate incidents and hate crimes. The team also facilitated meetings indirectly where the victim did not wish to directly communicate with the offender, or where the offender could not be identified. Facilitators were chosen based on previous work with hate crime, due to those crimes coming to their mediation practices.

As part of the restorative justice project, Restore DiverCity allows for offenders to speak directly with the victims in order to fully understand the impact of their actions and where possible, to make amends. In one documented case, a teenager who was attacked by five others after they called him homophobic names decided to take a restorative approach. Rather than filing a police report, he wrote a victim statement that was read by a restorative justice coordinator to the offenders and their parents. This scheme also allows victims to speak to their offenders through WhatsApp, or to have statements read on their behalf. The initiative recognises that though criminal prosecution is an option, the restorative solution encourages addressing prejudice and learned behaviour, and allows for the expression of what it means to have one's identity attacked. The programme first and foremost prioritises the needs of the victim and the community in resolving the conflict, and subsequently allows them to decide to send a message that such behaviour will not be tolerated.

Cooperation is fundamental to increasing access for victims of anti-LGBT hate crimes to restorative justice, and perspectives among those collaborating must consider how to combat prejudice to ensure secondary victimisation and the expressing of unconscious prejudices do not occur.

Legal mechanisms may be set up to promote cooperation. For example, as noted earlier in Belgium, a circular (Col13/2013) that addresses restorative justice within the investigation and prosecution in cases of hate crime provides guidelines for police and prosecutors when dealing with cases of hate crime and discrimination, referring to the use of restorative mediation as a first response. Police and prosecutors are also provided with guidance on how to assess and classify hate crimes to enhance the quality of reporting these cases. A working group on the document is involved in monitoring the impact of the circular. This point – namely setting up some type of platform for key actors to come together and discuss both what works and what challenges exist – can also serve as an important networking tool to increase access.

Where such documents provide even more guidance in terms of using mediation, and combine the legal framework with trainings for police and prosecutors so that they fully understand why a restorative response may be the best option, access is also likely to increase. These mechanisms can positively contribute to changing the culture and referral behaviours of key referring bodies.

Another example at the local level can be found in Poland, also described above. In pursuance of becoming a partner within the frame of European Forum for Restorative Justice Working Group on Restorative Cities, a Team

for Restorative Justice was established by the Mayor of Wrocław. The team gathers representatives of the municipality, district courts, probation officers, municipal police, and the NGO sector to promote restorative justice and to secure a smooth cooperation among these entities. Some members believe support from local authorities is crucial for victims of anti-LGBT hate crimes to get involved in restorative justice practices, and declare that the municipality-related programmes of restorative justice have been ready to profile their activities also for LGBT residents. Currently, LGBT activist circles are in cooperation with the restorative justice team.

Trainings undoubtedly have the capacity to require restorative justice practitioners to consider the uniqueness of hate-based harm, and to require LGBT victim advocates to consider alternative means of resolving the conflict, in a fully restorative way. These trainings will be particularly effective when they use each others' skills and knowledge, namely allowing both to learn from the other's expertise.

One recommended training is the LetsGoByTalking training on restorative justice and hate crime, which partially (Module 1 and 2) can be accessed at the project website: [www.lets gobytalking.eu](http://www.lets gobytalking.eu). The target groups for the training are LGBT professionals, justice agencies, prison, probation and community organisations staff that may be involved in cases of anti-LGBT hate crimes and are in need of basic knowledge and skills. There are three modules in total.

**Module 1** deals with LGBT and anti-LGBT hate crimes. Section 1a provides general knowledge about LGBT and LGBT terminology. It explains the concept of 'hate crime' and its impact on victims and victim needs. Section 1b provides information about the situation of the LGBT community in the specific country, the national legislation and policies to protect victims of anti-LGBT hate crimes, social initiatives to empower LGBT people as well as information about LGBT organisations.

**Module 2** deals with restorative justice. Section 2a provides general knowledge about the history, philosophy, principles and values of RJ, as well as the evidence for its efficacy. Section 2b provides country specific information about the national legislation regarding restorative justice and the available restorative justice programmes and organisations.

**Module 3** is the final module, in which a maximum of 12 participants join in an (online) interactive programme. A trainer facilitates the interaction and the learning process of individual participants. To this end, a detailed training manual is made available. In Module 3, the participants apply the knowledge from Modules 1 and 2 to an elaborate case history. They practice a restorative and LGBT-sensitive approach. The goals of Module 3 are:

- ▶ to raise awareness;
- ▶ to help professionals develop positive attitudes towards using RJ programs and practices for anti-LGBT hate crimes;
- ▶ to provide professionals with knowledge on how to apply a restorative approach in their work with victims of anti-LGBT hate crimes.

Finally, an important institution that is crucial in cooperation efforts is universities/schools, particularly those that educate future professionals who will work with victims and offenders of anti-LGBT hate crimes. Within these institutions, initiatives may be set up such as LGBT helpdesks, awareness campaigns or educational methods that recognise the need for restorative approaches to conflicts that arise in schools. Organisations that support hate crime offenders should also be involved to offer expertise on why these acts of hate and discrimination happen, knowledge that is necessary in developing any type of response mechanism.



# FREQUENTLY ASKED QUESTIONS

***Offenders of hate crime must have hate engrained in their belief system. Won't a procedure that brings the offender and victim together re-victimize the victim when the offender again demonstrates this hate?***

As is always the case with restorative justice, the well-being and safety of the parties is a priority. Hate crime offenders often do not hold extreme ideologies, and a proper assessment can ensure that the victim will not be further traumatised. Often, offenders commit hate crimes because of their own fears, ignorance, anger, and boredom, and look for ways to obtain feelings of power and respond to perceived threats to their ways of life. They often may not see the act as a crime of discrimination, or even a reflection of their own value system. The opportunity for a platform for dialogue allows the offender to build empathy, and to counter the de-humanization of the victims that occurred before and/or during the act itself.

***What is the process of empathy building more specifically?***

When we talk about building empathy, we refer to helping someone to think and feel more connected to the inner life of another person. Understandably this is a very hard process, one that cannot be achieved in one meeting, but the opportunity for dialogue can help parties understand what the other person is going through – first steps towards empathy. Although parties often come from different backgrounds, the empathy that humans have the ability to feel can often outweigh or counteract the prejudices that hate crime offenders possess. Particularly when offenders are faced with the trauma of the victim, they are likely to feel compassion towards those they witness are suffering. Speaking about the harm experienced also may naturally invoke remorse in the offender, and help parties to find common ground. In the best-case scenario, the process will allow for parties to obtain an appreciation for cultural and identity differences.

***It seems unlikely that a victim would actually want to meet with the offender. Is this not the reason for low numbers of victims accessing restorative justice procedures?***

Particularly where restorative justice is presented in a way that is not clear to parties, they are likely to reject the offer. Research, both by the LetsGoByTalking project and elsewhere, has indicated that victims and offenders are likely to accept the offer if it is made at the right time in their healing process and with the proper information provided. Unfortunately, we continue to see that victims are not actually provided with information, often because referring bodies have their own reasons not to inform parties or restorative justice organisations about a case.

***When we talk about strategies for restorative justice and hate crime, is it really necessary to have a separate programme for hate crime victims only?***

The LetsGoByTalking project has illustrated that if restorative justice agencies and hate crime organisations are able to collaborate or gain an understanding of the specificities of harm caused by an attack on the victim's identity, it is possible to work with victims within existing restorative justice programmes.

***Should we be taking a "soft" approach to dealing with hate crimes, when the impact can be so grave for victims?***

There is a common misconception that restorative justice is a "soft" response when dealing with crime. In many ways, it requires more from the offender, and does not necessarily miss a punitive component. At the same time, social condemnation through law is crucial to reinforcing the fact that discrimination and hate must be rejected, and one should not exclude the other. Restorative justice, however, ensures that the harm caused is addressed, and may help to challenge the underlying causes of prejudice, both at the individual level and the community level.

*Where can I find more information on restorative justice and anti-LGBT hate crimes?*

- ▶ <https://LetsGoByTalking.eu>
- ▶ <https://safetobe.eu/>
- ▶ <https://www.southwarkmediation.co.uk/projects/hate-crimes-project/>
- ▶ <https://why-me.org/campaigns/hate-crime-restorative-justice/>

## CONCLUDING THOUGHTS



This overview offers summary findings of the LetsGoByTalking project, with the aim of providing the reader with more information on an area that still needs further investigation and understanding. While ensuring a victim-centered approach is indeed likely to lead to more positive experiences for victims, this must be done with the recognition that victims who suffer from harms aimed at their identity are a unique group. Their particularly vulnerable status, where they are likely to have suffered feelings of disempowerment to a greater extent than their non-LGBT counterparts, requires some form of cooperation among professionals coming from both organisations with expertise on the topic and those working within criminal justice. In addition to the online training module that is offered on this topic, familiarising one's self with existing organisations is a further step towards strengthening the restorative response for victims of anti-LGBT hate crimes.

This booklet can be found in Bulgarian, Dutch, Italian, Polish and Spanish with summaries of relevant national organisations in the project countries.



# LET'S GO BY TALKING

[www.letsbygobytalking.eu](http://www.letsbygobytalking.eu)

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