

How do you solve a problem like ASB?

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October 2022

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Understanding law, understanding you

Introduction

Today we will be looking at:

- Breach of tenancy and the options available for dealing with ASB
- Wales Restorative Approaches Partnership model
- How restorative approaches have worked in practice
- How a restorative approach can work in conjunction with other options

Breaches of tenancy

- A reminder of the remedies available:

Possession proceedings	Demotion proceedings	Statutory Injunctions	Closure	Criminal Behaviour Orders
Common law/breach of tenancy injunctions	Community Protection Notice	Dispersal Powers	Public Spaces Protection Orders	Community trigger
Community Remedy	Parenting contracts	ABC's	Curfew schemes	Mediation
	Family Intervention	Environmental protection laws	Undertakings	

Breaches of tenancy

- **Possession**
- Part 1 covers grounds 1 to 8, and these are the mandatory grounds.
- Part 2 covers grounds 9 to 17, the discretionary grounds
- If the ground is mandatory, if you can prove it is made out the court has to make an order
- If the grounds is discretionary, you must be able to also satisfy the court that it is reasonable to order possession
- The court has the power to stay or suspend possession (where the ground is discretionary)

Renting Homes (Wales) Act 2016

- **Termination for Anti-Social Behaviour**
- This will be on the basis of breach of contract
- So you will need:
 1. To be able to prove a breach of contract
 2. It must be reasonable to order possession (reasonableness to be assessed by reference to schedule 10)
 3. To serve notice under s159
 4. Issue proceedings at any point after serving the notice and within six months (once the s159 notice is six months old, it has expired and would need to be re-served)

Renting Homes (Wales) Act 2016

- **Grounds for possession – ASB**
- In the case of ASB, the relevant behaviour clause is now prescribed by the Act: Much more akin to the injunction test set out by ASBCPA
- *s55– the contract holder must not:*
 - *engage or threaten to engage in conduct **capable of** causing a nuisance or annoyance” to others living or engaged in lawful activity in the dwelling or in the locality or to the landlord or any person acting in connection with the landlord’s housing management functions*
 - *Use or threaten to use **the dwelling or common parts** for **criminal purposes***
 - *By act or omission **allow incite or encourage:***
 - *any person living at or visiting the dwelling to engage in anti-social conduct as per above or*
 - *any person to use or threaten to use the dwelling for criminal purposes*

Renting Homes (Wales) Act 2016

Practical Considerations:

- “Capable of” suggests a lower test (currently causing or likely to cause) (I’m capable of doing something which is not likely but none the less capable of doing so)
- Biggest change – Responsibility for others. Does “by act or omission” cover it sufficiently? Omissions are very difficult to prove.
- Criminal purposes different to conviction – at the moment conviction needed. Any crime (rather than just indictable offences)
- But the crime must be in the dwelling or common parts – the wider area is not covered.
- Immorality is NOT included
 - There is no equivalent to the domestic violence
 - There is no ground 7A (mandatory ground)

Renting Homes (Wales) Act 2016

- **Reasonableness**
- The court must consider that it is reasonable to make the order for possession (s209).
- “Reasonableness” is now to be assessed in accordance with schedule 10, which provides a structured discretion by listing what the court must take into account, and one thing that it must not consider (homelessness).

Renting Homes (Wales) Act 2016

- Relevant issues for an ASB claim:
 - a) Effect of the order/decision on the CH and any other occupiers
 - b) The likelihood of CH complying with any conditions on a postponed order
 - c) Effect of not making the order on L's interests including finances
 - d) Where L is a community landlord, the effect on its ability to fulfil its housing functions, including assisting other persons in need of accommodation
 - e) The probable effect of the order or decision on other occupiers of other dwelling, those who have asked L to provide them with accommodation, and others living or visiting or otherwise in the area
 - f) Whether L has offered a new contract (whether or not of the same dwelling) to the CH or other occupier

Renting Homes (Wales) Act 2016

- g) The nature, frequency and duration of the breaches, degree of CH (or permitted occupier's) responsibility, likelihood of recurrence, and other action taken to end or prevent recurrence by L
 - h) The general public interest in restraining the conduct (section 55)
- NB the likelihood that a person will be assisted under Part 2 Housing (Wales) Act 2014 is not a relevant circumstance which the court must take into account.

What alternatives are there?

- ASB Injunctions
- Injunctions to enforce the tenancy agreement
- Acceptable Behaviour Contracts

Injunctions

The Injunction:

- Can be prohibitory (requiring someone not to do something)
- Or mandatory (requiring them to do something)
- Always within the court's discretion
- Can be on the basis of a breach of the tenancy, or anti-social behaviour –
- “Contempt of court” - which is a civil wrong, for which someone can be fined or imprisoned.

ASB Injunctions

- Test is on civil standard of proof (balance of probabilities), that:
 - The person has engaged in or is threatening to engage in ASB, and
 - It is just and convenient to grant the injunction for the purpose of preventing ASB
- Three definitions of what ASB is for the purpose of an application

Injunctions

- Where the applicant is a **housing provider, local authority or police ASB** is
 - “conduct capable of causing a nuisance or annoyance to a person in relation to that person’s occupation of residential premises”, or
 - conduct which is “capable of causing housing-related nuisance or annoyance to any person”
- Otherwise (eg where the NHS is seeking an injunction, or where it is a non-housing related case) the behaviour has to be
 - “conduct that has caused, or is likely to cause, harassment, alarm or distress to any person”
- A housing provider may make an application only if the application concerns ASB which directly or indirectly relates to or affects its housing management functions.

Injunctions

- Can be made on or without notice, and the court can grant an interim injunction
- Can attach power of arrest if the individual has used or threatened violence or if there is a risk of significant harm. (s4(1)).
- Breach by adult is contempt of court, punished by imprisonment up to two years or unlimited fine
- Can exclude someone from their home or a specified area provided they are 18 or over if there is a significant risk of harm
- Power to vary or discharge s8(1)

Injunction to restrain a breach of tenancy

- Any breach of tenancy can be dealt with as a common law injunction.
- This procedure is NOT a 2014 Act injunction and so the court papers and procedure is slightly different
- Still need to satisfy a judge it is reasonable to make the order
- This is probably the most appropriate course of action for issues such as refusal of access for maintenance or gas servicing or to undertake key repairs

- **Wales Restorative Approaches Partnership**

- Who we are – co-operative social enterprise, Welsh
- Cross sector – housing, families, education, criminal justice, community, business
- Quality assured and accredited by the Restorative Justice Council
- 100+ years' cross sector restorative experience in the team
- Training, service delivery, strategic development, qualifications
- Working across Wales, with 25 RSL's and LA's
- www.restorativewales.org.uk, contactus@restorativewales.org.uk @WalesRAP



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Restorative approaches and the law

- Restorative practice is never above the law
- Doesn't have to be traditional or restorative justice – can blend both
- Can be used as diversion for court, used as an out of court disposal, in parallel to court proceedings, as an outcome of court proceedings e.g. ABC's as in the wider Criminal Justice System and Youth Justice
- Can still enable better outcomes even where there is no other option to address harm e.g. help manage evictions, relocate, multi-agency interventions by community conferencing
- Do no more harm - justice that heals

So what does a restorative approach involve?

Lots of
different
tools and
techniques

Very simple
principles



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Restorative Justice

Restorative Justice (RJ)

brings those harmed by crime or conflict and those responsible for the harm into communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way forward

Restorative Justice Council



What is a Restorative Approach?

- ***Restorative approaches (RA)*** – are a way of being which includes outlook and the day to day skills involved in preventing and pre-empting conflicts and harm.
- It builds and maintains relationships and community, *as well as* reacting/ responding when things go wrong¹.

¹ Adapted from Hopkins, B (2004)



Restorative Justice understands that those directly impacted are the best suited to address the harm and determine how to repair the harm



- Harmed and Harmer – Meeting Needs during and after harm
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freshspectrum.com



What matters, what works- Paradigm Shift

Focus on B,M, R relationships first

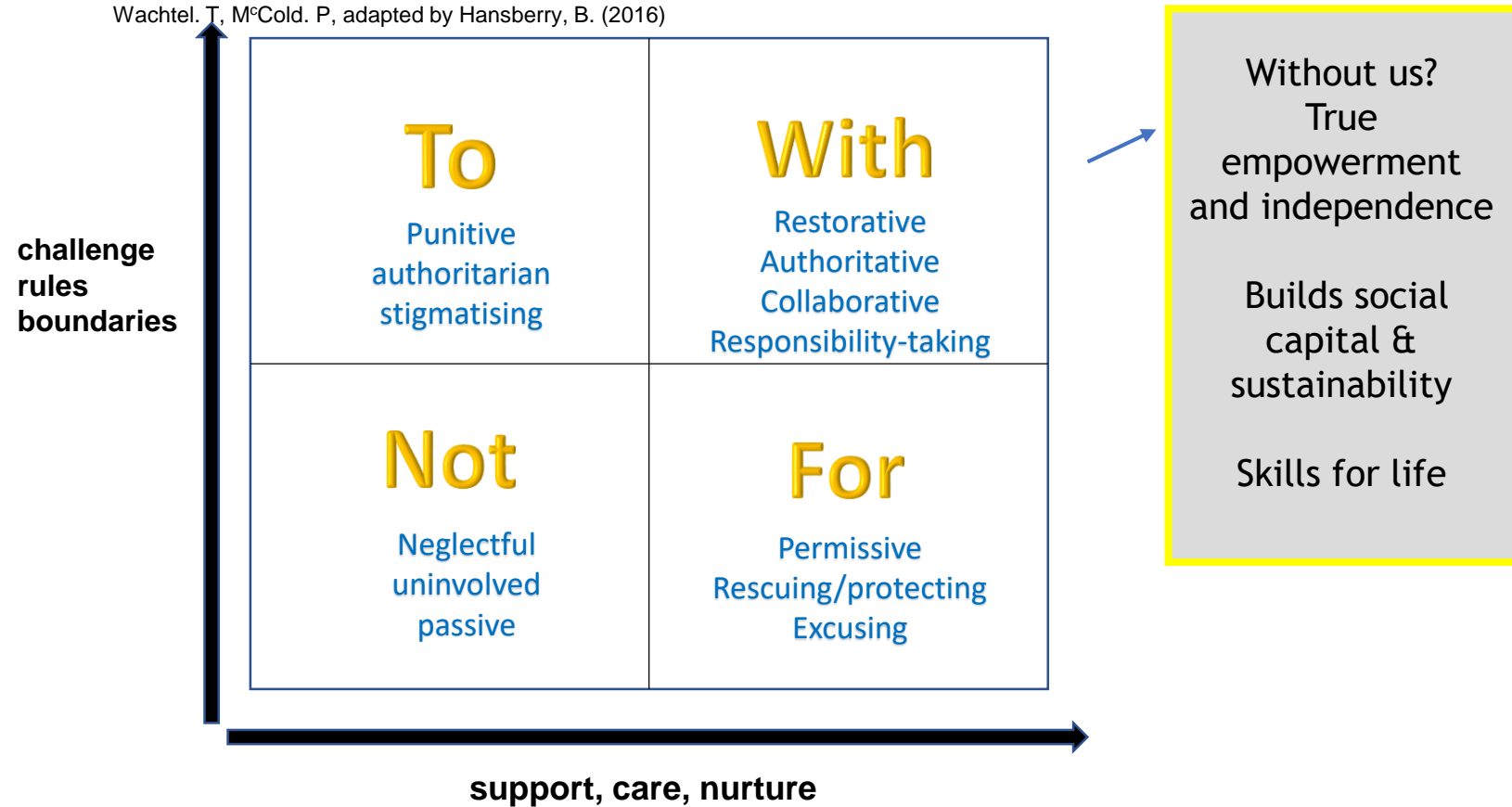
Paradigm shift from traditional punishment, use of sanctions as levers, blame, name, shame, label and exclude, power over/to



Restorative responses that encourage responsibility and accountability, community inclusion, problem solving, teach social skills, prevent, repair and heal, share power with

The Four Choices Window

Wachtel, T, M°Cold. P, adapted by Hansberry, B. (2016)



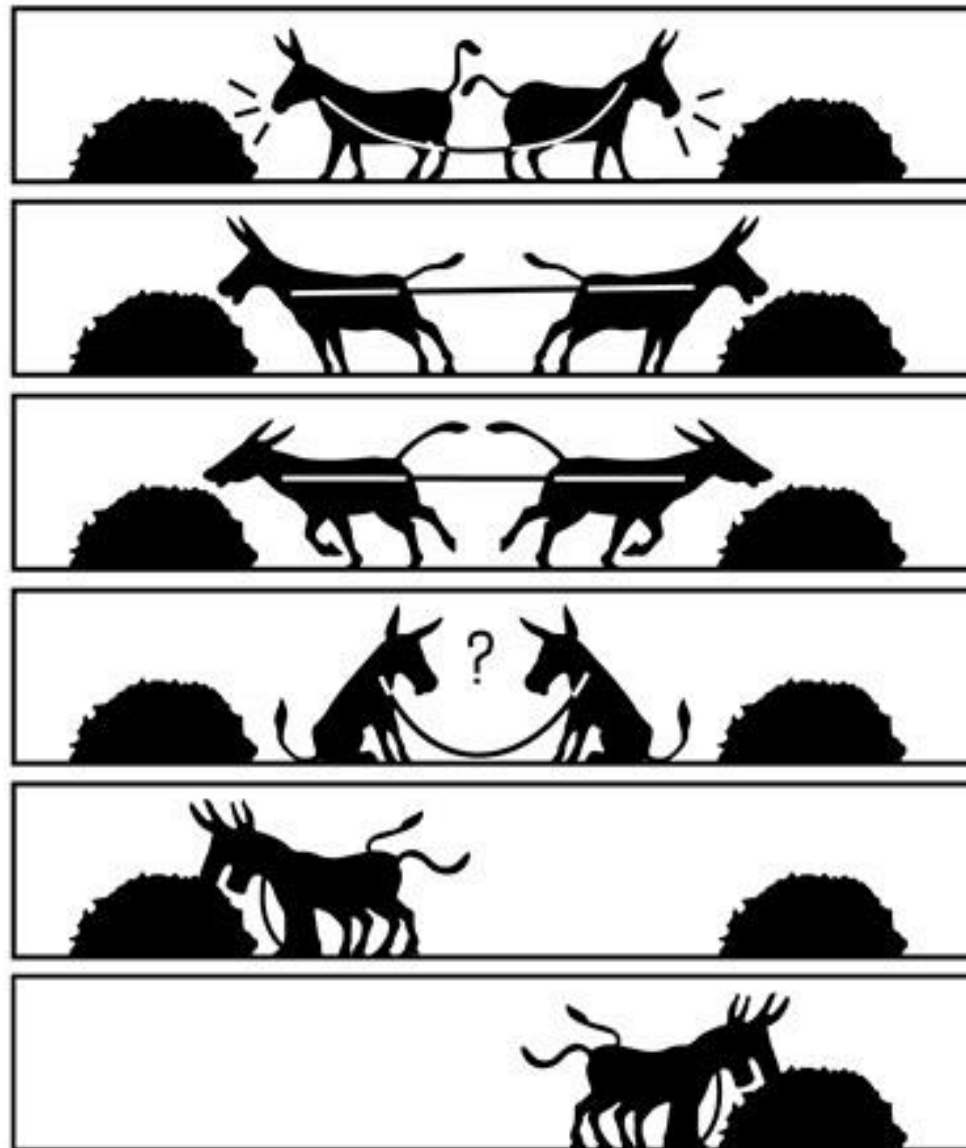
Does punishment change behaviour? Short/long term?
Do sanctions solve “the problem”? For whom?
How does punishment achieve the essential change desired?

Who benefits, who suffers?

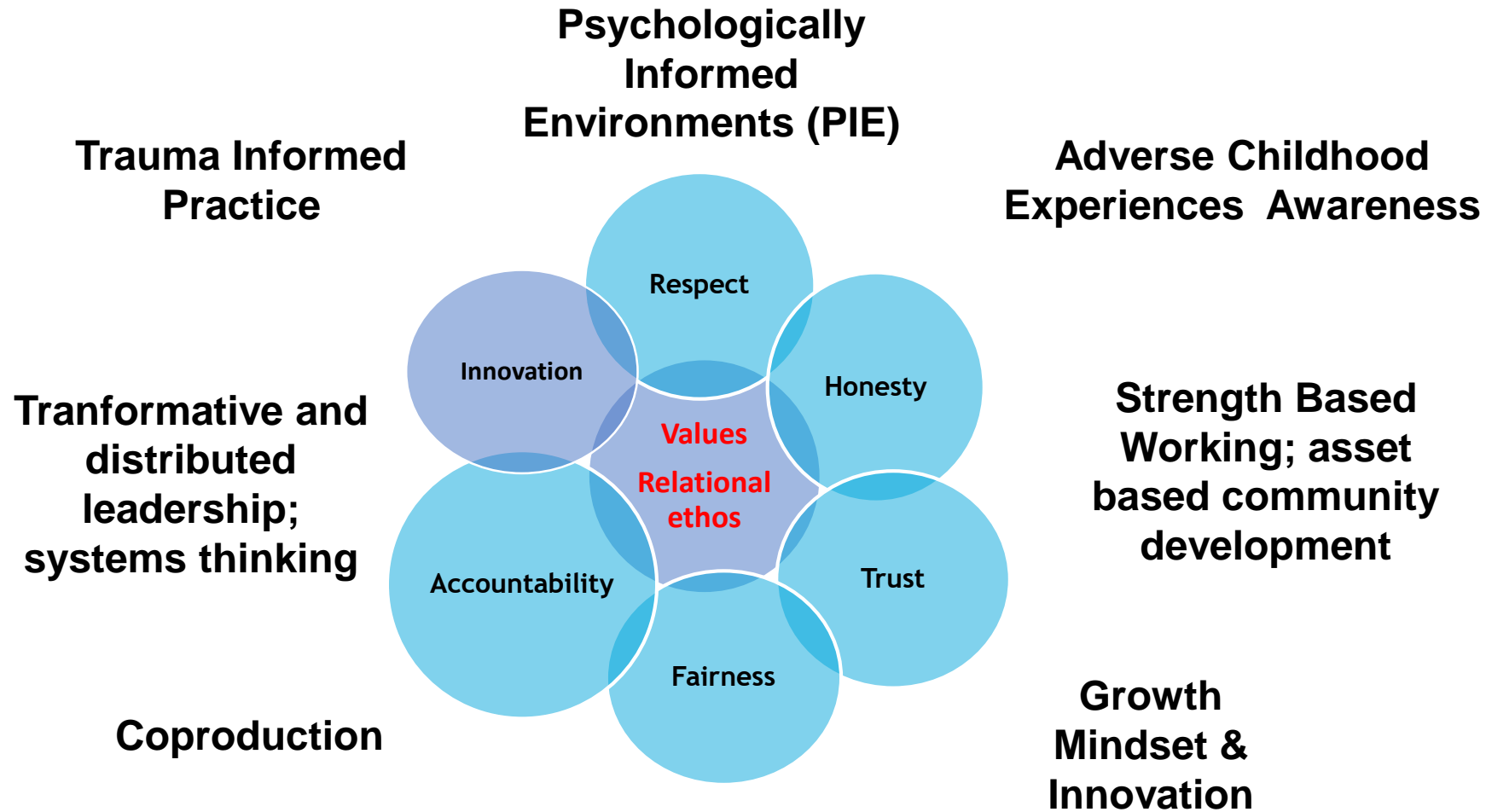
Are all parties’ needs met, harmed and harmer?
Wider relationships/community's needs considered?
Tenant, family, community?
Work place, service users needs?

What does evidence based psychology tell us actually changes
and sustains behavioural change?

Win:Win



Being restorative = core mindset, common thread, congruent practice



Social Housing Strategic & Operational Links

Values, behaviours, ethos

Tenant AND Staff core practice & workplace ethos

 **GIG** | Iechyd Cyhoeddus
Cymru
NHS | Public Health
Wales

Welsh Adverse Childhood Experiences (ACE) Study

Adverse Childhood Experiences
and their impact on health-harming behaviours in the Welsh adult population



ALCOHOL USE, DRUG USE, VIOLENCE, SEXUAL BEHAVIOUR, INCARCERATION, SMOKING AND POOR DIET

Our tenant *and* staff needs

Adverse Childhood Experiences awareness and developing Psychologically informed environments (PIE) means we need to be trauma informed in how we practice.

The response - how

Positive relationships are key

Provide spaces and circlers and talking pieces for engagement and meetings

Our mission statement, purpose, values....
and preventing homelessness aim

**If I am not modelling what I teach
then I am teaching something else**

Marshall Rosenberg

Non Violent Communication

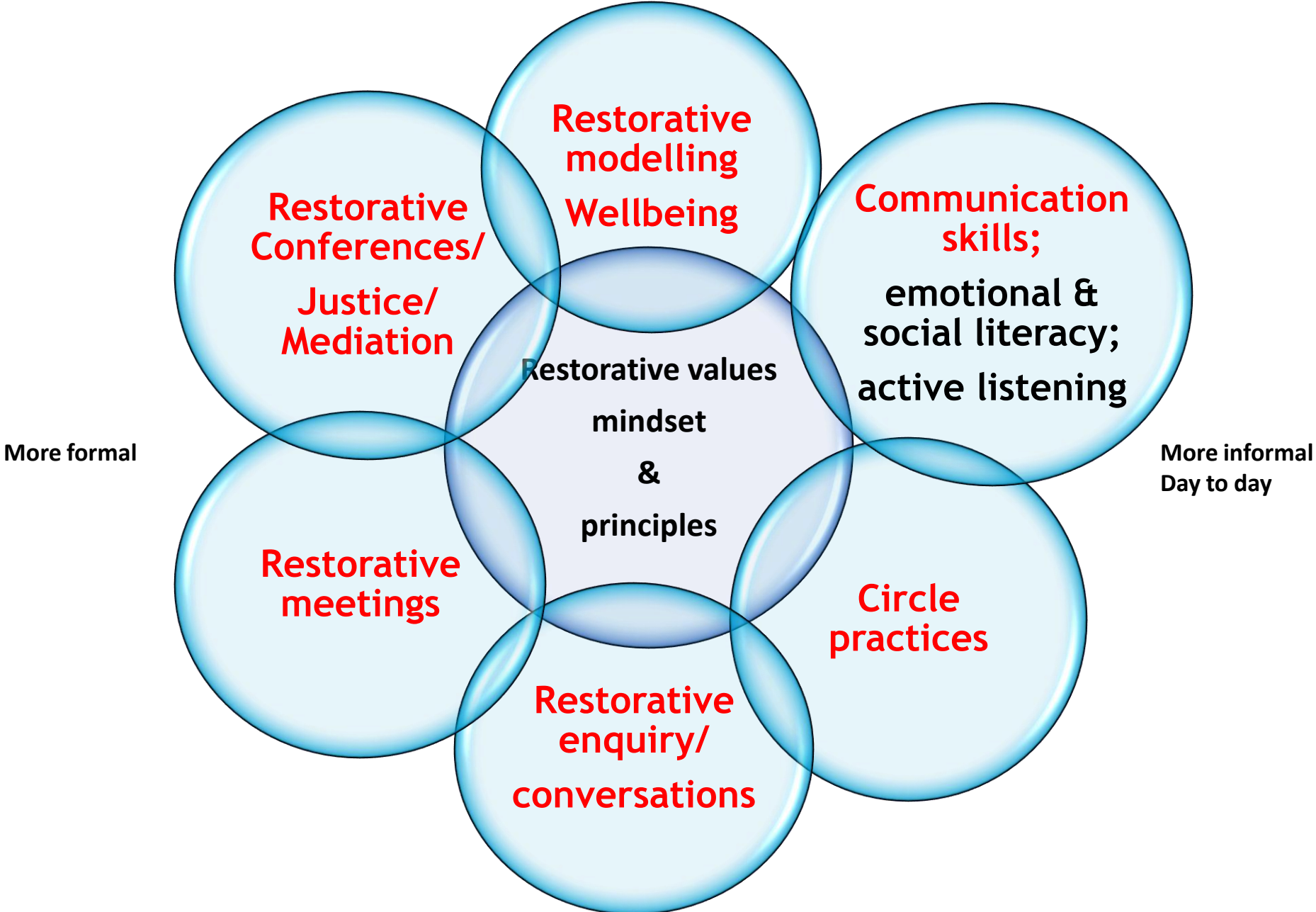
Pro-social modelling theory

What works - evidence base for effective practice with
tenants and staff and communities

Relationships, relationships, relationships
...with self, peers, staff, families, contractors & clients

**From positive behaviour management to
positive relationships management**

Restorative Tools & Techniques



Circles for listening and coproducing solutions

- **Active participation**
- **Everyone's voice matters**
- **Equality and inclusion**
- **Shares the decision making power, addresses conflicts**
- **#Blacklivesmatter highlighted attending to equity is essential**



A combined approach?

- When and how can a restorative approach work alongside court action?
- What if the ASB is serious and residents need immediate protection?
- Counter Allegations
- What if the relationship between staff and residents has broken down?

Complex cases

- Mental Health issues and disabilities e.g. Schizophrenia, Paranoia, Tourettes, Depression, OCD, Alcoholism.
- ‘Cuckooing’
- Domestic Abuse
- Equality Act/Capacity concerns

Post Court

- Traditionally we think of the conclusion of court proceedings as the end of the matter. Is it?
 - ♦ Support for the victims/wider community to move on following a stressful/traumatic experience
 - ♦ Support for the tenant subject to the proceedings
 - ♦ How do we ensure sustainability of a suspended order or demoted tenancy?
 - ♦ Building resilience in communities
 - ♦ Feedback from victims/witnesses? Victim satisfaction highest with RA.

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- Questions?