



To Refer or Not to Refer? Police Discretion and Morality in the Danish Victim-Offender Mediation Programme

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Abstract

Police officers are gatekeepers of the Danish victim-offender mediation programme (*Konfliktråd*) because they have primary responsibility for referring citizens to mediation. The aim of this article is to investigate discretionary elements of police practice that may shed light on the reasons for low caseload into the programme. Drawing on interviews with 16 frontline police officers, this case study explores both pragmatic and moral dimensions of referral practices to *Konfliktråd*. In line with previous work, we find that victim-offender mediation is generally not prioritised in the daily work of frontline police officers. Applying a moral policing lens, we further illustrate how multiple (in)acts of discretion influence not only *whether* the possibility of mediation is presented to victims and offenders, but also *how* this offer is framed. Greater attention to officers' 'gut feelings', moral evaluations of offender eligibility, and care for victims, is needed to comprehend and address problems with unequal access to restorative justice in Denmark.

Keywords

restorative justice, victim-offender mediation, *Konfliktråd*, police discretion, access to justice, morality

Introduction

The Danish victim-offender mediation (VOM) programme, *Konfliktråd*, was established nationwide in 2010. Designed as a voluntary supplement to the traditional criminal justice system, the programme offers victims and offenders an opportunity to meet with a lay mediator, to discuss the harm caused by a particular offence, and how to move forward.¹ As with restorative justice² interventions in several other countries (e.g., Australia, England, and the Netherlands), the Danish VOM programme is organised by the police and is therefore reliant on frontline police officers referring cases to mediation. Police officers thus act as *gatekeepers* of citizens' access to restorative justice (Hoekstra, 2022; Marder, 2020a; Rasmussen, 2020a, 2020b; Wood & Suzuki, 2016). In this article, we build on Rasmussen's (2020a, 2020b, 2020c, 2021) foundational work on police discretion in the Danish VOM programme by investigating and framing frontline police officers' discretionary referral practices as a token of '*moral police work*' (Fassin, 2015, 2018). In doing so, we elucidate how equal access to restorative justice can be threatened both by initial failures to inform potential participants of the VOM offer, and by frontline officers' moral framing of such offers when they are made.

In the European political context, access to supplemental or diversionary restorative justice is increasingly being conceived as a right, and more widespread application of restorative justice is encouraged in international policy instruments (CDPC, 2023; Council of Europe, 2021; Marder, 2020b). Such recommendations are particularly relevant in light of international research which generally points to positive outcomes of restorative justice initiatives, such as participant satisfaction and reduced recidivism (Laxminarayan, 2014; Sherman & Strang, 2007; Strang et al., 2006). Although two register-based reports by the Danish Ministry of Justice failed to identify any effects of participating in *Konfliktråd* on offenders' recidivism and victims' use of formal health and social services (Kyvsgaard, 2016; Kyvsgaard & Ribe, 2018), survey studies of Danish VOM participants indicate high satisfaction among both victims and offenders, in line with international research (Gade et al., 2020; Hansen, 2012). Despite the identification of positive outcomes in several international studies, low caseload into restorative justice programmes remains a central challenge in many countries (Crawford, 2006; EFRJ, 2021b; Laxminarayan, 2014; Laxminarayan & Wolthuis, 2015; Marder, 2022; Rasmussen, 2020c; Shapland et al., 2004; Suzuki & Wood, 2017).

In Denmark, the number of completed VOM meetings reached an annual high of 710 meetings in 2013, with caseload steadily declining to only 415 meetings in 2022 (Politik.dk, n.d.).³ Against a backdrop of 29,417 criminal convictions in that same year (Statistics Denmark, n.d.), the limited reach of the VOM program is striking.⁴ The decline in caseload in the Danish VOM programme is also particularly noteworthy in light of considerable expansions to the programme's scope over the years, to include not only core criminal code cases like violence, but also, e.g., restraining orders, traffic accidents, and neighbour disputes (Danish Ministry of Justice, 2012; Rasmussen, 2020c, pp. 252–253).

International research points to numerous possible contributors to low restorative justice uptake, including legal hindrances and lack of interest on the part of victims and offenders (see Laxminarayan (2014) for a mapping of barriers to restorative justice accessibility in Europe). Several studies also point to issues surrounding the police facilitation of some restorative justice programmes, ascribing caseload challenges to a fundamental clash between restorative justice and police culture (Banwell-Moore, 2023; Daly, 2003; Laxminarayan & Wolthuis, 2015; Marder, 2020a; Rasmussen, 2020b; Shapland et al., 2017). Researchers have variously pointed towards general police reluctance (Laxminarayan, 2014; Wood, 2013), scepticism (Archibald & Llewellyn, 2006; Chankova, 2014; Shapland et al.,

2011), and/or resistance (Campbell et al., 2006; Marder, 2020a) against restorative justice interventions that may hinder their expansion.

Particularly important for this study, several studies have highlighted police officers' discretion and their assessments of eligibility for VOM as factors explaining low caseload (Hoekstra, 2022; Marder, 2020a; Rasmussen, 2020b; Zhang, 2021). Such studies all perceive police officers as '*street-level bureaucrats*' (Lipsky, 2010) and, inspired by this perspective, emphasise discretion as a way for officers to balance competing tasks and big workloads (Marder, 2020a; Rasmussen, 2020c; Zhang, 2021), as well as the patterns of moral judgments made by police professionals and their implications for access to restorative justice (Hoekstra, 2022; Rasmussen, 2020b, 2021).

In Denmark, Rasmussen (2020a, 2020b, 2020c) elucidates the police's role as '*gatekeepers*' of restorative justice, and notes that referral practices are characterised by large variations on the national, district, and individual level, all of which pose challenges for the uniformity and predictability of the Danish VOM programme. She concludes that '*casting*' of (especially) offenders to the Danish VOM programme is decisive as to who is offered the possibility of participating in mediation (Rasmussen, 2020b). For example, offenders may be deselected due to perceived mental illness or lack of sincerity (Rasmussen, 2020b, p. 150). Similar findings have emerged in other countries. For instance, in the Dutch context, Hoekstra (2022) argues that moral evaluations of offenders and victims may influence restorative justice referrals, finding that police officers are more likely to offer restorative justice to '*messy victims*' who are seen as partly responsible for the crime.

A large body of literature on professional (and police) discretion outlines how professionals' attitudes and ideas about their work, the citizens they serve, and the organisations they are part of, contribute to a rewriting of policy in practice (Baviskar & Winter, 2017; Davis, 1977; Grimen & Molander, 2008; Holmberg, 2000; Lipsky, 2010; Skinns, 2019). Rules rarely suffice when guidelines about citizens' eligibility for public services meet the complex reality of specific encounters. In this sense, policing can be understood as a socially constructed and contextually dependent enterprise, where discretion is an ingrained part of many aspects of police work (Mutsaers et al., 2015; Skinns, 2019). Here, police discretion refers to the power of choice that officers exercise, through courses of both action as well as inaction (Davis, 1977; Holmberg, 2000). Diderichsen (2011) explains that discretion permeates police work in four significant ways. These include police officers' capacity to assess which tasks fall under their field of operation; to interpret laws and rules; to prioritise tasks; and to decide how they approach concrete tasks (Diderichsen, 2011, pp. 61–63). Given that individual police officers '*are invested, professionally and personally – that is, they hold a stake – in the incidents in which they intervene*' (Marder, 2020a, p. 22), it is pertinent to scrutinise police officers' normative VOM referral decisions.

Consistent with other international work on police-based restorative justice, the few Danish investigations that have addressed access issues indicate that entry to VOM is contingent on a fine-meshed assessment of eligibility by police personnel (Hansen, 2012; Rasmussen, 2020b). In Denmark, this usually follows a two-step process. An initial screening is typically carried out by frontline police officers interacting with citizens in the context of reporting or investigative procedures. If/when cases are referred to *Konfliktråd*, a second-round assessment is then conducted by VOM coordinators, who are responsible for the daily operation of the programme in each of Denmark's 12 police districts.⁵ Upon reviewing referred cases, the coordinators, most of whom are also police officers, decide whether to hand the cases over to civil mediators, who then facilitate the victim-offender meetings.

The legal basis for offers of VOM in Denmark is that both parties voluntarily agree to participate, and that the offender in all essential regards acknowledges that they have committed the offence (Justitsministeriet, 2009). Aside from these requirements, the specific basis on which eligibility assessments should be made is not elucidated in the legal framework for *Konfliktråd*. In the absence of definitive guidelines, police officers are left with considerable room for discretion in their referral decisions. However, relatively little previous research has explored how police discretion guides Danish VOM referrals at each screening stage.

A notable exception is Rasmussen's aforementioned (2020a, 2020b, 2020c) comparative work exploring the criteria and potential biases that determine access to the Danish *Konfliktråd* and its Norwegian counterpart. She finds that, in contrast to the Norwegian programme (which is not organised by the police), the Danish programme is characterised by larger variations in whether citizens are informed of the possibility for VOM or not (Rasmussen, 2020b, pp. 137–138). As noted earlier, Rasmussen (2020b) highlights the importance of '*police gaze related estimates*' whereby cases are excluded from VOM (either consciously or unconsciously) at both screening stages. She contends that such screenings are informed both by personal knowledge and preferences, and by attitudes towards VOM and the parties that could potentially be referred (Rasmussen, 2020b, p. 156). Of particular relevance to the current study, Rasmussen (2020b, p. 147) notes that some VOM coordinators express concern that their frontline police officer colleagues actively deselect cases via first-level screening based on 'inappropriate criteria'.

While Rasmussen's seminal work is crucial to an understanding of access to Danish restorative justice, her analysis builds mainly on interviews with *Konfliktråd* coordinators, and her insights regarding frontline police screening and referrals therefore represent a second-hand perspective. While it should be noted that the majority of coordinators are also police-trained, and one interview with a police detective was also included in Rasmussen's study, her empirical material does not focus primarily on frontline officers' own reflections regarding their first-level screening practice. In this study, we aim to supplement Rasmussen's earlier work by giving direct voice to first-contact officers responsible for providing initial information to potential VOM participants.

Further expanding existing research on police discretion in restorative justice, we apply a moral policing lens to the analysis, emphasising how moral considerations influence the referral decisions of frontline police officers. Drawing on Didier Fassin's (2015) assertion that '*institutions are governed by rules and procedures as well as values and emotions*' (p. 94), we attempt to explore the 'heart of the state'. Specifically, we follow Fassin's (2018) suggestion to consider not only the legal and organisational rationality of the police, but also the values and affects it mobilises (p. 177). In their interactions with citizens, police officers constantly find themselves in ethical moments (Zigon, 2007), in which they are confronted with several different courses of action. Choosing which tasks are prioritised, discarded, or neglected, and which citizens are targeted for suspicion or care, are all moral questions. Inspired by Fassin (2015, 2018), we conceptualise frontline police officers' referrals to VOM (or lack thereof) as one token of moral police work.

In the following, we start by presenting the methodological framework for the study, and subsequently present our findings in three sections. The first section establishes how frontline police officers understand the task of referring cases to VOM in relation to their other tasks, leading to a framing of VOM referrals as a '*soft formality*' in their work. The second section focuses on officers' views regarding eligibility for VOM, and how 'gut feelings', based on moral evaluations of offenders and care for victims, guide VOM referrals. The third

section exemplifies how police officers approach the task of informing parties about participation in VOM by framing the information they provide according to their own discretion. Lastly, we discuss these findings in relation to related literature and suggestions for further research.

Methodology

The research was designed as an interview-based case study of how first-contact police officers in one Danish police district explain their considerations and decisions regarding referral to the VOM programme. Data for the study was collected as a part of the larger *Konfliktråd* Impact Project (KIP), an ongoing research and development project, carried out in collaboration with seven police districts (Gade et al., 2020; Sherman et al., 2021).

The police district studied here is relatively large with respect to numbers of inhabitants and criminal reports and covers both urban and rural areas. The district was selected based on pre-established access as well as contextual knowledge that had been attained by one of the authors, who had been physically based in this district for two years at the time the interviews were conducted. As officers from many different departments in the district are involved in referring cases to VOM, we employed a nonprobability sampling method aimed at capturing this variability (Saumure & Given, 2008). Interviewees were chosen to represent a variety of police departments, experience with referrals, and knowledge of *Konfliktråd*. The sampling was assisted by the district Police Commissioner and several Heads of Department, who helped with facilitating contact to a total of 16 officers.

Ten of the 16 officers identified as men and six as women. Their seniority ranged from recently graduated to 30 years of employment, and their current job titles ranged from police constable to police inspector.⁶ Most had only referred a couple of cases at the time of the interviews, three reported that they refer cases regularly, and three others had never referred a case. It is important to note that since VOM is voluntary, these police officers could potentially have informed (uninterested) parties about the offer without actually referring the case onwards, i.e., sending the case to a *Konfliktråd* coordinator.

Semi-structured interviews (of approximately one hour) were conducted with each participant between March and June 2021. Due to coronavirus restrictions at the time, 14 interviews were conducted online, one was completed over the phone, and one in person. All interviews were conducted in Danish. Due to the inevitable reality that there is rarely complete correspondence between what people do and what they *say* they do, it remains a challenge to examine practice through interviews (Jerolmack & Khan, 2014). The interviews were therefore carried out with the specific aim of capturing normative aspects of the police officers' practice. By directing our methodological approach towards perspectives on how their work *should* be realised, we aimed to access the moral texture of police discretion in relation to *Konfliktråd* (Nicolini, 2009). While our analysis is aimed at comprehending local meaning and interpretations, rather than a representative study aimed at wide generalisation (Burawoy, 1998), we suspect that several of the themes we discuss in the article may also be relevant to understanding access issues in other restorative justice settings.

All interviews were transcribed and coded in several stages using NVivo. This included a data-driven '*pre-coding*', followed by a more systematic '*provisional coding*' with the aim of discovering patterns and categorising the material (Brinkmann & Kvale, 2015, pp. 259, 263). Next followed two rounds of analytically aimed coding. In the first round we created broader themes, and in the last round, all transcriptions were examined closely once more, and divided into the specific analytical themes that are represented by the sub-titles in the findings section below.

Findings

1. *Konfliktråd* as a ‘soft’ formality

Referring cases to VOM was generally not a high priority in the daily work of the police officers interviewed for this study. Many perceived the task of informing victims and offenders about the possibility for VOM as a ‘soft’ formality, also citing forgetfulness and lack of knowledge about *Konfliktråd* as reasons for their low referral rates.

1.1. One among many formalities

The police officers we interviewed referred to VOM as one of several formalities to ‘tick off’ when conducting interviews with victims and suspects. Other formalities include informing about the right to a legal representative and the possibility of reporting monetary damage. *Konfliktråd* appears in the police digital case control system and guiding check lists for writing up reports, and police officers are supposed to register whether persons they have had in for questioning have been informed about the possibility for VOM. However, during our interviews, it became apparent that informing about, and referring to, VOM is not a common practice, as illustrated in the interview excerpt below.

Police officer: Hmm well, I’m sure that the vast majority think it’s super fine. I just don’t know if everyone, like... uses it. [...] [T]here are so many formalities that we have to remember just like that, right? You can re-read your statement; you can get *Konfliktråd*; you can- “tell me, do you have monetary damage?” There are many, many formalities before you start an interview. So, you know it [...] by heart, right? But not everyone does [refer to *Konfliktråd*]. They don’t.

Interviewer: Why do you think-?

Police officer (interrupts): They don’t think about it. And some have no idea it exists, maybe. I mean, they’ve heard about it, but it’s so far out... that they just forget or don’t really think about it [...] (Interview 6)

The long list of things that police officers must inform about was described by one police officer (Interview 12) as ‘a rhyme’, and as a ‘*recipe for gravy*’ that you must remember. This means that VOM may be forgotten in the plethora of information that police officers must pass on to the people they interview. In other cases, providing information about VOM may be knowingly deprioritised in relation to other, more pressing, requirements. As one officer explained:

It is not something that *must* be ticked off, but it can be assessed and estimated if it fits in this particular situation. [...] In that way it is not like a hard formality, like the others we must consider. Therefore, I think that it can more easily be, you know, kicked to the side once in a while. (Interview 9)

Unlike the ‘hard’ formalities, such as informing the parties about their right to a legal representative, VOM was perceived as ‘an optional extra’ (Banwell-Moore, 2023), and something that should be assessed from case to case if it was relevant to bring up in an interview situation. Much like Rasmussen’s (2020c) findings, some of our interviewees expressed that they do not experience any consequences or feedback if they do not refer parties to VOM. Since referring to VOM is not included in the Administration of Justice Act⁷, there are no legal

consequences for the police officers when they do not inform about the possibility of VOM (Rasmussen, 2020a, pp. 53, 145). This may be part of the explanation for why some officers consider the ‘hard’ formalities more important to prioritise.

1.2. Forgetfulness and lack of knowledge

Almost all our interviewees pointed to forgetfulness and lack of knowledge about *Konfliktråd* as reasons for low numbers of case referrals. These points are also raised in previous research on restorative justice in a police setting, which illustrates that in some cases police officers do not consider restorative justice as an integrated part of their work, compared to other tasks (Banwell-Moore, 2023; Marder, 2020a; Rasmussen, 2020c). In relation to forgetfulness, some officers described a self-enhancing mechanism in the sense that they were more likely to forget to inform about VOM because it is not a part of their daily case work. Other police officers indicated that *Konfliktråd* is pushed into the background by the distance between frontline police officers’ daily work and an eventual mediation. Several of the officers we interviewed felt distanced from the process of *Konfliktråd*. Some recounted that they had informed about VOM in some cases but did not know if the parties ended up meeting in mediation. Others said that the *Konfliktråd* coordinator had reported back to them when a case they referred had entered VOM, but that it was still hard to know if the meeting had a positive impact on the parties.

Some police officers also admitted that they refrain from bringing up mediation during questioning because they were concerned that they had insufficient knowledge of *Konfliktråd*. One interviewee described it as a ‘reluctance’ (Interview 14) to deal with issues outside of their expertise, and another explained the reasoning that ‘if I don’t mention it, I will not be put in a situation where I am unable to give an answer’ (Interview 2). The understanding among some police officers was that if they felt unable to offer correct guidance and initiate a dialogue with citizens about mediation, they would rather not risk bringing it up and consequently coming across as unprofessional.

2. Eligibility for *Konfliktråd*

In addition to the pragmatic considerations outlined above, several of our interviewees recounted how considerations regarding eligibility informed their referral practice. For many of our frontline officers, ‘gut feeling’ is a valued indicator of VOM eligibility and is closely tied to both moral evaluations of offenders and intended care for victims.

2.1. Follow the ‘gut feeling’

When asked about which cases were most eligible for entering VOM, some police officers emphasised crime types they generally considered fit for *Konfliktråd*, such as cases of violence and restraining orders. Others emphasised so-called ‘relational cases’ like neighbour disputes. The most common response, however, was that it depends on the particularities of the individual case, regardless of case type. From our interviews, the most important guideline for offers of VOM is professional discretion and ‘gut feeling’.

I think it all comes down to the gut feeling. You can’t say that it [referring to *Konfliktråd*] needs to be mandatory to do every time you enter a case. So really, it is about a police professional estimate, I think. [...] [W]e have just seen so many kinds of people and people in various [affective] states who have been exposed to stuff, right? Uhm, so we are pretty good at reading people, I would say, [and assessing] when it makes sense [to refer to *Konfliktråd*] and when it doesn’t. (Interview 14)

Other police officers describe a special ‘touch’, an intuition, or judgement of character that guides and *should* guide whether and how they refer cases to VOM. Discretionary liberty and following one’s gut feeling when it comes to VOM referrals was considered a strength by most of the police officers we interviewed and was seen as morally justified (Fassin, 2018) given their professional skills. Several of the officers considered themselves and their colleagues particularly capable of making right decisions on the frontline, due to their training and experience as police. This was to a large extent considered an ability that is enhanced with both professional and life experience. In the following two subsections we address what our police officers believed was important to consider in relation to offenders and victims, respectively.

2.2. Moral evaluation of offenders

The legal framework for *Konfliktråd* in criminal code cases requires, as already mentioned, that the parties participate voluntarily and that the suspect must admit the crime in all essential regards. But even in situations where these requirements are met, most of the police officers we interviewed expressed the importance of listening to their intuition when deciding whether an offender would be suitable for VOM and whether an offer should be made. These assessments of offender eligibility rely partly on the offenders’ criminal histories, and the initial impressions that suspects give when they are interviewed.

Police officers can access citizens’ criminal records, and several of the officers we interviewed recounted that this was something they would have already done when assessing the eligibility of an offender for VOM during an interview. One officer (Interview 14) explained that if an offender already had 20 previous violence cases listed, they would not try to push VOM. This officer further explained that they would expect the offender to continue offending and fail to acknowledge their wrongdoing, which would be a poor starting point for a conversation with the victim. Offenders falling under this category were also referred to as ‘habitual’ (Interview 7) or ‘notorious’ (Interview 6) criminals and were generally emphasised as not eligible for VOM. These findings confirm the views of some VOM coordinators expressed in Rasmussen’s (2020b) work, that officers may deselect offenders because they think that they will reoffend, or because they believe a VOM would be a waste of time or could potentially re-traumatise victims (pp. 147–148).

For many of the interviewed police officers it was important to see a potential for personal change among the offenders and to get an indication that they were good people ‘deep down’, despite their criminal histories. As one officer explained:

Some [offenders], they almost apologise when you question them, right? Then you think, maybe we should get him in *Konfliktråd*, because it could give some empowerment [for the victim]. But for those who are completely indifferent about what they did, who don’t repent in the slightest because they just needed the money or whatever it might be, I would think twice. (Interview 13)

Offenders were considered particularly eligible for VOM if they demonstrate remorse and would be likely to give an apology to the victims, displaying characteristics of an ‘*exemplary perpetrator*’ (Asmussen, 2014, 2015). Just as the declaration of remorse appears to be important to such evaluations, so is the perceived sincerity of these declarations. Several of the police officers we interviewed reported that they try to see beyond immediate appearances and words, to expose offenders’ true intentions.

[I]f people tell me – no matter what case it is – ‘I want to go to *Konfliktråd*’ and the other guy wants it as well. That’s fine and no problem there, but I think you have to guide people and, like, see through people: what is it they want with this? (Interview 6)

If the offender agrees to participate in VOM, many police officers emphasised the importance of examining the motives behind their willingness to meet. In this instance, it can be particularly disqualifying for offenders if the police officer senses that the offender has agreed to meet because they think that participating in VOM can help reduce their sentence if they are convicted.

2.3. Moral consideration for victims

Related moral concerns surrounding the protection of victims were also prevalent. A recurring theme in our interviews was that the situation in which they bring up VOM should be a good experience for victims. The interview setting where police officers inform victims about the possibility for participating in mediation is often more or less immediately after the offence, and sometimes even at the scene of the crime. One police officer explained how the timing of providing information or referrals to VOM is often in disharmony with the attitudes and readiness of victims at that time:

[W]hen it has just happened they [the victims] can’t handle it, they can’t think at all: “Jeez, do I have to sit in front of him? No way!” [...] [I]t seems so strange to them that I don’t feel like it has made as much sense [to inform about VOM] out there [at the scene]. I mean, I have done it [informed about VOM], but people have been like: “Mmmh, no. I simply can’t.” (Interview 10)

Several of the police officers we interviewed found it inappropriate to introduce VOM to victims on the frontline, when potential traumas are fresh and they are still digesting events.

Now, if you figure that now is just not the time to suggest it [*Konfliktråd*]; there are some considerations to make, it’s inappropriate, and it’s unprofessional. And sure, it’s on paper that you should [refer to VOM], but there is also the human judgement – let’s just keep that option open. [...] Should we push it down people’s throats and get a cast-iron ‘no’? We also have to be able to face ourselves, right? If that is what makes a bad experience for the citizen, that you ask. [...] I know that we should suggest it... but we also have to treat people with respect out there! (Interview 8)

Other officers highlighted the amount of information that must be passed on to victims in the aftermath of an offence, which can result in a sense of information overload (Holmberg et al., 2020). Here, the officers we interviewed generally believed they should follow their gut feeling and not bring up VOM if they sense that victims are overwhelmed. These findings suggest that the decision to provide information about *Konfliktråd* is thus affected both by consideration for the victims’ emotional state, and one’s own professional integrity.

3. How police officers guide citizens about VOM

The sections above have primarily concerned frontline officers’ reflections regarding *whether* to provide information about/refer to VOM. We now turn to the way discretion manifests itself in police officers’ descriptions of *how* they inform parties about *Konfliktråd* when the choice is made to do so.

3.1. The weight of police advice

Most of the people involved in criminal cases where VOM might be relevant have never heard about the opportunity. This means that their impression of *Konfliktråd*, and their sense of whether this is something they may benefit from, is created in interaction with the police officer (Holmberg et al., 2020). During the interviews, police officers were asked to explain to the interviewer (as if he were a new colleague) how he should inform potential participants about *Konfliktråd* (Nicolini, 2009). This was extremely hard for many of our interviewees, partially because some of them perceived their discretion as the most ideal guide for how to inform about VOM. One police officer expressed this quite clearly by stating: *'I don't have one solution. Again, you got to, like, feel your way to what might be the best guidance'* (Interview 12).

Nevertheless, several of the police officers we interviewed indicated that they should guide the victims in their decision to accept or decline the offer of VOM.

I will definitely try to advise the victim: "Listen, you should know that the offender is an addict" and so on. "It is because of this that he did this and that. Sooo, do you still want to [meet in VOM]? You just need to know before you decide." Of course, I would do that. It can make them say: "OK, now I understand better, so I won't need *Konfliktråd*," for example, "it was because he needed the money," or the like. (Interview 6)

In the hypothetical example above, the officer shares information about the offender that may influence the victim's decision to participate in VOM. By telling the victim that the offender is an addict, the officer seeks to provide the victim with an explanation for why the offence happened. Although he does not explicitly tell the victim that he believes it is a bad idea to participate, he questions whether a mediation can be a help to the victim, based on his own moral assessment. In the experience of several of the police officers we interviewed, the manner in which they inform potential parties about *Konfliktråd* has a huge impact on whether they agree to participate in mediation or not.

3.2. Referring towards opening or shutdown

A central theme in our interviews was the various ways that police officers can frame information about *Konfliktråd*, based on their assessments of whether a VOM would be appropriate.

You can guide towards closure, and you can guide towards an opening [...] It makes a difference if you say: "this [*Konfliktråd*] is a possibility, but uhm..." you know, drag it a bit. It already dies there, [...] compared to if you say: "there is this possibility [of participating in VOM], and it would be a great idea because you could get this conflict between you resolved, so maybe it could help you moving forward." (Interview 10)

As statements like this show, at least some officers were well aware of how their practice can influence people's inclination to enter *Konfliktråd*. In cases where officers wanted to encourage people to participate, they referred to it as 'selling it' to the involved parties (Interview 1 & 7).

If it is someone [an offender] who seems susceptible, right, then you can, like, sell the idea that it actually is something that can let them get things off their chest [...] [T]hen you approach the victim and [...] tell them: "Listen, [...] the offender is willing to participate in *Konfliktråd* and share what happened that night." So, like, try to sell the idea, that I would recommend them to do

it, because it makes insanely good sense, and it is something that can ease the victim to talk about.
(Interview 7)

Selling *Konfliktråd* involves giving a detailed description of what VOM is, and how the offender and victim respectively may benefit from participating. The police officer above would emphasise to offenders that they get an opportunity to explain their actions, and to victims, he would recount the offender's motives for wanting to meet and provide details to portray the mediation as a safe setting.

Conversely, informing about VOM could also simply entail handing out a pamphlet about *Konfliktråd*, mentioning it briefly, or even apologising for bringing it up. One police officer (Interview 2) explained that in some referral situations, she had almost apologised to the victim by emphasising that it is not something they need to consider, but she had to bring it up. Taken together, these findings suggest that moral discretion impacts both decisions as to *whether* parties are informed about the possibility for VOM, and *how* they are informed, with important implications for access to restorative justice in both cases.

Discussion

This investigation of frontline police officers' screening and referral practices highlights the value of considering the interplay between discretion and morality to enhance understanding of low caseload into restorative justice programmes. While echoing previous findings in similar studies, most notably Rasmussen (2020b), this article expands earlier work in three ways. First, this case study provides a bottom-up approach to understanding referrals to *Konfliktråd*, by focusing on frontline police officers' own reflections on their practice as they engage with the affected parties and decide whether to refer cases on to specialist coordinators. Second, we offer new insights into the moral entanglements inherent to police discretion in the context of restorative justice, by examining police officers' moral evaluations as they relate not only to offenders, but also to independent care and consideration for victims. Furthermore, this case study exposes the importance of considering police officers' referral views and practices both in relation to whether parties are informed and how VOM offers are framed. Especially in relation to the latter, we encourage future research on how different ways of informing potential participants about *Konfliktråd* can influence the subsequent referral process and, consequently, the accessibility of restorative justice.

As discussed in more detail below, our findings clearly indicate that in order to fully understand how access to VOM is managed, it is not sufficient to consider the rules and guidelines that direct the programme. Police officers have considerable discretionary liberty and moral agency to prioritise their labour and decide how to approach their tasks, especially in the Danish context where the legal frameworks guiding VOM referrals are somewhat ambiguous (Diderichsen, 2011; Fassin, 2015). Rather than relying on specific characteristics of cases, offenders, or victims, our police officers' views on eligibility for VOM draw on the officers' personal assessments of the cases and their protagonists as the officers encounter them at the frontline (Fassin, 2015, p. 101).

Recent research on access to restorative justice has, as mentioned earlier, connected challenges with low numbers of referrals to incompatibility between police culture and restorative justice philosophy, resulting in resistance from the police who are asked to bear the programmes forward (Marder, 2020a; Rasmussen, 2020a, 2020b, 2020c). For example, Rasmussen (2020a, 2020b) suggests that many police officers resist the idea of mediation because they disagree with the basic premise of giving offenders a second chance (p. 145). Although we did not detect overt attitudes of resistance against VOM in our interviews,

we find that police officers' gut feeling decisions rely on patterns of moral justification which may have similar implications for (equal) access to restorative justice (Fassin, 2015, pp. 101–102).

Our findings indicate that police officers often carry out moral evaluations of offenders, with the ultimate intention of ensuring that VOM is a good experience for the victim. Despite being driven by noble intentions, such practices clearly contradict the Council of Europe's recommendations about accessibility to restorative justice (Marder, 2020b) as they have the potential to produce situations in which conflicts are 'stolen' from some victims and offenders, who do not get the opportunity to assess whether they themselves think VOM would be meaningful (see Christie, 1977; Diderichsen, 2022).

The basis on which moral evaluations of offenders are typically made include the offenders' criminal histories and the officers' immediate impressions of them. Drawing on Erving Goffman's theatrical metaphors for social life, Rasmussen (2020b) refers to this as a *casting* that police officers and district coordinators engage in to ensure that those who participate in *Konfliktråd* can perform appropriately during the meeting (p. 142). Previous research in a Danish context has attributed these tendencies to an absolution narrative inherent in VOM, following a Foucauldian pastoral ethics, which favours the authentic remorseful confession (Asmussen, 2014, 2015). Besides the confession of sins, the absolution also requires a promise of transformation and a break with a former, criminal self. An element of this moral assessment of offender sincerity also emerges in our interviews, entailing a consideration of disqualifying offender motives and characteristics, including prolific offending, lack of remorse, and hopes for a reduced sentence.

Another element of the moral assessments identified in this study is police officers' care for victims' wellbeing. Following gut feelings and approaching tasks according to compassion for people who have been harmed is not specific to police work regarding VOM. Bloksgaard and Prieur (2016) demonstrate that a significant part of the education at the police academy and the admission requirements is personal traits such as empathy and a sense of propriety (pp. 115–117). Police officers are trained in how to be '*professionally empathetic*' to handle the emotional states of people they encounter at the frontline by regulating their emotional expressions (Bloksgaard & Prieur, 2016, pp. 118–119). Empathy is just one part of a bigger repertoire of emotional expressions that police officers shift between, but it is nevertheless a central aspect of police work (Bloksgaard & Prieur, 2016, p. 126). As our study shows, police officers to some extent morally justify their discretionary (in)action with reference to showing consideration for victims. However, emotional labour puts strain on officers, and empathetic policing is challenged by officer burnout (Correia et al., 2023) and compassion fatigue (Turgoose et al., 2017), as well as more action- and force-oriented policing in the light of contemporary crime and threat assessments, such as measures to combat terrorism and gang-related crime (Bloksgaard & Prieur, 2016; Nilsson & Delica, 2015; Sausdal, 2021).

Rasmussen (2020b) raises an important critique of the exclusion of offenders in the Danish VOM, as she finds it problematic that people are deemed non-eligible based on their criminal history and how they 'perform' during questioning (p. 152). She argues that the police's role as gatekeepers can evoke stigma, as their methods disregard the possibility for recovery and change, and that the eligibility of offenders is assessed on the basis of their interactions with police which doubtfully reflects how they would act in VOM (Rasmussen, 2020b, pp. 151–153). Based on our findings, the same point may be raised in relation to victims, whose emotional states in the immediate aftermath of an offence may not reflect their emotional fitness in a later VOM situation. Nonetheless, from our material it seems that police officers' VOM offers are '*protective and selective*' (see Banwell-Moore, 2023) and

require substantial pre-existing remorse from offenders, which comprises a quite narrow and risk averse practice of restorative justice. Police officers' best intentions to protect victims may deprive them of the possibility to seek care or reparation of harm via restorative justice (Banwell-Moore, 2023).

Having sketched out some of the implications for caseload and access to justice that moral policing regarding VOM referrals may have, we now turn to discuss how these issues might be addressed. Firstly, our findings and previous Danish research (Rasmussen, 2020a, 2020b, 2020c) connect low caseload into the Danish VOM programme to time and resource constraints within the police, paired with the fact that VOM is not seen as a core task among police officers, resulting in limited awareness and officers forgetting to inform parties about VOM. Rasmussen (2020a, 2020b) suggests that including VOM in the Administration of Justice Act could potentially address the issue of low referral rates in the Danish VOM programme, since police officers would be legally obligated to refer all cases that meet the basic requirements for VOM, i.e., that the offender acknowledges the offence and that all parties consent to being referred. The issue of referrals and accessibility has also recently been raised by The European Forum for Restorative Justice (EFRJ), with a specific focus on victims' rights (EFRJ, 2021a, 2021b). EFRJ recommends reviewing the conditions for appropriateness and limiting the criteria for excluding cases, so that excluding factors are solely linked to restorative justice's influence on the criminal justice process and not to access to the restorative justice service itself (EFRJ, 2021a, pp. 10–11, 14).

While altering the legal frameworks and guidelines for VOM may have positive effects on some referral practices, our findings suggest that this may not address the whole problem, as even when police officers do choose to inform about/refer to *Konfliktråd*, they apply various strategic approaches, which may open or close doors to the programme, depending on the officers' moral gut feeling. Related to this, our findings indicate that some police officers experience that many victims are not fit to receive the offer of VOM. From our police officers' reflections on their encounters with victims, it is reasonable to question the timing of VOM referrals and the settings in which they occur. Timing issues have been addressed in previous studies (e.g., Adrian et al., 2020; Banwell-Moore, 2023; Rasmussen, 2020a), and, as Banwell-Moore (2023) points out, there may be no single 'right time' to provide victims with information on restorative justice. She therefore suggests that offers of restorative justice are practiced as a continuum, where people are continuously presented with the offer, so that especially victims, as the active agents they are, themselves can decide if and when the time is right for them to participate in mediation (Banwell-Moore, 2023, pp. 228, 232).

How best to address referral challenges is an open question for future researchers, practitioners and policy makers to consider in relation to further development of the Danish VOM programme. However, our analysis suggests that simply dismissing officers' moral concerns is unlikely to lead to change. Genuine efforts to equalise VOM access will require that officers' moral considerations are taken seriously, and that potential concerns are satisfactorily addressed through training and reframing efforts. While this is no easy feat, it is likely a necessary step to ensuring more equal access to justice, which is a fundamental principle of the Danish justice system.

Limitations

While this article has contributed novel insights regarding frontline police discretion and access to restorative justice, some limitations must also be recognised. The fact that the study is anchored in a single district, and that many of our interviewees were hand-picked by members of the police management introduces a potential sampling bias that is important

to keep in mind. To the extent that this district may differ from others, or that management may have prioritised the inclusion of officers with attitudes towards *Konfliktråd* that they wished for us to encounter, the practices recounted here may not be representative.

In light of the fact that several of our interviewees reported that they seldom refer cases and expressed critical perspectives on the VOM programme, however, we likely are not impacted by a positivity bias in the police officers' views on their referral task. It is also noteworthy that many of our findings resemble tendencies that Rasmussen (2020a, 2020b, 2020c) identified in her data material covering six different police districts in Denmark. This could indicate that our findings may represent more general tendencies towards police discretion in the Danish *Konfliktråd* programme. However, as Rasmussen herself has noted, there are quite large variations in how the VOM programme is administrated in the different police districts.

Beyond potential district effects, it is also important to acknowledge contextual specificities that are distinctive in the Danish case, for example, the fact that VOM is a voluntary supplement to other legal proceedings and not a diversionary form of justice, as it is in some other places. While the current analysis is not suited to wide generalisations, our hope is that this case study can inspire similar studies elsewhere.

Concluding remarks

Frontline police officers play a vital gatekeeping role in granting access to restorative justice in Denmark. In this article, we build on previous work on discretion and morality in relation to access to restorative justice, which offers a perspective that we believe is important to understanding low VOM caseload. Our case study contributes with bottom-up reflections from police officers about their referral practice and exposes the moral assumptions and considerations behind their decisions on if and how they inform parties about *Konfliktråd*.

We argue that discretionary practice in relation to VOM can be interpreted as a token of moral police work. It manifests itself through conscious decisions, e.g., to refrain from bringing up VOM in situations where officers assess that a victim will not benefit from meeting with the offender, as well as via (un)conscious de-prioritisation, for example by forgetting or failing to address VOM in an interview. With a view to protecting victims, police officers conduct eligibility assessments of cases, preferencing sincere, remorseful offenders. The officers further consider the needs and emotional states of victims which influences if and how they inform them of the possibility for VOM.

While former research has mainly looked at factors that determine whether a case is referred to VOM or not, we have further explored police officers' moral understandings of the practice of *informing* citizens about *Konfliktråd* and how these understandings can influence accessibility to restorative justice in Denmark. For further research, we encourage more in-depth ethnography and direct observation of frontline police officers' work with VOM referrals, in the style of, e.g., Banwell-Moore (2023), Fassin (2013), Sausdal (2021a, 2023) or the observations that Adrian et al. (2020) have made on *Konfliktråd* referrals (Rasmussen, 2020a, pp. 155–158). These methods can, to a higher degree than interviews, capture the ambiguities in police practice and shed light on the justifications that officers make, and what they actually *do*, in their frontline encounters.

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Notes

1. Prior to the establishment of the nation-wide programme, there were two trials with *Konfliktråd* in Denmark, the first starting in 1994 (Danish Ministry of Justice's Committee on Konfliktråd, 2008). The nation-wide programme was established by the Danish VOM Act (Danish Ministry of Justice, 2009). The majority of cases included in the nation-wide programme are criminal code cases, with violence being the most common type. However, the programme also increasingly handles non-criminal cases, such as neighbour disputes (Gade et al., 2020, pp. 6, 10).
2. One popular definition of restorative justice is provided by Tony Marshall, who describes it as 'a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future' (Marshall, 1999, p. 5). Mediation, restorative justice conferences, and restorative circles are commonly highlighted as the primary examples of restorative justice processes (Gade, 2022, p. 38).
3. The low number of completed meetings in 2022 may be attributed to lasting effects of Covid-19 lockdowns in the years 2020–2021. However, the caseload during this period is also far below that of some less populated Nordic countries, like Norway, whose *Konfliktråd* received 7,095 cases in 2022 (Sekretariatet for konfliktrådene, 2023, p. 8). It should be noted that the institutional set-ups of the Danish and Norwegian VOM programmes differ. In Denmark, meetings in the VOM programme serve as *supplements* to punishment in the court system, and the programme is managed by the police. In contrast, participation in the Norwegian programme may constitute an *alternative* to court punishment, and the programme is organised by a secretariat outside the police (see Norwegian Ministry of Justice and Public Security, 2014).
4. These conviction statistics are provided for general context, as not all penal code cases are formally eligible for VOM (cases where the offender denies the charges, for example, or where there is no identifiable victim, are not eligible). Moreover, cases which do not proceed to court/conviction and non-penal code cases (e.g., neighbour disputes, traffic accidents) are excluded from these statistics, but can also be referred to VOM. As a result, these statistics cannot provide a 'denominator' indicating the true number of cases that could be referred. However, they do illustrate considerable untapped potential, as many of these cases would, in fact, fall within the remit of the programme.
5. Cases are mainly referred to *Konfliktråd* by police officers, but other actors such as the social services, Danish Youth Crime Boards, or the parties themselves, can also suggest VOM (Kvysgaard, 2016, p. 6). It should also be noted that the procedure for referring cases to VOM can differ between police districts. In some police districts, many cases that enter *Konfliktråd* are sought out by the VOM coordinators directly using the police digital case control system. These subsets of cases hence only follow a one-step process for assessing eligibility for *Konfliktråd*.
6. Job titles varied for the people we interviewed, reflecting different ranks and functions. However, all were involved in criminal casework. For reader-friendliness, we refer to all our interviewees as 'police officers' throughout the article.
7. The Administration of Justice Act dictates the procedural framework for justice enhancement in Denmark, and thus includes tasks that professionals within the legal justice system must carry out.

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