



Frequently Asked Questions:

**Implementing Restorative Processes in the
Adult Criminal Justice System**

2005



Sir Halley Stewart's coat of arms

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Frequently Asked Questions: **Implementing Restorative Processes in the Adult CJS**

Introduction

This document is intended for use alongside the:

‘Principles of Restorative Processes’ published by the Restorative Justice Consortium (Dec 2004), and the

‘Best Practice Guidance for Restorative Practitioners and their Case Supervisors and Line Managers’, published by the Home Office Training and Accreditation Group (Dec 2004), which will form the basis of the new National Occupational Standards for restorative justice currently under development¹.

In addition, practitioners will need to have underpinning knowledge relating to work with victims and offenders and context-specific knowledge for the particular area of the CJS in which they are working. Restorative Processes should only be carried out by those trained in restorative practices and some contexts will require additional training. For sensitive and complex cases², practitioners will require specialist training and much prior experience.

This document aims to answer some of the frequently asked questions relating to the application of restorative approaches in the adult Criminal Justice System (CJS) in England and Wales, which are not necessarily covered by the afore mentioned documents (For questions relating to prisons and the juvenile secure estate³ specifically, please see FAQ’s: Implementing Restorative Processes in Custodial Settings – for more details see p.9 Q7). This document is not exhaustive and further questions not answered here are welcomed⁴.

For a definition of restorative justice and the restorative approaches currently available in the UK see ‘Glossary’. Systems in place will vary depending on the organisation and area of the country. It should also be noted that the CJS is under constant review; its many dimensions and ways of working are therefore subject to change.

Factors that enhance the success of restorative approaches in the adult CJS include:

- **A good knowledge and understanding of the ethos and basic principles of restorative justice⁵**
- **Good links with other agencies, service providers and the Courts.**
- **Support of an organisation’s senior staff from the outset.**

¹ Both documents can be found at <http://www.restorativejustice.org.uk/resources/policy.htm>

² ‘...cases in which risk assessment gives good reason to believe that either: there is someone who has the motivation and ability to cause significant further harm including emotional trauma, either during or outside the restorative process; or there is someone who is particularly vulnerable to further harm, including vulnerability arising from the original incident’. (Taken from Best Practice Guidance for Restorative Practitioners, December 2004)

³ Young Offender Institutions (YOI’s), Local Authority Secure Children’s Homes (LASCH’s) and Secure training centres (STCs), collectively known as the juvenile secure estate.

⁴ Please contact Restorative Justice Consortium info@restorativejustice.org.uk

⁵ Principles of Restorative Processes (2004) <http://www.restorativejustice.org.uk/resources/principles.htm>

Questions

1. At what point in the CJS could restorative processes be used?

Examples of restorative approaches can be found at all stages and post sentence; however implementation is patchy, and many areas have limited services or none at all.

Restorative approaches can be:

- As an alternative to the CJS
- As the sentence itself, or as part of the sentence
- In addition to any sentence imposed by the Courts

Where a restorative process takes place before sentence, participants (both victims and offenders) should be informed that this will not necessarily affect final sentence (see also Q17).

Flexibility is needed at all stages and with all models, in order to support the needs of the participants in the best way possible.

2. What is an offender's motivation to take part?

Motivation will be specific to the individual person, and may depend on what stage of the system they are at. However examples might include: a need to explain what happened from their perspective – they may feel unable to do so using the traditional CJS (e.g. in Court), they may have been prompted by work undertaken in programmes in Prison such as Victim Awareness, they may need to make amends for the harm caused, and if in prison they may want to make a fresh start on release.

Even where an offender's sole motivation is sentence reduction a restorative approach can still be worthwhile, as long as the victim is aware of this. Research has shown that where sentence reduction appears to have been an offender's sole motivation in the beginning, in fact their attitude often changes through the course of the process. Motivation will need to be discussed in the initial risk assessment of the offender⁶, and in the interview with the victim. To some degree if motivation does not impinge on the safety of participants, it may not be of primary importance, as long as expectations are realistic.

3. Why do victims want to take part?

This will be individual to the person. However, victims often have unanswered questions, which can frequently only be answered by the offenders themselves – Why did you do it? Why me? and so on. Research has shown that some victims need answers to these questions in order to start their recovery. Victims may wish to communicate to the offender the impact that the crime had on them. There is the potential for them to receive emotional, financial or practical reparation, or suggest some form of indirect reparation such as work for a voluntary organisation.

Evidence has shown that some victims say they value participating in a process that has the potential to help the offender refrain from reoffending. However, in the past not all victims

⁶ Home Office Training and Accreditation Group. 'Best Practice Guidance for Restorative Practitioners' (December 2004), '2. Preparation for restorative processes 2a Assessing and managing risk throughout the process', pp19-21.

have been satisfied with restorative processes and there is evidence that their needs are not always met. It is important to be responsive to an individual's need, for example allowing different levels of involvement and not an 'all or nothing' approach (see also Q12).

Victim motivation, like offender motivation, should be discussed in the initial risk assessment⁷ as to whether the case is suitable for a restorative approach.

4. What are the limits to confidentiality?

Limits to confidentiality are agreed by the parties at the outset of any restorative process, but confidentiality is limited with regard to the policy of any particular agency, and the requirements of law, including the provisions of the Data Protection Act 1998 and:

*'...matters where the Law imposes an overriding obligation of disclosure on the mediator. In any such event the mediator should, where appropriate, try to agree with the party furnishing such information as to how disclosure shall be made.'*⁸

It is acceptable, and in fact part of the restorative process, for participants to talk to families and friends about their experiences. There needs to be agreement about personal details of others that can be mentioned, and confidentiality, as regards the media for example, will need to be discussed and agreed by all parties.

5. How should initial contact be made with a victim and by whom? And how can I overcome problems accessing victim/offender details due to data protection regulations?

The first person to contact the victim following a crime is normally a police officer, and/or a Victim Support worker, and ideally they should ask the victim whether he or she has any objection to contact details being passed to someone who can explain the services that are available. The actual procedure for making contact regarding restorative opportunities is suggested below.

Before contact is made, as much information as possible should be gathered. How contact is made and by whom will depend on what stage of the system the case is at and whether the victim has any prior knowledge about the opportunities available e.g. from the Police. Ideally the person who explains to the offender should also be the one to explain to the victim. Appropriate contact methods will depend on agency policy; however, initial contact is best made by those experienced⁹ in restorative justice so that potential participants receive the highest quality of information about the options available and can therefore make a well-informed choice. Sensitive handling is required and protocols between the relevant agencies¹⁰ will need to be in place as to how this will be carried out. Safeguards will need to be introduced to prevent further harm; for example, messages should not be left on answering machines, because potential participants may not have told, or wish other family members or friends to know. Timing is equally important, ensuring that key dates such as anniversaries are avoided and allowing parties enough time to make a decision. It should also be ensured that the number of different people contacting the participants are kept to a minimum. This will require good communication and information sharing between different departments within an organisation, and between organisations – a victim who is repeatedly asked to

⁷ Ibid.

⁸ The Law Society's Code of Practice for civil/commercial mediation (Annex 22A).

⁹ See Best Practice Guidance for Restorative Practitioners (2004).

¹⁰ There are often local arrangements between the Police and other agencies

explain ‘what happened’ may feel frustrated and revictimised by this in itself.

The key to overcoming data access problems may depend on who initiated the contact (see also Q8). Where the *offender initiates contact*, the project will need access to Police records. The government is currently preparing guidance to Local Criminal Justice Boards (LCJB), on the implementation of restorative justice, which will cover issues such as this. However, at present this might be done either via a Police officer on the project, committee or staff, or via multi-agency sharing agreements. The Police officer can then either ask victims if they may pass their details on to the project, or the project is deemed to be acting on behalf of the police¹¹.

The most common form of first contact is an ‘opt out’ letter¹² – with either an appointment for a visit, or a promise of a phone call to arrange a visit. Victims are told that they can write or call and say no; otherwise a restorative justice facilitator will visit to explain the restorative process. However, protocols will need to be agreed individual projects and organisations.

Victim Support could also ‘inform victims that a mediation/conferencing service wishes to liaise with them, e.g. in cases where the victim’s whereabouts are not known to that service’.¹³

Where the *victim initiates contact* it is hoped that in the future the police officer on the case would know of the restorative services available and would be able to refer the victim or point them in the right direction, depending on what point the case was at. However, this cannot be guaranteed at present.

Victim Support may be able to offer general information to victims about restorative justice and relevant local agencies and services, and information about what may be involved¹⁴. They may also be able to help victims to access conferencing/mediation services (where available) and/other services.

In some areas, the Courts, Victim Support, and other agencies refer victims to their local probation service where an officer from the victims unit may try to contact the offender with regard to a possible restorative approach.

6. What happens if one party declines to participate, or terminates their participation, in any restorative process?

Offender not willing

Where the offender is not willing to participate in any restorative process, other opportunities to help meet the needs of the victim can be offered (see Q14). Where victims wish, they can be offered the chance to be informed of any future

¹¹ Research has shown ‘...that victim contact was best conducted by trained restorative justice staff rather than the police officer on the YOT’ (Hoyle, C and Wilcox, A (2004). ‘Restorative Justice Projects – The National Evaluation Of The Youth Justice Board’s Restorative Justice projects’. YJB p9.

¹² Ibid. (P9.) Suggests that ‘initial contact should be made via an opt-out letter’.

¹³ ‘Service framework for supporting victims in the context of restorative justice and restorative approaches’. Victim Support, August 2004. Section 4.2, p7. Victim support have stated that this is dependant on resources and should not be seen as a substitute for proper referral mechanisms.

¹⁴ Ibid

developments and outcomes concerning the case¹⁵. With the offender's consent other information could also be communicated.

Victim not willing

Where victims do not wish to be involved there may be someone close to them who is willing to participate on their behalf - with the victim's agreement - to convey the harm caused. Community reparation could also be an option for the offender; it is important to have other options, such as this, as an alternative for the offender to avoid the victim feeling any pressure to participate. The victim may wish to suggest some form of community reparation. The opportunity for the victim to be involved at a later date perhaps should remain open.

Informed choice is a key value of restorative justice. Ensuring that victims can make an informed decision on their contribution (if any) to dealing with the aftermath of an offence, can be restorative in itself - the opportunity to say no, on its own, can be empowering for the victim. Likewise, allowing offenders to take responsibility for their behaviour and enabling them to make amends in the most appropriate way possible can be restorative. The most restorative outcome is one that is acceptable to all parties.

Surrogate victims and offenders

It may be that there is a victim of, or an offender involved in, a similar crime who is willing to take part. However this area of work should be approached cautiously. Particular care should be taken when working with surrogate victims, so that they do not feel obliged to repeat processes or continue with approaches, which may in fact be detrimental to their well being and their need to move on from a particular incident.

7. Is a restorative approach still possible if the offender is in prison?

Yes, as long as both parties and the prison governor are willing. For more information see 'FAQs: Implementing Restorative Processes in a Custodial Setting.' (Due to be published by the RJC Spring 2005)

8. Neither the victim or offender has sought a restorative approach, but I feel it could be of benefit to them. Should I talk to them about the possibilities and if so whom should I approach first?

Yes, as it is important to allow parties to make an informed choice. It should be ensured that potential participants understand what a restorative approach can offer¹⁶ and have realistic expectations regarding any restorative agreements and apologies. The offender, in particular, should understand what other options he or she has. However, if potential participants do not wish to be involved, they must not be pressured into doing so.

Consent to participate should generally be obtained from the offender prior to contacting the victim, remembering to explore all possibilities including any indirect communication. This will avoid further victimisation through unmet expectations, should the offender be unwilling to participate. However, there are differing views on this.

¹⁵ See also Best Practice Guidance for Restorative Practitioners (2004), Section 2b10.

¹⁶ A restorative approach can offer the chance for all parties to gain a better understanding of what happened and why, for the victim to portray the full extent of the harm caused, and for the offender to understand this harm and have the opportunity take responsibility for his actions and to make amends.

9. The offender has pleaded not guilty in court. Can I use a restorative approach?

As long as the offender admits some involvement and acknowledges some responsibility, restorative processes are still an option. However the victim will need to know the extent/nature of the involvement and the extent/nature of the acknowledgement of responsibility, in order to make an informed decision regarding their participation.

10. The offender *is going* to plead not guilty in court. Can participating in a restorative process be used in evidence?

All parties should be made aware that in order to take part in a restorative process the offender must admit some involvement and/or acknowledge some responsibility for an act. However, this is not the same as a legal admission of guilt and should not be used as such in any subsequent legal proceedings.

Participants should also be made aware of the effect that limits to confidentiality can have on admissions of guilt (see Q4).

11. The offender does not admit any involvement or acknowledge any responsibility for the offence. Can I still use a restorative approach?

If an offender does not admit some involvement in the case and acknowledge some responsibility for the harm caused, it would be inappropriate to deal with the incident using restorative methods. However, if they acknowledge responsibility and involvement at a later stage, the opportunity to explore restorative methods should be available. Processes that force offenders to assume responsibility unwillingly are not restorative and are likely to have negative outcomes for all participants.

12. What happens if there are several victims and/or several offenders?

Where there are several victims/offenders involved, each participant should be contacted separately and invited to be involved in a restorative process. The level of involvement for each participant will more than likely be very different, and each must be treated individually. Likewise participants will probably move at different speeds from one another. For example, one of several victims may decide they would like to meet the offender, while another may only be ready to receive information. It must be remembered that the process belongs to the participants. If they wish to meet with any, or all, of the participants separately, then they should be able to do so as long as all the parties agree. For example, where a victim wishes to meet all or some of the offenders at the same time, each offender must be asked and agree for this to happen.

Corporate victims

If the victim is a business/organisation it should be established if anyone within the organisation wishes to be involved. For the best outcome, the person(s) most affected by the offence should have the opportunity to be involved in any restorative work, and always before the use of a surrogate victim is considered. Where surrogate victims are invited – for example a shop manager as opposed to the actual manager of the shop involved – the restorative effect is likely to be significantly lower.

Corporate offenders

Companies and other corporate bodies can be offenders as well as victims, for example against environmental and health-and-safety laws. These cases can be dealt with restoratively through the civil courts, with the offending organisation agreeing to take action to prevent re-offending, and to provide any appropriate treatment and compensation to the victims. When this does not happen and the organisation is prosecuted, similar outcomes can

be the most constructive sanctions. It would be possible to arrange a meeting between victims and a senior executive of the organisation, but we are not aware of instances of this.

Several offenders

Where there are several offenders a victim may be required to give evidence in Court for one or more of the cases, but not all. Facilitators should be aware of developments in the other cases and any implications this is likely to have on participants who choose to take part in a restorative process.

13. What if there is no identifiable victim?

Restorative work can still take place. Offenders can be encouraged to acknowledge some responsibility for the harm caused and understand the potential impact of their behaviour. Once an offender has admitted some involvement and some responsibility for their actions, community reparation could be an option. The victim might be the community in general, in which case there may be options for the offender to meet with members of the community, for example a member of a residents' association to express feelings about graffiti.

14. What if the offender has not been apprehended?

There may be support services that are available to victims¹⁷, a victim might be able to communicate with an offender who has committed a similar crime, and a victim might be able to receive community reparation from another offender. Any or all of these can take place whether the offender has been apprehended or not.

15. Can restorative approaches be used in cases of serious violence?

Yes. Victims should be able to participate in restorative processes whatever the level of seriousness of the case, 'except where there is a significant risk of further harm'¹⁸. In some of these cases victims have the most to gain with regard to questions being answered, apologies received and so on. This may be part of a sentence such as the new community order (as described in the Criminal Justice Act 2003), or post-sentence. In more serious cases it is important that a detailed risk assessment is undertaken, that safeguards are in place, there is in-depth preparation, and facilitators with specialised facilitation skills are co-ordinating the process. For more information on this please see 'Best Practice Guidance for Restorative Practitioners, Section B Sensitive and complex cases'¹⁹.

16. Do victim/offender agreements get fed back to Court?

This depends on what stage of the system the case is at.

Pre sentence

In cases where a restorative intervention takes place prior to sentence, the Court may wish to have information on the agreement, the nature of that agreement and any outcome. The discussion during the mediation process, however, should be treated as confidential and should not be disclosed to the Court (please also refer to Q4)

Diversion from prosecution

Where a case is diverted from Court in the adult CJS e.g. through a conditional caution, the Court does not need to know anything about agreements reached. However if the agreement

¹⁷ For example, Victim Support (all cases reported to the Police should be offered a referral to Victim Support) and other specific groups such as domestic violence and rape crisis support groups etc. Victims should also be made aware of the Criminal Injuries Compensation Authority (CICA).

¹⁸ Principles of Restorative Processes, 2004, Principle 16

¹⁹ Home Office Training and Accreditation Group, December 2004.

or conditions of the caution are breached the Court may wish to have information on the agreement, the nature of that agreement and any outcome

The CPS will have oversight of, and information on, any agreements reached as part of that caution. Where information is required, either by the Court or CPS, the level of detail required will vary depending on the area, and protocols should be agreed with each area. . The discussion during the mediation process, however, should be treated as confidential and should not be disclosed to the Court (please also refer to Q4).

Post sentence

If the sentence is breached, the Court may request information on any restorative intervention that has taken place. The Parole Board may also request information on the nature of the agreement and outcome.

17. Where a restorative approach takes place prior to sentencing, will this affect final sentence?

Not necessarily, it depends on the case and participants should be made aware of this. However, there have been cases where sentence has been affected (see 'R v Collins (2003) Times 14 April'²⁰ and 'R v Clotworthy (1998) 15 CRNZ 651 (CA) at 661'²¹). (See also Q2).

18. Are agreements essential?

No. A restorative approach can offer the chance for: all parties to gain a better understanding of what happened and why, for the victim to convey the full extent of the harm caused, and for the offender to understand the harm and have the opportunity to take responsibility for his/her actions and make amends. Although agreements and apologies are possible outcomes, often the communication process is more important to both parties.

19. How are agreements monitored?

Where agreements are made, participants are encouraged to develop a plan that clearly identifies agreed outcomes, timeframes and monitoring arrangements. The plan is then signed by the facilitator/mediator, victim, offender and the person responsible for monitoring.

20. What happens if an agreement is broken?

If the offender does not fulfil an agreement, all other parties are informed -unless they have previously stated that they do not wish to be - so that they have the opportunity to discuss why it has broken down and agree on how they wish to proceed. However in some situations, the breach of an agreement may have other implications, for example the breach of a conditional caution could result in a court appearance.

²⁰ The Chief Justice of England and Wales Lord Woolf, in a Court of Appeal agreed to reduce a sentence by two years because of the productivity of a victim-offender meeting that had taken place (cited in Akester, K and Tickell, S. 'Restorative Justice: The way ahead'. JUSTICE. (2004) P30.)

²¹ In this case a stabbing victim sought compensation from the offender, rather than a custodial sentence. The Court of Appeal however, substituted three years imprisonment for two years suspended, on the basis that the term of imprisonment was too short. The Court of Appeal noted : "We would not wish this judgment to be seen as expressing any general opposition to the concept of restorative justice . Those policies... must, however, be balanced against other sentencing policies, particularly in ... dealing with cases of serious violence". (Bowen, H, and Thompson, T (1999) Restorative Justice and the New Zealand Court of Appeals Decision in the Clotworthy Case, Article 4 of Volume 3.

Glossary

Restorative Justice

There are many definitions; the RJC's and one other are included below.

Restorative Justice Consortium

"Restorative Justice is a process whereby:

(i) All the parties with a stake in a particular conflict or offence come together to resolve collectively how to deal with the aftermath of the conflict or offence and its implications for the future, and

*(ii) Offenders have the opportunity to acknowledge the impact of what they have done and to make reparation, and victims have the opportunity to have their harm or loss acknowledged and amends made"*²²

Tony Marshall

*'Restorative Justice is 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.'*²³

Restorative approaches currently available in some parts of the UK²⁴ include:

Reparation

An action taken by the offender(s), which aims to make amends, or to put right the harm done as far as possible, whether directly to the victim or indirectly to the community.

Victim /Offender Groups

These are groups in which victims of crime and offenders meet, usually for a set number of sessions, where the victims have suffered similar crimes (but not the actual crimes) to those perpetrated by the offenders.

Victim/Offender Mediation

This is the process in which an impartial third party helps the victim(s) and offender(s) to communicate, either directly (in person) or indirectly (where the mediator passes information between the parties). It differs from mediation in that there is an identified perpetrator responsible for a particular incident of harm.

The mediation process can lead to greater understanding for both parties and sometimes to tangible reparation.

Victim/Offender Conferencing

What defines a restorative conference varies. In general conferencing refers to a structured

²² Memorandum of Association, of 'Restorative Justice Consortium Limited' (1999)

²³ Marshall, T. (1996) 'The Evolution of Restorative Justice in Britain,' in European Journal on Criminal Policy and Research 4:21-43.

²⁴ Implementation is patchy and some areas will have limited (or even no) services.

intervention by a trained facilitator involving families (often extended families) and friends of victims and offenders, and other relevant members of the community.

Family Group Conferencing/Family Group Meetings

Similar to victim/offender conferencing but the offender's family has some private time to come up with a viable plan for reparation and for the future. It can also involve social workers, education welfare officers etc.

Restorative approaches will include the use of: restorative language, values and principles.

Restorative Language

Restorative Statements: Statements that convey the feelings of the person(s) affected by a particular incident/ misbehaviour, to the person(s) causing the harm. For example '(Name), it really upsets me when you act like that.'

Restorative Questions: Questions that encourage the person causing the harm to think about their actions and the people that have been affected by them. For example 'How do you think (Name) feels when you do that?'

Values

According to the Australian Restorative Justice Network's 'Statement of Restorative Justice Values and Processes', restorative values are:

'...those values that are essential to healthy, equitable and just relationships'

Examples given include respect, honesty, humility, mutual care, accountability and trust.

Principles

The principles show how these values can be expressed in practice. Please see 'Principles of Restorative Processes' (2004).²⁵

²⁵ Restorative Justice Consortium, (2004). <http://www.restorativejustice.org.uk/resources/principles.htm>

About the Restorative Justice Consortium

The Restorative Justice Consortium was formed in 1997. It is a membership and umbrella organisation bringing together all those with an interest in restorative practices. These include statutory and voluntary organisations, practitioners, academics, policy makers, and others, both nationally and internationally.

Our aims are: -

“ To promote restorative justice for the public benefit as a means of resolving conflict and promoting reconciliation by

- (i) Promoting the use of restorative justice in the criminal justice system, in schools, in the workplace and elsewhere in the community in situations where conflict may arise
- (ii) Developing and promoting agreed standards and principles for evaluating and guiding restorative practice
- (iii) Advancing education and research on restorative justice and the publication of the useful results of that research”

The Restorative Justice Consortium is a registered charity.

In 2002, the RJC produced its `Statement of Restorative Principles`. These Principles were reviewed in 2004 and replaced with `Principles of Restorative Practices`.



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