



EUROPEAN RESEARCH ON RESTORATIVE JUVENILE JUSTICE

VOLUME III

Toolkit for Professionals: Implementing a European Model for Restorative Justice with Children and Young People



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1. Introduction

The International Juvenile Justice Observatory is a Belgian Public Utility Foundation with headquarters in Brussels, Belgium. The objective of the IJJO is to create a continuous international service which provides a meeting place, and a place of work and reflection for juvenile justice professionals, as well as those entities concerned by the situation of young people at risk from social exclusion and reclusion.

Launched by the International Juvenile Justice Observatory in 2009, the European Council for Juvenile Justice (ECJJ) is a network of juvenile justice institutions and experts hailing from almost all twenty-eight Member States of the European Union. Managed in Brussels, the ECJJ produces outstanding initiatives and research thanks to the management and support of the IJJO, officially appointed as Secretariat and coordinator of the network.

It is formed by a pool of institutions composed predominantly of public administrations, civil society and universities, providing and sharing knowledgeable inputs in the field of juvenile justice. It assists European institutions (EC and COE, mainly) and policy makers in developing inspiring initiatives such as research, capacity-building and advocacy work, which aims to improve the effectiveness of juvenile justice policies based on evidence.

In the last five years, the European Council for Juvenile Justice, as a knowledge sharing network, has developed research and policy papers such as the Three Green Papers on Child-Friendly Justice: 'Measures of Deprivation of Liberty for young offenders: How to enrich International Standards in Juvenile Justice and promote alternatives to detention in Europe?', 'The Evaluation of the Implementation of International Standards in European Juvenile Justice Systems' and 'The social reintegration of young offenders as a key factor to prevent recidivism'¹. In 2013, the ECJJ published the White paper "Save money, protect society and realise youth potential: Improving youth justice systems in a time of economic crisis"². As part of its capacity-building activities, ECJJ members have the chance to follow on-line courses through the International School for Juvenile Justice. The most recent, entitled 'Juvenile justice within Europe from an international perspective', offered three modules discussing the ins and outs of juvenile justice (International and European standards, the issue of the minimum age of criminal responsibility, of pre-trial detention, diversion, restorative justice, social reintegration and after care, and more topics).

In 2014, the European Council for Juvenile Justice undertook the task to realise a European Model for Restorative Justice with Juveniles in order to diffuse and advocate the advantages of a restorative approach. Restorative practices support a participative notion of justice that favours reintegration

1 <http://ejjc.org/green-papers>

2 <http://ejjc.org/ecjj-white-paper>

over retribution and punishment. As such, by investing in the youths' bond to the community and on a process that stimulates assumption of responsibility, restorative practices may prove particularly appropriate for integrating the best interest of the child in the justice process.

Furthermore, the European Model, through its definite regional connotation, is designed to stress the common denominator of practices that vary considerably from one European country to the other. In particular, the traditional focus on a children's rights perspective that prevails in European and EU standards and that includes both the rights of the offender and the victim.

The objective of the European Model for Restorative Justice with Juveniles is then, to enhance and deepen knowledge on the theoretical and practical aspects of juvenile restorative justice in Europe, with a view to supporting implementation strategies in a scientifically sound way. Restorative justice, in its various guises, promises a novel approach to dealing with the needs of young offenders, victims and the wider community. Presently, knowledge regarding these initiatives is fragmented.

Despite these findings, practice in most European countries is very limited and in some of the EU countries the practice is nonexistent, or the potential of restorative justice is far from being reached. Research suggests that many victims and offenders would like to attend restorative justice processes, even when they are not provided with access to such procedures, and that the number of people who refuse restorative justice procedures is limited.

2. Methodology

The research was conducted by a team of experts in the field of restorative justice. Tim Chapman, Course Director of the Restorative Practices Masters at Ulster University, coordinated the overall project. Maija Sisko Gellin, Finnish Forum for Mediation, who has extensive experience of mediation with young people both in a schools and criminal justice system and Monique Anderson, an academic from Katholieke Universiteit Leuven.

The research was divided in three main phases:

1. The “Research and selection of the most effective Juvenile Restorative Justice Practices in Europe: 28 National Snapshots”

Firstly, we focused on researching the best practices of restorative justice for young offenders in the 28 EU member states. These national studies were coordinated by a team of experts with the support of the members of the European Council of Juvenile Justice in their country, and was completed by field-visits in order to better select those practices that met the following criteria; innovative, effective, evidence-based and scientific evaluated. This group of academic experts have since visited three of the most effective practices selected on the ground in Northern-Ireland, Finland and Belgium, and have carried out interviews with staff members and other institutions involved such as the judiciary and the social welfare system, among others.

These countries were chosen because each had passed a law implementing mediation and/or conferences in their youth justice system. As a consequence each had at least 8 years experience and had completed a sufficient volume of processes to enable conclusions to be made on the value of restorative justice with juveniles. They are also relatively small countries with low populations and as such it is possible to see how restorative justice works on a national level rather than as individual local projects.

Northern Ireland has established a juvenile restorative justice system at the heart of the criminal justice system. There have been over 15,000 conferences and the rate of custody for juveniles is relatively low. Belgium has a strong commitment to the welfare of children in conflict with the law and has also passed laws on mediation for juveniles and has a longstanding practice in the area. Finland has a law on mediation with juveniles and been engaged in victim offender mediation with young people for many years. Importantly it has a very low rate of custody for young people. The team interviewed policy makers on law and policy, academics on research and practitioners on practice.

While we set out to compare how different countries have implemented restorative justice for juveniles, this project cannot be considered to be based upon a rigorous comparative research methodology. On the one hand our purpose is to identify the best practices in each of the countries that we have studied rather than to produce an overall analysis or assessment. On the other hand we need to recognise that such practices are a product of social, cultural and political conditions specific to that country and as such may not be simply replicated in other countries.

2. The development and design of an evidence-based *“European Model for Restorative Justice with Juveniles”*

Based on the findings of the 28 snapshots as to the effective practices that have been selected with positive results in reducing crime and increasing recidivism among the youth population, as well as on scholarship and research, the expert group has worked on the European model for restorative justice with juveniles and on a toolkit to allow professionals to implement this model in their respective countries.

The objective of both documents is to provide a useful tool and a starting point for the design and implementation of restorative practises in the social reintegration of adolescents and young adults in conflict with the law. The Model explores the benefits and methodology of applying restorative practises as extrajudicial measures, as community-based prevention and intervention, or as an alternative to deprivation of liberty.

Drawing on an evidence-based approach, the Model relies on a theoretical and conceptual framework and is inspired by practices that have been proved and evaluated.

3. The *“Toolkit for Professionals Implementing the EU Model on Restorative Justice for Juveniles”*

The Toolkit was created under the direction of the same research team that produced the European Model. This final publication is designed to allow for clear and efficient implementation of the principles and methods illustrated in the Model and is devised for practitioners of restorative justice and justice professionals from the 28 Member States in order to diffuse effective practices in their country.

3. The Theoretical and Practice Framework

3.1. The current state of restorative justice in Europe

This section is a summary of the key findings of a comprehensive survey of restorative justice in 36 European countries³. This study confirms that the delivery of various forms of restorative justice are steadily increasing throughout Europe. The drivers for this expansion include dissatisfaction with the effectiveness of the criminal justice system, a wish to reduce the incarceration of young people, valuing reparation to victims and reconciliation between those in conflict, improving youth justice systems so that they are more rehabilitative and reintegrative, the growing assertion of victims' rights and needs, the influence of international standards and European harmonisation, countering a lack of trust towards the state after a period of conflict and reducing the cost of the criminal justice system.

Inevitably the variety of drivers in different countries generated a range of different restorative processes implemented in differing ways. The most prevalent process is victim-offender mediation. This approach has a long history in many European countries. More recently, conferencing, which has its origins in English speaking countries, is gaining ground. Countries deliver these processes at different stages of the criminal justice process: diverting young people from entering the criminal justice system, diverting young people from being prosecuted in court, prior to sentencing in courts, as a court sanction, and in custodial settings. Restorative processes may be offered in some countries only for less serious crimes while in other countries they are available for all offences. In a few countries restorative processes are available throughout the jurisdiction, while in many countries its use is more patchy. Many countries do not collect statistics that accurately measure the scale of restorative justice. It would appear that only a few countries have made an attempt to put restorative justice at the centre of their way of dealing with youth crime.

3 Dunkel, F. Grzywa-Holten, J. and Horsfield, P. eds. (2015) *Restorative Justice and Mediation in Penal Matters A stock-taking of legal issues, implementation strategies and outcomes in 36 European countries / Vol.1 & Vol.2* Forum Verlag

In addition the case study research carried out in Belgium, Finland, and Northern Ireland (reported in this document) found that while Finland and Belgium had laws that facilitated a restorative response with young people in conflict with the law:

- There were still too few referrals to mediation services.
- Where referrals were made, there were a significant proportion who did not participate in a process.
- Of those who agreed to participate too few were facilitated to have a face to face meeting.

This means that many people who have been harmed and many young people responsible for harm are being excluded from the proven benefits of restorative justice throughout Europe.

This situation is caused by judicial or professional gatekeepers who are unaware of or unsupportive of restorative justice opportunities. This may be due to the dominance of and competition from other approaches such as retribution in some countries or rehabilitation in others. Professionals are often cautious of any initiative that appears to threaten their powers or status. One needs also to take into account an almost in-built inertia in many professional bureaucratic systems that make them resistant to change.

This European Model of Restorative Justice with Children and Young People is designed to maximise the participation of all appropriate parties in processes designed to restore justice when a harmful incident has occurred. It prioritises face-to-face meetings. This does not mean that indirect or shuttle mediation or conferences which do not include the direct victim have no value.

3.2. Criminal justice

The Council of Europe has regularly addressed the question of effective youth justice systems. In 1987 and repeated in 2003, the Council elaborated key principles of good practice:

- The response to juvenile offending should be swift, early and consistent.
- The responsibility for offending behaviour should be widened to include a young offender's parent(s).
- As far as possible and where appropriate, interventions with young offenders should include reparation to victims and their communities.
- Interventions should directly address offending behaviour and be informed, as far as possible, by scientific evidence on effectiveness.

The Council of Europe Commentary on Recommendation Rec (2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice called for a justice system that 'guarantees the respect and the effective implementation of all children's rights at the highest attainable level'. It is 'justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child

including the rights to due process, to participate in and to understand the proceedings, to respect private and family life and to integrity and dignity.’

In 2003 the Council of Europe recommended the use of restorative justice, stating that ‘in several countries providing opportunities for offenders to apologise to their victims and make amends for the harm they have caused is now increasingly used to help offenders see and understand the impact their behaviour has on others and to modify their behaviour in the future. This fosters respect not only for the legal system, but also for the underlying social values.’

Restorative justice has demonstrated that it is an evidence based approach to addressing the needs of both children and young people who have been harmed and those responsible for the harm. Restorative justice also safeguards their rights, and enables all those who participate in restorative processes to develop positive social values.

Policies on restorative justice should have a victim orientation as set out in the EU Directive on Victims⁴. This Directive obliges member states to take action to focus on victims’ rights and needs. Furthermore this emphasis is more likely to gain political and public support for restorative justice.

In relation to young people in conflict with the law restorative justice processes can:

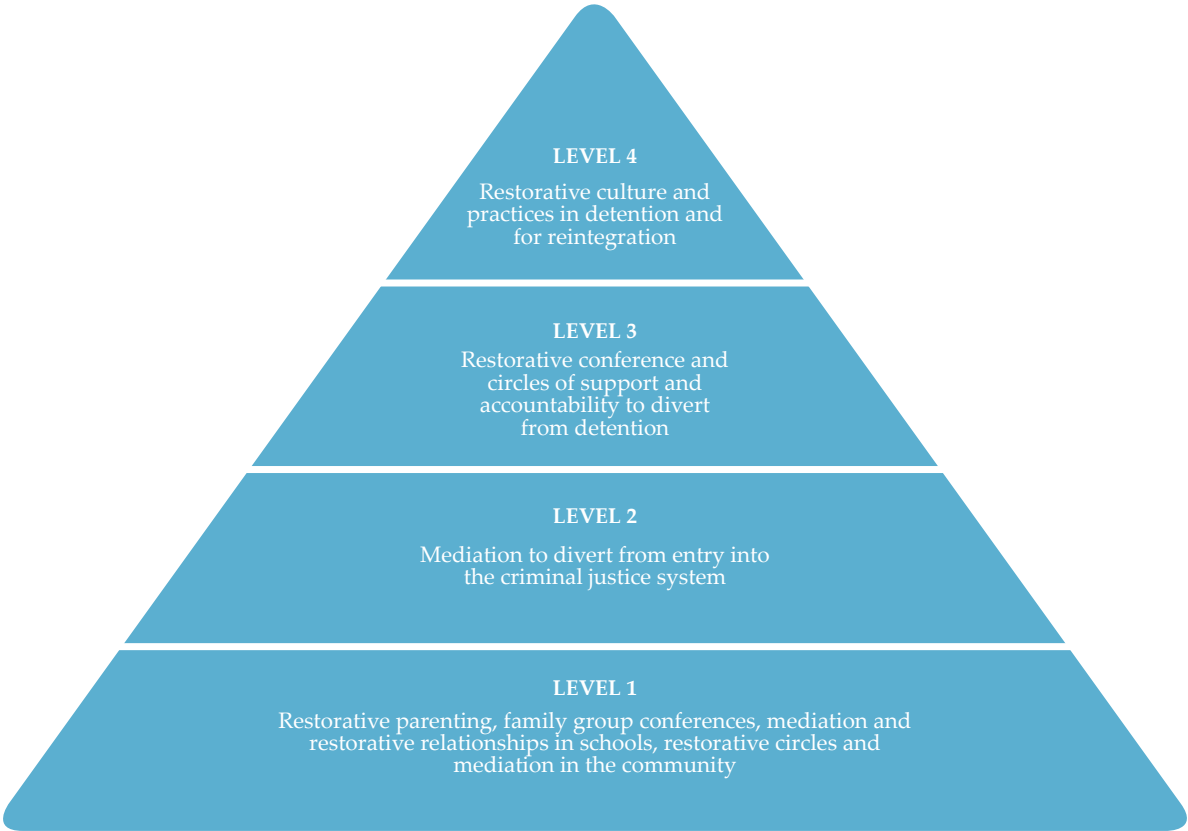
- Through mediation divert many children from entering the criminal justice system and thus having the stigma of a criminal record.
- Through restorative conferences and circles of support and accountability divert many children from detention.

These processes can improve the quality of justice for most people without causing the risk to public safety to rise and will reduce public expenditure.

4 DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

3.3. A holistic policy framework

This framework organizes restorative processes at the different stages of risk and seriousness in relation to the harm caused by a child or young person. Irrespective of the stage the primary purpose is to ensure that the rights the person who has been harmed have been protected and their needs addressed and met as far as they can be.



A Holistic Policy Framework

Level 1. To prevent and contain harmful actions involving children and young people within civil society

Immediate outcomes: Issues resolved without recourse to criminal justice.

Medium term outcomes: Children and young people learn to participate in decision-making and relate to others and authority responsibly and safely with empathy, truthfulness and respect.

Long term outcomes: Stronger civil society, more active citizens, greater social cohesion.

Level 2. To prevent offending resulting in prosecution

Immediate outcomes: Fewer children and young people being processed by the courts and receiving formal court orders.

Medium term outcomes: People who have been harmed have their needs met, children and young people responsible for offending learn to make reparation for the harm that they cause.

Long term outcomes: Children and young people avoid harming others out of empathy and respect.

Level 3. To use detention only as a last resort

Immediate outcomes: Fewer children and young people in detention.

Medium term outcomes: Victims and community reassured about their safety and justice being done and vulnerable young people gaining access to the resources and support they require to meet their needs and to reintegrate.

Long term outcomes: The lives of young people in trouble improve, less public fear of youth crime and less reoffending.

Level 4. To make detention more humane and effective in reintegrating young people

Immediate outcomes: Less discipline problems and distress experienced in detention by young people and staff.

Medium outcomes: Greater involvement of families and community in supporting young people in detention.

Long term outcomes: The lives of young people in trouble improve, less public fear of youth crime and less reoffending.

Governments will need to decide what criminal offences to include and to exclude. Many countries' policies on the delivery of restorative justice restrict restorative justice provision to less serious offences or first time offenders. Yet international research confirms that restorative processes are generally more effective with serious cases. Northern Ireland offers restorative conferences to all young people even if they have committed serious offences and have persistently offended. Domestic violence and sexual offences are considered contentious due to issues of unequal power and control and the fear of revictimisation. Yet if these types of harm are facilitated with sensitivity and skill, they can be very satisfactory to the parties. There is ample evidence that there is no type of offence or offender that cannot be engaged effectively by a restorative process. Ultimately the decision in different countries will be a matter of political judgement.

4. Policy Guidelines

4.1. What is Restorative Justice (R J)?

The primary purpose of restorative justice is to restore justice.

Restorative justice is a way of understanding and doing justice.

1. Crime and other breaches of rules cause harm to people and to the quality of relationships required for a flourishing society.
2. People experience harm in ways that are specific to themselves and they should be enabled to articulate what they suffered and the needs that arise from it.
3. Justice requires that those responsible for the harm should make themselves accountable for it and be obliged to repair as far as they are able the damage they have caused and to put things right.
4. If the perpetrators of the harm fulfill their obligations, they should be supported to have access to the resources and relationships that they need for a good life without recourse to harming others.
5. In this way, all parties, including the community, experience justice being done. Restoring justice is not exclusively the responsibility of the criminal justice system. It can be applied within families, schools, communities, organizations, and civil society to repair harm, to provide peaceful conflict resolution and to contribute to cohesive and democratic societies.

A restorative justice generally involves the victim and the perpetrator of the harm entering into some form of communication facilitated by a skilled practitioner. Others may be involved depending upon the context and the process.

4.2. Why should we support R J?

When someone harms another person, there are consequences. The person who has been harmed experiences injustice and needs the person responsible for the harm to be made accountable for this. Strong feelings will arise – anger, fear, humiliation, anxiety. The suffering may cause physical and mental illness. The harm also has an impact upon family, friends, neighbours etc. From society's point of

view those affected by the harm are often not able to engage as productively as before in their education, employment or social activities.

If perpetrators are not brought to justice, they may be encouraged to feel that they can continue to harm others with impunity. Furthermore, there is no opportunity to understand what is causing the perpetrators to choose to act in such ways.

European countries have developed sophisticated criminal justice systems to bring perpetrators to justice, to prove guilt and to determine the appropriate reaction. These systems both protect people's rights and maintain public support for the rule of law. They avoid the problem of citizens taking the law into their own hands and seeking revenge.

However, several problems have been identified with the formal approach to justice.

1. It can be slow, thus extending the time that the harmful act may continue to dominate the lives of those affected.
2. It tends to exclude the victim's needs and views.
3. It can result in the perpetrator being stigmatised, thus making reintegration into society more challenging. This sense of exclusion can increase rather than reduce the risk of further harm.
4. It is a very expensive way to address most harm.

For most harm restorative justice provides a less formal approach, which still protects rights and earns the confidence of the public. R J can resolve many acts of harm in families, schools and communities in a relatively short time without recourse to the criminal justice system. It allows the parties to move on from the harm and get on with their lives.

There is substantial evidence that restorative processes:

- Enable families to resolve their problems without formal interventions by professionals.
- Enable schools to reduce disciplinary incidents and exclusions while improving educational attainment.
- Satisfy victims' needs.
- Stimulate remorse and a commitment to make amends in perpetrators.
- Reduce the risk of further harm.
- Reduce costs to the state.

4.3. How can we support R J?

Legislation

The Special Representative of the UN Secretary General (SRSG) on Violence against Children publication, *Promoting Restorative Justice for Children*,⁵ sets out recommendations on legislation for restorative justice.

- States should undertake a comprehensive legislative review to align relevant domestic legislation, whether in statutory, customary or religious laws, with human rights standards.
- Governments should decriminalize status offences and survival behaviour and include legal safeguards to protect the child's best interests and the child's right to freedom from violence and discrimination, to free and safe participation in proceedings throughout the restorative justice process, as well as to legal and other relevant assistance.
- Legislation should provide law enforcement, prosecutors and the judiciary with options for diverting children away from the criminal justice system and promoting restorative justice processes at all stages of the proceedings; it should include alternative and educative measures such as warning, probation, judicial supervision and community work, to be applied in combination with restorative justice processes or when restorative justice is not appropriate.
- Legislation should recognize that restorative justice and informal justice or conflict resolution mechanisms, while being accessible at the local and community levels and playing an important role in the protection and reintegration of children, should never jeopardize children's rights or preclude children from accessing the formal justice system.

There are two forms of legislation for restorative justice: permissive and mandatory. Permissive legislation allows the prosecutor or judge to consider making a referral for restorative justice whereas mandatory means that they are obliged to offer the young person a referral.

Permissive law leaves the choice with the prosecutor or judge while mandatory law allows the perpetrator or victim to decide whether to participate in restorative justice. Mandatory legislation is likely to meet considerable resistance from the legal profession. However, the evidence is that if a country wishes to put restorative justice at the core of their youth justice system mandatory legislation will yield the highest levels of referrals.

⁵ Available at: http://srsg.violenceagainstchildren.org/sites/default/files/publications_final/srsgvac_restorative_justice_for_children_report.pdf

Policy on family support and safeguarding children

Governments reviewing policies on family support and safeguarding children should consider supporting the implementation of family group conferences. This restorative process has been found to be effective in families where there is a risk of neglect or where parents or carers are struggling to cope with a child's behaviour.

The process involves a meeting of not only the children and their parents but members of the extended family: grandparents, aunts and uncles. The facilitator clarifies the issue that faces the family, outlines what resources may be available to support the family and states what the limits to their choices are and then leaves. The family group then has 'family time' to talk about the issue and to come up with a plan. It is important that the children's views are heard and taken seriously.

The facilitator remains nearby and, when the family has agreed on the plan, returns to the meeting. Assuming the plan is appropriate to the best interests of the children and is feasible, the authorities will support it, reviewing it at regular intervals.

This process has been found in many cases to reduce the need for costly and compulsory professional intervention.

Policy on schools

Most schools have policies, rules and procedures to manage discipline among children. In many countries these are enforced by various sanctions or punishments depending upon the seriousness of the harmful or wrongful behaviour. These may result in children and young people being suspended and deprived of their education temporarily. Such sanctions may also reduce students' motivation to learn.

A restorative approach focuses on the management of relationships rather than behaviour. This is based upon the rationale that, if relationships are healthy and safe, children will feel safe and more motivated to concentrate upon learning.

This involves developing and nurturing a culture within the school that promotes respect and sensitivity to others' rights, feelings and needs. This culture is reinforced through the way staff communicate with, and relate to, children on a daily basis.

When rules are breached, when a member of the school community harms another or when there is a conflict, a restorative process can be facilitated. Such processes include restorative circles and mediation, both of which offer the key parties the opportunity to meet, understand each other and agree on how the issue can be resolved.

This approach has been found to improve behaviour, reduce the exclusion of young people and raise educational attainment.

Standards

Governments have a responsibility to establish standards of quality and effective practice to ensure that restorative justice is delivered to the public to a high quality and in compliance with human rights and with the law and that it is safe for individuals to participate in restorative processes.

Agencies commissioned by the government to deliver restorative processes should be required to conform to these standards and agree to their performance being reviewed regularly.

The standards should not be prescriptive regarding methods. They should focus primarily on what the process enables the parties to do rather the detail of what the practitioners do. They should include:

1. How the parties are engaged in the process.
2. How the parties are prepared to participate in the process.
3. How the parties are facilitated to participate actively in the process.
4. How the parties reach a mutual understanding and an agreement on action to be taken.
5. How the agreement is implemented
6. How the agency supports these processes.

As far as possible these standards should be based upon up to date research findings.

Training

Governments should arrange for effective training to support the development of restorative justice. The training should not only include those responsible for facilitating restorative processes but also to all relevant law enforcement professionals such as the police, prosecutors, the judiciary, probation officers, lawyers, and social workers on whom referrals depend.

Coordination and resources

For restorative justice to be implemented in any country, the government should take responsibility for ensuring that institutions such as social services, schools and courts have positive working relationships and protocols, which serve to ensure the coordination of systems for referral and delivery.

Adequate funding should be made available for a high quality service to be implemented.

Awareness-raising and promotion of restorative justice

Awareness-raising campaigns should be undertaken throughout society to inform the general public and significant stakeholders in civil society. Leaflets and advertisements should be in a language that the general public will fully understand.

4.4. How will we know if it is working?

Governments should ensure that relevant statistics are kept by all delivery agencies and submitted at regular intervals to a central information system. This will enable the government to hold the agencies accountable and to support continuous improvements in practice and outcomes.

Governments should also commission research into various aspects of the restorative processes to ensure that they are adapted to local conditions.

Ultimately it is through presenting evidence of the effectiveness of restorative justice that it will gain the support of the public.

Some indicators of effectiveness

Short term outcomes:

- Issues resolved without recourse to criminal justice.
- Fewer children and young people being processed by the courts and receiving formal court orders.
- Fewer children and young people in detention.
- Fewer discipline problems and less distress experienced in detention by young people and staff.

Medium term outcomes:

- Children and young people learn to participate in decision-making and relate to others and authority responsibly and safely with empathy, truthfulness and respect.
- People who have been harmed have their needs met, children and young people responsible for offending learn to make reparation for the harm that they cause.
- Victims and community reassured about their safety and justice being done and vulnerable young people gaining access to the resources and support they require to meet their needs and to reintegrate.
- Greater involvement of families and community in supporting young people in detention.

Long term outcomes:

- Stronger civil society, more active citizens, greater social cohesion.
- Children and young people avoid harming others out of empathy and respect.
- The lives of young people in trouble improve, less public fear of youth crime and less reoffending.

4.5. The Holistic Policy Framework



Level 1. To prevent and contain harmful actions involving children and young people within civil society.

Level 2. To prevent offending resulting in prosecution.

Level 3. To use detention only as a last resort.

Level 4. To make detention more humane and effective in reintegrating young people.

5. Guidelines for Schools

5.1. How do we set up R J in my school?

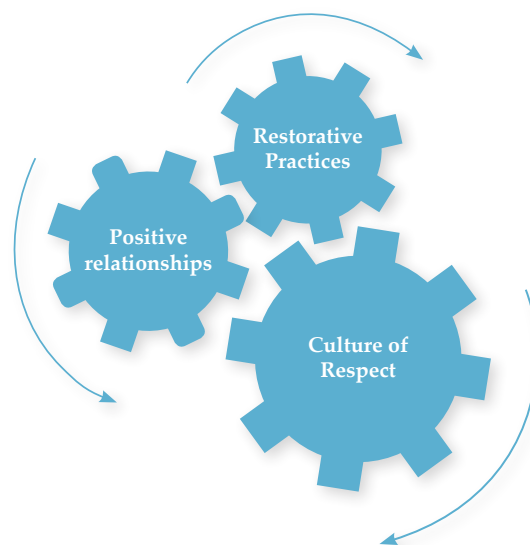
Leadership

Establishing restorative justice in a school requires strong, committed leadership. The senior team and the governing body of the school must fully understand the values, principles and processes of restorative justice and determine how they can contribute to their educational mission. Having done so they should decide how they wish to implement restorative justice. The term, restorative justice, is not important. The values, principles and processes are what make a difference.

Policies and procedures

Consider reviewing all policies and procedures to identify areas that could be enhanced by restorative values, principles and practices. Perhaps the most relevant area of policy relates to rules and discipline.

The restorative philosophy would reframe such a document into a policy on relationships that enable a learning community to flourish. It would see breaches of rules as both a potential threat to learning and an opportunity for those involved in the incident to learn how to live in a community. It would recommend that a process of accountability for harm and of putting things right strengthens the relationships that support learning.



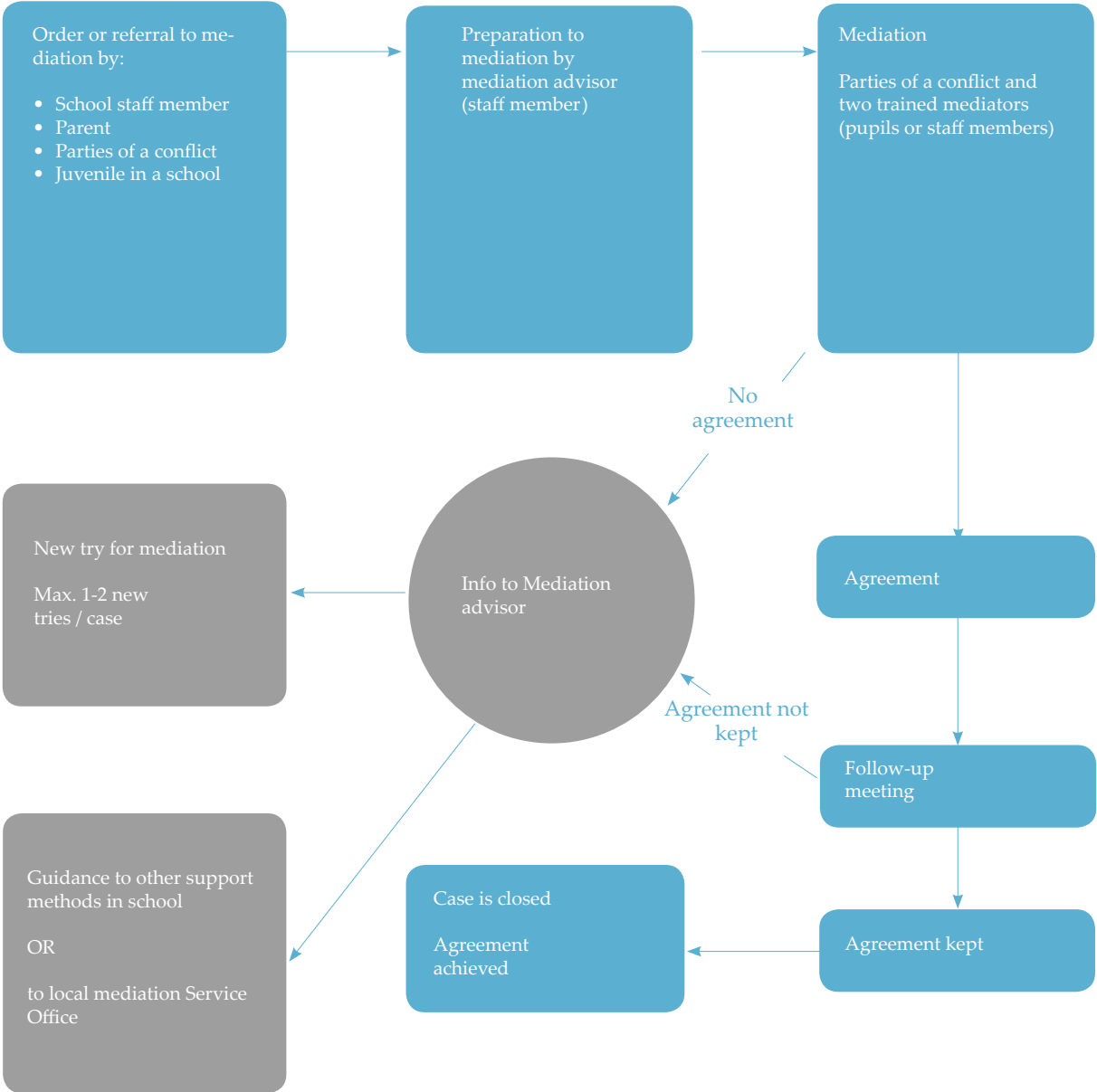
The policy would not simply list rules which should not be broken, but would define how all members of the school should communicate with each other and how they should respond to harm and conflict. Any such policy would be an integration of culture, relationship and practices. If the culture is established the relationships and practices will follow.

Restorative relationships between staff and children, between children and between staff members are based upon language and communication which expresses respect and assumes personal responsibility. The restorative practices in schools include circles and mediation.

5.2. How do we make it work?

System of delivery

The school should have a clear and simple system for organising the delivery of restorative practices.



Standards

The school should set out quality standards on how these practices should be implemented.

Training

It is important that all staff, children and if possible, parents, are offered training that enables them to understand and participate in restorative processes.

Some members of staff should be trained as specialists who can facilitate more complex harms or conflicts through restorative circles or mediation.

Some children and young people may also be trained to be peer mediators.

5.3. How do we know it is working?

Schools should identify indicators that can measure the effects of introducing restorative values, principles and practices. Information should be systematically collected on these indicators. These may include:

- The incidence of harmful behaviour.
- Numbers of these incidents resolved restoratively.
- Numbers of other forms of punishment.
- School attendance (both staff and children).
- Educational attainment.

The development of social skills is another critical effect of being at a school in which restorative justice is embedded. Schools should develop a method for measuring these capabilities in children as they are essential in modern European society. (see below)

<i>The characteristics of restorative environment</i>	<i>The social skills of restorative learning</i>	<i>The outcomes of restorative learning</i>
Active participation Face to face encounters Cooperation Resolution	Giving an account of an experience Listening Questioning Dialogue Reflection Understanding Expressing thoughts, feelings, and needs Making agreements Keeping commitments	Respect Empathy Sense of responsibility Trustworthiness Active citizenship

6. Guidelines for the Criminal Justice System

6.1. Who is suitable for R J?

As far as the research is concerned there is no *type* of offence or offender unsuitable for participation in a restorative process. In fact the available research has found that these processes are even more effective with serious violent offences than less serious crimes.

The decision regarding suitability is usually a political decision based upon an assessment of what would make sense to the general public.

Similarly there is no 'ideal victim' for restorative justice. Restorative processes can engage with very vulnerable people who have been harmed and enable them to restore safety and confidence in their lives. There is no reason that people with very punitive attitudes should not be permitted to participate as the process can accommodate such views.

The key criteria for suitability are:

1. The perpetrator admits responsibility for the harm caused to the other party.
2. The person who has been harmed will not be further harmed.

In using these criteria the system should bear in mind that the perpetrator does not need to assume full responsibility for all the harm caused and that most victims are quite resilient and have access to support. Any restorative approach must avoid being 'purist' if it is to have a relevance to the reality of harm in people's lives. Practitioners should be aware of the tendency to be over-protective of both victims and perpetrators.

6.2. When should it be used?

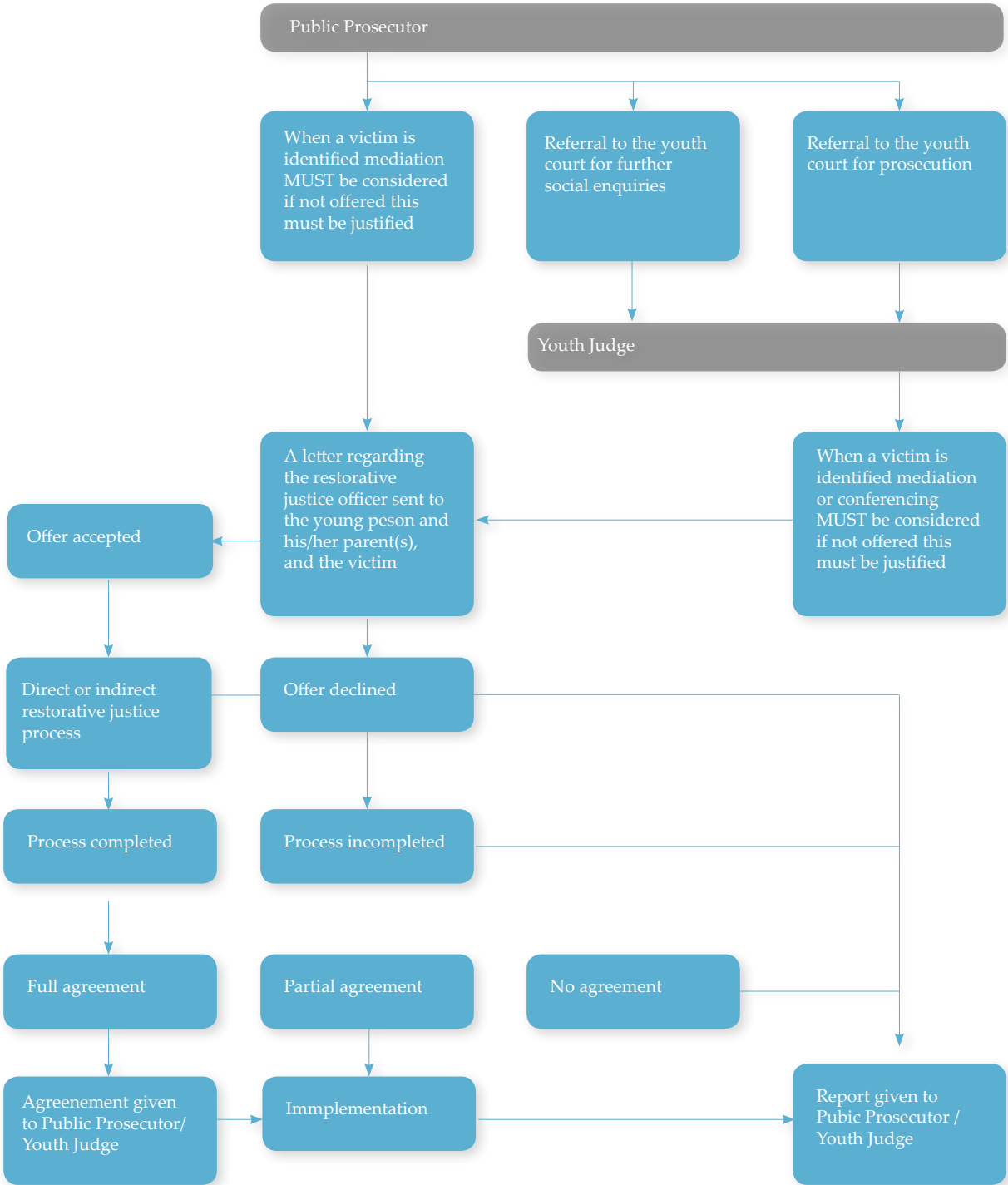
A restorative process can be used at any stage of the criminal justice process:

1. To keep children and young people from involvement in the criminal justice system through family, school or community based restorative justice.
2. To avoid court proceedings through prosecutors or the police diverting children or young people to mediation.
3. To avoid detention through a more intensive and holistic restorative process such a restorative conference.
4. To address harm and conflict in detention centres.
5. To enable children and young people to strengthen the relationships that they need for successful reintegration after detention.

6.3. How do we make it work?

System of delivery

The various decision makers at each stage of the criminal justice process should formally agree a system of referral and delivery and ensure that their activities are coordinated. This is a typical European process map for mediation in the criminal justice system.



Standards

This system should be supported by a set of standards of practice that ensure that each part of the system is aware of what is expected of them by the public (including the parties in the restorative process), the government and each other.

Such standards may include protocols on confidentiality and sharing appropriate information and time limits for certain tasks to be completed.

Standards relating to the restorative processes are outlined in the Policy section above.

Accessibility

It is critical that those who would benefit from restorative justice should gain access to it. Unfortunately most restorative justice schemes do not receive enough referrals. There is also a large attrition rate within those referrals resulting in far fewer completed processes. Those processes that are completed often do not involve face-to-face meetings. If restorative justice is to approach its potential for society, accessibility must be improved.

All stakeholders need to coordinate their tasks and cooperate to ensure that children and young people who would benefit from restorative justice are given access to it.

6.4. How do we know it is working?

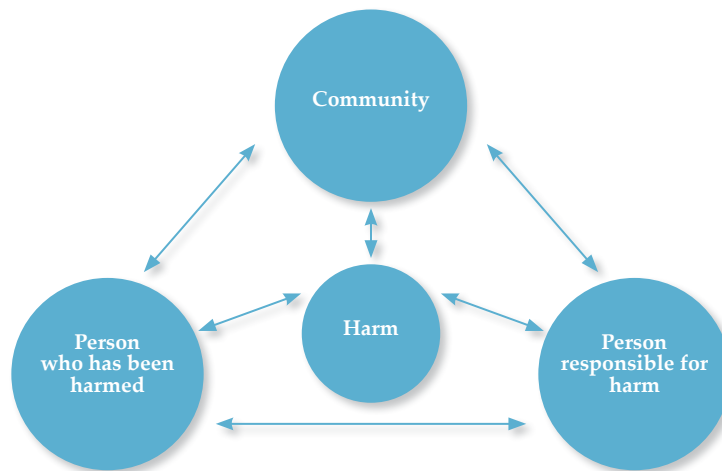
Agencies responsible for the delivery of restorative justice should keep information relevant to its effectiveness. This may include:

- Numbers of cases not referred and reasons for not referring a restorative process.
- Numbers referred to a restorative process.
- Numbers completing a restorative process.
- Numbers of restorative processes where there was a face-to-face meeting.
- Numbers of processes which resulted in an agreement acceptable to all parties.
- Numbers of agreements completed successfully.
- Numbers of victims and perpetrators satisfied with the process.
- Numbers of cases which were dealt with restoratively outside the criminal justice system.
- Numbers of cases that were dealt without court proceedings.

- Numbers of children and young people being sent to detention centres.
- Numbers of perpetrators re-offending.
- Numbers of those re-offending who committed a more serious offence.
- Numbers of those reoffending who committed a less serious offence.

7. Guidelines for Practitioners

7.1. The Balanced Model of Restorative Justice⁶



The Balanced Model of Restorative Justice

This model of justice is based upon the belief that each party benefits not only from having their needs and wishes addressed, but also from the other parties' needs and wishes being addressed.

When people are harmed the experience of suffering is prolonged by their feelings, needs and wishes not being addressed. When young people harm others, their reputation suffers and they are considered a risk by their community. In this sense the victim, perpetrator and their communities are linked by their attachment to the harm committed.

The process of giving an account of the harm and its impact, of making oneself accountable for the harm, of expressing remorse and promising to both repair the harm and take steps to avoid further acts of harm can release all the parties from this attachment.

This process is challenging and must be facilitated with commitment and skill.

⁶ Zinsstag, E. and Chapman, T. (2012) Conferencing in Northern Ireland: Implementing Restorative Justice at the Core of the Criminal Justice System. in Zinsstag, E. and Vanfraechem, I. Conferencing and Restorative Justice. Oxford: Oxford University Press. Balanced and Restorative Justice (2000) Curriculum. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

7.2. What is my role?

The purpose of the practitioner is to engage the parties involved in a harmful incident in meeting their needs and moving on in their lives.

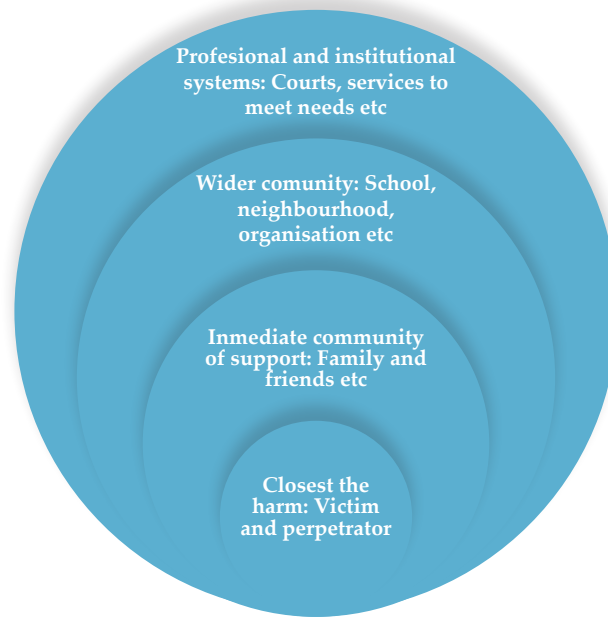
In this European Model of Restorative Justice with Children and Young People practitioners cannot be said to be neutral or impartial. They are not neutral in relation to the harm people cause to others, to the protection of rights, to the value of respecting the feelings, needs and wishes of the parties and to the importance of good relationships. The practitioner is committed to enabling each person to have their needs met. Consequently they are on everyone's side. Some refer to this role as characterised by multi-partiality.

While a moral stance is taken in relation to the harmful act, each party is of equal importance. This demands great self-awareness and skill from the facilitator.

While skills are very important in facilitating all restorative processes, it is even more important to embody or 'be' restorative in relationship with all the parties. This means acting and communicating on the basis of the values which are key to restorative justice. These include a commitment to:

- All parties experiencing justice and a fair process.
- The observation of the rights of all parties.
- The safety of all parties.
- Respecting all parties;
- The truth of all parties.
- The importance of relationships.
- The importance of responsibility.
- Inclusiveness and participation.
- Balancing the needs and interests of all parties.

To put this another way, a practitioner who acts on the basis of these values but who makes mistakes will be more effective than a practitioner who follows the process precisely but does not imbue the practices with the values.



Stakeholder analysis

7.3. Who should be involved in the process?

Restorative justice focuses primarily on understanding and responding to the harm that has been caused to people. Restorative processes are designed to restore what has been lost, damaged or violated by harm. They are not designed specifically to punish or rehabilitate people or to manage the risks that they pose, though these effects can emerge from a restorative process.

When considering who should be invited to participate in a restorative process the facilitator should ask: who has been affected by this harm and who has a stake in the harm being repaired?

Many harms can be addressed simply and quickly through a restorative conversation or basic mediation between the two parties. This can be done by a teacher on the school playground or corridor or by a police officer on the street.

Some situations require more preparation and a more structured mediation process yet still only involving the two parties.

If the harm is assessed as more complex and/or more serious, it is advisable to inquire into how the harm has affected other people perhaps indirectly and whether the parties will require the support of family, carers or friends to enter into a restorative process.

Some harmful incidents have a negative impact on the whole community, e.g. a school, and may need to involve people who represent the community's needs and interests. This may take the form of a restorative conference.

Some types of harm are not caused by an individual or suffered by an individual but are experienced by a group or community and are the responsibility of that group or community to repair. This might be a general behavioural problem in a classroom or neighbourhood. In such cases the facilitator might convene a restorative circle including all those who are affected.

A small proportion of harmful acts are considered sufficiently serious to be prosecuted in courts. This means that the harm is not only a personal issue to be settled privately but also becomes an issue that must be addressed according to the public interest. This requires attention to proportionality of response in relation to the seriousness of the offence, to due process and the protection of rights and to the need for professional intervention on the basis of an assessment of complex individual needs or risk to the public. In these cases lawyers and professionals such as social workers, psychologists and probation officers may be invited.

7.4. How do I engage the parties in R J?

Engagement is critical to the success of restorative justice. Too many referrals for restorative justice fail to engage the parties in communication. This is especially true of engaging those who have been harmed. Facilitators must be committed, confident and above all, competent in this area as no restorative process takes place without it.

The process for engaging all parties, whether perpetrator or victim, is similar in relation to values and process. They are people first and foremost. They can only be defined as ‘victim and perpetrator’ in relation to a specific act of harm.

Safety

Given the research into restorative justice, the facilitator starts with the assumption that it is in the best interests of children and young people, who are either perpetrator or victim of harm, to participate in a restorative process. This will be true in the vast majority of cases. However, the facilitator must still inquire whether there may be any reason that the process would be harmful to each specific individual with whom they engage.

The European Victims Directive lists factors such as “degree of trauma, the repeat violation of victim’s physical, sexual or psychological integrity, power imbalances and the age, maturity or intellectual capacity of the victim, which could limit or reduce the victim’s ability to make an informed choice or could prejudice a positive outcome for the victim, should be taken into consideration in referring a case to the restorative justice services and in conducting restorative justice processes”. These factors can also apply to the perpetrator.

It is important to recognise that people experience harm in many different ways. This is because each person varies in relation to their levels of resilience, the level of support available to them and how the

harmful act has violated what they value. For these reasons the same harm could be a source of irritation to one person and a source of trauma to another.

If a vulnerability, obstacle or risk to participating in the process is identified, this should not necessarily result in the process being abandoned. Vulnerabilities can be overcome with support. Obstacles can be addressed by adjusting the process. Risks can be eliminated or managed.

Nevertheless, the safety of all parties is critical. If the facilitator has found evidence that the process cannot be made safe, it should not go ahead.

Respect

If the people who have been harmed feel that they are being invited to participate in a restorative process to rehabilitate or even to punish a young person, they are unlikely to agree. They must be offered the opportunity to have their needs addressed.

The whole process must be facilitated with deep respect for each party's experience of the harm, for the feelings and needs that arise from it and for what they want to happen. The facilitator should affirm her or his respect for the strengths each person is demonstrating through engaging with the process; such as courage, intelligence and ability to communicate. By the facilitator's modelling and reinforcing of respect the parties are both more likely to participate actively and to treat each other with respect. Those responsible for the harm appreciate facilitators who do not make them feel like they are a 'bad person'.

Great emphasis is given in restorative processes to storytelling. Inviting people to tell their story allows individuals to begin and end the story where they choose, to highlight what they consider to be significant and to leave out what they do not choose to tell. Listening carefully without attempting to impose a structure on the story by the facilitator's prepared questions is an act of deep respect. This listening and demonstrating the effort to understand another person's story through questioning, reflecting, and summarising creates the relationship which has been found to encourage participation in restorative processes.

On the basis of what has been heard the facilitator may enable the party to 'thicken' or deepen their stories through open questions, affirmations, reflective listening and summarising⁷. Again, the facilitator's questions are in response to what the party has said and not intended to lead the conversation. This process enables individuals to examine the full complexity of their experience of harm and, perhaps, think critically about some of the general ideas that they held about the problem and its solution.

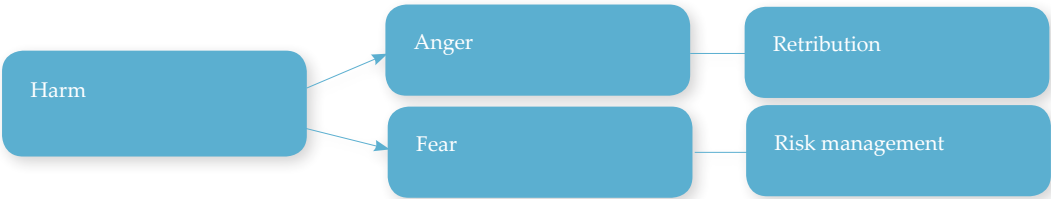
The facilitator is curious about what actually happened in detail. This shows that she or he is taking the actual incident of harm very seriously. Facts, what actually happened, are important in this process

⁷ These skills are described in Miller, W. R., & Rollnick, S. (1991). *Motivational interviewing: Preparing people for change*. New York: Guilford Press.

but they are not the whole truth. In the restorative process the narrative of the individual expresses the meaning of the event to that person. Clues to the real meaning of the harm to a party are often in the emotional content of their narrative. The facilitator tentatively checks her or his understanding of the emotion and then invites the individual to consider what unmet needs this emotion may signify.

There are four recurring emotions in most stories of harm and its effects: anger, fear, anxiety and shame. If these emotions are not taken seriously and explored, they make the individual susceptible to popular discourses about crime. Anger or fear in a victim may lead to a demand for retribution or protection. Anxiety or shame in a perpetrator may lead to a strategy to gain sympathy and be rescued from the consequences of their actions or an avoidance of responsibility and an attempt to blame others for the harm. None of these strategies are likely to repair the impact of the harm on either party.

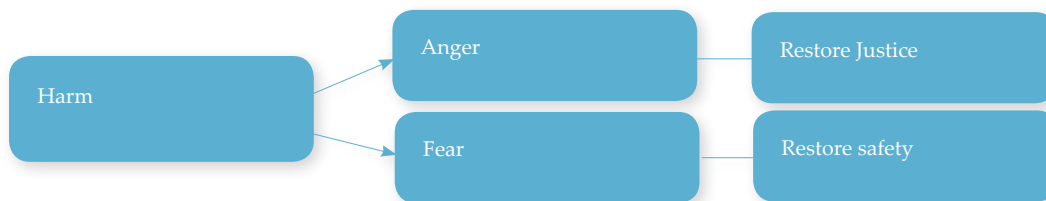
A discourse⁸ is a means of knowing which informs people’s understanding of an event or issue and their response to it. While people will articulate discourses with confidence and commitment to their ‘truth’, they are not derived from personal reflection on an actual event that they have experienced but a set of ideas that they have picked up from public representations of similar events. These discourses often conceal the power relationships that produced them. These discourses will inevitably exclude aspects of the individual’s real experience of harm and thus limit the truth.



Popular discourses on harm

Respecting the emotion and avoiding becoming involved in a debate about the discourse, the facilitator explores needs. This is done through a detailed examination of the context in which the harm took place for each party. Anger is a legitimate emotional response to an injustice and it often signifies the need for justice. Similarly fear denotes a need to be safe. Anxiety is often a response to feeling that you have lost control of your life. Shame represents in many cases the need to regain respect.

8 M. Foucault (1972). *Archaeology of knowledge*. New York: Pantheon.



Restorative response to harm

Justice, safety, control or autonomy and respect are all needs that can be addressed more effectively through a restorative process than through more formal and less personal processes. Having identified these needs, they can be further explored by engaging the party to consider that, if they met the other party, what questions would they like to ask and what requests would they like to make. This can create the realisation that the distressing story, which is dominating their lives, can only be ended by an encounter with the other party. Through this process of engagement each party moves from being passive to becoming an active participant in a process of justice.

It is, then, important that facilitators do not attempt to ‘sell’ the restorative process to the parties or to persuade them to participate. They are not even trying to motivate the parties. What the facilitator is doing is identifying each party’s motivation and drawing it out.

Other than a brief introduction at the beginning of the meeting, the facilitator should not describe in detail what the process is until the needs and requests of the individual have been identified. Only then is it possible to describe how a restorative process can be relevant to that individual and to enable him or her to envisage participating in such a meeting.

Led by needs rather than method

Practitioners should not assume that those affected by harm share their enthusiasm for restorative justice. Thus it is more important and respectful to listen and gather information from the parties about their experience of the harm than to offer information and promote a solution before the problem has been identified and clarified.

If information on the restorative process being offered is given too soon, the party may make the decision whether to participate in haste without having considered how their needs might be addressed by such a process.

Once the story of the harm is fully told and both the party and the facilitator understand the impact of the harm and the emotions, needs and requests that arise from the harm, the process will be explained using what the facilitator has learnt to place the party actively in the process; e.g. “at this stage you will be able to ask X why he assaulted you”. Some agencies have produced a DVD of a typical restorative process which can be played in the homes of the parties.

Once the process has been understood the facilitator should explore with the party any concerns or fears that they might have regarding participation. Each of these fears should be made a specific and concrete as possible as in that way the facilitator may devise a response, which will satisfy the individual.

In addition to describing the process, the facilitator should explain the ground rules which are designed to make the process safe, confidential, fair and respectful. The facilitator must assure each party that it is the facilitator's responsibility to intervene if any of the rules are breached.

It is important to allocate sufficient time to engagement. Research has found that letters inviting parties to restorative processes are usually ineffective. Telephone calls rarely enable the facilitator to develop the rapport, trust and authority, which is so necessary for each party. Ideally contact should take place at a venue of the party's choosing such as their home.

Conclusion

This approach to engagement is not based upon the question to the parties: "Are you ready, willing and able to participate in a restorative process?" The key question is: "What are you ready, willing and able to do about the harm and what support will you require to do it?".

7.5. How do I prepare children and young people to participate in the process?

The right of children and young people to be heard in decisions affecting their wellbeing is at the core of the restorative process. This right must be proactively supported. Children and young people are being invited to meet a group of people including those with who they may be in conflict. Most of these people will be adults. The people have come to the meeting to talk about something that may have caused distress, anger, fears, anxiety and shame. This is going to be a very challenging event for most young people. They need support and preparation to have their voices heard.

Preparing the young person responsible for harm

When preparing the young person who is responsible for the harm to participate in the process it is important that the facilitator is working from a position of respect.

- The young person should be made aware that the primary purpose of the meeting is to repair the damage or loss that the harmful act caused.
- Enable the young person to focus attention firstly on the harmful action and to consider what responsibility they are ready, willing and able to take in relation to it.

- The young person may need support in preparing his or her account of what happened. Ask: who can they turn to for such support? What type of support would they ask for? The supporter cannot speak for them but may be able to help them speak for themselves.
- The facilitator should focus on how he or she can say it but not suggest what should be said.
- It is important to remember that it is not the role of the facilitator to challenge young people to take responsibility. The skill is enabling them to challenge themselves by acknowledging what happened.
- The facilitator could ask the young person to imagine how the other parties might react to what he or she plans to say. This may lead to a discussion on how the young person would respond if met with disbelief, or anger, or tears etc. If the young person is not sure whether he or she can cope, ask what support would he or she need to be able to cope.
- While the facilitator may engage the young person in imagining how the other party may have been affected, it is important to make it clear that only that other party can relate these effects to the young person.
- As a consequence the young person cannot feel or express true remorse until he or she has listened to the other party's story very carefully.
- The young person should know that once the other party is satisfied that his or her needs have been addressed, there may be a conversation about what needs to be done to avoid further harmful acts. This will be the opportunity for the young person to talk about anything that is troubling him or her. This should not be done to make the other parties feel sympathy but as a means to identifying how the young person can take steps with support to sort out the problems.
- The young person needs to understand that while people may express their disapproval of what he or she did, they will not disrespect him or her as a person. In fact, the process offers an opportunity to earn respect by facing up to what he or she did, putting it right and taking action to avoid further harm.
- By doing this the young person can put the whole incident in the past and move on from it.

Preparing the young person who has been harmed

Again, the facilitator should relate to the person who has been harmed with respect and guard against being over-protective.

- The young person should be aware that the primary purpose of the meeting is to repair the damage or loss that the harmful act caused.
- He or she has an important part to play in telling the story of what happened and describing as specifically as possible the effects of the harm.

- Is she or he clear about the effects and confident about getting them across to the other party? Is there need for more support to do this? If so, who would give it and what type of support?
- The facilitator should focus on how he or she can say it but not suggest what should be said.
- Is she or he clear about what they need to move on from this harm and confident in getting that across to the other party?
- What questions and requests does he or she have for the other party?
- What will she or he do if the other person does not respond in a way that is satisfactory?

Inclusion

In Northern Ireland the process has been adapted for children on the autistic spectrum. The process can be changed to be more inclusive of children who find it difficult to put into words what happened or how they feel. It is the responsibility of the agency delivering restorative processes to make the process adapt to the parties rather than seek suitable target groups for a prescribed process. This is also true of children from different cultures and religions and who are not fluent in the local language.

Practitioners⁹ should be encouraged to be creative in the way they enable children to communicate. They can develop and use visual and other tools to communicate with children in the restorative justice process.

Research¹⁰ has found that between 65% and 91% of children in the youth justice system in the UK have speech, language and communication needs. If practitioners do not adapt their methods of communicating with these children, they will be excluded from the process and their views will not be heard. Worse, their inability to speak at a restorative meeting will be interpreted as a lack of remorse.

Practitioners need to translate restorative jargon into child friendly language.

Restorative conference means ‘a chance to meet the people who were hurt and to put things right and to try not to do it again.’

Preparation means ‘You will know what you want to say, when, and who to say it to, before you go into the room.’

9 I am grateful to Linda Mcfarlane, a youth conference coordinator with the Youth Justice Agency in Northern Ireland, for this information.

10 Bryan K, Freer J, Furlong C. Language and communication difficulties in juvenile offenders. *International Journal of language and communication difficulties*, 2007; 42, 505-520. Crew M, Ellis N. Speech and Language Therapy within Bradford Youth Offending Team, 2008. Gregory J, Bryan K. Evaluation of the Leeds Speech and Language Therapy Service Provision within the Intensive Supervision and Surveillance Programme provided by the Leeds Youth Offending Team, 2009. Brooks V, (2011) Report outlining the findings of a 13 month pilot project examining the effectiveness of speech and language therapy for young people known to Exeter, East and Mid Devon Youth Offending Team.

Perspective means 'Everyone's story will be different.'

Non compliance means 'If you break your promise you will have to explain why and if you do not have a good reason you could end up in more trouble.'

The use of visuals may include:

- Graduated colour wheels for feelings.
- Pre-prepared faces showing typical emotional responses to offences.
- Scales to demonstrate strength of feelings or size of problems.
- Using body parts to identify feelings (stomach, heart, lungs, expression, gritted teeth, clenched hands, running feet, speech bubbles and thinking clouds).
- Pictures of see-saws to show the balance of strengths against weaknesses.
- Cartooning to describe the child's story.

Asking children with Attention Deficit Hyperactivity Disorder (ADHD) to sit still and communicate for an extended period of time is unlikely to result in a positive outcome. Children can be supported by arranging the process visually from left to right in the room where the process takes place. The facilitator and child can move around the room as the process progresses. This keeps the children active enough that their focus and concentration can remain on task.

7.6. What are the different processes and when should I use them?

The key restorative processes are described in the following sections. These processes are not intended to be prescriptive. They simply reflect current good practice.

Family group conferences

Family group conferencing through which family members and/or carers are facilitated to discuss difficult issues and come up with a plan to address them has proved very successful in preventing problems from getting worse and leading to formal interventions.

WHEN TO USE

When families are assessed as having difficulties in caring for their children or struggling to manage the behaviour of an individual child. A family group conference can only be undertaken with the consent of the family.

The person who refers a family for a conference should not be the coordinator of the conference.

PROCESS

Preparation and engagement

1. The facilitator contacts the family including the young person identified as causing harm or being at risk of being harmed to agree the issues that need to be resolved and to explain how the conference process can address these issues.
2. The facilitator also asks the family who, in addition to the immediate family, should be invited. These may include members of the wider or extended family and other people with a stake in resolving the issues such as friends.
3. The facilitator has a conversation with the family about any concerns or fears that they may have about participating in the conference and what support they might need. They may bring a supporter or advocate to the conference. The conference process is outlined. A place and time for the conference is agreed.
4. The facilitator must agree with the referrer what information is to be given to the family and what can and cannot be agreed as part of the action plan. The facilitator should also be aware of what services are available to support the family's plan.

The conference

1. Information giving: The facilitator will arrange for each person to introduce themselves, clarify the purpose and process of the conference and how it will be conducted perhaps through ground rules. The referral agency representative explains the reason for this conference and shares information they hold about the child and the family relevant to assisting the family to make the plan and describes the resources and support they are able to provide. Any child welfare concerns relevant to the plan will be explained (e.g. that the child must not have contact with a particular person). It is also made explicit what action will be taken if the family cannot make a plan or the plan is not agreed. The child/young person and family members may also provide information, ask for clarification or raise questions.
2. Private family time: Agency staff and the facilitator will leave the family to begin the discussion in private knowing that the facilitator is nearby when they need her or him. Family members then talk about the issues and come up with a plan that addresses them. They will identify resources and support which are required from services, as well as from the family, to make the plan work.
3. Plan and agreement: When the family has made their plan, the referrer and the facilitator meet with the family to discuss and agree the plan including resources. The plan should be agreed unless it puts the child at risk of significant harm. Any reasons for not accepting the plan must be made clear immediately and the family should be given the opportunity to respond to the concerns and change or add to the plan. It is important that the children involved have a clear understanding of what is decided and that their views are heard. Services are agreed with the agency concerned, and it is important that, at this point, timescales and responsibilities for any tasks are specified. Contingency plans, monitoring arrangements and how to review the plan also need to be agreed. The facilitator distributes the plan to family members and to the referrer and other relevant professionals.
4. Implementation of the plan: It is essential that everybody involved makes themselves accountable for the implementation of their responsibilities in plan within agreed timescales and communicates or addresses any problems as they arise.

5. Review of the plan: There should be a clear timetable and process for reviewing the implementation of the plan. A review family group conference should be offered so that all parties can account for how the plan is progressing and to make changes in the plan if necessary.

Restorative circles

WHEN TO USE

When developing whole school approaches to improving the culture, relationships and communication through restorative practices.

When addressing anti-social behaviour, conflicts between young people and older residents in a neighbourhood, and conflict between groups such as gangs or different ethnic groups.

PROCESS

Preparation and engagement

1. Based on the nature and context of the conflict invite those most affected by the harm that it is causing. This will include:

- Those perceived as both perpetrators and victims of the harm and those with close relationships to them.
- Representatives of the communities¹¹ involved in the conflict.
- Representatives of civil society and statutory agencies who may have an interest in the resolution of the conflict or who may be able to support any agreement made by the circle.

2. Meet with each prospective member of the circle to explain the opportunity that the restorative circle presents and to invite them to participate.

3. Having met each person who will participate consider:

- In what circumstances and under what norms would all parties wish to participate?
- What will it take to create these circumstances?
- What resources will be required to create these circumstances?
- When and where should the circle take place?
- How can the space for the process be prepared?
- How will the process be facilitated?
- How will the facilitators work together?

¹¹ Communities can refer to both shared place and shared interest.

The Circle process¹² :

1. Welcome and introductions.
2. Explain the purpose and process of the circle and how the ground rules support purpose and process.
3. Ask each person in turn to make a public commitment to the purpose and process of the meeting.
4. Ask the party who seem to be suffering most from the harmful effects of the conflict to begin the process of understanding “what is happening that is not working and causing you harm”.
5. Ensure that the others have heard what has been said and allow them to question this party.
6. Repeat the process of storytelling and inquiry till everyone who wishes to speak has had the opportunity.
7. Identify the important values that are causing and sustaining the conflict.
8. Define the issues and needs to be addressed.
9. Agree a plan to address the issues and needs.
10. Establish a process to enable each party to make themselves accountable for their commitments.

Following through on commitments :

- I. Put in place the necessary and agreed resources to support the action plan.
- II. Put in place meetings to review the implementation of the action plan.
- III. Make contingency arrangements in the event of unanticipated problems with or obstacles to the implementation of the plan.
- IV. Make arrangements to celebrate success and if necessary to meet to build on success.

Mediation

The Council of Europe Recommendation (1999) 19 concerning Mediation in Penal Matters defines victim offender mediation as “a process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the crime through the help of an impartial third party (mediator)”.

EU Directive on mediation in civil and commercial matters (2008/52/EC) and The Council of Europe

12 In some models of circles a ‘talking piece’ is used. This may be a symbolic object that resonates with local or indigenous culture. It ensures that only those who hold the piece may speak. This makes the process inclusive and avoids dominance by the few. It can be repetitive and slow and restrict questioning and dialogue and as such may not suit every situation.

Recommendation Rec (99) 19 also state that mediation should be generally available at all stages of the criminal justice process and based upon the parties free consent. The mediators should be adequately trained and impartial. Agreements made through mediation should be reasonable and proportionate.

WHEN TO USE

Mediation can be used to hold a young person, who admits to responsibility for a harmful act or crime, accountable to the person who has been harmed. The accountability and the expectation of reparation means that such diversion from legal proceedings maintains public credibility and support of the system in which it takes place.

Mediation can be used as a preventive measure to resolve actual or potential conflict so that it does not escalate into causing harm. The process of mediation can vary depending on the situation but the basic principles - the role of mediator facilitating dialogue in mediation - should follow the values of restorative practices and respect the parties as the experts of their own situation.

PROCESS

I. The mediator contacts each party separately to invite them to mediate and to explain the process.

- Mediators make sure that parties are willing to join in mediation.
- By modeling a restorative attitude mediators build a safe atmosphere for the mediation meeting, develop trust in the process and nurture the motivation to participate.

II. If the parties agree to a mediation process, the mediator discusses what form it should take: direct (face-to-face) or indirect (shuttle mediation). On the basis of this decision, arrangements are made for the mediation.

- Face-to-face meetings are preferred. However, geographical distance, medical conditions or other factors may necessitate an indirect process.

III. During the mediation each party is facilitated to give his or her account of the harmful incident. Mediators explain the principles of mediation, which are:

- Neutrality meaning that mediators have a role of facilitators but not the role of judges, arbitrators or evaluators.
- Confidentiality, meaning that mediators as well as the parties of the conflict cannot use the information heard in mediation situation against the other participants and they promise not to spread facts heard in mediation to outsiders.
- Focusing on resolution of conflict rather than finding or addressing guilt.

- Voluntariness, which means that mediators ensures that parties are willing to participate and can quit the mediation any time.

IV. Parties of the conflict are facilitated to describe the harm that they have experienced.

V. Parties are facilitated to express their thoughts and feelings to increase the understanding.

VI. Parties are facilitated to describe the effects caused because and after the conflict.

VII. Parties are facilitated to state what they need and how they wish the harm to be repaired and how to put everything right.

VIII. A process of dialogue is facilitated until parties are satisfied and agree on a course of action.

IX. If the parties cannot come to an agreement the case will be returned to the authority that referred.

X. The agreed plan of specific actions and deadlines is written up and formally agreed.

XI. A time to review progress on completing the plan will be agreed.

XII. The schedule for follow-up meeting or procedure will be decided.

XIII. Mediators or mediation service officers will take care of the follow-up:

- Another mediation session can be offered when needed.
- Mediators can also refer people to any support service (e.g. health or mental health services or therapy services or support groups) if needed by any party.

XIV. Mediators actively inform the parties about keeping to their commitments. In case the agreement is not kept the case is returned to the authority for an alternative process to manage the case.

Restorative conferences

The European Forum for Restorative Justice has defined restorative conferencing as: “conferencing consists of a meeting, taking place after a referral due to an (criminal) offence. The condition *sine qua non* for it to happen is that the offender admits (or does not deny) guilt and takes responsibility for the crime¹³. The meeting will be primarily between the offender, the victim (but it should never be an obligation for him/her), their supporters and a facilitator. Subsequently a number of other individuals may also take part, depending on the scheme or crime, such as a representative of the police, a social

13 Note Council of Europe Recommendation Rec (99) 19 of the Committee of Ministers to member states concerning mediation in penal matters, Article 14: “The basic facts of a case should normally be acknowledged by both parties as a basis for mediation. Participation in mediation should not be used as evidence of admission of guilt in subsequent legal proceedings”

worker, a community worker, a lawyer etc. After a period of preparation, this assembly will sit together and discuss the crime and its consequences. They will try to find a just and acceptable outcome for all, with an agreement including a number of tasks to achieve or the offender in order to repair the harm committed to the victim, the community and society in general.”¹⁴

WHEN TO USE

In more serious cases and where there is a persistent pattern of offending, a young person may be prosecuted through the courts. In such cases a restorative conference is warranted. This not only allows for victims’ needs to be met but also facilitates a more comprehensive dialogue on what the young person needs to avoid further harmful behaviour. Conferences can include the wider family, social workers and other experts and can result in not only a plan for reparation but also a plan to reintegrate and rehabilitate. Such a plan can be part of a community sanction.

PROCESS

1. First meeting with the young person responsible for the harm and parents/carers. The person responsible for the harm is met with first in case he or she does not consent to the conference. This avoids raising and then disappointing the expectations of the person who has been harmed.

- Explain role, purpose of the Conference and provide detailed information on what happens throughout the process¹⁵.
- Stress that the Conference will focus on the behaviour and the harm it caused not on blaming and criticising the young person.
- Explain ground rules.
- Provide the young person with an opportunity to tell their story through which the young person expresses emotions, needs and what he or she wants.
- Address concerns.
- Enable young person to begin to identify with the thoughts and feelings of the victim.

2. First meeting with the person who was harmed and supporter/s:

- Explain role, purpose and process of a Conference.
- Explain ground rules.
- Provide the victim with the opportunity to tell their story through which she or he expresses emotions,

¹⁴ Estelle Zinsstag, Marlies Teunkens and Brunilda Pali (2011) CONFERENCING: A WAY FORWARD FOR RESTORATIVE JUSTICE IN EUROPE. European Forum for Restorative Justice.

¹⁵ Note that these are tasks to be completed in this meeting. It is not recommended that the facilitator uses them as an agenda to be followed in sequence. Consult the earlier sections on engagement as a guide to the process of the first meeting.

needs and what he or she wants.

- Invite them to consider what they may get out of a Conference.
- Address concerns.
- Explain purpose of the plan.
- Ensure time and venue of Conference suits the victim.
- If the victim does not wish to attend consider how best they can communicate their views.

3. Preparation meetings with each party (separately). The facilitator takes each party through the process of the conference in some detail and asks:

- What do you want from the conference?
- How will you participate at each stage of the process?
- What do you want to say and ask?
- How will you say it?
- How will you respond to the others?

4. The Conference: The facilitator ensures that the following areas are covered and that the parties stay on track and comply with the ground rules. The sequence may not be the same for every conference.

- Introductions and ground rules.
- Statement of uncontested facts.
- The young person accounts for the harm caused.
- The victim questions the young person.
- The victim describes the harm and its impact.
- The young person responds.
- Dialogue over how to make amends.
- Dialogue over how to prevent further harm.
- Agree action plan.

5. Post-Conference

- Review the action plan and agree steps to complete it.
- Offer support and reinforce commitments.
- Crisis intervention to solve any problems hindering the completion of the plan.
- Deal with non-compliance restoratively.

Circles of Support and Accountability

This is a restorative method that originated in Canada as a means of supervising and supporting sex offenders. However, it has been adapted for young people who require more intensive support to remain in the community or on release from custody. It involves forming a team of responsible adults, usually volunteers but could include professional support and family etc., to be in daily contact with the young person supporting him or her to engage in various ways to desist from harming others including participation in positive social activities and in programmes that address their problems.

RATIONALE

1. Young people who have adopted a pattern of persistent harmful behaviour are faced with many obstacles to desisting.
2. It is not possible for an agency acting alone to enable all young people to desist from offending. For this reason partnerships are essential.
3. Partnerships are most effective when built around the individual to meet specific needs and to manage specific risks and when they act as a coordinated and cooperating team.
4. Partnerships are most effective when individual citizens combine with professional experts.

PURPOSES

1. To provide young people with support to achieve a better life.
2. To strengthen the young person's relationships with family, school or employment and community (social capital).
3. To engage the active participation of informal resources and specialist services working together as a team.
4. To hold the young person accountable for desisting from harming others.

WHEN TO USE

In the case of a young person who is at risk of detention, courts may consider arranging for a 'circle of support and accountability'. This approach can also be used to support reintegration on release from detention.

MEMBERSHIP

The Circle of Support and Accountability (COSA) is made up of two membership categories:

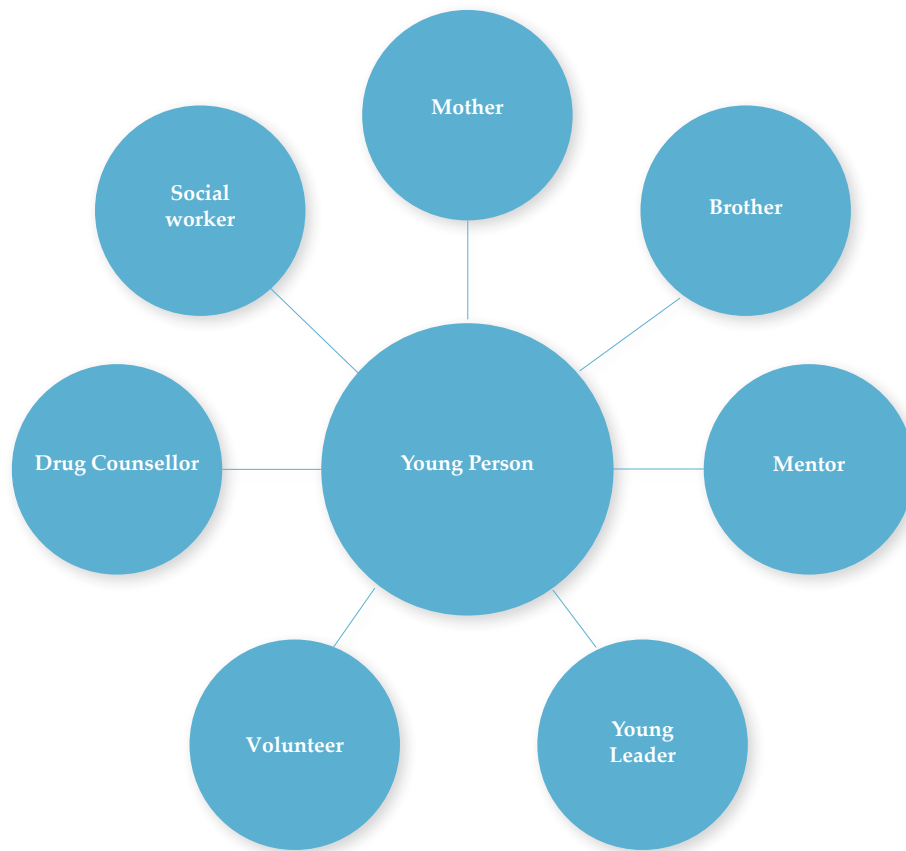
1. The core group includes a group of people from the young person's family and community who care and want to support him or her to achieve goals. This group should be in relationship with the young person long after the programme is completed. The young person should be involved in whom they invite to be in this group. They may include:

- Family/carers.
- Friends.
- Neighbours.
- Teacher/employer.
- Youth Service.
- Community organisation representative.
- Sports coach.
- Church.
- Volunteers.

2. The supporting group of specialist services which may include for example:

- Substance misuse worker.
- Mental health worker.
- Police officer.
- Mentor.
- Social worker.

Typical circle



The young person is at the centre of the COSA. He or she should believe that the COSA functions to support his or her goals and that he or she is an active participant in rather than a recipient or user of the Circle.

The worker should coach the young person so that he or she can take a leading part. This will demonstrate that it is a young person centred process.

The COSA will change its composition over time. It may start quite small and predominantly professional for some young people marginalised from community resources. But if it is effective informal supporters and volunteers will join and professionals will leave once they are no longer needed.

PROCESS

Each member of the circle meets individually with the young person on a weekly (or more frequent basis) to help them accomplish their goals in life. Members of the circle also meet together as a group on a regular basis, (usually monthly), to review and monitor the progress of their support, account for their actions towards each other, solve problems and plan future actions. This is often completed with a social event or activity.

The role of the worker is to host the Circle and facilitate its processes. The worker takes care of coordination and administration.

Each circle member has the contact details for the other members and is aware of who is doing what and when. If the circle of support breaks (e.g. the young person or one of the adults does not turn up for an agreed meeting) the member contacts the worker who in turn contacts the next circle member who will have contact with the young person, to share information and attempt to resolve the break in the circle by locating and holding the young person accountable for the missed meeting.

Each member of the young person’s circle will also need to be supported. The Circle should be experienced as supportive to each member. The worker should take responsibility to ensure that each member feels supported.

Typical time table

<i>Day</i>	<i>Time of Meet</i>	<i>Supporter</i>	<i>Relationship</i>	<i>Activity</i>
Monday	16.00 – 17.30	Joe	Social worker	Coaching
Tuesday	19.45-21-30	Alison	Mother	Quality time
Wednesday	16.00-17.00	Sue	Drug counsellor	Counselling on substance misuse
Thursday	19.30-21-30	Johnny	Youth Club	Activities
Friday	18.30-22-00	Jimmy	Brother	Cinema
Saturday	11.00-14.00	Paddy	Volunteer	Volunteering at the elderly people’s club
Saturday	15.00-17-00	Paul	Mentor	Swimming
Saturday	22.00	Alison & Ray	Mum & Uncle	Checking in
Sunday	12.00-2-00	Paul	Mentor	Informal meeting
Monday - Friday	9.00-16-00	Fred	Teacher	Available at school when needed

7.7. How do I facilitate these processes?

The facilitator is responsible for creating and holding a safe space in which each party can communicate freely and be heard with respect. Above all there must be the avoidance of domination or coercion through the exercise of power. The facilitator must take responsibility for ensuring that no one attempts to dominate the process or its outcomes. This is achieved primarily through ground rules and their enforcement. These ground rules should be based upon the best interests of the child, the right to be heard and protection from further harm. They are usually framed in the values of respect, safety, fairness, truth and confidentiality.

During the meeting the facilitator's responsibility is to keep the parties on track according to the process and ensure that everyone complies with the ground rules. Ground rules may include:

- Fairness: the process will allow everyone to contribute as they choose.
- Truth: people should speak as truthfully as they can.
- Respect: everyone should listen to each and respect each person's truth even when you disagree.
- Harm: the focus of the meeting is the harm and how it can be repaired and prevented.
- Safety: no one will be allowed to insult abuse or intimidate anyone else.

The parties' stories and their dialogue with each other should drive the process. The facilitator should encourage the parties to talk with each other and not through the facilitator. The most effective processes are usually ones during which the facilitator says very little.

The facilitator should strive to ensure that no one has been excluded from participating actively in the process, that each participant's views are heard respectfully, that they feel safe and free to state their truth, and there are no elements of coercion in the process and procedures of the dialogue.

Useful questions for the facilitator include:

- "What more would like to say about this?"
- "What have you heard X say?"
- "I know that it is difficult for you to speak now. Can you say what may be hindering you from saying more?"

Through this the facilitator enables all the relevant information and perspectives to be presented and examined. While no dialogue is ever perfect in terms of inclusion, equality and the absence of domination, by striving to uphold these values the process is likely to be 'good enough' for the participants.

Thin discourses rarely survive a real encounter with another human narrative. Through exposure to the other through dialogue one realises that one's account is partial, limited and incomplete and requires revision. Dialogue enables individuals to rid themselves of the belief that an alien and powerful source of evil controls them. This explains the emergence of empathy and compassion once feelings of anger, shame or fear have subsided. Exposure to the fallibility and vulnerability of the other confronts the

individual with an ethical choice. For the perpetrator the choice may be to apologise and to make amends.

Even when people make sincere apologies, it is not sufficient for many victims. They believe that 'actions speak louder than words'. Consequently they often ask for a reparative action. In most cases this does not involve direct reparation to the victim but some sort of service to the community that makes sense to all parties. Reparation is important because it is a tangible and accountable demonstration of remorse. It acknowledges that the perpetrator has done wrong and as a consequence takes on the obligation to put things right.

By this stage in a conference victims are content that their needs and requests have been addressed. They are no longer in the grip of the distressing emotions that the harm stimulated. They do not believe that it is likely that this person will harm them again. For the victim the choice may be to accept these offerings of remorse and reparation and to no longer wish for any further punishment.

They now enter an altruistic phase. Having had their needs attended to, their focus is often directed to the safety of others and the wellbeing of the person who harmed them. They want an assurance that the perpetrator of the harm does not intend to harm others. They may look for an explanation for the harm and evidence that steps will be taken to change whatever caused the harmful behaviour in the first place. Not only does the perpetrator commit to a reparative act but he or she also commits to take steps to reduce the risk of further offending.

A victim is someone who has been harmed unjustly. The perpetrator has made a choice to act in a way that causes harm to another person who had no choice. In this way the victim feels that a degree of autonomy over their own lives has been taken from them¹⁶. They need to regain control. The restorative justice process offers the victim the opportunity to respond to the harm, to act after being acted upon.

The outcome of the restorative process in the short term is that whatever has been lost, damaged or violated by the harm is restored. More importantly in a successful process, for each party the future is restored in that they can move on knowing that the story of the harm has been respected and completed. In respecting perpetrators for taking responsibility, feeling shame, expressing remorse, and promising to both make reparation and to take steps to avoid inflicting further harm, the young person restores the respect of the community and is supported to reintegrate.

The agreed action plan should first address the reparation of the harm to the victim. This may include a verbal or written apology, compensation of loss, or the offer of voluntary work for a charity nominated by the victim. Then any support needed to reintegrate the person who caused the harm. This might include community service to a local organisation or support to return to a school after suspension. The meeting may have identified some needs that are placing the young person at risk of causing further harm. An example might be the use of drugs in which case the meeting might agree the young person should engage in a rehabilitation programme. In some cases the victim may ask the young person to agree to a restriction; for example to stay out of a shop that he or she stole from for six months.

16 Zehr, H. *Changing lenses: a new focus for crime and justice*. (2005: 52).3rd ed. Scottsdale, PA: Herald Press.

The facilitator's task is to check that all parties are committed to the plan and specifically their responsibilities within it. The plan must be drawn up so that its actions are specific, measurable, achievable, relevant to the harm caused and time bound. Arrangements to review the plan should be agreed.

7.8. How do I develop my skills and knowledge?

All facilitators should have participated in training appropriate to the context in which they are practising and the complexity of the harmful behaviour that they are addressing.

Routine restorative communication training

For: People who wish to communicate with children and young people on the basis of children's rights and respect so that they develop strong healthy relationships with them.

Content: Awareness of children's rights, principles of equality and inclusion, the values of restorative justice (respect, responsibility and relationship), core skills in restorative communication.

Qualification to practice training

For: People intending to facilitate restorative processes such as circles, mediation and conferences.

Content:

- Understanding restorative justice, its aim, values and core principles and concepts.
- Understanding of the role of the facilitator.
- The ability to assess a situation and choose the most appropriate restorative process.
- The ability to assess any risks involved in participation and ensure that all parties are safe.
- The ability to engage parties in a restorative process.
- The ability to prepare parties for a restorative process.
- The ability to facilitate restorative processes.

As this training is intended to prepare for practice, it is recommended that there is some assessment of competence integrated into the training. This could take the form of a role play or preferably an observation of actual practice.

Continuous professional development

Restorative practitioners have a responsibility to regularly refresh their knowledge and skills.

Training should be available on restorative approaches within specific contexts such as:

1. Families.
2. Schools.
3. Detention and residential centres.
4. Leadership and management.
5. Research and evaluation.

Training should be available on restorative approaches with more serious and complex cases such as:

1. Young people with conditions such as autism, attention deficit hyperactivity disorder, and speech and language difficulties.
2. Hate crime and harm committed in an intercultural context.
3. Sexual harm.
4. Domestic violence.

Reflective Practice

Training is not the only or even the most effective method of developing knowledge and skills. Practitioners should continuously reflect upon and learn from their daily practice.

It is difficult to maintain the discipline and allocate the time to do this during a busy work schedule. The restorative justice delivery agency has a responsibility to provide opportunities and support for reflective practice.

This should include space and time to debrief after critical processes through regular supervision with a line manager. Organisations may also develop communities of practice through which practitioners meet regularly to share experiences and challenges.

8. Summary and Recommendations

8.1. Why support restorative justice

1. Restorative justice is a way of understanding and doing justice through the active participation of victims, perpetrators and the community in repairing harm and preventing further harm.
2. Restorative justice delivers justice more quickly, more fairly and at a lower cost than formal systems of justice.
3. Restorative justice reduces the costs of state interventions, satisfies victims, stimulates remorse in perpetrators and reduces the risk of reoffending.
4. Restorative justice is supported by international and European policy.
5. Restorative justice contributes to bringing up children who can flourish in modern, democratic and pluralist European societies.

8.2. How to support restorative justice

1. Pass legislation enabling or mandating prosecutors and judges to refer suitable cases for restorative processes.
2. Develop a holistic policy for criminal justice that includes prevention, diversion from the formal system, diversion from detention and reintegration through restorative processes.
3. Review policies on family support, children and schools to introduce restorative processes.
4. Establish standards of practice to assure the quality of restorative processes.
5. Support high quality training to prepare practitioners to engage and prepare parties for participation in restorative processes and to facilitate the processes.
6. Promote restorative justice with the public and among key stakeholders.
7. Commission research into the delivery of restorative justice and its outcomes.

9. Checklist for action

Section	Action steps	Planned	Resourced	Implemented	Evaluated	
Policy	How can we support RJ? <ul style="list-style-type: none"> - Legislation - Policy on family support and safeguarding children - Policy on schools - Standards - Training - Coordination and resources - Awareness-raising and promotion of restorative justice 					(section 4) SECTION 4.3
	How will we know if it is working? <ul style="list-style-type: none"> - Information systems and evaluation 					SECTION 4.4
	The Holistic Policy Framework					
Schools	How do I set up RJ in my school? <ul style="list-style-type: none"> - Leadership - Policies and procedures 					(section 5.) SECTION 5.1
	How do I make it work? <ul style="list-style-type: none"> - System of Delivery - Standards - Training 					SECTION 5.2
	How do we know it is working? <ul style="list-style-type: none"> - Information systems and evaluation 					SECTION 5.3
Criminal Justice System	Who is suitable for RJ?					(section 6) SECTION 6.1
	When should it be used? <ul style="list-style-type: none"> - Preventive use of restorative justice - Diversion from court through restorative justice - Diversion from detention through restorative justice - Restorative justice in detention centres - Restorative justice for reintegration after detention 				SECTION 6.2	
	How do we make it work? <ul style="list-style-type: none"> - System of Delivery in place - Standards of practice - Arrangements for Accessibility 					SECTION 6.3
	How do we know it is working? <ul style="list-style-type: none"> - Information Systems in place 					SECTION 6.4

Practitioners	The Balanced Model of Restorative Justice				(section 7) SECTION 7.1
	What is my role?				SECTION 7.2
	Who should be involved in the process? - Stakeholder analysis				SECTION 7.3
	How do I engage the parties in RJ? - Safety - Respect - Led by needs rather than method				SECTION 7.4
	How do I prepare children and young people to participate in the process? - Preparing the young person responsible for harm - Preparing the young person who has been harmed - Inclusion				SECTION 7.5
	What are the different processes and when should I use them? - Family group conferences - Restorative Circles - Mediation - Restorative Conferences - Circles of Support and Accountability				SECTION 7.6
	How do I facilitate these processes?				SECTION 7.7
	How do I develop my skills and knowledge? - Routine restorative communication training - Qualification to practice training - Continuous professional development - Reflective Practice				SECTION 7.8

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