

RESTORATIVE JUSTICE GUIDANCE AND MINIMUM STANDARDS

These **GUIDANCE NOTES** [or replace with relevant term] contain information to assist policing in England, Wales & Northern Ireland.

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1.0 Introduction

This guidance and minimum standards are intended to assist police forces in their introduction and management of RJ processes. In addition to this document, police forces will develop their own specific local procedures that compliment the ACPO guidance and minimum standards.

Restorative Justice (RJ) is a victim focused resolution to a crime or a non crime incident. RJ holds offenders, either young people or adults, directly accountable to their victims and can bring them together in a facilitated meeting. RJ can be an alternative disposal to, or complement, the formal criminal justice system (CJS). The RJ process is flexible and can be used to address crimes or incidents. Within neighbourhood policing it can help problem solve, reduce re-offending and improve community cohesion. With low impact crime it can offer a proportionate response with a tangible outcome for the victim. Police may regularly respond to issues with a conventional approach without solving the dispute; the use of RJ and talking through the problem can support participants to find the long term solution themselves.

RJ has a strong evidence base. The Ministry of Justice has reported on Restorative Justice Trials that began in 2001 and established that 85% of victims and 80% of offenders were satisfied with their experience of a Restorative Justice conference. Findings have also showed a significant decrease in the frequency of reconviction over the following two years leading to cost-savings for criminal justice agencies and the taxpayer.

2.0 Minimum Standards

The last ten years has begun to see the increasing use of RJ amongst a variety of police forces and other agencies. It is commonly agreed that whilst there will be different approaches, it is essential that for a disposal to be considered restorative it must have the following key elements:

- 1) The offender must take responsibility
- 2) Involvement of the victim, community or other affected party
- 3) A structured process that establishes what has occurred and what the impact has been
- 4) An outcome that seeks to put right the harm that has been caused or an outcome that makes other reparation that may not be directly related to the original case.

3.0 Strategic benefits of using RJ

The use of RJ should deliver the following benefits.

1) Victim Satisfaction

RJ can improve satisfaction levels by directly engaging the affected parties in the disposal. Victims are empowered and are able to suggest how the offender can acknowledge the impact of their actions and make reparation. The process enables a victim to understand why they were victimized and offers 'closure' enabling them to 'move on' from the experience. Studies have also shown that an RJ conference can reduce post traumatic stress.

2) Reduction in reoffending

Offenders are more likely to appreciate the effect of their behaviour in a face to face conference with a victim (or other stakeholders) with the likelihood of the victim offering honest and emotional comment. That said: where a victim cannot or chooses not to meet directly with the offender, the offender can still learn about the impact of their behaviour using other restorative means i.e. a shuttle process or third party representation.

The 2010 'Breaking the Cycle' green paper acknowledges a 14% reduction in reoffending was demonstrated in the pilot studies.

3) Community Cohesion

With formal CJ sanctions, there may continue to be reoccurrences of the same issue if victims and offenders have not resolved their differences; a restorative intervention at an early stage can prevent escalation from a minor conflict to a major event. RJ can increase and restore a sense of 'community' where offenders repair the harm done directly to the individual or the neighbourhood, allowing reintegration and a return to normality. The use of community justice panels, where local members decide on and may facilitate and monitor RJ outcomes can also build and improve community cohesion.

4) Value for Money

An RJ intervention reduces demand by solving problems and reducing repeat calls for service. It is accepted by Police forces using RJ that an average case can take less time than the usual option of arrest and subsequent processing. RJ can reduce the amount of time that police officers spend completing paperwork or gathering and preserving evidence - it offers a simple, low bureaucratic yet effective alternative.

Additional opportunities

- Offers a more relevant outcome for the victim.
- Helps reduce first time entrants into the CJS, ensuring offenders face up to their actions without criminalising them, or risking detrimental impact on their future due to their police 'record'.
- Deals more proportionately with issues at the frontline.
- RJ focuses on quality outcomes for those involved not performance outputs.
- Supports staff to use their skills and experience to sensibly resolve calls for service from the public, leading to increased staff satisfaction.

4.0 The National Context

There is a national drive for dealing with offences proportionately that can help staff understand the context of RJ within other case disposal options.

- Jan Berry's 'Reducing Bureaucracy in Policing' report.
- The 'Safe and Confident Neighbourhoods Strategy' that encouraged police forces to adopt a more proportionate approach to crime and incidents and a standard approach for dealing with restorative justice.
- The commitment and foresight of forces such as Norfolk and Cheshire to deliver RJ as the right solution for their communities.
- The findings of the Community Resolutions (CR) and Youth Restorative Disposals (YRD) pilots.

- The HMIC Thematic Review of RJ was undertaken in Autumn 2011 and the reports publication is due imminently
- The Comprehensive Spending Review that outlined that community penalties using restorative justice would be proposed, where they are more effective than short prison sentences.
- The 'Big Society' concept - the belief that the alternative to big government is the big society and that a strong society will solve problems more effectively than big government has.
- The 'Breaking the Cycle' green paper published in December 2010 highlighted the opportunities for the use of restorative policing in delivering victim satisfaction and approaching low-level offending by youth and adult offenders.

5.0 Hate crime

ACPO supports the use of RJ in relation to hate crime or hate incidents but consideration of its use at a local level should be done in consultation with the Local Criminal Justice Board (LCJB).

Consideration of RJ in hate circumstances should particularly take account of the impact on the wider community, where other individuals belonging to the minority group may also be affected by the offenders' behaviour.

6.0 Domestic Abuse

At present, ACPO policy for domestic abuse/domestic violence does not support the use of RJ in determining outcomes in this area.

DA/DV represents serious risk to the victims of such offences and is often subject to a complex and protracted investigation. As such there will be little opportunity for the use of RJ in the vast majority of such offences.

We do recognise that RJ is a customer focussed methodology and if a victim of such an offence demands RJ then it is for the individual officer to consider, in line with their respective force policy and the guidance already issued by ACPO DV as to whether furtherance under RJ is appropriate.

7.0 What does RJ look like?

RJ and 'community resolutions' (CR) are based on similar principles and desired outcomes, but can differ slightly.

CR can be a more informal and proportionate response to lower level crime and incidents. Since 2008, pilot forces have been using CR to good effect for the benefit of victims and the community because of the swift pragmatic disposal that a victim may prefer; in many instances this use of CR has met all 4 RJ standards.

To offer clarity, where the four RJ standards are met during the application of CR, the outcome should be recorded as RJ.

RJ will always involve the same principles but the type of RJ can be different and identified as a Level 1, 2 or level 3. RJ is applicable to both crime and non-crime matters. The three levels of RJ within policing must subscribe to the minimum 4 standards highlighted at section 2.0. The difference in approach and delivery is explained below.

Level 1

An instant or on-street disposal where police officers or PCSOs use restorative skills to resolve conflict in the course of their duties; this allows staff to deal with minor crimes and incidents quickly and proportionately. Instant RJ is conducted as an alternative to a formal criminal justice (CJ) process.

Level 2 (alternative to a formal CJ process)

Conferences are arranged, where the typical 'level 1' resolution could not take place immediately for whatever reason or to tackle more serious or persistent matters that have a clear impact on communities. Level 2 conferences may involve more participants and risk assessment and seek longer-term solutions.

Conferencing may occur in isolation or in tandem with a reparative act; it establishes what happened, why and the impact. It can be face to face with structured facilitation or 'shuttle' where the facilitator relays information between the two parties.

A Neighbourhood Justice Panel can be used at level 2 where the RJ process and outcome is facilitated by a panel of community representatives. A neighbourhood panel can help identify reparation that will help the offender understand their behaviour and enable them to put harm right or 'give something back' to the community; particularly useful where a victim does not want any personal reparation. By overseeing and delivering community focussed actions the opportunity for community cohesion is increased. Schools, probation, local authorities, housing associations and community groups are amongst those who may form a community justice panel.

Level 2 (in addition to formal CJ)

As part of a formal crime disposal (following a custody - out of court disposal - or post sentence). This is aimed at rehabilitation; the offender is likely to be deemed at risk of further offending. Level 1 and 2 are equally applicable to both crime and non-crime matters. The more restorative the intervention is, i.e. face to face conference as above, the involvement of family, communities and supporters – the more academic evidence suggest a greater level of impact for both offenders and victims.

Level 3

Deals with offenders mainly post-sentence and can be undertaken whilst the offender is in prison. Cases may be complex and sensitive and offenders may be prolific, monitored by integrated offender management (IOM) teams and deemed at risk of continued offending. Level 3 could be undertaken pre sentence but any consideration of that would be in conjunction with Probation, the Crown Prosecution Service and any other relevant agency involved in the case.

8.0 RJ Outcomes

The RJ 'outcome' should allow offenders to make amends for the harm caused. It might be any action that is requested by the victim (or a community justice panel on behalf of the victim), which is agreed by the offender and is considered appropriate by the facilitator. An outcome should be SMART (specific, measurable, achievable, realistic and time-bound), for example:

- Personal or written apology
- Commitment to access support to resolve any underlying factors leading to offending behaviour i.e. alcohol misuse.
- Reparation - This is the physical act that should seek to put right the harm caused. It can be directly related to the harm i.e. cleaning off the graffiti from a victim's house or offering

financial restitution. Where a victim may prefer not to have direct involvement, it can be an act that will benefit a community i.e. picking up litter at a local park

9.0 Training for RJ facilitators

Basic RJ training should equip all frontline staff with the skills and knowledge to prepare for and run a restorative meeting at level 1 and manage both crimes and incidents. Enhanced training (levels 2 and 3) enables identification of the right participants and cases, risk assessment and preparation of participants. Training at all levels should include practical application (role plays). It is recommended that all training providers should comply with the Restorative Justice Council's Trainers Code of Practice (see www.restorativejustice.org.uk) and any training cascaded within a Force should also subscribe to similar standards.

Only staff with appropriate RJ knowledge and experience should make the decision as to whether a crime is suitable for RJ disposal (rather than a formal CJ sanction). A trained RJ facilitator should complete the process.

An RJ facilitator can be any suitably trained individual to include PCSOs, Special Constables, volunteers or partner agencies.

Ideally, control room and custody staff will have some bespoke, local awareness training around RJ to enable them to support officers that are dealing with possible RJ cases.

The Restorative Justice Council (RJC) provides detailed Best Practice guidance on restorative practice for restorative practitioners working in any agency or context. The RJC Best Practice Guidance covers many of the issues from this document in more detail, and alongside the National Occupational Standards should form the basis of all quality training and practice. The RJC also provides the Trainers Code of Practice and RJC Trainers Register. For further information see www.restorativejustice.org.uk.

10.0 RJ and decision-making

A decision to use RJ as a crime disposal should be a proportionate, discretionary response to the specific circumstances made by the individual dealing with the case. Local Force training packages may advise that a supervisor should be consulted where a case may be more sensitive or complex. RJ policy should be flexible and should enable staff to tailor the resolution to meet the victim's needs yet meet audit standards without being subject to disproportionate limitations or restrictions.

The evidence does not need to be beyond all reasonable doubt, (as is the case for formal CJ sanction), Where RJ is used to solve non crime problems, the offender eligibility criteria is likely to be simpler and more likely to be based on the offenders acceptance of responsibility rather than any standards of evidence and offending history. Where any incident has occurred; before a decision as to RJ suitability, is made, it must be considered:

Does the offender accept responsibility and are they willing to undertake the RJ process?– this should be verified with the offender first, otherwise the expectations of the victim may be raised. They may be left with further anger if the offender is not agreeable.

If on the basis of public interest, RJ is recommended instead of the formal CJS, – the victim must not be coerced into face to face or shuttle RJ if they are not agreeable. A surrogate victim or other reparative outcome could be considered, e.g. referral to a community justice panel could identify a reparative act that would benefit both the offender and the community.

11.0 Decision making matrix, diversionary disposal for crime

A Force should establish its own local supportive processes to assist decision making around RJ as a diversionary disposal for crimes. This may include a green / amber / red type matrix that highlights offences that may prompt some consideration before proceeding with RJ or indeed prompt serious consideration / caution before proceeding. The ACPO agreed, 'National Decision Making Model' should also be used to aid this process and may feature in training

RJ decision making: The following considerations will help staff decide if the use of RJ as a diversion from prosecution is the right option

- 1) The individual circumstances i.e.
 - The offence title i.e. burglary does not denote how serious or not it actually is
 - How serious are the consequences for the victim?
 - What was the motivation behind it?
- 2) The individuals involved i.e.
 - The offender must accept responsibility for the offence
 - The previous record of the offender; a flexible approach should take account of individual case needs.
 - What outcome does the victim want?
 - Is the victim or offender vulnerable?
- 3) The community or environment that the crime has occurred in (public interest) ie
 - The offence may be minor but is prevalent in the local area
 - The impact of a crime that would be likely to inflame public opinion is unlikely to be suitable for diversionary RJ

Decision	Issues and considerations
<p>Green – Usually safe to RJ</p>	<ul style="list-style-type: none"> • No public interest factors. • No reason to make referral to or need support from other agencies. • No vulnerability with any parties involved
<p>Amber – Not always straight forward, just think</p>	<ul style="list-style-type: none"> • Crime that is a local priority • Serious crimes by definition but minor in the individual circumstances • Serious acquisitive crime • Consider risk of reoccurrence • Consider offending history
<p>Red – The most risky, consider cautiously and take advice from supervision or other agency experts</p>	<ul style="list-style-type: none"> • Domestic abuse - risk of revictimisation • Hate crime • Sex offences - risk of revictimisation • A crime where formal sanction offers more appropriate support or intervention to either party • A crime where formal sanction is essential to ensure that proper record is made of behaviour that is of 'significant risk'

12.0 Decision making - RJ in addition to formal CJ sanction

A Force should establish its own local processes to assist decision making around the use of RJ in addition to a formal CJ sanction. Not all cases will be suitable for RJ.

Example as follows:

RJ in addition to formal CJ sanction: Considerations:

- What would this achieve for the victim / community? – RJ can offer empowerment, satisfaction and closure.
- Risks - vulnerability / sensitivity of the victim owing to their personal circumstances or the specifics of the case.
- What would this achieve for the offender? – RJ intervention may reduce the risk the offender may pose in the future by offering learning and resulting in a reduction in re-offending.
- Risks - the level of responsibility taken by the offender and the behaviour that may be demonstrated by them.
- Capacity to undertake the RJ process – the greater the risk and impact in the offence and offender, the more likely - that greater preparation and planning will be involved in the process. Potentially also, the victim and offender may require some post RJ - conference support.

13.0 Further victim / offender considerations following the decision to pursue RJ

The 'harmed' (victim)

Do they require any support during or after the RJ process?

The expectations of the victim should be managed. The RJ outcome may repair harm but this is not always applicable (subject to the type of harm caused). If an offender fails to comply with an agreed outcome, whilst reversion to usual CJ processes can be explored, this may not succeed nor can the repair of harm be guaranteed.

Contact should be made with the victim after the RJ resolution, to ensure completion of outcomes or where applicable discuss non compliance and the options available.

'Victim' should be considered in its widest sense to include communities, hence any long term community need and impact should be considered as part of any RJ process.

The 'harmer' (offender)

Do they require any support during or after the RJ process? – any risk assessment of the victim should apply to the offender also.

On a 'standard' criminal records bureau (CRB) check, all cautions, convictions, Warnings and reprimands on PNC will be disclosed, this does not apply to RJ. Offenders must be informed that information regarding the RJ may be disclosed if they are subject to an enhanced check by the (CRB). Disclosure would only be made where it is proportionate and where the nature of the offence is seen as relevant to the reasons for the application.

14.0 RJ and Juveniles

An RJ disposal involving young people does not require the presence of an appropriate adult, although it is desirable. The RJ facilitator should use their professional judgment to decide on the capacity of the individual to understand the process without an adult present, if there is any doubt in that capacity, the RJ should be postponed.

Where an appropriate adult is not present, processes should ensure their notification at the earliest opportunity. Part of that notification should include information around crime recording, the retention and disclosure of information relating to the RJ process in addition to an appeals process.

Where any young people subject to the RJ process would benefit from further support or intervention, a referral must be made to the YOT. Forces, at a local level, should agree referral processes with their local YOT but the use of PENY (police electronic notification to YOT) would be preferred.

15.0 Crime recording

It is imperative that crimes and incidents are recorded and the principles laid down in the National Crime / Incidents Recording Standards, will not change.

Forces should be able to quantify crimes resolved via RJ and this should be separate to any crime classed as no further action (NFA). Correct recording of RJ is essential and should enable a force to report on RJ in the annual data return process (ADR) should this be required.

16.0 Understanding the benefits and Quality Assurance

A dip sampling process should test the quality of RJ disposals and ensure its recording is appropriate.

Victim satisfaction

Victims should be contacted to ensure that any agreed outcome has been completed. As part of the victim contact process, the satisfaction levels should be determined.

Re-offending

Forces should reflect on their use of RJ by dip sampling re-offending rates. This is particularly useful for young people to ensure that they are being dealt with appropriately and where necessary receiving YOT support.

Community Cohesion

The use of RJ to tackle repeat victim issues and deal with ASB / quality of life matters is likely to improve community cohesion by addressing problems that affect the wider community.

The introduction of neighbourhood justice panels is likely to raise awareness of RJ and encourage the wider community to identify reparation activities that benefit a broader audience.

Appendix A

RJ Case Studies

Theft - Level 1 RJ.

A 12 year old offender (with no previous record) stole a fishing net from a shop (value £1.50). The shopkeeper did not want the child to be arrested so a face-to-face restorative conference took place where the shopkeeper explained the impact of shoplifting on his business. The offender's mother was present and also explained her disappointment to her son. The offender apologised and the item was returned.

Public Order - Level 2 RJ.

A drunken adult had caused a minor disturbance and some damage in a public place. The offender had never been in trouble before and the witness did not want any personal restitution. The matter was resolved by referral to a community justice panel that identified some work at a local youth centre that the adult was able to take part in.

Criminal damage - Level 2 RJ.

Two 13-year old boys trespassed at a primary school. They vandalized the garden, causing damage to flower beds and tipping over plant pots. Neither had ever been arrested before. A face-to-face restorative meeting took place where the school caretaker and staff from a nearby nursing home explained how the school supported the residents by providing school-grown flowers. It was agreed with the school that the boys would attend the school during the summer holidays, re-plant the containers they had emptied and tidy up the garden at their own expense.

Burglary - Level 3 RJ.

A 20 year old PPO - male serving a sentence for burglary, requested a meeting with his victim following a victim empathy course in prison. He indicated he wanted to change his behaviour and believed his victim deserved answers relating to the crime. Police deemed the offender at risk of continuing to offend on release from prison. A face to face meeting took place in prison between the offender and the victim at which the offenders mother was also present. Following explanations and apology, the offender undertook to write a letter to the victims wife who was unable to be present at the conference. This letter was completed and forwarded to the victims as requested.

Non crime neighbour dispute – Level 2 RJ.

A minority ethnic family who move to a housing estate begin to suffer ASB and police are called numerous times over a period of weeks. A community representative offers misconceptions about the family to the police that are believed to be the cause of the ASB. After identification of key community members a restorative conference is agreed upon. All participants are prepared individually which results in a productive conference lasting two hours. Police continue to monitor activity in the area after the conference and the targeted family report no other ASB

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