

**Restorative Justice Council response to the Ministry of Justice's
'Improving the Code of Practice for Victims of Crime' Consultation Paper**

Introduction

1. The Restorative Justice Council¹ (RJC) is the independent charity and membership body for restorative justice in England and Wales. We provide the national voice for restorative practice, and quality assurance of training and individual practice. RJC co-chaired, with the Ministry of Justice, the steering group which produced the Government's *Restorative Justice Action Plan*² and now sits on the Implementation Board responsible for delivering the plan.
2. The *Restorative Justice Action Plan* for the CJS tasked the RJC with:
 - The development of a clear set of national standards for restorative service delivery
 - An accreditation framework (also referred to in the Minister's introduction as a Quality Mark)
 - Data collection requirements as part of the national standards/Quality Mark to create a national baseline and enabling ongoing monitoring and evaluation of restorative justice service delivery.³
3. The RJC welcomed *Getting it Right for Victims and Witnesses*⁴, and the inclusion of restorative justice in one of the nine principles underpinning the new Victims' Code in particular. We are pleased to see that *Improving the Code of Practice for Victims of Crime*⁵ follows this by ensuring that for the first time, victims of adult offenders will be entitled to receive information on restorative justice.
4. In particular the Draft Code states in the section on Victims' Entitlements : "If the offender is an adult, you are **entitled** to receive information on Restorative Justice from the police and how

¹ www.restorativejustice.org.uk | www.rjc.org.uk/victimscod13

² Ministry of Justice (November 2012) *Restorative Justice Action Plan* <http://www.justice.gov.uk/restorativejustice>

³ Ibid page 6.

⁴ Ministry of Justice (2012) *Getting it Right for Victims and Witnesses* <https://consult.justice.gov.uk/digital-communications/victims-witnesses>

⁵ Ministry of Justice (2013) *Improving the Code of Practice for Victims of Crime* <https://consult.justice.gov.uk/digital-communications/code-victims-crime>

you could take part. This is dependent on the provision of restorative justice in your local area.”⁶

The Code continues to provide some key information about restorative justice covering:

- a. that it is voluntary
 - b. its potential benefits
 - c. that it may not be appropriate in every case
 - d. when it may be available in the criminal justice system
 - e. that it will be led by a trained restorative justice facilitator with appropriate measures to ensure safety
5. To facilitate this, the Draft Code places a duty on the police:
- a. to offer or point victims to information on restorative justice and how they can take part
 - b. to assess suitability based on the particular sensitivities of the case and/or the vulnerability of the victim;
 - c. to ensure that appropriate safeguards are in place to ensure the victims is not re-victimised, particularly for victims of domestic or sexual abuse or violence.
6. Our comments in response to the consultation focus on:
- a. the duty relating to requests for information about restorative justice
 - b. the duty on police to assess the suitability for restorative justice
 - c. how to ensure appropriate safeguards are in place

We make four key recommendations in relation to restorative justice:

- *We propose that the duty to offer restorative justice be amended to a duty to refer victims to the relevant restorative justice service.*
- *We propose that the duty on police to assess the suitability for restorative justice is removed (as this is the role of the restorative justice facilitator).*
- *We propose that the duty on police to ensure appropriate safeguards are in place is made clearer and more transparent, by amending to ‘ensure RJC Restorative Service Standards are met’.*
- *We propose that the Victim Code includes recognition of the Restorative Service Quality Mark as the assurance victims can seek that restorative justice is being offered and delivered to national standards.*

⁶ Ibid. Page 22

Requests for information about restorative justice

1. The duty on the police to direct victims to information on restorative justice and how they can take part is a hugely welcome development which will help make more restorative processes victim-led.
2. In our experience even victims who are aware of restorative justice and want to access it frequently come up against poor awareness among Criminal Justice System professionals about what restorative justice is, when it might be appropriate and whether it is locally available. This duty therefore has the potential to radically improve the experience of thousands of victims who could benefit from restorative justice.
3. RJC also welcomes the duty on the police to offer restorative justice to victims *where such a service is provided by the police*. Where the restorative service is provided by a partner agency the police should inform victims about the service and refer them, but not be required to make the offer of restorative justice, as the actual offer of restorative justice should only be made by a trained restorative justice facilitator working to national standards. In many areas restorative services are led by agencies other than the police. ***We therefore propose that the duty to offer restorative justice be amended to require the police to refer victims to the relevant restorative justice service, whether this service is provided by the police, or by a partner agency.***
4. In our response to *Getting it Right for Victims and Witnesses* the RJC expressed a concern that a right to ask for restorative justice subject to resources did not amount to a new entitlement for victims if it did not affect the response that victims are entitled to receive.⁷ The publication of the corresponding duties relating to the entitlements in the Victims Code provides some clarity with respect to how victims will be treated where a restorative service is available to them. We would welcome further clarity with respect to how victims will be treated where no restorative service is available locally – as this is still the experience for too many victims, particularly victims of adult offenders and victims of more serious offences.
5. In our experience victims have been poorly treated when requesting information about restorative justice from services who have little or no awareness about what restorative justice is, when it is suitable or whether it is available in their local area. Victims can be made to feel as though their request is odd, an inconvenience, misinformed or even immoral (for example where relatives of victims of homicide have made the request).
6. Amending the victim's entitlement to ask for restorative justice (subject to it being available) to a right to be informed about the availability of restorative justice in their area would help address the poor treatment of victims who have requested access to restorative justice from the police.
7. We expect that the majority of police forces may already have received sufficient restorative justice awareness training to fulfill this duty. However, there is a need for the police to be supplied

⁷ Restorative Justice Council (2012) *RJC response to Getting it Right for Victims and Witnesses* consultation paper http://www.rjc.org.uk/news/rjc_response_to_government_strategy_on_victims_and_witnesses/

with accurate, up-to-date information about the availability of restorative justice in their local area and to be able to provide accurate information and signposting as to what is available for victims of more serious offences, at later stages of the CJS.

8. The availability of restorative justice is complex as it is affected by a range of considerations including the stage of the criminal justice system the request has been made, how the offence was handled by the justice system (ie whether or not the offence was prosecuted, and what type of sentence imposed) and the wide range of agencies potentially offering restorative justice services locally (including probation, prisons, youth offending teams, neighbourhood justice panels, charities, local mediation services, schools, local authorities, care-homes, housing associations). Therefore the police will need to understand exactly what is available in their area. The RJ provides an online 'Restorative Services Map' which could be a useful sign-posting tool for victims and the police.

We therefore propose that the entitlement to ask for restorative justice where it is available is amended to a right to be informed about the availability of restorative justice locally.

9. Longer term the impact of the Ministry of Justice RJ Action Plan should mean that restorative justice services are available to victims of crime in every area, and at all stages of the CJS. Therefore as RJ capacity improves, we would want to see the duty to inform victims about the availability of restorative justice, to a duty to offer restorative justice, as soon as the capacity to deliver this is exists in every area.

The duty on police to assess the suitability for restorative justice

10. Restorative justice professionals distinguish between a case being 'eligible' for restorative justice and 'suitable' for restorative justice. **Eligibility** can be determined by the service without an assessment of the individual participants. For example, if a service only delivers restorative justice for victims of young offenders then a request for restorative justice from a victim of an adult offender could be considered ineligible without further assessment.

11. Whether a case is '**suitable**' for restorative justice should only be determined by a trained restorative justice facilitator working to national standards (which require detailed preparation and an individual assessment of the risks and practice issues raised by the case).

12. Ministry of Justice policy is for no victim to be ruled out of restorative justice on the grounds of the type of offence.⁸ This is because even where certain types of offence are more likely to raise suitability issues, for example the risk of ongoing harm, the circumstances of each offence, the availability of senior restorative justice facilitators and/or specialist support, can often mean that can be managed appropriately.

⁸ Ministry of Justice (July 2012) *Getting it right for victims and witnesses: the Government response*
<https://consult.justice.gov.uk/digital-communications/victims-witnesses>

13. As highlighted by **Victim Support** in their briefing on the new Code of Practice, crime type is a poor predictor of need – you cannot tell which victims need help without contacting them.⁹ The same applies to restorative justice. Domestic violence between intimate partners is often raised as a category of offence where restorative justice should be considered ineligible. Whilst we agree that this is a specialist area that should not be undertaken by new practitioners or services there are circumstances – for example where the partners no longer live together, and where the request has come from the victim – where the risk of ongoing harm can be managed by senior restorative justice practitioners, who have had specialist domestic violence training. The RJC supports the government’s policy and the importance it gives to the wishes of the individual victim. This highlights the importance of trained restorative justice facilitators being the ones to make the offer of restorative justice to victims of crime.

14. Due to the complexity of determining whether a case is ‘suitable’ (which forms part of the assessment and preparation role of the facilitator) the police should only be required to assess for suitability where they are the service provider. Without adequate training requiring the police to undertake such an assessment risks victims being deemed unsuitable inappropriately and therefore being denied access to services to which they are entitled.

15. Where a restorative service is delivered by a partner agency the police’s duty to ensure that appropriate safeguards are in place (see below) is sufficient to ensure the victim is not re-victimised. The safeguards that are needed to ensure safe and effective restorative practice are set in *RJC Best Practice Guidance for Restorative Practice (2011)* which is endorsed by the Ministry of Justice, NOMS, Victim Support and the Youth Justice Board, among others. The *Best Practice Guidance* covers the necessary assessments for the suitability of a case (for example there are guidance regards whether the case is ‘sensitive or complex’ and therefore requires a senior facilitator and/or specialist support) and acknowledges that risk assessment is an ongoing process throughout restorative justice. These practice standards for individual facilitators form one element of the wider **Restorative Service Standards** being launched in May 2013 (see below).

We therefore propose that the duty on police to assess the suitability for restorative justice is removed – and the separate duty to ensure safeguards are in place is strengthened.

Ensuring that appropriate safeguards are in place

16. The RJC supports the proposed duty on the police to ensure appropriate safeguards in place, but believe the text as it stands is vague and open to numerous interpretations. This duty in the Code can be strengthened and made transparent in the light of the new national Restorative Service Standards, and Restorative Service Quality Mark being launched next month, as per the MoJ Restorative Justice Action Plan commitments.

17. As highlighted above appropriate safeguards are critical to ensuring that victims are not revictimised either by the process of restorative justice or the manner in which it is offered. A

⁹ Victim Support (April 2013) *Code of Practice for Victims of Crime. Victim Support: Position on the Government’s proposals to amend the Code*

recent amendment to the Crime and Courts Bill¹⁰ recognized the importance of this issue by requiring restorative service providers at the pre-sentence stage to have due regard to guidance issued by the Secretary of State. The RJC has been asked to contribute to the Statutory Guidance.

18. As highlighted in our response to *Getting it Right*¹¹, restorative justice training to national standards is the foundation of best practice but it is not in itself enough to ensure safe and effective practice – the role of the whole service is critically important.

19. Only services – rather than individual facilitators - can ensure that the appropriate systems are in place should the lead facilitator not be able to continue the case until its completion. Services must consider the line management, support and ongoing development of restorative justice facilitators which will continue years after their initial training. Services are also responsible for ensuring proper data collection and storage, the proper handling of referrals and complaints (in the first instance).

20. The RJC was tasked by the Ministry of Justice *Restorative Justice Action Plan (November 2012)* with the development of a new set of national standards for service delivery and an accompanying accreditation framework.

21. In March 2013 we published draft national *Restorative Service Standards* for consultation which have been widely supported including by the Restorative Justice Implementation Board (Victim Support, Ministry of Justice, NOMS, ACPO, YJB). The *Restorative Service Standards* cover all the appropriate safeguards needed to ensure victims are not revictimised and their suitability for restorative justice is properly considered. The duty on police can therefore be strengthened by amending ‘ensure appropriate safeguards are in place’ to ‘ensure *RJC Restorative Service Standards* are met’.

22. The Restorative Service Quality Mark (RSQM) is the accreditation for services who meet the Restorative Service Standards. The Victims Code can help raise awareness of the RSQM with victims and service providers by recognising the RSQM as the main way in which agencies can demonstrate they are meeting the national Restorative Service Standards, and victims can be assured of the quality of the restorative justice service they are being offered.

We propose that the duty on police is amended to ‘ensure that the Restorative Justice Council Restorative Service Standards are met’.

We propose that the Victim Code includes recognition of the Restorative Service Quality Mark as the key assurance the Police can look for, that restorative justice is being offered and delivered to national standards.

¹⁰ <http://www.restorativejustice.org.uk/news/crimecourtsbillamend/>

¹¹ Op cit fn 7. Page 7.

Figure 1: RJC Restorative Service Quality Mark



Conclusion

23. The RJC welcomes the revised Victims Code as a key step in ensuring victims who want restorative justice are able to access it where it is available and that appropriate safeguards will be in place. The recommendations we have proposed are intended to strengthen the Code:

- for victims where restorative justice is not available
- to ensure suitability assessments are carried out to national standards
- to be clear how appropriate safeguards can be ensured.

We would welcome the opportunity to discuss our proposals in more detail and look forward to continue working with the government to ensure that victims have access to high quality restorative justice.

Restorative Justice Council

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