

RJC response to Punishment and Reform: Effective Community Sentences consultation paper

Introduction

1. The Restorative Justice Council is the independent charity and membership body for restorative justice in England and Wales. Our members are affiliated organisations, training providers, registered practitioners, and supporters. RJC affiliated organisations provide restorative justice at local level across the country and include police forces, YOTs, probation services, prisons, mediation services and neighbourhood justice panels. We provide the national voice for restorative practice, and quality assurance of training and individual practice.
2. Restorative justice is unique in criminal justice, in reducing re-offending and providing very high levels of victim engagement and satisfaction. Restorative justice holds offenders to account and encourages them to take responsibility, providing them with the motivation to change. It gives victims a say in criminal justice, as the Justice Secretary has said: “Restorative processes can help to turn the justice system from one that does things to victims to one that does things with victims.”¹ We welcome the Government’s strong commitment to expanding the provision of restorative justice at all stages of the criminal justice system.
3. The four main points we make in this response to the Punishment and Reform Consultation Paper are:
 - Pre-sentence restorative justice has been carefully and extensively tested as part of a £7 million research programme representing around half of all the cases in that research. We have a body of evidence and expertise on which to build.
 - Pre-sentence restorative justice provides specific benefits and should be offered alongside post-sentence options within criminal justice.
 - 30 VIPs and hundreds of professionals have called for the Government to legislate for RJ in an online petition on the RJC website.²
 - There has not been a single instance of pre-sentence restorative justice in this country since the research trials closed in 2004. Although pre-sentence restorative justice is technically possible under current legislation, it will not develop without a stronger legislative footing.

¹ HC Deb, 2 February 2012, c1043

² For the full list of signatories see

http://www.restorativejustice.org.uk/news/add_your_voice_to_the_call_for_restorative_justice/

Question 26: How can we establish a better evidence base for pre-sentence restorative justice?

4. The consultation paper outlines the Government's plans to test pre-sentence restorative justice in a number of areas. This builds on the Breaking the Cycle Green paper, which set out a vision for restorative justice:

"We are committed to increasing the range and availability of restorative justice approaches... Firstly, this is likely to involve using restorative approaches as a better alternative to formal criminal justice action. Secondly, in instances where a court case is likely to lead to a fine or community sentence, we will explore how it could best be used at the charging stage. Thirdly, restorative conferences carried out pre-sentence for offenders who admit guilt and who agree to participate, could be reported to the court with the victim's consent as part of pre-sentence reports."³

5. The RJC backs the Government's vision that restorative justice should be available at every stage of the criminal justice system, so that a) it is available to victims as early as possible and b) it can be part of, and motivate offenders to access and engage in, a programme to prevent re-offending, at whatever stage of the criminal justice process they are. The key point we would make in relation to pre-sentence restorative justice is that it is not uncharted territory for criminal justice. Pre-sentence restorative justice with adult offenders convicted of (but not yet sentenced for) serious offences formed half the cases in the 7 year, £7million pilot study of restorative justice evaluated by Professor Joanna Shapland and her team. All the cases at the London site of the Justice Research Consortium trials, facilitated by the Metropolitan Police, took place in the short gap between conviction and sentence without introducing delay into the system. [The Woolf Within](#)⁴ – a film about the case of Peter Woolf and Will Riley, which is now one of the most well known and powerful examples of restorative justice – was a pre-sentence case run by the Metropolitan Police.

Pre-sentence Restorative Justice Case Study from the Ministry of Justice Research Trials

John was robbed by one man whilst another struck him across the face with a knife.

Semu was arrested for the robbery, and agreed to take part in the restorative justice programme. Semu nominated his mother, Achen, and brother, Obrio, as supporters who would attend the conference. John and his wife, Sam, also agreed to take part.

John explained how his life had changed dramatically since the incident. He had suffered from panic attacks, sleeping difficulties and frequent mood swings, and the family had moved to a different area. Semu apologised to John. Sam told Semu how his actions had affected her son, her work and her health. Semu had never before realised the wider impact of his actions. At this point Semu's mother, in tears, apologised to Sam, and Semu's brother described the shame his

³ Page 22, Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders (2010) Ministry of Justice

⁴ Available at http://www.restorativejustice.org.uk/resource/the_woolf_within__peter__wills_story/

family felt following Semu's behaviour.

Semu received a two-year custodial sentence, during which he carried out what he agreed to do at the conference. He took part in regular voluntary drug testing, and completed drug treatment courses. He also followed an educational course, which led to his enrolling on an Access course in psychology and criminology on his release. For John and Sam, the conference helped put the incident in the past. John said 'it did him good being there', and that the conference was helping the healing process. Sam wasn't as worried after the conference, and they both felt strong enough to go back to the scene of the robbery, which they had been unable to do before.

6. Whilst we welcome the Government's commitment to further study, we believe that in that research trial we already have strong evidence that restorative justice works well at the pre-sentence stage, without introducing delay, and has the support of the judiciary.
7. Specific findings in Professor Joanna Shapland's report on pre-sentence restorative justice⁵ were that:
 - Offender participation rates were higher pre-sentence than post-sentence, meaning more victims got access to restorative justice.
 - Victim participation and satisfaction rates were very similar in the pre-sentence cases in London, as in the post-sentence cases in Thames Valley.
 - Victims who were offered restorative justice (pre- and post-sentence, varying from a few weeks after the crime to many months or even years) were asked if restorative justice had been offered at the right time. 72% said that restorative justice had been offered to them 'at about the right time'. 22% said that they felt it should have been offered to them sooner. Almost no victims said that restorative justice had been offered too soon. This shows that one of the key fears about pre-sentence restorative justice – that victims will feel rushed – is not borne out by the evidence.
8. The Metropolitan Police Team running the trial found that:
 - The Judiciary welcomed pre-sentence restorative justice – the reports they received from facilitators gave them additional information on which to make their sentencing decisions. One judge during the trial, upon hearing that a particular restorative justice case was going to be filmed as a training resource, watched the entire film of the restorative conference prior to sentence. "The relationship with the judiciary was excellent. We focussed on [providing] accurate information to [the judiciary to help them] make better and fairer judgements. We found judges enthusiastic for a tool that would allow them to have more information to vary judgements."

Brian Dowling, Metropolitan Police Service RJ Lead, JRC London Restorative Justice Trial

⁵ Shapland, J., Robinson, G. and Sorsby, A. (2011) Restorative justice in practice. London: Routledge.

- The pre-sentence restorative justice trials did not increase delay in court proceedings. The restorative justice teams agreed to complete restorative justice within 28 days and that was adhered to. Although further adjournments were commonly requested for the completion of presentence reports, this was not the case for restorative justice.
- Having full and quick access to data on victims and offenders and probation computer databases was crucial to the avoidance of delay. This can be particularly problematic for providers outside the public sector and for new projects.

Impact on sentencing and legislative precedent in this country

9. There is some evidence that pre-sentence restorative justice led to shorter custodial sentences for the offenders who took part, because they had provided the Court with concrete evidence of their remorse and intention to make amends⁶. The research trial led to two new pieces of case law in relation to pre-sentence restorative justice, both providing a precedent for participation/willingness to participate in restorative justice to be factored in as mitigation⁷. We believe these should form the basis for more specific guidance to sentencers from the Sentencing Council on pre-sentence restorative justice.
10. The Government has indicated that it wishes to turn around the growth in the prison population through more effective interventions. Pre-sentence restorative justice provides an entirely appropriate means by which to reduce the use of custody by providing the Courts with solid evidence of remorse.

Cost-Savings

11. Using Professor Joanna Shapland’s evidence, Victim Support and the Restorative Justice Council have together modelled the cost-savings that could be delivered through pre-sentence restorative justice, both through reductions in re-offending and through reductions in the use and length of custody.⁸

Number of offenders	Number of RJ interventions (40% take up)	Net cashable CJS savings over 2 years	Of which police	Of which Prisons	Of which Legal Aid	Net Cashable NHS savings	Non-cashable net savings
75,000	29,000	£185m	£65m	£56m	£14m	£55m	£741m

Based on modelling by Victim Support and the Restorative Justice Council

⁶ Shapland, J et al (2006) Restorative justice in practice – findings from the second phase of the evaluation of three schemes. full report at http://www.shef.ac.uk/polopoly_fs/1.783!/file/RestorativeJustice2ndReport.pdf.

⁷ Precedent in case law reflects both the impact of participation in RJ on sentence (Regina v. Collins (David) 2003) and the impact of intention to participate in restorative justice on sentence (Regina v. Barci 2003).

⁸ Page 30, Victims’ Justice? What victims and witnesses really want from sentencing (2010) Victim Support

International precedent

12. Restorative justice is offered pre-sentence in a number of jurisdictions internationally, as noted in a recent report for the Criminal Justice Alliance:

“The third distinctive element available in the European jurisdictions is restorative justice (RJ) options which can be used by prosecutors and by courts in a wider variety of cases than in England and Wales. In Germany prosecutors can dismiss charges if the accused makes a serious attempt to reach a mediated agreement with the aggrieved person thereby trying to make reparation for his offence, in full or to a predominant extent. Courts can mitigate or even in minor cases dispense with punishment if the perpetrator has in an effort to achieve mediation with the aggrieved party, completely or substantially made restitution for his act or earnestly strived to make restitution. About half of victim offender mediation cases in Germany relate to a violent offence.”⁹

13. In Northern Ireland, restorative youth conferences take place both as an alternative to prosecution and by order of the court following conviction for an offence.¹⁰ A conference is held with the young person, an appropriate adult, a police officer and the youth conference co-ordinator. A victim attended 70% of conferences in 2010-11 with 100% of victims reporting satisfaction with the process.¹¹ At the conference the participants agree a plan of activities, restrictions and reparation which is submitted to the court for approval, amendment or rejection. The Independent Commission on Youth Crime and Antisocial Behaviour recommended that a youth conferencing service, based on the Northern Ireland model, becomes the centrepiece of responses to offences committed by young people in England and Wales.
14. A similar pre-sentence restorative justice conferencing programme operates for young offenders in New South Wales, Australia. A major evaluation of the scheme, including the views of over 250 victims, found that 72.5% of conferences were attended by victims, 98% of victims agreed, or strongly agreed, that they were given the opportunity to express their views and 89% of victims agreed, or strongly agreed, with the conference outcome plan.¹²
15. For victims of adult offenders pre-sentence restorative justice is provided for in Finland, Norway, France and Catalonia (Spain). New South Wales, Australia has piloted pre-sentence restorative justice in the magistrates’ courts. In New Zealand, the Sentencing Act 2002 obliges sentencers to take into account restorative processes and outcome agreements in determining the appropriate sentence for both adult and young offenders.

⁹ Allen, R. (May 2012) Reducing the use of imprisonment. What can we learn from Europe? Criminal Justice Alliance

¹⁰ Jacobson, J and Gibbs, P. (2009) Making amends: restorative youth justice in Northern Ireland. Prison Reform Trust

¹¹ Youth Justice Agency Annual Report 2010-11

¹² National Commission on Restorative Justice (final report) (2009) available at http://www.restorativejustice.org.uk/resource/national_commission_for_restorative_justice_final_report__ireland/

The need for legislation to further develop pre-sentence restorative justice

16. Pre-sentence restorative justice, although technically possible under existing legislation, has not once taken place since the Metropolitan Police restorative justice trials closed, eight years ago in 2004. It is therefore extremely unlikely to develop further without a clear statutory basis and guidance to sentencers as to how to take restorative justice into consideration in sentencing.
17. Based on the evidence of success from the Government's own research, the lack of any use of pre-sentence restorative justice since the research trials closed, and on international precedent the need for legislation for pre-sentence restorative justice, along with guidance to sentencers, is clear.¹³ Therefore, along with **Victim Support, the Prison Reform Trust and the Criminal Justice Alliance**, we advocate that legislation should be developed under which the court has the option to request that an offer of restorative justice be made to the victim and offender, at the pre-sentence point.
18. The legislation should also make clear that, if the victim and offender are unready but indicate a willingness to participate later on, this information can be used to inform the sentence, with a restorative justice activity requirement being a clearer option within the sentencing framework.
19. The Government has made clear that they are not yet convinced of the need for legislation in relation to restorative justice, and have pointed to the innovations that have been achieved within the existing statutory framework.
20. We would point out that, in ten years, only one area has consistently offered restorative justice post-sentence (Thames Valley Probation) with two more coming on stream recently. Provision of restorative justice, optional as it is in the existing statutory framework, has relied on the enthusiasm of the pioneers which has meant that – for most victims of adult offenders – RJ has not been available to them.
21. Proposed changes to the legislation were initially discussed as the LASPO Bill went through the House of Lords, gathering cross-party support, and a welcome offer from Government to consider the need for legislative reform in more detail through this consultation.

“The fact is that the benefits of restorative justice are now widely accepted, but its role in the criminal justice system is sadly lacking in statutory recognition. It is essential that it now receives this recognition”. **Lord Woolf (Crossbench) HL Deb, 20 March 2012, c813**

“Any or all of these proposals and approaches would help to keep restorative justice in the minds of sentencers and to achieve the Government's aim of ensuring that it becomes a central part of the criminal justice system.” **Lord Dholakia (Liberal Democrat), C815**

“Restorative justice is a relatively new arrival on the criminal justice scene... Although restorative justice is possible, there is no provision in legislation yet, as far as I am aware, that

¹³ HL Deb, 7 February 2012, c217

makes clear in express terms, using the expression "restorative justice", what is the precise, core role of the courts. There are indications that the role can include restorative justice but I respectfully suggest that nothing appears clearly in legislation covering the position now. I hope and believe that the Government have plans, but cases have to be decided day in and day out, up and down the country. The courts look to [legislation]. [Legislation] will be a message to those who are involved in the justice process that restorative justice has come of age." **Lord Woolf (Crossbench) HL Deb, 27 March 2012, c1336.**

"I entirely agree that there can be no real, logical reason for not accepting the amendment"
Baroness Howe of Idlicote (Crossbench) c 1339

"Therefore, my reason for strongly supporting the noble and learned Lord's amendment is that if we get it into the Bill, we will then have something that can be used in the future and cannot be brushed away by some unfortunate event that might lead to public opinion turning against it and putting temporary political pressure on the Government of the day. **Lord Hodgson of Astley Abbotts (Conservative) c1340**

"I hope that the Minister, when she replies, will see the enormous persuasive logic of the case made by the noble and learned Lord, supported as it has been on all sides of the House." **Lord Beecham (Labour) c1341**

"However, if it is not included in this legislation, there is a danger that it will not go in anywhere. In the absence of primary legislation, there is a danger that the Government will have difficulty in implementing the measure." **Baroness Butler-Sloss (Crossbench) c1343**

22. Before deferring legislative support for restorative justice until after this consultation, Baroness Northover, speaking on behalf of the Government, made two substantive points against the need for legislation – that culture change is all that is required to increase the use of restorative justice and that legislation may stifle local innovation.

"[increasing the use of restorative justice] is about supporting a culture change in the mind of practitioners to develop and deliver effective restorative justice practices and building capacity across the system, all of which must be rooted in local need and responsive to local crime and reoffending."¹⁴

23. In response we strongly support the views of the noble Lords that legislation will greatly assist in achieving the required culture change, particularly within the judiciary. It is our view that the scarcity of restorative sentencing options for magistrates exacerbates any concerns they might have towards restorative justice as an out-of-court disposal. Magistrates and judges look very carefully to legislation to instruct their sentencing; the clearest way to ensure that the judiciary considers restorative justice when sentencing is to legislate.

¹⁴ HL Deb, 20 March 2012, c815

24. Without clear direction from Government, both in the form of legislation and guidance, the Courts will always prioritise the need for efficient and speedy justice over the benefits of restorative justice. Unnecessary delay should of course be eliminated from the criminal justice system wherever possible – but the Courts need clear direction from Government that adjournment between conviction and sentence to allow restorative justice to take place - is both worthwhile and welcome.
25. Strengthening the restorative justice options available to the courts will not only assist the Government in promoting restorative justice at all stages of the CJS, but it will ensure more victims get offered RJ. At present victim access to restorative justice is usually withdrawn if an offence is escalated to be dealt with by the courts. In the absence of clear legislation, cultural support for restorative justice will be dependent on the continued support of the Ministers of the day and will not be given the priority required to become a mainstream part of the justice system, particularly in a time of austerity with strong competition from other priorities.
26. In a letter published by The Times newspaper in April 2011, the RJC, with nine partner organisations and thirty prominent people including peers, chief constables, academics and senior criminal justice professionals called on the Government to ensure through legislation that restorative justice is offered to all victims of crime, whenever an offender pleads guilty to their offence and agrees to participate.¹⁵ Hundreds of people have since added their voice this call.¹⁶
27. Given the strong cross-party support for these changes and their purpose, which is to underpin the Government's stated desire and intention to increase the use of restorative justice at all stages of the criminal justice system, we urge the Government to build these or similar clauses into any new criminal justice legislation.

Question 27: What are the benefits and risks of pre-sentence restorative justice?

28. The key benefits have been identified above. The key risks relate to poor practice, for example pressurising victims to take part, or rushing the preparation due to concerns about timeliness. The Government should continue to encourage take-up of Practitioner Accreditation and Registration as a key means to ensure that evidence-based best practice is followed wherever restorative justice is being offered to victims.
29. Offender motivation to participate is often raised as a concern. However, again the evidence shows that offenders' motivation to participate is complex¹⁷ but that a) well-trained facilitators are able to screen out offenders where there is no genuine remorse (therefore risking harm to the victim) and

¹⁵ The letter, with its full list of signatories and supporting organisations, is available at http://www.restorativejustice.org.uk/news/30_prominent_people_across_society_sign_letter_to_the_times_in_support_of_restorative_justice/

¹⁶ See the full list of signatories at http://www.restorativejustice.org.uk/news/add_your_voice_to_the_call_for_restorative_justice/

¹⁷ Shapland, J et al (2007) Restorative Justice: the views of victims. The third report from the evaluation of three schemes. Ministry of Justice Research Series 3/07. London: Ministry of Justice. www.justice.gov.uk/papers/pdfs/Restorative_Justice_Report.pdf.

b) the restorative justice meeting itself often generates a deeper sense of empathy, remorse and motivation to change, leading to reductions in re-offending.

30. As Brian Dowling, who led the Metropolitan Police RJ team delivering pre-sentence RJ, states in his response to this consultation:

“[At the pre-sentence stage] The offender can be motivated by sentence reduction (despite assurances [from the facilitator] that RJ may or may not affect sentence). This is not a bad thing as it creates the motivation for the offender to meet the victim and be exposed to the impact of their crime.”

31. Timeliness is identified in the paper as a concern. As we have highlighted earlier in this response, the experience of the London restorative justice trials was that restorative justice can take place pre-sentence, without introducing delay into the system.¹⁸

“Often we would conference within the Crown Court adjournment but occasionally because of the victim’s schedule [or where the offender was well known and a report was readily available] we needed an additional week or two. This got better as we evolved through the project and we would introduce the expectation of an early conference.” Brian Dowling, Metropolitan Police Service RJ Lead, JRC London Restorative Justice Trial

32. Professor Joanna Shapland states in the final chapter of her recent book *Restorative Justice: lessons from Practice*:

“At what stage should restorative justice be available? Given that victims and offenders who experienced it at each stage of criminal justice all thought that this was the right point for them, whether it was diversionary, pre-sentence, post-sentence or pre-release, there is no reason why it should not be available at each of those stages. However, we would argue that the key stages are pre-sentence and pre-release from prison, because it is at these stages that criminal justice would itself benefit most from the outcomes and process of restorative justice. Pre-sentence restorative justice can create individualised outcome agreements which meet victim needs and also suggest helpful possibilities for sentence.”¹⁹

Question 28: How can we look to mitigate any risk and maximise any benefits of pre-sentence restorative justice?

33. The greatest risk facing pre-sentence restorative justice is that it will continue not to exist in our criminal justice system. The key benefits of pre-sentence restorative justice will only be realised when pre-sentence restorative justice is widely available. The best way to ensure this is through:

a) New legislative provisions, highlighting this as an option to sentencers (see above),

¹⁸ See para 9

¹⁹ Op Cit fn 5

- b) Guidance to sentencers on the kinds of cases where it might be particularly beneficial to request that restorative justice be offered to the victim and offender pre-sentence, for example cases where the offender has pleaded guilty, or where there is any additional evidence of their remorse, and how to take pre-sentence restorative justice into account when sentencing.
 - c) In addition to this, probation areas providing pre-sentence restorative justice (or referring such cases on to external third party providers, such as neighbourhood justice panels or community mediation services) need guidance as to how and what to report back to the courts from the RJ process.
34. The key risks, as outlined above, relate to poor practice, for example lack of risk management, lack of preparation, pressurising victims or offenders to take part. Therefore the best way to mitigate the risks in relation to RJ (at any stage of the criminal justice process) is to ensure high quality training (complying with the RJC Trainers Code of Practice), high quality practice (individual practitioners are Accredited and Registered with RJC) and high quality services (the RJC is working with our members to develop a Restorative Services Quality Mark).

Restorative Justice Post-Sentence

35. The Consultation Paper does not ask any specific questions about the development of post-sentence restorative justice, but outlines the steps that have already been put in place to increase provision of restorative justice in NOMS.
36. The Government has invested in training and the development of guidance materials for NOMS, and restorative justice now features in both the NOMS Commissioning Intentions and the new proposed Victims Code. These will both help to drive the development of restorative justice provision post-sentence.
37. In addition, to support these measures we would also propose:
- a. The need for specific guidance to Governors on the provision of restorative justice in custody. The new NOMS guidance provides very helpful clarity in relation to the types of cases that should be prioritised for restorative justice, and the potential link through victim empathy courses like The Sycamore Tree programme²⁰, SORI²¹, or RESTORE²². Further guidance to Governors is needed in relation to delivery models including the training options for probation and prison officers (and/or volunteers) employed within the prison; the involvement of chaplaincy or chaplaincy volunteers; the involvement of a Third Sector partner working through the prison gates; clear links to Victim Support/the Probation Victim Liaison Unit to ensure data sharing and to enable victim contact; and links to parole.
 - b. We would suggest that the Government could explore the potential for the use of restorative justice pre-release as part of, or alongside, parole decisions. Belgium has one of the most

²⁰ For more information see <http://www.prisonfellowship.org.uk/sycamore-tree.html>

²¹ For more information see <http://www.bps.org.uk/news/using-psychology-change-offenders%E2%80%99-ways>

²² For more information see <http://theforgivenessproject.com/prisons/forgiveness/>

developed prison-based programmes for restorative justice with restorative practitioners in almost every prison. The Belgian system of parole and early release is influenced by the evidence of offenders' efforts to address the harm caused by their offending, particularly to their victims. As such, the use of restorative processes has become an important part of the Belgian prison regime.²³

- c. Specific training and awareness-raising for Probation Areas, Judges and Magistrates on the potential for the use of existing legislation – the CJ Act 2003 – to deliver restorative justice post-sentence in the community. At present the Thames Valley Restorative Justice Service is almost unique in the country in having used the provision in the CJ Act 2003 to make restorative justice a specified activity requirement of a Community Sentence. West Yorkshire Probation has also developed the use of restorative justice post-sentence under this legislation and the London Probation Trust is just starting to do so. We suggest there is a need for further work to raise awareness among both Probation Trusts and sentencers of what is possible under existing legislation, tied in with the roll-out of the NOMS training.
- d. The need for careful preparation, risk assessment and management of safety throughout the process is particularly critical at the post-sentence stage of Criminal Justice, where practitioners are likely to be dealing with significant harm to victims. The importance of practitioners continuing to uphold national standards, e.g. the Ministry of Justice endorsed RJC Best Practice Guidance for Restorative Practice (2011), which is based on the RJC principles, practice experience and the evidence base, cannot be overstated. We therefore recommend that the Government continue to encourage and recommend Practitioner Accreditation and Registration with RJC, whether practitioners are working in the voluntary, statutory or private sector, in order to ensure the safety of all participants in the process and maintain public and commissioner confidence in restorative justice.
- e. Legislative provision might be developed to increase the use of restorative justice post-sentence (specific proposals for both pre- and post-sentence RJ legislative developments follow).

The legislative changes we propose to enable provision of both pre- and post-sentence restorative justice to grow are as follows:

- 38. To signal the Government's seriousness of intent that restorative justice should become a mainstream part of the criminal justice system, we propose that restorative justice be named in the purposes of sentencing.

Insert the following new Clause—

“In section 142(1) of the Criminal Justice Act 2003 (purposes of sentencing) after paragraph (c) insert – “(ca) the achievement of restorative justice,”.”

²³ The European Forum for Restorative Justice provides information on European restorative justice programmes. www.euforumrj.org

39. To increase the use of restorative justice post-sentence, rather than having it listed in the CJ Act 2003 just as an example of how the specified activity requirement could be used, it should be listed as a potential requirement of a community sentence:

“Restorative justice requirement

The Criminal Justice Act 2003 is amended as follows.

In section 177(1) (community orders) after paragraph (j) insert—

“(ja) a restorative justice requirement (as defined by section 212A),”.

After section 212 insert—

“212A Restorative justice requirement

(1) In this Part “restorative justice requirement”, in relation to relevant order, means a requirement that the offender must take part in a process of restorative justice involving him and any person or persons affected by the offence.

(2) A court may not impose a restorative justice requirement unless it is satisfied that arrangements for a process of restorative justice can be, or have been, made in the area where the offender will reside.”

40. In addition to strengthening the legislative base for post-sentence restorative justice, there is also need for legislative provision making clear to sentencers that they can request that restorative justice be offered to the victim and offender pre-sentence:

Remands for a restorative justice process

(1) Where –

(a) a defendant pleads or has pleaded guilty to an offence, and

(b) there is an identifiable victim of that offence,

the court may remand the case in order that the victim shall be offered the opportunity to participate in a process of restorative justice involving the offender and any person or persons affected by the offence.

(2) A court may not remand the case for the purpose specified in subsection (1) unless it is satisfied that arrangements for a process of restorative justice can be or have been made in the area where the offender will reside.

(3) A remand under subsection (1) may be for up to 28 days on bail or, subject to section 4 of the Bail Act 1976, for up to 21 days in custody.

41. We would welcome the opportunity to work with the Government to frame enabling legislation in terms which do not stifle innovation whilst providing clear opportunities for restorative justice pre- and post-sentence, based on an expectation (as framed in the new proposed Victims Code) that capacity for restorative justice will develop and eventually be available for all victims of crime, across England and Wales.

Question 29: Is there more we can do to strengthen and support the role of victims in restorative justice?

42. The Restorative Justice Council welcomes the Government's reform of the Victims' Code and the inclusion of restorative justice within the nine principles underpinning that reform.²⁴ As discussed in detail in our response to the Government's strategy for victims and witnesses, requiring criminal justice agencies to offer restorative justice to victims wherever it is available will be a major step in strengthening the role of victims in restorative justice.²⁵
43. Quality training of restorative justice practitioners and their ongoing practice standards is key to ensuring that victims are supported through the process and that their interests remain central. This is particularly important when the aims, targets and culture of the service providing the restorative justice focus on the needs of the offenders. The Youth Justice Board is working to strengthen the restorative element in referral order panels, which have previously included examples of poor practice for victims.
44. The RJC is seeking to improve restorative justice practice with victims through the development of the RJC Continuing Professional Development Workshop Programme. The CPD Workshop Programme is a series of half-day workshops held in Manchester, Bristol and London throughout 2012. The 'Working with Victims' workshop will help practitioners build the skills needed, not only to engage victims on initial contact and early stages of a restorative process, but also to support victims' journeys throughout the process. The RJC has also invited expressions of interest in working with us to develop a series of How-to Guides which will include a guide aimed at engaging and supporting victims in restorative justice.
45. As highlighted in RJC's response to Getting it right for victims and witnesses, if funding and provision of restorative justice is from offender-focussed organisations, the challenge will be to ensure that the victim is suitably supported and their role kept central within that environment. There is strong evidence that restorative justice benefits victims, not only in terms of their satisfaction with the justice system but also in reducing post-traumatic stress symptoms.²⁶ There is a strong case for some funding for the development of restorative justice services to come from

²⁴ Getting it right for victims and witnesses Consultation paper CP3/2012 (January 2012) Ministry of Justice

²⁵ RJC response to Getting it right for victims and witnesses (April 2012) Restorative Justice Council, available at http://www.restorativejustice.org.uk/assets/_ugc/fetch.php?file=cpe3_rjc_response_to_government_strategy_on_victims_and_witnesses_wpdbn.pdf.

²⁶ Angel, C. (2005) Victims Meet Their Offenders: Testing the Impact of Restorative Justice Conferences on Victims' Post-Traumatic Stress Symptoms, PhD dissertation, University of Pennsylvania.

victims' services, which would encourage the development of innovative practice around the role of victims in restorative justice.

Question 30: Are there existing practices for victim engagement in restorative justice that we can learn from?

46. The evidence is clear that when offered by well trained restorative justice facilitators extremely high levels of victim engagement in restorative justice are possible. The Northern Ireland Youth Conferencing Service, for example, has a victim present in three quarters of all conferences²⁷. However, practice surrounding victim engagement in referral order panels varies enormously; some areas have gone an entire year without ever having a victim present, whereas in one area 90.3% of victims engaged in a direct process.²⁸
47. The answer is built on the RJC Best Practice Guidance for Restorative Practice (2011) and one of its key source materials - Bacon's study of the practice of restorative justice facilitators, including their victim engagement work.²⁹ The research identified three main obstacles to victim engagement in restorative justice: fear (including uncertainty about the benefits of restorative justice, loss of anonymity and anxiety about how the offender might behave), not wanting to do anything which might 'let the offender off', and the views of the victim's family and friends.
48. Key to overcoming these obstacles was the ability of the restorative justice practitioner to build rapport and trust with the victim. The practitioner needs to be able to build the victim's confidence in their ability to deliver a safe process which will meet their needs. The most successful way of doing this is by a face-to-face meeting between the practitioner and the victim; meetings were arranged by phone but facilitators resisted going into too much detail whilst on the phone. The presence at the meeting of the person offering and explaining the process is an important element, as this makes the most of the rapport and trust built during the preparatory meeting. Arranging the venue and timing around the needs of the victim was also important. This is in stark contrast to standard YOT practice where victims are invited by letter to attend a meeting at a set venue and time – giving a clear (if unintended) message that the RJ process is not about them.
49. During the preparation meeting the practitioner needs to listen to the victim to understand their needs and concerns, clearly articulate the benefits of restorative processes in relation to the issues and needs the victim themselves has talked about, address any concerns that have been raised and encourage the victim to visualise what they would like to say to the offender. Video testimonials from people whom the victim can relate to, who have benefitted from restorative processes can also be a powerful tool of engagement. Meeting a friend or a member of the victim's family at the same time is helpful to build a network of support for the victim's choice to engage with the process. These and other key lessons from good victim engagement have informed the RJC Best Practice Guidance (2011) and we should continue to learn from the services and practitioners with

²⁷ Op cit fn 9

²⁸ Restorative Justice Statistics April 05 – March 06, Youth Justice Board

²⁹ Bacon, J. R. (2010) Making progress in restorative justice: a qualitative study University of Cambridge. Available at http://www.restorativejustice.org.uk/resource/making_progress_in_restorative_justice_a_qualitative_study/

the highest rates of victim participation and satisfaction with the process.

Conclusion

50. The RJC welcomes the Government's strong commitment to expanding the provision of restorative justice at all stages of the Criminal Justice System. In order to realise the Government's vision for restorative justice we support the following:

- The enactment of legislation to support the provision of pre-sentence restorative justice.
- Post-sentence restorative justice to be placed on a stronger statutory footing
- Guidance for sentencers and parole officers on how restorative justice may be taken into account in their decisions.

51. We repeat the call made in our response to the Getting it right for victims and witnesses consultation for the government to ensure high quality restorative justice and strengthen the role of the victim in restorative justice by:

- Revising the principle in the Victims Code to require criminal justice agencies to offer restorative justice to victims, where the service is available locally
- Including victim needs in the commissioning framework that recognise the full benefits that victims say are provided by restorative justice
- Requiring local commissioners of restorative justice training to commission restorative justice training only from RJC registered trainers
- Ensuring local commissioners are aware of national standards of restorative practice and promoting practitioner Accreditation and Registration with the RJC as the best means to assure these are being met and maintained in the longer term
- Investing in the development and piloting of the Restorative Service Quality Mark

52. We look forward to continuing to work with the Government, and all RJC members, to make the case for good restorative justice practice, to develop practitioner accreditation and registration and to build capacity and the legislative and policy framework, to realise our vision - that every person harmed by crime and conflict should have access to a restorative process.

Restorative Justice Council

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