

Improving victim take-up of restorative justice

A Restorative Justice Council research report



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About the Restorative Justice Council

The Restorative Justice Council (RJC) is the independent third sector membership body for the field of restorative practice. It provides quality assurance and a national voice advocating the widespread use of all forms of restorative practice, including restorative justice. The RJC's vision is of a society where high quality restorative practice is available to all. The RJC's role is to set and champion clear standards for restorative practice. It ensures quality and supports those in the field to build on their capacity and accessibility. At the same time, the RJC raises public awareness and confidence in restorative processes. The ultimate aim of the RJC is to drive take-up and to enable safe, high quality restorative practice to develop and thrive.

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Foreword

Jon Collins
Chief Executive
Restorative Justice Council



In recent years, there has been significant support for restorative justice from the Ministry of Justice. Among other measures, funding was provided to police and crime commissioners (PCCs) to enable them to make restorative justice available to victims of crime in their areas. New restorative justice services, funded by PCCs, have consequently emerged.

Despite the progress that has been made, however, there are concerns that not enough victims are currently being offered restorative justice, with the Crime Survey for England and Wales finding that in 2015-16 only 4.2% of victims of crime where the offender was known to the police recall being offered restorative justice. In addition, not enough of those who are offered it appear to be choosing to participate. This is despite the well-evidenced benefits of restorative justice for victims of crime.

Responding to these concerns, the Restorative Justice Council (RJC), with the support of the Ministry of Justice, has carried out a programme of work to explore the barriers to victims participating in restorative justice and what can be done to address them. To do this, we have spoken to practitioners, service managers and victims themselves, both those who had taken part in restorative justice and those who had chosen not to do so. On behalf of the RJC, I would like to thank them all for agreeing to contribute to the project.

This report is the result of that research and sets out the key findings, as well as making recommendations that would help to increase the number of victims participating in restorative justice. It is not intended to provide a comprehensive guide to running a service, nor is it best practice guidance. It is, however, intended to help those in the field consider what steps they can take to increase the number of victims agreeing to take part in restorative justice.

We are now at a crucial stage in the development of restorative justice in England and Wales. The evidence indisputably shows that restorative justice works. Significant steps forward have undoubtedly been taken in increasing its availability. But all those of us working in the field need to show that we can make it work in practice and to do this we have to ensure that victims are given every opportunity to take part.

The new ministerial team at the Ministry of Justice are rightly focused on ensuring that victims' services funding, of which funding for restorative justice is part, is used effectively and has a real impact. PCCs who have invested in restorative justice are similarly keen to see evidence that the services they have funded have made a difference. Ensuring that sufficient victims choose to take part will be part of demonstrating that they have. With these aims in mind, this report is intended to help services to better engage with victims and support them to participate in restorative justice.

Executive summary



Context and background

Restorative justice brings those harmed by crime or conflict and those responsible for the harm into communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way forward.¹ There are multiple points in the criminal justice system where the process can be applied, from out of court disposals, through to the pre- and post-sentence stages.

Despite there being significant evidence of the benefits it can bring, the number of completed restorative justice activities remains lower than hoped. This study explores the barriers to take-up rates and discusses solutions which can address those barriers.

Summary of existing evidence

Previous literature suggests that barriers exist in the earlier stages of the process, with most attrition occurring before victim and offender consent to take part. There are challenges in restorative providers being able to obtain a flow of cases. Access to information is a persistent issue which hampers the ability to identify cases and contact victims and offenders.

Awareness of restorative justice is also identified by some as a barrier to victims taking part, but whether increasing awareness among the general population will positively increase take-up rates is still unknown. Criminal justice agencies are essential to the delivery of restorative justice, however, and as a result it may instead be more beneficial to focus resources on increasing awareness areas among their staff.

Making the offer of restorative justice requires skill, knowledge and experience of the process and is likely best left to trained facilitators, but this relies on the resources to access potential participants in the first place. Generally, although not always, once victim and offender consent has been obtained a completed restorative activity will result.

¹ For the purposes of this document the term restorative justice refers to the dialogue between the victim and offender, which is the basis of the definition used by the RJC and the Ministry of Justice. This differs from the term proxy restorative approaches which refers to contact between victims and offenders but not specifically from the same offence.

Approach and methodology

Building on a review of the existing literature on this issue, this study is of a qualitative nature and draws on interview data. The data was collected from two groups – first, practitioners, managers and commissioners from the restorative field, and second, victims who had taken part in restorative justice and those who were offered it and declined. The ultimate aim of the study was to identify the barriers to take-up rates and practical solutions which could potentially increase take-up rates.

Summary of the findings

Service design

As restorative justice services have developed, funded by PCCs, different models have emerged, frequently with specific restrictions around the cases that they can take. These include the stage of the justice system that they work at, whether they can take offender-initiated or only victim-initiated cases, and exclusions around particular offence types, particularly domestic and sexual violence. Short contracts also mean that services lack stability.

These restrictions may hinder services' ability to maximise the number of in-scope cases and therefore make restorative justice available to all victims of crime. In order to increase the opportunities to deliver restorative justice, services should therefore be freed from restrictions that limit the cases which are deemed in-scope. This would see more victims taking part in restorative justice and avoid situations where victims want to take part but are unable to do so.

Case flow

Key to ensuring that victims are able to take part in restorative justice are the ways in which cases are identified by the restorative justice service provider. In general, these can involve case extraction, whereby potential cases are identified from administrative data, referrals from partner agencies and self-referrals from victims themselves. Services that rely on referrals alone have, however, struggled to obtain sufficient cases, due to other pressures on referring agencies' time and resources and their lack of understanding of restorative justice and its potential benefits.

Overall, practitioners and managers thought that the best way to ensure a flow of cases is for the restorative justice provider to have direct access to case information in order to extract cases and proactively offer restorative justice. This should, however, be accompanied by mechanisms to allow victims to self-refer and to enable other relevant professionals to refer suitable cases, where the victim has not yet been offered restorative justice.

Partnership working

Whichever case flow pathways are adopted, working in partnership with key agencies in the criminal justice system was seen as essential – restorative justice providers that achieved higher numbers of restorative outcomes in comparison to others in this study stated that partnership working was key to their success. Many of those interviewed said, however, that local partnerships are not working as effectively as they should.

This impacts on the information being provided to victims on restorative justice. It also leads to criminal justice agencies being reluctant to refer people to take part in restorative justice.

Effective partnership working – whether achieved through virtual co-working, co-location or secondments – was reported to have brought benefits in the form of easing access to information, raising awareness, increasing support for restorative justice and securing the buy-in of gatekeepers. Essential to partnership working, however, is clear agreement on the responsibilities of all partners and support at a senior level.

Information sharing

Effective information sharing is at the heart of good restorative justice delivery, both in terms of accessing victim and offender contact details in the first place and in obtaining risk information and the specifics of the case as the restorative justice process develops. Challenges in information sharing can prevent a restorative justice service from functioning effectively.

The main barrier to take-up is that of restorative justice providers being unable to access participants' information in order to initiate contact. The Code of Practice for Victims of Crime states that unless victims opt out, their details should be passed by the police to the local restorative justice provider. Restorative facilitators could then contact the victim to offer them restorative justice. It appears, though, that this is not yet routinely happening and greater clarity is required on how to practically apply the provisions of the Code.

Overall, the practitioners and managers who took part in this research thought that the best way to overcome the barrier of information sharing was to provide restorative services with direct access to the information required. This would rely on information sharing agreements being in place and staff passing the necessary vetting checks.

Public awareness of restorative justice

It was argued by many of the practitioners, managers and victims interviewed that raising awareness of restorative justice among the general public would increase take-up rates. There is, however, little evidence to support this. Of the victims interviewed only two had heard of restorative justice before becoming a victim. Both went on to complete a restorative meeting with their offender, but neither came about as a result of their pre-existing awareness. Higher levels of public awareness could, however, lead to more self-referrals and it may be that people who have a pre-existing but misinformed view of restorative justice are deterred from taking part. Local and national promotional work could address this.

Victim and professional awareness

Raising awareness of restorative justice is arguably more significant at the point at which people become a victim of crime. Raising awareness with victims often initially falls to the police, as the agency that makes initial contact with victims. Throughout the system, there are then further points where awareness of restorative justice could be raised. Where there is a lack of buy-in or understanding from the relevant agencies, however, or key agencies are overloaded with other demands, information on the benefits of restorative justice may not be provided or may be inadequate.

There is, therefore, a need to raise awareness and knowledge of restorative justice among the key professionals who are responsible for telling victims about it for the first time. Systems also need to be put in place to ensure that they do so. In addition to having systems compelling key agencies to provide information on restorative justice, however, it is important that they understand and support the reasons for doing so. To achieve this, support from senior leaders in relevant agencies, and particularly the police, is crucial.

Enabling key professionals to observe restorative justice in action can help to achieve this and identifying restorative justice ‘champions’ in key agencies can also be beneficial. Awareness raising sessions for professionals can also have an impact, if appropriately targeted. Generating support for restorative justice in key agencies can be achieved by demonstrating tangible benefits to those organisations, while key agencies may also be incentivised to identify suitable cases for restorative justice using targets, as long as checks and balances are in place to ensure that inappropriate offers are not made simply to make up the numbers.

The offer of restorative justice

The point at which restorative justice is actually offered to a victim is a key point of engagement. Practitioners and managers interviewed for this study felt strongly that the person who makes the offer should be a trained restorative justice facilitator, with the knowledge, understanding and experience of restorative justice to explain it properly to the victim and answer their questions.

In making the offer, developing the trust of victims is important, as is exploring the victim’s needs with them to help them to decide whether restorative justice is the right choice. A personalised approach is important, and, ideally, face to face meetings should be conducted with the victim. As much detail as possible should be provided. It should be made clear that the process is voluntary, free and confidential and reassurance should be provided about safety. It was also suggested that the term restorative justice can be a barrier to engagement, so in initial conversations the focus should instead be on the process and how it is delivered.

Engaging offenders

For victims to take part in restorative justice, it is necessary for the offender to also agree to participate. There were, however, very few offender-specific barriers put forward by practitioners and managers. The prevailing view was that offenders are easier to engage. Barriers to offender engagement that were highlighted included a lack of acceptance of guilt or of the harm caused by offending, mental health problems and problematic use of drugs and alcohol, and low levels of emotional literacy.

Facilitator skill, supervision and support

Facilitators must have the right training, skills, supervision and support in order to be effective in engaging with victims. High quality initial training, which includes victim engagement skills, is essential, but training is only the first step to becoming a facilitator and further support and development is required to enable practitioners to develop their skills. Peer networking events for practitioners could also help with this. Providing supervision and support for staff from other key organisations which are responsible for providing information about restorative justice and offering the intervention could also help to increase take-up rates by ensuring that a quality service is offered.

Peer support

Victims and offenders who have taken part in restorative justice could play a vital role in raising awareness of restorative justice and, arguably more importantly, as peer mentors who could meet with potential participants and provide them with support, advice and guidance. Victim and offender fear was raised as a barrier to take-up rates by practitioners and victims who chose not to do restorative justice. Facilitating contact between potential and actual participants could, therefore, be a way to allay concerns and correct misperceptions. This could encourage victims to engage initially and to continue with the process.

Out of court disposals

Out of court disposals which contain restorative justice can be delivered by the police, by an external agency or by a combination of both, and present a good opportunity to use restorative justice with offences of a less serious nature. It is, however, important to ensure that restorative justice is only used in appropriate cases and that victims and offenders have a proper understanding of what is involved. Concerns were also expressed about level one restorative justice, or 'street restorative justice', being used inappropriately for expedient reasons.

Where the restorative justice element of the out of court disposal is delivered by the police, there was an unease among police officers about the voluntary nature of the process and the informal nature of outcome agreements. Where cases are referred to an external organisation for delivery, it was raised by some that the referring officer had decided that restorative justice was suitable, despite not being a trained facilitator or having done any preparation work with victim and offender. This could lead to unsuitable cases being referred.

To address these challenges, restorative justice facilitators can brief the police on what restorative justice is, when to refer and how best to work with victims. Clear guidelines on referrals may be beneficial. It was also considered helpful to have single points of contact within the police and regular meetings to remove barriers to delivery.

Pre-sentence restorative justice

There are some barriers to the delivery of restorative justice which are specific to the pre-sentence arena. First, there are misconceptions that successful completion of a restorative justice activity in the pre-sentence stage automatically reduces the sentence given. This can be a deterrent to participation. Second, getting access to accurate information on case progression from the courts can be challenging. Third, pressure on courts to handle cases more quickly means that pausing cases to allow restorative justice to take place is increasingly difficult.

Relationships with the police, the Crown Prosecution Service (CPS), defence representatives and the judiciary are key to reducing and removing the barriers to delivery of pre-sentence restorative justice. Observing the progression of cases as they move from charge to plea hearings is also essential, as is monitoring any changes in plea. Timely access to case information and tracking cases can enable this to happen. A particular opportunity for restorative justice to take place can be when the offender pleads guilty in the Magistrates' Court and the case is then sent to the Crown Court for sentencing. This creates a delay in the process that may provide a window for restorative justice to take place.

Ideally, however, pre-sentence restorative justice services are part of a wider model of delivery, so that if cases cannot be delivered in the pre-sentence stage they can be carried over into the post-sentence stage.

Working in prisons

While some practitioners reported having had very positive experiences of working in prisons, others found a number of challenges. The barriers identified were accessing prisons and prisoners, relocation of prisoners and gatekeepers within the prison. It was thought that over the last few years the resources available to support delivery of restorative justice in prisons had decreased. This had delayed some cases to the point where victims withdrew from the process.

In addition, relocation of prisoners presented a barrier because the offender may be moved from a local prison to another many miles away. Practitioners and managers reported that some prison staff were unsupportive of restorative justice and this posed a barrier to the process. Victims may also be denied access to prisons following risk assessments.

Nonetheless, prison can be an opportune time to work therapeutically with offenders to help them move to a place where they can better engage with restorative justice. Prisoner engagement in victim awareness courses and proxy restorative approaches can also be a precursor to restorative justice between the victim and their offender. When restorative justice does take place while an offender is in custody, however, the RJC's previous work has shown that victims may need additional support in going into a prison, something that will be entirely alien to many of them. This should include help with transport and other practical issues, advice on how prisons operate, and potentially a preparatory meeting. This will make the victim more comfortable and therefore less likely to drop out.

Offences taken into consideration (TIC)

TIC offences are also an opportunity to achieve restorative justice outcomes. They provide the additional benefit of offering a service to victims who may otherwise miss out on the opportunities that the criminal justice system offers, had the offence been detected and pursued in the traditional manner. TIC cases are offender-initiated, but people who work with victims thought that as long as the victim was handled sensitively and participation was voluntary this did not pose a problem.

Unknown offenders, not guilty pleas or no conviction

The fact that there is only a known offender in a minority of cases is clearly a barrier to delivering restorative justice – the majority of victims will simply never have a chance to participate. Where there is an identified offender, however, but they plead not guilty there may still be opportunities for a restorative justice process if the offender later admits guilt, or at least the harm caused. Prisons, probation and Community Rehabilitation Companies (CRCs) are best placed to notify restorative justice providers of admissions of guilt and – ideally – provide details of the case and any information they have on the victim. The restorative justice service can then consider the best way of contacting the victim to discuss their needs and whether they are interested in a restorative activity.

Measuring outcomes

While most services measure the number of completed restorative outcomes and levels of satisfaction, there are broader positive outcomes that can be achieved throughout the restorative justice process, even where it does not lead to a conference or indirect process. Not all services, however, record these wider outcomes. This is a missed opportunity and assessment tools are required which accurately measure the benefits of restorative justice throughout each stage of the process.

Conclusion

The benefits of restorative justice for victims of crime are well known and well evidenced. Yet not enough victims are currently taking part. The barriers to them doing so are, however, multifaceted and there is more than one point of attrition.

It is important to recognise that restorative justice is a process that does not operate in isolation. It is part of wider criminal justice processes and procedures, and can be influenced by professionals, all of which can have a significant impact upon its delivery, both positive and negative. Service design can restrict the remit of restorative providers, while establishing a flow of cases requires obtaining the information necessary to begin to have a conversation about restorative justice with victims and offenders. Compounding these issues is a lack of general awareness and professional awareness. Support for restorative justice across key agencies who are essential to the process is vital but is not always forthcoming.

Where contact is made with the victim by a restorative justice service, the offer is key and it should be made by a trained facilitator. They have the skills, knowledge and experience to manage the barriers to engagement. The logistics of organising a restorative process then need to be addressed. For offenders who are incarcerated, prisons have a valuable role to play in the smooth delivery of a completed outcome. Offenders residing in the community can prove difficult to contact and engage.

If restorative justice is to achieve higher volumes of completed activities then these barriers need to be overcome. Solutions lie in removing offence-specific exclusions, increasing the points in the criminal justice system where service providers can deliver restorative justice, and greater awareness among the general public and – more importantly – among key agencies within the criminal justice system. Those key agencies must facilitate an environment which is favourable to restorative justice, by supporting the process, increasing and improving the flow of cases and information and providing restorative justice services with the opportunity to do what they have been commissioned to do. Partnership working is key and the impetus to do this at the frontline must be supported and championed by those at the top.

If these steps are taken, then current challenges in enabling victims to access restorative justice can be overcome. Then victims will be able to benefit from a process that is known to help them recover from crime and move on.

Recommendations

Service design

1. Restorative justice services, and their funders, should be clear about whether they can accept both offender and victim referrals, to remove ambiguity.
2. Wherever possible, restorative justice services should remove access restrictions based on whether a case is initiated by the victim or offender (or the agencies working with them) to maximise the number of eligible cases to work with.
3. There must be continuity in restorative justice provision through the justice system (especially in pre- and post-sentence provision) so that a victim can develop a relationship with a service while they consider and prepare for restorative justice. Where there are multiple providers, clear protocols must be put in place to ensure continuity in provision for service users.
4. Offence-specific exclusions from access to restorative justice services should be removed, as they breach the Code of Practice for Victims of Crime.
5. Co-commissioning services across criminal justice agencies and statutory and non-statutory services should be considered, as it can reduce the duplication of work, increase partnership working and broaden the scope of delivery of restorative justice.
6. Restorative justice services must also be given adequate time to develop and short-term contracts can prevent this. A minimum three-year contract was suggested as a way to combat this issue.

Case flow

7. Where resources allow, services should use a case extraction model, with access to police and court data on offences, offenders and victims. Case extraction can be conducted by non-restorative justice trained staff or volunteers, where necessary.
8. This should be supplemented by clear and well-advertised mechanisms to enable relevant professionals to refer cases to the restorative justice service and to enable victims to self-refer.
9. Monitoring mechanisms need to be put in place to ensure that the same cases are not identified through both extraction and referral, leading to multiple offers to the same victim.

Partnership working

10. Where there is not an existing restorative justice partnership, restorative justice services should work with the PCC in their area to establish local partnerships that involve key local agencies which have a role in the delivery of restorative justice.
11. A lead from each of the relevant agencies in the area should be identified as the point of contact for that organisation on all restorative justice issues.

Information sharing

12. Each PCC area should put in place an information sharing agreement (ISA) between relevant agencies to enable the sharing of the information necessary for restorative justice delivery. The PCC's office should manage this ISA and require all commissioned services to sign up to it as part of the contracting process, while also encouraging other partners to do so.
13. Restorative justice services should work with the police and the PCC to explore how the requirements of the Code of Practice for Victims of Crime around sharing victims' information can best be enacted, with the aim of ensuring that services have access to all available victim information.

Public awareness of restorative justice

14. While there would be benefits to higher levels of public awareness, practitioners should not place too great an emphasis on the need for public awareness in order to increase take-up.
15. In order to counter negative preconceptions, restorative justice service providers should, however, consider what targeted work they can do locally to ensure that restorative justice is presented fairly and accurately in local media and by local influencers.
16. At the local level, PCCs and their deputies, who often have a high profile in the local media, can play an important role in raising awareness of restorative justice and the availability of local restorative justice services.
17. Restorative justice service providers should consider using case studies as a way of obtaining positive media coverage for restorative justice. Appropriate support must be given to the participants and advice on this can be obtained from the RJC, where needed.

Victim and professional awareness

18. Restorative justice service providers should offer restorative justice awareness training to the police and other local agencies that will come into contact with victims of crime on an ongoing basis (to take account of the turnover of staff). The sessions should highlight the benefits of restorative justice to the organisation receiving the training.
19. Restorative justice service providers should provide resources for agencies they provide training to that can be passed on to victims about restorative justice and how to access it.
20. Restorative justice service providers should work with the police to encourage them to put systems in place to ensure that they provide information about restorative justice and how to access it to all victims (in line with the requirements of the Code of Practice for Victims of Crime). This information for victims should be provided by the restorative justice service provider.
21. Restorative justice service providers should look to develop strong working relationships with local senior leaders in relevant agencies (for example, chief constables) in order to garner senior support for restorative justice.

22. Restorative justice service providers should work with the police and the local PCC to consider how the police can be incentivised, potentially using targets, to ensure that victims are provided with information about restorative justice.
23. Ways of recording how often information about restorative justice is being offered to victims by the relevant agencies, and how often it is accepted, should be developed. This information should then be reported back to the restorative justice service provider.
24. Restorative justice service providers should consider recruiting restorative justice ‘champions’ from key partner organisations. Their role would be to promote the use of restorative justice with colleagues.
25. Seeing restorative justice ‘in action’ can be very effective in securing buy-in from key local stakeholders. Restorative justice service providers should enable these individuals to observe a restorative justice conference.

The offer of restorative justice

26. The offer of restorative justice should be made by a trained facilitator, wherever possible, and ideally in a face to face meeting, where resources and circumstances allow.
27. Contact prior to a meeting should be geared towards securing that meeting. Discussion about the restorative justice process prior to the meeting should be minimised and letters should be kept short.
28. The term ‘restorative justice’ can be off-putting to some potential participants and criminal justice jargon can be confusing. Practitioners should explain the process clearly and simply, without resorting to labels or jargon. It can be beneficial to describe the process before giving it a label.
29. A decision on whether restorative justice is appropriate for a particular victim or offender should be made by a trained restorative justice facilitator following consultation with criminal justice professionals with full knowledge of the case.

Engaging offenders

30. Where offenders do not accept the harm caused by their offending, undergoing victim awareness work may help to prepare them for taking part in restorative justice.
31. If an offender’s drug or alcohol problems are deemed to be too severe for restorative justice to take place, the case should be revisited as the offender moves through the justice system and accesses treatment.

Facilitator skill, supervision and support

32. Restorative justice facilitation training should have a greater focus on victim engagement and the skills required to explain the process to victims.
33. Newly-trained facilitators should be supported and mentored by more experienced colleagues when first offering restorative justice to victims.

34. Restorative justice service providers should consider how they can provide support to staff from other agencies who are responsible for providing information on restorative justice.
35. Any restorative justice facilitator who works with sensitive and complex offences such as sexual violence, domestic abuse and murder must be appropriately trained and experienced.
36. Restorative justice service providers should create peer networks to enable their practitioners to share their experiences, knowledge and learning with their peers from other services.

Peer support

37. Restorative justice service providers should identify potential mentors from the victims who they work with and invite them to consider supporting others to take part in restorative justice.
38. Restorative justice service providers should 'match' mentors with victims who are considering taking part in restorative justice, where victims feel this would be beneficial.
39. Restorative justice service providers should provide practical and emotional support to mentors in engaging with victims.

Out of court disposals

40. Where restorative justice as part of an out of court disposal is delivered by an external provider on behalf of the police, clear guidance on which cases are suitable for referral should be provided to the police.
41. The restorative justice service provider should also conduct awareness-raising training with the police to ensure they understand the process that people are to be referred to.
42. Where police and police community support officers (PCSOs) are delivering restorative justice as part of out of court disposals, they must be properly trained and supervised, with a particular focus on ensuring that they are properly trained in working with victims.

Pre-sentence restorative justice

43. Restorative justice service providers should work with the judiciary, CPS and defence representatives to embed restorative justice at the pre-sentence stage.
44. Restorative justice service providers should work with court staff to develop processes that enable timely access to information about cases.
45. Restorative justice service providers should work with Magistrates' Courts in their area to develop systems to identify cases that are sent to the Crown Court for sentencing following a guilty plea.
46. When offering pre-sentence restorative justice, facilitators should ensure that victims are provided with clear, accurate information on the impact that participation will have on sentencing.

Working in prisons

47. Restorative justice service providers should develop links with their local prisons to enable them to work easily with offenders held in the prison where necessary.
48. Restorative justice service providers should work with their local prisons to develop a mechanism so that if a prisoner is moved while a restorative justice process is underway, they are informed at the earliest possible opportunity.
49. Restorative justice service providers should conduct awareness-raising training with prison staff to ensure they understand the process that prisoners are taking part in.
50. Restorative justice service providers should provide prisons with information to distribute about restorative justice to every prisoner on induction and at the end of victim awareness programmes.
51. Where possible, restorative justice facilitators should be vetted and hold keys for the prison so that they can access prisons to meet with prisoners quickly and easily.
52. When a victim wants to take part in restorative justice while their offender is in custody, the restorative justice service provider should ensure that the victim is familiarised with the prison environment, including a preparatory visit to the prison where possible.
53. Practical information and advice should be provided to victims who are going to go into a prison – for example on parking, entry procedures and what they can and cannot take with them.

Offences taken into consideration (TIC)

54. Restorative justice service providers should develop systems with their local police service and courts to ensure that they receive details of TIC cases in order to identify opportunities for restorative justice to take place.

Unknown offenders, not guilty pleas or no conviction

55. Restorative justice service providers should set up systems with other criminal justice agencies so they are informed about offenders who have initially pled not guilty but later admit guilt.
56. Restorative justice service providers should work with prisons and CRCs to identify offenders who have accessed victim awareness courses and might therefore be interested in taking part in restorative justice.

Measuring outcomes

57. Restorative justice service providers should ensure that in recording their outcomes they include the full range of positive benefits of their work and not just completed restorative justice processes.
58. Commissioners of restorative justice services should recognise the full range of positive outcomes that can result from restorative justice, rather than focusing solely on completed processes.

1.

Context and background



Restorative justice brings those harmed by crime or conflict and those responsible for the harm into communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way forward. This communication can be direct, through a face to face meeting, or indirect, through letters or messages being passed between the victim and the offender by a trained facilitator. At a minimum it must involve the victim and offender involved in the same crime², and can also include other people outside of those directly responsible or affected by the offence – for example, family members and the wider community.

Restorative justice can take place at any stage of the adult criminal justice system. It can form part of a police out of court disposal such as a community resolution or conditional caution, or can be used with offences that are charged to court at the pre-sentence stage and at the post-sentence stage. It can take place either in the community or when the offender is in custody.

The core conditions for delivering restorative justice are a known offender and victim, offender acceptance of responsibility and voluntary engagement from all parties. Following significant Ministry of Justice funding allocated to PCCs in 2013 for the provision of restorative justice, the volume of restorative justice processes taking place was expected to increase. A recurring theme across the field, however, is that many of the schemes established in England and Wales appear to have underperformed and numbers of completed restorative justice activities have remained disappointingly low (Kirby and Jacobson, 2015).

There is currently a lack of research into the specific factors that affect engagement in restorative justice and little guidance on how to improve take-up rates and increase the number of restorative justice activities. This research study, then, aims to identify the causes of low take-up, and develop practical recommendations for stakeholders across England and Wales to improve take-up.

² Restorative justice should not be confused with proxy restorative approaches, which involve dialogue between victims and offenders who have not been involved in the same offence. This approach is also used in victim awareness courses operating in prisons, which are often incorrectly referred to as restorative justice.

In order to better understand the scale, nature and causes of the problem and to make recommendations for change, the following methodology was adopted:

1. a review of the existing evidence base. This includes literature which mainly originates from the UK and was published within the last 10 years and data from a variety of adult restorative justice schemes
2. interviews with frontline practitioners delivering restorative justice with adult victims and/or offenders, and managers and commissioners of restorative justice services
3. interviews with adult victims – those who chose to take part in restorative justice and those who did not

The next section summarises the relevant existing evidence, while the subsequent sections set out the methodology for and results of the qualitative research conducted for this project.

2.

Summary of existing evidence



2.1 Rates of restorative justice activities

There is no centralised national record of completed restorative justice activities. Nor is it possible to calculate a comparative figure of expected number of completed restorative justice activities because services vary widely in their scope and delivery method. It is still helpful, however, to examine existing local data on rates of attrition and completed numbers of restorative activities.

In a review of the impact of restorative justice conferencing in 63 empirical studies across five countries, Coates, Umbreit and Vos (2002) note that 40-60% of victims declined the offer of restorative justice.

The pre-sentence pathfinder evaluation by Kirby and Jacobson (2015) covered nine Crown Court sites in the UK and ran for one year. Of the 2,273 cases that were in scope, it was possible to make contact with 1,201 victims (with the remainder not being available or responding in the timeframe). From that group, 446 of the victims were interested in restorative justice. Only 179 of those cases resulted in a guilty plea. The end result was a final figure of 93 restorative justice activities, which includes both direct and indirect interventions. (It is worth noting that the data does not represent all of the restorative justice activities completed as some were on-going at the point of evaluation.)

Wigzell and Hough (2015) report that in the 27-month NOMS restorative justice capacity-building programme which aimed to develop restorative justice in probation and prisons only 153 of the 2,643 cases went to conference. This amounts to 6%. Alternative restorative activities were also completed in a further 230 cases (9%), although some do not fit with the definition of restorative justice as set out in section 1, namely that there must be communication between direct victim and offender. The reasons given that more cases did not result in a restorative justice process included instability and de-prioritisation caused by wider criminal justice reforms, problems with case flow mechanisms and other demands on facilitators' time (with most also working in other, full-time roles).

Hallam (2015) evaluated a year-long pilot scheme of victim-led restorative justice at post-sentencing level in the UK. Only 24 referrals were processed and eight conferences took place with a further three planned.

Finally, the Shapland (2004) report evaluated three UK schemes, some of which worked with both adults and young people.

1. CONNECT – this was a partnership between NACRO and Probation delivering direct and indirect restorative justice with adult offenders at the pre- and post-sentence stage in Magistrates' Courts.
2. Justice Research Consortium (JRC) – there were three sites in London, Northumbria and Thames Valley. All only delivered direct restorative justice with the following groups:
 - London – adult offenders initially at Magistrates' Courts, later extended to five Crown Courts.
 - Northumbria – adult offenders in the pre-sentence stage at Crown Court and adults receiving a caution.
 - Thames Valley – adult offenders suggested for or given a community sentence and prisoners near to release.
3. Remedi – delivered mediation and restorative justice focused on criminal justice cases with adult offenders at several different stages of the criminal justice system.

After the first 12 months the sites reported the following figures (for the purposes of this report the data relating to young people and conferences which did not involve the direct victim have been removed):

- CONNECT – 59 referrals resulting in 12 restorative justice activities.
- JRC – in total there were 832 referrals resulting in 122 conferences. The figures for individual sites were:
 - London – 271 referrals resulting in 51 conferences.
 - Northumbria – 187 referrals resulting in 30 conferences.
 - Thames Valley – 374 referrals resulting in 41 conferences.
- Remedi – 485 referrals and 12 completed restorative justice or mediation activities.

Given the variety in the schemes above direct comparison is not possible, but what is evident is that engagement in restorative justice varies wildly. It is therefore difficult to establish the outputs which should be expected. It could be argued, however, that numbers of restorative justice interventions should be higher.

2.2 Points of attrition

Restorative justice is a process, and most cases are lost during the early stages, although it should be noted that there are variations according to the stage of the criminal justice system and type of offence. Generally, once victim and offender have consented the majority of cases proceed to a restorative justice activity.

Points of attrition have been reported as:

- Inability to contact participants. In the pre-sentence pathfinder evaluation 47% of victims of in-scope cases could not be contacted (Kirby and Jacobson, 2015: 4). Shapland et al (2004) also report that the main difficulty in converting cases at the CONNECT site was making contact with either the victim or the offender.

- The victim declines restorative justice. Wigzell and Hough (2015: 8) found that most cases which did not proceed to a restorative justice activity were because the victim did not want to engage. Unfortunately the reasons why were not provided. Miers et al (2001) also found that in 89% of cases victim refusal was the main reason that in-scope cases with contact details did not proceed to a restorative justice activity.
- Offender motivation. At the JRC sites the main points of attrition were with offenders who received an adult caution but did not wish to engage. This was perceived to be because motivation was low.
- Post-sentence. According to Shapland et al (2006) pre-sentence work produced higher rates of restorative justice, particularly for serious offences and at the Crown Court than post-sentence community work, where offenders were less likely to engage. (It is worth noting, however, that this does not mean that pre-sentence restorative justice will always deliver higher rates of take-up. In the evaluation of the pre-sentence pilot at Crown Courts, Kirby and Jacobson (2015) note that numbers of completed restorative activities were not as high as had been hoped.)

The lack of available data on rates of attrition is an area which requires further exploration. Given the focus on the number of completed restorative justice activities such information is vital in identifying the areas where cases are most frequently lost. This information would help to detect the points where work could be done to increase engagement and take-up rates.

2.3 Referral, case extraction or self-referral?

In order to start the restorative justice process there must be a pool of cases which can be referred to a restorative justice service, or from which restorative justice providers can extract cases. In addition there should be opportunities for potential participants, both victims and offenders, to self-refer. Establishing case flow from one or a combination of all three approaches has proved challenging.

2.3.1 Referrals

Many restorative justice schemes have been hampered by a lack of referrals due to reliance on other agencies referring cases in. Van Camp and Wemmers (2016) note that restorative justice referrals are predominately initiated by offenders and judicial authorities as opposed to victims. All three of the schemes in the study by Shapland et al (2004, 2006, and 2007) found that a lack of referrals affected their implementation. Wigzell and Hough (2015) highlight that the model of restorative justice delivery in their evaluation was based on acquiring referrals, which was problematic.

A number of factors have been identified as the cause of low numbers of referrals. These include lack of knowledge or misunderstanding of restorative justice with referrers (Meadows et al, 2012; Shapland, 2004; Victim's Commissioner, 2016; Wigzell and Hough, 2015), the perception that restorative justice was a passing fad (Wigzell and Hough 2015), underdeveloped referral systems (Shapland et al, 2004; Why me?, 2015) and a lack of obligation to refer (Why me?, 2015).

2.3.2 Case extraction

Case extraction refers to the process of proactively selecting cases from criminal justice databases which are believed to have the greatest potential to result in a restorative justice activity. Extraction can be offence-specific or based on the point in the criminal justice system – for example, after a guilty plea. An example of how case extraction works could be a pre-sentence restorative justice facilitator examining court lists to look for plea hearings. They then identify defendants and their representatives and make contact to ascertain their intended plea and interest in restorative justice.

In the Shapland study (2006) all three schemes moved to a case extraction model having tried to exist on referrals alone. This produced more in-scope cases and suitable offenders. Where sites also continued to receive large numbers of referrals from statutory criminal justice agencies, however, they found that these continued to contain far higher numbers of unsuitable cases. This issue can be mitigated by close liaison and co-location with the referring agency, as demonstrated by one of the projects included in the study.

The problem with reliance solely on a case extraction model is that it does not comply with the latest version of the Code of Practice for Victims of Crime or the 2014 Restorative Justice Action Plan. The Code of Practice for Victims of Crime (Ministry of Justice, 2015) states: “If the offender is an adult, you are entitled to receive information on Restorative Justice from the police or other organisation that delivers Restorative Justice in your area, including how you could take part.” The Restorative Justice Action Plan (Ministry of Justice, 2014) stipulates that all victims should have “equal access to restorative justice at all stages of the criminal justice system irrespective of their location, the age of the offender or offence committed against them.” Compliance can be achieved as long as services provide other opportunities, in addition to case extraction, to make victims aware of and able to access restorative justice.

Case extraction models can increase the number of in-scope cases but this is limited by the source from which cases are drawn. In the Shapland study (2006: 40), for example, cases were extracted from the list of those referred for a pre-sentence report (PSR). Not all cases are sent for a PSR, however.

2.3.3 Self-referral

The current Restorative Justice Action Plan states that restorative justice should be available to all, at all stages of the criminal justice system (Ministry of Justice, 2014). This implies that self-referral should be available. However it was noted by Baroness Newlove (Victims’ Commissioner, 2016) in a review of restorative justice service providers that while the option to self-refer is evident in many PCC services, the information about how to self-refer is lacking. This is particularly relevant for victims or offenders involved in offences which may have taken place many years ago.

2.3.4 Issues across all three methods

To further compound the issue of case flow, some restorative providers exclude or have strict criteria for referral of certain offences such as domestic violence and sexual offences. Guidance from the Association of Chief Police Officers (ACPO) on the use of restorative justice by the police specifically states that the use of restorative justice in cases of domestic abuse, sexual offences and hate crime should be considered cautiously (ACPO 2011: 11).

Baroness Newlove also found offence-based exclusions in the 2016 review of restorative service providers responsible for delivering restorative justice on behalf of PCCs (Victims' Commissioner, 2016: 13).

A ban on specific offence types from the outset inevitably reduces the amount of in-scope cases. This was especially evident in the pre-sentence Crown Court pilot where the number of restorative justice activities was affected by an increase in sexual offences which were out of scope of the pilot (Kirby and Jacobson, 2015).

2.4 Information sharing

Assuming that a case has been identified via one of the routes above, the next hurdle to overcome in the journey to a completed restorative activity is the issue of information sharing.

Without access to the correct information, particularly the contact details of victims and offenders, opportunities to offer restorative justice are lost (Kirby and Jacobson, 2015; Shapland et al, 2004; Wigzell and Hough; 2015, Why me?, 2015). Miers (2001) adds to this and states that non-statutory schemes in particular struggle to obtain data. The police are the key agency from which to access the information needed (Kirby and Jacobson, 2015; Shapland et al, 2004). Accessing police systems, therefore, or having a single point of contact within the police who can provide such information is essential. Establishing and agreeing data sharing protocols can be a lengthy process. There can be a temptation to seek the information elsewhere, particularly if access is easier to agree – for example, from victim services. However, offender details are not routinely held by victim services and not all victims consent to be referred for support.

The 2016 House of Commons Justice Select Committee recommended that: “the Ministry of Justice should produce and promote within the criminal justice system an information sharing template to speed up the agreement of data sharing protocols.” (2016: 19). This would go some way to removing a barrier to engagement and take-up rates.

2.5 Contacting potential participants

Once a suitable case has been identified via one of the three pathways (referral, case extraction or self-referral) and the correct contact details have been provided the next area to consider is how to engage potential participants. Irrespective of whether potential participants have a pre-existing knowledge of restorative justice, once they become involved with the criminal justice system, either as a victim or an offender, there are potentially two stages of their early engagement with restorative justice.

The first is when they are initially presented with information about the process in order to raise awareness. This involves the police or local restorative justice service provider making them aware that restorative justice may be an option, and may involve as little as being given a leaflet or brief explanation. If the police provide this information, according to the Code of Practice for Victims of Crime it is up to the victim to proactively opt out if they do not want their details to be passed on to the restorative justice service.

The second is when they are contacted by the agency responsible for delivery of restorative justice (which may also be the police in some areas) and told more about the process with a view to deciding whether they want to take part.

This stage constitutes the ‘offer’ of restorative justice. In much of the literature – and, arguably, in practice – these stages are often confused or referred to interchangeably. The following sections attempt to make the distinction between the two, but it should be noted that there may, in reality, be crossover.

The Crime Survey in England and Wales reported in 2015 that only 7.2% of victims aged 16 and over in the sample recalled being given the opportunity to meet their offender (Office for National Statistics, 2015). Worryingly, this figure had reduced to 4.2% in 2016 (Office for National Statistics, 2016). Despite a number of factors which may have influenced these low figures – respondents not being able to recall the offer or cases being out of scope, for example – this clearly demonstrates that victims are not routinely offered restorative justice.

However, the Crime Survey also reported that 44.2% of victims who recalled being offered restorative justice in 2015 accepted the offer and 24.7% of those who were not offered it would have accepted, had they been given the chance. The percentage of victims who accepted the offer of restorative justice in 2016 is not provided, but the number of victims who would have accepted the offer had it been made was 22.9%. This demonstrates that there is an appetite for restorative justice from victims, and many are potentially being denied the opportunity to engage because they are never asked.

The combination of low levels of awareness and very low numbers of actual offers is a major barrier to completed restorative justice activities. By increasing both, particularly the number of offers of restorative justice, it seems highly likely that the amount of restorative justice delivered would increase.

2.5.1 Awareness of restorative justice among victims

A recurring theme in the literature examined is the need for greater awareness of restorative justice (Hallam, 2015; Meadows et al, 2012; Shapland, 2004; Why me?, 2015). The key questions are with whom should awareness be raised and how?

In order to increase take-up, focused attention on victims could prove to be more beneficial and require less resources than trying to raise general public awareness (see Section 2.8 for a discussion of the latter). Indeed, the recent report published by the House of Commons Justice Select Committee refers to the need to raise awareness generally with the public but more specifically with people once they become a victim, as prescribed by the Code of Practice for Victims of Crime. There are multiple agencies within the criminal justice system that are well placed to do this, with the police being the key agency. There is, however, evidence of inconsistency in the provision of information to victims (House of Commons Justice Select Committee, 2016). The Victims’ Commissioner has also highlighted this point and recommends that a consistent approach is taken by the police when informing victims of crime about restorative justice (2016a).

Van Camp and Wemmers (2016) describe international efforts to increase the number of victims who are aware of restorative justice. In Belgium there are two laws with the objective of maximising access to restorative practices by encouraging judicial authorities to systematically provide victims with information about the availability of restorative justice. Despite legislation, proactive attempts to raise awareness do not always occur and if they do the method of delivery varies with some forms of information being more direct and personal than others – for example, a face to face discussion rather than a generic leaflet or letter. Interestingly, Van Camp and Wemmers (2016) conducted research into the experience of victims of violence who received information about restorative justice.

They compared a proactive and systematic approach to what they term a protective approach. This is when information about restorative justice is withheld and only provided when victim services or the police deem it to be in the best interests of the victim. They found that generally victims who experienced a protective approach were less satisfied than those who experienced a proactive approach.

Raising awareness with victims seems on the surface to be a sensible suggestion, but it is important to consider the timing. Very little is known about the best time to first raise the notion of dialogue between victim and offender. Indeed, at the point that a victim has first contact with the police it is likely that the offender is unknown. They may remain unknown and even if they are identified they may not plead guilty. Many questions remain, therefore, around the viability of applying restorative justice. Without a known offender who admits guilt, restorative justice cannot be used, and it may be inappropriate to raise victims' expectations at this early stage.

2.5.2 Offering restorative justice to victims

Whether or not the victim has previously received generic information about restorative justice or, indeed, expressed an interest in taking part, the first contact to discuss it in detail can be done in a multitude of ways and by many different professionals. For example, by letter, phone call or a face to face meeting, from police, victim workers or restorative justice professionals. The method chosen is affected by a number of factors including the seriousness of the offence and when it occurred, and contact could be months or even years after the offence. It is significant, however, that the majority of victims from the JRC and Remedi schemes reviewed by Shapland (2004) reported that it did not matter how they were initially approached. What was important was that they had the opportunity to discuss the restorative process in detail at an early stage. It should be noted, however, that these were the victims who took part. Those who did not may have had different views on the initial offer.

Van Camp and Wemmers (2016) state that the victims in their study preferred that restorative justice was offered proactively as opposed to protectively – in other words, to all victims instead of a select few – in a direct and personal approach. Many victims who received standardised letters had no recollection of receiving information about restorative justice.

The Victims' Commissioner Baroness Newlove notes that good practice when contacting victims to discuss restorative justice includes (2016: 11):

- Calling the victim multiple times and at various times of the day in order to maximise the chances of making contact (calling was deemed preferential to sending a letter because it gives victims the opportunity to ask questions).
- Ensuring that victims understood that their participation was voluntary.
- Explaining that the offender must have taken responsibility for the offence.
- Helping victims to identify their reasons for taking part and what they would like to achieve.
- Maintaining timely communication with victims so that they were informed of delays and where their requirements could not be met.

Guidance provided by the RJC on how to engage victims of crime in a restorative process (2016a) recommends that the person making contact with the victim has knowledge of the case. It goes on to recommend that before attempting to contact a victim three steps are taken. First, the practitioner should gain an overview of what happened. Second, they should ascertain where in the criminal justice system the case is. Third, they should speak with key individuals in the case such as the police officer in charge. Once the practitioner is familiar with this information contact with the victim can be attempted. The RJC advises that an opt-out letter is used followed by a telephone call. This asks the victim to contact the sender to let them know if they are not interested in restorative justice. Unless the victim opts out, further contact can be pursued via a phone call.

Wigzell and Hough (2015: 40) support this idea and report that using an opt-in letter was the wrong approach because it put the responsibility on the victim to contact restorative providers if they were interested in restorative justice. Opting out of restorative justice is enshrined in the Code of Practice for Victims of Crime, which states that victims of adult offenders are entitled to information about restorative justice, unless they state that they do not want their contact details to be passed to a restorative justice provider (Ministry of Justice, 2015: 35). It would be reasonable to assume that operating in this manner would increase the number of victims who know about restorative justice more effectively than relying on victims to pursue information themselves.

On the subject of sending letters, Wigzell and Hough (2015) suggest that to effectively engage with victims, lengthy letters should be avoided – the aim of the letter was simply to get the victim to agree to a meeting with a facilitator. Their study was based in probation and prison services. Offenders had therefore been convicted and were at the stage where an offer of restorative justice could be made because guilt had been established.

None of the research evaluated for this review provides examples of the information that was provided to potential participants. It would have been advantageous to know in detail what was said and how it was delivered. The Shapland study (2007) did report that those who undertook restorative justice felt that their expectations (which, presumably, were based on the initial information they were given) matched their experience, indicating that they were adequately informed at the outset. In the study, 90% of participants knew that they were entering into a voluntary process so it is possible to assume that they would have disengaged had they wanted to. In other words, the fact that they did not disengage indicates that the initial offer was made effectively.

A gap in provision of written material across all three schemes was noted by Shapland et al (2007: 13). The report notes that leaving a leaflet for the potential participant to read and re-read is advisable. Hallam (2015) also refers to leaving victims with a leaflet after the initial meeting about restorative justice. Unfortunately it seems that not all victims were then contacted again to ask whether they wanted to do restorative justice, which is surely a missed opportunity.

2.5.3 The first meeting

Whatever form the initial engagement with potential participants takes, the first face to face meeting is crucial (Hallam, 2015; Shapland et al, 2004, 2006, 2007). Burns, Coates and Umbreit (2003) state that every case considered for restorative justice should be considered as a unique situation where the needs of victim and offender will vary each time. The Victims' Commissioner links bespoke assessment of victims' needs with delivering a quality service (2016a).

While the awareness-raising stage may be delivered by professionals from a number of different agencies, research highlights that it is best if the initial meeting is delivered by a trained restorative justice facilitator. Data from the Shapland et al research (2006) highlights that very few victims whose initial contact was with a facilitator dropped out. The facilitators trained in restorative justice thought that victim participation would have been higher had they been able to have more direct contact with victims. Often the initial conversation, which in these projects included the offer of restorative justice, was via police or probation officers who were not trained in restorative justice.

When the agency delivering restorative justice is offender-focused, there may be a lack of experience of engaging with victims, and the victims themselves may perceive the agency to be more concerned with the needs of the offender. The Victims' Commissioner noted that offender-focused services could do more to develop their work on engaging with victims (2016: 19). The study by Wigzell and Hough (2015) which was based in prison and probation services highlighted that it is best to partner with specialist victim services when conducting initial visits.

In summary, early contact with the victim is essential in the restorative justice process and is a key component of securing engagement. Multiple attempts should be made to establish contact, and unless a victim opts out of receiving information on restorative justice this information should be provided, ideally, by someone who is trained in – or at the very least knowledgeable about – restorative justice.

Personalised (as opposed to generic) letters or phone calls are appropriate means of contact. Other resources should be available for participants to look at in their own time and if the first discussion about restorative justice is not face to face there should be such a meeting at the earliest opportunity to allow participants to ask questions about the process.

2.5.4 Engaging offenders

The focus of most research is on making the approach to the victim, and does not discuss contacting offenders. In order to increase victim take-up of restorative justice, however, it is essential to also engage the offender involved in their case. Offenders can be made aware of and offered restorative justice by a number of organisations within the criminal justice system. There are several challenges specific to this group.

Unsurprisingly, contacting offenders in prison is one of them. Letters present the most viable way of making contact. There is brief reference to this in the study by Hallam (2015), although the sample only consisted of two people who were in prison. Nonetheless, they state that brief and succinct letters were sent. This caused the offenders to worry as they had no previous knowledge of restorative justice and did not have the opportunity to ask questions to allay their fears. The recipients of the letters thought that the addition of a leaflet to explain further would have been helpful.

The timing of when to make the offer to offenders was raised as a potential barrier to engagement. Shapland et al (2004) found that offenders given a community order were unreceptive to the offer in their first probation appointment. This was because initial appointments tend to cover large amounts of information that they must absorb. To counter this, the initial conversation, assessment of suitability and a tentative agreement to participate took place at the pre-sentence report stage and engagement in restorative justice became a condition of the community order.

Some argued that this runs counter to the voluntary nature of restorative justice. At the time of writing, however, the authors did not see it as problematic.

2.5.5 Who to approach first – victim or offender

With regard to making an offer of restorative justice, consensus has yet to be reached on whether to approach the victim or the offender first and, crucially, whether this affects rates of engagement. There is an argument to say that approaching victims only at the point of a guilty plea cuts down on unnecessary work. There is a counter argument, however, that by sensitively approaching the victim to offer restorative justice, even if the process goes no further, at the very least awareness will be increased and the victim may choose to pursue it at a later date should the offender accept responsibility.

Miers et al (2001) clearly state that victims should only be approached once offender engagement is confirmed. Shapland et al (2006:46) report that in all the schemes they evaluated the offender was asked first, albeit in various ways.

When initially contacting victims to raise awareness it is essential that the victim is told that in order to pursue a restorative intervention the offender responsible for their crime must be identified and accept guilt. This avoids potential confusion and disappointment for the victim and in doing so negates some of the issues around who is contacted first.

In the pre-sentence pilot evaluated by Kirby and Jacobson (2015) the victim was generally approached at the stage where the offender had been charged but not yet entered a guilty plea. Concerns were raised that by approaching victims first this could lead to feelings of re-victimisation if the offender then refused to take part in restorative justice. This was not borne out by the research, however.

2.6 Motivating factors

In order to engage with victims and offenders it is helpful to understand what is known about their reasons for accepting or declining the offer of restorative justice.

Existing research provides the following reasons for victims' participation:

- to seek answers to unresolved questions (Burns, Coates and Umbreit, 2003: 12; Hallam, 2015: 4 and 22 and 26; Wigzell and Hough, 2015: 17)
- to discuss the harm that has been caused (Burns, Coates and Umbreit, 2003: 12; Hallam, 2015: 26; Meadows et al, 2012: 34; Wigzell and Hough, 2015: 18)
- to face or meet the offender (Hallam, 2015: 21; Meadows et al, 2012: 34)
- to recast the dynamics of the relationship so the victim would not be in a position of weakness and the offender would not be in power (Hallam, 2015: 27)
- to express feelings and to speak to the offender (Shapland, 2006: 10)
- to feel better (Hallam, 2015: 28)
- a desire to help the offender and influence their behaviour (Burns, Coates and Umbreit 2003: 12; Kirby and Jacobson 2015: 5; Hallam 2015: 26; Meadows et al 2012: 33; Shapland et al 2006: 14; Victims' Commissioner 2016a: 19; Wigzell and Hough 2015: 18)

- moral and civic duty (Kirby and Jacobson, 2015: 5; Wigzell and Hough, 2015: 18; Shapland; 2006: 14)

Fewer reasons for offenders taking part are described in the available literature:

- to atone for their behaviour as part of a desistance from offending (Wigzell and Hough, 2015: 19)
- to repair the harm (Shapland et al, 2006: 14). With regards to direct reparation or financial compensation this was very important to offenders but not important to victims.

There has been very little research into the reasons why victims decline the offer of restorative justice. Wemmers and Cyr (2005) quoted in Van Camp and Wemmers (2016) state that victims who declined the offer did not feel that the offence was serious enough to warrant involvement and commitment of their time or energy. This was also the most common factor highlighted by Burns, Coates and Umbreit (2003). They identify a further reason for victim non-participation in restorative justice. This is that victims did not wish to do anything in order to help the offender. This data was obtained from a small sample but was backed up by interviews with restorative justice facilitators and criminal justice professionals. They state that when victims do not want to take part in restorative justice, it is because the crime is too minor, they do not have the time, they fear retaliation and – interestingly – they have a lack of trust in restorative justice compared to traditional methods of justice such as going to court.

Comparing victims who accept the offer of restorative justice with victims who decline the offer could highlight whether there are inherent differences between the two groups. Unfortunately there has been little research into this area. Van Camp and Wemmers do reference a study by Bolívar (2013) which compared victims of interpersonal violence who chose restorative justice with those who did not participate. She concludes that those who did not engage were afraid of the offender and held a negative view of them. Additionally, those who chose not to do restorative justice did not wonder why the crime had occurred.

2.7 Offence types

Burglary has been shown to lead to a higher rate of conversion into restorative justice processes than other offences. Kirby and Jacobson (2015) found that 49% of restorative justice activities were for burglary offences, while Wigzell and Hough (2015) found that 27% of restorative activities were for burglary. Shapland et al (2004) report that at the JRC site, burglary cases were more likely to result in restorative justice. The CONNECT site also found higher rates of restorative activity in burglary cases and assault (Shapland 2006: 20), while the Remedi sites found violent offences and burglary were more likely to result in restorative justice (Shapland 2006: 37). It is worth noting that many of these sites operated in an environment where they were likely to see offences of a more serious nature, and in some instances practitioners may have been more likely to offer restorative justice to victims of burglary because they felt it was more appropriate than for other crime types.

2.8 Public awareness of restorative justice

Public awareness of restorative justice is known to be low. In 2016 the RJC commissioned a nationally representative survey which found that only 28% of respondents had heard of restorative justice (RJC 2016). It is possible to argue that a lack of awareness of restorative justice could impact upon take-up rates on the basis that if victims and offenders do not know it is available they will not ask for it. Hallam supports this view and explicitly states that raising awareness of restorative justice will increase take-up rates (2015: 53).

Little is known, however, about the relationship between public awareness of restorative justice and take-up rates. Previous sections have considered the way in which people should be told about restorative justice via formal mechanisms once they become victims. With that in mind, the group for whom public awareness raising is likely to be significant is victims of crimes which took place a number of years ago, before such mechanisms were in place, as well as anybody who is missed by the formal mechanisms that are now, or should be, in place.

2.9 Conclusion

Restorative justice has been shown to bring positive benefits to victims and offenders. However, the lack of research, data and understanding of the factors that affect take-up rates is highly problematic in the field of restorative justice. Structural and organisational issues such as problems with case flow and information sharing hamper the initial contact with potential participants and the available information suggests that most cases are lost before the point of consent from victim and offender. Where contact can be made, arguably more can be done to engage with victims and offenders to increase the numbers of those who decide to take part in restorative justice. Further exploration is needed, and the following research considers barriers to take-up rates and suggests solutions to overcome those barriers.

3.

Methods and approaches



3.1 The research problem

In recent years the government has committed resources to improving and increasing the availability of restorative justice. Between 2013 and 2016 £29 million was made available to deliver restorative justice in England and Wales (GOV.UK, 2013). The third Restorative Justice Action Plan, published in 2014, stipulated that good quality victim-focused restorative justice should be available to all at all stages of the criminal justice system (Ministry of Justice, 2014). Despite this, a recurring theme across the field is that many of the schemes established in England and Wales have underperformed and numbers of completed restorative justice activities have remained disappointingly low (Kirby and Jacobson, 2015). There is, therefore, a need for greater understanding of what can be done to increase take-up rates of restorative justice.

3.2 Project design and aim

This study was funded by the Ministry of Justice as part of their funding for the RJC and ran for eight months, from July 2016 to March 2017. The aim of the research was to explore the factors that affect take-up rates and subsequent restorative justice outcomes with adult victims. The research was of a qualitative nature, and its remit covered England and Wales.

The objective of the project was to develop practical guidance born from the experiences of victims and those who deliver restorative justice with the aim of increasing the amount of restorative justice activities.

3.3 Data gathering and participant recruitment

The data gathering process initially had four strands. The first was to collect data from frontline practitioners with experience of delivering restorative justice with adult victims and offenders. The second was to collect data from managers and commissioners of restorative justice services. The third was to collect data from adult victims who were offered restorative justice but declined the offer and the fourth was to collect data from adult victims who chose to participate in restorative justice.

Once data was gathered from the four groups identified, a secondary data collection phase took place. This concentrated on practitioners and managers of restorative justice services with a particular focus on out of court disposals and pre-sentence restorative justice.

In order to recruit participants contact was made with the RJC's existing network of providers. An introductory email outlining the study was sent and followed up with further emails or phone calls. Restorative justice providers were asked to identify practitioners to attend a focus group and managers to take part in a telephone interview. The providers were also asked to identify victims who were offered restorative justice but declined the offer. Victims who had taken part in restorative justice were recruited from those known to the RJC.

In addition, an advert for research participants was circulated in the RJC's member and practitioner bulletins as well as on the Restorative Forum (www.restorativeforum.org.uk).

3.4 Data summary

3.4.1 Practitioners

Three focus groups were held at various locations in England. They were semi-structured and ranged between one-and-a-half to two-and-a-half hours in duration. The final sample included 15 practitioners drawn from across England from a variety of services, including pre- and post-sentence programmes delivered by charities, community interest companies, the police and PCCs.

Before attending the focus group each provider was asked to complete a set of questions which provided background information on the type of service, forms of restorative justice offered and the number of completed restorative justice activities in a year.

3.4.2 Managers

Eleven managers, directors and commissioners of restorative justice services took part in a telephone interview. The interviews were semi-structured and lasted for around one hour. Participants were drawn from a variety of services in England including charities, community interest companies and PCCs. Many of those interviewed had experience of delivering and managing restorative justice provision across a variety of sectors and services.

3.4.3 Victims who did not choose restorative justice

With the knowledge that other studies had struggled to recruit similar participants (Coates, Burns and Umbreit, 2003) it was anticipated that this would be a difficult group to access and engage in the research. To counter this, considerable effort was made to achieve the target of 10 telephone interviews. Restorative justice providers were asked to identify victims who were happy for their contact details to be passed to the researcher. Some providers felt that it was not possible to revisit historic cases, many victims declined to take part and one service had so few referrals during the data collection phase that there was no one to ask. Multiple attempts were made to contact each victim who had consented to take part. The return rate of completed interviews was 30.77% – that is, four of the 13 victims in the referral pool. This figure is marginally higher than that of Coates, Burns and Umbreit (2003).

The telephone interviews lasted on average 30 minutes. The final sample was diverse in terms of the offence type and included victims of common assault, arson, car theft and robbery.

3.4.4 Victims who chose restorative justice

Six victims who had completed a restorative justice activity in the last two years took part in a telephone interview. The interviews typically lasted around an hour and were semi-structured. The group was varied in terms of offence type and included fraud, burglary, assault, two cases of death by dangerous driving, and murder.

Ideally a larger group would have been secured, but this was not possible in the time available. Of the total list of 11 victims who were sourced, one victim was out of scope because their restorative justice activity was over four years ago and four of the victims did not respond to repeated attempts at making contact.

3.4.5 Secondary data collection phase

The first data collection phase was dominated by discussion on the delivery of post-sentence restorative justice. It was important, therefore, to also identify barriers and solutions around delivering restorative justice as part of out of court disposals and at the pre-sentence stage. Five semi-structured telephone interviews with practitioners and managers of restorative justice services took place, focusing on their experience of delivering restorative justice in these specific areas.

3.5 Analysis and outputs

The large volume of data acquired from the focus groups was transcribed by an outside agency. The content of the data gathered from telephone interviews was not transcribed. All data was analysed and grouped according to themes, some of which were pre-set according to the literature review, while others emerged during analysis. Verbatim quotes that succinctly summarise the research participant's views were extracted. This report is the outcome of the research.

3.6 Ethical considerations

Participation in the study was based on informed consent. All participants were given an information sheet and asked to complete a consent form. Anonymity and confidentiality were guaranteed for all participants. All of the data collected is stored securely in accordance with the Data Protection Act (1998). As per the RJC's policy the information will be held for a minimum of three years after completion of the study.

Particular ethical considerations were made for victims. This included the right to terminate their involvement at any point, to opt out of any questions they did not wish to respond to and to withdraw the information provided up until the point of completion of the first draft of the report.

3.7 Limitations of the data

The barriers to take-up rates of restorative justice are multifaceted and vary according to the model of delivery. The small size and self-selecting nature of the sample within this study does not allow for causal links to be made between the barriers and solutions to restorative justice, nor can it claim to be representative of the whole restorative justice field. In the first data collection phase, the delivery of restorative justice did not include out of court disposals as most practitioners spoke of their experiences in either the pre- or post-sentence arena. For this reason, an additional data collection phase focusing on professionals who work specifically on out of court disposals and pre-sentence restorative justice was included.

4.

Findings



This findings section is structured in a broadly chronological order, beginning with the design of restorative justice services and then following the journey that a case could take through the criminal justice system. Each section contains a summary of the findings on an issue or area, followed by practical recommendations that, if implemented, would support increased take-up of restorative justice among victims of crime.

4.1 Service design

As government investment has led to the expansion of restorative justice service provision across England and Wales, numerous different delivery models have evolved. Funding or contractual requirements vary between different PCC areas, and managers, directors and commissioners of restorative services highlighted that these requirements can restrict the ability to deliver restorative justice. Funding criteria, for example, can stipulate that cases should be victim-initiated to the exclusion of offender-initiated referrals.

The RJC's broader work with PCCs and other stakeholders has highlighted this point. The funding allocated to PCCs for restorative justice was part of their allocation from the Ministry of Justice for victims' services, funded through the victim surcharge (GOV.UK, 2013). This money can only be spent on victims of crime. Some PCCs have interpreted this as meaning that restorative justice can only be funded from this source if it is initiated by the victim or offered to the victim first. Referrals from offenders or agencies managing offenders cannot therefore be considered.

Under this interpretation, where it is identified that an offender might benefit from restorative justice, this should be taken forward – or at least paid for – by the agency managing that offender. This is normally a prison or the National Probation Service (NPS) or CRC. Some PCCs have, however, suggested that all restorative justice benefits the victim, regardless of where the referral originated, and can therefore be paid for out of the victims' services funding, whether the initial referral comes from the victim or the offender.

These circumstances create challenges for maximising take-up by closing off referral routes in some areas, preventing services from taking on some cases, and causing confusion about when restorative justice should be offered and by who.

A lack of clarity about who is responsible for certain cases in a geographical area may also lead to victims being offered restorative justice more than once by different providers. This is unlikely to give them confidence in the agencies delivering restorative justice, potentially making them less likely to participate.

In addition, some services are funded to only deliver restorative justice at a particular point in the criminal justice system which may not be the point when victims or offenders are ready to engage. Additionally, specific offences such as domestic and sexual violence are, in some areas, deemed out of scope. All of these factors reduce the pool from which potential cases can be drawn.

The length of contracts was also raised as a barrier to delivery and take-up rates. Restorative justice practitioners and managers felt that restorative services were frequently denied the time needed to fully establish and embed a service. Some providers were expected to establish a service within one year, which was perceived to be too short a time span to reach full potential, particularly if the service was starting from scratch. The problem may be exacerbated by the election of a new PCC and the high turnover of staff that brings. Ensuring continuity of support is essential for the longevity of restorative justice.

Interviewees argued that the repetitive tendering processes and short term nature of contracts led to unhealthy competition between services, and wasted time re-establishing referral pathways and information sharing agreements when new providers won contracts. This caused practitioners to feel that they were unable to develop their skills and gain experience.

The competitive tendering process for new services has undoubtedly created challenges for service providers and having to retender on a regular basis is resource-intensive. It is therefore unsurprising that some managers and practitioners argue for longer contracts. It is the case, however, that the more time and energy an organisation devotes to getting established in an area and creating a viable infrastructure, the less time it will spend effectively engaging participants and delivering restorative processes.

A key theme to emerge from the interviews with practitioners and managers was that in order to maximise opportunities to deliver restorative justice, services need to be freed from restrictions that limit the cases which are deemed in-scope. This would involve the removal of restrictions on offender-initiated cases. Practitioners spoke of offender-initiated cases which had resulted in positive restorative justice outcomes for victims, and two of the victims interviewed for this study had taken part in restorative justice which was offender-initiated. When asked how she felt when she was offered restorative justice, one of the victims said:

“It was positive, I felt it was something I wanted to do to find out about why he’d done it, I wanted him to know how I’d felt at the time and what I was going through.”

It was also suggested by interviewees that removing offence-specific exclusions would increase the number of in-scope cases. This is supported by the Code of Practice for Victims of Crime, which enshrines the right of all victims – including victims of sexual and domestic violence – to full and impartial information to enable them to make a decision about whether they wish to take part in restorative justice.

Additionally, the current Restorative Justice Action Plan states that victims should not be denied restorative justice because of the offence committed against them. Furthermore, the House of Commons Justice Select Committee agrees in principle that restorative justice should be available for all types of offence.

A number of practitioners interviewed for this study had worked on cases of sexual and domestic violence, achieving safe and positive outcomes. They thought that safety could be achieved as long as the process remained victim-centric, participation was voluntary and comprehensive risk assessments were in place. Caution was deemed necessary, as was rigorous assessment of the probability of risk and the motivation of offenders. This was achieved via inter-agency work with specialist services, such as independent sexual violence advisers or independent domestic violence advisers.

In the main, sexual offences and domestic violence are perceived to be unsuitable for restorative justice because of the possibility of risk. Victims of domestic and sexual violence are likely to be vulnerable, and there are particular risks involving revictimisation and the perpetrator exerting coercive control over the victim. It is essential that any practitioner facilitating restorative justice in these cases has the appropriate level of training and experience, and the RJC recommends working in partnership with specialist support organisations, as the practitioners interviewed had done.

By building relationships with specialist organisations, the concerns which drive case type exclusions may be alleviated and such exclusions circumvented. These relationships may also give the specialist external agencies the confidence to refer suitable cases to restorative justice providers. Training to develop the skills of restorative facilitators and best practice guidelines would help to ensure a quality service. The latter point was, in fact, recommended by the House of Commons Justice Select Committee (2016: 16).

More generally, working in partnership could foster longstanding, positive relationships and increase confidence between agencies. When working together, it is important to have respect for the specialisms that each worker or organisation brings, and this includes the restorative justice provider. By working together and developing an understanding of the specialist skills that organisations can bring to the restorative process, barriers can be removed.

4.1.1 Service design – recommendations

1. Restorative justice services, and their funders, should be clear about whether they can accept both offender and victim referrals, to remove ambiguity.
2. Wherever possible, restorative justice services should remove access restrictions based on whether a case is initiated by the victim or offender (or the agencies working with them) to maximise the number of eligible cases to work with.
3. There must be continuity in restorative justice provision through the justice system (especially in pre- and post-sentence provision) so that a victim can develop a relationship with a service while they consider and prepare for restorative justice. Where there are multiple providers, clear protocols must be put in place to ensure continuity in provision for service users.
4. Offence-specific exclusions from access to restorative justice services should be removed, as they breach the Code of Practice for Victims of Crime.

5. Co-commissioning services across criminal justice agencies and statutory and non-statutory services should be considered, as it can reduce the duplication of work, increase partnership working and broaden the scope of delivery of restorative justice.
6. Restorative justice services must also be given adequate time to develop and short-term contracts can prevent this. A minimum three-year contract was suggested as a way to combat this issue.

4.2 Case flow

The design of referral pathways and their impact upon obtaining cases was frequently cited by practitioners and managers as a barrier to restorative justice take-up rates. Services which are reliant on other agencies for referrals and the information necessary to progress a case struggle to achieve high volumes of restorative activities. For these services, case extraction might yield better results. A director of services with many years of experience in the sector and who now has responsibility for a large number of restorative services across a wide geographical area commented:

“It has been a fight for referrals in these areas, it used to be very much like that in [name of area removed] before we got access to the [court] outcomes. For me that is what you need.”

The data provided by restorative justice services in this study highlighted that the service with the highest volume of completed restorative activities and lowest rate of attrition was one that offered restorative justice at all stages of the criminal justice system, from out of court disposals through to post-sentence work. Referrals were accepted and case extraction was also utilised. In contrast the agency which had the lowest number of completed restorative activities and the highest rate of attrition only delivered restorative justice in the post-sentence stage and was reliant on referrals from victim liaison officers. Dependence on other agencies for referrals was shown to be problematic in research by Shapland et al (2004, 2006, and 2007) and Wigzell and Hough (2015), as discussed in section 2.3.1.

Practitioners and managers felt that the reasons for low referrals from outside agencies were that the key organisations to refer – the police, victim services, probation and CRCs – were overloaded with work, did not see restorative justice as a priority and had no knowledge or a misinformed opinion of restorative justice.

As a result, the perception of restorative justice providers was that the offer of restorative justice to potential participants either never happened or was done ineffectively. One practitioner reliant on referrals from either the Witness Care Unit, victim liaison officers or self-referrals remarked that in the last year only 46 referrals were made. There were 1,700 active cases known to the victim liaison workers in that specific area, which demonstrates that the amount of referrals was a very small proportion of the total number of cases.

Further compounding the issue was a lack of data on how many people were offered information or access to restorative justice by other agencies outside of restorative justice providers. Without this information it was impossible to identify the extent of interest in restorative justice and any trends in take-up rates.

Practitioners and managers felt that the best way to ensure a flow of cases is for the restorative justice provider to have direct access to information in order to extract cases and proactively offer restorative justice. The pre-sentence pathfinder evaluation found that sites that had direct access to police and court information and were able to extract cases were significantly more effective than those that did not (Kirby and Jacobson, 2015). Direct access to criminal justice databases allows restorative justice providers to track cases as they make their way through the criminal justice system. This would mean that restorative justice can be proactively pursued at the points when it becomes viable – for example, when an offender is charged and has accepted responsibility.

Case extraction can be time-consuming and is not always possible with a small restorative justice team. To overcome these problems, interviewees suggested that staff who have not been trained in restorative justice could be employed to search databases from where cases will be extracted. This should be focused work which removes cases which will generate unnecessary work – for example, not guilty pleas (although it should be noted that pleas can often change). This role could be carried out by volunteers. While case extraction remains preferable to solely relying on referrals, referral pathways should remain in place in order to maximise routes into restorative justice. These pathways must be streamlined and efficient.

It was also suggested that self-referrals could yield better take-up rates. A key factor in generating self-referrals is ensuring that potential participants are aware of restorative justice and how they can access the service. Previous research by the Victims' Commissioner has highlighted that this is often lacking (2016: 14). A self-referral could also come at any point in the journey a victim or offender takes after the offence. Restorative services must therefore have the freedom to work on cases during their transition through the criminal justice system, including when cases are complete and sentences have been served. The group for whom this is potentially most relevant are people who became victims before access to restorative justice was regularly offered (where that now happens), victims in areas where restorative justice is not yet routinely offered, and victims who initially turn down an offer but are later interested in restorative justice.

It is preferable that all methods of achieving case flow are in place. Where this is the case, however, adequate monitoring systems are required to ensure that cases are not picked up across multiple pathways.

Practitioners and managers suggested that in a referral model the authority to make the decision about whether restorative justice was suitable should rest with the restorative provider and not the referrer. Gatekeepers were identified as a consistent and significant barrier to restorative justice. Throughout the journey a case takes through the criminal justice system there are a multitude of professionals who will be involved. This can include the police, victim services, the courts, legal representatives, and prison and probation staff, all of whom can act as gatekeepers who exercise authority over whether restorative justice is appropriate. The professionals interviewed for this study felt that this decision is best left to trained restorative facilitators and the participants.

4.2.1 Case flow – recommendations

7. Where resources allow, services should use a case extraction model, with access to police and court data on offences, offenders and victims. Case extraction can be conducted by staff who have not been trained in restorative justice or volunteers, where necessary.
8. This should be supplemented by clear and well-advertised mechanisms to enable relevant professionals to refer cases to the restorative justice service and to enable victims to self-refer.
9. Monitoring mechanisms need to be put in place to ensure that the same cases are not identified through both extraction and referral, leading to multiple offers to the same victim.

4.3 Partnership working

Whichever case flow pathways are adopted, working in partnership with key agencies in the criminal justice system is essential – namely the police, witness care units, probation and CRCs. Restorative justice providers that achieved higher numbers of restorative outcomes in comparison to others in this study commented that partnership working was key to their success. A manager said:

“It does need that really close working together, otherwise the systems fall apart.”

As discussed in the previous section, however, many of the practitioners and managers interviewed felt that partnerships between different criminal justice agencies are not working as effectively as they might, which creates significant barriers for take-up. The perception was that this is related to awareness, which creates two significant problems.

First, where potential partner agencies – particularly the police – are not sufficiently bought in to the process they are less likely to make referrals. Additionally, this lack of buy-in can also have a detrimental impact on the very first contact with the victim. This can take the form of the information provided not being accurate, or the first mention of restorative justice being actively off-putting.

Second, a lack of buy-in or understanding of the benefits of restorative justice was perceived by many interviewees to lead to the issue of some gatekeepers preventing either victims or offenders from taking part in restorative justice. This was thought to stem from criminal justice agencies either being overly risk-averse or not understanding the potential benefits of restorative justice. Ways in which this is being tackled are discussed in more detail in section 4.5.3.

According to the interviewees, partnership working is being achieved in different ways. Some services work together in a virtual sense, which is likely to be the most cost-effective approach, although may not be the most effective. Others were co-located in a restorative hub. Some restorative teams included staff seconded from other services such as probation, police or youth offending teams. One manager of a restorative justice service said:

“What did work to get the throughput is when we had a victim liaison officer with the YOT on secondment. They looked at every single victim linked to the YOT services. Unfortunately in the downturn that funding had to stop.”

Another manager suggested that restorative justice workers should be based in key agencies such as police stations and the courts. Partnership working brought benefits in the form of developing relationships, easing access to information, raising awareness, increasing support for restorative justice and securing the buy-in of gatekeepers. Essential to partnership working was clear agreement on the responsibilities of all partners and regular meetings with high-level management to discuss and agree ways forward.

One restorative justice partnership credited their success to having unwavering support from their PCC, chief constable and command teams within the police. They provided the impetus to create an environment conducive to opportunities for restorative justice. A manager who was part of a successful restorative justice partnership said:

“If your top person ... really wants something to happen then that is really helpful. If you don’t hear anything from the top, people assume that it’s not very important. We have a very loud voice at the top.”

4.3.1 Partnership working – recommendations

10. Where there is not an existing restorative justice partnership, restorative justice services should work with the PCC in their area to establish local partnerships that involve key local agencies which have a role in the delivery of restorative justice.
11. A lead from each of the relevant agencies in the area should be identified as the point of contact for that organisation on all restorative justice issues.

4.4 Information sharing

Information sharing is intrinsic to the issue of case flow, and this was raised by all of the practitioners and managers interviewed. Obtaining consent to share information and the inability to access victim and offender contact details, risk information and the specifics of the case are a significant barrier to restorative justice delivery. This finding is supported by numerous other studies into restorative justice, as discussed in section 2.4 (Kirby and Jacobson, 2015; Shapland et al, 2004; Wigzell and Hough, 2015; Why me?, 2015).

A director of a large provider of restorative justice explained how the combination of a lack of an information sharing agreement and the increased workload of other agencies impacted on delivery of restorative justice. They said that:

“One of the biggest challenges is getting the responses from offender managers or offender supervisors ... at the moment we’ve got 50 victims that are wanting restorative justice. They all fall under the CRC. The approach we have to take there is the case manager has to get written consent from the offender to talk to us. So before we can even get to explain restorative justice to them they have to get written consent from the offender manager, and then at that point we can actually see if that is something they are interested in. We are chasing and chasing some of those offender managers. Because of the changes with Transforming Rehabilitation and the bigger caseloads that CRCs have on their books ... they’re not seeing offenders as regularly as they possibly would have done in the past and therefore getting the written consent can take weeks and weeks. That means that we’ve got people waiting and sometimes cases close because of that.”

The practitioners and managers who took part in this research thought that the best way to overcome the barrier of information sharing was to provide restorative services with direct access to the information required. This would rely on information sharing agreements and staff passing the necessary vetting checks. One manager, speaking specifically about the relationship between restorative justice provider and CRC, also suggested asking offenders at the outset of their relationship with the CRC if their contact details could be shared with a restorative justice agency.

Many interviewees said that an information sharing template could be of benefit and would potentially reduce the time it takes to develop and agree protocols. Such a document would need to take account of the myriad of potential organisations it should cover (including statutory and non-statutory services), the types of information to be shared and the different routes of transmission. Given the variation in services across the country it is unlikely that a template could be created which would be a 'one size fits all' approach, but it could be a good starting point.

Where agreements between agencies are already in place, another manager highly recommended the use of a web-based case management system. She said that the use of an internet-based system had made it easier for information to be shared between the organisations in the restorative partnership:

“This is a system that we’ve all got, police probation, victim support, HMPs ... Every case is recorded to exactly where it is and that has really changed the way we work, it’s quickened things up terrifically ... you’ve got all the documents for that case, which generally means you’ve got all the information you need for restorative justice ... it means that the facilitators once they’ve read everything ... and perhaps had that initial case discussion in the Hub, they can get on with that case.”

While systems like this could speed up the progress of ongoing cases and improve partnership working, they are reliant both on multiple agencies agreeing to share information in the first place and the users ensuring the information recorded is accurate and complete. They do not overcome the main barrier to take-up, which is that of restorative justice providers being unable to access participants' information in order to initiate contact.

In fact, information sharing is already stipulated by the Code of Practice for Victims of Crime. This states that unless victims opt out, their details should be passed by the police to the local restorative justice provider. Restorative facilitators could then contact the victim to explain what restorative justice is and it seems reasonable to assume that this would positively affect case flow and take-up rates. If a victim expresses interest in a restorative process the case could be flagged for follow-up as and when an offender is identified and accepts guilt. Tracking cases can be resource-intensive work and relies on timely access to case information, but this can be alleviated by the adoption of a shared case management system, as described previously.

This particular point regarding the Code of Practice for Victims of Crime was not made by any of the restorative justice providers in this study. One director of restorative services stated that they had attempted to apply the Code in this manner, but the local police would not share victim information unless the victim had explicitly opted in. It is seemingly unclear to professionals whether victims should be asked whether they want to opt out of their information being passed to a restorative provider or whether the police should automatically do this, unless specifically asked not to.

It seems that greater clarity is required and information on how to practically apply the provisions of the Code. An automatic pathway would ensure the greatest flow of victim contact details to restorative justice providers, although questions remain whether this is legal or ethical, despite the recommendations in the Code of Practice for Victims of Crime, even with a data sharing agreement in place.

4.4.1 Information sharing – recommendations

12. Each PCC area should put in place an information sharing agreement (ISA) between relevant agencies to enable the sharing of the information necessary for restorative justice delivery. The PCC's office should manage this ISA and require all commissioned services to sign up to it as part of the contracting process, while also encouraging other partners to do so.
13. Restorative justice services should work with the police and the PCC to explore how the requirements of the Code of Practice for Victims of Crime around sharing victims' information can best be enacted, with the aim of ensuring that services have access to all available victim information.

4.5 Awareness

Supporting the views of the House of Commons Justice Select Committee (2016) and other research in the area (Hallam, 2015; Meadows et al, 2012; Shapland, 2004; Victims' Commissioner, 2016a; Why me?, 2015), low levels of awareness of restorative justice with victims and the knowledge of how to access it were highlighted as a significant barrier to take-up rates by interview participants, as was a lack of awareness of restorative justice among key professionals. All of the victims who had experienced restorative justice and over half of the practitioners, managers and directors cited low levels of awareness as the most important factor in improving take-up rates of restorative justice.

4.5.1 Public awareness of restorative justice

As discussed in section 2.8, it is argued that raising awareness of restorative justice among the general public would increase take-up rates. While this was echoed by many of the practitioners, managers and victims interviewed, there is little existing evidence to support the theory.

Of all the victims interviewed only two had heard of restorative justice before becoming a victim. One of the victims had heard the term restorative justice on a chat show but could not explain further. The second victim was aware of restorative processes in other countries but did not know that restorative justice services existed in the UK. Both went on to complete a restorative meeting with their offender, although neither came about as a result of their pre-existing awareness. Instead, they were proactively contacted by a restorative justice provider and a youth justice worker. One of the victims said:

"I don't think I would have done anything about doing it [restorative justice] unless I had had a phone call."

Both victims were asked whether they thought their pre-existing knowledge had swayed their decision to take up the offer of restorative justice. They both said that it had, but that there were other factors which had greater influence. This indicates that awareness alone may not be the answer to achieving a restorative outcome.

While prior awareness may not make victims more likely to want to take part in a restorative process, if awareness is low, self-referrals may also be scarce – victims or offenders are unable to ask for a service if they do not know that it exists. One of the victims in this study who knew about restorative justice stated that she did not know how to go about self-referring. This point was also raised by a number of practitioners in this research. Self-referrals were accepted by all of the restorative justice providers that took part in this study but numbers were generally very low or non-existent. This is consistent with other restorative services internationally. Suggnomè (2012) and Mèdiante (2012) quoted in Van Camp and Wemmers (2016) state that referrals initiated by victims or their support workers account for just 5% and 13% respectively of the total number of referrals received in two services in Belgium.

This in itself may not present a barrier to the vast majority of victims who should – theoretically – get picked up by the formal mechanisms for offering restorative justice in place across the justice system. It remains the case, however, that this is not yet happening in many areas and higher awareness could be important where extraction or referral models are not yet working effectively. It is also significant with victims or offenders who were involved in a historic crime, when restorative justice was not offered routinely.

A further but contrasting view regarding awareness was raised by managers and practitioners. This was that people who have a pre-existing but misinformed view of restorative justice may be deterred from taking part. For example, media representations of restorative justice may depict a victim or offender in a way which contrasts with how actual victims and offenders see themselves. They may then feel that restorative justice is unsuitable for them and their needs. Additionally, negative articles – often based on a misconception of what restorative justice is – appear in the media, presenting restorative justice as a ‘soft’ or unsafe option.

Many practitioners thought that negative preconceptions could be countered and general awareness could be increased through national restorative justice promotions, such as restorative justice week. This is supported by the Victims’ Commissioner, who also recommends that the Ministry of Justice carry out analysis of how the general public can be made more aware of restorative justice (2016a: 21). Practitioners in this study also supported local promotional work which could be tailored according to the provision in that area.

Case studies can be a highly effective way of obtaining positive media coverage for restorative justice. Where participants are willing to talk to the media, however, they require support and there is an ongoing duty of care. If the restorative justice service provider is inexperienced in this area, advice should be sought from another organisation, like the RJC.

4.5.2 Public awareness of restorative justice – recommendations

14. While there would be benefits to higher levels of public awareness, practitioners should not place too great an emphasis on the need for public awareness in order to increase take-up.
15. In order to counter negative preconceptions, restorative justice service providers should, however, consider what targeted work they can do locally to ensure that restorative justice is presented fairly and accurately in local media and by local influencers.

16. At the local level, PCCs and their deputies, who often have a high profile in the local media, can play an important role in raising awareness of restorative justice and the availability of local restorative justice services.
17. Restorative justice service providers should consider using case studies as a way of obtaining positive media coverage for restorative justice. Appropriate support must be given to the participants and advice on this can be obtained from the RJC, where needed.

4.5.3 Victim and professional awareness

The point at which awareness is crucial – and distinct from the ‘offer’ – is the point at which people become a victim of crime. Many of the restorative justice facilitators interviewed, however, could not directly access victims to raise awareness of restorative justice at the earliest stage and were reliant on other professionals in the criminal justice system to do so.

There are many points where awareness should be raised, all of which rely on other professionals or services within the criminal justice system. These points are:

- When the victim first reports the crime. Restorative justice should be raised by the police and victim support services. This would provide compliance with the Code of Practice for Victims of Crime.
- Once a case begins to progress through the criminal justice system. Again, restorative justice should be raised by the police, either as part of a disposal which may contain restorative elements, or in the pre-sentence stage if the case will be heard in court.
- Witness care units and victim services can mention restorative justice in their contacts with victims both pre- and post-sentence.
- The option of post-sentence restorative justice could be raised by the probation service, witness care units and victim services.
- Prison staff can raise awareness of restorative justice at induction, throughout sentences and before release.
- During a prison or community sentence, when offender managers could consider the use of restorative justice with the offenders that they supervise.
- With victims who attend support groups or counselling services for victims of crime.

The following explanations for key agencies failing to provide information about restorative justice at these stages were given by practitioners:

- Low levels of awareness or a misinformed opinion of restorative justice. Unless there had been direct experience of restorative justice, criminal justice workers had little real knowledge of the restorative process, or held incorrect beliefs. This is an obvious barrier to take-up rates.
- Increased workloads causing a lack of time to assess whether restorative justice was the right approach or to explain the process in detail to potential participants. Practitioners and managers stated that in recent years the workloads of their colleagues in police, probation and CRCs had increased.

This meant that they did not have capacity to spend time exploring what a victim needed and whether restorative justice would meet this. The Victims' Commissioner (2016a) reported that victims did not think that the police were the right organisation to inform victims about restorative justice because they were too busy and insufficiently trained in restorative justice. As explored elsewhere in this report the initial conversation about restorative justice is vital to engagement and is best done sensitively and with adequate time.

- Fear of upsetting the victim. This was especially mentioned in regard to victim liaison officers who often developed long-term relationships with victims of serious offences. The brother of a murder victim identified this. He said: "Maybe she [the victim liaison worker] felt we would be shocked and she was jumping the gun or being too forward by suggesting we meet with him. But it's kind of like in some ways she perhaps should have made us aware of what could happen over a period of years."
- Lack of confidence in how best to broach the subject with victims. This was particularly relevant if the professional tasked with raising the subject had little or no actual experience of the process.
- No buy-in to the benefits of restorative justice. This was in regard to police officers who did not see that the use of restorative justice would benefit them in their daily work or thought it ran counter to their priorities. Despite the potential benefits, restorative practitioners found that officers would not refer out of court disposals to them because the case would have to remain open until the restorative element of the disposal was complete. Officers were under pressure to close cases as quickly as possible, and there was no obligation to refer. This was also highlighted by *Why me?* (2015).
- Perceived ownership of victims or offenders. Practitioners and managers referred to other professionals in the criminal justice system who felt that the service user was 'their' victim or offender. Without consulting either party, restorative justice was deemed unsuitable. Although such decisions were often made with the best interests of victim and offender in mind, it is disempowering nonetheless.
- Competition for funding. Some managers felt that decreasing levels of funding had led services to become more protective of service users. As competition for dwindling resources increases, many services may not want to work co-operatively with other organisations that they are competing for funding with. They are perceived to be reluctant to refer victims or offenders they work with to other interventions for fear of undermining their own offer.

There is, therefore, a conflict between the role that key agencies could have in raising awareness and their lack of knowledge and buy-in to the area, which could potentially be combatted with increased professional awareness of restorative justice.

As discussed elsewhere in this report, the police are the key agency with access to victims and are frequently in the position of being able to suggest restorative justice as a potential option for the first time. Where there is a lack of buy-in or understanding from the police (or other agency), it may lead to information on the benefits of restorative justice being incorrect, lacking in detail or possibly even actively off-putting. There is, therefore, a need to raise awareness and knowledge of restorative justice among the police, as the key professionals who are responsible for telling victims about it for the first time - this is a point that was raised frequently by the practitioners and managers interviewed.

A manager of restorative services believed that police processes should be systemised in order to remove the option of officers choosing whether or not to discuss restorative justice. She said:

“We’ve realised with the police that we need to move away from people, it needs to be in their systems, their processes.”

She hoped to capitalise on the use of handheld devices which the local police force use to record victim statements. As part of the process there would be a mandatory section on whether the victim would like further information on restorative justice. A low-tech version of this approach could be achieved by adapting the paperwork in use by the police, by incorporating questions about restorative justice into the forms used when collecting victim and witness statements or victim impact statements.

An additional benefit to either of these systems is that it would allow for data to be collected on how many victims were offered restorative justice but declined (although with the latter approach, this would need to be recorded manually). This information is not routinely captured and would be very helpful in identifying factors that affect take-up rates. The Victims’ Commissioner also recommends capturing this data as it would be helpful to PCCs to identify how much of the funding they have allocated for development of restorative services is being utilised (2016a: 21).

While effectively forcing police officers to raise the subject of restorative justice to victims might offer a short-term solution, it is unlikely to persuade them of the potential benefits of the process. Raising professional awareness, then, is potentially a more effective way of securing long-term support for and buy-in to restorative justice. One manager said:

“What I think you are dealing with here is an audience of victims of crime and there has to be ... Something that’s common to victims of crime, something that they all engage in or they are all accessing. Where you can try and get that message to them ... It’s the police, isn’t it? But if they’re not trained and they haven’t got the awareness themselves of offering of restorative justice, again that can be a barrier. So it’s an awareness to the public and awareness in the criminal justice system.”

In addition to the police, the judiciary, court staff, victim and witness care units and victim liaison officers were specifically mentioned by victims, practitioners and managers as a barrier to take-up rates because they did not discuss restorative justice with potential participants. This is in spite of being well placed to raise awareness of restorative justice and positively promote its use because they have repeated contacts with victims and offenders and access to the necessary information.

A victim said:

“If the police know that this is an option and they know which crimes and which victims and which perpetrators are more likely to go through with this. They are the ones who should be pushing it and saying look we think you could benefit from this, go for it.”

He continued:

“There are a lot of good frontline police that do know about this sort of thing and have been trained on it and do care about their communities. So I think getting it into the mentality of the police that their first approach shouldn’t be arrest rates it shouldn’t be convictions it should be restorative justice before anything else. That seems like the most logical way to make this whole approach work.”

This did not routinely occur, however, despite the Code of Practice for Victims of Crime stipulating that all adult victims have a right to information about restorative justice.

To increase awareness and support for restorative justice across criminal justice agencies, a number of services spoke of the importance of key professionals observing restorative justice in action. A number of people commented that once seen, a real understanding of the process and its benefits developed. Observers then went back to their agencies and would spread the word about restorative justice and generate referrals. Such individuals often became restorative justice champions. One service was actively recruiting champions. It was a voluntary scheme but the hope was that interested individuals from the police and victim and witness services would come along to an awareness session which would generate support for restorative justice and ultimately referrals.

Awareness-raising sessions for professionals had frequently been delivered by restorative providers, to varying effect. One practitioner commented that in the county they worked, all front line police officers were given a two-and-a-half hour briefing on restorative justice. The number of subsequent referrals was disappointingly low. The manager of another service, however, had seen positive outcomes from delivering briefings on restorative justice. The sessions lasted for around two hours and covered what restorative justice is and how it works. Local case studies were used to clearly evidence the benefits and application of restorative justice. Officers from all ranks and teams were invited. Challenges arose in releasing officers from their duties to attend and turnover of staff – often officers were trained and then deployed to another team. The manager commented:

“Our referral rates have very much gone up and down for the last four years, it usually goes up when we deliver training to the police. So we can usually see an influx once we’ve given some really good training to the police. Our referral rates go up and that’s more noticeable than when we train other organisations.”

Another well-established restorative justice provider had delivered awareness sessions to the police over a period of years. There had been some positive outcomes after the sessions but the battle to raise awareness was not over, simply because there were so many frontline officers. Increasing and maintaining awareness of restorative justice is an ongoing job, particularly with large organisations like the police. The scale of the task is evident in the comments made by a detective chief inspector when discussing how to raise awareness and increase the use of restorative justice in community resolutions. He had started the process six years previously, and the work was still not complete.

“Six years ago when we started from nothing, every officer from a police community support officer to the rank of inspector attended a full day’s training ... they effectively had four hours around restorative justice and its use in community resolution. That is now embedded in our probationer training, so our brand new recruits receive this as part of their initial training, so they are equipped and prepared before they go out into the real world. Our newly promoted sergeants get a reminder when they’re promoted about what their responsibilities are ... and we deliver this training routinely to special constables as well.”

PCCs and their deputies are key in generating support for restorative justice because they have the authority to bring people and organisations together. Their support is invaluable. Generating support for restorative justice in key agencies can be achieved by demonstrating tangible benefits to those organisations. For example, offender appointments with restorative services can count as a rehabilitation activity requirement, normally delivered and managed by probation. If delivered by a restorative justice provider, this would reduce the workload of probation staff. Additionally, police time, resources and money can be saved by using restorative justice which positively changes offender behaviour and reduces police call-outs.

Key agencies can also be incentivised to identify suitable cases for restorative justice using targets. A manager suggested performance management targets for restorative justice with police officers as a way of motivating them to offer restorative justice. This could present a solution to the lack of support from some police forces reported by practitioners and managers in this study. A similar approach was reported by Wigzell and Hough (2015) – in the NOMS RJ Capacity Building Programme they combatted low referrals to probation and prison restorative justice services by including in staff appraisals the screening of their caseloads for eligible restorative justice cases.

Checks and balances are necessary to ensure that inappropriate offers are not made simply to make up the numbers. As already mentioned in this report, work is needed to ensure that professionals who discuss restorative justice with potential participants are equipped with the skills and knowledge to do so effectively. There is no sense in taking a performance management approach if it does not deliver a quality service.

It is also important to stress that such targets could not be linked to completed restorative justice activities. The voluntary nature of restorative justice means that there will always be difficulty in setting targets related to the amount of direct or indirect restorative outcomes. The Ministry of Justice itself recognises this in the current Restorative Justice Action Plan (2014: 2).

Overall, it was clear from the interviews conducted for this study that in order to ensure that providing information on restorative justice is a priority for staff working in the police and other relevant agencies, it is essential to get the support of senior leaders in those agencies. Clear, demonstrable support for restorative justice from chief constables and PCCs, for example, would make it clear to frontline staff that restorative justice is a priority for the agency. Restorative justice service providers should therefore develop relationships with these key individuals to build their support for restorative justice.

4.5.4 Victim and professional awareness – recommendations

18. Restorative justice service providers should offer restorative justice awareness training to the police and other local agencies that will come into contact with victims of crime on an ongoing basis (to take account of the turnover of staff). The sessions should highlight the benefits of restorative justice to the organisation receiving the training.
19. Restorative justice service providers should provide resources for agencies they provide training to that can be passed on to victims about restorative justice and how to access it.
20. Restorative justice service providers should work with the police to encourage them to put systems in place to ensure that they provide information about restorative justice and how to access it to all victims (in line with the requirements of the Code of Practice for Victims of Crime). This information for victims should be provided by the restorative justice service provider.
21. Restorative justice service providers should look to develop strong working relationships with local senior leaders in relevant agencies (for example, chief constables) in order to garner senior support for restorative justice.
22. Restorative justice service providers should work with the police and the local PCC to consider how the police can be incentivised, potentially using targets, to ensure that victims are provided with information about restorative justice.
23. Ways of recording how often information about restorative justice is being offered to victims by the relevant agencies, and how often it is accepted, should be developed. This information should then be reported back to the restorative justice service provider.
24. Restorative justice service providers should consider recruiting restorative justice ‘champions’ from key partner organisations. Their role would be to promote the use of restorative justice with colleagues.
25. Seeing restorative justice ‘in action’ can be very effective in securing buy-in from key local stakeholders. Restorative justice service providers should enable these individuals to observe a restorative justice conference.

4.6 The offer of restorative justice

As described in section 4.5.3, the point at which a victim is first told about restorative justice (the awareness-raising stage) is distinct from the point at which they are offered the chance to participate, which will typically involve more detailed information being conveyed.

According to the interviewees in this study, and supporting previous research in the area (Hallam, 2015; Shapland et al, 2004, 2006, 2007), this initial conversation with a victim about restorative justice is a key point of engagement. One practitioner identified it as the single most important factor in improving victim take-up rates in restorative justice.

While there is no set way to make the offer of restorative justice, interviewees did suggest a number of points they considered relevant:

- Developing the trust of victims is important. This can be achieved by remaining victim-centric. In practical terms this means keeping the needs of the victim at the forefront of decisions made and actions taken.
- Exploring with the victim what their needs are can help them to decide whether restorative justice is the right choice for them.
- Avoiding lengthy conversations on the telephone.
- Conducting face to face initial meetings with victim or offender where possible.
- Flexibility over time and place to meet with participants.
- Accepting that some victims and offenders will not be ready to engage the first time that restorative justice is offered. They will need time and space to reflect on the offer.
- Being clear that the process is voluntary, free and confidential.
- Providing as much detail about the process as possible.
- Avoiding the term restorative justice in initial conversations, instead focusing on the process and how it is delivered.
- Offering all forms of restorative justice, direct and indirect.
- Explaining that information about restorative justice is made available to all victims as part of the Code of Practice for Victims of Crime.

Interviewees also commented that the RJC guidance on engaging with victims (2016a) is helpful but may need to be adapted depending on local procedures.

One director of a restorative justice service stated that offering restorative justice in a generic way was a deterrent to victims, and a personal approach is better. It is important to recognise that each experience of victimisation is different. She said:

“I think when you’re doing that initial interview, that first visit, what’s really important is to try and tease out the underlying needs of that person, whether it’s offender or the victim, because if you can identify those underlying needs, then that will ... [either] identify restorative justice as a way of satisfying those needs, or there might be something else and you need to signpost them on.”

The importance of understanding and meeting victims’ needs was stressed by other interviewees. Van Camp and Wemmers (2016) also support this and state that an attractive offer of restorative justice is one which takes account of victims’ concerns. Using victimological literature they summarise victim need as a desire for “information, protection, reparation, emotional support, practical help and recognition.” (2016: 418)

Previous research has shown that victim dropout rates are reduced if the initial conversation about restorative justice is with a trained facilitator. The practitioners and managers interviewed for this study also believed this to be true, arguing strongly that knowledge, understanding and experience of restorative justice are essential and that the person making the offer should be a trained restorative justice facilitator. Those who lacked such skills and experience, they argued, would be unable to adequately describe the restorative process and answer questions that victims had. As one manager said:

“I think that if it’s done by someone who doesn’t understand the process and who gives incorrect information, you’ve kind of lost that victim.”

If, then, facilitators are best placed to make the offer, the challenges are resources and getting the case information to the trained facilitators. Effective case flow systems are therefore essential and there need to be adequate numbers of trained staff or volunteers to contact participants.

The term restorative justice was highlighted as a barrier by just under a third of managers and practitioners. Their comments referred to it being too technical or confusing. Another facilitator stated that the word restorative is infrequently used in general conversation and has little meaning to most people. A practitioner relayed a conversation that she had with a victim who had taken part in a restorative justice conference. The victim found the term did not roll easily off the tongue and kept muddling the words. When asked what she would call it instead she replied: “It’s just talking it through, isn’t it?” All of these points also relate back to the stage where awareness of restorative justice is initially raised with victims. Irrespective of the stage of the process, interviewees thought that the term restorative justice needs to be explained clearly so that it is properly understood, particularly by victims who are often experiencing a number of challenges as a result of their victimisation.

Contrary to what the practitioners and managers said, though, the victims in this study who had experienced restorative justice did not specifically comment upon the term or whether it impacted on their understanding and engagement in the process. They all had positive memories of the initial offer and explanation of restorative justice which for some took place over the telephone while for others it was in a face to face meeting.

Fear of repercussions was identified as an inhibitor by two of the victims who declined the offer of restorative justice and a number of practitioners and managers commented that initially many victims and offenders require reassurance that the process is safe. While the person making the offer clearly has a role to play in this, arguably reassurance is best provided by those who have experienced the process itself (which is expanded on in section 4.9).

4.6.1 The offer of restorative justice – recommendations

26. The offer of restorative justice should be made by a trained facilitator, wherever possible, and ideally in a face to face meeting, where resources and circumstances allow.
27. Contact prior to a meeting should be geared towards securing that meeting. Discussion about the restorative justice process prior to the meeting should be minimised and letters should be kept short.
28. The term ‘restorative justice’ can be off-putting to some potential participants and criminal justice jargon can be confusing. Practitioners should explain the process clearly and simply, without resorting to labels or jargon. It can be beneficial to describe the process before giving it a label.
29. A decision on whether restorative justice is appropriate for a particular victim or offender should be made by a trained restorative justice facilitator following consultation with criminal justice professionals with full knowledge of the case.

4.7 Engaging offenders

This study focused primarily on victims' access to restorative justice. For victims to take part, however, it is necessary for the offender to also agree to take part. There were, however, very few offender-specific barriers put forward by practitioners and managers. The prevailing view was that offenders had more awareness of restorative justice than victims and were easier to engage. Barriers to offender engagement included:

- a lack of acceptance of guilt or of the harm caused by offending
- mental health problems and problematic use of drugs and alcohol
- low levels of emotional literacy, preventing them from engaging with restorative justice

Once the victim and offender both consent to restorative justice, few barriers were identified and the view was that generally cases would proceed to a restorative justice activity, providing that any logistical challenges could be addressed.

4.7.1 Engaging offenders – recommendations

30. Where offenders do not accept the harm caused by their offending, undergoing victim awareness work may help to prepare them for taking part in restorative justice.
31. If an offender's drug or alcohol problems are deemed to be too severe for restorative justice to take place, the case should be revisited as the offender moves through the justice system and accesses treatment.

4.8 Facilitator skill, supervision and support

Many of the suggestions made within this report will only become possible if facilitators have the right training, skills, supervision and support. Interview participants made reference to the training and development of restorative justice facilitators, and some felt that the standard three-day course to become a restorative justice facilitator was not long enough.

There was a sense that training was only the first step to becoming a facilitator and that newly-qualified facilitators should spend time shadowing more experienced colleagues. Regular supervision and continued professional development were also recommended to maintain and develop proficiency. Those in the field thought that this would help to ensure that the restorative workforce were sufficiently skilled and able to find innovative ways of overcoming the barriers they faced.

Some practitioners commented that the standard training to become a level two facilitator focuses on facilitating a conference to the exclusion of other stages of the process. As this study and other research has highlighted, a huge amount of energy and resource is required in the earlier stages of identifying cases, chasing information, contacting victims and offenders and having the skills to discuss restorative justice in a way which maximises the chances of engagement. This indicates that training in the recruitment of participants and making the offer of restorative justice is also required. Suggestions were made to either extend the training course beyond the standard three days or increase the proportion of time spent on engaging with victims.

Experienced and knowledgeable facilitators are key to successful delivery of restorative justice. A director of services stated that there was a shortage of experienced practitioners. Ultimately, if numbers of completed restorative justice processes are lower than hoped there are fewer opportunities for practitioners to become experienced, creating a circular problem.

In addition to training frontline facilitators, it was suggested that supervision and support of staff from other key organisations who are responsible for providing information about restorative justice and offering the intervention will help to increase take-up rates by ensuring that a quality service is offered. One service holds restorative justice one to ones with the victim and witness care officers and said that this had led to an increase in referrals. The practitioners in the service saw the one to ones as an opportunity to develop the skills of those who raise awareness of restorative justice and make the offer of it.

In one of the practitioner focus groups the suggestion was made to develop and host peer networking events for practitioners regionally and nationally. The focus group itself proved to be a good opportunity for practitioners to come together to share their experiences, learn from each other and take solace in the fact that the challenges they faced were being felt by others. After the group, emails were exchanged and contact has continued. Formal development of peer to peer support and networking could facilitate sharing of knowledge which could go some way to increasing the numbers of restorative activities. The question is who would arrange, host and fund this? While the RJC is well placed to take on this role, resources to organise and fund peer support would need to be found.

4.8.1 Facilitator skill, supervision and support – recommendations

32. Restorative justice facilitation training should have a greater focus on victim engagement and the skills required to explain the process to victims.
33. Newly-trained facilitators should be supported and mentored by more experienced colleagues when first offering restorative justice to victims.
34. Restorative justice service providers should consider how they can provide support to staff from other agencies who are responsible for providing information on restorative justice.
35. Any restorative justice facilitator who works with sensitive and complex offences such as sexual violence, domestic abuse and murder must be appropriately trained and experienced.
36. Restorative justice service providers should create peer networks to enable their practitioners to share their experiences, knowledge and learning with their peers from other services.

4.9 Peer support

Victims and offenders who have taken part in restorative justice could play a vital role in raising awareness of restorative justice with potential participants and professionals in the criminal justice system. Practitioners and managers felt that personal stories were an effective way of generating awareness. Key to this is having a flow of cases and subsequent completed restorative activities to draw participants from. There was a sense that awareness-raising events needed to reach out beyond those who were already converted to restorative justice.

While raising awareness is not demonstrably linked to increasing take-up, there may be a more effective role for peer support, however. Victims who had gone through a restorative activity highlighted themselves as potential peer mentors who could meet with potential participants, both victims and offenders.

The brother of a murder victim described how meeting the father of a murder victim who had participated in restorative justice had really benefitted him. He identified this opportunity as a key factor which helped him to decide to pursue restorative justice. He said:

“Having his personal coaching and mentoring having been through RJ and been through a very similar experience to myself made a big difference.”

Also evidencing this point, the mother of a young woman who had died in a car crash spoke of her involvement in talking to prisoners about her experience of restorative justice. Prisoners had approached her afterwards and said that they were now more willing to consider taking part because their fears had been allayed. Victim and offender fear was raised as a barrier to take-up rates by practitioners and victims who chose not to take part in restorative justice. Facilitating contact between potential and actual participants could, therefore, be a way to allay concerns and correct misperceptions.

In order to impact upon take-up rates, mentors must be available to talk to potential participants at an early enough stage of the process, when they are undecided. Even if the decision to take part has already been made, it could still be helpful for a potential participant to talk with someone who has been through the process in order to support them through to completion of a restorative process. To facilitate the use of restorative justice peer mentors an organisation such as the RJC would need to maintain a database of willing mentors which practitioners could then draw on. Peer mentoring can be challenging, and it would be necessary to provide support and supervision for peer mentors. There may also be cost implications such as travel expenses, depending on the method of delivery of the mentoring.

4.9.1 Peer support – recommendations

37. Restorative justice service providers should identify potential mentors from the victims who they work with and invite them to consider supporting others to take part in restorative justice.
38. Restorative justice service providers should ‘match’ mentors with victims who are considering taking part in restorative justice, where victims feel this would be beneficial.
39. Restorative justice service providers should provide practical and emotional support to mentors in engaging with victims.

4.10 Out of court disposals

Out of court disposals which contain restorative justice can be delivered by the police, by an external agency or by a combination of both, and present a good opportunity to use restorative justice with offences of a less serious nature. Delivery is not without its issues, however.

Practitioners in the organisations that received referrals from the police thought that some officers misused the system. They felt that cases would be referred because it was either an easy way to record the offence as disposed of or because all other options of dealing with the matter had already been used unsuccessfully. The end result was that there were often poor quality referrals which were unsuitable for restorative justice.

An example of this can be seen in the referral of a longstanding neighbour dispute. Neither party was willing to take part in any form of communication with the other. Restorative justice was therefore unlikely to be appropriate but the officer referred the case to the local external restorative justice provider. Following assessment by a facilitator that restorative justice was not appropriate the case was returned. The referring officer decided to proceed with restorative justice regardless. The resulting meeting was observed by a facilitator and, in their opinion, did not follow the principles of restorative justice. The dispute was not resolved and one of the participants had a particularly negative experience.

Organisations that relied on referrals from the police also found that victims and offenders frequently lacked a comprehensive understanding of what they had agreed to do. Practitioners then found it difficult to engage with participants who did not want to comply with the requirements of the out of court disposal or take part in restorative justice. Some victims were unhappy that an outside organisation was tasked with delivering the restorative element because they did not view it as a police response, which was their expectation. In some instances this resulted in the case being returned to the police.

Other barriers to engagement included a time lapse of up to a month from the date of offence to the date of referral and the imposition of a time frame for delivery of the out of court disposal. One organisation had a 28-day time limit in which to deliver the restorative element of the out of court disposal. This was identified as the biggest barrier to delivery by one facilitator, particularly in cases which require multiple preparation sessions. In addition, not all victims and offenders were ready to take part in the restorative activity within 28 days. In these instances the facilitator had to negotiate with the officer in charge of the case and operational support officers to extend the deadline. Facilitators felt that police staff were under pressure to complete cases within 28 days and that this pressure was then transferred to them.

Misapplication of restorative justice in out of court disposals was also reported. Restorative justice facilitators felt that officers were inclined to use level one restorative justice to quickly deal with an offence which would have been better dealt with using a level two restorative approach. The reason for this was that a level one restorative activity could be administered immediately, whereas level two would take more preparation.

Level one restorative justice is commonly referred to as 'street restorative justice'. This term was seen by a detective chief inspector (DCI) as the cause of much confusion. In a wider sense the DCI felt that the language used in the restorative field is unhelpful to creating genuine understanding of the practice. He felt it unsurprising that the public were confused or against the use of restorative justice when they might hear that a low-level crime had been 'RJ-ed' and then also hear that restorative justice had been used in a more serious offence.

As with other areas of delivery, authority over whether restorative justice was an appropriate intervention was also a barrier. Organisations which relied on referrals felt that the referring officer had decided that restorative justice was suitable, despite not being a trained facilitator or having done any preparation work with victim and offender. If the facilitator then assessed the case as being unsuitable there was a sense that this was a failure on their part or as a result of the inadequacies of restorative justice.

If the police were the agency which delivered the restorative justice element of the out of court disposal there was an unease among police officers with the informal nature of outcome agreements, particularly if participants then reneged on the arrangement made. A DCI said:

“If we take an informal approach to the situation then we don’t have any mandate to enforce the voluntary agreement. As a police organisation, that makes us a little nervous in terms of any delayed reparation.”

Although the voluntary nature of restorative processes means that outcome agreements are not usually enforceable, this may be particularly challenging for the police because the victim may look to them to ensure that the agreed actions are carried out. If they are not, this may affect the victim’s relationship with, and confidence in, the police.

Facilitators with experience of delivering out of court disposals were asked what they thought the positives and negatives were of referring out of court disposals to an organisation outside of the police. The benefits of following this approach were widely perceived as a saving of police time (albeit with costs attached if the police need to fund the organisation that cases are referred to) and the ability to deliver better quality work with victims and offenders. A DCI said:

“I think in terms of the positives there is what I would anticipate to be an obvious expertise and different approach to the police officers’ perspective so actually you are looking properly at restorative justice in that sense. As I said before, I don’t consider police officers in general to be the best people to deliver [out of court disposals that contain restorative justice].”

The downside to referring cases to an external provider were that for some cases an immediate response was sufficient and preferable. The DCI described the delivery of an immediate out of court disposal as a way to quickly reintegrate the offender back into society while also repairing the harm to a victim. He said:

“We’re really clear around the speed around reintegration into society, which is, you’ve done wrong. You’ve done something silly. You’ve done something stupid. You’ve done something illegal. Here you are, you’re remorseful, you’ve apologised ... Let’s get you back into society without that legacy hanging over you, in terms of someone else contacting you, having to revisit that thing. There’s benefits to that in terms of does it minimise the impact? Actually I think our reoffending rates show that there isn’t. I think our reoffending rates show that [an immediate response] is an effective process for the vast majority of cases.”

To combat low levels of understanding of out of court disposals and restorative justice, facilitators regularly gave briefings to frontline police officers. The content focused on what restorative justice is, when to refer and how best to work with victims.

This was an ongoing piece of work which had to be regularly revisited, and flexibility over when briefings were delivered was essential due to the shift patterns that response officers worked. Facilitators felt strongly that if restorative justice was explained well at the outset, engagement would be improved. One organisation had plans to record a video which could be shown at briefings and a restorative justice training package.

It was also considered helpful to have single points of contact (SPOCs) within the police. Regular meetings helped to remove barriers to delivery and take-up and the SPOCs were able to disseminate information to those making referrals. Overall, anything that helped to develop the relationship between officers and the outside restorative justice agency was seen to increase understanding of the demands placed on each organisation and its staff members. This was achieved by having a regular presence in police stations and talking to as many officers as possible, both formally and informally.

Facilitators understood that extra preparation may be necessary with some participants. If this was required they communicated it to the police which helped to increase understanding and reduce concerns that cases remained open for too long. Offering all forms of restorative justice helped to engage participants who were concerned about meeting their offender or victim face to face.

One police force had created a pragmatic way of navigating what they described as the cluttered landscape of out of court disposals and managing the unease within the police force over the informal nature of outcome agreements. They had created a pathway which separated out restorative justice which could be delivered immediately and that which could not. The former would be dealt with by way of a community resolution with a restorative approach which incorporated some of the principles of restorative justice, and this was delivered by the police. The DCI interviewed felt that this approach struck a balance between delivering a response which satisfied victims, positively impacted on offenders and was workable for frontline officers.

Any cases which could not be dealt with immediately would be referred for a conditional caution instead, which would be delivered by an external restorative justice service. The DCI said:

“[They] upgrade the outcome to a conditional caution, which of course is still out of court, but very much more formal in its process. We’ll require the taking of fingerprints and photographs ... and will put someone in our system, but what it does do is it gives us the teeth to be able to see something through.”

Once a conditional caution had been issued the offender was mandated to take part in a restorative justice assessment. A facilitator would also make contact with the victim to assess whether there was any desire for restorative justice. While there was no assumption that victim or offender would take part, the victim details and the impact of the crime would be recorded. Even if the victim did not wish to convey this information personally, whether directly or indirectly, it could still be used to help the offender to understand the impact of their actions.

4.10.1 Out of court disposals – recommendations

40. Where restorative justice as part of an out of court disposal is delivered by an external provider on behalf of the police, clear guidance on which cases are suitable for referral should be provided to the police.

41. The restorative justice service provider should also conduct awareness-raising training with the police to ensure they understand the process that people are to be referred to.
42. Where police officers and PCSOs are delivering restorative justice as part of out of court disposals, they must be properly trained and supervised, with a particular focus on ensuring that they are properly trained in working with victims.

4.11 Pre-sentence restorative justice

While many of the barriers highlighted in this report are generic and can be found in all areas of restorative justice delivery there are some which are specific to the pre-sentence arena.

First, many victims, offenders and indeed criminal justice professionals wrongly believe that successful completion of a restorative justice activity in the pre-sentence stage automatically reduces the sentence given. The court may take participation in restorative justice and subsequent outcome agreements into account when sentencing, just as many other factors are considered – for example, whether a guilty plea was entered and how quickly. It is not a given, however, that successful engagement in restorative justice will lessen the sentence imposed.

The speed with which cases move through the court system can vary enormously. In some cases the process can take months, in others it can be days and this can impact upon victim engagement. Some victims may not be ready to engage at the point when pre-sentence restorative justice is an option.

Retaining a focus on the needs of victims is also a challenge when wider criminal justice systems and processes dictate the progress of cases. Better Case Management (BCM), for example, directly affects delivery of pre-sentence restorative justice. The purpose of BCM is to ensure efficiency across the court system. One of its aims is to reduce the number of hearings in each case. This means that there may not be time to deliver a restorative activity at the pace that participants would prefer or in the specific pre-sentence window.

Relationships with the police, the CPS and the judiciary are key to reducing and removing the barriers to delivery of pre-sentence restorative justice. Better links with defence representatives were highlighted by two directors of restorative services as a way of increasing restorative justice activities specifically at the pre-sentence stage. They said that briefing solicitors and legal representatives can in itself become a case flow pathway, as with their support referrals could be made to restorative providers. This would require buy-in from the judiciary if adjournments are required to allow time for the restorative activity at the pre-sentence stage.

Observing the progression of cases as they move from charge to plea hearings is essential, as is monitoring any changes in plea. There are many factors which influence the plea of the accused. If pre-sentence restorative justice providers are unaware that this has happened they will miss the chance to deliver a restorative activity in the pre-sentence stage. Timely access to case information and tracking cases can negate this issue.

A particular opportunity for restorative justice to take place can be when the offender pleads guilty in the Magistrates' Court and the case is then sent to the Crown Court for sentencing.

This creates a delay in the process that may provide a window for restorative justice to take place.

Ideally pre-sentence restorative justice services are part of a wider model of delivery, so that if cases cannot be delivered in the pre-sentence stage they can be carried over into the post-sentence stage.

4.11.1 Pre-sentence restorative justice – recommendations

43. Restorative justice service providers should work with the judiciary, CPS and defence representatives to embed restorative justice at the pre-sentence stage.
44. Restorative justice service providers should work with court staff to develop processes that enable timely access to information about cases.
45. Restorative justice service providers should work with Magistrates' Courts in their area to develop systems to identify cases that are sent to the Crown Court for sentencing following a guilty plea.
46. When offering pre-sentence restorative justice, facilitators should ensure that victims are provided with clear, accurate information on the impact that participation will have on sentencing.

4.12 Working in prisons

Where an offender is convicted and goes to prison, or is held on remand during a pre-sentence process, practitioners reported mixed experiences of delivering restorative justice activities within the prison estate. Some had a very positive experience while others found a number of challenges. The barriers identified were accessing prisons and prisoners, relocation of prisoners and gatekeepers within the prison.

Restorative justice practitioners reported difficulties in arranging to visit offenders. One provider found delays were caused because appointments had to be booked as a legal visit. These appointments took place every three weeks, so if all the appointment slots were taken it would then be a six-week wait. Other practitioners and managers felt that over the last few years the resources available to support delivery of restorative justice in prisons had decreased. This resulted in fewer prison staff to escort prisoners and victims to restorative justice conferences within prison and had delayed cases to the point where victims withdrew from the process. There was a sense that restorative justice is not a priority within prisons and that the prison establishment, perhaps unsurprisingly, had difficulty meeting the needs of victims taking part in restorative justice.

Relocation of prisoners presented a barrier because the offender may be moved from a local prison to another many miles away. Some restorative providers had developed very good relationships with their local prison and once the prisoner was moved new contacts and relationships with prison staff were needed. Similar experiences were reported by the Victims' Commissioner in the review of restorative justice (2016: 15).

Another finding in this study also reported by the Victims' Commissioner (2016: 15) was that of gatekeepers within prisons denying access. Practitioners and managers reported that some prison staff were unsupportive of restorative justice and this posed a barrier to the process.

An example was provided of a victim-initiated murder case which took two years to bring to a conference. The director of the restorative service involved described being passed ‘from pillar to post’ with numerous professionals denying access.

Another practitioner spoke of a victim-initiated rape case. Six months of preparation had taken place and staff within the prison were supportive. The afternoon before the restorative meeting the regional prison psychologist objected to the restorative meeting on the grounds that the offender had not completed the sex offenders’ treatment programme.

The victim, however, felt that this was irrelevant to the restorative justice process. She needed to hear what the offender had to say, regardless of whether he had taken part in the treatment programme – what was important to her was to hear the offender talk honestly and openly. She felt that the preparation for the restorative meeting had adequately ensured this and the facilitator felt the same. The case remains open after a year because the victim still wants to have a restorative meeting.

At the opposite end of the spectrum, another victim interviewed had met the man in prison who killed her husband in a dangerous driving incident. This had been a positive experience, and a year after the first conference the victim wanted a further meeting in preparation for the release of the offender. By this point he had been moved to another prison. Due to barriers within the prison it was not possible to arrange for the meeting to be held there, so it took place in a local café while the offender was released on a temporary licence. This highlights the variation across the prison estate in achieving restorative outcomes.

Broader work by the RJC exploring restorative justice in prisons echoes this variance in experiences, and additional barriers to take-up rates have also been discovered. These include victims being denied access to prison establishments following risk assessments and low rates of literacy among prisoners making awareness-raising a challenge. In relation to the latter point, specifically tailored materials may prove useful in maximising engagement and are currently being developed by the RJC.

Despite the barriers to community organisations delivering restorative justice in prisons, a number of positives were also highlighted by interviewees. The experience of practitioners was that prisoners were more likely to engage in restorative justice in comparison to those on a community sentence who had received a fine or with no instruction to engage with probation or the CRC. A director of a restorative service said:

“We know that we’re definitely going to get to see the offender. They can refuse to come and see us, obviously, but they’re more likely to turn up to a meeting than if we were to meet them in the community. That affects the [number of restorative justice activities] for us.”

According to the same director, 90% of the restorative activities delivered by the service took place in prisons as opposed to in the community because offenders in the community were uncontactable or did not wish to engage. This was also a finding in the Shapland (2006) research.

Prison can be an opportune time to work therapeutically with those incarcerated to help them move to a place where they can better engage with restorative justice, provided such programmes exist and are accessible. For example, a victim whose brother was murdered felt strongly that the reason one of the offenders was able to engage in restorative justice is because he had been in a prison which was a therapeutic community.

He said:

“We must not forget the hours, weeks and days that were put into treating [name of offender] from a psychological and emotional perspective to put him in a place where he was ready [for restorative justice].”

While this example comes from a prison which specialises in offering therapy to inmates, other forms of therapeutic work are delivered more routinely throughout the prison estate and can include drug and alcohol dependency treatment, among other things.

Practitioners thought that prisoner engagement in victim awareness courses and proxy restorative approaches could be a precursor to restorative justice between direct victim and offender. They believed that prisoner participation in such programmes began the preparation work for communicating with their victim and should be followed up with an opportunity to self-refer for restorative justice. Formalising such a system would rely on a number of factors. Prison staff would either have to liaise with community-based restorative justice providers or attempt to contact the victim themselves. There may not be any local restorative justice provision, which could pose a significant barrier to achieving this. Crucially, care should be taken to manage the expectations of prisoners who might hope to go on to meet their victim – this will not always be possible and could lead to disappointment.

A number of services had high volumes of prisoner-initiated referrals which directly resulted in restorative justice activities. A successful restorative justice partnership stated that upon induction prisoners are given information about restorative justice. Many want to take part – the task is then to assess motivation and levels of remorse. One service had even developed an offender-specific assessment to focus on this.

When restorative justice does take place while an offender is in custody, the RJC’s previous work has shown that victims may need additional support in going into a prison, something that will be entirely alien to many of them. This should include help with transport and other practical issues, advice on how prisons operate, and potentially a preparatory meeting. This will make the victim more comfortable and therefore less likely to drop out.

4.12.1 Working in prisons – recommendations

47. Restorative justice service providers should develop links with their local prisons to enable them to work easily with offenders held in the prison where necessary.
48. Restorative justice service providers should work with their local prisons to develop a mechanism so that if a prisoner is moved while a restorative justice process is underway, they are informed at the earliest possible opportunity.
49. Restorative justice service providers should conduct awareness-raising training with prison staff to ensure they understand the process that prisoners are taking part in.
50. Restorative justice service providers should provide prisons with information to distribute about restorative justice to every prisoner on induction and at the end of victim awareness programmes.
51. Where possible, restorative justice facilitators should be vetted and hold keys for the prison so that they can access prisons to meet with prisoners quickly and easily.

52. When a victim wants to take part in restorative justice while their offender is in custody, the restorative justice service provider should ensure that the victim is familiarised with the prison environment, including a preparatory visit to the prison where possible.
53. Practical information and advice should be provided to victims who are going to go into a prison – for example on parking, entry procedures and what they can and cannot take with them.

4.13 Offences taken into consideration (TIC)

TIC offences were highlighted by three practitioners as an opportunity to achieve restorative justice outcomes. They provide the additional benefit of offering a service to victims who may otherwise miss out on the opportunities that the criminal justice system offers, had the offence been detected and pursued in the traditional manner.

One practitioner remarked on a case where there were 13 TIC cases, and nine of the victims were interested in a restorative activity. Another practitioner referred to a case where there were 50 TICs. The main challenge in achieving a restorative outcome in this area was access to case information. The practitioner managing the case with 50 TICs was chasing contact details from the burglary squad which was impeding the process.

TIC cases are likely to be offender-initiated, but practitioners did not see this an issue. Across the board those who work with victims felt that as long as the victim was handled sensitively and participation was voluntary this did not pose a problem.

4.13.1 Offences taken into consideration (TIC) – recommendations

54. Restorative justice service providers should develop systems with their local police service and courts to ensure that they receive details of TIC cases in order to identify opportunities for restorative justice to take place.

4.14 Unknown offenders, not guilty pleas or no conviction

At the stage where a person becomes aware that they are a victim and reports this to the police, the offender may be unknown, and this may remain the case. Even if the offender is identified this is no guarantee of a conviction. Data taken from the Criminal Justice Statistics Quarterly Update to March 2016 show that between April 2015 and March 2016 there were 3,892,947 recorded crimes and 862,759 proven offences. The rate of detection is therefore 22% (Ministry of Justice, 2016). This means that there is no opportunity for restorative justice which relies on dialogue between victims and their offender in 78% of cases.

Practitioners and managers in this study thought that where this was the case, there were benefits to broader restorative approaches, not just those which occur between direct victim and offender. One director of services commented:

“[Victims are] getting told about restorative approaches and they’ve got no real opportunity to get them ... So you could probably do restorative work with the victim but if it’s not involving the perpetrator it doesn’t come under the government criteria for restorative justice. I would say that actually there is personal benefit to the victim to discuss their crime and the offending against

them as part of Cope and Recover, irrespective of whether the offender has been identified but that doesn't fit the criteria so there's a huge raft of victims that get no service because there's no perpetrator."

The fact that there is only a known offender in a minority of cases is clearly a barrier to delivering restorative justice. While there was support among participants in the research for using approaches based on restorative principles that do not involve the direct offender, it should be noted that although there is a body of evidence which highlights the benefits of restorative justice between victims and their offender (Shapland et al, 2004, 2006, 2007, 2008; Sherman and Strang, 2007 and Strang et al, 2013), the evidence base for proxy restorative approaches is less developed.

Where there is an identified offender, but where the offender pleads not guilty, there may still be opportunities for a restorative justice process if the offender later admits guilt or is found guilty. Prisons, probation and CRCs are best placed to notify restorative providers of admissions of guilt and – ideally – provide details of the case and any information they have on the victim. The restorative justice service can then consider the best way of contacting the victim to discuss their needs and whether they are interested in a restorative activity.

4.14.1 Unknown offenders, not guilty pleas or no conviction – recommendations

55. Restorative justice service providers should set up systems with other criminal justice agencies so they are informed about offenders who have initially pled not guilty but later admit guilt.
56. Restorative justice service providers should work with prisons and CRCs to identify offenders who have accessed victim awareness courses and might therefore be interested in taking part in restorative justice.

4.15 Measuring outcomes

All of the services which took part in the research were asked whether they had contractual targets to meet. Most did and although they varied from service to service, in general they included the number of victims and offenders contacted, numbers of completed restorative processes and levels of satisfaction.

Practitioners and managers who had direct contact with victims in particular referred to positive outcomes which were achieved even if a case did not result in a restorative outcome. One manager said:

"Even those that we go to and who decide they don't want to get involved with our service we do get feedback from them because we found that we've made a difference and had an impact just by visiting people. We did a kind of sliding scale of how people felt before we were involved and then after we were involved and 90% of people felt better for having someone go and speak to them and talk to them so we try to capture that as well as those that have gone fully through the process."

Not all services recorded wider outcomes. There was a sense of frustration from practitioners and commissioners that good work was delivered that was not recorded. The definition of restorative justice used by the Ministry of Justice and the RJC states that it is a process not an end result. A DCI referred to this and said:

“The complexities of restorative justice are such that we should see success as not in isolation of the number that go from referral to conference, but actually the journey that may have aided someone to cope and recover better.”

Preoccupation with the end result is shortsighted and could unwittingly put pressure on restorative practitioners to focus on completed restorative activities, which could negatively impact on the quality of service and appropriateness of decisions to progress cases. Instead a wider view and assessment tools are required which accurately measure the benefits of restorative justice throughout each stage of the process.

4.15.1 Measuring outcomes – recommendations

57. Restorative justice service providers should ensure that in recording their outcomes they include the full range of positive benefits of their work and not just completed restorative justice processes.
58. Commissioners of restorative justice services should recognise the full range of positive outcomes that can result from restorative justice, rather than focusing solely on completed processes.

5.

Conclusion and recommendations



5.1 Conclusion

At first glance the definition of restorative justice seems to be a fairly simple concept – as one victim said: “It’s just talking isn’t it?” It is the application of the concept that presents a number of hurdles to overcome. The barriers to achieving a restorative activity are multifaceted, and there is more than one point of attrition.

It is important to recognise that restorative justice is a process that does not operate in isolation. It is part of wider criminal justice processes and procedures, and can be influenced by professionals, all of which can have a significant impact upon its delivery, both positive and negative. Larry Sherman (2002 cited Shapland et al 2004: 25) “likened the process of undertaking restorative justice to peeling an onion, in which each layer (suitability, offender consent, victim consent, practical arrangements etc.) has to be accomplished in order to hold a conference.”

The first layer is that of service design, which can restrict the remit of restorative providers. The second layer is the flow of cases and obtaining the information necessary to begin to have a conversation about restorative justice with victims and offenders. Compounding these issues is a lack of general awareness and professional awareness. Support for restorative justice across key agencies who are essential to the process is vital but is not always forthcoming. Higher levels of general awareness alone will not solve the problem of low take-up – support is needed from the other agencies of the criminal justice system, particularly the police and victim services.

The third layer relates to making the offer of restorative justice. Not all victims can be offered the chance to meet their offender because they remain unknown. For this sizeable group of people other restorative approaches could be beneficial. If the offender is known then the offer of restorative justice should be made by a trained facilitator. They have the skills, knowledge and experience to manage the barriers to engagement.

The fourth layer relates to the logistics of organising a restorative activity. For offenders who are incarcerated, prisons have a valuable role to play in the smooth delivery of a completed outcome. Offenders residing in the community can prove difficult to contact and engage.

If restorative justice is to achieve higher volumes of completed activities then it needs to become mainstream. This would be achieved with greater buy-in across the criminal justice system. The benefits to victim and offender have been widely publicised, and benefits to organisations need to be explored and evidenced in order to generate support for the process.

Solutions lie in removing offence-specific exclusions, increasing the points where restorative justice can be delivered in the criminal justice system, and raising awareness among the general public and – even more importantly – among key agencies within the criminal justice system. They must facilitate an environment which is favourable to restorative justice, by supporting the process, increasing and improving the flow of cases and information and providing restorative justice services with the opportunity and authority to do what they have been commissioned to do. Partnership working is key and the impetus to do this at the frontline must be supported and championed by those at the top.

5.2 Recommendations

Service design

1. Restorative justice services and their funders should be clear about whether they can accept both offender and victim referrals, to remove ambiguity.
2. Wherever possible, restorative justice services should remove access restrictions based on whether a case is initiated by the victim or offender (or the agencies working with them) to maximise the number of eligible cases to work with.
3. There must be continuity in restorative justice provision through the justice system (especially in pre- and post-sentence provision) so that a victim can develop a relationship with a service while they consider and prepare for restorative justice. Where there are multiple providers, clear protocols must be put in place to ensure continuity in provision for service users.
4. Offence-specific exclusions from access to restorative justice services should be removed, as they breach the Code of Practice for Victims of Crime.
5. Co-commissioning services across criminal justice agencies and statutory and non-statutory services should be considered, as it can reduce the duplication of work, increase partnership working and broaden the scope of delivery of restorative justice.
6. Restorative justice services must also be given adequate time to develop and short-term contracts can prevent this. A minimum three-year contract was suggested as a way to combat this issue.

Case flow

7. Where resources allow, services should use a case extraction model, with access to police and court data on offences, offenders and victims. Case extraction can be conducted by staff or volunteers who have not been trained in restorative justice where necessary.

8. This should be supplemented by clear and well-advertised mechanisms to enable relevant professionals to refer cases to the restorative justice service and to enable victims to self-refer.
9. Monitoring mechanisms need to be put in place to ensure that the same cases are not identified through both extraction and referral, leading to multiple offers to the same victim.

Partnership working

10. Where there is not an existing restorative justice partnership, restorative justice services should work with the PCC in their area to establish local partnerships that involve key local agencies which have a role in the delivery of restorative justice.
11. A lead from each of the relevant agencies in the area should be identified as the point of contact for that organisation on all restorative justice issues.

Information sharing

12. Each PCC area should put in place an information sharing agreement (ISA) between relevant agencies to enable the sharing of the information necessary for restorative justice delivery. The PCC's office should manage this ISA and require all commissioned services to sign up to it as part of the contracting process, while also encouraging other partners to do so.
13. Restorative justice services should work with the police and the PCC to explore how the requirements of the Code of Practice for Victims of Crime around sharing victims' information can best be enacted, with the aim of ensuring that services have access to all available victim information.

Public awareness of restorative justice

14. While there would be benefits to higher levels of public awareness, practitioners should not place too great an emphasis on the need for public awareness in order to increase take-up.
15. In order to counter negative preconceptions, restorative justice service providers should, however, consider what targeted work they can do locally to ensure that restorative justice is presented fairly and accurately in local media and by local influencers.
16. At the local level, PCCs and their deputies, who often have a high profile in the local media, can play an important role in raising awareness of restorative justice and the availability of local restorative justice services.
17. Restorative justice service providers should consider using case studies as a way of obtaining positive media coverage for restorative justice. Appropriate support must be given to the participants and advice on this can be obtained from the RJC, where needed.

Victim and professional awareness

18. Restorative justice service providers should offer restorative justice awareness training to the police and other local agencies that will come into contact with victims of crime on an ongoing basis (to take account of the turnover of staff). The sessions should highlight the benefits of restorative justice to the organisation receiving the training.

19. Restorative justice service providers should provide resources for agencies they provide training to that can be passed on to victims about restorative justice and how to access it.
20. Restorative justice service providers should work with the police to encourage them to put systems in place to ensure that they provide information about restorative justice and how to access it to all victims (in line with the requirements of the Code of Practice for Victims of Crime). This information for victims should be provided by the restorative justice service provider.
21. Restorative justice service providers should look to develop strong working relationships with local senior leaders in relevant agencies (for example, chief constables) in order to garner senior support for restorative justice.
22. Restorative justice service providers should work with the police and the local PCC to consider how the police can be incentivised, potentially using targets, to ensure that victims are provided with information about restorative justice.
23. Ways of recording how often information about restorative justice is being offered to victims by the relevant agencies, and how often it is accepted, should be developed. This information should then be reported back to the restorative justice service provider.
24. Restorative justice service providers should consider recruiting restorative justice 'champions' from key partner organisations. Their role would be to promote the use of restorative justice with colleagues.
25. Seeing restorative justice 'in action' can be very effective in securing buy-in from key local stakeholders. Restorative justice service providers should enable these individuals to observe a restorative justice conference.

The offer of restorative justice

26. The offer of restorative justice should be made by a trained facilitator, wherever possible, and ideally in a face to face meeting, where resources and circumstances allow.
27. Contact prior to a meeting should be geared towards securing that meeting. Discussion about the restorative justice process prior to the meeting should be minimised and letters should be kept short.
28. The term 'restorative justice' can be off-putting to some potential participants and criminal justice jargon can be confusing. Practitioners should explain the process clearly and simply, without resorting to labels or jargon. It can be beneficial to describe the process before giving it a label.
29. A decision on whether restorative justice is appropriate for a particular victim or offender should be made by a trained restorative justice facilitator following consultation with criminal justice professionals with full knowledge of the case.

Engaging offenders

30. Where offenders do not accept the harm caused by their offending, undergoing victim awareness work may help to prepare them for taking part in restorative justice.

31. If an offender's drug or alcohol problems are deemed to be too severe for restorative justice to take place, the case should be revisited as the offender moves through the justice system and accesses treatment.

Facilitator skill, supervision and support

32. Restorative justice facilitation training should have a greater focus on victim engagement and the skills required to explain the process to victims.
33. Newly-trained facilitators should be supported and mentored by more experienced colleagues when first offering restorative justice to victims.
34. Restorative justice service providers should consider how they can provide support to staff from other agencies who are responsible for providing information on restorative justice.
35. Any restorative justice facilitator who works with sensitive and complex offences such as sexual violence, domestic abuse and murder must be appropriately trained and experienced.
36. Restorative justice service providers should create peer networks to enable their practitioners to share their experiences, knowledge and learning with their peers from other services.

Peer support

37. Restorative justice service providers should identify potential mentors from the victims who they work with and invite them to consider supporting others to take part in restorative justice.
38. Restorative justice service providers should 'match' mentors with victims who are considering taking part in restorative justice, where victims feel this would be beneficial.
39. Restorative justice service providers should provide practical and emotional support to mentors in engaging with victims.

Out of court disposals

40. Where restorative justice as part of an out of court disposal is delivered by an external provider on behalf of the police, clear guidance on which cases are suitable for referral should be provided to the police.
41. The restorative justice service provider should also conduct awareness-raising training with the police to ensure they understand the process that people are to be referred to.
42. Where police officers and PCSOs are delivering restorative justice as part of out of court disposals, they must be properly trained and supervised, with a particular focus on ensuring that they are properly trained in working with victims.

Pre-sentence restorative justice

43. Restorative justice service providers should work with the judiciary, CPS and defence representatives to embed restorative justice at the pre-sentence stage.
44. Restorative justice service providers should work with court staff to develop processes that enable timely access to information about cases.

45. Restorative justice service providers should work with Magistrates' Courts in their area to develop systems to identify cases that are sent to the Crown Court for sentencing following a guilty plea.
46. When offering pre-sentence restorative justice, facilitators should ensure that victims are provided with clear, accurate information on the impact that participation will have on sentencing.

Working in prisons

47. Restorative justice service providers should develop links with their local prisons to enable them to work easily with offenders held in the prison where necessary.
48. Restorative justice service providers should work with their local prisons to develop a mechanism so that if a prisoner is moved while a restorative justice process is underway, they are informed at the earliest possible opportunity.
49. Restorative justice service providers should conduct awareness-raising training with prison staff to ensure they understand the process that prisoners are taking part in.
50. Restorative justice service providers should provide prisons with information to distribute about restorative justice to every prisoner on induction and at the end of victim awareness programmes.
51. Where possible, restorative justice facilitators should be vetted and hold keys for the prison so that they can access prisons to meet with prisoners quickly and easily.
52. When a victim wants to take part in restorative justice while their offender is in custody, the restorative justice service provider should ensure that the victim is familiarised with the prison environment, including a preparatory visit to the prison where possible.
53. Practical information and advice should be provided to victims who are going to go into a prison – for example on parking, entry procedures and what they can and cannot take with them.

Offences taken into consideration (TIC)

54. Restorative justice service providers should develop systems with their local police service and courts to ensure that they receive details of TIC cases in order to identify opportunities for restorative justice to take place.

Unknown offenders, not guilty pleas or no conviction

55. Restorative justice service providers should set up systems with other criminal justice agencies so they are informed about offenders who have initially pled not guilty but later admit guilt.
56. Restorative justice service providers should work with prisons and CRCs to identify offenders who have accessed victim awareness courses and might therefore be interested in taking part in restorative justice.

Measuring outcomes

57. Restorative justice service providers should ensure that in recording their outcomes they include the full range of positive benefits of their work and not just completed restorative justice processes.

58. Commissioners of restorative justice services should recognise the full range of positive outcomes that can result from restorative justice, rather than focusing solely on completed processes.

5.3 Future research

Recognising the limitations of a small-scale study of this kind, further areas of research have been identified:

- In-depth comparison of restorative justice services which operate similar models to explore the differences between those that achieve high volumes of restorative outcomes and those that do not.
- Exploration of what motivates participants to take part in restorative justice and a comparative study of those who take it up and those who decline the offer.
- Given the contrast of experiences highlighted here further exploration is needed to understand whether increasing awareness influences take-up rates in restorative justice.
- Greater understanding of the benefits and risks to using restorative justice in cases of sexual violence and domestic violence.

6.

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