

The Restorative Justice Forum (Scotland): its aims and activities

The purpose of this document is to set out the aims and purposes of the Forum and its remit, which includes contributing to the Scottish Government vision for restorative justice in Scotland, which says:

Restorative Justice is available across Scotland to all those who wish to access it, and at a time that is appropriate to the people and case involved. Approaches taken are consistent, evidence-led, trauma informed and of a high standard. This seeks to ensure the needs of persons harmed and their voices are central, and supports a reduction in harmful behaviour across our communities.¹

The definition and forms of restorative justice

In this document, the Forum is using the definition of restorative justice set out in the Guidance for the Delivery of Restorative Justice in Scotland, published by the Scottish Government in 2017 ('the Guidance')²:

Restorative justice is a process of independent, facilitated contact, which supports constructive dialogue between a victim and a person who has harmed (whether this be an adult, a child, a young person or a representative of a corporate or other body) arising from an offence or alleged offence (p. 8)

This includes 'harmful behaviour' committed by those under the age of criminal responsibility.

It has also taken account relevant international instruments,³ as well as the research and evaluation base internationally.

Using this definition, it follows that restorative justice can take a number of forms or processes, and we are still learning which may be the most helpful for which victims⁴, persons who have harmed, and circumstances. Three essential elements, though, are that:

- victims and persons who have harmed must *voluntarily* agree to take part in the process
- the process should encourage *communication* (in both directions) between the victim(s) and the person(s) who have harmed for that offence – so processes which do not involve one party, or do not allow communication in both directions are not included within the category of restorative justice

¹ Scottish Government (2019) *Scottish Government Action Plan 2019*, p. 10, at: <https://www.gov.scot/publications/restorative-justice-action-plan/>

² Scottish Government (2017) *Guidance for the Delivery of Restorative Justice in Scotland*, at: <https://www.gov.scot/publications/guidance-delivery-restorative-justice-scotland/>

³ Relevant international instruments include the 2012 Directive of the European Parliament and the Commission (Directive 2012/29/EU, at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012L0029>)

⁴ In this document we are using the term 'victims' to mean persons who have been harmed, as this is the term used in the Scottish Office guidance, and international instruments, including the 2012 EU directive (see footnote 3).

- the facilitated contact should be facilitated by an *impartial, trained person*.

Key principles are set out in the Guidance, section 3, and include that the person who has harmed must be able to acknowledge the basic facts of the case. Restorative justice therefore is not about establishing guilt. The restorative justice process will take full cognisance of the role of The Crown Office and Procurator Fiscal Service (COPFS) as the independent public prosecution service for Scotland. In that respect restorative justice will not impinge on any ongoing criminal prosecution. Decisions relating to the prosecution or diversion of a case from prosecution are matters solely for COPFS. Once a case has been identified by COPFS as suitable for diversion, restorative justice may be deemed to be a suitable form of diversion by the organisation responsible for delivering diversion.

Potential forms of restorative justice might include facilitated communication between the victim and the person who has harmed (a face-to-face meeting, also known as a ‘restorative meeting’ and, in international documents, ‘direct mediation’) or facilitated communication by letter, or an intermediary, or exchange of video messages etc., called ‘shuttle dialogue’, or in international documents ‘indirect mediation’). They may also include larger meetings, involving supporters of victims and those who have harmed (called conferencing) or meetings also involving representatives of the community, the state or relevant agencies (including panels).

The aim of the Forum

The aim of the Restorative Justice Forum (Scotland) is to bring together all those interested in the development of restorative justice in Scotland, including practitioners from the statutory and voluntary sectors (including children’s services), academics and policy makers, to:

- increase understanding of restorative justice
- encourage improvements in the quality and availability of restorative justice in Scotland
- promote the development of help for potential participants and those referring to restorative justice
- disseminate relevant information.

The Forum is a body itself independent of statutory agencies and the Scottish Government, but it seeks to promote the development of restorative justice at all relevant stages of criminal justice and youth justice, within the statutory and voluntary sectors, and to encourage policy development.

The role of the Forum

To achieve these objectives, the Forum’s role will be to:

- (a) Provide opportunities, including meetings of the Forum, to share best practice
- (b) Hold events to promote the development of restorative justice in Scotland and disseminate research and evaluation results

- (c) Provide feedback on delivery of the Scottish Government Action Plan
- (d) Encourage the development of any further statutory mechanisms (following on from the 2017 Guidance) and of action plans by the Government, and statutory and voluntary sector agencies, to implement the delivery of high quality restorative justice throughout Scotland and at all stages of criminal justice
- (e) Develop its Practitioners' Network, whose members will be those acting as facilitators for restorative justice, to encourage good practice, promote continuing professional development, encourage mentoring and facilitate discussion of practice issues
- (f) Encourage research and evaluation of restorative justice and collate and disseminate the results of research
- (g) Develop its Research Network, whose members will be those researching restorative justice in Scotland and those interested in research on restorative justice in Scotland, to encourage research and knowledge exchange
- (h) Develop a resource bank of materials and documents relating to restorative justice in Scotland, including on the web, to provide a resource for practitioners and others
- (i) Publish a newsletter to disseminate news about relevant events and publications
- (j) Liaise with relevant bodies and individuals in Scotland and elsewhere to promote and develop restorative justice
- (k) Keep a list of Forum representatives and also a list of those interested in restorative justice in Scotland, who wish to be invited to relevant events hosted by the Forum and to receive the Newsletter ('Forum members')
- (l) As appropriate, make bids to relevant funding sources for the cost of holding events and the development of the Forum's activities

Appendix

Priorities for the Forum

1. The next few years

The Forum brings together those interested in the development of restorative justice in Scotland. Its role is therefore to encourage continuing development of restorative justice, both through its own efforts and those of other agencies. Hence it will seek to encourage the following in the next few years:

(a) One key need when developing excellent services is to be aware of the current position in terms of availability, knowledge and delivery. The Forum has mounted a number of ‘scoping events’⁵ to set out emerging practice in parts of Scotland and in different agencies. We are aware that Community Justice Scotland and the Scottish Government have scoped what is being developed in relation to community justice, and there is a research project by Dr Giuseppe Maglione (funded by the Carnegie Trust), running from September 2018 to August 2019, to explore further current delivery. However, this scoping will need to continue and the extent of availability continue to be assessed, particularly because there will be continuing change in criminal justice and work with children and young people, which will impact on the need for restorative justice. We would suggest therefore that:

S1: There should be regular review of the availability of restorative justice, in terms of stages of criminal justice, the work of children’s services, types of work with adults, children and young people and geographical availability. The results of this review should be published, so that they can inform referrals by agencies and decisions by individuals.

(b) When a service is developing, it is important that both the general public and practitioners are made aware of what it is and what it can, and cannot, do. Though a good start has been made on informing people by the series of seminars funded by the Universities Insight Initiative and led by Mary Munro and Steve Kirkwood in 2017, with the Forum as a partner⁶, there is still relatively little knowledge about restorative justice amongst both the general public and practitioners. Scotland is not unusual in this respect. England & Wales has mounted governmental campaigns (including for International Restorative Justice Week annually) to increase knowledge⁷, and other techniques of communication are also helpful (such as TV documentaries, reference

⁵ These included mapping events in September 2014 and November 2015. Notes on the 2014 event are available at

http://www.sacro.org.uk/sites/default/files/publications/item_5_rj_forum_scotland_mapping_event_sep_t_2014_final.pdf

⁶ Proceedings can be accessed at

<https://www.scottishinsight.ac.uk/Programmes/ViewProgramme/tabid/5828/pid/93/rdid/5827/Default.aspx>

⁷ See the Restorative Justice Action Plans, with the first one in 2012 at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/217311/restorative-justice-action-plan.pdf and the most recent at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/596354/rj-action-plan-to-march-2018.pdf

in popular media programmes, Parliamentary debates, use of an explanatory video sent to potential participants⁸ etc.). We would suggest:

S2: A strategy should be developed by the Scottish Government, with input from agencies, the Forum and academics, as to how to increase awareness of restorative justice amongst both the general public and practitioners

(c) Building capacity for restorative justice: currently restorative justice is not available everywhere and at all relevant stages of criminal justice, youth justice and children's services. There are a number of trained practitioners who can act as facilitators, some of whom are underutilised (because sufficient referral mechanisms are not in place in their agency), but also some major gaps in the number of likely trained facilitators who will be needed. Filling the gaps will require resource, but also smoothing referral paths and all relevant agencies monitoring both demand in their sector and available supply. Helping this to occur needs a multi-pronged effort, which we would suggest needs to include:

S3. As a matter of urgency, creating or smoothing referral paths to restorative justice for all potential participants who are involved with Police Scotland, Procurators Fiscal, the Scottish Courts and Tribunal Service (presentence), Local Authority provided community justice services (both as diversion and post-sentence), the Scottish Prison Service, the Children's Hearing system and other relevant agencies

S4. The Scottish Government encouraging and mediating to ensure there are effective data sharing agreements between referring agencies, Police Scotland, those delivering restorative justice and victim support agencies so that victims can be contacted appropriately to be told about the possibility of restorative justice, and supported thereafter

S5. Building on existing arrangements to train facilitators to create new opportunities and possibilities for continuing professional development, which might include the universities, relevant statutory and voluntary sector agencies, and which might include facilitators taking part in training in agencies other than their own, particularly in more remote parts of the country

S6. Developing the Practitioners Network being run by the Forum to provide regular meetings and other opportunities for facilitators from different agencies to develop their own practice

(d) Both training facilitators and ensuring good practice delivery of restorative justice will require funding and it is not currently clear what plans there are to ensure victims and those who have harmed can learn about and access relevant restorative justice possibilities. We would suggest:

S7. Agencies should work together to create paths to inform victims at relevant points in the progress of their case about restorative justice, so that it

⁸ This was used very successfully in Northern Ireland by the Youth Justice Agency

is clear who is responsible for informing victims and when they should be informed

S8. Agencies should work together to set up suitable referral mechanisms for referring victims and those who have harmed to providers where restorative justice cannot be provided in-house

S9. The Scottish Government and agencies should develop funding mechanisms for training facilitators and carrying out delivery of restorative justice to good practice standards, whilst monitoring demand and supply

(e) We see research and evaluation as invaluable tools in promoting knowledge about restorative justice and its good practice, helping agencies to embed restorative justice into their working practices, and developing good practice generally, particularly where practice is occurring in many different agencies and parts of Scotland. We therefore suggest:

S10: Continuing to develop the Forum's Research Network to share research and evaluation results, help members to seek funding for research, and hold events

S11: The Forum and other agencies continuing to develop an active programme of knowledge exchange events, supported by the universities and the Scottish Government

S12: Encouraging those funding restorative justice practice to require funding recipients to undertake monitoring (both as accountability to participants and referrers, and to make reviews of provision (as in S1 above) easier), as well as to fund evaluations of developing Scottish good practice in restorative justice.

2. Into the future

In the future, we would hope to see:

- i. Appropriate forms of restorative justice to be available in all cases where they are wished by the victim and person who has harmed, irrespective of geographical location, and free of charge to the parties involved, together with monitoring of what is available
- ii. The development of means to refer to restorative justice in appropriate cases at all stages of criminal justice and children's services, and work with adults, children and young people who have harmed. This would include where referral is through diversion from criminal justice/formal action and also referral within the criminal justice process, so that possibilities exist pre-sentence and post-sentence, and for both adults and children who have harmed
- iii. The development of means to refer to restorative justice in appropriate cases at all stages of youth justice (including where children who have harmed have been referred to the Children's Hearing System or dealt with through Early and Effective Intervention)

- iv. Information about restorative justice and its availability to be proactively made available to victims by relevant statutory agencies (as per the EU Directive)
- v. Active dissemination of information about restorative justice to be made available to the general public (to improve general awareness of what it is and what it is not) and to practitioners in criminal justice and children's services
- vi. Informed risk assessment in relation to the appropriateness of different restorative justice processes for individual cases to be undertaken by trained staff
- vii. A sufficient supply of trained restorative justice facilitators in relation to the demand from victims and those who have harmed, including for complex and sensitive cases
- viii. Evidence based training and continuing professional development for facilitators, supported by the development of a network, regular conferences/meetings and practice/ethics discussion opportunities to disseminate emerging good practice and research/evaluation findings
- ix. Data and information sharing arrangements to be in place between statutory agencies and with those delivering restorative justice services, so that potential parties can be contacted appropriately and advised, and so that there is reporting back to those who have referred to restorative justice
- x. An integrated system of support for victims who wish to take part in restorative justice, including the means to take forward any support needs that emerge
- xi. Support for people who have harmed, together with support for all other participants in restorative justice processes as necessary, in partnership with relevant local support agencies
- xii. The continuing development of evaluation of restorative justice practice, including the requirement to monitor and evaluate practice in Scotland, together with attentiveness to international research developments

Steps towards the future

In order to develop restorative justice being available throughout Scotland and routinely offered to victims and those who have harmed (adults, children and young people), a number of future developments are required. The Forum cannot do all these itself, but it can encourage their development and, where it is considered that it is important that an independent body carry them out, it can seek the means to implement them itself. That would, though, require the Forum to acquire sufficient funds and create an appropriate and accountable structure for the tasks it is undertaking itself. The list below hence includes relevant activities to support those facilitating restorative justice and referring to it and, secondly, how the Forum would need to change if it were to take on further tasks.

The Forum will seek to promote means to:

- (a) Develop processes to accredit facilitators and agencies to show they have received appropriate training and can provide high quality restorative justice
- (b) Encourage the development of appropriate initial facilitator training and training for those referring to restorative justice services
- (c) Encourage the development of continuing professional development and set standards for its use
- (d) Develop regulatory mechanisms to promote high quality delivery of restorative justice and enable investigation of complaints
- (e) Attract sufficient funding to provide and encourage others to provide relevant events and means to disseminate knowledge about restorative justice and how to access it

The Forum itself, in order to take on any such activity, would need to:

- (a) Move towards having a relevant legal structure, governance and finances to ensure its independence and the quality of its work. This will include mechanisms to appoint trustees and Forum representatives and Forum members, including the election of representatives from relevant constituencies, as well as the appointment of representatives from statutory and voluntary sector agencies and those with key expertise for the Forum.
- (b) Provide an annual report on its activities and publish relevant documents
- (c) Become a member of relevant international bodies (such as the European Forum for Restorative Justice) to promote awareness of international developments in Scotland