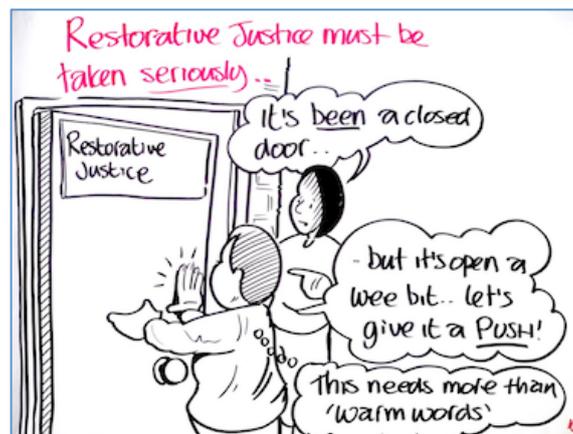




## Moving forward with Restorative Justice in Scotland: a platform for change

Notes from the concluding conference of the Scottish Universities Insight Institute 'Learning from Others' programme on restorative justice



Norton Park Conference Centre, Edinburgh  
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**Programme co-leads:**

Steve Kirkwood, University of Edinburgh  
Mary Munro, University of Strathclyde

**Planning team:**

Jenny Johnstone, University of Newcastle  
Estelle Zinsstag, K.U. Leuven, Belgium  
Sacro - represented in part by Scott Khalil  
CYCJ - represented in part by Donna McEwan  
Positive Prison? Positive Futures - represented by Jim Watson and then Pete White

**Previous events:**

13 March RJ and research (Glasgow)  
22 March RJ and sexual violence (Glasgow)  
20 April RJ and desistance (Edinburgh)  
15 June RJ and homicide (Glasgow)

**Associate programme leads (for conference on 'Communicating Justice' held in Glasgow on October 10th 2017):**

Cyrus Tata, University of Strathclyde  
Fiona Jamieson, University of Edinburgh

**Conference consultants present:**

Ivo Aertsen, K.U. Leuven, Belgium  
Tim Chapman, University of Ulster  
Jenny Johnstone, University of Newcastle  
Niall Kearney, RJ practitioner  
Joanna Shapland, University of Sheffield  
Estelle Zinsstag, K.U. Leuven, Belgium

**Workshop facilitators:**

Clair Aldington, Space2Face, Lerwick  
Alejandro Rubio Arnal, University of Glasgow  
David Cross, CJSW, Edinburgh  
Rania Hamad, CJSW, Edinburgh  
David Orr, CJSW, Edinburgh  
Terry Paterson, Prison Fellowship  
Michael Salkow, Victim Support Scotland  
Penny Taylor, Journalist  
Ciara Webb, CJSW, Edinburgh

We are very grateful to the Scottish Government 's Victims and Witnesses Unit, for their support for this meeting and to the hard work of the SUII team, Nicola Duncan, Lynne Costello and earlier in the year, Ann Logie. The conference was facilitated by Sarah Stocks and Graham Ogilvie drew the cartoons to visualise the discussion.

The cartoons are available as a movie at: <https://vimeo.com/241040334>

## Introduction

This conference was the closing event of a programme of dialogues on restorative justice funded by the Scottish Universities Insight Institute during 2017. It was an opportunity for participants to deliberate on the learning of the programme and also to address collaboratively the following questions:

- **why** restorative justice?
- **what** might restorative justice in Scotland look like?
- **how** do we move forward with restorative justice in Scotland?

Participants were from a range of backgrounds: social work, the voluntary sector, statutory agencies, government, the judiciary and universities.

In her introduction to the day, Joanna Shapland as convenor of the Restorative Justice Forum (Scotland) , welcomed the publication of the Scottish Government's *Guidance for the Delivery of Restorative Justice in Scotland* and its launch at this event (<http://www.gov.scot/Resource/0052/00526079.pdf>). She discussed the importance of this document as an up to date reflection of experience and knowledge about restorative justice practices and urged participants "not to leave their copy on the shelf, but that it should be dog-eared, bookmarked and used".

### Why restorative justice?

Starting from his own experience in New Zealand as a victim of an assault by a stranger, Steve Kirkwood identified three broad responses to the question 'why restorative justice?'.

The first is *empirical*: that there is now a substantial amount of research on restorative justice internationally that supports its effectiveness in relation to the needs of both the victim (person harmed) and the offender (person responsible for the harm).

The second is *theoretical and moral*: it is through being actively involved in a voluntary process such as restorative justice that people can tangibly demonstrate their genuine commitment to make amends and transform their lives. At the same time, we should move beyond simplistic divisions between 'offenders' and 'victims' and recognise the various and complex harms and obligations among people and communities.

The third is *political*: RJ is not something that appeals only to a particular politician persuasion. It is inclusive *and* it encourages people to take responsibility for their actions. It addresses the harms caused by crime *and* it is forward looking and supportive of personal transformation. It addresses the needs of victims of crime *and* it is concerned with reducing offending. For that reason, all political parties need to consider the extent to which RJ fits with their values and the needs of Scottish society.

There is a need he argued, not so much for legislation to define RJ's role in criminal justice in Scotland, but rather that a sense of legitimation - that this is a valid response to crime - would make a huge difference.

### **What might restorative justice in Scotland look like?**

The conference broke into workshop groups and facilitators were asked to choose three points from the group discussion to display in the plenary. Delegates then reviewed all the posters and added dots to the points that they felt were most important. From these it was possible to reflect the ideas prioritised by the delegates although not perhaps the richness of the discussion in most of the workshops.

These are:

- that there should be a move from a focus on criminal justice to social justice - from 'crime' to 'harm'
- restorative practices becomes a normal part of our culture, embedded and established throughout schools, justice systems, all services and institutions and communities and that there should be public education to support real change
- in which the victim is central in a voluntary process
- embedded in justice strategy and local partnership plans and owned by all key agencies working in criminal justice, there should be no 'post code' lottery of availability
- this implies funding to enable RJ to be delivered consistently and strategically across Scotland
- and this also implies the availability of, and support for, accredited trauma informed training including incorporation into social work practice education, clear procedures and inbuilt evaluation and monitoring.

### **Commentary on discussions by Ivo Aertsen and points from the informal plenary Q and As.**

Bringing his international expertise on the implementation of RJ programmes across Europe, Ivo Aertsen challenged the conference from the outset by pointing out that the new *Guidance* did not contain a plan for the implementation of the delivery of services and that perhaps we had not been bold enough in Scotland in tolerating that omission.

He cautioned that we have to think twice about implementing RJ within existing institutions in case this undermined the importance of maintaining the principles, such as practitioner neutrality, in relation to the provision of RJ services. In relation to the impact on offending he is of the view that this should not be the primary objective or criterion of success: the most important thing is to make a communication of dialogue possible in a safe way.

In his research with 80 desisters from crime across three European countries participation in RJ was not in itself the trigger for desistance, but an important element of support for processes that have already been started. We should not expect that one or two meetings with a victim will change people totally. It was found that skills of the mediator/facilitator and their ability to distil hope in the offender were important.

He then considered the concept of community in restorative justice and that how to involve it, is a big challenge (however defined). However, although there are communities of interest around the victim and offender, the fact of the crime means that there is a wider societal interest and dimension that has cannot be dismissed or ignored. We must find ways in restorative justice of making these societal interests much more concrete and - not just in terms of supporters at a conference - but to work with representatives of the community. There is an issue that where some programmes have engaged 'community representatives' they are in fact not representative of the community at all. It is not easy to do but we should learn from pilots and projects about the issues here. He feels that we do lack the tools to involve the broader community and suggests that thought is given to developing intermediate structures to enable this to happen.

What is success in the implementation process?

- the bottom up approach - a step by step programme has been successful in several countries in contrast to the mandatory top down process of the introduction of RJ in some Eastern European countries as part of their harmonisation with values of the EU. This has meant that the practices tend to replicate existing processes and are not good at all.
- the partnership and multi-agency approach at the local level in the first place that its formalised in some way through a steering group or coordinating body which takes care of quality assurance and coordination of practice across possibly multiple service providers
- but also crucial at a national level, you need an independent body capable of developing policy and taking political action
- whereas many countries in Europe have adopted legislation for RJ that it is not always needed and there is a risk that there is a too rigid or strict interpretation of a pre-defined legal framework
- notes that the Council of Europe is currently reviewing previous RJ instruments (1999, 2002) and in the draft was surprised to see that there should be an equal legal right of access to RJ on the part of every citizen - not just something that you can apply as a measure or intervention. That therefore goes further than the EU 2012 Directive.

Ivo had heard questions in discussions about RJ service providers: should they be autonomous or part of existing organisations? It is difficult to come up with a general answer. In some countries services are provided by independent organisations closely working together and cooperating with the criminal justice system, probation and so on. In other countries services are provided people working in for example, the probation service. That should not be excluded but what is most important is that to ensure neutrality and accessibility so that

people can make effective use of such services. This calls for specialisation within such an existing organisation if only for the period when working as a RJ practitioner.

Finally, we should not reinvent the wheel all the time. We should learn from each other and on a *practitioner* level make use of such cross border opportunities as the European Forum for Restorative Justice.

Points from Q and A:

- adversarial/common law and inquisitorial legal systems in themselves do not make a difference to the use of RJ
- main skills of RJ facilitators should be a (1) good feel for what is going on in the community (2) non-judgmental and open minded attitudes - not easy (3) good communication skills in general (4) the ability to work in a team because we have to think twice about encouraging private mediation /facilitation practice in a context of public justice
- also the skills of (1) listening (2) the ability of the facilitator not to get in the way of the process - the techniques, the skills, the process should be invisible not up front
- thinking about RJ - does it work best within or in parallel to the criminal justice system or in between? There are all kinds of variations in positioning RJ programmes in relation to criminal justice. Ivo is in favour of supporting a degree of autonomy but this is also needed within the system. Many programmes in Europe are over-dependent on their referrals from the criminal justice system and that has led to under use. This is because most victims do not report crime to the police.
- It is not an either /or but and 'and'. There should be widespread adoption of restorative practices but the process needs to be adapted to and pitched to the context and the people who are going to be participating.
- examples in of countries in which RJ was not politically accepted include Spain but there was pressure from within the judiciary and the Netherlands where for many years there has been a political view against RJ although not from people on the ground. This was because the Netherlands government considered it was not in the interests of the victim and it should not interfere with the criminal justice process decision making. But two years ago that resistance totally changed and the Netherlands is moving very fast now.
- Ivo commented that the note in the *Guidance* about the 'very rare' use of RJ in domestic and sexual violence is debatable because there is good research and results around these so there we have been a bit too cautious.



## **How do we move forward with restorative justice in Scotland?**

Participants were then asked to make three specific suggestions in response to this question in their workshops. These were then displayed, read and voted on with stickers, in the plenary space. The suggestions are quoted and grouped here according to three broad themes (with inevitable cross-overs) and ranked in terms of the importance given to them by delegates.

### Theme 1 - the need for an implementation strategy

- a national strategy that develops work from a community level
- local government and national government commitment to funding and support
- the need for an implementation plan which is both top down and bottom up
- trained local practitioners in restorative justice
- ensuring that there is the right information and support for victims ('victim infrastructure') in the process (before and after) including development of leaflets, media profile, people who can support victims
- the intersection of political will, people and money (how we spend what we have)
- commitment from and support from government - gather expertise
- infrastructure - routes into restorative justice from various sources at various times
- legal entitlement to access restorative justice.
- resources as a system hub connecting well trained people who are able to provide leadership in relation to RJ, money, the role of Victim Support, technology, opportunity, and political will
- identify high profile champions and 'nudge' strategies to drive change

### Theme 3 - communications

- practice development and awareness raising using stories and sharing narratives
- informing public and stakeholders - arguing for benefits using evidence
- public communications strategy
- to move forward we need to move out of the RJ 'echo chamber' and win the battle of ideas in the justice debate.

### Theme 4 - research

- research into what's working in the Scottish context
- start pilots (RJ evidence base is there), evaluate outcomes and feed back to strategy
- pilot? across different settings rural, city, highlands. Who is the lead? Victim Support

- piloting using existing resources - identify appropriate cases and show how it can work effectively
- we know who the victims are so opportunities exist and with the guidance in place we can use existing resources such as local authority websites and social media to promote restorative justice.

## Postcard commitments

At the close of the conference participants filled in a 'commitment postcard' that will be posted to them in early 2018. This will act as a reminder of what they or their agencies, can do to help move forward with RJ in Scotland.

Here are some examples of those commitments:

- discuss with colleagues, identify perpetrators, feed into pilot
- I commit to keeping up to date with progress being made in RJ, developing my knowledge. I would attend any training that is available to me and would be willing to facilitate any RJ meetings if possible
- (a) support RJ pilot now starting in our team (b) with supervision group continually screen for cases with RJ potential
- to identify possible cases for referral to RJ and to work with criminal justice to achieve a referral to RJ practitioners
- (a) attend Practitioners [Forum] Network (b) consider a radical, community led approach to restorative practices
- include RJ processes, practice, purpose and improve access for victims, in training provided by [my organisation] learning and development and share guidance and any other related information to assist in in making RJ work predominantly for victims and communities
- I plan to check on progress on the existing plan to develop restorative justice opportunities for young people and apply that knowledge to ensure this process runs smoothly (e.g. that training and resources are in place). I would also like to identify capacity to expand practice to include people of all ages
- start actually delivering it, generating real life case studies.



## Summary

The following statements are offered as an attempt to reflect what was a rich and informed deliberation across the day.

1. There was a need for an implementation strategy that was both 'bottom up' and 'top down'.
  - a. The legitimacy of restorative justice as a response to criminal harms should be endorsed and prioritised at a national political level. This is important in supporting the development of and access to restorative justice services through, for example, strategic practice capacity building and quality assurance.
  - b. Equally important is weight given to the growth of services on a local and community level. These will be able to reflect responsive, incremental and partnership based initiatives so that restorative justice services are available in all parts of Scotland.
2. The role of restorative justice as a trauma informed victim centred practice needs to be more widely understood and services implemented accordingly.

In her response and final comments, and reflecting on recent research into a police based RJ programme in England, Joanna Shapland acknowledged the importance of developing an implementation strategy for Scotland and the role of the Forum in taking this forward. No-one should wait for someone else to act: moving forward with restorative justice in Scotland is everyone's responsibility and yet there is also a role for leadership. At the same time, we learn from elsewhere that with the right will, much can be achieved. Now we have the *Guidance* in which the values and practice protocols are clearly stated, the important thing is to 'just do it'.

Mary Munro  
Steve Kirkwood

Enquiries to [s.kirkwood@ed.ac.uk](mailto:s.kirkwood@ed.ac.uk)

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What action are you going to take?