

Considering a Restorative Approach for Statutory Criminal Justice Social Work in Edinburgh

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Contents

Executive Summary	4
1. Introduction	5
2. What is Restorative Justice?	6
3. Values and Principles of Restorative Justice	9
4. Restorative Justice Interventions	11
4.1 Restorative Conferencing	11
4.2 Shuttle Dialogue	12
4.3 Peacemaking Circles	12
4.4 Circles of Support and Accountability	13
4.5 Diversion from Prosecution	13
4.6 Restorative Justice in Schools	13
4.7 Prisons	14
5. Models of Practice	14
6. The use of Restorative Justice in Domestic and Sexual Offending	18
7. Restorative Justice and Hate Crime	19
8. Victims and Communities	21
9. Public Perceptions of Restorative Justice	23
10. An Edinburgh Model for Restorative Justice	23
10.1 Considering the Victim	24
10.2 Raising Awareness and Implementation	25
10.3 Life Long Links, Family Group Decision Making, and Circles of Support and Accountability	26
10.4 Future Developments	27
Appendix 1	29
List of individuals and organisations contacted	29
Appendix 2	30
Proposed Restorative Justice Intervention Structure for the City of Edinburgh Council: Criminal Justice Social Work Services	30
Appendix 3	35
Identifying and managing risk in preparation for and participation in Restorative Justice Interventions for the City of Edinburgh Council: Criminal Justice Social Work Services ...	35
Appendix 4	37
Sample Outcome Agreement for Restorative Justice Interventions for the City of Edinburgh Council: Criminal Justice Social Work Services	37

Appendix 5	38
Sample Ground Rules for Restorative Justice Interventions for the City of Edinburgh Council: Criminal Justice Social Work Services	38
Bibliography	39

Executive Summary

The City of Edinburgh Council Criminal Justice Social Work (CJSW) service views restorative justice (RJ) as an opportunity to improve service provision to both those convicted of offending behaviour and the victims and communities affected by these behaviours. This paper considers the origins of the restorative approach to justice, values and principles underpinning the practice, and models of intervention.

In October 2017, the Scottish Government published [Guidance for the Delivery of Restorative Justice in Scotland](#) which included the following definition: '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, child, young person or a representative of a corporate or other body) arising from an offence or an alleged offence.' Of importance is the notion of facilitated dialogue between two parties, the victim (or person harmed) and the offender (or person who has caused the harm). Underpinning this notion, is the central tenet that involvement in a restorative justice process is voluntary for all participants. By choosing to participate in restorative justice, the person who has caused the harm is taking responsibility for their offending behaviour and the person harmed is being offered a platform to speak directly about their experience to the person who harmed them.

Criminal Justice Social Work now has a statutory responsibility to include the views of the community, including victims of crime, in how it provides a service to those who have been involved in offending behaviour as a result of *The Victim and Witnesses (Scotland) Act 2014* and the *Community Justice (Scotland) Act 2016*. Restorative justice is one method by which CJSW can meet this responsibility. There are valid questions raised as to the positioning of a voluntary process situated within statutory CJSW and the contraindication that may raise in practice. Exploration of international applications of restorative justice within this paper have provided some direction as to its use within a statutory setting.

Academic research has underpinned the development and implementation of a pilot restorative justice service within statutory Criminal Justice Social Work in Edinburgh, which ran from November 2017 to March 2018. It is the aim of the City of Edinburgh Council to embed restorative justice within statutory Criminal Justice Social Work services. Support from the City of Edinburgh Council and the University of Edinburgh's Knowledge Exchange Fellowship have been vital in facilitating the pilot project, with the latter assisting through access to extensive academic resources.

1. Introduction

Statutory Criminal Justice Social Work is primarily funded to reduce reoffending and protect the public. It does this in a number of ways, from delivery of unpaid work in the community and diversion from prosecution, to supervising people who have been released from custody or are subject to post-custodial supervision to serve the remainder of their sentences in the community. It is the aim of Criminal Justice Social Work to support people towards desistance from offending, through helping them address the social needs which contribute to offending behaviour. At present, there is no consistent approach to seeking the views of the victim in community supervision or post-release supervision planning, or to include the victim's views in seeking restoration for harm caused.

The Victims and Witnesses (Scotland) Act 2014 makes mention of restorative justice¹, but the real driver for change is the creation of Community Justice Scotland and *the Community Justice (Scotland) Act 2016*. Edinburgh's Community Safety Partnership has three main aims:

- reduce crime
- keep communities safe
- promote social inclusion and citizenship²

Specific reference is made to making sure the needs of victims of crime are met, whilst supporting those who have committed offences to reintegrate into their communities. Restorative justice is one method by which perpetrators of offences can be supported to take responsibility for their offending behaviour, and victims can seek resolution and reparation for the harm caused to them.

Restorative justice is not a new concept, but it is relatively new to statutory criminal justice social work services in Edinburgh³. Some restorative justice services in Scotland are outsourced by local authorities to third sector agencies. There is a Restorative Justice Forum in Scotland, chaired by Professor Joanna Shapland, as well as a national Restorative Justice Practitioner Network. The Centre for Youth and Criminal Justice (CYCJ) values the application of restorative justice in supporting improved outcomes for children and young

¹ <http://www.legislation.gov.uk/asp/2014/1/section/5/enacted>

² http://www.edinburgh.gov.uk/info/20204/council_planning_framework/1523/community_justice

³ The City of Edinburgh Council previously contracted SACRO to provide a diversionary restorative justice service as part of its statutory obligations. This contract was terminated in 2010.

people involved in offending behaviour and recognises that learning from this paper could evidence the value of positioning restorative justice within a statutory Criminal Justice Social Work landscape.

A number of different sources were used in gathering information to inform this paper including the internet, social science journals, governmental and non-governmental reports, and access to the Library at the University of Edinburgh (both hard and e-copies of books and journals). A secondary search of literature was completed using the bibliographies from initial reading, and was complemented by various professionals in the field of restorative justice. Restorative justice has its roots in indigenous populations around the world, and again this is acknowledged through exploration of services in other countries. Material relating to the use of restorative justice in Scotland was limited, however there was a plethora of information relating to projects in England and Northern Ireland. Where possible, inspiration has been drawn from UK-based projects, however the different legal systems and the devolution of powers to Scotland must be acknowledged as having an impact on any wider implementation.

The aims of this paper are therefore:

- To offer a definition of restorative justice
- To outline existing restorative justice projects
- To explore best practice in restorative justice and what can be taken forward within a statutory Criminal Justice Social Work setting
- To outline key values and principles in restorative justice
- To consider the application of restorative justice across the broad spectrum of offending including serious violent offending
- To make a proposal for restorative justice service development within statutory Criminal Justice Social Work in the City of Edinburgh, and to make recommendations for the development of this service

2. What is Restorative Justice?

Whilst there is no one agreed definition of restorative justice, Marshall's (1996) definition is widely accepted to cover the main principles, outlined in the next section: "*Restorative Justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future*" (p.37; cf. Braithwaite, 1999, p.5). It aims to;

“bring together the victim, the offender, and the community, in an effort to address the harm caused by the criminal behaviour” (Latimer et al. 2005, p.131).

Restorative practices, and restorative justice, are not new concepts. Based on the idea that addressing offending behaviour is not solely the responsibility of the offender, but should include the victim, the offender, and if possible their supporters and the community.

Restorative justice is just one aspect of a community problem solving approach to offending. Zehr (2004 p.307) suggests *“with its focus on interpersonal relationships, human need, and collaborative, problem solving approaches, restorative justice might be viewed as a peace-making or conflict-resolution approach to justice.”* Zehr (2015) also introduces the ‘Three Pillars’ concept:

- Restorative justice focuses on harm. Crime is harm done to people and communities. Legal systems adopt crimes and make the state the victim, losing sight of the harm felt by people and communities. Victims become secondary to justice, so restorative justice needs to focus on victims and their needs. Victims must have the opportunity to state their needs, rather than having others identify them for them. Restorative justice should be about preventing future harm, as well as restoring justice to those who have been harmed.
- Wrongs or harms result in obligations. Those who cause harm must be accountable for their actions, and take responsibility for their behaviours. This also means that the offender has a responsibility to repair the harm they have caused.
- Restorative justice promotes engagement or participation. Those who have been affected by crime are given roles in the justice process through restorative justice. This could take the form of face to face meetings, the use of surrogate victims, or indirect contact such as letters, audio, or verbal messages.

Restorative justice is only truly restorative when it includes the victim and there is reciprocation of communication. Reparative justice can include unpaid work in the community, or the writing of a letter of apology by the offender where no response is required of the victim. Both have their place in the criminal justice system. This paper will focus on restorative justice, and victim and community involvement in community problem solving.

As important as it is to focus on what restorative justice is, it is also important to reflect on what restorative justice is not. Zehr (2015 pp.13-20) suggests the following:

- Restorative justice is not primarily about forgiveness or reconciliation
- [It] does not necessarily imply a return to past circumstances
- Restorative justice is not mediation
- [It] is not primarily designed to reduce recidivism or repeat offences
- [It] is not a particular program or a blueprint
- [It] is not limited to “minor” offences or first-time offenders
- Restorative justice is not a new or North American development
- Restorative justice is neither a panacea nor necessarily a replacement for the legal system
- Restorative justice is not necessarily an alternative to prison
- Restorative justice is not necessarily the opposite of retribution.

Sherman and Strang (2007 p.33) state that the label ‘restorative justice’ has “*one common element: offenders doing something constructive to make the world a better place, rather than simply having pain inflicted on them*”. They highlight that the term ‘restorative’ can cause confusion, as it has been applied to activities such as unpaid work which are ‘restoring’ but have no contact with a victim.

Victims must be prepared for no apology to be offered; the purpose of restorative justice is not necessarily to have the offender apologise and the offender should not be forced to apologise nor should either party be expected to offer reconciliation. That is not to say that an apology will not happen or is not welcomed, but it is for the offender to decide whether they will offer this. Victims often thought that an apology was important in making emotional restoration for the offending, and apologies were more forthcoming through restorative justice processes than the Court (Sherman et al. 2007 p.63).

Additionally, organisations may hope that restorative justice will reduce offending but reducing reoffending should not be the primary aim in operating a restorative justice programme (Zehr 2015 p.16). Zehr (2015) states that “*Those who have suffered harm should be able to identify their needs and have them addressed; those who cause harm should be encouraged to take responsibility; and those affected by an offense should be involved in the process, regardless of whether the offending party gets the message and reduces their offending.*” Ward et al. (2014) highlight that data collected from restorative justice interventions used to back up claims that restorative justice leads to desistance from offending is often based on participant satisfaction rather than the impact of restorative

justice on offender risk factors or reconviction rates (2014 p.30). They suggest that the aim of restorative justice is not offender rehabilitation, but one of 'moral repair'. This is based on Walker's 2006 statement that moral repair is '*restoring or creating trust and hope in a shared sense of value and responsibility*' by placing responsibility on the offender and acknowledging and addressing the harm suffered by the victim, as well as restoring trust in communities and reintegrating the offender (Ward et al 2006 p.31). However, studies relating to youth conferencing in Australia (Hayes and Daly, 2003) and New Zealand (Maxwell and Morris, 2001) found that involvement in a restorative justice process had a positive impact on reoffending. Justice Research Consortium (JRC), part of the Home Office funded study evaluated by Shapland et al. between 2004 and 2008, evidenced that the process of the restorative conference affected how offenders felt and behaved afterwards, which included helping offenders to desist from future offending (Shapland et al. 2011 p.176)

3. Values and Principles of Restorative Justice

Whilst the values and principles of restorative justice may vary somewhat from country to country, there are a number of values and principles common to restorative justice worldwide which will be important in the application of restorative justice within a social work setting. These include:

- Recognition that harm has been caused through criminal behaviour
- Voluntary participation in any restorative intervention by both victim and offender
- Allowing the offender to be held accountable for their actions and accept responsibility for their actions
- Ensuring that the rights of victims and offenders are upheld
- Agreeing, if necessary, reparation for harm caused by offending and ensuring that any agreed outcomes of a restorative intervention are upheld
- Facilitating respectful, compassionate, dignified, honest communication between victims and offenders
- Ensuring the emotional and physical safety of all participants at all times
- Nurturing hope – hope of healing for victims and hope of change for offenders⁴

The Northern Ireland project Alternatives, helpfully offers the following comparison of restorative rather than retributive justice⁵:

⁴ New Zealand Ministry of Justice 2011; Correctional Service of Canada

⁵ <http://www.alternativesrj.org/values-principles/>

Retributive	Restorative
Crime violates laws set by government	Crime violates relationships between people
Focus is on placing guilt	Focus on needs and responsibilities
State is central to the process	Victim and offender are central to process
Rules are key	Assumption of responsibility is key
Victim plays minimal role	Victim's participation vital
Offender takes mostly passive role	Offender required to be active in the process
Offender marginalised from the community	Offender marginalisation decreased
Directed and led by professionals	Community and voluntary involvement
Focus on the past	Focus on the future
Low percentage of resolution	High percentage of resolution

The 1989 Children, Young Persons and Their Families Act in New Zealand set out principles and goals for the youth justice service, with the intention that if followed, these will lead to restorative practice (Macrae et al. 2004 p.18). Macrae and Zehr (2004 pp.18-19) summarise the seven primary goals as follows:

- Diversion (keep young people out of court and prevent labelling them as offenders)
- Accountability (young people must accept responsibility for their actions and repair the harm they have caused)
- Involving the victim (victims needs must be addressed and victims must be part of deciding the outcomes)
- Involving and strengthening the offender's family (the family can provide resources and support to help the young person make good decisions)
- Consensus decision making (outcomes should be agreed by all participants)
- Cultural appropriateness (processes and assistance should be adapted to the participants)
- Due process (the young person's rights must be respected)

The Scottish Government's Whole System Approach for Young People who Offend⁶ encourages children and young people, and their families, to be at the centre of a problem solving justice approach. Underpinned by Getting it Right for Every Child⁷ the values and principles of the Whole System Approach could be applied to adult offenders in Edinburgh. A model of restorative justice for Edinburgh will have developed alongside it principles and practice guidance, as per Appendix 2.

⁶ <http://www.gov.scot/Topics/Justice/policies/young-offending/whole-system-approach>

⁷ <http://www.gov.scot/topics/people/young-people/gettingitright>

4. Restorative Justice Interventions

Restorative justice can be broadly separated into two different types of intervention: Restorative Conferencing and Shuttle Dialogue. More simply, contact between the victim and offender is either face to face, or it is not. Other initiatives which include elements of restorative justice principles and values include interventions such as Circles of Support, diversion from prosecution, and reparative justice.

4.1 Restorative Conferencing

The Restorative Conference can have as few as three participants (the victim, the offender, and the facilitator). More people may attend the conference; the victim and offender can bring family and/or friends and/or supporters, and there may also be members of the community present such as local neighbourhood groups or police officers. The first Family Group Conference was held in New Zealand in 1989 (Zehr 2004 p.306) and is now central to the New Zealand Juvenile Justice system. The conferencing model is also widely used in Northern Ireland as a statutory part of the Youth Court service, where it is offered to all young offenders under section 57 of *the Justice (Northern Ireland) Act 2002*.

There are various points in the criminal justice process when a conference can be used, as outlined by Gavrielides (2007). He first suggests that conferencing can be an absolute alternative to prosecution, and offers the example of '*dading*' in Holland where a settlement is negotiated between the victim and offender and the case does not enter the formal justice system (2007: 31). Conferencing can also be offered as part of the formal justice system, for example as diversion from prosecution. The conference model can also be used alongside the formal justice system, after the criminal justice process has been completed.

It is essential that the offender takes responsibility for their part in the offence before the conference goes ahead. Voluntary participation is key, with any party able to cease their involvement at any time, without penalty. Some forms of conferencing are scripted, and many follow a process which allows the facilitator to manage the conference but the participants to lead it. The facilitator will meet with all the invited parties in advance to assess their suitability for inclusion in the conference, and to make clear the aims of the conference and the ground rules. On the day of the conference, the ultimate aim is for all parties to agree what actions are required by the offender to heal the harm caused by their offending behaviour through the creation of an Outcome Agreement, and how any identified needs can be met.

In Scotland, SACRO operate restorative justice services which involve conferencing, within the Youth Justice Services in Aberdeen, Dundee, East Dunbartonshire, Falkirk, Kirkcaldy and Clydebank; and the Motherwell and Aberdeen Diversion from Prosecution Services.

4.2 Shuttle Dialogue

Where either the victim or offender do not wish to meet in person, shuttle dialogue may be used. This could be in the form of messages passed between the parties or a letter from the offender to the victim. It is essential that this process is victim-focused and that the victim has consented to receive a letter from the offender. Letters should be screened by a facilitator in advance to ensure that no covert re-victimisation is occurring (see Appendix 2).

4.3 Peacemaking Circles

With origins in many indigenous cultures, Peacemaking Circles offer an approach to conflict resolution (Ehert, et al. 2016). Within the Navajo community it was traditionally a community leader, or *Naat'aani* who “arbitrated disputes, mediated quarrels, resolved family problems and tried to correct wrong-doers” (Zion 1983 in Nielson 1999 p.108). Peacemaking was facilitated through “prayer, value clarification, self-expression, teachings from traditional narratives about mythic creatures, and consensus” (Nielson 1999 p.108), and the outcome was dependent on the decisions of the people involved. Ideally, all parties would leave a meeting feeling that balance had been restored, and that the offender understood him or herself better. Peacemaking, or Navajo Courts became a formalised part of the US justice system in 1992 (Nielson 1999 p.109). There is an extensive network of Navajo Peacemakers in the US, who can be accessed through referrals from the Courts, health or social services.

The Centre for Court Innovation’s Peacemaking Project is an example of a service, which draws on Native American approaches, to focus on healing and restoration rather than punishment. Bringing together the victim and the offender along with family members, friends and community representatives, the aim is to reflect on the impact of the offending behaviour on those present whilst attempting to heal the relationships between the parties present and restoring balance to the community.⁸ Peacemaking sessions are facilitated by trained members of the local community, and the sessions are not limited to one. Occasionally, it can take more than one meeting to reach an agreement. In common with Restorative Conferencing, the agreement is an important part of the Peacemaking process and again the entire process is voluntary.

⁸ <http://www.courtinnovation.org/project/peacemaking-program>

4.4 Circles of Support and Accountability

Based on the principles of restorative justice, Circles of Support and Accountability (COSA) was created by the Mennonite church in Canada in 1994 to support sexual offenders to reintegrate into the community post-release from custody. The service was aimed mainly at those who were being released without any statutory supervision, was run by community volunteers, and intends to reassure victims and the community whilst supporting and assisting those convicted of sexual offences back into the community (Hannem 2013 p.270). Up to six volunteers from the local community, frequently with a background in working in the justice system or having had family members who have worked in justice, are allocated to the offender, who is the 'core member' of the circle. Expectations of the offender and the volunteers are set upon release, with the circle meeting weekly as a group and the volunteers taking turns to meet with the core member every day to support them to undertake tasks and reintegrate into society (Hannem 2013 p.272). Armstrong et al.'s 2013 evaluation of the Fife COSA project which at that time had been running for four years, highlighted that a Circle of Support can be used as one of a number of tools to support a registered sex offender returning to the community and as an effective contributor to risk management and public protection. Hannem (2013) highlights in her paper that UK COSAs have been firmly rooted in risk management and public protection; Richley and Kirkwood (2008) highlighted that COSAs can be used to support core members to develop pro-social relationships and engage in activities which 'may reduce re-offending more than traditional treatment approaches'.

4.5 Diversion from Prosecution

Kirkwood (2010) evaluated three restorative justice services that were offered as part of Diversion from Prosecution in five local authority areas in Scotland. Four of eight hypotheses were supported by Kirkwood's research, which included data on offence type, the age of the person responsible, the presence (or absence) of a history of offending behaviour, and whether the victim and the offender knew each other at the time the offence occurred. Kearney et al.'s (2009) evaluation of success rates of restorative justice as diversion from prosecution (where a case either went to a restorative justice conference, a face to face meeting or shuttle dialogue) were highest (82%) when both the victim and the offender participated, with the most common satisfactory agreed outcome an apology (2009 p.7).

4.6 Restorative Justice in Schools

Whilst this paper focuses on restorative justice within the criminal justice system, it should be acknowledged that there is an opportunity to embed/expand upon existing restorative

practice and promote social justice within the education sector. McCluskey et al. (2008 p.206) highlight “In the life of schools, relationships are central...school life is based on social interaction, both constructive and destructive...it is complex and multi-layered...formal restorative justice does not take any account of the historical and embedded power relations between teacher and pupil, adult and child, school and home”. In order to develop restorative practice in schools the nature of the power imbalance must be acknowledged prior to any restorative intervention, and the complexity of the relationships must be accepted. This seems to have taken place in a Scottish pilot, where some schools involved in a project in 2004 began to reflect on their ‘school relationships, processes, and priorities’ (McCluskey et al. 2008: 210).

4.7 Prisons

Only one intervention in Scotland which has its roots in restorative justice is believed to be running in Scottish prisons at present. Delivered by Prison Fellowship Scotland, the Sycamore Tree project is described as a ‘victim awareness and restorative justice’ service which aims to help people serving prison sentences to take responsibility for their actions through the Christian Bible story of Zacchaeus and his meeting with Jesus. The programme runs over five sessions, starting with an introduction to restorative justice, a session on taking responsibility, saying sorry and acting sorry (which is based on victims’ stories), reconciliation, and planning what to do next. The service can use volunteer victims to participate in session three, however these victims are not personal to the offenders participating in the course. There is also a scheme operating in the Thames Valley area⁹, where a former offender, a participant in restorative justice himself, runs a brief introductory programme for prisoners to encourage them to consider engagement in a restorative justice intervention.

5. Models of Practice

In considering the development of an Edinburgh model of restorative justice, it is helpful to review models of successful practice elsewhere.

Northern Ireland Alternatives is a project based in Belfast which started in 1998 on the Shankill Road and now has services in other areas of Belfast as well as Bangor. They offer a number of different services aimed at both young people and adults, underpinned by the values and principles of restorative justice practice. N.I. Alternatives aims include “peacefully

⁹ <http://www.why-me.org/2017/welcome-restorative-justice-council-guide-prison-governors/>

addressing socially harmful activities and developing non-violent, innovative approaches to doing justice within local communities.”¹⁰ There is a close working relationship between N.I. Alternatives and the Northern Ireland Department of Justice, and protocols agreed between N.I. Alternatives, the Public Prosecution Service for Northern Ireland (PPS), Police Service of Northern Ireland (PSNI) and the Youth Justice Agency (YJA) which allow young people to be diverted from prosecution towards a restorative intervention. Their Restorative Adult Practices (RAPS) project¹¹ takes referrals from named probation teams, and offers participants the opportunity to explore their offending behaviour and understand the harm they have caused as a result of their offending, as well as looking towards a positive future. Intervention includes Victim-Offender Mediation, Victim Awareness, Offender Support, and Community Reparation. Offender Support can include access to education, employability skills, counselling, or volunteering opportunities. A 2005 report on community-based restorative justice in Northern Ireland found that engaging with NI Alternatives resulted in a reduced number of so-called ‘punishment beatings’, that the use of restorative justice resulted in more community responsibility for the promotion of non-violent responses to crime, and that community-based restorative justice projects such as NI Alternatives were integral to reintegrating people back into their communities.¹²

The Duckfoot report (2012) highlighted different levels of restorative justice and community resolution available via six police forces, Merseyside, Greater Manchester Police, North Wales, West Midlands, Norfolk and Sussex¹³:

Level 1 (instant or on-street interventions) may not involve a victim, and if the victim is not involved then by definition it is not restorative justice. This is not to say, however, that restorative skills are not used in the application of justice on this level. Level 2 interventions are an alternative to formal criminal justice processes and fit with Marshall’s 1996 definition of restorative justice, and could generate positive outcomes for both the victim and the offender. Level 3 and Level 4 interventions are those which are used alongside the formal criminal justice process and would apply to the Edinburgh model of statutory criminal justice social work, and could use the restorative interventions outlined at Level 2 to deliver victim-led restorative justice in the community or in custody.

¹⁰ <http://www.alternativesrj.org/background/>

¹¹ <http://www.alternativesrj.org/restorative-adult-practices/>

¹² <https://www.atlanticphilanthropies.org/app/uploads/2015/09/HMikaReport.pdf>

¹³ Duckfoot 2012: 3 and 2012: 15

There is a strong tradition of Family Group Decision Making within Children & Families Social Work in Edinburgh, used to explore family based solutions where children are involved in problematic behaviour or require statutory safeguarding in the community. In common with the model used in New Zealand, conferences in Edinburgh allow the family time alone to generate their own solutions, empowering the young person, their family, and other invested parties. Indeed, this approach is also part of the Young People's Service to offending in Edinburgh, offering an established model of practice for work with adult offenders.

Community problem solving initiatives in New York such as the Centre for Court Innovation's Project Reset¹⁴, Youth Courts¹⁵, Peacemaking programmes¹⁶, and Brownsville Community Justice Centre¹⁷ can, and have, been used as models for intervention in the UK. The Centre for Court Innovation offers a number of restorative interventions including support to tribal communities wishing to develop their justice systems and form relationships with the formal justice system, community led mediation, peer led youth justice courts and community led violence prevention. In Scotland, the Aberdeen Problem Solving Court was supported in its development by the Centre for Justice Innovation, which is the UK arm of the Centre for Court Innovation in New York. A problem solving court model is operating in Alloa through the medium of Community Payback Order and Drug Treatment and Testing Order reviews, whereby involved parties meet around a table in the jury room rather than the formal setting of the court room¹⁸. Of note, is the interaction between the Sheriff and those appearing before the Court. The review allows an opportunity for reciprocal dialogue and honesty, and open disclosure is encouraged by both parties. The person subject to statutory supervision is at the centre of the process and they are encouraged to take responsibility for their behaviour and to engage with the change process. Family, social, and professional support are integral to the success of the review and the statutory order.

In Europe there is evidence of a number of different restorative justice programmes. In the Netherlands, a private law out of court settlement called *dading* first took place more than 20 years ago. *Dading* allowed both the victim and offender to come to an agreement out of court, with agreements implemented and monitored by trained legal assistants. Criminal law

¹⁴ <http://www.courtinnovation.org/project/project-reset>

¹⁵ <http://www.courtinnovation.org/topic/youth-court>

¹⁶ <http://www.courtinnovation.org/project/peacemaking-program>

¹⁷ <http://www.courtinnovation.org/project/brownsville-community-justice-center>

¹⁸ Mackie, D. (2017). Restorative Justice Works (but not in Scotland, yet). *Scottish Justice Matters*, [online] 5(1), pp.22-23.

did not apply, only civil law was used. It is rarely used in the Netherlands now as the criminal justice system has evolved.¹⁹

The Belgian model of *strafbemiddeling*, or penal mediation, was set up in 1991 with a view to improving the response to and simplifying the criminal justice system, and improving the experience of victims who have become involved in the criminal justice system (Aertson et al. 1998 p.508). On the surface, a success rate of 71% (whereby penal mediation took place and both parties came to an agreement as to what the offender should do to make amends for the behaviour) would suggest that this is a successful model of restorative justice. However, questions were raised about how mediative the contact between the victim and the offender was, or whether the focus was on financial settlement or treatment for the offender. Where the agreement was adhered to, prosecution was not pursued. Where the terms of the agreement were not met, the case proceeded to prosecution (Aertson et al. 1998 p.509). Penal mediation was made law in Belgium in 1994, and is applied to adults who commit criminal offences, as an alternative to short (less than two years) custodial sentences (ibid). Aertson and Peters highlight the benefits of mediators within the criminal justice system. They can encourage new approaches, have established links with the judiciary, and direct access to cases potentially suitable for mediation (Aertson et al. 1998: 511). Criticisms of the scheme include that it is offender oriented with victims often only involved by way of a letter, with face to face meetings rare, and conditions applied to agreements can depend on resources rather than meeting the needs of the victim or offender, amongst others (Aertson et al. 1998 p.515).

In the UK, restorative justice has mainly focused on young people involved in offending. Certainly, the majority of available literature relates to restorative justice interventions in youth offending services in England and Wales. A two year pilot project in England (c. 2001-2003) allowed three organisations to develop and/or expand restorative justice services to accommodate the needs of adult offenders in a statutory setting. This was extensively evaluated by Shapland et al. (2004, 2006a, 2006b, 2008) over a number of years. Aims of the study included an assessment as to whether the use of restorative justice led to fewer reconvictions, whether restorative justice met victim needs, and whether restorative justice could assist with solving the problems which led to an individual's offending behaviour. Shapland's research indicated that those offenders who participated in restorative justice committed fewer offences in the two years post-study, victims of offending were satisfied

¹⁹ Final National Report of the Netherlands 2013: 13

with the process and outcomes, and greater acknowledgement of the harm caused by offending behaviour was recognised by those who caused the harm (Shapland 2008: 66-68).

Kearney et al.'s 2006 paper highlights the dearth of restorative justice interventions in Scotland, particularly within adult criminal justice social work services, despite the push from the then Scottish Executive to embed restorative justice in youth offending social work practice. Funding to Youth Offending Services across Scotland allowed for provision of restorative justice interventions including restorative conferences, victim-offender mediation, shuttle mediation, and victim awareness sessions.

6. The use of Restorative Justice in Domestic and Sexual Offending

There is limited literature on the use of restorative justice in domestic and sexual offending, in comparison to the literature on restorative justice in schools or youth offending settings. Statutory Criminal Justice Social Work services supervise and support people who have been convicted of a wide range of offending behaviour. The application of restorative justice for 'lower level' offending behaviour is widely accepted, however there is disagreement as to whether restorative justice should be available to those who have committed and those who have been harmed by both sexual and domestic offending behaviour. Given the remit of statutory Criminal Justice Social Work, it is appropriate to comment on the use of restorative justice in both domestic and sexual offending circumstances.

Zehr refers to concerns about restorative justice and its use in domestic violence. He confirms that the concerns are legitimate, and that cases where restorative justice is used should involve professionals trained in working with victims and offenders in domestic violence and the cases should be monitored carefully. Some say that victims of domestic violence should never participate in restorative justice, others argue that restorative justice is important in empowering victims, with the correct safeguards (Zehr 2015 p.50).

The national treatment programme for individuals convicted of sexual offences in Scotland is *Moving Forward: Making Changes*, which aims to provide intervention with individuals convicted of sexual offences and encourage and support them to develop the skills and capacity to meet their needs through more appropriate behaviours that do not cause harm to others. As stated by Joyce-Wojtas and Keenan (2016: 43) criminal justice services play a key role in reducing crime but the same services have processes which "ensure fair proceedings in the gathering and testing of evidence against an accused, rather than to

directly address the harm caused to victims” (2016 p.45). Post-conviction intervention plans are also offender focused, and whilst consideration is given to the impact of the offence on victims from an offender point of view (supported by trained facilitators who will help offenders to try and see the impact from a victim perspective), there is no direct contact with victims of sexual offences.

Where an offender pleads guilty to an offence, there is no trial. Where there is a trial, and the victim is required to give evidence, there are concerns about re-victimization (McDonald & Tinsley, 2011, p.63 in Joyce-Wojtas and Keenan (2016 p.47)). Victim impact statements are an option as a means of communicating to the Court the impact of an offence on an individual. However, they are limited as to the information they can contain, are only presented to the Court once a conviction has been secured, and may not have the impact on the offender or their sentence that the victim desires. Restorative justice, where it is led by the victim and facilitated by someone trained and experienced in restorative interventions, may be empowering to the victim, validating their experience and acknowledging the harm caused to them. It also encourages the offender to directly acknowledge the harm they have caused through their offending behaviour and supports them to consider how they can make amends. At present, there are no plans to introduce a restorative justice element to services for sexual offenders in Edinburgh, and restorative interventions would not be offered as an alternative to prosecution. However, there may be a place for restorative justice alongside the traditional justice system in the context of sexual offending in the future. This would most likely require additional safeguards and processes, such as those introduced in New Zealand by the Ministry of Justice in 2013 which require consideration to be given to the psychological needs of the victim and the offender, as well as the impact of the offending behaviour on the community and the families involved.²⁰

7. Restorative Justice and Hate Crime

Police Scotland define Hate Crime under *the Offences (Aggravated by Prejudice) Act 2010*²¹ and have identified hate crime as crime motivated by malice or ill will towards a social group by:

- Race
- Sexual orientation
- Religion/faith

²⁰ <https://www.justice.govt.nz/assets/Documents/Publications/Restorative-justice-standards-for-sexual-offending-cases.pdf>

²¹ <http://www.scotland.police.uk/keep-safe/advice-for-victims-of-crime/hate-crime/what-is-hate-crime/>

- Disability
- Transgender/gender identity

The Scottish Government is committed to tackling hate crime, Police Scotland are tasked with primary operational responsibility for ensuring the public are protected from hate crime, and the Crown Office and Procurator Fiscal Service (COPFS) have a 'zero tolerance' approach to hate crime, with prosecution the favoured position unless there is information to show that this is not in the public interest (Scottish Government 2016 p.7). The Independent Advisory Group on Hate Crime, Prejudice, and Community Cohesion heard that victims perceive the justice system to be disjointed, fear that they will not be taken seriously and often experience so much prejudice in the form of hate crime that they would be unable to report them all (2016 p.13). The Advisory Group recognised that public bodies, which will include statutory Criminal Justice Social Work, have a responsibility to address hate crime (2016 p.14). The Advisory Group additionally recommended that 'the Scottish Government and partners should explore the use of restorative justice methods with victims and perpetrators of hate crime' (2016 p.20).

Research by Rania Hamad has highlighted the levels of hate crime that are being brought to the attention of statutory Criminal Justice Social Work services in Edinburgh; one in eight Criminal Justice Social Work Reports are written for people who have committed offences categorised as hate crime (2017 p.9). The impact of hate crime can be greater than that of a similar crime committed without hate-related aggravating factors. Hate crimes are more likely to be committed against individuals as opposed to property, can involve repeat victimisation, can cause heightened levels of fear and greater emotional impact. The motive is more personal, based on an offender's perception of an individual as a result of their appearance or other social or cultural attributes (Gavrielides 2007 p.192).

Involving victims of hate crime in restorative justice processes could be difficult, given the different type of harm they experience. Restorative justice could help empower victims of hate crime through returning control of what happened to them. Bringing offenders face to face with those that they have offended against could help give a human aspect to the victim, rather than the victim being seen as a stereotype based on cultural or other protected characteristics (Gavrielides 2007 p.198). Gavrielides encourages caution regarding the use of restorative justice in the context of hate crime, highlighting the risk of further victimisation, the lack of guarantees that the offender will not hurt the victim further, or approach the process with honesty (2007 p.198). The use of restorative justice within the context of hate crime has a limited evidence base, but if handled sensitively and in conjunction with the

existing criminal justice system there is potential for a restorative intervention that benefits the individual as well as a community.

8. Victims and Communities

There is a suggestion that restorative justice may work best when it is used across a community rather than in isolation (Sherman et al. 2007 p.78). This appears to have been the case in Northern Ireland. Tim Chapman stated at a recent SUII dialogue that most people in Northern Ireland now know what a restorative justice conference is and many of them have participated in a conference or know someone who has (March 2017).

Macrae et al. (2004) also highlight the importance of communication with victims and the role of the victim within the Family Group Conference. Victims may have concerns about re-victimisation, the cost of travelling to a conference, the date or time or venue for the conference, or their own work and family commitments. Flexibility is required to ensure that the needs of the victim are met and that victims feel empowered by the restorative justice process. Victims always have a choice as to whether they want to participate in the conference and can leave the process at any time. Victims should be involved in any agreement made as a result of a conference, and where possible should be kept informed of the progress made by the offender. Victims should be aware that they are entitled to tell the offender how angry they are and how they have been affected by the offender's behaviour (Macrae et al. 2004 p.35).

It is useful to therefore consider how we might use the disposals available to us, in particular Community Payback Orders (CPOs), as a means to support rehabilitation through the use of restorative justice. CPOs were introduced in 2011, widely used as a direct alternative to a custodial sentence and are based on community disposals first introduced in Scotland in 1977. The Community Payback Order comprises of up to nine requirements, including Offender Supervision and Unpaid Work or Other Activity, and has the following aims:

- Achieve a positive impact on individuals
- Require individuals to make payback to the community
- Replace an unnecessarily complex range of community sentences and increase public understanding
- Ensure the level of intervention matches the level of assessed risk and need

- Create a robust and consistently delivered community sentence which enjoys public confidence and credibility²²

The 'Other Activity' element, which can be 1/3 or 30 hours of the total hours ordered (whichever is lower), was designed to promote rehabilitation through education and unpaid work. In the context of restorative justice, there is an argument that 'Other Activity' could be used to encourage exploration of and potentially participation in a restorative justice intervention. The long term aims of CPOs are to reduce reoffending, promote reintegration and reduce the prison population, therefore it seems reasonable that restorative justice could be considered as part of the 'Other Activity' element, or explored as part of an Offender Supervision Requirement. Using restorative justice within a statutory Criminal Justice Social Work framework could be of immense value to victims of offending behaviour, both supporting the idea that community sentences should encourage offenders to recognise the impact of their behaviour and take responsibility for their actions, whilst also raising awareness and promoting confidence in statutory social work provision as a means to both protect the public and rehabilitate offenders.

The police are likely to be the first point of contact for any victim and therefore may be best placed to ask the initial question about whether they may be interested in a restorative justice intervention. Kirkwood (2010 p.12) found that participation was more likely when the offender was contacted before the victim. He argued that victims are more likely to participate when they know the person who offended against them has taken responsibility for their behaviour and wishes to make right the harm caused (2010 p.15). As mentioned earlier, there are processes in Fife and Aberdeenshire to share contact details of victims with the third sector for the purposes of restorative justice and these are in development in Edinburgh at the time of writing. It is the intention of Edinburgh to approach the offender regarding participation in restorative justice prior to asking the victim, both for the reasons outlined by Kirkwood (2010) as well as working to ensure the victim is not disappointed or re-victimised if the offender declines the invitation.

In New Zealand, the traditional Māori values of reconciliation, reciprocity and whānau (extended family and community) involvement influenced the development of restorative justice approaches.²³ Māori include the community in repairing harm and solving problems. Rather than solely focusing on punishment for wrongdoing, the cause of the problem is

²² <http://www.gov.scot/Publications/2015/03/3800/4>

²³ New Zealand Ministry of Justice, (2011). Restorative Justice: Best Practice in New Zealand. Wellington: Ministry of Justice, p6.

identified and addressed.²⁴ Family Group Conferences were introduced for young offenders in 1989, with a similar model for adults introduced on an informal basis over the years until 2002 when legislation was passed which formalised the role of restorative justice in the criminal justice system.²⁵ The role of the community is integral to the restorative process and can play a part in helping the wider community to recover from the impact of the offence. The community may also be able to provide resources and opportunities to support the person who caused the harm to make reparation for their offending, whilst empowering the community to safely manage and resolve its own conflicts.

9. Public Perceptions of Restorative Justice

Local media coverage²⁶ has highlighted the potential for restorative justice to be part of a community solution to offending behaviour. An incident where young people set fire to outdoor seating in Aberdeenshire resulted in the business owner offering the perpetrators a job, stating “People are all too quick to say 'hang 'em high' rather than make a difference and help. We can change their direction.”

A report by Duckfoot on behalf of Her Majesty’s Inspector of Constabulary (2012) on the general public’s response to restorative justice available in six police force areas, highlighted the lack of understanding about restorative justice and its application within the justice system. In specific reference to adult offenders, the population sample wished to see restorative justice as complementary to ‘traditional forms of punishment’ (Duckfoot 2012 p.8). The report concluded that there are instances in which restorative justice is considered appropriate, particularly in meeting the needs of victims. However, public perceptions that justice must be seen to be done, particularly when dealing with adult offenders who ‘should know better’ remained (Duckfoot 2012 p.8). A benefit of restorative justice being delivered alongside statutory criminal justice measures is that the offending behaviour is viewed as being appropriately dealt with via the visible justice channels (the Cour) as well as allowing a complementary approach via restorative justice. Restorative justice is therefore more for the benefit of the victim rather than the offender, in line with the values underpinning restorative justice provision.

10. An Edinburgh Model for Restorative Justice

²⁴ MacRae, A. and Zehr, H. (2011). *Righting Wrongs the Maori Way. Yes!*, [online] (58).

²⁵ (New Zealand) Sentencing Act 2002, Parole Act 2002, Victims’ Rights Act 2002.

²⁶ <http://www.bbc.co.uk/news/uk-scotland-north-east-orkney-shetland-39179038>

The pilot Restorative Justice Service for the City of Edinburgh's Criminal Justice Social Work Service was initially scheduled to run from November 2017 to March 2018, with a permanent service to be developed and implemented in the foreseeable future. Whilst there is a desire to focus on the use of RJ with hate crime, as recommended by the Scottish Government, the service will accept referrals from any social worker who believes their service user meets the referral criteria. There are a number of challenges to overcome, including contacting victims and ensuring victims have their own ongoing support, the likelihood of attrition reducing the sample number and developing measurable targets. It is highly likely that given the anticipated small sample size we will focus on evaluation of the process involved in the delivery of restorative justice, as well as what participants tell us about their experiences.

If we are to practice restorative justice within social work services in Edinburgh, it is essential that we employ a research-led value base and incorporate the values and principles of restorative justice into our social work practice. When the Edinburgh model progresses, it is anticipated that it will be available after the formal criminal justice process has completed and the offender is subject to statutory supervision, be that a community order or post-custodial supervision. That said, there may be a place for the use of restorative justice in conjunction with the Diversion from Prosecution Service. It is imperative that the voluntary nature of restorative justice is not lost within the statutory framework, and individuals must not feel pressured to take part for fear of jeopardising compliance with a Court Order.

10.1 Considering the Victim

Historically, there has been little engagement between statutory Criminal Justice Social Work Services and victims of crime. It must be said that the exception is the Caledonian Service²⁷ which in addition to working with men who have been convicted of domestic abuse and have been assessed as suitable for programmed group work, also offers a service to the female partners and children (victims) of men attending the project. Criminal Justice Social Work in Edinburgh has also been known to engage with appropriate agencies to ensure the safety of victims when the perpetrator of an offence is due to be released, through the Risk Management Case Conference (RMCC) and Multi-Agency Public Protection Arrangements (MAPPA) processes²⁸. For example, when it is recognised by the RMCC that a victim may not have appropriate safeguards in place to protect them from the person who harmed them, the Criminal Justice Social Worker could liaise with the Police and third sector agencies (such as Victim Support) to create a safety plan. Ensuring victim information is properly

²⁷ http://www.edinburgh.gov.uk/info/20110/domestic_abuse/333/men_convicted_of_domestic_abuse

²⁸ Multi Agency Public Protection Arrangements, <http://www.gov.scot/Topics/Justice/policies/reducing-reoffending/sex-offender-management/protection>

handled and stored has been the focus of the Information Sharing Protocol developed with the Crown Office and Procurator Fiscal Service, and Police Scotland (Edinburgh Division). Whilst acknowledging that restorative justice is victim led, as previously mentioned, it has been decided in Edinburgh that we will first approach the offender to discuss involvement in RJ, both for the reasons outlined by Kirkwood (2010) as well as aiming to ensure the victim is not disappointed or re-victimised if the offender declines the invitation.

10.2 Raising Awareness and Implementation

It has long been a recommendation (Kearney et al. 2006 p.54) that restorative justice is offered to both young people and adults at all stages of the criminal justice system. With the implementation of Community Justice Scotland comes an expectation that local authorities and their partner agencies engage with victims and communities to deliver community justice and equally *the Victims and Witnesses (Scotland) Act 2014* expects statutory services to engage more effectively with victims. *The Community Empowerment (Scotland) Act 2015* has additionally set expectations that communities are included in improving outcomes and making decisions about public services in their area. Restorative justice offers the opportunity to do both these things, in the hope that ultimately people involved in offending behaviour are supported to take responsibility for the harm they have caused and make amends for that harm, make victims and communities feel part of a solution and reduce harm and reoffending. It is encouraging that Scottish Government has now produced Guidance for the Delivery of Restorative Justice in Scotland, and that there is interest from a number of local authorities across Scotland as to how restorative justice can be implemented within both criminal justice and other services.

We have recognised that many people will not be aware of what restorative justice is and how they might access it. Pro-active publicising of the service in the form of an information leaflet which can be shared with both victims and offenders as well as awareness-raising for other professionals, are essential to explaining what restorative justice is and how it can be used. As a service which has traditionally focused on meeting the needs of and managing the risks posed by those involved in offending behaviour, it is essential that staff groups are trained to not only recognise opportunities to promote the use of restorative justice but are also trained to consider the victim perspective in more detail. Links with Victim Support may be of use in the event a victim requires further specialist support. It is equally essential that staff give consideration to the impact of this kind of service involvement to the offender. Post- RJ conference support will be provided by the allocated social worker. Sherman and Strang (2007) also make comment on the use of restorative justice within the formal criminal justice system and suggest that this is the best way to ensure best practice and successful

restorative justice programmes. The option for adjournment to allow victims and offenders to be approached to assess whether they are interested in restorative justice, access to risk assessments, continuing access to training and best practice and statutory agency support are all reasons to suggest that a restorative justice model set within the statutory criminal justice service in Edinburgh is a model which could, and should, be developed and promoted.

10.3 Life Long Links, Family Group Decision Making, and Circles of Support and Accountability

Following the publication of the Farmer Report 'The Importance of Strengthening Prisoners' Family Ties to Prevent Reoffending and Reduce Intergenerational Crime', there is an opportunity for Criminal Justice Social Work Services in Edinburgh to pilot Life Long Links and Family Group Conferencing. Research from the Ministry of Justice (England and Wales) indicates that prisoners who receive visits from family members are 39% less likely to offend than those who do not receive family visits. La Vigne et al. (2005) found that contact with family whilst in custody helps to improve the quality of family relationships and level of family support after release. The Farmer Report referred specifically to ICMs in Scotland as a mechanism for involving family members in sentence and release planning; Family Group Conferencing may provide a mechanism to promote family relationships and decision making from a community perspective which could then contribute to SPS sentence and release planning.

Life Long Links (LLL) is based on an American project called 'Family Finding' where birth and other records are used to map the full extent of an individual's biological family who may be willing to be part of their support network. LLL is currently being piloted nationally within children's social work in a three year project (funded by KPMG, The Esmee Fairbairn Foundation, and The Robertson Trust) across nine local authorities, Edinburgh being one. At present this service is being offered to children in long term foster placements, and the project is being evaluated by the Centre for Excellence for Looked after Children in Scotland (CELSIS). Whilst the research indicates that this kind of work is more successful where there has been short term loss of contact with family members, it can work with those who have lost contact with family members a number of years ago. The final aim is for the LLL coordinator to pull together a Family Group Decision Making (FGDM) meeting. Life Long Links could support young people to break away from the cycle of offending, and give them investment in their future in the community. If successful, the work could expand to include older and more marginalised people such as registered sex offenders or vulnerable adults.

The Farmer Report also makes reference to Circles of Support and Accountability (CoSA), which assist in the monitoring and community re-integration of high risk offenders who have committed sexual offences. In conjunction with the offender's Risk Management Plan/MAPPA arrangements, the Circle will attempt to address the identified dynamic risk factors. Circles are not an alternative to formal risk management arrangements, nor do they replace statutory supervision arrangements. Rather, they should complement the RMP. In England and Wales this service is provided by the charity Circles UK.

Armstrong et al. (2008)²⁹ undertook a feasibility study for Circles pilots in Scotland. They found that there was appetite in Scotland for Circles aimed at high risk/high needs offenders, and that whilst the respondents were split on whether Circles should be organised by the statutory or third sector, there was consensus that there should be a clear line of accountability to statutory agencies. Their paper is comprehensive and in favour of the use of Circles in Scotland.

It is possible that Circles of Support and Accountability could be employed in Edinburgh. Once again, this would be ground-breaking work by a statutory CJSW service, and may see the remit for CoSAs extended from being aimed at sexual offenders to other high risk/high need offenders such as those with significant alcohol or drug problems, ongoing anti-social behaviour issues, or other patterns of isolation linked to serious offending.

10.4 Future Developments

It is desirable that the judiciary, Scottish Prison Service, and Parole Board are made aware of the availability of restorative justice in Edinburgh for those people whose prosecution processes are complete (i.e. custodial or community sentence has been passed, or Diversion from Prosecution has been marked as successful). The judiciary should be aware that restorative justice will not be used as an alternative to traditional sentences, but as a complementary and voluntary service.

Restorative Justice Awareness raising sessions are being developed for the Willow Service (women only mental health resource) and knowledge has been shared with the Edinburgh Payback Project (male only general offending resource). Similar inputs can be provided for other services where requested.

²⁹ <http://www.sccjr.ac.uk/wp-content/uploads/2012/11/circles.pdf>

The City of Edinburgh's Family and Household Support Service already use mediation on a day to day basis as part of their service provision. There is a wish to expand the mediation service to include the use of restorative justice, where appropriate. There is an opportunity to share knowledge and experience of restorative justice and approaches with other services as a means to reduce reoffending and promote community resolution.

There is additionally an opportunity to offer restorative justice as part of Unpaid Work's 'other activity' element, thereby further embedding restorative justice within Criminal Justice Social Work. This would offer a greater proportion of those who offend access to restorative justice, as many of our service users are involved with Unpaid Work and not Statutory Supervision.

The following recommendations have been identified to support the development of restorative justice within the City of Edinburgh City Council's statutory Criminal Justice Social Work service. These may prove useful on a wider context:

- Programme of training opportunities to support practitioners and those with line management responsibilities increase their knowledge and understanding of restorative justice which includes self-directed study, supervision, formal training, and professional development sessions
- Group and/or clinical supervision is provided to ensure those practitioners delivering restorative justice interventions have the opportunity to share knowledge and explore the impact of the work on their practice, and to ensure best practice is promoted
- In common with the recommendation made by Rania Hamad (2017: 60), the development of a restorative justice service for those affected by Hate Crime is desirable, given the personal nature of hate crime and its impact on victims
- The feasibility of a restorative justice option within the Diversion from Prosecution service (as an alternative to prosecution) should be revisited
- Establishing 'short introduction' to restorative justice, for use in prisons and through existing group work programmes delivered by the Criminal Justice Social Work Service. To deliver such an intervention in a prison will require liaison with the Scottish Prison Service
- Consultation with the Judiciary regarding use of RJ within Community Payback Order or Drug Treatment and Testing Order Court reviews
- Identifying where the support for victims within a restorative justice process is held within statutory Criminal Justice Social Work processes

Appendix 1

List of individuals and organisations contacted

Laura Baxter, Chief Executive, Victim Support Scotland (Edinburgh City, Lothian and Borders)

William Birse, Community Payback Work Manager, City of Edinburgh Council

John Clark, Prevention & Restorative Justice Co-ordinator, Leeds Youth Offending Service

Tim Chapman, Chair of the European Forum on Restorative Justice

George Conner, District Judge, Courts Service Northern Ireland

Scot Dignan, Procurator Fiscal Depute, Crown Office and Procurator Fiscal Service

Andrew Gillespie, Victim Information and Advice, Crown Office and Procurator Fiscal Service

Inspector David Happs, Police Scotland, Edinburgh Division

Steve Harte, Young People's Service Manager, City of Edinburgh Council

Rania Hamad, Senior Practitioner (Hate Crime: Criminal Justice Social Work), City of Edinburgh Council

Scott Khalil, Service Manager Restorative Justice and Mediation, SACRO

Niall Kearney, Head of Mental Health Delivery for Scottish Government, and Former Chair at European Forum for Restorative Justice

Vikki Kerr, Team Leader Caledonian Edinburgh Programme, City of Edinburgh Council

David Kemp, Sherifffdom Legal Adviser (Lothian & Borders), Scottish Courts and Tribunals Service

Valerie Lawrie, Sector Manager, City Wide Services, City of Edinburgh Council

Susan MacDonald, Assistant Business Manager, Victim Information and Advice, Crown Office and Procurator Fiscal Service

David Mackie, Sheriff for Alloa, Scottish Courts Service

Mary Munro, Senior Visiting Fellow, University of Strathclyde School of Law

Mike Nellis, Emeritus Professor of Criminal and Community Justice, University of Strathclyde School of Law

David Orr, Senior Practitioner, Young People's Service, City of Edinburgh Council

Sergeant Nathan Readie, Police Scotland, Edinburgh Division

Andrew Richardson, Procurator Fiscal, Edinburgh Sheriff Court.

Christina Tay, MA student at University of Strathclyde, and Restorative Justice Lead Facilitator

Derek Wilson, Interim Head of the Criminal Department at Edinburgh Sheriff Court, Scottish Courts and Tribunals Service.

Peter Wolff, Associate, Why Me? (Victims for Restorative Justice)

Appendix 2

Proposed Restorative Justice Intervention Structure for the City of Edinburgh Council: Criminal Justice Social Work Services³⁰

Overview

The Restorative Justice Intervention Structure is to be used within the City of Edinburgh Council's Criminal Justice Social Work Service. Restorative justice interventions are led by the victim (or person harmed) as a result of an offence being committed against them by a perpetrator (or harmer). Restorative justice offers the opportunity for the victim to meet the person that harmed them in a safe and positive environment, facilitated by a trained Restorative Justice Facilitator. The restorative justice process empowers the victim to express the impact that the offence has had on them and to receive answers to any questions they may have. For offenders, understanding the human impact of their offending could have an impact on future desistence.

Both the victim and the offender should feel included in the restorative justice process and it must be remembered that engagement in restorative justice is always voluntary. Either party can, at any time, withdraw from the restorative justice intervention.

Intervention

Restorative justice interventions can be in one of two ways:

- Restorative Conference
- Indirect mediation (e.g. shuttle dialogue or surrogate victim).

Both the victim and the offender should be aware that participation in restorative justice is voluntary.

The offender should take full responsibility for their part in the offence. The Facilitator can liaise with the allocated Criminal Justice Social Worker (CJSW) to assess the offender's suitability for restorative justice.

The Facilitator should first approach the offender for permission to progress with restorative justice. This ensures that the victim is not disappointed if the offender does not want to progress with restorative justice. The Facilitator should then meet with the victim to decide

³⁰ These guidelines are based largely on those provided by Unite Mediation Limited, who provided training in Restorative Justice Facilitator skills to CJSW staff at the City of Edinburgh Council in March 2017.

which intervention is most appropriate, and seek agreement from all parties as to the type of intervention which will take place. If a Restorative Conference is the preferred option, the Facilitator should meet with all invited parties prior to the conference taking place.

Where available, a neutral venue should be chosen, on a date and time that is suitable for the victim in the first instance. It is helpful to have a 'break out' room in the event any participants need a break from the intervention.

The Facilitator is responsible for ongoing assessment of the intervention, and for ending the intervention if it is evident that the ground rules are not being adhered to.

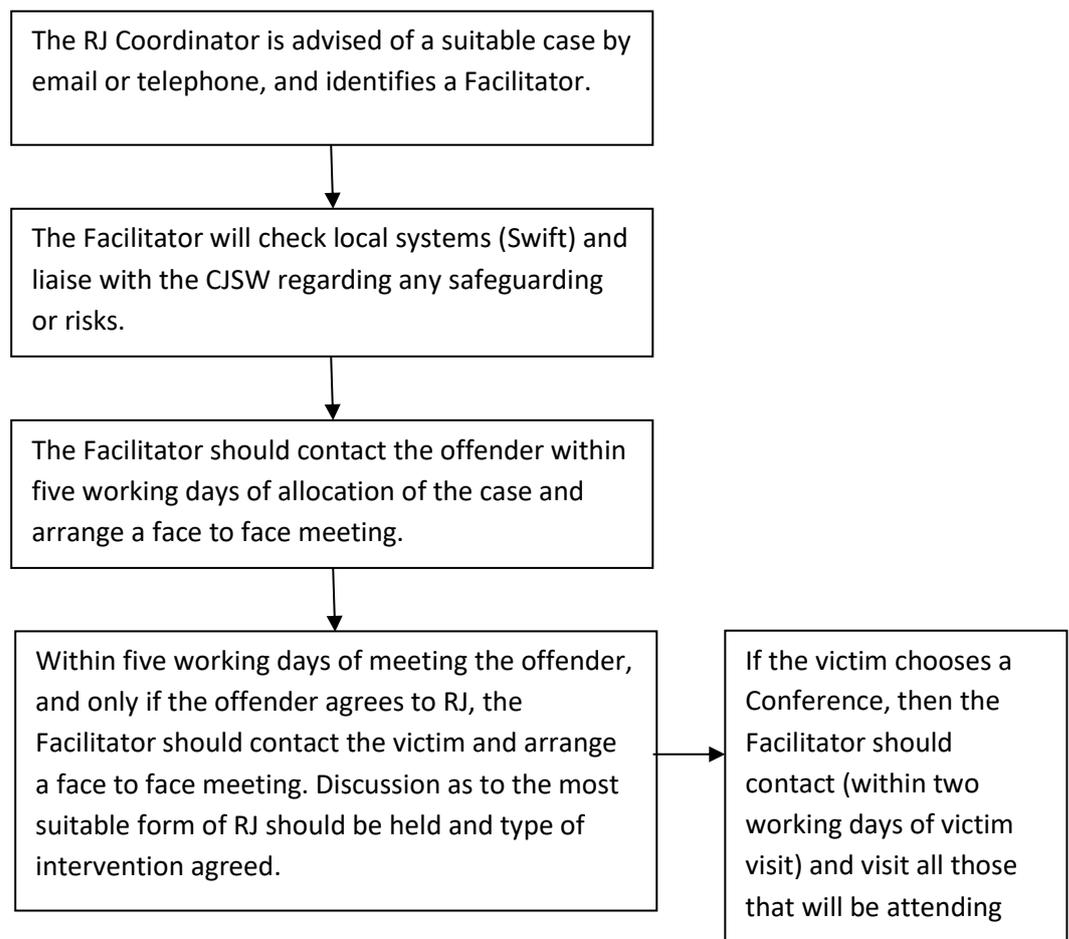
The Facilitator should be able to signpost the victim and/or the offender to other services that meet any identified needs, where required.

The Facilitator should not prompt the offender to apologise. Whilst desirable, an apology is not an essential part of restorative justice interventions.

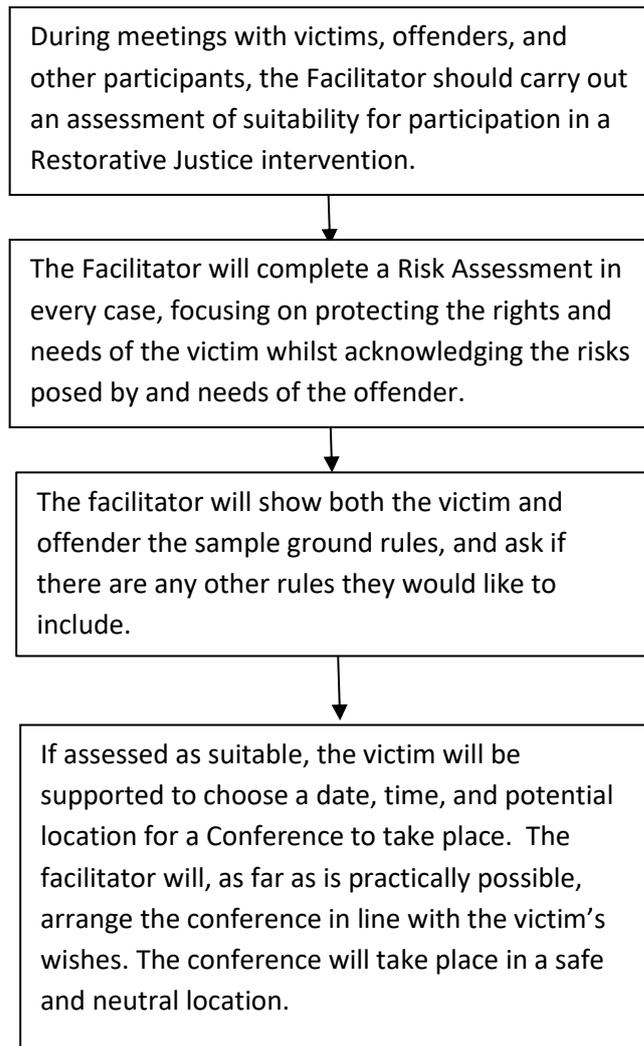
Organising a Restorative Justice Intervention

Preparation for a Restorative Justice Intervention can be separated into three parts: Pre-Intervention, Intervention, and Post-Intervention.

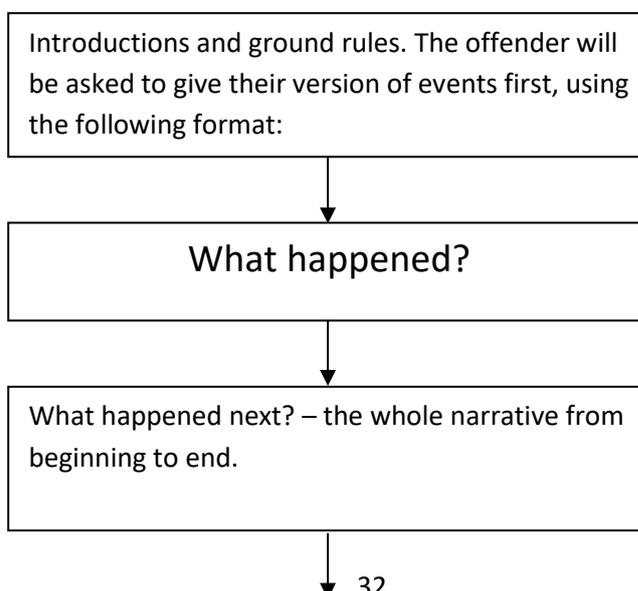
Preparation:

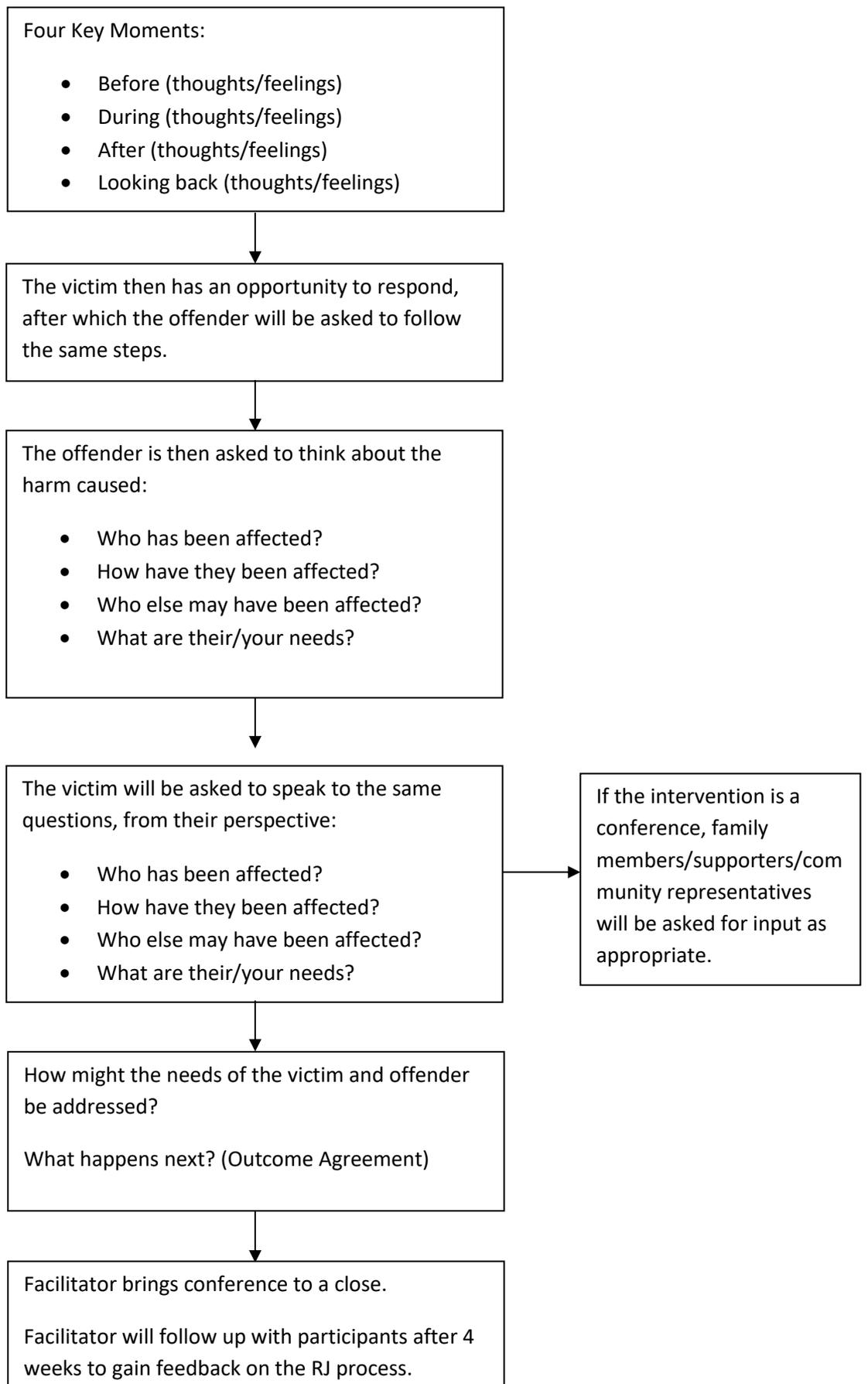


Engagement:



Conference:





Shuttle Dialogue/Letter of Apology

In the event the offender does not want to participate in face-to-face contact with their victim, a letter of apology can be offered as an alternative. The letter should be reviewed by the Facilitator before being delivered to the victim to avoid re-victimisation. The victim must have agreed to receive a letter of apology. The Facilitator should not accept a letter of apology or other written communication directed towards the victim without the victim's consent.

The format of the letter should be similar to what would be asked of the offender in a conference or mediation setting:

- What were your thoughts and feelings before/during/after/looking back on the offence?
- Who is being apologised to and for what?
- What is the offender's understanding of the harm caused?
- What does the offender think they can do to make things better for their victim?
- What is the offender doing to change their behaviour, and to avoid future offending behaviour?
- Who else might have been affected and how?

The Facilitator should take into consideration the literacy level of the offender. The content is more important than the presentation, spelling or grammar. The Facilitator should evaluate the letter for the following 'warning signs':

- Control – the offender overtly or covertly attempts to control the victim i.e. 'it's time you moved on', or 'I hope you say hello to me if you see me in town'.
- Self as victim – The offender attempts to make the victim feel sorry for them i.e. 'I've lost my job because of this' or 'I'm still upset about what I did'.
- Denial of harm or its effect: The offender implies things are the same as they were before the offence i.e. 'I hope you're keeping well'.
- Attitude towards change – The offender's language can mean the difference between engaging meaningfully and going through the motions i.e. 'I will be doing Art as part of my Order' or 'I'm finding my Art course really helpful'.
- Intellectualised abuse – i.e. 'I know you will live with this forever'.
- Minimisation – i.e. 'At least your arm was not broken'.
- Not taking responsibility – i.e. 'it was the drugs that made me do it' or 'I only joined in to stop my mate being hurt'.

Appendix 3

Identifying and managing risk in preparation for and participation in Restorative Justice Interventions for the City of Edinburgh Council: Criminal Justice Social Work Services³¹

Facilitators may wish to use the following checklist in preparation for a Restorative Justice Intervention. It is for information and guidance purposes only, and practitioners are encouraged to use their professional judgement and existing risk assessments. The Lone Worker Risk Assessment should be used prior to undertaking any Home Visits.

<i>Risk Factor</i>	<i>Summary of Risk</i>	<i>Action</i>
Communication skills of participants	Either party may have limited literacy skills, or have difficulty in making themselves understood	The victim should be advised, with the offender's consent. Written agreements should be read aloud and agreement confirmed verbally by all present.
Physical or psychological harm associated with offending behaviour	The offender may have caused psychological or physical harm to the victim, and may find it difficult to sit in close proximity of the offender.	Consider the seating plan for the intervention and ensure the victim and offender are not sitting next to each other. Ensure the victim and offender are not in the same waiting area together prior to the conference.
Offending history	There will be an awareness that the offender has at least one conviction, but the victim may also have a history of offending.	Where the victim has a history of violent offending, additional information should be sought from departmental records as to level of risk posed and suitability for participation in RJ. The victim and offender should not be seated next to each other in the meeting.
Substance misuse	One or both parties may have substance misuse issues.	Ensure all parties attending the meeting are aware they should do so free from the influence of alcohol and/or illegal or illicit substances.

³¹ This sample risk assessment plan is largely based on that provided in the Restorative Justice Council Practitioners Handbook, 2016.

		Consider terminating the meeting if it is apparent a participant is intoxicated.
Relationship between participants	It is possible that the victim and offender are related to each other, or have a prior relationship with each other.	Where possible, ensure that there are no issues of domestic abuse or outstanding bail conditions. Both the victim and offender will have consented to the intervention therefore it will be possible to remind both parties of the ground rules and promote positive communication.
Participant expectations	The offender may desire a verbal statement of forgiveness from the victim, or the victim may desire a verbal apology from the offender. Neither of these outcomes are considered essential to the restorative justice process, though they are desirable. The hopes and expectations of both the victim and offender may not be met.	All attendees will meet with the Facilitator in advance of the RJ intervention and expectations should be managed sensitively by the Facilitator, both prior to and during the conference.
Emotional state of participants	The Restorative Justice Intervention may trigger strong emotions in all attendees.	Prepare the room with tissues and ensure there is a 'break out' room to allow any participant to take a break. Ensure that the victim has been signposted towards victim support agencies if required, and that support information is available for the participants on the day (substance misuse, counselling services etc).

Appendix 4

Sample Outcome Agreement for Restorative Justice Interventions for the City of Edinburgh Council: Criminal Justice Social Work Services³²

The Outcome Agreement is an important part of the Restorative Justice Intervention. It will be created by the participants of the meeting, and should be agreed by all participants. Actions should be SMART (Specific, Measureable, Attainable, Realistic, Time-based). This example is for illustrative purposes only.

Example

This agreement is made on [DATE]

Between [FACILITATOR] and [VICTIM] and [OFFENDER] and [ANY OTHER PARTICIPANTS]

1. Overview of the harm caused

Summarise the offence which has brought the parties to the restorative justice meeting. Acknowledge the role of the offender and the impact of the offence on the victim.

2. Restorative Justice Intervention

A restorative meeting took place on [DATE]

3. Agreed Outcome Activity

The meeting agreed the following actions:

Person responsible	Action	Date for completion
[OFFENDER]	Write a letter of apology to the victim's partner who could not attend the meeting.	2 weeks
[FACILITATOR]	Provide update to victim as to progress of offender (with offender's permission)	2 months

4. Confirmations and signatures

I confirm that I have read and understand the contents of this agreement. I will carry out the agreed outcomes as per the Agreed Outcome Activity, and I will complete my actions by the agreed deadline.

Signed:

Print name:

Signed:

Print name:

³² This Sample Outcome Agreement is largely based on that provided in the Restorative Justice Council Practitioners Handbook, 2016 and information provided by Unite Mediation.

Appendix 5

Sample Ground Rules for Restorative Justice Interventions for the City of Edinburgh Council: Criminal Justice Social Work Services³³

The ground rules should be introduced to all participants in the pre-intervention meetings, and should be visible at all times during the restorative justice meeting.

- Take turns speaking, allow each person to say what they have to say and don't interrupt
- Ask questions if you don't understand
- Listen respectfully
- Try to understand each individual's needs and interests. Accept that someone else's views may not match your own
- Don't be judgemental
- Be respectful – refrain from arguing
- Take a break if you need to
- Respect confidentiality
- Work towards a positive outcome agreement.

Participants may have other rules they would like to add. This should be encouraged, but remember all rules have to be agreed by all parties.

³³ These ground rules are based on those proposed by practitioners at Restorative Justice Facilitator training provided by Unite Mediation

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