

Restorative Justice

What Scotland can learn from Northern Ireland

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Much of the appeal of restorative justice (RJ) is that it encompasses the needs of either the people or person harmed, as well as the person displaying the offending behaviour. Evidence shows this method can have a useful impact on reducing reoffending while giving victims a sense of having their voices heard within the justice system.

There are two main types of RJ although others have been used in different parts of the world:

- Victim Offender Mediation – this can be face to face or shuttle mediation where a mediator passes information between parties
- Conferencing – Involves not only the person harmed and person accused but also family members or supporters of each

As stated above, the aim of RJ is twofold, with the process making attempts to reduce reoffending as well as repair the harm done to the victim. Research in England and Wales, completed by Shapland et al (2017) suggests that in some areas both of these aims are being met. Their evidence indicates that of the people who were interviewed following participation in a conference (152 people responsible and 216 people harmed), 80% of the people responsible and 85% of the people harmed were satisfied with the conference. Furthermore, Shapland et al (2017) identified that during the two years following the study, there was a significant decrease in the frequency of reconviction. This is not only a saving in cost to the victim but also to the financial costs of the criminal justice process.

Throughout the country, although there is a policy, [Restorative Justice Services for children and young people and those harmed by their behaviour](#), a mapping exercise from the Restorative Justice Forum found that it does not appear to be widely adopted within practice. This is despite it being encouraged in the Scottish Government Youth Offending Strategy; [Preventing Offending Getting it Right for Children and Young People](#), as an approach to be used where appropriate.

The current age of criminal responsibility in Northern Ireland is 10, meaning children aged 10 years and above can be charged with a criminal offence and convicted in Court (Children's Law Centre). The Court in which they appear, in the majority of cases however, is the Youth Court dealing with young people aged 10-17 years of age. These Courts are less formal and do not include a jury. Instead, the Youth Court is comprised of a panel of three lay people, a judge and two community members.

During the Northern Ireland Conflict in 1979, there were developments for how children and young people involved in offending behaviour were treated. The decisions made in NI were unlike those anywhere else in the UK, with the decision being made for those children facing care and protection, and those children involved in offending behaviour being managed in completely different systems. It is noteworthy that meanwhile in Scotland, the Kilbrandon report had been completed 15 years prior to this, putting children requiring care and protection and those involved in offending behaviour into the same welfare based system.

Since the NI conflict officially ended in 1998, there has been legislation in place to promote the use of RJ within the area of youth justice (Justice (Northern Ireland) Act 2002). This provided for the introduction of the Youth Conference Service. All young people under the age of 18 who admit to a criminal offence are put forward to take part in a RJ conference. This allows the various professionals and decision makers along with the young person, their family and supporters, to discuss the present factors relating to the young person's offending behaviour. It is important to note that the use of youth conferencing in this context is not only as a referral from the Prosecution by way of diversion, but can also be directed by the Court. As in all RJ processes, involvement is voluntary for all parties. The legislation indicates that 'the victim of the offence or, if the victim is not an individual, an individual representing the victim' is entitled to attend the youth conference. Despite this, there has to be an agreement from the person accused to prevent any adverse effect on the victim.

It is estimated that over 18,000 conferences have now taken place in Northern Ireland with participation from 90,000 people, with the general population being increasingly familiar with the process.

Setting out legislation indicating the involvement of victims in how offending behaviour is managed is paramount in enabling the success of restorative justice in Northern Ireland. It has created a national expectation of the process for practitioners and promotes consistency across the country.

In Scotland, despite having the Children's Hearing System (CHS), it is not set up to allow 16 and 17 years olds who are not currently on a Compulsory Supervision Order, to be dealt with through this welfare-based system in relation to offending behaviour. In order to improve RJ practices, this may require the CHS to consider changes to their processes and legislation.

Despite it being clear that Scotland has work to do in order to improve its RJ practice, there is progress underway. The Scottish Government has updated statutory guidance which is currently at the final consultation stage. This document, deriving from the Victims and Witnesses (Scotland) Act 2014, will provide guidance for practitioners in relation to good practice in RJ to ensure that, where RJ processes are available; these are delivered in a coherent, consistent, victim-focused manner across Scotland and in line with the EU Victim's Rights Directive.

Scotland has the privilege of having the Children's Hearing System which is world renowned for being child-focused and welfare based. This system should be equipped to provide robust RJ services for young people involved in offending behaviour as there is overwhelming evidence detailing the benefits in other areas of the UK. Furthermore, former Justice Secretary Kenny MacAskill acknowledges that structural changes within Community Justice Scotland, and the need to reduce the use of imprisonment, provides the optimum time to prioritise RJ (MacAskill, 2017).

References

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