

# **A Guide to Youth Justice in Scotland: policy, practice and legislation**

## **Section 13: Restorative Justice**

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## 1. Introduction

Restorative justice is a term that emerged in the 1970s as an alternative to traditional justice processes. It is a process of independent, facilitated contact between those who have experienced harm and those responsible for that harm. The key to restorative justice is that it allows those with a stake in the outcome of a crime related intervention or conflict to communicate in a safe and structured way. This communication allows all parties to collaborate on a means to deal with the aftermath of an offence or conflict and its implications for the future.

The following definition has been agreed by the Scottish Government and used within their current [guidance](#):

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

Some important core values of restorative justice are that it is **voluntary**, confidential and safe for all participants. This means that a restorative process regularly will not take place as a classical criminal justice trial for a criminal offence. It also requires the person who has caused the harm to take a level of responsibility for their actions. The [Council of Europe](#) provides clarity on the need for restorative justice to be voluntary including the need for all parties to be fully informed of the process before they make the decision to participate (informed consent).

Many of the principles of RJ have been around for centuries and can be found in studies of ancient communities and civilisations (Amjad & Riaz, 2019). Although many Western societies, for example New Zealand and [Northern Ireland](#), began using restorative justice in the 1970s, it was not recognised in Scotland until the 1990s. Much of the use of restorative justice in Scotland has been for low level offending and for offences committed by children and young people. In the early 2000s restorative justice services were funded by the Scottish Executive to specifically deal with offending by children and young people.

A milestone was achieved in 2002 when the [United Nations endorsed](#) the use of restorative justice. It is now a widely (although mostly not systematically) used approach across most countries worldwide.

Since the introduction of restorative justice, it has continued to increase in popularity across many areas of the justice system worldwide, with much of this growth coming from its use in addressing lower-tariff offences. Despite this, however, the evidence suggests that the use of restorative justice is most helpful for those who have been harmed by more serious offences (Shapland, Crawford, Gray, & Burn, 2017; Strang & Sherman, 2015). As restorative justice has expanded throughout the justice system, the definition of restorative justice has also expanded. Understanding of the term restorative justice can therefore be difficult to fully define and unpick from other approaches, with much of the literature in this area often further confusing this. The expanded use of restorative justice before, during and after justice system engagement has resulted in the inclusion of a broader range of practices and

offences under the definition of what can constitute restorative justice. This makes it difficult to provide a succinct definition, or one which is agreed across international practice and literature.

From the literature, it would appear that there are three main constituents, or parties, of restorative justice:

- Those responsible for harm
- Those who were harmed
- Communities

Mccold and Wachtel (2003) indicate that only when all three parties are involved can it be deemed fully restorative, two parties would be mostly restorative and one constituent partly restorative. Despite this many theorists would not involve the community in restorative justice.

When considering what a community is there are multiple facets to consider. As well as being a geographical area where the event took place it may also be a social community for example a church, place of work or recreational group as well as a family, a community of care, a custodial setting, school or shared living environment (Schiff, 2007). However, in order to include anyone who has been impacted by an incident, the definition of a community is broader in the context of restorative justice. Schiff (2007, p. 235) defines the community as “anyone who feels connected emotionally, physically or in other ways to the victim(s), the offender(s) or the event itself”.

An increase in restorative practice and research has led to the term ‘restorative’ being applied to a variety of practices and in a range of settings, for example schools, prisons and workplaces (Wood & Suzuki, 2016). Practices include processes that involve a surrogate victim or may not include a victim at all. For example, many services set up to repair harm to the community by ordering the person who has caused harm to carry out unpaid work, as part of a Community Payback Order, via the Court, or Fiscal Work Order, have deemed this as restorative. However, as restorative justice grows in popularity and awareness these services are being branded as restorative justice despite not being set up as this or following the basic principles (maximalist approach). This shift in the language over time is causing the term restorative justice to be widened and may be challenging for the future of restorative justice and for the criminal justice system. Furthermore, much of the work with children and young people involved in offending which is carried out around victim awareness and empathy is being branded as restorative justice, without any consideration to the person harmed or restorative justice process followed (Daly, 2016). [The Guidance for Delivery of Restorative Justice in Scotland](#) would not consider this work as restorative justice.

Overall, it is evident that we need to be clear what we are referring to when using the term restorative justice as opposed to restorative practices or approaches.

An article by Maglione, Buchan, and Robertson (2020) presented the results of the first empirical qualitative research on restorative justice provision in Scotland. This study concluded that restorative justice in Scotland was generally a one-off response to minor offending committed by children and young people with a number of systemic challenges hindering its development across the country,

## 2. Restorative Justice Process

A restorative justice process may take a number of forms which fall into three broad categories:

### 1. Direct communication including:

- A face-to-face meeting between the person responsible and victim. These are normally led by one or two facilitators and are attended by the victim(s), the person who has caused harm and observers (where assessed as appropriate).
- Video conferencing, which would include the same people as a face-to-face meeting
- Restorative Justice Conferences. These are normally facilitated by two trained facilitators in addition to victim(s), the person who has caused the harm, support persons for both, and community members and observers (where assessed as appropriate).
- Restorative Justice Circles. These are normally facilitated by two facilitators and are set up following harm caused by a number of individuals to a group or community rather than an individual. They are attended by those who have caused harm and those who have been harmed.

### 2. Indirect communication including:

- Shuttle Mediation is where a facilitator acts as a go-between to allow the person harmed (victim) and the person who has caused harm to communicate without having to meet. This communication can be done in writing or verbally.

### 3. Other restorative processes

As mentioned previously in this guide there are a number of other restorative processes or approaches that although not classed as restorative justice, may provide alternative methods for consideration where restorative justice is not possible. This may occur in a case where the person harmed or who has caused the harm does not want to participate. These processes would be deemed as partly restorative, restorative practice or adopting a restorative approach.

- Support for the person harmed involves only the person who has been harmed meeting with a facilitator to talk about their experience, strategies in moving forward and how to access other relevant agencies.
- Restorative Conversations is when work may be carried out with a person who has caused harm should the person harmed not wish to participate in restorative justice. This may include discussing the incident and strategies moving forward, victim awareness work or general reparative tasks.

All restorative justice processes should be **voluntary, confidential and safe** for all parties involved and be conducted by a trained facilitator. Any party involved can discontinue the

process at any point. Prior to any process or meeting, all parties should have an understanding of restorative justice processes, what is involved and what the result might be. Although it is not always possible to fully restore people to a state that existed prior to the incident it is hoped that the process can restore a sense of security, self-respect and control. Throughout any process undertaken the needs of the victim are paramount and the avoidance of any further harm is imperative.

Before any process is commenced, the following steps should be followed to ensure safe and appropriate practice is adhered to. These are set out in the [Guidance for Delivery of Restorative Justice in Scotland](#):

1. **An assessment of the appropriateness of the process for all participants.** In order for the process to continue, the person who has harmed should show an acknowledgement or understanding of their behaviour. This could include them acknowledging that their behaviour has had an impact on an individual or community and/or a willingness to repair the harm they have caused.
2. **Within this initial assessment consideration should also be given to any risk of emotional and physical harm to any participant** and whether they have made an informed choice to be there without being coerced or pressured. The process should not proceed if the initial assessment raises any of these concerns.
3. **Consider if a co-facilitator is required.** This may be required in a case where there is a need for specialist knowledge on an area e.g. mental health or child welfare or for a facilitator to have different characteristics and backgrounds. It may also be required for practical issues, for example if there is a large number of participants or a meeting is taking place with participants in different locations.
4. **Assessment and management of risks involved.** (This should continue throughout the process). In order for the process to be carried out safely a risk assessment, formulation and management plan must be carried out. This risk assessment should highlight any requirement for specialised support services to be involved for any of the participants.
5. **All participants should be allowed space to make an informed choice about their involvement in the process (informed consent).** For participants to do this they must be provided with clear and accurate information about the process, including, but not exclusively, the potential benefits, risks and limitations, roles and responsibilities of those involved, possible legal implications (if any), confidentiality and what information will be held on them, where and for how long.
6. **Assisting participants to prepare for their participation in the process.** In order to assist participants, they should be provided with information in advance, giving them adequate time to process this and ask questions. They should be provided with the opportunity to change their mind if they wish to and be provided with alternative support if required. Participants may also require ways to manage their anxieties around being involved in the process, ensuring no pressure, and be provided with reassurance from the facilitator. All discussions and agreements should then be accurately recorded.
7. **Facilitating a process either directly or indirectly.** Any process should take into consideration the emotions and management of this by the facilitator. A clear expectation of the process and overall safety should be considered. Any discussion

with the participants before, during and after the process should also take into account any speech, language and communication needs of the participants and practice should be shaped accordingly ([see Section 9](#)). All direct or indirect communication should also be trauma-informed. Any venue should be thought out and structured to promote safe and open dialogue, in a neutral environment with the process being simply set out from the beginning.

8. **Supporting participants to establish an outcome agreement.** Where appropriate participants should agree if they wish to make an outcome agreement as part of the process. If participants agree, the facilitator is required to ensure that this is clearly defined, measurable, appropriate and proportional to the harm caused and that support is available to the person harmed to complete the agreement. Often the victim is looking for an apology. The person responsible may not wish to give an apology and should not be expected to do so. As there is no requirement for an apology to be given throughout the process the expectations of the person or people harmed (victims) should be managed accordingly.
9. **Evaluation, monitoring and ongoing support.** To ensure the overall success of the process an agreement should be in place of who is responsible for monitoring the agreement and any implications should it not be complied with. Furthermore, an agreement should also be in place to ensure ongoing support for all participants including how information on whether, and to what extent, the person who has harmed has completed the outcome agreement. Finally, processes should be evaluated including the opportunity for participants to openly discuss their thoughts and feelings about the process and the outcomes.

For more information on conducting a restorative process please see [Delivery of restorative justice in Scotland: guidance](#) Section B.



### 3. Impact of Restorative Justice

Restorative justice will always have more than one aim and therefore can have more than one outcome. There is a plethora of research which highlights the benefits of restorative processes for all parties involved. Most research indicates that restorative justice reduces the likelihood of reoffending, benefitting both the individual who has caused harm and also the wider community by preventing further victims.

A report championing the rights of the victims of crime, [Valuing Victims: A Review of Police and Crime Commissioners' Delivery of Restorative Justice 2018/19](#), highlights significant benefits across several areas; including improved health and wellbeing, being better able to cope with aspects of life, an increased feeling of safety and feeling better informed and empowered (Watson, 2020).

An explanation as to why restorative justice may reduce reoffending is given by Braithwaite (1989) in his reintegrative shaming theory which suggests shame is necessary to inhibit offending behaviour. Through restorative justice processes the person responsible for the offence is directly faced with the harm that they have caused, resulting in them being less likely to avoid or deny it. This takes place in a safe and controlled environment and has the potential to support the individual's self-worth and capacity to change.

Furthermore, research indicates that after taking part in a restorative process young people who have been in conflict with the law tend to have more positive attitudes towards police, law and justice than those who have not. Those who experience face-to-face restorative justice were more likely to have a clearer understanding of the impact on the victims and feelings of remorse (McGarrell, Olivares, Crawford, & Kroovand, 2000; Strang, Sherman, Mayo-Wilson, Woods, & Ariel, 2013).

For people who have been harmed, the evidence suggests that those who have taken part in a restorative justice process have a higher satisfaction level than those who have been involved in often more formal criminal justice proceedings (Latimer, Dowden, & Muide, 2005; Sherman & Strang, 2007; Strang & Sherman, 2015). Furthermore, those who engaged in a restorative justice process had fewer symptoms of post-traumatic stress and less fear of further victimisation. Arguably, restorative justice could be seen as a health intervention and may even sit better in such an arena, as a trauma-informed approach.

### 4. Challenges for restorative justice

Wood and Suzuki (2016) highlight a number of challenges for the future of restorative justice. Although restorative justice can be used as an alternative to the traditional justice system, in most cases it is used as a parallel to this system or as part of any alternative to prosecutorial action, where this is deemed to be in the public interest. It is possible that restorative justice is less frequently used as an alternative to the traditional justice system as there is no requirement to "fact-find" the case, ensure timescales are kept, and actively encourage buy-in from all parties, all characteristics of traditional justice.



The research indicates that there is a lack of current restorative justice practice specifically considering the needs of girls and young women, resulting in a gender neutral or gender blind approach (Osterman & Masson, 2018; Toor, 2009). The Mental Health Foundation (2002, p. 3) states that “Gender should always be considered with respect to anti-social behaviour and offending” evidencing a requirement for restorative justice to be sensitive to gender. Daly (2008) states that girls who offend can be viewed as more difficult, due to them having experienced greater levels of victimisation and disadvantage compared to boys. Furthermore, it is suggested that girls and young women can be punished more harshly than their male counterparts due to societal views and expectations (Roberts & Watson, 2017). These societal views are important to consider in restorative justice as it may result in girls facing a higher level of stigma and shame. This is particularly important when working with Asian girls where there is clear evidence on the gendered nature of shame. Toor (2009) highlights that this can act as a lever for social control and further stigmatise girls.

For more information please see [Section 7](#).

Although restorative justice aims to be supportive and individualised to the victim and the person who has harmed, the processes can bring many pressures to young people with speech, language and communication needs (SLCN), risking the success of the intervention. Narrative language abilities appear key to restorative justice, yet these skills of describing and relating events are frequently compromised in young people who are in conflict with the law. Any expectation by participants that the young person may express emotion and possible empathy may be at odds with the experiences and abilities of young people who may struggle to recognise the feelings of others or to identify and share their own, have very limited vocabulary with which to describe and reflect on feelings or experiences, and who may have very little experience of empathy in their own lives. If a young person engaged directly with victims of crime shrugs their shoulders, speaks little and is unresponsive to others, this may be seen as doing more harm than good. In order to address this, restorative justice practitioners need to be able to access creative and flexible ways of helping young people tell their story. Others involved in the process may need information about communication issues which could lead to misunderstanding or breakdown of interactions. For more information on SLCN please see [Section 9](#).

## 5. Economic benefits of Restorative Justice

The research into the impact of restorative justice for the person responsible, those harmed and the wider community shows greater satisfaction for all parties and a reduction in reoffending, resulting in safer communities. In addition, research has been undertaken in relation to the economic benefits of restorative justice. A study by Furman (2012) in Massachusetts, USA, concluded that a restorative justice approach proved to incur lower costs upon case facilitation than traditional criminal justice proceedings, in addition to producing lower recidivism rates, deeming restorative justice a more cost effective option. While it is clear that restorative justice cannot always be used as a replacement for formal justice proceedings, there is merit in exploring opportunities for cases to be diverted and restorative justice used, resulting in human and financial benefit.

Furthermore, research by Shapland et al. (2008) suggests that the cost saved by this reduction in offending was greater than the cost of providing a restorative justice process and Strang et al. (2013) (as cited in Kirkwood (2018)) concluded that restorative justice

results in a highly cost effective reduction in repeat offending. Additionally, a [study](#) commissioned by the Restorative Justice Council in 2009 reported that diversion to pre-court restorative justice conferencing schemes from community based disposals could produce a lifetime cost saving to society of almost £275 million, with the costs of restorative justice conferencing likely to be paid back within the first year of implementation (Matrix Evidence, 2009).

## 6. Rights of Children and Child Victims

When dealing with children who are in conflict with the law there is a real conflicting and difficult balance to be struck between the rights of the child and the rights of the victim. A recent report by Lightowler (2020), [Rights Respecting? Scotland's Approach to Children in Conflict with the law](#), highlights that in order to have a rights-respecting justice system there must be a focus on upholding the rights of victims, paying particular attention to child victims. It is known that in most cases the victim of a child who causes harm is normally another child, although despite this the child victim is largely ignored in this system and provided with little or no support. There is therefore a need to better support children who are victims of harm.

[The Victims Code for Scotland](#) has been developed by the Scottish Government stating the rights of victims. At the end of the Victims Code there is a list of supporting organisations, although it does not specifically mention where a victim might access a restorative justice service. This is potentially due to the lack of widespread and consistent availability.

The Council of Europe concludes that the involvement of children in restorative justice should be enabled and administered in accordance with the [United Nations Convention of the Rights of the Child](#), the [European Convention on the Exercise of Children's Rights](#) and the [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#).

For more information on the rights of children and young people, please see [Section 11](#).

## 7. Legislation, policy and guidance

There is no legislation stating that restorative justice should be offered or carried out following an offence or alleged offence. There is legislation however in relation to guidance for restorative justice.

### 7.1 Victims and Witnesses (Scotland) Act 2014

Restorative justice:

(1) The Scottish Ministers may issue guidance about:

- a) the referral of a person who is or appears to be a victim in relation to an offence [or alleged offence] and a person who has or is alleged to have committed the offence [or alleged offence] to restorative justice services, and
- b) the provision of restorative justice services to those persons.

(2) Any person, or description of person, prescribed by the Scottish Ministers by order must have regard to any guidance issued by the Scottish Ministers under subsection (1).

(3) In this section, “restorative justice services” means any process in which the persons such as are mentioned in subsection (1a) participate, with a view to resolving any matter arising from the offence or alleged offence with the assistance of a person who is unconnected with either person or the offence or alleged offence.

(4) An order under subsection (2) is subject to the negative procedure

## 7.2 Delivery of Restorative Justice in Scotland: guidance

The Scottish Government published guidance in 2017, [Guidance for the Delivery of Restorative Justice in Scotland](#), which provides an overview of restorative justice and key principles, as well as information on conducting a restorative justice process. The Guidance sets out key ingredients for any restorative justice process. It states that they should be:

- Honest
- Informed
- Voluntary
- Safe
- Respectful
- Accessible
- Appropriate
- Confidential
- Not about establishing guilt
- Proportionate
- Empowering and facilitating
- Looking to the future as well as the past

Despite the guidance clearly indicating the process, there continues to be a level of inconsistency in the use of restorative justice across Scotland. In order to embed the practice into the current Youth Justice System the complexities of the system need to be considered. To do this a clear understanding of a [young person's journey](#) through the youth justice system is necessary.

For example, following an offence a young person may be referred to:

- Children's Hearing System (CHS)
- Early and Effective Intervention
- Police Measures
- Procurator Fiscal

With the outcome being:

- Diversion
- Custody

- Secure care
- Community Payback Order
- Structured Deferred Sentence
- Compulsory measures through the CHS
- Voluntary Social Work intervention
- No further action

### 7.3 Restorative Justice Action plan

The Scottish Government published the [Restorative Justice Action Plan](#) in June 2019. The vision of the action plan is that “Restorative Justice is available across Scotland to those who wish to access it, and at a time that is appropriate to the people and case involved. Approaches taken must be consistent, evidence-led, trauma informed and of a high standard. This seeks to ensure that the needs of persons harmed and their voices are central, and supports a reduction in harmful behaviour across our communities”. The action plan sets out that this should be achievable by 2023 with a detailed plan under three priorities:

1. Restorative justice is available across Scotland
2. High quality restorative justice services are delivered by trained facilitators
3. There is a strong public awareness and understanding of restorative justice

The action plan clearly sets out the impact that restorative justice can have for all participants, requiring strong leadership, commitment and meaningful collaboration between national and local partners.

To ensure that this work is achieved the Scottish Government has provided funding for two posts to manage the delivery of the action plan. Posts will be hosted by Community Justice Scotland and CYCJ, ensuring links with community justice partnerships and the third sector. Specific consideration will also be given to the needs of children in conflict with the law and child victims.

A stakeholder group has been established with diverse representation to progress the aims of the action plan. Within the first year the stakeholder group has supported the design of an RJ model for Scotland which will be progressed in year 2. A short awareness raising animation and key messages paper have also been published. These resources, as well as more information on the stakeholder group and minutes of previous meetings can be found [here](#).

### 7.4 Preventing Offending: Getting it right for children and young people (2015-2020)

The current Youth Justice Strategy [Preventing Offending: Getting it Right for Children and Young people](#) states under the priority heading of ‘Improving Life Chances’ that there should be strategic focus on victims and community confidence. Furthermore, restorative justice fits into several strands of the [Whole System Approach \(WSA\)](#), the Scottish Government’s programme for addressing the needs of young people in conflict with the law. Within the WSA restorative justice is most commonly thought of in connection with Early and Effective Intervention and Diversion, although there is also evidence to suggest its use for more

serious and violent offending (Strang & Sherman, 2015). Restorative justice should be victim led and may therefore have more impact if the victim has experienced significant harm.

## 7.5 Restorative Justice Services for children and young people and those harmed by their behaviour (2008)

[Restorative Justice Services in Scotland for children and young people and those harmed by their behaviour](#) acts as a guide to the principles, protocols and criteria for the use of restorative justice. The intention is that it is used as a resource for agencies who wish to make use of restorative justice services ensuring delivery is consistent and of high quality. This document recognises that whilst restorative justice can function effectively within a context in which the welfare of the child is paramount, it does not imply that the interests and needs of those who have been harmed by the child's behaviour can be neglected, disregarded or diminished.

## 7.6 Designing and Implementing Restorative Justice Toolkit (2020)

More recently, the above toolkit was developed to support individuals and agencies involved in designing, setting up or extending restorative justice services in Scotland. It provides practical tools, checklists and questions that can be used in conjunction with the Scottish Government's Guidance for the Delivery of Restorative Justice in Scotland. It is designed to be used as an enabling tool rather than directive at any stage of the youth and criminal justice system.

# 8. Forums

## Restorative Justice Forum (Scotland)

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

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

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

## Restorative Justice Practitioners Network

The Restorative Justice Network, part of the Restorative Justice Forum, is open to practitioners of restorative justice as well as those who are awaiting training or opportunities to practice, or are simply interested. Meetings are arranged quarterly, generally in Edinburgh

or Glasgow. There is a Knowledge Hub which is periodically updated with information relating to the practice of RJ in Scotland.

### **Scottish Network for Restorative Justice Researchers (SNRJR)**

A Scottish Network for Restorative Justice Researchers (SNRJR), part of the Restorative Justice Forum, has also been established. The network allows members to share ideas and collaborate on research. Members are primarily those who are working in Scotland or interested in restorative justice in Scotland (including researchers from academic institutions, government and other agencies).

Anyone interested in joining the networks or Restorative Justice Forum or would like to find out more, contact the Restorative Justice Forum (Scotland) at [rjforumscotland@gmail.com](mailto:rjforumscotland@gmail.com).

### **European Forum for Restorative Justice**

[The European Forum for Restorative Justice \(EFRJ\)](#) is an international network organisation connecting members active in the field of restorative justice, such as practitioners, academics and policy makers throughout Europe and beyond. It promotes research, policy and practice development so that every person may have access to high quality restorative justice services, at any time and in any case. Its main focus is on the application of restorative justice to criminal matters, but other areas - such as family, school and community mediation - are not excluded.

The EFRJ does not defend any one 'best practice' model of restorative justice, but recognises that restorative justice is an evolving approach. It is essential any restorative service should be based on core restorative values and principles and should adhere to accepted standards of good practice.

One of the EFRJ projects is [Restorative Justice: Strategies for Change \(RJS4C\)](#) which aims to encourage the development of restorative justice in Europe. It seeks to achieve this by identifying, connecting and supporting a small group of 'Core Members' in each participating jurisdiction, whose role it is to develop and implement a co-created strategy with a larger group of policymakers, practitioners, researchers, activists and other relevant parties at a local level.

Community Justice Scotland and CYCJ are both active members of this European Forum.

## **9. Age of Criminal Responsibility**

Changes to the age of criminal responsibility mean that children under the age of 12 are no longer considered to have committed a crime. Although this is a welcome move in the right direction, there requires to be consideration of cases where someone has been impacted by harmful behaviour that may have been caused by a child. Although the child should not be involved in the justice system, a process where someone who has been harmed can access a restorative process should be considered. With the Age of Criminal Responsibility (Scotland) Act 2019 not yet fully enacted, consideration has to be given to how people harmed by the actions of a child are not dismissed. This is an area that may raise a number of conflicting and challenging rights and needs and should be progressed with immense care and consideration. Despite this however, restorative practices could play a key role in this area.



## 10. Information Sharing

Information sharing remains a barrier for restorative justice in moving forward, particularly with the introduction of the Data Protection Act 2018. Sharing of information between statutory organisations and the third sector remains an issue with Police Scotland currently holding the position that they are unable to share information with third sector organisations, which are often the providers of a restorative justice service. Despite this however, there are areas where they are working round this issue, by having information sharing protocols in line with the legislation, in order to continue to deliver a service. Further understanding of how this is overcome is required in order to progress this.

## 11. Training

One of the overarching outcomes in the Scottish Government's Restorative Justice Action Plan is that **"High quality restorative justice services are delivered by trained facilitators"** including the need to ensure that any training is accredited and undergoes continuous monitoring and evaluation. The action plan states that this should be carried out by spring 2021.

Currently in Scotland there are two recognised restorative justice courses to support practitioners in this area:

- [Foundation Skills in Restorative Justice Practices](#) (please note there are no upcoming dates for this at the moment)
- [Restorative Skills Training delivered by SACRO](#) (dates upon request)

As we move towards delivery of the Scottish Government's Restorative Justice Action Plan, work will continue to ensure that the training for restorative justice practitioners is approved at a national level.

## 12. Restorative Practices in Education

Due to the growing evidence of the effectiveness of restorative justice, over recent years there has been a move towards restorative approaches or practices, outside the criminal justice system and within schools and other learning establishments. These approaches would be used as an alternative to punitive approaches to address inappropriate behaviour or the breaking of rules which have caused harm. Due to these not being as an alternative to or part of a criminal justice system, they would be considered restorative practices or approaches as opposed to restorative justice. The following definition of restorative practice is provided by Education Scotland (2015):

'Restorative Practice is an approach to offending and inappropriate behaviour which puts repairing harm done to relationships and people over and above the need for assigning blame and dispensing punishment' (Wright (2008), as cited in Moir and MacLeod (2018))



Evidence suggests that restorative approaches within school can improve relationships between staff and pupils, improve attendance and improve discipline (Kane et al, as cited in Moir and MacLeod (2018)). Examples of two areas that have embedded restorative approaches can be found within the series of [case studies](#) here.

## 13. Restorative Justice Approaches in Custody

In the context of restorative justice in custodial settings, Johnstone (2014) has devised a four-fold categorisation of the potential uses:

- Victim awareness and responsibility acceptance courses
- Victim-offender mediation and conferencing in prisons
- Restorative imprisonment
- Restorative approaches to conflicts and offences within prison

Restorative justice has been used in custodial settings as a way to improve safety, enhance social order and create a less hostile environment for everyone (Edgar & Newell, 2006). Furthermore, research has indicated that although substantial preparation, care and caution is required, it is possible to safely bring victims into custodial settings for restorative justice (Liebmann, 2011).

In Scotland, there is limited activity around restorative justice in custodial settings. Some adult establishments have trained staff in restorative justice with the view to using it although this is still underway. It is important that restorative justice practitioners facilitating complex and serious cases, for example those involving sexual violence, have advanced training (Keenan, 2018).

## 14. Conclusion

Restorative justice is a well-researched and evidenced process, which is widely used and respected around the world. The evidence supports the benefits of restorative justice for both the person harmed and the person responsible for harm, making its use beneficial to all. Despite this however, restorative justice is not widely or consistently used in Scotland, with services being sporadic and sparse.

The Scottish Government's Restorative Justice Action Plan states clearly their commitment to make restorative justice available across Scotland to all those who wish to access it by 2023. This is a real opportunity to embed restorative justice in our work with children and young people in conflict with the law, benefitting the future of children and young people and the wider community.

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