

Restorative processes and children's rights


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As Scotland progresses with the incorporation of the United Nations Convention of the Rights of the Child (UNCRC) into Scots Law there is a requirement that all practices, when working with children in conflict with the law, are [rights-respecting](#). This includes all restorative processes being developed through the delivery of the [Restorative Justice Action Plan](#), to be delivered by 2023. This action plan sets out the Scottish Government's vision to have Restorative Justice available to those who wish to access it, and at a time that is appropriate to the people and case involved. Approaches to this must be consistent, including across age groups. Therefore special consideration has to be given to how this is delivered appropriately for children.

Despite [extensive evidence](#) highlighting the benefits of restorative processes in the context of children in conflict with the law and its wide use internationally, it could be argued that without the consideration of the UNCRC it could be at odds with children's rights (Lynch, 2010). This is because the focus on the best interests of the child (article 3) and the victim-focused nature of restorative justice could be incongruous. This was further highlighted by Chapman (forthcoming) who noted there is increasing evidence that children's rights are not always respected within restorative processes. To ensure that they are, practices should be based upon robust values and research. This Information Sheet aims to consider the practice of restorative processes within relevant articles of the UNCRC.

Article 1 (definition of a child) The UNCRC clearly states those aged under 18 are considered a child. Despite this the Scottish legal system has various options available when a child has been in conflict with the law including referral to the adult Court system. It is important that when considering restorative justice processes for children, there is consideration of all the avenues that a child may be processed through. [Youth and Criminal Justice in Scotland: The Young Person's Journey](#) highlights the complexity of this system and where restorative processes should be considered.

Article 2 (non-discrimination) Restorative processes should be offered regardless of an individual's ethnicity, sex, religion, language, abilities and any other status. For example, 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) highlights that girls who are involved in violent offending 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 processes as it may result in girls facing a higher level of stigma and shame.



Article 3 (best interests of the child): It is argued that the best interest of the child is in conflict with the idea of a child taking full responsibility for causing harm to another. It is known that these children have higher rates of adverse childhood experiences and therefore may have experienced significant trauma (Lightowler, 2020). Despite its intentions, there is a concern that children taking part in restorative processes may perceive this as a punishment which further reinforces their trauma. Any restorative process that includes children should therefore ensure that a risk assessment which fully understands the needs of the child is completed and understood.

Article 5 (parental guidance and a child's evolving capacities): Children who take part in a restorative process should have permission to bring their parent or guardian along to support them if this is in their best interests. This in turn should address any lack of power and confidence when participating in the process and respects their rights in relation to article 5 of the convention.

Article 12 (respect for the views of the child): Every child has the right to express their views, feelings and wishes in all matters affecting them, and have their views considered and taken seriously. It is crucial that the right to be heard is respected when taking part in restorative processes. However, in order to address potential lack of power and confidence in the process it is important they have the option to have a parent or chosen adult to accompany them. So that this accompanying adult is not dominating the process, the facilitator must ensure that this is considered both prior to and during the restorative process. This is being addressed as the Restorative Justice Action plan is delivered, to ensure child-friendly processes and specifically trained facilitators for children.

Article 23 (children with a disability): Even with a supportive and individualised approach, restorative processes can bring many pressures to children with speech, language and communication needs, risking the success of the intervention. Narrative language abilities appear key to the process, yet these skills of describing and relating events are frequently compromised in young people who are in conflict with the law. The expectation to express emotion and possible empathy is at odds with the experiences and abilities of children who may struggle to recognise the feelings of others or to identify and share their own. Many have very limited vocabulary with which to describe and reflect on feelings/experiences, and may have little experience of empathy in their own lives – [read more from CYCJ on this](#). If a child engaged directly with victims of crime shrugs their shoulders, speaks little and is unresponsive to others, this may be seen as risking doing more harm than good. Restorative justice practitioners need to be able to access creative and flexible ways of helping children tell their story. Others involved in the process may need information about communication issues which could lead to misunderstanding or breakdown of interactions.

Article 40 (juvenile justice): Caution has to be taken within restorative processes. Children often struggle to express themselves which may be misinterpreted by the person who has been harmed. It is therefore important that thorough assessment and preparation takes place prior to any restorative process. This should focus on ensuring the rights of the child being treated with dignity and respect are fully considered and the expectations of the person(s) who has been harmed are managed.

It is clear that restorative processes can be rights-respecting for children - although this should not be taken for granted. Moving forward, any assessment and preparation should consider restorative processes through a children's rights lens, with facilitators being competent and highly trained in this area.

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