

How can children access Restorative Justice?

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As the Scottish Government Restorative Justice Action Plan progresses, consideration is given to how those who wish to, can access restorative justice (RJ). Although the details of the national referral routes are still unclear, in line with the Scottish Government's vision any child who has been harmed can request that a Restorative Justice process be considered. Additionally, any child whose behaviour has caused harm can also request the consideration of an RJ process.

The Whole System Approach (WSA) is the Scottish Government's policy as to how children in conflict with the law should be responded to and is underpinned by the United Nations Convention on the Rights of the Child (UNCRC) and Getting It Right For Every Child (GIRFEC). WSA provides the framework for referrals to RJ from professionals supporting children in conflict with the law. It is crucial that the RJ process is not used as a condition or motivation around wider decision making for the child whose behaviour has caused harm. If the child who caused harm has also been referred to the Children's Reporter, both the Reporter and Children's Hearing may consider any information from the RJ process. This will not influence or delay the RJ process as the Reporter or Children's Hearing will fulfil their decision-making responsibilities.

RJ processes, by definition, seek an outcome that is in the best interests of all the participants and fundamentally GIRFEC should provide the framework for supporting the children involved. Whilst it is a stand-alone approach, it is essential that the need and nature of ongoing support for both the person who has been harmed (particularly in cases where this is a child) and the child whose behaviour has caused harm, is identified prior to the completion of the RJ process. The Victims and Witnesses (Scotland) Act 2014 sets out more specifically how children who have been harmed should be supported.

While it is crucial that RJ is victim led, it must be recognised that Scotland's approach to children in conflict with the law is an integrated way to help the child, their family and the community to flourish. In addition, given the age, stage and capacity of children, it is crucial to recognise that they will require support in identifying what their options are in terms of addressing the harm caused. Therefore, it is both appropriate and necessary that referrals for RJ in relation to children will also come from professionals involved in their support network, particularly those working with children whose behaviour has been responsible for causing harm but also from those supporting the child who has been harmed.

If the child engaging in the RJ process is under 12, parental or guardian agreement and support for their participation in a RJ process should be sought. If parents or guardians actively oppose participation, then the restorative process should not proceed.

Where the harm caused involves sexual harm, self-referrals by the child responsible/their support network, should only be considered when there has been a specialist assessment specific to the harmful sexual behaviour (HSB), which identifies specific risks, concerns and strengths of the child responsible. This should be completed prior to any discussion of the possibility of RJ with the person harmed, due to the specific complexities around this type of offence and the potential for re-traumatisation. The specific complexities around RJ and sexual harm when the harm is caused by an adult, has meant that there is agreement that self-referrals will not be accepted.

However, it is important to recognise that there are significant differences for children with HSB. For example, the evidence indicates that children who engage in HSB are more likely to have a history of victimisation and of being sexually abused (Smith et. al. 2013); as children mature, they are more likely to grow out of offending behaviour; children's sexuality, emotional and cognitive awareness and relationship world differs in important ways from adults; HSB can also occur in a variety of different contexts such as peer-on-peer abuse, children with learning disabilities, internet pornography and intrafamilial abuse (Anderson, M & Parkinson, KP 2018; Armstrong Lisa Mary 2021). Responding to children with HSB presents a unique set of challenges in upholding the best interests of the child while balancing this with the rights of the person harmed and the public interest, therefore providing the premise for this difference in referral routes.

Referrals can be made to an RJ service in the following circumstances*

- Self-referrals both from those harmed and those whose behaviour has caused harm
- Referrals from family members or carers of the child harmed or the child whose behaviour caused the harm, and with the child's agreement
- Agencies can make referrals on behalf of the individual both for those harmed and those responsible for the harm (including but not exhaustive support services, social work, education, children's houses, residential schools, counselling, Prisons, Secure etc.)
- Early and Effective Intervention (EEI)
- Children's Hearing, although as Children's Hearings make decisions about Compulsory orders, it is likely to be rare for a children's hearing to make the referral due to RJ being voluntary.

*Please note that as the Scottish Government progresses the RJ Action Plan, there may be additional referral routes identified.

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