

CHILDREN AND YOUNG PEOPLE IN CONFLICT WITH THE LAW: POLICY, PRACTICE AND LEGISLATION

Section 12: Restorative Justice

June 2024



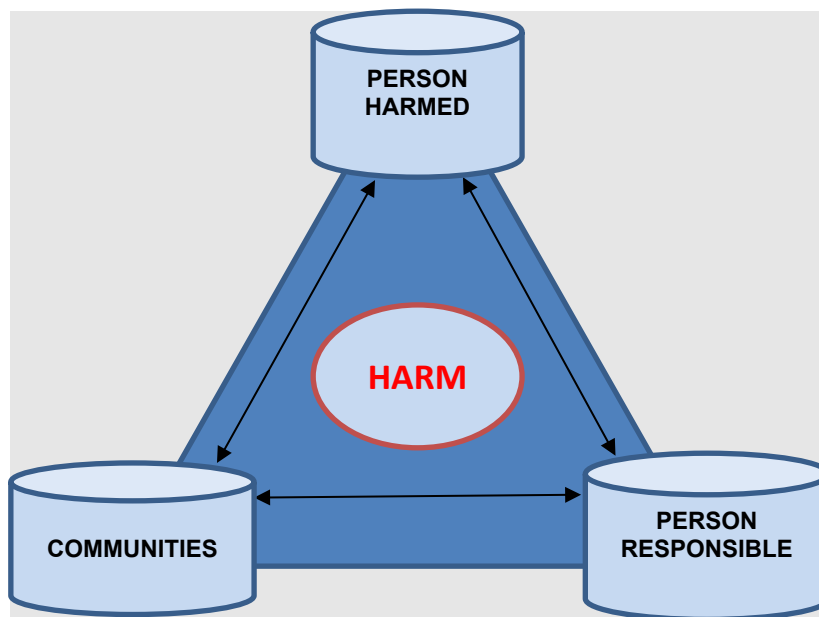
Contents

1. Introduction	3
2. Restorative Justice Process	4
3. Impact of Restorative Justice	8
4. Rights of Children and Child Victims	9
5. Challenges for Restorative Justice	11
6. Information Sharing	12
7. Legislation, Policy and Guidance	12
7.1 Victims and Witnesses (Scotland) Act 2014.....	12
7.2 Delivery of Restorative Justice in Scotland: Guidance	13
7.3 Restorative Justice Action Plan	14
7.4 Scottish Government: Youth Justice Strategies	16
7.5 Restorative Justice Services for Children and Young People and those Harmed by their Behaviour	16
7.6 Designing and Implementing Restorative Justice Toolkit (2020).....	16
8. Forums	17
9. Age of Criminal Responsibility	18
10. Training	18
11. Restorative Practices in Education	18
12. Restorative Justice Approaches in Custody	19
13. Conclusion	20
14. References	21

1. Introduction

Restorative Justice (RJ) is value-led and focuses on the following questions: *What has happened?* and *What is it that matters to each of you that needs to be restored?* It focuses primarily on the specific act of harm that has brought the parties together and the subjective experience, understanding and wishes of each person affected by the harm. In that sense the process is designed *to undo an injustice* (Chapman, 2021). It is based on the inclusion and active participation of both the person harmed and the person responsible. The key to RJ 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 for dealing with the aftermath of an offence or conflict and its implications for the future.

A commonly used tool to understand who the participants of RJ should be is the 'restorative justice triangle':



In this triangle, the harm is placed at the centre and the three parties that can play a role, or can be influenced by what happened, are: the person who is harmed, the person who caused the harm and the society or community (Wolthuis & Chapman, 2021).

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, Canada and [Northern Ireland](#), began using RJ in the 1970s, it was not recognised in Scotland until the 1990s. In the early 2000s RJ services were funded by the Scottish Executive to specifically deal with offending by children and young people. To date, the availability of RJ across Scotland has been inconsistent and generally a one-off response to minor offending committed by children and young people (Buchan, Maglione, & Robertson, 2020).

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). Such practices include processes that may involve a surrogate victim, or no 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 to be restorative. As RJ grows in popularity, and more people become aware of it, the terminology is becoming more commonplace. However, branding services / activities like this 'restorative justice' is inaccurate; they are not set up as RJ services and do not adhere to basic RJ principles. 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 RJ, without RJ process being followed and without consideration being given to the person harmed (Daly, 2016). [The Guidance for the Delivery of Restorative Justice in Scotland \(2017\)](#) would not consider this work as RJ. 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 'restorative approaches'.

In 2002, the [United Nations endorsed](#) use of RJ, and it is now a widely (although mostly not systematically) used approach across numerous countries worldwide. Much of this growth has come from its use in addressing lower-tariff offences. Despite this, however, the evidence suggests that the use of RJ is most helpful for those who have been harmed by more serious offences (Shapland, Crawford, Gray, & Burn, 2017; Strang & Sherman, 2015). Foussard (2021) gives more detail about the number of countries implementing RJ practices, highlighting that RJ for children has been applied in different contexts, both judicial and non-judicial. Overall, he concludes that RJ "*enables the peaceful resolution of conflicts and contributes to a better cohesion of societies*" (Foussard, 2021, p. 119).

In 2018, the Scottish Government made a commitment in the [Restorative Justice Action Plan](#) to have RJ available across Scotland to those who wish to access it. Specifically, in relation to RJ and children in conflict with the law, the Scottish Government's vision and priorities for children in conflict with the law 2021 states that "*All children's participation and engagement rights must be prioritised and upheld*"; here, the implementation of RJ processes would support achieving this vision (Chapman, 2016) of friendly, child-centred, and child-participatory.

2. Restorative Justice Process

RJ processes, by definition, seek an outcome that is in the best interests of all the participants; fundamentally, Getting it Right for Every Child ([GIRFEC](#)) should provide the framework for supporting the children involved. Whilst it is a stand-alone approach, it is essential that the need for, 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, are 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 and will be discussed later in this section (4. Rights of Children and Child Victims).

A RJ process may take several forms, which fall into three main categories:

Direct communication including:

- A face-to-face meeting between the person responsible and the person harmed. These are normally led by one or two facilitators and are attended by person(s) harmed, the person(s) who have caused harm and supporters. Participants should be informed, and where appropriate, consulted on who supporters will be in advance; examples include a parent / carer.
- Video conferencing, which would include the same people as a face-to-face meeting.
- RJ Conferences, which are normally facilitated by two trained facilitators, in addition to the person(s) harmed, the person(s) who has caused the harm, support persons for both, and community members (where assessed as appropriate).
- RJ Circles, which 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.

Indirect communication including:

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

Other restorative processes

There are a number of other restorative processes or approaches that, although not classed as RJ, may provide alternative methods for consideration where RJ 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, involving 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, where work may be carried out with a person who has caused harm, should the person harmed not wish to participate. This may include discussing the incident and strategies moving forward, victim awareness work or general reparative tasks.

Some important core values of restorative justice are that it is **voluntary, confidential, and safe for all participants** and **conducted by a trained facilitator(s)**. The person harmed or responsible for the harm can stop the process at any point.

The following steps should be followed to ensure the process is safe, and in the best interests of the children involved. These steps build upon the [Scottish Government's Restorative Justice Guidelines \(2017\)](#).

a. Assessing the appropriateness of a RJ process for the participants

Fundamentally, the person whose behaviour has caused the harm must be able to acknowledge that their behaviour has resulted in the harm. This does not mean an apology; it is about the individual accepting that their behaviour has had an impact on the other person and being open to hearing what this means to the other person. The meaning of the harm should be explored during the RJ process; therefore, the child does not need to have a full understanding of this before participating in the process. As the process needs to be voluntary, this requires informed consent. Thus, there must be no evidence of coercion or pressure, and the facilitator should ensure that both participants understand what they are agreeing to be involved in and why. It is the responsibility of the facilitator to adapt how they convey this information to support understanding, with consideration given to cognitive ability, communication needs, or any other relevant personal characteristics. In terms of capacity and understanding to engage in the process, facilitators must assess the participants' understanding of the potential impact and possible outcomes of participating. It is important to note that the process being emotionally difficult should not be the reason for not going ahead; the decision not to progress should be in relation to concerns that it would be detrimental to either participant.

b. Establish if a co-facilitator is required

The facilitator needs to establish if a co-facilitator is required. This may be needed for several reasons, including: the case requires specialist knowledge; case supervision/ facilitator practice evaluation; a large number of participants; for practical reasons; or to enable the involvement of participants, with different backgrounds or special characteristics.

c. Assessment and management of risks involved, throughout the process

The purpose of the RJ risk assessment process is to consider the potential risk of harm to all individuals involved in the RJ process (the person harmed, the person whose behaviour has caused harm and any others involved – e.g., support people). Risk assessment should be continuous throughout all stages of the RJ process. The overall principle is to establish that it is in the best interests of the child, and safe/ appropriate to proceed. It is the responsibility of the facilitator to try to manage the risks involved, and cases should only be declined if the potential of further harm cannot be managed, and the process is therefore deemed not safe for those involved. When completing the risk assessment process, facilitators should be clear regarding the identified risk(s) and the type of harm, which results in the RJ process being deemed unsafe to complete. Recent research by Shapland, Buchan, Kirkwood, and Zinsstag (2022) found that validated risk assessment tools are rarely used in RJ; they recognise that due to the individualised nature of the process, professional judgment and a case-by-case approach (with advice and support from other professionals sometimes sought), were the key elements in assessing and mitigating risk (Shapland et al., 2022).

d. Assisting individuals to prepare for participation in a RJ process

A facilitator's main role is to support both participants to explore what they want and/or need from engaging in this process. The number of individual meetings must not be limited, as the preparation is crucial to any decisions around direct or indirect communication between parties. Throughout the meetings, clarity about needs and views should be sought. It is vital throughout the process that participants are allowed the time and space they need in which to make decisions.

The facilitator should also regularly liaise with the child's parent/carer and/or identified professional, to monitor and review the impact of any discussions; they should also raise awareness of issues and any specific supports required in response to these discussions.

At all points, it is important to keep the alternative forms of RJ process open as options, subject to safety considerations and risk assessment. It is also crucial to reinforce the participant's ability to withdraw at any point, and the option of the facilitator to terminate the process if they assess that it is not in the participant's best interests to continue. The possible impact of the process being terminated, regardless of how this was decided, must be discussed with the participants on an ongoing basis. This is to ensure that there is a plan in place to support the participants to emotionally manage this potential outcome.

e. Facilitating a process either directly or indirectly

Indirect communication is when the RJ process takes place through other methods that are not face to face. These methods can be beneficial in circumstances when the parties do not wish to meet or do not initially wish to meet, or where it is risk assessed as unsuitable to meet in person. The facilitator will need to ensure that all parties are made aware of the limitations of indirect communication methods.

Direct communication between the person harmed and the child whose behaviour has caused harm should be prepared for, and supported by, a suitably trained facilitator. In order for the process to be trauma-informed and non-discriminatory, prior to the meeting taking place a facilitator will need to consider a number of factors in their planning. These include: the location and type of venue (taking into account factors such as ease of access due to location, disability, poverty); and whether participants will require space for a time out (seating arrangements, spatial layout etc.). Such factors may impact on the participants' ability to engage in the process, or even attend at all. It is also crucial that participants are clear about who will be present at the meeting and why.

A clear expectation of both process and overall safety should be considered, and any discussion with the participants before, during and after the process should also take into account any speech, language and communication needs (SLCN) of the participants; practice should be shaped accordingly (see [Section 6](#)).

f. Supporting participants to establish an outcome agreement.

Where appropriate, all individuals involved should agree if they wish to make an outcome agreement as part of the process. The facilitator should enable participants to think through and discuss what outcome elements may be helpful and realistic: 'can they be effectively carried out?'; 'do they have the support of everyone present?'. In addition, it should be clear to all those involved how it will be communicated that the outcome agreement has been completed.

g. Evaluation, monitoring and ongoing support.

Research carried out by Shapland et al. (2022) found that there was varied evidence regarding the practice of using follow-up measures after a meeting, despite this being seen as very desirable. A follow-up with both participants provides an opportunity to openly discuss thoughts and feelings about the process and its outcomes. How this information is communicated should be based on the best interests of the individual child and the child's views as to how this should be carried out. Any decisions should be discussed with the children, their parent or carer and the professionals involved in their care.

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

3. Impact of Restorative Justice

RJ 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 RJ reduces the likelihood of reoffending, benefiting both the individual who has caused the harm and also the wider community, by preventing further victims.

For those who have been harmed, there is increasing research that evidences the many benefits experienced by participating in RJ. A meta-analysis of RJ programmes in eleven countries across five continents, carried out in 2023, found that individuals who had been harmed, after participating in an RJ process, reported considerable reductions in negative emotions, such as fear, anxiety, anger, guilt and distress. A reduction in feelings of helplessness, increased perception of security and renewed sense of control were also reported. Significantly, researchers found that these improvements persisted over a period of years, “indicating that a transformation from ‘victim’ status to ‘survivor’ status had occurred, which is imperative to emotional recovery following a traumatic event” ([Justice for All: How Restorative Justice Mutually Benefits Victims and Youth How Restorative Justice Mutually Benefits Victims and Youth on JSTOR](#)). Arguably, restorative justice could be seen as a health intervention, as well as a trauma-informed approach.

In terms of the benefits of using RJ to respond to children in conflict with the law, the RJ process supports all participants to communicate in a safe and structured way, with the purpose of identifying clear pathways for addressing the harm caused and any future implications; this promotes the child’s positive reintegration into their community. Children in conflict with the law experience a higher rate of adverse childhood experiences (ACEs), have higher levels of communication difficulties than those not in conflict with the law, and are statistically more likely to have been victims themselves (Malvaso et al., 2022). Henderson, Kurlus, and McNiven (2016) highlight that 81% of children under the age of 12 who were reported to the Children’s Hearings System (CHS) displaying a pattern of offending behaviour had parents who were deemed to pose a risk to them. The flexible, creative nature of RJ allows a range of different processes and accommodations to meet the needs and varying coping preferences of different children, according to their age and specific needs (Gal, 2011). In addition, any RJ process should be inclusive, flexible and adaptable to diversity, including gender, sexual orientation, race, ethnicity, religion, language, class, disability and domestic circumstances. It should also seek ways to address the imbalance of power that exists as a result of the harm caused. The use of RJ in responding to children in conflict with the law, is trauma-responsive and supports Scotland’s Rights Respecting approach to justice for children and young people (Scottish Government, 2021).

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 engage in face-to-face restorative justice were more likely to have a clearer understanding of the impact on victims, and experience feelings of remorse (McGarrell, Olivares, Crawford, & Kroovand, 2000; Strang &

Sherman, 2015; Strang, Sherman, Mayo-Wilson, Woods, & Ariel, 2013). More recently, a systematic literature review of RJ and restorative practices in school found that positive results emerged with respect to different aspects: school climate, discipline, positive conflict management through actions that aim at preventing suspensions, exclusions, conflicts, and misbehaviour (e.g., bullying); positive relationships between peers and between students and teachers; prosocial behaviours; social and emotional skills; school–community–family ties; and well-being (through restorative culture as a whole-school approach). ([Use of Restorative Justice and Restorative Practices at School: A Systematic Literature Review – ProQuest](#))

An early explanation as to why RJ may reduce reoffending is given by Braithwaite (1989) in his 'reintegrative shaming theory', which suggests shame is necessary to inhibit offending behaviour. Through RJ 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. Moreland-Capuia (2019) explains this further by explaining that while shame can help individuals to learn what is and is not socially acceptable, it must be combined with reassurance, redirection, and education, as children learn appropriate behaviour based on context and environment. Without this, shame on its own can be toxic. Therefore, a more current explanation of why RJ may reduce re-offending, is because the aim is to repair harm instead of punishment; in addition, the process separates the child from their behaviour, which allows for positive change.

In addition to the many benefits outlined above, there is also research to support the economic benefits of RJ. A study by Furman (2012) concluded that a RJ approach proved to incur lower costs upon case facilitation than traditional criminal justice proceedings, in addition to producing lower recidivism rates - deeming RJ a more cost-effective option. Furthermore, research by Shapland et al. (2008) suggests that the cost saved by this reduction in offending is greater than the cost of providing a RJ process; Strang et al. (2013) concluded that RJ 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). More recently Why Me? in their [economic evaluation](#) of RJ within England and Wales, found that direct RJ intervention reduced the average number of reoffences in the first year from 27 to 19. Overall, the cost-social benefit ratio of RJ was £14 per £1 invested.

While it is clear that RJ 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.

4. Rights of Children and Child Victims

When dealing with children who are in conflict with the law, there is a difficult balance to be struck between the rights of the child and the rights of the victim (Wolthuis & Chapman, 2021). There is significant body of evidence of literature critically examining the tensions implicit in RJ when involving children who are in conflict with the law. Goldson and Muncie

(2015) raise the issue of RJ services being situated within the legislative and administrative framework of Youth Justice systems. They argue that these systems are often overtly anti-restorative and routinely violate children's rights. They also argue that the process of criminalisation plays a significant part in the reproduction of social marginalisation and the intensification of exclusion. A 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, with particular attention paid to child victims. The vulnerability of children who are victims of crime, specifically in relation to the risk of secondary victimisation as a result of their involvement in criminal justice proceedings, is highlighted in the UN Guidelines on Justice, issued in 2005; these advocate for the use of informal and community practices, such as restorative justice (Article 36). Gal (2011) identifies the need for the welfare considerations of children who have been harmed to shape service design at a systemic level. In line with UNCRC Article 3, in order to ensure that the best interests of both children are maintained, any decisions based on the needs of the person harmed should not be in any way to the overall detriment of the best interests of the person responsible. This should not be confused with the potential impact being upsetting or uncomfortable if this is done within safe parameters and leads to positive change.

A core value of RJ is respect for people, whether they have caused the harm or been harmed. The process is designed to support the person harmed to regain some control over the outcomes of the process. Gal (2011) states that "to be treated as an individual subject of rights, with legitimate interests in the particular case and with valid expectations from the process and its outcomes, can be no less than a healing experience for victims". As the process focuses on the harm and its impact, the distinction is also made between the child responsible and the harm, viewing the harm as the problem not the child. Thus, the child responsible is viewed as someone whose rights and agency are respected. See [Tim Chapman's webinar](#) for more information regarding the ability of RJ processes to uphold children's rights, while raising awareness of RJ services that have not achieved this and why.

[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 rights of victims has been further enhanced by the [Victims, Witnesses, and Justice Reform \(Scotland\) Bill](#), which was introduced to the Scottish Parliament on 25th April 2023 and is currently at Stage 1.

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 3](#)

5. Challenges for Restorative Justice

Wood and Suzuki (2016) highlight a number of challenges for the future of restorative justice. See also Shapland (2014, pp. 111-127) "Implications of growth: Challenges for restorative justice." [International Review of Victimology 20.1 \(2014\): 111-127](#). 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 RJ 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 RJ 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 RJ, 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](#).

A challenge for RJ processes involving children is the potential for power imbalances, which result in the process being dominated by adults; something which was highlighted in the 2022 [review](#) of the Northern Ireland RJ practices. Gal (2011) also raises issues around the role of parents/guardians in RJ processes involving children, referencing research that found low levels of satisfaction for child participants when parents were allowed to speak on their behalf. Similarly, this raises a challenge for professionals assessing suitability, when a parent/carer refuses to allow the child to participate, but the child expresses their wish to be involved. Given the potential for an imbalance of power, the All-Party Parliamentary Group on Restorative Justice (2021) have [highlighted](#) the need for facilitators to thoroughly examine the motivation for both individuals being involved. They also raised this as a particular issue in cases of hate crimes, given the potential to compromise the safety of both participants.

RJ processes can bring many pressures to young people with speech, language and communication needs (SLCN), which could negatively impact on the success of the intervention. Narrative language abilities appear key to RJ, yet these skills for 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, RJ practitioners need to be able to access creative and flexible ways of helping young people to tell their story. Others involved in the process may need information about communication issues which could lead to a misunderstanding or the breakdown of an interaction. For more information on SLCN please see [Section 6](#).

[The specific challenges within Scotland are documented by](#) Buchan et al. (2020) Some of the recommendations within this report have been established. The main challenges highlighted that remain relevant are; limited or unsustainable funding and the lack GDPR-compliant information sharing protocols between the police and RJ services to ensure a 'supply' of referrals. (<https://www.napier.ac.uk/-/media/worktribe/output-2693520/the-local-provision-of-restorative-justice-in-scotland-a-report-for-stakeholders-and.ashx/>).

6. Information Sharing

As stated above, Information sharing remains a barrier for RJ moving forward, particularly with the introduction of the [Data Protection Act 2018](#). Sharing of information between statutory organisations and the third sector continues to be an issue, due to Police Scotland currently holding the position that they are unable to share information with third sector organisations, who are often the providers of RJ services. Despite this however, there are areas where they are working around this issue, by having information sharing protocols in line with the legislation, in order to continue to deliver a service. Further understanding of how these issues can be overcome is required.

7. Legislation, Policy and Guidance

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

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 RJ and key principles, as well as information on conducting a RJ process. The Guidance sets out key ingredients for any RJ 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 explaining the process, there continues to be a level of inconsistency in its use 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 [the child's journey](#) through the youth justice system is necessary.

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

- Children's Hearings System (CHS)
- Early and Effective Intervention (EEI)
- 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” (Scottish Government, 2019, p. 4). The action plan clearly sets out the impact that RJ can have for all participants, requiring strong leadership, commitment and meaningful collaboration between national and local partners.

The detailed action plan has three main 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

Restorative justice is available across Scotland

To ensure that this work is achieved, the Scottish Government has continued to provide funding for a Project Manager, two full time and one part time RJ Co-ordinators and administrative support. Posts are hosted by Community Justice Scotland and CYCJ, ensuring links with community justice partnerships and the third sector. CYCJ's role is to ensure that specific consideration is given to the needs of children and young people in conflict with the law and child victims. To further support the rollout of RJ services across Scotland, [Thriving Survivors](#) have developed a service to provide RJ in cases involving sexual harm.

A stakeholder group was established within the first year, with diverse representation, to progress the aims of the action plan. The group meets approximately four times per year, and in the first year they supported the design of a RJ model for Scotland, which can be accessed [here](#). In the second year, a smaller group of representatives from the stakeholder group worked together to design two Codes of Practice, one for children and one for adults. However, the publication of these documents has been postponed due to increasing agreement that further clarification around policy was required to support the use of RJ alongside the criminal justice system. This has been completed and submitted to the Scottish Government as an options paper, and any decisions around this have yet to be confirmed. The first area for the initial test project was agreed to be in Edinburgh, the Lothians and the Borders. It was intended that the test project would provide a mix of feedback from both rural and urban areas, informing the progress of developing services in other areas. To date, there have been a small number of cases identified, with one completed. The options to deliver further RJ processes remain within these areas, provided by either the Local Authority, or third sectors partners, or a combination of these. Community Justice Scotland and CYCJ will continue to gather relevant information from these processes and experiences to provide feedback to the Scottish Government.

High quality restorative justice services are delivered by trained facilitators

In order to further the development of high-quality RJ services, the University of Strathclyde, on behalf of the Scottish Government, completed the training needs analysis; this was

published in August 2022 and can be accessed [here](#). They identified the need for three levels of training within Scotland:

1. Introduction to Restorative Justice.
2. Foundation Training in Restorative Justice with children and adults.
3. Specialist Training in sensitive and complex cases.

Due to the difficulties in predicting the anticipated number of referrals for RJ, the number of trained practitioners required, and the funding available for implementation, they have suggested three options for the training delivery plan.

CYCJ hosted training by RJ specialists for children in conflict with the law at the start of 2024 and hope to repeat this in early 2025.

There is a strong public awareness and understanding of restorative justice

The third priority area, developing a strong public awareness and understanding of RJ, was supported by the publication of a short awareness raising animation and key messages paper in the first year of the action plan. In 2022, CYCJ was commissioned by the Scottish Government to conduct research with children, young people and families to explore their awareness, understanding and attitudes to RJ. The [resulting report](#) by CYCJ researchers Nina Vaswani and Aaron Brown includes children's understandings of harm, the awareness and acceptability of RJ and key messages for the Scottish Government about the implementation and delivery of RJ. To ensure this research is accessible to a younger audience, a [child-friendly version](#) is also available.

In the above research, the children proposed that they should be involved in the design of information, communications, processes and approaches related to RJ, to ensure that they are child-friendly, and the risk of further harm is minimised. This work was overseen by CYCJ and completed in year 3 of the action plan. A CYCJ participation worker, working alongside the RJ Co-ordinator(s), worked with young people who have been harmed and those who have caused harm to co-produce information on communication and processes/approaches. From this a leaflet for children and young people called 'Know Your Rights' was created, within this there is also a QR code to allow children and young people to access a digital version, available [here](#). The purpose of this is to allow children and young people to know what they have a right to and can expect throughout any RJ process. In addition, young people were also involved in creating a video discussing RJ and the possible ways children and young people in Scotland could be supported to access this.

Further resources, as well as more information on the stakeholder group and minutes of previous meetings, can be found [here](#).

7.4 Scottish Government: Youth Justice Strategies

The previous Youth Justice Strategy ([Preventing Offending: Getting it Right for Children and Young People](#)) stated, under the priority heading of 'Improving Life Chances', that there should be a strategic focus on victims and community confidence. Furthermore, RJ fits into the current Youth Justice Strategy ([A Rights-Respecting Approach to Justice for Children and Young People](#)) via 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, RJ is most commonly thought of in connection with Early and Effective Intervention and Diversion, although there is also evidence to suggest its applicability for more serious and violent offending (Strang & Sherman, 2015).

The [Children's Hearing Redesign](#) group reported in 2023 that RJ should be available as an option in all Children's hearings. The Scottish Government plan to consult on this report during the summer of 2024.

7.5 Restorative Justice Services for Children and Young People and those Harmed by their Behaviour

Published in 2008, RJ Services 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 RJ. The intention is that it is used as a resource for agencies who wish to make use of RJ services; ensuring delivery is consistent and of high quality. This document recognises that whilst RJ 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)

[This toolkit](#) was developed to support individuals and agencies involved in designing, setting up or extending RJ 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 RJ 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, that seeks to promote the development of RJ 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 RJ Network, part of the RJ Forum, is open to practitioners of RJ, 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 RJ Researchers (SNRJR), part of the RJ 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 RJ in Scotland (including researchers from academic institutions, government and other agencies).

Anyone interested in joining the networks / Restorative Justice Forum or who would like to find out more, contact the Restorative Justice Forum (Scotland) at 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 RJ, 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 RJ services, at any time and in any case. Its main focus is on the application of RJ to criminal matters, but other areas - such as family, school and community mediation - are not excluded.

The EFRJ does not defend anyone 'best practice' model of RJ 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 RJ 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.

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 needs to be consideration of cases where someone has been impacted by harmful behaviour that may have been caused by a child under 12. Although the child should not be involved in the justice system, a process whereby someone who has been harmed can access a restorative process should be considered. With the [Age of Criminal Responsibility \(Scotland\) Act 2019](#), 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 therefore should be progressed with immense care and consideration. Despite this however, restorative practices could play a key role in this area.

10. Training

As stated previously, 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"; this includes the need to ensure that any training is accredited and undergoes continuous monitoring and evaluation.

Currently in Scotland there are three recognised RJ courses to support practitioners in this area:

- [Foundation Skills in Restorative Justice Practices](#) (please click on the link for more details and future dates)
- [Restorative Skills Training delivered by SACRO](#) (dates upon request)
- Restorative Justice and Children's Rights (future dates to be confirmed)

It is important that RJ practitioners facilitating complex and serious cases, for example those involving sexual violence, have advanced training (Keenan, 2018). Thriving Survivors have co-produced with the University of Edinburgh an extensive training programme for RJ involving sexual harm.

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

11. Restorative Practices in Education

Due to the growing evidence of the effectiveness of RJ 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 an alternative to, or part of, a criminal

justice system, they would be considered restorative practices or approaches, as opposed to RJ. Wright (2008, p. 30) defines restorative practice as:

“...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”.

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

12. Restorative Justice Approaches in Custody

In the context of RJ 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

RJ 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 RJ (Liebmann, 2011).

In Scotland, there is limited activity around RJ in custodial settings. HMP Edinburgh facilitated a research request in 2022 to let researchers gather the views of people responsible for causing harm, in order to ask them what they knew about RJ and if they would want to participate if asked - the published research can be accessed [here](#). HMP Edinburgh also have two members of staff who have taken part in RJ training alongside other justice sector and third sector professionals. Thriving Survivors have been in contact with HMP Edinburgh to look at ways in which they can promote RJ in the establishment and that conversation is ongoing. HMP Polmont have also expressed an interest in training some of their staff in RJ and discussions around how to support this are in the initial stages between CYCJ, Community Justice Scotland and Polmont.

13. Conclusion

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

The Scottish Government's [Restorative Justice Action Plan](#) states clearly their commitment to make RJ available across Scotland, to all those who wish to access it. This is a real opportunity to embed RJ 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.

14. References

- All-Party Parliamentary Group on Restorative Justice. (2021). *Restorative Justice APPG Inquiry into Restorative Practices in 2021/2022*. Retrieved from <https://eprints.glos.ac.uk/10197/7/10197-Hobson-%282021%29-Restorative-justice-APPG-inquiry-into-restorative-practices.pdf>
- Amjad, S., & Riaz, N. (2019). The concept and scope of restorative justice system: Explaining history and development of the system for the immediate need of society. *International Journal of Law*, 5(5), 100-104. Retrieved from <http://www.lawjournals.org/archives/2019/vol5/issue5/5-4-76>
- Braithwaite, J. (1989). *Crime, Shame and Reintegration*. New York: Cambridge University Press.
- Buchan, J., Maglione, G., & Robertson, L. (2020). The Local Provision of Restorative Justice in Scotland: an Exploratory Empirical Study. *European Journal on Criminal Policy and Research*, 1-25. doi:10.1007/s10610-020-09470-3
- Chapman, T. (2016). Protecting Rights, Restoring Respect and Strengthening Relationships: A European Model for Restorative Justice with Children and Young People. *MINORIGIUSTIZIA*, 41-48. doi:10.3280/MG2016-001005
- Chapman, T. (2021). Restorative practices can steal the rights of children too: the importance of value-led and evidence-based standards. In A. Wolthuis & T. Chapman (Eds.), *Restorative Justice from a Children's Rights Perspective*. Den Haag: Eleven International Publishing.
- Daly, K. (2008). Girls, Peer Violence and Restorative Justice. *Australian & New Zealand Journal of Criminology*, 41(1), 109-137. doi:10.1375/acri.41.1.109
- Daly, K. (2016). What is Restorative Justice? Fresh Answers to a Vexed Question. *Victims and Offenders*, 11(1), 9-29. doi:10.1080/15564886.2015.1107797
- Edgar, K., & Newell, T. (2006). *Restorative Justice in Prisons: A Guide to Making It Happen*. Winchester: Waterside Press.
- Foussard, C. (2021). Restorative Justice for Children Around the Globe. In A. Wolthuis & T. Chapman (Eds.), *Restorative Justice from a Children's Rights Perspective* (pp. 117-136). The Hague: Eleven Publishing.
- Furman, J. M. (2012). *An Economic Analysis of Restorative Justice*. Retrieved from <https://restorativejustice.org.uk/resources/matrix-evidence-%E2%80%93-economic-analysis-interventions-young-offenders>
- Gal, T. (2011). *Child Victims and Restorative Justice: A Needs-Rights Model*. Oxford: Oxford University Press.
- Goldson, B., & Muncie, J. (2015). 'Restorative Justice? A Critical Analysis' In *Youth, Crime and Justice* (2nd ed., pp. 137-156). London Sage.
- Henderson, G., Kurlus, I., & McNiven, G. (2016). *Backgrounds and outcomes for children aged 8 to 11 years old who have been referred to the Children's Reporter for offending*. SCRA Retrieved from <http://www.scra.gov.uk/wp-content/uploads/2016/03/Backgrounds-and-outcomes-for-children-aged-8-11-years-old-who-have-been-referred-for-offending.pdf>
- Johnstone, G. (2014). *Restorative in Prisons: Methods, Approaches and Effectiveness*. Retrieved from Hull: <https://rm.coe.int/16806f9905>

- Keenan, M. (2018). Training for restorative justice work in cases of sexual violence. *International Journal of Restorative Justice*, 1(2), 291-302. doi:10.5553/IJRJ/258908912018001002007
- Liebmann, M. (2011). *Restorative Justice in Prisons - An International Perspective*. Retrieved from http://mereps.foresee.hu/uploads/media/MarianLiebmann_text.pdf
- Lightowler, C. (2020). *Rights Respecting? Scotland's approach to children in conflict with the law*. Retrieved from <https://cycj.org.uk/wp-content/uploads/2020/01/Rights-Respecting-Scotlands-approach-to-children-in-conflict-with-the-law.pdf>
- Malvaso, G., Cale, J., Whitten, T., Day, A., Singh, S., Hackett, L., . . . Ross, S. (2022). Associations Between Adverse Childhood Experiences and Trauma Among Young People Who Offend: A Systematic Literature Review. *Trauma, Violence, & Abuse*, 23(5).
- Matrix Evidence. (2009). *Economic analysis of interventions for young adult offenders*. Retrieved from <https://restorativejustice.org.uk/sites/default/files/resources/files/Matrix%20Evidence%20-%20Economic%20Analysis%20of%20interventions%20for%20young%20offenders..pdf>
- McGarrell, E. F., Olivares, K., Crawford, K., & Kroovand, N. (2000). *Returning Justice to the Community: The Indianapolis Juvenile Restorative Justice Experiment*. Retrieved from Washington: <http://www.ibarji.org/docs/mcgarrell.pdf>
- Moir, T., & MacLeod, S. (2018). *What impact has the Educational Psychology Service had on the implementation of restorative approaches activities within schools across a Scottish Local Authority?* Retrieved from <http://www.northayr-edpsychs.co.uk/wp-content/uploads/2018/09/impacteps.pdf>
- Moreland-Capuia, A. (2019). *Training for Change* Switzerland AG Springer Nature
- Osterman, L., & Masson, L. (2018). Restorative Justice with Female Offenders: The Neglected Role of Gender in Restorative Conferencing. *Feminist Criminology*, 13(1), 3-27. doi:10.1177/1557085117738326
- Roberts, J. V., & Watson, G. (2017). Reducing female admissions to custody: Exploring the options at sentencing. *Criminology & Criminal Justice*, 17(5), 546-567. doi:10.1177/1748895816684177
- Scottish Government. (2019). *Restorative justice: action plan*. gov.scot: Scottish Government Retrieved from <https://www.gov.scot/publications/restorative-justice-action-plan/>
- Scottish Government. (2021). *Working with children in conflict with the law 2021: standards*. Retrieved from <https://www.gov.scot/publications/standards-those-working-children-conflict-law-2021/>
- Shapland, J. (2014). Implications of growth: Challenges for restorative justice *International Review of Victimology*, 20(1), 111-127. Retrieved from <https://doi.org/10.1177/0269758013510808>
- Shapland, J., Atkinson, A., Atkinson, H., Dignan, J., Edwards, L., Hibbert, J., . . . Sorsby, A. (2008). *Does restorative justice affect reconviction? The fourth report from the evaluation of three schemes*. Retrieved from Sheffield: http://www.antonioacasella.eu/restorative/Shapland_2008.pdf

- Shapland, J., Buchan, J., Kirkwood, S., & Zinsstag, E. (2022). *Mitigation and risk in restorative justice*. Retrieved from <https://communityjustice.scot/wp-content/uploads/2022/10/Mitigation-and-Risk-in-Restorative-Justice.pdf>
- Shapland, J., Crawford, A., Gray, E., & Burn, D. (2017). *Restorative justice at the level of the police in England: implementing change*. Retrieved from Sheffield: https://www.sheffield.ac.uk/polopoly_fs/1.743733!/file/DevelopingRestorativePolicing3.pdf
- Strang, H., & Sherman, L. (2015). The morality of evidence: the second annual lecture for Restorative Justice: An International Journal. *Restorative Justice: An International Journal*, 3(1), 6-27. doi:10.1080/20504721.2015.1049869
- Strang, H., Sherman, L., Mayo-Wilson, E., Woods, D., & Ariel, B. (2013). *Restorative Justice Conferencing - Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction. A Systematic Review*. Retrieved from Campbell Systematic Reviews: <https://restorativejustice.org.uk/sites/default/files/resources/files/Campbell%20RJ%20review.pdf>
- The Mental Health Foundation. (2002). *The Mental Health Needs of Young Offenders*. Retrieved from <https://www.mentalhealth.org.uk/publications/mental-health-needs-young-offenders-update>
- Toor, S. (2009). British Asian Girls, Crime and Youth Justice. *Youth Justice*, 9(3), 239-253. doi:10.1177/1473225409345102
- Wolthuis, A., & Chapman, T. (2021). *Restorative Justice from a Children's Rights Perspective*. The Hague: Eleven International Publishing.
- Wood, W. R., & Suzuki, M. (2016). Four Challenges in the Future of Restorative Justice. *Victims and Offenders*, 11(1), 149-172. doi:10.1080/15564886.2016.1145610
- Wright, M. (2008). *Restoring Respect for Justice: A Symposium*. Hampshire: Waterside Press.