

Restorative Justice within Diversion from Prosecution in Scotland

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Introduction

The Scottish justice system has increasingly adopted alternatives to prosecution reflecting a shift towards rehabilitation and prevention. [Diversion from Prosecution](#) (DfP) is a key component of this approach with [significant increase](#) in its use in recent years allowing individuals to avoid unnecessary contact with the formal court by engaging with support services (Gibson & Jardine, 2026). Within this approach, [Restorative Justice](#) (RJ) can be used as a specific intervention, aiming to repair harm and involve victims in the justice process. While this integration [has significant potential](#), it also raises important questions about effectiveness, consistency, and the preservation of RJ principles.

Restorative Justice within Diversion

RJ focuses on repairing harm through dialogue between victims and people who cause harm, emphasising accountability, reparation, and reintegration. [In Scotland](#), it is often delivered as part of diversionary approaches such as Early and Effective Intervention (EEI) and DfP, particularly in relation to less serious offences – although this is not always the case – and where both parties consent. In this context, RJ typically takes the form of mediation or facilitated communication, either directly or indirectly. It offers an opportunity to address the consequences of offending behaviour in a more constructive and personalised way than a formal justice process. This approach aligns with broader [policy](#) goals of reducing reoffending and promoting community-based justice.

Integrating RJ into DfP offers several advantages. First, it can increase victim satisfaction by providing opportunities for participation and acknowledgment of harm. This addresses a common criticism of traditional criminal justice processes, where victims often feel marginalised. Second, it may strengthen the rehabilitative impact of DfP which primarily focuses on addressing needs that have contributed to the alleged offence such as substance misuse or mental health issues. RJ adds a relational dimension to the work that is undertaken by confronting the harm caused. This combination aligns with [desistance theory](#), which emphasises the importance of personal responsibility and social relationships in reducing reoffending.

Limitations

Despite these benefits, the integration of restorative justice into DfP raises several concerns that must be addressed in order to achieve the desired results and to respect the rights and wellbeing of those involved. When RJ is used primarily as a tool to achieve diversionary outcomes, its core principles – particularly its focus on voluntary participation and victim needs – may be compromised. In such circumstances there is a danger that it becomes a procedural requirement rather than a genuinely restorative process.

Voluntariness is especially problematic in this context. Although participation in RJ is formally voluntary, the prospect of avoiding prosecution may create implicit pressure on the person who has caused harm to engage. Similarly, victims may feel obliged to participate in the process, even if they are uncomfortable, in order to be seen to be reasonable, or through an altruistic desire to help the person who has caused harm. This challenges the ethical foundation of restorative justice. To be clear, RJ must only be used within DfP when it is voluntarily agreed to by both the person who has been harmed and those accused of causing harm. What's more, [recent practice guidance from Social Work Scotland](#) makes clear that restorative practices can be utilised as a component of the overall intervention "where appropriate, and only at the request of the victim". While it might be appropriate for RJ to be referenced within a DfP intervention plan, it must not form part of the measure by which compliance with DfP is then assessed.

Another issue is inconsistency in practice. Access to RJ varies across Scotland, leading to unequal opportunities for individuals depending on location. A [recent survey](#) highlights that there is inconsistency with both RJ delivery and understanding of the definition of RJ across Scotland. Whilst [newly published guidance](#) stresses the need for DfP to be available across the country, there are considerable regional variations on the uptake and delivery of this approach. This raises concerns about fairness and transparency within the justice system, with sporadic uptake of RJ as a component of DfP.

Furthermore, the effectiveness of RJ as a component of DfP depends on the availability of resources and trained facilitators. Limited funding and capacity can result in superficial or poorly delivered interventions, undermining their potential benefits. As with diversion more broadly, the success of RJ is contingent on the quality of implementation, and at present there is no clear understanding of the number of practitioners trained and able to practice in Scotland.

Wider implications

The use of RJ within DfP reflects a broader trend towards community-based and rehabilitative justice in Scotland. However, it also highlights tensions within the system as stated above.

Additionally, the underlying causes of offending - such as poverty, social inequality, and lack of access to services - are not fully addressed by DfP or RJ; there is very little that RJ can do to address the socioeconomic circumstances that often exists as a backdrop to the lives of those who cause harm, and those who experience harm. Without tackling these structural issues, their impact will be limited, and thus practitioners must be mindful of the broader, ecological factors that contribute to the lives of individuals.

There is also a need for greater transparency and consistency in decision-making. Clearer guidelines and improved access to services could help ensure that RJ within DfP is applied fairly and effectively.

Conclusion

RJ can play a valuable role within DfP in Scotland, offering a more holistic and constructive response to children and young people in conflict with the law. By combining rehabilitation with a focus on repairing harm, this approach has the potential to benefit both victims and people who have caused harm, while reducing reliance on formal prosecution.

However, significant challenges remain including concerns about voluntariness - a key principle of restorative justice - and inconsistencies in access. Moreover, its success depends heavily on adequate resources and careful implementation.

Ultimately, while RJ within DfP represents a promising development, it must be applied in a way that preserves its core principles and addresses broader systemic issues. Without this, it risks becoming a limited and inconsistent component of the justice system that causes further harm, rather than offering a genuinely transformative approach.

References

Gibson, R., & Jardine, C. (2026). Diversion from Prosecution in Scotland: Promises and pitfalls. In C. J. Bald & I. Martínez Herrero (Eds.), *The Routledge International Handbook of Criminal Justice Social Work* (pp. 482-491). Routledge.

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