

## Written evidence from the Standing Committee for Youth Justice

Significant progress has been made historically in terms of Restorative Justice (RJ) in the Youth Justice System (YJS), where there is greater use, interest and understanding of the practice by YJS practitioners in comparison to the adult field.<sup>1</sup> However, it is clear that RJ is not being used as widely as it might be in the YJS and there is now a distinct need fifteen years after its introduction to the YJS to reassess the system to see how it can be improved to fulfil the Youth Justice Board's (YJB) commitment to place restorative justice at its heart.<sup>2</sup>

The Government Action plan (GAP) does not make the necessary distinction between children and adults in the policy development and application of RJ in the YJS thereby ignoring the critical differences between the two groups. For example, children have reduced culpability by comparison with adults, and therefore the attribution of responsibility, implied by RJ, should take a moderated form. There is also a greater overlap between victimisation and offending within the youth justice population, which means that the binary model implied by standard RJ scenarios is more blurred. Finally, partly as a consequence of the previous point, the victims of youth crime are more likely to be children themselves.

The GAP binary model of RJ (in which parties to the offence are either victims or offenders) falls short of models of best practice which seek a balanced resolution to address the needs of all parties rather than focusing on those of the victim alone.

### What is Restorative Justice?

Effective RJ is built upon the idea that through the provision of opportunities for repairing the harm between victim and offender, one can encourage a child who has offended to seek alternatives to their behaviour, and to see themselves as somebody with a different potential while simultaneously allowing the victim a say in the process. In order for this to be successful, the provision of RJ needs to be aligned with access to broader services to provide practical help to tackle the child's underlying problems and needs. Providing appropriate safeguards are in place, RJ need not be restricted to a particular type of offence, or stage of the youth justice system, but can be used across the spectrum of youth offending to address persistent reoffending, or to divert low-level offenders from the criminal justice system, as part of a community sentence or as an alternative to custody.

### Benefits of Restorative Justice:

When RJ is undertaken systematically, supervised and facilitated by trained practitioners with preparation of both the victim and the child, robust evidence demonstrates that RJ reduces the frequency of reoffending and boosts victim satisfaction. It has also been shown to have significant cost-savings benefit inherent in the reduction of reoffending<sup>3</sup>.

According to Government research:<sup>4</sup>

- RJ reduces the frequency of reoffending by 14%

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<sup>1</sup> The Restorative Service Quality Mark is an independent assessment of an organisation's restorative service by the Restorative Justice Council. The majority of accredited organisations within the field of criminal are in the youth justice sector. <https://www.restorativejustice.org.uk/standards-and-quality>

<sup>2</sup> Developing Youth Justice, An Action Plan, Youth Justice Board, 2006, page 3  
<http://yjbpublications.justice.gov.uk/Resources/Downloads/RJ%20Action%20Plan.pdf>

<sup>3</sup> Care should be taken with reoffending statistics as studies tend not to use controlled clinical research techniques to satisfactorily isolate one form of intervention to show its effect. Typically children who offend are subject simultaneously to more than one intervention at the same time, even where one of these is RJ.

<sup>4</sup> Breaking the Cycle, Effective Punishment, Rehabilitation and Sentencing of Offenders, MoJ Evaluation, 2010, accessed: <https://www.restorativejustice.org.uk/sites/default/files/resources/files/Ministry%20of%20Justice%20evaluation%20of%20restorative%20justice.pdf>

- 84% of victims who took part in a RJ conference are satisfied with the process
- For every £1 spent on RJ £8 is saved through a reduction in reoffending

An Ipsos Mori study commissioned by the Restorative Justice Council (RJC) found that three-quarters of the public support the concept of RJ<sup>5</sup> which may in turn help to improve public confidence in the YJS.

## The current Restorative Justice landscape in England and Wales

The principles and practices of restorative justice feed into many youth justice interventions delivered at both pre- and post-conviction stages across England and Wales. However, there is no standardised use of RJ across the region. RJ is often used to describe a wide array of victim or restoration work, from letters of apology to victim empathy work and face to face restorative justice conferences. However, the SCYJ believes only that activity which involves direct communication between the victim and the offender can be properly termed restorative justice.

Anecdotal evidence suggests that genuinely restorative practices are currently limited in their scope and application.

The lack of data concerning the nature and frequency of use of RJ with children who offend needs to be addressed in order to review effectively the success or limitations of RJ. We do not know how many children in the system participate in RJ, at what stage in the system they engage, or what type or restorative activities they complete.

Referral Orders (ROs) were intended to be the principal mechanism by which RJ is delivered and now account for one third of all court disposals.<sup>6</sup> However, restorative approaches are equally used in Youth Referral Orders (YROs) and in out of court disposals but there is a lack of data on this subject which precludes us from developing an overview of how these are used, although their practice is known to be variable in quality with many processes mislabelled 'restorative'.

ROs can have a strong restorative element, however, too often they are not run or managed along restorative lines (predominantly the victim is rarely involved).<sup>7</sup> When a child is given an RO they are required to attend a Youth Offender Panel (YOP) made up of two volunteers from the local community, and a panel advisor from the YOT. The panel, with the child, their parents /carers and where appropriate, the victim, will agree a contract which will include reparations<sup>8</sup> and interventions to address the causes of offending behaviour.<sup>9</sup>

## The Importance of Victim Involvement and Other Obstacles to Wider Use of Restorative Justice

Central to ROs is the principle of reparation which requires de facto involvement of a victim (often interpreted as the community, rather than the direct victim). Evaluations of the RO

<sup>5</sup> Ipsos Mori Poll Summary, Restorative Justice Council, 2015:

[https://www.restorativejustice.org.uk/sites/default/files/news/files/Ipsos%20MORI%20polling%202015\\_0.pdf](https://www.restorativejustice.org.uk/sites/default/files/news/files/Ipsos%20MORI%20polling%202015_0.pdf)

<sup>6</sup> Youth Justice Statistics: <https://www.gov.uk/government/collections/youth-justice-statistics>

<sup>7</sup> Time for a New Hearing, A Comparative Study of Alternative Criminal Proceeding for Children and Young People, The Independent Commission on Youth Crime and antisocial behaviour, 2010, page 17:

[http://www.policefoundation.org.uk/youthcrimecommission/images/095\\_pf%20time%20for%20a%20new%20hearing%20report.pdf](http://www.policefoundation.org.uk/youthcrimecommission/images/095_pf%20time%20for%20a%20new%20hearing%20report.pdf)

<sup>8</sup> Anecdotal evidence suggests that 'reparations' can include activities - such as litter picking or painting walls that are not related to the offence.

<sup>9</sup> It is questionable whether a panel meeting is the best forum for offender and victim to meet. Conferences can be highly fragile and emotionally charged events. Given that referral order panel members aren't experienced in conference facilitation, and therefore wouldn't be facilitating the conference, their presence may not be appropriate in a victim/ offender meeting.

indicate that success rates (measured by the number of children completing their contract) were greater where the victim attended (80%) as opposed to where they did not (63%).<sup>10</sup> However, figures for attendance at panel meetings are very low: the Home Office evaluation of the referral order published in 2002 found that victims attended 5% of panels overall, and 13% of panels where there was a clear identifiable victim.<sup>11</sup>

The process of engagement is impeded by the national standard timelines that YOPs must meet (allowing twenty working days to convene the panel following sentencing) which often does not allow YOTs time to engage the victim, and to prepare both the victim and the offender to participate meaningfully in the process.<sup>12</sup> Other obstacles to victim participation include national standards which stipulate only that victims be contacted, and pressure on YOT budgets.<sup>13</sup> Lack of awareness by the public about RJ also has been found to contribute to the low take-up of RJ, as well as a lack of communication between Magistrates and YOP members which has led in some regions to decreased confidence in the RO process and reluctance to use it.<sup>14</sup>

Where YOTS have invested in personnel or teams to ensure victim engagement, they have secured greater victim participation. An example of such a scheme is in Essex YOS which works alongside voluntary sector Victim Support caseworkers to whom are referred victims of lower end crimes. The team are responsible for all aspects of victim involvement from initial contact, explanation of the RJ process to accompanying victims to YOPs. Within the first year, in a third of all cases referred to it, victims attended a face-to-face meeting with the offender.<sup>15</sup> Without a special RJ unit in YOTs, research has found that only 5% to 15% of invited victims attended YRP meetings.<sup>16</sup>

## Models of best practice to consider:

### Northern Ireland

A model of best practice, structurally designed to overcome obstacles above, is the youth conferencing service in Northern Ireland which places restorative justice at the heart of the YJS, embedding it at every stage of the criminal justice system enabling youths to be diverted to an RJ conference pre-court (diversionary) and post-conviction (court-ordered). Of all referrals to the NI youth justice agency in 2014-15, 42% child offenders were dealt with by diversionary restorative justice while 45% were court ordered.<sup>17</sup>

Within the NI model, conferences are attended by the victim (or victim representative<sup>18</sup>) child offender, professionals and others to discuss the offence and its consequences. The outcome is to agree on an action plan that will specify how the child will make amends for their offence and how the causes of their offending will be addressed. To qualify, a child

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<sup>10</sup> Youth Offending and Restorative Justice, Adam Crawford and Tim Newburn, 2011

<sup>11</sup> <https://www.gov.uk/government/collections/youth-justice-statistics> page 41

<sup>12</sup> Youth Justice Board, *National Standards for Youth Justice Services*, 2010, p69  
:[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/296274/national-standards-youth-justice-services.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/296274/national-standards-youth-justice-services.pdf). Standard 8.18

<sup>13</sup> Rules of Engagement: Changing the Heart of the Youth Justice System. Centre for Social Justice, 2012:  
<http://www.centreforsocialjustice.org.uk/publications/rules-of-engagement>, page 105

<sup>14</sup> Bateman T and Stanley C, *Patterns of Sentencing: Differential sentencing across England and Wales*, London: Youth Justice Board, 2002,

<sup>15</sup> Rules of Engagement, Changing the Heart of Youth Justice, Centre for Social Justice, 2013, page 104:  
<http://centreforsocialjustice.org.uk/publications/rules-of-engagement>

<sup>16</sup> Integrating Victims in Restorative Youth Justice, Adam Crawford and Tom Burden

<sup>17</sup> Youth Justice Agency Annual Workload Statistics 2014-15: <https://www.dojni.gov.uk/publications/sb-12015-youth-justice-agency-annual-workload-statistics-2014-15>

<sup>18</sup>60% of RJ cases proceeding in NI are without direct victim involvement see Rules of Engagement, page 107

must admit guilt and consent to the conference. The outcome agreements from an RJC will address the multiple needs of the child by providing access to multiple services on either a compulsory or voluntary basis. Reviews of the service have cited the professionalism, commitment and skills of the staff and management of the Youth Conference Service.<sup>19</sup>

Evidence of the system's success (relative to England and Wales) includes higher victim participation rates (69% in conferences, of which 40% were personal victims) higher victim satisfaction rates (84% satisfaction) greater success rates (93% of plans were completed)<sup>20</sup>. NI has also seen an increasing rate of diversion of children out of the formal criminal justice process and an overall decline in the use of custody for children in trouble (however, after an initial decline, the rate of custody has been stable or increased slightly in the recent period).

Data from 2012/13 shows reoffending rates for Diversionary youth conferences to be 34.5% (which is higher than any other form of diversionary disposal) and a reoffending rate for court ordered conference to be 56.3% which is lower than probation (no data for other court orders, or custody).<sup>21</sup>

Recent statistics comparing rates of reoffending between NI and England and Wales show: <sup>22</sup>

- Overall youth reoffending rates: NI 30.1% and England and Wales 37.9%
- Diversionary reoffending rates: NI 27% and England and Wales 29.7% (the data for NI includes informed warnings which are not included in England and Wales data). When one compares diversionary conferences against cautions NI shows 34.5% and England and Wales 29.7%.
- In terms of court based measures (subject to difficulties in comparison) Youth Conferencing in NI is 56.3%, compared to in England and Wales with referral orders at 39.8% and youth rehabilitation orders at 65.6%.

Notwithstanding the difficulties inherent in making comparisons across the two regions, the data shows that reoffending rates in NI are lower than in England and Wales.

## Surrey

Another model considered RJ best practice is the Surrey model of Youth Restorative Intervention (YRI) which is jointly delivered by Surrey police and the youth support services. The YRI is a pre-court disposal alternative to youth cautions, youth conditional cautions, or prosecution and is available to under 18-year olds who have pled guilty to the offence. An independent evaluation of the YRI in Surrey found that it led to an 18% reduction in reoffending; that 91% of victims were satisfied with the process and that the YRI costs almost 50% less than the alternatives.<sup>23</sup>

In England and Wales, despite diversion, children continue to be charged and convicted for offences that would be more appropriately dealt with by means of RJ as an alternative to prosecution or conviction (as per NI or Surrey model above). Common examples are children who have been convicted of assault for a fight with a friend or family member or for assaulting staff in a care home. So often, such assaults, even when serious, are a product of wider family emotional or mental health problems. While such behaviour may need to be addressed through support and interventions, research is clear that criminalising children is often not helpful both in terms of their rehabilitation as well as community safety.

<sup>19</sup> Out of Trouble, Making Amends: Restorative Youth Justice in Northern Ireland, Prison Reform Trust, 2009, page v, [http://www.prisonreformtrust.org.uk/uploads/documents/making\\_amends.pdf](http://www.prisonreformtrust.org.uk/uploads/documents/making_amends.pdf)

<sup>20</sup> Rules of Engagement, page 107

<sup>21</sup> <https://www.dojni.gov.uk/publications/rs-bulletin-172015-adult-and-youth-reoffending-northern-ireland>

<sup>22</sup> <https://www.gov.uk/government/statistics/proven-reoffending-statistics-january-2013-to-december-2013>

<sup>23</sup> Youth Restorative Intervention Evaluation Final Report: [http://www.surreycc.gov.uk/\\_data/assets/pdf\\_file/0020/34436/YRI-Report-FINAL.pdf](http://www.surreycc.gov.uk/_data/assets/pdf_file/0020/34436/YRI-Report-FINAL.pdf)

Care should be taken to ensure that any criminal justice or restorative justice process is one that is actually required. Research shows that the response of authorities to children who offend can either breed or stop further offending.<sup>24</sup> Against this backdrop, during 2008 to 2009, eight police forces in England and Wales piloted Youth Restorative Disposals (YRD) which were intended to be a quick and effective means for dealing with low-level, anti-social and nuisance offending, offering an alternative to arrest and formal criminal justice processing. The YRD provided YOTs with an early opportunity to provide support and intervention to young people who might have been at risk of becoming further involved in criminal or anti-social behaviour.<sup>25</sup>

Evaluation of the pilots showed that the YRD worked best, and usage was highest, in forces or areas where the YRD was part of a broader strategic approach to RJ and that its success depended on well trained body of staff. Officers were supportive of YRD not just because they saved administrative time but because YRDs were regarded as offering a proportionate response, and was perceived to have a positive impact on young offenders and victims. Although the sample size of victims interviewed for the evaluation was small, responses indicated that YRDs appeared to satisfy the needs of victims who in many cases preferred to see young people given a second chance rather than be criminalised.<sup>26</sup>

## Challenges to Restorative Justice

RJ as a response to youth offending is not without challenge.

Studies have shown that RJ is less effective for victimless crimes as the very nature of it involves victims. Nor is the evidence clear cut about whether RJ is most effective for serious or low-level crimes; some research suggests that RJ is most effective with older and more serious offenders.<sup>27</sup>

Policy development of RJ needs to be different from that of adults; The RJ model typically thinks in terms of a triad of victim, offender and community with each as distinct entities for a particular incident. Yet, what we know about children is that offenders are likely to be victims and vice-versa. Many young offenders will not only have been victims of crime between other young people (much of which will not have been treated formally) but many will also be victims of more serious crimes such as abuse and neglect.<sup>28</sup> RJ is not for every child, what is required is to make it available, and to provide expert practitioners across the system, who are able to make decisions about its effectiveness and appropriateness on a case-by-case basis.

It is also imperative that any RJ system is sensitive to the requirement of admission of guilt. Although whether this needs to be a formal admission in legal terms for diversionary measures may be open to debate. For instance a youth caution requires a clear and reliable admission – usually in a police interview. It may be that you might advocate RJ interventions with a less formal admission than the legislation currently requires. Given the severely

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<sup>24</sup> Petronino, Turpin-Petronino and Guckenburg's meta-analysis of 29 studies over 35 years concluded that formal processing of children increased the likelihood, frequency and severity of further offending. Formal System Processing of Juveniles, Effects on Delinquency, 2010. <http://www.evidencebasedassociates.com/reports/processingjuvoffenders.pdf>

<sup>25</sup> Youth Restorative Disposal Process Evaluation, Youth Justice Board, page 2: <http://yjbpublications.justice.gov.uk/en-gb/Resources/Downloads/Youth%20Restorative%20Disposal%20Process%20Evaluation.pdf>

<sup>26</sup> Ibid, page 6

<sup>27</sup> Restorative Justice: The Evidence, Lawrence W Sherman and Heather Strang 2007: <http://www.smith-institute.org.uk/file/RestorativeJusticeTheEvidenceFullreport.pdf>

<sup>28</sup> The Links between Victimization and Offending, Number 5, The Edinburgh Study of Youth Transitions and Crime, David Smith, <http://www2.law.ed.ac.uk/cls/esytc/findings/digest5.pdf>

negative impact criminal records gained in childhood have on an individual's reintegration and rehabilitation, including their ability to access employment, education and housing, any system which reduces the number of children gaining criminal records should be encouraged.

Finally, there are questions to be asked about the current binary measure of reoffending which measures only whether a child has offended over a 12 month period since the date of their conviction. This blunt indicator does not reveal if there has been a fundamental change of behaviour by children who offend over a longer period – for some, their offending behaviour is deeply ingrained and needs to be measured long-term in order to identify changes in patterns of offending. For most people offending behaviour peaks in their teenage years and then starts to decline in what is known as the 'age crime curve'. Consideration should also be given to a child's 'developmental maturity' throughout the criminal justice process because variations in maturity may be directly related to offending and the ability to comply with requirements, including community sentences.<sup>29</sup>

Research into desistance from crime (or the long term abstention from criminal behaviour) demonstrates how this process of change is linked to the age crime curve.<sup>30</sup> For people who have been involved in persistent offending, desistance is a difficult and complex process, and one that is likely to involve lapses and relapses. There is value, therefore, in criminal justice supervision being realistic about these difficulties and to find ways to manage setbacks and difficulties constructively.<sup>31</sup>

Desistance theory finds that sometimes, the pathways to desistance are through repaired relationships – within families, communities and the state – and not just through 'correction of the individual.'<sup>32</sup> This suggests that a wider use of a RJ approach to address offending behaviour by children be more effective than an entirely punitive approach.

### Recommendations:

As evidenced by the foregoing, there is a strong argument, supported by robust evidence, of the need in England and Wales for a more integrated and wider-ranging system of restorative justice. In light of this, SCYJ recommends that:

- 1) RJ be embedded across the YJS - along the lines of Northern Ireland's youth conferencing model, or other 'best practice' systems such as Surrey which focuses on diversion - so that locally YOTs, courts and local police are working together to use a consistent restorative approach to challenging behaviour by children.
- 2) The expansion of the use of RJ be guided by robust standards, such as those set by the Restorative Justice Council, and mechanisms are in place to make sure that the standards are adhered to.
- 3) The lack of data concerning the nature and frequency of use of RJ with children who offend be addressed in order to review effectively the success or limitations of RJ.

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<sup>29</sup> Transition to Adulthood, T2A, <http://www.t2a.org.uk/evidence/>

<sup>30</sup> Kazemian, L. (2007). Desistance from crime: Theoretical, empirical, methodological, and policy considerations. *Journal of Contemporary Criminal Justice*, 23(1), 5-27.

<sup>31</sup> The Institute for Social Research and Innovation in Social Services: <http://www.iriss.org.uk/resources/how-and-why-people-stop-offending-discovering-desistance>

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***The contents of this document do not necessarily reflect the views of all member organisations of the SCYJ.***

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