

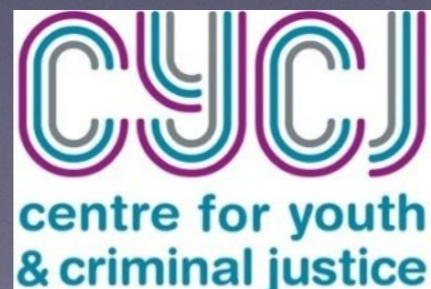
Restorative Justice in Scotland: at the crossroads?

European Restorative Justice Forum (ERJF) Friday 13th June 2014

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SCOTLAND

- Separate jurisdiction
- Relatively small – advantage and disadvantage (personalities count)
- Can effect change – VWA 2013



Provider agencies

- CJSW (Criminal Justice Social Work)
- Sacro (Safeguarding Communities and Reducing Offending)/VSS (Victim Support Scotland); voluntary sector organisations
- COPFS (Crown Office and Procurator Fiscal Service) Agreements i.e. between COPFS and Sacro re diversion for 16-18 year olds
- Police
- Prison



Processes

(see Scottish Government for descriptions)

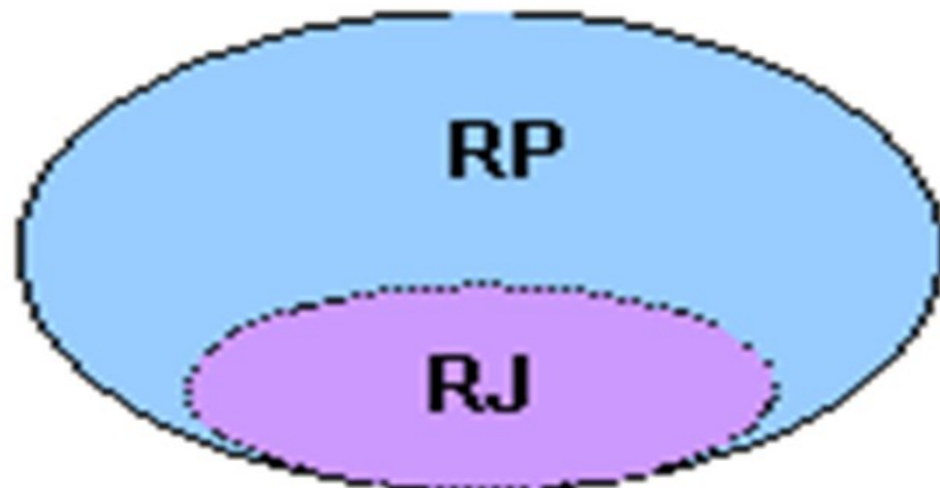
- RJ Conferences; RJ FG Conferences; Face to face meetings
- Others - Shuttle dialogue; Victim awareness; Restorative conversations etc.,. etc.,.
- Attempts at formulating guidance and guidelines for processes to provide coherence (Brookes, Sacro, Restorative Justice Training Service, Scottish Government – Best Practice Guidance for Practitioners (2008) etc.,.)
 - See VW (Scotland) A 2013 (Mary)
 - UHI – Postgraduate Qualification - Restorative Justice

Attempts at coordinated approaches - Groupings and initiatives

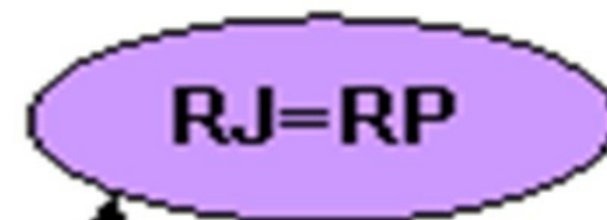
- RPS – practitioner focused in its development
- SCCJR – RJ Research Working Group (research focused)
- Scottish Government - 2008 “Progressing thinking about RJ . . .” event
- CJSW Development Centre champions group – ‘Champion for RJ mooted’
- Sacro + VSS joint initiative - Restorative Justice Joint Action Project (joint working possible from 2008 event but no evidence of implementation or taking this forward)
- BUT lack of effective coordination and understanding (CJS agencies/voluntary sector); lack of commitment by SG

Defining & Understanding Restorative Justice

View A.



View B.



Identical Processes

RJ and RP - application

- Some practitioners avoiding using the term restorative justice
- Focusing instead on the term restorative practice with a scale – informal to formal
- Problems with defining suggests Scotland not sure what 'rj' or 'rp' is and what it means in Scotland
- If there are debates over terms how do politicians, civil servants present it in legislative form and give effect, for example, to the EU Directive??
- BUT skills and values – there are commonalities (see surveys later - David)

In Practice

Many examples, focus on a few (concerns/issues/difficulties):

- Police Restorative Warnings - ? restorative
- Children's Hearings System and RJ - ? use
- TASC (Kearney, Kirkwood) - ? rollout but new initiative has started (Kearney/Whyte)
- Restorative Justice Toolkit for cases of Historical Institutional Abuse (linked to TTBH Forum) – Johnstone/Brookes/Sacro (? confidentiality and privacy issues; person responsible not there but rather representative of the institution)
 - BUT Scotland willing to try....
- Other examples.....

Other examples

- **Sacro main providers**
 - Focus has tended to be
 - Youth Justice
 - Young offenders
- **Prison – Cornton Vale (women) and Polmont YOI**
 - Represents ad-hoc approaches – i.e. bullying and issues between prisoners
- **Schools**
 - ‘justice’ – preference for ‘approaches’ or ‘practice’

Research

- Some small scale evaluations have been undertaken (Dutton/Whyte (2006, 2008); Curran, MacQueen and Whyte (2007) Sacro with Viewpoint (2008); Kirkwood (2009, 2010))
- Sacro & other initiatives - bespoke practices evaluated
- No large scale evaluation has been undertaken (akin to Sherman/Strang or Shapland et al) – although some discussion in 2008
- Attempts to assess understanding, awareness and use of RJ nationally and across different agencies to assess any common understanding – two surveys undertaken (David)

A tale of two surveys

- 2 separate but thematically linked online surveys:
 - Joint Survey of SCCJR RJ Research Working Group, RJ Champions Group and Sacro informed by RPS and SCCJR research [June and July 2010].
 - CYCJ Survey drawing on learning from 2010 and opportunities post-February 2014 conference [February to April 2014).
- Why conduct a restorative justice survey?
 - To develop a more nuanced understanding in relation to RJ/RP practice, skills and knowledge across Scotland.

Focus of surveys

What did the surveys seek to establish?

- Knowledge and involvement in RJ/RP.
- Understanding of RJ/RP.
- Different practices.
- Views on outcomes of RJ/RP.
- What practices were within their understanding of the remit of RJ.
- Achievable outcomes.
- Supporting of different RJ approaches.

Strengths and weakness

Strengths:

- Reasonable sample sizes (2010 = 89/2014 = 82)
- Good geographical spread of respondents.
- Good coverage of voluntary sector practice.
- Detailed insights into the youth justice sector and the Scottish Prison Service (SPS).
- Keen interest and participation of academic community

Weaknesses:

- Limited reach into the adult criminal justice social work sector.
- Limited participation from Scottish Children's Reporter Administration (SCRA), Crown Office and Procurator Fiscal Service (COPFS) and/or Judiciary.
- Purposive sampling rather than more robust research method.

RJ Philosophy

According to one of the respondents to the 2010 survey:

“The term actually describes a philosophy, but tends to refer in Scotland to services and therefore means a range of options that deal with the harm caused by offending and anti social behaviour. Allowing all those involved and affected an opportunity to address the harm and have their needs met.”

Experience

2010

- 75% of respondents used RJ within their work with 62% using it routinely.

2014

- 47% of respondents had direct experience of facilitating face-to-face RJ conferences while 56% had experience of other forms of RJ practice (e.g. shuttle diplomacy, supporting letter writing, supporting reparation tasks etc.)

Timing and breadth of RJ

2010 and 2014

- RJ approaches usefully adopted at any stage of the conventional criminal justice process.
 - Alternative to prosecution.
 - Structured Deferred Sentence.
 - Court order (Community Payback Order)
 - During Prison Sentence.
 - When on License.
- Respondents generally more comfortable with RJ in response to lower tariff offences.
- Respondents open to use of RJ approaches in response to more serious offences with appropriate safeguards.

RJ outcomes

The **2010** respondents viewed the following outcomes as significant aims of RJ:

- For offenders to understand and accept responsibility for their behaviour (91%).
- For offenders to make amends in a meaningful way (83%).
- For both the offender and victim to have a more meaningful involvement in the Criminal Justice System (73%).
- For the offender to be helped to reintegrate back into society (71%).
- For the offender to be helped to desist from offending (70%).

For the victim and offender to be helped (60%)

RJ and serious crime

2010

- 13% of respondents would definitely support use of RJ approaches in response to serious crime.
- 56% may support use of RJ approaches in response to serious crime.

2014

- 65% of respondents supported the development of RJ approaches in response to serious crime.
- For those expressing doubts in relation to RJ in response to serious crime these tended to stem from:
 - Concerns about risk assessment.
 - Concerns about the intensity of pre-RJ preparation.
 - Concerns about the skills/expertise of facilitators.

What next?

- RJ register
- Mapping
- Training
- Leadership
- Pilot projects

Curious failure to implement adult RJ?

- funding
- seen by some Local Authorities as an 'add on' and 'extra expense'
- culture of punitiveness?
- capacity / training challenges



Curious failure to implement adult RJ?

- reluctance of some RJ providers to engage with victim services
- ‘Victim services’ - RJ not a priority
- competing stakeholders
- complacent belief in merits of Scottish practices
- no crisis . . . ?



Scotland: pathway to innovation?

2013 - 14:

- formation of RJ Forum
- winding up of Restorative Practices Scotland
- reflections arising from RISC (Restoration in Serious Crime) - Whyte and Kearney's parallel session
- RJ in serious crime conference

European Directive (2012) establishing minimum standards, support and protection of victims

Article 12: Right to safeguards in the context of rj services

2. Member states ***shall facilitate the referral of cases, as appropriate to rj services,*** including through the establishment of procedures or guidelines on the conditions for such referral.

[European Directive \(2012\) establishing minimum standards, support and protection of victims](#)

Scotland: pathway to innovation?

Victims and Witnesses Bill:

- RJ?!
- Stage 2 - autumn 2013
- RJ Forum intervention to establish *entitlement of victim* to request access to restorative practice
- Stage 3 - concession



Scotland: pathway to innovation?

2C 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 and a person who has, or is alleged to have, committed the offence to restorative justice services, and

(b) the provision of restorative justice services to those persons.

Towards a new approach to restorative justice in Scotland: a short history

Mary Munro and David Orr

"Restorative justice is a victim-sensitive response to criminal offending ..."
Final Report of Irish National Commission on RJ 2009

Restorative Justice (RJ) has been patchily available in Scotland for some time, but, with only a few exceptions, has largely been confined to harms caused by low level youth offending. Yet research and experience indicates that RJ resources are best directed where the harm is greatest, in serious cases (CYC, 2014). Last year two things happened that radically altered the prospects of developing a more effective restorative justice policy and practice in Scotland.

First, at a seminar organised by the Scottish Consortium of Crime and Criminal Justice (SCCCJ), the 'Ripple Effect' DVD was shown which movingly juxtaposed the experiences of both victims and offenders, and demanded a response to make connections with the needs of both (SW Scotland CJA, 2012). A working group was set up bringing together people and agencies with experience of and an interest in RJ, including the now disbanded Restorative Practices Scotland practitioner support group, and representatives of Victim Support Scotland, Sero, the Scottish Prison Service and academics.

Second, an early initiative of the group led to a shift in the law. The Victims and Witnesses Bill was making its way through the Scottish Parliament to bring procedures and practices within the ambit of Directive 2012/29/EU of the European Parliament and of the Council which established minimum standards on the rights, support and protection of victims of crime (Wheldon, 2013). Rather oddly, both the preceding Scottish consultation and the Bill as tabled, were silent in relation to RJ despite Article 1(1) making it clear that member states should ensure "that victims who choose to participate in restorative justice processes have access to safe and compliant restorative justice services" and in Article 1(2) that "member states shall facilitate the referral of cases, as appropriate to restorative justice services, including through the establishment of procedures or guidelines on the conditions for such referral" (EU Directive, 2012).

The new working group proposed that this should be remedied by the insertion of a new clause establishing a right for victims to request access to a restorative process with the person responsible for the crime or offence committed against them, and that this would be separate from any particular stage of the formal criminal justice process. The thinking behind this move was to make very clear what has been understood by practitioners as basic good practice; that involvement in RJ has to be voluntary. No-one should feel obliged or forced to take part; the victim needs to feel empowered rather than used.

In November the Justice Committee, at Stage 2 of the Bill, agreed an amendment which would have placed a duty on Ministers to make provision, by regulations, for the referral of victims and offenders or alleged offenders to restorative justice processes.

When the matter was debated in Parliament a compromise position was reached whereby the amendment was revised, removing the duty on Scottish ministers and replacing it with the ability for Scottish Ministers to issue guidance relating to the referral of individuals to and the provision of restorative justice services. This outcome was positive on several levels and Cabinet Secretary Kenny MacAskill's comments are noteworthy. He stated, "...agree that more consideration should be given to the potential benefits of restorative justice to victims" and "there are compelling reasons for adopting a more flexible approach than would be possible through a statutory scheme" not least the importance of protecting both persons harmed and persons responsible from being drawn into restorative processes to which one or both parties are not fully committed (SP 2013).

That is how matters stand at the time of writing: developments will be reported in the SJM.

CYC (2014) Presentations from 'Restorative Practice in the aftermath of serious crime' Conference bit.ly/7bZd0W

Scottish Parliament (2013) Victims and Witnesses (Scotland) Act Bill <http://www.parliament.scot/bills/2013/vw>

South West Scotland CJA (2012) 'The Ripple Effect' Toolkit <http://www.vwscja.org.uk/the-ripple-effect.html>

Wheldon, F. (2013) 'Victims' rights: the new 2012 Directive and its impact on victims in Scotland' SJM 1.2, p. 26.

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Scottish Justice Matters - March 2014

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Scotland: pathway to innovation?

RJ Forum strategy

- articulating and prioritising victims' benefits
- communication (#RJinScotland)
- collaboration
- mapping
- capacity building





The Scottish
Government

Referendum on Scottish Independence

Restorative Justice!

Place a cross in the box to indicate your preference

Y'up firrit?	
Aye	
Naw	
Mibbe's aye, mibbe's naw	
Who's askin'?	

Are you for it?

Yes

No

Perhaps yes, perhaps no

Who is making this enquiry?

