

# THE VIEWS OF SCHOOL PUPILS ON THE USE OF RESTORATIVE JUSTICE IN SCOTLAND

January 2022

►► **Nina Vaswani and Aaron Brown**



# TABLE OF CONTENTS

<b>02</b>	Introduction
<b>03</b>	Literature
<b>06</b>	Method
<b>09</b>	Perceptions of Harm
<b>14</b>	Acceptability of Restorative Justice
<b>18</b>	Key Messages
<b>21</b>	Conclusions
<b>22</b>	Acknowledgements
<b>22</b>	References
<b>24</b>	Appendices

# INTRODUCTION

Restorative Justice is defined as “a process of independent, facilitated contact, which supports constructive dialogue between a victim and a person who has harmed (whether this be an adult, a child, a young person or a representative of a corporate or other body) arising from an offence or alleged offence.” (Scottish Government, 2017: p6.)

The Scottish Government have committed to ensuring that Restorative Justice (RJ) services are widely available across Scotland by 2023, and have an action plan in place to deliver that commitment. A key outcome set out within the action plan is to ensure that there is strong public awareness and understanding of Restorative Justice in Scotland. Under actions designed to ensure progress towards this outcome, the Scottish Government includes engagement with stakeholders across Scotland, and with specific groups, in order to identify current opinions on Restorative Justice and use these to inform key messages. As part of this activity the Scottish Government commissioned the Children and Young People’s Centre for Justice to conduct research with children, young people and families to explore their awareness, understanding and attitudes to Restorative Justice in Scotland.

This report presents the findings of that research, including young people’s understandings of harm, the awareness and acceptability of Restorative Justice, and key messages for the Scottish Government about the implementation and delivery of Restorative Justice in Scotland. A report aimed at younger audiences is available [here](#).



J<sub>8</sub> U<sub>1</sub> S<sub>1</sub> T<sub>1</sub> I<sub>1</sub> C<sub>3</sub> E<sub>1</sub>

# LITERATURE



## **Restorative Justice: An Overview**

Restorative Justice has traditionally occupied a prominent role within many international youth justice systems and has routinely been used with children who come into conflict with the law – frequently replacing more formalised responses (Lynch, 2010). Often, the use of Restorative Justice within a youth justice context has featured prominently within youth diversionary practice (Shapland, 2014), where the ambition has been to ‘divert’ children away from the formal processes of the youth justice system – and successively its criminogenic impacts. Restorative Justice has also frequently been employed within schools in a variety of different formats (Morrison, 2007), within social work practice (Beck, Kropf & Leonard, 2010), within prisons (Van Ness, 2007) and within transitional contexts (Clamp, 2016).

Although a fixed definition has been difficult to establish, Restorative Justice is normally understood to possess a number of key principles or tenets. These include: the person harmed and the person who has caused harm (often along with family members, community members and professionally trained facilitators) engaging in dialogue or communication, within a safe and suitable setting; an acceptance from the person who has caused harm as to the offence they have caused, along with actions to mend or remedy the harm done; and an ambition to see the person who has caused harm successfully re-integrated within their wider community following on from the offence (Crawford & Burden, 2005; Johnstone, 2002).

## Perceived Benefits and Limitations of Restorative Justice Approaches

A number of perceived benefits have been put forward as deriving from the Restorative Justice approach. It has been suggested that Restorative Justice can: facilitate rehabilitation, through allowing the person who has caused harm to understand the impacts of their crimes, in turn motivating them to change their behaviour; offer a forum for the person who has caused harm to explain their actions and concurrently provide an opportunity for the person harmed to better understand their distinctive circumstances and the reasons or rationale (if one exists) for why the offence took place; enable the person harmed to participate in the decision-making process following on from the offence; allow for victim recompense; and allay wider community apprehension over offending behaviour (Johnstone & Van Ness, 2007). There have also been claims made as to the empirical effectiveness of Restorative Justice in reducing re-offending rates and increasing victim satisfaction (Latimer, Dowden & Muise, 2005; Strang, Sherman, Mayo-Wilson, Woods & Ariel, 2013) as well as its being fiscally expedient (Restorative Justice Council & Victim Support, 2010).

There have however, also been certain potential weaknesses or limitations identified within the Restorative Justice approach. Here, within existing international children's rights standards, there is certain recognition of Restorative Justice and its role for children in conflict with the law. Although the term 'Restorative Justice' is not specifically referred to within the CRC itself (Lynch, 2010), the most recent General Comment No.24 (UN CRC, 2019; see also UN CRC, 2007) on 'Children's Rights in the Child Justice System' does contain a number of explicit references to its workings - including in the introduction - where it is noted that the General Comment (GC):

“...reflects the developments that have occurred since 2007 as a result of the promulgation of international and regional standards, the Committee's jurisprudence, new knowledge about child and adolescent development, and evidence of effective practices, including those relating to Restorative Justice.” (UN CRC, 2019, para. 1).

Successively, within para. 74, the GC proceeds to highlight that: “A wide range of experience with the use and implementation of non-custodial measures, including Restorative Justice measures, exists” and suggests that States Parties should “benefit from this experience” when creating and applying their own child justice measures. Additionally, within the Council of Europe's (2010) 'Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice' in para. 81 it is emphasised that settlement of conflicts outwith courts, through diversion, mediation and Restorative Justice is a 'positive development' - as long as these measures do not obstruct children's access to justice. More recently, in 2018, the Council of Europe's 'Recommendation CM/Rec (2018)8 concerning Restorative Justice in criminal matters' was adopted by the Committee of Ministers, and in late 2021, the 'Venice Declaration on

the role of Restorative Justice in criminal matters' was presented by the Italian Chairmanship at The Conference of Ministers of Justice of the Council of Europe in Venice.

Nonetheless, Lynch (2010) through examination of many of these international children's rights standards has specifically emphasised the tension that exists in Restorative Justice, when the 'best interests of the child' (art. 3, UNCRC, 1989) are set alongside an approach that is victim focused, whilst also asserting that 'due process' rights require safeguarding within any such processes (see also, Wolthuis & Chapman, 2021 for a fuller analysis of the relationship between children's rights and Restorative Justice).

In respect of tensions in youth justice practices, Suzuki and Wood (2018) have drawn attention to the specific challenges that Restorative Justice processes hold for children when accounting for their developmental and cognitive capacities. For example, Suzuki and Wood emphasise the particular challenges children can encounter during Restorative Justice processes if their lack of verbal skills are construed or misinterpreted as "rudeness, disinterest, poor motivation and lack of willingness to engage" (Suzuki & Wood 2018: p.455; see also CYCJ, 2021). Relatedly, Cunneen and Goldson (2015; see also Haines, 1998) in their critical analysis of Restorative Justice have stressed the way in which children in conflict with the law often evade neat classifications as either 'offender' or 'victim'; with these children often having experienced both identities. They also suggest that Restorative Justice is often founded on an 'idealistic understanding' of the dynamics that traditionally exist between children engaged in the youth justice system and the deep-rooted structural divisions continuously evident within wider society (see Maglione, 2021 for a Scottish perspective). Moreover, it is suggested that Restorative Justice is particularly susceptible to succumbing to the dangers of 'unintended consequences' (see Thorpe, Smith, Green & Paley, 1980 for a historical example within youth justice), through enabling inadvertent net-widening and system expansion (e.g., simply augmenting the system, rather than offering a genuine 'alternative' form of justice).

From a quantitative standpoint, the efficacy of Restorative Justice in reducing re-offending rates has also been questioned in certain quarters (see for example, Weatherburn & MacAdam, 2013).

## **Scottish Restorative Justice**

In 2018, the Scottish Government, in its strategy 'Delivering for today, investing for tomorrow: the Government's programme for Scotland 2018-19' committed: "... to have Restorative Justice services widely available across Scotland by 2023 with the interests of victims at their heart." (Scottish Government, 2018: p.105). This was followed by a 'Restorative Justice Action Plan' (Scottish Government, 2019) providing more detail on how this vision would be achieved (see Maglione, 2021 for greater detail on Scottish Restorative Justice policy developments). Practically, children in conflict with the law in Scotland can potentially encounter Restorative Justice in a variety of ways, including via

police 'restorative warnings' and 'restorative warnings conferences', as well as by means of a requirement of a Community Payback Order (Maglione, 2021).

Given Scotland's commitment to incorporation of the UNCRC, there is however now a clear requirement (see art. 12 UNCRC 1989) to hear from children as part of any future vision for Restorative Justice in the country. Accordingly, this research has been commissioned by the Scottish Government to explore children's awareness, understanding, attitudes and experiences in relation to Restorative Justice and to gather key messages to share service design and delivery. This involvement of children was deemed essential in the development of a Restorative Justice approach in Scotland, as children, young people and families are often excluded from the design of justice services and yet find themselves in a justice system that does not meet their needs and rights as children (CYCJ, 2020). When people are not included, heard or given the opportunity to participate in justice, then this reduces their perceptions of procedural justice, fairness and legitimacy (CYCJ, 2020).

# METHOD

## **Ethics**

This research was given approval by the University of Strathclyde Ethics Committee, which provides scrutiny of research proposals and aims to protect the integrity, security and wellbeing of participants and researchers.

## **Participants**

In total 146 secondary school pupils participated in the research, from eight different classes in four schools across four different Local Authority areas. Year groups ranged from S2 to S6, with the bulk of pupils in S3 (96, 66%) where pupils are typically aged 13 or 14 at the start of the school year. Three schools were non-denominational and one was Roman Catholic. Schools were located in a mix of small and large towns across the central belt as well as more remote areas of Scotland. All schools were located in the most deprived 50% of neighbourhoods in Scotland according to the Scottish Index of Multiple Deprivation 2020, with one school in the most deprived 30% and another in the most deprived 15%.

While the research successfully engaged with schools, we were unable to engage with the other planned groups of children and families. The intention had been to engage with around 90 children and young people (60 from schools) and 10 parents or carers.

This was to include children who have been harmed, children who have harmed, and children who have experienced Restorative Justice, as well as children in school and residential settings to explore the application of restorative approaches in settings outwith justice. Unfortunately, by the time fieldwork was able to begin it was approaching the summer holiday period, and rising COVID-19 cases in the late summer and early autumn added pressure on to services which limited the capacity they had to facilitate recruitment and support young people's online engagement with the project. While a small number of parents participated, this number was too small to support analysis without compromising anonymity or reflect a range of views, and thus this feedback has unfortunately not been reported here.

However, while we were unable to engage with groups of children identified as having specific experiences of harm, care or justice, it is likely that the 146 pupils who took part had a variety of backgrounds and experiences.



## **Materials and Process**

A Teachers' Resource Pack was developed containing all lesson plans, instructions, consent forms, materials and space for teacher notes for three separate but connected lessons. These were emailed to all participating schools for use in class. Schools participating after the summer break also received an optional PowerPoint presentation for use in class, following feedback from schools participating in the summer term. All schools received exactly the same materials, but were able to select the most appropriate scenarios, or adjust the pacing, to suit their school timetable and pupil needs.

### **Lesson 1: Harm Scenarios (see Appendix A)**

Scenarios were designed to capture a range of different characteristics within the incidents (high harm/low harm; deliberate/accidental; harm categories (physical, emotional, financial etc.) and victim characteristics (identifiable victim etc.)

Teachers were asked to select two out of five harm scenario worksheets for pupils to complete in class, based upon which was deemed most suitable for age and stage. Each worksheet contained three scenarios and so pupils generally completed six scenarios, although some pupils did not finish the task and others completed more than two worksheets (up to 15 scenarios). In total, 554 harm scenarios were included in the research.

## Lesson 2: Restorative Scenarios (see Appendix B)

Pupils watched a short animation explaining what Restorative Justice is. Pupils then completed worksheets that contained Restorative Justice scenarios, cutting out each scenario and attaching it to a sheet of paper marked 'yes' if they would use Restorative Justice in this situation, and 'no' if they would not. Pupils were asked to provide a few sentences explaining their decision. Teachers organised the activity to best suit the needs and size of their class, and so some pupils completed the task individually and others in pairs or small groups. In total, 538 Restorative Justice scenarios were analysed for the research.

## Lesson 3: Key Messages

Pupils were asked to debate the pros and cons of Restorative Justice, and to identify key messages that they would wish to share with the Scottish Government. Teachers made anonymous notes on the key conclusions from the debate, including points of agreement, difference and clarity.

## Analysis

Decision-making regarding harm scenarios and Restorative Justice scenarios was initially quantified in Excel, using a binary code of yes/no. Pupils' free-text justifications for their decisions were analysed within NVivo 2020. Both researchers independently coded the responses thematically, scenario by scenario. First-round coding was then compared, and any differences reviewed, debated and adjusted. There was a high level of congruency between both sets of coding. No differences in the high-level thematic codes were found, and very few differences in sub-codes, with the researchers reaching full agreement on the final coding structure within scenarios. A final analysis was conducted across scenarios, generating the overarching themes that are presented here.



# FINDINGS: PERCEPTIONS OF HARM

As a rule, pupils identified that harm had occurred in each of the scenarios, regardless of its characteristics, and there was generally a high level of agreement between responses, as shown in Table 1.

Table 1: The occurrence of harm, by scenario

Scenario (see Appendix A)	Yes harm	yes %	No harm	no %
Steal a phone at knifepoint	51	100%	0	0%
Share a nude photo without consent	48	100%	0	0%
Make racist comments about someone	32	100%	0	0%
Deliberately trip someone up and graze their knee	22	100%	0	0%
Steal a phone that is lying on a bench	60	98.4%	1	1.6%
Show a nude photo without consent	49	98.0%	1	2.0%
Steal a bar of chocolate from a small shop	17	89.5%	2	10.5%
Steal £500 electronics from Tesco	53	88.3%	7	11.7%
Accidentally trip someone and break their arm	28	87.5%	4	12.5%
Accidentally trip someone and graze their knee	18	81.8%	4	18.2%
Quietly call someone a mean name	26	81.3%	6	18.8%
Playground equipment is smashed up	17	81.0%	4	19.0%
Someone falls and cuts their knee	17	77.3%	5	22.7%
Steal a bar of chocolate from Tesco	43	71.7%	17	28.3%
Playground equipment is graffitied	15	68.2%	7	31.8%

# What do young people think about harm?

Responses were analysed within and across scenarios to identify some common themes on pupils' conceptualisations of harm.

## Harm is often interpersonal

When harm occurred between people, with a clearly identifiable victim, it was more likely to be recognised as harm, regardless of the intent behind the incident. Pupils recognised a range of harm that had been caused to the 'person harmed', including physical, emotional and financial harm. Physical harm was easily recognised.

"Zoe has been physically harmed. It was intentional and inflicted by Abbie" (HS3)

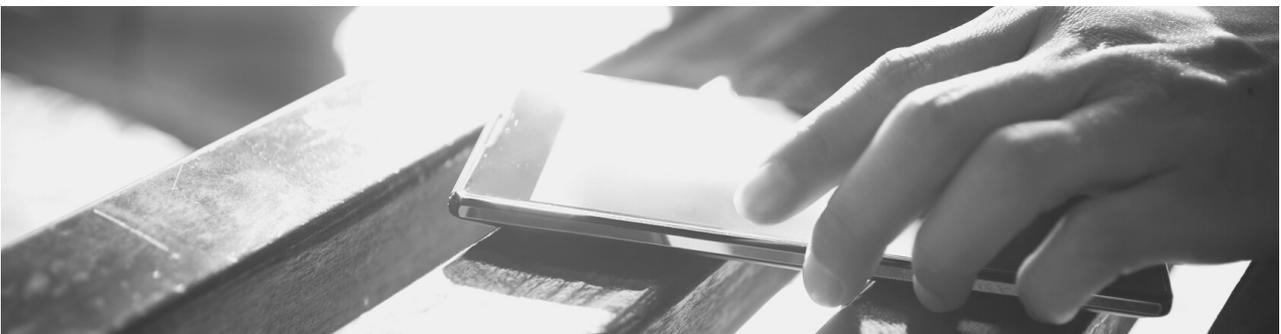
"Aisha is in physical pain even though Dan didn't mean to hurt her" (HS2)

Emotional or psychological harm was equally recognised as harm.

"Harm is done on the inside" (HS5)

"No physical harm was caused but verbal abuse can be just as bad/hurtful" (HS5)

Harm to people's belongings was also seen as causing both financial and emotional harm to the individual, and young people placed high value on their mobile phones in particular (both monetary and otherwise). The emotional harm from mobile phone theft often related to the loss of sentimental items such as photos, or confidential data such as bank account information. Fear and anxiety was also caused by not being able to communicate and connect with friends and family, especially pertinent when violence had been used to obtain the phone.



"It's bad because that's that persons property that another person shouldn't be stealing, and it's a lot of money to buy a new one and they would have a lot of memories like photos etc" (HS12)

"A lot of damage to the person who just got their phone stole. They might have kids who need to contact them. They might not have the money for another one" (HS12)

While harm was more consistently identified when it was interpersonal, this did not mean that pupils did not recognise harm in other contexts. Scenarios that, on the surface might be described by some as ‘victimless’ i.e. where there was not an immediately identifiable victim, or where there was a corporate victim, created a more variable response, although most pupils still agreed that harm had been caused. Although the presence (or lack of) a victim was a key deciding factor in whether harm had occurred, two-thirds of the pupils recognised that significant harm could still have occurred in a minor scenario without a direct interpersonal victim (graffiti in a playground).

“No harm to anyone just vandalism” (HS7)

“Not harmful nobody was hurt mentally or physically” (HS10)

“No harm has been caused unless there are slurs that have been written” (HS7)



### **Perceived levels of harm are significant**

A key deciding factor in whether harm had been caused was the impact that the behaviour had on the person harmed. Thus when an accident in the playground led to a broken arm, this was more likely to be described as harmful than a similar incident where the outcome was a grazed knee. Or while a corporate victim was seen as being able to brush off the theft of a chocolate bar, the loss of £500 of electronic equipment was more likely to be rated as causing harm both to the organisation and to employees more widely

“No harm has been caused because it is only one chocolate bar compared to a multi million pound company” (HS10)

“Tesco has been harmed because a lot of money has been stolen” (HS11)

“People and workers who were there could be affected and workers could get fired” (HS11)

## Harm Leaves a Lasting Impact

Pupils distinguished between short-term and longer-term impacts, with those incidents perceived to cause shame, embarrassment and fear associated with longer-term harm or trauma and more likely to be described as harmful. These incidents were often deemed to cause additional reputational damage to the person harmed.

“Harm caused because girlfriend trusted him not to show anyone and only gave him consent not his friend and his girlfriend could develop anxiety” (HS14)

“This would emotional harm the person being threatened because they would always be scared and shacken [sic] up. They probably never recover” (HS13)

“It can damage their reputation” (HS15)

## Harm affects more than the immediate victim

While the victim was always the most prominent consideration in harm, some pupils, especially those who were older, appeared to be more likely to think about harm in wider terms such as potential harm to the person who had caused harm, and harm to families, friends, bystanders and communities. Beyond the victim, harm to the person causing harm was most commonly identified as either harm from the consequences of their behaviour (punishment or criminalisation), as well as harm to their identity, often in the form of shame, guilt, future labelling and moral injury.

“The shop's money has been harmed and Lena's will to be good has been harmed.” (HS9)

“Ben feels guilty for hurting Owen and Owen is in pain.” (HS4)

“This jeopardises Caleb's future it could go on his criminal record which makes getting a job difficult.” (HS10)



Other harm included stress and worry to the families of both parties or any witnesses (bystanders) to the crime. There was also recognition that the wider community could also be harmed via increased fear and anxiety about high crime levels and practically through the loss of an important community resource. Some scenarios, such as the sharing of nudes, were understood as potentially implicating peers or others in criminal behaviour and perceived to be additionally harmful as a result.

"Witnesses traumatised by witnessing knife crime" (HS13)

"The council / school who owns it are harmed and whoever wants to use it" (HS8)

"The people in the chat have been harmed, they've had unsolicited nudes" (HS15)



### **There must be a reason behind the behaviour**

It was very important to pupils that there was a reason for the behaviour. There was at times a level of compassion and understanding from the pupils as to the circumstances that were behind the harmful behaviours, which they often perceived as mitigating or negating the harm caused. However, where incidents were seen as 'mindless' or as the level of harm increased, this tolerance and understanding was much diminished, and on occasion turned to anger or disgust.

"No harm caused because the person might be hungry and doesn't have any money" (HS10)

"£500 is a lot of money and you don't need that much electronics. It's different with food" (HS11)

"Abdul deserves jail time, he's disgusting..." (HS15)

This desire to understand the reason behind behaviour was a important feature of the pupils' decision-making about the suitability and feasibility of Restorative Justice approaches, to which this paper will now turn.

# FINDINGS: ACCEPTABILITY OF RJ

Table 2 highlights the proportion of scenarios that the pupils believed were appropriate for Restorative Justice. Generally, the pupils recommended Restorative Justice for more serious incidents and declined to use Restorative Justice when there was either no direct victim, where the incident was very minor, or where formal intervention by an external person (teacher, Restorative Justice professional) was not necessary. However, while it is not entirely clear from the data, it is likely that Restorative Justice was seen as an appropriate response alongside other disposals for more serious cases.

Table 2: Decisions on the use of RJ, by scenario

Scenario (see Appendix B)	Yes RJ	yes %	No RJ	no %
Man is stabbed and dies	52	80.0%	13	20.0%
Girl smashes window (residential unit)	48	75.0%	16	25.0%
Girl is bullied (pushed and hit)	14	60.9%	9	39.1%
Girl smashes window (family home)	37	56.1%	29	43.9%
Friends physically fight (one ends up in hospital)	14	53.8%	12	46.2%
Boy is caught in possession of small amount of drugs	28	45.2%	34	54.8%
A Primary School is graffitied	10	41.7%	2	58.3%
Girl is caught speeding outside a school	22	36.1%	39	63.9%
Girls is bullied (ignored and excluded)	9	34.6%	17	65.4%
A Tesco store is graffitied	22	32.4%	46	67.6%
Friends physically fight (no injuries)	8	30.8%	18	69.2%
Accidental damage to a sibling's jacket	3	11.1%	24	88.9%

# What factors do young people use in decision-making?

The main cross-cutting themes arising from the Restorative Scenarios exercise are outlined below.

## **Restorative Justice is for persons harmed as well as those causing harm**

Pupils made their decisions on whether Restorative Justice was suitable or not because of the potential impact (positive or negative) to the person or persons harmed, but of almost equal importance was the impact that Restorative Justice might have on the person who had caused harm. For example, in the scenario where Mark stabs a man who later dies (RJ10), reasons for assessing the situation as suitable for Restorative Justice mainly centred around the victims' perspective (a chance for closure, to understand why it happened) but also frequently brought benefits for Mark into the equation (a chance to explain; to apologise; to learn from mistakes etc).

“Yes as the man's family can get closure and their questions answered” (RJ10)

“We said yes because the family may want an explanation and the man who had the knife may want to explain himself.” (RJ10)

To a lesser extent, the decision was based on characteristics relating to the offence (or behaviour). There was variation in which characteristics made a scenario suitable for Restorative Justice, with reasons for not choosing Restorative Justice most likely to be because the situation was very minor, but also because the incident had been very serious with substantial impact on other people (directly or indirectly).

“It [graffiti] is not too serious and shouldn't need to be put in RJ as it is not bad” (RJ7)

“[No] because Mike murders someone which is a serious crime and should go to court” (RJ10)



## **Restorative Justice is most suitable when formal support or intervention is needed.**

Related to judgements about seriousness, decisions were also based upon whether the situation was easy to resolve, meaning that there were obvious solutions and restorative actions that could be agreed between the parties involved. This tended to incorporate more minor episodes of harm, where the persons harmed and the person doing the harm had an existing relationship. Situations that were more complex, or that might require external or formal intervention to reach a resolution were more likely to be assessed as requiring Restorative Justice.

“[No] because it's only a jacket it can easily be resolved.” (RJ1)

“[No] her parents issue to deal with, not Restorative Justice” (RJ8)

However, at times there was a recognition that Restorative Justice had a potential healing role within existing interpersonal relationships.

“[Yes] Since they are good friends if they had a long talk and tried to fix their friendship it would be beneficial for them not to be enemies.” (RJ2)



## **Restorative Justice is a responsibility and a privilege**

In situations where serious harm had been caused, such as murder, Restorative Justice was often seen as a responsibility, something that was owed to the victims of the behaviour. On the flip side of this, there was also the viewpoint that Restorative Justice was a privilege that must be earned and that was not always deserved.

“You have to talk about this, no matter what. You stabbed someone” (RJ10)

“This needs Restorative Justice because Jakub and Ryan need to talk to each other, and Jakub needs to apologise for causing serious injury.” (RJ3)

“I don't think Mike deserves Restorative Justice because he killed someone.” (RJ10)

## **Restorative Justice is about accessing help and support**

A common reason for opting to use Restorative Justice was that it was seen as a mechanism by which the person who had caused harm could access help and support.

“Jack should get Restorative Justice because he may have an addiction he could get help with” (RJ11)

“She should get Restorative Justice because if she has anger issues then she can get support” (RJ8)

## **Restorative Justice is about teaching and understanding**

Another important use of Restorative Justice was that it could provide an important learning opportunity, in that the person harmed, or the people who care for and support the person who had caused harm could gain a better understanding of the motivation and rationale behind the behaviour. The logical follow-on from this was that where pupils perceived an incident to be mindless or without reason, then Restorative Justice was seen as having little utility.

“No because there is no reason for Sophie speeding” (RJ12)

“No because Jack does not have a reason for doing the crime and it is very serious” (RJ11)

“[Yes] If they had a talk they would see that she had a reason for it and they could change” (RJ9)

Similarly, Restorative Justice allowed the person who had caused harm to understand what it was that they had done wrong. The learning often came from insights into the perspective of the person who had been harmed, but also from being told what they had done wrong. In this way, on occasion, Restorative Justice was seen as a punishment for causing harm which could be used to shame the individual.

“Sarah should talk with her carers about this so that she learns not to do it again” (RJ9)

“[Sophie should] speak to victims of reckless driving and understand what could have happened” (RJ12)

“In this case you want Harris to feel bad and apologise to the shop owners” (RJ7)

# FINDINGS: KEY MESSAGES

## Balancing the pros and cons of Restorative Justice

As evidenced by the complexity in decision-making, pupils felt that there were many pros and cons when it came to Restorative Justice. They recognised that there were inherent risks in a restorative approach, and that it could make the situation worse for the person harmed, especially if it was triggering or there was no remorse. Pupils also recognised risks to the person who had caused harm, especially if the person harmed remained angry.

“Could give trauma to the victim and bring back bad memories”

“It could make the situation worse. Cause it to heat up”

Pupils felt that another drawback to Restorative Justice was that it required both parties to be willing and able to participate, or that if it proceeded it might still not lead to a resolution.

“If the perpetrator doesn't want to engage it can't happen”

“One side might not be willing to resolve.”

“Questions may not be answered”



There were also concerns that a Restorative Justice intervention would feel awkward or uncomfortable. Importantly, one teacher noted that all pupils in her class felt that they personally would find it too embarrassing or scary to participate, although they could identify value for others in doing so.

“It can feel forced”

A key benefit of using Restorative Justice was seen as offering the person harmed the potential for some form of closure and an understanding of why the situation had occurred.

“Victims could give their forgiveness to get past what happened.”

“Gives the victims closure”

There was also perceived merit in hearing both perspectives that led to a more empathic understanding that could also allow the person who had caused harm some closure too. If managed appropriately, Restorative Justice could offer the person who had harmed the chance to apologise in a non-shaming manner.

“You are able to hear both sides of the story”

“Lets the perpetrator feel less guilty (if the perpetrator didn't mean it)”

In this way, Restorative Justice was also seen as providing accountability for the person who had caused harm, and providing a catalyst for desistance and change.

“Might cause a criminal to rethink their life and stop committing crime”

“The criminal may change their ways after seeing the damage they have caused”



## Solutions

Pupils felt that it was essential to ensure both parties, but especially the persons harmed, are willing to participate. The timing of restorative interventions was seen as crucial, and should only take place after the situation has cooled down. Participants need sufficient information and preparation in advance, in order to be able to make an informed choice about whether to take part, and to be able to have a choice in the shape and delivery of the restorative intervention.

“Make sure both parties are willing, make sure the victim knows they have a choice”

“Make sure there is plenty of choices”

It was recognised that both the person harmed and the person who caused harm would need support from trusted individuals throughout the process.

“Young people may need support from parent/guardian”

“Advocates for both sides to help support everyone on board”



# CONCLUSIONS

Pupils demonstrated a nuanced understanding of the complexity of harm within a range of settings. Harm was viewed as not only affecting the person harmed, but rippled out to the person causing the harm, bystanders, friends and family. This breadth of harm was particularly evident within justice settings, where the level of harm was likely to be more significant for persons harmed, but the harmful consequences also increased for the person causing harm.

Pupils viewed Restorative Justice as an important aspect of justice approaches to harm and criminal offences. The most serious offences, those that caused the most harm, were the most likely to be assessed as suitable for Restorative Justice, although it is not entirely clear whether this was intended to be the sole justice disposal, or to be used in conjunction with other sentencing options. When serious harm had occurred Restorative Justice was viewed as a responsibility towards the person harmed, and the benefits were often couched in terms of benefits for the person harmed, such as understanding what happened, or gaining closure. However, Restorative Justice was also seen as having benefits for the person who had caused harm too, such as the chance to apologise or to learn what they had done wrong. A main function of Restorative Justice was to understand the reasons behind behaviour, and to act as an avenue to support for the underlying causes of the behaviour.

Restorative Justice was also seen as acceptable in less serious incidents of harm, but only where formal and external intervention was required. The message that there is no need to formalise a process that can be resolved informally is an important one, especially considering the risks of net-widening, or up-tariffing.

While pupils recognised the merits of Restorative Justice, they also perceived the approach to come with considerable risks to all sides and stressed the importance of preparation and support. There was a genuine level of apprehension and reluctance to participate in Restorative Justice themselves. Any planned roll-out of Restorative Justice approaches for children should also involve them in the design of information, communications, processes and approaches to ensure that the Restorative Justice is child-friendly and the risk of further harm is minimised

# ACKNOWLEDGEMENTS

CYCJ would like to thank the Scottish Government for funding this research. We would also like to extend sincere thanks to the teachers, pupils and schools who took part in this research. Without them this project would not have been possible.

# REFERENCES

Beck, E., Kropf, N. P., & Leonard, P. B. (Eds, 2010). *Social Work and Restorative Justice: Skills for Dialogue, Peacemaking, and Reconciliation*. New York: Oxford University Press.

Clamp, K. (Ed, 2016) *Restorative Justice in Transitional Settings*. Oxon and New York: Routledge.

Council of Europe's (2010) *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*. Retrieved from: <https://rm.coe.int/16804b2cf3>

Crawford, A. & Burden, T. (2005). *Integrating victims in restorative youth justice*. Bristol: Policy Press.

Cunneen, C. & Goldson, B. (2015). 'Restorative Justice? A Critical Analysis', In Goldson, B. & J. Muncie (Eds.) *Youth, Crime and Justice* (2nd ed.) London: Sage.

CYCJ (2021). Section 9: *Speech, Language and Communication Needs in Youth Justice*. Retrieved from: <https://www.cycj.org.uk/resource/youth-justice-in-scotland/>

Haines, K. (1998). 'Some Principled Objections to a Restorative Justice Approach to Working with Juvenile Offenders'. In L. Walgrave (Ed.) *Restorative Justice for Juveniles, Potentialities, Risks and Problems for Research*. Leuven: Leuven University Press.

Johnstone, G. (2002). *Restorative Justice: Ideas, Values, Debates*. Cullompton: Willan Publishing.

Johnstone, G. & Van Ness, D. W. (2007). 'The Meaning of Restorative Justice' In G. Johnstone & D. W. Van Ness (Eds.) *Handbook of Restorative Justice*. Cullompton: Willan Publishing.

Latimer, J., Dowden, C., & Muise, D. (2005). The Effectiveness of Restorative Justice Practices: A Meta Analysis. *The Prison Journal*, 85, 2, pp.127–144.

Lynch, N. (2010). Restorative Justice Through a Children's Rights Lens. *International Journal of Children's Rights*, 18, pp.161–183.

Maglione, G. (2021). Restorative Justice, Crime Victims and Penal Welfarism. Mapping and Contextualising Restorative Justice Policy in Scotland. *Social & Legal Studies*, 30, 5, pp.745–767.

Morrison, B. (2007). 'Schools and Restorative Justice' In G. Johnstone & D.W. Van Ness (Eds.) *Handbook of Restorative Justice*. Cullompton: Willan Publishing.

Restorative Justice Council & Victim Support (2010). *Victims' Justice: What victims and witnesses really want from sentencing*. Retrieved from: <https://restorativejustice.org.uk/resources/victims-justice>

Scottish Government. (2017). *Delivery of Restorative Justice in Scotland: guidance*. Retrieved from: <https://www.gov.scot/publications/guidance-delivery-restorative-justice-scotland/>

Scottish Government (2018). *Delivering for today, investing for tomorrow: the Government's programme for Scotland 2018–2019*, Retrieved from: <https://www.gov.scot/publications/delivering-today-investing-tomorrow-governments-programme-scotland-2018-19/documents/>

Scottish Government (2019). *Restorative Justice: action plan*. Retrieved from: <https://www.gov.scot/publications/restorative-justice-action-plan/documents/>

Shapland, J. (2014). Implications of Growth: challenges for Restorative Justice. *International Review of Victimology*, 20,1, pp. 111–127.

Strang, H., Sherman, L. W., Mayo-Wilson, E., Woods, D., & B. Ariel (2013). Restorative Justice Conferencing (Restorative JusticeC) Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction. A Systematic Review. *Campbell Systematic Reviews*, 9,1, pp.1–59.

Suzuki, M. & Wood, W, R. (2018). Is Restorative Justice Conferencing Appropriate for Youth Offenders? *Criminology & Criminal Justice*. 18, 4, pp.450–467.

Thorpe, D, H., Smith, D., Green, C.J., & J.H. Paley (1980). *OUT OF CARE: The Community Support of Juvenile Offenders*. London: George Allen & Unwin.

UN CRC (2007). General comment No. 10 (2007). Children's rights in juvenile justice. *CRC/C/GC/10*. Geneva: UN.

UN CRC (2019). General comment No. 24 (2019) on children's rights in the child justice system. CRC/C/GC/24. Geneva: UN.

Van Ness, D, W. (2007). 'Prisons and Restorative Justice' In G. Johnstone and D.W. Van Ness (Eds.) Handbook of Restorative Justice. Cullompton: Willan Publishing.

Weatherburn, D. & Macadam, M. (2013). A review of Restorative Justice responses to offending. Evidence Base, 1, pp.1-2

Wolthuis, A, & Chapman, T. (2021). Restorative Justice from a children's rights perspective. The Hague: Eleven.

# APPENDIX A

## Harm Scenarios

Code	Scenario
HS1	Sophie falls in the school playground and cuts her knee
HS2	Dan accidentally trips Aisha in the playground and she cuts her knee
HS3	Abbie deliberately trips Zoe in the playground and Zoe hurts her knee
HS4	Ben accidentally trips Owen in the playground and he breaks his arm
HS5	Leo quietly calls Daisy a mean name on the school bus
HS6	Mark loudly makes racist comments to Amina on the school bus
HS7	The local playground equipment has been <u>graffitied</u>
HS8	The local playground equipment has been smashed up
HS9	Lena steals a bar of chocolate from her local corner shop
HS10	Caleb steals a bar of chocolate from Tesco
HS11	<u>Ashmi</u> steals £500 worth of electronics from Tesco
HS12	Beth steals a phone off a person sitting on a bench when they aren't looking
HS13	Olivia threatens a person with a knife and steals their phone
HS14	Alex shows his friends a nude picture of his girlfriend that he has on his phone
HS15	Abdul shares a nude picture of his girlfriend with his pals on WhatsApp

# APPENDIX B

## Restorative Scenarios

Code	Scenario
RJ1	Tia borrows her sister's jacket without asking. Someone bumps in to Tia and she spills her drink down the jacket, staining it. Tia tries to wash it off but it just makes it worse. Tia's sister is really angry when she finds out and starts yelling at Tia.
RJ2	Jakub and Ryan are normally good friends, but they've recently fallen out. One day they have a fight in the playground. Jakub pushes Ryan. They both end up with a few bruises but neither is seriously hurt
RJ3	Jakub and Ryan are normally good friends, but they've recently fallen out. One day they have a fight in the playground. Jakub pushes Ryan, who falls over and cracks his head on the floor. Ryan has to spend a week in hospital but is OK in the end.
RJ4	Ying is being bullied by some older girls at school. They call her names and make fun of her, and recently have been encouraging other children to ignore her.
RJ5	Ying is being bullied by some older girls at school. They call her names and make fun of her. Recently they stole her phone, and have been encouraging other children to push and hit her.
RJ6	Harris <u>graffitis</u> the playground of his local primary school
RJ7	Harris <u>graffitis</u> the wall of his local Tesco
RJ8	Sarah is upset after an argument with her parents and she smashes a window at home
RJ9	Sarah lives in a children's residential home. She is upset after an argument with her carers and smashes a window
RJ10	Mike stabs man in a fight. The man, who was married with two children, later dies.
RJ11	Jack is caught in possession of £40 of illegal drugs
RJ12	Sophie has recently passed her driving test. She is caught speeding at 50mph in a 20 mph zone outside the local primary school