

Restorative Justice Services in the
Children's Hearings System



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The Celtic knot on the front cover represents the intertwining of the ancient Celtic peoples. It is a symbol of peace with one's self and in one's relationships with others.

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Introduction

For a number of years restorative justice services have worked with young people referred to the Children's Reporter because of offending behaviour. These services have been recognised as a valuable means of addressing offending by young people so referred, enabling young people to address the harm caused by their offending.

Objective 4 of the National Standards for Scotland's Youth Justice Services states that "every victim of a young offender referred to the reporter on offence grounds will have the opportunity to engage in a [restorative justice] scheme, where appropriate."

The current developments associated with anti-social behaviour policy recognise the importance of restorative justice services as one of a variety of approaches to prevent and respond to anti-social behaviour by young people.

At this time there are no national guidelines regarding restorative justice services in the youth justice system. This state of affairs is no longer appropriate given the increasing importance of the services in relation to youth offending and due to the increasing number and variety of services that exist across Scotland. Scotland's Children's Hearings System is a unique response to youth offending and as such its relationship with restorative services needs to be set out and developed.

The following documents are part of a suite of documents that will act as a definitive guide to the principles and best practice for restorative justice services in the Children's Hearings System. They are the product of work undertaken by a group comprising representatives from the Scottish Children's Reporter Administration, practitioners from restorative justice services across Scotland, a restorative justice consultant and the Scottish Executive. The Group consulted with youth justice interests during the formulation of the documents.

The documents produced so far by the group include:

1. Statement of Principles on the Use of Restorative Justice Processes in the Children's Hearings System
2. Criteria for Referrals to Restorative Justice Services within the Children's Hearings System
3. Protocol for Referrals to Restorative Justice Services within the Children's Hearings System

A further document under development by the group to be added to this suite of documents relates to best practice guidance for restorative justice services.

The documents relate to and compliment the Scottish Executive's Guidelines for the Police on Police Restorative Warnings in Scotland published in June 2004 that cover the restorative warnings directed by the police in response to minor offending that does not require a referral of the young person to the Children's Reporter.

It is intended that the documents contained here and further documents produced will provide a resource for those involved in the Children's Hearings System and will ensure that services available for children who offend are delivered with the necessary consistency and quality.

The Children's Hearings System has a critical role to play in addressing youth offending and restorative justice services have an important place in that, whether as the outcome of referral or as part of a range of responses to the young person's offending. These documents are a vital contribution to that work.

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1. Statement of Principles on the Use of Restorative Justice Processes in the Children's Hearings System

Preamble

1. There has been a significant growth of restorative justice services across Scotland as a consequence of Scottish Executive's strategies and policies to prevent, address and reduce youth offending.
2. *The Children (Scotland) Act 1995* requires that the following central principles be considered in reaching decisions: (a) the welfare of the child is the paramount consideration; (b) no compulsory intervention should be made unless it would be better for the child than no compulsory intervention at all; and that (c) children should be given an opportunity to express a view and, if they do so, consideration should be given to the child's views.
3. The fundamental difference between the children's hearings system and other youth justice systems is that by virtue of being referred to the Principal Reporter a child charged with an offence is diverted from prosecution in a criminal process and instead enters a non-retributive civil procedure which aims to meet the child's educational and developmental needs.
4. With respect to the three principles above, restorative justice processes are a valuable resource for children's reporters and hearings insofar as they can meet a range of needs of children who offend: for example, the need (a) to have access to educative experiences that will enable them to reduce their offending and develop as mature and responsible citizens; and the need (b) to be given the opportunity to restore their moral status and reputation in the eyes of their family, the person harmed, their peers, and the wider community by voluntarily addressing the practical and/or symbolic (i.e. moral and relational) harm they have done.
5. Whilst restorative justice can function effectively within a context in which the welfare of the child is the 'paramount consideration', this does not imply that the interests and needs of those who have been harmed by the child's offence can be neglected, disregarded or diminished; restorative processes, by definition, seek an outcome that is in the best interests of both parties.¹
6. *Scotland's Action Programme to Reduce Youth Crime (2002)* indicates that the confidence of victims in Scotland's youth justice system needs to be restored, and that restorative justice approaches can "go some way" toward meeting this objective.
7. The *National Standards for Scotland's Youth Justice Services (2002)* states that "Every victim of a young offender referred to the reporter on offence grounds will have the opportunity to engage in a [restorative justice] scheme, where appropriate".

¹ "We believe that sensitively managed restorative justice approaches can be in the best interests of many of the children and young people who offend and their victims", *Scotland's Action Programme to Reduce Youth Crime (2002)*.

8. Restorative justice is a response to offending that respects the dignity and equality of each person, builds understanding, and promotes social harmony through the healing of persons harmed, persons responsible and communities.
9. Those harmed by or responsible for an offence may not wish to take part in such a process.
10. Restorative justice is primarily designed to address an individual offence or episode, rather than patterns of offending behaviour; although it can have the effect of reducing recidivism rates,² the reason for any referral and the focus of any restorative process will be a specific offence or episode.
11. This approach enables both those affected by and those responsible for an offence to share openly their feelings and experiences in a safe and respectful way.
12. This approach provides an opportunity for persons harmed to obtain practical and/or symbolic reparation, feel safer and seek closure; allows persons responsible to gain insight into the causes and effects of their behaviour and to take responsibility in a meaningful way; and enables all those involved to understand the underlying causes of youth offending, to promote community well-being and to prevent re-offending.

I. Use of terms

13. “Person harmed” means a person who has been directly harmed or affected by an offence (i.e. ‘victim’).
14. “Person responsible” means a person who bears some or all of the responsibility for the offence in question (i.e. ‘offender’).
15. “Support Persons” means whoever the person harmed or person responsible have agreed or invited to support them in a restorative process; and may include parents or carers, siblings, extended family members, friends, or professionals working with either party (social workers, counselors, health worker, and so on).
16. “Other Affected Persons” means any professional or community member who has been invited to participate in a restorative justice conference, whose presence is accepted by all parties, and who are able to represent the views, wishes or interests of the agency they represent or the wider community.
17. “Observers” means anyone who attends a restorative process without participating, and whose presence is accepted beforehand by all participants.
18. “Parties” means the person harmed, the person responsible, support persons and, where relevant, other affected persons.
19. “Facilitator” means a person whose role is to facilitate, in a fair and impartial manner, the participation of the parties in a restorative process.

² See for example, Sherman, Strang and Woods: *Recidivism Patterns In The Canberra Reintegrative Shaming Experiments (RISE)* Centre for Restorative Justice, Research School of Social Sciences, Australian National University, November 2000; and John Braithwaite “Does Restorative Justice Work?”, in *Restorative Justice and Responsive Regulation* (OUP, 2002): Ch. 3.

20. “Restorative process” means any process in which relevant parties participate together actively in the resolution of matters arising from the offence, generally with the help of a facilitator. Each process aims to enable the participants to explore, in a safe and structured way, (1) *the facts* – what happened and why, (2) *the consequences* – how people were affected, and (3) *the future* – what agreements or Action Plan needs to be made to meet the needs of all parties, including the central needs of addressing the harm and preventing re-offending. To ensure the safety and effectiveness of the process, no meeting is held without the facilitator preparing all parties in advance. Restorative processes in Scotland currently include the following:
- (a) “Restorative Justice Conferences” are normally led by two facilitators and attended by the person(s) harmed, the person(s) responsible, their respective support persons, other affected persons, where appropriate, and observers, where agreed.
 - (b) “Face-to-Face Meetings” can be led by either one or two facilitators and are attended only the person(s) harmed, the person(s) responsible and observers, where agreed.
 - (c) “Shuttle Mediation” involves a facilitator acting as a go-between for the person(s) harmed and the person(s) responsible.
 - (d) “Victim awareness” involves only the person responsible in one-to-one sessions with a facilitator; but it can also involve a meeting with a carefully briefed ‘surrogate’ person harmed using the format of a conference or face-to-face meeting.
21. “Restorative outcome” means (a) the emotional, cognitive and relational benefits felt by the parties during and following a restorative process, such as feelings of safety, increased self-esteem, the letting go of anger, increased empathy, and so on; it also means (b) an agreement or Action Plan reached as a result of a restorative process, which may include tasks and programmes aimed at meeting the individual and collective needs and responsibilities of the parties. This may include tasks that seek to address, either practically or symbolically, loss or damage experienced by the person harmed, and programmes for the person responsible that seek to address the underlying causes of the offence (such as anger management, substance misuse, peer pressure, and so on).

II. Use of restorative justice processes

22. The use of restorative justice processes in the Children’s Hearings system is subject to these principles and the referral protocols outlined in the “Protocol For Referrals To Restorative Justice Services Within The Children’s Hearings system. (2004)”
23. Restorative processes should be used only where, following a referral to the children’s reporter, he or she considers that there is sufficient evidence to prove that the person responsible committed an offence. The process should not proceed unless the person charged accepts some or all responsibility for the offence as described by the children’s reporter. Participation of the person responsible shall not be used as evidence of acceptance of the offence in either a subsequent children’s hearing or a court.

24. The person harmed and the person responsible should normally agree on the basic facts of a case as the basis for their participation in a restorative process.
25. Restorative processes must be voluntary for all parties at every stage: thus no party should be coerced, pressured, or induced by unfair means (a) to take up the invitation to have the process explained to them by a facilitator, (b) to participate in a restorative process, or (c) to enter into any agreements as part of the restorative outcome. All parties should be able to withdraw such consent at any time during the process.
26. Agreements or Action plans should contain only reasonable, constructive, mutually respectful and proportionate obligations. They must be restorative rather than punitive.
27. Disparities leading to power imbalances, as well as cultural differences among the parties, should be taken into consideration in referring a case to, and in facilitating, a restorative process.
28. The health and safety of the parties shall be considered in referring any case to, and in facilitating, a restorative process.
29. Where restorative processes are not suitable or possible, the case should be reported back to the children's reporter and, if no final decision has been taken by the children's reporter or a children's hearing, a decision should be taken as to how to proceed without delay. Such cases do not prevent the reporter or children's hearing, where appropriate, from encouraging the person responsible to take responsibility for their actions, and supporting his or her positive participation in the community in whatever alternative ways are available.
30. Where a person responsible has successfully completed a restorative process, they should be provided with official recognition of their accomplishments. This may take the form of a letter or direct communication from the children's reporter.

III. Operation of restorative justice

31. Children's reporters, hearings and restorative justice services in Scotland should respect the principles set forth in this document and should adhere to:
 - (a) The criteria for the referral of cases to restorative justice;
 - (b) The protocol for referrals to restorative justice services within the children's hearings system;
 - (c) The standards of best practice that govern the operation of restorative justice;
 - (d) The requirement for appropriate training and assessment of facilitators.
32. Fundamental procedural safeguards guaranteeing fairness to the person responsible and the person harmed should be applied to restorative processes:
 - (a) Subject to laws governing the children's hearings system, the person responsible and the person harmed have the right to obtain legal advice concerning the restorative process. Where necessary, they have a right to translation and/or interpretation. The person responsible, in addition, has the right to the assistance of a parent or guardian.

- (b) Before agreeing to participate in restorative processes, the parties should be fully informed of their rights, the nature of the process and the possible consequences of their decision.
33. Discussions in restorative processes should adhere to the principles of confidentiality within the children's hearings system.
 34. The results of agreements arising out of a restorative process should be reported to the referring children's reporter and, where appropriate, to a children's hearing.
 35. Where no agreement is reached among the parties or where an agreement made in the course of a restorative process fails to be implemented, then this should be reported to the referring children's reporter or hearing and, if no final decision has been taken by the children's reporter or a children's hearing, a decision as to how to proceed should be taken without delay.

IV. Continuing development of restorative justice in the Children's Hearings system

36. The children's hearings system and restorative justice services should take into account the formulation of Scottish Executive strategies and policies aimed at (a) the development of restorative justice in a youth justice context and at (b) the promotion of a culture in Scotland that is favourable to the use of restorative justice with young people who offend among law enforcement, judicial and social authorities, as well as local communities.
37. There should be regular consultation between representatives of the children's hearings system and administrators of restorative justice services to develop a common understanding and enhance the effectiveness of restorative processes and outcomes, to increase the extent to which restorative processes are used, and to explore ways in which restorative approaches might be further incorporated into the children's hearings system.
38. The children's hearings system and restorative justice services should promote research on and evaluation of restorative justice processes to assess the extent to which they result in restorative outcomes, serve as a complement or alternative to children's hearings and provide positive outcomes for all parties. Restorative processes may need to undergo change over time. Regular evaluation and modification of such processes should therefore be encouraged. The results of research and evaluation should guide further policy and development.

These principles have been adapted from "Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters", a resolution prepared by a UN Expert Group and adopted on July 24, 2002 by the UN Economic and Social Council to encourage countries to use in developing and implementing restorative justice in their countries. Other documents that were taken into account in the development of these principles are: the *Restorative Justice Consortium Statement of Principles for Restorative Justice*, and *Recommendation No R (9) Concerning Mediation in Penal Matters, 1999, Council of Europe*.

2. Criteria for Referrals to Restorative Justice Services within the Children's Hearings System

Essential Criteria

1. The person responsible for the offence should be aged between 8 and 17 years (inclusive).
2. The person responsible should reside within the geographical area covered by the Service.
3. The person responsible has been referred to the Reporter on the grounds of having committed an offence and the children's reporter considers that the evidence is sufficient to meet the criminal standard of proof.

Desirable Criteria

4. Restorative processes have been shown to be most effective where:
 - a. the referral to a restorative justice service is made as soon as possible after the offence (research shows that referrals made more than 3 months after an offence may limit the effectiveness of a restorative process, except for the most serious offences);³
 - b. the offence has (or is likely to have) had a significant impact upon or caused harm to an identifiable person or persons;⁴ and
 - c. if the offence has had an impact on an organisation or community, the needs and views of that organisation or community are communicated, in person, by a suitable representative, to the person responsible.

³ Denkers, & Winkel, 1998. "Crime victims' well-being and fear in a prospective and longitudinal study." *International Review of Victimology*, 5,141-162; Norris & Kaniasty, 1994. "Psychological Distress Following Criminal Victimization in the General Population: Cross-sectional, Longitudinal, and Prospective Analyses." *Journal of Consulting and Clinical Psychology* 62 (1): 111-123.

⁴ Sherman, Strang and Woods, 2000: *Recidivism Patterns In The Canberra Reintegrative Shaming Experiments (RISE)* Centre for Restorative Justice, Research School of Social Sciences, Australian National University, November 2000: 18; Mier, D. et al., 2001: *An Exploratory Evaluation of Restorative Justice Schemes* (Crime Reduction Research Series Paper 9, Home Office UK: x.

3. Protocol for Referrals to Restorative Justice Services within the Children's Hearings System

This protocol proceeds on the basis that what is offered by a Restorative Justice Service is a service for the person responsible for an offence. Accordingly, the protocol adopts an approach to such referrals that is similar to that adopted when a Reporter or Hearing makes a referral to (i.e. requests a report from) other services, such as drug and alcohol projects or youth justice teams.

Referrals by the Children's Reporter

The following procedure is to be followed in relation to referrals from Children's Reporters to Restorative Justice Services (RJS):

1. Having received a referral in terms of section 52(2)(i) of the *Children (Scotland) Act 1995*, the Reporter assesses that there is sufficient evidence that the person referred has committed an offence(s).
2. At the Initial Decision stage the Reporter considers the reports to be requested in relation to the person responsible for the offence (e.g. report from school, Initial Assessment Report or Social Background Report). The reports should be submitted in the usual time-scales.
3. If the offence meets the agreed *Criteria for a Referral to a Restorative Justice Service* (RJS), the Reporter should consider requesting a report from the RJS on the suitability of the person responsible for participating in a restorative justice service in relation to the offence(s). Such a report shall contain an assessment of the willingness of the young person to engage with the RJS and his/her current motivation to change and willingness to co-operate. The time-scale for submitting such a report shall be up to 20 working days from the Reporter's request. The Reporter shall have the option of requesting such a report in addition to, or as alternative to, the reports mentioned in paragraph 2 above. (The decision to request such a report from a RJS may be made after discussion with the RJS.)
4. In requesting a report from the RJS as described in paragraph 3, the Reporter shall provide the RJS with the information regarding:
 - a. The age of the person responsible;
 - b. The name, address and, if possible, telephone details of the person responsible and his or her parents or guardians;
 - c. The date, time and nature of the offence;
 - d. The existence and age of any co-accused;
 - e. The extent of any damage or harm caused to an identifiable person(s) and/or other affected persons;
 - f. Any risk factors associated with the person responsible and his or her family situation;
 - g. Involvement of social work or other relevant agencies, if known;

- h. Any previous participation by the person responsible in any restorative process.
5. If the Reporter requests a report from both the RJS and an Initial Assessment Report (IAR) or Social Background Report (SBR) from the local authority, he/she shall advise both the RJS and the local authority of the fact that both reports have been requested with a view to facilitating the co-ordination of work with the person responsible between the RJS and the local authority. (It is recognised that they may be one and the same organisation).
6. If the Reporter requests a IAR or SBR from the local authority and that service feels that a referral to a RJS may be appropriate, then the local authority may refer the person responsible directly to the RJS for assessment. If the RJS assess that he/she is suitable for participating in the restorative justice service, and is willing to participate, the RJS should request details of the person harmed by the offence from the Reporter. Final Reports should be sent to both the Reporter and the local authority.
7. a. If the RJS assess that the person responsible is suitable for participating in the restorative justice service, and is willing to participate, the RJS may proceed to offer that service, notwithstanding that the Reporter has not yet made his/her final decision. In order to proceed with the service, the RJS should submit the report requested in terms of paragraph 3 and request from the Reporter details of the person harmed by the offence.
b. Within 3 working days of the request from the RJS, the Reporter shall write to the person harmed offering them the opportunity to participate in the restorative justice service. The letter will state that the Reporter will pass the name and address of the person harmed to the RJS in order that the RJS may contact him/her, if the person harmed has not contacted the Reporter within 5 working days of the letter being sent. The letter will make it clear to the person harmed that if he/she does not want to participate in the restorative justice service and do not want their details passed to the RJS, then he/she should contact the Reporter within the 5 working day period.
c. If within 5 working days of the letter being sent, the person harmed does not contact the Reporter to indicate that he/she does not consent to their details being passed to the RJS, the Reporter shall provide the RJS with his/her name and address within 10 working days of the original request by the RJS.
d. The form of the restorative justice service to be offered (e.g. restorative justice conference, face-to-face meeting, shuttle mediation, or victim awareness) shall be agreed between the person responsible, his/her parents, and the person harmed in accordance with the *Statement of Principles for the Use of Restorative Justice Processes in the Children's hearings system*.
8. The Reporter should proceed to make a final decision in relation to the referral(s) in the usual way, taking into account the reports received, in accordance with the *Framework for Decision-making by Reporters*. For the avoidance of doubt, the Reporter retains all of his/her statutory powers in relation to a final decision, notwithstanding that the person responsible may have begun to participate with the RJS in relation to the offence(s). The

Reporter should not keep a referral open whilst awaiting the outcome of the participation of the person responsible with the RJS simply to see if the person responsible will co-operate.

9. If the Reporter's Final Decision is not to arrange a children's hearing as compulsory measures are not required and the person responsible is to participate in the RJS, the "Disposal" section of the Final Decision recorded in RAD should record "Restorative justice" as being the Disposal Detail. The Reporter's letter to the person responsible and other relevant persons should make clear the importance of the person responsible participating in the RJS.
10. If the Reporter's Final Decision is to arrange a children's hearing and the person responsible has begun (or completed) work with the RJS in relation to an offence referred to the hearing, the Reporter shall request a report from the RJS to be made available to the children's hearing.
11. If the Reporter's Final Decision is not to arrange a children's hearing, the RJS shall provide a report to the Reporter at the conclusion of their work with the person responsible. The final report provided by the RJS should give details regarding the work carried out with the person responsible and his/her cooperation with that work. If the process has not been completed within 12 weeks, then a brief interim report should be submitted.
12. The co-operation of the person responsible is critical to the service provided and any non-co-operation subsequent to assessment, whilst impossible to completely prevent, must be reviewed by the service providers. Any local pattern of this situation must be evaluated by the service provider and Reporter to assess the quality of the assessment process, the service itself and the Reporter's decision-making. Over the first year of the operation of this Protocol, SCRA will collate and produce a report on the co-operation of young people with the service provided based upon the final reports provided by the RJS.

Referrals by Children's Hearings

In most cases, a restorative justice service will have been considered and offered prior to a hearing. However, if this has not happened, and a children's hearing decide to refer a person responsible for an offence to a RJS, then the following procedure is to be followed:

1. In cases where a person responsible has been referred to a hearing and has not yet participated in a restorative justice service, the appropriateness of restorative justice would normally be included in the assessment available to panel members. Where this is not the case, then if the children's hearing, when considering a person whose accepted or established grounds for referral state that he/she has committed an offence, consider that a referral to a RJS is appropriate, they may continue their consideration of the case and request a report from the RJS on the suitability of the person responsible for participating in a restorative justice service in relation to their offence(s). The Reporter should contact the RJS within 2 working days of the hearing. The time-scale for the RJS report shall be 20 working days.

2. a. If the RJS assess that the person responsible is suitable for participating in the restorative justice service, and is willing to participate, the RJS may proceed to offer that service, notwithstanding that the children's hearing has not yet made their final decision. In order to proceed with the service, the RJS should contact the Reporter requesting details of the person harmed by the offence.
 - b. Within 3 working days of the request from the RJS, the Reporter shall write to the person harmed offering them the opportunity to participate in the restorative justice service. The letter will state that the Reporter will pass the name and address of the person harmed to the RJS in order that the RJS may contact him/her, if the person harmed has not contacted the Reporter within 5 working days of the letter being sent. The letter will make it clear to the person harmed that if he/she does not want to participate in the restorative justice service and does not want his/her details passed to the RJS, then he/she should contact the Reporter within the 5 working day period.
 - c. If within 5 working days of the letter being sent, the person harmed does not contact the Reporter to indicate that he/she does not consent to his/her details being passed to the RJS, the Reporter shall provide the RJS with their name and address within 10 working days of the original request by the RJS.
 - d. The form of the restorative justice service to be offered (e.g. restorative justice conference, face-to-face meeting, shuttle mediation, or victim awareness) shall be agreed between the person responsible, his/her parents, and the person harmed in accordance with the *Statement of Principles for the Use of Restorative Justice Processes in the Children's hearings system*.
3. On receipt of the report from the RJS, the hearing shall proceed to come to a decision in the usual way. As the voluntary participation of a person responsible with a RJS is one of the principles stated in the *Statement of Principles for the Use of Restorative Justice Processes in the Children's hearings system*, the hearing should be advised that it would be contrary to those principles to make a condition of a supervision requirement regarding the participation of a person responsible with the RJS.
 4. At a subsequent review hearing the social background report should include information as to the outcome of the involvement of a person responsible with the RJS.



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