

Restorative Practices Strategic Forum

Submission on Restorative Justice to the Joint Oireachtas Committee on Justice, Defence and Equality

1. Summary of recommendations

- Expansion of restorative approaches in criminal justice settings should take place in tandem with expansion of restorative practices in community settings, to support prevention as well as cure and to increase awareness and receptivity.
- Restorative justice should be a supplement to rather than an alternative to the formal criminal justice system in order to protect the interests of all participants and the wider community.
- Any expansion of restorative justice should be faithful to its core principles, goals and values and focus on both process and outcome and both past and future.
- Equal emphasis should be placed on offender-oriented and victim-oriented goals but the potential benefits to victims should be seen as providing adequate justification for restorative interventions regardless of other benefits.
- Adequate safeguards, including quality assurance processes, should be built into practice to ensure that potential pitfalls are avoided and factors critical to success are in place.
- Expansion of restorative justice should be along the lines recommended by the National Commission on Restorative Justice but should not exclude any categories of crime in principle and should be available at all stages of the criminal justice system, including prosecution, decision and post-sentence.
- Expansion of restorative justice should be gradual over a 2–3 year timeframe to facilitate (i) development of capacity, systems and infrastructure, (ii) articulation and agreement of standards, (iii) development of Irish accreditation and training options and (iv) demonstration of effectiveness and fairness;
- Restorative approaches should become “business as usual” for all those working with communities and vulnerable groups, offering a common language, consistent processes and clear expectations.

2. Introduction – The Restorative Practices Strategic Forum

Restorative Practices Strategic Forum

The Restorative Practices Strategic Forum (RPSF) is a membership organisation open to all those across the island of Ireland who have a role in the strategic management and development of restorative practices. The Forum sees restorative justice in the wider context of restorative practice – not just a response to crime but also an important measure for preventing crime and giving people a greater sense of safety and belonging in their communities. (See Appendix 1 for the membership of the RPSF Steering Committee).

The Forum's vision is: "Ireland as a restorative society which embraces restorative approaches as a philosophy and practice, integral to all relationships".

The Forum promotes and supports the use of restorative approaches across schools, communities and services, both locally and regionally, throughout the island of Ireland, and supports the national development of a strategy designed to embed these practices.

Critical aims of the Forum include (i) the development of capacity, systems and infrastructures which support the growth and sustainability of restorative practices, (ii) the development of Irish accreditation and training options and (iii) provision of a space for sharing and deepening understanding.

The Forum sees restorative practice, of which restorative justice is a part, as an approach and a way of working, rather than a programme or curriculum. It is both a philosophy and a set of skills that have the core aim of building strong relationships and resolving conflict in a simple and emotionally healthy manner. It has an important role to play in preventing harm and minimising difficulties when they arise, across a range of areas, including but not exclusive to criminal justice. Further, it offers an effective mechanism for changing 'business as usual' and bringing about organisational and cultural change.

3. Prevention as well as cure

Restorative justice is primarily a response to the harm caused by offending behaviour within the context of the criminal justice system. It has a key role

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in dealing with the aftermath of an offence, in supporting victims of crime and in preventing further offending by those involved. Restorative practice is effective in responding to harm caused, whether or not the behaviour causing the harm constitutes an offence and whether or not it falls within the remit of the criminal justice system.

Equally or more important, however, restorative practice is an effective prevention and early intervention strategy. There is sound evidence that restorative practice strengthens the social and emotional learning and skills of adults and young people and helps prevent and defuse conflicts. People who use restorative practice as a way of working report that it makes their work easier, more enjoyable and more effective. Parents report better relationships with their children, residents report better relationships with their neighbours and young people report increased confidence and better relationships with their teachers, their families, their friends and their peers.

A recent evaluation of a restorative practices community-based programme in Tallaght West, for example, found that work place conflicts were reduced by 43% in organisations that had adopted an RP approach; that 87% of those who had undertaken training reported being more confident in dealing with conflict; and that a significant improvement had occurred in relationships, with greatest gains between organisations and their service users. Significantly, from a community safety point of view, 36% of those surveyed said that they were more willing to report crime or anti-social behaviour (Fives et al (2013)).

A major factor in the success of restorative practice is that it builds on skills that everyone has and provides a simple framework for using those skills more consistently and, consequently, more effectively. Training is relatively easy, low-cost and accessible as a result and people can achieve competency in a short space of time.

Awareness, understanding and practice of restorative approaches in the community offers two-fold benefits for the criminal justice system. First, it helps prevent crime by preventing conflict from occurring in the first place or escalating in the community thereafter. Second, it creates a mind-set that is receptive to restorative justice in the criminal justice system: citizens who are familiar with restorative practice in community settings are more likely to buy into restorative justice when they or their family and friends are affected by crime.

The Forum strongly recommends that expansion of restorative justice in criminal justice settings should take place in tandem with expansion of restorative practices in community settings.

4. Definition and essence of restorative justice

There are several definitions of restorative justice. Common elements are an emphasis on process, the direct involvement of parties affected, the focus on a specific offence and the concern with both the immediate impact and implications for the future. Other conceptualisations of restorative justice place greater emphasis on restorative outcomes (such as reparation, community service) than on process, or on adherence to restorative values (such as respect, dialogue) than on outcomes. **The Restorative Practices Strategic Forum considers that both process and outcome are important, as is a focus on the immediate past and future.**

Restorative justice is often presented, at least for explanation purposes, as a superior alternative to the traditional criminal justice system. At the heart of restorative justice, it is argued, is the view that crime is a violation of people and interpersonal relationships, that violations create obligations and that the central obligation is to put things right. The central focus is therefore on victim needs and offender responsibility for repairing harm. The contrasting position is that the view at the heart of the criminal justice system is that crime is a violation of laws, that violation creates guilt and that the central obligation is to determine blame and impose a sanction. The central focus is therefore on offenders getting what they deserve. **The Forum does not see restorative justice necessarily as an alternative to the formal criminal justice system but rather as a supplementary and diversionary process within its overall umbrella. This offers safeguards to all participants and protects the wider community interest.**

It is useful to review briefly key principles, goals and values of restorative justice. **Key principles**, drawing from Dignan and Lowey (2000) and Graef (2001), include inclusivity, balancing different sets of interests, non-coercion, accountability and repairing harm. Inclusivity refers to participation, discussion and agreement. Balancing interests requires equal consideration of all parties' sides and favours dialogue, negotiation and consensus over adversarial relationships and win-lose outcomes. Non-

coercion requires voluntary participation and agreement. Accountability is multi-dimensional and includes direct accountability to the victim. Repairing harm is also multi-dimensional, with a key focus on meeting victims' needs. **The Forum considers that adherence to these principles is paramount in whatever shapes or forms restorative justice might be delivered. Good practice is always informed by these principles.**

Key goals of restorative justice, drawing on Sharpe (1998) and Johnstone (2003), include that offenders understand and repair harm, are remorseful, are reintegrated; that victims are healed/restored; and that communities are strengthened. Offenders understand harm better by hearing from those directly affected about the particular impacts of the crime on them, often hearing about unforeseen and unforeseeable consequences. They should be more remorseful as a result (recognising that actual or potential remorse is a pre-requisite for participation). Offender re-integration is a key goal, avoiding negative shaming and labelling as criminal outcast. Victim restoration is a critical goal of restorative justice, and argued to be a real strength in comparison with the mainstream criminal justice system. Community strengthening is not always obvious and may be a more modest, longer-term benefit.

Key values, drawing on Zehr (2002), include healing, solidarity, reconciliation, compassion, confidentiality, dialogue, informality and respect. The Forum considers the latter three in particular as important and perhaps in greatest contrast with the mainstream criminal justice system.

The Forum considers that the offender-oriented and victim-oriented goals have equal merit and are more likely to be achieved by explicit commitment to these goals and adherence to the key principles and values of restorative justice.

5. Ensuring benefits, avoiding negative effects

Claimed **benefits of restorative justice** are that it is more effective in meeting needs, fairer, and less costly than the mainstream criminal justice system. Rates of satisfaction with participation, procedures and outcomes are generally very high among victims, offenders and their respective supporters. Re-offending rates tend to be somewhat lower, although not always statistically significant measured against randomised control groups; at the very least, though, rates are no higher as a result of restorative justice.

Effectiveness of restorative justice in terms of deterrence is more nuanced: general deterrence for example relies essentially on widening understanding of the harms of offending and awareness of the nature of being held directly accountable to those affected. Procedures and outcomes are generally found to be fairer but much depends on actual practice. Restorative justice is generally assumed to be less costly than mainstream criminal justice, but the form of restorative justice used (e.g. conference versus indirect mediation) and the point of application may determine otherwise (see, for example, Shapland et al (2011)). The Forum accepts that benefits of restorative justice interventions that observe good practice can be significant and recommends greater use. **The Forum believes that the benefits to victims alone would justify greater use of restorative justice even if other benefits such as reduced re-offending were uncertain or failed to materialise. EU Directive 2012/29/EU of the European Parliament and Council establishing minimum standards on the rights, supports and protection of victims of crime is relevant in this regard.**

The Forum sees it as important that **potential downsides** to restorative justice are also considered so that pitfalls can be avoided. Among concerns raised by Johnstone (2002) and others are the following. Offender rights and well-being may be eroded under an informal system and agreements reached may be disproportionate and include sanctions that would not be imposed by a court. Unacceptable net widening could arise where restorative justice is applied to cases that would not otherwise reach a standard of evidence or importance demanded of other criminal justice interventions. Uncertainties are said to exist in relation to the roles assigned to State professionals, depending in part on the model employed and the extent to which community volunteers are involved. Concerns are also voiced about possible re-victimisation of victims, especially if invitations are mishandled, facilitation/mediation practice is poor or offenders are unremorseful. In similar vein, restorative justice could risk weakening already vulnerable parties, such as those less well off, less articulate, less able to argue their corner. The role of punishment is said to be unclear under restorative justice, since it is largely about consensus agreement and repair of harms. For many, restorative justice is seen as soft on crime. The nature of deterrence is changed under restorative justice and significantly weakened in the view of many. More fundamentally, it is argued that restorative justice can result in loss of security and public protection if it fails to incapacitate offenders or reduce re-offending. At the extreme, it may even trivialise acts deemed evil and unacceptable to society. Finally, a common concern is the

definition and role of community: who is to represent the community and, to the extent that it occurs, is community involvement always positive? **The Forum recognises that if restorative justice is to expand and flourish, it must deal with all these concerns. It believes that adequate safeguards, such as a registration system for practitioners and quality assurance mechanisms, can be put in place to ensure the protection of offender and victim rights and societal interests once restorative justice is delivered as a supplement rather than alternative to the formal criminal justice system.**

6. Critical success factors

Experience with restorative justice shows the following factors to be critical to success. The list is not exhaustive. Case screening is important to ensure that the intervention is focused where it is most needed and has some prospect of success. This is not cherry-picking but is essential to ensuring that concerns outlined above are addressed adequately and that resources are used sparingly and effectively. It places considerable onus on gatekeepers such as Garda and Probation Service staff to identify and refer suitable cases, while recognising the important fact that restorative justice interventions can and should also be at the request of victims. Offenders for example should demonstrate some degree of remorse as well as accepting responsibility. Offences should be relatively serious, although risk of re-offending and meeting victim needs are key considerations regardless of offence. Case preparation can be quite time-consuming but is critical to confirming suitability, identifying issues and participants and managing expectations. It should ideally be carried out by the facilitator/mediator and take place sufficiently in advance of the intervention. It needs to be recognised that cases will sometimes not proceed to a full restorative event but that benefits can nevertheless accrue for the parties involved. Adherence to clearly articulated process standards is a self-evident requirement. Most negative accounts of restorative events can be attributed to poor practice, such as inadequate facilitation skills or inappropriate involvement of facilitators, and perceived unfairness in procedures. Respect is a key value that should underpin all interaction.

Dialogue is the essence of restorative justice and should not be hurried – space needs to be allowed for each participant to be heard. Many successful events have some turning point where offender and victim see each other

differently, as human beings who are perhaps not terribly different from themselves. The turning point can emerge from people relating their stories, in ways that could not be predicted. Stereotypes and preconceptions can break down. Research suggests that memorable events are more likely to have a positive impact on offenders than more run-of-the-mill events. It is all the more important therefore that the right people are present and that stories are heard fully. Direct rather than indirect contact between the parties is also more likely to make for a memorable event.

Remorse is another element associated with reduced re-offending. The extent of remorse is likely to be greater following a direct encounter with a victim within a respectful, restorative framework. Events must also be non-stigmatising if the offender is not to feel permanently marked by a criminal label and a negative self-image. This is not inconsistent with accountability if a distinction is ultimately made between the wrong-doing and the individual and supports are put in place to help the offender avoid future offending. Finally, the voluntary nature of restorative justice is seen as almost sacrosanct. Participants must be free to abstain or leave at any point and must not feel under duress about any element of agreements entered into. Non-coercion is a safeguard against unfairness but cannot be taken for granted.

The Forum endorses these factors as critical to success and recommends that models of practice should allow sufficient time and resources so that quality is not compromised and the potential of restorative justice lost. The Forum urges that national quality standards for restorative approaches are developed and a practitioner registration system established.

7. Scope of restorative justice and potential application

The current scope of restorative justice in Ireland is relatively small. It applies in the main to juveniles. The Garda Diversion Programme incorporates restorative justice as part of its cautioning of offenders aged under-18. The Children Act 2001 (S26, S29) provides for restorative cautions and conferences to which victims and other relevant persons may be invited and which generally consider the actions of the child and draw up plans aimed at repairing harm and preventing further offending. The offenders must first meet the standard criteria of suitability for admission to the

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Diversion Programme, including acceptance of responsibility. Some 903 diversion cases were dealt with by restorative justice in 2011 out of 12,809 children admitted to the Diversion Programme. The Children Act 2001 (S78) also provides for similar conferences at the court stage. The court process may be adjourned to allow preparation of an action plan which the court may then approve or amend and order compliance. Criminal proceedings are re-activated in unsuccessful cases. Relatively small numbers of cases are processed annually under these provisions (for example, 145 conferences were held between October 2004 and January 2009). In both Garda and court instances, cases often involve serious offences including assault, robbery, burglary, arson and harassment. The Garda programme has been very successful on several fronts – see, for example, O’Dwyer (2006).

Restorative justice options for adults remain modest nationally, despite heroic efforts by relevant services and significant expansion in recent years. Community reparation panels operate in two main areas: in the Criminal Courts of Justice in Parkgate Street, Dublin as well as courts in Blanchardstown, Bray and Dun Laoghaire and in the Tipperary/Laois/Offaly area. Victim offender mediation is available in Dublin. Referral numbers in the past have been low, due mainly to factors which are typical of services that are not underpinned by statute and which rely on others as gatekeepers and funders. However, there has been a significant increase in referrals in Dublin and Tipperary/Laois/Offaly under a new pilot that was initiated by the Probation Service in June 2011. This has led to a doubling and trebling of referrals in the respective areas, including higher tariff offences. This level of progress demonstrates the potential for restorative approaches. Fledgling initiatives for the introduction of restorative approaches in prisons can also be noted, but these are so far focused on internal dispute resolution rather than victim-offender interaction.

The National Commission on Restorative Justice, chaired by Judge Mary Martin, reporting in 2009, saw greater potential for restorative justice, based on Irish and international evidence. It recommended a national roll out of restorative justice by 2015 at District and Circuit court level. It thought restorative justice should apply across a broad range of offences, including serious offences that could attract sentences of up to three years. It recommended against including sexual offences and domestic violence, at least initially. Use of the three main models just outlined was envisaged: conferences, reparation panels and victim-offender mediation. Priority was given to applying restorative justice to court referrals at the pre-sanction

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stage but restorative justice would ultimately apply at other stages, including as a diversion measure under the Garda adult cautioning scheme and post-sentence in prison. The Commission estimated potential use in 3,650–7,250 cases per annum. It also recommended an extension of restorative justice interventions under the Garda Diversion Programme. It recognised significant cost savings of restorative justice interventions compared with custodial sentences.

The experience of other countries would likewise suggest scope for considerable expansion, including in relation to very serious crimes, repeat offenders, additional points of intervention (for example, at prosecutor level) and using other models (e.g. healing circles).

Some limited geographical expansion of services did occur in response to the Commission's report, to the areas described above from respective bases in Tallaght and Nenagh. However, national roll-out was not envisaged by the Government until the prevailing economic climate improved.

The Restorative Practices Strategic Forum supports the recommendations of the Commission but would go further in two key respects. It is the Forum's view that restorative justice should be a possibility at all stages of the criminal justice system, including when prosecution is being considered for adults by the Garda Síochána and the Director of Public Prosecutions. Both agencies should have the authority to defer prosecution pending a restorative intervention, similar to the court stage at present. Victims should be consulted but should not have a veto. The outcome would be reviewed by the Garda or DPP and a decision taken as to whether or not the case should be taken to court. Restorative justice options should also be developed at post-sentence stage. Experience elsewhere shows the potential value to both victim and offender of such encounters. Options should include victim-offender mediation in prison at the request of the victim. Such a possibility should be publicised appropriately so that victims are aware of the possibility and how to make contact and independent external expertise should be availed of at least initially. The service should be restricted to more serious offences given the time and resources required. **It is also the Forum's view that no offence category should be excluded in principle.** Evidence from abroad suggests that restorative interventions can be very effective in dealing with serious offences, even more effective than in dealing with less serious offences. Additional safeguards are required when dealing with domestic violence and

sexual offences but relevant expertise is available. Emerging evidence in Ireland suggests a demand in respect of such offences.

8. Pre-requisites for expansion

Resources are clearly important. A requirement to expand the use of restorative justice cannot be foisted on already hard-pressed criminal justice staff with any great expectation of success. Even if community volunteers are availed of to facilitate and mediate, existing public service personnel would have additional duties of case selection, co-ordination and continuity. Costs associated with volunteers arise in respect of expenses and possibly part remuneration as well as in respect of selection, training, supervision and support. Services need to be appropriately staffed – quality of service risks being compromised if pressure arises to process large case numbers within tight timeframes and with poorly trained and poorly supported staff.

Resources are a necessary but insufficient condition for expansion. Even if resources were bountiful, little could possibly occur without widespread support and confidence of criminal justice professionals (including judges and legal representatives), politicians, media and opinion formers, victim representative groups and the general public. General levels of awareness and understanding of restorative justice are still low and, for all its flaws, the traditional method of processing criminal cases is seen as the only way to deliver justice. There needs to be belief in the efficacy of alternatives to prison. Public opinion, influenced by media, seems resolutely committed to custodial sanctions as a general response to crime, albeit that when presented with more nuanced scenarios about offenders, opinions can change. All parties with a stake in criminal justice need to be fully confident that restorative justice can be effective in dealing with crime while respecting due process and protecting rights. A gradual approach may be required that will build confidence through sharing of experience, debate and persuasion based on evidence. The growing use of restorative approaches in community settings, including schools, workplaces, youth services and community groups, can be expected to help shape public opinion that is more receptive to the use of such approaches in the criminal justice setting.

The Forum recommends a comprehensive awareness raising strategy aimed at the stakeholders above to inform them of the benefits of restorative justice and promote its utilisation.

Capacity is also clearly needed to manage and facilitate cases. It is not clear that sufficient capacity currently exists. Accredited training of staff is critical, as is supervision. Standards need to be in place to ensure continuing best practice and to flesh out relevant standards espoused by international bodies such as the United Nations and the Council of Europe. Accountability mechanisms need to be put in place to further underpin standards and safeguards, requiring robust record-keeping, monitoring and feedback. Full transparency is required to broaden awareness and understanding and ensure accountability to the wider public and specialist interests. Restorative justice also needs to be evaluated and reviewed on a regular basis.

For all of these reasons, the Restorative Practices Strategic Forum considers that a gradual approach may be appropriate within a 2–3 year time-scale. Such an approach would be important to (i) development of capacity, systems and infrastructure, (ii) articulation and agreement of standards, (iii) development of Irish accreditation and training options and (iv) demonstration of effectiveness and fairness.

Whatever models are finally applied must be faithful to the principles, goals and values of restorative justice that have been demonstrated as critical to its success. There is an on-going risk that the essential ethos of restorative approaches gets eroded as it becomes a routine response.

The challenge is to use restorative options more widely and across the full spectrum of intervention, from prevention and early intervention to more serious offences, as envisaged by the National Commission on Restorative Justice, while recognising two things: that restorative options will not be immediately relevant to offenders who do not accept guilt or show remorse and that punishment is not necessarily incompatible with restorative justice values – it is not an either/or choice. We should use the present period of scarce resources to lay the foundation for expansion when better times finally come along.

Appendix 1:

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