

# Justice in Scotland

Rapid Evidence Review

## Uses of Restorative Justice



## The uses of restorative justice: Key points



Overall, the evidence shows that Restorative Justice (RJ) can reduce the likelihood of further offending, assist people to recover from the harm of crime, and provide greater satisfaction with the justice process.



The Council of Europe recommends that Member States “should develop the capacity to deliver restorative justice in all geographical areas in their jurisdictions, with respect to all offences, and at all stages of their criminal justice processes”.



Scotland has some small-scale RJ services but they are restricted to certain geographical areas. As in Northern Ireland, RJ provision is mainly limited to youth crime and, for the most part, addresses less serious offences.



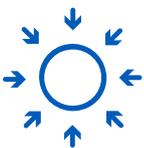
A centralised model is a common feature of more comprehensive and effective RJ systems, but the type of provider varies.



Norway and Belgium have the most comprehensive RJ systems of all the European jurisdictions we examined, offering RJ at each stage in the criminal justice system and for any age and offence type.



It is common for RJ to be used before sentencing to allow outcomes to be fed into sentencing decisions.



RJ for young people is more universal in the jurisdictions we examined, but adult provision is still widespread.



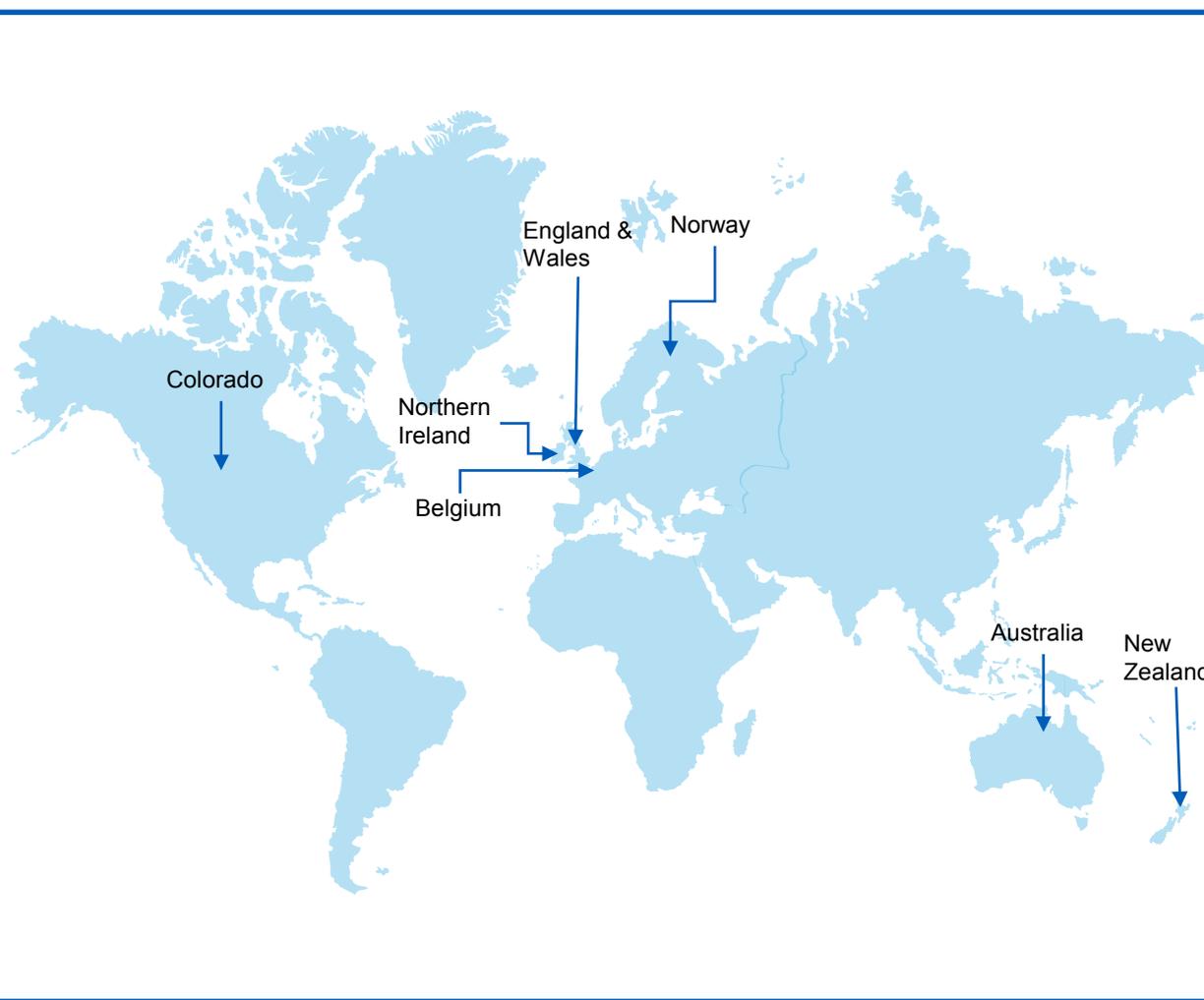
Restorative justice is used for serious offences in a number of jurisdictions but this requires more stringent practice guidelines and highly trained facilitators.



Referrals can be increased if both victim and offender can request RJ, as is the case in Belgium.

## The purpose of this paper

This paper aims to support the policy development and delivery of Scotland's Restorative Justice (RJ) vision and strategy, by giving examples of the breadth of ways RJ is implemented in other countries. It is intended to demonstrate that RJ can be, and is, applied broadly across different offences, offenders, and stages of the justice process, rather than to provide a complete picture of RJ internationally. Sources were identified through recommendations from RJ experts, as well as during staff attendance at a meeting of the European Forum on Restorative Justice. The jurisdictions reviewed are: England and Wales, Northern Ireland, Norway, Belgium, New Zealand, Australia and Colorado. England and Wales, N. Ireland, Colorado, Australia and New Zealand have an adversarial legal system, making findings particularly relevant to Scotland.





## How does Restorative Justice conferencing work?

RJ encourages offenders to take responsibility for their actions and to repair the harms they have caused, in communication with victims. Restorative justice therefore places control in the hands of those most affected by the crime, and is voluntary and collaborative. Both offender and victim are involved in a constructive dialogue to find a way forward and repair the harm caused. For example, in Norway the empowerment of communities and of the conflicting parties is central to the idea behind their National Mediation Service, which started with the idea of redefining criminal offences as conflicts<sup>1</sup>.

RJ can take place either face to face (called conferencing) or through correspondence (called shuttle dialogue). Practice will vary, but typically the facilitator explains the ground rules and why the process is happening. The person responsible for the offence gives an account of what happened, and the person harmed describes how they were affected. Other participants (such as others affected by the crime, or support people for the main participants) may contribute their own accounts of what happened and how they were affected. All participants then discuss what could be done to set things right. The process may end with a signed written agreement regarding what should be done next.

## Is Restorative Justice effective?

The 'what works' evidence has been canvassed elsewhere so we have only provided a short summary of the evidence below. Overall, the empirical evidence shows that RJ has a positive impact on victims and it can also reduce reoffending.



**VICTIMS:** There is strong and consistent evidence that RJ can benefit people harmed by crime. For example, a review of RJ conferencing in 2013 found that victims who take part in RJ experience less fear of re-victimisation, a reduced desire for violent revenge and fewer symptoms of post-traumatic stress syndrome. An evidence review by the Smith Institute also notes that the post-traumatic stress benefits, in addition to improving the lives of victims, may also reduce health costs paid by tax payers, as post-traumatic stress can be both expensive to treat in its own right, and also associated with increased risk of other physical health conditions<sup>2</sup>. RJ can also increase victim satisfaction with how their case was handled<sup>3</sup>. The Smith Institute review identified four randomised control trials that found victims actually preferred face to face RJ over conventional criminal justice<sup>4</sup>.

1. [http://www.nova.no/asset/4954/1/4954\\_1.pdf](http://www.nova.no/asset/4954/1/4954_1.pdf)
2. <http://www.smith-institute.org.uk/wp-content/uploads/2015/10/RestorativeJusticeTheEvidenceFullreport.pdf>
3. <https://campbellcollaboration.org/library/restorative-justice-conferencing-recidivism-victim-satisfaction.html>
4. <http://www.smith-institute.org.uk/wp-content/uploads/2015/10/RestorativeJusticeTheEvidenceFullreport.pdf>

In an evaluation of victim experiences in New Zealand, 86% were satisfied with the restorative justice conference they attended and 84% said they would be likely to recommend restorative justice to others in a similar situation<sup>5</sup>.

Scottish evaluations of RJ are rare but the limited findings are promising. An evaluation of Glasgow's youth restorative justice services found that 56% of those contacted took part in a restorative process and levels of satisfaction amongst those who participated were high<sup>6</sup>.



**OFFENDERS:** The evidence base is less consistent when it comes to the impact of RJ on reoffending, but is still highly promising. A comprehensive review of RJ interventions by the Campbell Collaboration concluded that restorative justice conferences cause 'a modest but highly cost-effective reduction in repeat offending, with substantial benefits for victims'<sup>7</sup>. The average effect of the ten studies reviewed by the Campbell Collaboration indicated that face-to-face RJ conferences resulted in offenders committing significantly less crime than their counterparts randomly assigned to standard criminal justice alone. The effect of RJ conferences on violent crime was larger than its effects on property crime<sup>8</sup>.

Similarly, the Smith Institute evidence review concluded that RJ "can work very well as a general policy", and that "In general, RJ seems to reduce crime more effectively with more, rather than less, serious crimes", while also noting that evidence on its effectiveness varies between different programmes and target groups. They also present some evidence that where RJ is offered before charging, it has increased the number of offences brought to justice by two to four times.

In New Zealand, a recent evaluation found that the reoffending rate for those who participated in restorative justice was 7.5% lower over three years compared with offenders who had not gone through RJ, and offenders who went through RJ committed 20% fewer offences per offender within the following three years<sup>9</sup>.

However, there is sometimes a gap between restorative justice theory and practice<sup>10</sup>. For example, a study found that Family Group Conferencing practices in New Zealand - which is widely considered an international exemplar of restorative justice - were highly variable, with some poor practices, including delays, a lack of communication, and instances where young people and family members felt disempowered<sup>11</sup>. Therefore it is important to evaluate RJ services to ensure they are working as intended and outcomes are being achieved.

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5. <https://www.justice.govt.nz/assets/Documents/Publications/rj-Reoffending-Analysis-for-Restorative-Justice-Cases-2008-2013-Summary-Results.pdf>

6. Dutton K and Whyte B (2006) Implementing restorative justice within an integrated welfare system: the evaluation of Glasgow's restorative justice service: summary report. Edinburgh: CJSWDC.

7. <https://www.campbellcollaboration.org/news-and-events/news/restorative-justice-practices-can-be-effective.html>

8. <https://www.campbellcollaboration.org/library/restorative-justice-conferencing-recidivism-victim-satisfaction.html>

9. <https://www.justice.govt.nz/assets/Documents/Publications/rj-Reoffending-Analysis-for-Restorative-Justice-Cases-2008-2013-Summary-Results.pdf>

10. <https://www.iriss.org.uk/resources/insights/restorative-justice>

11. [https://thehub.sia.govt.nz/assets/documents/42676\\_evaluation-of-fgcs-scoping-study-25-9-14\\_0.pdf](https://thehub.sia.govt.nz/assets/documents/42676_evaluation-of-fgcs-scoping-study-25-9-14_0.pdf)

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## SERIOUS OFFENCES

Although RJ conferencing is already used in response to serious, sensitive and complex offences, and there is research showing that it can benefit victims of serious crimes, the use of RJ for serious crimes remains contentious. As noted above, the Smith Institute review concluded that “in general, RJ seems to reduce crime more effectively with more, rather than less, serious crimes”. Research has also found that restorative justice can be safe, effective and empowering for people harmed by sexual offences<sup>12 13 14 15 16</sup>. However facilitators need to be equipped to deal with the complex needs and dynamics related to certain types of offending behaviour<sup>17</sup>, and in some cases will require specific training<sup>18</sup>.

### How does Restorative Justice work in Scotland?

Restorative justice has been available in Scotland for several decades, but its use has usually been limited to low-level and youth offending, and it is only rarely used with adult, serious or persistent offenders, despite evidence that it can aid with victim recovery and reduce reoffending in such cases. Moreover, projects tend to be small-scale and limited to specific areas (Community Justice Scotland report that they are now available in only a minority of local authorities)<sup>19</sup>, or they are restricted to responding to particular offence types – for example the current RJ project in Edinburgh for people on Community Payback Orders only addresses hate crime.

In terms of youth offending, the Children’s Reporter usually refers cases as an alternative, or addition, to a Children’s Hearing. Additionally, ‘Police Restorative Warnings’ are used to ensure the young person appreciates the harm caused by the offence. Although the process may involve the victim, this happens in a minority of cases and therefore the intervention can only be considered ‘partly restorative’.

RJ has been used in Scotland for more serious crimes such as culpable homicide and serious assault in a small number of instances, but it has been noted that there is currently a lack of funding and support for specialist training to properly equip practitioners to deal with more complex and sensitive cases<sup>20</sup>.

12. Kathleen Daly, Restorative Justice and Sexual Assault: An Archival Study of Court and Conference Cases, *The British Journal of Criminology*, Volume 46, Issue 2, March 2006, Pages 334–356, <https://doi.org/10.1093/bjc/azi071>
13. Koss, M. P. (2014). The RESTORE Program of Restorative Justice for Sex Crimes: Vision, Process, and Outcomes. *Journal of Interpersonal Violence*, 29(9), 1623–1660. <https://doi.org/10.1177/0886260513511537>
14. McGlynn, Clare M. S. and Westmarland, Nicole and Godden, Nikki, ‘I Just Wanted Him to Hear Me’: Sexual Violence and the Possibilities of Restorative Justice (June 2012). *Journal of Law and Society*, Vol. 39, Issue 2, pp. 213-240, 2012. Available at <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-6478.2012.00579.x>
15. Sen R, Morris K, Burford G et al (2018) ‘When you’re sitting in the room with two people one of whom... has bashed the hell out of the other’: possibilities and challenges in the use of FGCs and restorative approaches following domestic violence. *Children and Youth Services Review*, 88, 441–449
16. Bolitho, Jane and Freeman, Karen, *The Use and Effectiveness of Restorative Justice in Criminal Justice Systems Following Child Sexual Abuse or Comparable Harms* (March 1, 2016). Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, ISBN 978-1-925289-43-5, 2016. Available at SSRN: <https://ssrn.com/abstract=2877603>
17. Kirkwood S, Restorative Justice, *Iriss Insight* 44, November 2018, <https://www.iriss.org.uk/resources/insights/restorative-justice>
18. Scottish Government (2017) *Guidance for the delivery of restorative justice in Scotland*. Edinburgh.
19. Community Justice Scotland (2018)
20. Kirkwood S, Restorative Justice, *Iriss Insight* 44, November 2018, <https://www.iriss.org.uk/resources/insights/restorative-justice>

## What is the basis for developing Restorative Justice in Scotland?

The current Programme for Government includes the strong commitment that ‘We want to have restorative justice services widely available across Scotland by 2023 with the interests of victims at their heart. We will publish a Restorative Justice Action Plan by Spring 2019, that will set out how we will deliver this aim’<sup>21</sup>.

A new restorative justice vision and strategy are being developed for Scotland, against the backdrop of the recently adopted Council of Europe Recommendation concerning restorative justice in criminal matters.<sup>22</sup> Although this recommendation is not legally binding on Scotland, it indicates the standards that would be considered good practice and strongly supports the development of restorative justice in countries which do not have comprehensive RJ infrastructure. The most important of these is that:

“Member States are asked to develop the capacity to deliver restorative justice **in all geographical areas in their jurisdictions, with respect to all offences, and at all stages of their criminal justice processes**. Parties should not be excluded from restorative justice solely on the basis of their location or the type of offence in question.”

Other key rules from the Recommendation, for Scotland to consider as it develops its RJ strategy include:

- The provision of sufficient resourcing to meet demand up to good practice standards, and to continuously develop.
- The introduction of a presumption in favour of access, where criminal justice professionals could be asked for their reasoning for not referring a case to RJ, to encourage its use.
- The potential role of RJ as a diversion for formal processing by the criminal justice system for young and low level offenders while enabling victims to participate in the response to offending and to have their needs met.
- Raising and achieving social awareness of RJ.
- RJ should be delivered in line with good practice, including voluntariness and fully informed consent, and be subject to procedural safeguards, such as access to grievance procedures.
- Training providers should be monitored, accredited or be otherwise overseen by an authority with the required competencies.
- Facilitators should be trained to minimum standards and should be afforded the time and other resources required to undertake preparation with the parties, to conduct full risk assessments, and to engage in appropriate levels of follow-up after any process.

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21. Delivering for today, investing for tomorrow: the Government's programme for Scotland 2018-2019,

<https://www.gov.scot/publications/delivering-today-investing-tomorrow-governments-programme-scotland-2018-19/>

22. CM/Rec(2018)8

## The uses of restorative justice - key messages



**Norway, Belgium and Colorado State have the most comprehensive systems of the jurisdictions we examined, offering Restorative Justice at each stage in the criminal justice system, for all ages and offence types.**

### **NORWAY<sup>23</sup>**

The Norwegian approach is generally regarded by experts as an effective model and one of the most comprehensive in the world.

Norway has a National Mediation Service centralised under the Ministry of Justice and Police, with 22 regional mediation services delivering 8-9000 cases per year. Facilitation is by trained volunteers from the community rather than professional mediators, which is viewed as providing a crucial link into the wider community. They receive referrals from any agency, for any offence and at any stage of the process. The centralised approach came about after an initial model, requiring each municipality to develop its own mediation service, failed to provide a consistent service. RJ can be offered as an alternative to other penal consequences. If the case is successfully resolved it is closed and not recorded in the criminal record.

### **BELGIUM<sup>24</sup>**

Belgium has a similarly comprehensive system, underpinned by the view that access to RJ is a right at each stage of judicial procedure, regardless of the seriousness or type of offense. It differs from Norway in that Belgium uses third sector delivery partners (one major partner for each language group in the country) and professional mediators rather than volunteers. The victim receives letters automatically at each stage of the judicial process reminding them how to proceed if they would like to take up the offer. There is a legislative requirement on prosecutors to release the details of any person involved in a case if requested by a mediator, so that they can offer them RJ or communicate another party's willingness to start the RJ process.

Mediante, the French language provider, noted the following early lessons learned as RJ has developed in Belgium.

- Initially, RJ was only allowed at the request of the victim. This significantly limited the number of referrals. Now that either party can request RJ, 80% of approaches come from the offender, but 50% of victims asked then decide to participate.
- Initially, judges had to rule on the suitability of any request. This was slow and cumbersome, and services found that judges are not particularly well placed to know whether RJ is suitable or not. This requirement has now been removed.

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23. Summarised from Konflikttrødet, 2015

24. Summarised from Mediante contributions to the European Forum for Restorative Justice meeting, November 2018

- Excessively severe or unnecessary screening of offender profiles have now been relaxed slightly – for example, previously there were very high expectations in terms of sincerity, remorse etc, which did not account for victim needs to, for example, express anger and disgust. This was seen as too offender focussed and screening is now more balanced and proportionate.
- Initially RJ operated strictly outside of the criminal justice system to ensure there was no incentive for offenders to participate insincerely in order to obtain a lighter penalty. However, this approach was seen as not being respectful to the wishes of the person harmed, in that it gave no scope for agreements reached with the victim to be incorporated into judicial decisions, which would help with monitoring and enforcement. Now there is limited scope to feed into judicial process, where it is appropriate and relevant, which is mainly in situations where the two parties have reached an agreement that it is relevant for the judge to take into account.

With these changes, Mediante view the system as broadly working well. They report that the main challenge now is in implementing the duty to inform parties of their rights.

## COLORADO

The State of Colorado has perhaps the best developed RJ system in the United States. Services can be found throughout the spectrum of entry points prior to and within the criminal justice system. They also have a central body, the statutory Restorative Justice Coordinating Council (RJCC) which provides training and supports the development of RJ programmes;<sup>25</sup> the same law which created the RJCC also enables RJ to take place throughout the youth justice process. In 2013 a new law introduced a \$10 surcharge on offenders to fund new RJ pilots, research and a State RJ coordinator<sup>26</sup>. This law also gives victims the right to be informed about the availability of RJ; requires many young offenders to undergo a pre-sentence evaluation to determine whether RJ is a suitable sentencing option; requires district attorneys to assess whether certain young offenders are suitable for diversionary RJ; and directs the Department of Corrections to establish policies and practices for RJ in prisons.

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25. Restorative Justice Colorado, <https://www.rjcolorado.org/about-us/restorative-justice-council/>

26. <https://www.iirp.edu/news-from-iirp/new-law-in-colorado-will-help-make-restorative-justice-available-to-all-youth>

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## **Restorative Justice for young people is more universal than for adults, but adult provision is still widespread.**

### **YOUTH CONFERENCING**

Northern Ireland, New Zealand, and Australia all have near universal access to forms of conferencing for youth offenders, and Norway and Belgium for all offenders regardless of age. In England and Wales, under the victim's code, victims of young offenders are entitled to be offered RJ where appropriate, which is carried out by Youth Offending Teams. However, victims of adult offenders have slightly weaker rights, with the code entitling them to information only, and provision for adults varying geographically due to funding being decentralised<sup>27</sup>.

Restorative justice now plays a crucial part in Northern Ireland, but it is primarily limited to youth crime (although a system for adult offenders is currently being developed)<sup>28</sup>. There are two types of conferencing – diversionary (for which the young person admits they have committed the offence and consents to the process) and court ordered (for which the young person must either admit guilt, or guilt must be established through the court process, and they must also consent to the conferencing process). The Magistrate is required to refer a young person to youth conferencing in almost all cases. Their youth conference system is noted for being inclusive, future oriented, and underpinned by problem-solving principles, and for the important role victims play. The Youth Justice Agency has a statutory footing and the Youth Conference Rules (Northern Ireland) 2003 lay out the procedures to be followed when convening and facilitating a conference.<sup>29</sup> The service employs professional Youth Conference Coordinators who feed post-conference reports into the Public Prosecution Service (PPS) or the youth court. Case Managers facilitate the day-to-day service, including taking referrals and returning conference outcomes to the PPS or youth court. The service received 5,500 referrals in the first six years. Completion rates for the plans agreed at conferences is high, at around 90%<sup>30</sup>.

In New Zealand, Family Group Conferences (FGCs) are now, with a few exceptions, the primary and mandatory decision making forum for all types of serious offending before the Youth Court<sup>31</sup>. A specialist youth-focused division of the police force ensures that approximately 80 percent of all youth offending is dealt with by community-based alternative intervention. Those who are still charged in the Youth Court have a mandatory FGC, reducing reliance on judicial decision-making and instead developing a consensus-based plan that holds the young person accountable while addressing the underlying causes of offending. This model diverges from traditional RJ in a number of ways, including that it is compulsory for the young person regardless of whether the victim chooses to participate. It also necessarily includes

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27. HC 164: House of Commons Justice Committee, Restorative Justice: Fourth Report of Sessions 2016-17, <https://publications.parliament.uk/pa/cm201617/cmselect/cmjust/164/16402.htm>

28. <https://www.belfasttelegraph.co.uk/news/northern-ireland/proposed-northern-ireland-adultbased-restorative-justice-programme-must-be-victimled-37840865.html>

29. 2003 No. 473: The Youth Conference Rules (Northern Ireland) 2003 <http://www.legislation.gov.uk/nisr/2003/473/contents/made>

30. Criminal Justice Inspection Northern Ireland, The Effectiveness of Youth Conferencing, March 2015, <https://www.justice-ni.gov.uk/sites/default/files/publications/doj/cjini-report-effectiveness-of-youth-conferencing-march-2015.pdf>

31. Oranga Tamariki Ministry for Children, Family Group Conferencing, <https://www.orangatamariki.govt.nz/youth-justice/family-group-conferences/>

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the offenders family and/or wider support network, and emphasises a wider focus than the specific offense. In these ways the FGC can be seen as a model somewhere in between social work practice and Restorative Justice.

## ADULT CONFERENCING

Norway and Belgium provide RJ for any offender who consents (as long as other suitability criteria are met and the victim also agrees to participate).

In New Zealand it is also compulsory for cases involving adult offenders to be adjourned before sentencing to consider the suitability of RJ, and then to allow the outcomes of the RJ process to be taken into account in sentencing. This includes any offer of amends, any agreement between the victim and the offender as to how the offender may remedy the wrong, the response of the offender or the offender's family, or any measures to make compensation or apologise to the victim<sup>32</sup>.

For adults in Australia there is some form of conferencing or victim-offender mediation available in New South Wales, South Australia, Victoria and the Australian Capital Territory. In Queensland, conferencing is available for all adult offenders in certain geographic areas under the Justice Mediation Programme, which is intended primarily for offenders without a criminal history who have committed less serious offences, but can be convened for more serious cases if it would benefit the victim. Referrals can be made at any stage of the process, from police, prosecutors or courts, though it is primarily intended for diversion from the courts. Compliance with agreements reached is generally high, and evaluation has indicated that participants are generally satisfied with the process and reoffending rates are low. Some states also have specific programmes for aboriginal Australians<sup>33</sup>.

**Restorative Justice is used for serious offences in a number of jurisdictions, but this requires more stringent practice guidelines and highly trained facilitators.**

Most jurisdictions examined for this paper delineate a set of “sensitive” offences which are treated differently in relation to RJ, although there is variation in whether these cases are ineligible for RJ or merely require more stringent practice guidelines or more highly trained facilitators. The offences covered in these lists vary, but sexual assault, domestic violence and hate crimes are all common inclusions.

In Norway, Belgium and New Zealand any offence type can be referred for RJ, but there are specialist guidelines and training for dealing with certain sensitive cases.

In England and Wales, eligible offences vary geographically, with some areas offering RJ for any offence type, some not proactively serving cases of domestic abuse, hate crime or sexual offences (though they will do so at the victim's request), and others excluding those offences entirely.<sup>34</sup>

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32. New Zealand Ministry of Justice, How Restorative Justice Works, <https://www.justice.govt.nz/courts/criminal/charged-with-a-crime/how-restorative-justice-works/>

33. Summarised from: Restorative Justice in the Australian Criminal Justice System, <https://aic.gov.au/publications/rpp/rpp127/restorative-justice-australia>

34. HC 164: House of Commons Justice Committee, Restorative Justice: Fourth Report of Sessions 2016-17, <https://publications.parliament.uk/pa/cm201617/cmselect/cmjust/164/16402.htm>

In Australia, the offences covered in youth conferencing vary by region – some will cover any offence, but, for example, New South Wales excludes a relatively long list comprised of sexual assault, drug and traffic offences, offences causing death and breaches of apprehended violence orders. Adult coverage also varies by jurisdiction. New South Wales excludes child prostitution, child pornography, stalking or intimidation offences involving the use of a firearm or domestic violence<sup>35</sup>.

In Scotland, restorative justice has been used in relation to more serious crimes in a very small number of cases through interventions called Talk After Severe Crime (TASC)<sup>36</sup> and Restoration in Serious Crime (RiSC)<sup>37</sup>. However, it has been reported that these services lack funds, require skills not always available, and highlight the need for support services for those affected by severe crime<sup>38</sup>.

**Norway and Belgium offer Restorative Justice at all stages of the criminal justice process. In other jurisdictions, it is common for RJ to be concentrated pre-sentencing so outcomes can feed into sentencing decisions.**

Norway and Belgium provide RJ at any stage, from diversion from prosecution to after a prison sentence has been served.

New Zealand, Australia, the US and England and Wales all have adversarial justice systems like Scotland's, so it is particularly relevant to examine these case studies.

New Zealand's family group conference for young offenders generally replaces the judicial process entirely, but adult RJ is only centrally funded for pre-sentencing conferences. As noted above, it is now mandatory for courts to adjourn to consider the appropriateness of an RJ process between victim and offender before sentencing,<sup>39</sup> and to take the outcome of restorative processes into account in sentencing, including any offer of amends, any agreement between the victim and the offender as to how the offender may remedy the wrong, the response of the offender or the offender's family, or any measures to make compensation or apologise to the victim. Some organisations also obtain funding from other sources to provide RJ at other stages of the justice process, but this varies by region depending on local provision.

In Australia, youth conferences are available in all Australian states and may be held at different stages of the process, but in the four jurisdictions that provide RJ for adults it is primarily used at the pre-sentencing stage, except in the Australian Capital Territory, where it is available at any stage<sup>40</sup>.

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35. Restorative Justice in the Australian Criminal Justice System, <https://aic.gov.au/publications/rpp/rpp127/restorative-justice-australia>

36. Kearney N (2005) Talking after severe crime. Edinburgh: CjScotland.

37. Whyte B and Kearney N (2017) Peacebuilding and RiSC: elements of a Scottish model for restorative practices in serious crime. Scottish Justice Matters, 5,1, 11–12

38. Whyte B and Kearney N (2017) Peacebuilding and RiSC: elements of a Scottish model for restorative practices in serious crime. Scottish Justice Matters, 5,1, 11–12

39. Sentencing Act 2002, 24A <http://www.legislation.govt.nz/act/public/2002/0009/latest/DLM6362000.html>

40. Restorative Justice in the Australian Criminal Justice System, <https://aic.gov.au/publications/rpp/rpp127/restorative-justice-australia>

In England and Wales provision varies by region and particular issues have been noted with places that only offer RJ after conviction.<sup>41</sup>

In Colorado, young offenders must undergo pre-sentence evaluation of suitability. Their Department of Corrections is actively developing RJ programmes at other stages including in prisons.

Overall, it appears to be common in adversarial systems for RJ to be concentrated in the pre-sentencing period, in order to allow outcomes to feed into sentencing decisions. This may not be considered best practice by some experts, who argue that to do so can compromise the sincerity of the offender's motive for participating. However, a lesson from Belgium has been that maintaining a strict delineation between RJ and the judicial process did not best respect victims' experiences, in that it gave no scope for agreements reached with the victim to be incorporated into judicial decisions, which would help with monitoring and enforcement. On this basis, Belgium changed their system to allow pre-sentencing information sharing.

One advantage of focussing RJ provision at a specific point in the justice process is that it can clearly embed and formalise the use of RJ at these points and in relation to the wider process. However, a downside is that it can make it harder to access at different points in the process and may make it less responsive to the needs of those responsible or harmed by crime. For example, in New Zealand, a person responsible for or harmed by crime may not be ready or willing to take part in RJ at the pre-sentence stage, but it is not normally offered at a later point, even though more time may be required before the participants feel ready, or before a change such as release from prison prompts the parties to feel they would benefit from it.

**Central coordination and funding is associated with comprehensive Restorative Justice systems, but delivery varies in jurisdictions with more devolution to local areas.**

In Norway RJ is centralised under the Ministry of Justice and Police, with 22 regional mediation services. The central administrative service also carries out quality assurance. This structure was adopted after an initial, more decentralised, model failed to deliver consistent provision across the country. Facilitation is by trained volunteers from the community rather than professional mediators<sup>42</sup>.

Colorado's central coordinating council (statutory) provides training and supports programmes. It is funded partly through a \$10 surcharge on all offenders. In Northern Ireland RJ is implemented by the Youth Justice Agency, who employ facilitators directly<sup>43</sup>.

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41. HC 164: House of Commons Justice Committee, Restorative Justice: Fourth Report of Sessions 2016-17, <https://publications.parliament.uk/pa/cm201617/cmselect/cmjust/164/16402.htm>

42. Konflikttrødet, 2015

43. Restorative Justice Colorado, <https://www.rjcolorado.org/about-us/restorative-justice-council/>

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New Zealand has centrally funded RJ for young people, and for adults there is central funding for pre-sentence RJ, so funding for RJ at other points in the system varies locally. RJ is delivered by third sector partners, who may also obtain funding from other sources to extend local provision. Notably, in the areas that are centrally supported (young people and adults pre-sentence), availability is broad and fairly consistent, but when RJ is not supported centrally (for adults at any other stage in the process), it is highly variable by local area.

In Belgium, RJ runs parallel to the judicial process, so responsibility for ensuring people access RJ is placed on the judicial system. They ensure that the victim receives letters automatically at each stage of the justice process reminding them of their rights and how to proceed if they would like to take up the offer. The offender will usually be informed in their summons, and also in other subsequent letters. RJ is delivered by third sector partners who employ professional facilitators<sup>44</sup>.

In contrast, funding is not ring-fenced in England and Wales so provision varies geographically. RJ is administered by Police Crime Commissioning area and is delivered by a mixture of Police and Crime Commissioners, third sector partners and also by the probation service, prisons and community rehabilitation companies. For young people, RJ is delivered mainly by Youth Offending Teams. The large number of players has made delivery confusing and inconsistent and also gives rise to intractable data sharing issues which have hampered the development of Restorative Justice south of the border. The House of Commons Justice Committee's 2017 report on the state of restorative justice in England and Wales<sup>45</sup> concluded "that restorative justice provision is currently subject to a 'postcode lottery' and varying regional buy-in".

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44. Summarised from Mediante contributions to the European Forum for Restorative Justice meeting, November 2018

45. <https://publications.parliament.uk/pa/cm201617/cmselect/cmjust/164/164.pdf>

## CONCLUSIONS



Comprehensive, consistent national provision of RJ is associated with ring-fenced funding, centralised coordination and putting RJ on a legislative footing. Norway and Belgium have the most comprehensive RJ models we reviewed and are highly regarded by experts. However, it was hard to find evaluations translated into English within the time-frame of this review.

In jurisdictions with similar justice systems to Scotland, it is common for RJ to be used either as diversion from prosecution or before sentencing, to allow outcomes to be fed into sentencing decisions. Although RJ for young people is more universal in the jurisdictions we examined, adult provision is still widespread and restorative justice is used for serious offences in a number of jurisdictions, although this requires more stringent practice guidelines and highly trained facilitators.

Community volunteers, third sector partners and professional mediators all deliver RJ but there is currently little evidence on which delivery model may be most effective.

In a recent review of the evidence on RJ in Scotland, Kirkwood concluded that there are “many opportunities for increasing the use of restorative justice in Scotland as a response to crime”<sup>46</sup>. He proposed that there are 3 main parts of the Scottish criminal justice process where restorative justice could be used:

- As an alternative to prosecution for adults or diversion from formal processes for young people
- At the point between conviction and determination of sentence
- When a person is in prison, on license following imprisonment or on a community sentence.

Kirkwood also suggested that RJ could be used during a deferred sentence after conviction and before sentencing (this is the model currently used in New Zealand).

As demonstrated by several jurisdictions we examined, RJ could be used at several points along the criminal justice pathway including diversion from prosecution and at pre-sentencing stage, for all offenders and offence-types as long as there are the necessary guidelines and high quality training.

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46. <https://www.iriss.org.uk/resources/insights/restorative-justice>



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Any enquiries regarding this publication should be sent to us at  
The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

ISBN: 978-1-78781-726-5 (web only)

Published by The Scottish Government, May 2019

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS568450 (05/19)

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