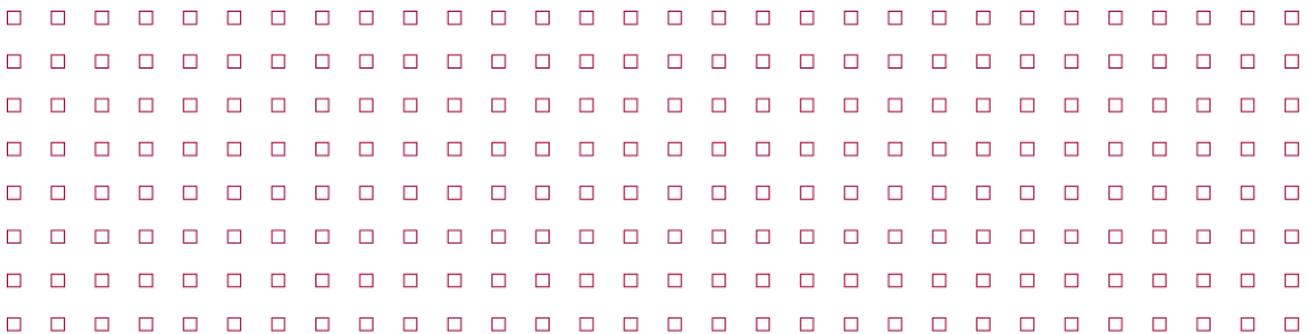




Ministry  
of Justice

# Pre-sentence restorative justice (RJ)

May 2014





## **Pre-sentence restorative justice (RJ)**

**This information is also available at [www.gov.uk/moj](http://www.gov.uk/moj)**



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## Introduction

This guidance has been issued by the Secretary of State for Justice under section 1ZA(6) of the Powers of the Criminal Courts (Sentencing) Act 2000 about deferring the passing of sentence to allow for restorative justice (RJ).

This guidance is not legally binding but it is intended to inform practice. It provides RJ practitioners with an overview of the processes involved in delivering pre-sentence RJ. Practitioners must have regard to this guidance, with a view to spreading good practice nationwide.

This guidance provides an overview of the processes involved in the delivery of pre-sentence RJ. However, variations and alternative processes may be developed at a local level. Processes will be influenced in part by future commissioning arrangements for the delivery of restorative justice services.

This guidance will be kept under review and may be updated to provide further detail and reflect alternative processes and delivery models if appropriate.

This guidance has been prepared by the Ministry of Justice in conjunction with National Offender Management Service, Youth Justice Board, Her Majesty's Courts and Tribunals Service and the Restorative Justice Council.

Any enquiries about this guidance should be made to:

[Restorative\\_Justice@justice.gsi.gov.uk](mailto:Restorative_Justice@justice.gsi.gov.uk)

## Getting ready to deliver pre-sentence RJ

Restorative justice brings those harmed by crime, and those responsible for the harm, into communication, enabling those responsible to face up to the harm offering both victim and offender a more positive future.

Existing levels of awareness, capacity, capability and provision of RJ, as well as local buy-in and resources available will impact on the time taken to implement and embed pre-sentence RJ in local areas.

Learning from early pathfinder projects has shown that processes for the delivery of pre-sentence RJ can be complex and effective partnership working is essential. It is likely that delivery will involve numerous agencies and organisations such as the police, probation, youth offending teams, victim services, RJ providers and the courts. Agencies and organisations will need to work together to establish processes such as the initial referral mechanism, effective communication channels and information sharing protocols.

It is envisaged that pre-sentence RJ will fit within wider RJ strategies to make RJ available at all stages of the criminal justice system. This will for example, help ensure that if a victim does not wish to participate in pre-sentence RJ then processes are in place to offer them the opportunity to participate in RJ post-sentence.

## 1. What is pre-sentence RJ?

### Definition of RJ

- 1.1 Restorative justice brings those harmed by crime, and those responsible for the harm, into communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way forward.
- 1.2 RJ offers victims an opportunity to be heard and to have a say in the resolution of offences, including agreeing rehabilitative or reparative activity for the offender. It can provide a means of closure and enable the victim to move on.
- 1.3 RJ also provides a way for offenders to face the consequences of their actions, recognise the impact that it has had upon others and where possible make amends. In this way, RJ has the potential to help rehabilitate offenders and enable them to stop offending. It has the potential to motivate them to change and become responsible, law-abiding and productive members of society.

### Pre-sentence RJ

- 1.4 RJ can take place at all stages of the criminal justice system including out-of-court and post-sentence. However, this guidance focuses on RJ activity that takes place post-conviction and pre-sentence. The different types of RJ Activity are set out at paragraph 1.21.
- 1.5 It is important that there is the opportunity for a RJ activity to take place at the right stage of the criminal justice system for all the participants involved, particularly victims. A RJ activity at the pre-sentence stage is an example of one of the earlier opportunities.
- 1.6 The aims of pre-sentence RJ are to:
  - provide victims with the opportunity to take part in a RJ activity at an early stage of the criminal justice system,
  - offer victims greater direct involvement in the criminal justice process, give victims a voice and increase victim satisfaction; and
  - reduce re-offending.
- 1.7 A pre-sentence RJ activity can provide victims with the opportunity to get answers to questions, gain a greater understanding of the crime and the offender and, where possible, receive some resolution or closure to the incident and move on.
- 1.8 For offenders it can provide the opportunity to face up to their actions and understand the implications of their actions and, where possible and acceptable to the victim, make some amends.
- 1.9 A pre-sentence RJ activity can take place whether the offender is an adult or young person (under 18 years) and can be imposed by any court.

- 1.10 The offender's agreement to participate in an RJ activity should not itself affect the sentence that he/she receives. It will remain a matter for the sentencing court to decide what weight to give to the offender's participation in RJ when sentencing.

## Legislation

### *Deferment*

- 1.11 Provisions on deferment of sentence are set out in sections 1 to 1D of the Powers of Criminal Courts (Sentencing) Act 2000 ('the 2000 Act'). Under section 1 of the 2000 Act the court is empowered to defer passing sentence for up to 6 months (from the date of the deferment).
- 1.12 The purpose of deferment is to enable the court to have regard to the offender's conduct after conviction or any changes in his or her circumstances, including the extent to which the offender has complied with any requirements imposed by the court.
- 1.13 Part 2 of Schedule 16 to the Crime and Courts Act 2013 inserts a new section 1ZA into the 2000 Act which makes it explicit that the courts can use their existing power to defer sentence post conviction to allow for a RJ activity to take place, by imposing a restorative justice requirement.
- 1.14 Section 1ZA(2) provides that a RJ requirement is a requirement to participate in an activity:
- a) where the participants consist of, or include, the offender and one or more of the victims;
  - b) which aims to maximise the offender's awareness of the impact of the offending concerned on the victims; and
  - c) which gives an opportunity to a victim or victims to talk about, or by other means express experience of, the offending and its impact.
- 1.15 In accordance with section 1ZA(3), imposition of a RJ requirement (under section 1(3)(b) of the Powers of Criminal Courts (Sentencing)\_Act 2000) requires the offender's consent and the consent of every other person who would be a participant in the activity concerned.
- 1.16 Section 1ZA(7) defines a "victim" as a victim of, or other person affected by, the offending concerned.

### *Adjournment*

- 1.17 There may be occasional cases where the court considers it is not appropriate to defer sentence to allow for a RJ activity to take place. In such cases the court might consider adjourning to allow for a RJ activity to take place. That will be a matter for the courts.
- 1.18 Provisions on adjourning cases in the Magistrates Court are set out in section 10 of the Magistrates' Court Act 1980. The maximum adjournment period is 3 or 4 weeks, depending on whether the offender has been remanded into custody, however, the court may re-adjourn for another four weeks on the date of the offender's next court appearance.

1.19 The Crown Court has common law discretionary powers to postpone the passing of a sentence (see *R v Annesley* [1976] 1 WLR 106). There is no express rule about how long the postponement can be for. This is a wide discretionary power.

### Types of RJ activity

1.20 Current evidence suggests that a direct face-to-face meeting between the victim and offender is the most effective form of RJ activity in terms of outcomes for victims and offenders. However, it is important that the right type of RJ activity is delivered for the individual circumstance at the right time. Wherever possible, a face-to-face meeting should be the aim, but if the trained facilitator does not assess it as suitable then an alternative type of RJ activity should be considered.

1.21 A RJ activity can include any of the following:

**A victim-offender conference** (sometimes called a face-to-face meeting or RJ conference): Involves a trained facilitator, the victim(s), the offender(s) and supporters, usually family members. Professionals, such as social workers may also be involved. Such meetings might well conclude with an agreement for further steps to be taken, such as some sort of reparation but this is not mandatory. On some occasions it may be necessary and appropriate to consider live video or audio/telephone as a means of bringing parties together;

**A community conference:** Involves members of the community which has been affected by a particular crime and all or some of the offenders. This is facilitated in the same way as a RJ conference but it differs in that it can involve more people.

**In-direct communication** (sometimes called 'shuttle RJ'): Involves a trained facilitator carefully passing messages back and forth between the victim, offender and supporters, who do not meet. This can also be by recorded video, audio/telephone or written correspondence. This approach can lead to a face-to-face meeting at a later stage.

## 2. Process overview

### Identifying suitable cases

2.1 A RJ activity is only suitable where:

- there is an **identifiable victim or victims**. In relation to cases with a corporate victim there must be someone who has been personally harmed or affected;
- the offender accepts responsibility and has made a **guilty plea** at any point in proceedings; and
- the victim, offender and any other participants all **consent** to take part in a RJ activity.

2.2 A RJ activity may be suitable for any offence. Current evidence suggests that the greater the harm experienced the more effective RJ can be. RJ is most effective with more serious offences, particularly violent and acquisitive crime. However, it should not normally be used in cases of:

- domestic violence due to the risk of ongoing harm to the victim and the potential for communication between intimate partners which can be difficult to detect; and
- hate crime and sexual offences, unless a victim of such offence requests a RJ activity and suitably experienced and skilled facilitators are available.

See the Further Guidance and Information section of this guidance for a link to further information on research.

2.3 A pre-sentence RJ activity may be suitable irrespective of the type of sentence which may be under consideration, and is not limited to cases close to the community sentence or custodial threshold.

2.4 Potentially suitable cases may come to the attention of the police, victim services, probation staff, youth offending teams or RJ service providers prior to the court hearing at which sentence is deferred or the case is adjourned to allow for a RJ activity to take place. The victim or offender may also request to take part in a RJ activity. The Victims' Code which came into force on 10 December 2013 includes, for the first time, a requirement to provide information on RJ for victims of adult offenders as well as young offenders. This is led by the wishes and needs of the victim, subject to the local provision of RJ. The new Code sets out strict requirements that any offer of RJ must be appropriate to the particular case. The Code also makes it clear that RJ activities must be conducted in a safe, secure environment with an appropriately trained facilitator according to recognised quality standards.

2.5 Depending on the local arrangements in place, the person who initially identifies a case as potentially suitable for RJ might then need to refer the case to a trained RJ facilitator, RJ service provider or probation. For example a police officer may identify a case and then refer it to a local RJ service provider or probation to take forward. However, a case identified by probation may not require a referral to any other parties, although other parties may need to be aware and involved.

- 2.6 If a potentially suitable case does require a referral then it should be made at the earliest opportunity. Cases should only be referred to a trained RJ facilitator or RJ service provider. For example, the Restorative Justice Council's Restorative Service Quality Mark is one recognised badge of quality for organisations.

### **Early contact with the victim and offender**

- 2.7 If a potentially suitable case has been identified, the trained RJ facilitator may decide to make early contact with the victim and/or offender prior to a court deferring sentence or adjourning the case to allow for a RJ activity to take place. The trained RJ facilitator may inform them about RJ and ask if they are willing to take part in a RJ activity. Only a trained RJ facilitator should seek the consent of all parties.
- 2.8 If early contact is made, particular care must be taken to manage expectations of both the victim and offender. The trained RJ facilitator must make it clear that a RJ activity may only take place if:
- the offender makes a guilty plea (in some cases there may be an indication of plea at the time of early contact);
  - both the victim and offender consent to take part in the RJ activity; and
  - the court supports the proposal and defers passing sentence (or in some cases adjourns the case) to allow for a RJ activity to take place.
- 2.9 Depending on the local arrangements in place the trained RJ facilitator, RJ service/agency, probation or youth offending team may inform the courts of potentially suitable cases. The courts should also be made aware of any initial contact with the victim and/or offender if they are willing to take part in a RJ activity.

### **At the court hearing**

- 2.10 Depending on local arrangements in place the trained RJ facilitator, RJ service/agency, probation or youth offending team may inform the court of suitability for a RJ activity.
- 2.11 The court will only defer passing sentence to allow for a RJ activity to take place, possibly alongside other requirements, if the offender pleads guilty **and** both the victim and offender consent to take part in a RJ activity.
- 2.12 If the offender pleads guilty and initial consent has not already been obtained from all participants then initial consent must be obtained. This may take place on the day of the hearing or alternatively, the court may adjourn to allow for initial consent to be sought or for a full risk assessment to be made.
- 2.13 If the court defers passing sentence to allow for a RJ activity to take place the sentence hearing date will be set with enough time to allow for the activity to take place. In most cases only one period of deferment can be granted therefore if it is not possible to complete a RJ activity or the outcomes of the activity within the deferment period the activity or outcomes may form part of a sentence plan.
- 2.14 In some instances deferment may not be the court's preferred option and the court might decide to adjourn to allow for a RJ activity to take place instead. If it has not been possible to complete a RJ activity or the outcomes of the activity within the adjournment period then the court may defer passing sentence to allow for the

completion of the activity or outcomes. Alternatively completion of the activity or outcomes may form part of a sentence plan.

### Consent and risk assessment

- 2.15 A RJ activity can only take place if the victim, offender and any additional participants have both been risk assessed and deemed fully able, consenting and suitable to take part in a RJ activity by the trained RJ facilitator assigned to the case. The risk assessment cannot be made by any other person and is a separate and more detailed process than obtaining initial consent.
- 2.16 The trained RJ facilitator must consider any risk of emotional or physical harm to participants and others through a RJ activity, and how any risks should be managed. Guidance on risk assessment can be found in section 2 of the Restorative Justice Council's Best Practice Guidance for Restorative Practice 2011 and any organisation or agency guidance. See the Further Guidance and Information section of this guidance
- 2.17 The risk assessment can be carried out before or after the court defers passing sentence or adjourns the case but must be completed before a RJ activity can take place.
- 2.18 Victims and offenders must not be forced or pressured to take part in a RJ activity. Presentation of successful outcomes and explaining the RJ process does not constitute exerting pressure. Participation in a RJ activity is completely voluntary and in some cases the victim will not want to take part in pre-sentence RJ. Other forms of intervention may be considered and a RJ activity may be appropriate at another stage of the criminal justice process and victims should be made aware of this if appropriate.
- 2.19 If the risk assessment indicates that a victim-offender conference would not be suitable, but an alternative type of RJ activity may be suitable then the trained RJ facilitator should explain the RJ activities options on offer and assist participants to choose a RJ activity that will work for them.
- 2.20 If the risk assessment indicates that no form of RJ activity is suitable then no activity can take place and the other participants should be informed. If the risk assessment is undertaken after the court has deferred passing sentence then the court should be made aware that a RJ activity is unsuitable so that sentencing can take place.
- 2.21 If the victim or offender decides to withdraw from the process after initially consenting to take part in a RJ activity the trained RJ facilitator should offer them support in exercising their right to opt out. Support should also be offered to the other participant(s) who had been willing to participate. If withdrawal from the process takes place after the court has deferred passing sentence, the court should be made aware so that sentencing can take place.
- 2.22 If the victim or offender cannot be contacted after they have provided consent then no RJ activity can take place. Agencies in possession of contact data for victims and offenders should actively ensure that this information is shared expeditiously, in accordance with the Data Protection Act 1998, in order to promote RJ activity.

- 2.23 Risk assessment is a continuous process that must be undertaken throughout all stages of the RJ intervention. Risk assessments should be formally recorded. Agencies in possession of risk data for RJ activity, including previous criminal history, should actively ensure that this information is shared expeditiously, in accordance with the Data Protection Act 1998, in order to promote safe RJ activity.

### **Preparing for a RJ activity**

- 2.24 If the victim, offender and any additional participants have been risk assessed by the trained RJ facilitator and have been deemed fully able, consenting and suitable for a RJ activity then the facilitator should begin preparing the participants.
- 2.25 The trained RJ facilitator should provide clear information to participants about how the RJ process works and explain who the other participants will be at the RJ activity.
- 2.26 Guidance on preparing for a RJ activity can be found in section 2 of the Restorative Justice Council's Best Practice Guidance for Restorative Practice 2011. See the Further Guidance and Information section of this guidance.

### **RJ activity**

- 2.27 Only the trained RJ facilitator(s) assigned to the case should facilitate the RJ activity.
- 2.28 Guidance on facilitating a RJ activity can be found in section 3 of the Restorative Justice Council's Best Practice Guidance for Restorative Practice 2011, and any agency/organisation specific guidance. The Restorative Justice Council's guidance covers: preparing for a RJ activity, during the RJ activity, forming an outcome agreement and after the RJ activity.
- 2.29 Guidance on providing ongoing support, evaluation and monitoring can be found in section 4 of the Restorative Justice Council's Best Practice Guidance for Restorative Practice 2011.
- 2.30 The Restorative Justice Council's Best Practice Guidance for Restorative Practice 2011 also includes guidance of sensitive and complex cases, co-working, guidance for case supervisors, line managers and service providers.

### **Report and sentencing**

- 2.31 Following the RJ activity the trained RJ facilitator will be required to prepare a report on the RJ activity and any outcome agreement for use by the court at the sentencing hearing. The report should be objective, proportionate, succinct and focused on outcomes and agreements. The report and Victim Impact Statement (if provided/available) enable the court to hear the victim's views.
- 2.32 While there is no prescribed form that such reports should take it is recommended that the following information is included:
- Who agreed to participate in the RJ activity;
  - Who participated in the process and RJ activity;

- Details of the outcome agreement or action plan whether or not it is completed by time of sentencing; and
  - The views of the victim and trained RJ facilitator
- 2.33 At the sentence hearing the court may have regard to the report and the offender's participation, willingness or lack of willingness to participate in a RJ activity and any outcome agreement. However, these considerations, together with considerations of other factors of the case remain entirely a matter for the courts to interpret and come to a sentencing decision about.
- 2.34 If a RJ activity does not go ahead through no fault of the offender, then the court will be able to proceed to sentence the offender before the end of the deferment period. It would be open to the court to take into account the fact that the offender had indicated willingness to participate in a restorative justice activity.
- 2.35 If a RJ activity or outcome agreement has not been completed during the deferment or adjournment period it may be possible to complete at a later stage of the criminal justice system for example as a rehabilitation activity of a community order or as part of a sentence plan.

### 3. Data sharing, recording and evaluation

- 3.1 Effective data sharing is an important component of restorative practice. Data must be shared in accordance with the Data Protection Act 1998. Local data sharing agreements between key agencies will be required to enable the sharing of data.
- 3.2 Data holders should expedite the sharing of necessary data in order to expedite the RJ process for the benefit of the victims and to minimise court delays.
- 3.3 Programmes engaged in delivering RJ activity must maintain sufficient records to allow a clear evaluation of quality, long-term victim satisfaction and the reduction of re-offending.

## 4. Further guidance and information

**Restorative Justice Council's Best Practice Guidance for Restorative Practice 2011:**

[http://www.restorativejustice.org.uk/resource/best\\_practice\\_guidance\\_for\\_restorative\\_practice\\_2011/](http://www.restorativejustice.org.uk/resource/best_practice_guidance_for_restorative_practice_2011/)

**Restorative Justice Council - Ministry of Justice research into RJ:**

<http://www.restorativejustice.org.uk/resource/mojresearch/>

**Victims' Code 2013:**

<https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime>

**Wait til Eight RJ Implementation Guidance:**

<http://www.justice.gov.uk/downloads/about/noms/wait-til-eight-guidance.pdf>

**NOMS Better Outcomes through Victim-Offender Conferencing:**

<http://www.justice.gov.uk/downloads/about/noms/better-outcomes-through-victim-offender-conferencing.pdf>

**NOMS Victim-Offender Conferencing (RJ) Service Specification:**

<http://www.justice.gov.uk/about/noms/commissioning.htm>







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