Restorative Justice

Member Guidance

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# Document History

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1. **Introduction**

1.1 The term ‘Restorative Justice’ (RJ) covers a variety of practices which bring together people who have caused harm by committing a crime with those who have been directly affected and harmed by that crime. The aim is to try to repair the harm caused by coming to an agreement about a positive way forward.

1.2 This guidance is for Parole Board members and provides information about:

- considerations for members where RJ may feature as part of a parole review, including best practice advice;
- participant eligibility and types of RJ;
- principles of RJ, how RJ works and what the outcomes might be;
- links to further reading.

1.3 Key points of note:

- RJ is a voluntary process and neither the offender nor the victim can be compelled to engage against their wishes. It can only take place with the consent of both parties;
- Either party can withdraw at any time;
- When considering the outcomes of RJ, members should remind themselves that RJ was not designed to reduce reoffending or risk of serious harm – its primary function is to repair harm;
- Any documentation produced as part of the RJ process, including notes from RJ meetings are all confidential and the Parole Board will not ordinarily have access to these. Any document produced may in any case have limited value for a parole review;
- There is no final report produced in concluding an RJ process.

2. **Legislation**

2.1 The **Crime and Courts Act 2013** made provision for RJ at the request of either the victim or the offender, whilst confirming it could only take place where circumstances are suitable, and both are assessed as being fully able and willing to participate in a particular intervention. The legislation also provided Courts with the power to defer sentencing for RJ to take place first.

2.2 The **Code of Practice for Victims of Crime 2020** forms part of a wider Government Strategy committed to strengthening victims’ rights and ensuring that comprehensive support is available at the right time. The Code establishes how victims of crime should be treated and sets out the services they should expect to receive through twelve clearly defined overarching Rights.

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1 This is further referenced in the Government White Paper: A smarter approach to sentencing 2020 [https://www.gov.uk/government/publications/a-smarter-approach-to-sentencing](https://www.gov.uk/government/publications/a-smarter-approach-to-sentencing)
RJ is covered under Right 3 of the Code: *To be provided with information when reporting the crime.*

You have the Right to receive written confirmation when reporting a crime, to be provided with information about the criminal justice process and to be told about programmes or services for victims. **This might include services where you can meet with the suspect or offender, which is known as Restorative Justice.**

The specific clauses are:

3.4 - *If the offender is an adult, you have the Right to receive information about Restorative Justice from the police and how to access Restorative Justice services in your local area. If the offender is under the age of 18, you have the Right to receive information about Restorative Justice from the Youth Offending Team.*

3.5 - *Although the police are responsible for providing you with information on Restorative Justice initially, all service providers must consider whether you would benefit from receiving this information at any stage of the criminal justice process.*

Additionally, Under Right 4: *To be referred to services that support victims and have services and support tailored to your needs,* the Code sets out:

4.5 *If you report a crime to the police, you have the Right to be referred to a service that supports victims, including Restorative Justice services.*

And under Right 11: *To be given information about the offender following a conviction* the Code states:

11.6 *The Youth Offending Team may seek your views prior to sentencing and explore whether you want to get involved in any Restorative Justice initiatives (see Right 3), where appropriate and available.*

3. **Restorative Justice and parole**

3.1 **Whilst the primary purpose of RJ is to repair the harm caused to a victim of crime,** if an offender has participated in RJ, this will be of interest for a parole review, and may be one of the factors that a panel will want to take into consideration when assessing the offender’s suitability for progression or release.

3.2 **As with any other intervention,** the panel will want to understand the offender’s motivation for taking part (or expressing an interest) in RJ, if the offender has changed their attitudes or behaviour as a result of their participation in RJ, and whether this may have any impact on their level of risk. RJ facilitators will usually assess motivation to take part in RJ if it is known that a parole review may be due. Panels are reminded of the analysis of the evidence of change section within the Decision-Making Framework, and in particular the points set out under “attitudes”.
3.3 Although research has indicated some clear findings in relation to RJ, these are mainly linked to outcomes for victims. There is still a lot about the impact on offenders and reoffending which is not known.

3.4 The impact of RJ is difficult to measure because:

- the process is different in every case and criteria for selection, environment and procedures may all vary;
- the delivery may be hard to define – when does it start and end?
- what exactly is being measured in relation to outcome, and over what timescale – there is no agreed definition of a successful intervention and the expectations of participants will impact on measurement;
- the quality and consistency of delivery and follow-up varies; and
- the process is confidential.

3.5 As it is difficult to measure the impact of RJ, it may not be appropriate to place weight solely on the completion of RJ when considering future risk. Ultimately, members should consider RJ alongside the full range of information they would ordinarily use to inform decision-making, using objective measures of risk.

3.6 Being knowledgeable about the RJ process that has taken place, the nature of the outcome agreement, and the assessments of prison and probation staff in relation to any progress made following the process, together with the panel’s own assessment following an opportunity to question an offender, will be a relatively reliable starting point.

4. **Best practice and issues of disclosure**

4.1 There are a number of ways in which members are likely to become aware that an offender has taken part in RJ:

- it should be referenced in an OASys, an HMPPS parole report, or other prison report;
- it may be referenced by a victim if a Victim Personal Statement is produced for a parole review;
- the offender may mention it themselves in personal or legal representations.

4.2 **In considering the outcomes of RJ, members should remind themselves that RJ was not designed to reduce reoffending or risk of serious harm – its primary function is to repair harm done.**

4.3 There is no report produced in concluding an RJ process; the outcome agreement is for the participants and, as such, there may be disclosure issues. As a document in its own right it may in any case have minimal value for a parole review.

4.4 However, participation in RJ may well have been a very significant part of an offender’s ‘journey’ and so the process itself, the broad details of the outcome agreement, and the immediate impact of the process on the offender could be addressed in the probation reports provided to a panel.
The finer detail is unlikely to be disclosable due to confidentiality, nor to assist in panel deliberations.

4.5 If it is apparent that an offender has taken part in RJ but there is little or no information about it in the dossier, this can be directed as part of an update from probation. Probation staff should have been engaged with RJ practitioners, and should be aware that an RJ process took place. Panels should be cautious about lending any significant weight to RJ if they have limited information on the outcomes.

4.6 Report writers are likely to provide (or could be directed to provide) their assessment of the offender’s motivation for taking part in RJ, their assessment of the extent to which it has impacted on the offender’s willingness to take responsibility for their offending and their level of remorse, their assessment of the impact (if any) on previously identifiable risk factors, any change in victim empathy, and their assessment of any observable behavioural changes. However, Panel Members should be cautious about attributions of impact to RJ interventions alone, and should consider change in an offender’s behaviour/outlook as something resulting from the totality of treatment/interventions received.

4.7 If a victim asked to engage in RJ but the offender declined, it may be helpful for probation to address this in their written reports and to provide their assessments of the reasons or rationale for the decision taken by the offender in question. There could be a range of reasons why an offender has declined to engage and members should take care not to approach this in a negative light or consider it a risk factor.

4.8 Members should only seek more detailed information about an RJ process from probation in very exceptional circumstances, and be mindful of the confidential nature of the RJ process.

4.9 Members should not issue directions to RJ practitioners or for any of the participants in RJ (other than the offender) to attend an oral hearing as a witness. All enquiries must be channelled through probation.

4.10 At an oral hearing the panel may wish to ask the offender about RJ if it is known that they have participated in it. Relevant questions may include:

- their motivation for doing it
- how they felt about the process
- what they think the impact on them (and the victim) was
- what they felt about the outcome agreement
- what difference they think it may make to them (and the victim) in the future

**Disclosure**

4.11 The clearest position on disclosure of information is set out in Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.
4.12 Article 12 deals specifically with “Rights to safeguards in the context of restorative justice services”, the relevant clause being 1(e):

“(e) discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest.”

The full wording of Article 12 can be found at Annex A.

4.13 RJ practitioners have been provided with an advisory note on engagement with the Parole Board, which sets out what information the Board may ask for and how it can be provided, if appropriate. This can be found at Annex B.

4.14 Referring to the Article 12 (e) of the EU Directive again, disclosure is only appropriate where it is required by national law due to an overriding public interest.

5. Restorative Justice Council and Principles

5.1 The Restorative Justice Council (RJC) is the independent third sector membership body for organisations working in the field of restorative practice. It provides quality assurance and a national voice advocating the widespread use of all forms of restorative practice including RJ.

5.2 The RJC has developed clear, evidence-based Practice Frameworks and guidance to support the delivery of restorative practice and puts in place mechanisms to enable its members to demonstrate that they meet agreed standards.

5.3 There are established Principles of Restorative Practice\(^2\) which provide an ethical framework for restorative practice. These principles should underpin all work carried out by RJ practitioners:

- **Restoration** – the primary aim of restorative practice is to address and repair harm.
- **Voluntarism** – participation in restorative processes is voluntary and based on informed choice.
- **Neutrality** – restorative processes are fair and unbiased towards participants.
- **Safety** – processes and practice aim to ensure the safety of all participants and create a safe space for the expression of feelings and views about harm that has been caused.
- **Accessibility** – restorative processes are non-discriminatory and available to all those affected by conflict and harm.
- **Respect** – restorative processes are respectful to the dignity of all participants and those affected by the harm caused.

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\(^2\) As set out on Gov.UK – Restorative Justice and Restorative Practice

5.4 The RJC has established a quality mark for restorative services (RSQM) which can demonstrate they meet the required standards. The standards were developed to ensure quality of provision and participant safety in the process. Parole Board members can be confident that service providers with this quality mark provide a service which meets the required standards.

5.5 More information about the Council, its membership, and its work can be found on their website (see Further Reading section).

6. Restorative Justice Providers

6.1 There is a diverse range of organisations across England and Wales that provide a variety of RJ services. They include prisons, probation services, police, youth offending teams, local authorities, housing associations and third sector organisations often working in partnership or as part of a local area ‘hub’.

6.2 Police and Crime Commissioners are the main commissioners of RJ services, with most being carried out by third sector organisations. Services vary geographically with some areas better served than others.

7. Restorative Justice Aims

7.1 The Criminal Justice Alliance published a roadmap3 for increasing RJ across England and Wales, which included the following two helpful statements:

‘RJ is a voluntary process which brings together victims and offenders to help repair the harm caused by a crime. It provides victims, should they wish, with an opportunity to meet in person or communicate with the person who committed the offence, to ask questions of them and to explain the harmful impact the offence has had upon them. In this way, they may receive human engagement and answers – and also sometimes a meaningful apology’.

‘RJ holds people who have offended to account for what they have done and helps them take responsibility and make amends. Properly administered, good quality RJ processes provide individually tailored solutions involving interaction between victims, offenders and the community’.

7.2 RJ is a process which can happen at any time following any crime. The law allows for pre-sentence RJ to take place and a sentencing Judge can defer sentencing for up to 6 weeks while it takes place. RJ can also take place alongside an out of court disposal. In other instances, the offender may be in prison, in the community on licence, or serving a community sentence, or even have completely served their sentence. Some victims are keen to proceed immediately whilst others may not feel ready to engage with RJ for years, if at all.

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7.3 RJ has often been misunderstood. It is not a ‘quick fix’ and offenders do not ‘do an RJ programme’ in the way they might complete another intervention. However, like other interventions and programmes, it is an individual journey of learning, growth and change for both the victim and the offender and must be approached as such when consideration is given to measuring its impact.

7.4 RJ services are interventions tailored to the individuals involved and there is not a ‘one-size fits all’ approach to delivery.

8. **How Restorative Justice Works**

8.1 RJ is underpinned by a set of principles, as set out in section five.

8.2 The foundation of any restorative approach is based on a set of restorative questions. These questions are open and flexible and can be used with offenders, victims, and supporters in addressing behaviour during restorative conversations. They can also be used with individuals in the preparation part of the process:

- What happened?
- What were you thinking and feeling at the time?
- What are you thinking and feeling now?
- Who has been affected?
- What do you need to feel better?
- What needs to happen to make things right?

8.3 RJ can be delivered in a variety of ways. The main types include:

   a) Face to face meetings (conferences) between victims and offenders that are structured and facilitated by a trained practitioner/facilitator;
   b) Community conferences – these are as above, but other members of the community who have been affected can attend;
   c) Indirect (shuttle) communication where the facilitator carries messages between the victim and the offender, but they do not meet in person.

9. **What a Restorative Justice conference looks like**

*Preparing for the conference*

9.1 RJ facilitators have a key role (best practice suggests two facilitators should work on one case together). They will meet victims and offenders (and any other participants) to explain how the process works and will spend a lot of time listening to both parties to understand their circumstances and the context in which the offence took place. They help victims think about the questions they will want to ask as well as working with the offender to check they accept responsibility and are willing and able to answer the questions they will be asked.

9.2 These preparatory meetings can take place over weeks or months. Throughout these preparations thorough and ongoing risk assessments take place to ensure that the process is safe for all participants.
9.3 Facilitators will, with consent, contact all professionals involved with either the victim or offender. This will often include the Prison Offender Manager, Community Offender Manager and Victim Liaison Officer.

9.4 Some participants may, as a result of this process, choose not to have a meeting and will then be helped to make an informed choice about other ways of proceeding which they might prefer. The indirect process for example can involve an exchange of letters, shuttle mediation or communication by video/audio.

The Conference

9.5 These are structured and closely managed with agreed ground rules. The offender usually gives their account first with the facilitator using the restorative questions as prompts. The victim speaks next; the offender is not permitted to challenge the victim’s thoughts or feelings.

9.6 There may be supporters of both the victim and offender present, such as individuals or professionals to support physical or mental well-being, and their roles at the conference will have been agreed in advance. Supporters are also given a chance to speak, as well as any other attendees, such as a Probation professional. After hearing from all participants, the offender has the opportunity to respond; any expression of remorse given at this stage is likely to be experienced as more genuine than any made before hearing how other people have been affected.

9.7 The final stage is a conversation between the offender and the victim to enable them to say what they would like to happen; this is the “outcome agreement”.

9.8 If both parties agree, there may be informal refreshments at the end of the conference. This gives all participants an opportunity to talk to each other outside the formality of the conference and is often when most restoration takes place.

9.9 After a conference, the facilitators are responsible for an immediate debrief with both parties independently, and then for following up on the outcome of any agreement reached. They will also check in at a later stage on the well-being of participants and to see if the agreement has been honoured.

The Outcome Agreement

9.10 Any agreement reached must be clear and signed by both parties who will take away their own copy. The content of these agreements will vary but can include things like the offender agreeing to write a letter to the victim with an update on their progress in prison or the offender agreeing to take part in rehabilitative programmes. The agreement may be simply that the offender has admitted responsibility and said sorry.
10. **Restorative Justice Outcomes**

**Outcomes for Victims**

10.1 In 2001, the government funded a £7 million, seven-year research programme into RJ. The independent evaluation, published by the Ministry of Justice in a series of reports, found that in a randomised control trial of the use of RJ with adult offenders:

- When offered the opportunity, the majority of victims chose to participate in face to face meetings with the offender;
- 85% of victims who took part reported being satisfied with the process;
- RJ reduced the frequency of reoffending by 14% in cases of both property and violent crime. (Far less is known about the use of RJ conferences in cases of other types of crime such as intimate partner violence, sexual and hate crimes).

10.2 Other research has identified that for victims:

- RJ can significantly reduce symptoms of trauma;
- RJ can help improve victims’ satisfaction and feelings of fairness and as a result generally enhances public confidence in the wider criminal justice system;
- RJ places the victim at the centre of the criminal justice process, encouraging them to engage with the process to a level they feel comfortable with;
- face to face meetings between the victim and the offender seem to work better than most other forms of RJ.
- victim satisfaction with RJ exceeds 85%, although this is from evidence of RJ undertaken early on in the CJS process, or as an effective alternative to prison, particularly in youth crime. A victim may feel relieved, satisfied to have been able to have their questions answered, to have faced the fear, and perhaps to be able to sleep better at night.

10.3 RJ allows victims to explain the suffering they have experienced to the offender and encourages the offender to confront the harm they have caused. RJ providers indicate that it is common for victims to be satisfied with the conference itself as an outcome. In addition to giving them the opportunity to say how they have been affected, it can help victims to understand the context behind the offending behaviour and the wider impact of an offence. Victims are more likely to receive some form of restitution – such as an apology or repairing criminal damage – from an offender when they engage with RJ. It has been suggested in some research that the direct and personal contact from a victim can invoke a sense of obligation on the offender to provide an appropriate form of restitution.

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5 See further reading section for relevant research
10.4 If there are further outcome agreement plans (for example a letter of apology, agreement of the offender to do something, or perhaps in rare occasions a further RJ meeting) it will be important to victims that they are told if the plans have been undertaken and if not, the reasons why.

Outcomes for Offenders

10.5 The outcomes for offenders are more difficult to measure. The emotions generated during RJ initiatives can potentially prompt and reinforce ‘turning points’ that can redirect a person’s life away from crime and potentially therefore mean that they are less likely to reoffend.

10.6 Individual offenders may feel relief or gratitude at having had the opportunity to meet their victim. For some, it may be a profoundly moving experience and an opportunity to reflect on their lives and what they have done. For others, the impact may appear to be minimal or it will just be the beginning of a much more significant process and may reset attitudes to a sentence, supervision or resettlement plan.

10.7 Research undertaken by the Home Office in 2007 concluded that RJ reduced the frequency of reoffending by 14%. Other studies have found a higher level of reduction; the Smith Institute found a 25% reduction in reoffending amongst violent offenders after participation in RJ, and a more recent analysis of the impact on juvenile offenders taking part in RJ suggested a 34% rate of reduction. However, it is important to note that the purpose of RJ is not to reduce reoffending and that RJ in itself should not be seen as a way to reduce reoffending. It can nevertheless be a significant part of an offender’s ‘journey’ to reduce their offending.

11. Types of cases where Restorative Justice may be appropriate and eligibility

11.1 RJ can potentially be used for any type of crime where there is an identifiable victim(s).

11.2 Good results have been identified in cases of property or medium level crime where there is a clearly identifiable victim. Medium and high risk of reoffending offenders are found to respond well.

11.3 However, there is limited evidence on the effects of RJ in cases of sexual or violent offending, domestic abuse or hate crime, and there are potential risks and challenges associated with the restorative process in such cases.

11.4 For these reasons, it is generally accepted that RJ will only take place in such cases in exceptional circumstances and only where there is confidence that the process will be of clear benefit and will not cause harm to any individual involved. Many RJ services will only take victim-initiated referrals for such cases.
11.5 RJ may still help victims of these crimes, but the process would have to be handled by very senior and experienced RJ practitioners, and with engagement of senior probation staff.

11.6 Even if the offender meets the eligibility criteria it will be dependent upon the victim agreeing to engage. Where both victim and offender agree to engage there will need to be an assessment by the RJ provider as to the suitability of the situation and circumstances before RJ can proceed.

11.7 There will be occasions when an offender may not be eligible, or where the circumstances dictate that RJ is not possible. This is often not through any fault of the offender.

12. Offender initiated Restorative Justice

12.1 Successive RJ action plans from the Ministry of Justice have made it clear that prisons must either develop their own capacity to provide RJ services, or create a supportive environment to facilitate the delivery of such services by another agency. Despite this, availability is not consistent and there are barriers to RJ being made available to offenders linked to rising prison numbers and cuts to staff numbers and budgets. Lack of awareness of RJ amongst prison staff and offenders has impacted on referrals.

12.2 Offenders should be told about RJ by their Community Offender Manager (COM) or Prison Offender Manager (POM). However, the responsibility for taking the lead on this has not been clearly defined across prison establishments, and therefore will vary. Offenders should be made aware that participation for all parties is voluntary and no assumptions should be made about the views of their victim(s).

12.3 Offenders interested in RJ will be interviewed for suitability by the local RJ coordinator, who may be based in the prison, before the victim is contacted. A victim can decline contact but has a right to be told if an offender has expressed an interest in the process. The offender will be told if the victim does not want to participate. Only one in four RJ conferences initiated by an offender in custody go ahead.

12.4 If the victim declines contact, there are no other options for engaging with RJ for an offender. Victim empathy programmes are the only other means by which they could address victim related issues in a more general sense. During the Sycamore Tree programme, for example, offenders can write a letter to their victim, which if not sent at the time, can be retained on the offender’s case file in case the victim changes their mind at a later date. In some cases, taking part in awareness initiatives can provide an opportunity for an offender to engage in a restorative conversation with a facilitator as an opportunity to express thoughts and feelings about what happened.

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6 More information about the Sycamore Tree Programme can be found in the Member Guidance on Interventions
12.5 Some victim awareness programmes extend invitations to individuals who have been a victim of crime to come and speak generally to course participants about what it felt like to be victimised and the impact the crime has had on their life. This can be a very impactful experience for offenders.

12.6 Members are reminded that victim empathy has not been proven to link to a reduction in the risk of reoffending and so the above should be considered with this in mind.

13. **Restorative Justice within prisons as a mediation tool**

13.1 RJ can be effectively used in prisons and Young Offender Institutions to deal with conflict within the custodial establishment.

13.2 It can help to resolve incidents between offenders. For example, a formal RJ meeting can be facilitated between offenders where there has been an assault, or it could take place more informally to mediate between offenders where there is persistent low-level conflict but where there is still a readily identifiable ‘victim’ and ‘perpetrator’.

13.3 RJ can also be used to deal with conflicts between offenders and staff. This can include formal conferences when offenders have assaulted or harmed members of staff but can also be an effective tool in situations in which offenders have made legitimate complaints about staff behaviour. This could take place alongside or instead of other disciplinary action but would always be facilitated by an independent RJ practitioner.

14. **Victim initiated Restorative Justice**

14.1 Victims have the right to request information about RJ during any stage of the criminal justice process and for any type of crime.

14.2 Some of the benefits and potential outcomes of RJ for victims have already been referenced in this guidance but there is very strong evidence to suggest that RJ helps victims to cope with and recover from the impact of the crime.

14.3 Information published by Victims First\(^7\) states:

- 72% of victims said their conference had provided them with a sense of closure;
- 85% of victims were very or quite satisfied with their RJ conference;
- 78% of victims said they would recommend RJ to other victims of crime.

15. **Restorative Justice in other Jurisdictions**

15.1 RJ can be used more frequently in other jurisdictions and may feature in cases involving restricted transfer offenders.

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\(^7\) **Victims First – what is restorative justice?**
15.2 In N. Ireland for example RJ schemes evolved for Youth Offenders following the Good Friday agreement in 2010 to create a bridge between not only individual victims but also their communities given the paramilitary connotations and was more likely to take place pre-sentence than counterparts in England and Wales. The NIACRO Get Real project supported by the European Union’s PEACE IV Programme supports those involved in hate crime aged 18 and over, their victims and those vulnerable to committing these actions to acknowledge the hurt and damage caused.

15.3 In Scotland, whilst the Scottish Government has stated their commitment to support RJ it is still relatively limited as compared to England and Wales.

16. Further Reading and Selective Research

**Legislation**

Crime and Courts Act 2013

Code of Practice for Victims of Crime 2020

EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime

**Information**

Why me? Information for the Parole Board panel members (2018)

**Research**

Ministry of Justice “Does restorative justice affect reconviction? The fourth report from the evaluation of three schemes” (2008)

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8 Northern Ireland Association for the Care and Resettlement of Offenders – Get Real
Get Real | NIACRO

Criminal Justice Alliance Briefing “The Need for an Entitlement to RJ” (2017)

Criminal Justice Alliance Briefing “A Journey of Learning, Growth and Change” (2019)

**Useful Websites**

https://restorativejustice.org.uk/

http://criminaljusticealliance.org/

https://why-me.org/


Get Real | NIACRO