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Department of Justice
Massey House
Stormont Estate
Belfast
BT4 3SX

 **Restorative Practices Forum (NI)**

# RESPONSE TO THE CONSULTATION ON THE DEVELOPMENT OF AN ADULT RESTORATIVE JUSTICE STRATEGY FOR NORTHERN IRELAND

**The Restorative Practices Forum (NI) (RPFNI)** is an independent umbrella body for groups and individuals working to promote restorative practice. It has been active for over 25 years.

The aim of the Forum is ***to promote restorative justice philosophy and restorative practice across all aspects of society****.*

RPFNI includes wide representation from 30 groups within the voluntary and community sectors, statutory and public agencies, educationalists and the judiciary as well as independent restorative practitioners. The forum includes education and events sub committees and continues to have close links with Restorative Practices Ireland.

The Forum has organised several successful conferences to promote restorative practice, including most recently in November 2019- “Building a Vision for the Future of Restorative Practices”. Please see

<http://www.quakerservice.com/Quaker_Service/RPFNI_2019_Conference.html> for information on this conference.

RPFNI has adopted the European Forum for Restorative Justice definition of restorative justice as “*an inclusive approach of addressing harm or the risk of harm through engaging all those affected in coming to a common understanding and agreement on how the harm or wrongdoing can be repaired and justice achieved”.*

Until recently, RPFNI was chaired by the Director of Quaker Service. NIACRO currently provide support to the Forum.

**Whilst, within the Forum, there are of course a range of views, this response represents those which the majority support.**

**General comments**

There is clear evidence that restorative approaches are effective, with better outcomes for victims, those who offend and the community. It is an approach that can effectively support and underpin the principles, purposes and all areas impacting on justice issues. It can provide those who have been harmed with the opportunity to be involved in the justice process by offering them a voice, rather than feeling side-lined in the justice process. Restorative philosophy and practices positively impact people’s lives in ways that few other methods can. The Criminal Justice System (CJS) can operate most effectively when it does so in collaboration with the community it serves.

**In general, we very much welcome this document as a significant step forward**. We appreciate the work and research that has gone into the preparation for this consultation over several years. During this time, we have invited those involved in preparing the strategy consultation to RPFNI meetings.

We note that there must be general buy in for adult restorative justice not only by the various organisations and state bodies but also, general society. The public in Northern Ireland must be prepared to consider an alternative response to crime for it to operate to the best of its ability. If the balance of the scales of justice is still skewed towards a retributive approach, the proposed strategy may not really get off the ground. There must be a political and social will to seek a balance between these two systems. A public education campaign is therefore important.

The Restorative Practices Forum (NI), has supported the development of restorative work in adult criminal justice cases over many years. We have encouraged this through a range of key events, meetings with DOJ officials and the previous Minister of Justice, David Ford. This has been supported by our individual and organisational restorative training, research and practice.

We note that the **Criminal Justice Review 2000** raised the need for restorative options in the adult court. It stated that (we) “*have focused on restorative justice in the context of juveniles (see Chapter 9) but believe that it can also be applicable in suitable cases involving adults, especially young adults…option of a restorative intervention should be available, especially as confidence in restorative justice increases, as we believe it will once it becomes embedded in the juvenile justice system. Accordingly, we recommend that the current sentencing framework for adults be reviewed to establish whether it could adequately accommodate restorative interventions where appropriate and, if not, to consider what changes might be made in order for it to do so. One area of examination would be the possible use of deferred sentences in a way that enabled restorative options to be tried before final sentence*”

1. We believe that, despite some welcome progress, the CJS needs to provide much greater support/role to victims as a critical first step in the development of restorative practice. The strategy should also feature increased recognition of victims’ needs and opportunities to initiate restorative practice.
2. RPFNI recommend that some new, appropriate legislation is critical. This should support a flexible range of opportunities for those who are victims of crime and those who have offended at all stages of the justice system. The legislation must enable appropriate time and support for those involved in any restorative intervention.
3. Restorative justice for adults must be equally available and accessible throughout Northern Ireland. Some current delivery only covers specific geographical areas. There needs to be a greater range and diversity of providers.
4. Quality and safeguarding in restorative practice are also a priority noted by our membership.
5. The Forums view is that for restorative practice to make a significant contribution in the prevention of crime and diversion, cross departmental work is critical. This includes the Departments of Communities, Education and Health and Justice. The important role of the Community Voluntary sector is also emphasised.
6. The Forum notes that, whilst better alignment of resources is important, additional resource is critical to enable delivery of this strategy.
7. In February 2020, the Forum responded to the Consultation on Sentencing Review and noted our support for the inclusion of restorative principles underpinning the CJS and that the adult restorative strategy needs to be implemented urgently.

**Vision, Aim, Purpose, Principles and Strategy.**

1. RPFNI welcomes a strategic approach which commits to a clear, timebound, outcome-based way forward in adult restorative justice. The strategy will depend on positive involvement from a range of organisations and the public/community. It needs to state that many objectives cannot be achieved without support from other elements of the justice process and beyond.
2. We support an ambitious vision for the adult restorative strategy, but also one that is realistic. It is important that we avoid disappointment to those who we want to benefit from restorative practice, especially those who have already been harmed. A commitment to resolving harm /conflict or repairing relationships is not always possible. The harm can, nevertheless, be addressed in a meaningful way with satisfactory outcomes for all parties. Restorative practice can give the person who has been harmed a different memory of the event which enables them to move on in their lives.
3. The purpose of delivering increased restorative options is supported. As already mentioned, we believe that legislation is one essential key driver.
4. It is critical that the restorative principles which underpin practice delivery are recorded in this strategy. This should include the commitment to standards of practice, the importance of the victim perspective and voluntary consent.
5. The strategy should be more realistic in the objectives it aims to achieve and provide more detail on how it plans to achieve them.
6. The Forum believes that we should build on the experience of the Community/Voluntary/Statutory sector and the Youth Conferencing approach in NI. If we allow for a flexible model in the initial stage of the strategy a more suitable approach can be arrived at for use in the adult sector.
7. RPFNI support the use of appropriately trained/supported Volunteers in restorative practice and emphasises the benefits of pilot projects and ongoing review/research.
8. Principles must be gender informed; take into account the specific history of Northern Ireland (legacy of the troubles) including significant trauma/mental health issues; take into account the needs and rights of victims, communities, offenders and their families. There should be consideration regarding how those with a learning difference, addiction, mental health issue and women and children are impacted.

To more formally develop restorative practice in the adult justice sector will require an improved approach. There is likely to be less tolerance and higher expectations from the public and those who are victims in comparison to youth cases. We note that the use of the word criminal in association with justice is not helpful, especially when we seek to divert regarding, for example, anti-social behaviour. Language is especially important in a restorative approach.

**Question 3**

1. Research confirms that it is most effective to divert cases from the formal justice system whenever possible
2. We agree that the protocol, which was of its time, should be reviewed/reformed. The aim should be to avoid delay, enable quick decisions, decrease bureaucracy and deliver effective support/diversion for appropriate cases. The strengths of the Community /Voluntary sector, with appropriate accountability, should be fully utilised. A case referral system should be established for low level cases to expedite and increase referrals to CBRJ projects. Training and practices of community-based projects must fully prepare them for the increased levels of accountability and risk involved in an increase in referrals for adjudicated offenders.
3. It is important that there remains an accreditation, monitoring and inspection protocol for organisations delivering restorative justice. In addition, some members suggest that the formal system needs to play a supervisory role to ensure the process does not contravene existing statutes. A conducive environment for restorative practice to flourish and schemes and programmes to function effectively should be supported.
4. The referral system is a major obstacle to rapid and effective delivery of RJ. It creates delays, it reduces referrals to a minimum and it undermines local confidence in the justice system.
5. Criteria based upon risk and complexity should be devised to determine appropriate cases for:
* A fast track to community-based schemes.
* Statutory agencies (PBNI, PSNI etc) only;
* Partnership work between Community RJ and statutory agencies.

**Questions 4 and 5**

In addition to the many benefits of restorative practice already recorded, we would emphasise the potential positive impact in respect of

1. The satisfaction of victims through validation of their experience of harm and vindication of the wrong that they have been subjected to.
2. The involvement of the community in supporting victims to recover and offenders to reintegrate.
3. Those who offend have the opportunity to signal to the community that they are righting a wrong and taking steps to desist, thus reducing stigmatisation.
4. A positive impact on many aspects of personal trauma.
5. A more effective way of dealing with some specific groups/offences (ie women who offend, young adult offenders and crimes motivated by prejudice or hate).

RPFNI note that, given the importance of quality practice, research /articles which offer constructive criticism of restorative practice should also be considered, in order that learning about the impact of bad practice and potential pitfalls/disadvantages is understood. The following section has been provided by Tim Chapman.

Where RJ goes wrong: the blindspot over victims.

While there is a considerable literature on the theory and effectiveness of restorative justice, it is important to learn from research into the flaws and weaknesses of restorative justice practice. This evidence enables a new scheme to take steps to assure quality.

1.Hoyle C Young R and Hill R (2002) Proceed with caution: An evaluation of the Thames Valley police initiative in restorative cautioning. Report, Joseph Rowntree Foundation, UK.

In the Thames Valley research, Hoyle, Young and Hill (2002) interviewed “non-participating-victims”, many of whom had not been well informed about the restorative process or prepared for participation. They felt that they were not in a position to make an informed decision to participate and, furthermore, that the police were not eager that they should attend. This clearly stems from a lack of understanding of victims’ needs and perspectives and such a perfunctory invitation may suggest that the motivation is to challenge the perpetrator.

2.Rosenblatt, F.F. (2015). The Role of Community in Restorative Justice. Abingdon: Routledge.

Rosenblatt (2015) found that, in the case of referral orders, community panel members received no training in how to engage with victims and prepare them for participation. Consequently, they attempted to represent victims’ experiences based upon their own. These attempts at victim empathy rarely convinced the young perpetrators.

According to Rosenblatt (2015), during youth offender panels the community panel members do most of the talking and the Youth Offending team worker dominates the decision making through a report that recommends what the young person must do. Hoyle, Young and Hill (2002) observed police officers pursuing their own preferred outcomes on many occasions rather than enabling the participants’ wishes to emerge from their dialogue. Often victims were not asked what they wanted to happen.

3.Maxwell G and Morris A (2004) What is the place of shame in restorative justice? In: Zehr H and Toews B (eds) Critical Issues in Restorative Justice. Boulder, CO: Criminal Justice Press, 133–142.

Maxwell and Morris (2004) observed that, when shaming becomes a strategy, it risks stigmatisation and the reinforcement of criminality. It may stimulate the need to defend oneself through neutralisation of responsibility for harm. Hayes (2006) concluded that neutralisation can result in apologies that are perceived as insincere by victims. Similar findings were reported by Newbury (2011). The outcomes of the dialogue between those affected by harm is to reach a mutual understanding and agree on what should be done to address the harm. Yet research has questioned the quality of the mutual understanding between victims and perpetrators (Daly2002) and the sincerity of apologies from the victims’ point of view (Daly 2002, Choi and Severson 2009).

4. Zernova M (2007) Restorative justice: Ideals and realities. Aldershot: Ashgate Publishing

There is also evidence that victims’ participation in restorative justice may be used primarily to rehabilitate perpetrators of harm (Strang 2002, Zernova 2007), thus, reinforcing rather than challenging the imposition of power by the perpetrator over the victim. The criminal justice system usually will not involve a victim in restorative justice unless the perpetrator of the crime admits responsibility and consents to the meeting (Shapland et al., 2006). Furthermore, Zernova (2007) reported that victims often feel that the facilitator were over sympathetic towards the person who had harmed them and that perpetrators had more support available to them.

The restorative process should enable victims not only to state the needs that arise from their suffering but to see that their needs are addressed as far as it is possible. Bolivar’s study (2010) found that victim’s value accurate information about the restorative process and participation in a just process which they associate with their narrative of harm and their emotions being heard and validated, and being treated with respect. It is important to recognise that each victim experiences needs in a very specific way and require an individually tailored approach.

Once the restorative process has produced an agreed action plan, victims complain that they are not kept informed of progress towards completing the plan (Shapland et al. 2006, Zernova 2007).

Rosenblatt (2015) found that referral orders, a restorative provision for young people in conflict with the law in England and Wales, consisted of a programme of activities designed for rehabilitate rather than for reparation. Even when reparation was part of an agreed plan, the young person was referred to a pre-existing reparation project rather than one designed to meet the victim’s or community’s needs arising from the harm. In some cases, it was decided that the referral order could be discharged even though the young person had not completed the agreed reparation. Rosenblatt (2015b) discerned a tendency to use a so-called reparation activity such as writing a letter of apology as rehabilitative method. As a consequence, the value of reparation to victims and communities is diluted.

It is hardly surprising that many schemes report a very low level of direct victim participation in restorative processes. Newburn (2002) found 13% victim attendance, Crawford and Burden (2005) found an average of 9 per cent and Rosenblatt (2015a) observed only one out of 39 panel meetings in which a victim participated. Hoyle, Young and Hill (2002) calculated that victims participated in 14 per cent of the processes in the Thames Valley Police restorative programme. This led to practitioners constructing surrogate victims or imaginatively describing the impact of the offence without any direct evidence. Such tactics can take the process away from its restorative and reintegrative principles towards shaming and stigmatising the young person.

The following list of other restorative practice articles, books and research is not exhaustive but has been provided by Forum members.

Ashworth, A. (2001), ‘Is Restorative Justice the Way Forward?’, Current Legal Problems, 54/1: 347 – 376.

Warner, K. (1994), ‘Family Group Conferences and the Rights of the Offender’, in C. Alder and J. Wundersitz eds. Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism? Australian Institute of Criminology, Canberra, Australia.

Skelton, A. and Frank, C. (2004), ‘How Does Restorative Justice Address Human Rights and Due Process Issues? in H. Zehr and B. Toews eds., Critical Issues in Restorative Justice, Willan, Cullompton, Devon.

Skelton, A. and Sekhonyane, M. (2007), ‘Human Rights and Restorative Justice’, in G. Johnstone and D.W. Van Ness eds., Handbook of Restorative Justice, Willan Publishing, Devon.

Jantzi, V. (2004), ‘What is the Role of the State in Restorative Justice?’, in H. Zehr and B. Toews, eds., Critical Issues in Restorative Justice, Willan Publishing, Cullompton, Devon.

Ashworth, A. (2002), ‘Responsibilities, Rights and Restorative Justice’, British Journal of Criminology, 42: 578 – 595.

Restorative Practice with Adult Offenders. C Hunter 2015 - <https://www.wcmt.org.uk/sites/default/files/report-documents/Hunter%20C%20Report%202014%20Final.pdf>

International Journal of Offender Therapy & and Comparative Criminology, Restorative Justice from NZ to Vermont, Kathy Fox

Evaluating New Zealand’s Restoration Promise: the impact of legislative design on the practice of restorative justice. Sarah Mikva Pfander 27th Oct 2019, Kokuitui – NZ Journal of Social Services Online

www.cjnvt.org- Community Justice network of Vermont

Conferencing in Northern Ireland: Implementing Restorative Justice at the Core of the Criminal Justice System.By Estelle Zinsstag and Tim Chapman

EU Directive on victims  <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN>.

Council of Europe Recommendation on Restorative Justice <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808e35f3>

UNODC handbook on Restorative Justice <https://www.unodc.org/documents/justice-and-prison-reform/20-01146_Handbook_on_Restorative_Justice_Programmes.pdf>

EFRJ manual on Values and standards <https://www.euforumrj.org/sites/default/files/2019-11/efrj-values-and-standards-manual-to-print-24pp.pdf>

Ashworth 2001: 364 – 65; Warner 1994; Skelton and Frank 2004: 205 – 06; Skelton and M Sekhonyane 2007: 583).Ashworth 2002: 581; Jantzi 2004: 194 – 195).

**Question 7**

The most significant measurements for restorative practice should be in relation to positive outcomes for all the stakeholders involved.

The use of pilots and evaluation are also important. We would also support measurement in relation to those priorities we have noted under General Comments.

**Questions 8,9,10**

1. Restorative practices can keep people out of the justice system while still holding them accountable for the harm that their offending has caused. It is important to have clarity about restorative roles and what the Statutory justice sector do best whilst building on the strengths of the Community /Voluntary sector. Non-justice agencies can often be experts in the field and have a reach within communities that helps make them more effective
2. In early intervention/prevention, RPFNI notes that many diversionary restorative approaches do not best sit within formal Justice. Indeed, once the terms Criminal Justice are used, we have already labelled people in a negative way which causes ongoing problems. In some countries the term Community Justice is used, emphasising that everyone is involved in how we respond to those who experience or cause harm. Restorative practice with families/parenting, in education, as an approach in health/social work, in voluntary or community settings is significant in crime prevention/diversion.
3. The above roles need to be recognised, promoted and funded by relevant sectors. To fail to resource these approaches inevitably leads to the higher cost and range of disadvantages of involvement in the formal justice system. We note that the formal justice system should, however, be a partner in many diversionary restorative approaches. In the most serious /sensitive cases, the Statutory sector should be the lead agency.

It is important to learn from the experience of the Youth Justice Agency, for example it is not helpful to use a formal restorative intervention in some lower level first offences ie shoplifting. The safeguard of legislation will ensure consistency and that a high standard is maintained across various regions in Northern Ireland. In addition, facilitators will need detailed guidelines to ensure they do not operate outside the scope of the law. For example, ensure that whatever agreement is reached between the parties must not only be proportionate but also, there must be no disparity with an outcome reached by a court if it had presided over the same matter.

Consider:

1. Defence solicitor referrals for pre-sentencing restorative justice
2. Victim initiated restorative justice.
3. The use of trained volunteers in circles of support.
4. Diversionary reparation panels for use with those on the cusp of the formal justice system.
5. Extending the list of low-level offences that can be dealt with in the community restorative justice arena, with the Police, PPS and other partners working closely with the accredited providers.

**Question 11**

Our members note that the following could be more fully considered.

Restorative circles of support and accountability; pre court reparation panels; restorative options instead of automatic recall to prison for those involved in technical licence breach and options for victim initiated restorative practice.

**Questions 12 and 13**

The Forum supports greater use of restorative interventions as a component in court community sentences.

More work needs to be done on appropriate and effective models of practice for each stage of the justice process. The inclusion of restorative practice must be meaningful and offer satisfaction to all parties. Automatically keeping victims informed throughout the process is critical (for example, via PBNI, Victim Support and other victim services). We do not underestimate the importance of voluntary involvement for victims and their potential fear. Therefore, a range of restorative options should be available.

**Questions 14 -17**

1. RPFNI support continued incorporation of restorative practice in a consistent way within custody and custodial sentences. These sentences should be used in the most serious cases. Therefore, restorative practice should include full assessment/preparation.
2. Any involvement in restorative interventions must be voluntary and motivated by the principles of restorative practice. A link to Conditional Early Release needs to be considered carefully and a tick box approach should be avoided. Victim awareness work, as a core initial step, for all those in custody is essential.
3. We note that in Vermont, there are restorative options to recall to prison (which is significant in NI), for example attendance at a day centre including reparation work.
4. We support the development of reparative work in prisons, especially that which indirectly benefits those who have been harmed or are disadvantaged.
5. Restorative approaches throughout all the living arrangements in prison should be further developed, including approaches which restoratively support families.
6. As noted previously, the use of circles of support and mentors to support those who are isolated in prison and on release is important.

**Question 18**

The need for a guaranteed income for community projects so that they can develop and assure quality is essential. Restorative justice needs to be available throughout Northern Ireland.

**Question 19**

The success of CORE is crucial to this strategy. If led by the Statutory sector, it must have all the relevant Community/Voluntary and Victim representatives around the table as active partners. The aim must be to ensure the use of restorative practice as outlined in our General Comments.

With legislation in place , the Executive's Programme for Government should produce appropriate funding with the Dept of Justice at its centre, though in the context of 'joined up government', all Departments should have an input, and CORE would be an excellent vehicle for highlighting this.

Specialist training will be required for practitioners in serious crime cases including where there has been a death, sexual harm, intimate partner violence and hate crime.

The work of the group overseeing the implementation of the Gillen Review recommendations is of significant interest to this strategy

**Questions 20 and 21**

In general, RPFNI support the key actions noted in this document. Our priorities are listed under General Comments. We emphasise the need for quality restorative practice; legislation as a driver/enabler; an enhanced role for victims; stakeholder support, additional funding and interdepartmental working.

**Question 23**

The Restorative Practice Forum (NI) would wish to continue to be consulted in relation to this strategy and its implementation. We represent invaluable commitment and varied experience in restorative practice.

 We recognise that a range of organisations, not noted in this document, have already contributed to restorative practice in NI. They include, Family Group Conferencing, NIACRO, Prison Fellowship and Quaker Service. Others could also have a role to play ie providers of education, research and training (including NI Social Care Council who oversee Social Work qualification training).

**Question 24**

 Equality and Human Rights Impact should be considered in respect of

1. Equal and accessible provision throughout Northern Ireland. Due to the perceived paramilitary association of some Community projects, people in their catchment areas may not feel that they can engage.
2. The need to develop models of practice appropriate for women, those from an ethnic minority and people who have a disability etc;

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Whilst this response is written on behalf of the RPFNI, the members who specifically helped to prepare it were:

Aideen McLaughlin (PBNI), Gerri McCorry (Family Group Conference NI), Geraldine Woods (PBNI), Robin Scott (Prison Fellowship NI), Ken Nixon (Independent/Retired Judge),Tim Chapman (Independent/Chair European Forum of Restorative justice), Christine Hunter (Independent/Board member NI Social Care Council and NIACRO), Adeniyi Olayode (QUB School of Law), Sinead Bailie and Shane Whelehan (Quaker Service), Tom Winstone (NI Alternatives)

If you contact me on 07538 043 545, or christinehunter11@gmail.com I can provide the contact details of those above on request.

 Christine Hunter

 Chair Restorative Practices Forum (NI)