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Building restorative probation services

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Foreword

HMI Probation is committed to reviewing, developing and promoting the evidence base for high-quality probation and youth offending services. *Academic Insights* are aimed at all those with an interest in the evidence base. We commission leading academics to present their views on specific topics, assisting with informed debate and aiding understanding of what helps and what hinders probation and youth offending services.

This report was kindly produced by Ian Marder, highlighting the Council of Europe guidelines on restorative justice. The framework calls for victims and offenders to have access to restorative justice, provides evidence-based standards for its delivery, and delineates the role of probation. It is grounded in research evidence, with providers needing to adhere to various principles and standards if restorative processes are to be as safe and effective as possible. A restorative culture is promoted, which would, for example, make sentence planning restorative by default and require the design of interventions strongly informed by principles such as voluntariness, repairing harm, stakeholder participation and relationship building. It is further emphasised that strong leadership is required from policymakers and managers so that restorative principles are not unduly diluted by existing institutional priorities and ways of working. Crucially, practitioners need to be given sufficient training, support and space – with attention given to caseloads – to adhere to standards of best practice.



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The views expressed in this publication do not necessarily reflect the policy position of HMI Probation.

1. Introduction

Modern restorative justice has its early roots in probation work. In 1974, a court in Ontario, Canada asked probation officer Mark Yantzi to write pre-sentence reports for two young men who pleaded guilty to vandalising 22 properties. Yantzi discussed with colleagues the idea that the perpetrators meet their victims, suggesting this in his pre-sentence report. Upon receiving judicial approval, Yantzi brought the men to each damaged property to discuss the harm done and possible reparations with their victims. His actions set off a chain of events that culminated in the first formal restorative justice scheme – the ‘Victim-Offender Reconciliation Programme’ in Kitchener, Ontario – in the Western world.

Today, restorative justice has moved from the margins to the mainstream of criminal justice. It is available in many countries at different points in their criminal justice processes, and in different forms. This momentum culminated in the adoption of a new Council of Europe Recommendation on restorative justice in 2018, which defined restorative justice as:

‘any process that enables those harmed by crime and those responsible for that harm, if they freely consent, to participate actively in the resolution of matters arising from the offence, through the help of a trained and impartial third party’.

This is somewhat broader than the UK Ministry of Justice’s definition (2012), in which restorative justice requires some form of communication between a harmed party and the person responsible for that harm. There is no single, accepted definition of restorative justice, but it is generally accepted that the fundamental tenets of restorative justice are:

- the participation of those involved in and affected by an offence (i.e. the ‘stakeholders’);
- the aim of addressing and repairing harm; and
- a focus on cultivating positive relationships.

Often, restorative justice involves facilitated, face-to-face communication between victims, offenders and other relevant parties, such as members of their families. Alternatively, the parties may communicate indirectly, through the facilitator or online, if they do not wish to meet face-to-face, or cannot do so safely. Research indicates that these processes can help victims recover from crime and support desistance among (even serious and persistent) offenders, saving public resources in the medium-term as a result of achieving these goals (Shapland et al., 2011; Strang et al., 2013; Angel et al., 2014; Sherman et al., 2015). Yet, the research also suggests that those who facilitate such encounters must adhere to certain principles and standards, if restorative processes are to be as safe and effective as possible (McCold and Wachtel, 2002). This is why research evidence must strongly inform restorative justice policies, practices and training.

Increasingly, beyond their involvement in victim-offender dialogue, criminal justice agencies are turning to restorative processes and principles to help reorient operational practices and cultures. A justice agency with a restorative culture would seek, at every opportunity, to:

- enable those who hold a stake in a given issue to participate voluntarily in dialogue and decision-making around that issue;
- respond to conflict when it occurs in a constructive manner by seeking to address and repair any harm that was done to individuals, relationships and society; and,
- actively build positive relationships with and among colleagues, clients and the community (Clamp and Paterson, 2017).

Crucially, a restoratively inclined agency would adopt these as the principles of its internal and multi-agency operations, as well as in its work with citizens (Burford, 2018; O'Connell, 2019). Often, we refer to this wider and more proactive application of restorative principles and processes as *restorative practices*. This represents a spectrum of ways of engaging with others, at the most formal and reactive end of which lies restorative justice (Wachtel, 2013).

In recent years, the development of restorative justice has gathered pace in the UK and across Europe. Some countries have nationally available restorative justice services that operate throughout the criminal justice process and take referrals involving any offence. In others, services cover only some offences, regions or stages of the process (Dünkel et al., 2015). Meanwhile, restorative practices are taking off across the human services, including in the education, social work and healthcare sectors (Burford, 2018).

October 2018 saw the adoption of the *Council of Europe Recommendation CM/Rec(2018)8 concerning restorative justice in criminal matters* (hereinafter, the Recommendation). Like the European Probation Rules (Canton, 2019), this legal framework applies to all Council of Europe member States – a separate body from the European Union. It calls for victims and offenders to have access to restorative justice, provides evidence-based standards for its delivery and delineates probation's role in making restorative justice accessible. It also promotes a cultural shift toward a restorative approach at all levels of criminal justice policy and practice, outlining how probation services and other justice agencies might incorporate restorative practices into both their internal and client-facing operations (Council of Europe, 2018, 2018b).

The Recommendation has led to a flurry of activity, with partnerships established in several countries to support its implementation (Marder, 2019). Yet, restorative justice provision remains fragile and patchy across Europe. Even jurisdictions that deliver restorative justice as a mainstream service still deny most victims and offenders the information and the opportunity to determine whether it is right for them. For example, figures from the Crime Survey for England and Wales (Office for National Statistics, 2018) suggest that only 7.5 per cent of crime victims were informed about restorative justice in 2017/18. This is despite 24.3 per cent of the surveyed victims stating that they would participate if offered, and tens of millions of pounds being invested in restorative justice services in recent years. Meanwhile, the criminal justice sector, despite a head start in the 1980s and 1990s, has fallen behind other sectors in embedding restorative principles and practices within organisational cultures.

This *Academic Insight* aims to provide information about restorative justice that empowers probation services to support its development, both operationally and internally. With reference to recent research and the 2018 Council of Europe Recommendation, it covers:

- probation's role in making restorative justice available;
- practice standards which can help ensure that its delivery is safe and effective; and,
- how to integrate restorative principles and practices into the organisational culture of probation services.

The paper concludes that researchers, policymakers, probation managers and practitioners, and other stakeholders, should collaborate to ensure that restorative justice is utilised to its full potential in the probation and criminal justice contexts.

2. Developing restorative justice in probation services

As politicians from across the political spectrum and criminal justice agencies increasingly recognise the potential benefits of restorative justice, more and more governments in the UK (HM Government, 2018; Scottish Government, 2019) and around Europe (Dünkel et al., 2015) have committed to its development. This momentum culminated in the adoption of the Council of Europe Recommendation in 2018, calling for governments to make restorative justice services widely available, promoting the application of restorative principles and practices to support cultural change, and listing the development of restorative justice in probation and prison settings as a central goal (Council of Europe, 2018b). This section draws on the Recommendation, international practices and empirical research to consider how probation services can foster restorative justice and restorative practices.

2.1 The role of probation in restorative justice provision

The Recommendation calls for all victims and offenders who might benefit from restorative justice to have equal access to services. It states that restorative justice:

'should be a generally available service' (Rule 18), 'available at all stages of the criminal justice processes [while] victims and offenders should be provided [...] with sufficient information to determine whether they wish to participate' (Rule 19).

It also notes that 'a degree of flexibility should be used in order to enable as many people as possible to participate' (Rule 27), meaning that services should design accessible information materials and appoint guardians to support participation, when it is in a prospective participant's interests to do so. These provisions signify that restorative justice services should be responsible for assessing, on a case-by-case basis, whether the parties to an offence are suitable for restorative justice. Currently, limits to service provision, coupled with paternalism and risk aversion within justice agencies, means that access to restorative justice is contingent on the parties' location, or the type or seriousness of the offence in question. As Rule 18 states, these factors 'should not, in themselves, and in the absence of other considerations, preclude restorative justice from being offered to victims and offenders'. Thus, achieving compliance with the Recommendation requires a fundamental shift in our approaches to victim engagement, risk management and restorative justice assessment and provision across Europe.

This is important for probation services, which, across Europe, may play one or more of three roles in restorative justice provision.

- Firstly, some probation services are, by law, the *national provider of restorative justice* at all stages of the criminal justice process. Examples include the Probation and Mediation Service in the Czech Republic and the State Probation Service in Latvia, where probation officers are trained to use victim-offender mediation and/or restorative conferencing, and do so both as a diversion from court and post-sentence.
- Secondly, probation may be responsible for delivering restorative justice *when a person is on probation supervision*. In Gloucestershire, for example, probation officers may co-facilitate, with volunteers from the local restorative justice service, in cases where someone is sentenced to supervision in the community. Another example is in Ireland, where the Probation Service is developing its capacity to deliver restorative

conferences pre- and post-sentence, if a victim, offender or judge requests that it be explored, or if a probation officer identifies a suitable case (Marder, 2019).

- Thirdly, probation officers may *refer cases to external providers*, such as those operating locally across much of England and Wales, or the national mediation providers in Norway and Finland to which all justice agencies may refer cases.

There is no consensus within the literature as regards the optimal service model, as this depends somewhat on the manner in which justice agencies are organised locally. It is crucial, however, that participants trust services and practitioners to be impartial, and that responsible agencies provide sufficient training, support and space for their practitioners to adhere to standards of best practice (Keenan, 2018).

Probation services play a crucial role in ensuring that restorative justice is generally available. In the first and second situations, probation services must ensure that their staff have the time and skills to facilitate according to best practice, and make resources available for training, policy development, case supervision and other core features of a restorative justice service. In all three roles, probation officers who do not facilitate must make referrals in cases where the offender is under their supervision. This also requires sufficient training to be able to identify suitable cases, describe restorative justice accurately to prospective participants, and make reasonable, evidence-based judgements on the likely benefits and risks of proceeding with restorative justice in a given case.

At a service level, all three roles require probation to participate in the development of multi-agency strategies and partnerships on restorative justice (Rules 22, 55 and 62). These are crucial for sharing information (such as risk information and participants' contact details), and developing clear, simple referral pathways and open, collaborative lines of communication. A recent report from the United States promoted the idea of a 'coordinating council,' as exists in Colorado, to bring agencies together and support the development of restorative justice across a geographical area (OPPAGA, 2020). Furthermore, for restorative justice services to be sustainable, performance management frameworks must be 'restorative justice proofed', and senior leaders and middle managers across the criminal justice system must visibly 'buy-in' to restorative justice and victim engagement. Irrespective of where the responsibility for providing restorative justice lies, everyone in the justice system has a role to play in making restorative justice accessible.

2.2 Safe and effective restorative justice delivery

The Recommendation outlines standards to which restorative justice services must adhere in order to be safe and effective. These provisions synthesise the vast literature on restorative principles, identifying those that the evidence suggests are most relevant to best practice.

For example, the Recommendation foregrounds *voluntariness*, stating that parties must only participate and agree to actions based on 'free and informed consent' which they can withdraw at any time (Rules 16, 25, 26 and 50). This seeks to ensure that victims are not coerced into speaking with their offenders, that the offender participates because of a genuine desire to do so (for the victim's sake, as much as the offender's), and that outcome agreements cannot be imposed on either party. The research closely links satisfaction with the process and compliance with its outcomes to its voluntariness (Latimer et al., 2005; Tyler, 2006; Shapland et al., 2011; Hansen and Umbreit, 2018).

To adhere to this standard, practitioners must manage:

- any pressure from family members;
- any power imbalances or pre-existing relationships between participants;

- their own (real and perceived) power and authority over citizens; and
- any moral obligation to participate that some prospective participants may feel.

Facilitators must be cognizant of these (often, unavoidable) factors, and provide the parties with complete and unbiased information about the process and its potential impact on court proceedings, to ensure that participation is free and informed.

The Recommendation provides several additional standards for restorative justice practice. For example, it states that ‘the *basic facts of a case should normally be acknowledged* by the parties as a basis for starting restorative justice’ (Rule 30). This is a safeguard for both parties: due process necessitates that a person who denies a criminal accusation must have the protection of a trial, while a victim might be at risk of revictimisation if a suspected or convicted offender denies responsibility entirely during a restorative justice process. This does not mean that someone must have pleaded or been found guilty of an offence: agreement over the ‘basic facts’ of a situation does not equate to an admission of legal guilt.

The Recommendation also notes that restorative justice should be *confidential*, in that ‘discussions [...] may not be used subsequently, except with the agreement of the parties concerned (Rule 17) or if ‘imminent or serious crimes [...] come to light’ (Rule 49). This safeguard enables the parties to have an open and honest conversation, allowing suspected or convicted offenders to discuss their background, feelings and past offending, without prejudicing a trial or sentence. Importantly, confidentiality does not extend to outcome agreements in cases that may have an impact on court proceedings, in which case facilitators should communicate any agreed outcomes to the prosecutor or Judge (Rule 53).

Other standards reflect further fundamental differences between restorative and criminal justice. Rule 46 regards *impartiality* and Rule 15, *process neutrality*. Practitioners must not be primarily offender- or victim-focused, but respectful of, and showing concern for, all parties as equally as possible. These provisions do not require us to ignore the fact that one party may have harmed another. Rather, practitioners must be careful to act (and to be seen to act) impartially, avoiding the incidence or perception of bias. This is especially important if probation officers use restorative justice with their own clients. Facilitators must also encourage and support all parties to express their needs, and seek to deliver a process that satisfies these as much as possible and prevents harm from reoccurring.

Adherence to these standards may require a change in mindset within justice agencies so that restorative principles are not unduly diluted by existing institutional priorities and ways of working. In a probation setting, for example, the restorative principles of equality, victim expression and participant empowerment must supersede existing institutional goals of risk management and offender rehabilitation. Services should ideally use a *co-facilitation model* to help ensure adherence to restorative principles (Restorative Justice Council, 2011), while line managers require the training and experience to supervise cases to this end.

Likewise, restorative justice facilitators must be given sufficient time to *prepare* and *follow-up* with the parties. Rule 48 notes that ‘restorative justice should be carried out efficiently, but at a pace that is manageable for the parties’, while ‘sensitive, complex and serious cases in particular may require lengthy preparation and follow-up [and] refer[als] to other services’ (see also Rules 29 and 47). In particular, the resources needed to deliver restorative justice in serious and complex cases may be significant, and practitioners require the space, time, and *advanced training* to do this work safely and effectively (Keenan, 2018). If probation officers (or, indeed, any other practitioners) are to deliver restorative justice, they must be free from the pressure of ever-expanding caseloads and efficiency targets. Indeed, the evaluation of a recent capacity-building programme found that finding the time to practice – in the context of

a significant, top-down reorganisation of probation – was among the main barriers to restorative justice implementation in probation in England and Wales (Wigzell and Hough, 2015). This is why Rule 20 provides that those who deliver restorative justice ‘should be given sufficient *autonomy* in relation to the criminal justice system’: institutional rationales that contradict practice standards must not unduly influence restorative justice delivery.

The Recommendation goes on to discuss further guarantors of safe and effective practice, noting the need for facilitation and training oversight (Rules 37-39), and outlining the skillsets that facilitators (Rules 40-43) and their managers (Rule 44) must possess. The standards outlined in the Recommendation are informed by over three decades of empirical research. All providers must adhere as closely as possible to these standards in order to maximise the benefits and minimise the risks of restorative justice.

2.3 Promoting a restorative culture in probation services

The above sections discuss restorative justice as an intervention involving victim-offender dialogue. Yet, the international research and legal framework illustrate how probation services can integrate restorative principles further into operational and internal practices. This section examines how to build a restorative culture in probation services by:

- making sentence planning restorative by default;
- (re)designing other interventions in accordance with restorative principles; and,
- integrating restorative practices into internal operations.

In many countries, probation officers are responsible for sentence planning. That is, when one’s sentence requires supervision by a probation officer, that officer selects interventions to take place during the supervision period. The Recommendation provides that restorative justice should be available as such an intervention, but Rule 58 takes this further by outlining how probation services can conduct the sentence planning process restoratively.

Restorative sentence planning enables stakeholders to participate and aims to repair harm and build relationships with and among affected persons. It requires probation practitioners, trained in restorative justice, to work with clients to identify who was affected by the offence (i.e. the victim, their family members, etc.), before contacting these parties to assess their willingness and suitability for participation in a direct or indirect restorative process. This enables the parties safely to express and reflect on the harm done and play a part in identifying what might help remedy the situation and prevent it from reoccurring. Any agreed outcomes could inform – or even become – the sentence plan. Indeed, in an evaluation of pre-sentence youth conferencing in Northern Ireland, Judges fully accepted as the sentence almost two thirds of plans that were determined in restorative conferencing (Campbell et al., 2005). Moreover, if an offender’s family participated (whether a victim is involved or not), the process could help address family conflict and (re)build the relationships and support networks that facilitate desistance. Even if no other persons are involved, probation officers can still operate restoratively by working with clients to identify and deliver interventions, rather than doing this for or to them (Wachtel, 2006).

Research indicates that people are more likely to engage with a process and to accept its outcomes, if they believe that the process is fair and legitimate (Tyler, 2006). Key components of this ‘procedural justice’ include having a voice and being treated with dignity, respect and concern for one’s interests – all principles of best practice in restorative justice. Thus, beyond supporting victim recovery and exposing clients to the harm they caused, restorative sentencing planning can increase compliance with interventions and the perceived legitimacy of probation (Latimer et al., 2005). Likewise, enabling people to participate in

identifying a plan of work makes it more likely that this plan will meet their personal needs (Schiff, 2007). Probation officers can still revert to making decisions themselves if the parties do not wish to engage or cannot do so safely. However, reimagining the sentence planning process to give stakeholders the opportunity to participate by default can help change organisational routines in ways that promote a restorative culture.

This begs the question of whether anything restorative is possible in the absence of communication between the parties, or in cases without an identified victim or offender. Helpfully, Rule 59 of the Recommendation outlines 'innovative approaches to reparation, victim recovery and offender reintegration' which do not require dialogue between victims and offenders, but which can still be enabled by probation and informed by restorative principles. For example, reparation boards/panels (McStravick, 2018) and victim support circles (Gaarder, 2015) are mechanisms of repairing harm in the absence of victim or offender participation, respectively. Likewise, victim empathy work (Wallis et al., 2010; Burrows, 2013; Sedelmaier and Gaboury, 2015) and offender reintegration ceremonies (Braithwaite and Mugford, 1994; Maruna, 2011) should be of interest to probation officers who seek to work restoratively with their clients.

Crucially, Rule 59 notes that whether these interventions fall within the restorative framework depends on the extent to which they are 'undertaken in accordance with basic restorative justice principles'. Namely, a restorative intervention must be strongly informed by principles such as voluntariness, repairing harm, stakeholder participation and relationship building. For example, community service that a court imposes, and is punitive, stigmatising and precludes collaborative stakeholder involvement, does not adhere to restorative principles. In contrast, community reparation can reflect restorative principles if the perpetrators and affected parties determine it voluntarily and collaboratively, and if it is dignified, relevant to the offence, and involves offender support, relationship building and reintegration. In essence, the more the restorative principles are recognisable in an intervention, the more restorative the intervention is. Again, attempting a restorative approach by default does not prevent reversion to traditional interventions whenever circumstances so dictate.

Three final Rules provide a template for how probation services and other justice agencies can use restorative practices to support cultural change. As noted earlier, restorative practices incorporate a spectrum of ways to engage with others. This includes:

- restorative justice processes – such as conferencing, victim-offender mediation and shuttle mediation – at the most formal end;
- circle processes – in which the right to speak moves around a group sequentially, and which can be used to structure any conversation – lying in the middle; and,
- restorative conversations and affective questioning (i.e. using open-ended, non-judgemental questions and language) at the least formal end (Wachtel, 2013).

All these practices seek to address and repair harm or build relationships and understanding, and all are taught to staff in organisations that wish to change their culture by adopting a 'whole-organisation approach' to restorative practices (Hopkins, 2004, 2009). This training equips staff with the skills to build relationships and interact positively with colleagues and clients, support people in distress, and respond constructively to harm and conflict. Research on the whole-organisation approach in schools has found less bullying and greater emotional literacy, problem-solving skills and empathetic attitudes among staff and students (Wong et al., 2011; Crowley, 2013), as well as reductions in stress-related illnesses and staff absences (Williams, 2015). In Leeds, an evaluation of a whole-organisation approach in children's services found a significant reduction in looked-after children across the city and 'clear indications of culture change' in the service (Mason et al., 2017, p.10).

The whole-organisation approach requires staff and managers to use restorative practices in their internal interactions with each other, as well as with clients. Initially, this requires staff training, and Rule 57 asks justice agencies to 'raise the awareness of all staff and managers [of] the principles of conflict resolution and restorative justice, so that they understand these principles and are able to apply them in the course of their day-to-day work.'

Beyond the day-to-day use of restorative practices, Rule 60 provides for restorative justice to be offered in relation to conflicts between staff and citizens, or among staff. These approaches have been used effectively in Australian and English police forces (Clamp and Paterson, 2017; Marder, 2018) and American prison administrations (Pranis, 2007). In probation, this might involve seeking to respond restoratively to breaches of conditions and other conflicts with clients, training and encouraging probation officers to help supervisees reflect on and make amends for breaches of conditions, rather than report these to court, where possible. Moreover, probation services might offer restorative justice as a possible response where problems arise among staff internally or in a multi-agency setting.

Finally, Rule 61 and its commentary discuss the use of circle processes to structure conversations among staff within an agency or between agencies. The benefits of the circle format include that they enable participants to feel heard and respected, to listen deeply to and reflect on others' perspectives, and to feel connected to and supported by others present. The circle process also prevents conversations from being dominated, meaning that participants are more likely to engage and feel equally valued (Greenwood, 2005).

Probation services may use circles in a variety of situations, including:

- to build relationships and understanding among probation staff and between probation staff and persons from other organisations with whom they work;
- to facilitate communities of practice, enabling probation officers to share their experiences, discuss tough issues, and reflect on their values and approaches; and,
- to enable meaningful staff consultation, giving all those with a stake in a new policy or institutional change an equal opportunity to have their voice heard and provide input into the change process (Pranis, 2005; Stuart and Pranis, 2006).

The change management literature outlines that organisational change is not likely to succeed or be sustained without staff buy-in and participation (O'Connor et al., 2019). Thus, restorative practices can help organisations implement reforms – including restorative justice itself – in a legitimate and effective way. Circle processes can be used in any situation where there is a question to be asked or an issue to be discussed (Wachtel, 2013). The difference in dynamic and experience between a conversation structured in a sequential circle format and an unstructured conversation can be very striking indeed.

3. Conclusion

Probation services are not immune to the ever-shifting roles and responsibilities of criminal justice practitioners. New duties are emerging to provide information to victims and enable direct reparation (Council of Europe, 2010). In some jurisdictions – and not without resistance from those on the frontline – probation practice has moved from a social work and welfare orientation, to managing risk and administering punitive measures (Canton and Dominey, 2018). Yet, research increasingly indicates that punitive measures for their own sake are not compatible with desistance, and perceptions of fairness, respect and legitimacy are needed to achieve high levels of cooperation and compliance. At the organisational level, decades of efforts to institutionalise change, encourage multi-agency working and minimise staff conflict, illustrate that participation and legitimacy are as crucial within criminal justice agencies, as they are between agencies and citizens (O'Connor et al., 2019).

Restorative justice and restorative practices are no silver bullet. However, they can support probation services with each of the above issues. The Recommendation emphasises probation's role in ensuring that restorative justice is open to all those who might benefit. It outlines the standards to which service providers must adhere and describes how restorative principles can inform other probation interventions, enabling those with a stake in justice outcomes to have a voice and play a role in repairing harm. It also provides mechanisms to help agencies resolve conflicts and build positive relationships with colleagues and clients. It is the most progressive and comprehensive international legal instrument on restorative justice to date, and is explicit in calling for 'a broader shift in criminal justice across Europe towards a more restorative culture and approach within criminal justice systems' (Council of Europe, 2018b: 2). Meanwhile, the EU is developing a new victims' strategy in which reparation and mediation will play a greater role (Milquet, 2019; European Commission, 2020), and new European guidance on training probation and prison officers (2019; see also Carr, 2020) identifies 'mediation, restorative justice and work with victims' as among the 'core components' of training for those involved in community sanctions.

Restorative justice can represent a new direction for probation practice internationally. We know that almost everyone who commits an offence is also a victim at some point in their lives, and vice versa. Restorative justice gives us the language and the tools to overcome a zero-sum approach to meeting the needs of citizens engaged with the criminal justice process. Of course, barriers to change remain. As Levrant et al. laid out twenty years ago:

'The substance of restorative justice reforms depends on the degree of staff commitment to a new philosophy of justice [...] staff members must be willing to change their roles from that of service provider to community justice facilitator [and] organisations must secure sufficient human and financial resources to operate quality programmes that are capable of achieving restoration' (1999: 15).

Restorative justice represents a new philosophy of practice, requiring practitioners to step back 'from their traditional sovereign position as the owner of the conflict' (Clamp and Paterson, 2017: 168). Many will initially feel discomfort with engaging victims and devolving power to stakeholders. However, the research increasingly indicates that the practical challenges are manageable, and the benefits for participants outweigh the risks.

Still, strong leadership from policymakers, managers and frontline workers is needed for restorative justice to be sustainable. Council of Europe frameworks are not binding on member States. This means that key decision-makers must be convinced to expend the time and resources required to implement the Recommendation in full (Marder et al., 2019). Researchers, probation managers and practitioners, and other stakeholders, should collaborate to ensure that restorative justice is utilised to its full potential in probation settings.

References

- Angel, C., Sherman, L., Strang, H., Ariel, B., Bennett, S., Inkpen, N., Keane, A. and Richmond, T. (2014). Short-term effects of restorative justice conferences on post-traumatic stress symptoms among robbery and burglary victims: a randomized controlled trial. *Journal of Experimental Criminology*, 10(3), pp. 291–307.
- Braithwaite, J. and Mugford, S. (1994). Conditions of successful reintegration ceremonies. *British Journal of Criminology*, 34(2), pp. 139-171.
- Burford, G. (2018). Keeping complexity alive: Restorative and responsive approaches to cultural change. *International Journal of Restorative Justice*, 1(3), pp. 356-371.
- Burrows, J. (2013). Victim awareness: Re-examining a probation fundamental. *Probation Journal*, 60(4), pp. 383-399.
- Campbell, C., Devlin, R., O'Mahony, D., Doak, J., Jackson, J., Corrigan, T. and McEvoy, K. (2005). *Evaluation of the Northern Ireland Youth Conference Service*. [Online] Available at: <https://restorativejustice.org.uk/sites/default/files/resources/files/Evaluation%20of%20the%20Northern%20Ireland%20Youth%20Conference%20Service.pdf> [Accessed 15 04 2020].
- Canton, R. and Dominey, J. (2018). *Probation*. Abingdon: Routledge.
- Canton, R. (2019). *European Probation Rules*, HMI Probation Academic Insights 2019/02. London: HMI Probation.
- Carr, N. (2020). *Recruitment, training and professional development of probation staff*, HMI Probation Academic Insights 2020/02. London: HMI Probation.
- Clamp, K. and Paterson, C. (2017). *Restorative Policing: Concepts, Theory and Practice*. London: Routledge.
- Council of Europe. (2010). *Recommendation CM/Rec(2010)1 on the Committee of Ministers to member states on the Council of Europe Probation Rules*.
- Council of Europe. (2018). *Recommendation CM/Rec(2018)8 of the Committee of Ministers to member States concerning restorative justice in criminal matters*.
- Council of Europe. (2018b). *Commentary to Recommendation CM/Rec(2018)8 of the Committee of Ministers to member States concerning restorative justice in criminal matters*.
- Council of Europe. (2019). *Guidelines regarding recruitment, selection, education, training and professional development of prison and probation staff*.
- Crowley, J. (2013). *Using a whole-school restorative approach: A realistic evaluation of practice in a city-based primary school*. [Online] Available at: <https://etheses.bham.ac.uk/id/eprint/4728/1/Crowley13Ap.Ed.&ChildPsy.D.1.pdf> [Accessed 12 04 2020].
- Dünkel, F., Grzywa-Holten, J. and Horsfield, P. (2015). Restorative justice and mediation in penal matters in Europe: Comparative overview. In F. Dünkel, J. Grzywa-Holten and P. Horsfield (Eds.), *Restorative Justice and Mediation in Penal Matters: A stock-taking of legal issues, implementation strategies and outcomes in 36 European countries (Vol. 2)* (pp. 1015-1096). Mönchengladbach: Forum Verlag Godesberg.

- European Commission. (2020). *Commission communication to the European Parliament and the Council on an EU strategy on victims' rights*.
- Gaarder, E. (2015). Lessons from a restorative circles initiative for intimate partner violence. *Restorative Justice: An International Journal*, 3(2), pp. 342-367.
- Greenwood, J. (2005). *The Circle Process: A Path for Restorative Dialogue*. Saint Paul: University of Minnesota.
- Hansen, T. and Umbreit, M. (2018). State of knowledge: Four decades of victim-offender mediation and practice. *Conflict Resolution Quarterly*, 36(2), pp. 96–113.
- HM Government. (2018). *Victims Strategy*.
- Hopkins, B. (2004). *Just Schools: A Whole School Approach to Restorative Justice*. London: Jessica Kingsley Publishers.
- Hopkins, B. (2009). *Just Care: Restorative Justice Approaches to Working with Children in Public Care*. London: Jessica Kingsley Publishers.
- Keenan, M. (2018). Training for restorative justice work in cases of sexual violence. *International Journal of Restorative Justice*, 1(2), pp. 291-302.
- Latimer, J., Dowden, C. and Muise, D. (2005). The effectiveness of restorative justice practices: A meta-analysis. *The Prison Journal*, 85(2), pp. 127-144.
- Levrant, S., Cullen, F., Fulton, B. and Wozniak, J. (1999). Reconsidering restorative justice: The corruption of benevolence revisited? *Crime & Delinquency*, 45(1), pp. 3-27.
- Marder, I. (2018). *Restorative justice and the police: Exploring the institutionalisation of restorative justice in two English forces*. [Online] Available at: <http://etheses.whiterose.ac.uk/19578/> [Accessed 08 04 2020].
- Marder, I. (2019). Restorative justice as a new default in the Irish criminal justice system. *Irish Probation Journal*, 16, pp. 60-82.
- Marder, I., Fernée, U., Chapman, T., and O'Dwyer, K. (2019). *Restorative Justice: Strategies for Change, A Collective Strategy for Ireland, 2019-2023*. [Online] Available at: [http://www.probation.ie/EN/PB/0/5D1EAF15E4717EF80258418002CF512/\\$File/Ireland_RJ_Strategy_for_Change%20Final.pdf](http://www.probation.ie/EN/PB/0/5D1EAF15E4717EF80258418002CF512/$File/Ireland_RJ_Strategy_for_Change%20Final.pdf) [Accessed 08 04 2020]
- Maruna, S. (2011). Reentry as a rite of passage. *Punishment and Society*, 13(1), pp. 3–28.
- Mason, P. (2017). *Leeds Family Valued: Evaluation Report*. [Online] Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/625222/Leeds_Family_Valued_-_Evaluation_report.pdf [Accessed 08 04 2020].
- McCold, P. and Wachtel, T. (2002). Restorative justice theory validation. In E. Weitekamp and H. Kerner (Eds.), *Restorative Justice: Theoretical Foundations* (pp. 110-142). Cullompton: Willan Publishing.
- McStravick, D. (2018). Adult reparation panels and offender-centric meso-communities: An answer to the conundrum. *International Journal of Restorative Justice*, 1(1), pp. 96–121.
- Milquet, J. (2019). *Strengthening Victims' Rights: From Compensation to Reparation*. Brussels: European Commission.
- Ministry of Justice. (2012). *Restorative Justice Action Plan for the Criminal Justice System*.

O'Connell, T. (2019). The best is yet to come: unlocking the true potential of restorative practice. In: T. Gavrielides, ed. *Routledge International Handbook of Restorative Justice*, (pp. 422-441). Abingdon: Routledge.

O'Connor, T., Bogue, B., Collins, S. and O'Connor, S. (2019). Staff development and practice models: When we get better, our clients get better. *Advancing Corrections*, 8, pp. 10-28.

Office for National Statistics. (2018). *Restorative justice, year ending March 2011 to year ending March 2018 Crime Survey for England and Wales*. [Online] Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/adhocs/008727restorativejusticeyearendingmarch2011toyearendingmarch2018crimesurveyforenglandandwalescsew> [Accessed 08 04 2020].

OPPAGA (Office of Programme Policy Analysis and Government Accountability). (2020). *A review of restorative justice in Florida and other States*. [Online] Available at: <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/2002rpt.pdf> [Accessed 15 04 2020]

Pranis, K. (2005). *Little Book of Circle Processes*. Intercourse: Living Justice Press.

Pranis, K. (2007). Healing and accountability in the criminal justice system: Applying restorative justice processes in the workplace. *Cardozo Journal of Conflict Resolution*, 8(2), pp. 659-675.

Restorative Justice Council. (2011). *Best Practice Guidance for Restorative Practice*. London: Restorative Justice Council.

Scottish Government. (2018). *Restorative Justice Action Plan*.

Sedelmaier, C. and Gaboury, M. (2015). Administering a victim-impact curriculum to inmates: A multi-site replication. *Criminal Justice Studies*, 28(2), pp. 226-238.

Shapland, J., Robinson, G. and Sorsby, A. (2011). *Restorative Justice in Practice: Evaluating What Works for Victims and Offenders*. Oxford: Routledge.

Sherman, L., Strang, H., Barnes, G., Woods, D., Bennet, S., . . . Slothower, M. (2015). Twelve experiments in restorative justice: The Jerry Lee program of randomized trials of restorative justice conferences. *Journal of Experimental Criminology*, 11(4), pp. 501-540.

Strang, H., Sherman, L., Mayo-Wilson, E., Woods, D. and Ariel, B. (2013). *Restorative Justice Conferencing Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction. A Systematic Review*. Oslo: The Campbell Collaboration.

Stuart, C. and Pranis, K. (2006). Peacemaking circles: Reflections on principal features and primary outcomes. In D. Sullivan and L. Tift (Eds.), *Handbook of Restorative Justice: A Global Perspective* (pp. 121-133). Abingdon: Routledge.

Tyler, T. (2006). Restorative justice and procedural justice: Dealing with rule breaking. *Journal of Social Issues*, 62(2), pp. 307-326.

Wachtel, J. (2006). *The Game: Restorative community supervision for adult offenders*. [Online] Available at: <http://www.iirp.edu/pdf/thegame.pdf> [Accessed 15/04/2020].

Wachtel, T. (2013). *Defining restorative*. [Online] Available at: <http://www.iirp.edu/pdf/Defining-Restorative.pdf> [Accessed 08 04 2020].

Wallis, P. (2010). *What Have I Done? A Victim Empathy Programme for Young People*. London: Jessica Kingsley Publishers.

Wigzell, A. and Hough, M. (2015). *The NOMS RJ Capacity Building Programme*. [Online]. Available at: <https://www.restorativesolutions.org.uk/files/download/documents/final-rj-report-26-03-2015.pdf> [Accessed 15 04 2020].

Williams, A. (2015). *Restorative practice in schools*. [Online] Available at: <https://www.sec-ed.co.uk/best-practice/restorative-practice-in-schools> [Accessed 12 04 2020].

Wong, D., Cheng, C., Ngan, R. and Ma, S. (2011). Program effectiveness of a restorative whole-school approach for tackling school bullying in Hong Kong. *International Journal of Offender Therapy and Comparative Criminology*. 55(6), pp. 846–864.

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