

# scottish justice matters

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# RESTORATIVE JUSTICE

# Restorative ‘Justice or ‘Approaches’ and its Potential in Cases of Historical Abuse

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**THE APPLICATION** of restorative justice to serious cases such as domestic, sexual and historical abuse has not been easy. There have been attempts at responding to this type of case by modifying various models of restorative justice practice to deal with the complexities and unique ‘dynamics’ amongst those involved in serious crime or harm (Bolithi and Freeman, 2016). In Scotland there have been a number of initiatives to respond to survivors of serious crimes through restorative approaches, most recently RiSC (see Kearney and White page 11 this issue).

A very different initiative was linked to the Time to be Heard Forum (originally the Acknowledgement and Accountability Forum) (TTBHF) launched by the Scottish Government in 2009 as part of its *SurvivorScotland* Strategy. Its purpose “was to test the appropriateness and effectiveness of a confidential forum in giving former residents of residential schools and children’s homes the opportunity to recount their experiences in care, especially abusive experiences, to an independent and non-judgemental panel” (Shaw, 2011). The TTBHF was overseen by a National Reference Group, with support from *SurvivorScotland*. The Scottish Human Rights Commission developed a Human Rights Framework and made several recommendations on the development of the TTBHF (SHRC 2010, 2013).

There were many concerns from survivors groups relating to the TTBHF including independence, the protection of survivors’ rights, protective mechanisms for confidential recording and ensuring fairness and ethical consideration for all survivors. There was a concern too over limiting this to just one institution, Quarriers. The TTBHF met with 98 survivors of Quarriers Homes based both in Scotland and abroad commencing 2010. Subsequent developments have been the establishment of the National Confidentiality Forum (Victims and Witnesses Act 2014) and in 2015 The Scottish Child Abuse Inquiry (<https://www.childabuseinquiry.scot/>). As in other jurisdictions finally recognising the need to respond to survivors there is still a need to put pressure on governments to acknowledge that this needs to be done fairly, transparently and with the needs of those coming before it and giving evidence being at the forefront. The Royal Commission into Institutional Responses to Child Sexual Abuse in Australia has additionally, recently commissioned work to examine research on the “use, justification and effectiveness of restorative justice

approaches in relation to child sexual abuse, and any problems or concerns arising, particularly in relation to institutional and non-familial child sexual abuse.” (Bolithi and Freeman, 2016).

*SurvivorScotland* wanted to add an additional element to TTBHF: an opportunity to be provided to survivors, if they wanted to, to meet with representatives of Quarriers, in a restorative setting. This was entirely voluntary. The institution would ‘represent’ or be identified as the ‘harm causer’ because the original person responsible was not available for various reasons.

Sacro, as the leading provider of restorative services in Scotland, developed a resource to use with the eight survivors who wished to take part in this restorative element (Sacro, 2011).

## Some key findings.

The values and benefits of restorative approaches were evident in the meetings between survivors and representatives of Quarriers. However, the facilitators also identified essential safeguards.

❖ **Counselling and Support Services.** It is crucial that there is access for survivors to individual counselling and support from independent sources. Survivors may be receiving ongoing therapeutic counselling: support workers should be engaged to ensure they are aware of the process. No-one should be left in a vulnerable position.

Counselling and support services should also be available for the representatives of the organisation responsible. They will be listening to very traumatic accounts with the possibility of secondary or vicarious trauma. This also applies, irrespective of the amount of training, to the facilitators.

❖ **Unresolved or outstanding issues.** The facilitators recognised that survivors may also be involved in related criminal and civil proceedings for which the restorative process cannot be a substitute but might have an impact on deciding on the whether the process is appropriate. Facilitators recognised that any outstanding issues surrounding financial compensation could be a barrier both to uptake of restorative approaches and to their progress. This does not, however mean that the primary interest of survivors participating in restorative processes is financial: we did not find this to be the case.

- ❖ **Commitment.** Organisations accepting responsibility and participating must commit, at the highest level, to the process. This includes being flexible in responding to the time needed for survivors to feel able to undertake the meeting.
- ❖ **Practitioners and training.** Practitioners need to be prepared for the challenges and extreme pain and trauma that survivors have experienced. It requires, trained practitioners working with a framework of supervision and support, significant organisational back-up in the form of policy resources, record-keeping systems and experience of managing restorative-type projects. The capabilities of the facilitators are crucial in the effectiveness of such an intervention.
- ❖ **Timescales.** Because of the high levels of hurt and damage arising from this form of abuse, the restorative process needs to be open-ended, with a minimum of time and resource constraints. Voluntariness, openness, transparency, flexibility and personalisation are key components in developing an appropriate process. Survivors understandably can take a considerable time to think and reflect before feeling ready to commit to a restorative process. There has to be a clear opt-out policy so survivors can leave at any stage and facilitators need to know when to stop a process.

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Work at the preparatory stage would ensure that an appropriate way or ways of developing and maintaining contact could be introduced to and agreed between the parties. There needs to be unqualified recognition that preparation could take a long time and might be up to 12 months or more in some cases (from the initial engagement meeting). The restorative process might include more than one meeting face to face. The model needs to have flexibility and adaptability built in, since, once a date has been set for a face to face meeting, things can change rapidly. Contact will depend on the individual and the circumstances. For some, an initial contact might be sufficient as that might be the kind of acknowledgement that they have missed for so long, but for others it could be that they also want some on-going dialogue.

- ❖ **Transparency of process and potential outcomes.** Restorative approaches are still unfamiliar and even alien to many people. There should be a Code informing the practice of all organisations involved in the provision of restorative approaches within this context. It should provide clarity on suitable language as well as ethical and practice issues. The Code and its implementation should be monitored and evaluated in an open and transparent way to help alleviate the fear that survivors and organisations/institutions may have about taking part.

National Guidelines for Scotland on restorative justice are being developed promoting safeguards for those involved in a restorative approach (Victims and Witnesses Act 2014 s5). The Code would complement those Guidelines. It should provide a clear flow chart of the key phases of the process as well as how the contact will be managed. For credibility and legitimacy, survivors engaged in this pilot process would provide valuable input as to its content. It is crucial that printed and electronic explanatory/publicity materials be clear, straightforward and positive.

- ❖ **Role of the apology.** Genuine apologies are important to survivors and the reluctance of organisations to acknowledge harm and provide an apology further alienates and devalues that harm that has been caused (see Apologies (Scotland) Act 2016). The aim of any restorative approach in this context would be to create an open and transparent process which provides an opportunities for survivors to have a more direct, personal contact with the institution. This would not be an apology by mass statement but rather through direct human contact on an individual level.
- ❖ **Outcomes.** There needs to be flexibility in being able to respond to the different outcomes that survivors would find appropriate for them. For those that took part they found the process helpful. One said that "It helped me face up to my ghosts": another said that "I feel like I can go away and get on with the rest of my life at last" (Sacro, 2011).

#### Can it be adapted?

Potentially this restorative approach used in relation to historic abuse within Quarriers can be adapted to other settings that are increasingly being challenged over historical abuse: but this requires, time, commitment, resources and input by all key stakeholders, ensuring survivors are included, to determine how this can be developed sensitively and appropriately.

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Bolitho J and Freeman K (2016) *The use and effectiveness of restorative justice in criminal justice systems following child sexual abuse or comparable harms*, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney.

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Sacro (2011) *Time To Be Heard – Final Report of Pilot*

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Scottish Child Abuse Inquiry <https://www.childabuseinquiry.scot/>

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Scottish Human Rights Commission (SHRC) (2010) *A human rights framework for the design and implementation of the proposed "Acknowledgement and Accountability Forum"* and SHRC (2013) *InterAction on Historic Abuse of Children in Care, Action Plan on Justice for Victims of Historic Abuse of Children in Care*

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Shaw T (2011) *Time to be heard: A pilot forum, An Independent Report*  
 Scottish Government

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# Foundation Skills in Restorative Practices Intensive Course



**Course leader:**

**Tim Chapman**

(University of Ulster; Chair, European Forum for Restorative Justice).

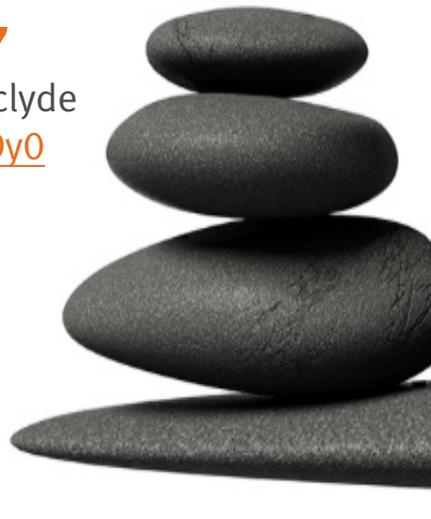
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15 June 2017	Glasgow	RJ and homicide
October (tbc)	Day conferences	

Further events to be announced.

[www.scottishinsight.ac.uk/Programmes/Learningfromotherplaces/RestorativeJustice.aspx](http://www.scottishinsight.ac.uk/Programmes/Learningfromotherplaces/RestorativeJustice.aspx)

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