

scottish justice matters

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RESTORATIVE JUSTICE

Restorative justice in Scotland: A Youth Justice Perspective

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RESTORATIVE JUSTICE, as an intelligent response to behaviours that cause harm, offers processes which can form part of a structured intervention to directly address young people's offending behaviour or as a single response to meet the needs of both the person responsible and the victim. So why are restorative justice approaches in response to youth crime still so little used in Scotland?

The youth crime narrative immediately following devolution, was extremely regressive. 'Neds' and 'Hoodies' were not to be tolerated: 'ASBOs' and 'Parenting Orders' were new tools in the battle. In what appears to have been an attempt to soften some of the rough/reactionary edges of this youth crime agenda, political interest in restorative approaches also increased with the emphasis on Police Restorative Warnings (Scottish Executive, 2006). These focused on diversionary processes to keep children and young people involved in low-level offending behaviour out of formal systems, replacing the previous police cautions.

Essentially this was a policy targeting the individuals who likely would desist from recidivism of their own accord anyway (see also Dutton and Whyte, 2007). However, for the 'real' criminals there would be Youth Courts, Fast Track Hearings and more secure accommodation placements. It can be argued that a major blockage affecting the development of credible and meaningful restorative justice practices in Scotland has been this stubbornly-hard-to shift perception held by some politicians that 'we've done that already' and that 'they didn't work' referring to these earlier initiatives which seem to have been little more than RJ-lite. The other unhelpful consequence of such initiatives was the way they seem to have led politicians to perceive restorative justice as something that is done with young offenders, as opposed to a philosophy and practice which might form the cornerstone of the whole justice system.

An evaluation of restorative justice practice across three local councils in 2007, found that most local authorities had some form of restorative justice provision either through direct (shuttle dialogue, face to face meetings or conferencing) or indirect interventions, such as, victim awareness raising (Scottish Government, 2007). Restorative justice played a part in responding to low level offending as part of a formal process or as part of diversionary measures, but there were issues such as the risk of net-widening, and an assumed victim-offender dichotomy.

The Getting Right for Every Child (GIRFEC) policy launched in 2008, sought to address the broad range of needs and risk for young people through a series of wellbeing indicators (Scottish Government, 2008). There remains a need to consider how restorative justice can be conceptualised within the range of interventions offered as part of a GIRFEC approach to offending behaviour and victim issues.

The Whole Systems Approach (Scottish Government, 2011), should also assist in addressing these issues. WSA promotes good practice as being to divert young people from formal systems, such as, the Children's Hearing System or Court, where possible, so mitigating the risk of net-widening. Research shows that where young people experience victimisation, there is an increased risk of them going on to commit offences where victim issues go unaddressed. It is important that practice acknowledges the relevance and impact of victim-offender dichotomy, the complexity of the young people we work with and need to offer a tailored response that addresses risk and need.

Current situation

Rather than being enhanced and promoted by these policy reforms, restorative justice with young people in Scotland is going through a period of uncertainty.

The current Youth Justice strategy (Scottish Government, 2015) refers to advancing WSA through the provision of effective interventions. In data provided by the WSA implementation group for this paper, of the 13/32 local authorities responding to date only two had programmes that could be identified as specific restorative justice interventions: these were most likely to be used in response to low level offending behaviour. In addition, Sacro provides eight restorative justice services. It would appear then that at least one third of local authority areas continue to have some form of restorative justice provision although this is likely to be a contraction from 2007, possibly because of the loss of dedicated youth justice teams (Nolan, 2015).

This poses the question whether there is currently sufficient confidence, experience and knowledge to deliver high quality restorative justice, both in relation to low level or serious offences by young people. For example, a point to consider is in relation to serious crime and technology. In *Over the Internet or Under the Radar* (CYCJ, 2017) it was noted that a restorative

approach was used in one diversionary case in relation to internet sexual offences. Is there also a need to consider restorative justice in relation to internet offending generally (see also McAra and McVie, page 38, this issue)?

While the Children's Hearings System is an internationally vaunted, welfare-oriented model through which both the 'needs' and 'deeds' of children and young people can be addressed it is not without its limitations. Given that most of Panel Members' time is spent addressing 'care and welfare' cases rather than 'offence' cases (in part owing to the significant reduction in offence referrals over the course of the last decade), it may leave them less well equipped and comfortable when confronted by a young person who displays persistent and serious offending behaviour.

Is there room for learning from other jurisdictions? While the history of conflict may be a unique factor which shaped the Northern Irish Youth Justice System, it is noteworthy that after a wide-ranging criminal justice review the Justice (Northern Ireland) Act 2002 embedded restorative justice conferencing in statute as the principal means by which to address youth offending. What the Northern Irish model certainly appears to guarantee is that the victims of offences are very much 'at the table' whereas in Scotland the important focus on the needs (and deeds) of the young person referred means that victims are not even in the vicinity of 'the table'.

Finally, and perhaps most significantly, there are major issues relating to the standard operating procedures that oil the wheels of the justice system, but which seem to obstruct the development of restorative justice. Social workers writing reports for court and hearings, rarely have any kind of information available as to the victim's experience of the offence, his/her attitude towards the perpetrator and/or whether he/she may have any desire to meet with the person responsible in a face-to-face encounter at some stage in the future. There does not seem to be any rigorous collection and storage of information about victims, their attitudes towards restorative justice and the potential linking of persons harmed by offending to persons responsible. In the *Victims and Witnesses (Scotland) Act 2014* provision is made in s.5, albeit in a very loose manner, for "the referral of a person who is or appears to be a victim in relation to an offence or an alleged offence and a person who has or is alleged to have committed

the offence or alleged offence to restorative justice services". At a time of considerable change in the world of Scottish justice with the *Community Justice (Scotland) Act 2016* and the arrival of Community Justice Scotland, now seems like an ideal time to be thinking about doing justice differently and better. Is it not time for restorative justice to have a central and sustainable place in any reshaped (youth) justice landscape and would a more robust legislative framework, as in Northern Ireland, be what it takes to deliver it?

The current policy landscape also offers promising options. The Youth Justice strategy (Scottish Government, 2015) highlights the need to provide "effective interventions". To this end, there is need to consider the international literature around the effectiveness of restorative justice not just in relation to desistance but to establish narratives around the benefits for victims, especially in the aftermath of serious crime.

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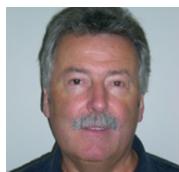
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