

RESTORATIVE JUSTICE IN SCOTLAND: AN OVERVIEW

*Niall Kearney, Restorative Justice Development Officer/Mediation and
Reparation Service Team Leader, Sacro;
Steve Kirkwood, Research Officer, Sacro;
and Lucinda MacFarlane, Database and Information Officer, Sacro*

Abstract

This article outlines the current provision of restorative justice processes in Scotland. There is policy for restorative processes in the youth justice system, and services are provided throughout Scotland. There is a high-level commitment by the Scottish Executive to restorative justice processes in the adult criminal justice system; however provision of these services is limited to the diversion from prosecution stage in 5 of the 32 Local Authority areas, and the pre-sentencing and post-sentencing stages on an ad hoc basis. The amount of people who have engaged with restorative justice processes at the diversion stage, and come to a satisfactory resolution, suggests that this is a viable option for dealing with minor crime. Although small scale, the use of these processes at the pre-sentencing and post-sentencing stages demonstrates their feasibility and shows that there are benefits for those involved. We conclude that restorative justice processes address a need on behalf of people harmed and people responsible for harm and they make an important contribution to justice. We suggest that making restorative processes available at the various stages of the criminal justice system is a feasible way in which the Scottish Executive could meet its high-level commitment to restorative justice.

Introduction

International research has illustrated some of the benefits of restorative justice processes as additions and / or alternatives to adversarial court and criminal justice systems. Scottish Executive policy supports the use of such processes, and they are well established in the youth system, however there is currently only limited provision of services for adults responsible for committing crimes or people directly affected by adult crime in Scotland. This article attempts to outline the provision of such services and the associated benefits.

Youth Justice

In contrast to England and Wales, in Scotland young people under the age of 16 who commit offences almost exclusively go through the Scotland's Children's Hearing System rather than the criminal justice system. With its focus on the 'welfare of the child', the Children's Hearing System is perhaps well suited to the use of restorative processes in dealing with offences compared with a punitive response.

The Scottish Executive's policy on aiming to prevent, address and reduce offending by young people has driven a large amount of growth among restorative justice-based Youth Justice Services in Scotland over the last few years (Scottish Executive, 2005). This has been facilitated by the increase in funding for Youth Justice, which is up from £3.5 million in 2000/01 to £63 million in 2005/06; of this, £15 million has been allocated to Local Authorities for the development of strategies, and the provision of services, for dealing with Youth Justice (Youth Justice Scotland, 2006). Currently all Local Authorities in Scotland have a Youth Justice service, with Sacro (Safeguarding Communities Reducing Offending) being the largest provider of these services, and it is the commitment of the Scottish Executive that by the end of 2006 all people harmed by youth crime in Scotland will be given the opportunity to participate in a restorative justice-type process (Youth Justice Scotland, 2006).

The restorative processes involved in these services include: restorative justice conferences (a facilitated meeting between the person(s) harmed, the person(s) responsible, support people and other affected people); face-to-face meetings (a facilitated meeting between the person(s) harmed and the person(s) responsible); shuttle dialogue (facilitated dialogue between the person(s) harmed and the person(s) responsible, without a direct meeting); and victim awareness (sessions between the person(s) responsible and the facilitator that do not involve the actual person(s) harmed but may involve a 'surrogate') (Scottish Executive, 2005). These processes provide opportunities for people to share their experiences and understandings regarding an event, to safely discuss the causes and effects of the harmful behaviour, and to develop an action plan that may include a reparative task or agreement to undertake a programme that deals with the causes underlying the offence.

Benefits

As yet, there has been limited research on these services in Scotland to assess their effectiveness in achieving outcomes. An evaluation of Sacro's Youth Justice Service in Fife suggested that the service performed reasonably well in addressing the offending behaviour and facilitating the young people to make amends, although it was inconclusive whether there was an impact on re-offending rates (Sawyer, 2000).

Recent research on Glasgow's Youth Justice Service has shown that there is a high level of satisfaction with this type of intervention by professionals, young people responsible for harm, and people affected by youth crime (Dutton & Whyte, 2006). Analysis of the rates at which young people were re-referred to the Scottish Children's Reporter

Administration on offence grounds showed no evidence that the restorative justice-based interventions reduced re-offending rates compared with pre-existing interventions. However, it was suggested that the service provides other important benefits, such as including people harmed by youth crime in the justice process. It is also worth noting that the Scottish Executive has recently recognised that there are limitations to this type of analysis of offending rates, and has stated that in measuring re-offending it is better to include analyses of the frequency and seriousness of offending (Scottish Executive, 2006).

Soon to be published data from Sacro's Youth Justice Services indicates that most young people referred to the services were willing to take part in a restorative justice-type intervention; of these cases, the majority of people harmed were willing to take part; and of these cases, the agreed action plans were successfully completed in 97% of cases (Nicol, Kirkwood & MacFarlane, forthcoming). Participant feedback suggested that young people responsible for the harm, those affected by the harm, and the parents of the young people, felt that the service was beneficial, and the large majority stated that they would recommend the service to others in a similar position to themselves, although it should be noted that response rates for this feedback was relatively low. The majority of young people who responded stated that the service gave them a greater understanding of the impact of their behaviour and that it changed their views about the person harmed. Most of the people harmed who responded stated that they felt the service allowed them to influence what happened to the young person. This evidence suggests that the service is well received in many instances and has benefits for all involved; follow-up analysis will look at the impact on re-offending.

Restorative Justice in Scotland's Criminal Justice System

The expansion of restorative justice is one of the Scottish Executive's 'High level commitments' (Scottish Labour Party & Scottish Liberal Democrats, 2003), but the growth in the youth system has not been matched in the adult criminal justice system. Restorative justice-based services in the criminal justice system are operated by Sacro and only exist as diversion from prosecution options for Procurators Fiscal and have only been used pre-sentencing or post-sentencing on very rare occasions.

Diversion from Prosecution

Sacro's Mediation and Reparation services form part of the Scottish Executive's provision for Local Authorities to offer Diversion from Prosecution services. Only five Local Authorities use this funding for Mediation and Reparation services operated by Sacro in Aberdeen City, North and South Lanarkshire, Edinburgh and Midlothian. These services are funded from the Local Authority Social Work Departments and take referrals from the local Procurator Fiscal's offices. Evaluation on Sacro's early pilot reparation and mediation projects and more recent research on diversion from prosecution schemes have been favourable to this type of provision (Warner 1992; Barry & McIvor, 1999). Regarding

diversion schemes in general, McInnes Report on Summary Justice Diversion reported the following:

We received very positive feedback from sentencers, procurators fiscal and social workers about the value of diversion schemes and recommend that effective schemes be made available nationally. We note, however, that little has been done to evaluate the costs and benefits of diversion schemes compared with other types of disposals.

We recommend that steps should be taken to ensure that, where a scheme has proved to be successful, it is available consistently across the country (Scottish Executive, 2004, p. 127).

Diversion schemes in general are intended to ‘provide an opportunity for persons accused normally of relatively minor offences and where it would otherwise not be in the public interest to prosecute, to be dealt with outwith the court system’ (Scottish Executive, 2002, p. 1). In addition to this, mediation and reparation services provide accused persons with the opportunity to make amends for their actions to the victim of their crime. This is achieved through the use of face-to-face meetings and shuttle dialogue. The facilitators who work on referrals include local volunteers recruited from the community and trained and supported by Sacro staff.

Benefits

Figure 1
Number of cases referred, accepted, discontinued, successful and unsuccessful for the period 1 April 2005 to 31 December 2005.

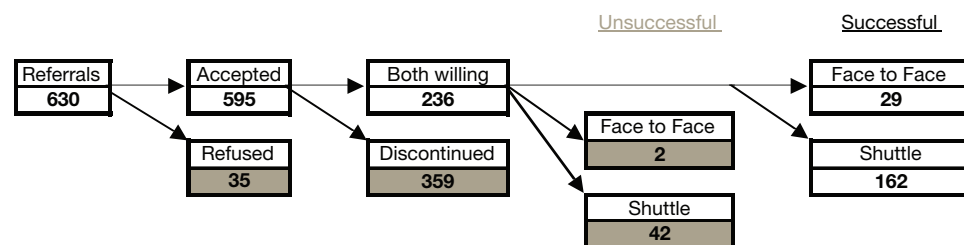


Figure 1 illustrates the process from referral through to case closure. In 40% of cases that were received as suitable for the service, both parties were willing to participate. This indicates that there is a significant constituency that are willing to use an alternative to prosecution. As has been found with similar schemes (Dutton & Whyte, 2006; Wemmers & Canuto, 2002), the main reason for cases being discontinued were that the person harmed was not willing to participate (n=172).

Figure 1 also shows the consistent outcome over many years of a high success rate when both parties are willing to use the service (81%). The high success rate of face-to-face

meetings (94%) is reflected in international research findings (McCold, 2003, cited in Mirsky, 2004).

The main satisfactory outcome for this period was cases in which, through engagement with the service, the people harmed and those responsible both agreed that the issue has been resolved between them, and that they wish no further legal action to take place (32%; n=63).

The next most common agreements involved financial reparation (26%; n=53) or non-harassment agreements (26%; n=53). The minority of remaining satisfactory outcomes involved the person responsible doing some work for the community (2%; n=4); all other cases were resolved through explanation and apology (13%; n=24). This means that in the majority of cases (72%), it was sufficient that the participants’ needs were met without material or financial reparation. In intervening at the diversion stage, it is important to bear in mind the research findings that suggest that individuals at low risk of re-offending should receive low or minimal interventions (see McGuire & Priestly, 1995).

This process avoids criminalising people, and yet ensures that justice is done in the eyes of those directly affected. Through this, the court time may be more efficiently used to deal with more serious crime. It also gives those harmed the option of having a direct say in the outcome, allowing a result that is more appropriate to their needs.

Pre-sentencing

New Zealand is considered one of the leading nations for commitment to restorative justice interventions (Braithwaite, 2002; Carruthers, 2005), and a recent evaluation has assessed the effectiveness of court-referred restorative justice processes (Crime and Justice Research Centre & Triggs, 2005). The service operates by providing an option for judges to refer people to engage with a restorative justice conference involving people harmed and those responsible for the harm, and the outcomes of these conferences are considered by judges when sentencing. Engagement is voluntary, and the process is intended to increase resolution of the impact of crime for those harmed, increase their satisfaction with the criminal justice process, and reduce re-offending. The evaluation found evidence that the pilot services met these objectives, as the majority of people harmed indicated their satisfaction with the process and that it helped them put the offence behind them, and there was a statistically significant reduction in re-offending. It was also found that most of those responsible for the harm felt the conference to be a positive experience, and fewer received custodial sentences compared with a court comparison group.

Restorative justice processes have been used in some European countries pre-sentencing (see Miers & Willemsens, 2004), but to date they have only been used in two instances in Scotland. There follows a brief overview of two interventions provided by Sacro within a deferred sentence context.

Case one

This case involved one person harmed who had been seriously assaulted by four young girls. The case had received a lot of media attention (see Martin, 2003) and, in terms of restorative justice, it was the first of its kind in Scotland.

The person harmed made it known to the Court that he wished to meet the four girls and tell them the effects of their unprovoked assault on him. Three face-to-face meetings were arranged; two of the girls were sisters so they attended the same meeting.

The outcome of these meetings was an action plan in which the girls agreed to attend a day's training at the brain injury clinic at Edinburgh's Ashley Ainslie Hospital, which gave them a comprehensive insight into the potential consequences of their offending behaviour.

The person harmed was able to make his voice heard effectively. The outcomes for him included a regaining of control in his daily affairs; he was more confident and has since become an advocate for this process and assisted as a surrogate victim in the case below.

The court received a brief report on each of the face-to-face meetings which was taken into account in sentencing. The Sheriff sentenced the girls to three years' probation.

Case two

The case involved one person harmed who was the subject to the offence of racially aggravated breach of the peace by a young man aged 18. A social enquiry report submitted to the court on behalf of the young man highlighted that, in the light of his remorseful attitude to the crime, the Sheriff might consider deferring sentence pending the outcome of a restorative justice intervention.

The work circumstances of the person harmed determined that shuttle dialogue was the most appropriate type of intervention. The resultant action plan was that the young man write a letter of apology to the person harmed. A report was submitted to the court at the end of the deferment period. The young man was admonished.

The outcome for the person harmed was that he was able to contribute to the process in a way that was appropriate to his needs. Through this, he was able to influence the action plan and therefore play an active part in the justice process. This resulted in an apology and explanation that provided the person harmed with a deeper insight into the motivations behind the behaviour, which assuaged any concerns that the behaviour might be repeated, and therefore led to increased feelings of safety.

Benefits

Intervention at this level enables a more active participation in the justice process at a crucial time in the lives of people affected by crime. It provides an opportunity to hold those responsible for crime directly accountable to their victims and encourages outcomes

that are more just in the eyes of those involved. The information provided from the process allows more informed decisions to be made about sentencing.

Post-sentencing

Research conducted in England, Wales and Northern Ireland has suggested that bereaved relatives of homicide victims can be left very unsatisfied and even traumatised by the court process (Victim Support, 2006). In this research, professionals who worked with people bereaved by homicide stated that the end of the court trial is often the beginning of a further stage of emotional support needs, and this may be the time when these needs are greatest.

In relation to these needs, post-sentencing restorative justice services are available on a very small scale in places around the world. For instance, in the Netherlands such a service is offered on a small scale to people affected by serious crime, including relatives of homicide victims (Wemmers & Canuto, 2002). The research suggested that the main reasons those harmed chose to participate in the process were to: 'forgive and find a way of coping; confront the offender; understand why things took place, and work out or eliminate their fears' (p. 24). In the majority of instances these expectations were met, and the process alleviated feelings of fear and allowed people to move on.

Since 2002, requests have been made to Sacro by a number of agencies including Criminal Justice Social Work Departments and the Scottish Prison Service to facilitate communication within a post sentencing context between those harmed by and those responsible for severe violent crime. Sacro funded training from Concentric Journeys (USA) for some of its staff in order to meet these requests (for info see <<http://concentricjourneys.com/>>). This has led to the development of a pioneering initiative called TASC (Talk After Severe Crime), which operates on a limited spot purchase basis (see Kearney, 2005). TASC offers face-to-face meetings, shuttle dialogue and protective contract (where the parties negotiate protocols on how to behave if the people should accidentally meet). There follows a brief overview of successful cases to date. All of these cases had high media coverage during the court processes.

Case one

A young man killed his friend in a drunken brawl and was sentenced to 6 years in a Scottish prison for culpable homicide. The case had not gone to trial as the man responsible had admitted his guilt; he therefore only appeared in court for sentencing. The mother of the man who was killed requested that the Scottish Prison Service facilitate a meeting between her and the man responsible for the death of her son. She was motivated by a strong desire to have questions answered. The details of her son's death were never revealed in court, for example, how did the brawl arise in the first place, how exactly did her son die, did he say anything when he was dying, what clothes was he wearing.

The offender's licence had expired and there was no compunction on him to participate in this process. He agreed to participate in order to apologise to this woman whom he had

known since he was a boy. He wanted the opportunity to explain what happened and discuss what they would do if they accidentally bumped into each other in the street.

After extensive preparation over a 6-month period, a face-to-face meeting took place in the Sacro office. Present were the mother and her support worker, the offender and his social worker and the Sacro facilitator. The meeting lasted two hours and resulted in answers being given by the offender. The offender was also appraised of the huge impact his behaviour had on the family. The loss to both sides in this tragic incident was explored during the meeting. In debriefing with the facilitator afterward all agreed that the meeting had been productive.

One of the outcomes was that the mother was able to finally bury the cremated ashes of her son. She was able to better understand the circumstances surrounding her son's tragic death. She was no longer tormented by unanswered questions. Her support worker said that the mother had made significant progress after the meeting in terms of her mood and general well being.

A brother of the deceased had been the best friend of the person responsible for this incident. The person responsible was able to pass on a word of explanation and apology through the mother to this brother. The person responsible was also very appreciative of the opportunity to establish a protective contract that detailed how to behave if he and the mother should accidentally meet on the street. He expressed relief that the meeting had taken place.

Case two

A 15-year-old boy was knocked off his bicycle and killed by a driver who was intoxicated. A year after this incident the case came to trial and the driver was sentenced to eight years imprisonment. Halfway through his sentence, the parents of the boy were informed that the driver was soon to be released on licence into the community. This raised a lot of issues for the parents: what happens if they meet on the street; how has this incident affected the driver; is he ready for release into the community? They requested a meeting with him.

The parents repeatedly said that they wanted to hear the driver's voice – they wanted to hear him speak for himself. He had never been put in the stand during his trial, he had never been allowed to apologise for the devastating harm he had caused (see Christie, 1997). A process of shuttle dialogue was undertaken which culminated in a five-hour meeting in a Sacro office facilitated by two workers.

Outcomes included that the parents heard the driver's voice and accepted his apology. There was a noticeable change in language at one point during the meeting. The mother of the boy used the phrase: 'when our son died...'. She then commented that she had never used that phrase before – previously she had used phrases like: 'when our son was killed' or 'when our son was knocked down'. This indicated a deeper shift in their process

of moving on from such a tragic loss. The parents have since spoken publicly about their experience of meeting the man who killed their son in order to let others in a similar position know that this is possible (MacLean, 2006).

The driver said that the meeting had been the most difficult thing he had ever done but that it was the right thing to do. Due to the protective contract, he said that he has no longer afraid of meeting the parents on the street.

Case three

A mother killed her son and, after serving time in a state hospital, was released on licence in the community. An issue arose between the mother and her own parents that resulted in a breakdown of their relationship. The supervising social worker referred the case to Sacro with a view to facilitating communication between both sides and re-establishing their relationship.

A significant outcome from this intervention is that there was no further loss to either side; the mother did not lose the support she needed from her own parents and they did not lose contact with their daughter.

Case four

A young man was convicted of serious assault and was sent to a secure unit. He expressed a wish to apologise to the person he assaulted. A request was made to Sacro to facilitate this communication. The person harmed proved uncontactable and, after consultation with a number of agencies, it was agreed to ask a 'surrogate victim', who had suffered from a similar kind of attack and participated in a similar restorative process, if he would be willing to participate in a face-to-face meeting (see Restorative Justice Consortium, 2005, p. 8, on surrogate victims). The surrogate agreed and the meeting took place in the secure unit.

The young man was able to speak clearly about the incident without minimising or excusing his behaviour. With the help of the surrogate, he was also able to listen to the effects this kind of incident can have on a victim. The surrogate found it helpful to be able to tell his story and have it respected and valued.

Other enquiries

In addition to the cases outlined above, to date six enquiries have been received about this type of intervention: four from the Scottish Prison service, one from Victim Support and one from a Sacro service user.

Benefits

Outcomes that would not have been achieved without this intervention include: explanations and apologies which give a deeper understanding and enable people to move on; protocols which relieve anxiety about meeting accidentally again and thereby increase feelings of safety; safe communication which decreases isolation and promotes self-

confidence. Where the process works well, these should be positive outcomes for all people involved.

Conclusions

The Scottish Executive has stated its political commitment to restorative justice processes. The evidence presented in this article shows that restorative justice processes can be implemented at various stages in the criminal justice system in Scotland. The level of engagement with the services suggested that there are people who are willing to make use of these processes where they are made available. These processes provide more direct involvement in the justice process for those most closely affected by crime; they allow people to take responsibility, apologise, and give explanations for their actions; they provide people with answers to questions that may not arise in the court process; and they can help to re-establish relationships.

Based on the above, we suggest that making restorative processes more widely available across Scotland at the diversion from prosecution, pre-sentencing, and post-sentencing stages of the criminal justice system is a feasible way in which the Scottish Executive could meet its high-level commitment to restorative justice. Currently in Scotland only people harmed by youth crime are consistently given the opportunity to have such direct participation in the justice process; this move would provide similar opportunities to people harmed by adult crime. It is our view that making these processes more widely available at all stages of the criminal justice process would bring added value to people's experience of justice.

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