

Restorative justice in the magistrates' court

Information pack

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Introduction

This information pack has been developed by the Restorative Justice Council (RJC) to raise awareness of restorative justice among magistrates.

The RJC is the independent third sector membership body for restorative justice. Our role, with the support of the Ministry of Justice, is to promote access to high quality restorative justice for all victims of crime in England and Wales. The information contained in this pack is intended to help magistrates understand more about restorative justice and their role in that process.

Restorative justice is a victim-focused resolution to crime. It empowers victims by giving them a chance to meet or communicate with their offender to explain the real impact of the crime. It also holds offenders to account for what they have done and helps them to take responsibility and make amends. Restorative justice can be used for both adults and young offenders and for any type of crime. It is not, as it can often be portrayed, a soft option, and can be used at all stages of the criminal justice system, from out of court disposals, to alongside a custodial sentence.

Building confidence in justice and meeting the needs of victims are central to the role of magistrates. Restorative justice can help to deliver this and government research has established that 85% of victims who have been through the process are satisfied with their experience. The study also showed that restorative justice leads to a 14% reduction in the frequency of reoffending and significant cost savings to criminal justice agencies and the taxpayer. Restorative justice also has the support of the public – a recent poll found that



75% of people believe that victims of crime should have the right to meet their offender.

In recent years, there has been growth in both political and public support for restorative justice. The government's genuine commitment to embed it within every stage of the criminal justice system is evident through legislation, passed in 2013, which allows for magistrates to defer sentencing to enable restorative justice to take place. Adjournments may also be used by the judiciary to facilitate a period of pre-sentence restorative justice activity. There has also been significant government funding provided to police and crime commissioners, youth offending teams and prisons to increase their provision of restorative justice.

As it expands across the criminal justice arena, it is essential for magistrates to understand exactly what constitutes restorative justice, the benefits it can bring to all parties involved in a crime and the role magistrates can play in the process.

Jon Collins
Chief Executive Officer
Restorative Justice Council

Restorative justice in the magistrates' court

Richard Monkhouse, the chairman of the Magistrates' Association, shares his experience of restorative justice in the magistrates' court.

During the pauses in one of my recent court sittings, I asked the half dozen or so magistrates who were there for their views on restorative justice.

One had just seen a BBC broadcast on restorative justice and was persuaded of its benefits, but said that this was outside our remit and the courts did not get involved in restorative justice. One said something about all our work going and there being a plot to remove magistrates from any activity at all. Others were less threatened, but few really knew what restorative justice was about, how it worked or how successful it can be. I find all of this strange as restorative justice has been an element of the criminal justice system for a while.

There is no ideological objection to restorative justice. In areas like Thames Valley, for instance, where high quality restorative justice is offered as part of a community sentence, magistrates have recognised its value.

However, restorative justice has almost exclusively been carried out outside of the realm of the courts. It occurs pre-court, particularly for young offenders, in an attempt to steer them away from a life of crime. This is entirely appropriate if it ceases to criminalise those who have simply made a mistake, and if it draws the victim into the system.

We also see restorative justice carried out post-sentence very effectively, again bringing the victim into the system and often bringing closure to them. I have heard of many cases that have been properly brought to a close because of restorative justice.

But if all this is true I would like to pose a question: why have we not had restorative justice as an option within the sentencing that is ordered in the courtroom when it is clearly such a good method of getting offenders to understand what their actions have led to, and reducing their need to reoffend?

Because restorative justice has not been an inclusive part of magistrates' sentencing, it is not surprising that a degree of mistrust has developed. This needs to change, and we in the Magistrates' Association have linked up with the RJC to embark on an education programme that sets out to explain to magistrates what their new options might be and how they may get involved in the restorative justice process.

No legislation is required to bring restorative justice within magistrates' sentencing options, whether as part of a community order for adults or a referral order for young offenders. A number of rehabilitation activity requirements can be made as part of a community order, along with other elements, such as rehabilitation and compensation. In some parts of the country, Community Rehabilitation Companies and the National Probation Service have taken this on board and offer and suggest to sentencers that restorative justice might be appropriate in certain cases.

The government has said that every community order must have a punitive element as part of that order. I would argue that restorative justice could be that punitive element. For offenders to accept and own up to their behaviour is one thing. To do this in front of the victim whose life they have affected is another thing, and is not easy.

So, the first change that is needed is to bring restorative justice within the ambit of magistrates' sentencing powers throughout England and Wales. This would mean that an offender can be dealt with in the same broad manner whether they offend in Carlisle or Canterbury, and whether they are dealt with outside court or within the judicial process.

The other change, and one which was brought in under the Crime and Courts Act in 2013, is the ability to defer sentence for restorative justice to take place; in other words, after guilt has been admitted but before sentence is passed.

Restorative justice not only includes the victim within the process, but also provides the sentencing bench with greater knowledge of the offender and his or her willingness to change.

In most cases where a community order is being considered, we pause anyway for reports from the youth offending team or probation. However, these days, pre-sentence reports are far more likely to be produced later the same day or within the next couple of days, unless there are reasons why a full report is required (for example, where there are domestic violence or mental health issues). In most circumstances the pause is, therefore, limited.

The proposal that a longer deferment will take place in those circumstances where restorative justice is seen as a more fruitful path to take is eminently sensible. However, we will need to ensure that the current emphasis on targets does not prevent this from happening by limiting how many hearings there should be for a particular case.

Clearly, it is important to avoid unnecessary delays as cases progress through court, but speed alone should not be allowed to interfere with justice. Magistrates will not only need confidence to take the advice being given to them about restorative justice as an option, but also confidence to drive this change forward.

We must argue that any delays that result from the consideration of restorative justice options would only be with the involvement of the victim; we must devise ways, particularly at a local level, to avoid these delays being viewed as a problem and a potential to derail an excellent development in criminal justice.

For my own part, I cannot wait to become involved. In the right circumstances the introduction of restorative justice is one of the most exciting developments of the last few years. I look forward to its development both inside and outside the courtroom.

Richard Monkhouse JP
Chairman
Magistrates' Association



"It is clear that, done well, restorative justice cannot be done to, or even for, victims – it must be done with them."

Garry Shewan, assistant chief constable, Greater Manchester Police, ACPO lead on restorative justice

"Victims and offenders cannot be forced into restorative justice but they can be encouraged by the opportunity being made available and a requirement that engaging in the process be considered."

Gaynor Mckeown, director of development, Victim Support

"Nothing prepared me for it. I think the main fear was looking into the eyes of the people that I'd stolen from. I even had nightmares over it, I was that worried." **Ex-burglar**

"It was so liberating to have a voice, and to know he'd have to listen to what I was saying."

Victim

"It gives you closure. People are never the way you imagine them to be." **Victim**

"For me, restorative justice turned the tables and I don't feel like a victim any more. I'm in control now." **Victim**

"It was a hugely uncomfortable experience for my assailant and took a vast amount of courage for him to do restorative justice. He seemed to be somebody who was genuinely trying to turn his life around."

Magistrate in London who took part in a restorative justice conference after being the victim of a very violent mugging

A Home Office report:

"Restorative justice face to face meetings ... improved perceptions of the criminal justice system"

For every £1 spent on delivering restorative justice, up to £8 was saved in lowering costs of offending.

14%

reduction in reoffending after restorative justice.

74%

of offenders would recommend restorative justice to others.

85%

of crime victims who had been through restorative justice were satisfied with the process.

78%

of victims would recommend restorative justice to others.

Restorative justice – the legal position

What is restorative justice?

Restorative justice empowers victims by giving them a voice. It gives victims the chance to meet or communicate with their offenders to explain the real impact that the offence had on them and potentially receive an explanation and an apology. It also holds offenders to account for what they have done and helps them to understand the impact of their actions, take responsibility and make amends. Restorative justice ultimately aims to:

- repair the harm caused by crime
- empower victims by giving them a voice
- encourage offenders to take responsibility for their offence and take action to change
- reduce crime

What type of activities could restorative justice involve?

Restorative justice activities can take many forms. These include:

- **A victim offender conference.** This involves a face to face meeting between victim and offender led by a trained facilitator. Supporters for both parties can attend, usually family members.
- **A community conference.** This is similar to a victim offender conference but involves members of the community who have been affected by the crime.
- **Indirect communication.** Sometimes referred to as shuttle restorative justice, this involves messages being passed between victim and offender by a trained facilitator. The participants do not meet and messages can be passed via letter, video or audio.

What are the legal powers for restorative justice in the courts?

Restorative justice as part of sentence:

The Criminal Justice Act 2003 made provision for restorative justice as part of a Supervision and Activity Requirement (SAR). This allows restorative justice to form part of a community order. Until recently, this provision has rarely been used as part of a SAR with the exception of areas such as Thames Valley and London.

The Offender Rehabilitation Act 2014 has since amended the Criminal Justice Act 2003, repealing the SAR and replacing them with a single new Rehabilitation Activity Requirement (RAR). The RAR gives greater flexibility for providers of probation services to determine the rehabilitative interventions delivered to offenders. The implications of the RAR on restorative justice are explained below.

Restorative justice pre-sentence:

The Crime and Courts Act 2013 came into effect in December 2013, giving crown court judges, district judges or magistrates the power to defer passing a sentence and in order for restorative justice to take place in cases where both victim and offender are willing to participate. The court can also adjourn the case, and in some cases may deem it more appropriate to do so, to facilitate a period of pre-sentence restorative justice activity.

The introduction of the Crown and Courts Act ensures that restorative justice is available at all stages of the criminal justice system for the first time in England and Wales. Restorative justice is used 'on the street' by police as an alternative to court, at the post-sentence stage as part of a RAR or alongside a custodial sentence. With pre-sentence restorative justice now available, victims are able to request it at the time that is right for them.

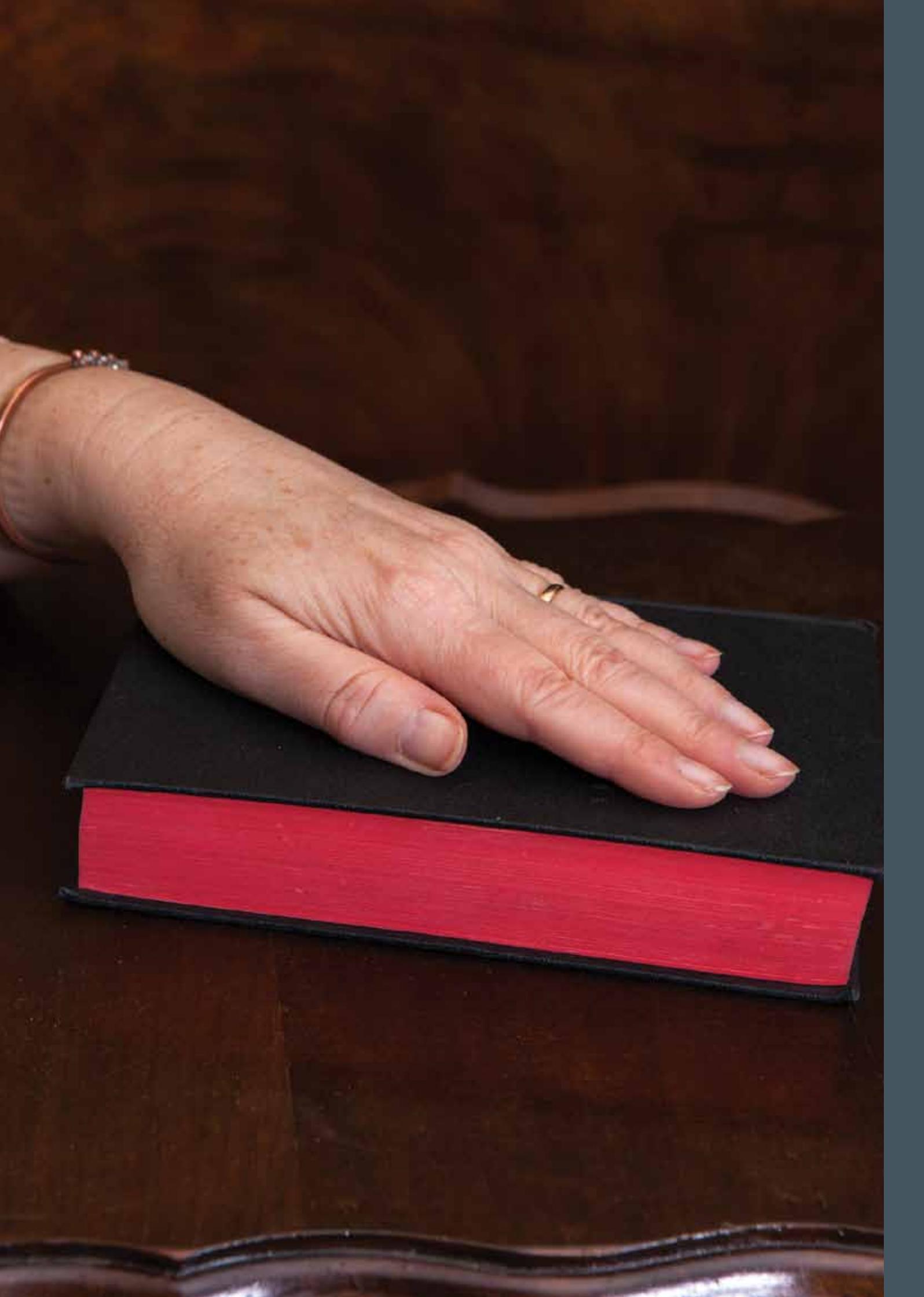
What conditions must be met in order for restorative justice to take place?

Restorative justice can only take place when three conditions are met:

- 1 There is an identifiable victim or victims.
- 2 The offender accepts responsibility and has made a guilty plea (at any stage of the proceedings).
- 3 The victim, offender and any other participants consent to take part in a restorative justice activity.

Why has the government introduced pre-sentence restorative justice?

Pre-sentence restorative justice is about getting victims' voices into court at the earliest opportunity in a way that the current criminal justice system does not make possible. It engages victims in the process as soon as possible and allows them greater direct involvement in the criminal justice system. Pre-sentence restorative justice is about providing more information to the sentencer and an opportunity to identify the outcomes an offender may agree to deliver to repair the harm they have caused.



How long is the deferment for?

Courts may defer passing sentence for up to a maximum of six months but, in relation to a restorative justice activity, it is envisaged that in most cases it will be possible to complete the process within six to eight weeks. There may be occasional cases where the court considers it is not appropriate to defer sentence. In such cases the court might consider adjourning to allow for restorative justice to take place.

The current Crown Court pre-sentence restorative justice pathfinder projects are testing whether this six to eight weeks timeframe is practical. In some cases where it is deemed inappropriate to defer sentencing to allow for a restorative justice activity – for example, where an offender is to be sentenced to custody – courts may consider suggesting restorative justice takes place alongside a custodial sentence. It ultimately falls in the hands of the prison and offender manager as to whether this restorative justice takes place in a custodial setting. Were it to do so, this could take place indirectly if a victim does not wish to visit a prison, either by exchange of letters or recorded video.

Toolkits on pre-sentence restorative justice will be developed in the first half of 2015. These will include outcomes from the pathfinders currently taking place in Crown Courts and lessons learnt from previous pre-sentence pathfinders undertaken in three magistrates' courts.

Guidance on pre-sentence restorative justice has now been published by the secretary of state and can be found here: www.gov.uk/government/publications/pre-sentence-restorative-justice

How can magistrates facilitate pre-sentence restorative justice?

As all magistrates are aware, if a defendant pleads guilty to the offence for which he or she appears in court, the prosecutor will read out the facts of the case so the magistrates can decide how serious it is and what action they wish to take.

The choice for the magistrates is then between sentencing immediately (with a fine or discharge) or asking for a pre-sentence report (PSR) from the NPS or Youth Offending Team (YOT). On receiving a PSR with a recommendation for restorative justice, magistrates have the power to request a deferment or adjournment of sentencing in order for restorative justice to take place pre-sentence.

For magistrates to be confident enough to ask the right questions regarding whether or not to defer or adjourn for restorative justice, they need to be sufficiently well informed of its benefits and understand which cases best lend themselves to the process. If the magistrates decide to proceed with recommending pre-sentence restorative justice, it will be referred to a qualified restorative justice practitioner who will undertake a thorough risk assessment of both the offender and victim. Based on that assessment, and the wishes and timescale of the victim, pre-sentence restorative justice may take place. For more information on how risk assessments are carried out, please see section 2 of the RJC's Best Practice Guidance here: www.restorativejustice.org.uk/best_practice_2011

In summary, if a magistrate is faced with a case where they feel the victim and offender would benefit from a restorative justice activity, and it would be in the interests of justice for them to do so, the magistrate is empowered to suggest to their legal adviser, or PSR writer, that a risk assessment take place by a qualified local restorative justice practitioner. If restorative justice is not recommended as part of the PSR, magistrates are still able to make a request for a risk assessment if they feel it would be suitable. The risk assessment would involve the practitioner contacting both the victim and offender and assessing whether they would be suitable candidates for a restorative justice activity.

How can magistrates facilitate restorative justice as part of a Rehabilitation Activity Requirement?

When magistrates ask for a PSR, the NPS will initially screen the offender to determine their appropriateness for the restorative justice process. Based on a number of factors (including the conditions mentioned above), if the offender is deemed suitable, the NPS will recommend to the court that restorative justice form a component of the RAR.

The decision on whether restorative justice then becomes a formal recommendation of the court lies in the hands of the magistrates. Magistrates' decision will be guided by the feedback they receive from the probation staff on the appropriateness and safety of the case. If, on balance, magistrates wish to proceed with the recommendation, the case will be referred to a qualified restorative justice practitioner to ultimately decide on timing and appropriateness.

Who can suggest a restorative justice activity?

A number of agencies can suggest that a case may be suitable for restorative justice. Police, victim services, NPS or Community Rehabilitation Company (CRC) staff, YOTs or restorative justice service providers can suggest a case prior to the court hearing at which the case is deferred. Either the victim or offender can also request to take part in a restorative justice activity.

The facilitator may make initial contact with the victim and offender prior to the court hearing to

inform them about restorative justice and ask if they are willing to participate. If either party is unwilling to take part, the case will not be taken forward. The courts should be made aware of any cases identified as potentially suitable for a restorative justice activity prior to the hearing and any knowledge on willingness to take part. Local processes will be developed to enable this.

Who arranges and organises the restorative justice?

Depending on the stage at which restorative justice takes place in the criminal justice process, it will be arranged and organised by either the YOT, CRC or NPS. There will always be a trained restorative justice facilitator to undertake a thorough risk assessment before proceeding with any restorative justice activity.

Which offences are appropriate for restorative justice?

Restorative justice can be suitable for any offence and is not restricted to offenders who are receiving community sentences. Both offender and victim must be willing to take part and there is an important emphasis placed on those cases where the victim has asked for restorative justice. Ministry of Justice guidance states that restorative justice should not normally be used in cases of:

- "Domestic violence due to the risk of ongoing harm to the victim and the potential for communication between intimate partners which can be difficult to detect."
- "Hate crime and sexual offences, unless a victim of such [an] offence requests a restorative justice activity and suitably experienced and skilled facilitators are available."

However, the RJC supports the use of restorative justice for all crime categories provided that it is facilitated by a practitioner with appropriate training and experience.

What information will the court receive after the restorative justice activity has taken place?

The court will receive a report prepared by the restorative justice practitioner who facilitated the activity as well as the outcome agreement. During a restorative justice conference the offender and victim will often agree on certain actions that the offender should undertake in order to repair the harm they



have caused. There is no prescribed form for the report to take but the Ministry of Justice recommends that it includes:

- Who agreed to participate in the restorative justice activity.
- Who participated in the process and restorative justice activity.
- Details of the outcome agreement or action plan, whether or not it is completed by time of sentencing.
- The views of the victim and trained restorative justice facilitator.

What effect should pre-sentence restorative justice have on sentencing?

At the sentence hearing, the court will receive the report from the restorative justice facilitator and it is at the court's discretion whether the restorative justice activity and subsequent outcome agreement should affect the sentence. The RJC recommends that all victims considering restorative justice should be informed of the effect this could have on their offender's sentence so that they can make a fully informed decision.

If an offender is willing to participate in a restorative justice activity but this cannot happen, through no fault of the offender, the court can sentence the offender before the end of the deferment or adjournment period. It is up to the court to interpret whether the offender's willingness to participate affects the ultimate sentence.

Could any outcome agreements from the restorative meeting be incorporated into the sentence?

During a restorative justice conference the offender and victim will often agree on certain actions that the offender ought to undertake to repair the harm they have caused. This could include, for example, the offender attending a drug rehabilitation programme or undertaking some form of reparative activity to the victim or community. It is at the court's discretion whether it is appropriate for any part of this agreement to form part of an offender's sentence.

If part of the outcome agreement does form part of an offender's sentence, it would have the same status as any other sentence given to the offender and they could return to court for breach of the order.

Does restorative justice fit into the purposes of sentencing?

Yes – restorative justice fits into reducing reoffending, rehabilitation and protecting the public. Government research demonstrates a 14% reduction in reoffending after a face to face conference has taken place, protecting the public from future harm. This is because restorative justice gives the offender something that the traditional criminal justice system doesn't – a personal insight into the effects of their actions. Restorative justice conferences involve an outcome agreement between a victim and offender. These agreements often lead to offenders agreeing to take rehabilitative actions.

What happens at a restorative justice conference and can magistrates attend one?

During a restorative justice conference participants meet to discuss a crime in which they have been involved. The discussion is led by a trained facilitator and supporters for both victim and offender can be present. The facilitator will lead the discussion by asking what happened, who was affected, how they were affected and what can be done to repair the harm that was caused. The participants may decide on an outcome agreement outlining actions to be taken to try to repair the harm caused. Both the victim and the offender need to be willing to undertake a restorative justice activity. The participants' suitability is assessed through a detailed risk assessment by a trained restorative justice professional, in line with the RJC's Best Practice Guidance.

It is possible to observe a conference through the Observer Programme run by Why me?, a third sector organisation, in association with the RJC and the Ministry of Justice. The programme allows observers to sit in on conferences in order to gain an understanding of the process. If you would like to be included or have any further questions about observing please email charlotte@why-me.org

Why magistrates can have confidence in restorative justice

What evidence is there that restorative justice works?

Government research has shown that restorative justice has a positive impact on both victims and offenders. The government funded a £7 million, seven-year research programme into restorative justice which showed that 70% of victims chose to take part in face to face meetings which led to 85% victim satisfaction rates. 78% said that they would recommend restorative justice to other victims (only 5% would not). The research also showed that face to face meetings reduced the frequency of reoffending by 14%.

Why is the Magistrates' Association supporting restorative justice?

The Magistrates' Association recognises the compelling evidence supporting restorative justice and would like it to be an option in every court both pre-sentence and as part of sentencing. To realise the full potential of restorative justice, the support and commitment of magistrates is essential. The RJC can help to provide local awareness sessions for magistrates. To request an information session for your court, email dani@restorativejustice.org.uk

Is restorative justice tough on offenders?

Restorative justice is about far more than an offender simply apologising to their victim for a low level crime and is not soft on crime. Offenders often say they found it much harder to face their victim than to go to court. Meeting the victim face to face and hearing about the impact of their actions frequently brings about a real sense of remorse and desire to change. This is the power of a restorative justice meeting.

How do victims benefit from restorative justice?

Many victims find that restorative justice helps them to come to terms with their experience and move on. Victims who engage in the process can experience reduced post-traumatic stress, higher levels of satisfaction with the criminal justice system and less fear of repercussions. The opportunity to participate may allow them to find some form of closure. There are many examples of victims who have an improved quality of life after engaging in a restorative intervention.

How are restorative justice facilitators trained?

Training in restorative justice, particularly training for practitioners who facilitate face to face meetings, is the bedrock of quality practice. The RJC has an online Trainer Register which lists providers who have signed up to our Code of Practice for Trainers and Training Organisations of Restorative Practice. The Code sets out the minimum requirements for training in restorative justice. There are five categories of training and each has its own requirements.

How can magistrates be assured that agencies are delivering restorative justice to a high standard?

Backed by the Ministry of Justice, the RJC developed the Restorative Service Quality Mark (RSQM) in 2013 in consultation with experts in the restorative field. The RSQM is a quality mark for organisations providing restorative services – only those organisations who can demonstrate they meet the minimum standards needed to provide quality provision and participant safety will achieve this mark. When an organisation has been awarded the RSQM, commissioners, referrers and participants can be confident that they provide a safe, high quality service.

To learn more about the RSQM please visit: www.rsqm.org.uk

What training will there be for magistrates in the process of introducing restorative justice into the courts?

The RJC and the Magistrates' Association are liaising with the Judicial College on introducing information on restorative justice into the magistrates' induction process. This information would also be distributed to magistrates who have already been sitting for some time. There will also be information hosted on the Judicial College portal accessible to legal advisers and the wider judiciary.

What constitutes a positive outcome from restorative justice?

The restorative justice meeting itself is a positive outcome for many victims. Even offering the opportunity to take part can be empowering by allowing victims to choose their level of involvement and affect the process. However, practitioners are trained to manage the expectations of everyone involved and accept the possibility that outcomes will be mixed. Inevitably, not every restorative justice meeting will lead to the offender never offending again, but it may still meet the needs of the victim and lead to a reduction in the frequency of offending.



Pre-sentence restorative justice pathfinders

Tracey Kadir is assistant director of the National Probation Service in Kent and was involved in one of three pathfinder projects which implemented pre-sentence restorative justice in a magistrates' court. Here she outlines how the pilot went and describes the multi-agency approach they have developed in Kent.

Restorative justice – what is it exactly? The term describes processes that brings those harmed by crime and those responsible for the harm into communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way forward. This is a simple but crucial definition, highlighting how restorative justice returns ownership to those actually involved in an incident, rather than the criminal justice system completely taking over.

With the new provisions in the Crime and Courts Act 2013, giving courts the explicit opportunity to defer sentence post-conviction to allow a restorative justice activity to take place, the National Offender Management Service chose three pathfinder sites, including Kent, to test out delivery models for pre-sentence restorative justice. We have subsequently worked closely with Sheffield Hallam University in the evaluation of the delivery models, and in the preparation of a toolkit for areas considering the use of restorative justice.

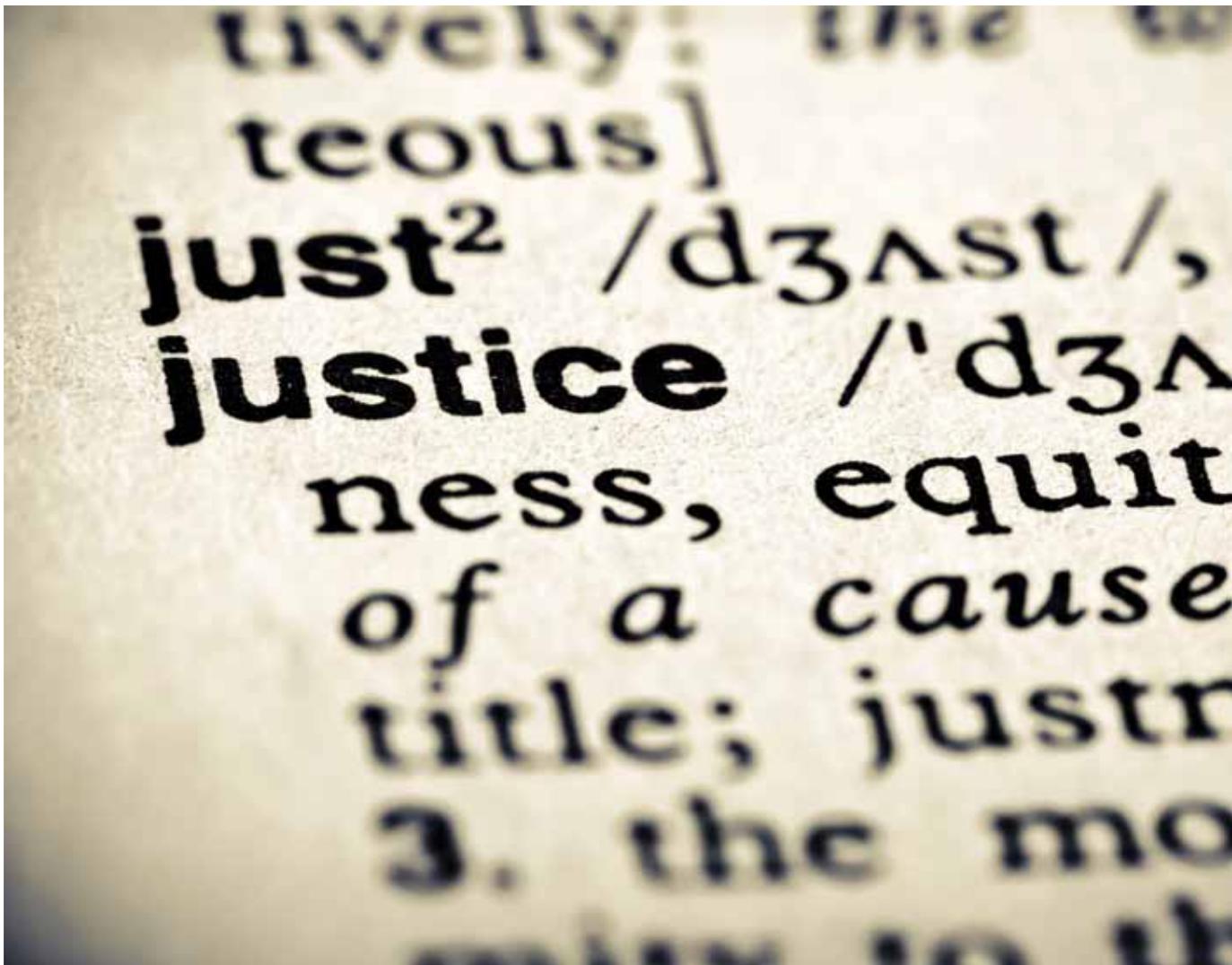
In Kent we ensured that magistrates were well briefed regarding the post-conviction pre-sentence model. We gave presentations at Bench AGMs, involving Peter Woolf, a well-known supporter of restorative justice, who was able to speak movingly of his own personal experience and about how hard it is for an offender to face his victim – certainly no soft option. The delivery model was rolled out in all magistrates' courts in Kent to avoid a postcode lottery for victims. We use facilitators trained to RJC standards and our court probation officers are all trained to ensure appropriate identification of potentially suitable

cases. We do not currently have the resources to make this available to all victims and so we focus on the offences of domestic burglary, assault and criminal damage.

Once identified as being appropriate by offence and a guilty plea, the court probation officer speaks with the offender to see if they would be interested in being involved in a restorative justice process. It is made clear that there is no promise that participating will have any impact on sentencing, although courts are rightfully able to consider remorse when sentencing. If the offender is willing, a brief two to four week adjournment is requested to enable the mediation services to objectively assess both victim and offender for readiness and suitability. On receipt of their report, the court probation officer either requests a deferred sentence of three months to facilitate the restorative justice activity or makes an alternative proposal for sentencing.

It is essential that both parties are willing to take part and that they understand they have a choice. At the end of the deferment, it is hoped that a restorative





justice activity – preferably a face to face conference – will have taken place, although sometimes the preparation needed takes longer. In such cases it is possible to sentence to a specified activity requirement to enable the process to be completed, or indeed for the restorative justice process to continue alongside another sentence – even custody if that is what is deemed appropriate.

Kent has taken a multi-agency approach to restorative justice through its Criminal Justice Board, involving probation, police, prisons, Her Majesty's Courts and Tribunals Service (HMCTS) and the voluntary sector. We have a shared vision that restorative justice should be available at every point in the criminal justice process, not just pre-sentence, but whenever the time is right for those involved. We have jointly commissioned the provision of conference facilitation and are able to offer this as part of a sentence,

whether in the community, in custody, or even on licence.

We all share a strong belief that restorative justice gives victims a voice, an opportunity to have their questions answered and a chance to move on. We believe that it holds offenders to account in a very challenging and meaningful way, and has a real impact on their future behaviour. I only have to hear a victim's account of how healing they found the process to be, or read an offender's heartfelt letter of apology, to understand the true impact of the process. Restorative justice is powerful and that is why we will continue to make it as widely available as possible in Kent.

Tracey Kadir
Assistant Director
Kent National Probation Service

Ed and Rumbie's story

When Ed and Rumbie were burgled two weeks after moving into their flat, their optimism about their new life together was ruined. As part of a pre-sentence restorative justice trial taking place at Wood Green Crown Court, they were given the opportunity to meet their offender at Pentonville prison.

Rumbie: Ed and I had just moved into our first flat together. We were in the middle of unpacking and settling in. Ed had just been promoted and I'd just got a new job, so it was a really exciting time. Ed came home one day and found a brick on the kitchen floor. He rang me and said: 'I think we've been burgled.'

Ed: I had a quick look around the flat, and at first it didn't look too bad. Then I noticed that our iPads were gone, and so was my hard drive. All of the drawers in our bedroom had been tipped out and everything had been rifled through.

I called Rumbie at work and she came straight home. I felt very upset. I knew Rumbie already had doubts about our new neighbourhood, and moving there had been my idea. I felt really guilty and I expected her to be very distraught.



Rumbie: Because the flat was still new to us it hadn't started to feel like home yet and I felt completely invaded by the burglary. We'd had great plans when we moved in and it was really frustrating to hit such a bump in the road. I already felt a bit unsafe, because our area isn't the safest in London, and the burglary made me really angry.

For me, the worst thing I lost was my backpack, which I took to work every day. Everything else was replaceable, but that one thing was so personal to me that I felt furious that the burglar had taken it.

Ed: The burglar hadn't taken anything which was dear to me, like my guitars, but I didn't feel like the flat was home anymore. As it was our first proper place together, it was the first time we'd been able to leave things lying around where we wanted them. After the burglary we started to put everything away before going out – I stopped feeling like our house was our personal space.

In those first few weeks afterwards my sleep was disrupted – the slightest noise would wake me up instantly. I was very nervous. I no longer felt as if I could take our privacy for granted.

Rumbie: What followed were weeks of visits from the police to keep us informed of what was happening. They caught the burglar through traces of his DNA which were on the brick. He was already known to the police as a prolific offender.

One day, we had a visit from PC Mark Davies and Kate Renshaw from Only Connect, a local charity. They explained that the burglar – Fabian – had been caught, and was willing to meet us in a restorative justice conference. After they left we started to look on the internet to find out more about restorative justice – we were really curious to know more about it and what it involved, and we found some films about the process.

After watching the films, we felt like it was our duty to take part in restorative justice. We were never pressured into it, but it seemed like the right thing to do.

Ed: Once we decided to go ahead with the conference, we were told exactly where it would take place and what would happen. I felt fine until a few days before the conference, but on the day, it was definitely nerve-racking.

Rumbie: I was really nervous on the day of the meeting, too. But the police had reassured us that if Fabian was violent or we were at risk, they wouldn't allow the meeting to go ahead. We trusted the people who were organising the meeting.

Ed: It was the first time either of us had seen the inside of a prison, which was interesting. We went into the chapel, where the conference was taking place, and took a while deciding exactly how we wanted the seating arranged. Then we chatted awkwardly until Fabian, the burglar, was brought in.

Rumbie: We were initially quite taken aback because we'd expected someone very different. Fabian was well dressed and well spoken – he seemed like a really normal guy and we couldn't get our heads around what was going on with him to make him do what he did.

Ed: I didn't know in advance what I wanted to ask him – I figured it would come to me on the day. We'd been encouraged not to plan too much. Fabian had brought a letter he'd prepared for us and he started by reading that out. It talked about how he understood it must be strange for us to meet him and that we probably hated him. He then went on to talk about the burglary. He'd been in the park next to our house using drugs, and when he'd run out he'd seen our road, which is quiet and secluded.

Rumbie: For me, the personal impact of the burglary was lessened by meeting him. I realised that it had been a spur of the moment decision – he was off his face – whereas before I had thought it was premeditated. I learned that he wasn't watching us, he wasn't following us, which are things you think when someone's been in your house.

Ed: I told Fabian how the crime had affected us, and how I felt about my home after he'd been in it. I didn't think it was worth asking him to go into a programme for his drug addiction – I felt that was something he was only ever going to be able to do for himself, and not because I told him to. What I did suggest was that he didn't go back to his flat – which he'd managed to keep for a decade while going in and out of prison – as that was associated with his old life.

I think I got through to him a little bit, but Rumbie was more effective. She said to him; 'If someone asks me what this guy is like, what should I tell them?' That was the first time he was lost for words – maybe it was a little ray of light coming through a crack. He couldn't answer – it challenged him.

Rumbie: When we left the meeting I felt really sorry for Fabian, but personally, I felt a lot safer in our home and our neighbourhood. We felt empowered, but we'll definitely think about Fabian for a long time and wonder how he's doing.

Ed: The conference definitely helped me to move on – it was a valuable experience. It made both of us less worried that we'd been targeted, but it also concluded some of the emotional aspects – it closed a chapter for us. Now, I've got a sense of perspective on what happened to us, but it's also given me some insight into the criminal justice process – it involved me. We were assured that restorative justice does not necessarily lead to a more lenient sentence, and in fact, we could request that the judge didn't take it into account when considering Fabian's sentence. I felt that if the conference was going to be helpful to the judge in making a decision, then it should definitely be considered.

If someone else was considering restorative justice, I would tell them to go for it. It offers you emotional closure and it puts a perspective on a crime – it seems less sinister. And it involves people – citizens – in the justice process. They come face to face with it and understand how it works.

The national pre-sentence restorative justice pathfinder programme, currently operational in ten crown court sites around the country, was designed by Restorative Solutions CIC and is being managed by them in partnership with Victim Support. Roll out of the crown court pathfinders to a number of magistrates' courts was agreed in December 2014. The first of these, in Bristol, will commence live operation in January 2015. For more information please contact Kate Hook on katehook@restorativesolutions.org.uk

The RJC would like to thank Wood Green Crown Court, and Ed and Rumbie for sharing their story with us.

Restorative justice in the youth courts

In this article, Pete Wallis discusses the positive changes that have taken place in youth offending teams delivering restorative justice, how they engage with participants and what magistrates can do to help.

The criminal justice process has long been criticised for focusing on the people who commit offences and neglecting their victims. While the referral order was designed to address this imbalance, there remains a danger that the victim is invited into a process that has been set up for the offender. The restorative training in referral orders aimed to encourage a more balanced approach in which the parties involved in an offence work together to find solutions that meet their needs.

The Youth Justice Board (YJB) is highly committed to improving the delivery of restorative justice. Since April 2013, anyone from a youth offending team (YOT) attending a referral order panel meeting has been required to have completed restorative justice facilitator training. The YJB invited my colleague Eric Fast and I to write a national restorative justice training course as a resource to help YOTs in training all panel members and YOT workers.

One of the aims of the initiative was to engage more victims in restorative processes, particularly at referral order stage. In reality, the number of victims attending referral order panels since they were introduced in 2000 has been disappointing and patchy. However, most YOTs have stories of panels and other restorative meetings that have been life-changing for those involved, and research tells us that restorative justice improves victim satisfaction and has a significant impact on recidivism. It is therefore heartening that the YJB is raising the game and improving the restorative skills of YOT practitioners and volunteers. This article aims to give a flavour of the training, and thoughts on how magistrates can support restorative justice, particularly when making referral orders.

Care needed

Approaching young people who offend and those they have harmed in such a way that they willingly engage in a restorative process is a delicate task that requires sensitivity, professionalism and care. The last time that these people met was quite possibly on the day of the offence, and initially their level of empathy towards one another is likely to be low. The training we developed emphasises the importance of the initial contact with each party, incorporating skills practice in managing those restorative conversations.

Having arranged an appointment and introduced themselves and their agency, the restorative practitioner's first step is to ask a simple question: "Would you like to tell me what happened?" Using active listening skills and minimal encouragement the speaker is given space to talk freely about the incident, revisiting key moments in the narrative and sharing their thoughts and feelings. In the next two steps, the speaker is asked to consider carefully who has been affected by the crime, and how.

The fourth step is crucial. The restorative question is: "What do you need to feel better?" Many crime victims, when asked what they need, will express what they think would be their ideal outcome – "They should be locked up for good", "It would all be better if they moved away" or "They should be made to apologise". These are position statements. If needs are presented in this form by the victim to the young person – for example, in a referral order panel – they will most likely be perceived as demands, and receive a defensive response. The task of the restorative practitioner is to identify the needs beneath these positions. If these underlying needs (often reassurance, recognition, safety, co-operation or respect) can be clearly identified, the victim may realise that the only way that those needs are likely to be met will be through restorative communication with the young person.

Restorative practitioners often find that the underlying needs of the victim and the young person who harmed them are remarkably similar, because these are universal human needs. Subsequently if the two sides do get into communication, each side is likely to recognise those needs, and understand why they are being expressed by the other person.



Maintaining progress

There is a danger that any initial interest in a restorative encounter may fall away, and it is important that the practitioner doesn't allow an opportunity to be lost. If the parties do agree to meet, the restorative meeting will explore the same steps as the initial conversations described above. The final step, which looks forward to how everyone's needs may be met, can become the basis of an outcome agreement – and in the context of a panel, inform the content of the contract. If the restorative process has been carefully followed, the contract will reflect all of the events leading up to and following the crime, and address the needs of each party arising from the incident.

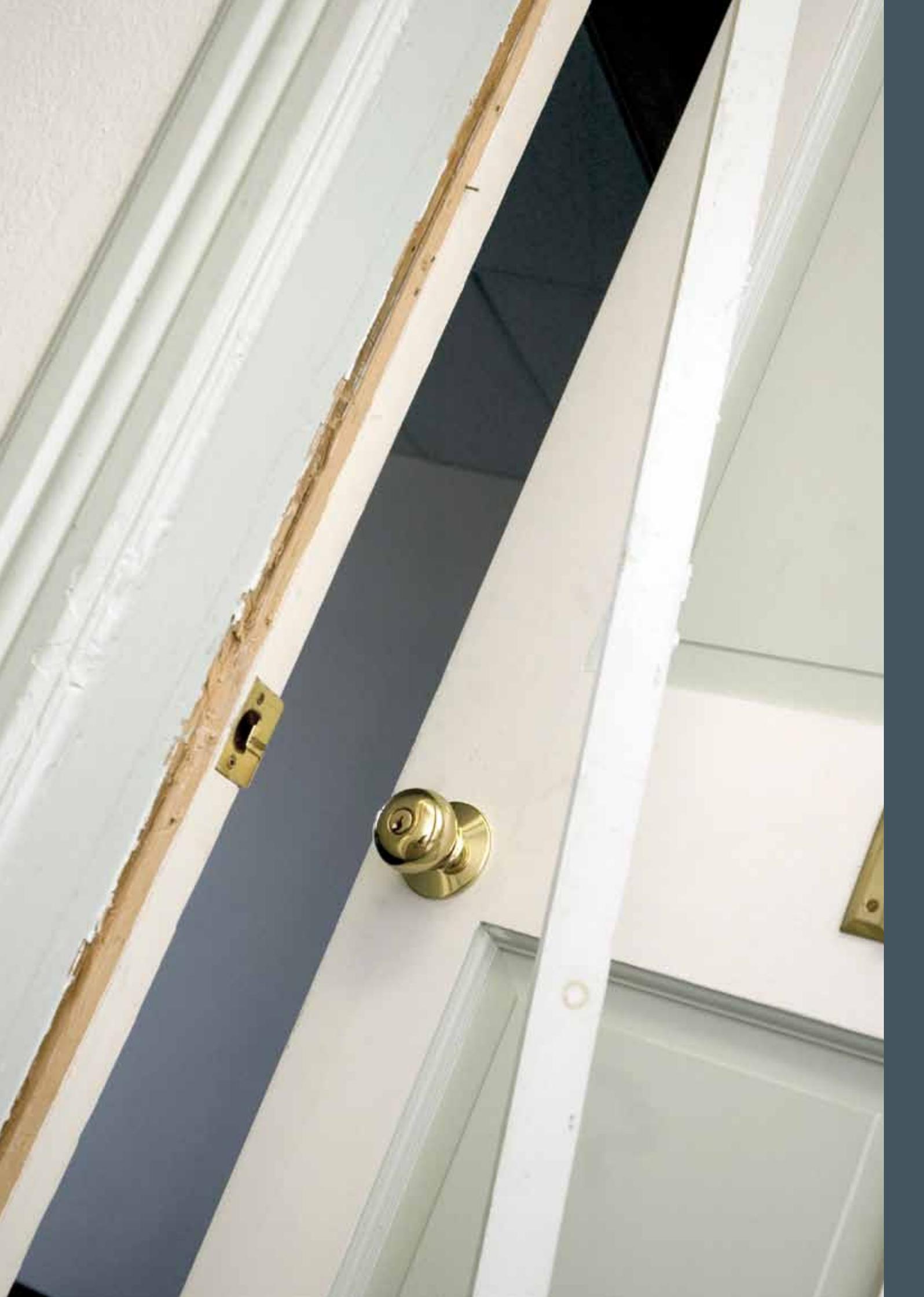
No matter how carefully the initial contact is made, many victims choose not to become involved. In Oxfordshire YOT about 50% of young people will communicate with their victim, with about 25% meeting those they harmed face to face in a restorative meeting. Magistrates can help this process by telling defendants that if they are accepting guilt and being sentenced to a referral order (or indeed a youth rehabilitation order), as part of this process they will – hopefully – have the good fortune of being

able to repair the harm they have caused, either by meeting or communicating indirectly with their victim. If the victims are not interested, this is also possible with the wider community.

It isn't possible to be definite that there will be a restorative process with the offender's actual victim, since involvement has to be voluntary for those harmed. While we can strongly encourage a young person to agree to meet their victim, we can't force the issue, since this would be unlikely to lead to helpful outcomes for either party. However, while not promising that it will happen, magistrates can help the young person to realise that repairing the harm will be a crucial element in their order, and encourage them to see that this can be a positive experience for themselves, as well as for those they harmed.

As restorative justice enters popular culture as the natural response to crime, greater numbers of people will start to see the benefits and choose to become involved.

Pete Wallis
Senior Restorative Justice Practitioner
Oxfordshire Youth Offending Service



Dan's story

Meeting their victims through restorative justice can be a tough experience for offenders. Dan* was sent to a young offender's institute after being convicted for burglary. Here he tells us about the impact restorative justice had on him and how it helped him to turn his life around.

While I was in prison I took part in a programme called Jets, which is a bit like restorative justice. They made us see how our actions affect everyone around us, and that's when I first met Alan, my probation worker.

Alan talked to me about writing letters to victims, and possibly going on day release from prison to meet them. I said I'd be happy to write a letter, but I didn't want to meet the victims while I was inside. It would have looked like I was only doing it to get my early release. I spent a month writing a letter to my victims. I did it about five different times before I felt it was finally good enough to send off.

I was released after seven months, and the first thing I had to do was go to my YOT (Youth Offending Team) office. Alan mentioned restorative justice to me and I thought it sounded good. Quite a few victims wanted to come forward.

Nothing prepared me for it. I think the main fear was looking into the eyes of people that I'd stolen from, the people that I'd made feel unsafe and brought pain to. I even had nightmares over it, I was that worried. I wanted to prove to myself that I could actually get through this, and do it. That I wasn't just going to run away and hide from it like I used to run away and hide from everything else.

The first meeting came. I remember it was a couple. When they first walked in, I literally felt like cracking in half and disappearing. I didn't want to be there. Paul, the restorative justice facilitator, did the introduction part, and they asked me why I did it, and if they were a specific target. The more the meeting went on, the more I felt comfortable being there, and when it was over, I felt on top of the world. The main thing they were worried about was that they were specifically targeted, and that we were going to come back for them again because they'd called the police. I felt really good that I'd taken a bit of the weight off their shoulders, and that I'd done something right.

I was always scared stiff before every meeting. But then after every meeting, I came out as happy as anything. I felt like I'd got a chance to explain my situation, and they'd got a chance to explain their feelings towards me, which helped me to understand how wrong it was. All in all, that was brilliant.

Going to prison, that's just running away and getting away from it all. But to actually go into a room and sit down knowing that they're going to walk through that door in a few minutes' time and want to know why you stole from them – that's scary for me. Every time, it kind of broke me, but it made me as well. I was looking in their eyes and thinking I don't know these people, they don't know me, they've never done anything wrong in life, as far as I can tell, and I've taken their things. A lot of people would have said, "No, I'm not doing that", but I tried to give them the best explanation I could, and apologise for what I'd done. I had a lot of friends who supported me. They were ringing me up the moment I came out, saying: "Well done, Dan!" It really put me on top of the world, and made me think: "If I can do this: what can't I do?"

At the moment, I'm being a full time dad to my four-month-old daughter. She's been the main turning point for me, her and my partner. I want to do the best I can now. I'd like to work with kids like me, trying to stop them getting into the life I had. I want to get myself involved in as much as possible and do some good things for the community, to try and give something back. I want to make a difference.

* Dan's name has been changed.

Henry's story – facing the music

As I waited for Rachel to arrive I was absolutely terrified. I knew what would happen but it was terrifying doing it – actually facing her. She was the one I stole from. It went right to my guts. I knew then that this just wasn't me – I had to change. I think back on that day and it gives me the attitude that I need to never go back to how I was before.

At 14 I moved schools and it was soon after that when a friend pressured me into trying ketamine for the first time. It became my addiction. I left school with one GCSE. I left my family to live with a friend in a caravan. I thought I was alright because I was next to my drugs, I could get them easily and that was what I cared about.

Eventually I ran out of money. I started to go out at night, breaking into cars and sheds, stealing anything I could sell.

I hung around with a guy called Michael*. Michael had a learning disability and I could convince him to do anything I wanted him to. One night I didn't have anywhere to stay so I convinced Michael to let me stay at his mum's house. The next morning while Michael was in the shower I started looking through his mum's things. I found a ring and a Rolex watch, which I stole. I made Michael drive me away, hiding his mum's things under my jumper.

Her things equalled money, money equalled drugs. When I was using, it shut me off from the world and everyone in it. I had no emotions, no feelings. To me, even that wasn't personal. I sold the watch and ring to a dealer for drugs.

Facing the music

I got caught a couple of weeks later. At court they gave me a nine month referral order. I had to go to see someone once a week and talk about my drug problem. I would go along to the meetings and be like "yep, yep, yep" and an hour later I'd go out and be using again. I wasn't enjoying life, I was suffering from depression and I had never felt so lonely.

As part of the referral order, I agreed that if Michael or his mum wanted to meet me I would do that. Rachel, Michael's mum, decided she would like to meet me. On the day of the meeting I stood outside of the Town Hall where it was going to take place, shaking. I was absolutely terrified about going in and seeing her, with everyone knowing what I had done.

I decided to go in there and face the music. I walked into the room where my referral order worker was waiting for me. We waited for Rachel to arrive. Those few minutes were horrible.

The meeting

Rachel came in with Peter, who was running the meeting. I could tell she was angry. She told me how furious she was when she found out about the theft and how I had been taking advantage of Michael. She asked me how could I have done what I did? She told me how badly I had abused Michael's trust and how important it was that I didn't do it again, to him or to anyone else. She told me that he was afraid of going out and making friends. It made me realise what the drugs had made me become.

Although she was fuming with what I had done, she was still concerned about me. She was supportive of my addiction and wanted me to get better. Her being nice made me feel even worse about what I'd done.

I agreed to do some outdoor work as reparation and that I would get myself off the drugs. I apologised to Rachel and said I would write a letter of apology to Michael. I told him not everyone was like me; he could find friends who will be there for him and wouldn't treat him the way I had done. I told him how sorry I was and that I was never going to do that to him or anyone else ever again.

Quitting the drugs wasn't easy. I stopped stealing to fund my habit straight away but it wasn't until Peter

set up a meeting reuniting me with my dad that I managed to go to rehab and get clean. Now I'm studying to become a tree surgeon and I've got a job, helping a local tree surgeon, which I love. I'm back with my family now, they can support me and I can support them too. It's all looking up at the moment.

*Michael and Rachel's names have been changed. Our thanks to Henry for sharing his story. The above is an abridged version of the original publication in Resolution magazine (Winter 2011–12).



Further reading for magistrates

For more case studies demonstrating restorative justice in action:

www.restorativejustice.org.uk/rj-in-action

For further information on pre-sentence restorative justice:

www.gov.uk/government/publications/pre-sentence-restorative-justice

For further information on observing a restorative justice conference:

www.why-me.org

For Best Practice Guidance on Restorative Practice:
www.restorativejustice.org.uk/best_practice_2011

For more information on restorative justice provision in England and Wales:

www.restorativejustice.org.uk/mappingreports

For further information on the RJC's Restorative Service Quality Mark:

www.rsqm.org.uk



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