

Thriving Survivors

Restorative Justice in cases of Sexual Abuse

Restorative Justice National Service for Sexual harm - Information



Restorative Justice

1. Background

1.1. What is Restorative Justice?

It is well documented that those who have been harmed by crime frequently report that they have no voice, feel let down by the criminal justice system and are left with unanswered questions¹. Recent research showed that survivors of rape and serious sexual assault experienced re-victimisation throughout the justice process₂, and survivors of domestic abuse had a similar experience³.

While restorative justice has many definitions, The Scottish Government define it as “a process of independent, facilitated contact, which supports constructive dialogue between a victim and a person who has harmed (whether this be an adult, a child, a young person or a representative of a corporate or other body) arising from an offence or alleged offence.”⁴ This animation gives an overview of restorative justice in a Scottish context.

1.2. The Scottish Governments Restorative Justice Action Plan

The Scottish Government has a commitment to have restorative justice services:

'Available across Scotland to all those who wish to access it, and at a time that is appropriate to the people and case involved. Approaches taken must be consistent, evidence-led, trauma informed and of a high standard. This seeks to ensure the needs of persons harmed and their voices are central and supports a reduction in harmful behaviour across our communities.

This activity is being managed by the Scottish Government's Victim and Witness team who own the RJ Action Plan and the restorative justice stakeholder group advise, oversee and deliver the priorities of the action. More information can be accessed here.

1.3. Values and Principles of Restorative Justice

There are a number of values and principles that underpin restorative justice. A summary of these are detailed below and further detail can be accessed in the Scottish Government (2017) Delivery of Restorative Justice in Scotland: Guidance.

- RJ Restorative justice is a voluntary, facilitated and supported process of contact between someone who has been harmed and the person who caused that harm.
- Both parties must provide informed consent; both can withdraw at any time and the facilitator can terminate the process if it becomes unsafe

1 Thomson, L., (2017). Review of Victim Care in the Justice Sector in Scotland. The Crown Office and Procurator Fiscal Service Review of Victim Care in the Justice Sector in Scotland.pdf (copfs.gov.uk) accessed 22nd April 2021.

2 https://www.sccjr.ac.uk/wp-content/uploads/2019/08/Justice-Journeys-Report_Aug-2019_FINAL.pdf

3 Dr-Emma-E.-Forbes.pdf (sccjr.ac.uk)

4 <https://www.gov.scot/publications/guidance-delivery-restorative-justice-scotland/pages/2/>

or inappropriate. At no point should either party be offered any kind of incentive to participate.

- In all crime types captured under the 2021 Public Health Scotland definition of 'Gender Based Violence', only those who have experienced such harm and/or their responsible, named adult(s) can request restorative justice. A referral will not be considered in these cases from someone who has caused such harm, their families or supporters⁵.
- The needs of the person harmed are at the centre of the process. They can set the pace, choose their facilitator and stop the process at any time.
- Preparation and the contact itself are both flexible to this person's needs and aims.
- The person who has done the harm has to acknowledge the harm, and take responsibility for the harm for restorative justice to proceed.
- Restorative justice is not quick, it involves many steps including risk assessment and management, emotional preparatory work and after-care support. It can be terminated by any participant or by the practitioner at any time.
- Contact can take many forms – these include direct contact, such as face-to-face meetings or indirect contact, such as facilitated letter writing, or third-party contact. It may also include facilitated family circles, in which the person who directly caused the harm may not be involved, but the consequences of the harm to the individual who has been harmed and its wider impact on family members in relation to dynamics, communication and relationships can be addressed.
- It is not a replacement for the existing criminal justice process. Decisions relating to the prosecution or diversion of a case from prosecution are matters solely for COPFS.
- In relation to children in conflict with the law, it is not a replacement for the existing Children's Hearings System. Decisions on referring a child to a children's hearing are solely for the Children's Reporter.
- It is not a disposal for a crime (so not a sentence).
- Restorative justice will not/cannot impinge on any ongoing criminal proceedings, or have any impact or influence on COPFS ability to make independent prosecutorial decisions.

⁵ Domestic abuse, rape and sexual assault, childhood sexual assault, stalking and harassment, commercial sexual exploitation and harmful practices such as female genital mutilation, force marriage and so-called 'honour' based violence.

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- Restorative justice will not impinge on any ongoing proceedings in the Children's Hearings System, and the Children's Reporter will retain the ability to make independent decisions.
- It is not compulsory, ever
- An apology on behalf of the person responsible for causing harm or forgiveness on behalf of the person harmed are not requirements of a restorative justice process (although these things may happen, sometimes spontaneously)
- It is not mediation where parties enter as equals. The entire process is based on acknowledging that one person was harmed, and the other person caused that harm.
- It is not a perpetrator programme.

1.4. Restorative Justice – The Evidence

Restorative justice has been shown to have an array of benefits that include people who have been harmed reporting reduced feelings of fear, re-victimisation and post-traumatic stress.⁶ Research documents that people harmed report high levels of satisfaction with the restorative justice process, compared to the criminal justice process, as this gives them a voice and opportunities to heal, feel safe and empowered.⁷ Research also supports a reduction in re-offending and desistance from crime⁸ For further reading on the evidence for restorative justice, access this Rapid Evidence Review.

1.5. Restorative Justice and Sexual Harm – The Evidence

Over the recent years, many organisations in Scotland have received enquiries from survivors of sexual abuse and violence to consider and explore restorative justice. This includes, harms of campus sexual violence, stranger rape, historical sexual violence.

In cases of sexual harm, a Scottish consultation with survivors of domestic and sexual showed there is a demand for access to restorative justice services for this type of harm, if made available. For survivors who did not wish to access a service, they believed this should be the choice of the survivors, not policy makers, or service providers. Survivors highlighted the importance of any restorative justice process being trauma informed and responsive and highlighted that this consideration should also be given to all aspect of their justice journey, recovery and healing. While some survivors highlighted that abusive power dynamics would dissuade them from accessing restorative

6 Strang et al. (2013) <https://onlinelibrary.wiley.com/doi/10.4073/csr.2013.12>

7 Victim satisfaction with restorative justice: More than simply procedural justice - Tinneke Van Camp, Jo-Anne Wemmers, 2013 (sagepub.com)

8 Sherman and Strang (2007) RJ_Text_FINAL (iirp.edu)

justice process, a number of survivors said that this process would allow them an opportunity to take back power and act as a mechanism for a rebalance of power. Trauma informed practice, power dynamics and coercive control emerged as a key factor that must be countenanced and addressed as part of best practice in the development of Restorative Justice services for survivors of domestic abuse and sexual violence in Scotland. The full report can be accessed here [Survivors Voices](#)

In Scotland, crimes of rape and attempted rape have the lowest conviction rate over a 10-year period, compared to all crime types.⁹ Thriving Survivors believe that survivors deserve the right to access and explore if restorative justice services are something that can provide an additional mechanism of justice, and opportunities for recovery and healing. However, we recognise that restorative justice services need to be safe, appropriate, trauma informed and delivered by highly skilled trained and experienced facilitators and this is very much at the forefront of our developments.

1.6. Restorative Justice and Sexual Harm – Case Testimonials

Restorative justice has been shown to provide a platform for survivors in relation to recovery. It can help the survivor to:

-  Get responses to unanswered questions, that only the person responsible will know, such as 'Why me?' 'How could you?'
-  Claim their voice by having a safe, appropriate and facilitated opportunity to let the person responsible for harming them know the impact of their actions, and what they think of them.
-  Be seen – showing the person harmed that their actions have not had a long-lasting effect, or how their personal resilience has grown.
-  Re-gain control – the person harmed can choose to be the first person to speak; emphasising that the person who did the harm is accountable to them directly in this process; and that their needs take precedence.
-  Move forward – reach agreement on how to move forward, particularly if it is impossible to cut the person who has harmed from life. E.g. family connections.

The above points can be further explained and understood by clicking on the links below to access case testimonies for restorative justice in relation to sexual abuse and violence and domestic abuse in the context of intimate partner violence.

Stories – Why Me? Restorative Justice ([why-me.org](#))

England: Childhood sexual abuse case – this case involved a stepfather who sexually assaulted his two stepdaughters – read the full case study [here](#).

⁹ Supporting documents - Criminal proceedings in Scotland: 2018-2019 - gov.scot ([www.gov.scot](#))

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England: This case involved a woman who experienced sexual violence from a man she knew – the man was convicted and imprisoned – 6 years later a restorative meeting took place – read the full case study here.

Ireland: This case involved a woman who experienced sexual violence from a stranger – the man was convicted and imprisoned – 9 years later a restorative meeting took place – read the full case study here and click here to watch a film of the restorative justice meeting, where the survivor plays herself.

Ireland: This case involved a woman who experienced sexual violence by a man. It is not clear in which context (e.g., by a stranger, someone she knew etc.) While the man was in custody a restorative meeting took place to allow the woman to ask questions about the crime and to show him that she was making steps to move on with her life – read the full case study here.

2. The Development of Thriving Survivors Restorative Justice National Service for Sexual Harm

Two national services have just been launched within Scotland. Community Justice Scotland (CJS) will provide national oversight, monitoring and evaluation of restorative justice services in Scotland, and individual Sheriffdom areas will provide local delivery for restorative justice. Thriving Survivors has been funded to be the specialist service which will take referrals from those who have experienced sexual harm to allow them to participate in restorative justice processes and gain a broader choice in how they experience justice.

Thriving Survivors will collaborate with Edinburgh Napier University, Midlothian Community Justice and CJS on developing and delivering a National Service for restorative justice in cases of sexual harm. The National service will initially offer survivors of sexual harm safe, appropriate and trauma informed access to restorative justice services, irrespective of where they reside in Scotland.

2.1. Training

Thriving Survivors in partnership with CJS and Edinburgh Napier University will develop a specialist training package on restorative justice and sexual violence. This will include a number of international experts, including trainers and restorative justice facilitators, together with local experts to provide specialist training and mentorship for restorative justice facilitators in Scotland.

Thriving Survivors will offer four stages of restorative justice training:

- 🍃 Foundational – Delivered by Tim Chapman
- 🍃 Intermediate – Community Justice Scotland
- 🍃 Advanced – Community Justice Scotland
- 🍃 Specialist – Edinburgh Napier University and international trainers who specialise in sexual violence

Additional training modules will include:

- 🌱 Trauma Informed Training
- 🌱 Domestic Abuse Training

2.2. Thriving Survivors Board of Advisors

Thriving Survivors will consult with an advisory board throughout the process of developing and delivering the restorative justice service. This advisory board will support the restorative justice service, ensuring a wide a representation of skills and expertise, and act as an expert reference group, as the service develops. The advisory panel is already established and has had an input into the development of the service thus far.

The Board of Advisors comprise of:

- 🌱 University College Dublin
- 🌱 Edinburgh Napier University
- 🌱 Resilience Learning Partnership
- 🌱 Rape Crisis Scotland
- 🌱 Midlothian Community Justice Partnership
- 🌱 Community Justice Scotland
- 🌱 Scottish Prison Service
- 🌱 Victim Support Scotland
- 🌱 Retired Sheriff
- 🌱 Stop it now
- 🌱 First Tier
- 🌱 Restorative Justice Council

We have extended invites to Scottish Women's Aid and others working in the VAWG sector to join the advisory panel. If you would like to be involved in one of our working groups or our advisory board, please drop us an email. We are keen to work with a number of specialist organisations RJ.Enquiries@thrivingsurvivors.co.uk

2.3. Thriving Survivors Working Groups

Thriving Survivors are developing three working groups to cover the following areas as we progress our service. These include:

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2.3.1. Risk and Policy

The principal focus of the risk and policy working group is to assess and develop the most effective safety procedures, ensuring the best support is provided, while upholding the autonomy of the survivors involved. Risk and safety measures will be assessed effectively, ensuring a person-centred approach. We aim to value the lived experiences of those harmed and incorporate their views and needs to provide a supportive, accessible, inclusive and trauma-informed service.

2.3.2. Evaluation and Monitoring

The principal focus of this working group is to assess and develop monitoring and evaluation procedures, ensuring good practice and duty of care are followed at all times. Privacy and data protection ensure safety, and complaints will be upheld and utilised as a learning point for service improvements. The working group will focus on ways to build upon and comply with the Scottish Government 2017 Guidance and accompanying Codes of Practice for adults and children and related policy by providing additional requirements and methods of evaluation.

2.3.3. Service Development

The working groups primary focus is the development, design and facilitation of services. The members of the working groups will participate in scheduled meetings where they will, amongst other tasks:

- 🍃 provide input on service development and design;
- 🍃 provide feedback on the most appropriate and efficient way to facilitate these services, and

The working group will value the lived experiences of those harmed and take their input forward to provide a supportive, accessible and inclusive, trauma-informed service.

2.4. Restorative Justice Service Provision

The working group will value the lived experiences of those harmed and take their input forward to provide a supportive, accessible and inclusive, trauma-informed service.

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Direct (e.g., a meeting) and indirect (e.g., letter writing or 3rd party contact) restorative justice with person harmed, person responsible and other relevant parties

Restorative Healing Circles

For families and wider communities to have restorative conversations to aid healing of secondary harm caused

Secondary Harm service

A restorative approach facilitating communication between statutory organisations (e.g., Crown Office and Procurator Fiscal Service) and people harmed

Restorative story telling

A restorative approach that does not involve the person responsible, but provides a platform for the person harmed to process the impact of sexual harm

Upon engagement with the National Hub, each person will receive a wraparound support package at the point of entering the service, which includes:

- Two specially trained restorative justice facilitators
- The restorative justice mentor (lived experience of restorative justice)
- The restorative justice counsellor

The above (and additional relevant agencies) will work in close partnership to ensure a safe, supported and collaborative approach is taken to the survivor's restorative justice journey. This is something that is not currently offered to a survivor who would participate in the criminal justice process.

In our initial pilot project, full intervention will also be provided to the person who caused the harm by agencies who sit within local authorities and who will receive full access to our specialist training, and all will be working within the Thriving Survivors model. Those who have caused harm will go through a bespoke behavioural programme and will be supported by a mentor who has experience of the restorative justice process during the preparatory stages of direct or indirect method of contact.

All aspects of Thriving Survivors trauma recovery work are informed by Judith Herman Professor of clinical psychiatry at Harvard University Medical School and Director of Training at the Victims of Violence Program in the Department of Psychiatry at the Cambridge Health Alliance in Massachusetts.

Herman conceptualises the recovery process in three stages

- Establishing safety,
- Retelling the story of the traumatic event, and
- Reconnecting with others.

The support survivors receive is based on which stage they are at, with flexibility to move forward or backwards as trauma recovery is rarely a linear

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process. This flexibility respects the individual needs of the survivors who access our service.

Our trauma-informed practices enable survivors to recover at a pace, which is appropriate for them, reconnect with others, forge new friendships with survivors, and develop skills, hobbies, and coping strategies to rebuild their lives, in the aftermath of traumatic events.

5. Summary

The provision of restorative justice services for these complex cases are particularly sensitive. This makes it all the more important that we take the time needed to ensure these services are set up to provide the highest standard of care and support, in terms of highly qualified and effective facilitators and processes that are set up with the needs and safety of survivors at its heart.

This is why we have included this specialism as part of our six-month intensive facilitator training programme. Our team of restorative justice professionals will be trained to identify and assess the risks for each individual case and will be confident in making decisions. If a case presents too great a risk, it simply will not proceed. We have a number of other restorative justice services that will allow a survivor to continue the process in another way.

Our risk framework is being created for facilitating sensitive cases that will have the needs of the person harmed at the centre, be fully trauma informed and in line with existing Restorative Justice Guidance and codes of practice.



