



Ministry
of Justice

Government response to the Justice Committee's Fourth Report of Session 2016-17: Restorative Justice

November 2016



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Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

November 2016



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Government response to the Justice Committee's Fourth Report of Session 2016-17: Restorative Justice

The Government welcomes the report of the Justice Committee on restorative justice. In particular, the Government welcomes the Committee's support for restorative justice and the pragmatic approach the Committee has taken in reaching its conclusions and formulating its recommendations.

This command paper is the Government's response to the report. Numbering of conclusions and recommendations matches the numbering set out at page 29 of the Justice Committee's report.

- 1. We conclude that restorative justice, particularly victim-offender conferencing, has the potential to offer clear and measurable benefits to the criminal justice system and to wider society, but we agree with Dr Gavrielides that arguments relating to the cost-effectiveness of restorative justice are "thin". In particular undue reliance should not be placed on the claim that £8 is saved for every £1 spent on restorative justice. This is because it arose due to a high performing site within the Home Office trial, applies only to victim-offender conferencing and does not take account of differing levels of cost and effectiveness across different types of offences. These points notwithstanding, there is clear evidence that restorative justice can provide value for money by both reducing reoffending rates and providing tangible benefits to victims. (Paragraph 18)**
- 2. We support the aims and objectives of the Ministry's Restorative Justice Action Plan. In particular we welcome the Ministry's focus on ensuring restorative justice services are high quality and victim-focused. (Paragraph 20)**
- 3. Progress has been made in expanding the availability of restorative justice service across England and Wales. While we appreciate that some variation in restorative justice provision is inevitable, the objective of equal access regardless of geographic location has not yet been achieved. (Paragraph 23)**

The Government welcomes the Committee's support for the aims and objectives of our restorative justice action plan. We remain committed to making sure that good quality restorative justice is available at all stages of the criminal justice system so that victims can access it at a time that it is right for them.

We believe that there is robust evidence from the earlier £7m, seven year randomised control trial to demonstrate the effectiveness of restorative justice as a tool with significant benefits for victims of crime. However, we accept that evidence of the cost-effectiveness of restorative justice is not as well developed.

Our funding to Police and Crime Commissioners to deliver victims' services means that more victims than ever have access to restorative justice. Our focus going forward will be on working with Police and Crime Commissioners to make sure that these services provide the right outcomes for victims. In the short-term, we will be working with Police and Crime Commissioners in areas where restorative justice services are already well established to identify good practice and develop a strategy for sharing this nationally. We will also be working to develop a common approach to performance

indicators across all restorative justice services for victims. This will help us identify which services represent the best value for money and provide the best outcomes for victims, offering further opportunities in due course to identify and share good practice. In this way we will help Police and Crime Commissioners raise their performance and help them demonstrate they are delivering good quality and efficient restorative justice services.

- 4. Information relating to how Police and Crime Commissioners are spending money allocated to them for restorative justice is helpful in assessing progress being made against the Ministry's Action Plan. *We recommend the Ministry works with Police and Crime Commissioners to publish information on how money is being spent to provide restorative justice on a yearly basis. The first such publication should be in the Ministry's Action Plan progress report. (Paragraph 24)***

Collated information on Police and Crime Commissioners' spend on restorative justice for the years 2013/14 to 2015/16 has already been published as part of the Government's evidence to the Select Committee inquiry. Individual Police and Crime Commissioners are also required, in their police and crime plans to specify the victims' services which are to be provided and any grants which are to be made in relation to this.

We accept that collating and publishing this information may help interested parties assess the Government's progress against our action plan. We will consider this as part of our wider work to develop an evidence base for the effective delivery of restorative justice services.

- 5. We understand the attraction of ring-fencing funding to ensure that Police and Crime Commissioners spend money on restorative justice provision, but we agree with the Minister that there are serious difficulties with such an approach. In particular, due to the entirely voluntary nature of participation in restorative justice, it is difficult to predict with certainty how much should be allocated to it. *We recommend that the Ministry continue to provide long-term funding for restorative justice to Police and Crime Commissioners, but this money should remain part of a wider pot of funding for victims' services to provide PCCs with the flexibility to meet local needs. (Paragraph 26)***

We agree with the Committee's recommendation. The Government funds Police and Crime Commissioners to deliver a range of victims' services, including restorative justice services and there are no plans to change this.

The Government has protected the overall victims' services budget over the spending review period (until 2020/21) and has provided Police and Crime Commissioners with funding of £63.15m in 2016/17 (with an additional £4.7m to support victims of child sexual abuse).

- 6. The goal to make restorative justice available to victims at every stage of the criminal justice system is a laudable one, but further work is need before it will be a reality. *The Ministry should consider if there are tensions between the aims of the Action Plan and wider criminal justice policy, particularly in relation to any tension between provision of pre-sentence restorative justice and the requirements of Better Case Management. (Paragraph 28)***

We welcome the Committee's support for our vision for restorative justice and acknowledge that further work is required. We will work with criminal justice agencies to identify and address any tensions between our policies to make sure comprehensive and effective support is available to help victims of crime and other criminal justice policies.

Better Case Management aims to improve the way cases are progressed through the criminal justice system for the benefit of all. This involves guilty pleas being entered at the earliest opportunity where appropriate and a reduction in the number of hearings through robust case management. Within this framework, it is for the court to determine whether sentencing should be deferred or adjourned so that restorative justice can take place. In making such a decision, the court will be mindful of the need for timeliness of court proceedings and the needs of the victim. Participation in a restorative justice process has no automatic impact on the offender's sentence; it is only one factor which may influence sentence, with the main consideration being the seriousness of the offence. Therefore sentencing is not dependent on the conclusion of the restorative justice process.

- 7. It is a matter of great concern to us that "Level One" restorative justice is being used by police forces in cases of domestic abuse. This risks bringing restorative justice into disrepute. It is crucial that frontline police officers are fully informed of the risks for vulnerable victims in such cases. *We recommend that it be reaffirmed that "Level One" restorative justice is not appropriate for cases of domestic abuse and the Ministry of Justice work with police forces to ensure officers have proper guidance to avoid using restorative justice in inappropriate circumstances. (Paragraph 34)***

The Government agrees that police use of level one restorative justice is inappropriate for offences involving intimate partner domestic abuse. The Government is considering with the police how to reinforce this message with front line police officers and as part of our proposals to overhaul the current adult out of court disposal framework.

- 8. *We agree in principle that restorative justice should be available for all types of offence. While restorative justice will not be appropriate in every case, a bright-line exclusion rule is contrary to the aims of the Restorative Justice Action Plan. Despite this, given the clear risks of restorative justice for certain types of offence, we understand why some service providers have restricted use of restorative justice for certain types of offence, particularly domestic violence and sexual offences. In order to help promote the use of safe restorative justice in such cases, we recommend the Ministry of Justice work with the Restorative Justice Council to create and fund training and promote guidelines of best practice for facilitators in such cases. (Paragraph 36)***

The Government's position is that adult perpetrators of domestic abuse should, wherever possible, be prosecuted. Alongside that, victims have a right to access restorative justice services to help them address their needs. As stated above we have always been clear that the police should not use level one (also known as 'street') restorative justice in cases of intimate partner domestic abuse.

In cases involving young people, the principal aim of the youth justice system is to prevent reoffending. A range of statutory obligations and international conventions emphasise the importance of considering young people's welfare and avoiding 'criminalisation' of young people. Prosecution may not be appropriate and responses

should be both individualistic and proportionate, restorative justice may form part of this response.

The safety of the victim is always paramount when taking a decision to proceed with a restorative justice process, irrespective of the offence committed. However, particular care is needed in relation to domestic abuse. It is essential to preserve the physical safety of the victim and for service providers to be alert to the potential risk and signs of coercive and controlling behaviour by the perpetrator. We are in the process of producing a paper which sets out the issues that need to be addressed (including consideration of any guidance or training) before restorative justice is taken forward in such cases.

- 9. Restorative justice is more fully embedded in the youth justice system than in the adult system, but there is further progress to be made and particular effort should be made to improve victim participation. *We recommend that the Government continue to embed restorative justice in the youth justice system and in particular consider following the model of youth conferencing used in Northern Ireland. (Paragraph 40)***

We believe that restorative justice can be an effective way for young people to understand the consequences of their behaviour and the impact on victims. Youth Offending Teams have processes in place to ensure that victims of youth crime are involved, as appropriate, in a range of restorative processes and since 2012 more than £3m has been provided to youth offending teams to develop restorative justice, including training of youth offender panel members.

We acknowledge that there is always room for improvement, however, we have no plans to introduce the Northern Ireland youth conferencing model at this stage. This is a restorative justice intervention to which a young person can be referred either prior to conviction, if the young person admits the offence, or following conviction when there is a statutory requirement for the court to order a conference. This is, to all intents and purposes, an automatic process. We believe the restorative justice process should be victim-driven and there will be circumstances where restorative justice may not be appropriate. The Ministry of Justice and the Youth Justice Board will continue to consider how the use of restorative justice in the youth justice system can be improved, including how victims can be more engaged in the process.

- 10. Data sharing has presented a persistent obstacle to the delivery of restorative justice. *We agree with the recommendations of Why me? and the Restorative Justice Council that the Ministry of Justice should produce and promote within the criminal justice system an information sharing template to speed up the agreement of data sharing protocols. We do not recommend legislation at this juncture to require data sharing, but this is an option which should not be excluded if non-legislative measures do not prove effective. The issue of data sharing is one which the Ministry should make specific reference to in its Action Plan progress report. (Paragraph 44)***

The Government has already worked with Association of Policing and Crime Chief Executives (APACE) as well as the Information Commissioner's Office to produce a national data sharing toolkit for Police and Crime Commissioners and third sector organisations, to facilitate secure data sharing in the local commissioning landscape. We will consider ways to make the guidance more widely available and more convenient to use for third sector organisations and criminal justice system agencies.

11. **The Ministry of Justice has an excellent reach with criminal justice organisations, but we are not convinced it is as effective in reaching victims, both potential and actual. While greater public awareness of restorative justice would be welcome, the priority must be in ensuring that victims of crime are properly informed about restorative justice and how they can access it. We recommend the Ministry, rather than engage in broad national awareness raising campaigns, should instead focus its resources on ensuring restorative justice is well understood by bodies within the criminal justice system who can then convey this information to victims. The Ministry should also provide support and funding to providers to enable local awareness campaigns. (Paragraph 50)**

The Government agrees that it is important to raise criminal justice practitioners' awareness and understanding of restorative justice. This is being addressed in a number of different ways including, for example:

- The Government has provided funding to the Restorative Justice Council over a number of years to work with a range of criminal justice organisations to develop targeted information packs aimed at helping criminal justice practitioners better understand the benefits of restorative justice and making good quality restorative justice more widely available.
- The National Probation Service's national working group for restorative justice has produced a draft position statement. This document is in its final stage of consultation. Once signed off this will be available to all NPS staff through national database called Equip.
- The National Offender Management Service uses a range of guidance documents which have been favourably received and are widely available through the National Offender Management Service intranet and third-party websites. These include '*Better Outcomes from Victim Offender Conferencing*' (2012) and *The Guide to Providing a Supportive Environment* (2015).

Police and Crime Commissioners are already required to make the public aware of the services they have commissioned to support victims of crime. This includes any restorative justice services and we understand that many areas are focusing on raising awareness of restorative justice at a local level. We therefore do not believe that providing direct funding to providers to raise awareness locally is necessary or cost-efficient.

12. **While there are several bodies within the criminal justice system who can and ought to be able to provide victims with information on restorative justice, we believe the police are well placed to ensure victims are informed about restorative justice in the first instance. But we have received evidence of inconsistency in making victims aware of restorative justice. We recommend a rigorous system be introduced to improve compliance with the police's requirement to inform victims about restorative justice. For example, forms for victim impact statements could have a box which reads "I have had restorative justice and how I can take part explained to me by the officer." Other criminal justice bodies also have a role to play in improving victim awareness of restorative justice. (Paragraph 51)**

Victims need to be told about all the services available to them to help them cope with and, where possible, recover from crime. The Government believes there is a clear role for Police and Crime Commissioners working with their police forces to make sure that all police officers understand what is required of them and know how to access up to date information on the services available in their areas. The Government is not persuaded that a tick box requirement on the victim personal statement (which is not completed in every case) would address this issue.

- 13. It would be too prescriptive to mandate that publicly-funded RJ services should attain the Restorative Services Quality Mark. Nevertheless there is value to ensuring a consistently high quality of delivery. We recommend that publicly-funded bodies should be required to demonstrate compliance with standards comparable to those Restorative Services Quality Mark (RSQM). We also recommend that NOMS review its service specifications against the RSQM. (Paragraph 54)**

The Government welcomes the Committee's focus on the quality of restorative justice services. The Restorative Justice Council's Restorative Service Standards and its associated Restorative Services Quality Mark were developed with funding provided by the Government. The Council's Training Services Quality Mark, which is currently being piloted, has also been developed with Government funding.

We have already taken a number of steps to encourage all those involved in the delivery of restorative justice services, to make sure that their services meet recognised quality standards. For example:

- The latest Victims' Code includes a duty on relevant service providers to make sure that 'any restorative justice is delivered by a trained facilitator and is in line with recognised quality standards such as the Restorative Service Standards.'
- Grant agreements with Police and Crime Commissioners include requirements that the recipient must: take account of 'guidance issued by the Restorative Justice Council'; and make sure that 'potential and actual providers can demonstrate that victims who choose to participate in restorative justice processes will have access to safe and competent restorative justice services'.

We will consider Committee's recommendation in respect of National Offender Management Service service specifications.

- 14. It has been made clear to us that judging the effectiveness of a restorative justice programme simply by reference to the number of conferences held is a poor measurement and could encourage counter-productive incentives. We recommend the Ministry of Justice, with the Restorative Justice Council, publish and promote clear guidance for commissioners of restorative justice services of what constitutes a successful restorative justice scheme, including measurements relating to offenders and victims such as victim satisfaction. (Paragraph 56)**

The Government accepts that more needs to be done in this area and work is already underway to develop an evidence base for the effective delivery of restorative justice services and the outcomes achieved by those services.

15. **The results of the NOMS Capacity Building Programme were hindered by concurrent organisational changes in both prisons and probation, but there were benefits from the programme, in particular the legacy products. In hindsight, it is likely the programme would have been more successful if it had focused on training voluntary sector workers. (Paragraph 61)**

The Government accepts that the capacity building programme was made more difficult to deliver because of major organisational initiatives being implemented at the same time and welcomes the Committee's acknowledgement of the benefits which were delivered. Through its Commissioning Intentions, National Offender Management Service has asked all prisons to provide a supportive environment to enable providers to deliver restorative justice in prisons. We have also worked with Restorative Solutions to develop a guide to support prison governors to put this in place.

16. **We have made clear in previous reports our serious concern about levels of violence in prisons. We will therefore be particularly interested in the findings of the pilot of restorative approaches to conflict resolution in prisons. (Paragraph 63)**

Safety in prisons is fundamental to the proper functioning of our justice system and a vital part of our reform plans. We have an ambitious agenda to modernise the prison estate, improve education and empower governors, so that we can tackle issues like drugs and violence which are key to cutting reoffending and keeping staff and prisoners safe.

The pilot of restorative approaches began in June 2016 and is due to conclude in Autumn 2017. An evaluation of the pilot's findings will be provided to the department once it has been completed.

17. **The Ministry of Justice is well placed to take a leadership role in restorative justice and set out a clear overall vision for how it expects restorative justice services to be delivered. We understand the Ministry will not wish to be too prescriptive on a matter primarily driven by local priorities, but we believe there is scope for a clear direction as to how the system is expected to work. *We recommend that the Ministry of Justice, when publishing its Action Plan progress report, provide an explanation of how they envisage restorative justice taking place across the criminal justice system. This should include what the roles of different organisations are, how they interact with one another and what support the Ministry of Justice will provide them. Clarity is particularly important in relation to probation services.* (Paragraph 66)**

The Government agrees it is important that all relevant parties have a common understanding of how restorative justice works within the criminal justice system in England and Wales. We will consider the points raised by the Committee before publishing a progress report.

18. **In our view, there is no good reason for entitlements under the Victims' Code being of differing strength depending on the age of the offender, as is the case now, with entitlements for victims of youth offenders being stronger. *We recommend that the Ministry strengthen the entitlements of victims of adult offenders under the Victims' Code so they are equal to that of victims of youth offenders.* (Paragraph 68)**

19. **We are convinced that there is value in strengthening the existing entitlements under the Victims' Code. In particular we find the proposal of providing an entitlement to restorative justice an attractive one. On the other hand we have already pointed out concerns about the capacity of the system to provide restorative justice services, particularly for certain types of offences. *The Ministry should consult Police and Crime Commissioners and other stakeholders to assess capacity within the system and whether it is feasible to provide an entitlement under the Code for victims to access restorative justice services, with a corresponding duty on PCCs to provide those services. Depending on the results of that assessment, it might be prudent to exclude certain categories of offences from that entitlement, with an intention to include them in due course.* (Paragraph 72)**

The Government has taken an incremental approach to strengthening entitlements on restorative justice in the Victims' Code. The most recent version of the Code came into force on 16 November 2015. The three main changes to the Victims' Code were to:

- Extend the services offered under the Code to victims of any criminal offence, not just victims of the more serious notifiable criminal offences.
- Entitle victims to support and information from investigative and prosecutorial organisations other than the police and Crown Prosecution Service.
- Make sure that a victim who reports a crime receives a written acknowledgement from the police, or other investigatory body listed in the Code to which a victim reports a crime.

At the same time we took another step towards closing the gap between the entitlements to restorative justice for victims of young offenders (which have been in the Code since it was first introduced) and victims of adult offenders (which were introduced much more recently). We continue to keep the Victims' Code under review and will consider the Committee's recommendations the next time we consult on changes.

20. **Because of the issues of capacity we have already set out, we believe it is too soon to introduce a legislative right for victims to access restorative justice services, but we believe such a goal is laudable and should be actively worked towards. *The Ministry should, in its consultation on the Victims' Law, seek views on a legislative right to restorative justice and how such a right would be enforced. Our view is that the Victims' Law should include a provision for victims to have a legislative right to access restorative justice services but this should not come into force immediately. Instead it should be a Commencement Order, which should be brought by a Minister only once he or she has demonstrated to Parliament that the system has sufficient capacity to provide restorative justice services to all victims.* (Paragraph 73)**

We are committed to introducing measures to increase further the rights of victims. Careful consideration is being given to suggestions made by the Victims' Commissioner and others about key rights and entitlements that might be set out in a Victims' Law. We are grateful for the Committee's recommendation that restorative justice be factored in to this work and any consultation that is undertaken in due course.

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