

Chapter 8

Victims and Community Confidence

Contents

Introduction

Why is relationship between the victim, perpetrator and the community so important?

The Victim (Person harmed)

The child or young person who has displayed offending behaviour (person responsible)

Young People in the Children's Hearing System

Young People in the Criminal Justice System

The Community

How do we do it?

Prevention and Early Intervention

High Risk

Girls and Young Women

Restorative Practices

Values

Who benefits?

Conclusion

Introduction

The Scottish Government is committed to a safer stronger Scotland by supporting everyone's basic human right to feel safe in their home and wider communities. Legislative proposals such as a [Victims Rights Bill](#), [The Commissioner for Victims and Witness \(Scotland\) Bill 2011](#), and [Consultation on the Right of Children Bill 2011](#) are evidence of this commitment. These developments in the context of [Safer and Stronger Scotland](#) necessitates communities working with local partners, supporting community development and acknowledging the positive contributions that children and young people can make to their communities. There is a commitment to:

- Promote positive messages about young people and support engagement with communities, including opportunities for intergenerational communication.
- Developing evidence base around effective interventions with young victims
- Continuing to work as partners to demonstrate the potential benefits that can be achieved in certain circumstances by adopting a restorative approach to youth offending
- Addressing issues around media perceptions of young people through Government's Youth Framework

The [Scottish Strategy for Victims](#) (2001) recognised that many victims can be the result of youth crime and both the Children's Hearing System and Scottish Children's Reporter Administration (SCRA) made the same high level of commitment to the Strategy in their own [SCRA Victim Strategy](#) (2005). The Scottish Government is consulting (2011) on the European Commission's proposal for a Directive establishing minimum standards on the rights, support and protection of victims of crime with a view to introducing legislation on victims rights. A draft European [Directive on Victims](#) was published on 18th May 2011. It is intended to replace and build upon the principles set out in the Council of Europe [Framework Decision on the standing of victims in criminal proceedings](#) (2001/220/JHA), and is the first in a series of measures included in the Council Resolution on a Roadmap for strengthening the rights and protection of victims of crime recently agreed by EU Justice Ministers.

The draft Directive requires that **an individual needs assessment is available for all victims** to identify vulnerabilities. It defines the following categories of victims as vulnerable:-

- Children (under 18);
- Persons with disabilities;
- Victims of sexual violence; and
- Victims of human trafficking.

A research report *Victims of Crime Project: Scoping a national service model for supporting young victims of crime in Scotland* published in 2011 ([see Scottish Government site when available](#)) has identified possible responses to dealing effectively with victims of youth crime. This developing area of practice is consistent with the Scottish Government's priorities outlined in [Preventing Offending by Young People: A Framework for Action](#) which includes

- Prevention
- Early and Effective Intervention
- Managing High Risk
- Victims and Community Confidence
- Planning & Performance Improvement

This chapter explores the relationship between the victim, the child or young person responsible and the wider social environment and community with a view to promoting victim focused practice.

Why is the relationship between the victim, perpetrator and the community so important?

In order to explore how these developments impact on those working with children and young people involved in offending, it is important to understand and consider the formal and informal controls and influences that assist in promoting, deterring and addressing harmful behaviour.

Young and Matthews (1992) argued that any effective explanation and understanding of crime requires examination of the interplay between micro and macro factors – formal and informal forces at work in what they called the 'square of crime'. In broad terms the 'four definitional elements of crime' include the state/agents of social control, offender, public/community and victim. These 'relationships' need to be understood in the context of the formal controls such as police and other agency authority and informal controls including family and peers, members of the community and the general public that can impact on the individual's criminal behaviour. This 'structural' and 'relational' way of understanding and responding to crime recognises the importance of different and varied influences at work on individuals including social inequalities and disadvantages at one end and personal choice and decision making at the other that cannot be resolved by policing or state control alone. The 'victim' is identified as a key dimension for practitioners in making sense of and responding effectively to criminal behaviour.

The relationship between the formal and informal control is a major factor to be considered in delivering effective practice responses. The police can often be dependant

on community attitudes and tolerance levels e.g. in the sale of illegal tobacco, alcohol and stolen goods. In many communities this behaviour would be seen as unacceptable which, in itself provides a degree of informal control. However, in other communities, perhaps due to a different social and economic structure, this type of crime may be perceived to be acceptable and seen as a source of financial gain in an informal economy (Young and Matthews, 1992). A more current example relevant to Early and Effective Intervention is the capacity and culture within a community for developing informal ways of making good, including giving and receiving apologies following anti-social and criminal behaviour by young people.

A fundamental right within article 3 of ECHR is the right to avoid state intervention, yet many people feel disempowered from finding local resolution to minor difficulties and may seek state assistance to do this. In many communities victims may feel that the power has shifted towards those who offend, and, in some, being a victim of crime may even be perceived to be justification for committing offences e.g. stealing to replace previously stolen goods or assaulting someone who has previously been a perpetrator. Balancing the concerns of the community with the best interests and reintegration of the individual who offends and causes harm within the community can play a major part in addressing offending behaviour. New approaches may be required to support meaningful re-integration particularly in relation to early and effective intervention and those committing serious crime.

This relationship 'gap' has sometimes been filled by specialist youth justice projects in restorative practice, mediation and other forms of individual and community resolution dealing with minor incidents. There is little evidence that these initiatives have strengthened communities or given communities back the confidence to deal with their own children through informal means. Research has highlighted that restorative approaches for minor offences can be an inefficient use of scarce resources compared to community driven informal actions and can result in lost (resource) opportunity for work where the harm is greatest and risk highest.

Investing in inter-generational work, empowering individuals, families and communities of 'interest' to find informal means of building positive communities and resolving difficulties alongside state driven restorative practices in schools, community mediation, and face to face restorative practices with victim and offender for serious offences, can provide constructive responses for both victims and perpetrators. Used appropriately, restorative practices, for example, can assist in change management and strengthening the relationship of the person who has caused harm through the informal controls within their community of interest. It may also provide the opportunity for a more positive relationship between the victim when appropriate (Muncie et al, 2002).

The Victim (Person harmed)

In many cases, children and young people who offend have been, and may continue to be, victims of crime themselves. Research has suggested that being a victim of crime could be one of the most important predictors of delinquency (Smith et al, 2001, p 63). Findings also stress that the characterisation of young people as 'victims' on one hand or 'villains', on the other, is difficult to maintain empirically, for many if not for most young people involved in anti-social or criminal activity. Young people might easily change places as 'victim' and 'offender' and few neatly correspond to this artificial dichotomy. There is a marked tendency for children who have been in public care to have higher rates of delinquency and victimisation than others. The most important factors explaining the link between victimisation and offending such as getting involved in risky activities/situations, social associations and victimisation and offending can be viewed as

“twin aspects of the same social settings, social interactions, behaviour patterns and personal characteristics”(Smith, 2004, p 18).

The value of community resolution and victim involvement in dealing with the person responsible was highlighted many years ago (Christie 1977). Nils Christie argued that victims and society benefit from certain types of conflict and when professionals take control of conflict, the victims lose their voice in the system. He also suggested that by not involving the victim in the process, this not only takes away the offender's opportunity to be forgiven but could also can make the situation easier for them as they may prefer to distance themselves from their victim.

The child or young person involved in offending (person responsible)

GIRFEC principles must always be applied when dealing with a young person under the age of 18, placing the child or young person at the centre of any intervention, their welfare a priority alongside benefits to the victim and community. This should apply whether they are dealt with in the Children's Hearings or Criminal Justice systems. All children or young people have a right to feel safe in their own homes and wider community but they must also be encouraged to take a share in responsibility for resolving difficulties caused by their behaviour, to make positive contributions to their communities and, in doing so promote the rights of others to feel safe.

The children and young people who display harmful behaviour have often been, and continue to be, victims themselves. This, in combination with complex difficulties, including economic disadvantage and social welfare issues, domestic violence, educational difficulties, substance misuse and relationship problems must be considered in developing any Child's (Action) Plan.

Bringing a victim dimension into all aspects of work with young people involved in offending is in line with the emphasis on prevention of current Government policy, whose aims include:

- to create more choices and chances for people to engage in positive activities and to ensure action taken to prevent and tackle antisocial behaviour (ASB) is appropriate, proportionate and timely.

Young People in the Children's Hearing System

There are several broad principles that define the Children's Hearing System and Scottish Children's Reporter Administration's (SCRA) action to ensure that victims of youth crime are involved in the Children's Hearing System, and receive the support they are entitled to:

- Recognition of the importance of the victim of crime.
- Recognition that victims have a legitimate interest in their cases.
- Commitment to provide explanations for victims about the processes.
- Commitment to offer victims information on the outcomes.
- Recognition that victims should be enabled to have a voice. ([SCRA Victims Strategy](#), 2005 p. 2)

This is done by achieving three objectives:

1. To provide for the emotional and practical support to meet the needs of victims.
2. To provide for the information needs of victims.
3. To encourage participation in the Children's Hearing System.

The needs and wishes of victims must be considered when decisions are being made in regard to the person who has caused harm. However, this is not a straightforward proposition and issues such as coercion, re-victimisation and the possibility of intimidation or reprisals which must be considered. If for example, a victim lives in the same community (or even street) as the person responsible, there may be legitimate anxiety with regard to their own safety and that of their family members. For this reason, before a victim becomes involved in any form of contact with their perpetrator, a thorough risk assessment must be undertaken and the process that is intended must be fully explained to all relevant parties. The increasing focus on victims, which may, in part, have been driven by individuals and the wider society feeling that they had no voice and were being let down by the criminal justice system.

The Principal Reporter has power to give the victim of crime the opportunity to receive information about the outcome of the offence against them whilst protecting the child's

right to confidentiality and SCRA's [Victim Information Service \(VIS\)](#) was rolled out nationally between September 2009 and March 2010.

Research findings highlight the need for culture changes in professional practice whereby the 'victim' dimension is not seen simply as an "add on" extra but potentially an essential element for serious crime. Workers who feel skilled in engaging with offenders may not feel the same way with "victims and offenders". Access to training in good practice must be established with the emphasis on quality not quantity.

Young People in the Criminal Justice System

UNCRC and European directives aspire to remove all young people under the age of 18 from adult criminal proceedings. Scottish Government response to the UN Committee report [UK Concluding Observations 2008](#) was that

"The UN Convention on the Rights of the Child (UNCRC) applies to everyone under 18. It is an international law that recognises that all children and young people have rights" (Scottish Government 'Doing the Right Thing' 2009)

In reality young people in Scotland aged 16 and 17 are still routinely prosecuted in adult criminal courts which places particular practice challenges on those completing [Criminal Justice Reports \(CJSWR\)](#) to ensure e.g that summary courts are reminded routinely of their powers to remit this age group to the Reporter and to ensure that GIRFEC standards for comprehensive assessment are applied in every case.

Young people who are found guilty in an adult criminal court may be subject to most penalties available to the court. Practice should be directed by [National Outcomes and Standards for Social Work Services in the Criminal Justice](#) which provide a clear framework of professional accountability towards the outcomes of community safety, justice and social inclusion. At the same time these have to be married with the UNCRC expectation that the 'best interests' of the young person will remain of paramount consideration and GIRFEC practice standards. [Practice Guidance for Community Payback Orders](#) highlights that supervision is to promote the rehabilitation of the individual and reduce assessed risks.

In Scots law supervision **must** be a requirement of a Community Payback Order where the individual is under 18 years of age. The Guidance stresses that understanding of the impact offending behaviour has on victims should be taken into account in managing a CPO ...as part of a... supervision requirement and that payback to victims and society should always be a prominent focus within a CPO regardless of the nature of the requirements imposed [Practice Guidance for Community Payback Orders](#) (2010 para 8.1).

[Scotland's Choice](#) (SC) (2008) recommended that paying back in the community should become the 'default position' in dealing with less serious offences and went further to recommend that 'pay back' should **include support for change and social reintegration** and not solely reparation or community service. It argued that ultimately, one of the best ways for offenders to pay back is by 'turning their lives around' (para 3.28). This is a recognition that the best interests of the young person and of the community are likely to be similar if positive change and desistance are the outcomes of intervention. At the same time young people often have direct experience of victimisation on which to base a victim focused intervention or reparative (ideally restorative) practices. Community Payback Orders and the associated emphasis within government policy on reparative practices is discussed later in this chapter.

The low take up rate of victims in becoming involved in face-to-face restorative interventions was highlighted in a Home Office Evaluation by Shapland et al. (2008). Of the 38,574 victims in the study who were offered the opportunity to participate in a restorative process, only 5,952 (15.5%) participated in face-to-face interventions. These findings are similar to Scottish research with young people ([Dutton and Whyte 2006](#)). Current practice in Scotland means although victims may benefit from their direct involvement in practice under the Children's Hearing and Criminal Justice System, the likelihood of them playing an active role in restorative intervention is slim. Nonetheless CPO guidance stresses that 'the other activity' requirements can (possibly should) include 'opportunity for rehabilitative elements e.g. victim awareness' (para 8.11).

[Victim Support Scotland](#) advocates that all victims should have the opportunity for face to face involvement with those perpetrating harm, should they request it. This ambition can only be achieved where practitioners are routinely exploring a victim's perspective within supervision and the options available including restorative practices to their client and the person harmed. [Accredited Post Graduate](#) Training in restorative practices is available in Scotland.

The Community

The Scottish Government is committed to supporting everyone's basic human right to feel safe in their own homes and wider communities. This can only be made possible by encouraging communities to support and actively participate in the re-integration of children and young people involved in offending. Not only will this promote public confidence but it could also assist in developing and strengthening relationships, thus benefiting all in the community (see Chapter 5).

It is widely recognised that the most effective and sustained forms of addressing offending behaviour in children and young people should be community based, allowing them access to local resources, activities and relationships which can support positive change. However even those considered as such a risk to themselves or others that

compulsory measures are required and they are accommodated and removed from their home, the likelihood is they will eventually return to their own community and family network. Findings from desistance research suggests that those who have positive family ties, good social relationships and involvement in education or employment, are less likely to re-offend as they have more to lose than those who have no social bonds or positive community ties. The responsibility of entering into new relationships, gaining employment and, the possibility parenthood, can give a young person, particularly young women, a greater stake in their own community and sense of a positive future, encouraging their motivation to desist from further offending.

The use of a reparative or restorative approaches can give young people a sense of agency (personal control) and belonging as well as providing direct benefit to the victim and/or to the community (see the Glasgow example in Who Benefits below) where the engagement/activity between the community and the young people was perceived by both to be relevant and proportionate.

How do we do it?

Six key recommendations have been made by the report *Victims of Crime Project: Scoping a national service model for supporting young victims of crime in Scotland (2011)*, ([link to SG website when available](#)) which are based on the findings from the review of research. These have major practice and resource implications:

- Young victims who are severely traumatised should have specialist professional support (i.e. from child psychologists and counsellors) readily available and easily accessible to them.
- Online support facilities should be developed and implemented, whereby young victims can access support instantly, confidentially and anonymously.
- One-to-one (face-to-face) support from a trained adult should be available and easily accessible to all young victims, regardless of whether the incident is reported to the police.
- A group support service should be developed, where young victims can meet and talk to others who have had similar experiences.
- Education and publicising initiatives should be delivered to promote awareness among young people about youth victimisation and support, and provide young people with opportunities to request support if they have experienced victimisation.
- Young victims should be provided with opportunities to participate in recreational activities which aim to develop self-confidence, self-esteem, friendships, and peer support between young people.

A major practice challenge is engaging meaningfully with victims. Evans (2006) study of a project managed by Milton Keynes Victim Support, detailed the processes used in

contacting and trying to engage with victims. Although many victims welcomed the support and contact offered, and appeared to be very satisfied in that they had been listened to and had felt included in the process, only a small percentage of contacts led to direct mediation with offenders.

Depending on the level of need/risk and the nature of the offence, there are several promising approaches that can be used to increase a victim perspective within interventions aimed at decreasing the risks of re-offending. These include

- using family/network conferences to allow them to contribute to assessment and planning
- challenging unacceptable behaviour and exploring its consequences for the victim, themselves, their families and the wider community
- encouraging victim empathy and providing meaningful opportunities to make amends, where appropriate
- assisting the child or young person develop their reasoning and problem solving skills in order to deal more appropriately with future problematic situations
- developing a social and leisure plan as part of any supervision requirement

Prevention and Early Intervention

Prevention and Early and Effective Intervention are priorities for the Scottish Government and for practice directed by UNCRC principles.

Prevention

The growing emphasis in government policy on the importance of social integration does not in itself identify how best to achieve this. Individual practitioners have little direct control over a community's capacity to support its young people. Nonetheless it is important that practitioners have an understanding of their local community to maximise opportunities for young people. Community development initiatives may provide resources to support young people change or sustain change over time. Chapter 5 offers the practitioner a multi agency perspective on the prevention of future offending by children and young people. This includes consideration of restorative practice within a school setting. An evaluation of restorative practice pilots in 3 local authorities was completed in 2007 ([Kane et al](#))

- **Intergenerational Practice**

Much has still to be learned about the potential of intergeneration practice in developing stronger and more resilient communities. Intergenerational practice aims to bring people together in purposeful, mutually beneficial activities which promote

greater understanding and respect between generations and contributes to building more cohesive communities. Intergenerational practice is inclusive, building on the positive resources that the young and old have to offer each other and those around them.

Four intergenerational pilots in Inverclyde, Tullibody, North Edinburgh and Dunoon were funded in 2009/10 and evaluated to explore the impact of, and relationships between, intergenerational practice, a youth work approach and community cohesion. All were aimed at developing and strengthening the relationships between young people and older people within their own communities (see [Bridging the Generation Gap](#), 2011). While the concept is admirable and should encourage a sense of belonging and shared values for all involved, the results of the evaluations are as yet very preliminary. The general messages are that it is important for the healthy development of young people to have positive intergenerational links both as a support and as a resource in their lives. Family conferencing may provide opportunities to link young people in difficulty with positive adults in their natural social networks and where this is not possible adult buddies and mentors can play an important role in supporting and maintaining change in young people over time (Jolliffe and Farrington 2007).

Early and Effective Intervention

[ACPOS Flexible Approach to Offending Behaviour](#) (2011) aims to prevent future offending and antisocial behaviour by children and young people by providing interventions which are timely and proportionate. At the same time early and effective intervention can provide an opportunity to alert agencies to concerns which exist about a child's or young person's well-being and the concerns of victims.

The Scottish Government [Multi Agency Early and Effective Intervention Guidance](#) (2009) notes the importance of establishing a process for the provision of information to victims of offending in those cases which are considered by the EEI process and where the case is not subsequently referred to the Reporter. The provision of information to victims should be informed by Section 53 of the Criminal Justice (Scotland) Act.

There is little documented evidence on how best to bring a victim perspective to early intervention. To date most responses have been focused on restorative practice despite research questioning the value of such responses with young people (see [Dutton and Whyte](#) 2006; [Hoyle et al](#) 2002, [Wilcox et al](#) 2004). Formal and restorative warnings intended to impress upon the child or young person and their family the impact of the offence on the victim or the community and on parents may encourage them to take responsibility for their actions and to understand the implications of future offending (para 4.4.3). They should be used carefully and should be conducted in the context of meaningful help for the child and family and for the victim where this is required.

Early and Effective Intervention processes are dealt with in Chapter 5. The case study at **Appendix 1** ([link](#)) illustrates multi agency early and effective decision making including the victim perspective.

High Risk

GIRFEC principles assume that for those presenting high risk, a comprehensive assessment of their social situation, the needs of the child or young person a carried out ([see Ch 5](#)) and a Childs (Action) Plan established. The assessment should include a detailed examination of the offence – time, place, social context and harm – to identify crime related and sustaining needs and risks and highlight issues relevant to the victim. The ways in which a subsequent programme of work could be delivered and who will be involved is also expected to be considered.

In some jurisdictions (e.g. New Zealand) the assessment includes an opportunity for the young person's family/network group to meet to contribute directly to the assessment and plan and prepare for the court/hearing. They are supported to assist the young person put their thoughts in a written statement about the circumstances, consequences and future intentions relating to the offences and the victim and anything else they may want to say. The statement can be addressed directly to the victim and may subsequently result in some direct face to face restorative intervention or communication and/or be directed to the decision making body – e.g. Children Hearing or Court. In New Zealand the disposal phase of the court is opened by an invitation to the young person and their family to share their thoughts in their prepared statement as a very powerful means of assisting and allowing the young people to express their views and participate in decision making – a requirement of UNCRC. Such practices need to be encouraged in Scotland.

Every Child's Plan for a young person subject to a supervision requirement should identify how the victim perspective will be addressed e.g. through victim empathy work, role reversal methods, family conference or restorative practices (see below). Every young person should have the opportunity to offer to participate in direct victim work, where this is appropriate, and/or to make amends in some form when appropriate. Before any direct involvement of a victim takes place, thorough preparation is essential in order to assess and manage the risks and anxieties of both the victim and the child or young person responsible. Staff involved should have the required skills and experience to carry out this work. Where this is not practical to involve victims directly it may be possible to involve the young person, with the support of their family, in other opportunities to make amends.

Girls and Young Women

One of the primary differences in discussions on girls' offending versus boys' is that the role of victimisation has been given a much more central role in the risk of re-offending by girls (Gorman-Smith 2003). Much less has been documented on responding to girls who cause harm to others and how best to address victim concerns and interests alongside those of female perpetrators.

There are similar crime sustaining (criminogenic) need/risk factors which apply both to boys and girls involved in offending viz. antisocial attitudes, pro-criminal associates, lack of parental supervision and unstructured leisure time. Unsettled and disrupted childhoods are common among girls involved in offending, although this is also the case in respect of many boys. There are, however, certain factors which seem to have stronger correlations for girls. These include physical, emotional and sexual abuse, weak support networks, influence of pro-criminal male associates, unsupervised and unstructured leisure time, low self esteem and material deprivation. The backgrounds of girls involved in criminal behaviour are typically characterised by victimisation, vulnerability and social exclusion and they have greater experiences of abuse, domestic violence, drug misuse, poor educational attainment, poverty, psychological distress and self-harm.

Victimisation in itself, however, cannot be used as a predictor of offending behaviour. Neither can abusive and disrupted childhoods, for although these are common to girls, it is not clear how much they can act as predictive factors, or how their co-existence with other factors directly contributes to the onset of offending behaviour.

In addition to recognising gender differences, it is equally not adequate to assume that the needs and risks of all girls who offend are the same. Those who are involved in low level or non violent offending are likely to have very different needs from those involved in more serious, violent and prolific offending. Despite this, the majority of available services and programmes to address offending behaviour remain based on the principles of "What Works?" which are generated largely from research on male offending. Girls are often subject to the same male orientated cognitive approaches designed for boys, which assume that offending behaviour is the result of cognitive defects rather than a complex set of social circumstances. While there is a growing body of knowledge based on research on girls' desistance there remains limited documented evidence of "what works?" specifically with girls who are involved in offending or specifically in relation to bringing a victim perspective into practice where young women are the offenders and perpetrators of harm on others. It is generally accepted that the most effective interventions are those which target interacting domains of risks and needs.

Restorative practices aimed at reintegration by building and strengthening interpersonal relationships may provide an effective option for young females involved in offending. However studies have shown that young women are often subjected to more

'prolonged and intrusive interventions' than young men (Chesney Lind and Sheldon, 1992) and guilt and shame, as Sandor explains, has been a "powerful tool of domestic control of women". At this time the implications of restorative practice for female have yet to be fully considered (Alder, 2000). Similarly it is not easily possible to distinguish and treat discreet criminogenic factors in girls. If women and men have different values (Gilligan, 1982), and women value connections with others while men value independence and autonomy then practices that explicitly focus on strengthening social bonds may be compatible with the value orientation of young women. Interventions to support girls in the community should embrace the following principles:

- Address needs holistically alongside any programmed work on offending
- Provide practical support and links to relevant universal and specialist services
- Address underlying mental health issues related to victimisation and trauma
- Empower and develop self-esteem
- Build strengths and develop new skills
- Promote and support pro-social relationships and role models
- Access longer term support post intervention.

Restorative Practices

Restorative practice is a response to crime that considers the needs of the victims, those who offend, and the community (Zehr 2002). It is an attempt to put into practice a set of ethical ideas about how human beings should relate to each other, in particular those who present harm or trouble, while seeking to resolve and strengthen relations where possible.

The term Restorative Justice can be viewed as an increasingly controversial term when dealing with children and young people raising international debates about whether, at one extreme, it is simply a humane form of punishment within the criminal justice system or, at the other, a new form of justice (Daly 2003). In the Scottish context the term restorative practices may be more appropriate as it refers to the activities and methods whether they operate within an informal setting including schools, or in formal settings like Children's Hearings or criminal courts. In all cases restorative practice with children and young people should operate within the principles established by GIRFEC.

[Guidance for Restorative Justice Practitioners](#) was published in Scotland in 2008

Three inter-connected elements in a restorative process need to be considered - Values, Skills and Processes.

Values

- Those who harm others should be accountable for their actions, taking responsibility, showing remorse, making amends and taking steps to change their behaviour with the assistance of family or other appropriate adults.
- Those harmed should have the opportunity to participate in a process and to have assistance that meets their needs.
- Genuine accountability, shared responsibility and change should be supported by decisions and actions that are freely chosen.
- The process should be understandable in helping to repair and address the harm caused, not used as a punishment, vengeance or retaliation.
- Everyone deserves to be treated with respect and fairness.

Skills

Facilitators should be impartial, empathetic, trustworthy, flexible and professional. They should also be skilled in delivering clear and informative information, be active listeners, conflict managers and problem solvers.

Processes

Those involved should be assisted to speak openly and honestly about:

- The facts: what happened and why?
- The consequences: how people have been affected
- The future: how the harm can be addressed and prevented constructively

The term restorative practice is used to refer to a wide and diverse range of formal and informal practices all of which in their purist form rely on the combined efforts of participants to co-produce shared understanding and mutually beneficial outcomes that could not be achieved by more formal and traditional state processes (Whyte 2007). These include:

- victim/offender mediation (VOM), restorative and family conferences in criminal and youth justice,
- community mediation and discretionary problem solving including policing initiatives in disputes between citizens
- restorative practices for children in trouble at school

While many studies such as McGarrell et al (2000) have found modest results in reducing offending in young people, advocates of restorative practices argue that the approach has intrinsic value in itself and any subsequent reduction in offending is an additional benefit. Others argue, such as Braithwaite (1999), that the efficacy of restorative programmes is dependent on the underlying assumption that people are, in part, deterred from offending by fear of social disapproval. Conferencing is said to heighten awareness of this disapproval by significant others, and any potentially harmful 'side-effects' of this shame are negated by the positive process of reintegrating the

person back into the family/community. In this respect Braithwaite argues that reparation agreements made between family, friends and other significant individuals will have more meaning for the person offending and therefore be more effective than those imposed through more official and impersonal procedures. Braithwaite, however, does not clarify how this principle operates when there is a lack of positive role-models and reliable support networks in place, a possibility that cannot be ignored when considering the chaotic lives and vulnerability of many young people with offending issues. It can also be asked what are young people being 'restored' to for example in the context of school, family or community. Many young people may never have felt part of school or their community in the first place making the concept of restoration and reintegration particularly challenging in practice.

In an evaluation of the first year (July 2003 – June 2004) of Glasgow's Restorative Justice Service, Dutton and Whyte's (2006) found that the uptake of the service from both victims and those responsible for the offences was limited. There was also some incongruity in the notion of a voluntary police restorative caution

Whilst voluntary participation is consistent with the principles of restorative justice, it appears rather incongruous that young people can choose not to participate in restorative interventions (particularly police warnings) and be subject to no further action or formal intervention (page 6).

The findings reflect those of other larger studies and that providing restorative interventions in isolation from other meaningful provision may have limited impact for young people involved in minor offending than less expensive forms of diversion or than non-intervention. Findings from the Edinburgh Study of Youth Transitions (McAra and McVie 2010) suggest that early contact can be confirmatory and lead to labelling, which increases the likelihood of the child or young person's progression through the system. While they agree that diversion should be maximised, this should be done using a proportionate level of intervention which avoids stigmatising and labelling the children and their families.

The latest meta-analytic review (Strang et al 2010) has summarized the findings from international studies to draw some useful conclusions. The evidence suggests that restorative conferencing with direct victim involvement does reduce the number of crimes in the community, on average, by 27% (frequency). However there is no evidence to show a reduction in the number of active offenders (prevalence), which would suggest restorative practices can have a major impact in changing individual behaviour but not sufficient in its own right to lead to desistance. Sherman concluded that the approach

- Works best for most frequent offenders:
- Works better for violence than property
- Wasted on Minor Offences—orthodoxy

Who benefits?

Restorative literature emphasises three main points:

1. those that place the victim at the centre of the process
 2. those that focus on reparation to the community
 3. those that attempt to reintegrate the offender back into that community
- Whyte (2003)

Youth Justice Services operate within a legislative framework, most notably in Scotland the Children (Scotland) Act 1995, which states that:

Where under or by virtue of this part of this Act, a children's hearing decide, or a court determines, any matter with respect to a child the welfare of that child throughout his childhood shall be their or its paramount consideration Section 16(1).

GIRFEC, UNCRC and Council of Europe guidance require that the child is placed at the centre of any intervention. The needs of victim's have to be considered alongside the best interest of the young people in order to ensure 'mutual' benefit from any action taken.

This apparent tension is reflected in the debate on the nature of restorative practices and relates to the kind of 'justice' involved. For 'justice' to be restorative it must evidence the consistent benefit to all parties affected by the crime, and focus on the development, implementation, and maintenance of healing and reparation rather than retribution and punishment. (Schiff 1998). There have to be benefits or 'uplift' at least for the two main characters - the person who harms and the person who experiences harm. This mutuality needs to be maintained in any balanced system and is not easily present in many practices incorporated into formal criminal legal processes (see Bazemore and Umbreit, 1994).

A further challenge generally neglected in practice, whether restorative or not, is the social and economic disadvantage of the participants, generally both victim and perpetrator, most of whom have been victims of social deprivation and educational disadvantage throughout their lives. The victim agenda, if implemented with integrity and according to the values set out in GIRFEC, raises radical issues that cannot easily be resolved in simple practice techniques. The degree to which a Child's Plan addresses systemic and structural issues as well as personal development ones is likely to determine how effective practice with a victim perspective will be in the long term.

Conclusion

There is little doubt that with the support of family and the wider community, the opportunities for children and young people to make positive changes increases. The involvement of the victim in this process can be beneficial to both the person harmed and the person responsible, however any face to face contact must be managed effectively by a trained facilitator. Bringing a victim perspective routinely to all aspects of youth justice practice can contribute beneficially many aspects of personal development for young people. Developing positive relationships within their own communities can promote a sense of belonging provide methods of informal control important both to the young person and to the wider community.

These benefits will not come without challenges, and, for Scottish Government and Local Authorities one of the greatest is trying to meet the needs both of victims and those responsible for crime while promoting confidence throughout communities and making those who live in them feel safer. What is clear is that, as with any intervention plan, a thorough assessment of both needs and risks must be undertaken in order to manage and address offending behaviour and fulfil the Government's commitment to a safer stronger Scotland. In order to do this, agencies have an obligation to access and provide relevant training for their workforce.

Appendix 1

Practice Example Case Study - Matt, aged15 and Kevin age 14

The following case is presented at an Early and Effective Intervention Multi Agency meeting. The meeting has to make decisions in respect of Matt who has been charged with assault. The decision making options available to the meeting include whether or not any intervention is required; and if so whether Matt may be in need of 'compulsory measures' and should be referred to SCRA; or whether alternative action can be taken the local authority, the Police or a referral made to other agencies on a voluntary basis. The meeting will also consider issues around Victim and Community Confidence.

Matt has been charged with an assault on Kevin, a 14 year old boy. Matt was in the company of others. It was 8 pm. Kevin sustained minor injuries, and complained to his mother who was outraged and phoned the police. Matt informed the police officer arresting him that Kevin had told teachers in school that day that Matt had told younger boys that they could buy cannabis from Matt's brother outside the school. Matt denied this and told the head teacher that this was completely untrue. The school didn't take the matter further but Matt wasn't convinced that the head teacher believed him and

thought it was a slur on his brother's reputation. Matt said he had had enough of Kevin trying to get him into trouble so he walloped him.

Police – Matt is part of a group of older teenagers who are sometimes involved in 'gang' fighting, although Matt himself is usually on the periphery. He has no previous charges. His mother advised that Kevin always seems to want to get Matt into trouble. She told police that Matt will be grounded for a week.

- Kevin has no police charges.

Social Work – Matt's family is not known.

Education - Matt is in 4th year, and an average pupil. His attendance is deteriorating – currently 70% - and he appears to have a group of friends who left school last year with few qualifications. He has little motivation for school although he is capable of passing most of his exams. He was excluded for hitting another pupil last year even though it was accepted that Matt had been provoked. However he can also be very engaging and is in the football team.

Kevin is in 3rd year. He is of below average intelligence, lacks confidence and social skills and has few friends. He has a history of being bullied but many teachers think that he brings it on himself through his behaviour to others and has previously tried to get other pupils into trouble. He is offered additional support in school.

Health – No known concerns

Community Safety – Matt is known in the community as part of a group of young people who hang about, drink, annoy the community through their noise and get involved in fighting at weekends. However Matt is on the periphery of this.

Kevin is well known largely because he talks to workers on the street and never seems to have friends. Kevin's older brother is involved in a different, more violent gang and Community Safety think that he may be known to the police.

In addition to making decisions about how Matt's charge should be dealt with (see Ch 6) the EEI meeting should also consider that this is an offence that has a victim.

For consideration:

- *The assault incident is clear; Matt has admitted it and it appears to be in response to what Kevin said in school. The reasons for Kevin's action in school, and where the truth lies within Kevin's allegation remain unclear.*

- *Matt has been known to resort to violence in the past. This will have to be addressed.*
- *Although Matt seems to be on the periphery of a 'gang', he has never been charged in respect of anything in connection with their activity. Labelling him within the community might lead Matt to want to identify more with the 'gang'. EEI decision is likely to include diversionary activity.*
- *Kevin clearly has his own support needs. Are these being met? A high percentage of victims also go on to offend.*
- *What are the strengths (family and personal) in Matt's life at home, in the community and at school?*
- *What resources do they have to deal with this matter informally, constructively and what help, if any do they need to do this?*
- *What are Kevin's needs as victim of assault? The EEI response should consider implications for him*

Action in respect of the victim's and community confidence should take account of the needs of both Matt and Kevin. It would be important that any restorative action taken does not label Matt, while failing to consider Kevin's own needs and the role he appears to have played in the lead up.

School based Restorative action might assist Matt to empathise with Kevin's feelings as a victim of an assault.

Part of Matt's action plan should be to consider alternative ways of dealing with conflict. However there may be issues between the families unknown to professionals. To avoid labelling Matt in the eyes of the community, it is important to ensure that any restorative activity happens in the least intrusive manner.

Education staff will know both Matt and Kevin better than other agencies and the incident was triggered in school. Restorative work might most appropriately take place in school, and involve a member of staff who knows each boy as well or instead of any outside agency.

How to involve the parents of both boys should also be considered. Both Matt's and Kevin's' parents may benefit from informal, individual discussion in terms of their sons' needs and their own concerns. This could also help them to understand how a small incident in school resulted in a serious incident in the community.

A family meeting to examine the incident and issues in Matt's life to draw up a statement for the victim and a plan for Matt identifying who might do what and what assistance the family and Matt might need at home, in the community and at school may be appropriate.

References

- Bazemore, G. and Umbreit, M. (1994) *Balanced and Restorative Justice*. Washington DC: Dept of Justice Programs
- Braithwaite, J., (1999) 'Restorative Justice: Assessing optimistic and pessimistic accounts', in Tonry, M.(ed.). *Crime and Justice: A Review of Research*, Chicago, University of Chicago Press.
- Christie, N., (1977) 'Conflicts as Property' *The British Journal of Criminology*, Vol. 17. No. 1. pp 1-15
- Daly, K. (2003) 'Restorative Justice: the real story' in Johnstone, G. (ed.) *A Restorative Justice Reader*. Cullompton: Willan Publishing
- Dutton, K. Whyte, B. (2006), *Implementing Restorative Justice within an Integrated Welfare System: The Evaluation of Glasgow's Restorative Justice Service Summary Report*, Criminal Justice Social Work for Scotland, Paper 8, March 2006.
- Evans, J. (2006) *Integrating victims into restorative justice*. London: Routledge.
- Gorman-Smith, D. (2003) 'Prevention of antisocial behaviour in families' in Farrington, D and Coid, J. (eds) *Early Prevention of Adult Antisocial Behaviour*. Cambridge: Cambridge University Press.
- Hoyle, C. Young, R. and Hill, R. (2002) *Proceed with Caution*. London: Joseph Rowntree Foundations
- Jolliffe, D. and Farrington, D.P. (2007) *A rapid evidence assessment of the impact of mentoring on re-offending: a summary*, London: Home Office Online Report.
- Kane, J., Lloyd, G., McCluskey, G., Riddell, S., Stead, J., and Weedon, E.,(2007), *Restorative Practices in Three Scottish Councils*, Final Report of the Evaluation of the first two years of the Pilot Projects 2004-2006. University of Edinburgh and University of Glasgow. Edinburgh: Scottish Government
- Jean**
- McAra, L. and McVie, S. (2010) 'Youth crime and justice: Key messages from the Edinburgh Study of Youth Transitions and Crime', *Criminology and Criminal Justice*, 2010; 10, pp. 179-203.
- McGarrell, E. F., Olivares, K., Crawford, K., Kroovand, N. (2000) *Returning Justice to the Community: The Indianapolis Juvenile Restorative Justice Experiment*. Indianapolis: Hudson Institute.
- Muncie, J., Hughes, G. McKaughlin, E. (2002) *Youth Justice: Critical Readings*, London, Sage.
- Sawyer, B. (2000) *An Evaluation of the SACRO (Fife) Young Offender Mediation Project*. Edinburgh: Scottish Executive Research Unit
- Schiff, M. (1998) 'The Impact of Restorative Justice Interventions on Juvenile Offenders', in Walgrave, L. and Bazemore, G. (eds) *Restoring Juvenile Justice: Repairing the Harm of Youth Crime*. Monsey, NY: Criminal Justice Press
- Scottish Government (2001) *Scottish Strategy for Victims*. Edinburgh: Scottish Government

<http://www.scotland.gov.uk/Publications/2001/01/7964/File-1>.

Scottish Government (2008) *Best Practice Guidance for Restorative Justice Practitioners and their Case Supervisors and Line Managers*. Edinburgh: Scottish Government

<http://www.scotland.gov.uk/Publications/2008/06/10144026/0>

Scottish Government (2009) *Multi Agency Early and effective Intervention: an Implementation Guidance*. Edinburgh: Scottish Government.

<http://www.scotland.gov.uk/Resource/Doc/254429/0081716.pdf>

Shapland, J. (ed.) (2008) *Justice, community and civil society. Evaluation of Restorative Justice Schemes (Crime Reduction Programme)*. London: Home Office

Strang, H., Sherman, L. with Woods, D (2010) *Effects of Restorative Justice Conferencing on Reoffending: A Campbell Collaboration Review* – paper presented by Sherman in London

Whyte, B. (2007) 'Restoring Stakeholder involvement in Justice' in Hunter, S. and Richie, P. *Co-Production and Personalisation in Social Care*. Research Highlights No 49. London: Jessica Kingsley

Whyte, B. (2003) Communities, conferences and restorative social justice. *Criminal Justice Social Work for Scotland*, **3** (2), 139-160

Whyte, B., (2002) 'Crime and Restorative Justice', *Briefing Paper 4*, April. Edinburgh: Criminal Justice Social Work Development Centre for Scotland.

Young, J. and Matthews, R. (1992) *Rethinking Criminology: Realist Debate*, London: Sage.