

The Local Provision of Restorative Justice in Scotland: A Report for Stakeholders and Practitioners

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Executive Summary

This report summarises key findings from a research project funded by the Carnegie Trust for the Universities of Scotland (RIG007869) conducted by researchers at Edinburgh Napier University (Principal Investigator: Dr Giuseppe Maglione; Co-Investigator: Dr Jamie Buchan; Research Assistant: Dr Laura Robertson). The aim of this project was to scope the provision of restorative justice (RJ) in Scotland at the level of local authorities, to provide an initial assessment of the implementation of recent Scottish Government policy on RJ, and to describe how practitioners understand RJ in the context of their work.

The key findings of the research were as follows:

- Most Scottish local authorities do not have a Restorative Justice (RJ) service available, posing a significant challenge for the Scottish Government's ambition to have RJ widely available across Scotland by 2023.
- Where RJ is available it is usually for young people involved in offending only and for minor offences. This reflects commonly held misconceptions about RJ which must be addressed if RJ is to be expanded nationally to the youth and adult criminal system in Scotland.
- Many existing RJ services – particularly those delivered 'in-house' by council youth justice teams – receive few referrals, even for minor youth offending.
- However, there is real enthusiasm for the use of RJ, and support for the Restorative Justice Action Plan, among relevant practitioners.
- We found indications of a significant body of valuable RJ skill and knowledge among the practitioners we interviewed.
- There may be a significant body of valuable RJ skill and knowledge among practitioners, although our research did not carry out a systematic assessment of training.
- There are a number of significant systemic challenges to the 'rollout' of RJ nationally, including limited and unsustainable funding, the effects of changing local and central dynamics elsewhere in the criminal justice system, and issues around information sharing and the impact of GDPR, which has led to a reduction in RJ referrals.

As discussed in Chapter 5, we recommend:

- The creation of robust, GDPR-compliant information sharing protocols between the police and restorative justice services to ensure a 'supply' of referrals for RJ services.
- Adequate and sustainable funding for RJ to ensure services can operate and plan for the longer term, 'bed in' in local partnerships and receive referrals consistently.
- The establishment of local stakeholder forums to raise awareness, primarily among criminal justice practitioners, and for knowledge exchange between RJ practitioners and potential referrers. This would alleviate the misunderstanding that RJ is appropriate only for young people and allow for more use of RJ with adults.
- Support from central government in identifying, providing and accrediting training and funding for RJ, and in 'championing' RJ within criminal justice, but with RJ continuing to be organised and delivered at the local level.
- The creation of an annual survey of RJ in Scotland, to measure RJ provision and outcomes, and with results to be published annually.
- Building links between RJ providers and victim support organisations to raise awareness of RJ among the general public.

Chapter 1: Introduction and Background

This report summarises key findings from the research project *'The Local Provision of Restorative Justice in Scotland: An Exploratory Empirical Study'*, conducted by researchers at Edinburgh Napier University and funded by the Carnegie Trust for the Universities of Scotland (RIG007869). The aim of this project was to scope the provision of restorative justice (RJ) in Scotland at the level of local authorities, to provide an initial assessment of the implementation of recent Scottish Government policy on RJ, and to understand how practitioners understand RJ in the context of their work.

The project was set up in response to the Scottish Government's decision to promote the expansion of RJ nationally, with the intention of having services available nationwide by 2023. Although there has been research on RJ in Scotland before, much of it was fairly dated; it tended also to be limited in scope and focused more on evaluating specific services rather than mapping the provision of RJ across Scotland.¹ There has been no such research carried out since the reforms to community justice under the 2016 Community Justice (Scotland) Act.

An earlier online survey, carried out by the Scottish Government and Community Justice Scotland in 2018, also aimed to 'map' RJ in Scotland. Our project, however, complements this work by not only mapping the local provision of RJ but also investigating the meanings and processes used by RJ practitioners, as well as providing some preliminary insights into the implementation of the Scottish Government's RJ policy.

Hence, our aim was to answer two interconnected sets of research questions:

- Mapping RJ in Scotland
 - Where is RJ provided in Scotland?
 - Who are the providers?
 - How do different services compare with the values, aims and goals set out by other providers?
 - Which are the common patterns (if any) across the provision of RJ services (e.g. organisation, training, approach, capacity, demands)?
 - What are the gaps in the delivery of RJ in Scotland?
- Understanding RJ in Scotland
 - Which values, aims and goals drive the local delivery of RJ?
 - How do providers interpret and apply the 2017 national Guidance on RJ?
 - Which are the best practices based on the standards set by the Scotland Guidance on RJ?
 - Which factors (e.g. local, political and organisational culture) affecting the application of RJ in context?

This project secured ethical approval from the Research Integrity Committee, Edinburgh Napier University, in October 2018. Our project used a combination of methods, with fieldwork taking place between October 2018 and May 2019. We contacted all 30 sets of local community justice partners, arrangements established under the 2016 Community Justice (Scotland) Act and representing all 32 Scottish local authorities (Community Justice Ayrshire represents all three Ayrshire authorities). We asked each set of partners whether RJ was available as part of criminal justice arrangements, and

¹ Kearney, N., Kirkwood, S. and MacFarlane, L. (2009) *Restorative Justice (Diversion) Services Monitoring and Evaluation Report 2006/07*. https://www.sacro.org.uk/sites/default/files/publications/rj_me_report_2006-07_external_v2_1.pdf

how this was provided and organised. The second stage involved 14 qualitative interviews with members of staff involved in local RJ arrangements.

Intended Readership

This report is intended for stakeholders across the criminal justice system, including the Scottish Government, local authorities, criminal justice social work, reducing reoffending/community justice partners, third sector organisations working in or with the criminal justice system. The first part of this report summarises briefly some key evidence on RJ before sketching the policy context in which RJ in Scotland is developing. The second part of the report discusses the findings of this research project – the local availability of RJ in Scotland, areas of strength and the significant system-level challenges facing the further development of RJ. The report concludes with opportunities and recommendations for the future development of RJ in Scotland.

Definitions & Scope

In this report, we use the Scottish Government's (2017) definition of RJ:

“Restorative justice is 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.

It gives victims the chance to meet, or communicate with, the relevant people who have harmed, to explain the impact the crime has had on their lives. This has the potential to help some victims by giving them a voice within a safe and supportive setting and giving them a sense of closure.

It also provides those who have harmed with an opportunity to consider the impact of their crime and take responsibility for it, with the aim of reducing the likelihood of re-offending. In some circumstances it can also allow them the opportunity to make amends for the harm caused. It can also be appropriate and helpful for children and young people who have harmed, where the need to safeguard and protect their interests is paramount.”

However, there is a diversity of views regarding the definition of RJ; some see it as including *only* mediated meetings between victims and offenders, while others see it more as a set of principles that can inform work across the criminal justice system.

We are also discussing RJ provided in connection to the criminal justice system, not within other settings such as schools. Our research approached all 32 local authorities in Scotland.

Limitations

Apart from the general constraints of qualitative empirical research, it should be acknowledged – as a matter of methodological caution – that there is the possibility of variations in levels of cooperation across gatekeepers (i.e. local authorities), and therefore that our mapping of RJ providers may not be exhaustive.

Chapter 2: Restorative Justice in Context

Restorative Justice, Victims and Reoffending

Restorative justice – a model of justice focused on mediated dialogue between offenders and crime victims, to help repair and move on from the harms caused by the offence – has been described as one of “the most significant developments in criminal justice and criminological practice and thinking” (Crawford & Newburn, 2003: 19). RJ scholarship usually describes RJ as involving the community where the crime has occurred as a stakeholder in the process and/or a setting into which the offender may be reintegrated by restorative approaches; community involvement is not, however, part of the Scottish Government’s definition given above.

A 2007 evidence review by Sherman and Strang found strong evidence that the use of RJ can produce significant reductions in reoffending, beyond those reductions associated with traditional rehabilitative/desistance programmes.² The largest empirical studies on RJ in the UK – a series of studies for the Home Office by Shapland et al. (2004; 2006; 2007; 2008) – found that RJ reduces reoffending and produces high rates of victim satisfaction.³

RJ can also empower crime victims to make their voices heard and express the harm caused by the crime. Sherman and Strang also found reduced feelings of fear, trauma and desire for violent revenge among victims. Victims may prefer RJ to a ‘mainstream’ criminal justice system which can be difficult, alienating and even retraumatising, particularly in cases of serious violence or sexual offences. Perhaps surprisingly, the evidence suggests that RJ is *more* effective in these respects when used to respond to serious and violent crime, than when used in cases of minor and property offending.⁴

However, it is worth noting that RJ requires the willing participation of all parties to be truly effective. Not all victims will wish to participate, for many and different reasons. Furthermore, despite promising evidence for its efficacy, some uses of RJ (such as in cases of sexual violence) are likely to attract public controversy.

RJ in the UK

England and Wales

In England and Wales there is a significant uptake of RJ across much of criminal justice, usually as part of a multiagency approach.

A mapping exercise by the Institute for Criminal Policy and Research in 2016 targeted youth justice, prison, probation and Police and Crime Commissioner (PCC) respondents, providing results broken down by PCC area. It found growing RJ provision at all stages of the criminal justice system in England and Wales.⁵ Young people tried in youth courts may be subject to a Referral Order to a

²Sherman, L. and Strang, H. (2007) *Restorative Justice: The Evidence* – <https://restorativejustice.org.uk/sites/default/files/resources/files/Restorative%20JusticeThe%20evidence%20-%20Professor%20Lawrence%20Sherman%20and%20Dr%20Heather%20Strang.pdf>

³ A brief summary of the research can be found at <https://restorativejustice.org.uk/news/what-does-ministry-justice-research-restorative-justice-tell-us>

⁴ Strang, H., et al. (2013) Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction. A Systematic Review. *Campbell Systematic Reviews* 12. <https://restorativejustice.org.uk/sites/default/files/resources/files/Campbell%20RJ%20review.pdf>

⁵ ICPR (2016) *Mapping Report of Restorative Justice Provision in England and Wales* - <https://restorativejustice.org.uk/resources/mapping-report-restorative-justice-provision-england-and-wales-2016>

panel meeting organised by their local Youth Offending Team; for most (but not all) YOTs, RJ forms part of their core business.

Within adult criminal justice, the impact of the Transforming Rehabilitation policy (2013-16) which partly privatised English and Welsh probation (and is now to be largely reversed), has created a mixed and uncertain picture with respect to RJ in adult probation. Some prisons provide or facilitate RJ services but a low response rate among prisons makes the exact picture difficult to determine. PCCs are under a legislative requirement to commission victims' services and are the main funders of RJ services in most PCC areas.

Northern Ireland

In Northern Ireland, RJ is well established, particularly as part of the youth justice system. The success of RJ in Northern Ireland is connected to its conditions as a post-conflict society. As well as reflecting a concern with peaceful conflict resolution, restorative approaches also draw on (and supplant) a tradition of often violent 'informal' justice practices carried out by paramilitary organisations amid a climate of distrust of state criminal justice institutions.

There are two main community RJ organisations which serve both adults and young people, largely in partnership with state criminal justice. Community Restorative Justice Ireland (established 1998), serving republican areas, and Northern Ireland Alternatives (established 2000), serving loyalist areas. CRJI now processes around 2000 cases annually.

Under the 2000 Criminal Justice (Northern Ireland) Act, youth justice services are under a legal obligation to offer a youth conference to anybody under 17 who comes before the youth court; referrals may come from the Public Prosecution Service or as part of a diversion from formal measures.

RJ in Scotland

RJ has existed in some form in Scotland since the 1980s, but this has usually taken the form of small local projects, many of them run by the charity Sacro (Safeguarding Communities – Reducing Offending). This charity also organises non-criminal justice mediation conferences.

Although these pilots have largely focused on young people involved in minor offending, there have been efforts to develop RJ for dealing with cases of serious crime, including Sacro's TASC (Talk After Severe Crime) project and the subsequent RiSC (Restoration in Serious Crime) in 2012-16.⁶ Despite innovative approaches, RiSC processed only a very few cases.

Recent developments have been driven by the Directive 2012/29/EU (Victims' Rights Directive), which advocated the use of RJ for helping crime victims as well as specifying standards and requirements for RJ services. The 2014 Victims and Witnesses (Scotland) Act implements the European directive in Scots law; as well as setting out victims' procedural rights, it establishes the legislative basis for national guidance on RJ (s. 5) (see also Maglione, 2020b).

All of these developments have occurred in the context of wider developments in Scottish criminal justice. The need to reduce imprisonment has also inspired successive reforms to the system of community penalties, with the aim of promoting these sanctions to divert cases away from the prison system.

⁶ Whyte and Kearney, 2017 – 'Peacebuilding and RiSC', *Scottish Justice Matters* 5(1):11-12
http://scottishjusticematters.com/wp-content/uploads/Peacebuilding-and-RiSC-SJM_5-1_April2017-6.pdf

These include the 2010 Criminal Justice and Licencing (Scotland) Act, which instituted a presumption against prison sentences of less than three months (since extended to 12 months), and replaced a number of preexisting community sentences with the single Community Payback Order (CPO). Structural reforms of the system followed under the 2016 Community Justice (Scotland) Act, which replaced the eight regional Community Justice Authorities (CJAs) with a system of partnerships at local authority level (usually known as reducing reoffending partnerships or community justice partnerships). The 2016 Act also established the national leadership body Community Justice Scotland.

Despite these measures, more than a decade after the report of the Scottish Prisons Commission, Scottish imprisonment rates have remained stubbornly high, reaching a historic peak, the highest rate in Western Europe, shortly before the Covid-19 pandemic spurred emergency measures to decarcerate.

In 2017, the Scottish Government issued the first ever national *Guidance for the Delivery of Restorative Justice in Scotland*.⁷ This guidance sets out the key principles of RJ, expectations for practitioners and facilitators, as well as the stages of the RJ process with requirements and considerations at each step.

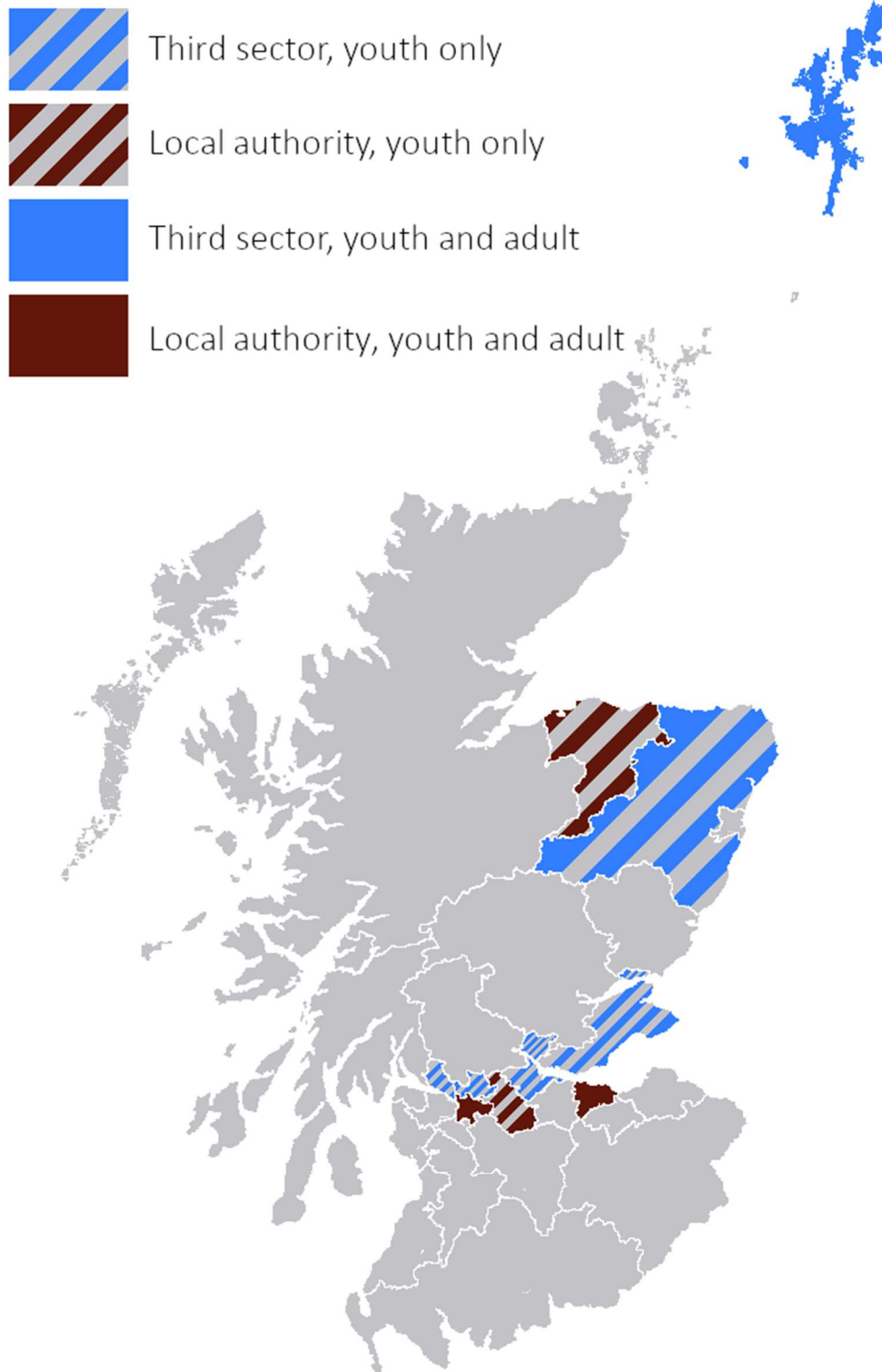
Shortly afterwards, the 2018-19 Programme for Government stated the Government's ambition to have victim-centred RJ available across Scotland by 2023,⁸ to be supported by the 2019 *Restorative Justice Action Plan*.

⁷ Scottish Government (2017), *Delivery of Restorative Justice in Scotland: Guidance* - <https://www.gov.scot/publications/guidance-delivery-restorative-justice-scotland/>

⁸ Scottish Government (2018), *Delivering for Today, Investing for Tomorrow: The Government's Programme for Scotland 2018-19* – <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2018/09/delivering-today-investing-tomorrow-governments-programme-scotland-2018-19/documents/00539972-pdf/00539972-pdf/govscot%3Adocument/00539972.pdf>

Chapter 3: The Local Provision of Restorative Justice in Scotland

The Local Provision of Restorative Justice in Scotland



Adapted from GROS (1998)

Local Availability

RJ in Scotland is provided at various levels/scales and by various organisations. Our research identified **12 local authorities** across Scotland within which RJ is provided: Aberdeenshire, City of Edinburgh (two separate services), Clackmannanshire, East Dunbartonshire, West Dunbartonshire, Dundee City, Falkirk, Fife, Glasgow, Moray, North Lanarkshire, Shetland.

The main provider⁹ of RJ services was the charity **Sacro**, which provided services in Dundee, Fife, East Dunbartonshire, West Dunbartonshire, Falkirk and Clackmannanshire. Sacro had until recently operated youth RJ services in Perth and Aberdeen, and continued to deliver some RJ interventions in Lanarkshire despite the closure of its service. The charity **Space2Face** in Shetland provides an RJ service centred on arts and creativity, while the work of **Barnardo's** in Aberdeenshire may include RJ as part of a wider youth justice service.

Some **local authorities** – Moray, North Lanarkshire and City of Edinburgh – delivered their own RJ service, acting as ‘in-house’ providers. Glasgow’s service was provided by the local authority, but through the arm’s length organisation Community Safety Glasgow. We also conducted an exploratory interview about RJ practice for young people in prison.

Most of the RJ services were focused on **young people** who offend, defined themselves as ‘youth’ providers and were implemented as part of the local youth justice service. ‘Youth’ is usually defined in these contexts as people aged between the age of criminal responsibility (at the time of the fieldwork)¹⁰ and the age of criminal majority, i.e. 8-17 years old. Notably, however, the North Lanarkshire youth RJ service dealt with people up to 24 years old.

We found only two **adult**-focused providers – in Motherwell (covering both North and South Lanarkshire) and in Edinburgh focused on hate crime. The Motherwell service had recently closed so is not shown above.

Two services – Shetland and Glasgow – were available both for **adults and young people**, although in practice the Glasgow service took mainly youth referrals through Early and Effective Intervention. In fact, the distinction between youth and adult services is as much to do with **referral processes** as the actual age of people referred; these processes are discussed in the next section.

The 2018 Scottish Government/Community Justice Scotland survey found that RJ was available in around half of Scottish local authorities. The reasons for this difference may be to do with differing response rates or different interpretations of the questions. The availability of services **may have changed** since the end of the fieldwork. For instance, we are aware of a new adult RJ service set up in 2019, under Alloa Sheriff Court and serving the county of Clackmannanshire.

Restorative Justice Methods and Organisation

Referrals

In order for an RJ meeting to take place, at least one party involved in the offence must be referred to a specific RJ service. As noted above, RJ is provided principally through the **youth justice** system in Scotland. Only three of the 11 youth RJ services also provided RJ for adults.

⁹ We use ‘RJ services’ in this report to refer to the provision or facilitation of RJ, and ‘practitioners’ to refer to people who deliver these services; ‘providers’ refers to dedicated organisations, or units within organisations, which provide RJ services. There is a significant difference in the scale of delivery of RJ and in practice these tend to overlap.

¹⁰ Since raised to 12 years old by the 2019 Age of Criminal Responsibility (Scotland) Act.

The informality of RJ, as well as its position somewhat ‘outside’ traditional criminal justice, mean that there is a high degree of flexibility in how it can be organised and provided. However, our research found two principal ‘strands’ of referral of young people to RJ services, both connected to the Whole System Approach (WSA): **Early and Effective Intervention (EEI)** and **diversion from prosecution**.

EEI referrals are used for young people involved in very minor offences/antisocial behaviour. These come from EEI multi-agency groups in each local area; the EEI group in turn receives referrals from Police Scotland. Each local authority has its own EEI arrangements – either a multiagency group which meets regularly, or a single coordinator. The implications of this for decision-making are discussed below.

Diversion from prosecution referrals are used in slightly more serious but still relatively minor cases of youth offending; in these cases, the decision to refer to RJ rests entirely with the Procurator Fiscal. Youth RJ in Scotland is also usually offered as part of a wider ‘package’ of measures for supporting young people involved in (or at risk of becoming involved in) the criminal justice system.

For services with adult provision (where available), there is more scope for referrals and a wider range of offences which may be referred, including even self-referrals.

“Well the main referral agency is CJ and children and family social department in the council. [...] And the Children’s Reporter [...]. But we do have a number of people recently referred them people harmed who have referred themselves because they’ve heard about the project or been involved in” [Interviewee K2, third sector, adult & youth RJ]

The adult service in Edinburgh takes referrals from the police for people convicted of hate crimes and subject to supervision in the community as part of a Community Payback Order, Supervised Release Order or on parole licence. However, as of late 2019 there had not yet been any referrals to this service.

“[W]e tried to get the protocol with victim information and advice service who were run by the procurator fiscal service based in courts and they were great, they were really helpful, but they then pulled out and said ‘look there’s too many obstacles for us to do it. We’re really the middle man. We would just be going to the police to ask them. So, you’re better just having it between.” [Interviewee A, local authority adult RJ]

The six RJ services provided by Sacro reported using the Outcomes Star method for evaluating outcomes (<https://www.outcomesstar.org.uk/>). Another third-sector service referred to using ASSET and service outcome documentation. Other providers did not report using any specific system for measuring outcomes.

Chapter 4: Systemic Challenges for Restorative Justice in Scotland

“They kind of felt like the ones we had previously. They looked like they’d been just kind of well yeah recycled really. They were very similar.” [Interviewee E, local authority youth RJ]

“I think it’s like this massive missed opportunity in general. Scotland is really behind. I think we’re got generally a great justice system but why are we not using RJ just everywhere all the time?” [Interviewee A, local authority adult RJ]

However, there are a number of **significant challenges** for the development of RJ in Scotland, particularly if the Action Plan’s goal of a nationwide ‘rollout’ of high quality RJ services by 2023 is to be achieved. Chief among these is the simple absence of RJ services – particularly for adults – in most local authorities in Scotland.

The *specific* systemic challenges listed below are likely related to this issue **both as causal factors and as consequences** – that is, they both arise from and contribute to the dearth of RJ services in local authorities in Scotland.

Even where RJ services are in place, they suffer from relatively few referrals; there is low awareness and low demand for RJ which is both a cause and a consequence of systemic issues discussed below.

Understandings of RJ

As noted above, RJ referrals in Scotland are mainly for **young people** involved in minor and/or first-time offending.

The RJ practitioners we interviewed envisioned RJ as a set of values with the potential to transform criminal justice:

“[I]t’s so true, that traditional justice is so owned my sheriffs and judges by other people you know and the victim quite often doesn’t even get to speak or just have their say or get any questions answered. And I just think that’s where RJ is amazing, I even get goose bumps just getting about that. But to be able to, and then when you see it, and you see the videos about it and you see how it really does work, when I saw that proxy conversation, it was really powerful, you know there were tears and it was amazing. So, you just can’t do that in traditional justice at all.” [Interviewee A, local authority adult RJ]

“[RJ is a] whole philosophy [which] is kind of used on a daily basis” [Interviewee E, third sector, youth RJ]

However, patterns of referral suggest that **police and prosecutors saw RJ as appropriate mainly for young people involved in minor or first-time offending**.¹¹ As well as being a cultural challenge for the expansion of RJ in Scotland (particularly services for adults), this is at odds with a significant body of evidence showing that RJ can be just as effective (possibly more so) in cases of serious crime committed by people with long histories of criminal justice involvement.

¹¹ However, while police have significant discretion to refer a case to EEI, diversion processes are determined by the Lord Advocate’s guidelines and COPFS policy; only around 10% of prosecutions of young people are dealt with by diversion. See Inspectorate of Prosecution in Scotland (2018) for a fuller discussion of prosecution outcomes for young people in Scotland.

These issues must however be seen in context of **limited awareness** of RJ, in society generally and even within the justice system.

“[E]verybody I have explained it to hasn’t heard of it before. Do you know? So I’ll say have you heard? Do you know what restorative justice is? And they’ll say not.” [Interviewee F, local authority youth RJ]

The issue of public awareness is recognised in the Scottish Government’s Action Plan, which proposes a network of ‘RJ Champions’ and a national communications strategy. However, there is not necessarily a straightforward relationship between public awareness and rates of RJ uptake among crime victims.

Local and Central Dynamics

Many of the systemic issues for Scottish RJ were related to **changing dynamics of central vs. local provision of services**.

Central organisation of services can produce efficiencies and allow for specialist support to be provided to local organisations. Furthermore, mainstream criminal justice ‘due process’ values emphasise consistent decision-making regardless of location. However, RJ is traditionally community- and locally-focused, with an emphasis on reintegration in local contexts.

Scottish criminal justice generally, and noncustodial penalties in particular, is marked **by tensions between local and central organisation**; successive reforms to community justice have entailed balancing local and central elements – most recently the 2016 Community Justice (Scotland) Act, which replaced regional Community Justice Authorities with the current system of local partnerships and established Community Justice Scotland.

Aside from the local **inconsistency and fragmentation** in the provision of RJ services (shown above), interviewees also referred to variations between areas in referral processes (arising from the locally-contingent nature of EEI systems) and differences between areas in the extent to which RJ is culturally accepted.

As well as variations between local authorities in actual RJ provision and referrals, there were also ‘knock-on’ effects of changing local-central dynamics in other parts of the criminal justice system. These have had implications for both the main ‘strands’ of RJ referral in youth justice.

Early and Effective Intervention

When screening cases for Early and Effective Intervention, local authorities are increasingly **moving away from multi-agency referral meetings** in favour a ‘single coordinator’ model in which a designated EEI coordinator solicits inputs from other specialists remotely. While this arrangement is more time-efficient, our research suggests that it has reduced RJ practitioners’ contact with EEI referrers, and limited their ability to participate in the multi-agency meetings.

“We had, until about a year and a half ago, local meetings and they were really helpful. We had partner agencies - social work and the Procurator Fiscal round the table and we had discussions around who was best placed to actually support the young person take the diversion and unfortunately that was then centralised [...] so the local conversations unfortunately were now discontinued” [Interviewee D, third sector youth RJ]

The Scottish Government has attempted to promote consistency in EEI across local authorities in Scotland through the Early and Effective Intervention Framework of Core Elements,¹² which includes guidance on a “nationally consistent range of options” which should include RJ. However, this does not address the issue of low rates of referrals to RJ services. These arise from the state of local links between EEI/WSA coordinators and RJ services, as well as the actual availability of RJ services which varies widely between local authorities.

Prosecutorial Marking

A further development with implications for Scottish RJ is the centralisation of prosecutorial ‘marking’. This is the process by which the Crown Office and Procurator Fiscal Service (COPFS) decides for each case brought to its attention, whether to prosecute, take no further action or arrange an alternative to prosecution (which includes a number of options including a diversion). This process has become increasingly centralised in the last twenty years.

While it has been beneficial for ensuring specialist cases (such as rape) get the benefit of specialist attention, and for promoting consistency in prosecutorial decisions, centralised case marking has also been criticised for diminishing the autonomy of local prosecutors, removing prosecutorial decisions from their local context and hence from decision-making underpinned by local knowledge of locally available programmes.

Our research suggests that the **centralisation of COPFS case marking** has therefore had a ‘knock-on’ effect of **reducing referrals** to local RJ services.

“I think when we had that relationship locally it was far easier. But when the Procurator Fiscal centralised their markers we didn’t have that relationship, we didn’t have that reputation for professionalism that we had built over nearly 20 years locally so that did have an impact” [Interviewee J1, third sector adult RJ]

“The diversion from prosecution number has significantly reduced so we don’t have our local meetings. [...] It’s very, very few which is a real shame and it kind of makes me wonder about the bigger picture - where these young people are actually going now? Historically, when we met we had really good contacts with the local Procurator Fiscal who had a really good understanding of services to support the young people” [Interviewee D, third sector youth RJ]

Funding

Like other public services at the local level, RJ is affected by issues with **funding** which largely reflect those in community justice services. Funding for justice services in the community and provided at local authority level comes from a variety of sources, but principally from the Scottish Government which provides a ringfenced budget for mandatory CJSW activities (such as supervision and report-writing) and funds for local initiatives.

In the current climate of **austerity**, it is to be expected that non-statutory and non-mandatory services become targets for budget cuts. This is a particular issue for RJ which by its nature **is not (and should never be) mandatory** for any party involved.

Even where funding is available it has tended to be provided on a short-term basis. Where a service faces the possibility of imminent shutdown due to lack of funds, it is difficult to plan services or

¹² Scottish Government (2015), *Early and Effective Intervention - Framework of Core Elements* - <https://www2.gov.scot/Publications/2015/03/6818>

recruit personnel for the long term. Here as elsewhere in the justice sector, short-term and unsustainable funding is a particular challenge for the third sector.

“A lot of the time, I'll be honest with you, and it's to do with business and it's to do with, if somebody is going to, for example, if you've got a tender and there's no actual price bid on it and somebody undercuts you by £50,000 then you're going to lose the service - it's just as simple as that. The council's going to look at cost effectiveness and a lot of the time that's not right because the services, the organisation sorry, that are taking on these services they've never done it before.” [Interviewee C, third sector youth RJ]

“K1: I think we probably would or could be referred more cases to the service but unfortunately for us there's the financial aspect - we don't have funding at the moment to actually offer the service. If we do do the work then you know to a large extent that is done voluntarily. So we're actually doing that - giving our own time. So that's an issue you know.

K2: Apart from we have case by case funding with some social work referrals. And Children's Reporter will send their social work open cases. But we don't have core funding to fund the project like to have a base, admin, that kind of thing.” [Interviewees K1/2, third sector youth RJ]

Information Sharing and Data Protection

Information sharing has historically been a challenge for local partnership arrangements, particularly in the Scottish context of highly local criminal justice structures. The implementation of the **General Data Protection Regulation (GDPR)** into UK law under the 2018 Data Protection Act has also affected referrals to RJ services, as noted by the Scottish Government's 2018 survey and the 2019 Action Plan; the issue arises from the fact that the details of the person who has been harmed are a form of personal data.

Local authorities have generally interpreted the law to mean that they cannot access the contact details of the person harmed (and sometimes also those of the person who has harmed), without their explicit consent.

“So, prior to GDPR coming into place we would automatically letter victims and we would say you know we understand that you've been a victim of a crime, we're working with the young person, and letting them know what the EEI service is but we don't have a legal basis to do that now so that has liked stopped” [Interviewee I, local authority adult and youth RJ]

Many organisations which might otherwise be referring cases have been unable to do so, because they do not yet have GDPR-compliant protocols for information sharing.

“Originally the set-up of the service was to attend EEI meetings with Police Scotland, youth justice assessor, and social work, and the other relevant agencies. That ran well when I started up until May this year [2018] and then with the compliance with the new GDPR law that came out – Police Scotland pulled that from the table. They basically said that they could not share information with us without the consent of the individual and they were having issues gaining consent to do that” [Interviewee C, third sector youth RJ]

GDPR has also led to the cancellation of multiagency screening meetings which might otherwise have generated referrals to local RJ services.

“It [GDPR] had an impact on accessing people that have been offending actually the referral group that we attend and we’re a big part of was cancelled for two months because of GDPR” [Interviewee B, third sector youth RJ]

The complexity of GDPR and public sector information sharing arrangements, alongside the threat of large fines for noncompliance, have slowed the development of information sharing protocols.

A final issue relates to the wider problem of low **public awareness**. Police and prosecutors do not usually discuss RJ with crime victims while dealing with the offence; RJ still enjoys little public awareness so victims are unlikely to seek it out on their own (even where it is available).

Chapter 5: Opportunities, Recommendations and Conclusions

Opportunities

The Restorative Justice Action Plan published in 2019 **explicitly recognises** some of the system-level challenges detailed above, particularly to do with funding and information sharing. This is potentially an important step towards resolving these issues, and one of several opportunities presented by the current picture of Scottish RJ.

Despite those challenges, there is considerable **enthusiasm** for RJ among CJSWs in Scotland and support for the ambitious goals of the Action Plan.

“It’s really useful. It’s long awaited. I was really excited when it was finally published. I think it’s actually a really good document... traditional justice is so owned my sheriffs and judges by other people you know and the victim quite often doesn’t even get to speak or just have their say or get any questions answered. And I just think that’s where RJ is amazing, I even get goose bumps just getting about that. But to be able to, and then when you see it, and you see the videos about it and you see how it really does work, when I saw that proxy conversation, it was really powerful, you know there were tears and it was amazing. So, you just can’t do that in traditional justice at all.” [Interviewee A, local authority adult RJ]

Our research found a great deal of support among criminal justice social workers for RJ. A number of respondents described it as a radical alternative to a ‘mainstream’ criminal justice system which alienates victims and is not always effective in promoting desistance.

RJ practitioners generally conceived of RJ in **similar terms** to the Guidance – meaning that disagreement over definitions of RJ and the values that underpin it is unlikely to be an issue for any nationwide ‘rollout’.

The practitioners were interviewed also had extensive **familiarity** with a range of different RJ procedures and practices, including direct RJ mediation and ‘shuttle’ mediation (in which communication between the person who has harmed and the person who has been harmed takes place through an intermediary), as well as less traditional RJ processes such as apology letters and victim awareness training.

“Some of them won’t want to do face to face. Some of them would prefer to do a letter of apology or prefer to be shuttle restorative justice where we go back and forth between. But we do try to do push on face to face and restorative justice conferences because we feel that that’s the best way for an individual to actually apologise. They’re taking ownership of their actions and sitting in - and they can see the impact that it’s had on an individual by sitting face to face with them and seeing them - and there’s a lot of people that do get upset during it and obviously it’s about us controlling the environment but they can see it and then they realise themselves that what was wrong what I done. They get the actual impact. So, we do try and push on that.” [Interviewee C, third sector youth RJ]

“We’ve got a member of staff who used a shuttle mediation example when it was a young person, it was a diversion piece of work. He, a young person had vandalised a local builders I think he was a builder or a painter or a director office and he had vandalised it and the police had been involved and the member of staff managed to access information – contacted the procurator fiscal – found out where the claimant, the victim lived, worked, and wrote to him and introduced herself and then followed that up with a letter from the young person so kind of did that shuttle mediation to see if he could get to a place where he could meet him which

he did do he eventually met him which was good that was a positive case of practice. That happened. That's happened maybe two or three times where we've managed to do that."
[Interviewee H, local authority youth RJ]

Practitioners also reported engaging with a range of **training** measures and referred to a high degree of specialist knowledge and capacity for RJ within their services. However, because this study is not a systematic survey of training, we cannot comment on the actual extent of training.

"[I]n our service there's seven people and I would say six of them fully RJ trained to a real competent standard and probably have you know I would say three of them have had significant experience probably up to about 1,000 conferences plus." [Interviewee I, local authority youth RJ]

Furthermore, and in line with the **non-stigmatising** approach of the WSA, interviewees generally emphasised using non-stigmatising language:

"We don't really tend to call young people offenders. Really move away from that. We just call them young people really" [Interviewee D, third sector youth RJ]

"We try to look at the terminology we use... talk about the person who has harmed and the person who has been harmed" [Interviewee H, local authority youth RJ]

This is partly similar to the national Guidance and the Action Plan which tend to use 'person who has harmed' in preference to 'offender', and in line with wider shifts in preferred language for criminal justice settings.

Furthermore, and despite the lack of adult RJ services, many of the people interviewed in the project had carried out training in RJ. This included training carried out by university experts as well as by organisations like Sacro.

Finally, the position of RJ services within CJSW means there is an **opportunity** for RJ – a mode of justice traditionally focused on resolving individual conflicts – to be combined with the communitarian **social welfare** ethos which has characterised social work with offenders since the 1968 Social Work (Scotland) Act. There is the possibility for Scotland to pursue the distinctive path of a fully 'social' RJ in which social work and RJ complement each other; the implications of this for social work practice are discussed in a recent paper by Kirkwood and Hamad, who suggest that RJ can become a 'lens' through which social work can be viewed.¹³

In short, Scotland has a workforce of practitioners who are ambitious and enthusiastic about RJ, and in some cases already trained to provide it. Our recommendations below offer potential opportunities for unlocking the potential of this resource and resolving the systemic challenges discussed in Chapter 3.

Recommendations

In order to expand the availability of RJ across Scotland and to fully realise the potential of RJ as a response to a wide range of harms, it is necessary not only to improve the provision of services but also to promote the value of RJ including for adult offenders and serious crimes.

¹³ Kirkwood, S. and Hamad, R. (2019) Restorative justice informed criminal justice social work and probation services. *Probation Journal*, 66(4): 398-415.
<https://journals.sagepub.com/doi/abs/10.1177/0264550519880595>

Our recommendations can be divided into those which focus on improving the **supply** of RJ services and those which focus on increasing **demand** for these services.

Building more diverse, and more sustainable, RJ provision across Scotland

- Adequate and sustainable **funding** provided by the Scottish Government is vital for the success of RJ services. Given the inherently non-mandatory, non-statutory nature of RJ, it may be advisable to earmark this funding while allowing local authorities autonomy in the commissioning and development of services. Sustainable funding will allow RJ services to plan for the longer term, and to become ‘bedded in’ in local partnerships, meaning that partners are more likely to be aware of RJ and to make referrals to these services.
- We recommend the creation of an annual **survey** of RJ in Scotland, to be carried out by the Scottish Government or Community Justice Scotland. This would be sent to all local authorities and would include information on RJ provision and organisation within local areas, as well as outcomes (existing outcome measurement processes, reoffending data, feedback processes), and would be published online. This would ensure the ‘picture’ of RJ in Scotland is kept up to date and enable the effects of RJ policies to be properly measured.
- **Support** from the Scottish Government can help reduce the fragmentation of local services and realise economies of scale. This includes potential efficiencies related to training; smaller authorities with low RJ caseloads, particularly in the Central Belt of Scotland, may find it helpful to share RJ-trained personnel.
- Central government support should support local authorities in the provision of RJ training, and for ‘**championing**’ RJ within the criminal justice system. Community Justice Scotland is likely to be able to make a valuable contribution in this area.
- Although variation in local practices is a significant challenge to the project of ‘rolling out’ RJ nationwide, we advise **against the centralisation** of RJ provision. Such a development would run counter to the cooperative, local, and community-facing focus inherent to successful RJ practice.

Encouraging referrals and building support for local RJ services

- It is essential for Police Scotland and COPFS to put in place improved, GDPR-compliant processes for **information sharing** with local authorities. Without these it will not be possible to increase the number and range of referrals to RJ services.
- While greater public awareness of RJ would be valuable, the principal target for **awareness-raising** efforts should be those in the criminal justice system who can make referrals to RJ services – police officers, prosecutors and social work. In fact, raising public awareness without also improving RJ capacity could harm the legitimacy of RJ and criminal justice in general.
- It is also necessary to raise awareness of the fact that RJ can be very valuable for adult and serious offending, by promoting **knowledge exchange** with RJ practitioners. The Scottish Restorative Justice Forum (particularly the Practitioners’ Forum which operates within it) would be one possible avenue for this.
- To these ends we recommend establishment of local **stakeholder forums** to raise awareness, primarily among criminal justice practitioners, and for knowledge exchange between RJ practitioners and potential referrers. These could take place as part of or alongside multiagency EEI referral meetings. This would alleviate the misunderstanding that RJ is appropriate only for young people and raise awareness of RJ generally. The identification of RJ champions in local authorities, as advised by the Action Plan, would contribute to this.

- To ensure that persons harmed by crime are aware of the option of RJ, and hence able to self-refer to RJ services, we recommend building **links between local RJ providers and victim support organisations** such as Victim Support Scotland.

The Scottish Government's plan for RJ in Scotland is ambitious, particularly in light of the system-level challenges discussed in this report. To bring about high-quality RJ services available nationwide will require overcoming or mitigating these challenges. However, it is appropriate to take an ambitious approach to a paradigm with such transformative potential.

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Organisations

Barnardo's - <https://www.barnardos.org.uk/>

Community Justice Scotland - <https://communityjustice.scot/>

Criminal Justice Voluntary Sector Forum - <http://www.ccpscotland.org/cjvsf/>

European Forum on Restorative Justice – <https://www.euforumrj.org/en>

Restorative Justice Council - <https://restorativejustice.org.uk/>

Sacro: Safeguarding Communities – Reducing Offending – www.sacro.org.uk

Space2Face (Shetland RJ Arts project) - <https://www.shetland-communities.org.uk/subsites/s2f/>

Why Me? (England and Wales) - <https://why-me.org/>