Written evidence from the Ministry of Justice

Executive Summary

1. The Ministry of Justice has supported the provision of good quality, victim-focused restorative justice (a process with significant benefits for victims) as one of a range of measures to help victims cope and recover from crime. The Ministry of Justice has also supported the availability of restorative justice to offenders because of its potential to reduce the frequency of reoffending.

2. Restorative justice is the term generally used to describe activities that take place within the criminal justice system in England and Wales. Other terms, such as restorative process, may be used to describe what takes place more widely across various sectors (for example education). There is still widespread confusion about what constitutes restorative justice and the Ministry of Justice has been working to raise awareness and improve understanding.

Introduction

3. The Ministry of Justice defines restorative justice as the process that brings those harmed by crime, and those responsible for the harm, into communication, enabling everyone affected by a particular incident to play a part in finding a positive way forward. The fundamental element is the dialogue (not necessarily face to face) between the victim and the offender.

4. Restorative justice activities can take place at the request of the victim or the offender and both need to consent. Participation in restorative justice is completely voluntary and should only take place where the offender admits responsibility and both the offender and the victim have been assessed by a qualified restorative justice practitioner as fully able, willing and suitable to engage in a restorative process.

5. The Ministry of Justice has a clear expectation that where a person has committed a criminal offence and a formal criminal justice response is appropriate, any restorative justice activity should take place alongside, but not instead of, that formal criminal justice response.

Progress made by the Government in implementing the Restorative Justice Action Plan 2014, including any changes that have been made to this plan

6. The current restorative justice action plan was published in November 2014 and covers the period to March 2018. It sets out overarching objectives relating to equal access, awareness and understanding, and good quality. These objectives are supported by detailed actions for the period November 2014 to March 2016. The two previous action plans operated from November to November (to coincide with international RJ week). This third plan regularises the position, moving to a financial year.

7. The Ministry of Justice is making good progress against the planned actions. Highlights to date include:

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2 Green Paper Evidence Report: Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders (December 2010, paragraph 5.59)
3 2014 Restorative Justice Action Plan for the Criminal Justice System
A national conference in February 2015 which showcased projects including the courts pre-sentence pilot, post sentence restorative justice delivery and complex cases projects (including those focused on supporting victims of domestic violence and sexual violence). The event facilitated and stimulated discussion to progress the provision of restorative justice nationally and was attended by police and Police and Crime Commissioner representatives.

A series of regional workshops to enable stakeholders to share best practice and their experiences of designing and/or commissioning a restorative justice service.


Establishment of an Experts in Restorative Justice Group to provide advice and guidance to the Ministry of Justice on a range of issues to support effective delivery of restorative justice.

Provision of training and training materials on restorative justice to police officers in the three forces participating in the out of court disposals pilot.

Continued support to the Restorative Justice Council (RJC) to encourage take up of its Restorative Service Quality Mark (RSQM) including some additional funding so that organisations that might not be able to afford the assessment process could apply free of charge.

A paper on restorative justice terminology that our stakeholders will be able to use to reduce misunderstanding (included at annex A).

8. To allow maximum flexibility, the action plan provided for addendums to be published during the year in order for the Department to respond to emerging and upcoming issues, if required. These issues included, for example, emerging findings from the out of court disposal pilot and the awarding of Community Rehabilitation Company contracts.

9. The Ministry of Justice will publish a full progress report at the end of this financial year (2015-16) and will review the action plan, taking account of current wider priorities at the same time.

How the entitlements to restorative justice in the Victims’ Code are working, and their implications for any such entitlements in any future Victims’ Law

10. A new Victims’ Code came into force on 16 November 2015 which sets out the entitlements of victims and the corresponding duties of specified service providers. The Code was updated to make sure it was compliant with Directive 2012/29/EU which established minimum standards on the rights, support and protection of victims of crime. The Directive included specific requirements on the provision of safeguards for victims in relation to restorative justice. At the same time, the Ministry of Justice took the opportunity to make sure that requirements in relation to restorative justice were, as far as possible, consistent across all service providers irrespective of whether the offender was an adult or a young person. Dependent on restorative justice being available locally, the Code now requires the police to pass a victim’s contact details to the organisation responsible for delivering restorative justice services to victims - unless asked not to do so by the victim. The Code also requires service providers to:
• Provide victims with full and impartial information on restorative justice and how they can take part.

• Confirm the offender has acknowledged the basic facts of the case and is willing to participate in restorative justice.

• Obtain the written consent of a victim who is willing to engage in restorative justice. Such consent must be free and informed, and may be withdrawn by the victim at any time.

• Be satisfied that restorative justice is in the interest of the victim.

• Ensure victims’ safety by putting in place appropriate safeguards and consider the needs of the victim to make sure the victim is not re-victimised.

• Make sure any restorative justice is delivered by a trained facilitator and is in line with recognised quality standards, such as the Restorative Service Standards.

• Make sure that appropriate safeguards are in place to protect the confidentiality of all discussions relating to, or that are part of, a restorative justice process.

11. It is too early to say how these entitlements are working. If, however, a victim is unhappy with the way the service provider managed their case, the Code makes clear that they can complain through the service providers’ complaints mechanism. The Code also sets out that a complaint can be escalated to the Parliamentary and Health Service Ombudsman if the victim remains unsatisfied. In addition, the Victims’ Commissioner, in her Annual Report for 2014/15, indicated her intention to review how restorative justice is being carried out now that the budget for victims’ services has been devolved to Police and Crime Commissioners (focusing on the quality of delivery) and to assess if and how restorative justice is being delivered in accordance with the requirements of the Victims’ Code. Her aim is to publish her report early in 2016. The Ministry of Justice will carefully consider the findings of that review and any recommendations it makes.

12. All EU Member States are required under the Directive to provide the Commission with available data showing how victims have accessed the rights set out in the Directive, which includes restorative justice provision and safeguards, by 16 November 2017 and every 3 years thereafter. The Ministry of Justice is considering how best to meet this requirement.

13. In the Queen’s Speech we made a commitment to bring forward measures to increase the rights of victims of crime. Further detail on our plans will be published in due course.

The impact and effectiveness of the National Offender Management Service’s restorative justice Programme to promote the development of victim-offender conferencing

14. The 2011 – 2014 National Offender Management Service (NOMS) grant funded Restorative Justice Capacity Building Programme aimed to build capability and capacity in prisons and probation to deliver restorative justice (victim-offender conferencing). During this period the programme resulted in over 150 conferences, 77 staff being trained as facilitators, 30 staff being trained as trainers and increased awareness of this service to victims and offenders by staff working in NOMS. The programme was delivered during a time of considerable change which influenced the resources available within prisons and provision of community services, requiring some changes to the initial scope of the project.
15. As part of the programme, NOMS awarded £0.5 million grant funding to Restorative Solutions match-funded by the Monument Trust. NOMS also separately grant funded £170,000 to Thames Valley Partnership - who had more experience within probation - to deliver some aspects of the programme. The programme was guided nationally by an executive group, comprising representatives from NOMS, Restorative Solutions, Thames Valley Partnership and the evaluators.

16. Two products provide a legacy from the programme: *Wait til Eight: an essential start-up guide to NOMS restorative justice scheme implementation* (January 2013) is a comprehensive guide, including eight checklists that identify critical issues that need to be addressed in order to create the minimum ‘supportive environment’ necessary to nurture the development of an effective restorative justice scheme. The *Guide to Providing a Supportive Environment* (March 2015) gives prison governors advice on ensuring their prison provides the necessary support to facilitate external providers to deliver restorative justice victim-offender conferences with prisoners. Both documents have been favourably received and are widely available through the NOMS intranet and third-party websites.

17. The Restorative Justice Capacity Building Programme was evaluated by the Institute for Criminal Policy Research (ICPR) at Birkbeck and the final report: *The NOMS Restorative Justice Capacity Building Programme: A study of the quality of participant and implementation experiences*, was published in March 2015. The ICPR research sought to assess the quality and impact of the training, explore variations in why some areas and institutions embrace restorative justice more enthusiastically than others; and to capture the perceptions of participants in restorative justice activities. The research noted that despite the organisational challenges, much has been achieved through the capacity-building programme, with more than 300 victims and offenders benefitting from the process. The training had also raised awareness and support for restorative justice amongst staff and managers in probation and prisons.

18. Restorative Solutions reported a £175k underspend from the capacity-building programme. This was attributed to the organisational changes that occurred during the course of the project which resulted in the targets for training not being fulfilled. NOMS and Monument Trust agreed this could be used towards a project seeking to develop a whole-prison approach to management of conflict based on restorative approaches. The project was initiated in June 2015 and Restorative Solutions are in the process of identifying which prisons will participate. The project is anticipated to last for two years and there will be evaluation throughout, with a further period of up to two years for tracking re-offending rates.

**The effectiveness of delivery of restorative justice across the range of service providers and funding arrangements, including provision made by Police and Crime Commissioners, the Prison Service, the National Probation Service, and Community Rehabilitation Companies.**

19. Funding arrangements for the provision of restorative justice reflect the fact that it can be requested by a victim (when it is the responsibility of Police and Crime Commissioners) or by, or on behalf of, an offender (where it is the responsibility of the offender manager to determine whether such an activity would support the rehabilitation of that offender). Restorative justice can also be delivered by the police as part of an out of court disposal. Where the offender is a young person, restorative justice is generally delivered by the youth offending team (YOT) irrespective of whether the process was initiated by the victim or offender, though lay panel members may deliver restorative justice for young people on referral orders.
Police and Crime Commissioners

20. The provision of funding to Police and Crime Commissioners from 2013/14 has meant that for the first time money has been available to develop restorative justice as a service for victims across England and Wales. There has been no formal assessment to date, however, the Ministry of Justice is aware of the progress Police and Crime Commissioners are making in developing and delivering restorative justice services and is offering advice and guidance where necessary and there is appropriate scrutiny of grant spend.

NOMS

21. NOMS sets out its commissioning priorities, and service specifications for providing services for offenders, defendants, victims and the courts. Through the NOMS Commissioning Intentions document, prison and probation providers have been asked to deliver victim-offender conferences (restorative justice) where capacity exists and develop partnerships and a supportive environment to enable delivery where in-house capacity does not exist. This approach is designed to preserve existing restorative justice capacity which prisons have developed and to ensure prisons are able to facilitate delivery of conferences by other organisations.

22. To further support local delivery NOMS developed a guidance document, Better Outcomes through Victim-Offender Conferencing which provides a summary of the evidence and suggests targeting limited resources where the evidence indicates it will have greatest impact on victim satisfaction and reducing reoffending.

Prison Providers

23. Supporting the use of restorative justice is a priority for NOMS. Whilst NOMS facilitates the use of restorative justice within prisons, it is difficult to quantify the delivery of it as there are a wide range of agreements and providers negotiated at a local level.

Probation Providers

The National Probation Service

24. Established in June 2014, the NPS inherited a diverse variety of local restorative justice delivery arrangements established by legacy Probation Trusts. During this early period, the NPS has been working to identify its forward role within the partner-matrix of restorative justice delivery. The NPS has positioned itself, not as a provider of restorative justice, but rather as a referral and facilitating agent, seeking to ensure that the knowledge, experience, capacity and value of locally commissioned services is maximised.

25. The responsibilities identified for the NPS within the NOMS service specification in support of this position are as follows:

NPS has renewed its commitment to ensuring a consistent approach to this:

- providing a supportive environment to enable delivery of restorative justice by other organisations;
- supervising the offender during the period of deferment for post-conviction pre-sentence; and
- referring victims to the relevant PCC should the victim be interested in restorative justice.
Community Rehabilitation Companies

26. The delivery of restorative justice is at the discretion of each Community Rehabilitation Company (CRC) which have the freedom and flexibility to innovate and decide what interventions they offer and deliver to reduce reoffending. Interventions are not mandated in the CRC contracts or funded directly by the National Offender Management Service (NOMS). The Offender Rehabilitation Act 2014 makes clear that CRCs can choose to deliver restorative justice (more commonly referred to in this context as victim offender conferencing) under the new Rehabilitation Activity Requirement which came into effect in February 2015 and if CRCs choose to deliver restorative justice they must do so in line with service specification requirements set out in the contract. NOMS robustly manages the CRC contracts, in line with government standards, to make sure they fulfil their contractual commitments to maintain service delivery, reduce reoffending and deliver value for money to the taxpayer. NOMS would not seek to mandate, specify or quality assure wider restorative justice activity.

27. The majority of CRCs are delivering restorative justice in-house. Some CRCs have though engaged with specific restorative justice organisations to deliver restorative justice including as part of the supply chain or help develop ae CRC’s overarching restorative justice strategy. There is also evidence that that some CRCs have also developed partnerships with Police and Crime Commissioners to increase and join up delivery of restorative justice to victims and offenders.

Youth Justice System

28. The Youth Justice Board (YJB) has undertaken a range of work to promote and embed the delivery of safe, competent and effective restorative justice by YOTs in England and Wales, including the distribution of funding to support the development of restorative justice services and training for YOTs staff and volunteers. In addition, the YJB is responsible for commissioning and overseeing the secure establishments for under 18s in England and Wales and encourages the use of restorative justice processes across the secure estate.

29. The National Standards for Youth Justice Services are set by the Secretary of State for Justice on advice from the YJB. The standards apply to organisations providing statutory youth justice services. The YJB has a responsibility to monitor adherence to these standards. National Standard 7 focuses on work with victims by ensuring that YOTs have processes in place to involve victims of youth crime, as appropriate, in a range of restorative processes. To ensure compliance with National Standard 7, YOTs must:

- deliver services to victims in accordance with the Victims’ Code (for community and custody respectively); and

- deliver restorative interventions in line with the RJC’s National Occupational Standards and Best Practice Guidance for Restorative Practice.

30. To help drive performance, and in line with the YJB’s focus on work with victims, YOTs are required to complete a victim-specific self-audit against National Standard 7 for three consecutive years, starting in 2014. Where high performance is identified, the YJB disseminates this as good practice, and where YOTs fall short of expectations, improvement plans are produced and additional support provided.

19 January 2016

Annex A

RESTORATIVE JUSTICE TERMINOLOGY
**PART A –** terminology directly linked to restorative justice as the Ministry of Justice defines it

**Restorative justice** brings those harmed by a crime, and those responsible for the harm, into communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way forward. The fundamental element is the dialogue between the victim and the offender (although it doesn’t have to be face to face). Restorative justice can take place at any stage of the criminal justice system. While restorative justice is the term generally used to describe what takes place within the criminal justice system in England and Wales, **restorative process** is the term used to describe what takes place more widely across various sectors (such as education) and the whole field is collectively described using the term **restorative practice**. Other terms which may be used include **restorative principles, restorative approaches, restorative interventions** and **restorative activities**.

**Restorative justice** can be delivered in a number of ways, including:

- **A victim-offender conference** (sometimes called a face-to-face meeting or restorative justice conference) involves a trained facilitator bringing the victim(s), the offender(s) and supporters, usually family members together in a meeting. Professionals, such as social workers, and representatives of the wider community may also be involved. On some occasions it may be necessary to use live video or audio/telephone as a means of bringing parties together.

- **A community conference** involves members of the community which has been affected by a particular crime and all or some of the offenders. This is facilitated in the same way as a victim-offender conference but can involve many more people.

- **Shuttle RJ** (otherwise known as in-direct communication) involves a trained facilitator passing messages back and forth between the victim, offender and supporters. The victim and offender do not meet. Messages can take the form of recorded video, audio or written correspondence.

- **Neighbourhood justice panels (NJPs)** provide a form of restorative justice conferencing. NJPs involve trained volunteers from a local community facilitating meetings between victims and offenders for low level crime and antisocial behaviour. Referrals can come from a range of agencies including police, local authorities and housing associations.

- **Street RJ** or level 1 restorative justice is usually facilitated by police officers or police and community support officers who have been trained to facilitate a conversation between offenders, victims and other stakeholders at the time of attendance at the incident. Street restorative justice can be used in conjunction with community resolution or a conditional caution. It is most commonly used for offences of shoplifting, criminal damage and common assault.

Any of the restorative justice activities listed above may conclude with an **outcome agreement** of further steps to be taken by the offender, such as some sort of reparation or
rehabilitative activity. Participants in the restorative justice activity will agree who will monitor the outcome agreement and the victim will also be asked whether they want to be kept informed of progress. However, the outcome agreement is not mandatory and cannot be enforced.

PART B – terminology sometimes confused with restorative justice

**Mediation** brings together conflicting parties with the help of an independent mediator to resolve or settle differences/disputes. In mediation both parties are equal and the key aim is not to apportion blame, but to negotiate a settlement. Mediation is used in a range of settings including cases where there is a crime related element. However, it is different to restorative justice where an initial requirement for participation is that a person accepts responsibility for the actions they have committed and roles are normally clearly identified whether it be victim and offender (in a criminal justice setting) or harmed and harmer (in other settings such as schools).

**Reparation** involves an offender undertaking actions to make amends for their wrongdoing. Such actions can include, for example, writing a letter of apology, paying back stolen money or mending something they have damaged. Sometimes, during a restorative justice conference, the victim and offender will agree the offender should undertake some form of reparation. This would be the outcome of restorative justice (sometimes called an outcome agreement), not restorative justice itself.

**Victim awareness programmes** aim to teach offenders to understand the physical, financial, and emotional impact of their crimes on victims and the community. Such programmes may introduce the principles of restorative justice to offenders and may be used as part of an offender’s preparation for participation in restorative justice. These programmes may also involve activities where offenders meet victims of offences similar to the ones they committed (sometimes called *proxy* or *surrogate* victims).

**Community remedy** gives victims a say in the out-of-court punishment of the perpetrators of low-level crime and anti-social behaviour. The community remedy document is a list of actions that may be carried out by an offender or a perpetrator of anti-social behaviour as a sanction without going to court. Actions may include mediation, a written or verbal apology, participation in restorative justice activities, reparation to the community, paying an appropriate amount for damage to be repaired or stolen property to be replaced, participation of the perpetrator in structured activities or the perpetrator signing an Acceptable Behaviour Contract. Police officers must make reasonable efforts to obtain the views of the victim(s) as to whether the perpetrator should carry out any of the actions listed in the Community Remedy document when a community resolution or conditional caution (including a youth caution) is to be used. If the officer considers that the action chosen by the victim(s) is appropriate, the perpetrator will be asked to carry out that action. The police officer or investigating officer makes the final decision on what action is appropriate for the perpetrator to undertake.

**Community resolution** is a non-statutory out of court disposal used by the police to deal with low-level crime in a way which is proportionate and appropriate, when it is not in the public interest to prosecute. The purpose of the Community resolution is to divert the
offender away from their offending behaviour, encourage them to face up to the impact of their behaviour and to take responsibility for the outcomes. Restorative justice can be used as part of a community resolution but the two are distinct and separate and community resolutions can take place without restorative justice.

**Conditional caution** is a statutory out of court disposal used by the police to deal with low-level offending outside of the formal court system, for cases which would be suitable for prosecution but where the public interest is better served by the offender complying with suitable conditions. The purpose of the conditional caution is to formally record the offender’s behaviour and impose conditions that the offender must comply with within a specified period. A conditional caution should be used when the offence requires a more formal outcome than that delivered through the community resolution. This may be because of previous offending history and/or the severity of the offence. Participation in restorative justice can be a condition of a caution providing both the victim and offender agree.

**BASIC RJ PROCESS CHART**
(can occur at any stage during or after the criminal case)

- Identify restorative justice case/receive referral
- Allocate to RJ facilitator
- Identify and seek agreement of other party
- Meet and assess victim and offender (separately)
- Prepare victim and offender for RJ conference (separately)
- RJ conference (or other RJ activity) including outcome agreement
- Follow up meetings with victim and offender (separately)
- Monitor outcome agreement and update victim on progress
- Close restorative justice case