The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective prison system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform.

The Prison Reform Trust's main objectives are:
- reducing unnecessary imprisonment and promoting community solutions to crime
- improving treatment and conditions for prisoners and their families.

The Prison Reform Trust is grateful for this opportunity to contribute to the Inquiry. Based on our established record of prison reform, we will respond to two of the themes to be considered by the Inquiry:

- Progress in implementing the Restorative Justice Action Plan 2014; and
- the effectiveness of restorative justice in prisons, including ways in which RJ can contribute to a safer and more constructive custodial environment.

Our response focuses on the relevance of the prison system to this Inquiry: how prisons can facilitate victim-offender conferences; and how restorative justice can benefit prisons and make them more effective.

**Implementing the Restorative Justice Action Plan 2014**

The Prison Reform Trust's 2009 report, Making Amends, documented the success of restorative justice in the youth justice system in Northern Ireland. It reported that the reoffending rate for youth conferencing was 37.7% as compared to over 70% for custodial sentences. Yet courts in England have been reluctant to make use of restorative conferences as an alternative to custody.

Statute already allows for the use of restorative justice after conviction and prior to sentencing (deferred sentencing). This allows judges to suspend sentencing to test how the convicted person will respond to restorative justice. Court data suggests, however, that the provision is rarely used. As early as
2007, a PRT report, Mitigation: the role of personal factors in sentencing, by Jessica Jacobson and Mike Hough, examined 127 cases; sentencing was deferred in just three (2%) of these cases. In our recent discussion paper on sentencing of mothers we proposed that the Sentencing Council issue further guidance to the courts confirming/receiving them that “deferring sentence to allow for restorative justice, or to enable the offender to demonstrate engagement with a specific requirement, is a valid and useful sentencing option.”¹ For this to become a real option for the courts there also needs to be a significant increase in the availability of restorative justice programmes and steps taken to ensure that police, courts and victim support services are aware of their existence and effectiveness.

We are also concerned that opportunities for restorative justice conferences in prisons may have been curtailed through a combination of changes, including Transforming Rehabilitation, Fair and Sustainable terms and conditions, and benchmarking.

Jon Collins, Director of the Restorative Justice Council (RJC), has stated:

“The reality is that too many prisons don’t have the resources to make it happen or even the links in place to enable them to get hold of a victim’s contact details. This is a missed opportunity. We know the benefits of restorative justice for both victims and offenders. Getting offenders to the point where they’d like to participate but then not enabling them to do so denies both sides these benefits. Prisons, Community Rehabilitation Companies and other service providers from outside the prison walls need to find ways to collaborate effectively. . .”

(Restorative justice and prisons – an opportunity? 14 December, 2015²)

A systematic study of prisons providing the venue for victim-offender conferences was undertaken by the Institute for Criminal Policy Research (ICPR)³. They evaluated NOMS’ Restorative Justice Capacity Building Programme. This 27-month project, begun in 2012, provided training in prisons and probation areas, to enable them to conduct restorative justice conferences.

All prisons were offered a chance to take part in the programme. Six prisons completed the evaluation, representing under 5% of the prison estate. The fact that 95% of prisons did not take full advantage of the Restorative Justice Capacity Building Programme helps to explain why, according to the
Restorative Justice Council, fewer than one percent of victims of crime currently have the opportunity to take part in a restorative justice conference⁴.

The ICPR report explained some of the obstacles preventing prisons from hosting restorative justice conferences:

“The government launched several ambitious reforms, including: Transforming Rehabilitation (the privatisation of the majority of statutory probation services, leaving only work with high-risk offenders in the hands of the statutory probation service); new ‘Fair and Sustainable’ working structures (new terms and working conditions in prisons); and the application of an ‘efficiency benchmark’ in public sector prisons, to reduce costs. Both probation and prison staff tended to see these as threats. In combination the reforms created a highly unstable and uncertain implementation environment, resulting in the loss of a significant proportion of RJ trained staff and low management prioritisation of RJ.”

On a practical level, the evaluation found that the project depended on referrals, of which there were too few. This finding is consistent with previous studies of restorative justice initiatives: considerable investments in training staff, rendered inefficient by structural and cultural barriers, resulting in low take-up of conferences. It is important to stress here that the levels of demand do not reflect a lack of interest among victims or offenders.

“Lack of referrals has been found to be a key challenge to implementation by previous RJ studies (See, for example, Shapland et al, 2004: 52). Reasons for limited referrals were: the perception that RJ was a passing fad; protectiveness over cases; belief that it required extra work, such as sorting through caseloads for referrals; and misunderstanding of RJ, including concern that it would harm the victim.⁵”

Properly conducted restorative justice requires a sustained commitment from criminal justice practitioners, as it involves quality facilitation, full preparation, and the active involvement of offenders, victims and the community (ideally to include support networks of both the offender and the victim). It also requires post-conference support for some offenders by officers who have sufficient training to understand the process and its effects.
Inspections by HM Chief Inspector of Prisons seem to confirm a decline in prisons’ support for RJ. Few recent inspection reports mention restorative justice activity.

HMP Pentonville was one of a number of establishments that has hosted victim-offender conferences. It was part of an evaluation of restorative justice, conducted by Professor Joanna Shapland at Sheffield Hallam University (see endnote 6, below). Her findings suggested that an expansion of restorative justice in prisons was likely to result in a significant decrease in reoffending on release from prison. Despite that evidence, and despite the resources invested in setting up the restorative justice project in HMP Pentonville, a recent inspection found its future in doubt:

“The small-scale restorative justice project was a promising initiative. Eight case conferences, involving the prisoner facing their victim, had been held to date but the future of the programme was uncertain after July 2015, when the pilot project would end.”

The ICPR study suggested that lack of continuity was a structural problem: Implementation was only possible due to the personal commitment of individuals.

“Despite the best efforts of facilitators, RJ tended to operate as a ‘bolt-on’ to their everyday roles, which could result in stilted progress on RJ cases. ... Where sites succeeded, this was due to the motivation of individual facilitators and management staff who ‘wouldn't take no for an answer’. There was a palpable sense of enthusiasm and determination in these sites that was lacking in others. Our concern is that, at present, implementation success is overly dependent on such people; the risk is that it crumbles in their absence. Effective implementation must also be embedded in the wider local and national infrastructure. 6"
next to repair the harm, address their problems and re-orientate their life away from crime

- Victim satisfaction levels were higher for those who met face-to-face, rather than through an intermediary
- Restorative justice approaches are cost effective. As a result of reductions in the frequency of offending restorative justice projects saved nine times what they cost to deliver.
- More than three-quarters (77%) of the public surveyed thought that victims should have the right to meet the offender. 69% agreed that ‘offenders need to see the real impact of their crime and face the people they’ve harmed’.

The Shapland study found that, overall, there was a 14% reduction in the frequency of repeat offending, following a restorative justice conference.

The ICPR study also found qualitative evidence which help to explain the outcome for reduced re-offending:

“Many offenders were motivated by a desire to apologise – to 'make things right', often as a means of shedding their criminal identity – and to stop offending. . . . Over half of those who took part in RJ said that their motivation was to apologise and try to put 'some of my wrong right'. All of those who expressed such sentiments also spoke of wanting to move away from crime.”

These motivations are consistent with evidence-based explanations of desistance. The ICPR report quotes one offender who took part:

“I wanted to change so I thought to myself it might help me change and it did, it made me feel different in what I was doing.”

Restorative justice reinforces desistance, the process by which offenders build new, non-offending lives. RJ has particular benefits in counter-acting three criminogenic effects of custody: neutralisation, institutionalisation, and stigma.

The concept of neutralisation refers to a moral perspective, shared among offenders, that minimises the harm done by crime. Prison surrounds an offender with other like-minded individuals who also have an interest in denying the extent of the harm done. Institutionalisation refers to the learned dependency and fatalism which makes people less able to function upon release. Custodial experience also means that former prisoners are shunned by members of the public, making it more difficult for ex-offenders to find sustainable accommodation, or employment.
Restorative justice helps to address all three of these criminogenic factors. It is the most powerful means of increasing victim awareness; it promotes agency, the person's capacity to make decisions and act responsibly; and it provides a process through which the offender can earn the acceptance of the community. Awareness, agency, and acceptance are three outcomes of restorative justice which explain why it is so effective in reducing the risk of reoffending.

**Applying RJ to prison functions**

The Inquiry may wish to consider the possible application of restorative justice principles and tools to the internal operation of prisons.

Inspection reports by the prisons inspectorate describe a few prisons making use of restorative justice to resolve conflicts following fights and assaults. For example:

. . . some promising new projects had been introduced. For example, the ‘basic intervention group’ (BIG), which comprised a group of prisoners providing mentoring, constructive reparative activity and mediation, promoted positive behaviour and helped to resolve conflict. (HMP Oakwood, Unannounced inspection, December 2014)

A prisoner community had been formed, with trained staff, on one wing to consolidate the restorative justice principles in everyday prison life. A small restorative justice team was also applying mediation to support conflict resolution and diversion from formal disciplinary measures across the prison. (HMP Hewell, Unannounced Inspection, July, 2014)

These examples from individual establishments demonstrate the improved efficiency in basic functions achieved by employing restorative justice. They also reflect the guidance from the United Nations about maintaining order in prison. The recently adopted Nelson Mandela Rules (Standard Minimum Rules for the Treatment of Prisoners) includes:

Rule 38.1

“Prison administrations are encouraged to use, to the extent possible, conflict prevention, mediation or any other alternative dispute resolution mechanism to prevent disciplinary offences or to resolve conflicts.”
There is considerable potential for further expansion in the use of restorative tools for prison discipline. Gerry Johnstone (2014) observed that most punishment makes prisoners passive: their role involves no effort on their part to resolve the problems caused by their behaviour. In contrast, Johnstone describes the power of restorative justice to build a genuine sense of responsibility:

“One of the key advantages of a restorative process over traditional disciplinary procedures is that the former encourages and empowers perpetrators of harm and conflict to take meaningful responsibility for their actions and to appreciate that they – along with the prison authorities – have a stake in the creation of a safe and orderly prison environment.”12

The relevance of restorative principles and processes is clear: if the aim of prison discipline is to encourage a change in behaviour from the person who has caused harm, then restorative justice is essential.

Kimmett Edgar and Tim Newell have described other potential benefits of restorative justice tools for resettlement, family ties, sentence planning, discrimination, and complaints13.

The voluntary sector provides restorative justice courses inside prisons, including Sycamore Tree, the Forgiveness Project and SORI (Supporting Offenders Restorative Inside). Typically, prisoners meet volunteers who have experienced similar crimes to those for which they have been sentenced. One of SORI’s facilitators, Rev Martin Earl, was a winner of a Butler Trust Award in 2013. In his acceptance speech, Rev Earl explained:

“SORI has always taken the facilitator team by surprise. The consistent depth, challenge and ability to encourage the transformation of closed, defensive and deflective prisoners to become men who embrace taking responsibility for the harm they have caused, and who actively want and engage in repairing and preventing harm is an amazing transformative process.”14

One of the consequences of establishing Community Rehabilitation Companies has been a severe loss of funding for the Forgiveness Project, and other voluntary sector organisations providing victim awareness courses.

Ways forward
Every prison should include restorative justice as a core rehabilitation programme. NOMS should recognise that the option of restorative justice conferences is needed to fulfil a profound gap in resettlement, as highlighted by the Scottish Prison Service:

“People are sent to prison not to be punished or to have their fundamental human rights derogated, but to be deprived of their liberty. Prison . . . should not equate to permanent banishment from the communities from which they have been temporarily separated. There has to be some mechanism through which people can take responsibility to repair the damage caused as a result of their behaviour and which allows them to reintegrate and contribute as active citizens.”

The strong evidence that victim-offender conferences, for serious offences, resulted in a 14% reduction in the frequency of reoffending compares favourably with cognitive offending behaviour programmes, yet no government has invested similar resources in restorative justice, nor have RJ interventions had the structural support which is provided to offending behaviour programmes.

The policy changes recommended by the ICPR were that Government should:

- lead on a culture shift, to give greater priority to the harm done to victims through crime
- establish structures and funding required to make RJ work; and
- consider using statutory requirements to give greater weight to restorative justice in pre-trial and sentencing processes.

Government should adopt the recommendations of the ICPR report to ensure that investment in restorative justice is not squandered by failures of implementation.

Government should prioritise the provision of restorative justice conferences pre-trial and pre-sentencing for women offenders; Jon Collins wrote:

“The reasons why thousands of women go to prison each year for non-violent offences are unclear, and certainly need more scrutiny. But surely some of the thousands of women who go to prison for six months or less could instead serve a community sentence with restorative justice at its heart? This would benefit victims – who get little from seeing the offender go to prison – and help to tackle reoffending. . . . There is no evidence to suggest that female offenders are less likely than their male counterparts to benefit from restorative justice if they
take part. Indeed there are indications that it may even be more effective.”*16

(Are we failing female offenders? 4 November, 2015)

The Justice Select Committee should explore examples outside England, in particular New Zealand and Northern Ireland, to understand how governments establish restorative justice as an essential component of their criminal justice systems.

NOMS should adopt restorative justice principles in the design of prison regimes, and in particular in its current review of disciplinary measures. Programmes that engage prisoners and prompt them to think in restorative terms should be funded alongside conferencing as a key part of the journey towards desistance for many individuals.

We welcome the Committee’s inquiry. The potential of RJ, broadly interpreted, to shift the focus of the whole criminal justice system towards victims and towards a more constructive and effective philosophy of punishment remains largely unrealised.

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4) An RJC-commissioned poll by Ipsos Mori found that 69% of victims of crime had not been offered any form of RJ. Of those who had been offered RJ, only two percent were invited to meet the offender. The poll indicates that victim-offender conferencing in prisons is made available to fewer than one percent of crime victims. Online: https://www.restorativejustice.org.uk/sites/default/files/resources/files/Ipsos%20MORI%202014%20summary.pdf
5) ICPR op. cit.
6) ICPR, op cit.
Neutralisation, a term first used by Sykes and Matza (1957), was refined by Andrews and Bonta (1998) to refer to attitudes towards offending that included: denial of responsibility, denial of harm and denial of a victim.


Rev Martin Earl, HMP Altcourse, Butler Trust Award winner, 2013
