Written evidence from the IARS International Institute

Introduction: Professor Theo Gavrielides, Director and Funder

This response is formally submitted by the IARS International Institute which I founded and currently direct. For the past 15 years, I have been a restorative justice ‘student’ and despite my enthusiasm with the prospect of instilling something fresh into a broken criminal justice system, I remained objective. Most of my public speaking and academic articles would start in the same way: “The focus of researchers should not be on the superiority of restorative justice, but on the development of its processes and principles” (Gavrielides 2007; 2008; 2012a; 2013).

It is true that we have more evidence and writings on restorative justice than any other criminal justice policy, and yet it is far from being used in the way that its proponents hope. Whether this is a good or a bad thing remains to be debated. As one practitioner said to me a few years ago “When restorative justice works, it works really well; but don’t expect it to always be appropriate” (Gavrielides, 2007). How can we when one of the fundamental principles of restorative justice is voluntariness meaning that it cannot be imposed on offenders and victims as if it is another form of punishment.

We also have to ask whether restorative justice was ever meant or conceived to be mainstreamed. As a believer of individual empowerment and the founder of a charity that promotes community-led solutions for a better society, my question has always been ‘How can restorative justice, as a community born ethos (Daly and Imarrigeon 1998; Gavrielides 2012), enable the individual to have a genuine role in bringing fairness to society’. Following from this, ‘What is the role of government, academics and practitioners in facilitating this process’; not for their own ends, but for the individual, let that be the victim, the offender, their family, friends and their community.”

As an organisation, one of our aims is to empower the community and professionals alike to better understand restorative justice, its principles and potential benefits. We welcome your inquiry and would like to invite you to attend one of our seminars on restorative justice. We currently provide a range of online training products for victims of crime and their families as well as a CPD accredited e-course for professionals from criminal justice agencies, voluntary sector organisations and anyone working with victims of crime. We also provide more in depth half-day face to face training sessions on victims’ rights in restorative justice.

About the IARS International Institute
What we do
The IARS International Institute is a leading, user-led, international think-tank with a charitable mission to give everyone a chance to forge a safer, fairer and more inclusive society. Led by its founder and Director, Professor Dr. Theo Gavrielides, and staffed with an expert and dedicated team of researchers, interns and volunteers, IARS achieves its charitable aims by producing evidence-based solutions to current social problems, sharing best practice and by supporting young people and the community to shape decision making. IARS is an international expert in user-led research, evaluation, human rights and inclusion, citizenship, criminal justice and restorative justice. We deliver our charitable mission:

- *By* carrying out action research and evaluation that is independent, credible, focused and current.
- *By* acting as a network that brings people and ideas together, communicates best practice and encourages debates on current social problems.
- *By* supporting the individual (with an emphasis on young people) to carry out their own initiatives to shape decision-making.
- *By* being an authoritative, independent and evidence-based voice on current social policy matters.
- *By* thorough, high quality user-led (youth-led) evaluations, increasing the effectiveness of how organisations work and deliver.

Our values
IARS was set up by volunteers as a user-led and user-focused think tank with an emphasis on changing society from the bottom up through evidence. IARS’ stated vision is “a society in which everyone is given a chance to actively participate in social problem solving”. Our Mission is “to give everyone a chance to forge a safer, fairer and more inclusive society”. We do this by producing evidence-based solutions to current social problems, sharing best practice, and by supporting young people and the community to shape decision-making from the bottom-up. We believe that the best solutions to social problems are found in those who are directly affected by them. We were founded upon the principles of:

- User & civic participation
- Restorative justice and dialogue
- Individual empowerment and responsibility

We act in the spirit of partnership, dignity, integrity and honesty and we remain independent, fearless and respectful of diversity and equality issues for all.

Inquiry Response

Introduction
IARS has demonstrated a strong focus on restorative justice throughout its 10 year history, contributing to best practice user-led research, training and evaluation to expand and improve
service delivery within the sector both across the UK and internationally. Most recently we have published the following research reports on restorative justice and a victim-centred criminal justice system:

- Restorative Justice in the United Kingdom
- Restorative Justice and the Secure Estate: Alternatives for Young People in Custody
- Waves of Healing: Using Restorative Justice with Street group Violence
- Restorative Justice and Domestic Violence: A Critical Review
- Restorative Justice Theory and Practice: Addressing the Discrepancy
- A Victim-Led Criminal Justice System: Addressing the Paradox

We are pleased to draw on this experience to provide the following response to the Justice Select Committee’s inquiry.

**Our understanding of “restorative justice”**

There are a number of definitions of restorative justice; Gavrielides (2008) explains that these tend to be divided into two big groups. The first places emphasis on the various types of restorative process, while the second highlights restorative outcomes. There are also the wider, value-based definitions including “Restorative justice is an ethos with practical goals, among which is to restore harm by including affected parties in a (direct or indirect) encounter and a process of understanding through voluntary and honest dialogue” (Gavrielides 2007, p. 139). Gavrielides argues that restorative justice “adopts a fresh approach to conflicts and their control, retaining at the same time certain rehabilitative goals” (ibidem).

Gavrielides understands the term ‘ethos’ in a broad way. “Restorative justice, in nature, is not just a practice or just a theory. It is both. It is an ethos; it is a way of living. It is a new approach to life, interpersonal relationships and a way of prioritising what is important in the process of learning how to coexist” (Gavrielides 2007, p. 139). For Braithwaite (1998) and McCold (1999), the principles underlying this ‘ethos’ are: victim reparation, offender responsibility and communities of care. McCold argues that if attention is not paid to all these three concerns, then the result will only be partially restorative. In a similar vein, Daly (2000, p. 7) said that restorative justice places “…an emphasis on the role and experience of victims in the criminal process” and that it involves all relevant parties in a discussion about the offence, its impact and what should be done to repair it.

**Sector development and service delivery**

Identifying current restorative justice service providers as well as those who we know will be expected to become restorative justice providers due to statutory or other reasons is critical to the ongoing success of strategic planning within the sector. It is important to note that there is no state-run organisation of practitioners and that the current situation is complicated by the open market culture and provision of services, which can lead both to opportunity and creative tensions on one hand – and competition over influence, funding and contracts on the other.
Many have argued (Gavrielides 2007) that the lack of uniformity in the development of the restorative justice sector seems to have resulted in the appearance of varying levels of quality standards which differ in the way they are carried out, their effectiveness and outcomes. More importantly however, they can vary in the level of their ‘restorativeness’. This fosters tension within the field and seems to allow some practices to be gradually exposed to ‘foreign agendas’ that are often used to ‘enhance their efficiency’ and improve their target measurement.

Furthermore, there is a lack of widely accepted training standards and procedures. It now appears that this oversight has led to a number of implications for restorative justice, central among which is inconsistency. Past attempts to address this problem showed that it might have become more complicated than originally thought. One question that this invites is, how and who will bring implementation back in line with the normative principles? The other danger is the diluting down of restorative justice principles to fit current means of delivery. For example, the Thames Valley Police training and the results of studies such as the Youth Justice Board 2004 National Evaluation suggest that practice most often precedes training, and that during application many facilitators are found to be non-qualified or needing follow-up training. As the evidence suggests, such practices are often in response to the immediate needs of the given programme or provider.

There is also evidence to suggest that most training courses seem to teach little to nothing about the normative restorative justice principles which should inform service delivery and practice. Even where such teaching is provided, it is most often inadequate, as trainers are not clear about the theory and its significance. In consequence, many trainees are left unaware of the theoretical framework in which they need to place their practices. The danger resulting from this is that as such practitioners facilitate more and more programmes, the character of restorative justice practices will be impacted. There is a general belief that to achieve consistency and higher quality in restorative practice, training and accreditation must be controlled centrally and from the top.

**Financing service delivery**

Implementing restorative justice in a difficult financial climate instantly brings up the question of cost and benefit. Although data on the financial viability of restorative justice is extremely limited, the argument that it is a cheaper option for governments has gained some traction.

This is mainly because the financial analysis of imprisonment is well developed (Justice Committee 2010). In the UK, keeping each prisoner costs £41,000 annually (or £112.32 a day). This means that if there are 85,076 prisoners at the moment, prisons cost as much as £3.49bn. According to Home Office statistics, it costs £146,000 to put someone through court and keep them in prison for a year (Prison Reform Trust 2010). Moreover, according to a 2010 report by the New Economics Foundation, “a person that is offending at 17 after being released from prison will commit on average about 145 crimes. Out of these crimes about 1.7 are serious crimes (homicides, sexual crimes or serious violent offences). Given that a prison sentence is estimated to increase the likelihood of continuing to offend by 3.9 per cent, this translates into an average of about 5.5 crimes caused, out of which about 0.06 are serious” (Knuutila 2010, p. 40).

In June 2010, the Justice Secretary said that prison often turns out to be “a costly and ineffectual approach that fails to turn criminals into law-abiding citizens” (Travis 2010, p. 1). He also indicated
the new government’s appetite for seeking new and more cost effective ways of reducing reoffending and serving justice.

The scarce evidence on restorative justice suggests that the savings that flow from the contribution made to reducing reoffending rates are impressive; According to Shapland et al. restorative justice can deliver cost savings of up to £9 for every £1 spent (2008). Victim Support also claims that (2010, p. 29), “if restorative justice were offered to all victims of burglary, robbery and violence against the person where the offender had pleaded guilty (which would amount to around 75,000 victims), the cost savings to the criminal justice system – as a result of a reduction in reconviction rates – would amount to at least £185 million over two years”. Furthermore, according to Matrix Evidence (2009), restorative justice practices would likely lead to a net benefit of over £1billion over ten years. The report concludes that diverting young offenders from community orders to a pre-court restorative justice conferencing scheme would produce a life time saving to society of almost £275 million (£7,050 per offender). The cost of implementing the scheme would be paid back in the first year and during the course of two parliaments (10 years) society would benefit by over £1billion (2009).

Time as a ‘unit cost’ has also been recorded in the scarce available literature. For instance, according to the 2010 Association of Chief Police Officers (ACPO) survey on restorative justice, the average time taken by Hertfordshire police officers dealing with minor crimes through ‘street restorative justice’ was 36 minutes as opposed to 5 hours 38 minutes spent on issuing reprimands. Translating this into cost meant £15.95 for restorative justice and £149.79 for a reprimand. Similar savings were found for Cheshire police (£20.21 vs £157.09) (Cheshire Operation Quest 2 2009).

The belief that restorative justice can cut down costs had an impact on funders’ intentions and priorities. For instance, the 2012-13 NOMS Business Plan states: “We will compete fairly in open markets ensuring expansion of work across the estate at no additional cost to the taxpayer and including financial contributions to victims’ services” (NOMS 2012b).

The Ministry of Justice also seem to have taken a more cautious approach and a different philosophy on how funds are spent on criminal justice. One of the results of this new approach was the introduction of what is now called ‘Payment by Results’ policy. According to the Ministry of Justice:

“Introducing payment by results means that we want to reward providers when they are successful in reducing reoffending levels, rather than providing upfront funding regardless of outcomes achieved. By implementing a payment system based on achieving actual reductions in re-offending – rather than meeting input/output targets – we think we can deliver improved public services at the same or less cost. This represents a radical departure from the justice policies of previous governments”.

The Ministry of Justice stated their intention to contract out probation services for low and medium-risk offenders to private companies and charities. Following a targeted 2012 consultation that aimed at bringing tailored changes to the probation services, 280 responses were received. In their

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subsequent 2013 paper *Transforming Rehabilitation: a revolution in the way we manage offenders* (Ministry of Justice 2013), the government is said to have reflected on these responses putting “forward proposals for reforming the delivery of offender services in the community to reduce reoffending rates whilst delivering improved value for money for the tax payer” (Ministry of Justice 2013). One of the key objectives of these reforms is “opening the majority of probation services to competition, with contracts to be awarded to providers who can deliver efficient, high quality services and improve value for money” (Ministry of Justice 2013).

It is expected that 70% of probation’s core work will be put out to competitive tender. All 35 probation trusts seem to have acknowledged that they have no other choice but to accept the shift in government thinking on how public funds are disposed for criminal justice. In a competitive market where private organisations are well placed in preparing bids and maximizing resources, probation trusts also seem to have acknowledged the need to deliver additional and better outcomes for their users.

This presents restorative justice with a unique opportunity to establish itself as outcome focused practice that delivers better justice for all. Making claims that it costs less however is not the right way forward. Further research is needed to support this thin argument. While it appears that it is economically advantageous to society to adopt a restorative approach to crime, research suggests that an appeal solely on this basis may undermine restorative justice in the long run. For instance, there was consensus among Gavrielides’ (2007; 2012a) interviewed practitioners that this could lead to quick fix policies, a lack of a coherent and long term strategy and high expectations. One practitioner said “When it comes to asking money, the problem is that restorative justice has a slow time delivery... this is especially the case with the Government where the money usually comes from. Funders, in general, want to see results now, and treat restorative justice as a ‘quick fix tool’; this often leads to disappointments and misunderstanding about what restorative justice really is and what it can offer”.

The way funding is distributed for restorative justice has already raised concerns among practitioners. In Gavrielides (2007) one practitioner noted: “So, when you get money from the Government, then it is likely that you get their agenda, and this affects how to measure the value of restorative justice and its outcomes”. Someone else said: “The government tends to give prime importance to reducing re-offending, and although this might not be problematic as such, the way restorative justice has so far been used suggests that it been treated as a ‘means to an end’.”

If we are to seize this third opportunity, then restorative justice must be treated as a practice and an ethos that is based on different principles from the ones that characterise the traditional criminal justice system. The literature suggests that the prioritisation of funding resources according to groups of parties involved in a crime affects the sponsoring of restorative justice schemes as the restorative principles place equal significance on all communities of interest. For example, funding specifically allocated to rehabilitating offenders may not consider restorative justice schemes to be

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3 As noted by NAPO, see [http://www.napo.org.uk/about/probationunderthreat.cfm](http://www.napo.org.uk/about/probationunderthreat.cfm) (accessed March 2013).
fit for that purpose. Likewise, funding for victim support programmes may treat restorative justice as something for the offender and indeed dangerous for the victim. Funders and stakeholders need to either remain open-minded when assessing funding applications for money allocated to specific parties, or introduce new funding streams for restorative methodologies that focus on all communities of interests.

We are aware that the provision of funding for restorative justice services has always been a challenge which must now be considered within a context of increasing austerity and spending cuts. The majority of funding for restorative justice services is sourced from existing criminal justice agency budgets in addition to a number of government pilot schemes which have created periodic and localised funding anomalies. For example, while Police and Crime Commissioners are funded to provide services for victims which can include restorative justice services, there is no specific requirement that resources be allocated to such resulting in great inconsistency, with some Commissioners strongly investing in restorative justice programmes while others do very little.

In many agencies, while restorative justice has been seen as a beneficial tool for general work, specific resources have not been allocated for service delivery resulting in restorative justice workers providing their services on a pro bono basis. There is a concern that there is an impression amongst criminal justice agencies the restorative justice services can be engaged at little to no cost from voluntary groups, acting on ethical grounds. Such a view will do little to increase the development of the sector, service delivery standards or consistency in implementation.

Research has also shown that funding priorities are not always consistent with the normative principles of restorative justice as understood by its extensive theoretical literature. The literature suggests that the prioritisation of funding resources, according to different parties involved in a crime such as victim, offender and community, conflicts with restorative principles which place equal significance on all parties. Funders and stakeholders should remain open-minded when assessing funding applications for resources allocated to specific parties, or introduce new funding streams for restorative methodologies that focus on all parties involved.

Furthermore, much available funding is targeted at reducing re-offending, while less significance is given to a holistic approach that also increases victims’ satisfaction, healing and meaningful reintegration. Any restorative justice service provider should accept that while a certain level of impact should always be expected from the uneven relationship between restorative justice and the punitive traditions of criminal procedure, this cannot alter the practices’ central character. As funders control resources, many practitioners are given fixed target agendas, which they need to satisfy, even if that means adapting their practices to fit.

Practitioners have also reported that they often receive pressure from funders to deliver within timeframes that were not consistent with the principles of restorative justice. In particular, funding bodies appeared to have demanded immediate results, and introduced timescales and performance measurement targets that were difficult to reach. Ensuring that funding and performance measurement frameworks are applied appropriately to restorative justice services is critical to the effective use of current and future investment in the sector and presents restorative justice with a
unique opportunity to establish itself as an outcome focused practice that delivers better justice for all.

It appears that most restorative justice practices are run in the community by voluntary and community sector organisations and groups (Marshall 1996, Johnstone 2002). Although this allows a considerable level of flexibility into the development and management of these schemes, it also adds a number of challenges. Voluntary and community projects are most of the times under-resourced and understaffed while most of the times are not seen by statisticians, criminal justice officials and governmental bodies as contributing to crime prevention.

Commentators have repeatedly stressed the important role of these projects in promoting a feeling of empowerment and belonging in community groups. Voluntary organisations help maintain a balance between community groups often feeling isolated and let down by public services and government. They establish communication channels between individuals and government bodies, and enable small and large minority groups to have a say in policymaking, legislation and regulation of the country’s affairs.

The vast majority of their activity takes place at a local level, often addressing the needs of society's most disadvantaged groups. Statistics also show that the public trusts these groups more than other criminal justice services. Charging these organisations with a £1,500 fee to acquire a mark that will allow them to practise what is rightly theirs marks the beginning of the end for restorative justice in the UK.

The Victims’ Code
IARS remains concerned about a number of persistent failures in acknowledging fundamental international rights for victims of crime. A key concern relates to the revised Code’s definition of who is a victim. Although it extends the services offered under the Code to victims of any criminal offense, it continues to ignore key aspects of the EU Directive 2012/29/EU on the minimum standards of rights, support and protection of victims of crime (the Victims’ Directive). In particular, the Victims’ Directive makes it very clear that all the rights and minimum standards included within apply to all victims of crime irrespective of their residence status. The rights set out in the Victims’ Directive are not made conditional on the victim having legal residence status in European Union territory or on the victim’s citizenship or nationality. Thus, third-country nationals and stateless persons who have been victims of crime on EU territory should benefit from these rights without discrimination. Recital 9 of the Directive furthermore specifies that “victims of crime should be recognized and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground such as race, colour, ethnic or social origin, genetic features, language, religion or belief (…)”.

Unlike the Victims’ Code, the Victims’ Directive understands victims in a much broader way, capturing groups who have traditionally been excluded from protection including migrant, refugee and asylum seeking people, as well as victims whose crime has not been prosecuted or who simply do not wish to enter the criminal justice system. The Victims’ Directive is particularly powerful for Black and minority ethnic communities, victims of gender based violence and victims of child abuse.
The approach of the current UK administration to migrant, refugee and asylum seeking groups may have clouded the good intentions of revising and strengthening the Code.

A Victims' Code without a Victims' Act will remain weak and its implementation piecemeal. IARS was pleased to see that intention to introduce a Victims' Bill was announced in the Queen's Speech in 2015 and we remain hopeful that the government will continue with these plans. IARS was also pleased to welcome the first reading of Victims of Crime Etc (Rights, Entitlements and Related Matters) Bill 2015-16 in October 2015 and the possibility of the rights of victims and the associated duties of service providers being raised to a stronger statutory level.

A further concern is the lack of provisions that would empower victims directly to challenge services that fail to honour the rights protected in the Victims’ Code, the Victims’ Directive or any future Victims’ Act. IARS response to this issue has been the development and release of free online training for victims and their families aiming to empower them directly in regards to utilising the Victims’ Directive throughout their contact with criminal justice agencies, victim support services and restorative justice services. Accredited training has also been developed for criminal and restorative justice professionals while extensive research that engaged with victims in the UK and EU was published in November 2015. The Victims’ Minister, who spoke at the launch, rejected legislation that would incorporate the Victims’ Directive, however, he did say: “The work that has been carried out by IARS helps us to really understand how legislation can affect victims’ lives. It is so important victims are heard throughout the justice system and placed at the forefront of reforms. Recovering after a crime can be difficult but we have taken a number of steps to help victims cope with what they have been through, and to make sure they are a priority”.

**National Offender Management Service (NOMS)**

The NOMS Restorative Justice Capacity Building Programme was perhaps the most significant development in the restorative justice sector in recent times. However, it was implemented during a difficult period of reforms for prisons and probation services which caused organisational upheaval and created significant barriers to the success of the programme. Perhaps most notably, the number of conferences that were conducted was much lower than expected and many sites are struggling to implement viable restorative justice schemes.

Despite this, some useful lessons can be identified. According to the evaluation of the programme, the vast majority of participants were deeply satisfied by the conferences and their outcomes and many of them found it a transforming and emotionally charged experience. Moreover, the programme facilitated the development and expansion of restorative justice to new centres of practice.

Perhaps the most important impact of the programme has been that it has made clear that in order to ensure the effective embedding of restorative justice schemes, a cultural shift within the criminal justice system is also needed in addition to resources and capacity building. Such a shift needs to better incorporate the principles of restorative justice in supporting both victim and offender beyond a ‘zero sum game’ and without focusing solely on catching, convicting and punishing the offender, in addition to a fundamental commitment towards a victim-centred approach at a
systemic level. The NOMS programme, and the difficulties it faced from external policy decisions, also demonstrates that to be most effective restorative justice initiatives cannot operate in isolation from the rest of the criminal justice system, but must be part of a broader strategic direction.

**Recommendations**

Restorative justice was reborn not out of formal structures and legislation, but of voluntary action by enthusiastic and dedicated practitioners from around the world. As the restorative tradition is now expanding to deal with crimes, ages and situations that it has never addressed before – at least in its contemporary version – and as it starts to make sense in national, and also regional and international forums, then the responsibilities of both restorative practitioners and academics redouble. Bridges must be built in order to synthesise.

From the evidence available, IARS would like to submit the following general recommendations:

1) That central and local government funding priorities and performance measurement frameworks better reflect restorative justice practice, principles and desired outcomes so that these are tailored to best practice service delivery models rather than the reverse.

2) That cross-government partnership approaches works best so that investment in, and the expansion of, restorative justice service delivery is coordinated, avoids duplication and allows for the sharing of lessons learned to avoid repeat mistakes.

3) That the Victims’ Code be revised to bring the definition of "victim" in line with the Victims’ Directive by extending it to anyone irrespective of their citizenship status. Particular focus will need to be given to migrant, refugee and asylum seeking women who become victims of gender based violence and abuse.

4) That the Government re-commit to passing a Victims’ Act by the end of 2016 and takes identifiable steps to support and progress its passage through the houses of parliament.

5) That awareness amongst victims, as well as criminal justice agencies and victim support services, of restorative justice and available local services is actively increased through the promotion of public dissemination projects and free training courses such as those provided by IARS.

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