Commentary of Part One of JSC committee meeting dated 19 April 2016.

I would like to add some commentary on your committee meeting dated Tuesday 19 April 2016. I speak from the perspective of one of the operational managers of the randomised controlled trials into RJ, an experienced practicing facilitator independent of the Restorative Justice Council. I have been working in RJ for 17 years but, as a purist and direct critic of some current practices leading to inertia am often excluded from the usual RJ circuit. If you have seen the video Woolf Within – my programme facilitated that case.

Randomised Controlled Trials (RCT)

The impact of RCT's is almost entirely misunderstood as some people lump RCTs in with general research. The RCT tends to be narrow and specific to ensure homogeneity for that being tested (comparing apples with apples and not with oranges). The RCT creates a specific point of change and, because of the randomisation, ONLY the treatment being tested is responsible for the effect AND NOTHING ELSE. Even after an explanation intelligent people will still suggest that our RJ group were more inclined towards desistence in the first place – this is not so. Each group had roughly equal numbers of repeat offenders, violence, drugs, mental disorder, etc. RCTs virtually eliminate bias. In our RCT the facilitators did not pick the participants on the basis of some personal preference the computer said yes or no!

The medical world, which persistently tests by RCT, would nowadays not employ the more subjective style of approach promoted by one of your witnesses later in part 2. The criminal justice system is still, mostly, operating a medieval approach to reducing crime (bleeding and leeches, etc.) by resisting RCT testing.

The RCTs were described by Jon Collins as ‘old’; they are as old as many RCTs on health procedures or medicines which are still in regular use. For example, for cancer, radiotherapy, chemotherapy and surgery have all been subject of RCTs decades ago; homeopathic medicines have not been subject of RCTs but on the internet you can find many personal opinions of their value in fighting cancer! Which would you chose for your loved one?

Once the penny has dropped for true nature of what RCTs deliver, other research into the impact of a change pales into almost insignificance and are often no better than lengthy masses of opinion equivalent to a tabloid survey supporting a bias.

You asked about breaking down the studies into regions and indeed they can be broken down into Northumberland for magistrates and youth low-level offending (despite the PCC apparently knowing nothing about this study and quickly diverting her answer to her current programmes), Thames Valley for post-convictions and the London Crown Court trials for post-plea/pre-sentence robbery and burglary. It is the nature of RCTs to be specific and one would not expect a medical RCT on cancer to necessarily provide an answer to questions on diabetes. A scientific approach to criminal justice needs to become as precise as health science.

The RCT approach has other profound implications too because it assesses the comparison group with equally independence and, in the UK trials, one can invert the findings in relation to the criminal justice system. For example, for London robbery and burglary, the criminal justice system operating without RJ increases convictions by 14%, increases the overall rate of reoffending by 28%,
it leaves the victims with a significantly higher level of post-traumatic stress and dissatisfaction, and costs the country £8 more to do so. I will be typically and unpopularly direct here; any authority, including government that does not implement RJ in the areas tested by RCT is in neglect of its community. For a medical analogy, this is the equivalent of a doctor not prescribing a treatment that is effective and economical.

**Money savings**

The exact sum is £9 saved for every £1 spent on restorative justice. The figures are not really “ball-park figures” but specific to the RCT case flows although they may be considered ball-park for other crimes not included in the trials. I would say, from my experience of murder and domestic violence RJ, that the costs are greater and the savings are more emotional than material for the criminal justice system. The evidence for costs comes from the Justice Research Consortium trials based in the London Crown Courts (applying RJ post-plea to robbery and burglary) and uses the Home Office’s own cost of crime figures. The cost of crime for the crimes NOT committed based on the crime reduction effect that was achieved using RJ in those trials only. The cost of the RJ was gathered using the Metropolitan Police Service (MPS) costs of one Chief Inspector, myself, and 7 constable facilitators with administration support (the project made these savings without using volunteers). Professor Rod Morgan pointed out that a problem with RJ is that those who invest in it do not reap the benefits of the savings. When the Home Office withdrew the funding for the RJ trials the MPS closed the RJ team down in favour of core services. The savings, down the line, went more directly to the victims, offenders, families, health service, courts, probation and prisons. It would also be true to say that the savings arrive in someone else’s term of office, therefore any manager who implements RJ is unlikely to be able to claim great savings for career advancement – just expenses.

It is important to note that this money saving, because of the RCT, is down to the RJ and no other factor.

You are right when you say there were variations in savings across the sites, this is not a defect in the study because the sites tested different things so that would be expected. One would not highlight a medical study with variations as somehow deficient if it was testing a treatment on illnesses with different levels of severity or chronology. So, it is possible, as you asked, to “drill down with greater granularity.” Interestingly the best RJ benefits and savings come from serious casework but for reasons I shall not cover here the criminal justice system embarked upon delivering RJ to minor offences and children!

**The Joanna Shapland Reports**

While these reports are the official versions they are quite impenetrable and merge RCTs with non-RCT studies which were often not testing necessarily the same thing or were claiming success for dealing with compliant people (who may well have not reoffended anyway). Many messages were lost or buried in the reports to never be seen again. Joanna Shapland was brought in as a UK third party to write up the Home Office research. The RCT studies were actually run by Professor’s Lawrence Sherman and Heather Strang, now both based at Cambridge University. They are solid experts on what the RCTs mean and about RJ across the world. Both are unbiased purveyors of the ‘what works’ philosophy (and do not suffer opinion based research well). I urge you to speak with them to be clear on the results. They can also appraise you of the long term implications from an Australian RCT study which, for example, show that RJ victims have more difficulty remembering the original crime than those selected for court.
The Definition of RJ

If RJ in the UK has a built-in issue, it is that many people working with it do not seem to know what it is! This is a hobby-horse for me, so indulge me for a moment. Using another medical analogy, what is penicillin? You may not be a chemist so you may describe it as an antibiotic; but there are hundreds of antibiotics for different purposes. So, ‘antibiotic’ is just a grouping – it does not define penicillin. You may describe it as a substance that kills bacteria… but so does bleach! If you want to test penicillin separately from other antibiotics or bleach, the distinctive difference becomes crucial. Penicillin is more accurately described as C9, H11, N2, O4, S. If any of the numbers or letters are different, it may be similar, but it is never penicillin. A changed formula, perhaps from a foreign pharmacist or economically challenged company, may be better than penicillin, it may make no difference, it may make things worse, being poison. People may not like this too much but so it is with RJ.

If RJ means anything one likes, then it means nothing at all. The current UK government definition of RJ is quite the most ridiculous definition I have read, where a Judge in court could describe their process as restorative. There are a number of good definitions of RJ, and I will not sell you a specific one here but promote that, whatever definition you chose, it should distinctly describe a treatment that can be replicated as exactly as possible, like penicillin, and not be confused with other treatments. When I look at motives for redefining RJ, I have observed, people have watered down definitions of RJ because I believe they have found it difficult to achieve full RJ and have opted for easier activities that they claim are RJ for fashionable reasons.

It is very important to note that the RJ subject of the RCTs around the world, which shows irrefutable benefits to victims, reductions in reoffending and costs are based on face-to-face meetings between the victim and the offender of the same crime and NO OTHER INTERVENTION, with one exception.

The one exception is interesting in that it tested the RJ process, essentially an empowering dialogue, in drink drive cases in Australia. This caused a 16% increase in re-offending when compared to the criminal justice system. There is some interpretation needed if one wants to establish why this is. The criminal justice system certainly may have a greater impact on changing behaviour with its strong penalties but there was no victim present because these were victimless cases. The Australians tried proxy victims, videos and the like but made no improvements. The distinctive chemical element of the victim was not present to create the chemical reaction needed (highly likely to be empathy which has recently been captured as a physically observable process on MRI scanners).

RJ Models

Your question of effective models relates to your chosen definition. The rigorous evidence for effectiveness is for face-to-face meetings ONLY. Suggesting evidence for anything else is opinion. This lack of evidence goes for ‘indirect’ or ‘shuttle’ work (where the parties do not actually meet but the facilitator passes messages back-and-forth) and writing letters. These indirect practices may make no difference at all or even make matters worse. Indirect work, without the victim present, shows more resemblance to the Australian drink drive trial which increased reoffending.

My opinion is that RJ is good for domestic violence, rape and homicide but there is no rigorous evidence for this because it has not been tested – it is my opinion only. I have been working with Durham Constabulary for an RCT on RJ with domestic violence but new finance cuts mean the Chief Constable, who is keenly pro-science in justice, has now withdrawn support for research.
If one said that ‘paracetamol is an effective penicillin’, because they are different and we understand this difference, the statement readily appears as non sequitur. When the Northumberland PCC describes her “range of things” as including restorative justice by proxy this for me and many in RJ is non sequitur. The RJ process must involve those affected by the crime and as soon as the victim meets an offender who was not the actual offender of their crime (or the inverse where offenders meet a victim who was not their victim) it ceases to be RJ in the purist sense. Some might call it a restorative approach but even that phrase misleads the reader into still seeing the process as restorative. This is because the proxy intervention does not empower the parties to deal collectively with the aftermath of their crime and its implications for the future. The proxy model may work, make no difference or make things worse – but it has not been tested so any view on this is subjective opinion. Proxy interventions are easier to achieve that true RJ so I am not surprised people go for them. The Australian RCT on drink drive, without a victim, showed an increase in reoffending and as proxy interventions do not have the true victim they could also show an increase. Our sister RCT project in Thames Valley dabbled with proxy work but stopped when they identified negativity from the offender, one burglar responded angrily, “Why are you having a go at me, I didn’t burgle your house!” Professor Sherman halted the approach as it was considered that the victim had no ‘legitimacy’ to speak to or question the proxy offender. In short this is a separate treatment, like a new medication, and needs its own separate test.

I despair when I hear purveyors of non-RJ projects touting the benefits achieved by the RCTs for activities that bear no resemblance to face-to-face RJ. In passing here, I will also point out that the ‘restorative’ in RJ refers to the restoration of power, not property, not happiness, not the status-quo or any other positive benefit that may or may not happen just power.

While “Community Resolution” described by the PCC might possibly include RJ, and RJ might be used as a community resolution they are not the same thing. In so many Community Resolutions, police, or other agencies, create or invent outcomes, some even offer a list of outcomes for parties to choose from – this is not RJ, commonly the parties do not meet or even communicate. This is not RJ and typically the authorities still control the outcome (or, as the late criminologist Nils Christie would say, “Steal the conflict.”). Again these alternative approaches have not been rigorously tested, please do not lump them in with RJ.

The PCC also mentions her YOT delivering offender-led RJ. I cannot speak currently for Northumberland but many YOTs I have come into contact with insist on remorse as a pre-requisite for RJ which reduces the application of RJ when remorse is not required by the RJ philosophy - which could actually deliver remorse.

Later Jon Collins said that the Shapland reports showed there were tentative conclusion to show that face-to-face was more effective. They were not tentative at all because the indirect/shuttle model or written letters were not even rigorously tested. For Jon to claim that indirect has “huge benefits” is just plain incorrect but will, no doubt appeases the organisations that struggle to get a face-to-face meeting. The view on indirect RJ as effective is conjecture based on opinion not a measurable factor, the effects of face-to-face is clear with, in most cases and to use ‘RCT speak’, a high probability that the treatment causes the effect. To even put the face-to-face model on a par with indirect is misunderstand the power of RCT and the equivalent of suggesting, that for cancer, both radiotherapy and St John’s Wort will be work just fine. An interesting comparison of the RCTs with a non-RCT project (CONNECT) showed that when offered the option of indirect people would opt for indirect but that when offered face-to-face only the same number of people agreed to face-to-face. Indirect work is best as a fall-back position for face-to-face RJ when parties cannot face
each other and has no evidence of effectiveness. The government has declined an RCT of indirect RJ intervention.

Who Leads RJ

The PCC introduces into your committee meeting the concept of offender-led and victim-led RJ. These are rather misleading phrases that generally point at the initiator of the RJ process. While some do, currently few people initiate RJ without being asked first. A more useful term, but not particularly palatable for some, is veto and there are three RJ vetoes – that is three parties that can stop RJ happening: the victim, the offender and one other, if you will forgive the drama, I shall describe later.

The PCC hopes that its recruitment of commercial CRC workers into the ‘Victim Hub’ will resolve its low caseload of RJ. I do not hold out a lot of hope here. The Shapland report described, albeit lost in its impenetrable style, that the RCT projects, as opposed to the under-performing non-RCT projects all quickly identified the model of case acquisition that became the most successful. I must tell you that it was pressure from the University of Pennsylvania and National University of Australia that drove us to the conclusion that we could not wait for referrals from agencies, Judges, solicitors, police or magistrates. We established that the only method to get significant case work was ‘extraction’ – this is the automatic ‘taking’ of cases. After negotiations with Judges we effectively took every case that fit our research criteria regardless of any opinions held by a Judge or anyone else about the case. In London we managed RJ in the short remand for sentencing period with very few requests for additional adjournments. All over the country around 60,000 people have been trained to do RJ but a few hundred may be actually doing, why is that?

The primary reason for the failure of funded RJ programmes is the lack of casework, my first observation looking at these project is that they train staff before establishing case flow. Further, their case flow is based on referral and some go to huge and expensive lengths to “increase awareness” by scattergun marketing to people who are not victims at that time. They pound circuits of agencies chivvying for referrals and may get dribs and drabs before that stream dries up and needs another referral boasting visit. The agencies, if they even remember, casually risk assess and second guess the wishes or needs of the victim or offender but for the majority of the time they are too busy with their core duties. Automatic extraction, where the agencies trust the RJ services, is the first step towards increasing the case flow, use of RJ and increased awareness.

The PCC mentioned she was building in another hurdle to RJ and that was her staff working together on cases they “might think are appropriate” for RJ – this is not restorative because the victim (and the offender) have been disempowered immediately by a third party assessing suitability without consulting them. The presumption to empower victims (and offenders) is that RJ is appropriate and suitable until they consider it is not. The conflict that some perceive in risk assessment is more imagined than real and, surprising it must be to some people, the victim could decide of their own accord to take the risk of being upset in a RJ meeting to achieve their wants or needs. Generally, as an experienced facilitator, I have made all my meetings safe. In my RJ career, facilitating and managing an RJ Programme, I have only declined 2 cases that the victims wanted to proceed on (both involved large fights between permanent caravan dwelling families which took several busloads of police to quell and I didn’t want that many officers in the RJ room).

The PCC described 232 cases ending up with 11 interventions. First, Northumberland has more than 232 instances of crime where offenders are identified for victim crimes. So already the top of the funnel appears narrower than it could be. However, the criminal justice system, after taking into
account dark crime as revealed by the British Crime Survey, only actually concludes about 4% of total crime so, like the system, RJ impact will be measured on the impact of the few it does touch rather than those it does not. From the London project, robbery and burglary, I can estimate that approximately 50% of cases can go to full face-to-face meeting with victim and offender consent. The Northumberland PCC operates post criminal justice system and, Thames Valley who worked in a similar position, would advise on a ‘sweet spot’ to offer the process of part way through a sentence if the sentence is prison (and not immediately after sentencing or immediately before release). In other cases, the research showed that the offer of RJ is best made as soon as possible in the criminal justice system’s journey for the victim with an offender. In any case RJ should not occur in a case being prosecuted before a plea or finding of guilt, as to do so would jeopardise the independent recollection of witnesses in a trial (this has not been tested in court but is a realistic assumption).

The Quality Argument

When someone in RJ talks about quality I find myself looking for the hidden messages. The focus on quality in RJ, I believe, is a reaction to poor caseload or possibly an excuse for it. When numbers of cases are low I have heard project managers wax lyrically about their project focussing on quality rather than quantity, implying without any knowledge of the truth, that the more successful projects did not. There is also an implied binary argument that you can only have one or the other – I do not think so.

No project manager, and I as the manager of the London Crown Court Trial, will ever admit to low-quality. Quality has never been rigorously tested in RJ as to whether it achieves better results or not because we all believe we are giving a quality service. Anyone suggesting their process is better for its supposed quality is quite possibly hyping-up their product, obscuring deficiencies or, at best, expressing an opinion. This is not to denigrate quality assessment, supervision and standards which are all important. If a high quality courtroom filled with the best qualified Judges, barristers and staff under strict supervision, with quality marks and membership of all the various applicable councils, lay empty without cases it is not unreasonable to question whether quality is only part of delivering a service.

The RCT trials, without the existence at the time of ‘good practice guidance’, quality marks and councils, operated on basis of delivering a service in a way that did not separate quality as something different to normal practice. Setting up the London Crown Court Trial I had no concept in my head of establishing a RJ Programme that was of poor quality. We set out to do the best job we could! This job, by the way, was to test RJ not make RJ successful. Now that all the ‘quality’ mechanisms exist you would be forgiven for thinking they may have, therefore, increase the likelihood of RJ… they have not.

Raising Awareness

Programmes to raise awareness have not been robustly tested and a lot of money and energy is put into marketing programmes with little or no way of measuring impact. Public broadcast by any media is a dubious practice as much of it goes to people who, at the time of broadcast, are not victims or offenders and they can forget the process exists when they become in a position to be potential participants. TV has a drip-feed value over a long period of time but I would not put a lot of public money into it because many commercial TV companies, who see its value in entertainment, although they will say it is for public information, often pull-out when the cost soars due to attrition and the delays in the system caused mostly by the third RJ veto.
I once spoke with a serial rapist who declined to meet the victim on the grounds that he didn’t want to be on TV, as the only experience he had had with RJ was watching it on TV, similarly I had a victim of domestic violence also ask, without prompting, whether she could have her meeting without cameras.

The perfect time is when there is a true potential of RJ and, as Lucy Jaffe described, this is the point at which an offender has pleaded guilty or accepted responsibility for the harm caused to a victim (even if they do not plead guilty). Immediately at this point, in a RJ friendly system, the money for awareness should be used to contact the victim(s) and families, and offer the RJ process. In a system that is not RJ-friendly the third party mentioned earlier applies its veto and RJ is thwarted.

Generally available leaflets describing the process but not selling the project, PCC, or benefits of RJ seem more effective. The sales-pitch awareness approach, in my opinion as someone who has tried it and ditched it, does not work well because victims seem to departmentalise the benefits to others as separate from them, i.e. “that is them with their offenders not me with mine.” Crime is very personal, good RJ is very personal but sales based on evidence is not. My advice – describe the process don’t sell it.

Why are referrals low?

Although it is not “early days” any more, the PCC is correct in saying that some inexperienced practitioners (which is most of them as referrals are low!) approach victims “gingerly”. Using many self-appointed volunteers who often do not have sufficient confidence to offer RJ properly – a reticence to speak with the victim, because of some assumption about the offender, disempowers the victim. If the offender were an “appropriate person” as she puts it he/she probably wouldn’t be an offender – the victim can understand this. Victims are not stupid and can understand that an offender can say no to a meeting (what they often have difficulty with is when the third RJ veto is executed, more on this later). The PCC then described the perfect way NOT to offer RJ, “Do you want meet your offender?” She is very much forgiven as I appreciate she is not a practitioner and she did say she did not know the psychology of the subject, in common with many of your witnesses. This approach creates a mind-set of a confrontation and natural self-preservation would cause many people to reject the idea or need another 20-30 minutes to be pulled out of their misconception. The RCTs, often not consulted, learned that the correct approach is to ensure the participant learns that the process is a dialogue before asking if they want that dialogue. In short, describe the process don’t sell it.

The problem is with the concept of referral altogether – this is passive and requires an initiating action by the victim, offender or criminal justice system and all of these have other things on their mind. So, as the RCTs found, the solution is not passive referral and lots of awareness raising, but active extraction; the RJ service takes the case from the prosecution list and offers RJ. Too many trained facilitators have deskilled twiddling their thumbs waiting for a referral. Numerous projects have been told this truth but still opt against advice for the referral line expecting busy professionals to stop what they are doing to support their project.

Resourcing

Lucy Jaffe correctly point out that if everyone was offered RJ who could have it that there would not be enough facilitators. Running out of facilitators in the current system will not happen any time soon. The way to manage demand matching resources, is to be available to all for RJ but offer RJ to specific groups progressing to more groups as skills and resources increase. This has been rejected in favour of offering to all, which Lucy and the Ministry of Justice could not deliver. In fact, they
cannot deliver the offer to all let alone the intervention 50%. The first step of a progressive development is to ensure that RJ is offered to victims of offences where there is a strong evidence base that it works. This progression would help in the committee’s correctly identified enforcement problem of codes, legislation or directives as I think it justifiable to enforce small steps that are evidenced based rather than RJ for all including where it is not evidentially proven to be effective, efficient or economical.

As much as I am passionately pro-RJ, having a victim’s entitlement to RJ under a new code or legislation is currently untenable and would probably serve to undermine the code itself as agencies would be forced to ignore it or box clever around the small print. The EU also stepped back from making it mandatory. Certainly, it would be welcome in the future but PCCs or likely agencies need to be given two or three year’s notice and ring-fenced funding. Impeaching a PCC for failure to provide RJ would certainly solve the Data Protection Act interpretation issues overnight. Victim legislation could resolve the data sharing issue but one should not underestimate an organisation’s data protection officer’s propensity to interpret legislation in favour of not sharing. In a previous project, as a senior officer, I authorised data sharing by effectively deputising a project into the police service (as their aims were the same as ours) and consequently they had access to victim and offender data. They had to contact potential participants stating that it was on behalf of the police. I did this in two sides of A4 paper but today’s managers would want 70 or 80 pages.

The government policy of empowering PCCs to decide on their various service provision is guaranteed to create a post-code lottery for services including RJ. It dismantled the national Victim Support Service which, while not perfect, was more consistent and capable of national change. If the policy is to continue, then consistency needs to be bolstered with more directives of what service they must provide. As said above, some are PCCs appear quite comfortable to wish an increase of 28% in the rate of reoffending on their electorate by not implementing RJ.

Taking RJ Seriously

Some people and organisations are better at taking RJ more seriously than others. From my experience, encouraging the delivery of this service by volunteers, the clever 21st century form of slavery, has made it the preserve of the sufficiently wealthy with time on their hands and appear amateur and insufficiently important to professionals. That volunteers work as magistrates could, of course, contradict this argument and fuel the idea that Crown Court roles could also be filled by volunteers. I do not wish to denigrate volunteers as I have respect for many I have worked with, excellent volunteers, with sound motivations for doing RJ and who would deserve good salary for doing this full time. I work at no charge, for around 90-100 hours, on grave, serious, complex and sensitive cases and cannot help thinking that the government is not playing fair. The average hours a volunteer donates is about 4.5 hours a week attendance (Source: Victim Support) – is this the basis on which to provide a RJ to all? It cannot be.

More on Data Sharing

Lucy Jaffe correctly describes the problems although she also has not described other cases where lack of cooperation has stretched a case to many months of frustration for the consenting victim and offender. The RJ services do not need the data shared at the will of the data owner they need direct access as representative of the data owner. While the RJ facilitators do not need immediately operationally sensitive intelligence they do need sensitive data to assess risk. When I meet a potential participant it would be helpful to know of their mental health, drug use and propensity towards violence. From 32 years in the police service I have the self-confidence to work without
that information but many of the volunteers we ask to do this work do not. If one is concerned about data sharing and cannot discover an interpretation of the DPA to make it happen the natural choice of facilitator is a police employee for a considerable number of reasons.

The London Crown Court Trial and its Northumberland sister project had no problems whatsoever with data. If we are to insist on third party delivery, it is not for the third party agencies to resolve this because politicians, who created the legislation and interpretations, cannot do so. Data to do RJ should be awarded with a contract not negotiated later as an afterthought and I believe this implies that the PCC awarding such a contract should ensure the sharing mechanism is in place already.

**Appropriateness of RJ in Domestic Abuse cases**

I have run cases of RJ in domestic abuse scenarios and its appropriateness is a matter for the fully informed victim. My experience of those cases, and a number of non-domestic rape cases is that it is not for the ‘system’ to re-victimise the victim further by disempowering them yet again as not being capable of making up their own mind – behaving in a similar vein to the offender in removing the victim’s self-determination. In properly run RJ, a participant is never forced or unduly coerced into RJ and their decision to engage should be based on an understanding of the risks.

It is not anticipated that vast numbers of survivors in these cases would want to do RJ or feel in necessary, but for some victims of domestic abuse I have noticed that the relationship was never ‘formally closed’. From the outside it would seem that 8 stab wounds to a pregnant victim would seem to be enough evidence of formal closure but the victim, because of a guilty plea, never heard the full facts or obtained the answers to burning questions (the court will concentrate on points to prove and mitigation). Neither, in this same case, is the survivor actually sure the ex-partner believes the relationship is over and is not expecting to come back into the family on release - there are enough ‘loose ends’ to cause anxiety and long-term harm. Like all RJ – this time it is personal and a victim may have needs in order to change themselves into a survivor that a systematic denial of the offer of RJ would remove.

One sound reason for not providing a facility of RJ in sensitive and complex cases which often, but not always involves manipulation and power imbalance, is that there is a lack of experienced facilitators to do so. A second reason is that there is no rigorous research (RCT) existing or planned investigating the benefits or dangers of RJ in domestic abuse. It must be said also that there is no RCT on the whether other interventions in domestic abuse make things better either. Again I refer the committee to Professor Lawrence Sherman, who is also an international expert on domestic violence, an area where emotional assumptions about what works are legion and the criminal justice system appears forced into strong statements of intent but practical inertia.

Further, the Code of Practice for Victims of Crime reflects the new Ministry of Justice thinking and does not make any offence type excluded from RJ per se and this is appropriate if the state is not to mimic the offender. An ‘offer’ of RJ is an appropriate means to ensure a victim, in a position to actually engage in RJ, is correctly informed of the option available to them. Would we make a similar assumption that they already know they can contact a support agency? No, we would tell them at the point the information can be most helpful.

I have a current case where the victim who definitely wanted RJ enough to self-refer, after her first preparation meeting is no longer sure and wanted several months to reconsider. That is ok, no is ok and yes is ok too. Empowerment means facilitating the power to decide - not getting to yes.
Consent to RJ, in this and other contexts, is only valid when given by someone mentally or emotionally capable to give consent. This does not exclude mental or other disorders per se but may exclude someone at a critical point in their illness. It is this capability assessment in other contexts that would exclude a very young child from the process, a victim during or immediately after a serious crime, a potential participant affected by substances, etc.

Finally, on this subject, the potential of the fully manipulated victim returning to their abuser after severe abuse of all kinds despite advice is not unknown. This risk exists

- regardless of agencies which, knowing better, may seek to prevent the victim repeat what they believe are bad decisions, or assume that offenders never ever change,
- regardless of the criminal justice system repeating its threats and punitive disposals, and
- regardless of a RJ dialogue.

What RJ may provide is an additional opportunity for the behaviours to be observed, reported upon and victims referred for additional support they may have declined earlier. People in these relationships need regular contact to allow change or empowering permission to escape.

Much work in Europe has also been done around abusive relationships where competent people still want to make a relationship work... without the abuse. From the PCC statement that RJ as “common currency” in domestic abuse might cause a view that, “You had to meet him again” I infer a belief that RJ is imposed or people are coerced and this is an incorrect view of RJ to be held at that level or the RJ she has experienced in incorrect.

Who has the third RJ Veto?

The third RJ veto is the ‘system’ in particular the criminal justice system. However much the victim and offender want to do RJ and are, in the view of a facilitator suitable, the criminal justice system can stop it happening. It can do this, while describing how much they support RJ and think it is wonderful, by not providing information or access, not responding to RJ service providers or, being risk averse rather than risk managing (generally RJ is dismissed by a third party, other than the victim or offender, as “not suitable”). The RJ philosophy empowers the victim and the offender to collectively resolve the aftermath of their crime and its implications for the future not the criminal justice system, so this third veto is anti-restorative.

Did the RCTs suffer from the third veto? Speaking on behalf of the London Crown Court Trial the answer is no, this was because we were the criminal justice system and had already decided to do RJ! Our presumption was in favour of the consenting victim and offender having RJ.

In the much simplified diagram below to illustrate vetoes – while all parties can withdraw at any time the criminal justice system represents several vetoes operated by different agencies as there is no presumption in favour of RJ. The RJ Service (e.g. that commissioned by a PCC, charity, etc. effectively becomes part of the ‘system’ and also operates the same veto as the criminal justice system (in which case it is more likely to stop RJ on criteria grounds, such as outside their catchment area, budget, experience, etc.)

28 April 2016
Diagram of RJ Vetoes

- **Victim Initiated RJ**: Agency offer of RJ to victim accepted
- **Offender Initiated RJ**: Agency offer of RJ to offender accepted
- **Criminal Justice System Initiated RJ**: Victim RJ Veto
  - Percentage from trials in pre-sentence model at 40% will veto
  - Victim RJ Veto (asking victim first is generally termed victim-led)
  - Offender RJ Veto
  - Offender RJ Veto
  - Criminal Justice RJ Veto
  - Case will probably STOP here due to gatekeeping of offender data or criteria
  - Criminal Justice RJ Veto
  - Case will probably STOP here due to gatekeeping of victim data or criteria
  - Criminal Justice RJ Veto
  - Case likely to progress here as system already has data but may STOP on criteria
  - Criminal Justice RJ Veto
  - May STOP here due to criteria or risk aversion
  - Offender RJ Veto

- **Final Criminal Justice RJ Veto**: RJ could stop here due to risk aversion or practical considerations (venue access)

- **RJ Intervention**