



Hourglass Response: Department of Justice
**Development of an Adult Restorative
Justice Strategy for Northern Ireland**

Development of an Adult Restorative Justice Strategy for Northern Ireland (Department of Justice NI)

Consultation Response: Hourglass NI

Question 1: Do you agree that a Restorative Justice approach should be introduced for those adults who offend, to build on the work that has already been undertaken, particularly in the youth and community sectors?

Yes.

At Hourglass we support older people who have been victims of abuse, and those family, friends, neighbours, and professionals concerned about an older person. We have learnt through delivering services and programmes that older victims suffer acutely from harm, abuse and neglect and face increased social isolation, decline in physical and mental health and increased risk of further crime. Additionally, under our definition of 'elder abuse', we specify that this type of abuse occurs between two parties where there is an 'expectation of trust'. These aspects of crime perpetrated against older people make it a category suited to a restorative justice approach.

Firstly, a retributive justice approach can act as a barrier to reporting in the instance of abuse of an older person. The historic relationship of trust, which is violated by the perpetrator, may prevent the victim wishing to criminalise someone with whom they are personally connected. The option for diversion to restorative justice programmes reduces this fear.

The example of financial abuse of older people articulates this well. In 2019, concerns regarding financial abuse made up 40% of calls to our Helpline, while the most common relationship between perpetrator and victim is "son/daughter." As an area which typically sees low reporting rates and low conviction rates through a retributive justice approach, a restorative justice approach allows the financial damage to be repaired and may facilitate the relationship of trust to be restored in a way that reduces the risk of further harm.

Secondly, it is well documented - as the consultation paper goes on to detail - that a restorative approach can reduce further harm to the victim. A restorative justice approach may allow for older people to voice and talk through the harm that they have received, ideally bringing closure to old wounds, and helping heal the trauma endured. For older people reducing further harm is tantamount. The effects of abuse have a radical impact on physical and mental health and can reduce life expectancy.

Restorative justice models and approaches may also address some of the aspects of dissatisfaction that elder and domestic abuse victim survivors have with the criminal justice process, namely the feelings of isolation and lack of voice. The flexibility of restorative justice approaches may also mean they can be easily adapted to suit different culturally appropriate interventions.

However, for older people there are some risks associated with this restorative approach that should also be highlighted. The key risk is that the approach will not be able to accommodate older people with varied mental capacity. The need for interpretation services or other specialist support, if not met, can reduce key aspects of restorative processes such as confidentiality.

Question 2: Do you agree with the vision, aims, purpose and principles as set out in the consultation document?

Yes.

We agree in particular with the core tenet of your vision, ‘to resolve conflict and wrong doing, and repair the harm caused by offending’.

On the point, ‘promote positive change and development in the use of restorative practices in partnership with statutory, voluntary and community sector organisations. We would add that this should include consultation with charity and other third sector organisations and how processes can be inclusive and varied to suit all victim-perpetrator relationships.

Question 3: Do you agree that there should be a review of the Government Protocol?

Yes,

We concur that with the development of a number of other standards of practice by statutory criminal justice organisations which have evolved beyond the Protocol led framework, as well as a number of limitations of the Protocol which have emerged since 2007, That the time is right for a review of the Government Protocol going forward.

We further agree that a key area for attention in review of the Government Protocol is the ‘low number of cases being referred to the schemes from PPS’. The PPS holds the discretion for decisions for and against prosecution and disposal. On examining the examples of factors that may be considered by the prosecutor in favour of prosecution or diversion, it is apparent that the abuse of older people is not identified as within the remit for a Restorative Justice approach.

For example, a key factors in favour of prosecution include: ‘where the offender was in a position of authority or trust and the offence is an abuse of that position’; ‘where the offence has resulted in serious financial loss to the individual, corporate person or society’; and ‘where the victim of the offence is vulnerable’. These three factors pertain to most instances of abuse of an older person. So, while the age of the offender is taken into account in favour of diversion - ‘the offender is a young person or otherwise vulnerable by virtue of age’ - the applicable factors in favour of diversion that apply to older victims are weaker than those in favour of prosecution. For example, factors in favour of diversion include, ‘where prosecution is likely to have a detrimental effect on the physical or mental health of a victim or witness’. This directly applied to many instances of abuse of an older person but is likely to be superseded by the factors in favour of prosecution.

A review of the Government Protocol needs to include working closely with the PSS to ensure an up to date understanding of the types of offence that are appropriate for a Restorative Justice approach. Additionally, any update needs to ensure there is no space for prejudice in judgments to prosecute or divert offences, and that the relationship between age, vulnerability and crime is properly understood. This can be achieved through consultation with third sector organisations and those with lived experience.

In the section ‘Evidence and Research’, we have included a range of information and links to empirical evidence which aims to demonstrate the effectiveness of a restorative approach.

Question 4: Are you aware of any further evidence or research which should be taken into account?

Kōrero Tahi: Using Restorative Circles for Addressing Harms Experienced by Older Persons, VICTORIA U. OF WELLINGTON

Jocelyn Yerxa et al., Restorative Approaches to Senior Safety: The Nova Scotia Experience, CAN. NETWORK FOR THE PREVENTION OF ELDER ABUSE 1, 20 (2015)

Arlene Groh, Rick Linden., Addressing elder abuse: the Waterloo restorative justice approach to elder abuse project, Journal of Elder Abuse and Neglect, 23(2), April 2011, pp.127-146.

Question 5: Please identify any further benefits that should be referenced.

We agree with the benefits identified by the consultation: positive impact on delay; improved outcomes through diversion from the formal criminal justice system (criminal records and increased reoffending rates); benefit to the community e.g., through community service; and financial savings.

For our area of concern, the abuse of older people, we would also add that a restorative approach holds the opportunity to increase reporting of this often hidden harm. The knock on effects of increased reporting for our understanding of the manifestations of the abuse of older people is considerable and will underscore an approach that centres prevention and protection of older people.

The consultation document lists a number of objectives which an Adult Restorative Justice Strategy would aspire to achieve.

Question 6: Are these strategic objectives appropriate? Are there any others that should be considered? Please provide more detail below.

We find the strategic objectives appropriate. In particular the leading theme of a reduction in the level of harm experienced by victims, and the commitment to greater coordination of restorative justice processes and greater utilisation of opportunities for joint funding and partnership working both inside and outside of the justice system.

We would add a strategic objective to contribute to a reduction in the re-victimisation of vulnerable groups. Re-victimisation can take the form of the breakdown of family relationships or other personal connections, increased social isolation, aggravated decline in health and wellbeing.

Question 7: When measuring success, what should we focus on? Please provide more detail below.

The focus for success should centre feedback from service users. This should be a process over a long time period. For example, the Department of Justice could learn from the good practice of the Community Care Access Centre of Waterloo Region, Kitchener, Ontario, Canada. Under this model, participants are contacted three months after the restorative justice programme, to ensure agreements are being upheld.

This section of the consultation document examines the current end-to-end justice system and considers the potential for introducing restorative justice at each stage of the process.

Question 8: What role should the criminal justice system play, if any, in early intervention/prevention?

While the criminal justice system should be one of a number of strands apparent during the early intervention/prevention timeframe, there is scope for a restorative justice approach to sit outside/ take place before any formal criminal justice proceedings take place. This would be on a case by case basis and according to the wishes of the victim-survivor. However, situating any restorative justice approach outside the criminal justice system would allow for - in best practice terms - justice and reconciliation to take place without the fear of criminalisation or a custodial sentence.

Question 9: Other than those set out in this section of the consultation document, are there other examples where justice partners could apply a restorative justice approach for those on the cusp of the criminal justice system?

N/A.

Diversion: Consider the current diversionary processes and the proposals in the consultation document for the greater use of restorative approaches as part of these processes.

Question 10: Do you agree with these proposals and the potential benefits that the inclusion of restorative justice can bring to the diversionary process?

Yes.

Question 11: Other than those discussed in this section of the consultation document, are there any different/additional restorative approaches which are not already included?

N/A.

Question 12: Do you agree with the inclusion of restorative justice processes in formal court sanctions?

Yes.

We support the inclusion of restorative justice processes in formal court sanctions. This approach would ensure that Northern Ireland's zero tolerance for the abuse of older people is upheld in court proceedings.

Question 13: Other than those discussed in this section, are there any different/additional restorative approaches you feel could be effectively incorporated into court ordered community sentences?

N/A

Question 14: Do you agree that aspects of restorative justice can be successfully incorporated into custodial sentences?

Yes.

Question 15: Do you agree that there is potential for the use of reparative programmes to be used as part of the Conditional Early Release Scheme?

Yes.

Question 16: Are there other opportunities for restorative justice to be used with individuals in custody which have not been explored in this section?

N/A

Question 17: Other than those discussed, are there further opportunities to manage and rehabilitate those who have served a custodial sentence through restorative or reparative practices?

We feel that restorative justice has a significant role to play following the completion of custodial sentences as well as being an early intervention/prevention tool. For the repair of family relationships and the restoration of trust, perpetrators of crime against older people should have access to restorative justice processes before, during and after serving custodial sentences.

This section sets out the current funding arrangements and issues to be considered if long-term funding is to be established.

Question 18: Should funding arrangements be changed to support the delivery of an Adult Restorative Justice Strategy, and if so, how?

N/A

Question 19: Please share your views on how these arrangements link to the wider aspects of a potential Centre of Restorative Excellence?

N/A

Question 20: In general terms, do you think that the key areas for action have been captured?

Yes.

Question 21: Do you feel that there are some actions which should be prioritised as more important or urgent than others? yes/no

Proposed Action	Please Rank 1 – highest	Please identify who should be involved
Promote restorative justice practices to aid greater understanding, acceptance and engagement.	7	
Review of 2007 Protocol with a view to enabling greater numbers of referrals to Community Based Restorative Justice schemes.	10	
Develop operational practice guidance for criminal justice organisations to maximise opportunities for the use of restorative approaches.	9	
Consider the introduction of a diversionary adult restorative justice model for low level offending.	2	
Engage with the Gillen Implementation Team and key stakeholders in the delivery of Restorative Justice recommendations.	12	
Introduce and include restorative and/or reparative actions into pre-sentence reports.	11	
Integrate restorative practice into community and custodial sentences, and licence conditions.	3	
Maximise options for community reparative work through partnerships with the voluntary, community and social economy sector.	8	
Provide access and support to those victims of crime who wish to engage in restorative justice.	1	
Consider the need for, and scope of, legislative change to establish restorative interventions in the statutory criminal justice sector.	4	
Ensure links are made/maintained with the work on delivering a Centre of Restorative Excellence and wider restorative practices in non-justice settings.	5	
Assist with the work towards the establishment of long-term funding arrangements for the delivery of restorative practices in Northern Ireland.	6	

Question 22: Are there any priority actions which do not appear in the consultation document?

Yes.

Priority actions should reflect the Department of Justice's commitment to prioritise restorative justice approaches that are accessible across all groups and communities in Northern Ireland. Third sector groups with specialised knowledge of different communities should be consulted at every level of design, commission, and delivery of restorative justice services.

Question 23: Are there any significant organisations or individuals in the justice arena that could play an important role in the implementation of these actions who have not been mentioned in the consultation document?

N/A

Question 24: What are your views on the potential equality impact of a proposed Adult Restorative Justice Strategy?

One risk to equality of opportunity between persons that could emerge from an Adult Restorative Justice Strategy, is in the process of commissioning or approving services. To avoid monopolisation of services by bigger groups, the Department should bear in mind the value and specialist knowledge added to smaller groups embedded in communities. To be inclusive of a wide range of third sector participants, the threshold for developing services must centre lived experience and case-studies as well as empirical evidence. The smaller capacity of some organisations might lead to exclusion. In other programmes, for example the UK's domestic abuse services strategy, this has been key to granting access to a variety of specialist groups. Including those working for BAME communities, disability charities and services for older people.

Any proposed adult restorative justice strategy must ensure a connectivity to other effective and culturally inclusive services (i.e translators/services focused specifically on BAME or other minority groups), as well as make certain it is flexible enough to be adapted to culturally appropriate interventions.

Question 25: Is there an opportunity to better promote equality of opportunity or good relations?

Regular consultation across the criminal justice sector and relevant groups and communities will be vital to developing trust and transparency for a restorative justice approach.

Question 26: In conclusion, are there any further comments you would like to make which you have not yet had the opportunity to provide?

N/A



Hourglass

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Get information from our KNOWLEDGE BANK - knowledgebank.wearehourglass.org

Email: helpline@wearehourglass.org

Hourglass England

Office 8, Unit 5,
Stour Valley Business Centre,
Brundon Lane, Sudbury,
Suffolk, CO10 7GB.

T: +44 (0) 20 8835 9280
E: enquiries@wearehourglass.org
W: www.wearehourglass.org

 @wearehourglass_
 facebook.com/wearehourglass

Hourglass Cymru

C/o - Office 8, Unit 5,
Stour Valley Business Centre,
Brundon Lane, Sudbury,
Suffolk, CO10 7GB.

T: +44 (0) 20 8835 9280
E: cymru@wearehourglass.org
W: www.wearehourglass.cymru

 @hourglassCYMRU
 facebook.com/hourglasscymru

Hourglass Scotland

PO Box 29244,
Dunfermline, KY12 2EG.

T: +44 (0) 20 8835 9280
E: scotland@wearehourglass.org
W: www.wearehourglass.scot

 @HourglassScot
 facebook.com/HourglassScotland

Hourglass Northern Ireland

PO Box 216,
Newry, BT35 5DH.

T: +44 (0) 20 8835 9280
E: nireland@wearehourglass.org
W: www.wearehourglass.org/ni

 @HourglassNI
 facebook.com/hourglassNI

