

# HOW CAN RESTORATIVE PRACTICES BECOME MORE EMBEDDED IN SCOTLAND?

*A REPORT ON THE CHALLENGES AND  
OPPORTUNITIES FACING THIRD  
SECTOR ORGANISATIONS*

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**AUGUST 2021**

## ACKNOWLEDGEMENTS

I would like to thank Restorative Solutions and The Scottish Graduate School of Social Science (SGSSS) for funding this project and giving me the opportunity to do this research. I am particularly grateful to Tony Walker, Director of Restorative Solutions, for his incredible support and patience.

Special thanks go to the researchers, practitioners, trainers and experts who participated in this small study and took the time to talk to me about their views and experiences of restorative justice. If there is one thing that continues to amaze me in the RJ community it is the passion and enthusiasm they share for the work they do.

I would also like to express my gratitude to Prof Cyrus Tata who helped me shape the proposal of this project and has, in the last 8 years, inspired me with his knowledge, kindness and generosity.

## TABLE OF CONTENTS

Executive Summary .....	4
Introduction .....	9
1. What is Restorative Justice ? .....	11
2. What are the benefits of Restorative Justice? .....	12
3. The Restorative Landscape in Scotland.....	13
3.1 The Role of the Third Sector.....	15
4. Restorative Solutions and the Restorative Landscape in England and Wales.....	16
4.1 About Restorative Solutions.....	16
4.2 The Provision of Restorative Services in England & Wales.....	17
5. Methodology.....	18
6. Findings & Discussion.....	19
6.1 Funding and Resources.....	19
6.2 Service Delivery Model.....	26
6.3 GDPR and Information Sharing.....	31
6.4 Multi-Agency Partnerships and Awareness .....	35
6.5 Training.....	39
7. Recommendations.....	44

# EXECUTIVE SUMMARY

## Aim & Background

Scotland is at a crucial stage in the development of restorative justice (RJ). There is now widespread consensus that RJ should be expanded in Scotland and the Scottish Government has made a commitment to have RJ services widely available by 2023. However, fulfilling this commitment will be challenging, not least as a result of the effects of the Covid-19 pandemic.

One key question relates to who is going to deliver RJ services and what are the barriers and challenges likely to be faced by those who will be at the forefront of service provision. The Scottish Government has acknowledged that the successful delivery of the plan will require commitment, participation and buy-in from public and third sector organisations, both at a national and local level, and recognised the importance of mapping the existing provision of RJ in Scotland.

This report aims to identify the challenges likely to be faced by third sector organisations in developing capacity to deliver restorative services in Scotland. In doing so it will provide an indication of the practical issues associated with the commission, expansion and delivery of RJ services.

## Methodology

This study is of a qualitative nature and draws on interview data. The data was collected from semi-structured interviews with key experts (n=8) including practitioners, researchers, policy officials, and trainers. The project ran for three months and used Restorative Solutions as an example of the specific institutional, logistical and cultural issues that such organisations might face in increasing RJ approaches.

## Findings

### 1. Funding and Resources

- Respondents identified lack of resources and investment as a major barrier to the delivery of the Action Plan and to the development of RJ in Scotland.
- While the Action Plan was welcomed by all, the overall sentiment was that it is too ambitious and is not adequately resourced.
- Interviewees were critical of the prospect of services being delivered in-house by social workers, and stressed that the Scottish Government could be underestimating the level of resource required to deliver restorative services. It was reported that RJ can be a labour intensive and time consuming intervention that requires extensive preparation.
- It was reported that long-term financial backing was paramount to the development of RJ.

- There were mixed feelings with respect to ring-fenced funding. Some interviewees perceived earmarking as necessary to ensure the delivery of services while others revealed some ambivalence.
- One of the key lessons that emerged from our interviews with Restorative Solutions was that funding allocation can impact the way RJ is delivered. It was reported that devolved funding had generated numerous barriers in terms of service provision and accessibility across England and Wales, as well as obstacles to the commission of services.
- Restorative Solutions reported that the disparity of value in contracts has been a contentious issue.

## 2. Service Delivery Model

- Respondents expressed concerns over the model that might be implemented in Scotland and reported feeling unsure as to what was envisaged by the Scottish Government, particularly with regard to their aim to have “a nationally available model for RJ.” It was stressed that RJ is a flexible concept and, therefore, should not be implemented as a single model.
- Interviewees welcomed a victim-centred approach but emphasised that RJ is a process aimed at both victims and offenders and, therefore, can still be used in cases where the victim is not available.
- It was clear from interviews with Restorative Solutions that there is a great deal of variation in service delivery models across England and Wales. While devolved commissioning had provided a valuable opportunity to design services that are capable of meeting local needs, it had also led to some inconsistency.
- One of the challenges identified by Restorative Solutions and other experts concerned how to measure success. It was reported that data is captured differently, both nationally and locally, and therefore it is difficult to track progress, benchmark services, and show that value is being provided.
- It was reported that evaluation requires time, commitment and funding.

## 3. GDPR and Information Sharing

- Respondents described GDPR as an operational challenge and a barrier to the development of RJ in Scotland. It was clear from interviews that the lack of information sharing protocols had created unnecessary roadblocks and had reduced multi-agency working, which led to dramatic reductions in RJ referrals.
- The overall sentiment was that GDPR was a complex legal framework with seemingly severe rules, and that the possibility of facing large fines had instigated fear over noncompliance.
- Restorative Solutions reported that they had made substantial progress with regard to GDPR, including the signature of an information sharing agreement with the HMPPS -

Probation and Prison Service. Nonetheless, they acknowledged still experiencing operational barriers. One of the challenges concerned access to information within PCC areas. While some areas may be willing to facilitate access to their systems and laptops, others are more restrictive or refuse access altogether.

- It was reported that public sector organisations are, in general, reluctant to share information with third sector organisations.
- Other professionals emphasised that the process of obtaining access and establishing information sharing agreements can be laborious and burdensome. It was reported that once a contract comes to an end, providers need to repeat the same process as sharing agreements are not transferable.
- It was suggested, with regard to Scotland, that sharing level agreements will be necessary to ensure the future commission of services.

#### **4. Multi-Agency Partnerships and Awareness**

- Respondents regarded effective partnership as a pivotal element in the development of RJ in Scotland. It was reported that restorative services cannot be delivered in a vacuum and that multiagency partnerships and communication are paramount to ensure services are delivered to a high standard.
- Restorative Solutions reported that building partnerships takes time, commitment and resource. It was stressed that it takes two years to truly set up a new service and establish relationships.
- One fundamental concern raised by interviewees was the opposition of key organisations towards RJ, some of which are openly hostile to the idea that it might become part of the justice system. It was emphasised that there is a clear lack of understanding and trust in the RJ process.
- Respondents reported that voluntary organisations tend to deem RJ as dangerous and a non-viable option for survivors of sexual and domestic violence due to concerns of revictimization and risk assessment.
- Restorative Solutions identified misconceptions around sensitive and complex cases. They emphasised that when professionals prevent access to RJ they are inadvertently disempowering victims.
- It was reported that cases of domestic violence require a different type of risk assessment. For example, a key element is that the abuser and the survivor are not co-habiting and that there is no desire to reconnect or rekindle the relationship.

## 5. Training, Accreditation and Standards

- Respondents praised the Scottish Government's initiative to support RJ training.
- It was clear that there is demand for RJ training in Scotland and that there have been unnecessary delays.
- Interviewees stressed that it would be impractical to train people without knowing the service delivery model that is going to be implemented in Scotland.
- It was reported that whilst the successful delivery of restorative processes requires experienced and knowledgeable facilitators, not everyone will be suitable for the role.
- One respondent emphasised the importance of having a national body overseeing different types of training.
- Interviews with Restorative Solutions and other experts evoked specific concerns around the level of training and qualifications of RJ practitioners in England and Wales.
- It was clear that registration is a highly contentious issue. We heard that while the RJC has developed their own registration frameworks with clear processes, they come at a cost and can be onerous for those who do not work exclusively in RJ (e.g. teachers).
- Some respondents expressed robust criticism of the lack of mandatory standards. Whilst training was perceived as the first step to becoming a facilitator, it was reported that it should not issue an automatic permit to facilitate RJ. One participant warned against the risk of having inexperienced practitioners, particularly volunteers, facilitating all types of cases without having the appropriate qualifications or experience.

## Recommendations

1. **Issue a progress report setting out key achievements against the Action Plan 2019 over the last 2 years** – The report should provide an update on the achievements made during this period and whether it has been necessary to adjust target dates. The Scottish Government should also provide greater clarity of their vision and direction with regards to RJ, both at a local and national level.
2. **Work with local authorities and the third sector to develop funding mechanisms for RJ services** - Sustainable funding will be key to the provision of RJ in Scotland.
3. **Prioritise decisions over the service delivery model** – We advise against the centralisation of RJ provision as it will block the opportunity to design services that meet local needs. In general, restorative services should not have restrictions based on the nature of the crime or whether a case is initiated by the victim or offender.
4. **Develop specialised programmes for complex and sensitive cases** - We recommend the Scottish Government work with practitioners and researchers to promote guidelines of best practice for facilitators in such cases.

5. **Develop legislation that places a duty on criminal justice agencies to offer RJ -**  
Legislation alone is not enough to promote and support accessibility but it can help embed a restorative culture within the justice system.
6. **Consider how good practice can be effectively shared in the future -** Providers should consider how they will monitor the number of victims offered RJ. We advise establishing guidance on success factors for RJ within local authorities.
7. **Create and endorse a national information-sharing template to support the agreement of GDPR-compliant information sharing protocols.**
8. **Create awareness campaigns -** Greater awareness is likely to lead to more positive attitudes towards restorative justice.
9. **Develop networking events, regionally and nationally.**
10. **Consider how training and qualifications will be accessed in the future.**



## Introduction

Restorative Justice (RJ) has long been in the criminal justice agenda worldwide as an alternative (and complement) to mainstream justice. There is now strong evidence supporting its effectiveness and benefits as well as number of different international legal instruments<sup>1</sup> to promote its development at a national level. Nevertheless, the provision of RJ remains an ongoing battle for advocates in some jurisdictions. Access is often contingent on a number of factors, including nature and seriousness of the offence and geographic location.

In Scotland, the application of RJ has been particularly cautious. Although RJ has been available for quite some time, its use remains limited to youth crime and restricted to certain geographical areas. The Restorative Justice Action Plan, published in 2019, brought a wind of change and set out aims to have services “widely available across Scotland by 2023.”<sup>2</sup> However, fulfilling this commitment will not be easy, particularly in the aftermath of the Covid-19 pandemic which has called for an adjustment of priorities across the justice system.<sup>3</sup>

One key question relates to who is going to deliver RJ services and what are the barriers and challenges likely to be faced by those who will be at the forefront of service provision. The Scottish Government has acknowledged that the “successful delivery of the plan will require commitment, participation and buy-in from public and third sector organisations – both at a national and local level”<sup>4</sup> and recognised the importance of mapping the existing provision of RJ in Scotland.

There is a successful tradition of RJ provision by third sector agencies across Europe (e.g. Belgium)<sup>5</sup> and the main provider of RJ services in Scotland has been SACRO (Safeguarding Communities Reducing Offending), a charitable company. Therefore, it is likely that third sector organisations will be central to the delivery of restorative services in Scotland.

Nonetheless, the expansion and provision of RJ services in Scotland will present challenges. Research suggests that more than half of Scottish local authorities do not provide RJ services, meaning that most services will need to be set-up from scratch. This raises several questions and concerns, namely the longevity required to implement services and make multi-agency partnerships work.

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<sup>1</sup> Marder, I. D. (2020) The new international restorative justice framework: reviewing three years of progress and efforts to promote access to services and cultural change. *The International Journal of Restorative Justice*. vol. 3(3) pp. 395-418. doi: 10.5553/IJRJ.000048.

<sup>2</sup> Scottish Government (2019) Restorative justice: Action Plan. Available at: <https://www.gov.scot/publications/restorativejustice-action-plan/> (Accessed 17 July 2021).

<sup>3</sup> Scottish Government (2020) Justice - vision and priorities: report. Available at: <https://www.gov.scot/publications/justice-vision-priorities-closing-down-report/documents/> (Accessed 17 July 2021).

<sup>4</sup> Scottish Government (n2) p. 9.

<sup>5</sup> Shapland, J., et al. (2017) Developing Restorative Policing: Using the Evidence Base to Inform the Delivery of Restorative Justice and Improve Engagement with Victims- Learning lessons from Belgium and Northern Ireland. University of Sheffield: Centre for Criminological Research. Available at: [https://www.sheffield.ac.uk/polopoly\\_fs/1.714948!/file/Comparative-report-publication.pdf](https://www.sheffield.ac.uk/polopoly_fs/1.714948!/file/Comparative-report-publication.pdf) (Accessed 17 July 2021).

This report aims to identify the challenges likely to be faced by third sector organisations in developing capacity to deliver restorative services in Scotland. The key purpose is to offer insights and contribute to the evidence-informed development of RJ in Scotland. In doing so, it will use Restorative Solutions, an organisation that has been at the forefront of RJ training and service provision in other parts of the U.K, as an example of the specific institutional, logistical and cultural issues such organisations might face in increasing RJ approaches across Scotland.

The report will analyse data obtained from interviews with academic researchers, practitioners, policy officials, and other experts with extensive knowledge and experience of RJ. The aim is to provide an indication of the practical issues associated with the commission, expansion and delivery of RJ services. The recommendations are aimed at the Scottish Government and are relevant to stakeholders across the criminal justice system, including social workers, policy makers, and third sector organisations.

## 1. What is Restorative Justice?

RJ is a voluntary process that brings together those harmed by a crime or conflict with those responsible for the harm, with the intent to find a positive way forward. The process typically entails some form of face to face encounter between participants,<sup>6</sup> and the presence of one or more trained mediators/facilitators. Depending on the type of intervention used, these encounters may also include family, community members and professionals such as police officers, psychotherapists and social workers.

RJ represents in many ways a point of departure from the traditional justice system. It perceives crime as a violation of people and of interpersonal relationships,<sup>7</sup> and promotes inclusive dialogue. Victims are given the opportunity to express their feelings, ask any questions they may have, or simply tell their version of events. Similarly, offenders are given the possibility to talk about their emotions, consider the impact of their behaviour and learn from their actions in a facilitated, safe environment. Thus, it is not surprising that RJ has been touted as an emotionally intelligent form of justice.<sup>8</sup>

The motivations to participate in RJ are diverse and it is always a personal decision. While some victims (and offenders) may not feel ready to undertake RJ for several years, others are keen to participate immediately after the incident. Therefore, it is important that RJ is available at the right time for those involved. Nonetheless, RJ is always a voluntary process and cannot take place without the full consent of all participants. It requires careful preparation and rigorous risk-assessment with stakeholders to prevent the risk of revictimization and further violence.

In the literature, RJ is often referred to as an ‘umbrella’ term or concept that covers a diverse range of practices and processes.<sup>9</sup> Its flexible approach means it can be applied to a variety of contexts (e.g. schools, criminal justice, community, family) and fit the needs of participants.

Common practices within RJ include, but are not limited to:

- Victim-Offender Mediation (VOM)<sup>10</sup>
- Restorative Conferences<sup>11</sup>

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<sup>6</sup> There are a wide range of RJ approaches that do not involve formal face to face meetings (e.g. writing a letter of apology or explanation to the person harmed).

<sup>7</sup> Zehr, H. (2002) *The Little Book of Restorative Justice*. Intercourse, PA: Good Books.

<sup>8</sup> King, M. (2008) Restorative Justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice. *Melbourne University Law Review*, 3(32), 1096–1126; Sherman, L. W. (2003) Reason for Emotion: Reinventing Justice with Theories, Innovations, and Research — The American Society of Criminology 2002 Presidential Address. *Criminology*, 1(41), pp. 7–37.

<sup>9</sup> Shapland, J., Robinson, G. & Sorsby, A. (2011) *Restorative justice in practice*. London: Routledge.

<sup>10</sup> McCold, P. (2003) The Recent History of Restorative Justice: Mediation, Circles, and Conferencing.” Pp. 23-51 in *Handbook of Restorative Justice: A Global Perspective*, eds. Dennis Sullivan and Larry Tiff. London: Routledge.

<sup>11</sup> Zinsstag, E. and Vanfraechem, I. (2012) *Conferencing and Restorative Justice: International Practices and Perspectives*. Oxford: Oxford University Press.

- Circles<sup>12</sup>

Research shows that RJ can be used as an alternative or complement to the criminal justice system (CJS).<sup>13</sup> It can take place at any stage of the process, from early intervention to post conviction and release into the community. Some European countries now have well established mediation systems that offer RJ at any stage of the criminal justice process and help parties make an informed decision. For example, in Belgium victims receive letters at each stage of the judicial process reminding them of the possibility of RJ and the safeguards that would be adopted in their case.<sup>14</sup>

## 2. What are the benefits of Restorative Justice?

The literature is replete with research supporting the effectiveness and the benefits of restorative interventions. Evidence shows that it can:

- Help victims heal, feel empowered and safe;<sup>15</sup>
- have a positive effect in reducing reoffending and encouraging desistance from crime;<sup>16</sup>
- help reduce criminal justice costs and court processing time.<sup>17</sup>

There is a consistent body of work suggesting that victims and offenders perceive RJ as being fairer and more respectful than court processes, as well as a constructive way of dealing with the offence. Victims who meet their offender have shown reduced signs of anxiety and fear and have expressed less desire for physical revenge.

Additionally, offenders who participate in RJ seem to commit fewer offences than those who do not. This seems to be particularly true for serious and prolific cases. Though recidivism fits within a wide spectrum, and the impact of RJ will vary on a case by case basis, there is strong evidence that these encounters can provide the necessary “scaffolding”<sup>18</sup> for a secure, safe platform that can support healing and, ultimately, change.

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<sup>12</sup> McCold, P. (n. 9).

<sup>13</sup> Shapland, J., et al. (2008) Restorative justice: the views of victims and offenders. The Third Report from the Evaluation of Three Schemes, Ministry of Justice Research Series. Available at: <https://restorativejustice.org.uk/sites/default/files/resources/files/Ministry%20of%20Justice%20evaluation%20-%20Restorative%20justice%20the%20views%20of%20victims%20and%20offenders.pdf> (Accessed 17 July 2021).

<sup>14</sup> Van Camp, T., Wemmers, J. A. (2016) Victims' reflections on the Protective and Proactive Approaches to the Offer of Restorative Justice: The Importance of Information. Canadian Journal of Criminology and Criminal Justice, 58(3): 415–442. <https://doi.org/10.3138/cjccj.2015.E03>

<sup>15</sup> Strang, H., (2002) Repair or Revenge: Victims and Restorative Justice. Oxford: Oxford University Press.

<sup>16</sup> Sherman, L. W., Strang, H. (2007) Restorative Justice: The Evidence. London: The Smith Institute.

<sup>17</sup> Shapland, J., et al. (2008) Does Restorative Justice Affect Reconviction? The Fourth Report from the Evaluation of Three Schemes, Ministry of Justice Research Series. Available at: <https://restorativejustice.org.uk/sites/default/files/resources/files/Does%20restorative%20justice%20affect%20reconviction.pdf> (Accessed 17 July 2021).

<sup>18</sup> Chapman, T. (2012). Facilitating Restorative Conferences. In E. Zinsstag & I. Vanfraechem (Eds.), Conferencing and Restorative Justice: International Practices and Perspectives, pp. 65–80. Oxford University Press.

RJ can also bring benefits to the CJS as it can save both time and money from public resources. According to an independent evaluation published by the Ministry of Justice in the U.K, RJ can deliver cost savings up to £9 for every £1 spent.<sup>19</sup> An independent expert analysis carried out by Matrix also estimates that RJ can produce a lifetime saving to society of almost £275 million (£7,050 per offender).<sup>20</sup>

All in all, research shows that RJ can be beneficial to all participants and the justice system. It might not be a panacea to all that ails the criminal justice system, but when facilitated well it can change the lives of all those affected by crime.

### 3. The Restorative Landscape in Scotland

It is safe to say that RJ is currently at its pinnacle within the Scottish political agenda. There is now widespread consensus that RJ should be expanded in Scotland and the Scottish Government has made a commitment to have RJ services widely available by 2023.<sup>21</sup>

RJ is not an alien concept in Scotland but its development has been somewhat trepid and slow compared to other UK jurisdictions. Until very recently there was no national guidance or policy documents that fully acknowledged its existence. The publication of the Restorative Justice Action Plan (‘Action Plan’) in 2019 marked a significant step change in the Scottish policy landscape and offered an opportunity for RJ to have a real place within the criminal justice agenda.

Nonetheless, two years after its publication, a lot remains unknown about the future of RJ in Scotland. It is unclear, for example, what model of service delivery will be adopted, who is going to be at the forefront of service delivery, and at what stage in the criminal justice system it is going to be available. As it stands, many of the activities outlined in the Action Plan are running behind schedule and it is unclear whether more resource is going to be made available to push for its delivery.

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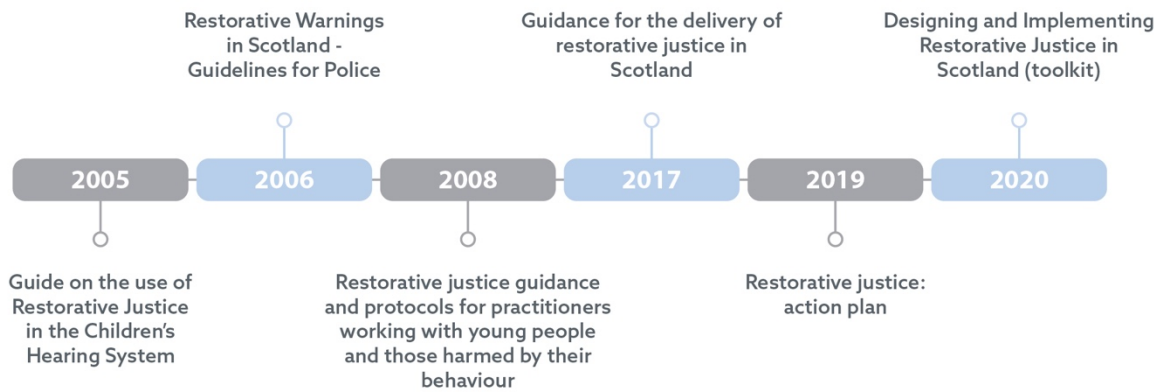
<sup>19</sup> Shapland, J., et al. (n16).

<sup>20</sup>Matrix Evidence (2009) Economic analysis of interventions for young adult offenders. Available at <http://www.t2a.org.uk/publication-download.php?id=29> (Accessed 18 July 2021).

<sup>21</sup> Scottish Government (2018) Delivering for Today, Investing for Tomorrow: The Government’s Programme for Scotland 2018-19. Available at: <https://www.gov.scot/binaries/content/documents/govscot/publications/strategyplan/2018/09/delivering-today-investing-tomorrow-governments-programme-scotland-2018-19/documents/00539972-pdf/00539972-pdf/govscot%3Adocument/00539972.pdf> (Accessed 17 July 2021).

# RESTORATIVE JUSTICE

## in Scotland



Although it is a changing scene, the provision of RJ in Scotland remains largely limited to low-level, youth crime and restricted to certain geographical areas. Recent research suggests that RJ is currently being provided in 12 (out of 32) Scottish local authorities, and although some of these services are available for both adults and young people, adult referrals are seldom taken.<sup>22</sup>

Referrals can be made by the police, multi-agency groups, social-workers, the Scottish Children's Reporter Administration (SCRA), or a Procurator Fiscal, often through one of two routes:

- 1) **Diversion from Prosecution**
- 2) **Early and Effective Intervention (EEI)**

EEI and Diversion from Prosecution are processes that deal with low to mid-level offending.<sup>23</sup> EEI aims to “ensure that young people in or at risk of offending receive appropriate, proportionate and timely support to prevent their involvement in further offending,”<sup>24</sup> whereas diversion schemes intend to prevent young people from entering the justice system prematurely and address the underlying factors.

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<sup>22</sup> Maglione, G., Buchan, J. and Robertson, L. (2020) The local provision of restorative justice in Scotland: an exploratory empirical study, *European Journal of Criminal Policy and Research* DOI: 10.1007/s10610-020-09470-3.

<sup>23</sup> They also constitute strands of a wider strategy for children and young people in Scotland- the Whole System Approach (WSA)- which aims to divert children and young people from statutory and formal measures. See Robertson, L. (2017) A practice-based approach to youth justice: the whole system approach in Scotland. PhD thesis. School of Social and Political Sciences, College of Social Science, University of Glasgow, p.17. Available at <http://theses.gla.ac.uk/8493/1/2017RobertsonPhD.pdf> (Accessed 17 July 2021).

<sup>24</sup> Robertson (n23), p.17.

The criminal justice system in Scotland is undoubtedly complex, comprising different layers of local and national structures, legal processes and arrangements. The youth system can involve professionals from multiple organisations, including the police, social work, local authorities youth teams, the Children’s Hearing System, The Crown Office and Procurator Fiscal Service, and third sector. The different roles and responsibilities mean that it is difficult to manage the criminal justice system as an integrated process, which is clear in the way that RJ referrals are made.

### 3.1 The Role of the Third Sector

In Scotland, RJ is provided either in house by local authorities or is commissioned to third sector organisations (TSOs). The third sector has played a key role in the delivery of RJ since the early ’80s when the first mediation and reparation services emerged,<sup>25</sup> and has in general a long track record of delivering criminal justice services that reduce reoffending.

Sacro<sup>26</sup> was and continues to be the main organisation involved in the delivery of RJ across the country. They deliver different types of restorative justice processes, including Restorative Justice Conferencing, Face-to-face Meetings, Shuttle Dialogue, Awareness Programmes, and Reparative Tasks and Programmes. According to their website,<sup>27</sup> these services are currently available in 6 local authorities:

- Dundee (Tayside)
- Kilmarnock
- East Dunbartonshire
- Forth Valley
- Kirkcaldy (Fife)
- Clydebank (West Dunbartonshire)

In general, the commission of RJ services can be a great alternative to in-house provision. The third sector can provide specialised knowledge and a service that is perceived as independent from other justice agencies. It also offers an opportunity to design services that are tailored to meet local needs when adequate resource is available. Sadly, experience has shown that funders’ priorities are not always consistent with RJ’s philosophy.<sup>28</sup>

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<sup>25</sup> Kirkwood, S. (2018) Restorative justice. *Insight*, n. 44, Iriss. Available at: [https://www.pure.ed.ac.uk/ws/portalfiles/portal/77511987/Kirkwood\\_2018\\_Iriss\\_insight\\_Restorative\\_Justice.pdf](https://www.pure.ed.ac.uk/ws/portalfiles/portal/77511987/Kirkwood_2018_Iriss_insight_Restorative_Justice.pdf) (Accessed 17 July 2021).

<sup>26</sup> Sacro (n.d) Youth Justice. Edinburgh: SACRO (online) <http://www.sacro.org.uk/services/youth-justice> (Accessed 17 July 2021).

<sup>27</sup> Sacro (n.d) Restorative Justice. Edinburgh: SACRO (online) <https://www.sacro.org.uk/services/restorative-justice> (Accessed 17 July 2021).

<sup>28</sup> Gavrielides, T. (2007) *Restorative Justice Theory and Practice: Addressing the Discrepancy*. Helsinki, Finland: European Institute of Crime Prevention and Control.

Funding constitutes a contentious issue in Scotland. Since there are currently no specific RJ funding streams, the commission of services is highly reliant upon support at a local level. Services are funded by local authorities' social work departments, typically through a ring-fenced funding scheme, provided by the Scottish Government, for delivery of criminal justice social work services.

Whilst there is a level of discretion in terms of how individual local authorities can spend their budgets, the reality is that they have seen dramatic reductions in core funding over the years, leading to financial pressures and the need to juggle competing priorities. As a result, local authorities have been increasingly unable to spend funds on non-mandatory services like RJ,<sup>29</sup> leading to occasional, short commissioning contracts.

## 4. Restorative Solutions and the Restorative Landscape in England and Wales

### 4.1 About Restorative Solutions

Restorative Solutions is a not-for-profit Community Interest Company (CIC) which specialises in restorative services and training. They are currently one of the UK's leading service providers in RJ and have been awarded both the Restorative Service Registration and the Registered Training Provider by the Restorative Justice Council (RJC).<sup>30</sup> They describe themselves as an organisation committed to supporting frontline practitioners, managing innovative programmes and delivering training to enable the use of restorative practice.

The work of Restorative Solutions spans a range of services, from awareness courses and specialist workshops in RJ practitioner training to restorative services for Police (Fire) and Crime Commissioners, consultancy, and case supervision. They have experience of delivering RJ at all stages of the criminal justice system, including Neighbourhood Justice Panels, Out of Court Disposals, Secure Establishments and both Pre- and Post- Sentence RJ.

Between 2011 and 2015, Restorative Solutions received separate grants of £500,000 from the Monument Trust and £1m from the Underwood Trust, each match funded by the Ministry of Justice, to implement two major RJ projects. One aimed to increase RJ capacity in the National Offender Management Service by training over 800 prison probation and police officers, while the other looked to develop and introduce 12 to 15-month RJ Pre-sentence programmes in 10 Crown Courts and 3 Magistrate's Courts in England and Wales.<sup>31</sup>

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<sup>29</sup> Maglione, G., Buchan, J. and Robertson, L. (n22).

<sup>30</sup> The RJC is the independent third sector membership body for the field of restorative practice. They act as a registry and as a regulator for RJ practices nationally: <https://restorativejustice.org.uk>.

<sup>31</sup> Both projects were highly successful. However, they ceased operation within two years due to lack of ongoing funding and movement of staff into other roles.



As well as working in partnership with local organisations, Restorative Solutions works closely with police forces across the country. They are currently contracted to deliver services across 6 different Police and Crime Commissioner (PCC) areas and 1 Mayoral area, and have been commissioned to deliver the CARA (Cautions and Relationship Abuse) programme, a recognised model of interventions with perpetrators of domestic abuse who are subject to conditional cautions. They currently employ over 150 staff and volunteers as facilitators, managers and other support roles.

More recently, they have worked with Community Justice Scotland (CJS)<sup>32</sup> to deliver awareness events and RJ training, including in cases of sexual violence and domestic abuse.

## 4.2 The provision of restorative services in England & Wales

Restorative services have expanded considerably in England and Wales over the last decade. This development has been supported by a number of Government initiatives, including an investment of £29 million from the Ministry of Justice from 2013 to 2016, and legislative changes that helped embed RJ into the criminal justice system and gave it statutory footing.<sup>33</sup> The Crime and Courts Act 2013 and the Offender Rehabilitation Act 2014 marked an important moment in the history of RJ's development in the English and Welsh criminal justice system by enabling the use of RJ at the pre-sentence and post-sentence stages, respectively. The Victim's Code 2015, which was recently revised,<sup>34</sup> also provided some entitlements relating to restorative justice, including the right to information on RJ for victims of adult offenders.

Despite this flurry of activity and considerable developments in recent years, advocates and practitioners continue to fight to see RJ available as a consistent option for victims and offenders. Provision remains patchy and is subject to regional buy-in from PCCs, the key commissioners and recipients of all funding.<sup>35</sup> A review conducted by 'The Victims' Commissioner between 2015 and 2016 found that different models have emerged locally with specific restrictions around the cases that can be taken.<sup>36</sup> For example, some areas seemed to offer restorative services for any type of offence while others appear to exclude cases of serious harm, such as domestic abuse and sexual violence. Moreover, recent figures from the Office for National Statistics reveal that only 5.5% of victims of crime recall being offered the possibility to meet with their offender in 2019-2020,

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<sup>32</sup> CJS is responsible for developing and promoting a National Strategy for Community Justice: <https://communityjustice.scot>

<sup>33</sup> Gavrielides, T. (2018) Victims and the restorative justice ambition: a London case study of potentials, assumptions and realities, *Contemporary Justice Review*, 21:3, 254-275, DOI: 10.1080/10282580.2018.1488129.

<sup>34</sup> Ministry of Justice (2020) Code of Practice for Victims of Crime in England and Wales. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/974376/victims-code-2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/974376/victims-code-2020.pdf) (Accessed 5 July).

<sup>35</sup> Criminal Justice Alliance (2016) Consultation response - written evidence. Available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justicecommittee/restorative-justice/written/27867.pdf> (Accessed 17 July 2021).

<sup>36</sup> Victims Commissioner Office (2016) A Question of Quality: A Review of Restorative Justice Part 1 - Service Providers. Available at: <https://s3-eu-west-2.amazonaws.com/victcomm2-prod-storage-119w3o4kq2z48/uploads/2019/02/VC-Restorative-Justice-Part-1-Service-Providers-Review-2016.pdf> (Accessed 17 July 2021).

suggesting that the overall picture is far more complex than it appears to be.<sup>37</sup> During interviews, it became clear that one of reasons for this variation is decentralised funding. Similar to what happens in Scotland, the money available to PCCs constitutes part of “a wider pot of funding”<sup>38</sup> and, thus, it is not ring-fenced. This means that PCCs hold the torch on how money is allocated locally in consultation with the Chief Constable.

While the bulk of RJ work in England in Wales is carried out by third sector organisations,<sup>39</sup> voluntary organisations end up having no control or say over the amount that is available to RJ services.



**“Whilst there is an expectation that an element of that work will be around restorative justice, it is up to the Police and Crime Commissioner. The concern is.... you might have a commissioner who is very proactive, very pro-restorative approaches, and invests a lot, but you may have another one who actually thinks that's far too woolly and doesn't want to invest much money.”**

Senior Professional

## 5. Methodology

Building on a review of the existing literature, this study is of a qualitative nature and draws on interview data. The data was collected from semi-structured interviews with key experts (n=8), including practitioners, researchers, policy officials, and trainers.

As noted in the introduction, the aim of this report was to identify the challenges likely to be faced by third sector organisations in developing capacity to deliver restorative services in Scotland. The project ran for three months and used Restorative Solutions as an example of the specific institutional, logistical and cultural issues that such organisations might face in increasing RJ approaches. Ethical approval was sought from and granted by the University of Strathclyde, Law School.

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<sup>37</sup> Office for National Statistics (2020) Restorative Justice. year ending March 2011 to year ending March 2020: Crime Survey for England and Wales (CSEW). Available at: [www.ons.gov.uk/file?uri=/peoplepopulationandcommunity/crimeandjustice/adhocs/12031restorativejusticeyearendingmarch2011toyearendingmarch2020crimesurveyforenglandandwalescsew/restorativejustice201920final.xlsx](http://www.ons.gov.uk/file?uri=/peoplepopulationandcommunity/crimeandjustice/adhocs/12031restorativejusticeyearendingmarch2011toyearendingmarch2020crimesurveyforenglandandwalescsew/restorativejustice201920final.xlsx) (Accessed July 17 2021).

<sup>38</sup> House of Commons Justice Committee (2016 ) Restorative Justice: Fourth Report of Session 2016-17 HC164. London: House of Commons. p. 13. Available at: <https://publications.parliament.uk/pa/cm201617/cmselect/cmjust/164/164.pdf> (Accessed 5 July).

<sup>39</sup> Keeling, P. (2019) A journey of learning, growth and change: A roadmap for increasing Restorative Justice across England and Wales. Criminal Justice Alliance. Available at: <https://criminaljusticealliance.org/wp-content/uploads/CJA7063-Restorative-Justice-190426-WEB-v3.pdf> (Accessed 17 July 2021).

## 6. Findings and Discussion

This section summarises the main findings of this study. Participants were asked to share their views on the Action Plan and on what they perceived as the main challenges to the development of RJ in Scotland. Some questions focused specifically on the third sector and the commission of restorative services, both in Scotland and in other jurisdictions.

Overall, interviewees shared similar views and reported similar concerns. These have been highlighted and discussed below. Although some participants have been involved in the delivery of restorative services in other jurisdictions, it was possible to identify similar challenges and key themes. It was also clear from interviews with Restorative Solutions and experienced practitioners across the U.K that some of the barriers and opportunities identified in this report are not unique to Scotland.

### 6.1 Funding & Resources

Respondents identified lack of resources and investment as a major barrier to the delivery of the Action Plan and to the development of RJ in Scotland. While the Action Plan was welcomed by all, the overall sentiment was that it is too ambitious and is not adequately resourced:



**“Even if you didn't have a pandemic, I think they'd still struggle to deliver on this action plan if I'm honest. One of the biggest challenges for me is that it's not sufficiently resourced. There's very little direct resource that is actually being used to meet the action plan, and in particular what I mean is resources that will actually allow for the hiring of staff who are to deliver restorative justice services.”**

Academic Researcher



**“I think it's fantastic that it's actually happening. I think it's about time (...) but I think proper investment has to be put in it. There's a huge community of people who are really invested, who really want to make it happen, but there's nothing there to support them to do it.”**

Gael Cochrane, Learning Development and Innovation Lead at Community Justice Scotland

A consensus existed amongst interviewees that the initial investment of £300,000 was enough to get RJ off the ground and access elementary needs, such as training. However, it was reported that the actual delivery of the plan will inevitably require a lot more resource:



**“I think £300,000 is about just getting some of the basics done, like looking at training needs and PR – like the animation that was produced, which I thought was very good.”**

Professor Tim Chapman, Chair of the Board of the European Forum for Restorative Justice (EFRJ)



**“They're going to need to significantly increase the amount of resource for the next financial year and the one after that to actually deliver on the action plan (...) If they want this to happen, they need to fund it.”**

Academic Researcher



**“How much money does the Scottish Government intend to spend on restorative justice? Ultimately that's the bottom line.”**

Tony Walker, Director of Practice Delivery at Restorative Solutions

Participants were critical of the prospect of services being delivered by social workers within local authorities, and stressed that the Scottish Government could be underestimating the level of resource required to deliver restorative services. It was reported that RJ can be a labour intensive and time consuming intervention that requires extensive preparation:

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“There are a number of people who are able to do it but not as part of their work. I think there's a lot of hidden time in there and resource that they possibly haven't thought about. Depending on how complex the case is .... you will need an initial meeting, then a meeting to do a risk assessment, and then preparatory meetings. And if it's just one, that's fine, but then you've got the same meetings with another person, and if there's a supporter, you've got to do the preparatory meetings with them as well.”

Gael Cochrane, Learning Development and Innovation Lead at Community Justice Scotland

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“The orientation seemed to always be, ‘well, once people get trained up, they'll be able to do this'. Well, but how? If you expect social workers to do it... I mean, social workers in the main are incredibly strapped for time and are overworked. So to expect them to take on additional activities, which are themselves potentially quite resource intensive, is a dream, really. It's a bit of a fantasy to expect that that would happen. I think that's the main barrier - the perception and expectation that people can do it within their day job.”

Academic Researcher

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“If you have a voluntary organisation which is being paid and contracted on the basis of delivering that service, they are going to do it. But if you've got funding that goes to a local authority social work department and that it's something that some staff do a bit within the rest of their activities... there's always a risk that it will slip away.”

Academic Researcher

Similar challenges emerged during interviews with Restorative Solutions. The overall view was that although the delivery of services in-house may appear to be an attractive economic option, it does not constitute a viable alternative in the long-haul. It was reported that there is a lot of hidden time and resource behind RJ which does not involve direct engagement with participants, and even if a Social Worker were to focus exclusively on RJ, their daily tasks would still need to be executed by someone else, which could put additional pressure and demands on other people:



**“If you take a Probation Officer or a Social Worker out and said 'you are now dealing with restorative justice and nothing else' that means that all the other probation officers or social workers in that department will have to share out that person's work. This is the problem. On paper it may look cheaper but just means that people are busier - or less is being done.”**

Tony Walker, Director of Practice Delivery at Restorative Solutions

Respondents also spoke at length about funding models and reported that long-term financial backing was paramount to the development of RJ:



**“Providers need to be able to rely on long-term funding, otherwise it becomes like it is today - very precarious. We have funding for two years, then it disappears, like it happened years ago. And obviously that's very detrimental for the development of restorative justice.”**

Dr Giuseppe Maglione, Academic Researcher

There were mixed feelings with respect to ring-fenced funding. Some interviewees perceived earmarking as necessary to ensure the delivery of services, while others revealed some ambivalence. Nonetheless, it was reported that such an approach had been highly successful in the past in Scotland and, therefore, should be perceived as a viable alternative:



**“I think ringfenced would be good. I think that's what happened 20-odd years ago when Sacro started out doing RJ.”**

Gael Cochrane, Learning Development and Innovation Lead at Community Justice Scotland



**“What I can say with regard to restorative justice in the youth sector in Scotland is that when they injected that money and ring-fenced it... it resulted in a massive expansion in the availability of restorative justice services. When they removed the ringfencing, those services disappeared. So it's one mechanism.”**

Academic Researcher



**“I think if it is just left to the local authorities, some will be really generous in their budget and some will think this is not a priority compared to street lighting, for example.”**

Professor Tim Chapman, Chair of the Board of the European Forum for Restorative Justice (EFRJ)



**“If you give a local authority money and say, ‘we'd like you to use this for restorative justice,’ they may do that but I guess you need to look at what the terms are and what the other demands are on those local authorities (...) because if they've got other things which they're legally required to deliver and then they're being told, ‘by the way, could you also do this other thing?’ They might want to, and they might try to, but at the end of the day they're going to have to prioritise.”**

Academic Researcher

Interestingly, one of the key lessons that emerged from interviews with Restorative Solutions and experienced practitioners in England and Wales was that funding allocation can impact the way RJ is delivered. It was reported that devolved funding had generated numerous barriers in terms of service provision and accessibility across the country, as well as obstacles to the commission of services:



“Funding is an issue and has remained an issue, particularly the disproportionate funding. If you look at how different areas are being funded, you've got some that are working on an absolute shoestring of a budget, trying to deliver a really effective service; others have a far larger budget; and then you've got places like London where there is huge investment.

There's challenges over some PCC areas allowing certain types of offence to be considered and others saying not. The biggest one that comes up is around domestic violence or sexual offences, where you've got two very distinct views. So, some PCC areas say ‘yes, you can take that sort of case.’ Others say, ‘most certainly not.’ So it becomes a bit of a postcode lottery as to whether or not your offence would be classed as being suitable. There’s also the issue of how funding is commissioned.

There are some areas where they can only work with victims and offenders who are based in that one PCC area. So, if you're a victim of crime in another PCC area, or the offender lives in another PCC area, it can't go ahead. They both need to live in one. So that presents challenges.”

Senior Professional

Restorative Solutions reported that the disparity of value in contracts has been a point of contention:



“For example, we have whole PCC area contracts ranging in value from £60,000 to £375,000 per annum. What is value for money in restorative justice?”

Tony Walker, Director of Practice Delivery at Restorative Solutions



One interviewee emphasised that the current funding model does not account for the hiring of staff who are to deliver restorative services and that there is an underlying expectation that volunteers can deliver RJ at the same level as any other RJ practitioner, which in their view can be problematic:



“There’s always an argument around the money that’s being made available. It assumes that there’s going to be this massive volunteer workforce that will actually do the delivery of services. The funding model actually provides very little provision for full-time paid staff. I think we all appreciate the real hard work that volunteers put in, but from a continuity perspective, there’s every chance that they could stop volunteering and then you’ve got to go through that process again.”

Senior Professional

A further issue concerned the nature of the funding itself. Participants reported that since the money is part of a wider fund allocation aimed at victims, there is often an erroneous assumption that services cannot take referrals from offenders. This has caused barriers in terms of accessibility and has discouraged referrals. One interviewee illustrated this with an example:



“One of the examples I’ve got that really frustrated me was.... we had a service which had a victim who wanted to participate in restorative justice, but was reluctant to because they didn’t feel the offender would want to engage, so decided not to take it any further. About three months later, the offender put in a self-referral and was told, ‘we don’t accept offender referrals’ – but that information was never shared with the victim.

When you think about it.... her reluctance was ‘I don’t know if the offender will want to engage’ but nobody thought, ‘well, actually, we should ask that question - do you want to do it?’ because she probably would’ve done it. So, when you start looking at whether that victim made a decision based on informed consent... well, no, she hasn’t because there’s a bit of information there that could’ve swayed her decision and wasn’t passed on. And why? Because we’re a victim service and don’t take offender referrals.”

Senior Professional

On the whole, participants perceived ring-fenced funding as beneficial and necessary in England and Wales:

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“I think there would be benefits in doing that, and it's certainly a model that would be beneficial in England. I think a ringfenced budget makes it very clear that you are spending ‘this amount’ on ‘this service’”.

Senior Professional

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“I would say minimum ringfencing. There needs to be a minimum. But that also needs to be potentially per capita. What frequently happens is everybody gets £100,000, but we have (*England*) got four times as many crimes as you have (*in Scotland*). So it needs to be that proportionate ringfencing.”

Tony Walker, Director of Practice Delivery at Restorative Solutions

## 6.2 Service Delivery Model

The service delivery model prompted a range of responses and issues amongst respondents. In general, interviewees expressed concerns over the model that might be implemented in Scotland and reported feeling unsure as to what was envisaged by the Scottish Government, particularly with regard to their aim to have “a nationally available model for RJ.”<sup>40</sup> It was stressed that RJ is a flexible concept and, therefore, should not be implemented as a single model:

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“I would really hate for it to be too prescriptive. That’s my only worry. It can’t be a one size fits all. You can’t just have one single model because that isn’t RJ.”

Gael Cochrane, Learning Development and Innovation Lead at Community Justice Scotland

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<sup>40</sup> Scottish Government (2019) Restorative justice: Action Plan. P.9  
<https://www.gov.scot/publications/restorativejustice-action-plan/> Accessed 17 July 2021.



“It’s not totally clear to me. We’ve had many discussions and we keep on saying, ‘that’s the whole point about restorative justice, you cannot have one model. RJ has to be flexible and adapt to the needs of the parties’”.

Academic Researcher



“As policy makers they need to have a clear guide, to give clear guidance and say, ‘we’re going to fund this and this’, and so they want a model. But I’m not sure they know exactly what they mean by that.”

Academic Researcher

Respondents welcomed a victim-centred approach but emphasised that RJ is a process aimed at both victims and offenders and, therefore, can still be used in cases where the victim is not available. Some researchers shared examples and highlighted how other countries have chosen to develop programmes that are offender-centred in other jurisdictions:



“When we did this project on conferencing a few years ago, we saw that most programmes were offender-focused and in the majority of cases - well, in all cases – the two people who absolutely had to be in the room for RJ to happen were the facilitator and the offender. The victim was a good addition, and generally you had better results if the victim was part of the process, but it wasn’t a must.”

Academic Researcher



“There was a Marks & Spencer’s Manager who had to go to ten conferences because every time they caught a kid stealing, the judge would ask them to go to the conference. Eventually they said ‘this a waste of time for us. It may be good for the offender but it doesn’t bring anything to us, so we’d rather not come’. So in some cases they had lower victim numbers.”

Academic Researcher



“Restorative justice is a service that's not for people who've committed crime and it's not for people who have been harmed by crime, it's for both. But what tends to be done, both in the way that funding's done and it's replicated in the way that a lot of the Government structures and so on are done, is that you have services that are directed at people who have committed crime and you have services that are directed at people who are victims of crime. And it reinforces this kind of false dichotomy, as if these are two distinct groups of people - people who commit crime are never victims, and people who are victims of crime never commit crime. Which we know is false, but that's part of the problem.”

Academic Researcher

A number of respondents emphasised that these decisions will inevitably need to address the perennial debate of centralism versus localism in Scotland:



“This kind of dialectic between centralisation and localisation is a problem in Scotland. And we need to try to understand what type of problem it is with respect to restorative justice. How can it be addressed without depriving local authorities of any form of power or initiative and so on? if we want local authorities to take over restorative justice, I think we, to some extent, have to accept that there will be local variations.”

Dr Giuseppe Maglione, Academic Researcher



“There's obviously a sort of political complexity to that in terms of delivery model. Should it be delivered by the local authority? Should there be a central agency? Or is just like a mixed economy? Third sector doing some bits, somebody else doing other bits.”

Academic Researcher

One respondent advised that it is important to be realistic and accept that no model is ‘perfect’ from the outset. It was also reported that a lot of fine-tuning will need to be done:



“I think if they're trying to make sure they've got a model that is going to answer every question from the beginning.... I think that's unrealistic. There's things you could predict now from our experience that we didn't foresee. For example, the level of sexual harm offences amongst juveniles and the amount of people on the autistic spectrum (...) just never crossed our minds.”

Professor Tim Chapman, Chair of the Board of the European Forum for Restorative Justice (EFRJ)

Interviewees also expressed concerns over the lack of clarity about how RJ is going to be integrated into mainstream criminal justice and at what stage it is going to be available:



“Is it something that can be accessed by people while they're on a sentence, like a community sentence or in prison? Is it just a parallel process which is going to operate independently of the criminal justice process itself? Or actually is the ambition to have an all-singing, all-dancing array of services and processes that will operate at all different points of the system for every crime imaginable? And if they haven't worked that out, you know, I don't see how they could deliver the plan.”

Academic Researcher

The service delivery model was a theme that also elicited interesting discussions with Restorative Solutions. It was clear that England and Wales are facing specific challenges and that there is a great deal of variation in service delivery models across the country. While devolved commissioning had provided a valuable opportunity to design services that are capable of meeting local needs, it also led to some inconsistency.

One of the challenges identified by Restorative Solutions and other experts concerned how to **measure success**. It was reported that data is captured differently, nationally and locally, and therefore it is difficult to track progress, benchmark services, and show that value is being provided:



“I think one challenge - that actually has never ever really been right - is how you measure success. When you look across England, there's lots of data, but how that's measured - certainly from a Ministry of Justice point of view - changes year on year. You can't actually look back at last year and say, 'this has got better', because we're measuring something completely different.

And then individual PCC areas measure differently. For example, for some it is purely based on the number of direct restorative processes that have taken place. Others collect data about the number of people being contacted.

So this area has had 3,000 positive outcomes but when you look at it, that's just about contacting people to make them aware. Where this area's only had 30 outcomes, but they're actually measuring cases that have gone all the way through. So, why is this one doing so well and this one not? Well, actually, you're measuring two completely different things. And that makes the argument for more money difficult because there's no real data there to say what impact it's had.”

Senior Professional

In general, respondents agreed that evaluation is not an easy task - **it requires time, commitment and funding**. One respondent emphasised that it is particularly difficult to monitor follow-up support:



“One of the things that we look for is the follow-up support that's done afterwards – if what has been agreed has been implemented, if it has been successful, and what people are feeling, three or six months after.

And we get a lot of people who come up and say 'well, we are not contracted to do that. So we don't. Once the case is finished, we are done. That's somebody else's problem.' So when you start looking at what is the positive impact... no one's really measuring that. I'm sure there will be academics out there that are doing various different research, but unless you know what you're looking for, you wouldn't know where to go and get that information.”

Senior Professional

## 6.3 GDPR and Information Sharing

Respondents described GDPR as an operational challenge and a barrier to the development of RJ in Scotland. It was clear from interviews that the lack of information sharing protocols had created unnecessary roadblocks and had reduced multi-agency working, which led to dramatic reductions in RJ referrals. One interviewee gave the example of an RJ service that was forced to close despite its longevity and previous success:



**“I think GDPR has caused unnecessary problems, unnecessary barriers. It's stopped really good partnership working and multi-agency working, and has possibly left vulnerable people more vulnerable. And it's made RJ incredibly difficult. The Aberdeenshire service, for example, they've been running for years but ended up closing because they couldn't get any referrals due to changes in the law. My colleague actually wrote up a new information sharing protocol for them, it got OK'd, and then the council stopped funding the project. I understand councils are dependent on funding but we can't just keep working in wee silos and not think about the future.”**

Gael Cochrane, Learning Development and Innovation Lead at Community Justice Scotland

The same respondent shared that Community Justice Scotland is currently trying to change their information protocol with Police Scotland but that it has been an uphill struggle:



**“We are currently trying to change our information sharing protocol with Police Scotland, but you wouldn't believe the difficulties in doing that.”**

Gael Cochrane, Learning Development and Innovation Lead at Community Justice Scotland

When asked to comment on what they perceived to be the problem behind GDPR and lack of compliant information sharing protocols, respondents gave similar answers. The overall sentiment was that GDPR was a complex legal framework with seemingly severe rules, and that the possibility of facing large fines had instigated fear over noncompliance:



**“GDPR has been around for a while but the last iteration includes a new kind of punitive regime. There are new penalties, which are particularly high. And I think that people, practitioners, criminal justice professionals, the Crown, lawyers, the police.... they all needed some time to digest these kind of novelties, particularly this new fines regime. It's a purely psychological phenomenon, basically.”**

Dr Giuseppe Maglione, Academic Researcher



**“I think GDPR has got us all so worried about what we might get in trouble for, that it's become such a red tape exercise that actually nobody wants to sign off and say that's OK - because it might not be - that it just takes forever to do.**

Senior Professional

Respondents also emphasised that RJ had not been perceived as a priority in Scotland and questioned whether these issues could be revealing of the ambivalence of some agencies towards RJ. Overall, governmental support was perceived as vital:



**“I wonder if what it did was expose a bit of ambivalence towards restorative justice as a particular type of service and intervention in the criminal justice sector, and that the key agencies who were required to be onboard with making that happen didn't prioritise it. They didn't see that this is something which clearly has to happen and we need to get onboard with sorting this out and making it work. Because I think if they had have, that would have been sorted. For instance, if the Crown Office and Procurator Fiscal Service was 100% behind restorative justice, surely they would've said, ‘we need to sort this, so let's just make this happen and work it out’”.**

Academic Researcher





**“It’s not the Government who needs to sort it out but it’s their responsibility to assist and lead on.... to prioritise this to happen.”**

Academic Researcher

Interviews with Restorative Solutions provided an opportunity to hear about their own challenges and advancements in England. It was reported that substantial progress has been made with regard to GDPR, including the signature of a national information sharing agreement with the HMPPS - Probation and Prison Service. Nonetheless, they acknowledged still experiencing operational barriers, including the requirement to have separate information sharing agreements with each police force.

A key challenge concerned access to information within PCC areas. While some police forces may be willing to allow access to their systems (e.g. by providing police laptops) others are more restrictive or refuse access altogether. It was also reported that public sector organisations are, in general, reluctant to share information with the third sector:



**“The other issue is public sector organisations’ massive reluctance to give information to third sector organisations. I’m DBS checked, vetted in about six different police forces, but still... ‘you can’t see this because you’re not in the police’. It’s a challenge, it’s a constant challenge.”**

Tony Walker, Director of Practice Delivery at Restorative Solutions

Other professionals emphasised that the process of obtaining access and establishing information sharing agreements can be laborious and burdensome. It was reported that once a contract comes to an end, providers need to repeat the same process as sharing agreements are not transferable. This can be particularly arduous for providers who need to have several agreements in place within local areas, and may impact their ability to build effective partnerships:



**“So, when a contract ends, you can't take the information agreements that were in place and transfer them to the new service. You start again. And if you're only contracted for three years, there's never really time to have a consistent service because you're re-setting up, you're re-establishing networks, you're re-establishing the agreements, and then it's finished.”**

Senior Professional

The same respondent shared that the lack of knowledge and fear around GDPR had led to some complaints, mostly due to lack of communication and gave an example:



“A gentleman had put a complaint in because he had given the police, in his mind, permission to give him information about restorative justice. They gave his details to a provider, who then contacted him. So his issue was ‘how have these people got hold of my information because I didn't give them permission to contact me?’. ‘Well, actually you did because you said to the police officer that you wanted information. What the police didn't make clear was that that information won't come from us.

It will come from the provider, which means we need to pass our information on.’ It ended up being such a complicated complaint to deal with.... in his head, he didn't say they could give that information to anyone else.”

Senior Professional

It was suggested, with regard to Scotland, that information sharing level agreements will be necessary to ensure the future commission of services:



“When you translate this to Scotland, it would be useful to have, even at a basic level, a minimum information sharing agreement that can be negotiated with services once the contract has been awarded.”

Senior Professional

## 6.4 Multi-agency Partnerships and Awareness

Respondents regarded effective partnership as a pivotal element in the development of RJ in Scotland. It was reported that restorative services cannot be delivered in a vacuum and that multiagency partnerships and communication are paramount to ensure services are delivered to a high standard.

Since the majority of local authorities currently do not provide restorative services, it is expected that most services will be implemented from scratch. It is also likely that each area will have different requirements and different agencies that should be involved.

Within this frame of reference, Restorative Solutions reported that **building partnerships takes time, commitment and resource**. It was stressed **that it takes two years** to truly set up a new service and establish relationships:



**“I would say it takes a couple of years to truly set up a service from scratch, to establish relationships, established trust and rapport with colleagues in other agencies, to introduce the concept of restorative justice and restorative approaches into an area.”**

Tony Walker, Director of Practice Delivery at Restorative Solutions

Nonetheless, there was a broad consensus amongst respondents that developing partnerships at a local level will not be a straightforward exercise. One fundamental concern raised by interviewees was the lack of awareness and support from criminal justice agencies and other key organisations:



**“I'm not sure that the Crown Office and Procurator Fiscal Service is fully behind restorative justice and know how it would work. The judiciary, in my opinion, probably largely don't know what restorative justice is.”**

Academic Researcher

It is currently unknown how RJ will be embedded in the Scottish criminal justice system or what responsibilities will be given to criminal justice agencies. While the Action Plan acknowledges the recommendation made by the Council of Europe to have RJ available at all stages of the criminal justice process, it is unclear how they are going to integrate RJ into mainstream justice. Respondents highlighted that there is a risk that RJ will be missed if no obligation is posed on criminal justice agencies to refer.<sup>41</sup>

Restorative Solutions also stressed that without the support of criminal justice agencies, it is unlikely that the restorative interventions will go very far:



**“Restorative practitioners sometimes forget they're only that much of the whole picture. You've got a whole criminal justice machine working behind them. So you need to identify people and key individuals, key roles that you can tap into, who are the people that can actually remove the barriers, establish the systems, and then everything kind of continues from there (...) what I would say to Scotland is.... just keep doing it. Hopefully you'll get further than we have in five years, but it's going to take you at least five years.”**

Tony Walker, Director of Practice Delivery at Restorative Solutions

Another concern voiced by interviewees was the opposition of key organisations towards RJ, some of which are openly hostile to the idea that it might become part of the justice system:



**“The organisations against this are really working against... last summer they said to the Scottish Government, ‘Please stop listening to academics. Evidence is not everything’”.**

Academic Researcher

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<sup>41</sup> Interestingly, a recent study found that criminal justice professionals are supportive of developing restorative services in Scotland but are critical of the Scottish Government’s approach to RJ. Butler, S., Maglione, G. and Buchan, J. (2021) Institutionalizing restorative justice for adults: an empirical study of practitioners’ perspectives. Unpublished manuscript.

This seemed to be particularly problematic with regards to complex and sensitive cases. Respondents reported that voluntary organisations tend to deem RJ as dangerous and a non-viable option for survivors of sexual and domestic violence, due to concerns of revictimization and risk assessment. It was emphasised that there is a clear lack of understanding and trust in the RJ process. One respondent suggested that the only way to address concerns and build confidence in the process is by “getting on board”:



**“One of the messages that's repeated over and over by organisations, such as Rape Crisis and Scottish Women's Aid, is that that they're worried about revictimisation, risk assessment, the credentials of the people who are going to be doing this, and so on. All of those things are completely legitimate, and one way of addressing it is to say, ‘Get on board’. If you're concerned about how this is going to be done, then become part of the solution. You can work out what the risk assessment process is going to be. You can provide the service, the support to people who are going to use the services. You can talk to them about what this will involve so that you can be convinced that they know what the benefits and risks are involved.”**

Academic Researcher

It is currently unclear what the position of the Scottish Government is with regards to this debate. While the Action Plan leaves the door open for the use of RJ in sensitive or complex cases, the Guidance for the Delivery of Restorative Justice<sup>42</sup> seems to suggest otherwise, deeming RJ rarely appropriate in cases of domestic abuse, sexual offences, human trafficking, stalking or exploitation.

Nevertheless, a recent consultation led by Thriving Survivors<sup>43</sup> found that there is a demand from survivors of domestic abuse and sexual violence for access to RJ, and while some were clear about not wanting to engage in RJ, they emphasised that a choice should exist for those who wished to access it.

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<sup>42</sup>Scottish Government (2017) Delivery of Restorative Justice in Scotland: Guidance. Available at: <https://www.gov.scot/publications/guidance-delivery-restorative-justice-scotland/> (Accessed 17, July 2021).

<sup>43</sup> Moore, A., Keenan, M., Moss, R., Scotland, A. (2021) Survivors Voices –National Consultation: A consultation with survivors of domestic abuse and sexual violence to establish awareness, opinion, and demand related to the ongoing development of a National Restorative Justice Policy and Practice Framework for Scotland. Thriving Survivors. Available at: [http://www.thrivingsurvivors.co.uk/uploads/1/0/8/6/108624537/restorative\\_justice\\_-\\_survivors\\_voices\\_-\\_consultation\\_report.pdf](http://www.thrivingsurvivors.co.uk/uploads/1/0/8/6/108624537/restorative_justice_-_survivors_voices_-_consultation_report.pdf)

Restorative Solutions debunked some misconceptions around sensitive and complex cases in interviews. We heard that when professionals prevent access to RJ, they are inadvertently disempowering victims:



“There's obviously all sorts of challenges from individuals who don't recognise practitioners have skills to assess people. Sometimes they actually forget who they're in the business for. You often hear ‘I'm not going to expose my victim to restorative practice because that's not right'. Okay, so who's making that decision? (...) I hardly ever will make a decision not to go forward with a restorative process, except in cases of domestic abuse. Because if you go through a process of preparation, victims decide for themselves. They withdraw themselves, so you don't disempower them because they are allowed to make those decisions.

There is also another presumption.... that just because they're upset, they can't get benefit from it and that they're not allowed to shout at the offender.... but the fact is, if you've been abusing me for 20 years, I want to tell you directly how I feel to your face and ....why shouldn't I be allowed to do that?”

Tony Walker, Director of Practice Delivery at Restorative Solutions

It was also reported that cases of domestic violence require a different type of risk assessment. For example, a key element is that the abuser and the survivor are not cohabiting and that there is no desire to reconnect or rekindle the relationship. This was illustrated with an example:



“A woman referred herself into the service. She had been in a relationship with a guy for years. He served 16 weeks in prison for violence and abuse against her, he's come out, they've re-established the relationship....he's been back to court because he's done it again, and much to everybody's surprise, he only got 16 weeks the second time. So he comes out, but he's got a license not to go near her, he's got restraining orders not to go near her, etc, etc. She has been removed for her own safety and she's in a women's refuge. She's texting him, telling him where she is.....and inviting him into the refuge to see her, to maintain that relationship. And she made the referral. So we said, ‘Excuse me, we're informing services about this.’ And we told the probation service, “Do you know he's visiting her in the refuge?” That's contrary to his license conditions.’ So that almost deselects itself.”

Tony Walker, Director of Practice Delivery at Restorative Solutions

## 6.5 Training, Accreditation and Standards

Respondents praised the Scottish Government's initiative to support RJ training. It was clear from interviews that there is demand for RJ training in Scotland but that there have been unnecessary delays:



**“The training needs analysis could’ve been done last year. It was planned to be done last year. But now they’re waiting to do it ‘til after the code of conduct meeting which isn’t necessary.”**

RJ Practitioner and Trainer

The same respondent highlighted the importance of listening to practitioners who are in the know:



**“This is probably something the Scottish Government don't do enough of - talking to people on the ground. They don't do enough of talking to the practitioners or the managers who are doing it in practice. I think sometimes they're missed.”**

RJ Practitioner and Trainer

It was also suggested that it would be impractical to train people without knowing the service delivery model that is going to be implemented in Scotland:



**“I really don't see the point in delivering training needlessly. There's no point in doing something that they're going to forget. I think we need the policies and procedures and the model, or whatever happens, to be in place first.”**

Gael Cochrane, Learning Development and Innovation Lead at Community Justice Scotland

It was reported that whilst the successful delivery of restorative processes requires experienced and knowledgeable facilitators, not everyone will be suitable for the role:



“I think there is the assumption that because you work in that area, you have got the skills to do it. And I'm sure there are lots of transferable skills but... In a different context, my previous life was in education, and we introduced it within our school. So we had teachers who were very knowledgeable and skilled and experienced in working with children, but actually were not suitable to be restorative practitioners because, regardless of all of their training, all of their many, many years in education, deep down, it was about punishment, and it was about the teacher's in charge, and what I say should go. And you weren't going to change that. Three days was not going to change that mentality.

So, in terms of should they actually be facilitating? No. They shouldn't. It didn't make them bad teachers or not appropriate to work in that school, but they weren't suitable for that role. And I'm sure if you go through the police, prison service, youth justice, probation, there will be people who similarly are very good at what they do, but they're not restorative.”

Senior Professional

In general, interviewees agreed that there is room for different types of training and whilst RJ is a growing market, it requires appropriate investment and resources:



“Restorative justice is essentially a niche, an area of work in Scotland that very few organisations do. And part of that is because there's very little resource that's made available to do it (...). If overnight millions of pounds were made available for restorative justice services, I think we're likely to see an organisation like Sacro being able to capitalise on that. But I think we're also likely to see some other organisations and perhaps local authorities, depending on how they approach it, being able to engage with those resources as well, and we might see a growth in voluntary sector organisations delivering restorative justice.”

Academic Researcher



One respondent emphasised the importance of having a national body overseeing different types of training:



“I really believe that there needs to be a national body overseeing all the different trainings (...) because it is a business and so... (...) there is a danger that they're not all up to standard. But the Scottish Government already has said, "that's expensive, maybe money is better spent somewhere else.”

Academic Researcher

Interviews with Restorative Solutions and other experts evoked specific concerns around the level of training and qualifications of RJ practitioners in England and Wales. It was clear from interviews that registration is a highly contentious issue. We heard that while the RJC has developed their own registration frameworks, with clear processes, they come at a cost and can be onerous for those who do not work exclusively in RJ (e.g. teachers).

Some respondents expressed robust criticism of the lack of mandatory standards. Whilst training was perceived as the first step to becoming a facilitator, it was reported that it should not issue an automatic permit to facilitate RJ. One participant warned against the risk of having inexperienced practitioners, particularly volunteers, facilitating all types of cases without having the appropriate qualifications or experience:



“I think it's really important that people who access restorative justice know that there is a minimum standard at which people are trained and work at, and that services are answerable or accountable for the way that they deliver things (...). I think the whole sector would be more professional if there was some sort of registration process that practitioners had to do, as with other professions.

I've been involved in restorative justice for 20-odd years and it's always concerned me that the only real requirement has been you go and do your three-day training. And then you can do whatever you want once you've done that. You can deal with the most complex and sensitive cases, set up on your own. And we rely heavily on services putting in place appropriate checks.

My argument is if you're volunteering to do what is a professional role, it's a very specific role, then actually it's irrelevant whether you're paid or not. If that's the standard that you should be working at, then that's what you should need to demonstrate. And my rationale behind that is...if something goes wrong in a restorative meeting, there is the potential that it goes horrendously wrong. And it'll get to the point where something will happen, and then the questions will be asked about how. 'How have these people been able to do this and not have any sort of professional recognition to do it? How could we have prevented that?'

Well, actually, how you prevent that is by having standards in place that people have to meet to make sure that they're safe, the same as lots of other professions that are high-risk (...). The risk of something going wrong if you get two people in room that actually shouldn't be there is huge. And will set us back years and years."

Senior Professional

However, the same interviewee recognised that funding currently constitutes a barrier to accreditation/registration:



"The argument will come back to funding. Any sort of additional training or registration process has a cost associated with it, and current funding doesn't allow for that to happen."

Senior Professional

Restorative Solutions provided examples of their own challenges and emphasised that it is difficult to make registration mandatory when facilitators have other occupations:



“You can make it mandatory but there are a few issues. For example, if you want to deliver a service for a Police and Crime Commissioner... in one area you've got to have this registration, in another service, you're not. And as a Police and Crime Commissioner, if you say it's required, it will have an associated cost – the cost to register with the Restorative Justice Council. So, on that basis, lots of people say, 'we cannot justify that cost'. So it doesn't happen. So is it mandatory or not mandatory?

The other problem is, for example: Tania is a teacher in a school, her day job is teaching, but she also uses restorative practice. You're probably not going to submit a registration because you've got a day job...The question is, what's the requirement? And the answer is currently none. On that basis, you may say, 'well, you've not been on Tony's course and it's registered, you went on Bert's training course and it's not registered.' And you'll say, "Ok, then. I'm a teacher, I'm still going to do restorative justice.”

Tony Walker, Director of Practice Delivery at Restorative Solutions

They stressed that ultimately it is a policy decision:



“There's some policy decisions to be made around standards- not so much what standards you have, but how they are implemented and how they're mandated or not mandated. Because that's a bigger problem. It'll be interesting to see how you can introduce that in Scotland.”

Tony Walker, Director of Practice Delivery at Restorative Solutions

## 7. Recommendations

This report provided an indication of the practical issues associated with the commission, expansion and delivery of RJ services. Though it focused on the third sector, it exposed a number of challenges that are likely to impact anyone involved in the delivery of restorative services in Scotland and beyond. However, it is clear that there is a certain political complexity in terms of funding and service delivery model in Scotland that needs to be addressed before we charge full speed ahead in running pilots and providing training. Without addressing these political fundamentals and providing a solid foundation, any developments rest on sand and we may lose momentum.

One important take away from this report is that there is room to learn from other jurisdictions. The interviews with Restorative Solutions revealed, for example, that one size does not fit all when it comes to RJ and that the commissioning of services needs to be adequately resourced. It is therefore important to be led by the evidence and listen to practitioners.

Whilst there are obvious limitations to a small study of this kind, we hope that the recommendations set out below help contribute to the development of RJ in Scotland. The recommendations are directed at the Scottish Government.

- 1. Issue a progress report setting out key achievements against the Action Plan 2019 over the last 2 years** – The report should provide an update on the achievements made during this period and whether it has been necessary to adjust target dates. The Scottish Government should also provide greater clarity of their vision and direction with regards to RJ, both at a local and national level.
- 2. Work with local authorities and the third sector to develop funding mechanisms for RJ services** - Sustainable funding will be key to the provision of RJ in Scotland.
- 3. Prioritise decisions over the service delivery model** – We advise against the centralisation of RJ provision as it will block the opportunity to design services that meet local needs. In general, RJ services should not have restrictions based on the nature of the crime or whether a case is initiated by the victim or offender.
- 4. Develop specialised programmes for complex and sensitive cases** - We recommend the Scottish Government work with the Restorative Justice Stakeholder Group to promote guidelines of best practice for facilitators in such cases.
- 5. Develop legislation that places a duty on CJS agencies to offer restorative justice** - Legislation alone is not enough to promote and support accessibility but it can help embed a restorative culture within the justice system.
- 6. Consider how good practice can be effectively shared in the future** - We advise establishing guidance on success factors for RJ in local authorities.

7. **Create and endorse a national information-sharing template to support the agreement of GDPR-compliant information sharing protocols.**
8. **Create awareness campaigns** - Greater awareness is likely to lead to more positive attitudes towards RJ.
9. **Develop networking events, regionally and nationally.**
10. **Consider how training and qualifications will be accessed in the future.**

## **The Author**

Tânia Nascimento is a PhD student at the [University of Strathclyde](#). She holds a Master of Laws (LLM) from the same university, and a Bachelor of Laws (LLB) from the University of Lisbon (Law School).

Her PhD, which is supervised by Prof Cyrus Tata and Dr Saskia Vermeulen, investigates the emotional dynamics of restorative justice conferences.

## **Restorative Solutions**

Established in 2004 by Sir Charles Pollard and Nigel Whiskin MBE, Restorative Solutions is a not-for-profit Community Interest Company (CIC). We are committed to supporting frontline practitioners working in the community and the public sector by creating and managing innovative programmes, delivering training and services to enable the use of restorative practice. Restorative Solutions currently deliver restorative services to seven Police (and Fire) and Crime Commissioners, as well as delivering adolescent to parent violence programmes, domestic violence interventions and restorative practice implementation across organisations. Our aim has always been to provide restorative solutions that reduce harm and resolve conflict.

Restorative Solutions has been proud and pleased to partner with The Scottish Graduate School of Social Science (SGSSS) to host Tania Nascimento to complete this important report. As members of Advisory Board to the All Party Parliamentary Group on Restorative Justice, we are keen to take every opportunity to support research into all aspects of Restorative Justice.

## **The Scottish Graduate School of Social Science (SGSSS)**

The SGSSS is the UK's largest facilitator of funding, training and support for PhD students in social science. By combining the expertise of sixteen universities across Scotland, the school facilitates world-class PhD research.

The school is funded jointly by the Economic and Social Research Council and the Scottish Funding Council to deliver PhD studentships, covering the full range of social sciences disciplines as well as areas of interdisciplinary research crossing over into the remit of other UK research councils. Each year SGSSS also provides around 700 hours of training covering social science methods, wider transferable skills, knowledge exchange, collaboration with non-academic partners and much more to over 4,000 PhD students.

The SGSSS is delighted to have welcomed Restorative Solutions as a collaborative non-academic partner to host one of Scotland's social science PhD students as part of our long-established professional internship scheme for PhD researchers.

The SGSSS professional internship scheme is one of the SGSSS flagship collaborative initiatives. Since 2017, the scheme has enabled approximately 350 students across Scotland to work with non-academic host organisations (in the public, private and third sector), applying their research and transferable skills to areas of priority need for the host organisation. As such, collaborating with Restorative Solutions has been central to SGSSS's vision for research, enabling Tania Nascimento to make a meaningful impact to society and the economy.

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