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INSTITUTE OF CONFLICT RESOLUTION  
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## **FINAL NATIONAL REPORT OF UNITED KINGDOM**

3E –RJ-MODEL

The 3E Model for a Restorative Justice Strategy in Europe  
Greece, United Kingdom, Bulgaria, Finland, Hungary, Poland, Spain  
(including research also in Turkey, the Netherlands, Denmark, Germany)  
JUST/2010/JPEN/AG/1534

**2013**

# Restorative Justice in United Kingdom

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## A. Introduction

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The term "restorative justice" (RJ) was first introduced in the contemporary criminal justice literature and practice in the 1970s. Despite a plethora of definitions and studies on the meaning of RJ, there is still conceptual ambiguity (see Johnstone 2002; Gavrielides 2008; Artinopoulou 2010). For the purposes of the 3E-RJ Project, Gavrielides' definition is accepted. "RJ is an *ethos* with practical goals, among which is to restore harm by including affected parties in a (direct or indirect) encounter and a process of understanding through voluntary and honest dialogue" (Gavrielides 2007: 139). According to Gavrielides, "RJ adopts a fresh approach to conflicts and their control, retaining at the same time certain rehabilitative goals" (139).

Gavrielides understands the term "ethos" in a broad way. "RJ, in nature, is not just a practice or just a theory. It is both. It is an ethos; it is a way of living. It is a new approach to life, interpersonal relationships and a way of prioritising what is important in the process of learning how to coexist" (Gavrielides 2007: 139). For Braithwaite (2002) and McCold (1999), the principles underlying this "ethos" are: victim reparation, offender responsibility and communities of care. McCold argues that if attention is not paid to all these three concerns, then the result will only be partially restorative. In a similar vein, Daly (2002) said that RJ places "...an emphasis on the role and experience of victims in the criminal process" (p.7), and that it involves all relevant parties in a discussion about the offence, its impact and what should be done to repair it. The decision making, Daly said, has to be carried out by both lay and legal actors.

Constructing a clear account of the development and current status of RJ in the United Kingdom (UK) is not an easy task for at least three reasons. First, as it will be evidenced by the report, in the UK, RJ developed organically and in the shadow of the law without any formal structures that would mainstream it as a consistent option. This is still the case as the RJ practice is chosen on *ad hoc* basis by agencies in the public, private and voluntary sectors.

Second, the UK consists of multiple legal jurisdictions which have not experienced a unified and consistent view and application of RJ. These jurisdictions correspond to the four UK countries: England, Wales, Scotland and Northern Ireland. There are 4 key sub-systems of

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criminal justice: (1) Law enforcement (Police & Prosecution) (2) Courts (3) Penal System (Probation & Prisons) (4) Crime Prevention. Some legislation applies throughout the whole of the UK; some applies in only one, two or three countries. The Criminal Justice System (CJS) is applied independently in three separate judiciaries; England and Wales, Scotland and Northern Ireland. The Youth Justice System (YJS) is significantly different in all three judiciaries with separate legislation, courts and sentencing systems.

KEY AGENCY	CJ DESCRIPTION	RESPONSIBLE BODY
<b>Police</b>	43 regional police forces	Led by Chief Constables
<b>Crown Prosecution Service</b>	42 areas	Headed by the Director of Public Prosecutions; the Attorney General is answerable to Parliament
<b>Courts</b>	Magistrates, Crown courts	Ministry of Justice
<b>Probation Service</b>	55 areas	Home Office
<b>The Prison Service</b>	15 regional areas (133 in 1998)	Home Office

**Table 1: The key criminal justice agencies in England and Wales**

Thirdly, the policy and political context within which RJ is developed is different in each UK country. This has a direct impact on the key principles and priorities driving its development. Although the process of RJ's development in the UK can be described as a transformation from the virtual absence of the late 1980s to its contemporary popularity (Walklate 2005), there are remarkable differences between all three jurisdictions (Miers 2004). For instance, when the early RJ initiatives were funded in England and Wales strong emphasis was given on their ability to divert offenders away from prosecution and imprisonment (Dignan 2010). On the other hand, in Northern Ireland priority is given on the preventative impact of RJ practices (Jacobson and Gibbs 2009). Irish RJ systems range from a highly successful Youth Conferencing Service to a community-based system (CBRJ – Community-Based RJ) providing an alternative to former/ bygone paramilitary activity (Ashe 2009). In Scotland, RJ initiatives are mainly championed by the Scottish Association for the Care and Rehabilitation of Offenders (SACRO) and function as diversion from prosecution options for Procurators Fiscals (Kearney et al 2006).

COUNTRY	CRIMINAL JUSTICE SYSTEM DESCRIPTION
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## England and Wales

The legal system of England and Wales is based on common law. The decisions of the senior appellate courts become part of the law, but most criminal law is codified within Acts of Parliament. The CJS is answerable to two ministries; The Ministry of Justice and the Home Office. It is served by the following main agencies:

**Police:** A decentralized system of 43 regional police services, which are responsible for the prevention of offending, the investigation and prosecution of crime to the point of charge.

### ***The Crown Prosecution Service (CPS)***

**Courts:** Most criminal cases are dealt with, or pass through the Magistrates Courts, although more serious cases are all dealt with in the Crown Courts.

**National Offender Management Service (NOMS):** an executive agency of the Ministry of Justice, bringing together: Probation Service (35 Probation Trusts responsible for pre-sentence reports, supervising non-custodial sentences and the safe rehabilitation of paroled offenders) and HM Prison Service (responsible for 137 prisons in England and Wales).

## Scotland

Criminal law and procedure in Scotland<sup>2</sup> is different from that in the rest of the UK. Similarly the CJS systems and agencies have developed from a separate background and are distinct from England and Wales. The main distinction is that Scottish criminal law is based principally on a common law tradition, whereas in many jurisdictions much of the criminal law is contained in statute. Scotland has developed a 'mixed' system of criminal law with an increasing number of crimes and offences appearing in the statute books. Many statutory offences are shared with England & Wales through UK wide legislation; nevertheless, many of the most serious crimes in Scotland, including murder, rape, robbery, assault and fraud as well as less serious crimes such as breach of the peace, are common law crimes.

## Northern Ireland

It has its own judicial system<sup>3</sup>, which is headed by the Lord Chief Justice of Northern Ireland. The Northern Ireland Courts and Tribunals Service have general responsibility for legal aid, advice and assistance. Policy and legislation concerning criminal law, the police, prisons and probation are the responsibility of the Department of Justice. The ultimate source of law is statutes passed by the Northern Ireland Assembly or Westminster Parliament,

<sup>2</sup> Scottish Office: Scottish CJS Legal and Administrative Arrangements 19/7/2001  
<sup>3</sup> [www.nidirect.gov.uk/index/information-and-services/crime-justice-and-the-law](http://www.nidirect.gov.uk/index/information-and-services/crime-justice-and-the-law)

but there is also the same legal duty to comply with European Community law.

**Table 2: The CJS in England & Wales, Scotland and Northern Ireland**

In all three jurisdictions it has been recognised that RJ was particularly relevant for young offenders and that it shared many values with existing preventative and therapeutic approaches to youth offending. There is specific legislation introducing the RJ ethos and some of its practices into the YJS but no legislation for adult offenders. The adult CJS is less well integrated and although there are RJ services either in place or available at every stage of the CJS, they are often unfunded or unsupported. There have been two attempts by government to construct a national RJ strategy for adult offending including the recent 2010 Breaking the Cycle Green paper (Ministry of Justice 2010). Various programmes and pilots have been funded by government and independent bodies but there has been no funded provision on a consistent basis for RJ for adult and serious offences.

## **B. Legal framework of Restorative Justice**

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In all three UK countries/ jurisdictions there is a distinct division between the use of RJ in the YJS and the adult CJS. There is legislative provision for RJ in the YJS; however there is only partial provision in the adult sector.

### **1. England and Wales**

#### ***1.1. RJ in the youth justice system***

The Youth Justice system is a complex set of arrangements (see Appendix I) led by the Ministry of Justice<sup>4</sup>. This involves multi agency Youth Offending Teams, on a local basis. These bring together local authority children's services, probation trusts, NHS services, the police and CPS, the voluntary sector, youth courts, prisons and private sector providers. Criminal liability is set at ten years old.

The main custodial sentence for young people (10-17 at the time of conviction) is the detention and training order. Young people may also be sentenced to extended determinate or indeterminate sentences under Sections 226 and 288 of Criminal Justice Act 2003. There are three types of secure accommodation in which a young person can be placed: (1)

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<sup>4</sup> Following the Public Bodies Reform Bill 2010-11, the new UK government started a process of transferring organisational authority of the YJS from the Youth Justice Board of England and Wales to the Ministry of Justice.

Secure training centres (STCs), STCs are purpose-built centres for young offenders up to the age of 17. They are run by private operators under contracts, which set out detailed operational requirements. (2) Secure children's homes which are generally used to accommodate young offenders aged 12 to 14, girls up to the age of 16, and 15 to 16-year-old boys who are assessed as vulnerable. They are run by local authority children services, overseen by the Department of Health and the Department for Education. (3) Young offender institutions (YOIs). YOIs are facilities run by both the Prison Service and the private sector and can accommodate 15 to 21-year-olds. They will only hold females of 17 years and above.

The main reform of the YJS took place after a 1996 Audit Commission report, which severely criticised it as ineffective and expensive (Audit Commission 1996). The result was the introduction of the 'Crime and Disorder Act 1998' (CDA), which according to many writers, is the first enabling legislation for RJ in England and Wales (e.g., see Liebmann and Masters 2001). With its principal aim "the prevention of offending by young people", the Act introduced three central innovative features into the youth justice system, which are said to have changed it fundamentally, bringing it one step closer to RJ values.

The first feature was a new governmental body: the 'Youth Justice Board for England and Wales' (YJB), an executive non-departmental public body that oversees the youth justice system as it aims to prevent offending and reoffending by children and young people under the age of 18. The second innovative element was the creation of 'Youth Offending Teams' (YOTs). These are multi-agency panels formed by local authorities to provide reports for courts, supervise young offenders sentenced by the court, and to undertake preventative work. Their staff includes police officers, social workers, probation officers, education and health workers and youth service officers. Third, the Act introduced a range of new orders and amended existing ones.

The major impact in relation to RJ was the introduction of formal Reprimands and Final Warning, which are the response to the first offences committed by young people and are intended as a diversion from prosecution. These are designed to be delivered in a restorative manner and they call for the victim's views and involvement to be sought. The Final Warning is referred to and delivered by the multi agency YOT and is the largest restorative response, albeit at an early stage of offending.

One specific measure was the 'Reparation Order', which enables courts to order young people to undertake practical reparation activities directly to either victims or the community. This needs to be the outcome of a mutual agreement between the parties.

Section 2.4 made it clear that "...it should not be a mechanistic process based upon an eye for eye approach; instead any reparation should be tailored to meet both the needs of the victim, if they wish to be involved, and addressing the offending behaviour of the young offender" (Home Office 1998: S2.4). Section 6.1 set down the restorative nature of the outcomes to which such a process should lead. Finally, the guidance notes suggested that VOM could be considered as a part of 'Reparation Order', and that YOTs may wish to consider establishing this restorative process (Home Office 1998: S6.1). RJ is also visible in other elements of the Act such as 'Action Plan Orders', final warnings and reprimands.

A year later, the 'Youth Justice and Criminal Evidence Act 1999' (YJCEA) was passed, which introduced the 'Referral Order'<sup>5</sup>. This is a mandatory sentence for young offenders (10-17) appearing in court for the first time who have not committed an offence likely to result in custody. The court determines the length of the Order based on the seriousness of the offence, and can last between three and twelve months. Once the sentence length has been decided, the juvenile is referred to a 'Youth Offender Panel' to work out the content of the order. These panels are arranged by local YOTs and can include: the offender and their family and friends, the victim and their family, a representative of the local YOT and three members of the community. In theory, the process is a restorative one, including honest and sincere understanding of what happened and the pain inflicted and what needs to occur to put it right. The Government has described the Order as the first introduction of RJ into the youth justice system, while the Act itself makes specific reference to VOM as a possible agreed outcome of a panel.

Arguably, Youth Offender Panels should operate on RJ principles, enabling young offenders, by taking responsibility and making reparation, to achieve reintegration into the law-abiding community. Victims must be given the opportunity to participate actively in the resolution of the offence and its consequences, subject to their wishes and informed consent. Victims who attend RJ processes such as youth offender panels can derive considerable benefit and they generally report high levels of satisfaction with the process. The presence of victims also can substantially enhance the beneficial impact of the panel on both young offenders and parents. The involvement of victims must be entirely voluntary and based on informed consent. Victims may choose to attend a panel meeting, to have their views represented, to submit a statement, to be kept informed, or not to participate in the referral order process

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<sup>5</sup> The two Acts also introduced Detention and Training Orders, Intensive Supervision and Surveillance Programmes, Bail Supervision and Support programmes, Parenting Orders.

in any way. They need clear information about the options they have and be given time to make up their mind, without pressure<sup>6</sup>.

The Criminal Justice and Immigration Act 2008 introduced the Youth Rehabilitation Order (YRO) is a generic community sentence for young offenders and combines a number of sentences into one generic sentence. It is the standard community sentence used for the majority of children and young people who offend. It simplifies sentencing for young people, while improving the flexibility of interventions. An Activity requirement, or a Supervision requirement can require reparation to a victim and, if agreed a meeting or communication with a victim. This will be the main measure to enable restorative practices with young people who offend at this level. RJ in a custodial setting can be enabled through supervision requirements, or on a voluntary basis, but there is no specific statutory provision. The YJS and its sentencing philosophy is currently under review.

### ***1.2. RJ in the adult criminal justice system***

The provision of RJ in the adult sector has been mainly on a non-statutory basis. There is some provision for restorative and reparative activities within a Community Sentence, as part of an Action Plan Order, or Suspended Sentence (see The Criminal Justice Act 2003, Sections 189 & 201). However, RJ at a post sentence stage has been successfully used by various agencies and practitioners for many years, generally without serious challenge.

The biggest official governmental step towards a CJS that would be more in line with RJ values was taken in 2003 with the release of a consultation document on the Government's strategy on RJ (Home Office 2003). The momentum that was created by the Home Office's 2003 consultation and the encouraging research findings slowly started to fade away without any concrete progress (Gavrielides 2003). In 2005, the Home Office RJ unit was closed down and during 2005 – 2007 no major policy or legislative development followed. However, in 2007, an encouraging a non-governmental assessment was published looking at the evidence on RJ in the UK and internationally. It examined what constitutes good-quality RJ practice, drawing conclusions on its effectiveness with particular reference to re-offending (Sherman and Strang 2007). In December 2010, the UK coalition government published the Green Paper "Breaking the Cycle", announcing its intentions for key reforms to the adult and youth justice sentencing philosophy and practice. The response to the

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<sup>6</sup> See Code of Practice for Victims of Crime, Office for Criminal Justice Reform, 2005.



consultation was impressive and the implementation of the stated intentions remained to be seen.

## **2. Scotland**

### ***2.1. RJ in the youth justice system***

In contrast to England and Wales, in Scotland, young people under the age of 16 who commit offences almost exclusively go through the Scotland's Children's Hearing System. The key legislative provision is the Children (Scotland) Act 1995. With its focus on the 'welfare of the child', the Children's Hearing System is perhaps well suited to the use of restorative processes in dealing with offences compared with a punitive response.

However, there is no specific legal framework for the provision of RJ. Despite this, there is a widespread use of RJ, as a diversion from prosecution and in parallel with the Children's Hearings legislation, which provides the central element of the YJS in Scotland. The following excerpt from the Scottish Office guidance sets this out clearly: "There has been a significant growth of RJ services across Scotland as a consequence of Scottish Executive's strategies and policies to prevent, address and reduce youth offending. The fundamental difference between the children's hearings system and other youth justice systems is that by virtue of being referred to the Principal Reporter a child charged with an offence is diverted from prosecution in a criminal process and instead enters a non-retributive civil procedure which aims to meet the child's educational and developmental needs."

The Children (Scotland) Act 1995 requires that the following central principles be considered in reaching decisions: (a) the welfare of the child is the paramount consideration; (b) no compulsory intervention should be made unless it would be better for the child than no compulsory intervention at all; and that (c) children should be given an opportunity to express a view and, if they do so, consideration should be given to the child's views.

### ***2.2. RJ in the adult criminal justice system***

Any restorative practice in the adult CJS is on the basis of voluntary and common law involvement. The third sector agency, SACRO runs a range of restorative services:

- *RJ Service* provides an alternative to court prosecution whereby proceedings are put on hold to establish if there is a possibility of the parties involved reaching and completing an action plan through a process of dialogue. It would depend upon the Procurator Fiscal (the Scottish prosecutor) to refer such cases.

- *TASC* (Talk After Serious Crime) is a SACRO service designed to provide those who have been harmed by a severe crime with the opportunity to communicate safely with the person responsible for the harm.
- *Community Based Reparation* gives the person harmed by a crime a voice in how they would like the harm caused to them to be addressed. Young people and adults accused of crime are given the opportunity to take responsibility, apologise and take some action to repair the harm caused by their behaviour.

### **3. Northern Ireland**

#### ***3.1. RJ in the youth justice system***

The main RJ related provision in Northern Ireland is the RJ conference. This is acknowledged to be highly successful and was initiated in 2002. The Justice (Northern Ireland) Act 2002 brought about the Youth Conference Service, which is empowered to facilitate RJ conferences between children and young persons (10 to 18 years) who offend, together with their victims. At an earlier stage of offending the Diversionary Youth Conference is used. This is arranged through the Public Prosecutor. At a later stage the Youth Court will order a Court-ordered Youth Conference, which is the standard disposal for youth offenders. The stated aim is: "to balance the needs of the victim and the young person who offends by agreeing plans of action which satisfy the victim and create opportunities for the young person to make amends and stop committing crime." This service was designed to have restorative practice at its very centre and on the specific order of the court.

#### ***3.2. RJ in the adult criminal justice system***

The Probation Service of Northern Ireland, specifically its victim liaison department, provides RJ interventions, in a similar manner to its English colleagues, again without specific legislation. This service is directed at the victims of serious violent and sexual offences and estimates to have provided approximately 250 cases over the last 5 years, with a large majority of victim-led cases. These cases are after sentence, but prior to release or parole. This RJ provision is as part of a wider service and is not covered by specific legislation. RJ has been provided by community groups, especially mediation groups; either independently, or increasingly at the request of CJS agencies across the whole of the UK. The situation in Northern Ireland is particular to the region, in that it has grown as a result of the peace process. Some members of sectarian groups took up the cause of RJ as a way

of utilizing their influence to facilitate the reconciliation of offending behaviour. This concept remains as one of many other community groups which are willing to provide RJ services.

#### **4. Reflections: victim involvement**

In the adult CJS, much restorative practice takes place freely and completely independently of statute law. This could be said to be under Common Law in that i.e. UK subjects/citizens have always enjoyed the right to meet and communicate, and there has never been any serious attempt by the government to hamper this in relation to RJ processes (although minor obstacles may have been thrown up on a local basis).

In the YJS, there is a mix of restorative processes and measures which are fully integrated into the law, e.g. the Northern Ireland Conference and those which are part of sentences, but allow only the carefully controlled views of victims on reparation, e.g. the Reparation Order. The Referral Order allows, even encourages the victim to inform the panel, or conference, which is must include suitably trained members of the community.

Within the UK, the position remains that the victim does not have involvement in sentencing, although their views on the effects of the crime can be taken into account. This is in variance with many views held in the RJ community on the independence of joint decisions made in a restorative meeting. The legal stance of the legal establishment regarding victims and the CJS is set out clearly in the following guidance on victim personal (impact) statements by the Lord Chief Justice in 2009: *"The court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and of the offender, taking into account, so far as the court considers it appropriate, the impact on the victim. The opinions of the victim or the victim's close relatives as to what the sentence should be are therefore not relevant, unlike the consequence of the offence on them. Victims should be advised of this. If, despite the advice, opinions as to sentence are included in the statement, the court should pay no attention to them."*

Specific legislation itself does not guarantee that restorative processes will take place; the actual wording and the emphasis of the language has to reflect the intention of those drafting the Act of Parliament. Thus, in English and Welsh law, whilst obliged to contact victims: *"the YOT must decide if it would be appropriate to invite the victim to become involved in a RJ intervention."* Likewise, in relation to Referral Order panels, *"The panel may allow to attend any such meeting any person who appears to the panel to be a victim."*

Compare this with the Northern Ireland legislation: *"The following persons are entitled to participate in any meeting constituting, or forming part of, a youth conference — the victim of the offence or, if the victim is not an individual, an individual representing the victim."*

The corollary of this wording is simple; the vast majority of victims do not attend referral order panels, because it was only discretionary for the agencies concerned. On the other hand the majority of victims do attend N.I. Youth conferences, because the agency concerned was obliged to ensure their "entitlement" to do so. On the issue of victim access and involvement in RJ, without which inclusive restorative practice must ultimately fail, directive legislation works, and discretionary legislation does not.

### **C. Actual Situation of Restorative Justice**

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There is little doubt that the UK government, along with all major political parties, support the implementation of RJ. However, statements of support have to be translated into law, or at the very least into a set of directives to the CJS agencies, for the process of implementation to succeed. For instance, in Northern Ireland it was decided that the Youth Conferencing Service would be the sentence of default for the youth courts. This was set in legislation and therefore conferences were supported by a dedicated and properly funded work force. In England and Wales, the youth court is again obliged by law to make Referral Orders, so young offenders are duly referred. The remit of victim involvement is more discretionary in this instance and the implementation is devolved to local Youth Offending Teams and their volunteer panels. It is therefore inevitable that the involvement of victims suffers by comparison. Nevertheless the Referral Order Panel can use restorative practice of the best kind and they do achieve good results.

When we consider the field of adult justice, the concept of concessionary implementation applies. The court may offer a restorative element in its overall sentence, but it is not directed to do so, or to consider this option. The drafting of current legislation does not require its consideration. The purposes of sentencing are defined as: punishment, reduction of crime (including deterrence), rehabilitation, protection and, finally, reparation. The sentence is usually based upon a pre-sentence report written by the probation service. The probation services' primary role is the rehabilitation of offenders, they are not legally required or directed to consider RJ interventions, nor do they consider themselves funded to do so. Given this structure of sentencing it will come as no surprise that there are few RJ interventions in the adult sector. Those that do take place are usually the result of a minority of enthusiastic and committed practitioners, or in local pockets of good practice. Sentencers in the UK follow the law and interpret their sentencing guidelines. If the use of RJ is not before them, in statute, then we cannot expect it to be regularly used or even considered.

Funding for RJ services has always been a challenge (Gavrielides 2007). This must also be considered against a background of recent spending cuts. Moreover, CJS agencies do not generally see RJ provision as one of their main, core priorities. Many of the key staff and practitioners that were approached in relation to this report had experienced significant cutbacks in funding and service provision; many were facing uncertainty regarding their own employment. In the current climate of public spending cuts it is most likely that costs will be withdrawn rather than increased.

The major funding for RJ services has been from existing CJS agency budgets. There have been government pilot schemes and these have created periodic and localized anomalies of funded provision. In some agencies, such as individual Police Services, RJ interventions have become policy and hence provision has been implemented. In many agencies, RJ has been seen as a beneficial tool for general work, but has received no separate budget, so that RJ workers squeeze their services in on a pro bono basis. Some case workload has been provided by workers on a completely free basis, simply on ethical grounds, on the same basis that legal aid and advice is sometimes provided in poor arrears. There is a concern that RJ can always be bought in cheaply, or even free, from voluntary groups. It should also be noted that some practitioners believe that it is a fundamental concept that no person should be denied free and open access to this, RJ system; accordingly they are prepared to offer free, pro bono, facilitation when they are able.

Comparison with the traditional CJS will reveal more savings from the RJ approach. Diversion from prosecution, usually through police use of RJ, will result in fewer offenders attracting the expensive attentions of the prosecutor, the legal aid and the court room. At the stage of court sentencing restorative sentences and measures result in less offenders needing to be imprisoned. Putting one young offender in prison costs as much as £140,000 per year (£100,000 in direct costs and £40,000 in indirect costs once they are released) (Knuutila 2010). Two thirds of the YJB budget, or about £300 million a year, is spent on prisons, while the money it uses for prevention is roughly one-tenth (Youth Justice Board 2009a). More worryingly, according to the YJB, as a result of inflation and the rising costs of utilities and food, the costs of custody will keep rising even if prisoners' numbers stay the same.

Year	Average cost of prison place
<b>2010/11</b>	£41,000

<b>2007/08</b>	£39,000
<b>2006/07</b>	£37,500
<b>2005/06</b>	£36,500
<b>2004/05</b>	£34,500
<b>2003/04</b>	£33,000

**Table 3: Average cost of prison places in the UK (Hansard 3 Feb 2009: column 1176W)**

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

The savings that flow from the contribution made by RJ to reducing reoffending rates are impressive; crime by former prisoners costs society more than £11 billion per year (Prison Reform Working Group 2009), while RJ can deliver cost savings of up to £9 for every £1 spent (Shapland *et al*/2008). According to Victim Support “if RJ were offered to all victims of burglary, robbery and violence against the person where the offender had pleaded guilty (which would amount to around 75,000 victims), the cost savings to the criminal justice system - as a result of a reduction in reconviction rates - would amount to at least £185 million over two years” (2010: 29).

<b>Table 1: Cost savings where restorative justice is offered to all victims of burglary, robbery and violence</b>							
Number of offenders	Number of RJ interventions (40% take up)	Net cashable CJS savings over 2 years	of which Police	of which Prisons	of which Legal Aid	Net cashable NHS savings	Non-cashable net savings
75,000	29,000	£185m	£65m	£56m	£14m	£55m	£741m

Based on Victim Support / Restorative Justice Council modelling

**Figure 1: Cost saving analysis for RJ (Victim Support 2010: 29)**

According to Matrix Evidence (2009), RJ practices “would likely lead to a net benefit of over £1billion over ten years”. The report concludes that diverting young offenders from community orders to a pre-court RJ conferencing scheme would produce a life time saving to society of almost £275 million (£7,050 per offender). The cost of implementing the scheme would be paid back in the first year and during the course of two parliaments (10 years) society would benefit by over £1billion

<b>Table 2: Cost savings where restorative justice conferencing is used to divert some custodial sentences</b>			
	<b>Number diverted from immediate custody</b>	<b>FTE 1 year prison places saved</b>	<b>Saving to prison budget from diversion</b>
<b>TOTAL</b>	<b>6,540</b>	<b>11,000</b>	<b>£410m</b>
Violence against the person	3,000	4,400	£166m
Burglary	2,300	3,300	£124m
Robbery	1,200	3,200	£120m

Based on Victim Support / Restorative Justice Council modelling

**Figure 2: Cost saving analysis for RJ in prisons (Victim Support 2010: 29)**

The area where RJ “savings” have been most ignored is that of the recovery of victims and their return to the community as healthy, working citizens. After restorative settlement of their cases some victims can return to employment, perhaps they can cease their expensive mental or medical treatment. RJ can be a healing process and this “treatment” has a price that can and should be measured. The measurement of the costs to crime for victims and the savings from restorative processes is, however at an early stage of development.

**Example 1: Referral Order Panels – England and Wales**

When the court makes a referral order the young offender is referred to a youth offender panel. At the initial panel meeting with the young offender and their parents or carers the panel members review the offence and its consequences; victims are invited to participate either by attending the panel or having their views represented. The young offender agrees with the panel a contract, which should include two core elements: reparation / restoration to the victim or wider community and a programme of interventions/activities to address re-offending risk.

Youth offender panels must comprise at least two volunteers who are representative of the local community, plus a member of the youth offending team acting as an adviser. The community panel members will take the lead in the panel meeting and one of them will

chair; the youth offending team panel adviser will provide background information and advice to the community panel members.

Youth offender panels should operate on the restorative justice principles of responsibility, reparation and reintegration. Restorative justice enables offenders to become aware of and take responsibility for the consequences of their offending and to have the opportunity to make reparation to victims and the wider community. Victims have the opportunity, if they wish, to say how they have been affected by the offence, ask questions, receive an explanation and/or an apology and discuss how the offender can make practical reparation for the harm that has been caused.

Nationally the Youth Justice Board (to be integrated into the Ministry of Justice) oversees the Referral Order process. In 2009 there were 24,077 orders and panels held, drawing upon 5,000 volunteers nationwide. The latest figures indicate that YOT staff achieved involvement of contactable victims in 23% of cases. Referral Orders currently achieve a re-offending rate of 37%, which compares very favourably with other measures at the same stage of offending.

There is a diversity of local YOTs therefore the local delivery and results of RJ will differ accordingly. In one successful West London Youth Offending service last year 83% of identified victims were offered participation in the restorative process, of which 64% took part in some form of restorative process, 16% in a direct meeting.

**Table 4: Example of an evaluated RJ programme in England & Wales**

It has to be noted, however, that recoding accurate numbers of cases resolved through RJ proved to be a challenge. As noted, RJ is done mostly on an *ad hoc* basis and in the shadow of the law. Where a funded pilot scheme has been set up with suitable funding, the research data is built-in and forthcoming. RJ services, or those disposals that lead to them, which are totally within the CJS, are accountable to the usual provision and collection of monitoring data.

Furthermore, community groups and individual facilitators adhere strongly to the principle of confidentiality; they see little need or requirement to collect data for academic purposes. Traditional CJS agencies do not always value the RJ input, so they do not grant it the courtesy of recording its process or outcome. RJ is also at an early stage, being used at all stages of the CJS in some ways and excluded in others. RJ has yet to establish its true, lasting status – where it belongs.

All these reasons conspire to leave much data on restorative interventions neglected, obscured or completely hidden. As an example we could consider a prison, within which



several inmates become involved for a variety of reasons. One is involved in a chaplaincy led project which leads him to wish to apologise and make amends - this project is completed by a church based RJ provider. The second prisoner is approached via the victim service of a distant probation area and a mediated meeting with his victim ensues. The prison probation manager does not believe in RJ so ignores it. The third prisoner is involved in an RJ process through the prison officers and a prison governor is informed and supports the process. Only one of these processes is likely to be recorded by the prison management. At this time it is highly doubtful that statistics are held on a local, regional or national level on the various aspects of RJ. Clearly it would be good for all concerned if RJ interventions were given the same status as court disposals and counted. They have real value and need to be both counted and accountable.

### **Example 2: Youth Conferencing Service - Northern Ireland**

The Youth Conference Service (YCS) of Northern Ireland was established in 2003. The Public Prosecution Service (PPS) can refer young people for a pre-court diversionary conference, or, if the matter proceeds to court, the young person can be referred for a Court Ordered Youth Conference. The young person must admit guilt or be found guilty and agree to participate in a conference.

The process of the conference as outlined by the YCS is as follows:

*"The Youth Conference Co-ordinator asks everyone to introduce themselves and explains the private/confidential nature of the meeting. The Co-ordinator asks that everyone shows mutual respect and affords each other the opportunity to speak uninterrupted.*

*The Co-ordinator invites the young person to give an account of what happened. The victim is then encouraged to ask the young person questions about what has been said.*

*The Co-ordinator invites the victim to tell the young person how they have been affected by the crime.*

*The Police Officer outlines the facts of the case and the effect of the crime on the community.*

*The Co-ordinator invites others present to give their views in relation to the crime and the effect it may have had on them.*

*The Co-ordinator asks the victim what they would like the young person to do to repair the harm caused and to make amends.*

*The young person and the appropriate adult are invited to suggest suitable actions which the young person will undertake to make amends and prevent further offending.*

*The Co-ordinator asks the victim and supporters to comment on the suggested actions.*

*If the young person agrees to the actions this agreement becomes known as the Youth Conference Plan. If no agreement is reached the matter is returned to the Public Prosecution Service or Court. The Conference is then closed."*

The process after the Conference:

*"A report is sent to the Public Prosecution Service or Court and they will decide to accept or reject the Plan.*

*When a Plan is accepted by the Public Prosecution Service the young person completes a Youth Conference Plan. This is not classed as a conviction on a young person's criminal record but can be referred to if there are further criminal prosecutions.*

*When a Plan is accepted by the Court the young person becomes subject to a Youth Conference Order and this is recorded on a criminal record in the same way as any other Court disposal.*

*If the Public Prosecution Service does not accept the Plan it may then prosecute. If the Court does not accept the Plan it may then give an alternative sentence. If requested the Youth Conference Co-ordinator will inform the victim of the decision. The Plan is then monitored by the Youth Conference Co-ordinator.*

*If the Plan is satisfactorily completed the Youth Conference Co-ordinator will inform the Public Prosecution Service or Court.*

*If the young person fails to complete the Plan the Youth Conference Co-ordinator will send a report to the Public Prosecutions Service or Court who will then deal with the matter."*

In the year 2008/9 a total of 1,234 conferences were approved, 590 as diversionary conferences and 644 as court ordered conferences. In 2006 the re-offending rate for all youth conferencing was 37.7%.

It has been estimated that the cost of a restorative conference case in 2008 was between £1,000 and £1,500 per referral. It is also estimated that staff time per case in Northern Ireland was approximately 26 hours. Given the high conference completion and compliance rates achieved, these costs per case represent a relatively efficient delivery cost. It should be considered that the costs of community and voluntary sectors, which provided opportunities and structures within which young persons could complete their restorative undertakings, are not generally reflected in the costs per case.

**Table 5: Example of an evaluated RJ programme in Northern Ireland**

The "focus" of RJ provision is usually initially stated to be on a truly restorative basis, i.e. equally towards the offender, victim and community. The resulting bias will depend on the practitioner, their management and the commissioning agency. The driving and clearly

stated need of government is to reduce offending and re-offending in particular. It is from this perspective that RJ provision loses its focus. The constant perspective is that of offender management. Whilst it may be stated policy to “put the victim at the centre of the CJS” they are not funded, whereas an offender will invariably attract legal aid. The agencies that provide RJ all manage offending too and that is the perspective from which most agencies provide their services. These agencies also see themselves as representing the community, rather than the CJS. The community, in the sense of the wider ring of those affected by the actual offence, is rarely involved. Some rare RJ services, such as some local Victim Liaison Service provision, are victim-initiated and achieve both a victim and offender perspective. Experienced practitioners will discuss various service provisions and assess them by the way that it values its victim involvement. The ultimate test is who does the RJ provider, or their practitioner, believe “owns” the restorative process? Is it theirs? Or the CJS agency that commissioned it? Or do they acknowledge that it belongs with the participants and that the purpose of RJ is to give the power of settlement back to them?

The vast majority of UK input is, inevitably, from an offender perspective. Practitioners do try to redress that imbalance; and it can only be achieved once victims have equal and independent access to RJ services.

Appendix II includes a detailed analysis of key research, evaluation and promotion projects in the UK.

#### **D. Informal Referrals & Initiatives**

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Across the UK, there is no formal split between the provision of court-ordered RJ processes and those provided “informally.” Moreover, there is no systemic separation between statutory providers of RJ and community based, or “informal” providers. The fact that a restorative process is not specifically ordered as part of a legal code does not mean that it is not furthering the aims of the CJS. It could be considered that this unlegislated use of RJ is a continuance of the Common Law system. Therefore we should consider carefully how we use the word “informal” in relation to RJ and the UK justice systems. Indeed, who does own, or order, a mediation or restorative process between, for example, a victim and an offender? Is this another state initiated justice process, or is one of the fundamental concepts of restorative justice that the process belongs to the parties involved rather than the state? In this respect the common law system can allow the restorative process to take place, so long as it does not interfere with the formal prosecution and court process.

Currently, there is a general political and budgetary desire to find alternatives to prosecution for less serious cases and for those who have no previous offending history. This is a

diversionary use of RJ, which can often be formal in its structure (e.g. restorative conferencing). It can be used by police, such as the use of restorative reprimands for young offenders, or conditional cautions for adult offenders. It could be a case involving a child or young person at a school or care home, which might be resolved by the relevant professional authorities using a restorative process. It could be used post-sentence, by the probation or prison services, or by independent mediation groups or restorative practitioners.

There has been debate about whether the mediation services provide more neutral facilitators than their state employed colleagues, but this has been mainly resolved in mutual recognition of each other's strengths and a growing realisation that commonly held practice standards are the way forward. There has been a history of community mediation services recognising and then championing the use of mediation/RJ in its early use in the criminal area of work. This was not universal, but there are areas where mediation services carry out RJ processes independently, or on behalf of the statutory agencies. In the UK it may be difficult to establish what a formal is or an informal referral is. This is partially the result of a belief that RJ, especially the formative thinking underlying it, is not a process to be submitted to; rather a radical new approach to reclaim justice for those involved in the conflict and their community.

An example would be the work carried out by a London mediation service in the field of hate crime. Most of the casework was referred by police or housing agencies independently of the criminal courts and as a diversionary measure. The RJ provision was dealt with in the same way and to the same standards as any full time statutory provider.

In one English county the mediation services have developed a relationship with the Police, Probation and Prison services whereby they are referred cases that require in-depth RJ input. It is felt by managers in these CJS agencies that there is a skill base in the local community mediation network that will be maintained to higher level than could be guaranteed, or funded, internally.

The level of skill and experience of non-statutory practitioners is a matter of debate, especially when the effects of crime, on all parties, are being facilitated. It is usually the case that the community practitioner will be a paid worker, albeit by the third sector, especially in more serious matters. The use of unpaid volunteers is at a different level and dependent upon their level of training. The Youth Justice Board (England and Wales), has recognised the need for extensive upgrading of the RJ training to be given to their 5,000 panel- member volunteers and this is already in preparation.

## **1. Victim Initiated Processes**

The whole strategic drive for RJ nationally and internationally has been from the perspective of the CJS agencies and the impact on offenders and the prospect for reducing re-offending behaviour. It has been almost a by-product that the hugely beneficial effect for victims has been recognised. Across the UK the probation services have had a statutory responsibility to keep victims in serious cases informed of the progress of their offenders. Early pioneers in the UK took on victim's requests to mediate, or meet with their offenders and to resolve outstanding issues and ensure a safe return from prison. This was undertaken before the concept of RJ was fully formed and now represents a mainstream approach to RJ within the UK. It has proven to enable safer and earlier release on parole, mutually agreed by the victim. However there is no statute which enables this practice and it is rarely funded; it survives on a precarious basis. There is a far higher take-up by offenders and victims for this approach to RJ and there is a strong argument for it to be moved from the "Informal" to "Formal" category of referral.

## **1. Restorative Approaches**

The focus of this research project is on RJ processes – within the criminal justice system. However the most important development of restorative thinking in the UK has been around the exponential growth in what has become known as restorative approaches. The full formality of conferences and mediations were unnecessary for the light touch needed for non-crime settings. There has been growing interest in the use of restorative approaches in schools, residential childcare settings and the work place, based on the philosophy and practice of RJ.

This work was pioneered in schools and then spread, wherever a more informal approach could address an area of conflict. Some police services too saw the need for restorative approaches that could enable their officers to deal with smaller conflicts and complaints before they developed into crimes, and without the need for full-scale conferencing skills.

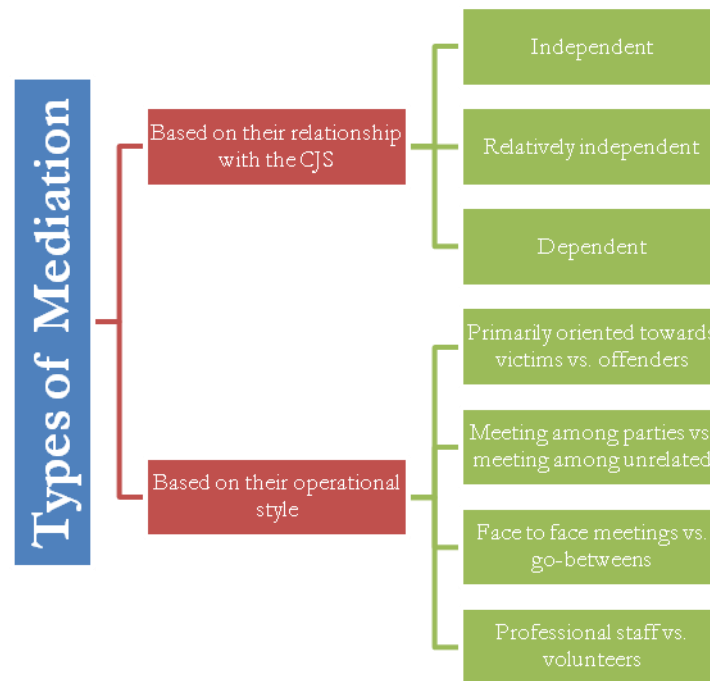
The experience developed using these processes gradually led to a realisation that the restorative approach requires a cultural shift in the way that police or staff and either young people, or clients, or even prisoners interact on a day-to-day basis. The benefits of using such an approach go far beyond the narrow remit of reducing conflict or potential offending behaviour.

As an example; in one prison setting RJ was introduced in partnership with the local probation service and then grew into what has become a fully restorative environment. Offenders can interact with victims, and victims can initiate RJ processes with offenders. It is

the wider remit that is of more interest; conflicts between staff and prisoner, or the wider, circle approach of working with the family too have all been used and the prison can be seen as a restorative establishment. This adoption of RJ, or restorative approaches has grown to the extent that some schools see themselves as "restorative schools" and even towns, or local areas have declared themselves to be "restorative" in their approach. The growth of restorative approaches and its adoption as a policy is relevant to our consideration of RJ strategy. The potential for internal reform and the involvement of the community are attractive to policy makers, as is the lowering of basic costs.

### **3. Mediated Restorative Processes**

Mediation based restorative practices have been some of the key and the most developed of RJ practices in the UK. Five distinctions can be made, none of which is mutually exclusive. The first is between programmes that are primarily oriented towards the needs of the offender, and those that also take account of the needs of the victim. The second distinction is made between projects where victims meet their offenders and projects where groups of victims take part in discussions with unrelated offenders. Although this type of mediation does not preclude bringing the individuals together to consider how offenders can make amends, their main goal is to help both victims and offenders to challenge each other's prejudices. The third distinction concerns mediation programmes that may include face-to-face meeting of the victim with the offender, and those that have mediators act only as go-betweens. The fourth category depends on the cases that the mediation programmes accept. For instance, a project may take cases below or above a certain level of seriousness, or only juvenile cases. Lastly, there are full Victim-Offender Mediation programmes that are designed to meet the needs of both parties, and their community, according to the permission and agreement of both parties, and to carry out any outcome agreement that might be forthcoming. These processes are usually carried out by paid professional staff or by trained volunteers.



**Figure 3: Types of Mediated RJ in the UK**

Mediation can appear as part of/instead of/on top of the structure of the formal criminal justice system. It can take place at any time during the criminal process, or outside the system altogether. In general, the process of mediation follows the same basic steps. The first step is a referral of the case to the mediation programme. Referrals usually come from the system’s agents (such as police, prosecutors, judges and probation officers), and may take place at any time from the report of the crime to the parole period. The second step is the preparation of the case. Victim and offender are contacted separately, and asked if they are interested in joining the mediation programme. The facilitator then gathers information about the offence, and schedules the session. The third step is the actual meeting between the offender and the victim. Here, the structure of the meeting varies accordingly. The final step, in those cases where this protocol has been agreed by the participants, involves preparing the file and returning it to the referral source (e.g. prosecutor, police, the court).

### **E. The Key Practitioners of Restorative Justice**

The limited scope of this report does not allow a detailed list of all the individual key practitioners and service RJ providers in the UK, therefore the main agencies are listed below. It is important to note that there are no state-run organisations of practitioners. There is also a mutual understanding that a ‘restorative movement’ exists, across all backgrounds and agencies. The situation is complicated by the open market culture and

provision, which can lead both to opportunity and creative tensions on one hand – and competition over influence, funding and contracts on the other.

- **Community mediation schemes;** have provided mediation to divert cases from prosecution and latterly to undertake casework for the CJS agencies e.g. Southwark Mediation Centre.
- **Police:** Here, RJ provision is dependent upon local policy and is frequently competent and committed.
- **Crown prosecution services / procurators fiscal:** The prosecuting authorities are critical to any matters related to the discontinuance of cases related to RJ.
- **Youth offending agencies:** These multi agency teams (YOTs) provide the great majority of restorative input in England and Wales. Some services outsource casework.
- **NGOs and Third Sector:** There is a long and successful tradition of RJ provision by third sector agencies<sup>7</sup>
- **Youth Conferencing Service:** This is the Northern Ireland statutory agency for RJ conferencing.
- **Courts and Judiciary:** There are separate youth courts who have worked with RJ related youth law for the last ten years. Adult courts and sentencers have shown a reluctance to engage with RJ involved sentences.
- **Probation Services:** Probation officers write the pre-sentence reports that advise judges as to the most effective sentence. They are also responsible for the supervision of offenders on community sentences, which can include RJ input. The Victim Liaison Service has a fine record of victim-initiated RJ in serious cases.
- **Judiciary:** The judiciary of all three countries are independent of government. Any increase in the use of RJ will need precise legislation to enable their consideration.
- **Ministry of Justice (MOJ) and Home Office:** The Government ministries involved in the forming policy, the drafting of legislation and regulation of RJ matters. The **MOJ** has recently taken over the role of the former Youth Justice Board, and is responsible for regulation and support of RKJ provision.

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<sup>7</sup> For instance, see SACRO, which provides RJ provision and support for Scottish government. SACRO was responsible for the development of: *Best Practice Guidance for RJ Practitioners and their Case Supervisors and Line Managers (Scotland) 2008*. Also see the RJ Council (RJC) which provides quality assurance and the national voice for the field of restorative practice. The RJC is the independent third sector membership body for the field of restorative practice. Our members are practitioners, training providers, organisations providing restorative practice across the country, and individual supporters.” The Restorative Practice Scotland fulfills a similar role in Scotland. The Association of Panel Members (AOPM): The AOPM is a membership organisation for the 5400 community volunteers supporting Youth Offending Teams (YOTs) in England & Wales in Referral Order panels.



- **Northern Ireland Office Northern Ireland Assembly & Scottish Parliament and Scotland Office:** Much legislative power has been devolved to the Scottish Parliament and the Northern Ireland Assembly respectively. Any RJ development in the UK will be carried out under the auspices of each independent CJS.

## **F. Current Reforms**

In December 2010, the UK coalition government published the Green Paper "Breaking the Cycle", announcing its intentions for key reforms to the adult and youth justice sentencing philosophy and practice. This consultation set out the resulting proposals which aim to break the destructive cycle of crime and protect the public, through more effective methods of punishing and rehabilitating offenders and by reforming the sentencing framework. The Ministerial Foreword noted: "There is much work to do in a criminal justice system which is so badly in need of reform ... We will simplify and reduce a great mass of legislation ... We will put a much stronger emphasis on compensation for victims ... I think it is right to describe these reforms as both radical and realistic" (Ministry of Justice 2010: 2).

The paper highlighted development of RJ at three key stages of criminal justice. First, as 'a better alternative to formal criminal justice action for low level offenders ... This is a more effective punishment than a simple caution, and builds on local approaches already used by the police.' Second, the paper highlights the use of RJ as diversion from prosecution – an out of-court disposal – for cases where prosecution would be likely to lead to a fine or community sentence. Thirdly the paper highlights the option of RJ pre-sentence for offenders who admit guilt, stating 'They could therefore inform the court's decision about the type or severity of sentence handed down'. This section of the paper concludes 'Greater use of RJ, as set out above, can prevent the feeling of powerlessness which often results from being made a victim. Increased use of compensation and reparation will benefit victims directly while establishing the principle that offenders must take personal responsibility for their crimes.'

Chapter 5 of the Green Paper focuses on Youth Justice 'To increase the use of RJ we will build on the role currently performed by volunteer youth offender panel members and ensure that referral orders have a strengthened restorative approach. We will support panel members to increase their skills and confidence in using RJ in referral orders ... RJ is already a key part of youth justice and we want to encourage this across the youth justice sentencing framework as a whole, drawing on the experience of youth conferencing in Northern Ireland.'

In the eyes of a criminologist, or indeed any thinking citizen, the Green paper's proposals come as no surprise. In a financial climate where public services are being reduced, legislative reforms are expected. On 21 June 2011 the Ministry of Justice published its response to the consultation responses received to the sentencing green paper. Although some areas of proposed policy have changed – for example in relation to the additional discount for early guilty pleas – the messages on RJ remained strong. However, there are no provisions on RJ in the draft Sentencing Bill laid before parliament the same day.

On 21 June, Ken Clarke said "We have recommended the extension of RJ from the start. The more I come across it, the clearer it is to me that it is very welcome to victims and can be made very successful. We are continuing unswervingly in that regard, and intend to make more use of the system." In relation to increasing community involvement and ownership of criminal justice, the Government response says: "(we will) increase community involvement in justice so that local people help to find resolutions to low level crime that reflect community concerns and interests. This will include continuing to test Neighbourhood Justice Panels to bring local volunteers and criminal justice professionals together, using restorative and reparative approaches, to decide what action should be taken to deal with some types of low level crime and disorder."

## **G. Evaluation and Recommendations**

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RJ is back on the agenda. It now appeals to the contemporary politician. It seems that a collective feeling of acceptance of non-punitive responses to crime is gradually being developed, while on an individual basis we are becoming more honest about what matters to victims and offenders, particularly if we have been touched by crime. The re-defining of "community" and the focus on locality spark a new debate that sees "conflicts as property" of local people and not so much of the all-powerful, centralised state. The interest of the UK coalition government in RJ may present its proponents with a unique opportunity to take the debate on its implementation forward. However, in going forward the following five main obstacles will need to be tackled.

### **1. Conceptual conflicts**

Conceptual conflicts affect communication between different types of practitioners (e.g. mediation and family group conferencing colleagues) and between practitioners and their organisations/employers (e.g. in terms of primary goals pursuit). The same is observed regarding the communication between programme-designers and their

organisations/employers (e.g. they tended to change the designed programme to fit in with their agenda). The evaluation of Hoyle *et al* and Wilcox *et al*, agree with this. Moreover, both the research and practice seem to concur that due to these tensions, the same restorative programme could be put in practice by different organisations of the same criminal justice system and still bear enormous differences.

Not surprisingly enough, conceptual misunderstandings seem to affect funding applications (e.g. funding bodies tend to misunderstand the purpose, extent or character of proposed restorative projects). Moreover, evaluation and research seems also to be affected (e.g. evaluators tend to follow funding bodies' understanding of RJ, aiming to reach the targets that were set according to their priorities).

## **2. Training and accreditation**

Undoubtedly, during implementation, a number of limits unavoidably have to be placed upon the RJ norm. These may stem in part from organisational constraints on what can or should be achieved within the existing punitive operational framework of our criminal justice system, and in part from popular understandings of what criminal justice means for the offender, the victim and their communities. There is no reason to believe that the training of RJ facilitators falls outside these organisational constraints. What is important to note, however, is that the evidence may suggest that the problem of training has already been extended far beyond this commonly acceptable level of pragmatism.

The lack of uniformity of training courses seems to have resulted in the appearance of a range of different quality levels of restorative practices. These may differ in the way they are carried out, their effectiveness and outcomes. More importantly, however, they can vary in the level of their 'restorativeness'. This encourages different tensions in the field. The lack of uniformity also seems to allow some practices to be gradually exposed to 'foreign agendas' that are often used to 'enhance their efficiency' and improve their target measurement.

Furthermore, there is a lack of widely accepted training standards and procedures. The way the RJ concept was originally approached by trainers and practitioners did not show the need for the introduction of comprehensive standards that would have guided implementation. However, it now appears that this oversight has led to a number of implications for RJ -among which inconsistency. Past attempts to address this problem showed that it might have become more complicated than it was thought to be. One question that this entails is how and who will bring implementation back in line with the normative principles. The other danger is thinning down the principles to fit current means of delivery. The examples of Thames Valley Police training and the results of studies such as

the Youth Justice Board 2004 national evaluation suggest that practice most often precedes training and that during application many facilitators are found to be non-qualified or needing follow-up training. As the evidence suggests, this is usually done in a fashion that serves the immediate needs of the given programme or provider.

We also have evidence to believe that most training courses seem to teach either little about the normative RJ principles or nothing at all. Even where such teaching is provided, most often it is inadequate, as trainers are not clear about the theory and its significance. In consequence, many trainees (later practitioners) are left unaware of the theoretical framework in which they need to place their practices. The danger from this is that as more and more programmes are facilitated by such practitioners, the character of RJ practices will be affected.

Directly related to the last problem was the identified lack of widely accepted or nationally provided training books. It was observed that in the best occasion, individual training providers produce their own manuals. However, this only introduces an additional relativity and inconsistency between training, practice and principles.

IARS past research has found accreditation to be a good idea and a possible way out of this problem, it was pointed out that this process might also involve a number of dangers, which can result as by-products of this inconsistency. For example, practitioners fear that accreditation processes might not always reflect the RJ ethos due to bureaucratic or standardised procedures. Concerns are also expressed about a number of other pitfalls such as not taking into account the already established traditions of practice.

### **3. Funding limitations & evaluation**

Generally, it can hardly be argued that reaching justice ideals can be costly both organisationally and economically. In fact, it would be naïve to believe that ideals of any origin (punitive or restorative) can ever come first in organisational routines and professional interests. This seems to be particularly relevant to restorative practices where the time and labour to organise a meeting appear to be greater than the construction and disposal of criminal cases by traditional procedures. In a high-volume jurisdiction that uses conferences as a matter of routine, the effectuation of an ideal RJ practice sounds unrealistic. Organisational shortcuts are therefore inevitable. A certain degree of realism has to be maintained.

Research has shown that funders' priorities are not always consistent with RJ's normative principles as these are understood by its extensive theoretical literature (Gavrielides 2007). For example, the bulk of the interest is mainly in reducing re-offending, while less

significance is given to increasing victims' satisfaction, healing and reintegration. While a certain level of impact is always to be expected from the uneven relationship between RJ and traditional punitive traditions of criminal procedure, this however cannot alter the practices' central character. This concern is mainly attributed to the control that funding bodies often want to have over the nature and process of programmes. As funders control resources, many practitioners are given fixed target agendas which they need to satisfy, even if that means adapting their practices.

Practitioners have also reported that they often received pressure from their funders to deliver within timeframes that were not consistent with RJ's principles (Gavrielides 2007; 2008). In particular, funding bodies appeared to have demanded immediate results, and introduced timescales and performance measurement targets, which were difficult to reach. RJ, participants said, has a slow delivery system, and cannot be forced in any way. Nonetheless, RJ seems to have often been used as a 'quick fix tool'.

This issue was also thought to be directly related to the way evaluation of RJ programmes is carried out. Research can be hampered, as funders are most often interested in seeing results that, according to the literature, should have been of secondary importance. Most participants chose to apply RJ in such a way that it addresses the funders' priorities, moving away from its normative framework. There is one note of caution that should be noted in respect to informal referrals; this is the matter of statistics and accountability. RJ processes generally are difficult to evaluate or monitor because they are usually confidential and generally outside the normal CJS network. This is part of their nature. It also means that they are often not recorded, or that the community agencies that provide them have not developed the capability to record them and their outcomes. In turn this makes it more difficult to prove their value and potentially more difficult to hold the process to account, in the manner which a justice process must be accountable.

Funding also appears to have been rejected due to definitional misconceptions. Some funders reject applications, because they are confused about the real strengths, potentials or dangers associated with RJ programmes (Gavrielides 2007). For example, applications were turned down because funders would take RJ to be a religious practice or a radical concept that supposedly aims to bring fundamental revolution to the criminal justice system. Funding applications were also rejected because funders were not aware that RJ could be used for adult offenders and serious crimes. RJ has, for so long, been applied solely for juveniles and minor crimes, which made people believe that these are its only potentials. Finally, various practices tend to label themselves 'restorative' in order to attract funding from bodies that have resources specifically allocated to RJ. Many of these schemes succeed

in getting this funding, mainly because a number of organisations are not equipped with the necessary tools to identify abuse of the concept.

#### **4. Watering down the victim-centred RJ principles**

Arguably, one of the factors that put RJ back onto the criminal justice agenda is the theoretical importance that it gives to victims of crime who, according to the literature, tend to be left out of traditional criminal proceedings (Ashworth 1986; Elias 1993; Group 1984; Hoyle and Young 2002; Kelly 1987). In theory, RJ does not give precedence to any of the primary parties, placing emphasis on establishing an honest communication and understanding between them, which will eventually be to the benefit of all. Therefore, RJ's victim-related principles could constitute one of its strongest cards against the already deep-rooted punitive traditions of utilitarian and retributive goals.

Over the last two decades a number of evaluations have been carried out focusing on RJ's effectiveness for victims. These, *inter alia*, aimed at testing the extent to which RJ's victim-related theoretical proclamations are reflected in practice. However, as the chapter also argued, there are still a number of victim matters that remain untouched or immeasurable. These are usually related to what Van Ness calls "shalom"; the ability of RJ to deliver grace (Van Ness 1993: 125).

Furthermore, practitioners fear of letting recidivism targets overshadow the rest of RJ's normative aspirations as these are recorded by its extensive literature. For instance, the sentencing stage of restorative meetings can often be completed without any substantial victim participation. This leads practices to fall back into the vicious circle of traditional criminal proceedings in which offenders are not aware of the reasons they were convicted for and victims are not heard or taken into account. Some courts have not yet been prepared to adjourn for the victim to be contacted and a proper assessment to be made of the offenders' suitability. In conclusion, outcomes might indeed sound to be 'restorative', but in the end, procedures can be far from it.

#### **5. Watering down the RJ principle of voluntariness**

According to the RJ theory, neither of the parties can be forced to participate in a restorative meeting, and even if they agree to take part, they have the right to withdraw at any time. This is arguably one of the strongest features of restorative processes. It is a principle that makes them stand out from the rest of the criminal justice procedures, which (most of the time) are triggered automatically once a case is reported.

However, the restorative world seems to be in disagreement with regards to the rigidness of this particular principle. A question that is often posed concerns the extent to which coerciveness can be employed so that procedures may retain their restorative character. This tension is significant for the RJ practice. In fact, the views around the application of this particular principle have divided the restorative movement into two groups. On the one hand are those who seem to claim that a certain level of coercion is acceptable if RJ is to work side by side with the current criminal justice system. On the other hand are those who believe that if the principle is not fully respected, then the practice cannot be restorative (Gavrielides 2005).

According to research evidence, if any of the parties feel forced to participate, this is likely to lead to a counterproductive process (Hoyle, *et al.* 2002; Miers, *et al.* 2001; Roberts 1995). On the other hand, many policy papers, including the government's 2003 Strategy Document, claim that a certain degree of pressure can and always has to be put on offenders (Home Office 2003). At the same time, practitioners seem to be sceptical about extending application of this principle to all RJ audiences, as this could exacerbate the problem of not having enough cases diverted from the criminal justice system (referrals). Some others have asked how truly voluntary restorative programmes are if offenders know that failure to participate will result in the traditional criminal justice procedure being triggered.

## **APPENDIX I: YOUTH JUSTICE SYSTEM – ENGLAND & WALES**

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## Prevention

A young person is at risk of offending.

[▶ More](#)

### Who's involved

[YOT](#), [LEA](#) (local education authority),  
[Social Services](#), [Police](#)

## Pre-court

A young person commits a first or second offence and admits guilt or is behaving anti-socially.

[▶ More](#)

### Who's involved

[Police](#),  
[YOT](#),  
[Local Authority](#)

## Court

A young person is charged by the police after committing further offences, or a young person is charged with a more serious offence.



A young person is bailed or remanded in custody.

[▶ More](#)



The young person appears in a Youth Court

If the young person is charged with a serious offence, the Youth Court refers to the Crown Court.

[▶ More](#)



If the young person pleads guilty or is convicted of the charge, they are sentenced.



Sentences to the community  
OR  
Sentences to custody

[▶ More](#)

### Who's involved

[Police](#),  
[YOT](#),  
[CPS](#)

[Police](#),  
[YOT](#), [CPS](#),  
[Solicitor](#),  
[Youth Court](#)

[YOT](#),  
[Solicitor](#),  
[CPS](#),  
[Youth Court](#) /  
[Crown Court](#)

[Youth Court](#) /  
[Crown Court](#)

[YOT](#),  
[Custody](#)



**APPENDIX II: RJ Research & Promotion Projects (Dignan 2010)**

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RJ initiatives – brief details				RJ empirical evaluation overview			
Name of initiative and/or location	Type of initiative	Form of RJ intervention	Scope	Evaluator(s)	Type of evaluation	Duration	Report(s)
South Yorkshire probation service	Exploratory Stand-alone	VOM & reparation	1 x court-based schemes (adult)	Smith, D., Blagg, H. and Dericourt, N.	Simple evaluation Descriptive: feasibility study	15 months	Smith et al., 1985; 1988
Northampton Juvenile Liaison Bureau	Exploratory Stand-alone	VOM & reparation	1 x pre-prosecution (juvenile)	Blagg, H.	‘Simple’ evaluation Descriptive	12 months	Blagg, 1985
Early English mediation & reparation projects	Exploratory Stand-alone	VOM & reparation	9 x pre-prosecution schemes (juvenile) 15 x court-based schemes (adult)	Davis, G., Boucherat, J., Watson, D. and Thatcher, A.	Meta-evaluation Descriptive: aims & operation	One year	Davis et al., 1987; 1988
Northampton Juvenile Liaison Bureau	Exploratory Stand-alone	VOM & reparation	1 x pre-prosecution (juvenile)	Davis, G., Boucherat, J. and Watson, D.	Simple evaluation Descriptive: aims & operation	One year	Davis et al., 1989



### **Case Study 1: Restorative justice post sentencing – England**

In the Court of Appeal's judgement in *Regina v David Guy Collins*<sup>8</sup>, the appellant, aged 26, had been sentenced to a three-and-a-half years' imprisonment for unlawful wounding and a consecutive term of three-and-a-half years for robbery. For the latter, he undertook to participate in a VOM programme, which resulted in the writing of a letter of apology and a report by the mediation authority. The offender agreed to deal with the drugs problems, which to some extent had led to these serious offences, and promised to attend 'Narcotics Anonymous'<sup>9</sup>. He also applied for a change of prison where a drug treatment programme was available, and was required to write to a liaison officer every three months to report upon his progress. All these were taken into consideration by the Court of Appeal, which said: "We think that was a powerful feature of the sentence, and one to which it is important we draw attention. The judge referred to the fact that the appellant had written to the victim, but we think that it was to the credit of the appellant that he took part in that programme and that it is a factor properly to be taken into account...RJ is a comparatively recent programme designed to ensure effective sentencing for the better protection of the public...It is by no means a soft option, as the facts of this case reveal...In all the circumstances, having regard to that feature and to the appellant's plea of guilty, we think that the total sentence of seven years was too long. We think that for the period of seven years a total of five years' imprisonment should be substituted...".

### **Case Study 2: Restorative justice & theft – London, England**

*Ben Lyon, Register of Restorative Practitioners & IARS*

In a court ordered case in London, a young man, at risk of an offending lifestyle, was given employment by a small charity, which struggled financially to provide services to him and his community. Under outside influence, he gained access to their accounts and drew out a substantial amount of cash. This was discovered and the matter went to the Crown Court since a serious breach of trust was involved.

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<sup>8</sup> [2003] EWCA Crim 1687.

<sup>9</sup> This is an international non-profit Fellowship of recovering addicts that meet regularly to help each other. Narcotics Anonymous has local branches in many countries including the UK. The only requirement for membership is the desire to stop using drugs. <http://www.ukna.org/>

The sentencing guidelines indicated that a prison sentence was inevitable. The judge realised that no party would benefit from this: the money would be lost, the offender would be lost to crime, the charity staff would have no redress and the community would pay for his incarceration. The judge had some experience of the experimental use of restorative justice, and after discussion with the probation service a probation worker with RJ expertise was found. The judge used a suspended sentence, with a condition of an Activity Order that specified victim reparation and so a restorative sentence was passed.

The victims (the staff) initially rejected any apology or contact. They needed the money back and could never now trust words alone. The facilitator was able to help the offender trace the remains of the money. The family and friends rallied round to find the rest and the money was paid back in full. After watching a videoed recording of an apology the staff were able to see that it was genuine and eventually requested a meeting with the offender.

The trust could not be mended, but all parties had benefited and moved on. The judge was able to follow progress through periodic reviews at court, which reinforced the offender's resolve. The offender remained in employment and there was no eventual loss to the community.

### **Case Study 3: Restorative justice & burglary – Belfast, Northern Ireland**

*Ben Lyon, Register of Restorative Practitioners & IARS*

*Case as shown in Northern Ireland Youth Conferencing Service website; Coordinator, John Murphy*

In a Northern Ireland Youth Conference, the young person involved is aged 16 and from South Belfast. Along with three other people he had broken into church property, and the premises were flooded and vandalised. The young person was subsequently charged with burglary and criminal damage.

He agreed in court to participate in a Youth Conference. The facilitator met with the young person and his family on a number of occasions to discuss the offence and to encourage them to think about addressing the harm done and how the offender could make amends. The family co-operated fully in the process.

I met with the victim, a clergyman representing the particular church organisation. He described how the premises had been damaged and how groups using the building had been impacted, and was prepared to meet with the young person to communicate these

feelings. In conference both parties were able to tell their stories. The young person was remorseful and regretted his decision to enter the premises without permission, and further now realised that his actions had a detrimental effect on other people. He stated that he was sorry and was prepared to make amends for his mistake by way of reparation work.

The young person donated a sum of money to a charitable organisation helping to reconstruct people's lives and homes after the Asian Tsunami. In addition he completed ten hours voluntary work with the church, cleaning polishing and painting, and supervised by the caretaker. He kept his word as given at the conference and completed all that had been asked of him. This young person has not re-offended. He has returned to school and will shortly take up vocational training. The victim is positive about the experience, and the caretaker pleased that he was able to not only put a face to the offence, but to put closure on it by working alongside the offender. All parties involved in the conference believed the outcomes to be fair and proportionate to the offence.

#### **Case Study 4: Restorative justice & in-prison conflict - West Midlands, England**

*Ben Lyon, Register of Restorative Practitioners & IARS, UK*

*Case facilitated by Clifford Grimason, RJ Manager at HMP Hewell and Barbara Tudor, Victim Offender Development Officer, West Midlands. Probation Service*

In a custodial case in an England, a prisoner on visits, informed by his wife that after invasive treatment for cancer, she had been told that she was in remission, became understandably emotional and bent forward to kiss her forehead. This was enough to invoke an admonition from a prison officer. The same officer similarly humiliated the prisoner in the group returning to the wing after visits to which he reacted aggressively. Worse, he also refused his wife any further visits which was devastating for her and resulted in their two children reacting very badly, experiencing frightening dreams and causing her a great deal of anxiety all of which she kept secret.

The restorative team took up this incident and the conflict within the prison which had been festering was settled without any emotional or disciplinary cost. Equally important, the team was able to make contact with the family outside the prison and enable a special restorative visit, which has kept the relationship together and helped to restore normal contacts. This case was not part of a formal criminal justice system referral, but it was truly restorative, repairing the damage both in the prison and the family.

## **Case Study 5: Restorative justice & drunken driving causing death, Scotland**

*Ben Lyon, Register of Restorative Practitioners & IARS*

*This case, facilitated by SACRO, was described in Restorative Justice in Scotland an Overview, by Niall Kearney et al.*

In a post sentence case from Scotland, a 15-year-old boy was knocked off his bicycle and killed by a driver who was intoxicated. A year after this incident the case came to trial and the driver was sentenced to eight years imprisonment. Halfway through his sentence, the parents of the boy were informed that the driver was soon to be released on licence into the community. This raised a lot of issues for the parents: what happens if they meet on the street; how has this incident affected the driver; is he ready for release into the community? They requested a meeting with him.

The parents repeatedly said that they wanted to hear the driver's voice – they wanted to hear him speak for himself. He had never been put in the stand during his trial, he had never been allowed to apologise for the devastating harm he had caused. A process of shuttle dialogue was undertaken which culminated in a five-hour restorative justice meeting in a SACRO office facilitated by two workers.

Outcomes included that the parents heard the driver's voice and accepted his apology. There was a noticeable change in language at one point during the meeting. The mother of the boy used the phrase: 'when our son died...' She then commented that she had never used that phrase before – previously she had used phrases like: 'when our son was killed' or 'when our son was knocked down'. This indicated a deeper shift in their process of moving on from such a tragic loss. The parents have since spoken publicly about their experience of meeting the man who killed their son in order to let others in a similar position know that this is possible.

The driver said that the meeting had been the most difficult thing he had ever done but that it was the right thing to do. Due to the protective contract, he said that he has no longer afraid of meeting the parents on the street.

## APPENDIX IV: The current criminal justice legislative framework

Name of legislation	Criminal Justice Area	Description
Police and Criminal Evidence Act 1984 (PACE) Changes made to this in March 2011	Policing	This Act provides the core framework of police powers and safeguards around stop and search, arrest, detention, investigation, identification and interviewing detainees.  Recent changes to code A of PACE include abolishing the requirement to record stop and account.
Criminal Justice Act 1991	Courts and Sentencing	Key changes called for in this legislation included the need for more consistency in sentencing policy and for sentences to be proportionate to the offence. This Act also introduced a clearer distinction between property offences and violent crime. Punishments in the community were set to be more widely used for property offences and longer prison sentences for violent crime.
Criminal Justice Act 1993	Courts and Sentencing	This Act deals primarily with measures to combat anti-terrorist acts, drug trafficking and insider dealing.
Criminal Justice and Public Order Act 1994	Courts and Sentencing  Youth Justice System	This Act deals with multiple aspects of the criminal justice system – including the youth justice system. Measures introduced by this legislation include the use of secure training orders for 12 – 14 year old persistent offenders. Secure Training Orders involve the young person spending half their time in a secure training unit and the second half under compulsory supervision in the community. The Act also introduced a change to the maximum length of time that 15 – 17 years olds could be sentenced to in a young offender institution; rising from 1 year to 2 years.
Crime and Disorder Act 1998	Youth Justice System  Courts and	The main focus of this legislation was the reform of the youth justice system. It formed the basis for a new youth justice framework document that legally enshrined preventing offending by children and young people as the principle aim of the youth justice system. The government also introduced a new range of penalties aimed at young offenders and associated orders aimed



## APPENDIX V: Principles, Codes and Guidance

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**A Code of Practice for Victims of Crime**, is a government document which is addressed at all the major CJS agencies and some of which enables RJ interventions to take place, or at least directs that they should.

The **RJC Principles of Restorative Practice** (Home Office 2004). These form the underpinning ethical framework for work in the field of RJ.

**Best Practice Guidance (2004 Home Office)** has been revised and updated for England and Wales

**Best Practice Guidance for Practitioners (RJC 2011)**<sup>10</sup>. This sets out “the full range of skills that a practitioner needs to deliver safe and positive processes.” It is worth noting, for the purposes of this project, that guidance is directed not only towards practitioners, but also to case supervisors, line managers and service providers. Furthermore the area of informal restorative practice (restorative approaches) is recognized, as is the need for extra skills and experience with sensitive and complex cases.

**National Occupational Standards** (Skills for Justice 2010), These standards were formed to conform with the Guidance above as basis for accreditation of practice.

**A Code of Practice for Trainers** of Restorative Practice (RJC), sets out the minimum requirements and another Code for practitioners have also been established.

**The Restorative Justice Council (RJC)** has been the major driving force in establishing the codes and guidance above. Its membership is wide and it is highly influential. The most important developments of the last years have taken place either with its involvement or at its initiative. They have just established their own **RJC Register of Practitioners**, which builds upon previous similar movements in this field. This is in its early stages, but has attracted support and funding from the Ministry of Justice.

*"We signaled our commitment to expanding the availability of restorative justice...and are examining how it can be fully integrated within the criminal justice system.*

*Ensuring the quality of restorative justice practices, that it is evidence based, ethical and properly accredited will be essential to ensure positive outcomes for everyone involved in*

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<sup>10</sup> [www.restorativejustice.org.uk/resources/best\\_practice](http://www.restorativejustice.org.uk/resources/best_practice)

*restorative processes and to ensure public confidence.” Crispin Blunt, Parliamentary Under Sec. of State, Ministry of Justice, 2011<sup>11</sup>.*

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