



A Collective Restorative Justice Strategy for Ireland, 2019-2023

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Abstract

This article reproduces in abridged form a strategy for developing restorative justice in Ireland that emerged from a symposium held in March 2019 in Maynooth University and through subsequent consultations with participants and other interested parties. The purpose of the strategy is to help embed restorative justice and restorative practices within the Irish criminal justice system, building on existing practices and stimulating new work to fill gaps in policy and practice. The strategy initiative is part of a four-year project involving ten European jurisdictions, coordinated by Maynooth University, Restorative Justice Nederland and the European Forum for Restorative Justice. The key elements of the strategy and implementation steps are set out below; changes to the original document are limited to the omission of three appendices which provided information on the background to the project, a brief overview of the current state of play of the field in Ireland and the report of the March symposium. A full copy of the complete document can be accessed at

<http://www.probation.ie/EN/PB/WebPages/WP19000022>

Introduction to the Strategy

This strategy represents the first Irish output of the four-year, cross-European project, *Restorative Justice: Strategies for Change*. The purpose of the



strategy is to help embed restorative justice and restorative practices within the Irish criminal justice system, building on existing practices and stimulating new work to fill gaps in policy and practice. It aims to integrate all the information collected during a symposium which took place on March 1st, 2019, at Maynooth University, bringing together 94 persons working across the criminal justice system. People who were interested in the event but could not attend, were given an opportunity afterwards to respond by email to the questions which were asked of attendees on the day.

In April 2019, a strategy was drafted on the basis of the collected information (totalling around 14,500 words). In late April, the draft was distributed among the project's Stakeholder Group for comment. The Stakeholder Group, which numbers 221 people as of May 30th, 2019, includes everyone who attended the symposium on March 1st, as well as those who could not make it that day, but have since expressed an interest in being involved in the project.

We received feedback about the draft strategy from 18 individuals and organisations. This was overwhelmingly positive, and the three Strategic Pillars proposed in the draft strategy - **1) accessibility, 2) knowledge and 3) cultural change** - have been retained, forming the basis of this document. Some amendments and clarifications were requested and made, and we are confident that this final strategy addresses all the feedback we received.

Each Strategic Pillar is comprised of a statement of principle and a series of objectives and potential actions. The term 'potential actions' is used intentionally to denote that we will work collaboratively with the Stakeholder Group during this project (2019-2023) to determine which actions (including, but not limited to, those listed in this document) should be prioritised and how these should be implemented. Soon, we will open a new call to identify persons who are willing and able to contribute to this process. We will also work closely with project partners in other countries, while seeking to evaluate any actions which we undertake.



Achieving the goals set out in this strategy will not be quick or easy, but ten years on from the report of the National Commission on Restorative Justice (2009), we believe that the time has come fully to implement restorative justice across Ireland. The recent adoption of the Council of Europe Recommendation concerning restorative justice in criminal matters (2018, 2018b) provides a fantastic opportunity to advance this area of work. The document begins by answering some key questions regarding restorative justice and restorative practices in the Irish criminal justice system, before outlining the three Strategic Pillars.

Restorative Justice in Ireland - Key Questions	
What is restorative justice?	<p>The Criminal Justice (Victims of Crime) Act 2017 s.2(1) defines restorative justice as: “any scheme administered for the time being under which, with the consent of each of them, a victim and an offender or alleged offender engage with each other to resolve, with the assistance of an impartial third party, matters arising from the offence or alleged offence”</p> <p>The Council of Europe Recommendation concerning restorative justice in criminal matters (2018: Rule 3) defines restorative justice slightly more broadly as: “any process which enables those harmed by crime, and those responsible for that harm, if they freely consent, to participate actively in the resolution of matters arising from the offence, through the help of a trained and impartial third party”</p> <p>We believe that, the more that stakeholders are brought into communication and enabled to participate in deliberations and decision-making, the more restorative a process can be. This means that, in the first instance, restorative justice should seek to include all victim(s), offender(s) and their supporters and other relevant persons in a dialogue. However, as is noted in the Council of Europe Recommendation’s Rule 8, we recognise that the ideas and principles underpinning restorative justice can also be used to design practices which do not involve dialogue between victims and offenders, including innovative approaches to reparation, victim recovery and offender reintegration. Some examples of these practices are outlined in Rule 59, perhaps the best known of which in the Irish context is the Offender Reparation Panel. Rules 8</p>



	<p>and 59 make clear that such practices cannot fall within a restorative framework unless they are designed and delivered in accordance with restorative principles (see Rules 13-17 for an outline of these principles). As per Rule 60, restorative justice should also be available in the criminal justice system, beyond the criminal procedure. Our plans for making restorative justice more accessible and better known and understood can be found under Pillars 1 and 2 respectively.</p>
<p>What are restorative practices?</p>	<p>Restorative Practices Ireland (O'Dwyer, 2014: 8) describes restorative practice as: "an approach to building and maintaining interpersonal relationships, resolving conflict and repairing damaged relationships." For the purpose of this project, 'restorative practices' refers to the application of the restorative framework in criminal justice, in all manners other than those described as 'restorative justice' above. This includes with respect to how all those who work within or with the criminal justice system relate to each other, and to all members of the community, on a day-to-day basis. This also describes the proactive use of circle processes and other approaches to building relationships, sharing information and creating more inclusive decision-making processes within criminal justice agencies, and among practitioners and members of the community. Rule 61 of the Council of Europe Recommendation and its associated commentary outline how restorative practices can be used proactively and for relationship building and inclusive decision-making in the criminal justice context. We believe that restorative practices can help initiate and support cultural change within criminal justice agencies; our plans for using restorative practices to achieve this goal can be found under Pillar 3.</p>
<p>Who can participate in restorative justice?</p>	<p>We believe that victims and offenders are usually best placed, once fully informed, to determine whether restorative justice is right for them. At the same time, trained professionals must be enabled to assess whether restorative justice is necessarily in the interests of all parties in each case. A person's desire to participate is not the only factor which should be considered, but assessments should occur on a case-by-case basis. While the nature and circumstances of an offence must be considered, the offence type should not automatically disqualify a case from restorative justice. Services should also be flexible enough to enable as many persons as possible to participate (see the Recommendation's Rule 18 and Rule 27 and its commentary).</p>



<p>When can restorative justice be used?</p>	<p>We believe that, as per Rules 6 and 19 of the Recommendation, restorative justice should be available at all stages of the criminal justice process, including as a diversion from court, at the pre-sentence stage and post-sentence. This does not mean that it should be used instead of prosecution in all types of cases; in many serious cases, the public interest requires that restorative justice only takes place alongside or following prosecution. Again, the question of when restorative justice should occur is best determined on a case-by-case basis, in collaboration with those who wish to participate. This means that restorative justice is relevant to the whole criminal justice system and should be explored as part of all efforts to support victim recovery, to manage, rehabilitate and reintegrate offenders, and to prevent crime.</p>
<p>Is restorative justice always the same?</p>	<p>The nature, extent and dynamics of the preparation, practice and follow-up required, depends entirely on the situation in which restorative justice is taking place. For example, its use in cases of serious interpersonal violence is different than its use with low-tariff acquisitive offences. Levels of vulnerability, trauma and mental health must always be carefully assessed and taken into consideration when determining if or how restorative justice will take place. Similarly, levels of practitioner training and experience must reflect the seriousness and complexity of the circumstances and the vulnerabilities of the parties (Keenan, 2018). As noted earlier, we also believe that the restorative framework can be used to inform interventions for either party in cases where dialogue is not possible, or if one party does not wish to participate.</p>
<p>How does this work relate to other sectors?</p>	<p>While this project focuses exclusively on the criminal justice system, we believe that this work will complement, and has much to learn from and share with, similar work which is taking place in other sectors across Ireland, including in local communities, workplaces and educational and social care settings.</p>

We hope that this provides clarity regarding our approach to this work. If you have any questions, or would like to join the Stakeholder Group, please get in touch by emailing Dr. Ian Marder on ian.marder@mu.ie. What we do as part of this project will be strongly shaped by your views, needs and participation, so please let us know what you think we should prioritise and what you are able to contribute. There will also be opportunities to revise this strategy later in the project, and we will regularly provide updates regarding our progress.



Strategic Pillar 1: Accessibility

Statement of Principle

Safe, high quality restorative justice should be available to all victims and offenders who would benefit from participation. Access should not depend, exclusively and in the absence of other considerations, on where they live in Ireland, their age, the offence in question, or the stage of the criminal justice process. Other affected persons should also be enabled to participate in restorative justice, if victims and offenders so wish.

Objectives

- a) Enough capacity should exist so that restorative justice is a generally available service in Ireland, as in a growing number of comparable jurisdictions. This requires services with enough practitioners who are trained, skilled and enabled to support victims and offenders to determine whether restorative justice is right for them, and to facilitate its delivery whenever this would be of benefit to the parties.
- b) There should be clear, simple mechanisms through which victims and offenders are systematically provided with accurate information about restorative justice and offered the opportunity to participate.
- c) There should be a range of practice models available with which to engage all victims and offenders who wish to participate in a restorative-informed intervention, even if the other parties in their case do not.
- d) There should be systems in place to ensure that restorative justice is consistently of a high quality, adhering to internationally accepted standards and research evidence on safe and effective practice.
- e) Diversionary, pre-sentence and post-sentence applications of restorative justice should be developed simultaneously, with the utmost sensitivity given to participants' differing needs and interests, depending on factors including the type of offence and the presence of trauma and other vulnerabilities.



Potential Actions

- i. Undertake a mapping exercise to establish the existing levels of training and practice, on the basis of which we can identify where the gaps lie and encourage those who are already trained in restorative justice to offer it more often.
- ii. Engage with management in government departments and criminal justice agencies on the questions of legislation, resources and capacity, the establishment of a criminal justice-focused high-level forum to consider new policies, standards and operational directions, and the provision of other crucial support for the development of restorative justice services.
- iii. Undertake research to estimate the costs and potential benefits of a comprehensive restorative justice service.
- iv. Engage with criminal justice agencies to inform and support the training of practitioners in restorative justice.
- v. Engage with management in government departments and criminal justice agencies to encourage further support and action to develop restorative justice. This may include multi-agency approaches to its delivery, its embedding in existing strategies and/or a new joint-agency strategy. These strategies should establish clear and simple referral pathways, encourage referrals to be made, and enable public agencies to share all the information required for restorative justice to take place.
- vi. Explore the potential to establish a local pilot project, underpinned by a multi-agency working group, in one or more counties in which there is a limited capacity to deliver restorative justice.
- vii. Explore and support the development of frameworks for improved data collection. This would enable further research on the nature, quality and impact of the existing services and on the extent to which current policies and legal provisions are being implemented.
- viii. Engage with criminal justice agencies and the relevant oversight bodies to support the development of restorative justice for conflicts which occur within the criminal justice context, but outside of the criminal procedure



(such as anti-social behaviour, conflicts in prisons and public complaints against criminal justice practitioners).

- ix. Facilitate shared learning opportunities with experienced practitioners and other relevant persons in Northern Ireland and other jurisdictions.

Strategic Pillar 2: Knowledge

Statement of Principle

Restorative justice should be known and understood widely enough and to such an extent that all relevant persons are aware of its potential benefits and risks, and the available services.

Objectives

- a) All criminal justice professionals and other relevant persons should be aware of basic restorative principles and processes and feel confident enough that they could identify when a case might be suitable for referral to restorative justice and explain the process to a colleague, trainee, friend or prospective participant.
- b) Politicians, journalists and the general public should have a basic understanding of the meaning of restorative justice, and how and why it can be used in criminal justice.

Potential Actions

- i. Work with practitioner training bodies and those who design practitioners' inductions to include knowledge and training on restorative justice in their curricula.
- ii. Work with criminal justice agencies to increase the knowledge of serving practitioners and managers at all levels.
- iii. Disseminate briefings which summarise research evidence, provide case studies and outline how restorative justice could be used in each institution's area of operation.



- iv. Identify 'restorative justice champions' in each area and agency, from whom others who are unsure about the meaning or process of restorative justice can request advice, and who can lead national, local or institutional learning communities.
- v. Design and undertake a public awareness campaign which includes information about the meaning, potential benefits and availability of restorative justice.
- vi. Engage with national, local and special-interest media, both by discussing restorative justice with journalists and by publishing articles on the subject.
- vii. Engage with artists, designers and other creative professionals to discover new and innovative methods of communicating restorative justice.
- viii. Engage with universities, schools and educational policymakers to encourage students of all ages to be educated about restorative justice.
- ix. Engage with politicians of all parties and at all levels to raise their awareness regarding the meaning and potential benefits of restorative justice.
- x. Explore the possibility of observer schemes and study visits to other countries.
- xi. Identify victims, offenders, practitioners and other persons who have participated in or delivered restorative justice and who would be willing and able to speak publicly and to the media about their experience.
- xii. Ensure that information about restorative justice is available on criminal justice agency websites and other relevant websites (e.g. Citizens Information).

Strategic Pillar 3: Cultural Change

Statement of Principle

All persons working in or in collaboration with the criminal justice system should be trained in restorative practices so that they are confident in using these skills, principles and processes in their day-to-day work. This will help support the



development of more responsive, relational, participatory, procedurally-just and reflective organisational cultures.

Objectives

- a) All persons working in or in collaboration with the criminal justice system will have the language, skills and tools to enable them to utilise restorative practices with the citizens over whom they have authority, or for whom they bear responsibility.
- b) All persons working in or in collaboration with the criminal justice system will have the knowledge and the capacity to identify when restorative practices could be used within their organisation, both internally and in the context of joint-agency working.
- c) Restorative practices should be used to help agencies to implement restorative justice (and manage other forms of change) in a procedurally-just manner. This would involve including all those with a stake in implementation in deliberations and decision making from the start of the process, enabling staff to participate in change.

Potential Actions

- i. Work with practitioner training bodies and those who design practitioners' inductions to include knowledge and training on restorative practices in their curricula.
- ii. Work with training providers to create CPD courses on restorative practices.
- iii. Work with criminal justice agencies to establish how they might best use restorative practices with citizens and internally (including in organisational decision-making and human resources), and to encourage professionals across all levels of management, practice and non-operational divisions, to learn about and use restorative practices.
- iv. Work with the relevant oversight bodies to embed restorative practices in their work and restorative principles in their organisational mission or values statements.
- v. Support and engage with existing local and national networks, community groups and training providers to encourage more collaboration in, and a



focus on, the development of restorative practices in the criminal justice system.

- vi. Work with those who implement strategies and policies in criminal justice agencies to ensure that these processes involve meaningful engagement with all those whose buy-in and input is crucial to their success.

Steps to Implementation

On June 4th, 2019, we began the process of disseminating this strategy. We request that all those on the Stakeholder Group (or who otherwise have an interest in, or responsibility for, the development and use of restorative justice in the Irish criminal justice system) assist us in doing so by publishing the strategy on their organisational websites, mentioning it in their newsletters, and circulating and discussing it widely among their colleagues. We are currently designing the process by which, in collaboration with the Stakeholder Group and with other stakeholders, we will devise and implement specific actions which contribute to achieving the objectives outlined under each Strategic Pillar. If anyone you know or work with would like to join the Stakeholder Group, please ask them to email ian.marder@mu.ie with their name, role and organisation, and we will add them to this list.

As you know, some of the work outlined in this document is already happening in small pockets across the country. Our intention is not to compete with or duplicate any of this work. Rather, we seek to help organise, motivate and provide a strategic platform for collaboration with as many stakeholders as possible, harnessing our collective knowledge, experience and energy to ensure that the criminal justice system takes full advantage of restorative principles and processes. Achieving these objectives will require a significant, sustained and collective effort. We are hopeful that, given the enthusiasm we have observed in recent months, many of you will be willing to contribute to these goals.

Future events and reviews of the strategy will be agreed at a later date, in consultation with the Stakeholder Group. In the meantime, we hope that this



document will help you to think about how you might be able to develop restorative justice and restorative practices in your organisations and work. The adoption of the Council of Europe Recommendation provides us with a significant opportunity to take a significant step forward in this area, and we look forward to working with you on this in the years to come.

Ian Marder, Ursula Fernée, Tim Chapman and Kieran O'Dwyer are Core Members for Ireland for the "Restorative Justice: Strategies for Change" project.

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