



Submission to the National Commission on Restorative Justice

Introduction

As a group of practitioners, Facing Forward believe that Restorative Justice models **have the potential to** address many of the shortcomings of the current criminal justice system in Ireland. We see these shortcomings as:

1. A lack of opportunity for the victim to be heard;
2. A lack of opportunity for offenders to face the victim and take responsibility for their behaviour;
3. A lack of opportunity for the victim and offender to work out a way of resolving matters between them
4. The de-humanising of the offender through the current process, in particular the prison system;
5. The re-traumatising of the victim through the trial process;
6. The lack of flexibility and creativity in addressing the offender's behaviour and the harm caused to the victim.

It is the view of Facing Forward that where appropriate, the models of victim-offender mediation, conferencing and dialogue circles can be used to address all of these shortcomings. Further, these models are appropriate for **adults as well as juveniles**, serious as well as minor crimes, and can work with offenders **at the pre-sentence stage**, during sentence and post sentence. They can work alongside the current criminal justice system.

These RJ models have a twin objective through an interactive two-way process:

1. To build on the recovery process **already initiated by the victim** and to provide them with an opportunity to tell the offender the story of what happened to them;
2. To enable the offender not only to hear but also acknowledge the harm they caused to the victim and to take responsibility for repairing that harm.

A. Review of Existing Models in this Jurisdiction

It has not been easy for Restorative Justice groups in the Republic of Ireland to get schemes off the ground in the absence of a proper legislative framework being in place and national funding. Neither the Nenagh nor Tallaght schemes could have survived without the **continued** financial support of the Probation Service.

To involve both the victim and the community in a conference with the offender involves considerable organization. In particular, substantial time needs to be spent providing emotional support to each victim and offender to prepare for the joint meeting. Research shows that without adequate quality preparation, there will not be real engagement with each stakeholder. Effective schemes are those agencies who front-load the process with maybe as much as 80% of the time given to preparation and 20% of the time given to the actual face-to-face meeting.

The **Nenagh Community Reparation Project** has always seen the importance of involving local people from the community in a face-to-face meeting with the young offender. District Justice Michael Reilly was instrumental in introducing the scheme based on his experience of a similar type of project in New Zealand. He believes that by confronting the offender with the impact of the crime on the community and others, it will minimise repeat offending. It also allows the community to have a say in how these offenders are dealt with within the justice system.

This pre-sentence scheme works well because there is a good local cooperation and a routine working arrangement between the Project co-ordinator, the District Justice and Probation. There also has to be a willingness by offenders to agree to a contract at the meeting which aims to address the effects of the crime committed. Much depends on how successfully the contract has been completed by the offender.

In recent years, it is our understanding the project has concentrated on first time offenders. All of the crimes involved have been minor. Frequently, it is the community rather than an individual victim who has suffered harm as a result of the public order offences and behaviour of the offender. The numbers going through the project may seem small but it has acted as a great demonstration project. On average, 12 offenders are referred to the project annually, but they have the infrastructure to deal with up to 30 cases per year.

In our opinion, the weakness of the Nenagh project is that it does not have sufficient human resources to prepare each side for the meeting. As a result the scheme relies on paid public officials like an Garda Siochana attending the meeting who may not be able to provide that authentic voice of a lay local community person who can speak from their own human experience of the impact of the crime on themselves as a member of that community. Nothing can quite replicate that lay dialogue provided it is done in a respectful manner and not in a shaming act. Yet recruiting local people and asking them to give their voluntary time requires much facilitation and a spirit of “active citizenship”. More effort needs to be put into having the victim actively participating in the meeting or to have the victim represented by someone else who has had a similar experience.

The Nenagh model has particular relevance in a local community where many people still know each other but it may have limited application in urban areas where the offender has never felt a sense of belonging to a community.

The scheme run by **Tallaght Restorative Justice Services** was based on the SACRO model in Scotland and encourages/ facilitates both victims and offenders to participate in a mediation process. It leads in most cases to an agreed contract which can include personal commitments and reparation by the offender. They have pioneered the Offender Reparation Programme, whereby persons convicted of offences agree a programme of reflection, reparation and restoration. The work done is documented to the court and their final penalty

is commensurably lenient. The key areas of work undertaken are under two particular schemes namely:

1. The offender Reparation Programme and
2. The Victim /Offender Mediation scheme.

Statistics for 2005 show that of the 100 cases referred to the Reparation Programme in that year, 97 offenders successfully completed their contracts.

The Tallaght scheme started out only using the victim /offender mediation model but it has since moved away from a heavy commitment of working with victims possibly because it is harder to engage victims directly in the work. The Scottish trainers were surprised at the initiation of the scheme at how successful the Tallaght scheme was in getting so many face-to-face meetings between victim and offender. Many of the original team of mediators came from the community mediation scheme that had a lot of experience of meeting with the disputants prior to the joint meeting. Community mediators are volunteers so they are able to give more time to the pre-mediation stage along the lines of the 80% formula referred to above. There was also a big input from the victim support agency at the beginning.

The Nenagh and Tallaght experience raises interesting project management issues for RJ schemes. It seems that they tend to drift to one or other end of the spectrum. They are either very good at being victim support based but not so good at providing the same amount of emotional support to offenders; or they turn out to be driven by the requirements of the criminal justice system to be very focused on meeting the non-offending needs of the offender and not so good at involving the victim's experience and substituting it with the voice of community representatives, or failing that, the attendance of public officials.

Facing Forward believe it is very important to have both voices present in the room and that sufficient emotional support has been given to each in a number of preparation meetings prior to the joint meeting. This is supported by research findings which we have summarised in Appendix A:

“Several separate preparation meetings involving personal, face-to-face contact by the mediator/facilitator with each of the participants (as opposed to phone calls) is the single most important factor contributing to the success of mediation.”

Our experience of talking to Juvenile Liaison Officers (Gardai) is that in many cases they have been successful in engaging both sides in their restorative cautioning events for young offenders under 18 diverted by the DPP into the scheme operated under the Childrens Act (2001). Where this has happened, there can be profound transforming moments in the lives of the young people with the support of their parents and teachers, leading to changed lives and non-reoffending.

Most police forces who do RJ work are trained in the “Real Justice” model which relies on a script of structured questions asked in a particular sequence. Initially, the JLO's involved in restorative cautioning were given this training by either going over to England or by the English trainers coming to Ireland. They found, however, that it lacked the human touch, was too wooden and not sufficiently interactive. The JLO leadership decided to supplement the “Real Justice” training by putting every JLO through a module of community mediation training that taught them listening skills and hearing the person's concerns through “storytelling”. Finally, every JLO was put through some days of victim support training.

They found the combination of these three pieces of training has equipped them to really connect with both the victim and the offender and to hold the balance between the two, not allowing their scheme to be driven by the needs of one group only.

B. Contemporary Developments in Restorative Justice in Other Jurisdictions

Restorative Justice (RJ) is still considered an emerging form of intervention within the criminal justice systems in many parts of Europe. However, RJ practices have existed for up to thirty years in New Zealand, Canada, the USA and Belgium. Nearly all these schemes started out working with young offenders and minor crimes in a format known as “youth conferencing” where the young offender is brought face to face with the victim with support people from each side.

In [Appendix A](#) attached to this document, there is a summary of research findings on best practice in Restorative Justice Programs in the United States and England. As will be seen, the benefits of restorative justice programs can be shown in the satisfaction rating of both the victim and the offender and the reduced recidivism of offenders. It is submitted that even in cases where the offender does re-offend, the benefits to the victim of this process are considerable in affording him an opportunity to be heard and have the harm done to him acknowledged by the offender.

The success rate of the restorative processes at a pre-sentencing stage has led to a growing confidence in Victim-Offender Mediation (VOM) and some countries are now actively introducing RJ for serious crime cases and offenders within custodial settings.

To quote from a paper by David Gustafson [see [Appendix C](#)], a leading Canadian expert on Restorative Justice, on the Langley serious crime initiative:

“It was once thought that victim offender mediation or dialogue was appropriate in only relatively minor cases. However, the Victim Offender Mediation Programme involves the most serious offences imaginable: criminal negligence causing death; drunk or dangerous driving causing bodily harm or death; aggravated assault; armed robbery; kidnapping; sexual assault; attempted murder and homicide offences including manslaughter, first and second degree murder and multiple murder. Significantly, evaluations of the programme report profound and positive impacts on the lives of both victims/trauma survivors and offenders, and “unanimous support for the program from all victim and offender respondents” in just these sorts of offences (Roberts, 1992).

Facing Forward believe that in addition to strengthening and extending the existing pre-sentence schemes in Ireland, the Department of Justice should also support the introduction of RJ schemes for adults and serious crimes. We briefly describe a sample of current VOM programmes which describe the evolution of restorative justice practices into the areas of [juvenile, moderately serious and serious crime](#) in several jurisdictions.

[New Zealand](#)'s restorative justice programmes have a long history mostly using youth and community conferencing models [for juvenile and less serious crime](#). However, the Sentencing, Parole and Victims Rights Acts in 2002 gave statutory recognition to restorative justice processes in the criminal justice system for the first time, encouraging groups such as Project Turnaround in Timaru (2004) to provide opportunities for victims and offenders in more serious cases to be involved in mediation after conviction but before sentencing. The

project was initiated in 1995, when Timaru was selected to be one of the Crime Prevention Unit's three pilot sites, trialing the use of community panels in adult diversion, and dealing with more than 750 cases since 1996. Two-thirds have involved victims, and agreements have been reached at almost all conferences. Approximately 90 percent of offenders complete all aspects of their plans within agreed timeframes. Twelve months after completion of the programme, 82 percent of offenders had not re-offended. The project's success rate has created confidence that its expansion into the area of serious crime will bear fruit.

Canada has several VOM initiatives that have been mainstreamed under the auspices of the Correctional Services of Canada. The longest one in existence is the Fraser Region Community Justice Initiatives Association (FRCJIA), a community based non-profit organization in Langley, British Columbia, which has developed a VOM programme for use in crimes of severe violence. Based on 15 years of empirical research demonstrating the therapeutic impact of victim/offender mediation upon the participants, therapists and prison programme facilitators have reported seeing significant increases in victim empathy and a commitment to relapse prevention in those who have participated. Other jurisdictions are implementing similar models, a number of them involving consultation, training and continuing mentoring provided by FRCJIA staff. Another recent government evaluation study looking at restorative justice practices (for serious crime, in the main) between 1992 and 2006 provides ample statistical evidence of the benefits of VOM, based on the tracking of offenders for up to 5 years following their participation in VOM programmes.

In the USA, corrections-based programmes in prisons have been replicated in 18 states (Just Alternatives 2005) and a 14-week seminar entitled *Citizens, Victims and Offenders Restoring Justice* (CVORJ) was held five times between 1997-2000 at Washington State Reformatory, where all stakeholders came together in a Healing (or Dialogue) Circle format, where many had been involved in serious crime. The CVORJ has since been replicated in Minnesota. In San Francisco, the Resolve to Stop the Violence Programme (RSVP) an immersion VOM programme to address recurrent violent behaviour led to up to an 80% decline of offending when evaluated a year later, as well as a dramatic decrease of violence in the prison. (Parker, 2005).

Finally, Belgium has mainstreamed its youth and penal restorative justice practices (for [juvenile and less serious crime](#)) within the existing judicial system, and since 2000 has introduced a serious crime mediation service. Leuven Mediation Service reports that of its 160 cases in 2006, 50% of victims and offenders started mediation of which 90% reached agreement and of which 97% of those achieved fulfilment of their agreement. A key feature of the success in Belgian restorative justice programmes is that of judicial support at the highest level in its implementation, underpinned by legislative reform, enabling its continued development and ongoing practice.

C. What Facing Forward would like to be able to do

Over the past year, Facing Forward has developed three RJ models for work with adults involving serious crime:

1. The victim/offender mediation model
2. The conference model
3. The dialogue or healing circle.

It has not been possible for us to develop these programmes on an extensive basis because we have not yet received public funding. A description of each model is provided below.

In the refinement of these restorative justice models, Facing Forward has drawn on international experience and our considerable mediation experience. We have consulted widely with victims groups and individuals working with offenders, in particular, prison chaplains. It is our belief that the needs of the victims but also the needs of offenders must be accommodated within the process. It is only then that the model will be successful.

In a similar manner, we recommend that the Commission would seek to take into account the views of victims and offenders for whose benefit any restorative justice schemes are established.

1. Victim/offender Mediation

The Victim/Offender mediation process brings the victim and offender together in a one-to-one meeting to engage with each other in relation to the offence committed. It is confined to these two people. Each process is facilitated and mediated by two trained mediators and usually lasts 90 minutes.

2. Conference model

The Conference is a meeting of a group of people affected by the offence, including families and friends of both the victim and offender.

Each of these processes provides a forum in which those affected by the incident can express all perspectives on:

- The nature and severity of the harm caused
- The best options for the offenders to repair that harm
- What circumstances led to the commission of the offence
- How best to prevent any repeat offences by the offender
- What supports are required for both victim and offender in the future?

The meeting results in a written agreement outlining the actions the offender agrees to undertake to repair the harm. It may simply be the reimbursement of the out of pocket expenses of the victim or other gesture agreeable to the victim. There is considerable flexibility within each process to create an agreement that is meaningful for both parties. Frequently, the offender undertakes to do something that has personal significance for the victim. The agreement may also address the circumstances which led to the commission of the crime and outline steps the offender proposes to take with support to help himself in the future.

Preparation for each process is critical and a series of advance meetings is essential to ensure the parties are adequately prepared. It is important that the offender is in a position to take responsibility for his crime and that the victim will not be re-traumatised by meeting the offender. Thorough preparation also will ensure the offender is sincere; prepare him to appreciate fully the impact of his behaviour and to consider appropriate life changes for himself.

3. Dialogue Circle

This process involves the bringing together of a group of victims and offenders, not necessarily the offenders involved in the particular crime committed against the victims present. This process is particularly of benefit where it is not possible for the actual victim and offender of a particular crime to meet. This may arise where the victim is unwilling or unable to meet the offender or the offender cannot be located, or is unwilling or unable to meet the victim.

The Glencree Centre for Reconciliation has very effectively adopted this model in facilitating meetings between victims and ex-combatants of the Northern Ireland troubles. This process has allowed ex-combatants of the various paramilitary organisations to meet with victims and explore and take responsibility for their actions. It has also enabled the victims to speak about their suffering and initiate the process of recovery. Several members of Facing Forward have been involved in this process with the Glencree Centre.

D. Some final comments

We broadly endorse the views expressed by the Joint Oireachtas Committee report on Restorative Justice and their recommendations. We wish to add further to their expressed view that the education and training of legal professionals and the judiciary on the benefits of restorative justice is crucial to the success of any scheme.

At present, the cost of retaining an individual in prison is in excess of €90,000 annually. The actual cost of crime is far greater than this when the costs of other services are taken into account such as the Garda Síochána, Office of the Director of Public Prosecution, legal, court and judicial costs. The potential savings to the State increases the earlier that conferencing or mediation is offered to the offender.

We would like to point out that the public interest in seeing that Justice is done would not be met by conferencing or mediation in that neither is open to the public and there would be no reporting of the process in the media. This could be addressed, however, by annual reporting of the number of meetings and their successful outcomes or otherwise. The absence of publicity surrounding the process is seen more as an advantage to both the victim and the offender than otherwise but the public interest may need to be addressed in any initiative adopted.

We believe that all crimes may be the subject of Restorative Justice processes. The Belgian experience confirms that the process is successful in cases involving serious crime. In fact the full potential of Restorative Justice and consequent benefits to the community and the State are best seen with serious crimes. In particular, the RJ process affords the opportunity to the victim to ask questions of the offender, which the current criminal process does not allow. The benefits of this to the victim cannot be underestimated. However, as the body of research indicates, the success of the process is dependant on the level of skill of the mediator and the degree of advance preparation. It would, in the long term, be self-defeating and costly, to introduce restorative justice programs and not provide sufficient funding for the appropriate preparation and skill of the mediators.

RJ models should be available at all stages of the criminal process – pre-sentence, during and post sentence – and be made an integral part of the formal criminal justice system. The process could be initiated by judicial referral, by referral by the Gardai or by election of the

parties themselves. Making the parties aware of the option of this process and providing information around it is important to its success.

The crime and circumstances surrounding the victim and offender, it is submitted, dictate the appropriateness of the model required. Issues such as psychological strength, need for support, age and physical and mental health are relevant to the choice of process. Rather than impose a model which may not have relevance, it is submitted that the experienced mediator should be in a position to select which model best suits the circumstances in question. This may be done in consultation with the Probation Service, victim support groups and the parties themselves. For example, if the parties request it, it may be considered that a family type conference may be more appropriate than one-to-one mediation.

Flexibility is important to maximise effectiveness. Consequently, it is suggested there be minimum statutory input only and, common with mediation principles, the process would be achieved by agreement. It is important to remember that in the absence of agreement, the normal procedures within the current criminal justice system, may be invoked.

Appendices

Appendix A Summary of research on best practice in Restorative Justice Programs in the United States and England.

Appendix B An outline of an initiative in Langley, British Columbia, Canada, involving serious crime.

Appendix C Paper by David Gustafson, a leading Canadian expert on Restorative Justice, on the Langley serious crime initiative.