



# REVIJ

Reparation to the victim in the  
European Juvenile Justice System

**NATIONAL REPORT**

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REVIJ

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# 1. JUVENILE JUSTICE SYSTEM IN ENGLAND AND WALES (GENERAL OVERVIEW)

## NATIONAL STANDARDS

The *Crime and Disorder Act* is currently in force in England and Wales dates back to 1998. As is stated in the Act (section 37): “it shall be the principal aim of the youth system to prevent offending by children and young persons”.

The National Standards for youth justice services are set by the Secretary of State for Justice on advice from the Youth Justice Board for England and Wales (YJB), which is a non-departmental public body set up by the Crime and Disorder Act 1998 (Section 41). This body works in the prevention of offending and reoffending of children and young people under 18 years. The standards apply to those organisations providing statutory youth justice services.

For the past years, the National Standards have been updating their investigations in search of improvements, and each time these are reviewed, they go under the indications of the national consultation with Youth Justice Services and other skilled key professionals. These standards should be seen as a distillation of the range of legislation, compliance frameworks (contracts, inspection regimes, etc.), and sources of statutory and effective practice guidance which applies across the youth justice sector.

The Youth Justice Board has a responsibility to monitor adherence to National Standards on behalf of the Secretary of State. National standards in youth justice must define the minimum required level of service provision consistent with ensuring:

Delivery of effective practice in youth justice services;

Safeguarding of children and young people who come into contact with youth justice services;

Protection of the public from the harmful activities of children and young people who offend.

In defining these standards the Secretary of State also requires that (Youth Justice Board, 2013 p5):

Where possible and appropriate, youth justice services are afforded the maximum freedom and flexibility to adapt their practice to local context,

The public have confidence that children and young people subject to statutory supervision by youth justice services are fairly punished and are supported to reform their lives The youth justice system of England and Wales constitute a structure of institutions that cooperate to give support and guidance to young offenders.

The National Offender Management Service (NOMS), through the small number of establishments holding young people, supports the youth justice system by looking after young people in custody in Young Offender Institutions (YOI) and to help prevent those young people from reoffending.

## PRINCIPLES

Although acting in the best interest of the child is an obligation under the United Nations Convention on the Rights of the Child (1989), and is a dominant principle in youth justice systems around the world, there are a number of other principles that have been adopted.

These include (Hazel, 2008, p.6):

The principle of 'preventing offending', which is influential in England and Wales,

The protectivist *parens patriae*; of treating young people who offend as children in trouble who require welfare,

Minimal intervention,

Protection of society,

Education and resocialisation.

## AGE RANGES

The age of criminal responsibility is the point where a child or young person can formally enter the criminal justice system and be legally prosecuted for a proven offence. In England and Wales the minimum age of criminal responsibility is set to 10. Children under 10 cannot be arrested or charged with a crime. Young people between the age of 10 and 17 can be arrested and taken into court. However, they are treated differently than adult offenders as they dealt with by youth courts, they are given different

sentences, and they are not sent to adult prisons but Special Secure Centres. People over 18 are treated as adults however, if an imprisonment measure is imposed and they are sent to prison, they will be sent to a place that holds 18 to 25 years old, separated from the adults (Youth Justice Board, 2013).

## **TYOLOGY OF SENTENCES**

There are different types of sentences in England and Wales, depending on the age of the young person or the offence committed. Here, we have a brief explanation of the available measures:

### **First tier penalties**

It has to be taken into account that: “The police have the power to issue a reprimand or final warning, where it is judged that prosecution is not in the public interest” (House of Commons, 2013, p.19).

When a young person is sentenced to a referral order, they have to attend to a Youth Offender Panel, and agree to take responsibilities that the panel decides, this period could last from three months to a year. The object of this referral order is to make the young person conscious of their behaviour and take responsibilities for their actions. These measures are usually for young offenders that have committed a first offence and plead guilty. The sentence can be a minimum of three months to a maximum of twelve months. The victim could also contribute to this measure.

### **Community penalties**

The *Youth Rehabilitation Order (YRO)* was introduced at the end of November 2009. The YRO provides judges and magistrates with a choice of 18 community options from which they can create a sentence specifically designed to deal with the circumstances of the young offender before them.

The *Youth Rehabilitation Order* is a sentence applied in the community and can contain one or more of all the different requirements that the young offender must fulfil for a total period of three years. Some of the requirements mentioned before are the following, curfew, drug treatment, mental health treatment, education requirement, etc.

### **Custodial sentences**

Custodial sentences apply to the most severe cases, the main goal is to give the training, education and rehabilitation so reduces the risk of reoffending. For these types of measures specific centres are required, like, Secure Children’s Homes (SCH), Secure Training Centres (STC) and Young Offender Institutions (YOI).

A *Detention and Training Order* (DTO) may be in respect of a youth aged over 15 or over the date of conviction, or in respect of a youth aged 12 to 14 at the date of conviction if he or she is a 'persistent offender'. A DTO can only be made if the court agrees that the offence is so serious that neither a fine alone nor a community sentence can be justified for the offence (Sec 152 Criminal Justice Act 2003 and Section 100 powers of Criminal Courts (sentencing) Act 2000).

The *Detention and Training Orders* are sentences that can go from 4 months to 2 years. These types of sentences split into two; the first part sends the young offender to custody (Secure Children's Home, Secure Training Centre's or Youth Offender Institution) and the second half will be under the supervision of a Young Offender Team out in the Community.

For more serious offences in the Crown Court, longer sentences up to a maximum of 14 years can be imposed. If the Crown Court considers that there is significant risk of serious harm to members of the public or if they have been convicted of a specified offence listed in section 91 of the Powers of Criminal Courts (Sentencing) Act, 2000, a sentence of detention for life or an extended sentence of detention could also be imposed.

## 2. RESTORATIVE PRACTICES IN YOUR JUVENILE JUSTICE SYSTEM

Restorative Justice is not in itself a new concept. In the UK there have been several ways to use agreements between the Justice System, victims and offenders applying the same main principles to seek the best benefit for all, working to resolve issues formally.

Historically, police across England and Wales have used Restorative Justice since the 1980s. Research by the *Association for Chief Police Officers* (ACPO) found 33 of the 43 police forces in England were using some form of restorative practices (Criminal Justice Joint Inspection, 2012).

Restorative Justice has been part of the process of youth justice in England and Wales since 1998, when the system was reformed, (Youth Justice Board, 2008). Marshall (1999), noted that this was mentioned in the Crime and Disorder Act 1998, "only partially and haphazardly" (p.6), but not enough for it to be embedded in the system.

According to the Crown Prosecutor Service (2015), "RJ processes are more widely used with youth offenders. The Youth Justice Board has been promoting RJ from 2001 and includes within national standards a standard regulating RJ and work with victims of crime". That means a focus on addressing victims needs should be central to the criminal justice system. Afterwards, in 2006, the statutory Victims Code of Practice was created "to transform the criminal justice system more responsive and easier to navigate." (Ministry of Justice, 2015, p. 1).

## FEATURES

### Definition

There are in existence a wide range of definitions about what Restorative Justice means, but one of the main definitions that we take into account is the one from the UK government which says: “RJ brings those harmed by crime, and those responsible for the harm, into communication, enabling everyone affected by a particular incident to a play part in repairing the harm and finding a positive way forward” (Ministry of Justice, 2014a)

For a wide definition of the process, and according to Marshall (1999), Restorative Justice is defined as “a process whereby parties with a stake in a specific offence resolve collectively how to deal with the aftermath of the offence and its implication in the future” (p.5).

### Typology of measures in the frame of restorative practices

The intervention of Restorative Justice has some common types of practices, from indirect mediation where offenders and victims never actually meet, to face-to-face offender/victim mediation and the Restorative Justice conferences composed by offenders, victims and their supporters.

It is known that the process of Restorative Justice requires engagement with young people, involving them into the process, mainly with young people who have committed an offence. Young people who participate in the Restorative Justice process can learn about the harm caused to the victim and work to make amends in the community.

There are four main types of restorative practices, which involve victims, offenders and also the families and volunteers, as shown below (Youth Justice Board, 2008, p. 8):

**Victim-offender mediation:** communication between a victim and offender facilitated by a trained mediator,

**Restorative conferencing:** in addition to the primary victim and offender, other people connected to the victim and offender (such as family members) also participate,

**Family group conferencing:** includes members of the wider extended family, with a particular onus on the family to provide an acceptable solution,

**Youth offender panels:** trained community volunteers work alongside a member of the local YOT to talk to the young person and their parents/carer, with the participation of the victim, to agree on a tailor-made contract aimed at putting things right

## Principles

Here we can find some general principles which can orientate, according to Marshall (1999) “the general practice of any agency or group in relation to a crime”:

These principles are:

Making room for the personal involvement of those mainly concerned (particularly the offender and the victim), but also their families and communities.

Seeing crime problems in their social context.

A forward-looking (or preventive) problem-solving orientation.

Flexibility of practice (creativity).

RJ may be seen as criminal justice embedded in its social context, with the stress on its relationship to the other components, rather than closer system in isolation (Marshall, 1999, p.5).

On other hand, the Restorative Justice Council (RJC) which aims to promote quality restorative practices for everyone, defines as principles that should be held by all practitioners in the field (Restorative Justice Council, 2015, p. 1):

- **Restoration:** the primary aim of restorative practice is to address and repair harm.
- **Voluntarism:** participation in restorative processes is voluntary and based on informed choice.
- **Neutrality:** restorative processes are fair and unbiased towards participants.
- **Safety:** processes and practice aim to ensure the safety of all participants and create a safe space for the expression of feelings and views about harm that has been caused.
- **Accessibility:** restorative processes are non-discriminatory and available to all those affected by conflict harm.
- **Respect:** restorative processes are respectful to the dignity of all participants and those affected by harm caused.

## Age ranges

The age of criminal responsibility in England and Wales is up to 10, this excludes children under 10 years, they cannot be arrested or charged with a crime. The remit of the cases to the Youth Justice Board is 10 to 17 years old. Restorative Justice is used in the same way throughout the youth court procedure in this age range. In addition, the YOTs carry out mediation work as participation in the Restorative Justice with children and young people with an age range of 8 to 18 years old.



Through research, the RJC is developing programmes for schools with a restorative approach to resolving conflicts and preventing harm, by using a range of methods adapted to appropriate age groups.

### **Statistical data about restorative practices at national level**

Ministry of Justice research demonstrates that restorative justice provides an 85% victim satisfaction rate, and a 14% reduction in the frequency of reoffending (Restorative Justice Council, 2015).

Government research has shown that Restorative Justice has a positive impact on both victims and offenders. The government funded a seven year research programme into restorative justice which showed that (Restorative Justice Council, 2015, p. 10):

70% of victims chose to take part in face to face meetings which led to 85% victim satisfaction rates.

78% of victims said that they would recommend restorative justice to other victims (only 5% would not).

The research also showed that face to face meetings reduced the frequency of reoffending by 14% and that this reduction in reoffending was highly cost effective for the criminal justice system, saving an average of eight pounds for every one pound spent on delivering restorative justice.

### **Implementation of restorative practices in the juvenile justice system**

Restorative Justice in England and Wales is in place in all the stages of the criminal justice process, from out-of-court to post-sentence. And the activities that are included in these processes can be a victim-offender conference (face-to-face), community conference or indirect communication (Ministry of Justice, 2014a). In the cases that Restorative Justice practices cannot take place in direct form, the participants can choose another kind of communication like indirect shuttle mediation, video conferencing, telephone conferencing, the use of a two-way screen, audio or video recordings or written communication.

Restorative Justice processes are always voluntary for both victim and offender. If it is a part of a diversionary process (e.g. with a conditional caution), offenders need to have admitted responsibility for the harm they have caused. When the RJ process is part of a conditional caution, both victim and offender agree to take part. In some processes when the offences are misdemeanours, and the conditional process executes correctly, the young person could avoid a Court Attendance Notice.

In that respect, "RJ works best when the offender is committed to participating in a meaningful way, rather than simply trying to avoid being prosecuted", (The Crown Prosecution Service, 2015).

### In pre-trial proceedings

The aim of the pre-sentence RJ is to provide victims with the opportunity to take part in a RJ activity at an early stage of the criminal justice system; offer victims greater direct involvement in the criminal justice process, give victims a voice and increase victim satisfaction; and reduce re-offending (Ministry of Justice, 2014a, p. 4).

The cases have to be identified as “suitable” for RJ practice, with some requirements: “identifiable victim or victims...the offender accepts responsibility and has made a guilty plea...and victim, offender and any other participants all consent to take part in a RJ activity” (Ministry of Justice, 2014a, p.7). RJ activities, can be suitable for any offence, however it should not normally be used in cases like domestic violence or hate crimes and sexual offences.

The identification of “suitable” can come from police, victim services, probation staff, youth offending teams and even from court, where sentence is deferred to allow for RJ activities. The early contact with the victims takes part when the suitable case is identified with victims and offenders. These cases should only be referred to a trained RJ practice, from recognised organisations like the Restorative Justice Council. Only the trained facilitator should seek the consent of both parties. The trained facilitator has to be sure that the requirements mentioned above have been fulfilled. RJ practice can only take place if victim and offender have been risk assessed by the facilitator and deemed fully able. Procedures differ depending on the area, local authority or court. The facilitator may be required to inform the court of the practice and keep them updated on progress (Ministry of Justice, 2014a).

### During the execution phase of the measure

According to the Crown Prosecutor Service (2015), “RJ can take place in any stage of the criminal justice process including after conviction and it can also form an integral part of any sentencing disposal, specially with youths.”

In addition, part 2 of schedule 16 to the Crime and Courts Act 2013 inserts a new section into the power of Criminal Courts (Sentencing) Act 2000, which makes it explicit that the courts can use their existing power to defer sentence post conviction to allow for an RJ activity to take place by imposing an RJ requirement, (The Crown Prosecutor Service, 2015).

Restorative practices can be used as well as part of a sentence. The Criminal Justice and Immigration Act 2008, contains and gives the power to issue a *Youth Conditional Caution*, providing another vehicle for the RJ approach.

## **Development of restorative practices (where, when and implemented by whom?)**

The Ministry of Justice has developed a “Restorative Justice Action Plan for the criminal justice system for the period to March 2018”, with the focus firmly on developing equal access for victims, awareness and understanding of RJ and benefits, the way to access RJ and how to find good quality practice, delivered by trained facilitators. This action plan is a continuation from the last one published in November 2012. The success of the last action plan is the bed-rock of the next plan, working in the areas previously mentioned.

To ensure the success of this action plan, Ministry of Justice wants to put in place some measures during the next years until March 2018.

Implementing the plan is something that has to be part of the work of all the agencies, local authorities and not only working centrally. To introduce the new system would increase administrative burdens but it is important to collect the data on the use of RJ.

The Ministry of Justice will measure success using the following range of measures (Ministry of Justice, 2014b, p.2):

Monitoring RJ provision through on-going engagement with Police and Crime Commissioners (PCC).

Monitoring take up of the Restorative Justice Council's restorative services standards and restorative services quality mark.

Working with the Victims' Commissioner to monitor compliance with the relevant requirements in the Victims' Code.

Continuing to work with the Restorative Justice Council to understand the extent and nature of RJ provision and build on research which has attempted to provide a benchmark.

## **3. VICTIMS IN THE RESTORATIVE PRACTICES**

### **GUARANTEES FOR VICTIMS IN CRIMINAL PROCEEDINGS**

According to the article 27 of the Directive 2012/29/EU, of the European Parliament and of the Council of October 2012 establishing minimum standards on the rights, support and protection of victim of crime, member states must have brought into force the laws, regulations and administrative provisions necessary to comply with the directive by November 2015.

The Victims' Code sets out the minimum level service victims should get from criminal justice agency. The Code was revised in 2013 after the

Directive, to reflect the commitments in the EU Victims' Directive. The last updated version of the Code was published in October 2015, and came into effect on 16 November 2015, fulfilling the Directive 2012/29/EU. The last updated version states that "enhance entitlements are provided to victims of the most serious crime, persistently targeted victims and vulnerable or intimidated victims" (Ministry of Justice, 2015, p. 1).

The Code for Victims (2015) is a guideline, to use as information and as a guide of services that victims should receive from the criminal justice system. There are two specific chapters for victims under 18 that set out all the steps to follow if you are a victim, from the police investigation, information about the pre-trial trial or post-trial, appeals, to the post-sentence or the way to use Restorative Justice in the process. In addition, victims have a short guide of the duties of the Service Providers for children and young people.

As listed bellow, there are some key rights under the Code (Ministry of Justice, 2015):

The right to be kept informed about case progress by the police.

The right to hear when a suspect is arrested, charged, bailed or sentenced.

The right to apply for special measures in court for vulnerable or intimidated victims.

The right to be told when an offender will be released, if the offender in question has been sentenced to a year or more in prison for a violent or sexual offence.

The right to be referred to Victim Support Services

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