

# The Differences between Mediation and Restorative Justice/Practice \*

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\* Many thanks to Niall Kearney, Richard Hendry and Billy Nicol for their helpful comments and suggestions.

## **Introduction**

Over the past few years, many practitioners in Scotland have come to recognise the importance of distinguishing restorative justice or restorative practices from mediation.

However, this distinction appears not to have been widely applied by practitioners and trainers working within the context of schools. They have included mediation as one of many ‘restorative practices’ or ‘restorative approaches’, along with processes such as problem-solving circles, circle-time, emotional literacy, active-listening, a culture or ethos that emphasises positive relationships, and so on.<sup>2</sup>

In addition, there are many other countries – especially in Europe – that are ‘addressing harm’ restoratively and yet have chosen to call this process ‘mediation’ (or more fully, ‘Victim-Offender Mediation’ or ‘Penal Mediation’).

Whilst various attempts to explain and defend this distinction have been made, it may now be necessary to examine the arguments in more detail.

This is particularly the case given that restorative youth justice services in Scotland are - in anticipation of ‘Getting it Right for Every Child’ - now beginning to work more closely with schools, for example, by taking referrals or presenting awareness and training sessions; and these new connections are already revealing significant confusion or disagreement about what constitutes a ‘restorative process’.

Clarity is also critical for the development of ‘restorative justice or ‘restorative practice’ in Scotland in general. All those who have an interest in or responsibility for delivering these processes urgently require a clearer sense of what it is they are doing, talking about, evaluating, commissioning or funding.

Above all, practitioners need to be assured that they are not confused or misinformed in a way that could potentially cause harm to those they are working with. This is particularly important in schools where children and young people can be involved both as participants in the process and as facilitators (i.e. peer mediators).

This paper will attempt to outline, in detail, the reasons for maintaining such distinctions.

### **1. What is Mediation?**

The definition provided below by the Scottish Mediation Network is widely accepted by practicing mediators and trainers across Scotland and beyond:

“Mediation is a way of resolving disputes which assists the people involved to reach an agreement with the help of an impartial mediator. The parties rather than the mediator, decide the terms of the settlement.”

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<sup>2</sup> For example, see “Defining Restorative Practices” (<http://www.betterbehavioursotland.gov.uk/initiatives/piloting/definingrp.aspx>)

As this definition makes clear, the purpose and focus of mediation is the resolution of a *dispute* or *conflict*. But what precisely do these terms mean?

### 1.1 What is a conflict or a dispute?

According to the Oxford English Dictionary (OED), a **dispute** is “an argument” or “a disagreement”. To dispute something is to “argue about” a statement of fact; it is to “question the truth or validity of” that statement. A dispute can involve “competing for” something or a “battle to win”.

The meaning of the term **conflict** is almost identical: it is defined by the OED as a “serious disagreement or argument”. It can involve an “incompatibility between opinions or principles”. To be in conflict is to be “incompatible with” or “at variance with” something or someone. The word can also be used to describe a “prolonged armed struggle”.

From these definitions, it seems clear that a ‘dispute’ or ‘conflict’ involves a situation in which the opposing parties feel entitled to something, and they are prepared to enter into a contest in order to obtain or ‘win’ that to which they feel entitled. This contest may involve words only, but also actions - even to the point of violence. But the core issue is that the parties have, or believe they have, incompatible goals, values or beliefs; and that these goals, values or beliefs are important enough that they are prepared to enter into conflict rather than abandon them.

### 1.2 Why is mediation suited to resolving conflicts and disputes?

In order to prevent such a situation from escalating and to resolve the issues, what is required is an approach in which no one feels that they have ‘lost’. In other words, both parties need to come to an ‘agreement’ or ‘settlement’. They need to find a ‘win-win’ outcome.

Mediation is designed to bring about precisely this kind of result. It does this by using an approach in which both parties feel that they are being treated as equals, they are given the same consideration, speaking time, preparation, and so on. Most importantly, the mediator is, within ethical boundaries, ‘morally impartial’: that is to say, the mediator does not ‘take sides’ or speak or act as if one party is ‘in the right’ and the other ‘in the wrong’. The mediator, in other words, is responsible for the process but has no vested interest in the outcome.

### 1.3 Can mediation result in a restorative outcome?

There are of course cases in which mediation has led to a restorative outcome. For example, it may turn out that one (or both) parties are, within the mediation process, honest enough to admit that they are – in some respect – ‘in the wrong’. They may even admit that their actions have ‘harmed’ the other in some way. In such cases, one (or both) parties might even apologise to the other and offer to make amends.

That is a restorative outcome, but it is crucial to note that this outcome is a by-product of the process. Mediation is primarily motivated by *the need to resolve a dispute or conflict*. It does not proceed on the assumption that addressing harm or repairing a relationship is the - or even *an* - objective.

This is demonstrated by the fact that mediation is most frequently used in situations where the parties disagree about where fault or blame lies. The mediation process is not intended specifically to clarify this, although it may do so. Its primary purpose is to establish agreement on how parties will relate to or engage with each other in the future and how they can avoid subsequent conflicts. Family Mediation and Community Mediation, together accounting for over 90% of all mediations carried out in Scotland, are replete with this kind of scenario. If one party to a dispute admitted sole responsibility in this context, it would be a rare exception.

## 2. What is restorative justice/practice?

Restorative justice/practice, by contrast, is motivated *primarily* by the need to address the harm done: it does not take place unless and until the person who has caused the harm has fully and freely admitted to their actions and is willing to take responsibility for them.<sup>3</sup> That is what makes the purpose of a restorative intervention entirely distinct from mediation.

### 2.1 Why should restorative approaches be limited to addressing harm?

This definition of ‘restorative justice/practice’, of course, begs the question: Why can’t ‘restorative justice’ or ‘restorative practice’ also be used to address conflict? Why limit it to harm? Isn’t this just an arbitrary terminological restriction?

To address this question, we will again need to be as clear as possible about our terms.

We have clarified the term ‘mediation’ as being a process that is primarily about ‘conflicts’ or ‘disputes’. We have also seen that, on the face of it, this means that mediation is not designed to address issues of harm or wrongdoing, even though it may do so fortuitously or as a by-product.

So what the question above comes down to is this:

- Is the concept of **harm** broad enough to include **conflict** or **disputes**? Or is there a genuine distinction between these categories that we need to preserve?

It is crucial to remember that what is at stake here is not *just* conceptual clarity (although that is helpful). A genuine distinction might preoccupy theorists, but if it doesn’t make any difference *on the ground* then we can probably afford to be more relaxed.

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<sup>3</sup> This willingness is likely to increase in clarity and strength during and as a result of the restorative process, but there must be sufficient evidence of its presence from the outset.

On the other hand, if practitioners are confused or ignorant about a distinction, and their confusion could potentially result in people getting hurt, then it is a distinction that we need to take very seriously.

## 2.2 Defining Harm

Again, it will be useful to start by setting out some definitions:

- The Oxford English Dictionary defines harm as involving
  - “physical injury, especially that which is deliberately inflicted”, or
  - “material damage” (although, strictly speaking, the “harm” caused here is to the owner of the material in question), or
  - “an adverse effect on” someone.
- Again, in ordinary usage, when we say that one person has “harmed” another, what we are normally saying is that they have “wronged” the other, or “treated them unjustly”. In other words, they have indefensibly (i.e. unjustifiably and inexcusably) violated the other person’s rights in some way.<sup>4</sup>

## 2.3 The difference between harm and conflict/disputes

With these definitions in mind, it seems clear that there is a genuine difference between *being in conflict* and *causing harm* or *experiencing harm*. One is neither necessary nor sufficient for the other. For example:

- There can be a conflict or a dispute in which no one is directly harmed at all. Suppose that two people strongly disagree about whether to vote Labour or Conservative. It doesn’t follow in the slightest that one has *thereby* harmed the other. Obviously, one can imagine a scenario in which such a disagreement might give rise to harm. But even to say as much is to admit that there is a key difference between these concepts.
- Again, one person can cause another serious harm without there being any conflict or dispute between them. The person harmed might be a perfect stranger from whom the other has decided to steal a DVD player. But the person responsible could hardly say that they were ‘entitled’ to the DVD player, or that there was a ‘serious disagreement’ about who owned the player. Both would be in agreement about who was the rightful owner; both would agree that the DVD player was not a gift or free for the taking; and both would agree that it was taken without consent. There is really nothing here about which they disagree. So what needs to be resolved in this case is not a conflict or dispute, but rather the fact that one person has *wronged* the other. As Von Hirsch et.al. put it:

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<sup>4</sup> There are a number of ways in which this definition can be refined so as to exclude counter-examples, but it is reasonably uncontroversial that the concept of ‘being wronged’ lies at the heart of what we ordinarily mean by ‘being harmed’. E.g. J. Feinberg ‘Harm to Others’ (Oxford University Press, 1984) p. 34.

[Some advocates of RJ suggest that] restorative processes are supposed . . . to resolve the ‘conflict’ between offender and victim (Christie, 1977); but crimes are different from disputes in that the offender seldom claims to be entitled to what he takes – so what ‘dispute’ is being resolved? . . . The idea of ‘conflict’, moreover, also carries no necessary implication that either part has *wronged* the other.”<sup>5</sup>

Worse still, a person harmed would (and should) be outraged by the suggestion that their primary need is to sort out their ‘difference of opinion’ with the person who has harmed them, so as to create a ‘win-win’ outcome. This is no place for that kind of moral neutrality. As Howard Zehr has put it:

“The term ‘mediation’ is not a fitting description of what could happen [in a restorative encounter]. In a mediated conflict or dispute, parties are assumed to be on a level moral playing field, often with responsibilities that may need to be shared on all sides. While this sense of shared blame may be true in some criminal cases, in many cases it is not. Victims of rapes or even burglaries do not want to be known as ‘disputants.’ In fact, they may well be struggling to overcome a tendency to blame themselves. At any rate, to participate in most restorative justice encounters, a wrongdoer must admit to some level of responsibility for the offence, and an important component of such programs is to name and acknowledge the wrongdoing. The neutral language of mediation may be misleading and even offensive in many cases. Although the term ‘mediation’ was adopted early on in the restorative justice field, it is increasingly being replaced by terms such as ‘conferencing’ or ‘dialogue’ for the reasons outlined above.”<sup>6</sup>

## 2.4 Practical differences between mediation and restorative justice/practice

One very clear way of highlighting the distinction between mediation and restorative approaches is to look at how they differ in practice, and why it is that they *need* to differ in these ways in order to fulfil their respective roles.

### (a) Who speaks first

In mediation, the mediator will normally begin by asking who would like to speak first. That is because it should not matter who speaks first. Since they are to be treated as moral equals, there should be no sense that one person is entitled to speak before the other, or that there is any particular advantage in doing so. It is purely a matter of preference.

By contrast, it matters very much who speaks first in a restorative process. The person who caused the harm needs to set the tone of the meeting by taking responsibility from the outset. Hence, the facilitator should begin by asking the person responsible to start the dialogue by explaining what happened and why.

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<sup>5</sup> von Hirsch, Ashworth and Shearing “Specifying Aims and Limits for Restorative Justice” in ed. Von Hirsch et.al. *Restorative Justice & Criminal Justice: Competing or Reconcilable Paradigms?* (Hart Publishing, 2003): p. 22 & 23, n.3

<sup>6</sup> Howard Zehr, “The Little Book of Restorative Justice”, (Good Books, 2002): p. 9

A facilitator who has only been trained in mediation may be unaware of the psychological and moral reasons for this procedural difference; and *vice versa*.

### **(b) The focus on agreements**

A process that addresses harm should – first and foremost – enable people to express their *feelings* in a safe and constructive way. It should also ensure that people take genuine *moral responsibility* for their part in what happened. Some kind of reparative task or agreement will often emerge from this process, particularly in cases involving theft or property damage; but that agreement is secondary and should not therefore cloud the main aim.

Mark Umbreit provides some useful empirical evidence to support this claim. He conducted a study of “burglary victims” going through what was (back in the 1990s) called “victim-offender mediation”. He found that some of them did not find the process “helpful”, due to the “the negative, non-repentant attitude” of the person responsible. They said: “I felt he wasn’t owning up to it. . . . He just slouched all the way down and just sat and half-heartedly gave answers”.<sup>7</sup> In other words, Umbreit found that to address the harm in a restorative way, the person who caused the harm needed to take full and genuine responsibility.

Marshall and Merry made similar observations with respect to the expression of feelings:

“It is not possible to carry out fruitful [restorative work] without dealing with underlying feelings. A material agreement without this will be superficial and of little meaning to the parties. Facilitators should be prepared to gain the skills necessary for ventilation and expression of grievances, not merely for their direct therapeutic benefits, but also because the ultimate settlement will have more content and value.”<sup>8</sup>

It might, of course, be argued that this is something that restorative approaches have in common with mediation: ‘good mediation practice’, the argument goes, ‘will also deal with underlying feelings, because that will produce a stronger agreement and a more satisfying outcome.’

In some situations, this may well be the case. But it cannot be an *essential* requirement of mediation, given that the primary objective is ‘to resolve a conflict or dispute’. There are many agreements created by mediation that are strong, enduring and have enormous value for all the parties involved, but where those parties did not (and did not want to) express their feelings to each other, or admit responsibility for their part, or apologise. They did not want, nor did they get, a ‘therapeutic process’: they only wanted to resolve the dispute, and get on with their lives; and mediation was very successful in achieving that aim. In other words, mediators are responsible for the process, but, within ethical boundaries, are not responsible for either what the parties define as the issues or the nature of the agreement to resolve these issues.

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<sup>7</sup> Umbreit, M. (1990) “The meaning of fairness to burglary victims”, in B. Galaway & J. Hudson (eds.) *Criminal Justice, Restitution, and Reconciliation*. Monsey, NY: Criminal Justice Press: p. 56

<sup>8</sup> Marshall, T. & Merry, S. (1990) *Crime and Accountability — Victim/Offender Mediation in Practice*. Home Office, HMSO, London: p. 98

By contrast, in any restorative process, as Umbreit and others have observed, such a ‘business-like’ approach would be re-victimising, unsafe, and virtually meaningless to all those concerned.

Incidentally, it would not be implausible to assume that the facilitators - in the cases Umbreit mentions – were trained as mediators, rather than as restorative practitioners. The 1990s were, after all, early days in the restorative justice movement: facilitators were usually called ‘mediators’, and what they did was called ‘Victim-Offender Mediation’.

Hence, it would be unfair to suggest that they were ‘doing restorative justice badly’. Rather, what they were doing was delivering sound mediation practice, *but in the wrong context*. A mediator would, typically, have no absolute responsibility to ensure that either party was genuinely remorseful or willing to take responsibility for their wrongdoing.

As we have seen, a mediator’s primary role is to enable the parties to resolve a dispute and reach a settlement. But if one uses *this* approach in a context where people have been seriously harmed, then it is no surprise at all that people end up re-victimised or hurt.

### **(c) The focus on reparation**

There are some services that call (or would like to call) what they do ‘restorative justice’ and yet are designed to focus entirely on agreements about restitution, compensation or reparative tasks. If mediation is about securing an agreement, why not call these services ‘mediation’, or even ‘mediation and reparation’? And if that is acceptable, then surely mediation is, after all, a restorative practice, since these cases are dealing with harm?

This is a useful question, since it will help us to make a number of additional clarifications.

First, it is likely that a service which focuses primarily on reparative agreements originated (historically) within a mediation context: that is, the practitioners or service-developers were probably trained in mediation, and so are more familiar or comfortable with a process that concentrates on producing agreements or settlements. However, it does not follow that what they are doing can therefore be called ‘mediation’. As we have seen, mediation – by definition – is about resolving *conflict* or *disputes*. If a process is designed primarily to deal with the aftermath of a *harmful* incident, then – by definition – that process is not mediation.

Second, it is clear – from our discussion above – that this kind of service would also not count as a *restorative* approach. If a process routinely and deliberately avoids dealing with “underlying feelings” or the “ventilation and expression of grievances”, and puts a higher value on an agreement or a reparative task than on the full and free acknowledgement of responsibility and an expression of sincere remorse, then it is missing an essential element of restorative justice/practice. A more appropriate term for such processes would be ‘reparative justice’ or ‘reparation schemes’. They have more in common with ‘reparation orders’ and ‘community service’ than with restorative justice, and so a clear distinction should be made.

Again, it is not necessarily the case that what we are calling ‘*reparative* justice’ is just ‘*restorative* justice done badly’. There may be isolated cases in which a restorative practitioner cuts corners in this way; but the key difference is that a genuine restorative process is *designed* to provide much more than mere reparation. By contrast, the primary objective of ‘reparative justice’ or a ‘reparation scheme’ is to reach agreement on and/or arrange reparation of some kind. It is possible to tell whether a service is reparative or restorative simply by looking at the kind of process their practitioners routinely and deliberately deliver.

## 2.5 Complex cases: where the blame is shared

What about the more complex cases where, as Zehr noted above, the blame needs to be ‘shared’: that is, cases where there is no clear ‘victim’ or ‘offender’ because some conflict between them has resulted in them both being harmed in (roughly) equal measure? In such cases, isn’t the distinction between mediation and restorative justice unhelpful or inappropriate? If such cases exist, doesn’t that mean that the distinction is something we can ‘take or leave’?

It might be helpful here to focus on a hypothetical example.

Suppose two boys have ended up in a bad fight at school over a serious disagreement about something, and that this is a clear and serious breach of school rules. How should this incident be resolved?

Let’s say they have assaulted each other, and both are bruised and hurting. In this case, the solution should be primarily restorative, since the most important issue at stake is the fact that they have both seriously wronged each other; and that needs to be addressed and put right.

But if the situation is not to re-occur, then they will probably need to resolve their disagreement as well. In this case, the restorative facilitator will, at some point in the process, need to use mediative techniques (consensus building, reframing of issues, assisted negotiation etc.) to help the boys come to some kind of agreement or ‘settlement’ that will resolve their initial dispute in a way that is acceptable to both of them.

It should be clear from this example that the distinction between restorative justice and mediation has not broken down; nor was it unhelpful or inappropriate. On the contrary, the techniques and skills of each approach were, in their place, used in an entirely relevant and appropriate way. Nevertheless, the primary aim of the intervention was a restorative one: the harm needed to be addressed.

So, even in these complex cases the distinction holds: if their reason for coming together is to *address the harm that has been caused*, whichever of them caused the harm in question, then they need to use a *restorative* approach. If they want solely to resolve a dispute, then they need to use mediation. If they are meeting in order to address harm *and* resolve a related dispute, then – within the context of the restorative process – the facilitator will need to employ mediative skills.

## 2.6 Why confusing restorative justice/practice and mediation can cause harm

Whilst confusing the two would clearly be a conceptual mistake, it could also potentially cause significant harm to the boys and others.

Suppose the practitioner had brought the boys together without any suggestion that they needed to take responsibility for the harm they had caused each other, telling them simply that they needed to meet in order to “work out their difference of opinion”.

But then, as seems likely, suppose that the fight was brought up in the meeting. Would the boys have felt properly prepared to have a constructive discussion? What if one boy apologised for his part, and the other boy refused to do so? How would *that* leave them both feeling after the meeting? Would not the practitioner have thereby created a more dangerous situation?

Or again, what if the fight wasn't mentioned in the meeting at all? What sort of message would *that* give the boys about the acceptability of physical assault? How would the meeting have addressed their anger, their hurt, their sense of safety, and the appropriateness of their behaviour?

Clearly, as there was a significant breach of school rules and significant harm had been done, the practitioner should not be employing a mediation framework in this situation

Of course, this kind of case is not infrequent, particularly within schools or other institutional settings. So if practitioners are confused about the differences between mediation and restorative justice, then mistakes will inevitably arise: for instance, they will use one kind of process where the situation demands that they use the other; or they will confuse both, resulting in an unmanageable hybrid. These mistakes, as we have seen, could have potentially harmful consequences for those involved.

## 2.7 Confusing restorative conversations with conflict-resolution techniques

One restorative practice that schools probably use the most is called a ‘restorative conversation’ (also called ‘restorative enquiry’, ‘restorative language’ or a ‘restorative chat’). This is a brief dialogue, usually between a teacher and student who has broken a minor rule in class. Normally, no one will have been *directly* harmed, but the behaviour will have had a harmful or adverse impact on others, for instance, by causing disruption to their learning. It is quite different from other restorative practices insofar as it is a relatively quick reactive approach, and so rarely involves any preparation.

Insofar as this is a process that addresses harm, it is properly called ‘restorative’. However, like mediation, this restorative practice can easily be confused with other approaches; and like mediation, this confusion probably arises, in large part, due to the way in which ‘restorative conversations’ emerged from an adaptation of conflict-resolution and negotiation approaches.<sup>9</sup>

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<sup>9</sup> Belinda Hopkins' chapter on 'Restorative Conversations' - in *Just Schools* (Jessica London and New York: Kingsley Publishers, 2004) - is primarily about conflict management. Indeed, she explains that her “sources of inspiration” for her style of training in ‘restorative conversations’ and ‘restorative skills’ come from [her] experience working with LEAP – Confronting Conflict, the Alternatives to Violence Project and Mediation UK’s experiential training approach.” She also draws heavily on *Difficult Conversations: How to Discuss what Matters Most*, by Douglas Stone, et.al. New York: Michael Joseph, 1999.

Restorative conversations do, on the face of it, have much in common with these other approaches. For instance, the book *Difficult Conversations*, whose authors are associated with the Harvard Project on Negotiation, offers advice for handling “unpleasant exchanges”. They recommend that such dialogues should comprise three components:

1. The “what happened” conversation (verbalizing what we believe really was said and done),
2. The “feelings” conversation (communicating and acknowledging each party’s emotional impact), and
3. The “identity” conversation (expressing the situation’s underlying personal meaning).<sup>10</sup>

These three elements appear very similar to the three parts of a restorative conversation:

1. The Facts (what happened)
2. The Consequences (who was affected or harmed)
3. The Future (how can we make things right and stop it from happening again).

There is a fundamental difference, however: a ‘restorative’ conversation should, by definition, be focused on *an incident that has caused harm*. This makes it a very different kind of conversation from one that is focused on resolving a conflict, disagreement or a misunderstanding.

For example, a conversation about a conflict or disagreement needs to proceed on the assumption of moral neutrality. It is also, for the most part, a reciprocal dialogue: it is not the kind of conversation in which one person asks a series of questions so as to help the other to ‘think for themselves’ and thereby ‘create a learning experience’ for them. That would be wrong-footed in the extreme. In a conflict-resolution conversation, both ‘parties’ need to ‘resist the impulse to lay blame’ and instead ‘explore their own contribution to the situation’. That is because the focus is *not* the fact that one or both have wronged or harmed each other. The focus, instead, is a dispute, disagreement, or misunderstanding to which both have contributed in some way.

How does this apply to the classroom? Clearly, there will be cases of misconduct in which the teacher’s behaviour or attitude has made a contribution: the teacher may not have been clear or consistent in their instructions; they may have been aggravating the pupil with sarcastic or dismissive remarks. In such a scenario, the teacher might begin the conversation under the assumption that it will be ‘restorative’, only to realise that *they* have, in fact, significantly contributed to the problem. In such a case, it would be unhelpful to continue with a restorative conversation. The teacher and student should instead work together to come up with a way of preventing the behaviour from re-occurring; and this ‘plan’ should include the teacher agreeing to adjust their own behaviour in certain ways. In such cases, the teacher will have made a good judgement about what kind of conversation they should be having, drawing upon (and modelling) negotiation skills in the process.

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<sup>10</sup> *Ibid.*

What would have happened if the teacher had continued with the standard restorative conversation? This would inevitably have felt to the student like an unfair and ‘one-sided’ dialogue. Indeed, if the student had any self-confidence, they would (not unreasonably) have tried to disrupt the restorative conversation with self-defensive remarks or simply have been unwilling to engage. Worse still, the exercise could merely have served to re-enforce - in their mind - the perspective that ‘might makes right’.

One additional clarification is needed: there will be many cases in which a restorative conversation – on its own – is not sufficient to address the situation, largely because there are others who need to be involved.

First, the student’s misconduct may have arisen out of a conflict they are having with other pupils or another teacher. Sometimes this will be clear from the situation. Sometimes it will only be revealed within the course of the conversation. But what is likely to happen if the teacher does not acknowledge this wider context? What if they continue to focus narrowly on the student’s behaviour and its impact? Invariably, the student will perceive the injustice and will react accordingly. The wider conflict will not be resolved, and so the behaviour is likely to continue, if not escalate.

The teacher clearly needs to recognise the issue as soon as possible, disengage from the restorative approach, and begin a process that will enable the other parties to be brought in. If that is what they do, then it would be unhelpful to describe the result as a ‘restorative conversation’, even if it started out that way. Instead, what has actually taken place is a dialogue that may serve as a prelude to some form of direct or indirect mediation.

Second, the only impact of a student’s misconduct may seem - to the teacher - to be ‘general undirected disruption to the class’. But it may also have *directly* hurt or wronged another student; and this may not be identified until the restorative conversation begins. In such a case, the teacher will need to change their focus: they need to ensure that the needs of the student who has been harmed are also ‘heard’ and addressed; and they need to assess whether the student who has caused the harm is willing to take responsibility and apologise for their actions. If so, then arranging a restorative meeting or shuttle dialogue might be appropriate, if this is what the person harmed wants.

Although it may seem to be a fine line in this instance, it is still unhelpful to say that the teacher’s initial discussion with the student was a ‘restorative conversation’, even if it started out that way. Instead, what has actually happened, is that the teacher has asked the kind of questions that would indicate whether or not the student would be willing and suitable for a restorative meeting or shuttle dialogue. This kind of ‘assessment’ dialogue happens regularly, and – whilst there are structural similarities – they are not the same thing as (nor are they called) ‘restorative conversations’: they are simply a normal part of the process that leads to a restorative meeting or conference.

Finally, if a teacher has been *personally* hurt or wronged by the misconduct, then they will need to think carefully about what their needs are. It should be clear that, if the harm is sufficiently severe, the standard restorative conversation format is unlikely to be suitable. It would be more beneficial and safe for all concerned if the teacher asked another member of staff to facilitate a restorative meeting or shuttle dialogue between themselves and the student.

What follows from all this, is that a teacher needs to be able to distinguish between the following types of conversations:

1. Where the focus is to resolve a conflict, disagreement or misunderstanding between the teacher and the student;
2. Where the focus is to initiate a process that will help to resolve a conflict, disagreement or misunderstanding between the student and other parties;
3. Where the focus is to address a student's misconduct, which may have caused harm or had an adverse impact on others, but where no individual has been directly or seriously harmed;
4. Where the focus is to initiate a process that will help to address the harm that the student has caused to another person or to the teacher.

Given these distinctions, there are two crucial implications:

First, only **3** above should be called a 'restorative conversation', even if the other conversations may start out as 'restorative'. If this is not clear in the teacher's mind, then they could easily use the wrong approach, with potentially damaging consequences.

Second, given that teachers will routinely be faced with the full range of situations described above, it seems clear that training in 'restorative conversations' requires far more than memorising a series of scripted questions. Moral discernment, self-awareness, humility, conflict-resolution skills, and the ability to quickly adjust one's approach to ensure it matches the situation are *far* more important.

## 2.8 Confusing restorative approaches and 'pro-active' processes

As mentioned in the introduction, many schools are now calling a range of 'pro-active' processes 'restorative': such as circle-time, problem-solving circles, interpersonal skills, emotional literacy, positive relationships, and so on.

One simple problem with this usage is that **pro**-active processes are, by definition, not designed to **re**-act to or address *something that has happened in the past* – which an incident that has caused harm will always be. But there are more substantive issues here as well.

Suppose it so happened that, within the context of a pro-active process like circle-time, someone brought up the fact that they had been harmed by someone else in the group; and suppose the facilitator was able, then and there, to help them address this harm restoratively. That scenario would clearly be nothing more than a 'happy accident', rather than something that was planned or something that circle-time is specifically designed to bring about.

Put another way, what would have happened in such a case would be that the facilitator was able to use a restorative approach within the context of a pro-active process. But it clearly does not follow from this that circle-time or any other pro-active process is in any sense intended to be 'restorative'.

It may be useful to give an actual example of what can happen if this distinction is not upheld. In 2005, an article in the *Observer* reported a case in which "a 13-year-old girl from South Wales . . . died in a suicide pact with a friend last year after being bullied in

school.” The report states that “Her father [said] that before her death she had taken part in a ‘circle time’ meeting at school along ‘with the children that actually bullied her’. Her mother said: ‘She felt even more intimidated.’”<sup>11</sup>

Now those who created the concept of ‘circle-time’ would be the first to protest that it was never designed to address bullying. So why, then, would the school have used this approach? Could it be that the school had been trained to take the view that circle-time was just one of many ‘restorative approaches’? After all, this view holds that ‘restorative approaches’ are – at least in part – designed to ‘repair relationships’. So the school might easily have been misled into thinking that ‘circle-time’ – being a ‘restorative approach’ – could therefore be used to address bullying.

Whatever the reasons for the confusion, it is crucial to note that this was not simply a case of a practitioner delivering circle-time ‘badly’. They could have been facilitating the process ‘by the book’. The practitioner could have made sure that each person was given equal time to speak, they may have been morally impartial (not taking sides); and, as is standard for circle-time, the practitioner may have assumed that they did not need to prepare the students carefully beforehand for the meeting.

In short, the practitioner could have been doing circle-time as well as could be expected. The problem was that they were using that process *in entirely the wrong context*. It could easily have been that this occurred because the practitioner was seriously confused or misinformed about what kind of process counts as ‘restorative’.

Even if there was some other reason in this particular case, it is not difficult to imagine how a practitioner *might* be confused if they have been taught that ‘restorative practices’ or ‘restorative approaches’ include processes that have nothing to do with addressing harm, such as circle-time and mediation; and how that could potentially lead to the kind of tragic consequences that were reported in the *Observer*.

### 3. Why have mediation and restorative justice/practice been confused?

Given the arguments outlined above, it might be helpful to examine the reasons why this confusion has persisted.

#### 3.1 Historical Reasons

We have already suggested that many early restorative justice programmes, particularly in Europe and America, originated out of a mediation context - inasmuch as the facilitators and developers were most likely to have been trained as mediators. It is not difficult to imagine how, whilst they might have adapted the process in various ways, some of the working assumptions and procedures of mediation persisted.

This ‘inheritance’ would be most evident where a so-called ‘restorative justice’ service exhibits the following characteristics:

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<sup>11</sup> “Anti-bullying protests force policy U-turn”, by Ned Temko, (Sunday August 28, 2005 The Observer). <http://www.guardian.co.uk/child/story/0,7369,1557999,00.html>

- The main focus is to reach a reparative agreement;
- There is very little substantive preparation beyond explaining the process and arranging a time to meet;
- The facilitator doesn't ensure that those who have caused the harm have fully and freely acknowledged their actions *before* the restorative work proceeds;
- The facilitator doesn't ensure that the person responsible has agreed to meet with the person harmed *primarily* in order to be accountable for their actions: that is, by fully admitting to what they had done, apologising, hearing the consequences of their actions, and making amends.<sup>12</sup>
- The meeting or conference does not routinely begin with the person responsible, but rather leaves it open as to who would like to start.<sup>13</sup>
- The service is described in the language of mediation, for instance:
  - They use words like 'conflict' or 'dispute' (as in "this will help to resolve the conflict in a restorative way");
  - They use the words 'mediation' and 'mediator' (as in "Victim-Offender Mediation" or "Mediation and Reparation");
  - They use morally neutral language, e.g., calling those involved "parties" or saying that the meeting will "not focus on blame", and so on.

### 3.2 Restorative processes in an institutional context

A second reason for the confusion has arisen more recently, and more self-consciously. Institutions – such as schools, prisons, residential units, and workplaces – have, over the past few years, started to incorporate restorative processes. Initially, restorative work was introduced as an alternative to formal discipline or punishment, and the main processes used were restorative meetings and restorative conferences.

However, it became increasingly clear that restorative processes were, in many cases, somewhat alien or odd to those working in the institutions. They felt that their normal day-to-day experience was, to varying degrees, inconsistent with restorative values, skills and processes. Some teachers or managers were using an authoritarian, dictatorial or punitive approach in one context, and then requesting or even taking part in a restorative approach for another context.

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<sup>12</sup> There will always be the rare exception where, regardless of how much preparation is done, the person responsible fails to speak or act in a way that the facilitator was assured they would. However, this is quite different from a service in which facilitators routinely fail to provide adequate preparation or assessment and thereby consistently place persons harmed in an extremely vulnerable position.

<sup>13</sup> If a restorative facilitator has explained to the person harmed (in the preparation phase) why the meeting normally starts with the person responsible, and yet the person harmed still makes the request that they would like to start, then if the facilitator feels that meeting this request would be safe and helpful for all concerned, it should be honoured.

Moreover, it was clear that restorative approaches would be most effective if implemented within a culture or ethos that placed a high value on *building* and *maintaining* positive relationships – and not just on *repairing* relationships.

In fact, it was seen that the bulk of time, resources and training should be devoted not to facilitating processes like restorative meetings and conferences, but rather to the kind of interpersonal skills, communication techniques, and conflict resolution processes that constitute the bedrock of healthy, flourishing relationships. The need for restorative meetings and conferences would then, hopefully, reduce; and when they *were* needed, those involved would be better motivated to participate because they would have experienced the value of having positive relationships, and so would want to do what they could to repair them.

This was a very helpful and positive development. Restorative meetings and conferences in an institutional setting *needed* to be better contextualised, and this ‘wide-angle lens’ was entirely appropriate. Unfortunately, however, in the rush to convey what has come to be known as the ‘whole-school approach’, advocates and trainers have – perhaps for want of a better term – extended the word ‘restorative’ to describe *all* of the conditions, processes and skills that contribute to this contextualisation.

So, for example, mediation, circle-time, active listening, relational values like ‘respect’, and so on, have all been re-classified as ‘restorative practices’ or ‘restorative approaches’. Even entire institutions have been labelled as ‘restorative’: as in ‘restorative schools’ or ‘restorative workplaces’. This only makes sense on the assumption that the word ‘restorative’ has been extended, for the reasons above, to define all aspects of human interaction.

In sum, we now have two explanations for why the distinction between mediation and restorative justice/practice has continued. The first reason can be (and is being) rectified as restorative justice services become more self-aware. Services that were once called ‘Mediation and Reparation’ in Scotland have now been re-branded as ‘Restorative Justice Services’, and many of their inherited mediative practices are now also changing.

The case of schools is more problematic however, since a conscious decision appears to have been made to extend the term ‘restorative’ to include mediation and other proactive approaches. We have already presented the conceptual, moral and practical objections to this kind of extension. But we haven’t looked at another problem, unique to schools, that has emerged with this extended usage and its underlying motivation.

#### **4. Why has ‘restorative justice’ been distinguished from ‘restorative practices’?**

Once it had been decided that, in the context of schools, the word ‘restorative’ could be applied so broadly, a new question emerged: what would schools now call those processes that were specifically designed to address harm – processes that were originally called ‘restorative’?

One solution has been this: if it is a process that is merely used to address harm, then it should be called ‘restorative justice’; and if it is a process that is consistent with and supportive of restorative values and skills, then it should be called a ‘restorative practice’

or a 'restorative approach'. In other words, 'restorative justice' becomes a subset of 'restorative practice' or 'restorative approaches'.

Another, more recent, solution has been to exclude the term 'restorative justice' altogether. Some advocates, trainers and practitioners are now positioning themselves by saying 'we do restorative practice, not restorative justice'. In this scenario, practices which specifically address harm are placed within a continuum of processes ranging from 'informal' to 'formal' – *all* of which are called 'restorative approaches'. The processes on the 'informal' end of the scale are in fact pro-active approaches (like communication skills and circles); around the middle of the scale are re-active approaches like peer mediation; it is only at the 'formal' end of the scale that we find those processes that are specifically designed to address harm, namely, restorative meetings or conferences.

Both of these 'solutions', of course, involve confusing restorative work with mediation and pro-social approaches; but they also both involve distinguishing between 'restorative justice' and 'restorative practice/approaches'. It will be necessary, therefore, to examine the range of reasons that are typically presented to justify this distinction.

#### 4.1 'Restorative justice' is guilty by association

One reason given for this distinction is that the word 'justice' has unhelpful associations with 'criminal justice'; and/or that 'restorative justice' should be used to identify restorative work that takes place within the 'justice system', for example, after the police have made a charge. 'Restorative practice' or 'restorative approaches' would then identify processes that take place outwith the justice system, such as in schools.

There are substantial difficulties with this rationale. First, in the phrase 'restorative justice', the word 'justice' is modified by the word 'restorative', not the other way around. 'Restorative justice' is the least likely term to have become tainted with the brush of 'criminal (retributive) justice'. The term 'restorative justice' was, in actual fact, created precisely to draw attention to the way in which it contrasted with traditional, punitive ways of 'doing justice'. It is therefore bewildering that the term 'restorative justice' is, in some quarters, now referred to in a way that implies that it is suspect or inferior in some way to 'genuine restorative work'. Is it really the case that someone will be treated less restoratively *just because* they have been charged by the police? Or that someone will be offered something less than the full and proper restorative process *just because* they have been harmed by a crime? Any close analysis of (what this paper would call) 'restorative approaches' or 'restorative practices' will find that they share the very same values, skills and processes that are described by the term 'restorative justice'.

#### 4.2 'Restorative justice' lacks a relational context

A second reason given for distinguishing between 'restorative justice' and 'restorative practice/approaches' is this: if a restorative process takes place 'in the community' (i.e. within the justice system), then there is typically no relational context: in stranger-crimes, for instance, the person responsible is likely never to meet or relate to the person harmed again. By contrast, it is argued, students and teachers (or work colleagues) will continue to meet each other regularly and thus need a process that will enable them to manage that ongoing relationship.

This second reason is based upon an empirical error. Many restorative cases ‘in the community’ involve people who either know each other or would be very likely to come into contact again. These cases will need ongoing reviews and agreements about how to manage future contact, just as much as cases within schools will. It is true that schools will require this kind of relational management, on the whole, in a more intensive and routine way: but this is a difference of degree, not of kind. Relational management is part and parcel of the kind of dialogue that can go on in any restorative justice process – whether ‘in the community’ or not.

### **4.3 ‘Restorative justice’ is incapable of dealing with moral complexity**

A third reason given is this: the morally clear-cut ‘one person causes harm to another’ scenario may be the norm within the justice system, but it is rarely so simple in a schools context, where the distinction between who was harmed and who caused the harm is frequently more blurred or complex.

This reason again makes the mistake of assuming that the word ‘justice’ modifies the word ‘restorative’, rather than the other way around. Whilst the justice system does refer cases to a restorative justice service using their dichotomous template of ‘victim-offender’, it does not follow that the restorative work that then takes place is unable to adapt itself to accommodate any moral complexity that emerges.

Restorative justice processes are designed to be ‘fair, open and honest’ in a way that the justice system cannot always be. If the justice system has identified an individual as the person harmed, and yet it turns out that they have either themselves caused harm or contributed to the conflict that gave rise to the offence, then that is precisely the sort of ‘fact’ that should (and routinely does) ‘come out’ within a restorative justice process, and is dealt with appropriately. Whether the formal justice system can recognise such complexity has no bearing on what happens within the restorative process itself.

### **4.4 ‘Restorative justice’ does not recognise the causal role of conflict**

A fourth proposed argument is this: if serious harm occurs within a school, it is more likely that it has arisen from some kind of interpersonal conflict, rather than an impersonal offence that has come ‘out of the blue’, so to speak. Restorative justice in the community deals primarily with such ‘impersonal offences’, and therefore is less likely to recognise the role of conflict as a cause, or be equipped to deal with it appropriately.

This argument falls on two counts: First, we have seen how mediative techniques can be (and often are) used to resolve conflict or disputes within the context of a restorative process, and this will be true regardless of whether it takes place in the community or not. Second, there are cases where conflict is aggravating someone to the point that they cause harm, but the source of the conflict is not the person harmed (e.g. a stranger); instead, the conflict lies elsewhere (e.g. with their parents or a neighbour). In such cases, this problem can (and usually is) referred to a local community mediation service or to another agency, such as social work. Any school would have to do the same kind of additional mediative work, if it was to resolve the originating conflict.

In other words, restorative justice in the community *does* recognise the role of conflict when it occurs, and *is* just as capable of dealing with it appropriately as a school.

#### 4.5 'Restorative Justice' does not deal with underlying causes

The final reason is this: Restorative work done within a school is more likely to recognise that the behaviour it is addressing is in some way connected with deeper underlying problems, whether that be personal issues or the school's ethos or policies. For example, an authoritarian teacher might aggravate students to the point where they react with aggression and cause significant harm.

It is not so easy, in this case, to isolate the problem from its context, or reduce it to the simple matter of 'who harmed who': the problem goes much deeper and wider. The authoritarian teacher may need to attend professional development courses or counselling. There may be institutional injustices that need to be resolved at the highest level of management. It may be that people need to attend anger management courses or communication skills training. That is why the 'whole-school' approach is so important and necessary. Restorative processes do need to view an incident that has caused harm through a 'wide-angle lens'. Otherwise they will consistently skim the surface and allow the underlying issues to fall through the net.

But is this problem so different to that faced by 'restorative justice in the community'?

First, it has long been recognised that restorative justice processes cannot, in themselves, resolve the social or contextual injustices that give rise to offending behaviour, such as child abuse, parental inadequacies, socio-economic deprivation, peer pressure, and so on; nor can they, in themselves, address psychological causes, such as anger management, substance misuse, and so on. For this reason, restorative justice services in Scotland offer a range of additional programmes designed to help young people who require these. They also work alongside a variety of agencies that help to address more complex issues, such as social work, youth justice teams, and other voluntary agencies.<sup>14</sup>

Second, restorative justice services in Scotland now include (and are continuing to develop) additional, separate support processes for persons harmed. This has arisen out of the recognition that restorative justice, in itself, will normally be only one aspect of recovery from the experience of harm. It is not a 'one-stop shop'; and indeed many persons harmed do not want or need restorative justice at all. So if a person harmed comes into contact with a restorative justice service, they should be offered support regardless of whether or not they wish to communicate with the person responsible; and if they *do* take part in the restorative process, then additional internal and/or independent support should be made available to them. Restorative justice services 'in the community' need to (and most in Scotland do) have close working relationships with Victim Support, and other relevant agencies. This ensures that these services are able to meet the needs of persons harmed *as they see them*.

Put another way, restorative justice 'in the community' is equally able to (and does) accommodate the fact that recovery from harm is contextual: it depends upon the individual's network of support, their socio-economic circumstances, their history of previous victimisation, their particular psychological make-up, their relationship with the person responsible, and so on.

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<sup>14</sup> See *Census of Restorative Youth Justice Services in Scotland 2006* (unpublished).

## 4.6 Summary

It would appear from the above that restorative justice in the community is not so different, after all, from the way in which restorative processes are carried out in schools. In both cases, restorative work has a ‘wide-angle lens’; and in both cases, background or causal issues are dealt with alongside or in connection with the restorative process.

It is crucial to note that it would make little sense to place all of these ‘supportive’ or ‘contextualising’ processes under the same ‘restorative’ umbrella. If there is conflict, whether in the community or an institution, then that will need to be resolved by a mediative approach, whether this means using mediative skills within the context of a restorative process or a separate mediation process. If there are underlying cognitive-behavioural problems, then that will need to be dealt with by someone appropriately trained to address those issues, whether a guidance counsellor or a youth justice worker. If the issue is social injustice, then that will need to be addressed at a higher level, whether by the Scottish Executive or by the school’s senior management. It does not help anyone to define all these additional pieces of work as ‘restorative’.

In short, the alleged distinction between ‘restorative practices in a school’ and ‘restorative justice in the community’ does not involve a difference in kind: the restorative values, skills and processes used are exactly the same; the additional contextual work required to resolve wider issues might differ in degree, but certainly not in a way that would radically affect how restorative work is done or conceived. In other words, making a distinction between ‘restorative justice’ and ‘restorative practice’ or ‘restorative approach’ is entirely unwarranted.

To sum up, the term ‘restorative justice’ is effectively synonymous with other terms like ‘restorative practice’ or ‘restorative approaches’. The only basis for making a distinction between them would be if there are plausible reasons (a) to use the term ‘restorative approaches’ or ‘restorative practices’ as ‘catch-all’ phrases; and (b) to use the term ‘restorative justice’ *only* to refer to processes that address harm ‘in the community’. We have seen that, in both cases, no such reasons exist.

## **5. Conclusion**

It is entirely possible that the kinds of confusions we have looked at in this paper are presenting a formidable obstacle to the development of restorative work in Scotland. To outsiders, these terminological confusions give the misleading impression that ‘there is no agreement about what restorative justice/practice is in Scotland’.

The reality, on the ground, is that there is an enormous degree of commonality. When restorative work occurs – understood as ‘processes that addresses harm’ – it is done with remarkable consistency and agreement about best practice: there is widespread agreement about the main restorative values and skills and even about what should happen in a restorative process. Mediators are similarly in agreement about the structure and purpose of mediation interventions. It is therefore of some concern that this fact is obscured by the lack of terminological clarity that endures in some quarters.

How are politicians, civil servants and local authorities to assess, let alone support, a concept that is presented to them in a way that is muddled or that ‘depends on who you speak to’?

More importantly, what will service-users think of this situation? Will the confused way in which we describe what we are offering help to build trust or confidence? What harm could we be doing when, because of this lack of clarity, we offer them a process that does not fit the context?

In short, those of us who work on the ground and who have a deep interest in restorative justice/practice, mediation and other processes - trainers, service managers, practitioners and researchers – all need to work toward a much clearer understanding and agreement on the language that we use to describe what it is that we are doing.

It is hoped that this paper will contribute toward that objective.

## Recommendations

The following are recommendations implied by the perspective outlined in this paper:

1. It would be helpful if the term ‘restorative practice/approaches’ was no longer used to encompass pro-active processes (like circle-time) or re-active processes that seek to address conflict or disputes (like mediation, peer-mediation or conflict-resolution conversations). An alternative term that would be more appropriate - and which could include ‘restorative practices’ - might be ‘relational approaches’, ‘relational practices’, or even “positive communication approaches”.
2. It would be helpful if entire institutions or cultures were not described as ‘restorative’ (as in ‘restorative school’). If what is actually meant is that the school is striving to embody positive relational values like mutual respect, honesty, a willingness to take responsibility for your actions, interconnectedness, and so on, then a more appropriate – and less confusing – label might be: ‘relational school’.
3. It would be helpful if the term ‘restorative justice’ was no longer used in a way that suggests or implies that it is distinct from ‘restorative practice’ or ‘restorative approaches’. As this paper has argued, these terms are essentially synonymous.
4. There are contexts – like schools – in which practitioners are very likely to be asked to intervene in a range of different situations. One case might involve only conflict, another only harm, and another some combination of conflict and harm. In these contexts, the practitioners must be trained in both mediation and restorative practice; and their trainers must themselves be trained and experienced practitioners in these respective areas, with a clear understanding of the structural, psychological and moral differences between the two approaches.
5. It would be helpful if there was a national agreement on what processes and outcomes may be regarded as ‘restorative’ (acknowledging that this agreement will undergo periodic review and development). The following is a suggestion. It is taken from the “Best Practice Guidance for Restorative Practitioners (Scotland)”<sup>15</sup>

“Restorative process” means any process in which relevant individuals participate together actively in the resolution of matters arising from an incident that has caused harm, generally with the help of a facilitator. Each process aims to enable the participants to explore, in a safe and structured way, (1) *the facts* – what happened and why, (2) *the consequences* – how people were harmed or affected, and (3) *the future* – what agreements or action plan needs to be made to meet the needs of all concerned, including the central needs of addressing the harm and preventing similar incidents. To ensure the safety and effectiveness of the process, no meeting is held without the facilitator preparing all participants in advance.

Restorative processes fall into three broad categories, dependent on the kind of communication (if any) that takes place between the person harmed and the person responsible: that is direct communication, indirect communication and cases where communication is either not possible or not appropriate.

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<sup>15</sup> [http://www.restorativejusticescotland.org.uk/RP\\_Best%20Practice%20Guidance%201-6.pdf](http://www.restorativejusticescotland.org.uk/RP_Best%20Practice%20Guidance%201-6.pdf)

Processes involving direct communication currently include the following:

- “Restorative Justice Conferences” – also called “Restorative Conferences” and “Police Restorative Warning Conferences” – are normally led by two facilitators and are attended by the person(s) harmed, the person(s) responsible, their respective support persons, other affected persons where appropriate, and observers where agreed.
- “Face-to-Face Meetings” – also called “Restorative Meetings” – can be led by either one or two facilitators and are attended only by the person(s) harmed, the person(s) responsible and observers, where agreed.
- “Restorative Circles” are normally led by two facilitators and are arranged when a number of individuals have harmed an institution, group or community, rather than caused direct harm to any individual (e.g. vandalism). They are attended by affected person(s), the person(s) responsible, and observers where agreed.

Processes involving indirect communication currently include the following:

- “Shuttle Dialogue” involves a facilitator acting as a go-between to enable the person(s) harmed and the person(s) responsible to communicate without meeting.
- “Police Restorative Warnings” are normally facilitated by one police officer and are attended by the person responsible and his or her support persons. The views and requests of any person harmed are obtained by the police officer and conveyed to those present at the Warning. If the person harmed wishes, the outcome of the Warning is fed back to them.
- “Restorative Family Group Conferences” are normally led by two facilitators and are attended by the person responsible, his or her family members and support persons, and professionals who are working with or have some involvement with the person responsible. The views and requests of any person harmed are obtained by the facilitator and conveyed to those present at the conference. The professionals present their perspective and information on resources they can provide. The ‘family group’ meet privately to come up with an action plan, which is then refined and finalised in the larger group. If the person harmed wishes, the outcome of the conference is fed back to them.

Processes where no communication is possible or appropriate currently include the following:

- “Support for Persons Harmed” involve only the person harmed meeting with a facilitator to talk about their experience, short- and long-term reactions, strategies for recovery and access to other support services.
- “Victim Awareness” involves only the person responsible in one-to-one or group-work sessions with a facilitator, and may include reparative tasks.
- “Restorative Conversations” involve only the person responsible in a 5-10 minute meeting with a facilitator, normally in an institutional setting (schools, prisons, secure care, etc.) but may also be used to address anti-social behaviour or incidents in the workplace.

“Restorative outcome” means (a) the emotional, cognitive and relational benefits felt by the participants during and following a restorative process, such as feelings of safety, increased self-esteem, the letting go of anger, increased empathy, and so on; it also means (b) an outcome agreement or action plan reached as a result of a restorative process, which may include tasks and programmes aimed at meeting the individual and collective needs and responsibilities of the participants. This may include tasks that seek to address, either practically or symbolically, loss or damage experienced by the person harmed, and programmes for the person responsible that seek to address the underlying causes of their behaviour (such as anger management, substance misuse, peer pressure, and so on).

November 2006.

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