



Justice Committee

Oral evidence: Restorative justice, HC 594

Wednesday 4 May 2016

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Written evidence from witnesses:

- [Youth Justice Board for England and Wales](#)
- [Standing Committee for Youth Justice](#)
- [Surrey County Council](#)
- [Women's Aid](#)
- [SafeLives](#)
- [Professor Clare McGlynn and Nicole Westmarland, Durham University](#)

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Members present: Robert Neill MP (Chair); Alex Chalk MP; Alberto Costa MP; Mr David Hanson MP; Victoria Prentis MP; and Marie Rimmer MP.

Questions [53–113]

Witnesses: **Rt Hon Lord McNally**, Chair, Youth Justice Board, **Ali Wigzell**, Deputy Chair, Standing Committee for Youth Justice, and **Ben Byrne**, Head of Youth Support, Surrey County Council, gave evidence.

Q53 Chair: Thank you very much for coming to give evidence to us in our inquiry into restorative justice. I do not think that any Members here have an interest relevant to the subject of this inquiry, so we can record that as being the case. Before we move to the questions, can I ask the witnesses to introduce themselves for the record and for those who may be watching?

Ali Wigzell: I am Ali Wigzell. I am deputy chair of the Standing Committee for Youth Justice, which is a membership organisation, with about 40 members at the moment, who are not for profit organisations all campaigning for a better youth justice system.

Lord McNally: I am Tom McNally, Lord McNally, chair of the Youth Justice Board for England and Wales. In 2013, I was the Minister at the Ministry of Justice who piloted the Crime and Courts Bill through the House of Lords. That was the first piece of legislation that specifically wrote in restorative justice.

Ben Byrne: Good morning. I am Ben Byrne from Surrey County Council. I am head of the youth support service, so I am responsible for youth justice. I also lead on transforming justice for the criminal justice partnership.

Q54 Chair: Thank you very much. We will go into further detail about all those things in due course. We heard evidence last time about some of the various studies that have been made about the cost-effectiveness, or otherwise, of restorative justice. What is your take on the evidence? You may have read some of the same academic studies we were referred to in the previous evidence session. I am interested in your own assessment, or that of your organisations, as to the state of the evidence, particularly how effective it is. Is there any specific research that you think we should look at?

Ali Wigzell: In terms of cost-effectiveness, the best available evidence in the UK is that of Shapland et al, with which you will be familiar. As previous witnesses said to you, there is wide variation in the cost-effectiveness of various schemes. Costings so far have not been able to take account of the effect on victims—for example, victim satisfaction. To be able to take that into account is crucial.

Q55 Chair: That means further research.

Ali Wigzell: Yes. I am not sure whether you are interested in the wider evidence related to the effectiveness of restorative justice among young people, but a systematic review in 2013 of 10 studies in randomised control trials across the UK, the US and Australia found that restorative justice was slightly more effective with adult offenders than young offenders.

Q56 Chair: Perhaps that is something we could have a look at. Did it give a sense as to why that was?

Ali Wigzell: The systematic review doesn't; it focuses very much on the what rather than the why.

Q57 Chair: Beyond that, would you broadly regard Shapland as robust? We had one witness who did not think so.

Ali Wigzell: The SCYJ definitely would, because it represents the best available evidence in the UK, despite there being some holes.

Lord McNally: I think you will find that, although evidence-based policies are the buzzwords in Whitehall, it is very difficult to get the evidence. In March this year we published a study by Birkbeck and the Restorative Justice Council on work within YOTs and take-up, which is useful. It is quite right that there is a lot of work being done in Australia and other places, but what convinced me was more anecdotal than research for both victims and perpetrators. I would welcome more research and analysis, because I hope it would confirm my belief in restorative justice.

Q58 Chair: Do you have any view as to what form that extra research and analysis might take? Would it be for specific offences or otherwise?

Lord McNally: It is extremely difficult. First, you always have to get funding for it, but you are quite right; it would be places like the University of Sheffield, Birkbeck and so on. We probably have to look to academic research to help us.

Ben Byrne: When we set about our restorative justice transformation in Surrey six years ago we looked at Shapland. That strong piece of research is probably as good as you can get in the criminal justice field. We started from the premise: is it the right thing to do? We were convinced by a basket of evidence around restorative justice, which you have probably heard, that it is the right thing to do for all those involved. On that basis we pursued it knowing that, if you do the right things, good things will probably happen. That was certainly the case in Surrey. We found it cost-effective for us. That was not the main reason for doing it. The main reason was that we wanted to provide a better service for people involved in the justice system. We have had an external evaluation of our own restorative approaches. It was done by Get the Data, who do a lot of work for the Ministry of Justice. They found that £1 invested in our system provided a value of £3.42. It was not eight to one, but we were very happy with £3-plus back for each £1 invested.

Chair: Not bad.

Ben Byrne: Clearly, all the other outcomes supported it, and that was why we pursued it.

Chair: That is very helpful.

Q59 Alberto Costa: The Committee has received written and oral submissions that data sharing is an intractable problem for restorative justice. Do data-sharing issues affect restorative justice in the youth estate?

Lord McNally: I think they do, partly because of wrong and over-interpretation of the Data Protection Act, which causes some YOTs to sit on data for fear that its release would offend the Act—it would not—and partly because, although we think we live in a new world of magic technology where with the flick of a switch we have data, actually gathering data, analysing it and drawing the right conclusions from it is a rather costly exercise. There has to be a cost-benefit case for collecting data. At the moment, we do not collect at national level all data on restorative justice. I wish we did. Perhaps part of the academic studies will be to get more and better analysis of the data. Part of the problem, which is not just in this particular area, is over-interpretation of the Data Protection Act, which prevents some bodies releasing data which they are quite entitled to do.

Ali Wigzell: We would have a slightly different take. In terms of access to data and getting a better picture of what is happening with respect to restorative justice and the youth justice system, we wholeheartedly agree with Lord McNally that we need to know far more about that. I can say a little more about that later. In conversations we have had with youth offending services, one of our members, the Association of Youth Offending Team Managers, says that, in contrast to the adult justice system, data sharing is perhaps not such an issue in the youth justice system. That is possibly because, given the way youth offending teams or integrated youth services are set up, they have much more entrenched and ingrained relationships with the police, for example. Many youth offending teams include a police officer. I know that in some of the youth offending services in which I have spent time the youth offending service officers have direct access to police systems to gather details to facilitate restorative justice.

Ben Byrne: I agree with Ali. Generally, I think it is easier in youth justice. I accept Lord McNally's point that that does not mean it always works, but it is easier because in youth justice it is on a more statutory footing, and perhaps we can discuss that further shortly. I think that in the adult world restorative justice is much more peripheral.

Q60 Alberto Costa: It has been suggested to us in oral evidence that there should be some form of legislation mandating the sharing of data for restorative justice. What is your view of such a proposal? You touched on it a little bit, Ms Wigzell.

Lord McNally: What you will have is a request for a cost-benefit analysis. It is very easy to assemble data; it is less easy to analyse it and draw conclusions and make policy from it. Ideally, it would be marvellous if we at the YJB and the Ministry of Justice had a centralised restorative justice dataset. I do not know how expensive that would be. As you know, all pieces of legislation now have to pass a test as to how burdensome they would be. One of the experiences of the YOTs is that filling in the data we already collect is time-consuming and burdensome. You hear the same thing from the police and other agencies. Data collection always sounds attractive, but there are downsides to it that have to be considered before you go to mandatory legislative powers.

Ali Wigzell: I agree with that point. In our written evidence to the Committee, we said there needed to be comprehensive data on the nature and extent of RJ activity in the youth justice system. Currently, we do not have a picture of what is going on across England and Wales with respect to restorative justice. In the youth justice system we do not know what proportion of children are doing restorative justice; we do not know at what stage they are doing it and we do not know what type of restorative justice is being used. Is it family group conferences? Is it victim-offender mediation? Is it face-to-face victim-offender meetings? It would be good to have greater understanding of what is going on, but I totally agree with what Lord McNally said. I have spent the past 17 months in two youth offending services doing some research for my PhD. I have already seen the demands on youth offending services in collecting and submitting data. That is already potentially eating into the time they have to spend with young people, for example. Any thought of extending data collection needs to take that into consideration. Perhaps there could be consideration of other means—for example, an audit; Lord McNally talked about a recent report by the ICPR at Birkbeck, or perhaps inspection could consider the use of restorative justice as well.

Ben Byrne: The particular concern around information sharing has been personal data and organisations that want to deliver RJ getting hold of it. In answer to the question whether it should be put on a statutory footing, I would say yes, it should. There should be a right to restorative justice if you are a victim and a reciprocal responsibility on the agencies to share information to facilitate that.

Q61 Alex Chalk: If I may stick with the youth justice system and restorative justice, referral orders were supposed to be the vehicle by which there was restorative justice, and victims would be involved through youth offending panels, but in 2012 a joint thematic inspection of restorative justice found general agreement that not enough victims were being engaged by the panels. Does that remain the case?

Ali Wigzell: The anecdotal evidence is very much that it still does. Victim attendance at panels continues to be low. One of the reasons for that is seen to be the short time in which panels have to be convened, within 20 days of sentence.

Q62 Alex Chalk: Could you expand on that a little? Why does that matter?

Ali Wigzell: There are a number of reasons. Twenty days is quite a short period of time in which to access information about victims, to contact them and prepare them appropriately, if they were to attend. For many victims, there might be a short period—only a matter of weeks—between the offence and the first panel being convened, and it may not be appropriate at that time for them to attend the panel. There are other factors to be taken into consideration as well. If you look at youth justice statistics, a lot of young people in the system will be there for drug offences and knife possession offences where perhaps there is not a direct victim, so there would not be a victim attending the panel, or at least not a direct one.

As we said in our written evidence, a lot of restorative justice activity happens outside panels, so alongside referral orders there need to be rehabilitation orders and detention and training orders. There is a question as to whether panels are an appropriate forum for victims and offenders to meet anyway. Victim-offender meetings tend to be highly fragile, emotionally charged events. Given that panel members tend not to be experienced in either conference facilitation or participation, there is a question of whether it would be appropriate to be there in that capacity. Further, there is growing evidence to suggest that the success of conferences is related to their level of emotional energy. That is linked to the skills of the facilitator in the preparation of the victim and offender to generate and lay the foundations for that emotional energy. Given that that is the case, it might not be appropriate to have two or three lay panel members also present at the first victim-offender meeting. The implications of that are potentially twofold. The argument is that either you bolster referral orders significantly and perhaps have a model more like Northern Ireland's, where you have highly skilled facilitators running conferences or panels in a conference-like capacity, or, as is the case at the moment, perhaps they become more of a stepping stone to restorative justice further down the line.

Ben Byrne: I absolutely concur with Ali's views but would add, with respect to our legislators, that the referral order is a bit of a camel—it is a hotch-potch, hoping for the best of both worlds. There is a retributive core process that a young person is taken through and is then referred away to a community panel. As Ali said, we do not necessarily have the skills of facilitation that would be required. It is a rather bizarre hotch-potch where we try to get the best of all worlds and end up with the worst of each.

Lord McNally: It is interesting that your authority is from 2012, which is four years ago.

Q63 Alex Chalk: That was why I asked whether it had changed.

Lord McNally: One of the problems in justice is that it takes time to collect statistics and analyse trends. I have never thought of restorative justice as a silver bullet. It is a very interesting addition to what I would see as a move away from our more confrontational system of treating young offenders to one that looks for solutions. Ben calls it a hotch-potch. I think we are nudging and trying things out to see what works. That will continue to be the process.

Q64 Alex Chalk: In the process of seeing what works, what has become clear from the answer given by Ali—if I may call you that—is that restorative justice is delivered across all sorts of things: a bit in referrals where appropriate, because perhaps it is a street robbery and there is a victim; a bit across youth rehabilitation orders; and a bit across out-of-court disposal. How do we go about collating that data and working out whether the restorative stuff is working? It is quite hard to get a grip of it all; it is happening all over the place in different pots and to different extents. How do we draw the threads together and say that, however it is being delivered and in whatever context, it is worth doing, it is worth pursuing?

Ali Wigzell: That goes back to two earlier points. First, the picture is unclear and it will look different in different youth offending services. The recent mapping exercise carried out by ICPR at Birkbeck suggested that restorative activity with young people tended to be concentrated more at the out-of-court disposal and diversion end, particularly in comparison with the adult justice system, with some going on throughout the rest of the system. Before we can look at effectiveness we need a much better grasp of what is going on.

Alex Chalk: Exactly.

Ali Wigzell: Then we have to look at the arguments for further randomised control trials which look at the impact on an intervention group and a control group, and then more qualitative research to understand the “why” questions.

Q65 Alex Chalk: Act 1, scene 1, is to find out what is going on. Who should collate that data so that we know what is going on and how it is being delivered in the youth justice system?

Ali Wigzell: That is a trickier question. We covered some of it earlier. There is potentially a role for the Youth Justice Board, but, as we discussed in part earlier, the SCYJ would be reluctant to say there should be further demands placed on youth offending services. Possibly it is a question of how else that data could be collected. Could it be collected every couple of years by an auditing exercise? Is there a role for thematic inspection to collect that kind of data? We need to think quite creatively.

Q66 Alex Chalk: Answers on a postcard. Thank you very much.

Lord McNally: If you are waiting for the big picture and the final report with all the data, I will certainly be dead and you may be dead as well.

Chair: You think we might wait in vain.

Lord McNally: You put it more delicately, Mr Chairman.

Q67 Victoria Prentis: With that in mind, shall we focus on specifics? Mr Byrne, may I ask you a few questions about your experience in Surrey? You describe the youth restorative intervention programme in your written evidence. Could you briefly tell us how it is different?

Ben Byrne: Our whole approach has been to try to put the restorative into everything we do, so clearly we needed a mechanism in the criminal justice system to deliver that. With Surrey police and our criminal justice partners, we have designed over the past five or six

years the youth restorative intervention, which is effectively the default for young people who offend in Surrey. If it is not very low level and can be dealt with by a police officer more or less in the moment, or so serious that effectively it is a grave crime, our expectation is that we would be able to facilitate youth restorative intervention. The young person would be bailed from the police station with a bail date. In the meantime we would collate information about the circumstances of the offence and the young person and consult the victim on their view of what they would want to happen. What is their view about involvement in terms of restorative justice?

Q68 Victoria Prentis: Victim involvement has been an issue in other areas. How do you persuade the victims that it is worth their while, or do you have a problem with victim engagement?

Ben Byrne: Not engagement. We need to be clear about it. People will tell you that it is only restorative justice if the two people in the room together are the victim or the harmed party and so on, and the offender. Our view is that our criminal justice processes have long neglected the victim and often people just want an involvement; they want to understand what has happened; they want to be clear about what is going to happen to the perpetrator; and they want some questions answered. If we can answer their questions—if that is all they want—we facilitate that. We also work up. Some people want face-to-face contact and we facilitate that. We do a whole range of things, but the important thing is that they are sensitive to the needs of the victim. We are always talking to them about what they want, and that may change at various points. A week after the offence they may feel very differently from a month or six months after it, but we keep that dialogue going.

We have examples of very serious matters. One parent made a video for us telling her story, which I saw last night for the first time. The last thing on earth she wanted was to have any involvement with the young person who had effectively bullied her son who had hanged himself. He did not die, but he hanged himself. It was the most serious and awful thing for a parent and child to experience. She wanted nothing but retribution. That is okay and we work with that, but we said, “There is an ongoing process for this young person, and we will involve you and keep you informed.” Over the months, she wanted more involvement; she wanted to know why. Her position changed, as did her family’s. You can imagine the massive ripples and effects on the family. We have worked with that family for over a year. She has been involved in a face-to-face victim-offender conference. She got to ask the questions, get the answers and express her anger, fear and dread in what she experienced. She now says that, if it had not been for that ongoing opportunity and the process she has been through, she would never have got to a place where she can now move on. It does not mean it has gone away. She has reached a new normal, but it has given her an opportunity to move on that she would never have had through any process other than that restorative one. That is at the very serious end. We do this a thousand times a year at all types of gravity, but it is a common experience for people to say, “It’s made a difference for me.” We roll with where the person is at; we take them where they are at and work with it.

Q69 Victoria Prentis: That is very helpful.

Lord McNally: Anne-Marie Cockburn may have given evidence to you. She lost her daughter, who was sold ecstasy. She went through restorative justice to meet the young man who committed the crime. She has stayed with it and has become a major influence

both for restorative justice and against drug abuse. We could probably all recount big and small anecdotes. Sometimes it does not work. I was in Thames Valley and met a couple who had gone through all of it. When they were set to meet the young man who had burgled their home, he got to the door next to where they were and then could not go through with it. I was slightly worried by what Ben said about a statutory right of victims to restorative justice. In the way he played it, where the victim is kept informed, that is perfectly right, but no statute can make restorative justice work; it needs, as Ali said, very good and expert preparation and two willing participants.

Q70 Chair: It might improve awareness and it might improve the culture, but it cannot take people to the end. Do you disagree with that, Mr Byrne?

Ben Byrne: Lord McNally's comment? I think it is nuanced. People have a right to the process. It does not mean they will ever end up in the same room as the offender.

Chair: You cannot predict the outcome.

Q71 Marie Rimmer: To build capacity in restorative justice, £2.5 million was allocated; there was a further £3.5 million between 2011 and 2016 to support further development, and 9,000 staff and volunteers were trained. Lord McNally or Ali, you said that approximately £2,000 had been allocated to each youth offending team. Do you think that is more or less than in previous years?

Lord McNally: It is what we've got. Part of the problem—this is another issue—is that the budget of the YJB has been constantly cut since 2010. We were very grateful to get that money via the victim surcharge, and I think it is well spent. One thing we can do, instead of catching all the statistics, is to look for best practice and circulate that to other YOTs, and that we are doing. To be frank, the use of restorative justice by YOTs is still very localised. There are good ones and there are those that do not make as much effort, but since we are moving in a direction where decisions on youth services will be made more locally that is a fact of life. We have to be much better in following that money by looking for best practice and asking the YOTs, "Are you spending that money wisely? Could you spend it better? Here is an example of how it is being spent better." As an investment, we are very well satisfied; indeed, the ICPR report from Birkbeck and the RJC is reassuring in that respect.

Q72 Marie Rimmer: What is your assessment of the capacity of youth offending teams to deliver restorative justice?

Lord McNally: I think it has got better, but it is work in progress. We are a long way from where it is in Northern Ireland or in states in Australia where it is absolutely embedded in the system. We are still convincing people. Some people grasp it, as Surrey clearly has. Yesterday, Ben and I were at a conference where we heard very positive reports from Northampton about their experience of it, but localities being encouraged to look at best practice is probably a better way forward than trying to accumulate all the statistics and then deliver some great national plan on restorative justice.

Q73 Marie Rimmer: Do you agree with the objectives and approach set out in the Ministry of Justice's action plan?

Lord McNally: It would be suicide for me to say otherwise. On restorative justice, within the constraints—my two colleagues may have other objectives—we work very well with the MOJ; we are certainly working in the same direction on this. The secure estate and its use is still work in progress as well, but common sense tells me that this is the way to go. I just hope that when the statistics arrive they will prove that common sense is right.

Ben Byrne: The aspirations of the action plan, in terms of equal access to restorative justice and raising public awareness and quality, are all absolutely laudable. I just think that, while we tie it to a criminal justice system that does not really operate on a restorative ethos, it will always struggle. We have done an analysis of our local criminal justice system; 80% of people are fined or are given a conditional discharge and do not go to prison. Those people, by and large, are fairly vulnerable. The victims in that process are not terribly well served. If the offender gets a fine, how do they feel about that? We spend an awful lot of money on an expensive court process. If we just started with a restorative mindset, I think we would get much better outcomes and better value for money for all concerned.

Ali Wigzell: I agree with Ben. We broadly agree with the action plan and its objectives, but our main source of concern and what we would like to see being done differently is a recognition in the action plan of the differences between children and adults, and perhaps their restorative justice needs and considerations. We know there is significant overlap between victims and offenders in the justice system. A lot of children who are in the system as offenders have also been victims both of other young people and, in their past and perhaps at the time, of adults. Potentially, that needs to be recognised. For example, a couple of months ago I was sitting in on a referral order panel involving a young girl. It was her first panel. She had previously been a victim of a sexual offence, but she was on the referral order because she had been forcibly removed by a bouncer from a bar that, granted, she should not have been in. In removing her from the bar, he had pulled her top open and she had hit him. She was being asked about potentially having a meeting with him. In that situation it seems quite inappropriate, because she was already a victim and potentially it could have re-victimised her in another way.

It is also important to recognise that all the neuroscience evidence strongly indicates that young people's brains continue to develop into their late teens and early 20s, and perhaps they therefore have reduced culpability for their crimes. There is a potential question about responsibilising children for their behaviour in the same way as we would with adults.

Q74 Marie Rimmer: Are there any lessons to be learned from the youth justice estate for the provision of restorative justice more widely?

Lord McNally: I think there are two lessons. One we already do, which is a holistic approach that brings in all the experts and allows them to cross-reference their responses to an offender. The other, which is still imperfect, is consistency in the journey through the criminal justice system post either community sentence or custody—through-the-gate support for offenders—where restorative justice can play an important part. Those are two lessons I feel very strongly about: an holistic approach in dealing with offenders, and less pass the parcel and more continuity post-release or post-end of community sentence.

Ben Byrne: Restorative justice has contributed significantly to the successes of the youth justice system in the past decade. Far fewer children are coming into the system, going to

prison, going to court and so on. I think restorative justice has been really important in that. Within the youth justice system there are places, and clearly Surrey is one, where there is a good news story. How often in the criminal justice system policy and politics are we able to say we have something to celebrate? I think we really have. Let's look at it, celebrate it and learn from it. I lead a transforming justice programme for the adult system as well in Surrey. We cannot just drag and drop, and transpose everything from the youth to the adult world. Clearly, there are lessons and we will take those.

Lord McNally: I should warn you that, although Kent may be the garden of England, if you listen to Ben too long, Surrey is the garden of Eden.

Q75 Marie Rimmer: It is certainly something to be proud of. Ali, do you have any comments?

Ali Wigzell: I was heavily involved in evaluating the NOMS project that tried to build capacity for restorative justice in the adult justice system. Having been involved in that, but also looking at what is going on in the youth justice system, it is clear that the youth justice system is a lot further ahead. It is not perfect in terms of where it is at with restorative justice, but generally there seem to be higher levels of awareness and more acceptance of the principles of RJ. The recent ICPR report showed that in many YOTs most staff are trained in RJ to some extent, whereas you would not find that to the same extent in the adult system. Even though there are problems with the referral order in terms of victim attendance, it has established to some extent in the youth justice system restorative principles that perhaps we cannot see in the adult justice system. There are questions about training, automatic consideration of cases and perhaps some kind of mandatory restorative element in the adult system.

Q76 Mr Hanson: Could we look at the victims' code? Perhaps I can start with you, Lord McNally. Can you tell the Committee your understanding of the requirements in the victims' code for restorative justice being offered to victims?

Lord McNally: As far as I understand it, there is an absolute right for the victim to be made aware of restorative justice, but there is no element of compulsion in it. As to how far the victims' code has influenced the take-up of restorative justice, I would not know; I have not seen any analysis.

Q77 Mr Hanson: Two months ago, the victims commissioner said there was no evidence that demonstrated that victims were informed that their details would be passed on. We have had evidence from Committee members to indicate that their experience to date is that it is not provided uniformly. I am trying to get a sense from the panel as a whole whether the victims' code means anything in terms of what it provides being effective.

Lord McNally: I can only assume that the fact we are now contemplating a victims' law means this is one area where Government are beginning to be convinced that we might need some statutory back-up. I am not so sure that is the case. As Ben has just said, we are dealing with a criminal justice system that is long established on the basis of confrontation between guilty and not guilty in a court of law, and we are bringing in systems that give more information and feedback to the victim. Ben is absolutely right. From all the feedback I have seen, victims mainly want information about what is happening and how things are being dealt with. I think that will take time. The Prime Minister is apparently

much convinced by nudge theory. After 50 years around Whitehall, I think nudge is probably your best hope. We are nudging the victim more into the process. As to whether the code is sufficiently strong to do that, it is a relatively recent innovation, and I worry that we want too much to make instant judgments on some of these things. Has the code worked? Probably, very patchily. Would a statute work? We can probably tell you in 10 years' time. We are in the early stages of involving the victim in a process which, up to very recently, left them out entirely. When I first became a Minister in 2010, there was talk about putting on police websites information about what had happened, and we had lots and lots of evidence from people who had been the victim of a crime and did not hear anything else from anybody. That added to the trauma. We have moved from that and we are still on that journey.

Q78 Mr Hanson: Turning to your own remit, in the evidence you supplied you say that some YOTs are making good progress in relation to providing restorative justice and some are not. Could you give the Committee a breakdown of how many are under-performing?

Lord McNally: Under-performing is probably too harsh a word. As I said, we are trying to ask YOTs for best practice and then circulating it to YOTs and encouraging them to take up things that work. It is the old problem with these things: on the one hand, you want the localism that allows Surrey to be innovative and push ahead, yet you want central direction that is against the trend of where we are going, or the resources that we have to impose central direction. We still have a long way to go before we get good performance from all YOTs as far as restorative justice is concerned.

Q79 Mr Hanson: Ben and Ali, before we move on to the victims' law itself, should we be strengthening the victims' code now to give an entitlement to restorative justice to victims who wish it?

Ali Wigzell: We will hold up our hands and say that, as we are an organisation that focuses primarily on the needs of children in trouble with the law, we do not feel we have the expertise to be able to take a position on the victims' code and victims' law, so I hand over to Ben.

Ben Byrne: I think it does need to be strengthened, particularly in light of the unfolding devolution opportunities in England where the innovation Lord McNally described will be encouraged, but if we do not have something underpinning that centrally around an expectation that restorative justice will be available as of right to victims, we could see it going in very different directions.

Q80 Mr Hanson: The Government promised last year a victims' law at some point in this Parliament. If there is going to be a victims' law at some point in this Parliament, should it have within it the right of entitlement under the victims' code particularly for restorative justice, so that we get away from the postcode lottery of people deciding whether or not they want to provide it?

Lord McNally: Postcode lottery is a pejorative term, but the whole direction of travel of the Government—we are waiting for Charlie Taylor's report—is local initiative, which is often another name for a postcode lottery. Some places will do it better and some will do it differently.

Q81 Mr Hanson: It is, but if the Government have said they are going to have a victims' law, one of the central questions for you as three professional bodies dealing with victims and restorative justice is whether the Government should allow PCCs and local boards to decide that policy locally, or whether it should be part of a statute—a victims' law that accessibility to restorative justice is available should victims want it. Are we having a victim-led service or a PCC-led service?

Lord McNally: I would certainly like to see rights enshrined in statute. I do not want to trespass on other areas, but you will probably need a central body that will be able to give some oversight. While the various parts are using the freedoms that devolution gives, you will have to have some guarantor at the centre of the minimum standards that can be delivered under a right to restorative justice. That would be entirely possible. You can get the balance right between oversight of the systems delivered and a promoter of best practices and the freedom at local level to initiate and innovate.

Q82 Mr Hanson: Ben and Ali, do you have a view on a victims' law?

Ben Byrne: I will be brief because I think you have my view on this. We would welcome it. It is for the centre to set the outcomes—the desire—and in this case enshrine them in law. Then you have the minimum expectation that, as devolution takes hold, people around the country will still know that they have a right to RJ, whatever their particular politics or PCC at that time.

Ali Wigzell: As I said on the previous point, we do not have a view on a victims' law.

Q83 Mr Hanson: For young offenders and adult offenders, there is different treatment currently in the victims' code. Is that justified overall, or is the principle of restorative justice the same for victims of young offenders and adult offenders?

Lord McNally: No, because our law is that under 18 we are dealing with children, and children have protections and rights that do not extend to adults. Referring back to the conference I attended yesterday with Ben, it is extremely difficult in our legal system to make sure that children are dealt with differently. I am not so sure that proper analysis would show that children benefit less from restorative justice. Certainly, in lower-level cases there is lots of evidence that restorative justice is a good and effective early intervention that prevents the child from being sucked into the criminal justice system, but it is important to make sure that the way we treat our children in law is kept separate and distinct.

It would be a pity if the victims' law became a cheap headline that did not fulfil in reality. We made it clear that an absolute statutory right to restorative justice can be guaranteed only if there are willing participants on both sides. If a victims' law is taken forward—this is what Ben was arguing for—we should be moving towards some statutory responsibility to make people better aware of the ability to participate in restorative justice.

Q84 Mr Hanson: That needs enforcement ultimately, by somebody, somewhere, doesn't it?

Lord McNally: Yes. I can think of a body that might help there.

Q85 Mr Hanson: It wouldn't be the Youth Justice Board by any chance, would it? In the evidence you submitted you said that vulnerable and young victims should have access to services as part of any victims' law. What precisely would that mean?

Lord McNally: Again, we are nudging towards an understanding that the perpetrators of horrible crimes, if you feed into the back story, have quite often themselves been victims, and have vulnerabilities that the system should be ready and able to address. In some ways, the broader sense of restorative justice, helping people to face up to what they have done but also to deal with some of the negatives they have had in their own lives, is a very positive way forward.

I have not visited Northern Ireland myself, but those who have come back with very positive views about the way it is operated there. I would like to see more about that. I was talking to James Timpson, the new chair of the Prison Reform Trust, who has just been to Northern Ireland. He came back very much convinced that the approach of looking particularly at child perpetrators to address some of the issues they have had as victims is part of a restorative justice process.

Q86 Marie Rimmer: Touching on Northern Ireland, I am not sure you can tell us very much because you said you would like to learn more about it, but do you know what the key differences are in the Northern Ireland approach? We have had numerous witness statements pointing to Northern Ireland as good practice and saying that comparisons in terms of reoffending are much better.

Lord McNally: I do not know whether Ben has direct experience, but I understand that it is moving away from a court process to a problem-solving process.

Ben Byrne: It is integral to their system in a way that it is not to ours. Even in the youth justice system, quite often it comes after the formal court process; it is a bolt-on and seen as a luxury, certainly in the adult system, whereas in Northern Ireland it is central. There is an expectation or presumption that the process will be restorative, and it is the exception that leads to more punitive court action. That is the starting point. For all parties—the community, the victim and the offender—looking to restore that as a starting point is very powerful. It clearly works in Northern Ireland. We have tried something similar in Surrey, within the constraints of our existing legal framework, and we have had similar success.

Q87 Marie Rimmer: Do you think that is why victim attendance in Northern Ireland is greater?

Ben Byrne: I think it is. Also, it is a fairly small system, and by virtue of that a very high percentage of the population has had experience of restorative justice in Northern Ireland. You have a word-of-mouth thing. It is done well and very skilfully in Northern Ireland and, therefore, commands a good level of confidence. That is the place we would like to get to.

Ali Wigzell: I went to Northern Ireland several years ago to look at the system over there. I agree that it is very impressive. Perhaps one of the reasons why they have much greater levels of victim involvement is that they also have very highly skilled facilitators. They are trained for about nine weeks, in comparison with facilitators over here, who may have only three days of training.

Looking at implementation of restorative justice around the world, all the evidence points to the importance of having it embedded in the system in a mandatory way, as Ben said. In the conversations we had with sentencers when we were in Northern Ireland, there was some initial scepticism about having restorative justice as the default option, but the fact that it was basically obligatory, unless the offender disagreed or the offences were very serious, meant that it had to happen and as a result it has taken on a life of its own. We could learn a lot from that, as well as the fact that involving the victim and the offender in developing the contract is a far more participatory approach than we have here when we focus on the youth court. There they have high levels of victim involvement and compliance with the contract. I think it is about 93%. That system is very interesting, but it is not perfect either. You will have heard that there are issues with significant delays between offence and the conference being held; it is about 250 days. There are also concerns about having multiple conferences for some young people, and the fact that the length of contracts has increased significantly in recent years. I do not think it is necessarily a perfect example, but there is a lot we could learn from the system over there.

Q88 Marie Rimmer: Can you comment on the difference in the reoffending rates compared with other diversionary measures where they seem to be much lower? Does that count against restorative justice?

Ben Byrne: No. Within our own system, which we have had evaluated, restorative diversion reduced reoffending by 18% compared with other approaches, so it worked better. We are back to the data question: the difficulty is that there are all types of diversion going on across the country, so you are probably not comparing like with like.

Marie Rimmer: I understand that.

Chair: On your point about the Northern Ireland context, the youth justice conferencing may not have performed as well, but there are issues about the way it works. That is the matter you have set out.

Q89 Alberto Costa: Can I turn to the issue of restorative justice in sensitive cases? The Ministry of Justice's action plan gives the objective of all victims having equal access to restorative justice at all stages of the criminal justice system. We have heard concerns about the use of restorative justice for certain offences, such as those involving sexual violence and domestic abuse. In your opinion, is restorative justice appropriate for all offences?

Lord McNally: The short answer is that it is appropriate for all offences, but with considerable care in how it is applied. When I say all offences, it can be applied in sexual offences and domestic violence, but to go back to what we said earlier, it should not be in any way compulsory. There may well be some cases where it could be positively dangerous to try restorative justice. My feeling is never to rule it out in a case, but there are certain areas where the best advice would be to proceed with extreme caution.

Ali Wigzell: My personal view is that ultimately it is the decision of the victim whether or not to participate in restorative justice, if the offender agrees to it, but clearly there are sensitive cases, such as domestic violence cases and sexual offence cases. On the domestic violence front, particularly in the youth justice system, child on parent violence is an issue where there is potential to re-victimise the victim where there is inequality of power. In such cases it is absolutely essential to have a highly skilled facilitator who has experience

of such cases and can assess the victim and decide whether or not it is safe to proceed. In principle, the decision should be with the victim, assuming the offender agrees to the intervention.

Ben Byrne: I absolutely concur with my two colleagues. I do not think we should ever rule it out, because that does a disservice to the victim. I give you one very brief example. A Crown court judge, sentencing a rapist while the female victim was in court, said, “You’ve destroyed this woman’s life.” The victim left the court fuming, saying, “Who is he to say he has destroyed my life?” She made it her business to have the restorative justice process with that rapist and say, “I’ll tell you one thing: you haven’t destroyed my life.” That is absolutely a right that we cannot take away from victims.

Chair: That is very helpful, and a useful note on which to end this part of the evidence session. Thank you very much for your time and attendance, and for your evidence.

Witnesses: **Polly Neate**, Chief Executive, Women’s Aid, **Clare McGlynn**, Professor of Law, Durham University, and **Diana Barran**, Chief Executive Officer, SafeLives, gave evidence.

Q90 Chair: Good morning and thank you very much for coming to give evidence to us. For the record, perhaps you would like to introduce yourselves briefly—who you are and your organisation.

Polly Neate: I am Polly Neate, chief executive of Women’s Aid, which is a national domestic violence charity. We are a federation of around 220 local domestic abuse services.

Clare McGlynn: I am Clare McGlynn, a professor of law at Durham University.

Diana Barran: I am Diana Barran, chief executive of the national charity SafeLives.

Q91 Chair: Maybe that last piece of evidence from Mr Byrne is a good starting point. We have had evidence that some cases are so serious and complex that restorative justice is not appropriate. On the other hand, other people say that is perhaps almost demeaning of the victim’s ability to make an informed choice. In the case Mr Byrne just quoted, does any of us have the right to say to that victim, “You do not have the right to restorative justice because it is a serious sexual assault and we know better,” or should that be her right if she so wants, with all the caution everybody has talked about?

Clare McGlynn: I would concur with the speakers on the previous panel. Restorative justice is a possibility that should be open to all victims and survivors, including those of domestic and sexual abuse. There are very specific circumstances we must apply if we are using restorative justice in those cases, but we should never underestimate in some ways the options for survivors and their strength to make choices for themselves.

Q92 Chair: Does anybody dissent from that view?

Diana Barran: Your previous speakers picked out a number of key issues. If restorative justice is to be an option in what have been described as sensitive cases, the system needs to be fit for purpose. Deciding to make it available before ensuring that the system works properly in terms of training for facilitators and taking into account safety and potential re-victimisation feels like we might be putting the cart before the horse.

Q93 Chair: I understand that.

Polly Neate: I agree with Diana. It is important to understand the level of risk. It could be damaging, specifically in domestic abuse cases. Coercive control and post-separation abuse over a long period of time are not the exception in domestic abuse cases; they are the absolute essence of domestic abuse. Studies have shown that about 95% of victims experience coercive control, and over 90% experience significant post-relationship abuse. We need to be aware of the risk that a decision is not what we would call a free decision or the exercise of a right. The risk that that decision is not the exercise of free choice or a right is very high. We need to understand what the level of risk is and then ensure that the system is able to deal with that level of risk, rather than deal with a system that assumes a general level of risk that is much lower than the reality in these cases.

Q94 Chair: I get that. Equally, we do not want a system where the provider is a blanket gate-keeper and says, “No, never,” just because of the nature of the offence.

Polly Neate: I agree with that, but at the moment, the gate-keeping simply is not well enough informed or trained. Understanding the impact of domestic abuse, in particular coercive control, is quite a complex matter that requires a specialist level of knowledge, which simply is not there at the moment.

Clare McGlynn: It is helpful to recognise—we are already getting towards it—that when we talk about sensitive cases, there are huge variations. We can talk about domestic abuse, but that can include sibling violence or intimate partner violence. Many of the youth justice cases we have been talking about will have involved domestic abuse among families and will also have involved sexual violence. Sexual violence obviously covers a vast range of different sorts of circumstances in which the levels of specialisms and the risks will vary hugely. It is important that we have that nuanced discussion about its use in lots of different sorts of cases. The other thing to add is that it is also going on at the moment. It is not just a discussion of whether we should be doing it and whether there should be a right for victims. We know this is happening in domestic abuse and sexual violence cases. Therefore, we need to proceed on that basis and think about what in those cases we need to be careful about and make sure it is happening.

Q95 Chair: Is one of your concerns that this is happening on a somewhat ad hoc basis at the moment?

Diana Barran: Exactly.

Clare McGlynn: Yes, it is.

Chair: That is what alarms one.

Polly Neate: That is what I want to pick up, because the status quo we have right now is possibly the worst of all possible worlds in a way. The whole practice of restorative justice is being applied very differently in different local areas. There is not much understanding of a general pattern around that, and I am very concerned that victims of domestic abuse are being put at risk at the moment.

Q96 Victoria Prentis: My first question is for Diana and SafeLives. You argue in your written evidence that “restorative practice” is better terminology than “restorative justice”. Is

that just semantics, or is it a completely different understanding of what you are trying to achieve with it?

Diana Barran: It is a broader understanding. It is more than semantics but not entirely different. It is about a mindset and an approach, and opening up the restorative response, if we can call it that. The reason why that is important to Polly's point is that understanding safety and the risk someone faces is almost never doable for just one agency, whether it be the police, probation, children's services, or even the specialist domestic violence services that are the most likely to have a full picture. One of the things that would be fundamental in restorative practice is a multi-agency approach. Without that, we argue that we cannot do this safely in domestic abuse.

The second element, which goes to the case referred to earlier about someone's life being destroyed, is that there is something about the transparency that can bring which can remove some of the shame associated with the trauma, particularly for children. Talking to colleagues this morning, they were struck by the response of children who had been involved in well-run, victim-led restorative practice outside the criminal justice system.

Q97 Victoria Prentis: Is there any evidence about that?

Diana Barran: This is anecdotal. Clare will know better than I how much grown-up evidence there is, but certainly they have sat in on sessions and been struck by that.

Q98 Victoria Prentis: That is very interesting. Polly, do you see a role for proactively using restorative justice in domestic abuse cases, or do you just think it is too difficult to go there?

Polly Neate: The benefits are not worth the risks one is running in the current system. The multi-agency response that can really understand what is going on behind a victim's apparent choice is simply not there in most cases to be able to do that. There are undoubtedly examples of women who have been killed by their partner following restorative justice, as I am sure you know. There are also examples, quite a long time after a conviction and after the criminal justice process has been gone through completely, where it has been beneficial. I would not rule it out, but my argument is about understanding the balance of risks and benefits, and at the moment we are way too far on the side of risks.

Q99 Victoria Prentis: To what extent do you think women are pressured into using it, where it is available?

Polly Neate: Again, this is anecdotal, which is part of the problem. To be absolutely clear, I am talking primarily about intimate partner violence. The evidence about both the benefits and the risks is quite anecdotal, and that is a problem.

Q100 Victoria Prentis: That is one of our difficulties.

Polly Neate: It is very difficult. What I am going to say is anecdotal. We have examples at local level where absolutely, without a doubt, women have been pressured into going down this path. We know of its happening reasonably regularly—I guess that is at the root of my concern—through our network of local services, but the research is quite lacking on both sides. We are in danger of almost a stand-off between the kind of absolutist approach that everyone has the right and the absolutist approach of never, never in certain cases,

with probably insufficient evidence on either side of that stand-off. We then end up with the status quo carrying on, which is probably the worst possible option.

Q101 Chair: I suppose that if it is offender initiated that makes you more and more concerned to have all these checks and balances in place.

Polly Neate: Yes. If it is offender initiated, that is extremely problematic.

Clare McGlynn: It is important to be specific about what we are talking about when we refer to restorative justice. From the work that my colleagues and I have done around the police use of the term in these contexts, we can be talking about restorative justice but it can mean lots of different things. We find that all police forces in England, Wales and Northern Ireland are using what they call restorative justice or community resolutions in cases of domestic abuse, but the majority of those are street-level disposals. Our view is that we must never use that sort of street-level restorative justice or community resolution in cases of domestic abuse. Those might be some of the sorts of cases that are coming through to the women's aid organisations, because you could easily have those sorts of coercion. If you are talking about restorative justice in terms of conferencing, where you have months of planning, specialist facilitators, and victims and offenders having support, it might be a different sort of situation from police street-level response in the context of domestic abuse.

Q102 Alex Chalk: That is what I have understood as well—some things are being wrongly badged as restorative justice. Can I get a bit more understanding of it? Are you suggesting that if a police officer says to the man—as it very often is—“Say sorry and don't do it again” they are somehow badging that as restorative justice? What do you mean when you say street level?

Clare McGlynn: We have found that many police forces use the terms community resolution and restorative justice interchangeably. From the evidence they have given us, there are examples of exactly the sort of thing you are talking about. They note that an apology has been given and that words of advice have been given. That language for a street response like that is inappropriate.

Q103 Alex Chalk: It is meaningless and gives restorative justice a bad name, because it is diluting what it should be if it is to take place at all.

Clare McGlynn: That is right, although, to be fair to the police, police guidance has different levels of restorative justice. Level 1, which they call restorative justice on the street, would perhaps be fine for neighbourhood disputes, but it is still labelled restorative justice. The sort of restorative justice we are talking about in terms of conferences is, for the police, like level 2 restorative justice, which their guidelines say may be appropriate in domestic abuse and sexual violence contexts. The police use the language, but in our discussion we tend to be thinking of something else.

Q104 Alex Chalk: This is more serious stuff. It is not about giving a bike back and writing a letter saying, “I'm sorry,” although that could be restorative justice because it is proportionate in the event of a youth bike theft.

Clare McGlynn: Exactly.

Q105 Alex Chalk: But you are talking about the higher-level stuff.

Clare McGlynn: Yes.

Alex Chalk: That is very helpful.

Q106 Chair: That is very clear. The words of advice in a fight between neighbours would be, “Calm down. If you do this again, you’re nicked.” They say, “Sorry,” and back off. In a sense, that is badged up in a completely inappropriate fashion. It may have solved the issue, but it is not restorative justice in the way Mr Chalk was talking about.

Clare McGlynn: It would certainly be very helpful. My own view would be that perhaps the Committee could reinforce the police guidelines. They should not be using the level 1 forms of restorative justice or community resolution in cases of domestic abuse, for all the reasons that have been laid out.

Q107 Chair: Your FOI finding suggests that to a greater or lesser degree it is happening in every police force in the country.

Clare McGlynn: Every police force in England, Wales and Northern Ireland is using restorative justice, obviously in varying degrees. What is also really important about that is that it is against police guidelines. It is important that we do not push this underground, because from some of the data we got there are examples where the police say there are a large number of other resolutions, but they have not recorded the relationship between the parties. The concern is that they will still be using restorative justice or community resolution at street level and not acknowledging it. It is important that we welcome police forces being transparent about that but also reinforce the police guidelines that they must not do it. For myself, I would not close down the possibility of a restorative conference in some circumstances, so we must not throw the baby out with the bathwater in that sense.

Q108 Chair: You are concerned about whether there is enough evidence about what happens in practice, so the guidelines need to be reinforced. We can do that. The reality is that the police themselves—the line managers, inspectors and sergeants—have to ensure that their officers out on the beat understand what genuine restorative justice is, as opposed to something that is being lumped in with it but which is not. Those are the nuts and bolts of it. Very often, the officers themselves might not be clear.

Clare McGlynn: They might not be clear. Some officers we have spoken to—

Q109 Chair: You have spoken to officers.

Clare McGlynn: We have spoken to a couple, not as many as we would have liked. In some ways, they are trying to do the best they can in a situation. We have had examples where a male offender has damaged property—smashed a window or the windscreen of a car—and the domestic abuse victim survivor in that immediate moment wants some money back. The police officer has attempted to get the money back to the victim survivor and that has been recorded as restorative justice or community resolution. In some cases, some officers are trying their best when they feel that nothing else is going to be done and the victim survivor does not want to take things further. There are a number of concerns about that sort of practice at a more general level, because obviously it does not take into account a wider range of circumstances about what is going on.

Q110 Chair: The intention may not be the key thing; it may be well meant, but, as I understand it, your particular concern is the ad hoc nature of it, and the fact that everybody ought to be well aware of the guidelines.

Clare McGlynn: Yes.

Q111 Mr Hanson: Is there any barrier of seriousness of offence that you feel should not be applicable for victims of domestic violence? I am thinking even of murder. I have seen domestic violence murder cases being dealt with on a restorative conferencing basis with victims whose relative had been murdered. I am genuinely interested in whether you think there is any role for that approach in the context of your experience.

Clare McGlynn: Some of the evidence outside the domestic abuse and sexual violence context shows that some of the positive benefits of restorative justice are more likely to accrue for the more serious offences. I guess that is because of the involvement of the parties. In the circumstances of murder that you are talking about, it is obviously a post-conviction, possibly post-sentence, situation. Some of them have been very powerful and transformative for those involved. They can continue, with the right risk assessments being done and with the right support.

I would not rule out the possibility of restorative justice in sexual violence and domestic abuse cases at different levels in many different circumstances, but only in very carefully delineated circumstances where you have support for survivors and offenders—because this is about trying to instil change in offenders—and where you have specialist facilitators and a flexible system that responds to victims' needs and wishes, which is why it cannot generally be just rolled out as a generic process. The cautious evidence we have about the use of restorative justice for both domestic abuse and sexual violence cases is that, where you have positive results, they are usually in very specific projects carefully designed for those offences. They are generally not part of a generic programme that happens to include sexual offending or domestic abuse, because then you are not taking into account the specificities of those crimes. It is in very specific, carefully delineated circumstances that I would hold out the possibility of its being appropriate.

Diana Barran: I absolutely endorse what you say. I am sure you are all aware that the charge in a domestic abuse case may look very different from the actual experiences. We often have cases charged as common assault where there has been an attempt at strangulation on multiple occasions, but they come to court as common assault so we cannot do a read-across between the charge and the safety or risk for that individual.

Q112 Chair: You have to look at the facts before you do it.

Diana Barran: Exactly—hence the need for a much fuller picture.

Q113 Chair: I get that entirely. That is very helpful.

Polly Neate: I would make the same point about domestic abuse being a pattern of behaviour, and the criminal justice system being very incident-focused. The result is that you often do not have the total picture. We have been putting together a proposal with the Restorative Justice Council to develop specific training around domestic abuse for facilitators. They would then propose that only those facilitators would be able to gate-keep the offer of restorative justice in domestic abuse situations. We are proposing to

develop that together. It is important to understand the pattern of abuse Diana was talking about, and that the impact of coercive control is known. To make one further point about wider families, for some survivors from black and minority ethnic communities there is quite a complex situation, with multiple perpetrators; it is not necessarily a straightforward intimate partner violence situation, and in that kind of circumstance an even greater level of specialist knowledge is needed.

Chair: Obviously, that needs to be reinforced. Thank you very much for your evidence and for the additional written evidence that will add to that submitted on the FOI point that we discussed. We are very grateful to all of you for your time and for your evidence to us.