

Written evidence from Thames Valley Restorative Justice Service (TVRJS)

PREFACE

Thames Valley Restorative Justice Service (TVRJS) is at the leading edge of Restorative Justice (RJ) in the UK and is part of the **Thames Valley Partnership (TVP)**, a Registered Charity.

Established in 2000, TVRJS works collaboratively with statutory and voluntary partner agencies at the forefront of research, development and delivery of adult RJ in England and Wales. We work at all stages of the Criminal Justice System (CJS) both within the Thames Valley area and beyond. Our status as an internationally-recognised centre of excellent practice is based on our 15 years of experience and expertise; we have been partners in two European Funded RJ Programmes.

TVRJS welcomes this opportunity to submit views and, as invited, we have addressed particularly the four stated Terms of Reference.

Our submission is informed by the considerable knowledge and experience of TVRJS since 2005 [including its predecessor, the Justice Research Consortium 2001 - 2004]. We were one of three Home Office funded Random Controlled Trial research sites that provided the evidence base evaluated by Professor Joanna Shapland.

We were one of the first schemes to be awarded the Restorative Services Quality Mark and we were awarded the Howard League's prestigious Community Sentence Award in 2010.

This response paper has been submitted by **Ray Fishbourne**, Chair and Founder of TVRJS, Thames Valley Partnership Associate (RJ Strategic Lead) and contains the collated contributions of the following:

Katrina Edwards, TVRJS Hub Coordinator;

Geoff Emerson, Thames Valley Partnership Associate, former TVRJS Manager;

Ray Fishbourne;

Helen Leney, TVRJS Senior Practitioner;

Nicola Preston, RJ Senior Practitioner and TVP Trustee;

Becci Seaborne, Assistant Director (RJ), Thames Valley Partnership.

The Executive Summary contains the main points we wish to make. Subsequent pages contain the text in support of the points made in the Executive Summary.

Executive Summary of Main Issues Identified

- **Risk Aversion** resulting in unnecessary severe gatekeeping: There is a tendency for too many people to be involved in the decision making process around 'suitability' for RJ. Suitability should be established solely by a trained and experienced RJ Facilitator at the earliest possible opportunity in the victim's journey.

- **Data Sharing obstacles:** There is the potential for this to improve as a result of the revised Victim's Code but currently it appears to be the biggest single block to effective and timely interventions in those areas where there is service provision.
- **Inequitable Service Provision:** Due to the way in which RJ services are commissioned and funded there is currently a postal lottery aspect to victims being able to access RJ.
- **Good Quality:** There is cause for concern around the lack of consistency around quality assurance, ongoing training and support and supervision processes within some RJ service providers.
- **Awareness Levels:** Greater local and national campaigns need to be funded. It is insufficient to expect relatively small, often charitable, service providers to be able to fund awareness promotion at the required level.
- **Victim Personal Statements are not common practice:** There are issues around both the obtaining and timing of victim statements.
- **Victim Choice** needs to be respected: There is the potential for 'well intentioned' professionals to make decisions on behalf of victims, thus denying victim choice.
- **Culture change is required:** Culture change within the Criminal Justice Agencies needs to accompany the legislation and Victims Code already introduced.
- **Communication to Courts:** Post RJ conference feedback needs to be minimalist in nature and respect the agreed wishes of the conference participants.
- **Co-ordination of RJ services within areas is a priority:** Without robust co-ordination mechanisms there is the potential for victims to be re-victimised due to multiple approaches from different professionals.

Section One

Progress made by the Government in implementing the Restorative Justice Action Plan 2014, including any changes that have been made to this plan

The three key areas of focus and desired outcomes of the action plan are stated as:

A. Equal access – RJ is available to victims at all stages of the criminal justice system irrespective of whether the offender in the case is an adult or a young person and irrespective of where in the country the victim lives and where the offender is located. Victims should not be denied RJ because of the offence committed against them.

In our experience there are **three key obstacles** to equal access:

Risk Aversion

1.1 This is related to issues of Eligibility and Suitability.

Eligibility is clearly spelt out in the Action Plan's Equal Access Statement. No CJS professionals should be making any judgement on whether a victim is deserving or underserving of the opportunity of a referral for RJ.

Suitability needs to be determined by a trained and experienced RJ Facilitator based on a timely and full discussion with the victim. This should represent the first time a victim is informed of RJ. In our experience the more people involved and the more discussion had before the victim and a trained and experienced facilitator are able to have their initial contact the less likely it is to lead to a restorative justice outcome.

1.2 A particular issue, emerging more recently, is the role of criminal justice agencies as gatekeepers in victim-initiated RJ cases. Historically in Thames Valley, and other areas, RJ has tended to be initiated from within the CJS, and so these key professionals will have been involved in the assessment and referral of the case from the beginning, securing participant support and buy-in. The emergence of victim-initiated RJ is a significant culture change for such professionals who are now being approached by RJ practitioners once the case has already been referred and begun from the victim side of the case. In the most part, sound partnership working and engagement may be able to mitigate the effects or likelihood of any gatekeeping.

1.3 For example we have recent experience of a Prison Governor calling a halt to an RJ conference one day before the victim of a sexual offence was expecting to meet with the offender at the prison. The meeting had been arranged in liaison with the relevant Offender Supervisor and Offender Manager, and this was upsetting and unhelpful for the victim. Such action fundamentally challenges the notion that service providers are able to offer truly needs-led RJ for victims, when criminal justice agencies remain able to veto processes and activities which have been thoroughly risk-assessed and needs-assessed by qualified and competent RJ practitioners (in liaison with CJS colleagues).

1.4 We think it is important not to build in unnecessary 'institutional risk aversion' to the assessment of suitability as this will leave a number of victims frustrated because their wishes have not been respected. We recommend an approach of *'ensuring that victims' wishes to participate in RJ are respected by way of a presumption in favour of proceeding unless there are overriding concerns about personal safety'*.

Data Sharing

1.5 Access to RJ services is prevented by **data sharing issues** which mean that key agencies are frequently unable to provide victim details to service providers in relevant cases. Relevant agencies are unable to contact victims to request details in all relevant cases to enable details to be shared both because they do not have sufficient resource, nor do the staff have sufficient knowledge or training to respond to questions which arise from such an approach.

1.6 Data sharing does not yet work well due, in part, to the many agencies involved in taking victims through the complex process of taking a case from crime report through to sentence completion and beyond.

Inequitable Provision

1.7 In our experience provision of RJ services is patchy and inconsistent across the country and different areas may be resourced to deal with different types and seriousness of crime. For example, some areas will work with sexual offences and some won't, some prisons will support facilitation in such cases and some will not. Some areas appear not to be resourced to provide any RJ service provision whatsoever.

1.8 Whilst the £290M was allocated to Police and Crime Commissioner's (PCC's) for RJ, it was not ring-fenced for such a purpose and it seemed that very little apparent guidance or support was given to PCC Offices in the planning or commissioning of RJ services. This, and no doubt other factors, has meant that very many PCC areas have failed to commission any victim-initiated (or pre-sentence) RJ services. Whilst some of those areas clearly intend to but are still enmeshed in working out what they want to commission and how, others still will not be introducing RJ schemes.

1.9 We have been fortunate in the Thames Valley area that the PCC's office was supportive of RJ and was proactive and resourceful in its research and commissioning programme. This was also helped considerably by the fact that TVRJS, a high quality RJ service, was already well established and they spent a good deal of time in contact with us.

1.10 Other areas are not so well provided for, and indeed Thames Valley PCC are now being approached by PCC Offices from other areas (Yorkshire, Devon & Cornwall to name but two) asking for their advice and support; Thames Valley PCC are in turn directing them to us. It seems that even those areas committed to commissioning an RJ service are a long way off the culmination of that process.

1.11 Our experience (9 months into implementing a commissioned service across three counties from scratch, and following an 18-month pilot project funded by the EU), is that even once a contract is awarded, achieving awareness and referral mechanisms to support the assertion of "universal" access is a lengthy process (24 months minimum).

B. Awareness and understanding – People are aware of RJ and its potential benefits (particularly for victims). They understand what RJ entails and its place in the CJS. Victims and offenders can make informed decisions about participating in RJ and know how to access it.

1.12 Access is not assisted by any form of public information and in our experience the public are woefully ignorant as to the existence and availability of RJ. Newspaper articles often do not fully explain RJ and can lead the public to believe an offender can apologise and in so doing avoid a prison sentence; they do not ask what victims want, what their motivation is or what they find beneficial. Aggregated figures may be quoted rather than exploring more nuanced debate about what RJ involves.

1.13 In general victims of juvenile offenders subject to Youth Offending Services remain better provided for because of better information flows which facilitate a more pro-active and inclusive approach.

1.14 Awareness and understanding is not facilitated by what is experienced as the Government's piecemeal approach where information is not provided to victims consistently at each stage of the process. This needs to be done in a pro-active manner whereby all victims are provided with information through leaflets and general advice regarding availability, rather than pressured advice to a selected few as tends to be the case at present. Victims need to be provided with information that is followed up by a trained and experienced facilitator with an offer to reflect on their needs in the light of what services are available.

1.15 Victims of historic cases also need to be made aware of available services both through public information, advice and information to caseworkers in self-help groups and specialist agencies. Health providers and commissioners need to be made aware of the potential health benefits of RJ and the availability of RJ services for victims of both current and historic crime, whether reported or not.

1.16 Awareness will be most effectively raised through good quality service provision and word of mouth as more service users take part in RJ. In addition, practitioners in stakeholder and referring agencies, who see the benefits achieved with their service users, are good advocates.

1.17 We appreciate the role of the RJC in promoting RJ generally, and promoting confidence in the quality standards of RJ practice in particular (see below). The MoJ support of RJ Week is helpful but not sufficient in itself to raise public awareness of RJ. The MoJ should build on the momentum gained in that week to continue a programme of ongoing publicity, and further support the RJC in their work.

1.18 The unprecedented changes occurring within all aspects of the criminal justice system at present have presented significant obstacles in terms of engagement with key stakeholders who would otherwise be keen to gain greater understanding of RJ in general and how they might support access and improved awareness in particular.

1.19 Funding for communication needs to be included in scope for commissioned RJ services. In our experience it is extremely difficult for a charitable service provider to fund and undertake a high impact and effective awareness raising campaign. Seemingly everyone wants to improve awareness of RJ, but no one wants to pay for it; they want to pay for service delivery and outcomes but that could be greatly improved by service providers and statutory agencies working together to fund better promotion of RJ and thus improving public awareness, agency awareness, referrals and outcomes.

C. Good quality – RJ is safe, competent and focused on the needs of the victim. RJ is always delivered by a facilitator trained to recognised standards and only takes place where an assessment by the facilitator indicates that this would be an appropriate course

of action for all relevant parties with a particular emphasis on ensuring there is no re-victimisation.

1.20 TVRJS was involved in the Home Office funded RJ randomised control trials evaluated by Professor Shapland and, as such, contributed to the evidence base which forms the current Best Practice Guidance (RJC). We continue to be committed to high quality and safe practice, being amongst the first to achieve the RSQM.

1.21 We welcome the role and work of the RJC in this area, particularly as it relates to offering confidence of safety and quality to harmed individuals who may be seeking RJ. We are aware, anecdotally, of some areas where there may be RJ practice which does not appear to conform to basic best practice guidelines, but have not had direct contact or involvement with such instances.

1.22 As RJ services begin to proliferate, we anticipate the risk of significant variance in practice standards, but also in the scope and specifications of different services in different areas. Whilst we appreciate these issues are recognised by the MoJ and the RJC within their plans, we retain reservations about how robust the results might be.

1.23 We have been approached by a number of RJ service providers across the UK who have asked us to make contact with the “other” party in their case who lives in our area on the grounds of distance and travel costs involved. We appreciate time and financial impact of such long journeys but our concern is for the relationship between facilitator and RJ participants. Our experience tells us that the first meeting is crucial to building that relationship and the trust that is required going forward in a sensitive and challenging process (regardless of the type of offence). It is also questionable to what extent a facilitator from one service provider is able to “represent” another provider; whilst the principles and practice guidelines that inform a process will remain the same, the specific types of RJ process or intervention that are on offer, and how they are implemented varies from area to area.

1.24 One of our senior practitioners is an Assessor for the NVQ Level 4 in Restorative Practice and in this capacity comes into contact with newly trained practitioners across the country. This gives her insight into the standard of training, organisational support and supervision offered, as well as some contact with other RJ service provider organisations. It also gives her experience of the other RJ qualifications on offer. She states this experience and insight give her cause for concern around the lack of quality assurance processes within some RJ service providers. In particular, there is inconsistency, and at times a significant lack of quality involved in initial training, ongoing training, support and supervision arrangements, and formal quality assurance processes. There appears to be significant variation in the standards and comprehensiveness involved in different RJ qualifications (e.g. NVQ Level 4 and RJC direct accreditation seem to require more thorough, detailed and comprehensive coverage of essential practice skills than the BTEC qualification, and yet all three enable a practitioner to refer to themselves as “qualified”).

1.25 Some helpful developments to address these concerns might be: mandatory accreditation of all practitioners to a minimum standard which is agreed and consistent

across the sector. A professional standards committee with responsibility for overseeing and benchmarking accreditation and professional standards, dealing with breaches and complaints would be beneficial too.

Section Two

How the entitlements to restorative justice in the Victims' Code are working and their implications for any such entitlements in any future Victims' Law

2.1 We welcome the revised Victim's Code's (2015) emphasis on victims' entitlement to restorative justice and see as a positive step the notion of universal access via an "opt out" default position. However in order to ensure equality of access we think that there should be an onus on commissioners to ensure that such provision is made for otherwise significant numbers of victims will continue to be denied their rights of access to RJ service provision under the terms of the Victims' Code.

2.2 We recognise that it is too early to understand how the implementation of the most recent revisions will progress, but based on experience with previous versions, we perceive two key barriers:

2.3 **Data Sharing:** This has been addressed elsewhere (Paras 1.5 and 1.6). Information sharing remains one of the biggest obstacles to undertaking RJ casework (both in terms of universal case identification strategies and mechanisms, and in case progression once referrals are secured). This hampers significantly any sense of universality of an offer of RJ to victims and any future Victims Law will need to make data sharing mandatory.

2.4 **Awareness Levels:** Much work still needs to be done in terms of raising awareness of RJ. Information needs to be included in general leaflets, RJ specific leaflets and to agency contacts to make sure victims are aware of their entitlements, what they might involve and how to access them. This involves an understanding of local processes and a massive training and awareness raising exercise across a range of key professionals. Until this is achieved the availability and take-up of services will remain patchy, inconsistent and unfair.

2.5 Police officers often find themselves in positions where they are well placed to make mention of the availability of referral to RJ service providers. However in our experience many Police officers, particularly front-line officers (Specials, Community Support Officers, Constables, and Sergeants) remain:

- a. Unaware of the existence/content of the Victims' Code;
- b. Unaware of what their specific obligations are under the Victims' Code;
- c. Unaware of what service provision there is (although this is being addressed by the PCC's office in Thames Valley);
- d. Unconfident in how to address these issues with victims;
- e. Reluctant to offer RJ for fear of upsetting victims;
- f. Unclear of the distinction between Community Restitution and Restorative Justice.

Anecdotally, Police managers in Thames Valley tell us their officers need more information and support in having meaningful conversations with victims around these issues.

2.6 Anecdotally victims of crime tell our facilitators that they encounter poor communication, procedural delays, insensitive decision making and other problems. Yet too often they do not know where to turn. In our view, victims should have access to a clearly signposted single complaints system.

2.7 We have experience of working in a consortium of agencies providing post trauma therapeutic interventions for victims to assist their 'cope and recovery' process. This tells us that victims need to be able to access this type of therapy at any point in their journey through the criminal justice system. Victims should not have to await the outcome of a case.

Victim Personal Statements

2.8 In the experience of Thames Valley we see very few Victim Personal Statements (VPS) at the PSR stage, which leads us to conclude that the practice of obtaining such statements is still yet to be embedded in routine practice.

2.9 As we understand it VPSs should be obtained immediately following the crime and we think it is debatable as to whether this is the most appropriate point at which to be addressing such issues. Victims are people in crisis and the issue of timing is critical as is the point at which it is envisaged the RJ process would be activated. For example in the case of post- conviction, pre- sentence conferencing it may well be that the victim would wish to amend the content of their VPS in the light of the conferencing process.

2.10 Over the past 25 years greater recognition of the importance of victims in the justice system has led to extensive research around their role and needs. The results of this research are summarised by Strang 'Repair or Revenge: Victims and Restorative Justice (2002). In brief they are as follows:

- A less formal process where the views of victims count;
- More information about the process and outcome of cases;
- Opportunity to participate in the case;
- Respectful and fair treatment;
- Potential material restoration;
- Emotional restoration and apology.

In essence to:

- be recognised;
- receive information;
- be safe;
- be empowered;
- be respected;
- be satisfied with the process.

2.11 Our experience suggests there are strong indications that victims have clear and distinct ideas about what they want in relation to reparation and restoration: reparation is

not the same as restoration. In cases involving serious violence and psychological damage, many victims are less concerned with the prospects of practical reparation or restitution and are keener to learn whether or not the offender is demonstrating real remorse and to receive, at some stage, a face-to-face apology for the harm caused.

2.12 We therefore suggest any commissioning body of restorative services should ensure that any organisations providing RJ should be obliged to provide an RJ service that ensures that victims have the opportunity to obtain the benefits that evidence shows are most important to them, with the focus on victim choice and emotional restoration.

Section Three

The impact and effectiveness of the National Offender Management Service's restorative justice programme to promote the development of victim-offender conferencing.

3.1 The focus of the MoJ's RJ Programme and Policy changed completely in 2014 from one that was previously focused on offender 'led' provision to one that was victim initiated. The former policy was expressed through the NOMS RJ Capacity Building Programme that ran from 2012-14. Thames Valley Partnership was a joint leader of this programme.

3.2 This programme was premised on an offender-led model whereby the focus for generating cases was on agencies and organisations working with offenders. This is the complete opposite of victim-initiated RJ. They are not mutually exclusive but it does represent a step change for NOMS agencies.

3.3 The NOMS RJ Capacity Building Programme was overly reliant on training a vast cohort of professionals in prison and probation as facilitators at a time when both services were undergoing massive reorganisation. Management capacity was diverted from the NOMS Capacity Building Programme in order to concentrate on the Transforming Rehabilitation agenda. Consequently managers were unable to dedicate resource in sufficient quantity to sustain viable RJ operations because of service cuts and staff relocation. Paradoxically prison and probation staffs are now probably more aware of RJ, but less able to deliver RJ on the ground.

3.4 With hindsight the Capacity Building initiative may have been better had it focused on training facilitators in the voluntary sector and provided awareness training for prison and probation staff. This awareness training would have made prison and probation settings RJ friendly places in which external RJ services could operate with the co-operation of Offender Managers, Offender Supervisors and others with responsibility for offender rehabilitation.

3.5 Our experience in Thames Valley has been to try and 'shift the culture' of the CJ agencies to one that makes participation in RJ for offenders the expected norm at whatever stage of the CJ process.

3.6 Pre-sentence the strong message is conveyed to defendants by Pre-Sentence Report writers that 'you have a duty to face the person you harmed and you will be expected to

make amends unless there is good reason not to, or your victim does not wish to meet with you’.

3.7 Offender motivation to take part in a face-to-face meeting with victims is complex and can be suspect and difficult to interpret. However each offender can potentially emerge from a conference with greater understanding of the emotional, physical and psychological impact of their behaviour on victims.

3.8 Such a ‘presumption in favour’ approach is more victim centric in that victims are able to meet their offender if they so wish rather than being denied the opportunity on the grounds that the offender ‘would prefer not to’.

3.9 A presumption in favour approach still involves suitability and risk assessment but does not enable offenders to avoid facing up to the harm they have caused on the grounds of they ‘would prefer not to’. Such an approach ensures that the maximum number of offenders experience a quality process that has the potential to deliver increased victim satisfaction rates and reduced reoffending rates.

3.10 A presumption in favour approach by NOMS agencies can be applied at any stage of the criminal justice system. In our view the above kind of cultural change needs to run simultaneously alongside the bedding in of the Pre-sentence RJ legislation and the revised Victim’s Code.

3.11 Restorative Justice Conferences lead to outcome agreements whereby the offender makes a voluntary commitment to undertake activities that will make amends for the harm caused. All those present at the conference make suggestions as to what is helpful, appropriate and realistic. Conference participants undertake roles to enable and ensure that such activities are completed. Such outcome activities are not part of the sentence of the court and are entered into on a voluntary basis by the offender. Whilst the offender is under no legal obligation to complete what is set down in the conference agreement, there is a strong moral obligation for him/her to do so arising from the power of the conference and the support of those present.

3.12 In the case of Pre-sentence RJ, the Court of Appeal has said that courts should take RJ outcomes into account as potential mitigation for the reduction of a custodial sentence. In our view a minimalist approach to any court feedback should be taken – courts absolutely need to know whether the RJ conference process/outcome was satisfactory or not to the victim. Beyond this we suggest that the boundaries of confidentiality need to be set by the participants of each conference as part of the outcome agreement. Attendees representing agencies that will be involved in making plans happen need to explain to the conference participants how they will deal with the information they take from the conference, with the consent of participants.

Section Four

The effectiveness of delivery of restorative justice across the range of service providers and funding arrangements, including provision made by Police and Crime Commissioners,

the Prison Service, the National Probation Service, and Community Rehabilitation Companies.

4.1 Our local experience of being commissioned to deliver a victim-initiated RJ service has been good. We aim to deliver a co-ordinated hub approach within Thames Valley in order to be efficient and effective and not duplicate or leave gaps in what is being delivered. This aim to simplify and streamline has been frustrated by funding arrangements and the many players involved.

4.2 TVRJS delivers an effective service, but we cannot share (receive or give out) information with other strands within our own service (where there are different funders, commissioners and staff teams) due to data protection restrictions.

4.3 In our view the effectiveness of RJ services could be significantly improved by a national Information Sharing Protocol. This cannot be resolved locally as many cases involve victims, offenders and other participants from 'out of area' requiring additional agreements with all police, NPS, HMCTS areas across the country for each individual provider – a national protocol is therefore essential to ensure effective, seamless and more economically efficient delivery across the UK.

4.4 Additionally, everyone wants to improve awareness of RJ, but no one wants to pay for it; they want to pay for service delivery and outcomes but that could be greatly improved by service providers and statutory agencies working together to fund better promotion of RJ and thus improving public awareness, agency awareness, referrals and outcomes.

4.5 Within Thames Valley, RJ provision within the adult CJS is all overseen by TVRJS under the management of Thames Valley Partnership. This currently involves three funding streams: CRC for community-based offender-initiated cases; PCC for victim-initiated and pre-sentence cases and HMPS for custodial offender-initiated cases. It has in the past, and is likely in the future to involve other funding streams including EU money and other grants. TVRJS works with relevant delivery partners including Victim Support and CRC/NPS to deliver RJ services and as such this ensures a good level of continuity and consistency across all stages of the CJS, and through all partner agencies. We would be concerned about areas which were not able to offer such continuity due to the impacts this may have on victims and offenders through dis-jointed service delivery. We are aware of a number of (varying) "hub" models, our own included, which are designed to mitigate these concerns and would welcome an evaluation of effective practice and process in this regard. We have no experience or anecdotal awareness of areas where there are a range of providers in operation within the adult CJS.

4.6 The extensive change programmes within some CJS agencies (CRC and NPS in particular), have presented enormous challenges in service delivery (requiring the need for new information sharing agreements and other operational protocols), and have also meant that decisions around RJ delivery, service level agreements, implementation arrangements and transition arrangements, have been unclear and slow at times, presenting obstacles to service planning and engagement with key agencies.

4.7 In our view, based on anecdotal knowledge, the commissioning model for service provision has disadvantaged some long standing deliverers of RJ due to management capacity in terms of tender preparation. This can potentially detract from the sense of local 'connection and ownership' of service providers with the communities they serve.

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