

Response by Dr Martin Wright ⁱ to

European Commission consultation document:

**Taking action on rights, support and protection of victims of
crime and violence**

September 2010

INTRODUCTION

The key to this reply is in the last answer: that in principle restorative justice practices should be available to all victims, subject only to the safeguards mentioned in the reply to Question 17. Restorative processes are in the interests not only of victims, but also of offenders and the community.

Victim-offender dialogue is valuable as an end in itself as well as a means to an end. For many victims, action to make the offender less likely to re-offend is at least as high on their list of priorities as monetary compensation or reparation through work. When the victim and offender agree on one of these methods of reparation, it is incumbent on the community to provide the resources to enable offenders to carry them out.

I. GENERAL QUESTIONS:

1. What are the main obstacles and problems faced by victims of crime or violence in relation to the five categories of needs (Recognition, Protection, Support, Access to Justice, Compensation and Restoration)?
 - a) Recognition: Criminal justice personnel should be aware of the needs of victims, and the criminal justice processes should also take them into account.
 - b) Protection: One danger facing victims is repeat victimisation. For example burglars sometimes return to the victim's house, but are less likely to do so when they have met the victim in a restorative meeting; or when the crime has resulted from a violent conflict, both sides will be safer if it is possible to resolve the conflict itself through mediation..
 - c) Support: Support should be available to victims at all stages of the process, including during a restorative meeting, if they require it.
 - d) Access to Justice: This should include access to restorative justice at any stage of the criminal justice process, as laid down in

Council of Europe Recommendation R(99)19 of the Committee of Ministers
Mediation in penal matters;
European Commission for the Efficiency of Justice (CEPEJ) *Draft guidelines for a better implementation of the existing recommendation concerning mediation in penal matters* (2007); and
United Nations *Basic principles on the use of restorative justice programmes in criminal matters* (2002).

e) Compensation and Restoration: It has been found that offenders are more likely to complete payment of compensation, or to fulfil reparative actions, if these have been agreed in a restorative process, rather than imposed by a court.

2. What concrete initiatives would you suggest to ensure the five categories of victims' needs are met? Do you think the EU can contribute to these initiatives and if so how?

It would be helpful if the EU recommended member states to pass legislation requiring prosecutors and courts to refer cases to assessment for a restorative process, subject to prescribed safeguards and to the availability of accredited mediators or mediation services. Self-referral should also be possible. This means that statutory agencies and/or NGOs should be authorized to provide a restorative process, and funded accordingly by central or local government. The legislation should require such service providers to meet agreed standards; it should not however prescribe these standards in detail, but authorise a national NGO to draft them, in consultation with service providers, and administer a system of accreditation.

3. Are you aware of good practices, initiatives, programmes (including training programmes) or tools that contribute to meeting the needs of victims?

In England and Wales, since 1999, referral orders for juvenile offenders provide for a hearing before a panel, at which victims among others can be present; however, arrangements for explaining the process to victims are not yet adequate to ensure a high level of victim participation.

In Northern Ireland, a Youth Conference Service based on the New Zealand model was introduced in 2003, which has achieved a much higher level of victim participation.

In both the above cases, however, the system does not provide for the needs of victims of adult offenders.

In Norway, a nationwide mediation service has been provided by law since 1991, dealing with both civil and criminal cases.

4. How could existing EU legislation on victims be improved to meet the needs of victims?

See Answer 2 above. Legislation should also guarantee confidentiality of the restorative process (see Answer 9 below).

5. Is sufficient information and data collected on victims' policies and needs? How do you think such information should be collected (e.g. specific studies and research, national or EU wide victim satisfaction surveys)?

No: there should be routine monitoring to assess performance, and periodic in-depth research to assess quality. Registers of accredited mediators and mediation services should also be maintained.

II. SPECIFIC QUESTIONS BASED ON THE NEEDS OF VICTIMS

RECOGNITION

6. Do you think victims related training should be compulsory for practitioners? How do you think the quality of training programmes can be improved?

Yes, because there is still a tendency for the criminal justice system to focus on offenders. Training programmes should include awareness of the potential benefits of restorative processes, and some understanding of whether they are being carried out to an adequate standard.

7. How should it be ensured that the individual needs of victims are properly assessed (e.g. individual needs assessment when reporting crime)?

Police should routinely refer victims to a victim support agency, whose workers should either be qualified to explain the restorative process to victims, or offer to arrange contact with the restorative justice agency. However, many practitioners consider that the agreement of the offender to take part should be obtained first, to avoid the risk of raising and then disappointing the victim's expectations, and staff and procedures should take account of this.

8. How do you think vulnerable victims should be identified? What special measures should be available to them (e.g. provide testimony only once, legal assistance always available, specially trained professionals carry out questioning)?

Victims may be vulnerable on account of their age (youth or old age), psychological or mental state, addiction, or relationship with the offender, among others. In such cases a restorative process is not necessarily ruled out, but should be considered with extra care. The option of being accompanied by a supporter should be offered. In certain cases, such as family violence, specially designed processes are available (notably in Austria), and staff should be available who are trained to use these.

PROTECTION

9. Do you think measures are needed to protect a victim's privacy and if so how (e.g. court orders, code of conduct)?

Proceedings in a mediation or conferencing session should be confidential (except where information is revealed which must by law be reported). If the mediation or conference takes place before the court passes sentence, the court should only be informed of the outcome; mediators should not be asked to disclose or comment on what took place during the session.

10. How do you think the victim should be protected from an offender/ potential offender in particular in relation to:

- a) Intimidation/ further harm (e.g. separation of offender and victim in court/police station through protocols)?

In some cases, where a crime has arisen from a conflict, resolution of the conflict will ensure the safety of both victim and offender (see 1 b) above). There are obviously cases where this would not be likely to be effective, but staff should be trained to bear the possibility in mind.

- b) As regards protection orders, what do you think is the most feasible and effective option to achieve EU wide protection?

As part of the answer, in some countries the names of victims are not published in the media, and consideration should be given to making this standard practice, either by law or by a journalistic code of ethics.

SUPPORT

11. How do you think victim support organisations can be assisted to provide effective services to victims?

Employers should be required to allow employees a prescribed amount of time off for voluntary public duties such as victim support and mediation.

12. What services do you think they should provide?

The model in the UK is that they recruit and train volunteers to make initial contact with victims, to assess their needs, including claims for compensation, explanation of the court process, etc. (and in some cases whether they require referral to professional help such as psychotherapy, in which case the staff of the victim support agency arranges it). Information about restorative processes should also be provided.

There should also be limited funds to cover urgent expenses incurred because of the crime – ideally not limited to crimes of violence.

13. Do you think foreign and/or domestic victims should be provided immediate basic assistance (e.g. hotel accommodation, food vouchers, phone calls)? If so, who should provide such assistance (e.g. consular authorities, other government agencies, victim support organisations, tourist industry)?

This question mostly concerns victim support agencies. At the current stage of development, transnational victim-offender mediation is not likely to be logistically feasible in many cases, but it should remain a possibility.

ACCESS TO JUSTICE

14. How should we ensure that victims fully understand their rights and the information they are given (e.g. Translation and interpretation available to all victims who don't understand, legal assistance, simplification of forms and documents, information provided through different media)?

Any of the above. Victim support workers and mediators from ethnic minorities with knowledge of other languages should be actively recruited. Organizations which work for the rights and welfare of ethnic minorities, such as Asian, Turkish or Roma people, should be made aware of services for victims, including restorative justice.

Legislation should ensure that victims (and offenders) have access to a complaints procedure, which they can use if they consider that the restorative process has not been fairly carried out. It is therefore necessary that the restorative process has been properly explained to them, so that they know how it ought to be done.

15. Should victims have a right to provide information before key decisions are made, such as decisions to stop an investigation or prosecution, and to seek the review of such decisions afterwards (e.g. through a senior official, ombudsman, court)?

In cases where the accused does not deny involvement in the offence, victims should be entitled to request that the case be diverted into a restorative process rather than prosecuted. Safeguards would be necessary to avoid pressure being placed upon them to do so.

COMPENSATION AND RESTORATION

16. How do you think victims should be assisted when making compensation claims and when seeking to enforce compensation orders (e.g. State assistance in recovery, State payment in advance, simplification of forms)?

This answer refers only to compensation by offenders, not by the state. As stated above (1 e)), offenders are more likely to pay when they have taken part in reaching agreement on the amount to be paid. If they fail to pay, the restorative process should be reconvened, to discover whether there are external circumstances which led to the failure to maintain payments or complete tasks; only then should enforcement action be taken, such as imprisonment, which makes it impossible to pay.

17. Should restorative justice practices such as mediation be available to all victims? Should minimum standards be applied to organisations providing such services?

Yes, a restorative justice process should be the norm, as in New Zealand and Northern Ireland (but for all ages, not only for victims of juvenile offenders as in those countries). Exceptions should only be made in specific circumstances, for example where there is a danger of physical or psychological harm, or of course where one party refuses to take part. Each government should support a national NGO whose governing body would include practitioners. It would draw up standards for mediators and mediation services, in consultation with them. It would then make arrangements for these standards to be applied through a system of accreditation, including a programme of continuing professional development.

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