

INTERNATIONAL CO-OPERATION ON THE IMPLEMENTATION OF RESTORATIVE JUSTICE IN POLAND AND GREAT BRITAIN

1 INTRODUCTION

This is a three-year project funded by the British Academy and the Polish Academy of Sciences. Its purpose is to exchange information and experience about the use and effects of restorative justice and victim-offender mediation for both adult and juvenile offending.

The project is set in the broader context of the various European developments that have taken place over the past decade. Articles 10 and 17 of The European Union's *Framework Decision on the Standing of Victims in Criminal Proceedings*, which oblige Member States to adapt their legislation in order to promote victim-offender mediation by March 2006, is of particular relevance.

The Polish criminal justice system's responses to crime are, in the case of restorative justice interventions, less well developed than in Great Britain. From the Polish perspective, the principal objective of this research proposal is to gather information about the design and delivery of such interventions for the purpose of informing their own initiatives. More particularly, this includes a focus on

- the process and the effects of restorative justice
- national recording systems,
- national legislation in relation to restorative justice
- the relation between criminal justice and restorative justice practices and agencies,
- training models and the experience of training legal professionals in the restorative justice area
- new restorative justice models and applications
- theoretical concepts, approaches and frameworks on restorative justice.

Within Britain, restorative justice occupies a clear statutory place within the youth justice system. This is not so for adult offenders, save in limited circumstances. The Home Office is considering how to give effect to the main options set out in its 2003 paper *Restorative Justice: the Government's strategy*. From a British perspective, acquaintance with other possibilities for restorative justice intervention will assist in the evaluation of these options.

On the British side, the management team comprises Professor David Miers of Cardiff University Law School (Chair), Dr. Guy Masters (Manager, Wandsworth Youth Offending Team), Mr. Chris Stanley (NACRO), and Dr. Martin Wright (European Forum for Restorative Justice)

This Report has been compiled from the activities that have been funded to date, and includes papers given by Polish experts. It is intended to inform colleagues (in whatever capacity) working with restorative justice and victim offender mediation of developments within Poland.

2 EXCHANGE ACTIVITIES

Three exchanges have taken place over the past year. We report on them below.

2.1 British visit to Poland: September 2004

In September 2004 two members of the British management team visited Poland for the purpose of meeting victim-offender practitioners, and to participate in a one day conference.

The visit took place between 26 and 30 September. The Conference was held on 28 September in Warsaw. The team members gave papers on the potential for restorative justice to provide more cost-effective responses to offending, and on the mainstreaming of restorative justice. From Poland, presentations were made by a senior academic, a judge, a mediator, and the President of Polish Mediation Centre.

The team also met a number of practitioners and others with an interest in the travel grant's focus. They noted some points of comparison and of difference between the position in Poland and in England and Wales.

- 1 The team was struck by the firm commitment to use what might be called a 'continental European model' for using victim offender mediation within criminal justice. Here, restorative justice processes are considered to offer an *alternative* to the mainstream criminal justice system, unlike in youth justice in England and Wales, where it is a possible component of a sentence or intervention plan. There appeared to be very strong belief amongst Judges that many more cases should be referred to mediation before reaching court in the first place.
- 2 There was a great deal of evidence that mediation use has been consistently increasing. It was also clear that referral rates vary considerably between different courts, and will depend on the judge's enthusiasm. It was not possible to obtain a view on the overall referral numbers nationally.
- 3 In general, judges had a high level of awareness about the potential use of mediation as a means of focussing on the real causes of concern. They saw mediation as a way of obviating trials, rather than being applicable, as in England and Wales, as one part of a sentence.
- 4 Of further theoretical interest is the very clear difference between the application of restorative justice to reduce offending. One of the key drivers for the development of restorative justice in youth justice in England and Wales have been the arguments, largely driven by re-integrative shaming theory, that the psychology of the restorative encounter will impact on the offender. In Poland, the (albeit limited) discussions that took place of this subject identified that it was the fact that mediation can diffuse the underlying 'causes for the conflict' that was likely to reduce offending.
- 5 As well as the impressive discussion of the application of mediation in what are seen by many in the UK as 'taboo' cases, such as domestic violence, there also appeared to be some use of restorative justice in very serious cases that had resulted in custody. This may represent an interest in mainstreaming.
- 6 The mechanisms through which mediation practice is funded, and practice delivered, are, compared to England and Wales, unstructured. Once a Court,

Prosecutor, or the Police have decided to refer a case to mediation, that agency/body becomes responsible for (a) selecting the mediator(s) and (b) paying the fee to the mediator(s). Since neither the police nor the prosecutors wish to pay for mediator fees, the courts have become the key referral agencies. They will have a list of registered mediators to whom they can assign cases. In some areas the Polish Mediation Centre (PMS) has registered as a possible recipient of cases, and the case will be taken by a mediator attached to that local centre.

- 7 It was clear to the team from conversations with mediators that this system was seen as highly problematic for many. From a theoretical perspective, Polish mediation delivery is more in line with the ‘community volunteer’ model than the ‘professional delivery’ model. There is a serious funding deficit. Among other effects, this means that case management is very uncertain. There are no standards or requirements around how quickly cases must be started, progressed, or returned to Court. Neither are there any nationally agreed training standards or accreditation systems as in England and Wales.

2.2 Polish visit to Britain: April 2005

In April 2005 the British team hosted four Polish visitors to a substantial programme of events. The visitors were:

- Judge Barbara Wajerowska-Oniszczyk
- Michal Jaksa (mediator)
- Professor Dobrochna Wójcik (Head of the Penal and Criminology Section of the Institute of Justice, and Head of the Criminology Department of the Polish Academy of Science)
- Dagmara Wozniakowska (Polish Academy of Science)

Judge Barbara Wajerowska-Oniszczyk has responsibility for District Courts within her judicial region and had been a member of an expert team led by the Ministry of Justice promoting restorative justice. The team was aided by a fifth visitor (from London, and had worked in the Probation Service) who is herself Polish and acted as a translator.

The visit took place between 5- 8 April. The programme involved meetings with a key statutory agency, a local authority responsible for the delivery of restorative justice responses to young offenders, a national NGO, a well-established family group conferencing service, and a seminar at the Home Office. The visitors met practitioners, academics, officials, programme managers, and policy makers.

The Polish visitors prepared four papers for the Home Office seminar. These reproduced below. They are:

Michal Jaksa (Polish Centre for Mediation): *Introduction to mediation in Poland*
 Professor Dobrochna Wójcik (The Institute of the Administration of Justice): *The Mediation Process in Research*

Judge Barbara Wajerowska-Oniszczyk: *Mediation – legal grounds, obstacles and development possibilities – a judge’s perspective.*

Beata Czarnecka-Dzialuk, Marzena Kruk and Dobrochna Wojcik (The Institute of the Administration of Justice): *A Summary of research into mediation in Poland*

Professor Joanna Shapland and Ms Marian Liebmann gave papers on restorative justice research and mediator training respectively. Their papers are reproduced at the end of this document.

2.2A Papers presented to the Home Office Seminar (8 April 2005): Polish Papers

A1 Michal Jaksa (Polish Centre for Mediation): *Introduction to mediation in Poland*

I would like to begin my presentation with a brief introduction about the organization that I represent. I am a mediator from Polish Centre for Mediation (PCM). The organization has some 500 mediators associated with it, and about 30 branches located all over Poland.

The main activities of the organization are:

- conducting mediation proceedings,
- promoting mediation,
- publishing a quarterly magazine, *The Mediator*, and other material,
- conducting training programmes.

The organization is primarily concerned with conducting mediation proceedings for juvenile and adult offenders. Although we focus on victim-offender mediation we also conduct other types of cases, for example civil law cases.

As a mediator I conduct adult cases, so I will concentrate on the issues to which this type of mediation gives rise.

In Poland there are regulations which specify who can become the mediator. Such person must:

- be at least 26 years old,
- has Polish citizenship,
- has no criminal record,
- has some experiential background.

These are the only legal requirements.

PCM emphasises training. We consider that at least basic training must be finished before any candidate mediators may undertake any mediation. On completion new mediators operate under supervision. They must conduct a minimum of 10 cases with experienced mediators. During this phase problems may arise. I will present two of them.

The first problem is that of the self-confidence of new mediators. Some of them are so afraid of the responsibility that they ask the supervising person to tell and show them

everything, how to open mediation session, how to write the invitation letter, etc. This creates difficulties, because experienced mediators realize that there are no universal answers. We also know that in some situations mediator must act intuitively.

The second and more important problem is how to dissuade unsuitable persons from applying to be mediators. This is closely connected with the evaluation of mediators' work and behavior. We are currently trying to determine the procedure for rejecting improper persons.

For these two and more reasons PCM stresses the importance of a proper training.

During our practice we also noticed some other aspects which mediators must take into account:

- when and how react in a very emotional situation,
- whether a lawyer should be present at the initial and mutual meeting,
- what to do when a criminal case gives rise to civil issues.

These and similar questions can arise for both the inexperienced and the experienced mediators, who must seek to manage their response.

Email address

This paper has been written as part of a Joint Project on Restorative Justice Practices in Action, supported by the British Academy and the Polish Academy of Sciences.

A2 Professor Dobrochna Wojcik (The Institute of the Administration of Justice): *The Mediation Process in Research* (2005)

Very slowly but surely the philosophy of restorative justice is becoming part of the Polish justice system. Within the last few years there has been an improvement in the legal situation of the victim in the penal system. Mediation as an institution has been included in the penal code and the code of penal administration (1997) and the Act of 26th October 1982 which deals with proceedings in juvenile cases (2000).

On the basis of research relating to mediation I should like to present you with a few problems which have significance for the promotion, spread and growth of mediation in our country, which at the moment seems to be our most important task and anxiety

Complying with European Standards

The first problem relates to the significance and consequences for our legislature, Ministry of Justice policy and practice of the Recommendations of the Council of Europe (99) 19 *Mediation in criminal cases* and of other international documents (as for instance the Outline Decision of the EU Council 2001). Changes in the law were preceded by an experimental programme of mediation in juvenile cases, which took account of our traditions and legal system, and also of the above mentioned Council of Europe recommendations. In the course of seminars organised in Poland we took the advice of experts (Christa Pelikan, Martin Wright, Ivo Aertsen and others). The positive results of the experiment led to legislative changes (at first very insufficient

ones) which took account of some principles of mediation, for instance the principle of voluntary participation.

We also consider it important that the legislature accepted the principle that mediation should be carried out outside the justice system by people and institutions that are trustworthy but independent of it, thus guaranteeing the impartiality and neutrality of the mediator. The influence of the Recommendations of the Council of Europe (together with noteworthy and persistent interventions by the Polish Centre for Mediation) was also significant in the formulation of the (executive) Directives of the Minister of Justice and the amendment of the penal administrative Code. It is not possible to give an unambiguous answer to the question whether the existence of the Recommendations (and possible knowledge of this) influenced the policy of the Ministry of Justice.

This policy changed with the changes of governments and of ministers and their views. At the first stage, at the start of the experimental programme mediation was given the 'green light'. There was then a change of government and some MPs who were against mediation wanted to remove it from the penal codes when these were again being amended (the situation was saved by the President who vetoed the amendments, though to be frank, not because of mediation). Recently there has been an improvement in the attitude of the Ministry, but we are after all awaiting...new elections?

Can one see the influence of knowledge of the principles and ideas of the EU Recommendations on practitioners, prosecutors and judges, and also (since July 2003) on police officers? Judging by the results of the research that influence is still relatively slight (in spite of the many courses, conferences and publications). This is particularly true of prosecutors who very rarely show any interest in mediation in spite of the introduction in the Code of Criminal Procedure of directives motivating them to more frequent use of that institution. Judges show a greater, though still unsatisfactory interest in mediation. There are various reasons for this: insufficient knowledge of the essence of mediation and its advantages, routine lack of trust in new solutions, fear of delays in dealing with cases, and so on. Some judges suggest that mediation should be made obligatory in some cases, eg those arising from private prosecutions. It is difficult to talk about police officers, as it has not yet been decided whether mediators should be paid from the Police or Prosecution Service budget. At the same time those judges who are truly convinced about mediation refer many cases to it (as in Czestochowa, Gliwice, and Lublin) I wonder whether the situation is the same in other countries of Eastern and Central Europe?

Research

In planning our research on mediation we felt it very important to design the evaluation of that research – agreeing with the opinion of Tony Marshall that evaluation must be an integral part of research. If we accept with Korporowicz that evaluation must relate to the process, result and generalised influence, then in the two researches presented which relate to mediation in young offender and adult cases we concentrated on the evaluation of the process (some aspects of it) and results.

The evaluation of the process in the young offender research covered a number of matters: the reasons for participation in the programme, the voluntary nature of the decision to do so, attitudes to the other party and possible changes in those attitudes, satisfaction with the agreement, and the emotions found in offenders and victims during mediation, their strength and direction. The scope of the evaluation was determined by the methods used in the young offender research: to remind you, these were the method of participant observation by the mediator and questionnaires given to the participants. The result of the mediation was evaluated in terms of the honouring of the agreement and data about reconviction during the follow up period.

Evaluation of research relating to mediation within the penal process concentrated on analysing the concordance of the judges' and mediators' behaviour with the legal requirements. The progress of the mediation process was evaluated from the point of view of the role of the mediator. The evaluation of the results of mediation was, as in the research on young offenders, based on information available (unfortunately not completely) in court registers about the honouring of agreements, and also data from the national Penal Register of reconvictions of offenders.

In considering whether and to what extent our research meets the basic conditions and standards of evaluative research, I shall start with the problems and some doubts I have about this. The research had no control group (organisational and financial difficulties), the populations studied, particularly with regard to the young offenders, were small (174 young offenders and 415 adult offenders). And what were the positives? In evaluating the results of mediation we had clearly defined criteria of the effectiveness of the programme, namely the honouring of the agreement and we used two measures of that effectiveness, namely the honouring of the agreement and the fact of reconviction. In the light of the above the effectiveness of mediation scores high. It is also worth pointing out that arising from the carefully prepared programme of mediation this research can be replicated.

Scope of Mediation Interventions

The last problem that I should like to talk about is the kinds of offences and cases in which the judges most often use mediation. As evidenced by the research in respect of both adult and young offenders, judges from both criminal (adults) and family (young offenders) courts refer to mediation more offences against life and health and against the person (violent offences, family violence) than against property.

In the research relating to adults as many as 36.6% of cases referred for mediation are of offences against family and the duty of care, and among these family abuse makes up 28.8% and non-payment of alimony 7.6%. Some authors are against referring family cases for mediation. However in our research the effect of mediation as measured both by the honouring of the agreement and reconviction was similar in relation to offences of family abuse and other offences. The exception was non-payment of alimony where the offenders were more likely not to honour their agreements and had much higher rates of recidivism, as they continued to be behind with their payments.

This does not however mean that we are satisfied with these results. We should realise that in some cases of family abuse the perpetrator might have honoured some of the

‘easier’ undertakings, and that the long term ones should continue to be monitored, which the court is unable to do over a long period. The lack of reconviction might also result from the fact that the family does not want to inform the authorities about the reoffending. This problem is important and doubtless requires further research. (One of the Ph.D. students at the Institute of Legal Studies at the Polish Academy of Sciences has taken this subject for her doctoral thesis).

When judges are asked why in their opinion family abuse cases are suitable for mediation, ie why they referred them for it, they said that they were aiming to resolve the conflict at the root of the violence. They felt this would be achieved most easily through mediation, but in cases against property it sufficed to use another means such as compensation to the victim. Another explanation involved the fact that they were guided by the expectations of society. In view of the large number of that kind of offences and the negligible effectiveness of the penal response people expect the courts to take other steps to prevent reoffending and are prepared to accept conciliatory solutions.

The results of our research indicate that in spite of generally accepted opinion victims are no more punitive than the rest of society. They want to take part in mediation when they are given the chance, and their fear of crime is generally reduced after meeting the offender. It is therefore the duty of the justice system to give them the opportunity to meet in this way.

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A3 Judge Barbara Wajerowska-Oniszczyk: Mediation – legal grounds, obstacles and development possibilities – – a judge’s perspective

One of the key goals of European Union policy concerning the administration of justice within the member countries is better access for those seeking redress. The European Union sees the fulfilment of this goal as comprising a number of features. These include a broad use of mediation between a harmed person and an offender, regarding it as a faster, simpler and more effective mechanism that allows a wider recognition of the parties’ interests to be taken into account.

Poland, as a member country, has already introduced mediation into two law fields: criminal and juvenile law, taking into consideration the necessity of adjusting the domestic law to the European law broadly understood. Legislation concerning the amendments to the civil law is currently being undertaken.

In Polish criminal law, the possibility of using mediation was introduced by an Act made in 1997, which was put into effect on 1st November, 1998. Initially mediation could only have been performed in the course of preparatory proceedings as well as in the legal proceedings – as far as the preliminary prosecution inspection is concerned. Thus the scope of the use of mediation was limited. Therefore, on 10th January, 2003 the general part of the code of penal proceedings was changed, which has resulted in the introduction of mediation at every stage of penal proceedings.

Cases subject to penalty and punitive measures may be directed to mediation. The authorities who are entitled to make such decisions on their own initiatives, with the parties' consent or on their application are:

- a prosecuting attorney – at the stage of the preparatory proceedings;
- the police - at the stage of the preparatory proceedings;
- the court – in the whole course of legal proceedings until the court's decision in the case, as well as during the private accusation cases.

There is still some doubt about the interpretation of the legislation, as it is not obvious whether the penitentiary judge can use mediation in the application of administrative law at the stage of carrying out the penalty or punitive measure.

Mediation proceedings should not last longer than a month. It is generally accepted that a positive mediation result should influence the final decision of the proceedings, but at the same time it should not determine the content of that decision. No solutions are imposed by the act in this respect. The effect of a successful mediation in the administrative law could be for example:

- conditional discontinuance of penal proceedings;
- unconditional discontinuance of proceedings;
- legitimizing of the agreement conditions in the decision ending the proceedings.

I should mention that the lack of the parties' agreement to make use of mediation is not connected with any negative results for the accused while the offenders' participation in mediation cannot be treated as an evidence of a guilty plea.

The principles for the use of mediation that is provided by an Act about juvenile proceedings, which were put into practice by an amendment on 15th September, 2000, vary a little from the rules accepted in Polish administrative law.

Firstly, the only authority entitled to direct the case at the mediation proceedings is a family judge or, in some cases, the family court. It is not possible for the police or prosecuting attorney to make any decision in these cases. Nevertheless it must be emphasized that there are no legal obstacles to these two authorities to suggest reconsidering any case as far as mediation is concerned.

Secondly, there is no doubt that dealing with juvenile cases, mediation is possible at every stage of the proceedings, as well as at the stage of executory proceedings.

Thirdly, the duration of mediation is longer when we take into account the juvenile proceedings. It may even last six weeks. It may be prolonged by 14 days in some special cases if there some probability exists as far as the parties' agreement is concerned.

Finally, the differences concern some standards connected with the mediators themselves. As far as the juvenile cases are concerned, a mediator must have completed specialist training as well as meeting some basic conditions common to both fields of law, such as their age, education and personal features. Mediators

involved in criminal cases are not obliged to take part in this specialised training. The lack of training in these cases means that judges may have doubts about the mediators' skills within the criminal cases.

In case of the legislation covering juvenile proceedings, the mediation process comes under the control and evaluation by the court or a family judge as well as during the penal proceedings. If a family judge decides that the educational goals have been achieved as a result of mediation, he or she may also decide about the discontinuance of legal proceedings, where the young person meets all the conditions of any mediated agreement. On the other hand, the judge may apply an educational measure, provided by the Act, in cases where the young person's behaviour has not changed sufficiently.

I have presented very briefly the legal grounds and period of mediation functioning in Poland, in order to emphasize the fact that mediation is a quite new phenomenon in our country. It should be noted that its background is neither connected with Polish tradition nor results from our history. In my view, these facts are of great importance in judging the development and popularity of mediation in Poland.

Given the non-repressive character of the legislation concerning juvenile proceedings and the domination of an approach that is focused on encouraging juvenile behaviour to satisfy the standards accepted in a society, the development of mediation as far as juveniles are concerned should not be a problem.

Paradoxically, Polish practice points to the more efficient development of mediation in criminal cases, while its use in juvenile proceedings has lagged far behind. For instance, in 2003 there were 1,838 criminal cases directed to mediation in Poland. This number is constantly rising, as in the first half of 2004 there were about 1,633 such cases. Meanwhile, as far as the juvenile proceedings are concerned, there were 86 cases directed to mediation in the first half of 2003, and in the analogous period of 2004, only 69. These figures are surely not impressive.

In 2004, the Ministry of Justice carried out some research among judges leading to the explanation as far as the reasons concerning the mediation and the juvenile cases. The judges explained this fact as the following:

- lack of qualified mediators in the court's jurisdiction,
- low salience among the parties of the possibility of mediation, coupled with distrust and lack of faith in its effectiveness,
- many cases in which the victim cannot be identified,
- lack of finance,
- prolonging the time of closing the proceedings,
- badly constructed regulations where judges are imposed to deal with mediation,
- lack of trust towards mediators,
- limited training for mediators as far as the family cases are concerned,
- extra-judicial compensation between the parties.

In my view, a very important reason why both the parties and judges are unwilling to direct their cases to mediation lies in the awkward co-existence between the court and mediation proceedings. This mainly concerns the principles of civil procedure, which may have an influence on mediation efficiency. Up to now, mediation has not been

tied to the court proceedings in the expectation that an agreement might be reached that the court could enforce. There is therefore little incentive to finish the proceedings with mediation. In my view, this poses a serious problem that needs solving. As a matter of fact, there is draft legislation that contains a solution to these problems, but it is not certain whether the present Parliament will enact it.

It is no secret that juridical societies prefer legal stability and are reluctant to accept new system solutions. Polish judges are no exception. Meanwhile, the proper understanding of the place and role of mediation in court proceedings is essential to its success. Polish administration of justice needs more time in order to accept the fact that mediation is not an alternative to court proceedings but is one of the methods to solve the dispute. It is available in a modern society to solve some sorts of problems, but of course not every one. The year 2005 gives some opportunities for its use, because this year has been announced a Year of Restorative Justice by the Ministry of Justice. I hope that this time would be correctly used because the mediation institution in Poland has a potential that is yet to be fully realised.

A4 Beata Czarnecka-Dzialuk, Marzena Kruk and Dobrochna Wojcik (The Institute of the Administration of Justice): *A Summary of research into mediation in Poland*

This section comprises three separate summaries. The authors acknowledge the contribution of Maria Palmer, who translated from the original Polish.

A4.1 Beata Czarnecka-Dzialuk and Dobrochna Wojcik: *Mediation in young offender cases in the light of theory and research (2001)*.

The first practical experiments in the field of mediation and restorative justice in Poland date back to 1995, ie to the implementation of an experimental programme of mediation between young offenders and victims; first in five and subsequently in eight family courts (in the following localities: Brodnica, Lublin, Pila, Poznan, Skarzynsko Kamienna, Warszawa, Zielona Gora). One of the aims of the programme was to test the possibility of using mediation in dealing with young offenders and in adult criminal cases. The initial positive results of mediation were influential in introducing the institution of mediation into the Criminal Code, the Code of Criminal Proceedings in 1997 and the Act of 26 October 1982 about procedure in young offender cases in 2000.

The design of the experimental programme of mediation took account both of the specifics of the Polish system of dealing with young offenders and its long tradition, and the international standards relating to mediation. The family court that has the dominant role throughout the proceedings decides whether a case should be referred for mediation and judges its results at the time of the final adjudication. NGOs and individual mediators independent of the justice system carry out the mediation. The basic standards of mediation are assured (voluntary participation, confidentiality, etc).

The evaluative research was carried out in 1997 – 1999. The basic method used was participant observation by the mediators who reported on the process of the mediation, as well as questionnaires completed by perpetrators and victims regarding their attitudes to mediation and analysis of other documents.

The most important results of this research:

Out of 174 offenders (including about 17% girls) referred for mediation, 29 young offenders (about 17%) did not take part (lack of parental consent of juvenile victims, lack of consent by adult victims, etc). Finally 145 young offenders took part in the mediation process, 137 signed an agreement, and 130 carried it out, i.e. 94% of those who had signed the agreement. (Even if the number of 130 young offenders who carried out their agreements is taken as a percentage of all the 174 covered by the research, the percentage - 74.7% is still high).

In over half of the cases (57.8%) restoration took the form of financial compensation paid either by the parents or by the offender him/herself from money he/she already had or earned. In 32.1% of cases restoration took the symbolic form of an apology to the victim, and in 10.1% of cases the young offender performed some designated work for the victim. Over half of the victims (138 people) were under age and the remainder were adult. Among the victims there were almost three times as many males as females, victims of the boys were usually male, and victims of the girls most often female.

Most of the young offenders (63.9%) covered by the research committed offences against property (about 6% of these being robberies), and 32% committed offences against the person often with the use of violence. As many as 53% of the girls and only 28% of the boys committed offences in the second category. The girls' offences were often threats, assaults but also affray or bodily harm.

One of the measures of the effectiveness of mediation may be the fact that of the 174 young offenders 14.4% appeared in family or criminal courts again during the follow-up period (from one to two and a half years). Among the general population of sentenced juvenile offenders these percentages reach 22 – 24%.

The results of the questionnaires given to the participants in the mediation are also interesting. These noted changes in the strength and direction of emotions during mediation, changes in attitude to the opposing side, the generally apparent satisfaction with the mediation which had taken place and its acceptance, changes in attitude (particularly among the victims) to the offending, the justice system and the need for alternative methods.

A4.2 Marzena Kruk and Dobrochna Wojcik (The Institute of the Administration of Justice): *Mediation proceedings in criminal cases (2004).*

The research was carried out within the research plan of the Institute of the Administration of Justice by Marzena Kruk, who analysed court records and evaluated the results of the analysis.

The research was mainly aimed at evaluating the functioning of mediation in criminal cases in the practical administration of justice. The detailed questions related to the problem of selection of criminal cases for mediation (types of offences, categories of offenders, etc) and whether cases are referred for mediation mainly by judges or prosecutors. There were questions about compliance with the basic principles of

mediation, particularly the principle of voluntary participation (eg who obtains agreement from the parties), and the effectiveness of mediation as measured by the number of signed agreements and those which are carried out. Attention was given to reconviction of the participants (data taken from the Criminal Register).

347 criminal cases referred for mediation in the whole country were analysed (ie about 95% of all cases referred for mediation in 1999).

According to the statistical data of the Ministry of Justice the number of criminal cases referred for mediation is slowly but continually rising (from 366 in 1999 to 3232 in 2004), and the number of district courts referring cases from 16.8% in 1999 to 36% in 2003. About 60% mediations end with the signing of an agreement.

Article 66 of the Penal Code formulates the principle that cases involving crimes carrying a sentence of not more than 5 years of imprisonment can be referred for mediation. This places little restriction on judges in respect of the type of offences.

As shown by the research only judges made use of mediation, referring cases involving very varied offences. Mostly these were offences against the family and the duty of care (36.6%), among them offences of family violence (28.8) and non-payment of alimony (7.6%). Next were offences against life and health (21.9%) (over half of these were offences of affray and assault or causing grievous harm to health). Property offences totalled just 14.1%, and other offences 27.3%. Interestingly within the whole population of those sentenced (according to general statistics) the structure of offence types is quite different, ie about 45% are offences against property, about 10% against life and health, and about 15% against family and the duty of care.

A detailed analysis and description of the process of mediation itself is an integral part of this research. It may be noted that the research was carried out during the initial period when the directives relating to mediation were made law. Therefore there were no instructions about the way in which mediation should be carried out as these did not come into force until mid 2003 and few mediators had undergone training.

It is not surprising therefore that in over 1/5 of cases at least one of the parties had not been asked for their consent to participate in mediation and in only 1/3 of the cases did the mediators have so called introductory talks with the parties or face to face meetings. It was also judged that it was inappropriate that mediation meetings had taken place in the parties' homes or in court (about 31%) as that did not meet the condition of neutrality or safety. And as the researched showed the atmosphere of mediation, agreement to take part, highly qualified and skilled mediators are all positively linked to the making and honouring of the agreement.

In spite of these irregularities the general results of mediation are quite good: agreements were made in 66% cases. Data relating to the honouring of the agreements are incomplete, as the courts did not always check them and sometimes for various reasons it was not possible for them to do so. About 30% are not available. However in cases where this information was available about 80% of the agreements were honoured.

The undertakings contained in the agreements were quite varied: in 40% cases these were of financial compensation, 11% of undergoing treatment for alcohol abuse, 33% of a number of undertakings in one agreement. In the majority of cases the offender apologised to the victim, and in about 1/5 cases the agreement was only for an apology. Decisions of the court after mediation were often dependent on its result. The signing of an agreement resulted in a more lenient verdict such as an absolute or conditional discharge. Over 1/5 offenders returned to court during the three year follow up period which in terms of the data on recidivism in the whole population of those sentenced is a good result.

A4.3 Dobrochna Wojcik: Questionnaire based research of attitudes of judges to mediation (in preparation).

In 2004 questionnaire based research was carried out on 2 groups of judges: those who referred cases for mediation and those who did not use it in spite of the fact that it became law in September 1998. The research aimed to discover the motives for making use of mediation or not, check (somewhat superficially) the judges' knowledge of it, proposals for possible changes in regulations, actions aimed at making the use of mediation more widespread or the usefulness of referring cases for mediation at different stages of criminal proceedings (eg after sentence). 35% questionnaires were returned, ie from 102 judges who use mediation and 213 who do not.

There are clearly considerable differences in attitudes and knowledge between judges from the two groups. Particularly interesting are however the detailed results relating proposals for legislative changes eg a demand for the obligatory introduction of mediation, or clearly presented attitudes of unwillingness to undertake new tasks or challenges, or the denial of any advantages of using mediation coupled with the declaration that no attempts had been made to use it.

2.2B Papers presented to the Home Office Seminar (8 April 2005): British Papers

B1 Ms Marian Liebmann (Independent consultant and trainer in RJ): Being a mediator: England and Wales: Training, accreditation, practice and issues

Initial Training

There are several ways of training as a mediator/ facilitator:

- Victim-offender mediation training 3-5 days. Can be adapted to include community or educational mediation, also multi-party mediation.
- Community Mediation training (5-6 days), then 3 day conversion course to VOM.
- Restorative Conference facilitator training 3-5 days, using a script. Most often used for an identified offender, but can also be adapted for multi-party situations such as schools.
- Family Group Conferencing training. Only two projects in England.

These are provided by a variety of victim-offender services and independent trainers.

Ultimately there is the hope that training courses will cover all models; many practitioners already use whichever model seems most appropriate in the circumstances.

In-service Training

There are many issues which it may be difficult to cover in any depth during initial training, although they may be touched on. In-service training can provide opportunities to develop these skills.

- Refresher training
- Diversity training: race and disability issues, including use of interpreters
- Young people's development (for youth services)
- Working with parents
- Power balancing
- Anger management
- Working with large groups
- Complex and serious cases (e.g. serious violence, murder)
- Controversial cases (e.g. racial, sexual, domestic)

Accreditation

This is an area which is still being worked on. Existing awards related to RJ (from *Best Practice*) are:

- National Vocational Qualification/ Scottish Vocational Qualification (NVQ/ SVQ)
- Continuing Development Award in RJ, based on a selection of units from the Community Justice NVQ/ SVQ
- Mediation UK: Competent Mediator Status
- National Open College Network (some training courses)
- Professional Certificate of Effective Practice and Foundation Degree in Youth Justice

Proposed awards:

- The national training organisation *Skills for Justice* is developing new National Occupational Standards for restorative work (based on *Best Practice*), and awards based on these. It is hoped that these awards will be widely recognised by agencies and practitioners.

Working as a Mediator

Many different contexts and practices exist:

- Youth Offending Teams – part of generic work
- Youth Offending Teams – victim contact workers
- Youth Offending Teams – RJ specialist posts
- Independent mediation/ conferencing services (NGOs)
- Community Mediation Services with VOM/ conferencing training
- Probation Victim Contact/ Liaison Officers (adult offenders, serious offences)
- Prison RJ schemes

Issues for Mediators

These are some of the issues mediators encounter in their work:

- Single or co-mediation?
- Paid or voluntary?
- Ring-fenced resources
- Multi-agency team working
- Everyone in the team understanding RJ
- Supervision by someone who understands RJ
- Contributing to policy and standards: the proposed Association of Restorative Practitioners

B2 Professor Joanna Shapland: International Co-Operation on the Implementation of Restorative Justice in Poland and Great Britain: Research

(Joanna Shapland, Anne Atkinson, Helen Atkinson, Becca Chapman¹, Emily Colledge, James Dignan, Marie Howes, Jennifer Johnstone, Rachel Pennant, Gwen Robinson and Angela Sorsby²)

We have been appointed by the Home Office to evaluate the three restorative justice schemes funded by them under the Crime Reduction Programme from mid-2001. For schemes funded by government, it is a requirement that there be an evaluation by a team of researchers who are entirely independent of the running of the schemes themselves. Hence the title of this talk: 'Restorative justice: an independent evaluation'. The three schemes, which I shall describe, are very different, but they share four key parameters, which make the task of running the schemes and our own task of evaluating them exciting, path-breaking and sometimes rather exasperating.

The first parameter is that they are intended to involve a substantial proportion of adult offenders, rather than the young offenders with whom restorative justice practice in England and Wales has chiefly been developed, through the work of YOTs, referral panels and mediation schemes³.

The second parameter is that the cases are intended mainly still to be within the criminal justice system and, often, at active decision points within it. Hence cases may be referred between conviction and sentence, or prior to prison release, or during a community sentence, or, for young people, as part of the final warning system. This means that the restorative justice being carried out by the schemes is being undertaken very much within a framework set by criminal justice.

¹ Becca Chapman and Rachel Pennant are members of the Home Office Research, Development and Statistics Directorate. Both have worked as a member of the evaluation team.

² This paper was originally given as 'Restorative justice: an independent evaluation', to the conference on 'Restorative justice at the coalface: working with victims, offenders and stakeholders in crime', 23-24 June 2004, The Assembly Rooms, Newcastle-upon-Tyne

³ Though there has been notable work with adults previously, particularly by the Leeds mediation scheme (JUSTICE 1998) and, in relation to pre-trial initiatives, by the Northamptonshire Diversion Unit and its predecessor, the Kettering Adult Reparation Bureau.

The third parameter is that this is not intended to be a small, minority, 'tag-on' element to the main flow of criminal justice in those areas, involving minor offences only. That has been the fate of many of the schemes previously set up in England and Wales, as the review by Miers et al. (2001) has shown. These three schemes were not intended to be just a dribble of referrals over a long time period. And they have not been. Between them, the Justice Research Consortium, REMEDI and CONNECT have completed restorative justice, in the form of a conference or mediation, in some 840 cases which we are evaluating (at the time of writing, JRC 559 conferences; REMEDI 232 mediations/other forms of restorative justice; CONNECT 50 mediations). This is by far the largest evaluation of restorative justice in England and Wales. Criminal justice initiatives can sometimes be dogged by implementation failure - i.e. the thing just doesn't happen. Emphatically, that is not the case here and the schemes deserve very considerable credit for, as we shall see, fighting through the maze of criminal justice to set up viable schemes, to run them over the period of 2-3 years and to engage with so many cases.

Fourthly, if one sets up restorative justice for adult offenders *and* expects a considerable stream of referrals, then the consequence is also that the kinds of cases referred include serious offences, such as robberies, burglaries and grievous bodily harm. This has not, in the main, been diversion from criminal justice. It has not, in the main, been first time offenders or less serious offences. This has been a trial of restorative justice at the sharp end of criminal justice with the kinds of serious offences and offenders which make people nervous. It makes these schemes different from much of the evaluative work which has been carried out in Australia and the US.

I shall first outline our evaluation methods, and then tell you something about the schemes, their struggles to become established within criminal justice, and what restorative justice has involved for those schemes and for the hundreds of victims and offenders who have been involved.

The Evaluation

The evaluation covers all three schemes funded by the Home Office: the Justice Research Consortium, REMEDI and CONNECT. The methods being adopted are very similar, but we are, of course, evaluating schemes according to the way in which they themselves are operationalising restorative justice.

Where are we at? The schemes themselves were funded from spring 2001. The work which we are evaluating ended at different points for different schemes. The last referral date for REMEDI, which works in South Yorkshire, was the end of March 2003, a total time of some two years. CONNECT continued to take cases we were evaluating until June 2003. Our last Justice Research Consortium cases are those which reached randomisation by the end of March 2004. So the schemes have been running for some two to three years. So I'm afraid I can't give you anything like final results and, particularly, I can't give you anything on output or outcome results, such as reconviction rates, or victim views after they have experienced restorative justice. But I can give you an idea of what has happened to the schemes and also about what restorative justice events have been like. We have also produced a first year interim report, which looks in detail at the implementation of the schemes up to autumn 2002 and which was published by the Home Office in 2004 (Shapland et al. 2004).

Marshall's (1999) definition of restorative justice is probably the most accepted and was the definition set out originally by the Home Office for both schemes and evaluators:

Restorative justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future.

Looking at this carefully supplies, I think, some key ingredients for the evaluation, ingredients which are now I think commonplace in evaluations of restorative justice. I would never claim that what we are doing is really new. What I hope we are doing, though, is to pursue some of these elements a little further than they have been previously.

Process

So, what are the key phrases here? First, restorative justice is a *process*. The point has been made by many contributors to Andrew von Hirsch and others' edited collection (2003) that, in contrast to conventional criminal justice, for restorative justice, process is as important, or maybe more important, than outcome. So we need to track, document, interpret and understand process. The process experienced by participants in any individual restorative justice event - a conference or a mediation - encompasses them being contacted by the facilitator or mediator, their preparation for that event by the facilitator or mediator, their experience of the event itself and any follow-up afterwards. These elements, all of which are vital, have been developed in each scheme as the result of a long period of training and preparation by the facilitators or mediators, together with, for those trying to do it in a criminal justice context, a very long process of negotiation with criminal justice agencies and courts. The shaping of the scheme and thereby the restorative justice event are really important.

Having been wading through the restorative justice literature recently, I am amazed at how rarely schemes and authors bother to describe in detail what they actually do and how this has been shaped by the context in which the scheme has developed. Barton (2003), in his recent comparison of criminal justice conferencing in Australia and New Zealand, has said much the same. The contexts and constraints of criminal justice, of the different stages of criminal justice, of community mediation, of mediation between housing authorities and tenants, or of school mediation - to take just a few examples of where restorative justice has been used - are not the same. Hence the expectations of victims, offenders, their supporters and any practitioners involved will not be the same.

To take one very simple example, in restorative justice in the context of criminal justice, as all three of our schemes were operating, the roles of victim and offender come pre-defined. It is not a generic dispute whose history is entirely up for grabs in the conference or mediation. Indeed, all our schemes expected offenders not only to have already admitted their guilt, but to acknowledge the responsibility for the offence and for it having effects on victims at appropriate points in the conference or mediation. Victims and their supporters expected their role to be respected. The history of the offence itself and the events leading to it might be far more complex and extend further back in time than the rather sanitised and highly time-sliced

version the criminal justice system can typically cope with (see Shapland 1981 for similar problems relating to mitigation), but key roles had been set well prior to the restorative justice process.

So context, process and scheme development are important. So, we have needed to put a lot of effort into process evaluation - meaning what happens to schemes, how things change, what decisions are taken, what happens in terms of what the restorative justice events delivered are. There are several elements to this.

(a) We have worked with schemes to create data bases of the operation of the schemes so that schemes and the evaluation can use them.

We would like to stress that creating and maintaining such databases has been a difficult task for all our schemes. Schemes typically set themselves up without sufficient administrative personnel to keep accurate and up-to-date records and then struggled as caseloads mounted. Similarly, statutory criminal justice agencies are pretty awful in terms of their ability to produce, rapidly, financial spend figures on the scheme as a project. What we must also stress, however, is that this necessity and strict regime is not something dreamed up by nasty evaluators or just required for the dreaded research.

If restorative justice is working within criminal justice, it is a fundamental human rights requirement that a scheme can say which cases it is working with, what it has done on them, and what agreements have been made with victims and offenders. It may not be palatable to all restorative justice workers - but if the restorative justice scheme is working within criminal justice it takes on the burdens and responsibilities of the state - and it has to be similarly accountable to the individuals with whom it deals. Similarly, good management requires that cases are kept up to date, constantly monitored, closed off when they are finished, participants informed of where things are at, and the scheme knows whether it is within budget.

(b) But raw figures from databases are pretty useless in themselves. So we have been talking to those involved with the schemes from very early on in the evaluation, to follow through the decisions they have needed to take and the way in which the case flow has developed - to document what's been happening and why.

(c) We did one series of more formal interviews with both scheme personnel and key agencies with which they are in contact, in summer 2002, after about a year, focusing on how they had been set up and were developing and what the start-up costs were. We have nearly completed a second set of these formal interviews, again with both scheme personnel and relevant agency staff, to look at what happened when schemes were able to work in a more routinised way, and at what happens when project funding comes to an end.

(d) And, to ensure that we do have agencies' reactions etc, we have been attending steering group meetings, training sessions, workers' meetings etc.

Collectively resolving

The second key ingredient from Marshall's definition: the parties *collectively resolve* how to deal with the aftermath of the offence and its implications for the future. So

how do they do that? Where schemes are using direct meetings between victim and offender or conferences, we have been observing such meetings and have developed a substantial observation schedule, very much helped by work previously done by the evaluations of the RISE experiments in Canberra (see, for example, Strang et al. 1999), the work of Kathleen Daly in South Australia (Daly 1998; 2001), and the evaluation in England and Wales by Miers et al (2001).

We have observed some 65 conferences out of around 204 held for JRC in their initial start-up phase whilst they were developing their final randomised controlled trials and some 214 conferences out of 325 held in the final randomisation phase, making a total of 279 conferences observed (which is an awful lot!). Where the restorative justice has been indirect or shuttle mediation, as in much of the work of REMEDI and CONNECT, one can't observe without being impossibly intrusive (i.e. shadowing all mediators all the time). So here we have to rely on records of meetings.

Parties' views

The third key ingredient: it is *parties with a stake in a specific offence* who will collectively resolve. The implication of the importance of how restorative justice is done - its process - is that we must look at parties' own views about the whole of their experiences with restorative justice. It is not enough to look at indicator outcomes, whether that be reconviction rates, or whether outcome agreements are made, or whether apologies are written and received. Evaluation of restorative justice means that victims' and offenders' views must be sought and they be given a real opportunity to comment and say what they thought about the preparation, about their expectations, about the restorative justice process, about the outcome, about its effects on their lives, and about its effects on the criminal justice process. But of course, only if people want to talk to us.

For CONNECT and REMEDI, and during Phase 1 for JRC, we have drawn up pre-mediation or pre-conferencing interview schedules or questionnaires for victims and offenders, in consultation with the schemes, looking at the information people have received about the scheme, their expectations of the process and their reasons for getting involved.

We have also asked all participating offenders and victims in the main phases of the schemes if we can talk to them after the restorative justice, to see what people's expectations, views and experiences were with restorative justice interventions and criminal justice processes. We shall also be seeking to interview a number of victims and offenders from the control groups, who have only experienced criminal justice. Obviously, these interviews are still ongoing, but hundreds have already been finished.

Outcomes

And finally, the fourth key ingredient is that restorative justice is future-oriented: parties collectively resolve how to deal with the aftermath of the offence and its *implications for the future*. So we have to look at outcomes. Because this is in the context of criminal justice, some of these are criminal justice outcomes. What sentence (if relevant) did offenders obtain? Is that different from control groups? Are both different from the general picture at that court, or nationally? (they could be,

because sentencers know that these cases are being considered for restorative justice and there is now some Court of Appeal guidance that undertaking restorative justice can be seen as mitigating).

What about reconviction? Does restorative justice, in the context of criminal justice, reduce the frequency of reconviction, or its severity? Obviously, we have to have a control group to see whether there are differences in reconviction. For JRC, that control group is created automatically for us by the process of random allocation we shall describe. For CONNECT, we have individually matched each mediation case with another on age band, offence type and gender from the same petty sessional division. So, in our evaluation, we need to look at offending careers and at what happens after restorative justice.

We also need to look at what is in outcome agreements from conferences, or from mediation, and at whether any aspects have been problematic, and whether the elements in the outcome agreements have been achieved.

So I need to emphasise that evaluation of restorative justice is not the simple 'relate outputs to inputs', OXO model, or 'develop a basket of indicators', that other evaluations of other initiatives may be able to adopt. Outcomes are very important. But, since process is key, people's perceptions and the mechanisms by which things happen are also key.

The Schemes

Having looked at the main elements of the evaluation, we should turn to the schemes themselves. First, a very brief description of the three schemes. All the schemes look carefully at referred cases for eligibility, with important issues being whether the offence is suitable (domestic violence cases between partners, for example, are not included), safety issues for participants and facilitators/mediators, and mental health issues. So, taking the schemes in alphabetical order:

CONNECT

CONNECT is working with two magistrates' courts in inner London, taking cases involving adult offenders between conviction and sentence, after sentence, or if sentence is deferred. CONNECT offers a wide range of mediation and restorative justice services, from indirect mediation to conferencing, over a wide range of offences involving personal victims.

Most of CONNECT's cases were acquired prior to sentence, from requests for pre-sentence reports from the magistrates, which were all acquired by and examined by CONNECT - though a few cases, particularly later on, arose from victims in serious cases telling the Probation Service Victim Liaison Unit that they would like contact with the offender.

Every case taken on as potentially suitable was allocated to a particular worker (all CONNECT's workers were paid), who would in the court-based cases first contact the offender, going to see them personally in prison or in the community, to find out whether they would be interested in contact with the victim. CONNECT might well also contact the offender's probation officer. In seeing whether the case should

proceed further, the attitude of the offender towards the offence was important, to see whether the offender was likely to express remorse for the offence or apologise to the victim. If not, the case would be taken no further. CONNECT offered both direct meetings between offender and victim (direct mediation) or conferences (with supporters present) but it also offered indirect or shuttle mediation, if either offender or victim did not want to meet personally. After seeing the offender, and if the offender did want contact with the victim, the CONNECT worker would see the victim personally and see whether the victim wanted to meet the offender or information could be passed back. If so, they would contact the offender again.

Most of CONNECT restorative justice was indirect mediation, with some cases involving direct mediation - a meeting. In indirect mediation, information is passed between offender and victim, typically, from the offender's side, how the offence came about, whether the victim was targeted, apologies, and from the victim's side, what effects the offence has caused for the victim and others. In all these cases, CONNECT was working to court dates for sentence. They always wrote a report to the court, setting out what had happened and including any victim wishes for compensation, where relevant. They also saw it as their task to inform the victim of the results at court and whatever had been said about the offender and the victim. Since the offender was in court when sentence was passed, they did not necessarily contact the offender again afterwards.

In direct mediation, or conferencing, it is easy to say whether or not the elements for restorative justice have occurred - i.e. whether the parties with a stake in the particular offence have collectively resolved - because the parties meet together. In indirect mediation it is much more difficult. We consider the minimum definition of whether restorative justice has occurred in indirect mediation to be that information has passed from offender to victim, and from victim to offender - i.e. both ways. It means that, effectively, there has to be a minimum of three contacts by the worker. Quite difficult to manage within the time constraints for sentencing and pre-sentence reports. This was one of the main difficulties CONNECT found, together with the difficulty of obtaining victim contact details and, particularly in London, tracking down both parties in what could be a fairly mobile population.

Justice Research Consortium

Justice Research Consortium (JRC) has been working on three sites, in London, in Northumbria and in Thames Valley. JRC undertakes conferencing, using an experimental model in which cases are randomly assigned to conferencing or to a control group. In London, JRC is working with adult offenders pre-sentence at the Crown Court. In Northumbria, JRC is working with adult offenders at the presentence phase in the magistrates' court, with young offenders given final warnings, and, though not using random assignment, with adult offenders who are cautioned. In Thames Valley, JRC is working with adult offenders suggested for or given community sentences and with prisoners near release from prison. JRC is dealing with a variety of offences at different sites, with an emphasis on assault, robbery and personal theft offences. Because this is a random assignment experiment focusing on conferencing and direct meetings between victim and offender, conferencing has been the only restorative justice option open to JRC participants.

The procedure in all cases is that, after assessment for suitability and risk, cases are allocated to a particular facilitator. Facilitators in London and Northumbria are police officers, in Thames Valley probation officers, prison officers, victim support people or community mediators. All are paid staff. The facilitator will first approach the offender personally, normally in a face to face meeting, to see whether the offender would be prepared to attend a conference with the victim. There is a video, explaining the conference and the process, which has been shown, where possible to the offender and the victim. Working out which supporters, primarily family members, but also others important to the offender, should and could attend, is also important. If the offender agrees to a possible conference, the victim is then approached and asked similar questions. Again, which supporters could be present is ascertained. The facilitator will try to see or talk to all offender and victim supporters. If the victim agrees to a possible conference, the case then proceeds to randomisation - either to the conference group, at which point a date and time are arranged, or to the control group, when no further restorative activity will be undertaken by JRC.

The conference itself has been described in other sessions in the conference, but could be described as a standard format. This format was developed by and the facilitators trained by Transformative Justice Australia, and it is intended it should be uniformly delivered in each conference in every site. It uses three stages: first, the offender is asked what happened and then who has been affected by the offence and in what way. Secondly, the victim and then both victim and offender supporters individually are asked to comment on what the effects have been. The offender is then asked whether they have anything they would like to say (whereupon an apology is usually offered). Thirdly, people are asked to turn to a consideration of what could now happen to resolve the problem. Facilitators are trained to have minimal input themselves, introducing each stage, but then using non-directional prompts to encourage individuals to talk if there is complete silence to an uncomfortable extent. At the end of the third stage, participants agree a conference outcome agreement, which is signed by all participants. Refreshments - an informal and essential final part of the conference - are provided whenever possible at the end.

JRC staff emphasise the need for all relevant parties to be present at the conference and the importance of encouraging everyone to participate, and no one to be too dominant. Hence the *process* of finding out what the offence means and its effects on all is important. Apologies by the offender are common and verbally emotional statements are certainly not discouraged. The third, outcome agreement stage essentially takes a problem-solving mode, often focusing on the offender's problems seen as relevant to stopping him or her offending.

There is follow-up by telephone or questionnaire for the vast majority of JRC conference cases a few days afterwards, primarily as a safety measure to ensure that people are OK, there has been no intimidation etc. There is also follow-up of conference outcome agreements, but there is unlikely to be contact after criminal justice outcomes for victims.

REMEDI

REMEDI provides mediation services, both direct and indirect mediation, in South Yorkshire, with several offices spread over the whole county. REMEDI has been in existence for many years prior to the start of the Home Office funding, unlike the

other two schemes. REMEDI is working with both adult and youth offenders at several different stages of criminal justice, with an emphasis on adults and youths given community sentences, youths given final warnings, and adults in prison. REMEDI works with a wide range of offences, including both violence and property offences.

REMEDI obtains its referrals from a very wide range of sources and a correspondingly wide range of criminal justice stages. Initially, it was thought that referrals for victim awareness sessions by probation as part of community sentences would lead on to a significant number of cases for mediation, but this has not proved to be so for adults. However, the equivalent for young people as part of youth justice orders has proved much more fertile ground in one office, where mediation is very much encouraged by the YOT. In other YOTs, where restorative justice is less part of the culture, there has been much less take-up. This indicates the extent of local differences and the effect of local criminal justice agencies - one of the main findings of this study.

On the adult side, more recent referral sources have been direct referrals from prisoners themselves as part of resettlement or release processes, as well as victim-led referrals stemming primarily from the work of the Probation Victim Unit (in a similar fashion to London referrals to CONNECT). Over the last few years, REMEDI has been changing from a primarily mediation service looking to undertake victim awareness work to increase mediation cases, to a rather more generic service seeing victim awareness and, indeed, victim support to victims at referral panels, as work in their own right. There are now a considerable number of different funding streams, which are encouraging conflict resolution in schools, community mediation, and mediation between separated partners (family mediation), as well as criminal justice mediation and victim awareness. Overall, the number of mediation cases taken on has continued to rise over the period, but requires continuous effort on sourcing finance, relations with other agencies and publicity.

For mediation cases, specifically, after initial assessment of cases for suitability and risk, cases are assigned by a REMEDI coordinator for that office to a pair of mediators. REMEDI uses primarily trained volunteer mediators, but has been developing a greater range of employed staff as mediators over the three year period. For offender referrals, the mediators visit the offender first in person, to ascertain his or her continuing willingness for direct or indirect mediation, and then if there is a positive response, try to contact the victim. Obtaining victim contact details has been a continuing problem. It has to be done through the police and, hence, the victim contact person at the police has had the major job of telling victims about what is obviously often a new idea to them and persuading them to allow their details to be given to REMEDI. The training and nature of this victim contact person is hence crucial. If contact details are given, then the mediators will contact the victim, see him or her personally and proceed down the line of indirect or direct mediation (mostly indirect mediation) as I have described above. REMEDI work, because it is generally done during an offender's sentence or diversion work, is not so time-bound as much of that at CONNECT or JRC, which has to meet court deadlines.

So what was easy and what has been difficult for the schemes running restorative justice within the ambit of the criminal justice system in England and Wales?

One of the questions we have asked all the scheme personnel and their linked agencies in our interviews is what has been easier than they expected and what has been particularly difficult. The answers have been pretty uniform between the three schemes - so uniform that I think that they are of general importance in the development of restorative justice in England and Wales.

What has been easier than expected? The answer has been twofold -

- the pleasure of working with committed teams of restorative justice facilitators or mediators and of resolving things and taking things forward together
- and actually doing the restorative justice itself - the mediation or the conferencing.

So what has happened during the restorative justice process itself? We are still engaged in doing the analysis of the restorative justice events we have observed, so these can only be preliminary observations.

Restorative justice means bringing victim and offender together, either at a meeting (or conference) or engaging them through passing information between one and the other. In this climate of shock horror headlines in the media, many of which focus on crime, and of Big Brother like reality TV shows, I'm not sure what people's expectations would be of that process. Punch-ups? Haranguing? Snide remarks like on Big Brother?

No, that doesn't happen. There has not been a single punch-up that we have observed. Very occasionally someone has, in the heat of the moment, made a threat, but no one has hit anyone - though a few have patted each other on the back, shaken hands or even hugged each other. The restorative justice conferences and direct mediations we have witnessed have been, in the vast majority, constructive, problem-solving events. Yes, conferences and direct meetings produce emotion. Victims suffer emotionally from crime. They will speak emotionally about the effects of crime, particularly violent crime, on them. Offenders' families will describe their worries and their despair at what their children or partners have done. Offenders will describe what they don't like about themselves and their drug and alcohol abuse problems. And much of that may be done emotionally - even by the traditionally stiff-upper-lipped English. Even in the rather unlikely settings of prisons and police stations where many conferences have been held. But extremely rarely aggression or threats and certainly not violence. That is a major achievement of the facilitators and mediators who have prepared the participants for the meeting or conference.

It's also a major achievement for the participants themselves. Restorative justice is still a strange concept for people invited to take part. It means that both offenders and victims have to consider what they will say about what happened and its effects, as well as, for the offender, how it happened and why. That is a difficult, introspective process. For conferencing, it may also mean saying such things, maybe for the first time, to those close to you.

But then the conference poses a new challenge to participants. It requires that people turn to think what now should happen. For offenders, it's an opportunity to apologise and to suggest how they would like to see their future or sort out the difficulties they perceive they have.

When victims are asked this, it's obviously a challenge - because we notice often a slight pause at this point. They tend to turn to what could be done to prevent the offender offending again - not in terms of locking him or her up for ever, but in terms of what is lying behind the offending. Can the offender tackle the drugs or alcohol problem, or conflict with parents (for young people), or lack of skills? Are there programmes or opportunities to do this? It illustrates one of the key elements and, we suspect, motivators for victims - to prevent re-offending. People do clearly find this part of the conference hard - they're not used to being asked about such things - or even being allowed to talk about what is normally the province of professionals and sentencers. But they will do their best. And their best is often very perceptive - if only the criminal justice system had the availability of such programmes.

In JRC conferences, offender supporters are also asked what should happen next. Here too there is some hesitation, possibly because they are not sure they are allowed a voice, possibly because some may not have been in much recent contact with the offender, particularly if the offender has been in prison. But again they rally, typically. And, when the outcome agreement is signed, offender supporters are often asked whether they will take responsibility for overseeing elements of that agreement. They seldom demur. I don't know whether one should use the term empowerment - but it is certainly giving families more responsibility than is normal in a criminal justice system.

However, this is, for most conferences, family responsibility - the schemes we have observed have not, in most cases, moved out to include community agencies and community members. The forms of restorative justice we have been observing have not brought in the wider community, except in some rare conferences, some here in Northumbria, where the overall dispute was wider than just an offender and individual victims - it had spilled over to involve many people in the locality. These, quite rare, events were some of the larger conferences we have observed, with the number of participants into double figures, and could more properly be characterised as forms of community mediation arising from disputes which had become criminal matters, rather than restorative justice being within the normal shell of criminal justice.

In general, the restorative justice schemes we have observed must be characterised as having very small casts - the offender, the victim and their supporters. We think this is characteristic of the ways in which victimisation is experienced in England and indeed of the ways in which victim support is primarily offered by families, close friends or work colleagues, or by volunteers from the wider community (such as from Victim Support), rather than by the community, whatever that may be, acting together. The pattern of support, for both offender and victim, is a star pattern radiating out in close relationships from those individuals to their families and close friends, rather than being a whole community affair. Similarly, offenders have sometimes been reintegrated into their family through the medium of the mediation or conferencing process, but we have not seen many examples which could be characterised as reintegration into a wider community. But maybe that is the role of

the criminal justice sentence or decision which may follow on after the restorative justice element?

I have talked about victims wanting to reduce the offender's likelihood of reoffending. But isn't this rather strange in what appears to be quite a punitive society in England at the moment? Don't victims rather want something for themselves? In fact, what we are finding, provisionally, in the evaluation of these schemes mirrors research on direct victim views in relation to criminal justice in past research (see for example, Shapland et al. 1985; Hough and Roberts 1998). Yes, victims do want something for themselves. But what they want is acknowledgement that they have been hurt by the offence - a real apology from the offender and a real wish to do differently in future. They want what we may call symbolic reparation.

Requests for direct financial compensation from offenders have been rare, though slightly more common at CONNECT, who were working primarily with offenders at the sentencing phase at the magistrates' court. Requests for direct reparation - work by offenders for victims or to repair harm directly have also been rare. What victims want is for offenders to acknowledge the harm they have caused - and to change. What of course we do not yet know is whether reconviction rates over the longer term show that this change has occurred. That will have to wait, I'm afraid, for a time yet, until the end of 2006, when we can produce final reconviction rates.

What is difficult: interaction between criminal justice and restorative justice

If all of this has been easier than people expected, what has been harder? The answers all revolve around the criminal justice system. All three schemes have had real difficulty elbowing a place for themselves within criminal justice and achieving a reasonable case flow. All three still have difficulties, even after achieving so much restorative justice work, in finding ways and funding to retain their facilitators' and mediators' skills in order to preserve this legacy for the future in relation to criminal justice and the potential future development of restorative justice.

Going back to the start of the schemes, what happens when someone tries to start up restorative justice within a criminal justice framework in a particular area of the country? There are three key implications of doing restorative justice within criminal justice. The first is that the cases for restorative justice need to come out of the criminal justice process itself, rather than, normally, from self-referrals, hotlines, housing agencies, schools or other institutions. It's the problem of referrals and, specifically, trying to ensure that the right cases and all of the right cases, are acquired from a criminal justice agency. And not just referrals of offenders. All our schemes, in one way or another, have had some difficulties in obtaining victim contact details. Essentially, it is the police who hold such details, so it will involve police officer time to access such details and provide them to the scheme, if necessary consulting the victim first. But assisting restorative justice schemes is not currently a major priority of the police service. Acquiring that personnel resource can be difficult to negotiate and very dependent upon the particular people in post, which means that it is fragile and susceptible to being disrupted if people move.

The second implication is that the case may have been referred in order to aid in a key criminal justice decision (such as sentence). Where there are direct consequences, as we've seen, the restorative justice process has been normally constrained and time

bounded by the needs of criminal justice. At least for these schemes, criminal justice has been the dominant partner. And, it tends to be a rather inflexible friend.

The third implication, we think, is that restorative justice is needing to operate within a framework of procedures, precautions and values which have primarily been developed for criminal justice. So, for example, working within a criminal justice setting, defence lawyers are not an optional element, to be held at arms' length. They must be kept informed, but in fact often become really helpful recruitment tools. Equally, the suitability of cases for restorative justice has to be considered with safety (of the participants and the facilitators - and the researchers as well) very much in mind. A third example is that a conference can be a very emotional experience and so offenders in prison - and also victims - may need people to talk to after a conference. A fourth is that it is important to ensure that statements made in the context of a restorative justice process, often very much in the heat of the moment, are not subsequently picked up and used as evidence in a conventional trial.

Achieving case flow

In order to acquire referrals or other means of obtaining case flow, restorative justice schemes have needed to develop procedures and practices which allow them to exist alongside criminal justice. We would venture to argue that the culture and nature of criminal justice in England and Wales is currently one in which it is extremely difficult for any new initiative, whatever it be, to set itself up and be operative as a substantial new player quickly (Holdaway et al. 2001; Shapland et al. 2003; Brown 2000). Achieving referrals has been the Achilles heel of almost all restorative justice schemes, apart from the semi-mandatory referral order (Davis et al. 1987; Dignan and Lowey 2000; Miers et al. 2001). Acquiring and then maintaining referrals seems to us, looking at all three schemes, to involve a number of elements:

- making sure there are enough cases there to begin with,
- getting to know all the relevant agencies,
- developing protocols with agencies to allow work to begin,
- developing and then maintaining an image as a reliable partner,
- trying to manage a place within agencies' performance measures,
- and just simply keeping noticed in the 'multiplicitous bustle' of criminal justice in England and Wales.

By the end of the first year of our evaluation, many of our schemes had effectively given up on the likelihood of many individual referrals from criminal justice agencies. Though they kept this route open for instances where individual clerks, probation officers or YOT workers saw advantages in restorative justice, they had decided they could not afford to wait on this difficult, uncertain process to obtain referrals. They moved to organise acquisition of agencies' or courts' records of forthcoming cases and to a process of *extraction*, rather than *referral*, of cases.

Hence CONNECT moved towards acquiring requests from sentencers for pre-sentence reports from probation, to propose restorative justice interventions in conjunction with sentence. JRC in London acquired the warned and dead lists of cases in the Crown Court. Northumbria JRC acquired probation pre-sentence report request lists from the magistrates' courts and looked over all cases which were to receive final warnings or cautions from the police. Thames Valley JRC works from

prison lists. REMEDI is working with referral panels and is sending out information to prisoners and to those about to be involved with rehabilitation work. All the schemes have concluded that the key is for the schemes themselves to extract relevant cases from normally available criminal justice lists.

In many ways this is very sensible, since the schemes are far more likely to be able to screen relevant cases than to train the large number of criminal justice personnel who may be referring cases as to what are relevant cases. It does, however, have two major consequences. One is that the work and burden involved in extraction and screening has passed from criminal justice to restorative justice. Much of the time, and hence funding, of the schemes is taken up in finding relevant cases, rather than in working with referred people. Secondly, it means that the only cases which the schemes can use are those contained on such lists routinely already produced by criminal justice for another purpose - and that has implications for equity and as to whether such people are the most suitable.

Being a new scheme or project is difficult. The lesson from previous evaluations, and from this one, is that it is a long, slow process to try to institute change in criminal justice and to get criminal justice personnel, whether in the police, courts or probation service, to work in a new way. It means changing the working culture. Why is culture change difficult? Partly it's because we all like to go on working in the same way we have. People try to routinise how they deal with cases, to speed the flow and to cope with workloads. If possible, people try to accommodate and adapt to change, and where necessary modify the change, rather than letting that change radically affect their working lives.

Partly, I think it is because the work of criminal justice is so complex. If we think about the work of a court clerk, a magistrate, or a YOT member, then they are confronted every day by lots of different cases, all at different stages in their criminal justice progress. Each initiative only affects a very small proportion of one practitioner's work daily. So just remembering what they should now be doing about that category of case is very difficult.

The lesson from previous evaluations is also that, if one wants change, there also have to be consequences - consequences difficult to ignore - if the change doesn't happen. So, for example, sentencing changes are all-or-nothing: sentencers can ignore new sentences by not using them, but they can't continue to use repealed sentences. They have to alter their sentencing pattern and think through how they will adjust to the new range of possibilities.

In relation to restorative justice, there have normally been no clear consequences to statutory agencies and the courts of not providing the service. It is interesting that the specific adoption of restorative justice as a heading in the inspections of Youth Offending Teams by the Joint Inspectorate - and the publication of their reports - may start to change that (for example, Joint Inspection Team 2004). Generally, however, if a sentencer decides to sentence immediately, rather than adjourn to try restorative justice, or if community reparation, rather than direct reparation, is ordered, there will be no or few consequences either for that individual sentencer, probation officer or YOT member, or for the courts, NOMs or the YOT as an agency.

Hence culture change is difficult and it is only slowly accomplished. The lesson from our evaluation I want to emphasise today is that culture change also needs constant attention. It is not something that can be confined to the beginning of an initiative. As all three of our schemes have found, it needs constant presence, reminders to new statutory agency staff, and feedback to decision makers. All of this is work, particularly for scheme heads. As one of our schemes put it,

'Developing and maintaining relationships with other agencies is time consuming. There is a constant need to source funding, inform local agencies of our work, maintain relationships with referring agencies and links with the Home Office ... [and other national agencies] in the hope that we can share learning and help to develop good practice and hopefully secure our future.'
(REMEDI report to the Home Office)

That, I think, would be the message from all the schemes even now. As we all learn from the experiences of these schemes, we also need to bear in mind that developing restorative justice, particularly developing it in other geographical areas or at new stages of criminal justice, will require the same amount of effort and elbowing of criminal justice as has been put in by all our schemes.

This is far from the end of our evaluation. We are looking forward to analysing the views of all the participants who have experienced restorative justice and criminal justice from all three schemes. We are also looking forward to finding out how, if at all, restorative justice impinges on people's lives and on offending patterns. And, hopefully, to telling you all about that then.

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2.3 British visit to Poland: October 2005

Pam Bowen (Crown Prosecution Service), Dr Jacky Smith (South Yorkshire Probation Service) and Dr Martin Wright (Restorative Justice Consortium, Mediation UK and European Forum for Restorative Justice) visited Warsaw on 17-23 October 2005. Dagmara Wozniakowska acted as guide and interpreter throughout, and for much of the time the group was accompanied by Professor Dobrochna Wójcik, head of the Criminological Section at the Institute of Justice, which comes under the Ministry of Justice.

The first visit, on Tuesday 18 October, was to the H. C. Kofoed Association for Social Help, Rehabilitation and Resocialization (Stowarzyszenia Pomocy Społecznej, Rehabilitacji i Resocjalizacji im. H Ch Kofoeda), in Siedlce (pronounced 'shedl-tse'), about 2 hours by train from Warsaw. We were told that this town was chosen because of its very progressive policies and practices. The Chair of the Association, Pawel Nasilowski, is the deputy director of the prison. He introduced us to a group of judges, prosecutors, police, probation officers and social workers, and they explained the local system and the work of his association for people in difficulties, including ex-offenders. We also met a prisoner, who said he was glad to be in a prison, which,

unlike others, enabled him to do something for the community, and he felt that people in the community appreciated the prisoners' efforts. We met Mr Miroslaw Symanowicz, the president of Siedlce, who told us about the town and his plans for it.

On 19 October we met General Marek Szostek, deputy director general of the Polish prison service, and Colonel Dr Jerzy Czolgoszewski, director of the director general's bureau.. After clearing up some confusion about whether they were acquainted with Harry Fletcher of NAPO or Norman Stanley Fletcher of Slade Prison, they explained the structure of the Polish prison service and some of its programmes.

We were then taken to Mokotów prison, where the governor, Mr Bogdan Cuda, gave more detailed information about prison regimes.

At a meeting with mediators and probation officers at the Polish Centre for Mediation we made presentations about prosecution, victim awareness work and aspects of restorative justice, and heard about their work.

A conference for about 100 people was held at the Ministry of Justice on 20 October. It was opened by Mr Andrzej Kalwas, minister of justice until the elections which took place shortly after our visit. He spoke encouragingly about restorative justice, and stressed the importance of training for mediators. Other speakers included Philip Barclay, of the British Embassy, Dobrochna Wójcik, Janina Waluk, chair of the Polish Centre for Mediation, Jurek Ksiazek, vice-chair, Alina Prusinowska-Marek, a probation officer specializing in families and children, two prosecutors, Eugeniusz Wildner and Andrzej Piaseczny, and the three English visitors. The Polish translation of Martin Wright's book *Restoring respect for justice (Przywracając szacunek sprawiedliwosci)*, published with help from the British Embassy was launched.