

Consultation on the Development of an RJ Toolkit for  
survivors of historical institutional abuse

2011<sup>1</sup>

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## **Summary**

In May 2010 the Scottish Government launched Time to be Heard (TTBH) a pilot forum to test out one model for assisting survivors who were abused in care as children and others who spent time in residential care. TTBH provides the opportunity for adult survivors of in-care historical abuse and other former residents of Quarriers<sup>2</sup> to be heard and listened to by an independent Chair and Commissioner.

To complement the work of the TTBH it was felt by Scottish Ministers that there was a need to look at the potential of restorative justice (RJ) in working with survivors and the institution involved.

SACRO, Derek Brooks (Relational Approaches) and Jenny Johnstone were appointed to look at the potential for restorative justice within this context.

The project was broken down into several stages, covering background information, preparation of a toolkit and a pilot to test out the toolkit. Stages 1 and 2 (which form the subject of this report) involved a literature review and a consultation process which included interviews with key stakeholders. The focus was on the pilot and how SACRO could effectively facilitate a restorative justice approach through the development of a toolkit.

The consultation process highlighted the need for a transparent and appropriate restorative justice approach which would have due regard to the unique and very serious and distressing nature of these cases. In developing an effective toolkit to meet the needs of those involved the facilitators had to be fully aware of the wide ranging responses from people who had been harmed.

The recommendations were developed from the responses of advisors in the consultation process. The advisors were drawn from a wide range of stakeholders, including survivors, institutions, policy makers, and support and counselling service providers.

The research for this report identified various different models of restorative justice that are recognised within Scotland. It was clear from the consultation that a number of these different models were not appropriate for this particular context.

The complexity of the issues involved requires a clear understanding of the process, presented in a way that states what is expected of everyone involved in

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<sup>2</sup> Magnusson, A. (2006) *The Quarriers Story*, Birlinn Press, details at <http://www.quarriers.org.uk/en/HeritageAndEducation/History.aspx>

the process and what they can expect of the process itself. Managing this process is crucial and the facilitator would need to have the requisite skills to be able to identify the crucial issues, work through them with both the survivor and institutional representative and culminate in some form of meeting or contact between them. The facilitator's ability in dealing with highly complex issues and intense emotional feelings requires support and relevant training to ensure that survivors and those persons representing institutions feel confident in the process.

A crucial difference between the models identified in Scotland and the approach that is being taken in this pilot is the fact that it is not the person responsible but rather a representative of the institution responsible that will be involved in any restorative justice process.

The organisation and management of the process should be neutral. In addition if contact or meeting is deemed to be appropriate then a safe and secure environment should be found for the meeting or contact to take place. It is recognised that the process of working towards a contact or meeting between the institutional representative and the survivor may take time.

Transparency of the process was also identified as paramount in obtaining the trust and engagement of all those involved. In relation to survivors this means recognising the individual journeys that each person has made through this process and retaining a written record of those journeys.

The process also needs to recognise the value of the outcome for individuals. Suggested outcomes ranged from being 'listened to', to receiving an apology<sup>3</sup> from the institution involved, to creating a symbolic place of resolution.

The institution organising and administering the process needs to have robust risk assessment and monitoring in place to ensure the safety and wellbeing of all involved. This includes the knowledge of relevant support agencies to which individuals can be referred in the event that they feel the need for further help and support. This can be done by signposting or having an appropriate referral mechanism in place.

The pilot should be evaluated to consider the potential and effectiveness of restorative justice within this context.

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<sup>3</sup> Further exploration and independent legal advice should be sought by those administering and facilitating the process-see the Scottish Human Rights Commission Human Rights Framework on the role of an apology and the possibility of liability arising from it-  
<http://www.scottishhumanrights.com/application/resources/documents/SHRCHumanRightsFrameworkonAAAF.pdf>

## **Recommendations**

### ***Voluntariness***

Recommendation 1: ensure the consent of all parties is obtained.

### ***Managing expectations***

Recommendation 2: prepare a clear statement of what both institutions and survivors want in each individual case. Have mechanisms in place to manage expectations.

Recommendation 3: prepare a general statement to the effect that the RJ process is not an alternative to civil or criminal proceedings.

### ***Aftermath and follow through***

Recommendation 4: design an appropriate follow-up procedure ensuring the safety and welfare of participants and monitor the implementation of any action plan by those facilitating the process to ensure that action points, if any, have been followed through.

### ***Creating an environment for an open dialogue***

Recommendation 5: ensure that preparation meetings and the whole process clearly identify that the institution and the representative of that institution is in attendance and not the person responsible.

### ***Involvement and Support in the Process***

Recommendation 6: present face to face contact between parties as an option.

Recommendation 7: do not use a surrogate offender in the pilot model.

### ***The Kinds of Support that should be Available for Parties***

Recommendation 8: provide an independent facilitator to facilitate the process.

Recommendation 9: ensure support provision is available for the person harmed (counsellors etc.)

Recommendation 10: ensure support for the person representing the institution (internal or external) to avoid secondary or vicarious trauma.

### ***Organising the Process***

Recommendation 11: develop an administrative team or fully trained Advisory Board working with the RJ facilitators. This could also involve survivors not involved in the RJ Process as consultants and advisors.

### ***Referral Mechanisms***

Recommendation 12: design some form of clear guidelines and preparatory documentation.

Recommendation 13: establish a panel of facilitators (balanced in terms of gender and age etc.) who are neutral or impartial – a facilitator trained in traumatic events.

Recommendation 14: train and prepare facilitators to work specifically with the person harmed and the institution responsible with a co-facilitator in the background who can help.

Recommendation 15: record and retain, in the interests of transparency, integrity and meaning, all documentation on the individual journeys of the survivors through the process. Data protection requirements need to be met in full.

### ***Forms and Length of Contact between the Survivor and the Institution***

Recommendation 16: develop pathways to meet the individual needs of the person harmed. This might mean a short term or long term pathway.

Recommendation 17: the process in all cases should be no longer than 12 months.

Recommendation 18: have appropriate criteria to select the appropriate form of RJ process for the individuals involved.

### ***Where contact should take place***

Recommendation 19: hold the RJ process in a safe environment that is neutral and has no ties to 'authority'.

Recommendation 20: create an action plan or outcome agreement between the participants. Recognise that the meeting or shuttle dialogue/conversation may be enough in itself and the process needs to be flexible in this context. The Action Plan needs to be recorded.

### ***Privacy and Confidentiality***

Recommendation 21: draft a protocol/code of practice drawing on independent legal advice documenting what would happen in the event of allegations about serious crimes or child protection concerns.

Recommendation 22: apply a legal disclaimer and obtain consent forms signed by the parties which state clearly:

- the purpose of the meeting;
- the fact that preparation is crucial to ensure that nothing new will emerge in a face to face meeting;
- responsibility to safeguard both sides in the meeting.

Recommendation 23: apply data protection guidance in the storage of information electronically and keeping of any paper records. Protocols need to be drafted for the sharing of any information between parties in order to facilitate the process.

### ***Concerns for Institutions***

Recommendation 24: obtain independent legal advice on the role of an apology and the possibility of liability arising from it. This needs to be clarified in light of the Scottish Human Rights Commission Framework  
<http://www.scottishhumanrights.com/application/resources/documents/SHRCHumanRightsFrameworkonAAF.pdf> .

### ***Self Esteem and Self Worth: a Reduction in Anger***

Recommendation 25: create an open and transparent process which provides an opportunities for survivors to have a more direct and 'human to human' contact with the institution. Survivors must appreciate the fact that somebody close to the institution in which they were homed has listened to their experiences and taken responsibility for the institution's role in the harm survivors experienced. This would not be an apology by mass statement but rather through direct human contact on an individual level

## **Introduction**

In May 2010 the Scottish Government launched Time to be Heard (TTBH), a pilot forum to test out one model for assisting survivors who were abused in care as children and others who spent time in residential care. TTBH provides the opportunity for adult survivors of in-care historical abuse and other former residents of Quarriers<sup>4</sup> to be heard and listened to by an independent Chair and Commissioner.

To complement the work of the TTBH it was felt by Scottish Ministers that there was a need to look at the potential of restorative justice (RJ) in working with survivors and the institution involved.

SACRO, Derek Brooks (Relational Approaches) and Jenny Johnstone were appointed to look at the potential for restorative justice within this context.

The project was broken down into several stages, covering background information, preparation of a Toolkit and a pilot to test out the Toolkit. Stages 1 and 2 (which form the subject of this report) involved a literature review and a consultation process which included interviews with key stakeholders.

A literature review was undertaken to encompass the following:

- Review literature on the development of Accountability Forums and other existing initiatives dealing with restorative practice in institutional abuse settings; comparative literature
- Review consultations that have taken place
- Identify and review Toolkits that have already been developed for the purpose of restorative practice and note whether they have been amended, modified or used to deal with sensitive cases of institutional and historical abuse
- Identify and review Toolkits that have already been developed for the purpose of restorative practice and note whether they have been evaluated (including methods of evaluation that are particularly applicable to or effective for institutional abuse).

The literature review was designed to inform progress on each of the steps and the development and content of the Toolkit.

The first part of this Report (pages 11 to 18) presents a brief summary of the findings and models of restorative justice from a literature review. The second part (pages 19 to 21) considers existing protocols and programmes in restorative justice to see what can be learned from them. The third part (22 to 43) deals with

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<sup>4</sup> Magnusson, A at footnote 1 above

the results of the consultation. The conclusions and recommendations are presented at pages 44 to 47.

## **1. Summary of Findings from the Literature Review**

### **1.1 Use of Terms and Models of RJ**

There is a broad consensus in Scotland that ‘restorative justice’ refers to **processes that seek to address or repair harm.**

There are many definitions of restorative justice. Marshall’s (1999) definition is a commonly held and internationally recognised definition:

“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.”<sup>5</sup>

The use of restorative practices has grown and developed across various jurisdictions and its use and forms are varied – it has been applied within a wide variety of settings including sites of conflict within and between states, the courts, police, education, prisons, peace making and work places. One of the most often reported observations arising from the research and experience of RJ practices is that victim satisfaction does not always require financial reparation. Victims may feel satisfied because “they [the victim/person harmed] were heard”.<sup>6</sup>

However, Braithwaite argues that Marshall’s definition does not define the core values of restorative justice, Braithwaite identifies the values as being “about healing rather than hurting, moral learning, community participation and community caring, respectful dialogue, forgiveness, responsibility, apology and making amends”.<sup>7</sup> Taking this further Wachtel and McCold<sup>8</sup> have also suggested six principles of restorative practice:

1. Foster awareness;
2. Avoid scolding or lecturing;
3. Involve offenders actively;
4. Accept ambiguity;
5. Separate deed from the doer.

They suggest that every instance of wrong doing and conflict is an opportunity for learning.

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<sup>5</sup> Braithwaite J. (2002) *Restorative Justice and Responsive Regulation*, Oxford University Press.

<sup>6</sup> Strang, H. (2002) *Repair or Revenge: Victims and Restorative Justice*, Oxford University Press (paperback edition published 2004).

<sup>7</sup> Braithwaite J. (2002) *Restorative Justice and Responsive Regulation*, Oxford University Press.

<sup>8</sup> Wachtel and McCold (2001) *Restorative Justice and Civil Society*, Cambridge University Press.

In Scotland the development of RJ has brought with it a paramount requirement that every restorative justice process aims to provide a ‘safe place’ where all those involved in an incident that has caused harm can speak openly and honestly about three topics<sup>9</sup>:

<b>FACTS</b>	What happened? Who was responsible? Why did it happen?
<b>CONSEQUENCES</b>	Who was harmed? How were they affected? How do they feel now?
<b>FUTURE</b>	How can the harm be addressed or repaired? How can this behaviour be prevented?

There is a range of restorative justice processes, each of which is designed to meet the needs and wishes of participants.

These different models were explored with various stakeholders in the course of the consultation to ascertain their views about the most appropriate model for cases of historical institutional abuse. In this context we define an institution as ‘representing’ or being identified as the ‘harm causer’ since the original person responsible will not be available. This raises significant issues that were explored with those consulted.

The application of restorative justice philosophies to serious cases such as domestic abuse, sexual abuse, and historical abuse has not been an easy one. As the literature shows there have been attempts at responding to this type of case by modifying various models of restorative justice practice to deal with the complexities and unique ‘dynamics’ amongst those involved in serious crime or harm. The capabilities of the facilitators are crucial in the effectiveness of such an intervention. However such approaches have been used infrequently and therefore research evidence about their effectiveness is sparse. Talking after Severe Crime (TASC) is an example of Scotland’s attempt to consider RJ practice in cases of serious harm (this will be discussed at page 15).

A rare insight into what survivors of severe abuse may be seeking is given by Julich (2006) who presented her findings of views of justice among survivors of historical child sexual abuse and the implications for restorative justice in New Zealand. Her findings seem to suggest that the opportunity to be listened to with understanding and to be believed is very important:

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<sup>9</sup> Scottish Government (2008) *Restorative Justice guidance and protocols for practitioners working with young people and those harmed by their behaviour* at <http://www.scotland.gov.uk/Publications/2008/06/10143757/0>

...”it would be wonderful to be allowed to stand up there and say, ‘this is what you did, this is how it felt, this is what happened to me because of this, and you’re not allowed your say at the moment, this is my turn’.”<sup>10</sup>

The key dynamics that are associated with sexual abuse and domestic violence have been documented by Block and Lichti<sup>11</sup> and some of these can be usefully applied to cases of historical institutional abuse. Such abuses:

- 1) involve a power imbalance between the victim and abuser
- 2) are a reality that is frequently buried and kept a secret
- 3) are on-going crimes that are deeply ingrained in the relationship and the abusers way of thinking
- 4) require extensive intervention in order for change and healing to occur
- 5) often continue without confrontation by key institutions in society (i.e. political, legal, and religious).

The fifth dynamic is fundamental to what both the TTBH process itself and the RJ interventions associated with it are attempting to achieve. TTBH offers a form of public acknowledgement that harm was caused by institutions looking after children on behalf of the State and the RJ processes being developed alongside TTBH will include the institution as a full participant in any RJ process.

When discussing the implementation of a RJ process within this context it is important to consider the existing models that have been officially recognised in Scotland<sup>12</sup>.

## **1.2 Restorative Justice Conferences**

Restorative Justice Conferences involve two facilitators with one fully preparing all those attending to ensure that they are aware of what the process involves and what each participant’s role is. The person harmed and person responsible will attend and they are encouraged to bring support persons with them as well as those who have been affected by the behaviour/offence. Support persons can include family members, friends and/or professionals (e.g. social worker, school staff, youth worker, victim support volunteer, and so on). The facilitators will not be present at the conference. An outcome of the conference may be an Action Plan. The Action Plan sets out any reparatory tasks or steps they will take to address their behaviour. The Action Plan is agreed by all those attending.

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<sup>10</sup> Julich, Shirley (2006). *Views of Justice Among Survivors of Historical Child Sexual Abuse. Implications for Restorative Justice in New Zealand*, Theoretical Criminology. 10(1):125-138

<sup>11</sup> Block, Heather and Lichti, Chris. (n.d.). *Restorative justice with respect to domestic violence and sexual abuse*. TMs (online). Boston, MA: Unitarian Universalist Association.  
<http://www.restorativejustice.org/editions/2003/September/domesticviolence>

<sup>12</sup> The Scottish Restorative Justice Training Service (2007), An overview of restorative justice in Scotland at [http://www.restorativejusticescotland.org.uk/RJ\\_in\\_Scotland\\_1.10\\_TextOnly.doc](http://www.restorativejusticescotland.org.uk/RJ_in_Scotland_1.10_TextOnly.doc)

“Conferences are ordinarily used only where the incident has caused significant harm to an identifiable person(s) and when the involvement of family members or other support persons is seen as critical to a positive outcome.”<sup>13</sup>

### **1.3 Restorative Family Group Conferences**

Restorative Family Group Conferences differ from the Restorative Justice Conference as the two facilitators attend with the person responsible and their support persons. It may also involve any professionals who are working with the survivors or who could have some input into a plan flowing from the conference. A discussion takes place about what happened and the impact of the conduct by the person responsible. After this discussion a process which has been broken down into three phases takes place. The first phase is information sharing when the professionals state what they believe to be the underlying causes of the offending and what resources they have to support the person responsible and their family. Secondly the family are given some private family time to establish a plan to help the person responsible to desist from repeat behaviour. And finally an Action Plan is agreed and signed by the people involved.

### **1.4 Face-to-Face Meetings**

These meetings occur when the person harmed and person responsible believe that the incident can be resolved without extra support at the meeting. The meeting will be led by one or more facilitators. Again an Action Plan may be the outcome and will detail any reparatory tasks or steps to address offending behaviour.

“Face-to-Face Meetings are often used in cases where people have harmed each other as a result of conflict (e.g. a fight). In such cases, the process can be used both to resolve the underlying conflict, as well as address the harm done.”<sup>14</sup>

### **1.5 Shuttle Dialogue**

This involves a facilitator acting as a go-between for the person harmed and the person responsible. Communication can be by various methods – letters, audio or visual recordings – or by the facilitator reporting directly. This is used when the parties do not want to meet directly – due to safety implications or practicalities. Again an Action Plan may be developed as an outcome.

### **1.6 Victim Awareness**

If the person harmed does not want to communicate or again if there are practical difficulties a facilitator may meet on a one-to-one basis with the person responsible

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<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

or within a group session with other person(s) responsible. The outcome may include the person responsible taking part in some form of community reparation task or behaviour modification programme.

### **1.7 Support for Persons Harmed**

This model is currently in place for persons harmed who do not know or do not want the person responsible revealed to them or do not want to communicate with them. Whilst this has been developed for use within prison there is potential for it to be used in another context.

“The process involves a discussion between the facilitator and the person harmed, with the aim of addressing the hurt, fear and anger experienced by person harmed. The process also seeks to raise their awareness of how to protect themselves in the future, and to assess whether they require professional help in their recovery process.”<sup>15</sup>

### **1.8 Restorative Conversations**

Restorative conversations are used in institutional settings and are short discussions between the person responsible and a teacher or manager that should be undertaken very soon after the breach. The aim is for the conversation to have a learning element rather than telling someone ‘off’ or ordering them to do something. This process of self discovery in their learning can help persons responsible to reflect on how their behaviour could have impacted on a person harmed and how they might modify that behaviour in the future.

### **1.9 TASC (talking after severe crime)**

The aim of TASC is to provide those directly affected by severe violent crimes the opportunity to:

- Move toward personal healing, recovery and reconstruction.
- Attend to needs they feel were left unaddressed by the criminal justice process.
- Increase their awareness and understanding of the human consequences of the offence<sup>16</sup>.

Those who have been harmed by severe crimes are provided with an opportunity to have a structured Face-to-Face Meeting, Conference or some other form of communication with the person responsible. The meeting or communication takes place in a secure and safe environment.

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<sup>15</sup> *Ibid.*

<sup>16</sup> Kearney, N. (2005), *Talking After Severe Crime* at [http://www.cjscotland.org.uk/index.php/cjscotland/dynamic\\_page/?title=talking\\_after\\_severe\\_crime](http://www.cjscotland.org.uk/index.php/cjscotland/dynamic_page/?title=talking_after_severe_crime)

Some key components of the service that were identified when TASC was used in Scotland are pertinent to the development of an RJ process within the context of historical institutional abuse:

**PREPARATION:** preparation for working with people involved in severe crimes took at least six months and in some cases more. Preparation time was case specific. Preparation involved establishing the motivation for both parties wanting a meeting or agreeing to take part in a meeting and dealing with any factors that might hinder a positive outcome for that meeting.

“Issues common to both those hurt and those responsible that emerged during the preparation period included: guilt, shame, loss. In the early preparation phase, there were issues of trust and confidence in the process. In the middle of the preparation phase, there was a noticeable synchronicity between the parties that was exhibited in, for example, unprompted questions about each other. In the final pre meeting phase, there were last minute difficulties, such as agreeing time and venue. Immediate feedback after SACRO’s first face-to-face meeting of this type was positive: one mother said that she had found answers to questions and felt as if she had got her life back again; the person responsible said that it was the hardest thing he had ever done but that he was glad he participated.”<sup>17</sup>

**OUTCOME:** the service did not guarantee any particular outcome. So no set outcome was prescribed. This helped manage expectations as to what the process could achieve.

**DELIVERY:** the service was delivered on a national basis by trained SACRO staff and volunteers in co-operation with relevant statutory and voluntary agencies. A service advisory group ensures safe practice and procedures.

**PERSON CENTRED APPROACH:** SACRO led this initiative and developed a person-centred approach to working with people in this type of intervention.

**KNOWLEDGE:** knowledge of the effects of emotional trauma was described as ‘vital’.

**TRAINING:** Advanced training in the theory and application of mediation and restorative justice was crucial.

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<sup>17</sup> *Ibid.*

**PARTNERSHIP WORKING:** effective partnership working was seen to be an important factor in the effectiveness of the process. Those agencies included SACRO, agencies that support victims of crime and agencies working with those responsible in both the voluntary, statutory and private sectors.

The findings of the TASC initiative are very useful for developing a similar approach within the context of historical institutional abuse. Much can be learnt from the work that has already been undertaken within SACRO and Scotland.

However, the necessary resources have to be available and costs have to be met. Given the concern to enhance personal well being a model of evaluating the social cost of improving the lives of persons harmed and person(s) responsible needs to be properly developed.<sup>18</sup>

### ***1.10 Restorative Justice Circles***

Restorative Justice Circles are used in an institutional context (schools, residential units and prisons) but they can also be used to address anti-social behaviour in the community and in other contexts. They involve situations where there have been a number of people involved who have caused harm to themselves and others. The Circle allows everyone to participate and discuss what happened and should result in the group identifying how to prevent the harm happening again.

“In other words, like every other restorative practice, the circle discussion is structured by a focus on the **facts** (what happened), the **consequences** (who has been affected) and the **future** (how can we stop this from happening again).”<sup>19</sup>

### ***1.11 Restorative Warning***

Trained police officers can give Restorative Warnings to persons responsible who have committed minor first or second offences. The person responsible meets for approximately 20-30 minutes and the specially trained police facilitator should allow everyone to speak honestly and openly about the facts, consequences and the future. The person harmed does not attend but can be informed of the outcome and in some cases receive a letter of apology and/or appropriate reparation.

### ***1.12 Conclusion***

The Scottish Government overview clearly sets out the different approaches that can be taken. The appropriateness of these approaches within the context of

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<sup>18</sup> See Survivor Scotland Strategy: <http://survivorscotland.org.uk>

<sup>19</sup> The Scottish Restorative Justice Training Service (2007) *An overview of restorative justice in Scotland* at [http://www.restorativejusticescotland.org.uk/RJ\\_in\\_Scotland\\_1.10\\_TextOnly.doc](http://www.restorativejusticescotland.org.uk/RJ_in_Scotland_1.10_TextOnly.doc)

historical child abuse can be explored further. However, the research started from the premise that whilst these options needed to be acknowledged and understood it would be a case of whether these were appropriate to meet the needs of the particular group that would be using this service. It is clear that some of these approaches would not be appropriate. One clear difference presented itself at the outset since the institution rather than the person responsible would be participating in any restorative justice approach.

## **2. Developing Protocols**

### **2.1 Models and Guides**

Transformative Justice Australia developed a full procedure and practice manual guide<sup>20</sup> for the restorative justice project in Thames Valley which details the process that the facilitators go through from the initial referral process to preparatory meetings to the RJ model itself. It also includes guidance on how to ensure that the most appropriate model is chosen for the individual circumstances of each case. An appropriate procedure for safeguarding the rights of participants to confidentiality and privacy is also included in the manual so that all participants have a clear statement on confidentiality and privacy within the conference. However the guidance clearly states that confidentiality and privacy are not absolute and will need to be overridden where, for example, there are allegations of serious crimes or child protection issues raised in the course of the conference.

### **2.2 Content of Guidance**

The Thames Valley model and other national guidance<sup>21</sup> recognise that specialist training is crucial in dealing with serious and sensitive crimes.<sup>2223</sup> Recurring common themes run through the guidance about the need for:

- **Appropriate** facilitators being identified and trained – these facilitators should not be linked to any particular organisation but be people who can provide neutrality and impartiality in delivery.
- **Identification** of appropriate cases: this includes sources of referrals and the appropriate referral mechanism.
- **Locating** and preparing the individuals involved in these cases for consent interviews: this is a crucial stage to ensure the voluntariness of their involvement in the process. To ensure that secondary victimisation does not occur many models have sought to secure the consent for participation from the person responsible first. Once consent has been obtained from the person responsible then the person harmed can be approached.

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<sup>20</sup> Transformative Justice Australia (TJA), (2002) *Transformative Justice Australia Conferencing Facilitators Manual: How to Run a TJA Conference*, TJA.

<sup>21</sup> Scottish Government, (2008) *Restorative Justice Services for children and young people and those harmed by their behaviour*, at <http://www.scotland.gov.uk/Resource/Doc/226988/0061357.pdf> and Scottish Government, (2007) *Best Practice Guidance for Restorative Justice Practitioners and their Case Supervisors and Line Managers* at <http://www.restorativejusticescotland.org.uk/BPGScotland.pdf>

<sup>22</sup> *Final Report JAI/2003/AGIS/129*, (2004) *Exchange of Training Models for Mediation Practitioners* European Forum for Victim-Offender Mediation and Restorative Justice.

<sup>23</sup> *Best Practice Guidance for Restorative Practitioners* (2004) Home Office, December.

- **Preparing** for the meeting with the person harmed. It is at this point that the expectations of the person harmed should be clearly managed and the most appropriate model identified.
- **Informing** the person responsible of the outcome of the meeting with the person harmed.
- This will then give rise to an RJ process preparation meeting with the person harmed and an RJ process **preparation meeting** with the person responsible.
  - The preparation meetings will identify any support that is required for either party – family, friends and/or professionals that can support. At this stage it is important to be aware that the families of some persons harmed may not be aware of what has occurred and the person harmed may not want their families to know or be involved in what they are going through. These are issues that can be explored throughout the preparation. Support that is already being given to the person harmed may be identified at initial contact with them to ensure that they are at the ‘right place’.
- **Consultation** with a co-facilitator to re-visit safeguarding principles of the process and ensure that they are being met, that risk assessments have been completed and all risks identified with action plans detailing how risks will be addressed. Any specific or special considerations should be identified as early as possible so that plans to avoid adverse consequences can be made in advance of new issues being introduced at an RJ meeting or shuttle dialogue.
- Arranging the **venue** that is appropriate for the person harmed. This should include ensuring it is a safe and secure environment, a neutral environment and with a comprehensive risk assessment being undertaken
- The **RJ conference/shuttle dialogue/meeting occurs**. A document setting out how things will move forward will be devised which may include recognising the needs of the person harmed as well as detailing any future action the person responsible/institution responsible will be taking. An outcome could just be the giving and acceptance of an apology.
- Immediately after the conference/exchange of information there should be some form of **follow up** to ensure there are no adverse effects on either party arising from the meeting/dialogue and that they are receiving the support they need.
- Any agreement resulting from the Restorative Justice intervention should be recorded using standard forms and signatures should be obtained.

The consultation considered these themes and especially in this context which involved serious cases with very complex issues. The development of the Toolkit follows these national strategic guidelines using them as a baseline to inform the appropriate development of protocols that could be tested in the pilot.

### **3. Consultation Process**

The format for the Consultation drew upon existing consultations and literature in this area, for example, the consultation undertaken by Survivor Scotland<sup>24</sup>. The consultation process involved speaking with restorative justice practitioners, with adult survivors of childhood abuse in care, support providers and the institutions involved in caring for children. A semi structured interview schedule was drafted (Appendix 1) and interviews were carried out face to face and by telephone. The interviews were broken down into four themes covering:

- 1) The preparation and development of the Toolkit; referral mechanisms, quality assurance checks and risk assessments
- 2) The skills required for appropriate delivery of restorative justice in this context and the pros and cons of an institutional led approach; training needs of facilitators
- 3) The issues and concerns surrounding implementation;
- 4) the follow through and outcomes of restorative practice in this area including whether any forms of therapeutic support or counselling need to be identified for survivors who are offered this RJ opportunity

#### **3.1 Research Method**

##### **3.1.1 Selection of participants**

A purposive sampling method was used to identify key participants for the consultation process (see Appendix 1 for the questions asked). A total of 16 people were involved in the consultation process and were drawn from the following: RJ practitioners, therapeutic support service workers/counsellors, adult survivors of abuse of children in care, TTBH Pilot Forum staff, TTBH Advisory Group members, for the TTBH Forum, Scottish Human Rights Commission personnel. (These consultees are referred to as 'advisors' in the analysis of their views given below.) Due to the short timescale for the project people who might have valuable insights into how the RJ Toolkit could be developed were identified initially with help from the Advisory Group, Sacro, and SHRC. These initial contacts then suggested other people who they considered could usefully assist in giving views on the use of RJ in the context of institutional abuse<sup>25</sup>. There are of course limitations in the sampling method as we cannot say whether these views are shared by survivors of abuse within residential childcare generally. However the consultation did undoubtedly reflect the views of a robust sample of suitably qualified RJ practitioners in Scotland, the opinions of those directly involved in TTBH and the views of some survivors.

##### **3.1.2 Developing an appropriate model**

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<sup>24</sup> Scottish Government, (2005) *A National Strategy for Survivors of Child Sexual Abuse*, at <http://www.survivorscotland.org.uk/national-strategy/> and <http://www.survivorscotland.org.uk/research-library/item/national-strategy-document-1/>

<sup>25</sup> Known as a 'snowball' sample.

In developing an appropriate model for RJ intervention in this context it is important that we recognised that survivors may vary in age and in the type of abuse suffered. This provides challenges in producing an effective model that is able to capture such variation as we need to recognise that the level of abuse or harm suffered may range from very serious crime involving sexual abuse, physical abuse and neglect to feelings of a "lack of opportunity and not being taken care of in a loving and family environment".<sup>26</sup> The age of the person harmed is significant in that survivors could range from some who are over 80 to 30 year olds. Their needs and expectations within the process might be affected by their age and this would need to be recognised at the preparatory stage. (TTBH dealt with some people who were in care in the 1930s.) The point in time when the person harmed was in Quarriers could also affect their perception of the harm they experienced and the reaction of the institution and others to any allegation of abuse<sup>27</sup>.

### **3.2 Defining Restorative Justice**

The consultation asked advisors what they thought restorative justice was. Their responses suggested a general lack of awareness about restorative justice (apart from those who already provide RJ). This finding underlies the importance of ensuring that participants in this pilot understand fully what RJ processes are and what they are designed to do.

Advisors saw it as a process that would involve communication between parties in a safe environment. There was some discussion over the words 'accountability', 'responsibility' and 'acknowledgement'. There was some recognition that an understanding of these words and their implications for work with survivors of abuse in residential childcare would be crucial in managing expectations of what could be achieved within the context of this particular RJ practice.

Creating an opportunity for dialogue was seen as a value of RJ, certainly in the context of people involved in the TTBH forum. One advisor described it as "a form of communication in an open environment to explore responsibilities and accountability" [Int. 2] but also at the same time suggested there was a need to recognise what stage people who may want to engage in the process are 'at'. Can we adequately paint a picture of what RJ looks like at the start of the process and what RJ may look like at the end of the process? Individuals may be crying out for some form of 'justice'. Only one advisor mentioned compensation and noted that this issue may be raised by participants in any RJ process. However compensation is expressly excluded as a form of reparation in this project. It is about:

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<sup>26</sup> Interview 3.

<sup>27</sup> Shaw, T., (2007) *Historical Abuse Systemic Review: Residential Schools and Children's Homes in Scotland 1950 to 1995*, Scottish Government at <http://www.scotland.gov.uk/Publications/2007/11/20104729/0>

“...coming together and talking about it...an acknowledgement that some harm has been done” [Int. 3]

Others suggested that the relational aspect of RJ could empower people to move on with their lives.

“It is an alternative or constructive means of helping perpetrators and victims to come together and in some measure to confront the issues and injuries and through that process come to some sort of resolution in the form of what is perceived to be justice and that may involve some reparations – things in kind or relational and beyond that I don’t know a lot, that’s my perception.” [Int. 7]

Accountability was a recurring theme with one advisor suggesting it was about:

“.....making sure there is accountability and encouragement of responsibility for young people [in care] but in a way that is not adversarial or punitive but allows them [the person/institution responsible] to take responsibility for their actions and provide some redress to the victim. I would see it as restoring the balance of power between the victim and the oppressor by hearing their acknowledgement. Hearing what victim/survivor needs to rebalance power.” [Int. 7]

Advisors suggested that RJ involved some form of coming together between the person who caused the harm (the person responsible) and the individual harmed. However there was a lack of awareness as to the different models that could be applied and recognition that institutional abuse represented a very different context from most RJ interventions.

Advisors were asked what they would expect to see happen within a restorative justice process. Their lack of knowledge about possible RJ models made that difficult to ascertain. However, they recognised the different perspectives that come into play because of the particular context of institutional abuse. They were able to differentiate between the role of the TTBH forum with the Commissioners and Chair listening to and acknowledging the survivors’ experiences and the RJ process which might require more ‘active’ participation by the facilitators.

Advisors highlighted a key difference from the usual RJ processes in that this process will involve the institution rather than the individual responsible for the harm caused. It was felt that this gave recognition that the responsibility lies with the institution. Since the literature shows there are current debates as to the appropriate model for bringing the individual responsible and person harmed together in serious cases the approach proposed here may be particularly timely and perhaps easier to implement: “maybe [we are] at a stage where we can get an institution in the room”. [Int 2]

One advisor suggested that they would expect to see:

”.....a meeting with appropriate setting and support, and an agreement about that.....would envisage the person who had suffered the hurt to say how it had affected them and to be listened to.....and some acknowledgement from the institution.”[Int. 3]

The aspect of voluntariness was discussed and advisors raised issues surrounding the willingness of people representing institutions to engage and the survivors (persons harmed) to engage with the process. There was a consensus that voluntariness was central to any successful outcome and must be established with both parties at the outset.

Recommendation 1: ensure consent of all parties is obtained.

### ***3.3 Managing expectations***

A theme running throughout the responses was the importance of ensuring that survivors involved in RJ were fully aware of what they were undertaking and what the process could achieve. There was a need to work towards positive outcomes and those outcomes could be very different for each individual. So the process had to be able to adapt not only to accommodate different ‘harms’ but also to develop an individual approach to ‘what needs to happen now’ so that people can move forward. Clarity on the impact of this process on civil and criminal proceedings needs to be communicated to participants:

Recommendation 2: prepare a clear statement of what both institutions and survivors want in each individual case. Have mechanisms in place to manage expectations.

Recommendation 3: prepare a general statement to the effect that the RJ process is not an alternative to civil or criminal proceedings.

### ***3.4 Aftermath and follow through***

The advisors felt that some survivors would be keen to know what lessons the institution had learnt from survivors’ disclosure of abuse. But survivors would potentially need some convincing that positive change had resulted and some concrete proof. The process could be developed to ensure that there is some productive element of learning from what has happened so that participants could “see every instance of wrong-doing and conflict as an opportunity for learning”<sup>28</sup>.

Recommendation 4: design an appropriate follow-up procedure ensuring safety and welfare of participants and monitor the implementation of any action plan by

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<sup>28</sup> Wachtel and McCold, (2001) *Restorative Justice and Civil Society*, Cambridge University Press.

those facilitating the process to ensure that action points, if any, have been followed through.

### ***3.5 Creating an environment for an open dialogue***

Some advisors, particularly RJ facilitators, were of the view that this may not just be a one off meeting. As one advisor commented, "setting it up as a single meeting is a drawback of situations we have been in - keeping it open as open dialogue is probably more beneficial". [Int 7] The advisor recognised that we had moved into an era of looking at how we achieve positive outcomes and that maintaining some form of dialogue would be "more beneficial" rather than focusing on one meeting to try and reach a "resolution".

There was a mixed response to the issue of how dialogue could be maintained. There was an assumption that the dialogue conducted through a restorative justice process would ordinarily be face to face. However not all cases would be suitable for this and, crucially, survivors need to be involved in 'shaping the process'. But it was accepted by the majority that a face to face meeting may be powerful and empowering for the individual concerned. As one advisor noted:

"I remember one woman who had been abused by a neighbour – he used to look at her and she looked away, shamed and embarrassed but one day she realised he was wrong and looked at him and he looked away and she got her power back." [Int. 7]

As already noted, one of the distinguishing elements in this RJ model is the fact that the survivor would be interacting with the institution and not the person responsible.

In some cases abusers are dead or no longer traceable and in other cases it has not been possible to bring criminal proceedings against suspected abusers. Some of those convicted of abuse against children in residential care maintained that they were not responsible and had not done anything wrong (this is evidenced in cases that have featured recently in the media e.g. St Ninians School, Nazareth House, Kerelaw). In any case it falls to the institution to acknowledge that the harm occurred and to accept responsibility for failing to prevent that harm. Restorative Justice in its true sense ultimately requires the person responsible to accept responsibility and acknowledge the harm caused. During the consultation process there were some clear messages as to the responsibility that the organisation/institution should take and the acknowledgement of harm that they should make. But the fact that it is the institution and not the individual responsible that would be involved in the process has to be very clear. The way in which this could ultimately impact on any potential outcome also needs clarity (see below).

Recommendation 5: ensure that preparation meetings and the whole process clearly identify that the institution and representative of the institution is in attendance and not the person responsible.

## **4. Involvement and Support in the Process**

Advisors were asked who they would expect to be involved in the RJ process. Advisors provided a mixed response to this but reference was made to some form of “human contact”. By “human” advisors were referring to an empathetic, willing to listen approach that involved face to face contact with a “human” side. Others talked of a ‘figurehead’ [Int. 7, 9, 10] from the organisation/institution being involved and another advisor went on to suggest that two representatives of the organisation/institution should be present.

There was a recognition that the “representatives will have to endure what others within the organisation have done so they need to be able to de-personalise but not de-humanise”. [Int 3]

There was a suggestion as to whether a surrogate offender would be appropriate in these particular circumstances – to take the place of the abuser. The literature and practice would provide some support for this but in this context the RJ model would be addressing the responsibility of the institution and not the abuser. The institution should be taking responsibility for their failure to prevent harm.

Recommendation 6: present face to face contact between parties as an option.

Recommendation 7: do not use surrogate offender in the pilot model.

### ***4.1 The Kinds of Support that should be Available for Parties***

Support was recognised by all advisors as important to a positive process. There was recognition that survivors may be receiving on-going therapeutic counselling and support. In such cases advisors thought it was important that counsellors knew what their client was ‘getting into’ because of the impact involvement in an RJ process could have on their clients’ progress. This raised a point about who would ultimately make the decision about taking part in any RJ process and the influence, positive and negative, of those providing counselling services to survivors. One advisor suggested that in their experience counsellors can “wrap their clients up in cotton wool” and be over protective [Int 2]. Sometimes this could be in cases where ultimately the client was well able to make the decision themselves.

However there was a consensus of opinion that counsellors and support workers were important in ensuring that some support was there for people who decided to take up the offer of an RJ intervention. It was seen as important by some advisors that survivors felt able to tell their counsellors about participation in RJ so that those counsellors were aware of that in their work with ‘their client’. [Int. 1]

There was a consensus of opinion amongst all advisors that support should be available with signposting and referral to the appropriate services. No-one should

be left in a vulnerable position and there has to be a clear opt out policy. Facilitators have to be well trained to understand when to bring a halt to the process.

A facilitator who was independent of the institution/organisation or any public body representing authority and who was appropriately trained and understood the nature of the harm that had been caused was suggested as being the ideal. One advisor who had had experience of working with cases of serious crime/harm stated that it was important that a co-facilitator was appointed to work with the primary facilitator in the case as support and 'back-up'.

Recommendation 8: provide independent facilitator to facilitate the process.

Recommendation 9: ensure support provision is available for the person harmed (counsellors etc.)

Recommendation 10: ensure support for the person representing the institution (internal or external) to avoid secondary or vicarious trauma.

The representatives also need to be appropriate for the role and understand the process and the aim of the process. Advisors recognised that RJ facilitators and the representatives for the institution could be listening to very traumatic accounts and so the possibility of secondary or vicarious trauma needs to be recognised. There was a majority opinion that the importance of support has to be recognised in relation to the person representing the organisation.

"You are being challenged by someone else's pain and if you are not affected by it at all then you should not be doing it." [Int. 14]

## **5. Organisation and practicalities of the contact**

### **5.1 Organising the Process**

The responses to this ranged from the formation of a stakeholder board with no-one having ultimate control to the development of an administrative team working with RJ facilitators to organise the process. The latter was generally viewed as a workable option; however the team would need to be highly skilled in dealing with external influences to ensure the integrity of the process<sup>29</sup>.

Recommendation 11: develop an administrative team or fully trained Advisory Board working with RJ facilitators. This could also involve survivors not involved in the RJ Process as consultants and advisors.

### **5.2 Referral Mechanisms**

Advisors were asked to explain their views about preferred referral mechanisms to the RJ process. The important element of voluntariness was introduced again here with a requirement that the ownership of the decision to participate should lie with the individual survivor. Power should be with that person to make the choice and not others, for example their therapist. Support should be there for them pre and post any engagement but ultimately any decision to take part should be with the individual survivor.

The general view was that people should be free to access RJ through any route, for example, a GP or therapeutic support referral, but ultimately self referral was an important route and this should be clearly signposted for survivors. To manage expectations the support mechanisms pre and post the referral need to be clearly set out as does the purpose of the RJ process. For example, it is important to avoid the situation where the ultimate aim is financial compensation which is something the RJ process would not be able to guarantee or do.

Recommendation 12: design some form of clear guidelines and preparatory documentation.

The following agencies were identified as possible sources of referrals to any RJ process: physical, sexual and mental abuse support agencies, self referrals, GPs, Social Work, counsellor from GP surgeries, Women's Aid, substance abuse agencies, health agencies.

A further suggestion was that a national base would need to be set up to provide a clear framework for RJ intervention with survivors of institutional abuse as children. The current pilot is drawing cases from a wide client base within one well

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<sup>29</sup> For example, the advice of the TTBH Advisory Group was sought in preparing the RJ project and the SurvivorScotland Reference Group was also consulted. Both these groups include survivors of abuse in residential childcare none of whom were former residents of Quarriers.

recognised organisation. It may be more difficult if the survivor suffered harm whilst in care with an organisation that no longer exists or is so small that it would not be able to pay for or participate in such a process.

There was a very clear consensus that the administration and management of the RJ process should be carried out by some independent body and not the institution that may be the location of the harm caused.

“Someone independent set up to make arrangements as I think it will be difficult for a survivor to phone up a named person – I was hoping that TTBH would take on that role as I know they are employing a number of people in a supportive/administrative role and I was hoping that was something that they could take on board and acting as an intermediary. I’m assuming that the majority of people that come forward in the TTBH forum will not have lawyers and I think the great benefit of TTBH is those who don’t wish to involve themselves in legal action and this is a way for them to get some closure or help with what they have been living with.....People often need help.....The main benefit that the survivor would get is a supportive way of setting it up.” [Int. 2]

Another advisor took this further and suggested that a group of institutions get together to pay for RJ interventions. They could then collectively fund a small core of staff who could be facilitators:

“I think that would be very positive if it could be done that way - even if it was SACRO, the facilitators could be funded by the institutions to work on their behalf.” [Int 3]

The nature of the crime means that the organising body needed to be genuinely independent. The mistrust of authority that survivors may have would require that for the RJ process to be effective the administration and management of the process should be separated from the institutions. As stated earlier a suggestion has been put forward that the institutions could pay but not organise and manage. However, a concern was raised that if the institutions do pay for this then some survivors may feel that the money should pass to them instead.

Just as the management and administration of the process should be the responsibility of an independent body the facilitators would also have to be independent and well versed in the key issues that surround historical child sexual abuse, physical abuse and neglect. They have to have the qualities and flexibilities to respond to the different types of abuse suffered by the survivors. They would need expertise in working with the historic nature of the abuse, which could have occurred from the 1930s to the 1980s.

Survivors suggested that they themselves could be trained to facilitate the process and that they should not have to disclose that they have been in care. They would

have that empathy from their own experiences and coupled with specific training could provide a suitable source of facilitators.

Advisors agreed that there should be some form of Code of Process/Practice that could be used by all organisations involved in the provision of restorative justice services within this context. Two advisors raised the point that language and terminology surrounding RJ may not be understood and that a Code could provide some clarity on the language and its meaning as well as the ethics involved in the process. The Code and its implementation should be monitored and evaluated in an open and transparent way. The Code would not only give clarity but also provide an opportunity to alleviate the fear that organisations/institutions may have about taking part. National Guidelines on RJ have been developed and are still evolving and these could be adapted to suit this specific approach and context.

“It’s putting things into perspective about where the organisation might be coming from when they’re meeting and might help deal with those expectations before people come in.” [Int. 14]

The Code should provide a clear flow chart of what will happen and when, covering the key phases of the process as well as how the actual contact will be managed so the provision of macro and micro guidelines within the ‘Code’ would be desirable. The Code should also include a clear statement of the values and principles underpinning the process, recognising that this will evolve as the process develops. The survivors engaged in the pilot process could provide valuable input as to the content of the Code.

Recommendation 13: establish a panel of facilitators (balanced in terms of gender and age etc.) who are neutral or impartial – a facilitator trained in traumatic events.

Recommendation 14: train and prepare facilitators to work specifically with person harmed and institution responsible with co-facilitator in the background who can help.

Recommendation 15: record and retain in the interests of transparency, integrity and meaning all documentation and the individual journeys of the survivors through the process. Data protection requirements need to be met in full.

### ***5.3 Forms and Length of Contact between the Survivor and the Institution***

Work at the preparatory stage would ensure that an appropriate way or ways of developing and maintaining contact could be introduced to and agreed between the parties. For example, shuttle dialogue might be used at the beginning and could form the basis for moving towards a face to face meeting. However, shuttle dialogue might be the only form of contact that would be appropriate for particular individuals. Advisors involved in the consultation process were clear that there needed to be unqualified recognition that preparation could take a long time and

might be up to 12 months in some cases (from the initial engagement meeting). There would also need to be provision for an 'opt out' at any stage. The RJ process might include more than one meeting face to face and the preparatory stage may be a lengthy one. The model needs to have flexibility and adaptability built in since once a date has been set for a face to face meeting things can change rapidly. So there is a clear need to be prepared for obstacles that may have to be overcome. Those may include a change of heart, change of circumstances and so on. However, it was thought feasible to set a time limit on working towards a face to face meeting. If a meeting had not taken place within 12 months following the work with facilitators then it was feasible to suggest that it would not happen and was no longer appropriate.

There was a consensus of opinion that the preparatory stage was crucial in ensuring that right form of contact was being introduced to participants. If the ultimate aim is a face to face meeting then you are "are asking quite a lot in a face to face meeting as there is a power dynamic there". [Int. 1] However advisors suggested that 'human' contact is important as the survivor will then be seen as a person rather than a label. There was a majority view that all parties need to go into the room as 'equals'.

"People will know instantly if it is not 'real' – the process needs to be honest and transparent. Be clear and honest about expectations and what we can actually achieve." [Int.2]

The contact should depend on the individual and the circumstances. For some, an initial contact might be sufficient as that might be the kind of acknowledgement that they have missed for so long but for others it could be that they would want some on-going dialogue. Pathways of response may be required with efficient referral and signposting mechanisms to ensure that appropriate support is being provided or at least the individuals are aware of what is available.

One advisor talked of the skill of the facilitator in their role but also in creating the dialogue. The RJ process should provide a safe environment for an open dialogue, whether that is a face to face meeting or shuttle dialogue.

Recommendation 16: develop pathways to meet the individual needs of the person harmed. This might mean a short term or long term pathway.

Recommendation 17: the process in all cases should be no longer than 12 months.

Recommendation 18: have appropriate criteria to select the appropriate form of RJ process for the individuals involved.

#### ***5.4 Where Contact should take Place***

The feedback from advisors on this issue included a neutral venue, the place where the harm occurred or a publicly recognised purpose-built venue that was “culturally valid”. Each advisor gave their own reasons as to why they thought these were the most appropriate options. However, the commonly held belief was that it should be “somewhere the survivor feels safe”. [Int. 1, 10, 11]

Neutral places included ICSSS or other counselling services that were nationally recognised as providing support to survivors. SACRO premises were also suggested as a potential source of a venue as well as the current TTBH forum venue<sup>30</sup>.

The place where the harm occurred was mentioned as possibly being appropriate for some survivors.

“Naturally where something happened may be therapeutic – if it happened there maybe it’s to end there.” [Int. 2]

Another suggestion was a purpose built structure – a round building which would to some extent reflect the ‘circles of support’ model with no symbols of power or authority. The advisor suggested the building should be culturally valid reflecting Scotland’s Celtic heritage. This would provide a symbolic recognition that was nationally held (link to outcomes).

One advisor described an interaction with a survivor which they considered represented the RJ process:

***Institution Practice***

Institution X had been involved in one meeting with a survivor (Y) which was held in the office of the survivor’s solicitor in their home town with their solicitor present and the institution’s solicitor present. Y had a counsellor and solicitor present. Y expressed their views. The meeting was arranged between the solicitors and the institution on the basis that it was ‘without prejudice’. Y talked at length and it lasted about 2 hours and [all] accepted that was the way it had to be and Y had to have as much time as they wanted to. “It’s pretty tough but you have to do it. It did not take that long to organise – once Y said they wanted it then it wasn’t that long at all.”

Ultimately the RJ intervention was best undertaken at a neutral venue with the person harmed making major input to the decision as to where it should be held.

One element regarded by some as creating a potential barrier to participation by survivors is a lack of trust that survivors may already have established with those in authority.

<sup>30</sup> Only available until September 2010.

Recommendation 19: hold the RJ process in a safe environment that is neutral and has no ties to 'authority'.

## **6. Benefits and Barriers of RJ**

Reparation, restoration, healing, accountability, transparency, closure, acknowledgement, empowerment, reducing the feeling of shame, therapeutic were all words identified by advisors as being potential benefits of engagement with the RJ process. These terms were identified by all parties.

”For some of them there will be a sense of closure.....that they are being taken seriously and that they are able to move forward and will empower them in a way that for so many it hasn’t been the case.....” [Int. 7, 13]

The process could also provide a way of reducing a feeling of shame that survivors may have about what has occurred in the past in the institution.

A recurring theme expressed by advisors was the potential for therapeutic benefits. They considered that this would have to be clearly set alongside any existing support programme that had already been established for the survivor. However while the RJ process would have to be appropriately dovetailed with any ongoing support it should not in itself be regarded as therapeutic support.

### ***6.1 The Potential Benefits of RJ for Survivors***

The RJ process allows the person harmed to talk about that harm to the institution within which the harm occurred.

A role that the process may fulfil is allowing the survivor to see what the institution has done to learn from the lessons of the past. But this comes with a warning that it may also reignite wounds and raise questions as to why things have changed but ‘it wasn’t in place for me’.

One advisor did suggest that survivors may also have had some positive experiences and might want to see staff who are still there to say that to them. On the other hand there may also be staff who were there at the time the abuse took place with survivors feeling that they [staff] should have done something at the time. Advisors went on to say that it is important that the RJ process is seen as one part of a much bigger process allowing the survivor to ‘confront’ the institution. The TTBH forum may provide the acknowledgement from the State but they may want acknowledgement from the institution itself.

### ***6.2 The Key Barriers to using Restorative Processes***

The RJ process is currently being developed alongside the TTBH Pilot Forum and is being offered to TTBH participants only. There was some concern raised by all advisors about limiting the RJ pilot to one institution.

A crucial question that is often raised by survivors is ‘why did this happen to me?’ This may be a question that an institutional representative would find difficult to answer and is one that could probably be addressed only to the person directly responsible.

The organisation/institution itself may have concerns about becoming involved. The expertise in preparing and providing suitable representatives may be lacking, the institution may not exist anymore or it may have completely changed its role and remit. Insurers for the organisation may discourage institutions from becoming involved because of a concern that during the process the institutional representative may accept legal liability (see legal issues below).

Survivors may have an expectation of a full apology which the institutions may not feel able to give. If the institution does apologise the apology may be dismissed by the survivor because it is not from the person who caused the harm. The issue of an apology is very sensitive (see section on outcomes at page 40 below). The legal system may also be seen as a barrier and the clear distinction between the RJ process and the criminal justice or civil justice system needs to be made clear<sup>31</sup>.

### ***6.3 Particular Concerns about Restorative Justice***

Advisors were asked about the concerns that institutions may have and how these concerns might be addressed.

The majority of advisors were concerned about expectations.

“I have a slight worry that too much might be expected of it and that for some people it might be part of a response to need but it might not be enough. If the process was developed and working would someone want to know that if they should choose to do so can they choose another line? In Southern Ireland – it moved from those who were coming forward not expecting compensation to those who were coming forward [and] were expecting compensation. So initially they just want to be believed but the mood may have changed to an expectation that there might be more.” [Int. 1]

This requires the aim of the process to be clearly established and communicated in the preparation. The aim is to meet with and have a dialogue with the institution. A meeting with facilitators prior to the process is needed to ensure that participants are clearly aware of and accept the aim.

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<sup>31</sup> The term ‘justice’ may mislead and it might be worth considering an alternative title should the pilot project be rolled out.

The main concern surrounds the giving of an apology and engaging in a meeting that could result in an admission of liability or a conversation that could give rise to a suggestion of admission of liability. One advisor suggested that the apology would only be of value if it is “backed up”. There is, however, some understanding about the concerns institutions may have about getting involved in an RJ process. Ultimately some may be voluntary organisations who cannot afford to put themselves in a position of admitting liability. Such an apology might be used in legal proceedings as evidence showing admission of liability and might render the institution liable to pay compensation. This might have adverse consequences for the institution in terms of financial resources and access to insurance.

To this end ‘without prejudice conversations’ were suggested by advisors:

“I understand the concerns for institutions – ‘without prejudice’ statement can be used so that no legal implications can arise from the conversation. People are willing to have a conversation but can’t take anything out of the room – you can’t abuse people; you can’t personally attack anyone etc. This will require [that] those who are taking on representation will have to be specifically trained and given support.” [Int. 2]

The institution should respond or take some form of professional responsibility to try and “do something about what is being said to them”. (Int 7) The response to what is being said and action taken as result of that information could provide value and meaning to what the survivor has suffered in the care of that institution.

“Survivors will want a proper apology and acceptance of responsibility is a key part. Institutions talk of the insurance companies restricting their ability to say sorry but recognise that there are a number of people who want an extra acceptance of responsibility. Setting it up on a more formal statutory basis might provide more protection. There are well worn formulas regarding confidentiality and the limits of it – but the purpose would be to establish a confidential space in which you can explain experiences and can have a dialogue based on mutual respect...but that comes with a caveat that they will be required to report it if anything is revealed that leads them to believe that serious mistreatment is occurring. To be effective it needs to be as open as possible.....If you are looking at a process established by the state to have a forum where individuals are recounting experiences of serious mistreatment then it is a blurry area as to what degree of confidentiality you can maintain – may give rise to criminal prosecution.”<sup>32</sup> [Int. 6]

For survivors the RJ process may “bring stuff up again” [4, 10, 11]. This could have a negative impact so facilitators need to ensure that they can manage expectations.

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<sup>32</sup> In Ireland the Commissioners were compelled to release information in certain circumstances.

Recommendation 20: create an action plan or outcome agreement between the participants. Recognise that the meeting or shuttle dialogue/conversation may be enough in itself and the process needs to be flexible in this context. The Action Plan needs to be recorded.

#### **6.4 Privacy and Confidentiality**

The RJ process would not be able to ensure confidentiality and this should be made clear at the outset. An example given by one advisor is where an individual is identified as continuing to work with children. In those circumstances the allegations would probably need to be reported to the police. This needs to be balanced with the survivors knowing that their involvement would not prevent them from pursuing criminal or civil proceedings but that the information within the RJ setting should be treated with confidence. The providers would be directed to the TTBH guidance<sup>33</sup>.

Recommendation 21: draft a protocol/code of practice drawing on independent legal advice documenting what would happen in the event of allegations about serious crimes or child protection concerns.

Recommendation 22: apply a legal disclaimer and obtain consent forms signed by the parties which state clearly:

- the purpose of the meeting;
- the fact that preparation is crucial to ensure that nothing new will emerge in a face to face meeting;
- responsibility to safeguard both sides in the meeting – anything that might lead to further investigation should come out at the preparation stage. The facilitator would then have to be able to identify if something ‘new’ is being introduced and stop the process at that point if appropriate.

Recommendation 23: apply data protection guidance in the storage of information electronically and keeping of any paper records. Protocols need to be drafted for sharing of any information between parties in order to facilitate the process.

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<sup>33</sup> TTBH has a Confidentiality and Privacy Policy which can be found on the SurvivorScotland Website at <http://www.survivorscotland.org.uk/time-to-be-heard/key-statements/> or from the SurvivorScotland Team. This was drafted with advice from independent lawyers.

## 7. The outcomes institutions and survivors wish to see from this process

Advisors were asked for their views on the outcomes. The process of RJ involves, as a crucial element, what happens next. Various ideas were suggested including an apology; modifying the way in which the institution works or responds to children's complaints of abuse or neglect; knowing that things have changed; more contact or further dialogue.

One advisor felt that there were three important issues to be considered:

- 1) Forms of communication: People like to communicate in different ways – words and talking may just form a little part of that - pictures, silences, body language can also provide extremely powerful mechanisms of communication. The facilitators need to be aware how much people may be able to articulate their feelings in words and the process needs to be adaptable enough to recognise other methods that may be equally effective.
- 2) Rawness – how much of what happened historically is now impacting on an individual's daily life? Do survivors have other mechanisms of support to help them or do they need to have these? If it's still very 'raw' then the process may not be appropriate for them at this stage.
- 3) Awareness of each other – throughout any RJ process the person harmed and person responsible become aware of each other and vice versa. In this context such awareness is between the survivor and the institution rather than the person who is directly responsible. Nevertheless this awareness is important to an understanding of the individual survivor as someone who has been harmed in the institution and recognition of what they have been through.

The planning stage is crucial in explaining the process of arriving at an agreement and helping to shape potential outcomes. There were a number of suggestions about potential outcomes for survivors:

### **7.1 Creating a Record**

One advisor identified the creation of a record of the survivor's experiences as outlined in the RJ process as a positive outcome so that all the pieces can be "put together for them once and for all". It is an important part of the survivor's history. Retention of those records, whether at an official level or with the institution or the RJ initiative, would need to be further explored and discussed.<sup>34</sup>

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<sup>34</sup> The TTBH Pilot Forum recorded the testimonies of those involved in the pilot in an aggregated and anonymous format.

## **7.2 Creating a Symbolic Place of Resolution**

One advisor suggested that the place of resolution is important. It needs to symbolise that these 'harms' have occurred and that recognition is being given on a national level as well as micro level with the institution involved. The place could then provide a recognisable neutral venue for 'conversations' between institutions and survivors to take place.

“Look at a ‘place of resolution’ – a symbolic place. Depends on the individual.....for some people it will never be enough but for some it might be the one thing that’s been missing but needs to be driven by people who believe in it as if it’s just seen as a tick box exercise then that will come through as well.” [Int 2]

## **7.3 Being Listened to or ‘Giving them a Conversation with the Institution’**

Being listened to by the institution may be a meaningful outcome for an individual survivor. In practice the institution must agree with their legal advisors and insurers that the institution can participate in any restorative justice process. Then if an apology is sought by the survivor the institution will feel confident that an apology can be made.

## **7.4 An Apology**

There was a consensus that an apology would be a potential outcome that *some* survivors would be looking for. Rather than a public general apology<sup>35</sup> survivors would want a personal apology recognising the particular harm that was done to them individually. However institutions may see this as a barrier to their engagement with the process<sup>36</sup>. The apology has proved to be a sensitive area amongst organisations wishing to become involved in an RJ process and may act as a barrier to them engaging with the process because of the potential liability that they could incur from an apology. For the survivor the fact that an apology is qualified because of legal concerns may make it difficult to accept.

The Scottish Human Rights Commission in their report on a Human Rights Framework for an acknowledgement and accountability forum discussed the concept of an apology and the implications of using an apology within any reparative process<sup>37</sup>. In Annex 1 of their Report, the approaches by several

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<sup>35</sup> Quarriers gave a public apology in September 2001 following the conviction of several members of staff for historic sexual and physical abuse-see footnote 1.

<sup>36</sup> Scottish Human Rights Commission *A human rights framework for the design and implementation of the proposed “Acknowledgement and Accountability Forum” and other remedies for historic child abuse in Scotland*, SHRC.

<sup>37</sup> Scottish Human Rights Commission (2010), *A Review of International Human Rights Law Relevant to the proposed Acknowledgement and Accountability Forum for Adult Survivors and Childhood Abuse*, at

jurisdictions and their enactment of apology legislation are described. These developments in other jurisdictions were designed to encourage public authorities and other organisations to apologise without fear of legal (civil) liability.

“The practical consequence of introducing legislation of this kind should be that more public sector officials would be encouraged to say ‘sorry’ and more members of the public are more likely to feel satisfied that their grievance has been taken seriously. An apology shows an agency taking moral, if not legal, responsibility for their actions and the research shows that most people would be satisfied with that.”<sup>38</sup>

The Report cites Tasmania as an example where “over 300 people came forward to report childhood abuse, most people requesting an apology. The following year the Government of Tasmania issued a comprehensive apology, as a result of apology legislation which limited civil liability flowing from an apology.”<sup>39</sup> The Framework (2010) produced by the Scottish Human Rights Commission recommends that the Scottish Government should consider the “development of legislation to facilitate apologies by institutions; and make available each of the elements of effective access to justice, effective remedies and reparation to all survivors of childhood abuse without discrimination”.<sup>40</sup>

Vines<sup>41</sup>, in her article, discusses the social utility or value of an apology in tort cases. Section 2 of the UK Compensation Act 2006 applies to the role of an apology in negligence cases and although an apology in itself does not give rise to liability an admission of facts may be used as evidence in seeking to establish liability. The value of the apology may be reflected in the admission that events have actually occurred.<sup>42</sup> One advisor suggested that participation in an RJ process would not preclude any further action that the individual might take. A further suggestion was that survivors involved in cases that currently are on-going in terms of legal civil claims or criminal justice cases should not participate in the process until the legal proceedings are completed.

Facilitators would have to be aware that legal proceedings could impact on the effectiveness of any RJ process and advise parties accordingly during the preparation stage – the RJ process should not be a ‘fishing expedition’ but rather

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<http://www.scottishhumanrights.com/application/resources/documents/SHRClegalpaperforAAF.pdf>

<sup>38</sup> The Office of the Ombudsman of New South Wales, *Annual Report 2001-02*, Ombudsman Office.

<sup>39</sup> Scottish Human Rights Commission, (2010) *A Review of International Human Rights Law relevant to the proposed acknowledgment and accountability Forum for Adult Survivors of Childhood Abuse*, at p 106.

<sup>40</sup> Scottish Human Rights Commission, (2010) *A human rights framework for the design and implementation of the proposed “Acknowledgement and Accountability Forum” and other remedies for historic child abuse in Scotland* SHRC at p. 8.

<sup>41</sup> Vines, P. "Apologies and Civil Liability in England, Wales and Scotland: The View from Elsewhere " [2007] UNSWLRS 61 <http://www.austlii.edu.au/au/journals/UNSWLRS/2007/61.html>

<sup>42</sup> *Ibid.*

an opportunity to allow an on-going dialogue between the survivor and the institution.

Recommendation 24: obtain independent legal advice on the role of an apology and the possibility of liability arising from it. This needs to be clarified in light of the Scottish Human Rights Commission Framework.

### ***7.5 Self Esteem and Self Worth: a Reduction in Anger***

The RJ process may provide a mixture of acknowledgement and response to survivors about the circumstances of their abuse and may have benefits to them in a therapeutic sense, fostering their self esteem and self worth. These less tangible benefits are very important and could be an on-going benefit of re-establishing contact with the institution. Some survivors may have experienced good things in the institution and these could be acknowledged as part of developing a more constructive relationship with the institution.

Recommendation 25: create an open and transparent process which provides an opportunities for survivors to have a more direct and 'human to human' contact with the institution. Survivors must appreciate the fact that somebody close to the institution in which they were homed has listened to their experiences and taken responsibility for the institution's role in the harm survivors experienced. This would not be an apology by mass statement but rather through direct human contact on an individual level

Advisors also noted that some survivors wanted something tangible – for example a plaque. All agreed that acknowledgement of what has happened may come in various forms.

## **Conclusions**

The Time to be Heard Pilot Forum was launched in May 2010. To complement this work it was felt that there was a need to look at the potential of restorative justice (RJ) in working with survivors and the institution involved. This marked a slight deviation from the models of restorative justice prescribed by the Scottish Government in their guidance and protocols on restorative justice as in this pilot a representative from the institution responsible rather than the person responsible is involved in the process. The consultation process drew responses from a wide range of stakeholders to ascertain how they could see this developing and to inform the development of a Toolkit to ensure an effective process. The recommendations for the Toolkit were developed from the responses of advisors in the consultation process.

There is a common understanding that there are many complexities involved in preparing a Toolkit for these particular cases. The historic nature of the abuse, the emotion that is involved, the legalities over the use of an apology in such a setting all provided areas of concern and discussion during the consultation process. The work of the facilitators at the preparation stage was judged to be very important in seeking to develop effective contact at the eventual meeting. Advisors also highlighted the importance of an individual approach to each case, not only in seeking an appropriate model of restorative justice but also in the organisation and management of the process. Advisors felt that there was no reason why a model of restorative justice in which there was a face to face meeting between the survivor and a representative of the institution could not take place. However, the setting should be neutral and the meeting should take place in a secure and safe environment with robust risk assessment and monitoring processes.

In developing the Toolkit there was a perceived need to recognise the potential outcomes and the very different reasons why people may wish to take part and it is important for the facilitators to be transparent about what restorative justice is and what it can do within this context. Rather than 'justice' it was felt that maybe we should be talking of a restorative approach and reaching appropriate and realistic outcomes. The outcomes identified by advisors included recognising the individual journeys that each person has made through this process and retaining a written record of those journeys. It was felt that the process needed to recognise the value of the outcome for individuals. Outcomes ranged from being "listened to", to receiving an apology<sup>43</sup> from the institution involved, to creating a symbolic place of resolution.

The Toolkit would also have to include clear details of privacy and confidentiality relating to those involved in the process.

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<sup>43</sup> Further exploration and independent legal advice should be sought by those administering and facilitating the process with reference to the report by the Scottish Human Rights Commission on the role of an apology and the possibility of liability arising from it.

The pilot should be evaluated to consider the potential and effectiveness of restorative justice within this context and to allow for further development of the Toolkit.

## ***Recommendations***

### ***Voluntariness***

Recommendation 1: ensure the consent of all parties is obtained.

### ***Managing expectations***

Recommendation 2: prepare a clear statement of what both institutions and survivors want in each individual case. Have mechanisms in place to manage expectations.

Recommendation 3: prepare a general statement to the effect that the RJ process is not an alternative to civil or criminal proceedings.

### ***Aftermath and follow through***

Recommendation 4: design an appropriate follow-up procedure ensuring the safety and welfare of participants and monitor the implementation of any action plan by those facilitating the process to ensure that action points, if any, have been followed through.

### ***Creating an environment for an open dialogue***

Recommendation 5: ensure that preparation meetings and the whole process clearly identify that the institution and representative of that institution is in attendance and not the person responsible.

### ***Involvement and Support in the Process***

Recommendation 6: present face to face contact between parties as an option.

Recommendation 7: do not use a surrogate offender in the pilot model.

### ***The Kinds of Support that should be Available for Parties***

Recommendation 8: provide an independent facilitator to facilitate the process.

Recommendation 9: ensure support provision is available for the person harmed (counsellors etc.)

Recommendation 10: ensure support for the person representing the institution (internal or external) to avoid secondary or vicarious trauma.

### ***Organising the Process***

Recommendation 11: develop an administrative team or fully trained Advisory Board working with the RJ facilitators. This could also involve survivors not involved in the RJ Process as consultants and advisors.

### ***Referral Mechanisms***

Recommendation 12: design some form of clear guidelines and preparatory documentation.

Recommendation 13: establish a panel of facilitators (balanced in terms of gender and age etc.) who are neutral or impartial – a facilitator trained in traumatic events.

Recommendation 14: train and prepare facilitators to work specifically with the person harmed and the institution responsible with a co-facilitator in the background who can help.

Recommendation 15: record and retain, in the interests of transparency, integrity and meaning, all documentation on the individual journeys of the survivors through the process. Data protection requirements need to be met in full.

### ***Forms and Length of Contact between the Survivor and the Institution***

Recommendation 16: develop pathways to meet the individual needs of the person harmed. This might mean a short term or long term pathway.

Recommendation 17: the process in all cases should be no longer than 12 months.

Recommendation 18: have appropriate criteria to select the appropriate form of RJ process for the individuals involved.

### ***Where contact should take place***

Recommendation 19: hold the RJ process in a safe environment that is neutral and has no ties to 'authority'.

Recommendation 20: create an action plan or outcome agreement between the participants. Recognise that the meeting or shuttle dialogue/conversation may be enough in itself and the process needs to be flexible in this context. The Action Plan needs to be recorded.

### ***Privacy and Confidentiality***

Recommendation 21: draft a protocol/code of practice drawing on independent legal advice documenting what would happen in the event of allegations about serious crimes or child protection concerns.

Recommendation 22: apply a legal disclaimer and obtain consent forms signed by the parties which state clearly:

- the purpose of the meeting;
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- responsibility to safeguard both sides in the meeting.

Recommendation 23: apply data protection guidance in the storage of information electronically and keeping of any paper records. Protocols need to be drafted for the sharing of any information between parties in order to facilitate the process.

### ***Concerns for Institutions***

Recommendation 24: obtain independent legal advice on the role of an apology and the possibility of liability arising from it. This needs to be clarified in light of the Scottish Human Rights Commission Framework

### ***Self Esteem and Self Worth: a Reduction in Anger***

Recommendation 25: create an open and transparent process which provides an opportunities for survivors to have a more direct and 'human to human' contact with the institution. Survivors must appreciate the fact that somebody close to the institution in which they were homed has listened to their experiences and taken responsibility for the institution's role in the harm survivors experienced. This would not be an apology by mass statement but rather through direct human contact on an individual level.

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## **Appendices**

### **Appendix 1**

#### **Consent form and information sheet**

Name of Study: Pilot: Potential for RJ with Survivors of Historical Institutional Abuse: developing a RJ Toolkit

Researchers: Jenny Johnstone in collaboration with Sacro and Derek Brookes

Contact: Law School  
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The study has a number of aims: The Scottish Government is assisting expert providers to develop Restorative Justice opportunities for survivors of institutional abuse, for example Children's Homes. These options are being developed alongside *Time to be Heard*. *Time To Be Heard* is a pilot forum that will give up to 100 survivors and other former residents from Quarriers the opportunity to describe their experiences and will run from May to September 2010. An 'RJ Toolkit' will be produced, explaining for survivors and institutions the possible benefits and methods of RJ, training will be provided to enable experts in RJ to deliver on the Toolkit and the Toolkit will be tested with a number of participants in *Time to be Heard* who wish to explore RJ possibilities. The work to develop the Toolkit is being undertaken by Sacro, Derek Brookes of Relational Approaches and Jenny Johnstone of the University of Newcastle Upon Tyne.

I [ ] have read the participant information sheet and letter and have had an opportunity to ask questions about the study. I agree/do not agree to participate in this study. I understand that I may withdraw from the study without penalty at any time by advising the researchers of this decision. I understand that the project has been reviewed by, and received ethics clearance through, the University of Newcastle HASS Faculty Research Ethics Committee. Only the named researchers will have access to the personal contact data.

The data will be stored in a secure filing cabinet and will be held on a memory stick with password access. The data will be analysed and used in the final report. The information will be treated with confidence and any reference to direct quotes in the report will be referenced by role rather than name. Participants will have the opportunity to hear about the outcomes from this research through feedback organised by the Scottish Government.

Participant Signature  
Date:  
Print Name  
Signature

Researcher Signature  
Date  
Print name  
Signature

## Appendix 2

### Newcastle University Law School Logo

### Interview Schedule on the Development of an RJ Toolkit for survivors of historical institutional abuse

This interview schedule is designed to seek your views on the development of a restorative justice process for survivors of historical institutional abuse. The aim is that the process will complement the Time To Be Heard forum that has been established as a pilot in Scotland.

The study has the following aims:

1. the preparation and development of the tool kit; referral mechanisms, quality assurance checks and risk assessments
2. the skills required for appropriate deliverers and the pros and cons of an institutional led approach; training needs
3. the issues and concerns surrounding implementation;
4. the follow through and outcomes of restorative process in this area including whether any forms of therapeutic support or counselling needs to be identified for survivors providing this RJ opportunity

#### **Part 1: Interviewee Details**

The first set of questions seek information about the organisation/people that are being interview

##### **1. Name of interviewee**

##### **2. Organisation (if applicable)**

##### **3. Brief description of organisation (if applicable) (who you work with primarily and whether this has changed in the past)**

**Part 2: Definitions and understanding**

5a. What do you understand by the term restorative justice?

**Prompt:**

What would you expect to see happen with a restorative justice process?  
(prompt: meeting face to face with representative of the institution/meeting face to face with the survivor)

b. Who would you expect to be involved in that process?

c. Do you think there should be some form of contact between the survivor and institution? (prompt: shuttle dialogue, face to face meeting etc.,)

d. If yes, what form should that contact take?

e. How long do you think the contact should last?

f. Where do you think the contact should take place?

g. Who do you think should be involved in organising the process?

6. Please identify the types of restorative process that would be appropriate for bringing together survivors of historical institutional abuse with the institutions?

**Type of RJ process**

.....	.....
.....	.....

.....  
.....

7. In what kinds of circumstances might restorative justice be helpful to a survivor?

8. What do you see as the key benefits of restorative process?

9. What do you see as the key barriers to using restorative process?

10. Should there be any support services available for those going through an RJ process?

**Prompt: nature of crime);**

11 Do you have any particular concerns with restorative justice

Yes

No

Please explain (e.g. **safeguarding**)

### **Part 3: Referral Mechanism**

12. Where should referrals come from? (self referrals, the survivor, the institution, specialist service, others?)

13. For those making referrals (i.e. Time To Be Heard Forum), how would you make the decision to refer. What criteria would you deem appropriate to use?

#### Part 4: Administration and Management of the RJ Process

14. Do you think the restorative justice service should be managed by the Institution?

Yes | No |

*Please provide reasons for your answer*

*What are the advantages?*

*What are the disadvantages?*

15. Do you think an independent body should administer and manage the restorative justice process?

Yes | No |

*Please provide reasons for your answer*

*What are the advantages?*

*What are the disadvantages?*

16. Who would you deem suitable for the role of facilitator? (JJ to describe)

17. Do you think there should be some form of Code of Practice that could be used by all organisations involved in the provision of restorative justice services? ***(Training and awareness raising; organisation specific guidance Monitoring and regulation)***

#### Part 6 Outcomes: Institutions and Survivors

18. Can you think of any positive outcomes for being involved in a Restorative Justice Process? (prompt; apology; modifying process by the institution; knowing that things have changed; more contact or further dialogue)

**Part 6: Concerns for institutions**

19. As an institution becoming involved in this what are your key concerns? How do you think these concerns can be addressed? (privacy, confidentiality, legal action etc.,)

**Part 7: Concerns from Survivors**

20. As a survivor who could potentially be involved in this process what are your key concerns? How do you think these can be addressed?

21. Is there anything else that you would like to add?

We very much appreciate the time you have taken to participate in this interview