

Guidance for the Delivery of Restorative Justice in Scotland



Scottish Government
Riaghaltas na h-Alba
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Contents

1. _____	Introduction	1
	PART A - OVERVIEW AND KEY PRINCIPLES	4
2. _____	What is restorative justice?	5
3. _____	Key principles of restorative justice	8
4. _____	Requirements for service providers and facilitators	11
	PART B - CONDUCTING A RESTORATIVE JUSTICE PROCESS	16

INTRODUCTION

1

1.1 Purpose

The purpose of this document is to provide statutory guidance to ensure that, where restorative justice processes are available, these are delivered in a coherent, consistent, victim-focused manner across Scotland, and are in line with the EU Victims' Rights Directive¹.

1.2 Who is this guidance for?

The guidance is intended for restorative justice practitioners and facilitators, as well as restorative justice service providers, and may be useful for those referring to restorative justice services. It aims to provide both an overview of restorative justice principles and key factors which should be considered by practitioners and facilitators (**Part A**), and more detailed best practice guidance regarding the provision of restorative justice services (**Part B**).

This document is not intended as a guide for victims or persons who have harmed, although they may find it informative nonetheless.

1.3 Statutory basis and scope

This guidance is issued in accordance with Section 5 of the Victims and Witnesses (Scotland) Act 2014, which enables Scottish Ministers to issue guidance about:

- (i) the referral to restorative justice services of a person who is, or appears to be, the victim of an offence;
- (ii) the referral to restorative justice services of a person who has committed or is alleged to have committed the offence; and
- (iii) the provision of restorative justice services to those persons.

For the purposes of the 2014 Act, "restorative justice services" are defined in section 5(3) as: *any process in which [the victim of an offence and the person who has, or is alleged to have, committed the offence] participate with a view to resolving any matter arising from the offence or alleged offence with the assistance of a person who is unconnected with either person or the offence or alleged offence.*

¹ Directive 2012/29/EU establishing minimum standards on the rights, support and protection of the victims of crime - <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>

This guidance is also informed by Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime ('EU Victims' Rights Directive'), in particular Article 12 (*Right to safeguards in the context of restorative justice services*).

This guidance relates specifically to restorative practices undertaken, in the context of an offence having been committed, by those bodies or persons that may be prescribed by Scottish Ministers. It may also be useful as a guide for other bodies or persons involved in restorative justice processes. It does not apply to other situations in which similar methods may be deployed such as in schools, the workplace or community settings, for example, in supporting conflict resolution.

1.4 Definitions

The term "*victim of an offence*" is not defined by the Victims and Witnesses (Scotland) Act 2014. However, it may be helpful, for the purposes of this guidance to refer to the EU Victims' Rights Directive definition of a victim. Article 2(1)(a) of the Directive defines a victim as: *a natural person [i.e. an individual not a company or other legal entity] who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence; or family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.*

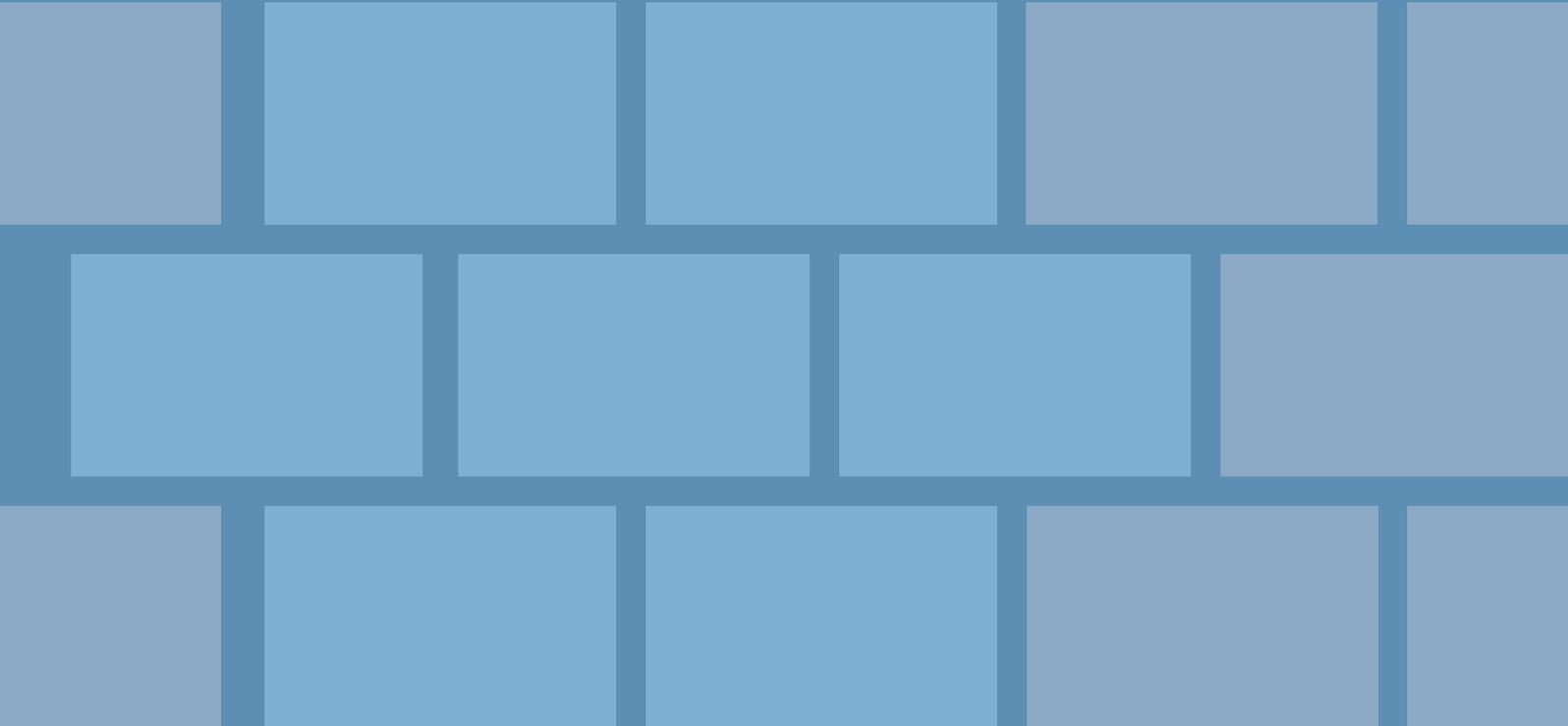
Family members are defined in Article 2(1)(b) of the Directive as: *the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis; the relatives in direct line, the siblings and the dependents of the victim.*

This definition of 'victim' should not however preclude restorative justice processes being used where legally the victim is a corporate or legal person, including community bodies, and individuals connected to these bodies have been affected.

The person who has harmed the victim through the commission of a criminal act is called the offender in the Directive. However, this guidance uses the term 'the person who has harmed'. The guidance applies to both adults, children and young people², as well as legal entities such as companies or organisations and the term 'the person who has harmed' should be understood to apply to such persons.

² More information on the Youth Justice and the Whole System Approach can be found in [Preventing Offending: Getting it right for children and young people](#). (June 2015)

OVERVIEW AND KEY PRINCIPLES



A

WHAT IS RESTORATIVE JUSTICE?

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Restorative justice is a process of independent, facilitated contact, which supports constructive dialogue between a victim and a person who has harmed (whether this be an adult, a child, a young person or a representative of a corporate or other body) arising from an offence or alleged offence.

It gives victims the chance to meet, or communicate with, the relevant people who have harmed, to explain the impact the crime has had on their lives. This has the potential to help some victims by giving them a voice within a safe and supportive setting and giving them a sense of closure.

It also provides those who have harmed with an opportunity to consider the impact of their crime and take responsibility for it, with the aim of reducing the likelihood of re-offending. In some circumstances it can also allow them the opportunity to make amends for the harm caused. It can also be appropriate and helpful for children and young people who have harmed, where the need to safeguard and protect their interests is paramount.

During a restorative justice process, the person who has harmed and the victim may sometimes agree on certain actions that the person who has harmed can undertake to acknowledge the harm they may have caused. Clearly the agreement of both parties on which actions are appropriate cannot be guaranteed. The restorative justice process can be initiated by either the victim or the person who has harmed.

Restorative justice processes may take a variety of forms, including:

- (i) Direct communication between the victim and person who has harmed, prepared and supported by a suitably trained facilitator. For example:
 - (a) a closed face-to-face meeting between the victim and person who has harmed in the presence of a trained facilitator (often called 'victim-offender mediation'). Where supporters of the victim or person who has harmed are present it is often called 'conferencing'.
 - (b) the use of technology such as video conferencing that allows direct communication where a meeting is neither practicable nor desirable.
 - (ii) Indirect communication between the victim and the person who has harmed, supported by a trained facilitator, for example through the use of shuttle dialogue, written, audio or video messages.
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Restorative justice should always be considered an entirely voluntary process for both the victim and person who has harmed, which can be discontinued at any time.

Both parties should be aware that there is no guarantee that participation in the restorative justice process will be a positive experience for either participant. Victims, in particular, should be advised of the mental or emotional impact that interacting with the person who has harmed may have. The potential positive and negative impacts, the potential for further harm, the need for support, advice and the safeguards necessary to ensure the victim's safety should be considered in risk assessments conducted by the facilitator prior to consideration of any restorative justice taking place. This assessment must take place at the start and then be reviewed during, and at the conclusion of, the process.

Throughout any restorative justice process the needs and interests of the victim, and avoiding further harm, are imperative.

KEY PRINCIPLES OF RESTORATIVE JUSTICE



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Any restorative justice process should be:

- a) **Honest** - in the first instance, the person who has harmed must be able to acknowledge the basic facts of the case.
- b) **Informed** - through access to unbiased information and preparation, so that participants understand the aims of the restorative justice process, the role of the facilitator, what to expect during any communication, how each party will be supported and what the possible outcomes might be.
- c) **Voluntary** - participation is voluntary and is based on the informed consent of both the victim and person who has harmed, taking into account the potential benefits, risks and possible outcomes. This includes any mutual or co-produced agreement, the production of which is entirely voluntary and not a mandatory expectation or aim of participation in the process. Consent to participate can be withdrawn at any time by any participant.
- d) **Safe** - facilitators should ensure the arrangements for any communication allow participants to feel safe and be safe, and that the communication process and the realisation of any outcomes, has participant safety at its core. In each case, the potential for harm, the need for support and the safeguards necessary to ensure safety should be assessed by the facilitator at the start of the restorative justice process and be reviewed both during and at the conclusion of the process. Appropriate safeguards, advice and support should be provided to participants.
- e) **Respectful** - facilitators should manage any communication to ensure all participants are allowed a fair and equal opportunity to speak without fear of interruption, discrimination or intimidation.
- f) **Accessible** - facilitators should ensure restorative processes are non-discriminatory and do not exclude those participants with additional support needs.

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- g) **Appropriate** - facilitators should ensure the preferred restorative process is appropriate to the offence committed. Whilst the restorative justice process can, in theory, be used for any type of crime, it is anticipated that it will very rarely be appropriate for offences involving domestic abuse, sexual offences, human trafficking, stalking or exploitation offences, particularly where there may have been a deliberate course of conduct or coercion by the person who has harmed over a prolonged period of time. Facilitators should be mindful that, in such circumstances, a victim may be further victimised or traumatised by any contact or dialogue with the person who has harmed.
 - h) **Confidential** - what is communicated during the restorative justice process is completely confidential and should remain firmly between the participants (unless they agree to disclose information or there is a legal requirement to disclose it, for example, where there is an overriding public interest, or an imminent and significant risk of harm).
 - i) **Not about establishing guilt** - where the person who has harmed takes responsibility for the harm caused and its consequences, the victim should have the opportunity to hear that person take this responsibility.
 - j) **Proportionate** - any agreement resulting from the restorative justice process should aim to be proportionate to the harm caused in terms of any reparation and should be mindful of the capacity of the person who has harmed to complete it. Any agreement must be entered into voluntarily by the participants.
 - k) **Empowering and facilitating** - the victim is empowered to communicate with the person who has harmed them in circumstances in which that person has admitted responsibility. The process also aims to provide the person who has harmed with the facility and opportunity to apologise for causing the harm.
 - l) **Look to the future as well as the past** - any agreement resulting from the restorative justice process may include an assurance as to the nature of any future contact between the victim and person who has harmed and how that should be conducted.
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REQUIREMENTS FOR SERVICE PROVIDERS AND FACILITATORS

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The interests of all participants in restorative justice processes must be safeguarded by adherence to the following high level guidance in relation to the provision of restorative justice processes.

4.1 Service Providers

Service providers may be organisations or individual practitioners. Service providers must:

- a) have in place written policies and operational procedures needed for restorative work to take place.
- b) in the case of organisations, ensure that the practice of both the organisation and individuals within it is of a high standard and complies with relevant guidance and policy.
- c) ensure that participants know what to do and who to speak to should they have any concerns about the facilitation of the restorative process or wish to make a complaint, and ensure an adequate complaints procedure is in place to deal with these sensitively, respectfully and timeously.
- d) provide access to suitably trained and competent facilitators.
- e) where appropriate, ensure that the informed consent of the participants is obtained in relation to any recording of the process and the sharing of information, and crucially in relation to confidentiality. If appropriate, consent should be obtained from a parent, guardian etc.
- f) comply with any statutory obligations, for example in relation to data storage or reporting matters relating to child protection.
- g) ensure that any record of the restorative meeting is in a form that can be understood by the participants.
- h) feed back to participants on the results of any agreement made during the restorative justice process.

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- i) keep secure, accurate and up-to-date records of referrals, cases, processes and outcomes.
 - j) feed back promptly to those referring cases after the conclusion of the restorative justice process.
 - k) monitor their own performance and the reactions of participants and keep their data in a form such that it could be used to evaluate the offer and delivery of restorative justice processes for research purposes (only with the full consent of participants).
 - l) guard against any conflict of interest arising between the service provider, facilitators or any of the participants or other relevant bodies.
 - m) not charge participants for restorative justice services.

4.2 Facilitators

Restorative justice services must only be provided by individuals who are appropriately trained and competent. Any organisation (and individual within it) providing restorative justice services must be able to comply with statutory and other requirements and guidance, as prescribed. The following paragraphs list key skills, knowledge and behaviours that restorative justice facilitators must possess.

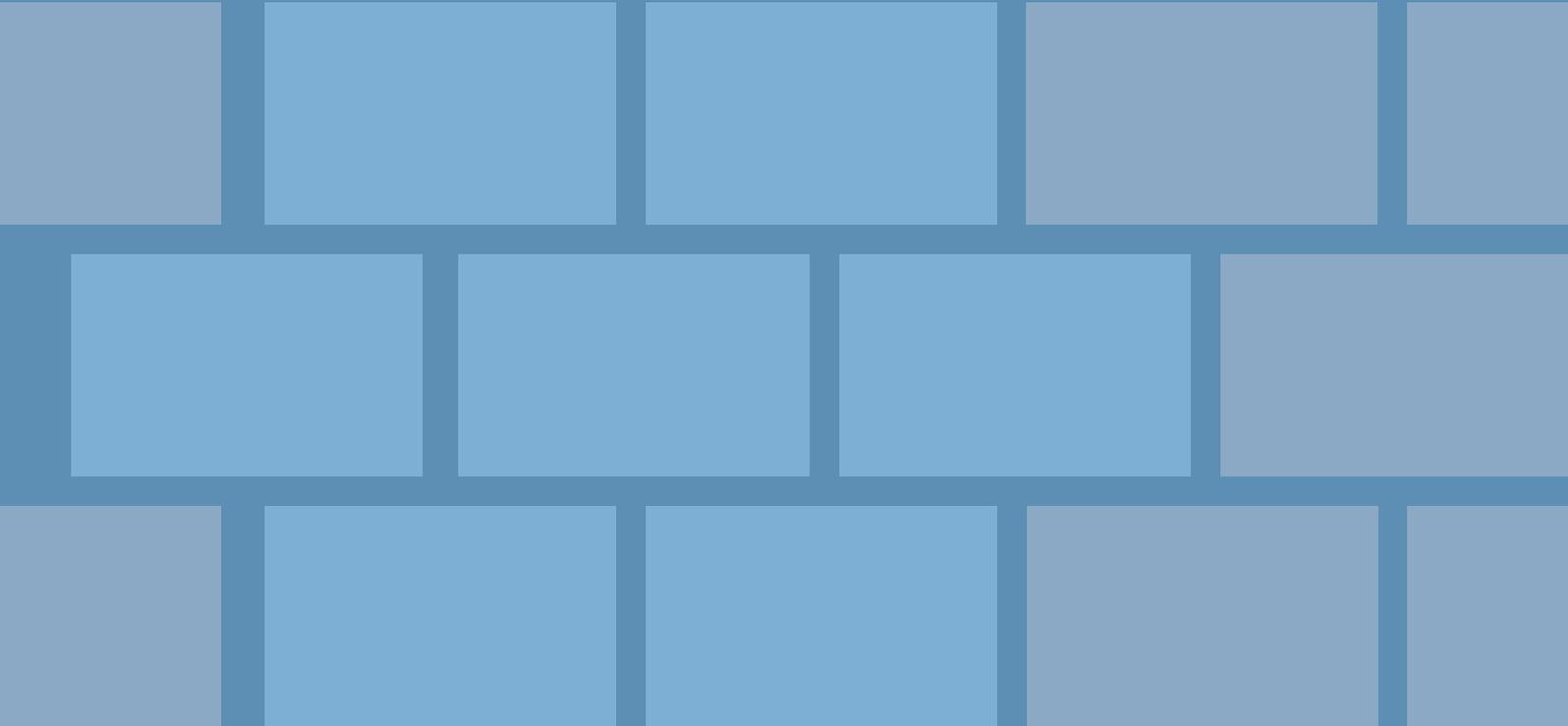
Facilitators must be able to:

- a) Demonstrate effective communication skills, which includes the ability to:
 - actively listen
 - form questions that will achieve better understanding
 - be aware of and be able to read non-verbal signals
 - summarise and reflect back
 - use telephone communication skills
 - challenge constructively and positively
 - enable participants to make their own choices

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- b) Create a safe environment for participants, which includes the ability to:
- build trust between all participants
 - show sensitivity to diversity and differences
 - use appropriate risk assessment and evaluation tools
 - be alert to the potential for any conflict and aggression and manage it quickly and appropriately, including when a session should be ended to protect the safety and general welfare of any of the participants or the facilitators
 - assess imbalances of power, and act to redress any imbalances quickly
 - be and remain impartial and demonstrate this to all participants through words and actions
 - be aware of how the physical environment can affect the sense of safety, comfort and security felt by participants
 - be alert to the manipulation of the practitioner, victim, session or process by the person who has harmed
 - be alert to the formulation of agreements or outcomes which could prove harmful and negative to the victim and are not in line with the aim of the process
 - be aware of safety and confidentiality issues around the disclosure of personal information
- c) Treat people fairly, without discrimination on the basis of gender, age, ethnicity, ability/disability, sexuality, culture, faith or history of causing or experiencing harm. This includes showing respect for all participants, their opinions and views, except where these opinions and views are discriminatory and/or harmful to the victim.
- d) Demonstrate additional knowledge or skills as set out in guidance or specialist training when undertaking complex and sensitive restorative processes where there is significant lasting injury, bereavement or harm, and have extensive prior experience of dealing with such matters.
- e) Record decisions and outcomes accurately, following service providers' guidelines and statutory and other requirements around confidentiality and data protection.
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- f) Offer a definition of restorative justice, including reference to:
- victims and those who have harmed
 - restorative justice as a process
 - the aims of restorative justice, and potential outcomes
- g) Articulate how restorative justice differs from other approaches, including:
- other disciplines (e.g. advocacy, counselling)
 - community mediation and conflict resolution (that is, what difference it makes that there is a person responsible for a particular incident of harm)
- h) Demonstrate an understanding of the principles and values of restorative justice, and the implications of these principles for your own practice.
- i) Articulate the nature and impact of being harmed and the needs that may arise, including:
- the short and long-term physiological, psychological and social impact for the victim and those close to them
 - the factors which affect how individuals react to and recover from their experience (e.g. previous harm done to them, reactions of family and friends)
 - their need for safety, respect, recognition, choice, information, confidentiality, and an opportunity to have the harm addressed, materially and/or symbolically
 - the services that may offer additional support during or, as an alternative to, a restorative justice process, and how to assist them in accessing these
- j) Describe the different types of restorative justice processes available, explaining their respective benefits and limitations, and the situations in which each process would be applicable.
- k) Demonstrate an understanding of the criminal and youth justice contexts and the statutory or policy framework for restorative justice practice.
- l) Explain why the supervision and monitoring of agreements (if any) and following up with each individual involved after a restorative justice process can be an important part of aiding the victim's recovery, and facilitating the person who has harmed in taking responsibility for their actions.
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CONDUCTING A RESTORATIVE JUSTICE PROCESS



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The steps below should be followed when preparing and conducting a restorative justice process:

- A. Assessment of appropriateness of a restorative justice process for the participants
- B. Establish if a co-facilitator is required and the level of support necessary for the facilitator, especially in a serious or complex case
- C. Assessment and management of risks involved, throughout the process
- D. Enabling individuals to make an informed choice about their participation
- E. Assisting individuals to prepare for participation in a restorative justice process
- F. Facilitating a process involving indirect communication
- G. Facilitating a process involving direct communication
- H. Enabling the participants to form an outcome agreement, where appropriate
- I. Following up the restorative justice process with evaluation, monitoring and ongoing support

A. Assessing the appropriateness of a restorative justice process for the participants

In assessing whether the restorative justice process is appropriate for the participants the facilitator needs to take the following issues into account:

A1. Whether and to what extent the person who has harmed is prepared, at this stage, to be accountable for their actions by expressing any of the following:

- A1.1. a full and free acknowledgment of their part in what happened and the harm that their actions have (or may have) caused to specific persons and/or communities.
- A1.2. expressions of genuine remorse for their actions.
- A1.3. a willingness to address or repair the harm they have caused.

If the person who has harmed shows no signs of acknowledging or understanding they may have caused harm then the restorative process should not proceed.

A2. To what extent there is a risk of emotional and physical harm to any participant, which would suggest the use of restorative justice might not be appropriate.

A3. Whether each person has made an informed choice about participation, which includes considering information about the process, assessing the potential emotional impact of participating and potential outcomes (where the desire to obtain a specific outcome or outcomes is expressed or anticipated by the parties), as well as ensuring sufficient time to consider their decisions and access to independent advice and support.

A4. The need to ensure the voluntary participation of each person in the process. This includes ensuring that:

A4.1. Participants are not coerced, pressured, or induced by unfair means to participate in the process or its outcomes, including agreements; and

A4.2. The invitation to participate is explained to the potential participants by a trained facilitator.

A5. That while the restorative justice process can, in theory, be used for any type of crime, it will very rarely be appropriate for offences involving domestic abuse, sexual offences, human trafficking, stalking, or exploitation offences, particularly where there may have been a deliberate course of conduct or coercion by the person who has harmed over a prolonged period of time.

B. Establish if a co-facilitator is required

B1. The facilitator needs to establish if a co-facilitator is required. This may be needed for a number of reasons. For example:

B1.1. The case requires specialist knowledge. For example, someone fully competent in restorative justice approaches might work with a partner who can bring specialist knowledge on mental health or child welfare issues, or knowledge of different local support and services for the participants.

B1.2. It may provide an opportunity for role modelling and case supervision for a less experienced practitioner (co-facilitators would need to agree which areas of the process each should handle, so that the less experienced partner can both watch good practice, and also practice and receive feedback themselves).

B1.3. If the restorative justice meeting will involve a large number of participants, a co-facilitator may make this more manageable, for example by bringing matters to the attention of the lead facilitator.

B1.4. There is a requirement for a co-facilitator for practical reasons. For example, co-facilitating can allow for separate meetings, for one practitioner to accompany a participant to the meeting, and for practical support (e.g. with provision of refreshments) during a meeting.

B1.5. To enable the involvement of participants with different backgrounds or personal characteristics. For example, having a male and a female co-facilitator and giving participants, particularly victims, the opportunity to specify the gender of the facilitator(s), where this can be accommodated.

B2. The facilitator should ensure that any co-facilitator is sufficiently competent in restorative justice practice to carry out their role effectively.

C. Assessment and management of risks involved, throughout the process

The facilitator must:

C1. Carry out an initial formal risk assessment and assess and manage any identified risk throughout the process. The facilitator and senior practitioners consulted must recognise, and be responsible for acting, when there is a clear risk to participant's physical or mental safety, (particularly the victim), meaning that the process does not commence, or is immediately terminated safely.

C2. Record risk concerns, ways in which these might be addressed, and refer these to the appropriate level of management and/or partnership agency (e.g. any concerns relating to child protection).

C3. Assess whether complex issues of intimidation and vulnerability require referral to a senior restorative justice practitioner, other professionals or specialist support services in order to make an immediate decision on whether the process should be ended, and to discuss the consequences of this.

C4. Assess the potential impact on the restorative justice process of any available assessment information relating to previous actions that have caused harm, mental health or substance abuse.

C5. Assess any risks relating to the participants. The facilitator should consider:

- C5.1. Participants' feelings, attitudes and behaviour.
- C5.2. Whether their expectations of the process are realistic.
- C5.3. Their motivation for being involved.
- C5.4. Substance abuse and mental health issues.
- C5.5. Any physical or learning disabilities, mental impairment or ill health.
- C5.6. The emotional resilience of individuals and ability to cope with the process.
- C5.7. Any previous history between the participants.
- C5.8. Any power imbalances between individuals.

C6. Develop methods to manage any identified risk (involving others in the process such as supervisors) including:

- C6.1. Selecting which type of communication will be safe at each stage of the process.
 - C6.2. Sequencing direct or indirect forms of communication to ensure safety.
 - C6.3. Selecting venues for any meetings that will maximise participants' safety and minimise their anxieties or concerns.
 - C6.4. Managing and balancing the presence/absence of supporters who can influence the emotional and physical risks of the process and its outcome.
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C7. Review risks throughout the process, for example, taking account of timing of the justice process, the impact of substance abuse etc.

C8. Recognise when risk is unacceptable and end the process safely at the earliest and most appropriate point.

D. Enabling individuals to make an informed choice about their participation in a restorative justice process

A facilitator needs to:

D1. Provide clear and accurate information to all individuals about:

D1.1. The purpose, potential benefits, risks (including case-specific risks) and limitations of a restorative justice process.

D1.2. The different restorative justice processes available to them, including a description of what actually happens in each process, the likely timescales, and who else could be involved.

D1.3. The roles and responsibilities of those who will be involved.

D1.4. The links between restorative justice and other interventions.

D1.5. The possible legal implications (if any) of participating and not participating for them and the others involved.

D1.6. Alternatives to restorative justice processes (if any).

D1.7. Who will have access to information about individuals in the process and how the information may be used – both within and outwith the criminal justice system.

D1.8. The steps taken to maintain the confidentiality of information and the reasons for this.

D1.9. What information is held on record and how long it is held.

D2. Communicate with individuals throughout the process in a manner which:

- D2.1. Treats them fairly, with dignity and respect.
- D2.2. Enables them to make informed decisions about whether, and to what extent, to participate in restorative justice processes.
- D2.3. Encourages an open exchange of views, where appropriate, while taking steps to ensure that this does not cause harm to participants.
- D2.4. Minimises any constraints to communication.
- D2.5. Is free from discrimination and oppression.
- D2.6. Keeps the options of different forms of restorative justice process open throughout, subject to safety considerations and risk assessment.
- D2.7. Allows them the time and space they need in which to make decisions.

D3. Encourage individuals to describe their expectations of restorative justice processes and the possible outcomes.

D4. Encourage individuals to raise any questions and express any anxieties they have about restorative justice processes.

D5. Encourage all participants to make a realistic assessment of:

- D5.1. Any risks involved and if, and how, these risks can be managed. Safety considerations should be a primary consideration at all times, with the option of terminating the process at any time, if the level of risk becomes unacceptable.
 - D5.2. The potential benefits that a restorative justice process may bring.
 - D5.3. The potential adverse impact that a restorative justice process may bring.
 - D5.4. The likelihood of the process reaching a conclusion which benefits all those involved.
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D6. Discuss the outcomes of the assessment fully with the individuals involved and find out their willingness to proceed.

D7. Offer individuals information about other agencies and services that may provide additional and independent advice and support to them either during the restorative justice process, or as an alternative to the restorative justice process, and assist individuals in making contact, should they wish this to happen.

D8. Make accurate and complete records of discussions and agreements with individuals about restorative justice processes, provide copies to those who are entitled to, and require, this information and store these records in a way that takes account of organisational arrangements for confidentiality.

E. Assisting individuals to prepare for participation in a restorative justice process

A facilitator will need to:

E1. Enable participants to ask questions about any material they were given in advance on the various restorative justice processes that are available.

E2. Review with individuals their reasons for being involved in restorative justice processes, supporting those who change their mind at any stage to access alternative support.

E3. Assist individuals to find ways of managing their anxieties about the restorative justice processes once they have decided to participate, for example, by:

E3.1. Pacing the process appropriately to meet their needs.

E3.2. Agreeing on the support, both within and outwith the process, that will be available to them and how this will take place.

E3.3. Assuring them of their ability to withdraw from the restorative justice process or change to another process at any time.

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- E3.4. Providing reassurance that, although their feelings and reactions are unique to them as individuals, they are not uncommon responses to the experience of harm and restorative justice processes.
 - E3.5. Responding to their description of the restorative justice process and the (actual or possible) effects of this experience in a manner which acknowledges their right to express their feelings.
 - E3.6. Reassuring them that safety concerns, anxieties and inappropriate or intimidating behaviour will be dealt with immediately.
- E4.** Encourage and assist the person who has harmed to:
- E4.1. Identify and reflect upon their behaviour, the factors that contributed to it and the impact that their behaviour had (or may have had) on the person harmed and others.
 - E4.2. Take responsibility for their part in what happened and its impact on others.
- E5.** Encourage and assist the victim to:
- E5.1. Identify and reflect upon the nature and consequences of the harm done to them and others close to them.
 - E5.2. Find effective ways by which, if they choose to, they can express this during a restorative justice process.
 - E5.3. Clarify their views and needs and be involved in selection of appropriate processes.
- E6.** Encourage participants to consider:
- E6.1. Whether reparation or any other outcome might be appropriate.
 - E6.2. If so, what the reparation or other outcome might be.
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E7. Ensure that no pressure is placed on participants to continue the process in any form where they have chosen to meet, but then change their minds during preparation. The facilitator should discuss the following with individuals who have decided not to proceed:

E7.1. Their reasons and concerns, whilst respecting their decisions.

E7.2. The support that is available to them throughout the process.

E7.3. The option of indirect communication as an alternative process.

E8. Provide additional support to participants and, where appropriate, refer participants to external agencies who can provide further support, in the following circumstances:

E8.1. Where one of the participants has decided that they can no longer participate in restorative justice processes due to the adverse effects on them.

E8.2. Where the restorative justice process is terminated and a participant is experiencing feelings of disappointment, anger or anxiety about the lack of resolution.

E8.3. Where a participant chooses to stop the restorative justice process and is experiencing feelings of guilt or self-blame about their decision.

E9. Make accurate and complete records of discussions and agreements with individuals, including the decisions that have been reached and the arrangements that have been made.

E10. If information is to be relayed and the facilitator is concerned that it could cause harm to either participant, the facilitator should discuss this with the person who provided the information, before any decision is taken on whether to relay the information or not.

E11. Relay any information each participant has asked to be passed on in a way that takes into account

E11.1. What the recipient has indicated they wish to know.

E11.2. Whether the information could cause harm, and if so should the information be passed on at all.

F. Facilitating a process involving indirect communication

The facilitator will need to:

F1. Be clear that the skilled facilitation of dialogue or other means of communication between participants is fundamental to the restorative justice process and that the same values and principles apply to a restorative justice process involving indirect communication as would apply to a restorative meeting.

F2. Ensure that the communication is transmitted using means appropriate to the participants age, and taking into account any disability or language needs.

G. Facilitating a process involving direct communication

A facilitator will need to:

G1. Plan for direct communication, by:

- G1.1. Assessing whether participants are likely to need or want separate meetings or time out, whether this is necessary under risk assessment and if so, planning accordingly.
- G1.2. Assessing the likelihood of strong emotions or conflict and how the facilitator will manage this, including ending the session and process.
- G1.3. Giving all participants clear information about the structure of the meeting so as to create a sense of safety and clear expectations.
- G1.4. Informing all participants that, while the aim is to stick as closely as possible with this structure, if it is no longer meeting the aims of the overall process, then alternatives will be discussed with them and a new way forward agreed, if possible.

G2. Ensure that, if observers are to be present:

- G2.1. All participants are informed about the possibility of observers being present and are advised of the identity of the observers.
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- G2.2. That all participants give their permission for observers to be present. If permission is not given, this does not go ahead.
 - G2.3. Inform participants about where in the room observers will be sitting, and gain their agreement to this.
 - G2.4. Ensure that observers sign confidentiality agreements and that all relevant parties receive a copy.
- G3.** Select an appropriate venue and prepare the venue appropriately, including:
- G3.1. Setting up seats according to a seating plan that enables participants to enter into a safe, open and honest dialogue.
 - G3.2. Ensuring the premises will meet the needs of all the participants.
 - G3.3. Ensuring that the safety and security of participants is taken into consideration.
- G4.** Manage the arrivals of the participants, ensuring that:
- G4.1. The participants do not meet or wait together prior to the meeting.
 - G4.2. They are not left on their own without access to support and information while waiting.
- G5.** Remind all participants, once they are seated, about:
- G5.1. The purpose of the meeting.
 - G5.2. The ground rules relating to behaviour and language.
 - G5.3. Why it is important that everyone involved in the process follows the ground rules and what will happen if they do not.
 - G5.4. The agreed structure of the meeting.
- G6.** Confirm individuals' agreement to proceed on this basis.
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G7. Guide the participants through the following stages of a restorative justice meeting, using the normal or agreed structure to sequence the participant's speaking turns within each stage, allowing for flexibility where appropriate:

G7.1. Facts: what happened and why.

G7.2. Consequences/effects: how the victim and/or others have been harmed.

G7.3. Future: how all concerned can begin to move forward, a discussion which may result in the formulation of an outcome agreement.

G8. Encourage participants to communicate in a manner which:

G8.1. Acknowledges their situation and their rights within the process.

G8.2. Treats those involved fairly, with dignity and with respect, whilst recognising the harm that has been caused.

G8.3. Is appropriate to those involved.

G8.4. Encourages an open exchange of views.

G8.5. Minimises any constraints to communication.

G8.6. Is free from discrimination and oppression.

G9. Assess whether at any point it is necessary to stop the meeting or call time out.

G10. Should unexpected issues arise, assess which issues should be dealt with during the meeting, and which are more appropriate to suggest dealing with outside the meeting.

G11. Continuously monitor:

G11.1. The emotional and physical well-being of participants, through verbal and non-verbal cues.

G11.2. The compliance of participants with the ground rules established at the start and take appropriate action if the ground rules are not adhered to.

G11.3. All participants to ensure that the person who caused harm is not using or manipulating the process to intimidate or further harm the victim.

G12. Make constructive contributions to the process (without suggesting the facilitator's own 'solutions') and facilitate the exchange of information between individuals in a way which:

G12.1. Encourages everyone to contribute actively and fully in the process.

G12.2. Moves the process forward at a pace that balances the needs of everyone involved and the need for a fair and respectful process, with the time and resources available.

G13. Give participants space and time to discuss what they want to see come out of the meeting, and use these discussions to formulate possible outcome agreements.

G14. Encourage individuals to review what has happened during the process and confirm details of:

G14.1. Any agreements reached.

G14.2. Any unresolved issues.

H. Enabling the participants to form an outcome agreement, where appropriate

A facilitator should :

H1. Make it clear to all participants that any outcome agreement is part of the process and so should always be considered in relation to safety and risk.

H2. Enable participants to think through and discuss what outcome elements may be helpful, realistic, and can be effectively carried out, and which are supported by all present, taking into consideration:

H2.1. The abilities of the person who has harmed.

H2.2. If what is being considered is reparation, what would be appropriate to the harm caused, and to whom the reparation should be made.

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- H2.3. The need for any activity to be clearly defined, measurable and supported freely by the participants.
 - H2.4. The need for an outcome agreement as a whole to be appropriate and proportional to the harm caused.
 - H2.5. The support available to help the person who has harmed to complete the agreement.
 - H2.6. The timing of any element and a schedule for completion.
 - H2.7. Any practical issues such as costs, transportation, and what they do if they inadvertently meet each other again, etc.

H2. If the victim wishes to nominate a recipient for reparative activity, restorative justice practitioners will need to check the suitability, the feasibility and the wishes of the nominated recipient.

H3. Provide all participants with a record of what has been agreed, unless this is not required or desired by participants.

I. Following up the restorative justice process with evaluation, monitoring and ongoing support

A facilitator will need to:

- I1.** Assist with and monitor the completion of items in outcome agreements, by:
 - I1.1. Ensuring that there is an agreed person or agency responsible for monitoring the agreement and any implications should the agreement not be complied with.
 - I1.2. Ensuring that there is an agreed person or agency responsible for supporting the person who has harmed in complying with the agreement.
 - I1.3. Sensitively informing the victim, and any other agencies or referring bodies which the facilitator has a duty to inform, whether and to what extent the person who has harmed has completed the outcome agreement.

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- 12.** Evaluate the process with individuals involved, by:
 - 12.1. Relaying agreed information about outcomes to other parties, as agreed by the participants.
 - 12.2. Providing the participants with the opportunity to discuss openly and honestly their thoughts and feelings about the restorative justice process and its outcomes.
 - 12.3. Offering constructive feedback to individuals about their contributions to the process, emphasising the positive aspects of their role.

 - 13.** Encourage individuals to consider whether, following the restorative justice process, there is any further communication (direct or indirect) that they need or want in order to close the process.

 - 14.** Facilitate closure and enable any ongoing support, by:
 - 14.1. Agreeing with individuals involved when it is right that the process is at, or should come to, an end and ensuring that all participants know it has ended.
 - 14.2. Encouraging individuals to consider their need for further support and information, discussing the ways in which such support could be provided, and the most appropriate means of accessing support.
 - 14.3. Informing individuals about any arrangements for further contact with the facilitator and/or the facilitator's organisation and exploring their willingness to take up any follow-up contact that the organisation offers, including long-term arrangements.

 - 15.** When co-facilitating, ensuring that respective roles and responsibilities are clarified regarding any follow-up required.
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