

Mitigation and risk in restorative justice

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Executive summary

This report summarises key findings from our project which was funded by the Scottish Government, in support of the Scottish Government's Restorative Justice Action Plan (Scottish Government 2019). In particular, we seek to support the expansion of restorative justice in Scotland to include its use in response to more serious offending and more difficult cases.

Our objectives were to develop a sense of what factors were perceived by facilitators as risky in any restorative justice process, how they assessed risks, and what measures have been used to prevent and mitigate these risks, with a view to informing the development of practice and policy in Scotland. By 'risk' we mean not (just) risks to safety but any factors that might jeopardise the success of the process, i.e. the participants being able to communicate safely. To this end, we interviewed 30 restorative justice facilitators in 11 European jurisdictions. The extent to which restorative justice was 'established', and how it was organised, varied considerably between these. Our questions roughly followed the timeline of a restorative justice process: we began by talking about the referral process and how facilitators decide to move forward (or not), before considering facilitators' definitions of 'risk', approaches to assessment, and measures they used to mitigate specific risks in restorative justice. Finally, we asked them about their training and measures for capacity building, including co-facilitation, mentoring and reflective practice.

Key Findings

- The restorative justice risks described by our interviewees attach to *individual people and cases*. Some cases are risky, but this is because of individual factors, not because of the *type* of case or person. This is essentially different to the actuarial/statistical mode of risk assessment found in many criminal justice settings.
- It is impossible to predict the risks of a case before engaging with the individuals involved, because different people experience 'risk' factors in very different ways. Furthermore, the seriousness of the harm in a given case may not tally with the legal categories imposed on it by the criminal justice system.
- Aside from unwillingness to engage or attempts to coerce others on the part of either party, only two types of risk were seen as ruling out restorative justice entirely: where the person responsible is unable or unwilling to acknowledge the harm (which does not necessarily entail admitting criminal guilt), and where either party is unable to comprehend the proceedings, usually because of substance use or severe mental disorder. Even these may be amenable to change over time.
- Most facilitators agreed that certain difficult cases, particularly those involving sexual offending and domestic/intimate partner abuse, presented particular challenges related to trauma and power imbalance. There was no sense however of them being qualitatively different to other cases in terms of how they were approached from a practice perspective - they just require additional care and preparation.

- Capacity to facilitate more challenging cases comes with experience. In Scotland, many facilitators are less experienced with these types of case, so are more concerned about risk and their capacity to facilitate these; facilitators in other jurisdictions with experience around facilitating in cases involving more severe harm are much more confident taking on more difficult cases.
- Facilitators rarely used formal risk assessment processes, and none appeared to use, or have, validated risk assessment tools in relation to restorative justice, although some may use informal ‘checklists’ of factors. Professional judgment and a case-by-case approach, sometimes with advice and support from other professionals, was *the* key element in assessing and mitigating risks. Given this, and the individual nature of ‘risk’, it was usual to consider risks *and* mitigating measures simultaneously, not sequentially. In assessing risk, they focus on risks related to the restorative justice process itself, rather than more general risks, such as risk of re-offending. They would also adopt a restorative approach to assessing risk, such as through raising and discussing potential risks and their mitigation with participants.
- Facilitators valued the advice of other professionals, such as prison officers, social workers and psychiatrists, and (in some cases) these professionals’ work supporting parties in restorative justice meetings. However, in making decisions about restorative justice, facilitators’ own judgment and the views and needs of the parties (principally the person harmed) were seen as more important.
- Facilitators use a range of measures to mitigate potential risks. The single most important measure is simply preparation with the people involved, through a series of ‘pre-meetings’. All facilitators used these meetings to prepare each party for the restorative justice process, and identify and mitigate particular risks; more difficult cases were generally seen as requiring more pre-meetings.
- Communication difficulties which could affect the process included language barriers as well as those related to mental illness or the youth of the parties. Facilitators used a range of methods to overcome these, including interpreters and supporters as well as non-verbal communication techniques.
- While some types of case, such as those involving young people, communication difficulties or large groups, might require extra preparation, these cases (like more difficult cases) were not seen as fundamentally different to any others.
- Many participants want supporters present at face-to-face meetings, and so facilitators invited these people into the restorative justice process as ‘supporters’. These could be friends and family of the participants or sometimes professionals (e.g. therapists or social workers). While this was seen as useful, care was needed in order to avoid power imbalances or inappropriate interventions from supporters.
- There was varied evidence on the practice of using follow-up measures after the meeting, though this was seen as very desirable. While some facilitators

check in with the participants afterwards, others are content simply to provide contact information and solicit feedback.

- It was common for facilitators to work in pairs on a given case, particularly where the case is risky, complex or involves many people. This ‘co-facilitation’ is particularly valuable for gaining complementary perspectives as well as for training newer or less experienced facilitators, who can ‘shadow’ a senior colleague.
- The physical space in which a meeting occurs is very important. Preferably this would be an accessible and neutral space with no links to criminal justice or to either of the parties, and conducive to an atmosphere of safety and calm. It should have at least one ‘breakout room’ for parties to prepare and take breaks.
- Facilitators generally felt that their training had prepared them adequately for facilitating restorative justice, but this training had not always been well evaluated.
- Restorative justice is not suitable for all people or all cases. However, it is worth remembering that for some people harmed by offences, the risks of *not* engaging in restorative justice may outweigh the risks of doing so.

Suggestions

- We do not advise the adoption of formal risk assessment processes in restorative justice. This would risk compromising the individual-focused ethos of restorative justice, and could have harmful consequences by imposing risk categories ‘top down’ on cases. Tools should particularly not be imported from other criminal justice processes, where the aims and purposes are likely to be different. There must be an acknowledgement that every case is different - the most serious offences may be relatively straightforward in restorative justice terms, while apparently minor crimes may hide unexpected risks. However, checklists, tailored to the specific restorative justice services, may function as a useful *aide memoire* for practitioners in considering the types of issues and factors that should be considered when assessing and mitigating risks.
- ‘Pre-meetings’ are the key measure for identifying and mitigating risks. Without introducing undue delay, adequate time must be allowed for a preparatory meeting or meetings ahead of the restorative justice process. This is particularly true for more difficult cases.
- Restorative justice services will need to be flexible in accepting referrals at different stages of the criminal justice process and afterwards, to allow for cases of serious offending where the person responsible is serving or has served a custodial sentence.
- Where necessary, resources should be made available for communication support in restorative justice (interpreters and/or supporters). Non-verbal tools such as picture cards may also be helpful for supporting communication.

- Co-facilitation of cases may be helpful, particularly during the development of restorative justice in Scotland, to contribute to building experience among Scottish restorative justice facilitators (many of whom have been trained but have little practice experience).
- Restorative justice meetings need to be held in accessible and neutral spaces. These should be safe and calm and should always have at least one side room. Participants should be assisted where needed (including financially) with transport to the venue (and this may be particularly necessary in rural or island areas).
- High-quality training of restorative justice facilitators will need to be widely available, with practitioners supported to access this.
- Restorative justice facilitators should be encouraged and supported to help each other develop their practice. As well as co-facilitation, this includes mentoring of less experienced facilitators and regular reflective practice sessions to reflect on and learn from more difficult cases.
- Partnership working between restorative justice facilitators and criminal justice professionals is beneficial, but needs to be underpinned by an awareness that no case is 'too serious' for restorative justice. In decisions about restorative justice, the professional judgment of facilitators and the needs of people harmed should take precedence over other professionals' views.

1. Introduction

1.1 *Restorative justice in the Scottish context*

Restorative justice practice in Scotland can be traced back to at least the mid-2000s, some of which developed out of reparation and mediation services in the late 1980s, with prior historical antecedents. Most cases have been in relation to young people who have offended, however there has also been a significant use of restorative justice within diversion from prosecution for adults who have been accused of criminal offences, and there are a relatively small number of recorded instances of its use in response to more severe harm during pre- or post-sentencing (Kearney et al. 2006). Recent research has shown that most existing restorative justice services only deal with cases where the person responsible for the offence is young (i.e., under 18 years old), and are delivered either by local authority social work services or contracted third sector agencies (Maglione et al. 2020). There has therefore been significant restorative practice across the country at different points in time, with different types of crime, at different points in the criminal justice process, and for individuals with varying characteristics. However, the availability and practice of restorative justice is uneven and variable.

Regarding the contemporary context, the legally binding Scottish Government (2017) *Guidance for the delivery of restorative justice in Scotland*, outlines what restorative justice involves and how it ought to be delivered, and includes the following definition of restorative justice:

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.

In 2018, the Scottish Government committed ‘to have restorative justice services widely available across Scotland by 2023’. The Scottish Government's (2019) *Restorative justice action plan* details how this will be achieved, and this work is supported by the Scottish Government’s Restorative Justice Stakeholder Group. This ambition would increase the geographical coverage of services and the number of cases being dealt with, as well as expand the types of cases being addressed, especially in terms of offences committed by adults and more severe harms. A prominent issue that has been discussed within this work relates to restorative justice in cases of sexual offences, domestic abuse and gender-based violence, especially the potential risks to those harmed by such offences and how these may be assessed and mitigated by restorative justice practitioners. As yet, there is relatively scarce practice experience in Scotland regarding the assessment and mitigation of risk in such cases for restorative justice, and a general absence of research on how risk should be assessed and mitigated in restorative justice, either locally or internationally.

Given the stage of development of restorative justice in Scotland, the commitment to expanding service provision, and the concerns and paucity of research regarding assessing and mitigating risks, we believe the current research comes at a crucial time. This work is intended to draw on the practice wisdom that exists in Scotland, as well as experience in other jurisdictions within the United Kingdom and internationally, to address the lack of research and theory on risk assessment and mitigation in

restorative justice. It is also intended to help inform restorative justice policy and practice, both in Scotland and globally.

1.2 Previous academic and practice literature on risk and mitigation in restorative justice

The key international instruments in relation to restorative justice indicate firmly that risk assessment should be undertaken by facilitators when a potential participant asks for restorative justice or a referral is received. So, for example, the Council of Europe Recommendation CM/Rec(2018)8 says ‘Facilitators must be afforded sufficient time and resources to undertake adequate levels of preparation, risk assessment and follow-up work with the parties.’ (pt. 29). The 2012 Victims Directive of the EU indicates that all victim services should be preceded by an individual risk assessment: ‘Victims who have been identified as vulnerable to secondary and repeat victimisation, to intimidation and to retaliation should be offered appropriate measures to protect them during criminal proceedings. The exact nature of such measures should be determined through the individual assessment, taking into account the wish of the victim.’ (para 58). In Scotland, the Scottish Government Guidance (2017: 10) indicates that one key core value for restorative justice is that it should be 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.’ (A3). In order to do this, the national guidance advises that facilitators should ‘use appropriate risk assessment and evaluation tools’ (4.2(b)) and ‘Carry out an initial formal risk assessment and assess and manage any identified risk throughout the process’ (Part B.C1).

Given this, it is very strange that the extent of the academic and practice literature on risk assessment for restorative justice is meagre. Facilitators are of course trained in their initial training to undertake risk assessments and, as we shall see, they do use such assessments, both when they receive a referral or self-referral and subsequently. However, there is no uniformly agreed risk assessment procedure or instrument in any of the jurisdictions we have researched. Facilitators and restorative justice providers seem to have developed their own through experience, and knowledge about these processes seems to be kept within provider schemes. In this section we set out the pointers towards risk assessment we have found through searching the literature.

First, however, we need to consider the nature of risk assessment. Assessing and monitoring risks is now widespread throughout social policies and practices, as well as in relation to work and employment – and the same is true of criminal justice. However, risk assessment, it is emphasised, should be in relation to risks relevant to that activity and setting. So, for example, the Health and Safety Executive advises employers to look around *their own* workplace and identify hazards (HSE 2022), assess the risks and then control the risks. It is advised to think about workers with particular requirements, to talk to workers and then assess the level of risk and how it is being and could be further controlled.

Though there is good practice generally in how to do risk assessment, it is definitely not advised that an instrument or elements from another activity or situation should be imported: risks must be assessed in relation to that specific activity and context. Risk in relation to restorative justice is not necessarily risk as practiced in criminal justice. There is a wide literature on risk in criminal justice, but that is centred on risk of (re)offending by those who have harmed, and particularly on the potential frequency of reoffending and risk of serious harm being caused through that reoffending. In contrast, the risks associated with restorative justice are primarily about the potential consequences of the participants being in communication with/meeting each other, not whether the person who has harmed will reoffend generally.

Further, one should not think just about risk, but also about how those risks can be controlled (HSE 2022): the processes and elements which are already in place to control risk, and what might be put in place. In this project, we have termed these controls ‘mitigation’ of risks. The principle is that one should not just assess risk, but also controls/mitigations for the specific situation – the two should go together.

We searched the academic literature for mentions of [risk – mitigation – restorative justice]. The very few articles that appeared were primarily about restorative justice for young people who have harmed, either from a risk preventive viewpoint (occasionally harm minimisation) or about generic needs of those who have been harmed. The focus was on the outcomes of restorative justice in terms of reoffending and skills of those who have been harmed, rather than on the processes to be adopted in restorative justice (e.g. Dillard et al. 2019). Any reference to mitigation was primarily to mitigating factors as related to sentencing (not restorative justice).

An interesting exception was Swida (2020) who was talking about the work of Open Circle in Australia during Covid. They emphasised the need to ‘work with service users to identify and respond to the risks as well as the potential benefits of various forms of communication. All service users are consulted on how they would like their cases progressed and decisions are made on a case-by-case basis’. Choi et al. (2012) warn against too great a focus on preparation of young people who have harmed, to the exclusion of proper preparation for those who have been harmed, with resulting deficits in the satisfaction and potential secondary victimisation of those who have been harmed. Shapland (2009) focused on large restorative justice conferences, stemming often from neighbour disputes or groups who know each other, where both preparation and the conference need to involve more facilitators and an emphasis on refraining from gossip or using social media with those outside the group of participants so as not to exacerbate tensions.

On the more theoretical side, Christie (2009) has cautioned that as restorative justice facilitation becomes more professionalised, there is the danger that its processes will become more facilitator-led and dominated, with facilitator values, or government values, becoming more visible and the balance of power shifting from participants and communities to professionals. There is clearly potential that this may happen in relation to risk assessment and mitigatory measures, for example, if discovering there is a potential risk that might lead to abandonment of trying to facilitate restorative justice, without consultation with the relevant participant or thinking together whether there are suitable mitigatory measures. O’Malley (2009: 2) picks up on this when he says that ‘we must always be quite specific about the particular configuration of risk to which we are referring when thinking about – and evaluating – possible

convergences of risk and restorative justice'. Moreover, '[Risk] freezes us into immobility and fear for it reveals only hazards and forecasts previously unanticipated harms. While ostensibly about security, it thereby generates insecurity' (p.3). Hence it is important, when thinking about risk, to consider professional judgment and lay views and particularly not to consider solely reoffending.

The restorative justice literature is therefore characterised by almost silence about the processes of risk assessment, mitigation of risks and preparation of participants which are, none the less, seen as crucial in creating well managed restorative justice, safety and satisfaction on the part of participants (Bolitho 2015; Shapland et al. 2011). It is the aim of this research project to start to populate that silence with practical tips, honed by experience, which will allow future new facilitators to know more about what needs to happen when a referral occurs.

1.3 Methods for the research into risk and mitigation

Drawing from this, the aim of the project is to find out about the risk mitigation strategies experienced restorative justice facilitators use when risks to participation in restorative justice are identified for any participant or other person. This will include how facilitators identify risks (including in serious and difficult cases), what (if any) instrument they use, and their experience of the effectiveness of the risk mitigation measures.

Given there is little written evidence on this, the best source is to interview facilitators themselves. Because there is much more experience in other countries of dealing with more serious cases and different kinds of cases over a longer time span than in Scotland, our intention was to interview not only facilitators from Scotland, who will be familiar with the Scottish context and criminal justice system, but also facilitators from different countries, including those doing primarily conferencing and those doing primarily mediation. The idea was to interview some 25-30 experienced facilitators, using virtual interviews which would, with the permission of the interviewee, be recorded and transcribed. Analysis of the interviews was done thematically by members of the research team.

We have used our contacts, prior research experience and international experience to identify experienced facilitators, trying to maximise the range of different providers in a country. So this is not (and cannot be) a random sample or entirely generalizable sample of practitioners, but we have tried to tap into the range of experience and context of the use of restorative justice for both adults and children who have harmed in a criminal justice context. We have not looked at the use of restorative justice for conflicts which do not involve criminal offences, nor in organisational contexts outside the criminal justice system (for example, in schools or the health service). Ethical permission in relation to research ethics was given by the University of Sheffield School of Law research ethics committee. We have said that we will not identify individual facilitators or providers, but, because the contexts are different, will indicate which country the interviewee has practiced in.

The formal aims of the research were therefore:

1. To consider and draw together a schema of the risks involved to facilitators and individual participants in restorative justice in individual cases, including

both face-to-face and indirect restorative justice (mediation and conferencing). The project will not consider organisational, systemic or reputational risks (e.g. recidivism or failure to notify outcomes).

2. To draw upon the savoir-faire and expertise of experienced facilitators in different countries as to the (successful) measures they have adopted to mitigate these risks and the processes necessary, with a view to informing development of practice and policy in Scotland.

1.4 Our interviewees

We undertook 28 interviews with a total of 30 interviewees (one interview was with a group of three interviewees from one provider). Eight of these interviews were with facilitators from Scotland, five from England and Wales, two from Northern Ireland, two from Belgium, two from Denmark, two from Norway, two from Finland, two from the Republic of Ireland, and one each from France, Austria and Estonia (see Table 1).¹ Sixteen interviewees were female, eleven were male and one was a mixed group.

Table 1 Interviewees

Jurisdiction	No. of interviews (and interviewees)	Abbreviation
Scotland	8 (8)	Scot
England & Wales	5 (7)	E&W
Northern Ireland	2 (2)	NI
Belgium	2(2)	Belg
Denmark	2 (2)	Denm
Norway	2(2)	Nor
Finland	2 (2)	Fin
Republic of Ireland	2 (2)	RoI
France	1 (1)	France
Austria	1 (1)	Aus
Estonia	1 (1)	Est

In terms of the range of experience of interviewees, 13 interviews were with facilitators who had worked with both adults and children who had harmed, nine with facilitators who worked with primarily adult people who had harmed, and six with facilitators who worked primarily with children who had harmed. Interviewees had used a variety of restorative justice procedures and processes, with 22 describing themselves as doing conferences, 18 mediation and nine other forms of restorative justice (including indirect means, panels and circles) – interviewees were asked what type of restorative justice they used as separate questions, so answers add up to more than 28. It was therefore common for interviewees to describe more than one type of

¹ To anonymise interviewees, each quote in this report has been provided with a code at the end, which indicates the country the interviewee is from (using the abbreviations in Table 1) and the number of the interviewee. Hence ‘E&W2’ is the second interviewee from England & Wales, whereas ‘Fin1’ is the first interviewee from Finland, etc.

restorative justice. Eighteen of the providers for which the interviewees worked used volunteers for at least some cases, whilst ten only had paid staff and we were not sure of the scheme composition in two cases. Where interviewees were based depended upon the structure for delivery of restorative justice in that country, but overall 12 were employed in third sector restorative justice providers, eight were employed within the criminal justice system (sometimes in probation, prison or Justice Social Work or its equivalent), three within the police and five in other settings (within government or local government, in a national victim agency, in a national mediation service or as independent practitioners).

These were experienced facilitators, so it is not surprising that they had dealt with difficult, complicated and serious cases. It is important to bear in mind that the extent of experience into which we tapped would not be there for the average facilitator (if there is such a person) and certainly not for new or trainee facilitators. We specifically asked if facilitators had undertaken cases which involved a homicide (in 15 interviews they had), cases of sexual assault (in 20 interviews they had) and cases involving domestic violence (in 16 interviews they had). We asked if interviewees had responsibility for supervising others, and 23 had, which proved very useful in asking about how it was possible to develop others' experience within the provider.

The interviews normally took around an hour and covered interviewees' careers in restorative justice; what information they would obtain (if possible) from whom before approaching potential participants; whether any particular risks would make them cease exploring restorative justice at that point; how they would contact potential participants and what risks they would be considering; and whether they used a risk assessment checklist or schedule. We then considered with them some particular risks and potential mitigating processes, including communication difficulties, sites, safety during any meeting/communication, safety after restorative justice, and large group meetings. We asked if they used a category of 'serious and complex cases' and what would be in it; and then what their procedures would be for these cases. Similarly, we asked what would be assessed and done for cases involving a child. We enquired about follow up processes and about what was covered in training. Finally we asked specifically about managing more difficult cases, including any use of backup, mentoring, co-facilitation and learning sessions/CPD (as well as asking interviewees whether there were any other issues which they would have expected us to raise).

1.5 How restorative justice is organised in the countries covered by the study: careers in restorative justice facilitation

The justice context for restorative justice is obviously dependent upon national legal systems, though the countries in which our interviewees practiced were all influenced by the international instruments from the Council of Europe and the European Union.² In general, restorative justice can be done through referrals from criminal justice agencies (and self-referrals) to specialist facilitators, or it can be done by those employed in the criminal justice system. Both routes may be available in the same place, with specialist facilitators being used in more complex cases, as in some towns in England & Wales.

² For more information on individual countries, see also Duenkel et al. (2015).

In Scandinavia (defined as including Finland, as well as Denmark and Norway), commonly cases are referred by the police or prosecutors (sometimes the courts) to specialist restorative justice bodies, which may be set up in statute (as in Finland, for example). The restorative justice body will have a central or regional professional set of employees, who act as coordinators and organise training and selection of mediators, but use community-based mediators for cases. These mediators are normally volunteers, but paid by the case (Norway, Finland, Denmark) and commonly have a main paid occupation, facilitating restorative justice as a side line. In the case of our interviewees, though, acting as a facilitator/mediator could take up substantial amounts of their time for some of the more complicated cases. Initial contact with potential participants is made by the police or prosecutor, who may do some initial screening, before passing the case to the mediation body, which will select the mediator or mediators to use, according to their previous experience and location. It is common for the mediation bodies to deal with civil as well as criminal cases.

In Belgium in 2006 federal legislation formalised the use of professional restorative justice organisations (separate in Flanders and Wallonia). Cases are referred by the police or prosecutor to this organisation, which employs the mediators/facilitators, who are normally employed full-time. The public prosecutor offers mediation to each case which goes to court (though victim support, the police and prisons also refer). However, restorative justice is also available at subsequent stages of the criminal justice process, including referral by the court pre-sentence or when the person who has harmed is in prison. Historic cases of sexual abuse can be self-referred by those harmed and do not necessarily need to involve criminal justice authorities. Referrals are particularly likely to occur from those involved as support people in previous cases (key workers from prison etc.) because, as one interviewee put it, 'tell me, and I will forget, show me and I will remember, involve me and I will understand' (Belg1).

In all these countries, people who have harmed may be either adults or children (above the age of criminal responsibility). Restorative justice is available at any stage of criminal justice and, potentially, for any offence, depending on individual risk assessment screening on that particular case. However, there may be police 'stereotypes' involved in the initial decision as to whether to refer the case and, in Finland, self-referrals are not possible for domestic violence cases. It is unusual for mediators themselves to examine criminal justice records to look for potentially suitable cases, though it has occurred, for example, in Denmark.

In Austria, however, restorative justice is purely diversionary (cases do not go forward to court, and referrals are from the public prosecutor following a charge, only for an offence which carries less than five years imprisonment). That said, there are quite some years of experience with mediating domestic violence cases, which raises some questions as to the weight of such cases in the criminal justice system and the problems of prosecuting them. Similar processes are possible using unpaid work or fines.

The facilitators we interviewed came from a wide variety of backgrounds. Some had been social workers (most of those in Scotland were Justice Social Workers or from third sector agencies), some from criminal justice agencies, some originally psychologists or therapists; some even from academia. Because of the relatively recent development of restorative justice and its dependence on funding, it was common, for example, in England & Wales, for facilitators to have moved between

agencies, utilising their restorative justice skills to set up or manage restorative justice in that agency. In Scandinavia, most facilitators had a primary paid occupation as well as undertaking cases as a facilitator. The advantage of this wide experience was that facilitators would be familiar with the practices of criminal justice agencies, the difficulty that they came into post with the previous agency's cultures and experiences of risk assessment, which, as we shall see, were not always appropriate.

As restorative justice developed, it has become increasingly used for more difficult, but more politically pressing, types of cases. So, for example, in both Northern Ireland and the Republic of Ireland, restorative justice facilitators have adapted their methods (but not changed their values and practices) to take on historic and institutional child sexual abuse. Similarly, mediators have taken on and gained expertise in relation to image-based sexual abuse and other sexual offences involving cybercrime. In Northern Ireland, the skills developed in relation to statutory youth conferencing for children are being used to move towards providing a service for adults who harm.

Given the patchy development and funding in several countries (even where there is a statutory basis for restorative justice, as in Denmark), interviewees have had experience of different models of setting up what has often needed to be a local service in a national context. They cautioned against developing, or funding, restorative justice on a very local basis – because crime does not necessarily respect local authority boundaries. Those who harm, those who have been harmed, and the offence itself, can be in different areas – but an easily available service needs to exist for all potential participants, so developing a network of provision and links between providers are crucial. Though interviewees, after several years, might specialise in particular kinds of more serious cases (such as homicide, domestic violence or sexual assault), the general pattern was that they gained experience, and confidence, in an increasing variety of kinds of case which they could then take on to more serious cases. We consider in Chapter 5 how facilitators learned and were mentored to take on more difficult cases.

It seems most sensible to discuss the results from the interviews with facilitators in terms of the progress of the case. In Chapter 2, therefore, we deal with the first steps facilitators take when a case is referred, the information they try to acquire and their initial views on risk. In Chapter 3, we consider the nature of risk in restorative justice and how it is intrinsically bound up with mitigatory measures. In Chapter 4, we consider specific kinds of risk and how and whether they can be dealt with. In Chapter 5, we look at the ways to train, mentor and coordinate facilitators which have been found useful to develop their skills and competences in the different countries.

2. Analysing risk in the context of restorative justice – the first steps

Before any restorative justice process can be carried out, restorative justice facilitators must first be made aware of a given case. This can happen in a variety of ways, through referrals by the police or others in the criminal justice system but also for example by self-referrals. Then the facilitator asks both parties (the person harmed and the person who has harmed) whether they would like to go ahead with restorative justice, perhaps taking into account input from other professionals and agencies.

For successful restorative justice meetings this stage may be the first step towards reconciliation and healing; however, it is also the stage at which many cases may be ‘filtered out’ (Banwell-Moore 2022). When considering the use of restorative justice in ‘risky’ cases and situations (however these are defined), it is essential to develop good practice for this initial decision-making stage - not only so that genuinely unsuitable cases are prevented from going further, but also to ensure that cases where people harmed *would* benefit from restorative justice are not prevented from going forward.

This section discusses the process of initial decision making around restorative justice, how our interviewees get initial information on each case, the solicitation and use of input from fellow professionals, and their preparatory discussions with parties in the case, ahead of the meeting itself. Our research has found that there are few risks which are truly ‘prohibitive’, and that these tend to apply to specific, individual people and cases rather than to types of case.

2.1 Where and when do interviewees get initial information on the case?

Many of our participants worked in some way within or in connection with the criminal justice systems of their jurisdictions. It was usual for participants to receive referrals from criminal justice agencies as part of the criminal justice process. These referrals can be made at a range of points in the process.

In the Scottish youth justice system (where most Scottish restorative justice activity has to date been carried out) most referrals occur as part of the Whole System Approach, which allows for both Early and Effective Intervention (EEI) referrals from the police and diversion from prosecution referrals from the Crown Office. However, restorative justice referrals may also be made informally for children *or adults* through Justice Social Work (JSW) supervision as part of a community sentence, where this service is available.

They were a diversion for prosecution services ... so they were individuals that were being prosecuted by the Procurator Fiscal and they felt that diversion could be done. As part of that diversion, we then assessed that restorative justice was appropriate for that person and then we would reach out through Police Scotland to the person harmed and ask them if they’d be willing to take part in a restorative justice conference. Or any other sort of method of restorative justice that we can facilitate at that point in time, whatever they were comfortable with. If they agreed and said, yes, we would be interested in that, we would obviously have further

appointments with them and explore the different options that they would have. (Scot7)

So, at the moment referrals had traditionally come from just within Justice Social Work. They would have been flagged up as people who had a hate crime aggravator. People who were coming in on orders and who had a hate crime aggravator. (Scot1)

Whether made as part of the Whole System Approach or otherwise, however, for a restorative justice referral to happen still requires knowledge and engagement on the part of local justice professionals:

So our pick-up point will generally be police reports, in our case juvenile offence notifications, so that'll be Police Scotland submitting the summary of the crimes that have taken place. We may have no prior relationship with the young person responsible, or as is more likely they'll be known to us and there'll be emerging patterns of behaviour. Often they'll have an allocated social worker, and the allocated social worker will have some additional insights into that young person's engagement, empathy – or lack thereof – maturity and openness to participating in any kind of process. But the reason that so little happens remains because nowhere in any juvenile offence notification that we receive from the police is reference made to the person harmed and their interest or willingness in participating in any kind of restorative process. Therefore, I assume countless opportunities go by because it's just not the way things are done. (Scot5)

In Northern Ireland, where restorative justice is well established as a response to youth offending, there are clear referral pathways from the courts and the Public Prosecution Service, with extensive information provided on the person's background and potential risks. Processes of referral in the Republic of Ireland are similarly centred on the criminal court, but are somewhat more similar to Scotland in being contingent on awareness of and engagement with restorative justice on the part of other criminal justice professionals.

The case [youth case] would come from PPS or court. We would first review the prosecutor's file and antecedent history, either the full file or the case summary. It has witness statements and victim details and victim statements and a case summary. If they were already known to us - the majority are - we have links to social services, education, educational welfare and maybe police youth diversion schemes. More recently we have been doing early diversion, so if a few (9%) come back to us, we will have the same information on family and we use all that to build an assessment on need. With an underage person, you require assessment - previous trauma, lifestyle, that would not be picked up prior to the meeting but it's ongoing. With sexual offences it may not be a serious offence but meeting a child in care or if there was significant trauma or issues on compliance and ADHD - you have to have the ability to sit for a period of time, also substance misuse, mental health and specialist assessments, drugs etc. (NI2)

Well, having clarified the way the requests come to us, the information will come through a number of ways. The information that comes from the court is a very standard form. It's the standard form that basically outlines the fact that the court has adjourned the matter for a pre-sanction report, and it's a tick-box to say that

restorative justice to be considered as part of the assessment. We still practice a court duty system where probation officers are in court, although it's very resource intensive, and I suspect that may change in the coming years. But for the moment, if we have a probation officer sitting in court, they will often provide the context within which this arose, which may be as a consequence of a defence solicitor providing some information. Or arising from the fact that the victim was in court and as part of their victim personal statement maybe expressed some interest in having contact with the offender. Or it might very often where a judge themselves, because of the nature of the offence and the facts that have been laid before them, feel that it is appropriate for it to be explored. (RoI2)

In other European jurisdictions in our study, there is similarly an established procedure of restorative justice referrals from prosecutors as an alternative to prosecution and trial. To expand the use of restorative justice in Scotland it will be necessary to substantially improve awareness of restorative justice among criminal justice professionals and develop working relationships between prosecutors and facilitation schemes (see Maglione et al. 2020).

[I]f I do the Victim-Offender Mediation according to the law, then I'm most often provided with basic information from the police, for example. And so, there you have contact details, names, what is the crime, what has happened in short. If I do the mediation I do now, community mediation, I don't have any previous information at all because it's what the parties ... how they perceive, how they feel about a conflict in the neighbourhood or in the community. (Fin6)

In Norway, restorative justice may also be used directly as a criminal sentence for young people. However, there are potential problems with using restorative justice in this way: it requires the person who has harmed to admit responsibility, but when a restorative justice referral is used as an alternative to prosecution there may be problematic implications in terms of due process (as the person admits having committed the harm but has not been convicted of the crime).

Participants would usually expect the referral to include, at minimum, some information on the case and the contact details of relevant parties. However, information on the case and the parties involved may also be passed on informally, particularly where both the facilitator and the referrer are within the same organisation. In some jurisdictions, facilitators receive more detailed information including judgments on risk from other professionals, although some of our participants were keen to point out that they did not necessarily take this information at face value. The system in England & Wales, in which restorative justice services are commissioned primarily through Police and Crime Commissioners, allows some facilitators access to information collected by the police about particular crimes.

[W]e are in a really fortunate position in that ... we've got a police, fire and crime commissioner but because we sit in the office, we have access to police systems ... we get very basic information on the referral itself ... we'll be looking at history between participants. We work with neighbour disputes and things as well as complex and sensitive cases. So there can be real complications in the relationships between the parties, whether there was one before or since ... Things like warning markers that keep us as facilitators safe. So anything around drugs or violence or anything like that we'll be looking at. (E&W2)

We get the complete criminal file existing and they send it to us and we read it with all the damage, with what they said to the police, anything that exists in the file in connection to this case is sent to us, and that's our preparation. (Aus1)

Although referral from criminal justice professionals was the most common type described by our participants, some participants described self-referrals by the person harmed or (less frequently) the person responsible for the harm.

On the other side, I'm working a lot with domestic violence but also cases from the prison, because the prison care has a duty to inform all the inmates about their right to ask for restorative processes and meeting people that they have hurt, damaged or...yes.

I see. And that's the prisoner's right, to ask for that?

Yes. (Nor2)

Participants in Scotland described this type of 'self-referral' as very rare, perhaps because of still quite low levels of public and practitioner awareness of restorative justice. However, these participants showed an interest in receiving more of these types of referrals.

It [the restorative justice service] was unique in the sense that it was perpetrator-led. Referrals were led by the person harmed, facilitated by the person's allocated social worker, their supervising officer essentially, and Justice Social Work. That would really be about people starting to express a wish or a need to perhaps speak to a victim to apologise or make amends somehow, that sort of thing. If there were enquiries ... because it was something that people often said and there was no recourse. It was led by that ... Referrals-wise, when I was there, we had a couple of people, we had some that just didn't end up in anything. They weren't quite appropriate. (Scot3)

In some cases, particularly where the case was extremely serious or traumatic in its implications, a self-referral process - whether from the person harmed or the person who has harmed - might not occur until long after sentencing or even after the person responsible had completed a custodial sentence. For this reason, it will be vital to allow for flexibility in terms of timing when seeking to expand restorative justice to more serious and 'risky' cases.

2.2 How might facilitators follow up this initial information by approaching others? - partnership working

The sharing of information from criminal justice agencies was widely seen as crucial to successful restorative justice work, whether this was done as a matter of course when making the initial referral, or sought out by the restorative justice provider in consultation with other agencies.

That multi-agency risk assessment is absolutely vital ... working with agencies like probation or [other agency] and ironing out as much of those issues as possible before those cases start. (E&W2)

One of the things that I think is really important is that we don't kind of deem someone too risky and we don't look to progress to have some conversations. So, and that's not conversations about necessarily going to the offender, but actually, let's have some conversations with the people that are working with that individual. ... So that actually we've got a real thorough picture in terms of when we might go to step B or actually, is there some mental health concerns and actually, I've worked with people where let's look at engaging mental health services, because we know the restorative justice process can be really difficult. Actually, do we need to look at kind of what support somebody has got. Because we know that further down you go down this process, the more difficult that that can become and particularly as you're getting towards a restorative meeting. We need to see where someone's mental health is. (E&W3)

However, the *reasons* for the importance of information sharing and partnership working were varied. Information sharing was seen as useful for identifying possible risks to the process but the emphasis was usually more on particular concerns held to require specialist expertise, or where careful engagement with this expertise was seen as important for supporting the person's welfare needs.

One of the other things that we also ask as standard is, who else are you working with? And we also then try to liaise with those people and tie in with them. So, if that is a GP, if that is a mental health worker, if that is a specific support worker in some sort of specific issue like domestic violence, or sex offences, or anything like that, we will try to see if we can work alongside that person or that organisation as well ... 'Cause for the most part, in restorative justice, we're there in the short-term, and all of those support people will be the ones dealing with the aftermath of this. (E&W1)

[I]f there was, you know, some sort of psychotic condition that I didn't fully understand, I'd want to talk to somebody who knows about that. (NI1)

I think with post-traumatic stress as well there's a very real danger, with some of those more serious – well, any crime at all – and again you need to plug people into the whole medical field of how to treat post-traumatic stress. (Scot4)

If there's an organisation working with them, I would get permission to contact the agency. What really would want to check with the agency is are they supportive. Because if they are in contact with an agent in the agency, if they are in contact with therapists, in contact with whoever, it is very important that they are supportive of whatever is going to happen. Because if they are not supportive I'm bringing, whether it's the victim or the offender, in a difficult position that maybe they get into opposition with the agency, with the therapist, with whoever. ... I thought - really, really important for me is the support. If there's no support, I would be hesitant to move forward until I can get some kind of support working in the background. (Denm1)

Information sharing of this nature must be done only with the consent of the individual, but can be useful to coordinate support in place for people with ongoing welfare needs, to enable them to participate fully in the restorative justice process and minimise any negative emotional impact (see Chapter 4).

Despite this, facilitators did not necessarily feel bound to follow the advice of other professionals. Where restorative justice is used in criminal cases, the views of parties in the case (people harmed, people responsible and potentially others) may differ from the claims made officially by prosecutors and sheriffs/judges and the systematic categorisation of cases found in criminal justice. Parties in the case may also disagree with the advice of mental health or other professionals on whether they are ready to go ahead with the process. For restorative justice facilitators in such situations, the feelings of the parties in the case took precedence over professional opinion.

I'll give the [example of the] person in the prison because he's the one that was most recent, ... suspected ADHD, you know, and had had substance use issues. [They] ... were managed very well within prison, so even though there were things going on for him when ... we met, he was clearly ... you know, he was...he clearly understood what was being said. Understood what the process was. You know, there was nothing to suggest that he didn't ... You know, so the other person, the prison officer, did actually put some barriers in the way to the process, but it didn't influence my decision about whether he was ready or not, because ultimately, it's up to that person and it's up to your judgment. (Scot1)

I have had cases where the therapist said, you're not ready, but the victim said, I think I will never be ready but I have to do this and I went on doing it. Because, for me, the most important is the person themselves, and then it's that person that will decide, no matter what their lawyer or therapist advises them. I take that advice very seriously, I will discuss the advice with them, but if they then decide, I'll go on with it, I'll go, as a mediator, also go on with it. (Belg1)

This is in line with the traditional principles of restorative justice as focused on the needs of the parties involved in the harm or the criminal case, also reflected in the emphasis in the Scottish Government (2017) guidance on meeting the needs of the person harmed.

Information sharing was sometimes described as a particular challenge for partnership working around restorative justice in Scotland; prior research (Maglione et al., 2020) has noted this as a challenge for efforts to expand restorative justice in Scotland following the implementation of the General Data Protection Regulation by the 2018 Data Protection Act.

For the victims we already held ... you will have heard the term obviously 'complaint' or 'indictment', you have the victim's name on that but no other details. Where we were then able to do something with that is, with Police Scotland we developed ... it took two years to develop an information sharing protocol with them. We had approached VIA, the Victims Information Advice service, through the Crown Office. We almost got to a point but they then finally said, 'No, we actually don't want to have this ISP [Information Sharing Protocol]. We have contact with victims to a certain point and then we just end contact.' Whereas the police said, no, do you know what? We would keep that, we would keep a victim informed about the progress of their case. We are interested in this, we can do this. So the police were much more ... it still took two years as I say. (Scot3)

[T]he people that suffer are your victims and offenders because they're the ones sitting waiting for you to, you know, manage your political issues between services while they're hanging around for three or four months ... the biggest risk that we face at the moment with cases is other organisations creating huge delays that we then have to manage. (E&W2)

For restorative justice to be expanded in Scotland, good partnership working between restorative justice schemes and other agencies is essential. However, this must respect confidentiality and privacy; any decisions should centre the welfare of the parties involved in the case.

2.3 What do facilitators check in these early stages?

For restorative justice to take place, facilitators must necessarily contact the person harmed and the person responsible for the harm. Facilitators commonly highlighted 'pre-meetings' with the parties, ahead of the meeting itself, as vital for preparing them for the restorative justice process - to give the parties a sense of what to expect, what they and the other party would say, the emotions during the restorative justice process and the possible outcomes. Throughout this process of contact, facilitators must check - and sometimes continue checking - that both parties are truly able to engage in restorative justice. As well as requiring readiness on the part of the person harmed, it also means that the person who has harmed must acknowledge the harm done.

When we are talking about risks, in these severe cases we really want to have that the prosecutor or the police attorney calls us and we discuss, is this a case for the mediation board or not? We are not focusing so much on if the case is suitable, but if the parties is able to use restorative processes in their case ... The person who has harmed, if they acknowledge what they have done, that's the first step. Because if they haven't acknowledged it, we can make things worse when they meet their victims. So that's the first question. (Nor2)

We were looking for information on them from their social worker, what have they been saying about the offence? What are the risk assessments saying? Are they remorseful? Do they still hold prejudiced beliefs? Do they need to do some work first on that before they are able to even think about speaking to the victim of the offence? That sort of stuff. (Scot3)

This is where much of the crucial preparation work for restorative justice is done; our participants consistently highlighted the importance of preparation in forestalling or mitigating any risks that might arise in the meeting itself. The pre-meeting process was particularly important in sensitive or highly emotive cases, to build trust between the parties and the facilitator/s and perhaps to identify previously unknown risks (which may have been missed by less relational formal criminal justice processes).

There was nothing official to go on but I remember in one of the more serious post-sentencing cases, where we discovered that the ... I mean, we had conversations in preparation for ... to meet the person harmed or the person accused. And in one of the more serious cases, we discovered that the people harmed had weapons and this came out in the course of conversation. But what I

used to do was keep it very simple in terms of a case note for those cases. There was a little box on the case note for risk. Is there any identifiable risk here? (Scot4)

Because just talking about risks, because then you can really assess this person you're talking about and they're quite in-depth interviews, you know that, and that really makes it easier to assess the risk. Sometimes you provoke something, I have talked to many violent men and I know, well, there are methods to get them to where they don't have any more words and where they ... how do they react to better assessment, how will they react if there is any critical situation? And it's easy ... and on the other hand, when you have these preparational talks you get into good context with these people and they trust you because they see you're not against them. You're against violence but not against the person and even the offenders feel supported by you because you helped them in a way that you can help them solve a problem, or even recognise the problem and find ways for a solution. (Aus1)

Facilitators might also continue to use relationships with other agencies to consider any possible risks or issues that might affect the process. In some cases, this could entail bringing in specialists who could support a party during the restorative justice meeting.

We will always be looking at risk of physical harm, so we do a lot of home visits. So that's the first thing that we'll look at is are we safe to do that. And how do we manage that, do we need to meet away from the home or something like that. ... We'll be looking at things around any additional needs, were there any mental health concerns, any physical health concerns or any extra support that either participant needs in order to have those conversations with us. And do they need somebody in as a supporter to help them manage, you know, those needs or can we manage them ourselves. (E&W2)

[T]hey fill in a client referral form, which I send them. And that details things like the nature of the offence, basic information, but a brief risk assessment around particular risks or trauma in that person's life, any risks to staff, that kind of thing. And then following that, I arrange an initial three-way meeting between the referring agency - so social worker, say, and the person, and myself or a colleague, and we have a chat. And in that session, I say it's very much a chance for the person, the prospective client, to find out information about the service and about the restorative justice process. So I would give them a leaflet that we have, a [service] leaflet and a card with contact details on. And it's an opportunity for them to ask questions about me to share information. (Scot2)

However, the key thing facilitators are looking for is whether the parties are emotionally and psychologically ready to go ahead with the restorative justice process. Pre-meetings with the parties in the case are the most important method for establishing this.

2.4 Would any risks make facilitators cease exploring restorative justice before approaching participants?

In our interviews we sought to find out whether any specific risks function as ‘barriers’ which would prohibit any further exploration of restorative justice and effectively ‘close off’ the process, whether as a matter of policy (on the part of the restorative justice provider) or of professional practice (on the part of the individual facilitator). All of our participants mentioned factors which *could* lead them to decide not to proceed further. However, unlike the ‘risk factors’ found in various actuarial criminal justice tools, the risks identified by restorative justice facilitators in our study related to specific individuals and cases, rather than to types of case or individual.

Some facilitators had experienced situations in which a restorative justice meeting might be a source of physical danger to one of the parties, including where there was ongoing violence. Such a situation is clearly prohibitive to restorative justice, given the obvious risks to safety and the requirement that the person responsible be sincere about not doing any further harm.

So when we, for example, talk to the victim that’s why we talk to the victim first, and she tells us, no, it was not just this one incident, every week he runs after me with the knife in his hand. This would be a serious reason ... [to send] the case back and say that’s not a case for victim/offender mediation. (Aus1)

However, these extreme situations are very rare in the facilitators’ experience. In general, the decision not to proceed with restorative justice comes about for one of two reasons. First, one of the parties may for various reasons lack the insight or the ability to engage with the process. Second, particularly relevant for cases such as domestic abuse or gendered violence, there may be a concern that restorative justice would become a vector of control or manipulation on the part of the person responsible, particularly if that person is not sincere in their engagement with the process.

In line with the discussion above, a lack of understanding or engagement on the part of either of the parties appeared as the single most prominent factor in any decision not to proceed. If the person harmed does not feel ready to proceed with restorative justice, the process cannot and should not continue, given participation in restorative justice must be voluntary. Equally prohibitive were an unwillingness to engage on the part of the person who had harmed, or a sense that they did not understand or appreciate the harm they had caused, or were not emotionally ready to deal with discussing it. This does not mean a formal admission of guilt is needed, but there must be understanding of the harm and a willingness not to do further harm.

It was a really nuanced one with hate crime [referrals to restorative justice]. We didn’t need people to stand up and say, I am completely a racist or whatever it is. We needed people to understand, right, I committed this offence and I have caused harm to someone. (Scot3)

Let’s imagine hate crime related, do you know? For example, a 15-year-old goes into a corner shop, makes derogatory references to somebody’s heritage, vandalises the shop and steals from it. If during the course of preparations for a potential restorative encounter people have continued to use racist epithets, abusive

language, continue with the languages of ‘they should just go home, they’re over here stealing our jobs’, and that kind of stuff, well then it’s a non-flyer. (Scot5)

These are clearly in line with the key principle that restorative justice must be voluntary on the part of the person harmed and the person responsible. Related to this, some participants highlighted factors which while not necessarily prohibitive of successful restorative justice *in and of themselves*, were thought to be likely to diminish the ability of the person who had harmed to fully engage with the meeting, understand the content of the discussion or manage their emotions appropriately - usually because these would affect the person’s understanding of reality. It must be stressed though that these were rare.

We’ve not stopped exploring it in any of the cases that we’ve managed to date. I think it’s possibly the concern that the level of ... the possibility of mental health issues on either side, where reality is very distorted. (RoI2)

Yes, one time, yes, one time the person was so drunk I couldn’t discuss with him. (Fin5)

I suppose substance use is the other one. Is somebody going to be under the influence when they’re ... are they going to be able to manage to have a meeting? If they’re going to be under the influence of any substance then that’s probably going to be a no. Unless it’s somebody who is on a methadone script and they’re really, really, steady, or they’re a - again, it doesn’t rule it out, but it’s about what impact does it have on them and how they manage their emotions, how they manage themselves. (Scot1)

Evidence on risk assessment in criminal justice settings highlights a difference between unchanging static risk factors and dynamic risk factors amenable to change through supportive interventions by psychiatrists, social workers, probation officers, etc. A number of our facilitators suggested that while some risk factors might be prohibitive of restorative justice at a given moment, they do not necessarily rule out restorative justice at a later stage if these factors can be addressed or can be managed in the meeting itself. Mental illness can usually be treated, and problematic drug or alcohol use reduced, although it may take years for the person’s understanding of reality to return to the point where restorative justice would be possible.

[T]here is no risk that would make us, at that point, start to say no. There are ... when we talk to professionals, sometimes they want to see other things put in place. So sometimes a prison programme they want to see completed first or some maybe victim awareness work or something, or they’d like them to be released if they’re coming up to release. That sort of thing we might consider. ... I think it’s probably really individual to each case as to the level of that risk and how we think we can manage it with the people and the resource and the environment that we’ve got. (E&W2)

I might put some measures in place. Like if there was concern about risks to staff, like jointly facilitating cases, finding a bit more about what those risks involved, why they’re there. Like for instance, there’s a woman involved in a female offender’s group that we have that’s co-facilitated with Justice Social Work and she has assaulted staff in the past. But that was to do with getting particularly stressed

over a particular issue. And she was able to tell us why that happened and the kind of triggers for her. So it's about exploring the risk with the person as well as with the worker. (Scot2)

Managing and mitigating risk factors appeared alongside and largely dovetailed with the importance of managing expectations on the part of both parties.

[I]f there was a kind of, I want to look that wee bastard in the eye, I better get an apology out of him, and if I don't there'll be hell to pay, do you know? If there's still, like, latent hostility that is beyond the level that could be managed safely and appropriately. Equally, if people have completely false impressions or understandings about what can be gained from this, yeah, I want an apology, I want them to come to my house to sweep my floors for the next six weeks as penance for their actions. (Scot5)

Cases of gendered violence, sexual harm or domestic abuse (including coercive control) were seen as highly problematic. The concern here is that in such a scenario, the restorative justice process could become another vector of manipulation and (coercive) control by the person responsible over the person harmed, potentially in subtle ways which might escape the notice of the facilitator. For some participants, these types of offence or situations made cases 'ineligible' for restorative justice; in at least one case, this was not a decision of the facilitator but a matter of policy on the part of the restorative justice scheme.

Yes. If, when we work with them, finds out that one of the parties is just using the process to manipulate, but otherwise we just start and we believe in the process. (Nor2)

We will not accept referrals from perpetrators of sex offences, or of domestic violence. I guess that is a risk assessment in itself. Part of that is because those are very complex cases, and while we would accept referrals from victims of those crimes, we would not accept referrals from offenders. There's various reasons for that, in terms of risks. Complex relationship dynamics, not wanting to approach a victim of those particular crimes because that, in itself, can be particularly traumatic. (E&W1)

Other participants, while acknowledging the complex and difficult power dynamics implicated in cases such as these, saw them as requiring substantial additional care but not as prohibitive. For these participants there was an acknowledgement that *some* offenders in these types of cases could be helped to develop their understanding of the harm to a sufficient extent for restorative justice to take place safely and successfully.

Certainly COVID has brought it into sharp relief here in this country in terms of the level of reporting, and our increased understanding of that whole mechanism of coercive control and the subtlety of how that control is exercised or is managed by perpetrators. I think for me as somebody who's facilitated and managing a team, I would like to think that we could work with some of those issues and that, I suppose, our assessment antennae would be keen enough to pick them up. But I think it might be a little bit arrogant to assume that that would be the case because I think it's very powerful what happens in a relationship where there's an established pattern of abuse and control. So we are circumspect. (RoI2)

I think with sex offenders, again, it's another risk that most victims want to know why, the question why did you do it. ... I find that most sex offenders are not able to answer that question, unless they've done quite a lot of work and have had an opportunity to really examine themselves. And that can take quite a lot of time. And some never get there but some do. (E&W4)

The questions of when engagement is truly voluntary and sincere, and of the parties' cognitive and emotional skills to do so, require the facilitator's professional judgment to answer, as part of the pre-meeting process. Overall, there was little sense that any features of a case would be in themselves prohibitive, although some, particularly where certain power dynamics were involved, would require substantial additional care or might render a case unsuitable for restorative justice *at that specific moment*. As in some of the specific risks discussed in the next chapter, careful professional judgment is underpinned by an awareness that every case is different.

It is notable that in jurisdictions where restorative justice is well established in responding to more serious criminal harms and difficult cases, our interviewees reported much less concern about risk and more willingness to take on the most challenging cases. More experienced facilitators are less concerned about risk but also, as we discuss further below, aware that even less apparently risky cases may present unforeseen challenges. As Scottish restorative justice develops further, facilitators will develop more skills and confidence to handle challenging cases.

Our participants' accounts highlight the importance of partnership working and careful preparation for restorative justice. Good partnership links with criminal justice and other agencies enable not only more and better referrals but also better management of risks and better support for the parties involved (including, where necessary, providing parties with supporters in the meeting itself). The process of preparation for restorative justice with any case requires facilitators to engage with questions of risk, sometimes continually or repeatedly, as the parties' emotional states and readiness to engage with restorative justice can change over time. Some types of case in which there are difficult power dynamics may not be appropriate for restorative justice but even in these situations there may be at least the possibility of restorative justice in future. The next chapter discusses specific risks in more detail.

3. Concepts of risk

3.1 *Are risks seen in terms of particular offences?*

We saw in the last chapter that there were few risks that would make our interviewees, who were experienced facilitators, reject a case for restorative justice as soon as they had received the initial information about it. Primarily those counter-indications were breaches of the core values for restorative justice, as set out in the international instruments, but also the Guidance from the Scottish Government (2017). They were that one or both of the parties did not want to take part in restorative justice (lack of voluntary agreement), that the person who had harmed did not take responsibility for the main thrust of the offence³, or that one party might have another agenda for taking part (which did not involve restorative values). It is also possible that a particular restorative justice provider might have decided, as a matter of policy, that they would not take certain types of case (for example, referrals from a person who has harmed in relation to domestic violence). It was quite unanimous, though, that facilitators would not reject a case simply because it involved a particular type of offence.

Indeed, our interviewees were clear that they would normally wait and see what the potential participants said and wanted before they made decisions not to proceed.⁴ They had found that it was wrong to presume what a potential participant might want out of restorative justice – and that there were often several ways to proceed to enable that to happen.

I'm actually not that interested in knowing all the details about what has happened and so on. That's not that important to me. Of course, some people find it important to share that and then I'll listen. But what is important for me is to get a better sense of what their needs are and what I can do to take care of them during the meeting. (Denm2)

Increasingly, I find it's hard to tell in advance. It doesn't come down to the offence, it comes down to the harm. Harm varies considerably on the particular person. There are some risk assessment factors along the way, which get flagged up by partner agencies, and that's why it's really important to have good relationships with partner agencies. (E&W1)

The thing about it is, the seriousness depends on the person harmed as well. I can sit here and say, oh, it's lower tariff crime, but if somebody broke into my house, I know how upset I would be because it's a very personal crime. So you have to gauge it in terms of the seriousness, in terms of how serious it is to that person, which is going to be probably serious 90 per cent of the time. (Scot7)

³ It is not unusual that one or both parties do not agree with all aspects of the offence as set out in the police or criminal justice records. In a burglary, for example, one item in a list of property stolen might have been found by the victim afterwards, but not amended on the official list. Often both parties may agree on their recollections at a subsequent restorative justice conference that there might be slight errors (Shapland et al. 2011).

⁴ See e.g. the discussion in Daly (2017) on sexual violence and victims' justice interests.

Even if the person who had harmed was not taking sufficient responsibility for the offence, some facilitators would want to gauge the person harmed's reaction to this before deciding how to proceed:

For example, it's, like, okay, when people are minimising I will tell the victim, okay, we have a problem because your offender is minimising, and so, how do you feel about it and what do you think about it? And if people say, I don't care, I will tell them that's not, I mean, it depends on their reaction, it depends on what they ... and it's their decision to react on the minimising offender. (Belg1)

Certain offences (those which are sometimes labelled as 'serious or complex') tend to have particular potentially problematic risks associated with them, but the interviewees were clear that just because the offence was a particular legal type of offence, it should not necessarily be rejected. The corollary is that one should be prepared for risks to be present even if they are not obvious from the stereotype of that legal offence. This fits with the findings of Sorsby and Shapland (1995) that the ways in which domestic violence may come to the attention of the police (in this instance in one police force in England & Wales) may be through an offence 'crime'd' as an assault, but equally it might be a theft, criminal damage or a burglary. Legal categories do not define the social context of an offence:

For me, the risks are about the individuals involved, not necessarily the offence. I think the offence gives a different shape but you can work with people where it's ... that have got a lot of needs for quite a minor offence. (E&W3)

Some of those needs may stem from participants' backgrounds. Facilitators have to be aware that both those who have harmed and those who have suffered harm may be likely to have trauma in their backgrounds, and so the instant offence may have awakened previously unexpressed needs and problems. Trauma informed practice in this sense is about not presuming, but listening carefully to what the person is saying and what is being revealed.

I would say a lot of our cases involving young men from Justice Social Work are assaults, violent assaults. And all our female offenders have domestic abuse and sexual abuse in the backgrounds and some of them have rape. I worked with a shoplifting case involving a young woman in her twenties that was currently going through very serious domestic violence, where there was a threat to her life. So yeah, there's some quite serious issues going on in the backgrounds ... a lot of the time these adverse childhood experiences are often in the background of many of the people responsible for offences. (Scot2)

I've been doing this job nearly ten years, so the one that seems the most straightforward, open and shut, tend to be the ones that's most difficult, and the one that seems the most difficult is probably the easiest ... I suppose one thing is, it depends on what their take on the incident is, so if it's something fairly low level, say it's like a minor assault, that could be a case of, they've been getting bullied horrendously for the last wee while. They're a quite relaxed person, but all of a sudden they've snapped, they've punched someone in the face or they've kicked them, whatever, and then because of that prolonged period, you've one, got to deal with the offence, and two, you've probably got to deal with emotional issues like confidence, resilience, stuff like that. (Scot8)

We saw that where a few of the facilitators were associating potential difficulty or risk with legal categories, it tended to come either from the particular scheme not wishing to take on those kinds of cases (so they had little experience of it) or because of worries about the criminal justice system itself, rather than the possibility of restorative justice.

It would never be extreme violence or anything like that. We just wouldn't touch that, or it wouldn't be sent through to us. Or even if it was, we probably wouldn't assess it to be appropriate things for restorative justice. (Scot7)

When facilitators were taking on a case with new risks which they had not dealt with previously, they tended to be more nervous, but that showed in extra preparation and consultation with those who knew the potential participant, rather than giving up the case. It might also, as we shall see in Chapter 5, mean the facilitator being asked to work with a more experienced co-facilitator.

We did a restorative meeting with a young person who'd made offensive phone calls, I was really anxious about that but I had to try and get a sense of the preparation ... I prepared it as best I could by getting a sense of what they might say but also I had to kind of put down boundaries about what was acceptable and what wasn't acceptable in the meeting and just making sure they were prepared for it. So depending on the type of offence, you would obviously need to do a lot of ... preparation's key. (Scot6)

All the cases where you have the feeling you have to walk on eggs, I will ask advice, at least, from my colleagues, and at most I will ask ... You can always ask to do the mediation with two mediators. ... sometimes from the beginning we say, okay, if we take that case, we have to do it with two mediators. (Belg1)

Many facilitators were animated by the same purpose that one expressed, as to how they worked to ensure, even in difficult cases, that it might be possible to have some form of restorative justice in that case. Yes, there were cases where they would need to say, no, we will not do that – which we will turn to discuss now - but those cases seemed rare:

I will say I'm always careful. And I think the victim will very often feel very unsafe. And I have to respect that. But still they have the courage to go into this room and meet the one who has harmed you. And I have a deep, deep, deep respect for the people that really choose this, and there are many. (Nor2)

3.2 Is there a separate category of 'serious and complex' cases, which only some facilitators do?

By virtue of centring our interviews around risk and mitigation of risk, interviewees talked about the seriousness of cases and what they saw as greater risks. We wanted though to work out whether interviewees from different countries put dividing lines between certain types of cases, seeing some as always much more risky or difficult, and what distinguished the more risky from the less risky. We are aware that in England & Wales, for example, the Restorative Justice Council's good practice guidelines distinguish between the experience and techniques needed to undertake 'serious and complex cases' from those which are less serious or less complex.

Equally, the legislation governing statutory youth conferencing in Northern Ireland (the Justice (Northern Ireland) Act 2001) distinguishes indictable only offences (murder, manslaughter, rape, robbery etc.), where referral to youth conferencing is discretionary on judges pre-sentence, from all others (where referral to youth conferencing is mandatory on judges, but of course voluntary for participants). We have seen above that there was no intrinsic divisor for our interviewees in terms of legal offence.

In general, our interviewees proceeded on a case-by-case basis. They did not operate with a set category of more complex cases, but they did recognise that some aspects of cases or the context of the offence meant that the restorative justice process needed more care and probably more preparation time.

Increasingly, I'm finding that they're all serious and complex. I think, when I was young and naïve, there was a kind of hierarchy of, you know, down here you've got shop theft, someone's handbag's getting snatched, then you've got burglary, robbery, and you'd kind of build up to things that involve death, sex offences, domestic violence. And the more I work in restorative justice, the more I realise that, although that's the way that it's looked at in the criminal justice system, you can't anticipate harm. (E&W1)

When asked what kinds of cases these were, there was quite a degree of unanimity:

I think in my experience as a mediator, it's primarily the cases where the parties they know each other and where their relationships have developed over a longer time period, that are potentially problematic. So I think cases about domestic violence, neighbour disputes, and so on, they are in my experience more risky compared to standard cases about violence, for instance. (Denm2)

I think in cases of sexual violence, domestic violence, then the power differential is bigger. I don't think there's any doubt about that, because the person who has been harmed is the crime scene ... That was what one of the people I was interviewing said to me, and I thought that was a really good ... really good point is like people feel victimised when somebody breaks into their house, but you can leave your house. (Scot1)

Sensitive cases to me are domestic abuse, sexualised or gender-based violence crime, or anything that is extremely violent. So you're talking obviously murder or manslaughter, or serious assault with permanent disfigurement or what have you, or if there are assaults with knives or guns or what have you. (Scot7)

There's not a case that can't be mediated or restorative justice process, but there are people who are not suitable for the process Domestic violence, sexual violence always large groups, young people, maybe if somebody has mental health issues or some communitive disorder, you have to be careful. (Fin2)

The key factors for more complex cases were therefore prior relationships, dominance, power differentials and major effects on the person harmed. These can be especially found in particular types of offences and contexts of offences, such as sexual violence, domestic violence and neighbour disputes, but they do not translate neatly into particular legal offences.

Some facilitators, however, reflected that, when thinking about more complex cases, they were also being influenced by criminal justice ideas of what were serious offences, which did not always translate into complexity in terms of restorative justice:

I guess I'm thinking of the serious cases where the harm has been greatest, where somebody has been lost for one reason or another. But it's a loose language and I'm taking it from the criminal justice system, which maybe I shouldn't. (Scot4)

They felt that criminal justice was more concerned with the seriousness of the offence, rather than the seriousness of the harm caused. And although the seriousness of the harm obviously impacted on restorative justice and might require more careful handling and preparation, it did not always in and of itself imply more difficulty or complexity. Hence criminal justice judgments about which types of cases might be seen as 'suitable' were not usually relevant to the restorative justice process itself.

If a case was thought to be more difficult, would it be given to different facilitators, or those with more training? In some schemes, more complex cases might be given to paid staff, or a volunteer working with a more experienced supervisor:

We do have a category because we have two levels of facilitator. So we have those that can facilitate 'complex and sensitive' cases and those that can't. Or can't yet as we like to think of it. So complex and sensitive cases for us ... are cases that involve a high level of trauma, so a lot of life-changing injuries, sort of sustained abuse tend to fit under there. (E&W2)

I think, well, in terms of how they're allocated to volunteers, I think we do make a distinction that some cases are potentially easier and can go to volunteers, which can't. (E&W4)

Would the process be different for more difficult or complex cases? Certainly there was an awareness that there might need to be more preparation time, or more consultation with other agencies which specialised in supporting those who have been harmed in such cases. Overall, though, it was not a different process with different values, but the need for a greater awareness of what might be sensitive areas or what harm had been done:

I don't know that it's a different approach ... I think it's the level of intensity in terms of the checking and the re-checking, and the level of ... I want to use the word supervision. (RoI2)

I think the process should be the same ... I mean you would consult more people at your risk assessment stage, I would say so. Say for sexual violence or domestic, you know, you've got ... you will have social workers or workers who will have carried out specific risk assessments for those particular types of harm. You'd be wanting to liaise with them, you know, and get their thoughts ... But ... I think the process is the same, it's just there's a bit more checks and balances in place at the beginning. (Scot1)

Then I would always organise the separate physical pre-meetings. I will always go deeper into how I can take care of the parties. I might formulate these rules together with the parties and so on. (Denm2)

Restorative justice measures in France depend on participants' expectations (meeting several offenders and victims, meeting their offender/victim, being supported in a circle, etc.), but they do not depend on complexity or seriousness. It is in the preparation that we consider these aspects. (France1)

I have to make sure that everybody participates actually and genuinely voluntarily. ... And that there's no coercion or power control, but power and imbalance or control that cannot be remedied by, for instance, taking family members, friends, social workers, support persons and involve them in the process if the fear or anxiety is too much or the timing is wrong, but this is information I get from the parties themselves. So, I lean very much on restorative values. The participants have to understand what they're about to embark on, for the journey, what it means. They have to be able to comprehend what their role in the process is. (Fin2)

Those who had not done such difficult or complex cases were far more likely to be diffident about them, saying that they required more specialised training:

I do think it's important to have specialist training if you can on serious harm, on domestic abuse, on sexual violence, you know, because there are different ... some different things at play there and just to have a real good understanding as I say of the power [imbalances]. (Scot1)

The potentially most difficult cases were some of those involving sexual abuse or domestic violence (between partners or former partners). In historical abuse cases, facilitators recounted how those who had been harmed had often been rebuffed from pursuing restorative justice in the past:

Quite often they've never heard of restorative justice, they don't know where to go, they go to people they think can help, victim support, or Women's Aid, or ... And they're told no, for your offence that's impossible, you know, it's often domestic violence or sexual crime ... it tends to be framed as what is the risk of doing this. And what I've certainly come to the conclusion is, having talked to victims, and particularly victims who really did want to have a restorative process. What are the risks of not doing it, even if it is risky, do you know what I mean, to put it that way? (NI1)

I have listened to victims of sexual abuse that went through the trial and they have come to me and asked why they could not have the permission to go through the mediator. Because they have known the mediation processes and they have been discussing with me about how they felt going through this trial and how they felt they were more victimised with these trials. And they were so disappointed about this process. Even after many years they felt that they are stuck with this, what has happened to them because they couldn't have their voice heard and they couldn't get answers to their own questions and so on. (Fin1)

Yet attitudes to those two categories really differed for most facilitators who had done both:

My line in relation to the sexual violence is this, if the victim wants it, then I will move heaven and earth, if the offender is willing to make this possible, and to facilitate it in the best and safest way possible. There are certain circumstances in domestic violence cases, if the victim wants it, with her domestic violence perpetrator, that it may not be possible. Because we know from the literature, we know from clinical experience, that it's not necessarily that woman, that former partner, that will be at risk if this man enters a restorative process with that woman, it might be his current partner, new partner, right, and it might be his children, and it might be ... or her family of origin. So, that is something, and that's primarily when it comes to coercive control, patterns of coercive control. (Ro11)

Overall, therefore, amongst those who had considerable experience of undertaking what would be seen as serious cases and complex cases, in different countries, there were no no-go areas in terms of legal offences. Nor was there a clear dividing line with some cases on one side and some on the other, with clear demarcating characteristics. Indeed, most facilitators and their schemes did not use a separate category of 'serious and complex cases', finding that unhelpful. Instead, they were very aware that particular social contexts involved in cases, especially prior relationships, required more investigation, consultation with potential participants and discussion, including where relevant bringing in input from support agencies or experienced colleagues. We consider the mitigatory measures available in such cases below in section 4.2, especially section 4.2.4.

3.3 Are there separate risks in relation to young people?

Vulnerability – and hence potential risk – is not confined to the type of offence or its social context. It can also arise from the person's own attributes, such as age, mental health or social class.⁵ One obvious aspect is where a potential participant is a child (under 18).⁶ In Scotland, restorative justice is used more widely with young people (as part of the Whole System Approach to youth offending) than adults, so there is more experience around this within the Scottish restorative justice facilitator workforce (Maglione et al. 2020).

In criminal justice proceedings, a child would always need to be accompanied by a parent or guardian or other responsible adult (in England & Wales in criminal justice settings called an 'appropriate adult'). Given that restorative justice in relation to a criminal offence is inextricably linked to criminal justice, all the interviewees said that similar provisions needed to be in existence for the restorative justice pre-meetings and any meeting with the other party (mediation or conference). There were, not surprisingly, some differences in the ages to which this would apply in the different countries (given there are different ages of criminal responsibility), but in general the principle was that there should be an adult present, there for the child, and that adult should be supportive. Children aged 16 to 17 might undertake the restorative justice on their own if that is what they wanted and their responsible adult consented to this. In some countries, such as Denmark, the legal guardian would need to give permission before any restorative justice could start (Denm2), but the key

⁵ On the last, see, for example, the discussion in Willis (2018).

⁶ On restorative justice with young people, see, for example, Daly (2006), Mercer et al. (2015), Suzuki and Wood (2017).

aspect for the facilitators was that the person present would be seen by the child participant as supportive. So, who it was might vary:

It's about making sure that that support is there and I think it's different having a 17 year-old to having a 12 year-old. (E&W3)

A responsible adult needs to be present - a parent, social worker, sometimes an older sibling. (NI2)

Some facilitators who normally worked with adult participants indicated that they had sometimes been unsure whether children should be present at a conference in, say, a burglary where they were in the house at the time, but did not see the burglar. Children in particular may be more vulnerable to the trauma of indirect harm, for example, as witnesses to a crime. Generally, however, they had resolved that in the direction of having them present – and been surprised at how well that had gone:

We do have an issue that is also about children being present when they're not necessarily victims or offenders but they're children of the parties, brothers, sisters and so on. So that's arisen from time to time. ... I suppose you'd assess the risk to those children ... In [one case] the parents and a 12-year-old daughter in the house at the time, was burgled during the night. And the 12-year-old girl, who has Asperger's, wanted to come along ... Anyway, she was absolutely determined and the parents wanted her to come along. ... She was brilliant. Because she asked the questions, the direct questions that other people were sort of hedging around and she just went straight in for it and she was amazing. And that was a real eye-opener for me that, you know, given the right support and the risk assessments and all the rest of it, that you can have children. (E&W4)

Normally, interviewees who had undertaken cases with both adults and children (see Table 1) said the process where there was a young participant would be exactly the same as for adults, but there were a few aspects which needed to be thought about (see also Mercer et al. 2015). One was to ensure participants did not have their mobile phone on, or recording:

[We ask them to] take off big jackets or big handbags and put them in that corner or in that corner so that you can see this is what's in the room. That's also because we don't want them to use the phone to take up the conversation. Someone is very afraid that there is a mobile phone that is recording and that type of thing. People are afraid, if you have a victim of a knife, the victim will think, I think he have a knife. We don't talk about that. That's just a routine. Put your clothes down there so you can see what's in front of you. Yes, and I think that's first of all the security measures that we have before we go into the meetings. (Nor2)

Another was to think through any need for age-appropriate explanations and whether other participants might misjudge the ways in which the child may communicate. There is a considerable literature on restorative justice and communication with children, particularly since many countries have started using restorative justice in a youth justice setting (see Daly 2003; Campbell et al. 2005; Hoyle et al. 2002; Zernova 2007). Some evaluations have pointed up the need for facilitators to be skilled in drawing out children's participation, particularly when others in the room are mainly adults. Daly (2003) has spoken about the young person potentially being in a sea of

adults, which is a scary and potentially threatening situation, to which young people may react by silence or defiance (e.g. laughter).

So, aye, there was another time when I didn't really prepare well and one of the young ... the young boy who had committed the harm and was meeting the person he harmed, he just burst out laughing with anxiety, you know. He was just anxious so that just didn't work well at all. It's about the use of voice, the use of tone so these are the kind of risks, I think. (Scot6)

Campbell et al. (2005), however, concluded that in the Northern Ireland pilot of youth conferencing young people were generally able and very willing to contribute, providing facilitators took the trouble to draw them out. Increasingly, in addition, restorative justice is being used in the school context and children may even have been trained as school facilitators. In our interviews, facilitators referred to both aspects: that communication might need facilitating and also that children welcomed an opportunity to speak:

Communication difficulties can actually be a risk, I think for some of these young people it can be quite difficult to express themselves. But then my task as a mediator, as I said before, will be to help them. (Denm2)

It's best to have an understanding of what somebody's intellectual capacity is. So if something needs to be spoken to somebody in simpler terms, in regards to what the process is going to be, how it's going to be, then you will speak to them like that. Obviously if you're dealing with youngsters, then some of them might not be that far in education and they could be quite young. I mean, we've dealt with people that have taken part in restorative justice at the age of 12/13, so it does happen. (Scot7)

When we do a letter, we'll always risk assess it and make sure that it's suitable. (E&W4)

We have one survey now beginning of this year where the juveniles said it was so necessary for them that they can talk as much they want to talk and that nobody comes and say that, no, it wasn't so and I can listen to other party and what he was thinking that it was so necessary (Est1)

There are, therefore, some specific aspects which need checking when working with children, including how to maximise communication; whether to warn other participants beforehand that some communication might appear inappropriate; and making sure explanations and written documents are age-appropriate and comprehensible. However, while factors such as communication or understanding might be especially relevant for restorative justice with young people, they are also relevant to many adults. The most important thing was not the age of the participant but their levels of emotional and intellectual maturity. Overall, we did not get the impression that restorative justice with children was in any way fundamentally different from that with adults.

3.4 Who can be risky in terms of other participants?

Just as children may pose particular challenges in restorative justice, so may other participants. We deal with a number of specific challenges in Chapter 4, such as those participants with communication difficulties or mental health issues. Here, we would just want to make the general point that there is no particular category of potential participant who in themselves is particularly risk-free or risk-prone – all need evaluating and all may have real positives to contribute and real difficulties. Indeed, having more participants at a restorative justice meeting can be really helpful, as it can mitigate power imbalances, as the participants themselves will informally exert some control over a too dominant individual, as both Strang (2002) and Shapland et al. (2011) have shown. Having a very large meeting, though, will often demand extra facilitators to be present, purely for practical reasons (see Chapter 4).

The general rule for the experienced facilitator interviewees was:

It's really important that no-one comes to a meeting that you don't know, that you always meet everybody prior to that meeting ... I've said, if you want that person to come then we need to postpone this restorative meeting because I haven't got time to assess that person's suitability for this meeting to take place. (E&W3)

In terms of other people coming to a meeting beyond the key participants, facilitators spoke about the benefit they could provide in terms of support (whether they were relatives or from a support agency), but also about risks they might act inappropriately:

It's people that can sabotage it because they're perhaps feeling protective towards the individual. Or them being risk averse and not wanting their loved ones to expose themselves to such a process. (E&W4)

You also have people that can advocate on behalf of people, social workers, et cetera. They're allowed to come in, that's fine, but they cannot speak for the person unless they're asked to ... So they can't interject and just start speaking, they have to be prompted by that person to speak. (Scot7)

The key was to deal with all of this in preparation. Key participants (those who had harmed and been harmed) needed to be asked who they would like to be there to support them – which, if they did not know someone themselves, might be someone from a local agency such as a victim support agency or one particularly experienced in people who had been victimised in that way or had particular support needs:

What other people do you need in the room, you know, fair do's for domestic violence, would you like, you know, an advisor from Women's Aid to be in the room, because she might spot any, you know, trickery from the perpetrator quicker than I would, you know. (NI1)

There's always that option ... asking, you know, the family members to be part of it. It's not just about explaining what is, but actually for them to be part of it, and if they're part of it you would go and meet with them and talk them through the process and what was going to happen as well --- you know, that ... you'd be able

to gauge at that stage where they were going to be too angry to be able to participate or, you know, not going to take on board what was being said. (Scot1)

Thankfully [we] had lots of good links with other local organisations, particularly support organisations for people with different protected characteristics and so on. If people needed that support there were local organisations as well. (Scot3)

3.5 Are there particular risks related to different restorative justice processes?

Restorative justice has been described as an ‘umbrella term’ (Shapland et al. 2011). Certainly, there are a number of different practices and processes which can be used and experienced facilitators will discuss with potential participants which might be most suitable for their case. As we saw in Chapter 1, the most common of these are mediation (just the parties and the facilitator) and conferencing (the parties have supporters present as well) (Zinsstag et al. 2011; Zinsstag and Vanfraechem 2012). Conferencing always involves a meeting between the participants (normally face-to-face but occasionally by video conference). Mediation, however, can be either direct mediation (a face-to-face meeting) or indirect mediation, sometimes called shuttle mediation, in which the facilitator/mediator passes information and questions between the parties. There are also some rarer processes such as circles, in which either both participants may take part in the same circle with supporters and members of the community and the facilitator, or there may be separate circles for different participants (see, for example, Fellegi and Szego 2013). Which forms of restorative justice are more common in a country tends to have historical roots and particular schemes and facilitators may prefer one to another. All have shown high rates of satisfaction for those who have been harmed (see Umbreit et al. 2000; Shapland et al. 2011 for summaries).

Because they are different processes, they obviously carry different risks and have different mitigating elements and techniques. Direct meetings can be risky in that participants are face-to-face, with the possibility of intimidation, secondary victimisation or coercive control in relevant cases. However, some research has found that if participants in indirect mediation do not appreciate the answers they obtain from the other party to their questions, then they may come to distrust the facilitator (Shapland et al. 2011). Indirect mediation is also necessarily a longer and more multi-stage process than a direct meeting, as the facilitator has to shuttle from party to party with answers and to obtain more questions.

We asked our interviewees whether there were particular risks related to different restorative justice processes. They all favoured:

Using other approaches where we think they are more appropriate. So if there’s a real power imbalance, maybe don’t get people in a room together. We once worked with a case of a teenager who had been sexually abused by an uncle. And it just wasn’t appropriate to get them in a room together because of the difficulties with family and just the huge imbalance of power between him and her. And so we did the whole thing through written communication and everybody got out of it what they needed to and it was really successful ... So yeah, I think sometimes just not seeing the face-to-face meeting as the ultimate goal. And sometimes seeing a case

closing, you know, a victim deciding this isn't the right process is a far more successful outcome than getting them into communication (E&W2)

It was very important that the parties be involved in making the decision as to which process would be the most helpful in their case, rather than facilitators deciding it for them:

Everything we let the person harmed lead on, and then we go back to the person responsible and say, these are the sort of terms that we're looking at ... I think we strive to empower the person harmed to make that decision, for them to lead on it ... If we feel, however, it's not going to help them, it's actually going to make them worse or it's not going to answer any of the questions that they're looking for, then we would have a discussion with them about that. Not necessarily say, no, you can't do it, but we would say, is it appropriate, do you think that you're going to get the answers to some of the things that you're looking for? Because we potentially don't think that would be the case. (Scot7)

Occasionally, providers have taken the view that, in difficult or sensitive cases, indirect mediation should normally come first, but that was not the view we obtained from the experienced facilitators we interviewed. What mattered more was what the participants themselves wanted and thought, and whether any risks could be mitigated. It was also not uncommon that, if some form of indirect mediation were to happen first, then the parties might want to go on to a direct meeting. If the facilitator thought there were still real risks which precluded a meeting, then other forms might be tried:

If she has a wish, maybe has something to say, has questions, I would look into it and say, let's see how this can be achieved in a different way. So, I would do something restorative, but I would not work to a restorative meeting. ... Generally, I would say there's no case that is not suitable. All cases are suitable; we have to look at the people, we have to look at who's in it. And then see maybe it's not suitable for meeting but is it suitable for something else? (Denm1)

In some instances, the risks from a direct meeting would just be too great, whether to the person harmed or to others. However, other forms of restorative justice processes might be suitable.

3 6 How important are the wishes/expectations of participants?

The wishes and expectations of the participants are almost unanimously agreed upon as being crucial in this context by the different facilitators we spoke to – the wishes and expectations, but also the hopes and needs of participants are hugely important and should drive the restorative justice initiative, whatever they are. They help to develop safe and satisfactory practice; they help to build trust and to have the parties feeling listened to and in charge.

So the purpose of the conversation was to build trust ... But part of that trust building was all around asking the person can you see any risks here, of you being hurt or the other person being hurt, and how can we manage that. So it was part of the conversation ... Our job is to be supportive and not to force anybody into something that clearly isn't appropriate for them ... I think the importance is to

take the lead from the participants. It's what do they want and how can we make that happen in a way that's safe for everybody. And in the course of the conversations around what would make it safe, we need to be clear about the risks. And, as I say, keep it simple and have it written down so they can see and change their mind over time if they wish, you know. So it's part of that ongoing dialogue. And, again, you're trying to model where they might find it more helpful to be in their own situation. (Scot4)

It is clear indeed that practice should adapt to those wishes and expectations of the parties themselves. Some of our interviewees cited Nils Christie and his 'Conflicts as Property' to justify that approach of giving the parties the lead in their own situation created by the crime and ensuing harm (Christie 1977).

The facilitator's role is to assist, help, accompany in deciding whether a case is too risky, or if risky, how to mitigate that risk. It is the start of the restorative process to discuss with the parties those wishes and expectations to make sure that the process then can respond to them.

But I think to me it's really, really important that they define the aim. I don't think ... as I said, I see myself as a process facilitator, so I don't think I'm the one to define the aim. I think that is something that should be defined by the victim and the offender. And that's of course also something I'll talk to them about when we have this initial dialogue. Okay, so why do they want to [meet] in case they think it would be good to meet them. Why? What do they hope to get out of this meeting? And actually when I do a victim and offender mediation, that's actually the first question I will ask them, okay, so what do you hope to get out of this meeting? (Denm2)

Following the choices and wishes of the parties is possible as long as it is safe and possible to accommodate and sometimes it is important to explain to them why it might not be adequate. Openness and honesty about the process are crucial in this context.

You have to respect the victim's choice unless it's clearly preposterous ... The sort of feminist argument of the imbalance of power and I think that's true and if there's a risk, if there's a ... if they want to get back together again and you've identified that there is an imbalance of power and a pattern of coercive control, that extreme violence, then that would be one I would say no ... My approaches to, you know, very carefully take a victim through all the choices they need to make ... And then ask them, you know, what would, you know, what are the risks there do you think, what could happen a sort of, what if. And then what can we ... is there anything we can put in place. And of course, it doesn't have to be a face-to-face meeting, that's my preference and it's often the victim's preference but you can say no, in this case I don't think that would be advisable and then think well what are the alternatives to still have some dialogue but not in the same room. (NI1)

A lot of practice in this field revolves around those needs, interests and choices and about how good restorative justice practice can respond to those expectations.

What is the bit that really needs to get settled for you to be okay or, maybe, not okay but better than you are at the moment. And then what do you want to do

about that so they, you know, so I would put that upfront rather than the risk assessment, and then it's like okay that's what you want, that's what's really important, now let's see if it's possible to do that safely. ... And that puts them in control rather than, you know, me telling you what's good for you. (NI1)

It often is also about managing those expectations, as all wishes cannot be granted, some are unrealistic, some might not be safe etc. Much of that work should happen during the preparation of the parties.

I think in terms of managing risks as well again it comes down to preparation but it's managing participant expectations as well, what the process can and can't deliver for people. And I think if you've managed those well, you've been really honest and transparent about that then that mitigates against the risk of people being disappointed or angry or frustrated or hurt at the end as well. (Scot2)

For good practice it is really important to listen to the practical wishes of the parties, e.g. to let them lead on who they want to have as a supporter or what they might need as support to feel safe and understood.

We never contact them before the party says, I want this and this support person. So they decide. It's the child welfare, the family protection office, it's their health doctor, their [psychologist] yes, health person. When I'm in prison it's often the contact person in the prison or the priest that they want to have with them. (Nor2)

When practice is too focused on risk rather than the wishes and needs of the parties, opportunities might be missed, additional dangers may be created. Therefore the information about restorative justice needs to be available broadly and given to people who have been the victim of a crime or have committed one, so that they are aware of the possibility and can take the decision whether it might be for them etc.

With risks ... I think, in some cases, there is the risk that some of our partners who are the victim, like, in prison or they want to protect them, but with this protection, they don't give them the voice and then the victim doesn't know about restorative justice. And if victim will come to us eventually, then it's ... it is so long time past, so that there are some, kind of, risks already. And, also, yeah, this ... because, in Estonia, we talk about it that the victim should have opportunity to have restorative justice in whatever ... whenever they want. (Est1)

The wishes and expectations of the parties are drivers of the restorative justice practice in many ways and in most jurisdictions our interviewees came from, and mostly they were clarified at the first meeting, spoken about during preparation sessions and addressed with the consent of the parties during the direct or indirect meetings.

3.7 Do facilitators use a risk assessment instrument? – what does it focus on?

The interviewees were asked whether they used a formal risk assessment tool, schedule or checklist. Most reported that they did not use a formal risk assessment tool. Two interviewees from Scotland, four interviewees from England & Wales, one interviewee from Northern Ireland, one interviewee from Finland and one interviewee

from Austria said their scheme did use a written tool, which might be a form or questionnaire or checklist.

Two Scotland-based respondents explained their services' formal risk assessment tools:

We have formal risk assessment processes and forms. So I said the first one of those is that initial client referral form which has very basic risk assessments, I suppose, around the client from the referring agency. We then have dynamic risk assessments as well as what I call static ones. So we have a generic static risk assessment for the space, which [service] meets clients in, which is to do with things like, there's a glass window along a corridor that has curtains pulled across it, so there's blinds in there, so blind cords, anything that could be hazards in the room for a traditional risk assessment I suppose. And then we have more dynamic risk assessments that are around the particular client. ... they're client specific ones that are recorded on forms, that are to do with emotional and psychological risk of that particular client. So that will be to do with things like, where there's a suicide risk because they self-harm, those kinds of things. Is there a history of mental illness, and previous offending, if it's been violent, for example, using weapons, whether it was related to drink or drug taking? ... We also have an incident reporting form And actually, the formal risk assessment forms we use with numbers for probability and severity, come from other training that I had when I worked for another organisation ... there's also another risk assessment that we do that I missed out, that's before the joint meeting and that we do use a Restorative Justice Council form for that, which I find really helpful. (Scot2)

In regards to [organisation], we've got our own basis for a risk assessment, so a risk assessment matrix ... So we'd be scoring on that anyway. My role in regards to management is to sign off risk assessments et cetera and review them. And the risk assessment dynamic, it changes, so every time we see somebody that risk assessment should be getting updated, it shouldn't just be static. And as I say, a risk could get higher or lower, it just depends what's going on in an individual's life. So that's something that we do use. If a score is too high, I'd be sitting there saying to somebody, no chance you're going to go ahead with this, because it's too high. That person at this moment is not ready to do this. When I say risk assessments, we do it for both, so we're doing that for both the person responsible and the person harmed. Because a person harmed could be at that time volatile because they're angry about what's gone on or what has happened, because it could be too early for them. Or it could be at a stage where an assessment needs to be made in regards to if they have other incidences going on in their life, et cetera, or they're another victim to somebody else, and you've got to be careful. So the risk assessments are scored on our matrix. I wouldn't say it's the best matrix in the world but it does the job, it's adequate, and it allows us to have at least a starting point for discussion in regards to the risk factors involved in restorative justice and if it's appropriate or not. We also take into account, as I said, Outcome Stars, so we will look at the needs assessment specifically for the person responsible and see where they are in their life as well and if there have been improvements, or if there's been decline. And make an assessment based on that as well before we would ever go into anything. (Scot7)

Several interviewees stated that they used some form of checklist, assessment form, screening tool or other ‘paper work’, rather than a formal, structured risk assessment tool, although these were sometimes derived from such tools:

Sometimes in domestic violence cases, we use, I think it’s a CAADA-DASH Risk Identification Checklist ... But this is an assessment form developed for people who work with domestic violence victims. So, it’s not really for mediation or restorative justice, but we tend to use it at least partially. (Fin2)

When we meet a victim and an offender, then we’ve got an assessment form which we do, which is just about that information gathering from the participants during that meeting. ... It’s something that’s kind of done as you go on. So there’s a risk assessment as part of that initial assessment and every time we visit a victim or offender or speak to a partner or a service, we record it on our case management system. ... There’s a risk assessment form in terms of going to a conference. So some of the things to think about in terms of facilitating that direct communication. In terms of domestic and sexual violence there’s also then, I’m not sure if you’d class it as a checklist or a form really, but I guess it’s some prompts. (E&W3)

We took the most important indicators out of all of the assessment tools and we mixed them into a checklist. (Aus1)

The way the interviewees described these tools suggested that they were used as a guide or aide-memoire to assist practitioners in checking a range of issues that both related to risk and aspects of eligibility or willingness of potential participants to take part in a restorative justice process.

The checklists and other similar tools took the form of a list of topics or questions, usually with tick boxes and spaces for further information to be added, and tended to cover issues such as:

- Does the person responsible take responsibility for the harm?
- Does the person responsible have attitudes that could lead to revictimisation?
- Motivations for taking part in restorative justice
- Support needs
- Access to support
- Does the offence involve sexual offending or domestic abuse?
- Physical health
- Mental health
- Learning difficulties
- Disabilities
- Communication or language difficulties
- Substance misuse/addictions
- Physical safety/hazards
- Chaotic lifestyle/homelessness
- Anger
- Anxiety
- Risk of violence
- Power imbalances

Some tools were specifically in relation to domestic abuse or had sections related to this, including issues such as controlling, threatening and abusive behaviour.

Most interviewees reported that they did not use structured tools for risk assessment. However, they often described some sort of process in relation to assessing risk, broadly based on professional judgment or discussion with potential participants:

I ask questions, if there's violence involved, how do you argue, does this happen before, were you hurt, how were you hurt, are you afraid, do you have contact with your family and your friends. Questions like this. And what would you want for your future and how would you like things to change and what do you need to feel safe. And of course, somebody who uses violence, I talk about how they feel about using violence. And this is ... If somebody says, well, of course it's all right to hit your wife, then, no, it's not a good idea to mediate. But if violence is more of something that the offender also feels bad about and it maybe happened because loss of job, problems with substance abuse, a life situation, something bad has happened ... I've had some cases where a couple used, or the men used violence, but they were so torn up about their child having killed himself. So, if it's sort of related to a life crisis of some sort, then I think it's okay to mediate or to start a restorative justice process because they might need other help too. But the restorative process could be a start, a first step in that direction. (Fin2)

Do I have a formal risk assessment scheme? No I don't. But my point of departure is that let's see what possibilities are available, let's see what is the motivation. I would say one thing, if I have an idea that the motivation is not to have a restorative conversation, there's an agenda, hidden agenda, I would look for that. I would look very much into motivation and hidden agenda. And I would explore. I think the first phase of preparation is simply exploring the landscape: what is this? What do you want from this? And see what is the motivation, what are the abilities to talk about it. (Denm1)

A few interviewees also noted that those responsible for the harm had often already been subject to some form of risk assessment, notably if they were subject to probation or some form of criminal justice supervision, but this did not tend to apply to people harmed:

The simple answer is no ... I mean, I have some training in the risk assessment stuff and so on, but I don't use a tool as such. Because by the time people will have come to me, particularly in the serious cases, they would have been through various other bits of assessments and through probation, through social work. Except for victims. Victims had very little or no support. So what I used in that was, kind of, nothing formal but, again, that honesty, that this is a risk; let's talk about this, you know. (Scot4)

Overall, formal, structured risk assessment tools were used relatively rarely, and none stated that they currently used validated risk assessment tools used in other criminal justice contexts or assessing risk in relation to restorative justice cases (discussed further in section 3.10 below). More commonly practitioners were drawing on their own professional judgment, often aided with some form of checklist, to identify and assess risks.

3.8 Do facilitators have a standardised approach to measuring risk? Or is it always case-based/individualised? The role of professional judgment and the use of standardised measures

Regarding interviewees' overall approach to assessing risk, only rarely was this based on structured tools, although some did use checklists. The most common approach was to draw on professional judgment, and notably to use the principles and practices of restorative justice to engage in dialogue with potential participants to assess and discuss potential risks, in tandem with their wishes and motivations for taking part, to decide how to mitigate potential risks, or possibly to agree that a restorative justice process should not proceed. One respondent described their use of standardised risk assessment:

We do risk assessments, and the risk assessments...the headings for the risk assessments are standardised, so they'll be like risk to staff, risk to service users, behavioural risk, environmental risk... (Scot8)

Regarding the more structured approach to risk assessment, one interviewee explained how the comprehensive nature of risk assessment tools were useful for the process:

The integrated impact assessment really made me think about all of the ... you have to almost think of everything, cover everything. ... It was really a nuanced document and then the discussions I had with partners to help inform it covered loads about different kinds of risks. ... Equalities, environment, it brought it all together in one actually. Data protection obviously was all that sort of stuff. Yes, it covered so much because I had to think about it, from both the person responsible and person harmed side, about any risks and harm to them. (Scot2)

Another interviewee explained how the checklists were used as a guide to check for potential risks:

I suppose as experienced facilitators, we've kind of used our own template way of describing how we're mitigating risk. Whereas the one that we currently use brings up every individual and sort of tick boxes ways of prompting substance misuse or various issues that might arise and whether they're an issue or not. So yeah. And we use it a lot with volunteer facilitators specifically because it teases everything out. (E&W4)

More commonly, interviewees described the use of professional judgment, drawing on information from a range of sources, and especially engaging in dialogue with the potential participants to identify, explore and discuss potential risks. This included collaboratively discussing and identifying potential risks and working to find ways to mitigate these.

Relationship based it's about seeing the person, walking in the young person's shoes, seeing their world, understanding their needs. The same as I would ... actually the same as I would with any young person, understanding their world and where they're at and through that discussion and engagement, I'll get a sense of whether they're anxious, how they may deal with an emotional process so it's just ... it's about engagement. It's just getting a sense of where they're at, understanding their world and I would do that with adults too. (Scot6)

I think our philosophy is, if it's difficult, okay, what do we need then to make it work and what extra safety we can build in, if you say it like that, what extra safety do we need? And it can be like, say, okay, I have to talk to your therapist, I need permission from the *juge d'instruction* [investigating magistrate in some inquisitorial legal systems], I need to talk about this with my boss, I need to talk about this with my colleagues, I need to talk about it in supervision. But at the end it's me who decides mostly, yeah. (Belg1)

Some of the interviewees made more explicit reference to the use of restorative justice principles and/or basing their approach to risk assessment upon dialogue with potential participants, transparently discussing potential risks, and even working towards an agreement that restorative justice might not be suitable if the risks are too high or could not be readily mitigated. Some explained that the assessment of risk was based on aiming to work towards a beneficial restorative outcome, working out what the relative risks were, and whether or how these could be addressed to achieve positive restorative justice outcomes:

My general approach to mitigating risks. I suppose the key piece is knowledge. There isn't a sort of structured framework to doing that. But the pathway around moving at the pace of ... well, of both parties, but generally speaking very much in the context of safeguarding the rights of the victim and ensuring that there's no additional risk of further victimisation. But also, indeed, to balance that against the rights and needs of the offender. So there is the knowledge and understanding of the values and principles of restorative justice, but there's also the use of collaterals, as in any other supports that would be available to both offenders and victims so that we're not out there on our own pioneering a certain approach to the exclusion of all the other services that have been involved. (RoI2)

The way we were trained for this kind of work was to, kind of, look and listen out for certain things. The training was there's nothing that can't be talked about, so listen out and with that sixth sense, if you sense something is in the room, name it and bring it ... like, put it on the table. ... So the simple answer is, I didn't use any formal assessment tools, but the way we were trained was to call it out if you sense something in the room. And, again, that modelling of how to talk about something difficult, you know ... I'm not sure if formal risk assessment things are needed in this process, because it's all about creating trust and space, safe space. But I do think we need to talk openly about risks with the parties, so that it's all out on the table, and they know and you know that it's about creating a safe space that brings benefit. And if they're not interested in that, they really shouldn't participate, you know. (Scot4)

I'll be using the themes that the victim has told me, and I'll be watching. It's like, all lights are on, all clinical lights are on when I'm then assessing him in his response. And if I detect any victim blaming, disrespect, lack of responsibility taking, or whatever ... But that's clinical skill, as much as it is restorative justice skill. (RoI1)

By talking to the parties and asking them what they feel about the situation, how they experience the situation and what they would need for them to feel better and what do they want the other party to do differently and what would they maybe be prepared to do differently themselves in the future ... I would start with talking to the person who I think is at risk and I would say that in my opinion, correct me if

I'm wrong, but this is the feeling I get and then I would explain what risk I see. Because my ... I want to be open, transparent and genuine. If I get a feeling, I tell the person in front of me about that feeling and then we can discuss that. And if I get that feeling, usually they might agree with me and then we can come to an agreement, well, this is not for you, not at this stage. (Fin2)

Generally, then, professional judgment was used to assess risks, sometimes with the aid of checklists or similar tools, and often through a process of dialogue with the potential participants around risk and how they might be mitigated.

3.9 Would facilitators get someone else's view?

Several practitioners stated that they would seek information from other parties to inform the risk assessment, notably social work and/or the police.

We can absolutely seek support from other agencies on a general basis. But I can call to someone. If we're talking about drug abuse, that kind of thing, aggression problems, treatment, I can call another agency and ask, could you give me some tips about how to ... what to look for, and that kind of thing. (Nor2)

Equally, the involvement of the statutory authorities, like the police in cases. So making sure that we have all of that collateral information as well. Then, like for instance, the protocols in the prison in terms of if we're setting up meetings, that there is sufficient attention given to the challenges maybe for a victim to go inside a prison gate, if that's where they have to go. (RoI2)

For children and young people, practitioners might seek further information from schools, parents and carers:

If there are children involved of course I'm talking with parents or other persons who are responsible, have a responsibility with the children. And if they for example are living separately from their parents then we call those for example here schools for specialised youngsters and so on, then I'm talking with them, the officers there. And of course sometimes the police and social worker or healthcare worker if needed. (Fin1)

In at least some cases, contact with other agencies was not just about seeking further information, but understanding or ensuring the additional help that the person was receiving, and the views of any involved professionals on whether proceeding with restorative justice was appropriate. If people were using specialist services, such as therapists, mental health services, or victim support agencies, practitioners may ask potential participants if they would give permission for the practitioner to seek further information from these services.

If there's an organisation working with them, I would get permission to contact the agency. What I really would want to check with the agency is are they supportive. Because if they are in contact with an agent in the agency, if they are in contact with therapists, in contact with whoever, it is very important that they are supportive of whatever is going to happen. Because if they are not supportive I'm bringing, whether it's the victim or the offender, in a difficult position that maybe they get into opposition with the agency, with the therapist, with whoever. And this

goes for agency; this goes for families as well – if there is no support. And I will say this, when I read the question, I thought a really, really important for me is the support. If there's no support, I would be hesitant to move forward until I can get some kind of support working in the background. (Denm1)

However, if the other professionals did not recommend participating in restorative justice in that case, this did not necessarily mean restorative justice would not proceed, as practitioners viewed those agencies as sometimes having a different understanding of risk, and ultimately the decision over participation belonged to the individual.

Overall this suggested that many practitioners would regularly seek information from other people, including family members, partner agencies, and professional support agencies, and often seek permission from the potential participants before doing so. Such information would inform risk assessment, but would not necessarily dictate whether a restorative justice process would or would not proceed.

3.10 Is risk re restorative justice the same as risk re criminal justice?

Two Scotland-based respondents suggested that risk assessment tools that are used within criminal justice practice more generally could be appropriate for assessing risk for people responsible who might take part in restorative justice, although they noted that they are not currently used in this way:

We certainly use a plethora of risk assessments when looking at the risk of re-offending ... the risk of violence, the risk of sexually harmful behaviour, but those are quite forensic and they relate to the prospect of a future offence taking place. The better assessment, the Short-Term Assessment of Risk and Treatability: Adolescent Version, START:AV, focuses on strength and vulnerabilities, adverse outcomes, and integrates case formulation and scenario planning. So I think it's a wholly appropriate tool which would have an application if a young person responsible for harm was about to engage in this process. You would have a really solid picture of their risks and needs. As to an assessment of a person harmed's vulnerabilities, risks and needs, that would be more of a gap currently. (Scot5)

I've been on START:AV training as well and that's something that we would use specifically with quite an intense case in youth justice. And that might actually lead to us to formulating an opinion based on is a person capable of doing RJ and a person responsible side of things. And basically, with the actual assessment, you're looking at the vulnerability of a person in regards to, where is the vulnerability in their life and what's happened, what's causing them to do x, y, z? What's causing them to commit this crime? Are there factors at home, are there factors in school, are there factors outwith? Are there factors in work, are there factors in their social circle? You would look at all this. Is there damage that's been done in their childhood now and it's trauma that's causing them to do or act out in a certain way? It's a very holistic look at somebody and looking at all phases of their life and parts of their life. ... But we would use that with young people, specifically, like I say, if it was a very serious crime, but it's not something we've used alongside RJ. But I wouldn't be against it because I think it's quite good, specifically with a person responsible. (Scot7)

Two respondents indicated that criminal justice risk assessment tools were not very useful in relation to restorative justice, as they did not assess risks that were directly relevant to participation in a restorative justice process, but rather were more generic in terms of likelihood of further offending.

That [risk of reoffending and LS/CMI] wasn't mentioned in the screening tool so it didn't matter a jot actually what level of risk they were assessed as. So whether they were low, medium, high, that didn't matter. What did matter I suppose was the nature of the risk, any seriousness, any evidence and we would rely on the person's allocated social worker to update us on what are the main risks. We didn't need to know in terms of their risk of re-offending in general. We needed to know what would be the risks and nuanced aspects of that in the social worker's professional judgment as well. And in a restorative justice context or process and meeting the victim whether face to face or if there was other shuttle stuff. (Scot3)

I think a really important point to make is that our idea of a risk assessment from restorative justice is not necessarily the same as a risk assessment in the prison or probation or the OU or victim support or anything else. And, you know, as an example, we've had prison governors and psychologists say we can't do a case with a sex offender because he hasn't completed all the sex offender treatment programmes. And so he won't know what to say to the victim ... Well, from our point of view and from the victim's point of view, that is pretty much complete nonsense because what the victim wants is to put their questions. (E&W4)

Overall, we found no evidence that formal, validated risk assessment tools used in other criminal justice contexts were used to assess risk in relation to participation in restorative justice. There were as many respondents (two) who were in favour of such risk assessment potentially being used in relation to restorative justice as there were those who argued that such assessment was not relevant to assessing risk in relation to restorative justice, although it must be noted that these respondents were referring to different tools or assessment processes.

4. Mitigation and risk

4.1.1 *Considering both mitigation and risk*

Facilitators have a duty to consider, in each individual case, what the risks might be in starting or continuing any restorative justice process. In doing this, however, do they think solely about risk (i.e. potential negative effects if one continues with the process), or do they also think about possible mitigation (i.e. can one potentially lower the risk by adopting particular strategies)? We have already seen that our interviewees thought it was key to find out about potential participants' wishes for the restorative justice and the outcomes they would like to see, and to discuss possible processes with them (Chapter 3). Chapter 3 also showed that facilitators were likely to see certain individuals and cases as risky, but not types of case or person. Would they also discuss potential risks and potential mitigatory measures? In this chapter we shall first discuss how facilitators thought about risk and mitigation, and then consider a range of common potential risks and the specific mitigatory measures our interviewees had tried (and succeeded with).

Facilitators would often, once they had established that there might be a risk, put that before the potential participants to see whether they felt it was relevant:

When it comes to the participants we work with, for the most part, the sensible approach is to lay those concerns on the table, and say, this is a concern to me, what do you think, how do we deal with this, how do we approach this? What do you feel about this? ... Because the things that I think are concerns may not be a concern for a victim, may not be a concern for an offender. (E&W1)

I think how we try to measure it, the victim itself, if a victim is really angry or aggressive in the way he or she talks, or an offender, or scared, we say, okay, what would you need to calm down? What do you need to make sure you don't have to be afraid? (Belg1)

We talk a lot about restorative justice, putting the participants at the heart of what we do. And then I think sometimes we fall into the trap of making those decisions without even telling them. So we will always try, I will always encourage our participants to say, if you've got a risk that needs managing, get your participants involved in that. So I think just putting extra things in place where it's needed and kind of formal support. And just being quite open and transparent with participants about does this work for you? (E&W2)

Some facilitators also emphasised that risks may attach not just to continuing with the restorative process, but also to stopping it. Deciding to end a restorative process is a decision which also has consequences for the parties.

And they've all said it's been great, it's changed my life, you know, so that's made me suddenly realise there is a risk in not [going] ahead. ... There's no risk-free option. (NII)

From my perspective, it's all about designing a process where you do your very best to manage potential risks, in case you have a victim in a case like that who

really finds it important to meet the offender. Then I think we should also be a bit careful not to steal the conflict from the parties in cases like that. (Denm2)

Even with more difficult cases or more vulnerable participants, preparation *with* each participant is key to being able to get past more difficult moments. So, for example, in a murder case, one facilitator said:

The predictability is really, really, really important. When I'm working with inmates, I'm working now with a man, he's serving a sentence for a murder, and he wants to meet the family to the young man that he killed ... But what I have to work with him now is will he be able to sit there and hear about the consequences of the action, actually murder of their son? I have to prepare him. Will he deal with that? ... how will your reaction be? And he said, I know what I did. I know it will be hard. But if that's what they need, I will take it. (Nor2)

I suppose one of the mitigations for those experiences and risks is working in a trauma informed way. And being aware of your client's trigger points, possible trigger points, having breakout activities, where you break off from the direct RJ work, do something different, those kinds of things, if you think somebody is getting really stressed. (Scot2)

One facilitator talked about balance, that mitigatory elements needed to be designed so that for that particular case and those particular participants, everyone could feel safe:

Do you need a red flag, do you need a ... what do you need, do you need a bell, do you need a [nearby] door, do you need two big brothers, do you need four colleagues? So that for everybody the balance feels like it's at the same level. Sometimes if it's necessary, yeah, you need seven people on one side and two people on the other side to have a balance. So, okay, for everybody, including the mediator, is there a balance and does it feel safe for everybody? (Belg1)

It was clear that, as facilitators were thinking about risk, they were also thinking about mitigation of risk for those individuals and that setting. It was not a two-stage process, whereby risk was considered first and then mitigation. Rather, a relevant risk would be thought through, and discussed with the participants, with potential mitigation in mind.

4.1.2 Creating general mitigatory elements

Some aspects of the normal restorative justice process were seen to create general mitigatory elements if participants were concerned about others present or the process.

There are two things that really mitigate the risk. One is prep. As long as you've done your prep right and everybody knows what's going to happen, everybody's there because they've been able to make an informed choice ... And the other thing is having the right supporters there for people. (E&W4)

Because it's voluntary and it's also voluntary during the process, during the meeting and they can always leave. I try, if necessary, we put them at the door so

that they can leave immediately. Because people have the feeling that if it's not okay I can leave and I will stop it, I think that's already a safety. (Belg1)

These general mitigatory features could always be emphasised if necessary in particular cases:

Sometimes with children we work with a flag, they just have to show the red flag, if there is a red flag shut down immediately. So we have, I think, procedures like that to make it work, so people feel safe enough to do it. (Belg1)

4.2 Specific risks and their mitigations

We asked facilitators about various specific types of risks related to the restorative justice process and their approach to mitigating these, as well as including an open question to identify any risks we had not anticipated.

4.2.1 Communication difficulties

Communication is the essence of restorative justice, which is about bringing the different parties together so that they can each give their point of view and discuss outcomes (Marshall 1999). Complete inability to communicate would prevent restorative justice, but it is often possible to be creative to mitigate any communications difficulties. Such difficulties can arise because of language problems; difficulties in expressing things in words, particularly for young people; mental problems; and having to go through intermediaries. We asked all our interviewees whether there had been communication difficulties in the cases they had facilitated and all said there had been in some cases:

I mean substance use and mental health are the ones that you immediately jump to but you'd be looking at does the person have any communication ... communication difficulties or any barriers due to a learning disability or just ... or difficulty or, you know, language ... just English being their second language (Scot1)

We shall consider all these in this section, but the first point is that, like with all other elements to do with restorative justice, it is important to check the extent of any apparent problems, not to presume that there will be impossible difficulties (or no difficulty). For example, even when there are significant mental health issues due to psychosis which are likely to affect communication (and perception), they may diminish over time or with treatment, and so restorative justice may be possible at a later date.

Communication difficulties can also be due to past relationships between the participants, which may need to be addressed so that it is possible to have a constructive restorative justice meeting. An interesting insight was provided by one facilitator into how the context of the offence might affect communication and how important preparation was in these instances:

Often in domestic violence, they will say, we have been talking a lot about this. But when we dive into it, it has been two monologues. And now the offer is a dialogue. So you have to break some patterns, how they have been communicating

before. They have to communicate in another way when they are meeting in our meetings. (Nor2)

Where participants speak different languages

Almost all the interviewees said they had used interpreters where participants spoke different languages, or where English was a second language. They stressed that it was important that the participant felt confident in being able to communicate, even if their English was good.

We always use an interpreter, because it's so important not to misunderstand each other. Because often the misunderstanding is the cause of the violence. So we have a huge use of interpreters. Often in these cases we actually have them on the phone, because some language groups are so small so they feel very vulnerable if the person is in the room (Nor2)

It is important to have a budget for interpreters when necessary. Some schemes were able to use their own staff or volunteers who spoke the relevant language (who would act solely as interpreter in that case, not a secondary facilitator). They found it helpful to have someone who knew the basics and principles of restorative justice, but they were aware that they could not meet all requirements from amongst their own personnel:

We've used interpreters but I think sometimes it's really helpful when you've got someone that understands restorative justice that interprets ... Where we've had one party speaks one language and the other party speaks English, then we've had a restorative justice practitioner as the interpreter, not there to facilitate, but to interpret in that ... we're maybe needing to use, you know, flipchart and paper in order for someone to help kind of explain a bit about what's going on. (E&W3)

Another benefit of using one's own personnel is that they are used to the confidentiality necessary and the kinds of meetings or other events, and to the likelihood that emotions would be displayed. There has to be a contract in place which emphasises confidentiality, the ground rules of any meeting and safety.

Those interviewees with experience in facilitating restorative justice in small communities, whether in Scotland or Scandinavia, emphasised the need for absolute confidentiality and no gossip:

Some communities in Norway are really small, and if they come from a country where ... you know, everybody knows everybody in Oslo, here, that might be a problem for them. Because then they are afraid that if they tell about this, that the translator will gossip about this. So we are very strict about what kind of translators we use. We have one firm and they are authorised. (Nor1)

Shapland (2009) also found that with large meetings in cases of extended family disputes, or neighbourhood disputes, or bars, or clubs catering for particular hobbies or sports, one of the main fears of participants was that what was said might get out, either in gossip or on social media. People knew each other, and knew others, and realised that any communication outside the 'circle' might stoke up further trouble. It may be useful in such situations to have an explicit agreement between all the parties

(and any interpreters or key workers) that there would be no communication after the restorative justice conversation with anyone else.

A further possible mitigatory measure, where people are wary of who might find out what has been said, is that participants can be assured that it is not necessary for them to explain every aspect of the situation or its background in great detail. Participants can choose what they want to say:

Also the agreements in these meetings that everyone can say how much they want and you ... don't have to be sharing your story, like, today, then you can say as much as you want, and that kind of thing. (Est1)

A variant of the potential communication difficulties where participants speak different languages is where the participants speak the same language, but the facilitator speaks a different one:

[They] immediately started conversing in Kurdish. I didn't have a clue what was being said. And that sort of ... I was uncomfortable with it because I knew that I had no control over if there were any threats or whatever. In fact, it was fine but I did have to ask them to speak in English. (E&W4)

So, it is important that everyone taking part in restorative justice is able to understand what is being said and what is happening.

This applies not just in terms of conversation, but also any documents which are sent out, either to explain the process or in relation to outcomes. Whatever the needs of the participants, they apply to both verbal and written communication:

Instead of a letter going out in a standard format, that might be about going out in bigger text, font, it might be in more simplistic language, it might involve images as well as text, et cetera, et cetera. But I would be attuned to that in any case to a greater or lesser degree, and you would modify your behaviour as a practitioner according to that need. (Scot5)

Where there is difficulty in expressing things in words, particularly with young people

The empirical studies of restorative justice with young people have for some time acknowledged that there can be difficulties for young people to feel comfortable about communicating, with many adults present (see, for example, Daly 2003; Campbell et al. 2005). Those difficulties can be magnified if the participant is autistic or with other neurodiverse issues. Experienced facilitators referred to these communication difficulties as common with young people and some had deliberately developed means of communication which do not just depend upon verbal skills:

I think that the majority of my clients have communication difficulties, which are not all, but I'd say the majority because of all the things that I've said previously about adverse childhood experience, current or previous trauma, which makes it really hard to voice and articulate things, which is another reason that I find the arts making really helpful. (Scot2)

One key mitigation was to prepare all the participants if someone was likely to have some difficulties, rather than it coming as a surprise. Another was to put in place relevant support to aid communication:

We've also had cases where just sort of level of education and communication and those sorts of things have been different. So if people need additional support, we will make sure that's in place before we progress with any cases. But a lot of the time, it's just about setting those expectations with participants and helping them to recognise that there might be a difference and so how are we going to manage that. (E&W2)

Another method which was found successful in some cases was to prioritise non-verbal communication. If, whether in preparation or during communication, someone was very silent and just did not seem to want to talk or initiate anything, one facilitator had started using pre-printed cards, which could be pointed to:

So you would get like a pile of cards pre-printed, and then you would give the young person the cards or you would put them out on the floor, and you would say, right, have a look over those questions. If there's one that you want the answer to, pick it up and we'll talk about it. So I'd be like, you don't have to speak to me, you don't have to...just pick up the question, I'll read the question and I'll give you the answer (Scot8)

Other facilitators had used pictures or other images.

We had some cases where young people have been autistic and they don't want to have that kind of contact or they don't want to speak up, then we have to use the different things, like, cards or animals or pictures or something like that. (Est1)

Some had got participants to make art in whatever way they wished, during indirect mediation (i.e. the art would be sent to the other party as part of the communication).

Where there are mental health difficulties

Taking part in a meeting or sustaining a dialogue can be challenging for those with some forms of mental health problems. All the facilitators would in these cases try to contact (with the participant's agreement) relevant professionals, to find out whether there might be mitigatory measures, and whether the condition was expected to improve or change with time. None would give up on a case simply because of mental health difficulties, but there could be cases where the mental state of the person was so extreme and long-lasting that it would not be possible to continue with the restorative justice in a reasonable time frame, or it might harm the other party. Facilitators recognised that they did not have the professional skills to work with cases with mental health difficulties without external advice.

Potential participants might not at the time be receiving relevant treatment or support. Facilitators suggested that they would say that the participants might benefit from support (for example, via a relevant charity or their GP), but of course participants could not in any way be forced into this. Generally, however, the message was that potential participants welcomed support and their potential supporters would

collaborate with facilitators to find the most suitable kind of restorative justice at the right time, so that participants could take part, as they wished.

Supporters, including key workers and treatment professionals, might well attend a mediation or conferencing session with the participant. Facilitators were clear, though, that they should not speak for the participant unless the participant themselves wished this:

You also have people that can advocate on behalf of people, social workers, et cetera. They're allowed to come in, that's fine, but they cannot speak for the person unless they're asked to. (Scot7)

Supporters must not take over control or power from the participant themselves.

Where one has to go through intermediaries

We have already referred above to how communication can be affected by intermediaries, i.e. people who are not 'in the circle' or direct participants from the offence, but play more subsidiary roles. So, interpreters and supporters can present challenges. Where communication with the participant during the preparation has to go through intermediaries, however, that can produce even more interesting circumstances. All restorative justice facilitators are aware that it is best if they themselves can have the conversations at the beginning of the restorative justice process where they are describing what restorative justice is and ascertaining whether the participant might be interested (Banwell-Moore 2022). Others may have limited views as to what restorative justice processes may be available, or stereotypes of who might be 'suitable' for restorative justice, or just not the time to answer the person's questions.

In some situations, however, it is impossible not to use intermediaries. This is often the case where one participant is in custody or a looked after child. One of our interviewees put it concisely and provided a potential solution, at least for some kinds of communication:

A tricky area ... particularly with working with offenders who are currently in prison, is that often your communication has to be filtered through a third party, not all the time but some of the time ... when you're dealing with prisons, often what you can find yourself doing, is saying, 'I need to speak to this person, and I want to ask them about this thing', and you'll have a middle party like a probation officer, or a prison officer, going, and we'll pass that message on for you. And you think, 'oh, what have you passed on?' ... 'One of the ways that we have tried to mitigate that, and with various degrees of success is by being extra specially helpful and saying to those professionals, what I can do is, do you want me to put all of this down in a letter for you? And then you can give them the letter and feed back what they say. (E&W1)

Potential communication difficulties, then, can come in all kinds of shapes and sizes. We have set out the main types above, but the key areas to cope with these difficulties are often common to several types. They are:

- Be alive to the possibility of communication difficulties, not just in obvious cases where participants speak different languages, but also in terms of the confidence the participants will have in expressing themselves
- Discuss any such potential difficulties with the participants before any meeting or starting indirect communication, so that they are aware of the situation
- Where there are particular mental health difficulties, or communication difficulties which can be alleviated using professional support, be in touch with the professional supporting that participant (with the participant's agreement) before deciding what to do
- Be prepared to be creative in surmounting the difficulties, whether that be by using different means of communication or ensuring other intermediaries do not confuse the message.

4.2.2 Virtual communication

The Covid-19 pandemic had encouraged restorative justice providers to think about using virtual processes and technology, but very few seemed actually to have done so. It was not clear why that was, though obviously restrictions on movement and working impacted on everyone, including facilitators and criminal justice personnel, so there may have been less demand in general.

The key risks relating to virtual methods were said to be ensuring confidentiality and the safety of participants. This included difficulties with the facilitator's own household. Essentially, facilitators had to ensure that no one else could hear what was being said or be able to influence a participant. This is relatively easy to do normally when the facilitator chooses the venue and see the participants and all parts of the room. It is more difficult with virtual communication, because cameras only normally cover a segment of the room. These are, however, the conditions in which many legal interviews and consultations take place where the person who has harmed is in custody (including for court hearings). It is interesting that facilitators remained opposed to the use of technology normally:

How could you guarantee safety, how could you guarantee who's hearing what? And I suppose, more than any other format, if your tech goes down, there isn't really a work around. (E&W1)

None the less, there were circumstances, not related to Covid, in which some had used videoconferences:

We have had conferences with a police officer in the station, or the victim on the phone, or WebEx (videoconferencing) or with their family, assessed for safety and confidentiality. (NI2)

I can tell you that even though the goal is always to have in severe cases that the people are meeting face-to-face, we also have had some solutions, minimal, where there is a facilitator in a small place with one of the parties and a facilitator with the other parties in another small city, and they are meeting on the screen. (Nor2)

Here the factors prompting the use of virtual technology were primarily distance and difficulties getting the participants in the same room. Virtual meetings, particularly

during the period of Covid partial lockdown, were also primarily used for pre-meetings, rather than the main dialogue.

4.2.3 The room, the building and the site

One of the main challenges highlighted by our participants was the need for a suitable site for restorative justice to take place. Choices of site were shaped by practical concerns as well as the emotional needs of the parties in the process; in practice, these tended to overlap as facilitators sought out sites that were accessible and safe but also allowed parties in the restorative process to feel safe and supported. Prison settings were highlighted as a particular challenge for restorative justice due to their remoteness and inaccessibility as well as their atmosphere. However, facilitators reported a range of measures to mitigate the challenges around any site in which restorative justice would take place.

Choices of site

There was significant variation in how sites were chosen and what was available to the facilitators. Some restorative justice organisations benefit from dedicated office space for restorative justice meetings, which allows the organisation a high degree of control over the physical environment, enabling the creation of bespoke spaces intended to have a calming effect on the parties and promote dialogue. Ideally, dedicated spaces would be available in as many cases as possible.

We try to have the conference in the most appropriate venue - in our building rooms are bespoke for conferences and we've tried to make them softer with paintings on the wall, colour, soft toys and a fidget, large plastic tanks with plastic fish. We did research on it with mental health services as to what would have a calming effect. We also have a one way mirror system for victims who don't feel safe. (NI2)

So the [organisation] room is set out more like a living room, it's not an office space. You wouldn't know that it was an office as well as a space where we meet clients. So we have a circular dining table, white dining table chairs around it, which we conduct our meetings around. There's a leather sofa and coffee tables, and two other leather armchairs type chairs. And it's got windows all along one side so it's really light and well lit. And there are curtains, as I said, there's a glass window into a corridor and we close curtains for privacy during the meeting. So the curtains add to a feeling of it being more of a domestic space, and I think that's really important. (Scot2)

However, particularly in areas where restorative justice is less well-established, or space is at a premium, facilitators need to make do with whatever spaces are available. Facilitators nearly always saw it as vital to use neutral spaces with no associations with either party or with criminal justice agencies.

So in terms of a physical space, like, obviously imperative that that is a neutral space. So, for example, it wouldn't make sense to host it in the social work office where somebody attends for their Community Payback Order appointments, right? So I would argue if both individuals are from the same community, is there a safe

local space in that community that feels neutral that would be supportive of that process? (Scot5)

I think obviously you'd need to look at things like venues and things like that as well. It needs to be neutral, a neutral site ... You wouldn't have it probably ... you wouldn't have it in anybody's homes or anything like that, you'd have it at a neutral site. You wouldn't have it back where the incident happened either, probably. I think I gave you the example with the shopkeeper and the hate incident, that's actually happened. Numerous times we've had referrals like this and we would never host it back at the shop, we would always bring the two parties together at a neutral venue. Risk factors are taken away then because somebody doesn't feel maybe hostile in that environment. It can calm things down, it's neutral, both people are foreign to it, you're bringing them in to have an open discussion. (Scot7)

A few facilitators in jurisdictions outside Scotland placed less emphasis on the space being neutral, and sometimes described using police stations as restorative justice spaces. In general, though, this was felt to be suboptimal and a neutral space preferred, with one exception who highlighted the potential for police stations to contribute to meeting the need for feelings of safety on the part of the person harmed.

So of course, safety is a really, really important issue. I think what we do if for instance, the victims feel really unsafe is that we'll normally have the meetings at the police station. (Denm2)

Some facilitators carried out home visits as part of the restorative justice process. This was not seen as appropriate for the restorative justice conference *itself*, given the need for a sense of neutrality and potential safety concerns if one party becomes aware of the other's address. Home visits to either party were sometimes offered as part of the preparatory meetings in the leadup to restorative justice.

Another important aspect of risk was a lone worker assessment, looking at are there any red flags on the system about can the person be seen by a lone worker, would it have to be two people? In RJ it should really be two people doing a visit if it needed to be a home visit. Actually indeed were there any risks for the victim might pose, can we go to their house alone? We didn't actually maybe have information on them. No, formal risk assessment tools, yes, we needed to know about what they were saying but wouldn't have necessarily had a bearing for people's risk level, wouldn't have had a bearing. It was about what were the risks for the context of delivering restorative justice.

I: You mentioned home visits there, was that something that was central?

It would have been offered, yes, definitely. We had to take off our criminal Justice Social Worker hat and really offer a service where it was really, really flexible for both the person responsible or the person harmed. Where were they most comfortable meeting? As it happened, the one that I did, the person responsible was quite happy to meet me in the social work office and have a chat. But I certainly offered, would you like me to come to your house to visit? Certainly, for victims we would have been offering a home visit, phone call, whatever they were comfortable with rather than making them come to a social work office where they might see the perpetrator or whatever initially. (Scot3)

Practical concerns: access and safety

There were also more practical considerations around the choice of site. These included ensuring the site was accessible to the participants - a particular challenge in more rural or remote areas, where public transport provision may be limited, infrequent and/or prohibitively expensive. Some organisations either provide transport for the parties directly or fund them to use public transport, although other facilitators reported no such practice. Given existing patterns of inequality in Scotland, particularly among those affected by crime and punishment, we advise that procedures are put in place to facilitate transport for participants in restorative justice meetings.

Most of the people that tends to come from like the area around the main town of [area] or within easy travelling distance by public transport. But yeah, it can sometimes be a problem. Sometimes we would offer to transport clients to appointments, and sometimes the referring agency, like the social worker will do that, transport clients because the public transport system does exist, but it's not that brilliant. Some places there are only two buses a day, one in the morning, one in the evening. Occasionally we have clients who live on other islands other than the main island. And in the past, we have travelled to their homes to do the initial meeting with them to avoid ferry crossing and long journeys. So we ... we are flexible and we do offer to meet people in other environments, such as local community halls, for meetings. (Scot2)

One interviewee noted the importance of accessibility for people with physical disabilities for ensuring all parties could participate:

If so, we would always make sure that people can access it, so for example if there's like mobility issues, we'd always make sure ... if it's a lower floor or if there's no room on a lower floor, is there lift access et cetera, et cetera, so all that can be worked out, depending on the dynamics of the case, but ... we'd always kind of make sure that we're dealing with them respectfully. Because that's the case of the meeting, don't make it feel like anybody's being excluded, dealing with anybody that's got a disability or whatever respectfully. (Scot8)

Facilitators also agreed on the need for safety within the building, although only a few interviewees discussed in detail the risk assessment of the restorative justice space and the objects within it to mitigate the risk of potential violence and its consequences.

[In the space] there's a standard lamp and a table lamp, those are also potential objects that could be picked up, could be used as weapons. So obviously our static risk assessment takes those kinds of things into account as well. So each object in the room is on our risk assessment and how it could be used negatively and mitigating the risks around that. So if we had a client who was assessed as being particularly volatile, then for instance, we might move the lamps into the cupboard. (Scot2)

So, you put the potentially aggressive person maybe in the back so that everybody else can get out of the room easily, you don't leave any heavy glassware on the table, you use little plastic cups for your drink of water or whatever you serve, coffee. (Fin2)

Emotional needs and the built environment

Much more common, however, was discussion of how the space could be configured to ensure that the parties, particularly the person harmed, *felt* safe. Aside from attempting to choose neutral, bright and calm spaces, facilitators also described several measures to alleviate the fear of aggression or violence, agreed with the parties involved in the case. These included placing people and furniture to create a sense of distance between the parties, or positioning the parties near doorways to allow for a quick exit in the event of the conversation becoming volatile or overly emotional:

We have some rules about where to put people in the room and then we always ask the victim first, her only, where will it be safest for you to sit? Some of them will say, I will sit near the door so that I can run out. Others say, I want him or her ... the offender ... to sit close to the door so they can run when they get angry. (Nor2)

Across all types of site, the most important architectural feature was one or more additional spaces that could serve as ‘anterooms’ for the RJ process, for the parties (and their supporters or assigned facilitators) to prepare for the meeting, to debrief and discuss afterwards, and to retire to take breaks if the meeting becomes very emotionally charged or begins to become confrontational. Preferably, there should be an anteroom for *each* of the parties:

Time off is good. Have a break, go out, separate rooms, let’s talk in separate rooms and then bring together again ... That’s one thing that I think is very important: when you find out where it’s going to be, the location, logistically you have to have several rooms available. (Denm1)

What safety feels like will be different for different people as well, but I do think having a space that’s got rooms off it is key. You know, I think ... if you can’t have anything else, if you’ve got a room that’s got space off that people can wait and people can go if they need a breather and a time out is really, really, important. (Scot1)

The site should be organised such that parties will not encounter each other accidentally either after or (especially) before the meeting can start. This can be achieved by having separate access arrangements (e.g. different entrances/corridors) for each of the anterooms, but in practice this may be impossible, particularly if the space is not purpose-built for restorative justice meetings or is a small part of a larger multi-purpose site. In such cases, the need for separate entry and exit can be addressed by staggering arrival and departure times of the parties and, if necessary, coordinating their transport arrangements away from the venue:

I will always make sure we have it all in advance, as part of the prep, who's going to leave the room first, who's going to leave the room second, who's going to be with the one in the room, so it will be the co-facilitator, when the other party, the first party to leave, is brought out of the building, which will usually be by me, out of the building to their husband in the car park, or mother at reception, or wherever it is ... And then, I'll come back and the other party will be brought then to their person, or they will have told us, I'm meeting him in a coffee shop, or I'm meeting at the ... let's say, the offender, I'm meeting my wife in the coffee shop down the

road, or whatever it is. And then, I'll follow-up by text with both parties that evening, are you okay, did you get home okay, and whatever. And then, the next day ... and then I'll just ... if I'm facilitator, it'll be a little bit later before I contact them both again. (Ro11)

It is worth noting that none of our facilitators described witnessing any actual instances of aggression between the person responsible and the person harmed in a restorative justice setting. Only one of our interviewees described instances of physical aggression but this was directed at the facilitator, not at the other party in the meeting.

However, the *feeling* of being safe and supported is essential for full and honest participation in the process, and some of the relatively simple measures presented above can help to engender this even where the choice of site may be challenging.

Restorative justice in a prison setting

Finally, some facilitators described the logistical and practical challenges of carrying out restorative justice with prisoners and in a prison setting. In such circumstances, the challenges noted above are intensified - but our interviewees described ways of adapting to this situation.

Carrying out restorative justice in prison does not allow for a 'neutral' site free of criminal justice associations. The prison setting also intensifies challenges around geographic access, particularly for prisons which might serve very wide geographic areas so require long-distance travel for access. Finally, the nature of prison settings, with space at a premium and highly securitised spaces, may make it difficult to set up a restorative justice venue to meet the emotional needs of the parties in the restorative justice process; in fact, the prison environment and the strict security procedures required to enter may well be intimidating to those not already familiar with it:

I've had a person who had a prison restorative conference say to me that actually, yes, the prison wasn't the ideal environment. She wanted a table between them. So, sometimes you'll try not to have a table, but she wanted a big table between her and the person who harmed her. So, things like that. So, just making sure you're asking the person who's been harmed what will make you feel ... what will keep you feeling safe, you know, because I automatically think 'big table - barrier', but actually she *wanted* a big barrier. This person raped her. She didn't want to be sitting that close that she could be touching knees with him, you know. (Scot1)

One issue that we do have is that there's no prison in [area], so all [area] prisoners most usually go to [large prison], which is in [distant town], sometimes other prisons such as [others]. That is really problematic if we're facilitating an RJ case with somebody in custody. (Scot2)

However, our interviewees highlighted a range of measures to mitigate or overcome these problems. These included finding relatively neutral and less 'prison-like' rooms within the prison, preferably with adjoining rooms that could also be used as anterooms (as noted above). Other measures to address challenges associated with restorative justice in prison included facilitating access and transport, and working

with the person harmed as part of the pre-meeting process to familiarise them with prison security procedures.

Where there's prisons involved, how do I put this nicely, you take what you can get, space is at a premium, so it's rare that you will find a prison that has a dedicated restorative justice place. ... But in those instances, we try to find somewhere that is as unprisony as possible, and we try to mitigate that by saying to, particularly the victim who may not have ever had [experience] of prison, do you want to come and see this place first, before you have your meeting, do you want to come and see what it looks like, do you want to go through the security process, so you know what that's like? It's two big stresses, one meeting your offender, two, doing that in a prison. How about we do one on one day, which then means that you've only got one to deal with on the day itself? (E&W1)

So whether it's the chapel or the different kind of rooms within the prison which might feel more appropriate, where it's maybe more quiet, you're not having to go through so many gates or walk past different people. Whether it's accessible, if there's accessibility problems. ... for some people, you know, the thought of going into prison for the first time is quite daunting. So having that experience of where to park, how to go in, how you get searched, what you need to bring for your ID. And you know, we've worked with people that once they're in the room, it's like oh, actually, I want to sit here. Or actually, I didn't realise this and actually it's just really important to know which door they'll come from and which door I can come out of. (E&W3)

Restorative justice in Scottish prisons is still very rare and in early stages of development, but it will be necessary to be aware of these challenges – and of measures to mitigate them – if restorative justice is to be used in the most serious criminal cases.

4.2.4 During meetings: voice and safety

There are a number of specific risks which can occur in a restorative justice meeting attended by all the participants, such as a conference. They can create fears, anxieties and tensions for the parties before and during the meeting and put the meeting at risk. Safety during meetings is crucial and is worked on thoroughly during preparation sessions but of course safety can never be one hundred per cent assured and can mean many different things to different participants.

Safety looks like lots of different things for lots of different people. So, there's the basic health and safety, you know, can everybody get there, can everybody get into the room, can everybody get out of the room, what do you do if there's a fire? That. But there's also what is deemed safe for both parties, and we talk about that as we progress to things like conferences. ... sometimes that's, I don't want this person to see me upset, I don't want this person to see me cry. If those things happen, I want to be removed from the room, in a way that doesn't suggest that this is why we're doing this. (E&W1)

However, most of the risks can be mitigated in the preparation phase, if done well. If not carefully considered in the preparation phase, there can indeed be problems.

I think ultimately if a conference were to take place where things got out of control, that's a failure in the part of ... yeah, on the part of the facilitator, I think. You know, granted there will be occasions where the unforeseen occurs and that that might not have been avoided. But the idea that you would coordinate a conference that got out of control? (Scot6)

In this section we will first look at a number of specific issues regarding voice and safety during meetings which interviewees mentioned in particular and are also present in discussions around the topic more generally in Scotland and beyond. They include having ground rules; possible aggression in meetings; cases where there are power imbalances or the possibility of coercive behaviour; where there may be gossip; and considering the safety of the facilitator, not only the participants. We also examine what measures can be taken to mitigate those risks.

Ground rules

Communication includes allowing all participants to have voice, i.e. a fair share of the time in which they can put their point of view and ask their questions. Some providers and facilitators covered these points in what they called ground rules for the meeting:

All meetings start with ground rules - confidentiality, taking turns and everyone agrees. Breaks, tea-coffee, use of breakout room, if someone says they don't want to do it we stop the process - some do. They can bring supporters and friends and child victims are asked who can speak for you. (NI2)

We go through the ground rules as well, so everybody's got to be respectful, only one person speaks at a time, if you've got anything to say, you need to say it with respect, if you need a break, take a break, you know what I mean, stuff like that. So sometimes you just can't calm the parent down, because quite rightly, they're irate ... so obviously we wouldn't want to put the person responsible in a position where they're feeling threatened ... So you would go for a break, let's take five, go and get a drink of water, go and get a cigarette, whatever you need, and then we'll come back in five minutes. But you would try as much as possible not to be alone with a parent on their own, with other parents outside, because they might think, oh, you're on their side, but also you would make sure that both sets of parents aren't outside at the same time, for obvious reasons. (Scot8)

The ground rules would be made clear, no disrespect, no disrespectful language, victim blaming ... a respectful process that everyone's voice matters. It's an opportunity, however, for the victim to speak, and for the offender to respond, and of course, his life matters too. And that's all in the room. But the ground rules, yes, and that we're going to start with Mary and then we'll go to you, John. If there's support persons at the end, I might ask them for comment or thought, support persons will not be facilitated to jump in, and whatever. And if any of those ground rules are being broken, I will call a timeout ... or the co-facilitator, we will call a timeout. But a timeout can also be called by the victim at any point if she feels uncomfortable, or something is happening that's not right for her, or she needs a breather, or the offender, equally, can call a timeout if he is concerned, or feels he needs time to think, or something, or whatever. Timeout is the mechanism, and the ground rules. (Ro11)

Some of that comes down to ground rules. So, ground rules are, for the most part, they're generic, but sometimes there's ones that need to be a lot more specific. So, I think while it is easy for facilitators to say, the ground rule is that we're going to respect each other, that's fine, but respect is something that's subjective, and looks different to different people. And sometimes, when we know that we're going to have someone who is problematic, we talk very specifically about, 'we think that this will happen, how do you want us to deal with that?', and make that very open so that we are saying to ... our difficult person, this is a problematic behaviour, you may not intend it to be a problematic behaviour, but it is, and if that happens, we will do a, b and c. And sometimes that is, we will flag that up with you that you are doing that, and give you the chance to change it but if you continue with that, we will halt the meeting (...) One of my first conferences, and it was very good self-awareness on the part of the offender, it was a shop-lifting case, and the offender said, I'm nervous, I'm really nervous about this, but I also know that whenever I'm nervous I laugh, so please could you say that to my victim in advance, because I don't want them to think that I'm taking the Mick, I'm not, I'm taking this very seriously. (E&W1)

Again we are seeing that facilitators share the possibility of misperceptions with participants and may allow them to suggest ways to mitigate possible problems.

Aggression

Although most interviewees specifically commented that they have very rarely witnessed violence during the preparation phase or during a meeting (as was also found in Shapland et al. 2011's large evaluation), it cannot be excluded that it might occur, and might come from either of the parties.

Yes, we've encountered aggression before. And when I say that, probably a lot of people would think that's from the person responsible. No, it wasn't, it was from the person harmed. And that was because they were really angry and upset because they felt in that moment in time that they weren't getting probably the answers that they probably wanted. Or it wasn't what they thought it was, the reason why things had happened, and they become very upset and they become very angry and aggressive. And we had to pause the meeting right there and then and then say, we need to calm down and we need to remove that person from the meeting just now and calm the situation down. (Scot7)

Aye, you need to know that someone's not going to kick off. These are difficult, damaged young people so you don't know what their trigger could be so you do need to ... preparation's key. For me, the main things in restorative practice are preparation and confidence in skills ... For me, I'm experienced in working with young people in trouble so I'll get a sense of that. For someone else who's not so experienced in working with young people in trouble, they might kind of underestimate the young person so there needs to be a lot of preparation and it needs to be people who the staff group would need to feel confident and be skilled basically. Most people that work in youth justice are probably skilled but then there may be some teachers who are not as skilled in ... they're skilled in educating and teaching and but they might not be skilled in working with young people in trouble and that emotional kick-off point when they're distressed so that's the main risk. (Scot6)

This is one of the key reasons why it is very helpful to have a breakout room (see previous section), so that participants can themselves decide they need a break, if they find themselves becoming particularly emotional, or the facilitator can call a break.

Power imbalances and coercive behaviour

Power imbalances are of course a very important risk in all kinds of cases but in particular for example in domestic or sexual violence. They may be in part the cause of the harm in the first place and are often tricky to uncover and to address. It is of course very important that they are addressed as early and as openly as possible.

We work quite closely with prison and probation colleagues to try and make sure that we always pick that up [power imbalances] ... it's about working through that with our partners, our participants, working out how they feel ... Particularly with domestic and sexual abuse cases where we want to make sure that the victim doesn't blame themselves and that the perpetrator's not blaming the victim. (E&W2)

There's always a power imbalance, and it doesn't matter whether it's petty crime, severe crime, there's always a power imbalance. If there wasn't a power imbalance we wouldn't be there. Somebody took power over the other one at some point. ... I will say that there's more talk about power imbalance than actual power imbalance when you get to the meeting. It is something that I know always comes up, and I would be particularly aware of it when we're having domestic violence, if people have been married for 20 years, all the little signals that I do not know ... I never doubt the sexual violence, because it's a one-off very often, it's a completely different set-up with sexual violence. With domestic violence I'm far more cautious because I know there are things that I don't know, I know there are things that I don't see; I know that that's where the power imbalance is so invisible. Whereas with the sexual violence or the severe cases the power imbalance is far more balanced actually. (Denm1)

Gossip after the meeting

Participants can be really worried about the fact that the meeting might not remain confidential, that someone who has participated might go and 'gossip' about what happened in the meeting publicly or on social media and this might also be an impediment for some of the parties in their decisions about whether to contribute.

We have a consent form that we ask people to sign right at the beginning, which talks about not putting things on social media and not discussing things with people outside of the process ... We also make sure people have got support. If we don't think effective support is in place, we'll make sure that that's put in. (E&W2)

I'm concerned about somebody going to the press, to the media, or a lawyer. Because, again, that's not keeping faith with the process. And I think that would be my concern. And, again, ultimately, that feeling that you're either harming the person again, who was harmed originally, or making life worse for the person responsible, you know. Ultimately you want to avoid those two things. (Scot4)

Fear of future victimisation

In severe violence cases one of the parties can be worried about further violence and some of the facilitators had some very practical solutions to try to alleviate those fears. We saw in section 3.3 that one measure was to make people wearing big jackets which might conceal a knife take them off, or similarly put rucksacks or bags in a corner.

People are afraid, if you have a victim of a knife, the victim will think, I think he have a knife ... Put your clothes down there so you can see what's in front of you. Yes, and I think that's first of all the security measures that we have before we go into the meetings. (Nor2)

Supporters

Although supporters were not referred to as a direct risk, it is really important to invite the 'right' supporter for the person harmed and the person who has harmed, who really accept that they are at the meeting to come and be there to support that person, but also who do not want to take over, speak for that person, or be over-protective etc. (see also section 4.1 and section 4.2.1).

[talking about preparing for domestic violence cases] We never contact them before the party says, I want this and this support person. So they decide. It's the child welfare, the family protection office, it's their health doctor, their psychologist, health person. When I'm in prison it's often the contact person in the prison or the priest that they want to have with them. This is also a risk factor. Because one of the risk factors is if you don't have support persons, both professional or private, you can continue to have this ... now I'm especially talking about domestic violence. You can continue to keep the family secret if you don't involve a bigger network (Nor2).

So it could be like the relationship between the young person, so it could be like a prolonged period of bullying, it could be victimisation, any sort of thing that could cause a bit of a tense situation in a conference. A few times I'd had really irate parents and when we've been doing preparation for the work for the conference in the past, I've experienced this, and it's been the parents wanting ... almost like they're wanting their pound of flesh, because they attacked my son, and et cetera, et cetera. (Scot8)

It has ultimately to be the facilitator's decision as to whether a particular supporter can attend, or will pose too many risks – though it is always best to talk it through with the person to be supported. Equally, though supporters are normally helpful, if one participant decides they do not want to have anyone, that decision needs to be respected.

Facilitator safety

Just as there can be risks in relation to participants before or at meetings, there can sometimes be risks to the facilitators. Those also need to be dealt with in preparation, by making sure if there is a perceived risk or if the parties have a history of violence etc. that the facilitator is not working alone, or that the right support is in place when

they might need it, within the organisation or outside of it. This includes considering that facilitators working alone outside the office are lone workers and so health and safety protocols apply (such as notifying managers where they are; ringing someone when they have finished, etc.).

When you're talking about risks, I think we always also have to think about risks to the actual facilitators, particularly when you're dealing with murders or sexual violence or, you know, some of the CPS [Crown Prosecution Service] papers that we get are pretty horrible to read. And I think the benefit of our team is that I know that I can ring up xxx at any time and say I'm feeling really a bit overwhelmed by this. And not even what do I do but just to, you know, sort of vent. And I think that's really, really important to have that supportive environment for facilitators. (E&W4)

So I was the only one who saw that, as the manager. But at that time I had a good memory, so if anybody asked I was able to say the guy has a history of violence so be very careful. Meet during the daytime. And we did have kind of a protocol that we went through and we trained the people in, the volunteers, about how to take care of themselves and in some cases, those kinds of cases, we did have alarms that people could take with them. And also, there was a protocol that people were to ring me or I would be available. So I would know when they were meeting, so the person responsible, the person who was doing the case, would ring me before they had the meeting and after the meeting, to make sure that they were okay. And in some cases, I think I might have even suggested that two people go, you know ... And then for the other cases, where there was a clear identifiable incidence of violence, you took those precautions where I would have somebody that I would phone. I'd say I'm going into the case now and then when it was over, I'd ring them and say I'm okay. And I remember when we had a protocol where you were to sit near the door, so in case things got bad you could get out quick. (Scot4)

I think in terms of risk factors now, I've said to you it's all about having a big room. You don't want individuals close to one another, especially if they clash heads. You don't want them to be able to get to one another quickly either. So that's the reason we choose large rooms ... We also do things as well ... our workers sign into a ... what I like to call a guardian angel app, it's ... basically an app to say if ... you're with somebody or in a meeting, et cetera, and it's also got a panic button on it. And if you press the panic button, it phones the police straightaway and it phones me. So [the app's provider] are then told that there's something going on, the police need to be at that venue, the police go. And I would be contacted and I would also be told to go to the venue. So we do things like that as well to ensure that there are things in place, other than just us being there. (Scot7)

It is also important how the facilitators are perceived and the fact that they clearly have a different role to that of the authorities that dealt with the case to start with or within the criminal justice system. The facilitator needs to be fair and open. In some cases the interviewees talked about the need for the facilitator to be clearly 'neutral' although this is a contested concept in restorative justice discussions (see Keenan and Zinsstag, 2022 forthcoming).

I think the only reason the RJ managed to go ahead was because I wasn't a social worker. I think if I'd ... because there was real animosity towards Justice Social Work as well and the person who was responsible, he'd been in and out of care since he was at the primary school as well ... Yes, I think ... me being a neutral person or certainly perceived as a neutral person, certainly helped. (Scot1)

Another mitigating tool is to work in a trauma-informed way in order to be able to predict or at least not be overwhelmed by someone having been triggered during a preparation session or the meeting itself (see section 4.1 and above).

For example facilitators could decide if they see that things are not going according to plan to address them directly and try to resolve them.

Of course, in case I'm not able to manage the dominating behaviour, then I would definitely stop a case ... I've actually never tried to stop a case, but I have several times organised a break or something like that, in order to get a meeting back on track. So, that is something I've often done. But in case the communication becomes problematic. then normally I'll just articulate that, I'll just say, okay, so Peter, is it okay ... I'm actually sensing that it's becoming quite difficult for you to be in here right now, is that true? And then Peter will say, okay, yeah, it's actually the way he's talking to me it's really making me feel nervous or something like that. Okay, so, Peter, how would you like him to talk to you? So I'll go into it and then I will make an agreement in there with all the people in there. So how should they communicate now instead? (Denm2)

Communication during meetings and risk assessment of those meetings are clearly a subset of the kinds of risks that can occur during restorative justice in general. The elements we discussed about general risks and mitigation are also relevant. It should be stressed though that the instances the experienced facilitators were remembering in our interviews with them had occurred only rarely in what were often long careers. It is important to bear in mind the risks discussed above in all cases, but it is equally important not to expect they will occur. All the participants in restorative justice are at the meeting voluntarily – and the preparation should ensure that their reasons for being there have been discussed and all have been prepared for what is likely to occur. In other words, the participants are at the meeting because they want to meet the others for reasons which are in tune with the values of restorative justice.

4.2.5 Large meetings

Interviewees were asked whether they had facilitated large restorative justice meetings, and whether this involved different processes in relation to assessing and mitigating risks. Many respondents had not facilitated large group meetings. For those that had, three indicated that the process was essentially the same, and they explained how the processes would be applied:

No [wouldn't do anything differently with large groups]. But what's important for us is that everyone that's in a room has a voice. So we will always involve everyone in the room ... And when we help the parties to find support persons in their private life, it's very important for us to help them find a private person that supports the process. That's not their advocate or is there to punish, but is there to support the choice that the parties have taken. (Nor2)

We have ... we use model of Belinda Hopkins and if we have only two parties or we have ten of them, then we have same questions and we have pre meetings with all of them and, yeah, I don't think we have some different things, no. (Est1)

Well, no, it's the same thing [for large groups]. I mean, there's no shortcuts. I've also supervised a few restorative justice processes, healing circles, I've supervised the facilitators in doing some with religious orders. So, my sense is that everybody who is going to be there has to be met, right. So, they either have to be met in person, or they have to have a phone call, depending, and sometimes, multiple phone calls as a part of the prep ... sometimes, healing circles in those kinds of cases, you need two or three of them. (RoI1)

Some highlighted the importance of meeting with each of the potential participants individually, to check their understanding of the process, of the original offence, and understand what they expect or desire from the process:

And one of the things we learned from that was to interview, informally, each participant before bringing them into the group. So there's an opportunity for them to learn about us and us to learn about them and to talk about expectations and outcomes and content of the group and commitment to the group et cetera. So the time we got to the first meeting, they had already been a relationship established, an expectation established. (Scot2)

So ideally when you invite more people into the room, in many cases, it actually makes it easier to facilitate the process, because the people in the room will take care of the process quite often. ... I think when it can become difficult if they don't do that. Then I think it can be really, really difficult to have many people in the room and especially if they don't agree on what has happened. And I think actually talking about what has happened can quite often be risky in a way. I think that's often where we end up in trouble in my experience, especially if you're sitting with people who have a long history, then they normally have completely different versions of what has actually happened. ... So, I quite often have a dialogue with the parties before the meeting to actually hear whether they think it's important to talk about what has happened during the meeting or whether they would rather focus on something else? Especially in difficult neighbour disputes and sometimes also in cases where there has been a history of domestic violence or something like that. (Denm2)

Some emphasised that the process could take a long time, particularly because of the need for individual meetings and the overall preparation time:

Some cases I've done, I've had a mediation process that has taken over a year when you have many pre-meetings and time in between to reflect and consider. And then I might have several face-to-face meetings. I might have smaller groups, larger groups if it's sort of a conflict that involves a lot of people. Then I always encourage for also a follow-up meeting which can take place a few months later. So, the process from beginning to end can be, yes, over a year, sometimes, but the more normal length would be maybe two, three months. (Fin2)

One of the respondents stated that it was important to understand power structures in relation to large groups:

If there's a large group of people, I also try and find out about sort of power structures in a group, that is it important to keep some people separate and go on with the process before bringing them together, so I don't give individual persons more strength to face other people. And if there's fear and insecurity or anxiety, can it be remedied with support persons or something else. (Fin2)

Two of the respondents noted that having all the people harmed present at a meeting needed to be carefully considered, with one noting the risks associated with having one person harmed in a room with several people responsible for the harm:

It's a judgment call whether every victim should be there. You have to take account of power imbalances, especially if the victims don't know each other. Sometimes the facilitator does video conferences for each victim, or just one group one. (NI2)

There are other times where individuals don't want to go into a group or a room where there are five individuals that have done something to them. I think he felt safe because of who he was as a person and he was confident enough to do that. However, I probably wouldn't recommend that if it was somebody that was quite vulnerable or had been antagonised at a point where maybe the crime was a bit ... I understand that arson is a serious crime, of course it is, but it wasn't deemed as probably personal ... I think if it was a crime like that, you'd be looking and going, this is probably not a good idea, to have five individuals sat at table and one victim. So we probably would have done that a bit differently, maybe done it one on one, or done it through shuttle. (Scot7)

Overall, then, the main points were that several individual meetings with potential participants could be required to assess risks and agree ground rules, which could take a significant amount of time. Facilitators may also need to consider the power dynamics among people who may participate in a large meeting, and the presence, needs and dynamics of the people harmed in a large group setting needed to be considered carefully.

4.2.6 Checking in with the participants afterwards

At the end of a conference, or an indirect mediation exchange of information, the restorative justice process, according to our interviewees, is not finished. This is true whether or not there is an outcome agreement between the key participants, and whether or not it is a serious or more difficult case. The interviewees spoke about a number of different elements that needed to take place afterward, all of which are related to mitigating risks and ensuring safety. They can be divided into what is done immediately after the meeting or process, checking up again a few weeks later, the need for any further meetings, obtaining feedback from participants, and providing information on what has happened in relation to the outcome agreement (if there is one).

Immediately after the conference

In the few hours after a conference, or the next day, many of our interviewees had a practice of contacting participants to see how they were feeling and doing. They were aware that a conference can be an emotional time and that participants might well

need support or to vent their feelings, particularly if they are likely to be on their own, and especially if they are in prison or other secure accommodation:

At the end I walk him back to his car, we have a quick chat and I said, look I'm going to give you a ring in two days' time to see how you're doing, just debrief it. And if there's anything else you need, you know, I can point you in the right direction. And so, there's that just to see if they're okay afterwards and, you know, you know a bit about them, you know, he's going back to his home, his wife ... He's not going to be sitting on his own in the pub somewhere getting drunk or something, you know? (NI1)

So safety thinking of the prisoner is trying to make sure that they have access to or they've got someone that's going to talk to them immediately afterwards. And then with victims, it's about trying to make sure you know who's bringing them and who's taking them back home again and whether or not those people are likely to be supportive to them. (E&W4)

We would contact them about 24 hours after ... phoning them or contacting them the day after and saying, how are you doing? Or if that's someone who's in a prison, I will have previously booked a visit in advance, for the next day, or as close to the next day as I can manage, so that I'm able to say to them on that day, I will be back to see you on Tuesday morning, or whatever. .. Partially, 'cause if you wait until the day of the conference, and then you try to book a legal visit, it's going to be three weeks, and that will be dreadful. (E&W1)

It is not just participants who need this check-up and ensuring they have support – it is also important to debrief facilitators as to how the process went and how they are feeling, though this might be done a day or a few days later:

Facilitator debriefing is hugely important and I think sometimes gets a bit lost. But just facilitators coming out of a situation and saying, oh, that didn't feel quite right or do we need to do something about that I think can be missed. (E&W2)

I think there are potential risks to staff afterwards as well. So how you exit and close a case is really important. There's an opportunity for reflective practice and reflection during supervision. We have monthly supervision, which is peer supervision. And then tackle any feelings or emotions that have arisen as a facilitator during a case, because we're all human. And the chance to reflect on good practice, as well as things that you think you might have been able to do better is very important. (Scot2)

Checking up again a few weeks later

It was seen as good practice by many providers that there should be a follow-up meeting with participants a few weeks later. This could be for a number of purposes – to see how people are getting along; to make sure any needed support is in place; to obtain feedback on what the participant thought about the restorative justice process; to see if there are remaining issues which need action; and to clarify any aspects or things which have occurred.

Particularly where the harm has been great, you'd always have a follow-up meeting. Is there any ... how are they feeling about what happened? You know, in terms of the restorative justice process. Are there any other needs that people have that we could help them with? (Scot4)

And then look to then go back and have a physical meeting to kind of get the feedback in terms of how that was, what they've been left with, whether it's met their needs and to look at how to end that process. (E&W3)

[W]e would do that at the end, so we'd do what's called a debriefing period, so after the meeting, during about a week to ten days after the meeting, we would go to each person, each house and say, okay, how the meeting went, what's happened since then, how do you feel et cetera, and then we would just kind of debrief. (Scot8)

Some providers had a set period at which they would do this follow-up meeting, whereas for others it would depend on the case. The evaluation of restorative justice in England & Wales some years ago found that follow-up procedures tended to be the least well developed parts of restorative justice procedures for all three providers studied (Shapland et al. 2011). Some of our interviewees in the current research commented that this was an area which was still developing for them, though they were finding increasingly that it was crucial:

The thing with the victim-offender mediation, there was no requirement to do a follow-up, but I always have done a follow-up ... this was also pre-arranged that I said I will follow up in this ways, in two days I'm going to call you and ask you about how you're feeling and how you're feeling after this meeting, and were you satisfied with the outcome of the meeting [with the person harmed and the person responsible]. (Denm1)

I'll follow-up by text with both parties that evening, are you okay, did you get home okay, and whatever. And then, the next day ... and then I'll just ... if I'm facilitator, it'll be a little bit later before I contact them both again. If I'm the support person, I'll contact the person I'm supporting, generally, in these instances, the victim, I'll contact every day by text and say, fancy a call, or whatever. And a few days on, have a call, and a few days on, have a call, and a few days on. So, it depends on the role. What I haven't done well enough, and I think restorative justice practitioners in serious cases, maybe in all cases, but certainly in serious cases, we haven't done well enough, is the follow-up, the follow-up with both parties ... they were saying [in an internal piece of research] that it would have been really helpful [in domestic violence cases], as part of the follow-up, to maybe, a month later or three months later, to have a meeting with the injured party and their husband, because of the ramifications, and the soul-searching, and the implications, and the re-visions, and transformations that were happening in the party, as a result of the meeting, that that had ramifications for their partnership, their husband, and their this, that and the other ... with follow-up, I think there's nearly as much a need for it, as robust to follow-up, as there is for a preparation. (Ro11)

Obtaining feedback

What participants say about the restorative justice process afterwards is key in enabling the facilitator and provider to develop the service further. Feedback may be obtained through using a structured questionnaire to participants, but it can also be obtained more informally through what is said in the contacts after a conference or indirect mediation process. Facilitators we interviewed saw the benefit of both.

We do things as well with service user evaluation feedback, we do post-meeting appointments, et cetera. ... we'd ask them for feedback, what could have been done better, what not went well, what went well. So we know ourselves in the future what we can do better. (Scot7)

Feedback can be done continually during the restorative justice process, but it is particularly important to give participants the opportunity to do so when they have had an opportunity to reflect back on the process.

Specific issues that may occur or be left over from the process

In particular cases, the risk assessment during the restorative justice process may indicate a continuing risk to participants after the conference. From our interviewees' comments, this seemed to be most likely to occur if there was a pre-existing relationship (especially in the case of domestic violence) or where communities are small and people are likely to bump into each other afterwards. In these instances, facilitators said the issue would both be addressed during the restorative justice process, but also be picked up afterwards in follow-up action.

It's kind of second nature for us to see these kind of things and to discuss these kind of things. So you would be saying that in terms of an individual's safety. You would be speaking to them and saying, if you do feel unsafe, then you should phone the police. Or if there is something that happens, you should phone the police. And you can phone us as well. If you don't want to report, we can self-report for you, so be a third party reporting organisation as well. So we can report things to the police for you if you don't feel comfortable doing it yourself. (Scot7)

I know a lot of RJ services and therapeutic services, just to have a blanket rule where they don't, they say they won't acknowledge somebody in the community. In [small place] that's a bit trickier because that could be considered really rude because it's a highly relational community, as you can imagine, as most small communities are. So we ask clients what their preference is. Whether they want us to acknowledge them and say hello or not. (Scot2)

One restorative justice provider in Austria has taken the idea of continuing to monitor risk after the formal restorative justice process would normally be considered to have ended a step further. They have instituted a period of time during which the facilitator will continue to monitor the situation and be ready to step in and take action if necessary:

For each case and it depends on the risk checklist, if there are uncleared points on the risk checklist then we try to have an observation period. It's not very long, three months or something, just to see what the beautiful words in the mediation

meeting, will they stay or will they change them or they're out of the door again? ... If there is an observation period the minimum standard is with the victim, but, of course, if there are some things to talk about and to recalibrate, then it makes sense to talk to both of them. (Aus1)

Providing information on the implementation of any outcome agreement

One of the key elements which either the facilitator or other staff from the provider can undertake is to ensure that information is passed to the other key participant (normally the person harmed) on what has happened in relation to items in an outcome agreement (if there is one). Not all cases nor all providers routinely seek to have an outcome agreement: in mediation it often depends on the participants' wishes (Shapland et al. 2011). However, if there is such an agreement it is important to follow it up and ensure relevant parties are informed as to what happens. Otherwise, as Shapland et al. (2011) discovered, those harmed could start to think that the person who has harmed has not done whatever the action item was and so become dissatisfied with the restorative justice process. Providers had increasingly recognised the need for such feedback:

What we weren't doing following conferences, or victim/offender mediation indeed, but certainly the conferences which are much more established and certainly the family conferences, there wasn't any follow-up at all once there was a commitment at the end of the meeting these things will happen. We have actually moved to have a follow-up at the end if there's been an action plan arising from a conference and certain actions are to be taken to give feedback to the victim. (RoI2)

In most countries, outcome agreements are not legally binding on participants. Hence, any agreement on compensation or restitution cannot be enforced. This stems primarily from the voluntary nature of restorative justice. So those who have harmed are not required to pay, for example, any agreed moneys to the person harmed.

However, in some countries where restorative justice is diversionary (leading to the potential cessation of criminal justice proceedings), there can be consequences if the person who has harmed does not pay. A facilitator commented:

And then they would say, right, is everybody happy with the content of that? And they'd go yes, then you would say, this contract, it's not legally binding, so it's not going to be notified or notarised by lawyers and solicitors and courts, it's morally binding, so what you've agreed to do, you need to do. It's in your best interests because ... for the person responsible, if you don't agree to this, if you don't stick to the action plan, then you could be ... we could be back here for another meeting, or you could be charged again. And they would give everybody a copy or they give the person responsible a copy and say, this is what you've agreed to do, and you've signed it, so make sure that you stick to it. (Scot8)

In Finland, facilitators may be involved in then working out what to do:

Of course I cannot take care if they follow their agreement between, before the follow-up. It's up to them, and it must be up to them. So, it can happen that that party is calling back and saying that the other party is not keeping the agreement,

and then it's another case of course. Then it will be discussed with both parties what we are going to do now if the mediation or agreement has not been kept.
(Fin1)

As has been discussed above, different providers and facilitators had different routine practices as to what kinds of follow-up they would do after a restorative justice process. The key ones were to contact participants soon after any meeting to check on their state of mind and safety; to arrange a follow-up meeting with each key participant (the person who has harmed and the person harmed) a few days or weeks later; to obtain feedback on how the participants felt the process had gone; and to pass on information about completion of outcome agreements. All of this is part of closing the restorative justice process, rather than dropping contact with participants suddenly and unexpectedly. Having a plan on how to close cases and making sure participants are aware of it are just as key to successful delivery as the initial preparatory stages are.

4.3 Working in a risk culture – does it affect judgments of risk?

Working with the criminal justice system these days means working constantly with ideas about risk and conversations about risk. Most of those conversations and professional practice concern risks of reoffending or the ability to prevent future criminal offences. They are common in relation to decisions about prosecution or diversion, to sentencing decisions, to Justice Social Work practice and in the penal system. There are tools to aid risk assessment in individual cases in all these areas of practice. There is and will be therefore pressure on restorative justice practitioners and providers to consider risk. As Ulrich Beck (1992) has written, we live in a risk society.

Considering risk in the context of restorative justice, as we argued in Chapter 1, is rather different to considering risk in other areas of criminal justice. In some ways it is more imperative: restorative justice aims to put into communication people who have already been involved in an offence against each other. There are intrinsic questions about ensuring safety as far as possible, especially in more serious cases, and we have covered the key specific areas in which risk to safety may arise above.

But, as facilitators said, the risks involved in restorative justice are not the same as the risks related to reoffending, and definitely not the same as those related to general reoffending. Risk in restorative justice is about risk in allowing that process of communication to start or continue. It is also important to do no foreseeable harm, as far as possible. But though it would be really good if the restorative justice process were to reduce general reoffending (though not all providers aim to do this: Robinson and Shapland 2008), the risk assessment for restorative justice is not about predicting the likelihood of reducing reoffending.

Moreover, risk in the context of restorative justice is different in that it needs to relate to the individual case. Risk in criminal justice generally tends to be considered as group risk – a group of people who have harmed are followed up to see what outcomes ensue, and risk assessment instruments (where validated at all) are validated on a group of people. A group estimate of likely risk tends to be unhelpful where the outcomes of the process are variable and according to what the participants want, and where there are so many different parameters to the potential process or details of how

it is executed. Doing restorative justice is therefore taking criminal justice professionals out of their normal comfort zone of using group risk estimates and adjusting them to a particular individual. The process itself is variable.

Living in a risk culture also tends to concentrate thoughts and professional judgment on risk – and not on whether there are ways to mitigate that risk. It emphasises negative consequences, and if anything tends to minimise or ignore questions as to whether doing nothing itself produces risk. In contrast, the facilitators we interviewed tended to emphasise problem-solving – how to mitigate and minimise risk; how to allow participants to do safely what they themselves really wished to do. This is a consequence of restorative justice being voluntary on all participants – whereas most criminal justice processes are far from voluntary. So not thinking carefully about mitigation is denying participants potential benefits. Living in a restorative culture is almost the antithesis of living in a risk culture: it does not minimise problems and dangers, but it works individually, emphasises positive aspects, tries problem solving and only reluctantly gives up. As a result, doing restorative justice may be something of a cultural shock to former criminal justice practitioners. In the next chapter we engage with what the facilitators we interviewed said about how to manage and encourage the development of restorative practitioners and good practice in providers.

5. Managing mitigation and risk

We have been discussing the potential risks that may arise in undertaking restorative justice, as well as the possible mitigatory techniques which could lessen those risks. Risk, though, can be mitigated not just by considering measures relevant to specific risks, but also through the ways in which the cases are managed and run. This chapter considers several different aspects which facilitators and restorative justice providers have used to manage delivery and potentially reduce problems.

These managerial elements can be divided into those which upskill facilitators themselves, and those which may enhance accountability and help to carry the burden of taking responsibility for risks and mitigation. We are assuming that providers already have in place the basic measures for accountability and governance which are set out in the Guidance (Scottish Government 2017). They include keeping comprehensive records of cases, including referrers, details of participants and risk assessments. They also involve providing clear and accurate information about both restorative justice and the provider's services; monitoring outcome agreements; feeding back to referrers; evaluating the process with the participants who have been involved; ensuring participants know when the process has ended; and having a complaints mechanism (Restorative Justice Council 2011). Facilitators should also be provided with support and guidance, including being able to access help to find 'new ideas and fresh perspectives on how to work cases' (Restorative Justice Council 2011: 31).

Different providers have set themselves up to provide these means for accountability and guidance in slightly different ways, influenced also by the legal and cultural national understandings for restorative justice. What one provider may see as axiomatic and standard, another may achieve in an alternative way. This is particularly true for cases seen as more complex or difficult and, as we saw in Chapter 3, some may see there being a scale or dimension of complexity and seriousness, whereas others may see the potential for more complex or serious elements in any category of cases. This is one of the reasons why we deliberately sought to interview experienced facilitators from different countries, to see how providers there were managing risk and mitigation at the provider level.

In this chapter, we shall first consider training for facilitators, which is one of the most commonly required elements and figures in all the international instruments on restorative justice. We then turn to a related issue, whether the provider uses mentors for new or more inexperienced facilitators (or all facilitators). This leads to the question of whether providers use one or two facilitators on a case, and at what point or for which kinds of cases more than one facilitator might be used. There can be different policies on this where volunteers are working a case to when there are paid staff, so we next look at the use of volunteers. Finally, we turn to helpful ways of ensuring continuing professional development and reflective practice, before summing up our overall messages in considering when and if a case is seen as too risky to take on or continue.

5.1 Training

All the facilitators we spoke to recognised the importance of training to develop good practice, to prepare the facilitators to what could happen during practice, to address

different aspects which might come up and to make sure the trainee facilitators are given the tools to be able to deal with all the different aspects of restorative justice which will arise once they start facilitating. Most recognised that additional or specific training is needed to be able to deal with more difficult cases (on this see also Keenan 2017; Anderson 2017; Lopez and Koss 2017), but we heard from quite a number of them that sometimes that training does not exist or is not adequate and they took it upon themselves to improve training or seek help and inspiration elsewhere.

Among the facilitators/mediators we spoke to, it was clear that each country, region or organisation has their own type of training. Some of the training is very formalised:

So when we are recruiting mediators, the formal is that they have to be 18 years old, no criminal record, live in a place that we need a mediator. We interview them and then they have a training course. The training course is four full days with role-play, role-play, role-play, learning by doing, then it's six weeks with observation in mediation and facilitation, and then we have three more days, two days with role-play and one day with your ... laws, that kind of things. (Nor2)

We have quite a big comprehensive training programme for mediators, they're already social workers but we have, I think, four or five hundred hours of training for their certification for any means, theoretical and practical training, they have to write about cases, reflect on cases. (Aus1)

I was also training workplace mediators at the University of Helsinki. Ever since I have been doing that, every year we have a training going on; it takes around one year for them. (Fin1)

So you have several checkpoints during a year where it's mandatory that you participate in different group discussions or [attending] ... meetings. (Nor1)

Some of the training develops as practice develops and as needs arise.

I think there was some training at the level of social work, yeah, I think there are some courses from different organisations in Belgium. But if people start to work for a mediation service in Belgium, it can be for minors or for adults ... and all the other organisations have training, the middle link.

I: So the organisation itself does the training?

Together with the other organisations who also do mediations. And we organise trainings for all the different people. In a few weeks it will be about LGBTQ+ people and then it's for people from ... but it's also from people who work with minors and it's also for mediators who work in the house of justice. (Belg1)

A common trait about training is that when there are not enough resources to train appropriately, practitioners outsource as much as they can. Also, one rather common aspect among the practitioners whom we interviewed is that as they are quite experienced and been doing it for a while, so when they started there was no training available and some of them found different types of training and sort of developed their own training which they then used for training others:

I became involved in restorative justice, I suppose, around about 2007 when I attended a restorative justice training course and I just liked it. I thought it was a good way to work with young people. So that was a justice model really, looking at the scripted conference. I'm a senior, so I manage a team who work with young people, so I started talking to the staff about how we should try and use this approach and we did offer a couple of scripted conferences at that point but, to be honest, I just didn't feel that experienced about it. So then I attended the European restorative conference and met So he came along to ... and did some training for us on the balance model and I just really liked that, became really interested in it. I started studying it myself and I went to ... to do the certificate in restorative practice ... completing ... the Masters in restorative practice 2011. So I felt much more confident about knowing about restorative practice. Meanwhile throughout that, I was involved in training staff in restorative approaches, just a basic understanding and we did this, myself and another worker. (Scot6)

And we have had different seminars or trainings, here in Estonia, or now, in COVID time, online, with different specialists, because, in Estonia, we don't have, yeah, specialists about this topic and we have to go outside ... also that I want to know more myself and I am looking for this info and I am communicating with other experts and, yeah, I think it has, yeah, bring it all together. (Est1)

Some such as Ro11 were fortunate to have trained in several different countries, including in prisons and using different techniques, such as healing circle training.

Some interviewees commented about the background and previous experiences that is needed from people wanting to become facilitators among our interviewees:

But also, I've always taken the view that therapists working in the area of sexual violence are very well-placed, with additional training, to become restorative justice practitioners in sexual violence cases, because they understand the dynamics and they understand characteristics and various things. ... But I always felt like ... so, learning restorative justice skills and techniques and whatever, you have to untrain slightly being a therapist, because you're different, it's different when you're doing restorative justice, than when you're being a therapist, although the skills can be helpful, but you're not a therapist in a restorative process ... (Ro11)

But some also commented on the background of the trainers, very much supporting the idea that in order to train you need to have a career as mediator yourself, because you cannot answer questions if you have nothing on which to draw.

The types of training used were very different in nature, content and structure but there are a number of common points like the fact that risk and mitigation need to be included:

Yes, I was trained as a practitioner, and then when you're talking about a practitioner, you do talk about the risk factors, you do talk about how it should be run. You do talk about laying the ground rules down, but every service is different. You could talk to me and you might go and talk to somebody from, I don't know, [...], and they're going to do something completely different in terms of what I'm

going to do because their service is different. It tailors to ...who their service users ... are. (Scot7)

Yeah, I mean, I couldn't say chapter and verse, yeah we covered this point, this point, and this point. Awareness of risks and mitigation was certainly part of the discussion, do you know? Quite often there were segues into the domestic abuse and domestic violence discussions, and the risks around, you know, a male being put in a room with a vulnerable female victim and continuing to exercise that dangerous and harmful control. So, I suppose, was I satisfied that as a result of that training we were given sufficient messages about the need to be attuned to risks and need? Yes. But it wasn't in a sense of, here's your checklist for an easy conference, here's your checklist for a medium conference, here's your checklist for a difficult one. (Scot5)

During the training, the preparation of the participants occupies an essential place. The tools for collecting information, evaluating, understanding the situation and needs are important to master. The trainers put the professionals in a situation to understand the issues, especially for cases at risk (domestic violence, sexual violence, radicalization, etc.). The way to ask questions and understand the issues is central. (France1)

Others, however, said that not enough was done on risk in their training and that it was missing and should be included.

Very little said about training on risk and mitigation. (Denm2)

I remember, years ago, in social work, where they told us that one person's risk is another person's way of life, you know? Meaning that what would be risky for me or you, other people have to live like this, you know. So live on the streets or live under the threat of violence. So there was no formal treatment of risk in the training that I can remember, in the restorative justice training. It was all about those, kind of, skills of how do you create the conditions for people to talk about difficult matters ... And so what would I like to be done to me, to help me talk about something that's difficult ... So I think we do need to look at that and create some training around what is a risk and who is the risk for and how do you manage it, how do you mitigate this risk. And for me, my tinpot way of doing it was talk about it. You know? Just put it on the table. Give it a name. And make sure there's a note about it, because then other people know what you're talking about and how it was managed. And you're trying to promote openness and honesty, so... It's just making sure you've covered as many bases as came up in the course of conversations and that you're relatively happy that you've calculated the risks insofar as they can be. (Scot4)

A number of other aspects were addressed during training in order to make sure that practice is safe:

We have some rules about where to put people in the room and then we always ask the victim first, her only, where will it be safest for you to sit? (Nor2)

We needed a space where you could have a breakout room area. I think we got that from the training with ... about the set up. So we took that and we made sure that we would be able to replicate best practice. (Scot3)

We spoke a bit about domestic and sexual, not to a large degree, but ... it was implicit in the whole preparation process that you were assessing the stuff all the time and you'd be needs led. You'd be led by the participants and, you know ... so if there was ... say if there was a communication issue, who else might you get ... who would you get involved, a speech and language therapist or, you know, interpreter, and some ... actually, ... we did have some really interesting conversations about that and about how interpreters might not interpret exactly what the person wants them to say. (Scot1)

In terms of initial training, many of the interviewees spoke of the importance of role play and of practical aspects in the training, for example in order to understand and get a feeling of what it means in practice. They agreed, however, that role play cannot be fully realistic and therefore mentoring and follow-up training are also necessary.

I said that in my trainings yes, we are doing lots of simulations, demonstrations. With the cases that they give to the group so that they are such cases that they are dealing with in their profession or in their lives and so on. Yes, this is a very important part of the training. (Fin1)

The knowledge and skills, ensuring that the staff felt confident in using, you know, like we would have practice skill sessions and they're really, really valuable, the practice skill sessions. So then you would give feedback on the use of your practice and that was good too and I think that could be ongoing in terms of any systems we want developed to support developing the approach across Scotland. (Scot6)

I think, in theory, there is no book which says if a new mediator starts with ... the first few weeks or month, he or she does all the mediations together with another person, just to observe. The next step is to do them themselves, but with the other mediator as an observer. And if we both say, okay, I think you're ready, the people start and they can choose in which cases they start, and if it's a murder case, of course, you don't let them start their first case on their own in a murder case. But sometimes you feel very soon, like, okay, this person is ready, she has all the reflections, the instincts, the philosophy, he or she knows how, and you don't have to wait one year to do your first murder case, no. (Belg1)

Some of the interviewees spoke of the need to have specialised training to deal with complex cases, including sexual and domestic violence:

And one part of this education is one seminar on IPV, domestic violence. That's really a good seminar where someone from anti aggression work, who works with offenders, talks about the offender's side of violence and some woman from a support centre talks about the victim's side. And then we talk about the mediation aspect of this thing and it's good for understanding. (Aus1)

But I always felt comfortable in this sense, that I knew my sexual violence and I know my domestic violence. But I think people who don't know that, the training has to be really robust for them too. They can learn the restorative justice skills

relatively easy, how to follow, how to ... but they can't learn how to spot power dynamics, a blink, a trigger word, the most innocuous sentence that you know is about power and control, or you know because you've a lot of experience of working in sexual and domestic violence. So, my sense is that the training for people to work in restorative justice field, in sexual and domestic violence cases, they need a huge amount of training in the dynamics, in the power dynamics of sexual and domestic violence, in perpetrators' strategies and tactics, in impact on victims, and in the law. They need that, because often, they can walk people into disclosing stuff ... But they need all that training in the dynamics of sexual violence and the power dynamics, impact on victims, perpetrators' strategies, and the law, to make the process safe, otherwise, it can't be, from my perspective. (Ro11)

It is important to evaluate training to make sure that it is adequate, that it is usable for those attendees, that it has given the appropriate tools, the focus was correct etc. There seems to have been little evaluation of the training programmes that our interviewees attended, though the below was an exception.

I have to tell you, the mediators from ... in Austria, they have a very high ethic standard, they are very centred about this situation where we had a lot of issues about this matter, can domestic violence be dealt with by victim/offender mediation? So we are through this whole process for many years and so we are all really victim sensitive. And we just, one month ago, we had a study about victim satisfaction after victim/offender mediation, six months after victim/offender mediation. And the result was they were extremely satisfied, all the victims, and amongst all the victims the victims of IPV cases were seven to eight per cent even more satisfied than victims of other cases. So there is a very high awareness and sensibility towards these cases. (Aus1)

When there is no evaluation of training, it can be really problematic and practice can then be degraded and unsafe, as standards might not be followed adequately, risk assessments not carried through appropriately and what is called restorative justice practice might not be.

But I must say that in Finland at the moment there is no kind of evaluation if the trainers are following for example restorative values or standards. I do know that they are not always following the trainers at all ... So, this is a big discussion here also. (Fin1)

Going forward it is clear that well developed and thought through training are crucial to develop good practice. That training needs to be relevant to the Scottish context. It is also clear that risk and mitigation need to be addressed in training - as well as a number of other aspects. Further training to address specific aspects of crimes like sexual and domestic violence is certainly also needed, even by inviting experts to come and speak about important aspects (from the point of view of both the person harmed and the person responsible). The regular evaluation of training should be made mandatory.

5.2 The use of mentors

The use of mentoring was highlighted by our interviewees as a method of managing risks and developing facilitation skills. Typically, this would entail 'pairing' newer or

less experienced facilitators with more experienced mentors. Mentoring or shadowing was generally described as a key part of training and managing less experienced restorative justice facilitators. These new facilitators might be expected to begin by observing restorative justice meetings rather than facilitating directly.

We also then send them out with a buddy until them and their buddy feel like they should be signed off, they'll work with sort of a mentor. (E&W2)

[W]hat you normally do as a new mediator is that you will follow a more experienced mediator in the beginning. So when I started in the Danish programme, I assisted one of the more experienced mediators just to get a better sense of what he did or what he does in practice. (Denm2)

[O]ne person who is the one who makes the appointments and phone calls, so that's maybe the file manager because you can't call with two people, so you have one file manager. But then when you go on a house visit it's the both of you who ask questions, give comments, talk about...it's the both. Also in a face to face meeting it's the same, you have a face to face meeting manager, if I'm the manager I will say, okay, hello, everybody, we will introduce, would you like coffee? And then your colleague can already start to help. So it's one person who starts with the introduction, but then, once the face to face meeting has started it's the both mediators who can come in between or ask something or say something. And there is no hierarchy, no. Of course, if I'm doing this together with a colleague who started a month ago, then I, with all my experience, then the other person will probably only be the observer. (Belg1)

In some cases, particularly where the case is serious or entails dealing with highly emotive forms of offending, mentoring support might be sought from a facilitator with experience or expertise in the relevant field.

[C]ertainly the sexual harm model we've been talking about ... mentoring has been crucial to that. We think it's massive. It's hugely important if you're dealing with sexual harm, domestic, or, you know, other cases of serious harm that you've got the opportunity to be mentored and have that professional, kind of, discussion and relationship, it's crucial, I think just to keep everybody safe. (Scot1)

Care is needed to ensure that mentoring does not lead to a situation in which either party in the restorative justice process feels overwhelmed by the number of facilitators in the room. In cases in which mentors and new facilitators would attend the meeting, preparatory work should involve discussing the arrangements with the parties in the case.

We try to [have mentoring], but it's at the discretion of victims and offenders. ... [one victim said] all of a sudden this conversation that I'm having, which is just a conversation, is a conversation with four other people, five other people ... I feel like I'm in a zoo now. (E&W1)

However, the mentor does not necessarily need to be present in restorative justice meetings, and a number of participants highlighted the value of mentoring activities after the event (discussed below in section 5.5).

A relatively large number of criminal justice practitioners in Scotland have undergone restorative justice training, particularly that provided by Professor Tim Chapman at the University of Strathclyde, but have had little opportunity to use their training in a real restorative justice setting. As restorative justice develops and expands in Scotland, we suggest that encouraging the use of mentoring both during meetings and after the event would increase restorative justice capacity and improve the ability of restorative justice facilitators in Scotland to handle difficult situations.

5.3 When should one use two facilitators? Co-facilitation of restorative justice meetings

The vast majority of our interviewees have had experience running restorative justice meetings with more than one facilitator in the room. Aside from its use as part of mentoring arrangements (discussed above), the use of co-facilitation was seen as helpful for practical reasons as well as because of the value of complementary viewpoints on a given meeting.

Practical considerations which were seen as justifying the use of more than one facilitator included potentially volatile situations in which single facilitators might feel vulnerable and the presence of a second facilitator might improve safety (or the perception of safety).

There are also parts of that risk assessment that talk about worker safety and things like that as well. Is the person safe enough for us to go and speak to on a one to one? Is it a two to one? Are they deemed not safe to speak to a male or a female, et cetera? So they're things that we'd be involved in anyway. (Scot7)

A co-facilitator is able to 'cover' for the first facilitator if they need to take a break or take notes. If either party in the restorative justice process needs to take a break, one facilitator can accompany that party to the designated breakout room/anteroom (see section 4.2.3) while the other remains with the second party.

Some providers habitually used more than one facilitator on a case, but others, particularly very experienced facilitators who worked primarily freelance, might take cases on their own, but call on professional colleagues with whom they had worked previously to handle the demands of a particular case. Examples from those who normally worked with two facilitators were:

We would always work with two people on a case, two facilitators. ... One is, from a practicality, if you get to a stage of conferencing, if you have an upset victim, or an upset offender who needs to leave the room for a minute or two, if there's one facilitator, who is your priority? ... Two, it's always good to have a second pair of eyes on a case ... if there's two facilitators, it allows an opportunity for either a victim or an offender to go, do you know what, actually I prefer the other one? (E&W1)

We also have two workers involved in these meetings, there's never just one, there's always two. That way, if there's a breakout or there needs to be a pause, one worker can go with one and one can go with the other. (Scot7)

I prefer to ask for co-mediation. I like to have a colleague with me if it's a difficult case and I also am much inclined to take breaks and lengthen the restorative process in order for either give the parties themselves time to consult family members, lawyers, Victim Support and so on and so on. (Fin2)

The value of complementary perspectives on the case was highlighted as one reason for co-facilitation, particularly where there were numerous participants or the case was especially emotive. A second facilitator can pick up on points or emotional valences that the first might miss. This was seen as particularly valuable for complex or difficult cases and cases with large groups, but some providers used co-facilitation routinely in 'ordinary' cases.

You have a few possibilities, you can ask for back up only with face to face meetings, but only in complicated cases. You can start from the beginning with two mediators, two mediators will do everything, all the preparations, everything. So that you have two pairs of eyes, because each mediator, it's yourself that is the instrument, the mediator is the instrument, so we all work from the same philosophy, the same vision, the same method. But, yeah, we all have our different style and sometimes the two styles are very much complementary which is much richer for the case than if it was one mediator. (Belg1)

I think what we've used successfully for conferences and I mean the meeting, is to have a colleague, experienced facilitators to back us up as a backup facilitator, which works really well to deal with issues that arise on the day that can't be kind of foreseen. And that's crucial. I think, unlike some other services that have a co-facilitation model which work the cases all through, not to say that in some cases we have done that but I think more generally, it's one facilitator working with other professionals, et cetera, and the victim and offender. (E&W4)

In criminal cases, one facilitator could be assigned to the person harmed and another to the person responsible. Each assigned facilitator might then spend some time engaging with and getting to know their assigned party in the case, as part of the preparation for the meeting itself, and potentially act to support that specific party in the meeting. In cases involving gendered violence or domestic abuse, the use of co-facilitation with facilitators matching the gender of the parties was useful for ensuring that neither the person responsible nor the person harmed felt they were being 'ganged up on'.

And if it's a male and a female, it's a male and a female mediator.

Is that a very deliberate choice, to match the gender of the facilitators to the gender of the parties?

Yes. Absolutely. Also because when I was a project leader for one of the measures in the government action plan, we early on saw that a lot of the men in the domestic violence cases, they met women all over the place. They met women in the family protection office, in the child welfare. The mediator's role is to behave impartial, not neutral, but behave impartial. That's important for us, because we cannot be neutral to people's ... to what they have experienced as severe violence. We cannot be neutral. But I expect that my mediators behave impartial. That's the first sign is, well, there's a man here, there's a woman here. We are a man and a

woman ... yes. Always two. And both of them are with both parties in all the pre-meetings also. (Nor2)

Other facilitators, while agreeing on the value of co-facilitation in itself, suggested that allocating facilitators to individual parties could be problematic in terms of the neutrality of the facilitator with respect to the case.

We try and avoid allocating one facilitator to one participant, just to manage any risk of bias and that sort of thing. (E&W2)

Co-facilitation may not always be appropriate. One facilitator who works on cases involving sexual harm between children stated that having two facilitators was less successful in terms of rapport than having designated supporters in the room.

We tried two facilitators, one for the victim and one for the offender, but it didn't work. These cases are now coallocated to a facilitator and a social work supervisor, who cowork it. The facilitator does their job but has support from a colleague. The social case worker is used to communicating with the child, so you get better quality information. (NI2)

Although co-facilitation is clearly valuable particularly in complex or highly emotive cases, or those involving many participants, it is essential to ensure that the (co-)facilitator and the supporter roles are clearly demarcated from each other.

A few interviewees also identified resource constraints as a barrier to co-facilitation, but expressed an interest in making more extensive use of this measure. Given that there was generally consensus on the value of co-facilitation for some cases, particularly in more challenging cases, it is important that providers where restorative justice services are in development, for example in Scotland, consider this question of co-facilitation carefully, as to where it is useful or essential, and that Scottish restorative justice services are adequately resourced to allow co-facilitation where it would be appropriate and beneficial.

5.4 Using volunteers as facilitators

Many of the schemes from which we drew our interviewees made some use of volunteer restorative justice facilitators. Volunteer facilitators may work alongside paid employees or serve as the entire workforce of the organisation. Our interviewees included a couple of volunteer restorative justice facilitators, but most were paid employees. As noted in Chapter 1, eighteen of the providers for which the interviewees worked used volunteers for at least some cases, whilst ten only had paid staff and we were not sure of the scheme composition in two cases.

It is beyond the scope of this report to provide a statistical overview of patterns of paid employment and volunteering within the restorative justice providers of the jurisdictions under discussion. However, it was notable that the volunteer facilitators discussed usually held employment in relevant or related professional spheres, such as criminal justice, social work or mental healthcare. This was seen as a valuable way to introduce varied life experiences and perspectives into the restorative justice setting, with appropriate safeguards to ensure there would be no conflict of interest between restorative and criminal justice roles.

And because they're volunteers, they have such a wide range of experience in their personal and professional lives as well. (E&W2)

And they are doctors, they are psychologists, they are coaches – the only one that cannot be a mediator in Norway is police. Because they have an obligation to act if they hear something in mediation that's criminal. (Nor2)

Proper training and support, and particularly the use of co-facilitation, were also identified by one interviewee as a protective measure against role conflict in volunteers (i.e. the danger that they might act out their 'everyday' professional identity in the restorative justice meeting, rather than their identity as a facilitator of that particular service).

Our facilitators are volunteers and some of them – in their real life, in their real job - they are specialist therapists or social workers, who usually offer the things that the people have to do, 'I know what you have to do', or something ... And in this model, we don't offer them [in those cases in that area] because ... well they know best what are their needs and what they should do to cover their needs and, yes, it's sometimes, like, risky business. Now I, as Head of Service, know that all of our volunteers or our facilitators do their job as we have taught them and that's also why they are doing it to people in pairs, that they can check each other also. (Est1)

More generally, training and support, including through mentoring and co-facilitation, were identified as key to ensuring successful facilitation by volunteers. No cases were described as too serious, complex or 'risky' to be facilitated by a volunteer. However, this is not of course to say that any volunteer could facilitate any type of case. More risky cases would require more experienced volunteers. Additionally, rigorous training and support, particularly through mentoring and co-facilitation, were seen as important in any use of volunteers in restorative justice but especially in cases which might be sensitive or complex (where providers used those terms). In 'mixed' restorative justice schemes, paid employees would usually provide support and advice, but these relationships were not described as hierarchical.

I've recently facilitated a murder case with a volunteer and I guess it's about, we've got volunteers that come with quite a lot of experience and volunteers that may be quite new or haven't got much confidence. So if it's a case that's not sensitive and complex, then one of my lead practitioners would facilitate it with a volunteer. If it's sensitive and complex, so it might be a death by dangerous driving, or a murder case, I tend to view the domestic and the sexual abuse, they're sensitive and complex, but they're even more sensitive and complex. ... So we have facilitated death by dangerous driving, murder cases, so it would be a lead practitioner or myself, with a volunteer. So we will always co-facilitate cases. (E&W3)

I don't know if you know the Norwegian mediation, that we have lay mediators. We don't have professional mediators, we have lay mediators that are professionals, because they are good. So when we are recruiting mediators, the formal is that they have to be 18 years old, no criminal record, live in a place that we need a mediator. We interview them and then they have a training course. The training course is four full days with role-play, role-play, role-play, learning by doing, then it's six weeks with observation in mediation and facilitation, and then

we have three more days, two days with role-play and one day with [legal training]. And then they will be put into a mediator group and they will start mediating together with another mediator. The one who have the severe cases, they have to be experienced, they have to have more training in severe cases, it's all about trust, courage and loyalty to our method. (Nor2)

I think no matter who the facilitator is, whether they're a volunteer, whether it's part of their professional role, I think as long as they're well trained and they've got the right values and they can facilitate it with, as long as the support is round about them ... (Scot1)

The use of volunteer facilitators in Scottish restorative justice would contribute to expanding the number of facilitators available to work on restorative justice cases, and could have benefits in terms of engaging restorative justice more closely with the communities it serves, as well as for the volunteers. However, volunteer labour should not be used simply to fill gaps in service provision or make financial savings in schemes. Care may need to be taken to ensure that the 'pool' of volunteers is representative of the community served, and overreliance on volunteer facilitators without sufficient supervision runs the risk of inconsistent provision of service (as some communities and regions will have more volunteers than others). Volunteers should always be trained to the same standard as paid facilitators, and supported, emotionally and practically, by experienced paid facilitators.

5.5 The reflective practitioner

Several professions working with people have adopted what have sometimes been called action learning sets to disseminate good practice, to find creative solutions and to provide elements of continuing professional development. These have, for example, been adopted by the health service in England, which has defined them as a 'group of people within a workplace that meet with the specific intention of solving workplace problems' (National Health Service, no date). The Justice Research Consortium, developing restorative justice in three areas in England, used action learning sets to bring together the team of facilitators in the area to discuss one or two recent cases, sharing difficulties and solutions and thereby developing expertise on more unusual matters throughout the team (Shapland et al. 2011). They have also been used as means of developing reflective practitioners, who become used to reflecting back on how a case is going and has gone, with the aim of seeing how it might have been improved. A similar idea has been adopted by the Irish Government, which defines them as 'a learning process for working on stubborn and complex challenges in a collaborative way. It combines the learning cycle of action, reaction, planning, new actions with the power of small groups' (Department of Children, Equality, Disability, Integration and Youth no date).

In the evaluation by Shapland et al. (2011), Justice Research Consortium found the practice of bringing together teams of facilitators to discuss confidentially real cases very helpful, but it did have challenges. It was necessary to plan ahead and schedule everyone in the team to be free at a particular time, and to minimise anxiety about one facilitator bringing their own case (in which they may not have done brilliantly) to be discussed with others. In developing good practice in probation practice in England, using the SEED programme, Sorsby et al. (2013) found staff really felt the benefits of encouraging reflective practice and giving an opportunity for people to learn from

each other, but there were similar challenges, particularly getting managers to attend regularly.

Action learning sets are not always called the same thing in different countries and different professions. The key idea is that teams meet together and that one or two people provide a past case and all discuss it confidentially, to work through solutions to problems and spark ideas in different cases. In our interviews for this research, similar practices were described by facilitators from different countries, all of whom indicated the benefits, particularly in honing risk assessment and learning about different possibilities for mitigating risk. It was also seen as a way to help facilitators – particularly newer facilitators – deal with the emotional impacts of restorative justice facilitation and resolve any questions or concerns. As many as 16 of the facilitators we interviewed sang the praises of having such sessions, with examples being:

We have provided for two years a group of facilitator who wanted to have a space, not because they were having difficulties but to deal with the emotional impact of what they face on a daily basis. But in general, over the years, they learn to deal with their emotions, to have a break, because the professional and private. And we provide a one day meeting every month, one day meeting completely every month between six or eight mediators. We call local meeting, just to deal with complex case and even to express some difficulties they face, emotionally. So this kind of internal intervention proves very helpful and to go on the ... to be sustainable on the long term. (Belg2)

Once in a month, we have online meetings, where the facilitators can come together and tell their stories and ask questions, but also, we have the opportunity for facilitators to contact with us and have a meeting with us and ask the questions, it's, like, mentoring, if they have some harder cases, or difficult parties, or questions what I have to do next. (Est1)

[I]n the Victim-Offender Mediation Service ... with the staff at the office and the lay mediators where they go over cases and discuss what was difficult, how we can do this and share experiences and think about them. And then of course also case-specific help from the employed staff. (Fin2)

I always stress to people the importance of having reflective practice. Either peer support, you know, and the ... action learning sets, but, you know, having peer support, so meeting up regularly to talk about cases but also supporting supervision ... or mentoring for a case of more serious harm. (Scot1)

The ways in which the meetings were organised varied between different providers. Mostly it was based on the workplace, with workplace teams of facilitators. But sometimes other relevant agencies were brought in and the method is also used by the Practitioner Network of the Restorative Justice Forum (Scotland).

We have that as standard as part of supervision within our team. ... that's been really helpful for other facilitators in my team to go, have you considered contacting this organisation, doing this thing, using this exercise? On a wider scale, we do that with, like alongside the Youth Offending Teams [YOTs], so I think

quarterly we have discussions where it's our team, and then the RJ practitioners in each of the YOTs. (E&W1)

We have group facilitator meetings every three or four months ... we always have a section in there that's case discussions. So anybody can bring a case and say I really learnt from this one or I'm really stuck with this one and they get an opportunity to have a bit of a group supervision around it ... every facilitator does annual refresher training [with scenarios to work on weaker areas]. (E&W2)

Yeah, so the Practitioner Network, the Restorative Justice Practitioner Network, that is a forum where that happens ... [people have] got to the stage of anonymised case studies as opposed to the sharing of a process that they've been involved in and the challenges that went with that. So the sharing of practice learning, practice wisdom, has definitely been a part of those networks. (Scot5)

We think the use of regular action learning sets within teams and between facilitators, providing confidentiality is assured, is a key way of sharing good practice and developing staff skills, particularly with more difficult cases. It does need though to be regularly organised and the whole team should participate, including managers.

5.6 So is restorative justice ever too risky?

The simple answer to this question is yes, undertaking restorative justice or progressing restorative justice can sometimes be too risky. Facilitators have to be prepared to take the decision that the process should not proceed further. The experienced facilitators whom we interviewed, though, said that this was rare.

It was primarily if the key values or conditions for restorative justice were not being fulfilled. They are set out in the Guidance (Scottish Government 2017) and also in the various international instruments we discussed in Chapter 1. They include that the key participants want to participate in restorative justice, being facilitated communication between the participants, and that the person who has harmed is admitting responsibility for the offence. If one party is threatening the other party, or trying to use part of the restorative justice process to coerce the other party into doing something they do not want to do, that negates the process being voluntary. If one party denies they have caused harm at all, then communication is going essentially to turn into an argument – and restorative justice cannot take the place of a criminal justice trial trying to determine the key facts. Equally, if communication is impossible at that time, because of the mental state or ill health of one of the parties, then the process will have to be paused, and possibly abandoned.

The facilitators indicated, though, that any such decision should be discussed with participants, and that it was vital that the facilitator not presume he or she knew what each participant wanted from the restorative justice process.

And you never know what kind of needs people have. And that's things that we have to sort out. Can your needs be taken? Can [he or she] answer on your needs? And the goal is never that people are going to be the best friends forever. The goal is that people get the chance to say what they have to say, ask what they need to ask and may be able to go further in life. (Nor2)

Restorative justice has been developed as a ‘bottom-up’, democratic process, in which the participants determine what is said and how it happens, rather than being told what to do (see Braithwaite 2003). The idea is to give the conflict back to the participants so that they can help to solve it (Christie 1977). Where risk comes in is that the process needs to be as safe as it can be, for those participating. That can normally be done by skilful preparation by the facilitator.

Assessment of risk and how those risks can be mitigated continuously needs to bear in mind that this is being done by, for and with those participants, not for the needs of professionals in criminal justice or restorative justice. It needs to respect the participants. It also needs to bear in mind that there can be risk in not proceeding with restorative justice.

I have taught different specialists, or experts, from restorative justice. They have always say that it’s the process of parties and ... if the parties want to be involved, who are we that we say that, no, you cannot have restorative justice? So we have to do this pre work or pre meetings and all that kind of things, to ensure that nobody will not be hurt or nothing goes wrong. (Est1)

You know, the risk to themselves of not meeting the person who harmed them and not getting the chance to say what they needed to say was worse than the risk they were taking and possibly retraumatising themselves. (Scot1)

I think the victim will very often feel very unsafe. And I have to respect that. But still they have the courage to go into this room and meet the one who has harmed [them]. And I have a deep, deep, deep respect for the people that really choose this, and there are many. (Nor2)

Throughout the research, we have emphasised, as our interviewees did, that risk should always be considered together with potential measures to mitigate that risk. There is a wide variety of potential risks, stemming from prior relationships between the participants, the need to facilitate communication so that all parties can contribute, through managing the site, to ensuring that there is support for participants before, during and after the process. Which are important for each case will depend on the nature of the case and the wishes and needs of participants – and can only be assessed in that individual context. The research has drawn upon the interviewees’ very considerable experience to set out what kinds of risks to consider and what means there may be to mitigate them, as well as that learning about risks and mitigation is a continuous process of reflective practice.

We all learn by mistakes and I would say in restorative practice you definitely do learn from your mistakes. It’s because of that emotional content and what happens in a meeting and actually that’s the most precious thing about it, is that kind of emotional meeting which creates a change in the person but it has to be handled very well. So I think it’s good you’re looking at risks, I really do because I don’t think I’ve read anything about that in my kind of studies over the years. (Scot6)

References

- Anderson, M. (2017). Sexual violence cases involving minors: what training can contribute to professionals and what professionals can contribute to training, *The International Journal of Restorative Justice*, 1(2): 303-308.
- Banwell-Moore, R. (2022) Just an 'optional extra' in the 'victim toolkit'? The culture, mechanisms and approaches of criminal justice organisations delivering restorative justice in England and Wales, *International Review of Victimology*, DOI <https://doi.org/10.1177/02697580221079993>
- Beck, U. (2004) *Risk society: towards a new modernity*. London: Sage.
- Bolitho, J. (2015) Putting justice needs first: a case study of best practice in restorative justice, *Restorative Justice* 3(2): 256-281.
- Braithwaite, J. (2003) Principles of restorative justice, in A. von Hirsch, J. Roberts, A. Bottoms, K. Roach and M. Schiff (eds) *Restorative justice and criminal justice: competing or reconcilable paradigms?* Oxford: Hart, pp. 1-20.
- Campbell, C., Devlin, R., O'Mahony, D., Doak, J., Jackson, J., Corrigan, T. and McEvoy, K. (2005) *Evaluation of the Northern Ireland Youth Conference Service*. NIO Research and Statistical Service Report No. 12. Belfast: Northern Ireland Office, at <https://www.restorativejustice.org.uk/resources/evaluation-northern-ireland-youth-conference-service>
- Choi, J.J., Bazemore, G. and Gilbert, M.J. (2012) Review of research on victims' experiences in restorative justice: implications for youth justice, *Children and Youth Services Review* 34(1): 35-42.
- Christie, N. (1977). Conflicts as property, *British Journal of Criminology*, 17(1): 1-15.
- Christie, N. (2009) Five dangers ahead, in P. Knepper, J. Doak and J. Shapland (eds) *Urban crime prevention, surveillance and restorative justice: effects of social technologies*. Boca Raton: CRC Press, pp. 195-204.
- Council of Europe (2018) *Recommendation CM/Rec(2018)8 of the Committee of Ministers to member States concerning restorative justice in criminal matter*. Strasbourg: Council of Europe, at <https://rm.coe.int/09000016808e35f3>
- Daly, K. (2003) 'Mind the gap: restorative justice in theory and practice', in A. von Hirsch, J. Roberts, A.E. Bottoms, K. Roach and M. Schiff (eds) *Restorative justice and criminal justice: competing or reconcilable paradigms?* Oxford: Hart Publishing, pp.219-236.
- Daly, K. (2006) Restorative justice and sexual assault: an archival study of court and conference cases, *British Journal of Criminology*, 46(2): 334-356.
- Daly, K. (2017) 'Sexual violence and victim's justice interests', in E. Zinsstag and M. Keenan (eds.) *Restorative responses to sexual violence: legal, social and therapeutic dimensions*. London: Routledge, pp.108-139.

Department of Children, Equality, Disability, Integration and Youth, Irish Government (no date), at <https://whatworks.gov.ie/resources/action-learning-sets/>

Dillard, R., Newman, T.J. and Kim, M. (2019) Promoting youth competence through balanced and restorative justice: a community-based PYD approach, *Journal of Youth Development* 14, at <https://jyd.pitt.edu/ojs/jyd/article/download/19-14-04-FA-1/945>

Duenkel, F., Grzywa-Holten, J and Horsfield, P. (eds.) (2015) *Restorative justice and mediation in penal matters: a stock-taking of legal issues, implementation strategies and outcomes in 36 European countries* (vols 1 & 2). Mönchengladbach: Forum Verlag Godesberg GmbH.

European Union (2012) *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*. Brussels: EU, at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012L0029>

Fellegi, B. and Szego, D. (2013). *Handbook for facilitating peacemaking circles*. Leuven: KU Leuven, at https://www.euforumrj.org/sites/default/files/2019-11/peacemaking_circle_handbook.pdf

Health and Safety Executive (2022) *Managing risks and risk assessment at work*. London: HSE, at <https://www.hse.gov.uk/simple-health-safety/risk/steps-needed-to-manage-risk.htm>

Hoyle, C., Young, R. and Hill, R. (2002) *Proceed with caution: an evaluation of the Thames Valley Police initiative in restorative cautioning*. York: Joseph Rowntree Foundation.

Kearney, N., Kirkwood, S. and MacFarlane, L. (2006). Restorative justice in Scotland: an overview, *British Journal of Community Justice*, 4(3): 55–65.

Keenan, M. (2017). Training for restorative justice work in cases of sexual violence, *The International Journal of Restorative Justice*, 1(2): 291-302.

Keenan, M. and Zinsstag, E. (forthcoming, 2022) *Sexual violence and restorative justice: addressing the justice gap*. Oxford: Oxford University Press.

Lopez, E.C. and Koss, M.P. (2017) Training in restorative justice for sex crimes from the perspective of sexual assault specialists, *The International Journal of Restorative Justice*, 1(2): 309-313.

Maglione, G., Buchan, J. and Robertson, L. (2020) The local provision of restorative justice in Scotland: an exploratory empirical study. *European Journal on Criminal Policy and Research*. DOI: <https://doi.org/10.1007/s10610-020-09470-3>

Marshall, T. (1999) *Restorative justice: an overview*. Home Office Occasional Paper. London: Home Office, at <http://fbga.redguitars.co.uk/restorativeJusticeAnOverview.pdf>

Mercer, V., Madsen, K.S., Keenan, M. and Zinsstag, E. (2014) *Doing restorative justice in cases of sexual violence: a practice guide*. Leuven: Leuven Institute of Criminology, at <http://hdl.handle.net/10197/7160>

National Health Service, England & Wales (no date) Action learning sets, in *Learning Handbook*, at <https://www.england.nhs.uk/improvement-hub/wp-content/uploads/sites/44/2015/08/learning-handbook-action-learning-sets.pdf>

O'Malley, P. (2009) 'Risk and restorative justice: governing through the democratic minimisation of harms', in *Institutionalizing restorative justice*, paper at https://www.researchgate.net/profile/Pat-Omalley/publication/228134124_Risk_and_Restorative_Justice_Governing_Through_the_Democratic_Minimisation_of_Harms/links/00b495350d1d6a9805000000/Risk-and-Restorative-Justice-Governing-Through-the-Democratic-Minimisation-of-Harms.pdf

Restorative Justice Council (2011) *Best Practice Guidance for Restorative Justice*. London: Restorative Justice Council.

Robinson, G. and Shapland, J. (2008) Reducing recidivism: a task for restorative justice?, *British Journal of Criminology*, 48(3): 337-358.

Scottish Government (2017) *Delivery of restorative justice in Scotland: guidance*. Edinburgh: Scottish Government, at <https://www.gov.scot/publications/guidance-delivery-restorative-justice-scotland/pages/2/>

Scottish Government. (2018). *Delivering for today, investing for tomorrow: the Government's programme for Scotland 2018-19*. Edinburgh: Scottish Government, at <https://beta.gov.scot/publications/delivering-today-investing-tomorrow-governments-programme-scotland-2018-19/>

Scottish Government. (2019). *Restorative justice action plan*. Edinburgh: Scottish Government, at <https://www.gov.scot/publications/restorative-justice-action-plan/>

Shapland, J. (2009) Restorative justice conferencing in the context of community policing, *Journal of Police Studies*, 2009-2: 119-138.

Shapland, J., Robinson, G. and Sorsby, A. (2011) *Restorative justice in practice*. London: Routledge.

Sorsby, A. and Shapland, J. (1995) *Responding to victims of domestic violence*. Sheffield: Centre for Criminological and Legal Research, University of Sheffield.

Sorsby, A., Shapland, J., Farrall, S., McNeill, F., Priede, C. and Robinson, G. (2013) *Probation staff views of the Skills for Effective Engagement Development (SEED) project*. Sheffield, Centre for Criminological Research Occasional Paper no. 4. Sheffield: University of Sheffield, at http://www.sheffield.ac.uk/polopoly_fs/1.293093!/file/probation-staff-views-seed.pdf

Strang, H. (2002) *Repair or revenge: victims and restorative justice*. Oxford: Oxford University Press.

Suzuki M. and Wood W.R. (2017) Is restorative justice conferencing appropriate for youth offenders? *Criminology & Criminal Justice*, 18(4): 450-467.

Swida, A. (2020) A service response to the pandemic: Open circle and restorative justice during Covid-19, *Australian Social Work* 73(4): 508-9.

Umbreit, M., Greenwood, J., with Fercello, C. and Umbreit, J. (2000) *National survey of Victim-Offender Mediation programmes in the United States*. St Paul, MN: Office for Victims of Crime.

Willis, R. (2018) 'Let's talk about it': why social class matters to restorative justice, *Criminology & Criminal Justice*, 20(2): 187-206.

Zernova, M. (2007) *Restorative justice: ideals and realities*. Aldershot: Ashgate.

Zinsstag, E., Teunkens, M. and Pali, B. (2011). *Conferencing: a way forward for restorative justice in Europe - final report of JLS/2008/JPEN/043*. Leuven: European Forum for Restorative Justice, at www.euforumrj.org/assets/upload/Final_report_conferencing_revised_version_June_2012.pdf

Zinsstag, E. and Vanfraechem, I. (eds.) (2012) *Conferencing and restorative justice: international practices and perspectives*. Oxford: Oxford University Press.