



# Institutionalising restorative justice for adults in Scotland: An empirical study of criminal justice practitioners' perspectives

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## Abstract

While in some European and extra-European countries the incorporation of restorative justice into policy frameworks is a dated and widely studied phenomenon, in others it is a more recent and scarcely researched process. The Scottish Government is making renewed efforts to institutionalise restorative justice including the ambitious goal of making adult restorative justice available nationwide by 2023. In this article, we analyse the consequences of these recent attempts, addressing a gap in knowledge on adult restorative justice in Scotland. We gathered views from justice professionals ( $n = 17$ ), involved in organising and delivering adult restorative justice, on the implementation of the policy and the future of Scottish restorative justice. Findings show that participants support expanding restorative justice services, but are sceptical about the Scottish Government's approach. They advocate for a coordinated but locally sensitive model of restorative justice development, to some extent challenging the stark opposition between 'purist' and 'maximalist' approaches to the expansion of restorative justice. These findings generate evidence to critically assess Scottish restorative justice policy and its implementation, while drawing implications for the development of restorative justice across Europe.

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## Keywords

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## Introduction

In Europe, since the early 1990s, practices inscribed under the label of ‘restorative justice’ (RJ) have slowly expanded, as evidenced by the development of policy, growth in public awareness and proliferation of academic research on this subject (Gavrielides, 2007, 2016; Johnstone, 2011; Poama, 2015). RJ has increasingly become ‘institutionalised’ – that is, integrated into criminal justice processes, used as an instrument of penal policy and in practice more professionalised and standardised. Developments in individual European states have also been accompanied, and sometimes anticipated, by the enactment of supranational European standards and agreements (Pali and Maglione, 2021).<sup>1</sup> Institutionalising RJ is a contested process though (Gavrielides, 2016; Maglione, 2020a, 2022) particularly as it runs counter to the radical communitarian impulses that drove the development of RJ as an *alternative to* criminal justice (e.g. Christie, 1977). This contention is only one manifestation of a long-standing debate within RJ scholarship and practice, between ‘purists’ who favour RJ remaining a radical alternative to criminal justice and ‘maximalists’ who believe it can do most good from within criminal justice (which itself reflects debates played out in many radical social and political movements) (cf. Walgrave, 2000).

In Scotland – a separate jurisdiction and devolved nation within the United Kingdom – the expansion of RJ has been relatively stilted, lagging behind the rest of Europe and even other UK jurisdictions. However, there is now a significant policy thrust towards ‘rolling out’ RJ as widely as possible. In fact, in 2017, the Scottish Government has fully recognised the existence of RJ, in line with recent European policy, by issuing the first national ‘Guidance for the Delivery of Restorative Justice’ (Scottish Government, 2017: 2) followed by an ambitious ‘Action Plan’, aiming to guide the nationwide expansion of RJ by 2023 (Scottish Government, 2019: 3).

Extant research on RJ in Scotland largely consists of service evaluations carried out in the early 2000s (Kearney et al., 2006; Kirkwood, 2009) while the only recent qualitative research focuses on Scottish *youth* RJ (Maglione et al., 2020). This in itself poses a significant problem for the development of RJ practice, and for the ambitious aim to extend RJ services to adults nationwide. In this study, we address such a knowledge gap through empirical qualitative research on the views of key criminal justice professionals involved in the organisation of (adult) RJ services, on the current situation and future development of RJ in Scotland. In addition, we seek to provide professionals involved (or potentially involved) in delivering RJ, with material which could be used to reflect on their relationships with RJ services, in order to work out some of the challenges related to the cooperation between the criminal justice system and RJ. Finally, we draw implications with relevance for the development and institutionalisation of RJ across Europe.

After a background section and an outline of methodology, the article presents the key results under three macro-themes – views on RJ and RJ policy, challenges and risks of institutionalising RJ and future prospects. These results are then discussed in light of both the critical criminological literature (Hudson, 2007; Maglione, 2020a;

Pavlich, 2005; Woolford and Nelund, 2019) and empirical findings on the institutionalisation of RJ (Asadullah and Morrison, 2021; Gavrielides, 2016; Suzuki and Wood, 2017), focusing on the character of Scottish RJ, relationships between RJ and criminal justice, and the impact of specific organisational and political dynamics on shaping Scottish RJ. The last section of the article considers the implications for practice, policy and research, at the national level and beyond.

## Background

### *Historical context*

In Scotland as elsewhere, the development of RJ was anticipated by sporadic mediation and reparation projects run by third-sector organisations (e.g. *Sacro*<sup>2</sup>), between the 1980s and the 1990s (Marshall, 1999: 16; Miers, 2004: 27). But unlike in much of Europe, or even in other UK jurisdictions,<sup>3</sup> those RJ projects were never backed up by legislation. The development and policy recognition of RJ services in Scotland has been much slower, and its impact on local criminal justice much more limited (Maglione, 2020b; Miers, 2004: 28). Recent progress in institutionalising RJ has been largely within youth justice; the development of the ‘Whole System Approach’ (WSA), a diversionary Scottish policy framework for youth justice (Scottish Government, 2016), has provided RJ with some institutional anchorage, although provision is not yet consistent across local areas. Youth RJ remains the main form of RJ in Scotland, implemented through local WSA multi-agency partnerships which can refer the young person to a RJ service (see Centre for Youth and Criminal Justice, 2018; Maglione et al., 2020).

In *adult* criminal justice, the Criminal Justice and Licensing (Scotland) Act (2010) has created a policy basis for RJ in community justice, a system which in Scotland is organised through local authority social work rather than a national criminal justice agency. The 2010 Act introduced the Community Payback Order, a flexible community penalty within which RJ *can* be linked to one of the requirements imposed on the offender, for example, as part of a supervision or programme requirement. Supervising social workers may also refer the sentenced person to RJ informally as part of ordinary supervision (cf. Hamad and Cochrane, 2020). However, this Act does not refer explicitly to RJ or make specific provisions about it.

### *Policy context*

The ‘Guidance for the Delivery of Restorative Justice’ (Scottish Government, 2017) (‘the Guidance’) is the first ad hoc policy on RJ in Scotland,<sup>4</sup> representing a potential breakthrough in this context. It aims to ensure that, where available, RJ is delivered in a coherent, consistent, victim-focused manner, for both young people and adults, in line with the Directive 2012/29/EU.<sup>5</sup> The Guidance defines RJ as

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. (Scottish Government, 2017: 6)

It states that RJ's main purpose is to give 'victims a voice within a safe and supportive setting and giving them a sense of closure' while providing 'those who have harmed with an opportunity to consider the impact of their crime and take responsibility for it, with the aim of reducing the likelihood of re-offending' (Scottish Government, 2017: 6). It then asserts specific requirements for RJ in practice such as voluntary access, confidentiality, appropriate and empowering nature and not directed at establishing guilt (i.e. RJ can take place only when 'the person who has harmed takes responsibility for the harm caused and its consequences' (Scottish Government, 2017: 10)).

In 2019 the Scottish Government (2019) followed up the Guidance with a 'Restorative Justice: Action Plan', which commits it 'to have [high quality] Restorative Justice services widely available across Scotland by 2023' (p. 3). In doing so, it encourages a 'partnership approach involving organisations across the Scottish justice sector' which should then lead to developing a 'nationally-available model for RJ' (Scottish Government, 2019: 9). It also considers some of the challenges which may hinder such an ambitious plan, namely the lack of public awareness, issues with information sharing, lack of resources and of training opportunities (Scottish Government, 2019: 8). Together, the Guidance and Action Plan represents the Scottish Government's most thoroughly articulated commitment to RJ to date.

### *Extant research*

There is limited research on RJ in Scotland. Empirical works consist of some small-scale reviews of early (Warner, 1992: 204) and more recent (Dutton and Whyte, 2006; Kearney et al., 2009) reparation/mediation pilot projects run in Edinburgh and Glasgow, all generating converging findings on high levels of satisfaction among users. Over the last 10 years, a few surveys were conducted, focussing on criminal justice practitioners' knowledge and organisation of RJ (Scottish Centre for Crime & Justice Research (SCCJR) and Viewpoint, 2009) and on the local delivery of RJ (Scottish Government, 2018). The findings show a differentiation of knowledge and use across respondents, the patchy delivery of RJ and that referrers were mainly youth justice institutions. Only around half of Scotland's local authorities provided RJ services; where RJ was provided this was usually by social work, with third-sector organisations the second most common provider. Those surveys also identified information sharing, public awareness and lack of training as the key challenges for the future development of Scottish RJ.

More recently, Maglione et al. (2020) carried out the first empirical qualitative research on the provision of RJ in Scotland, based on interviews with 14 practitioners. This work presented original data on the Scottish provision of RJ, showing similar understandings of RJ across practitioners, context-specific organisational models and common systemic challenges characterising RJ providers. One of the main findings was that RJ in Scotland is fundamentally *youth* RJ and its organisation and functioning are tightly interwoven with Scottish youth justice cultural frameworks and institutional arrangements. Indeed, a significant challenge facing the Scottish Government's RJ policy is that there is simply very little RJ focused on adults.

Complementing this very recent body of work, our article provides the first empirical qualitative research on *adult* RJ in Scotland, specifically from the perspective of criminal justice practitioners. In fact, the limited amount of the extant research does not afford an updated and in-depth picture of what is actually happening in this field, particularly considering recent policy developments. The impact of such policy and more broadly the future of RJ depend on the identification of how key criminal justice professionals involved in the organisation of RJ as actual or potential referrers understand RJ and its policy implementation. Our research contributes to addressing this knowledge gap, by generating qualitative insights which may contribute to a critical development of adult RJ in Scotland while presenting implications relevant for the institutionalisation of RJ also in other European countries.

## Methodology

This research is a qualitative empirical work which addresses the following questions: (1) What are the criminal justice professionals' understandings of (adult) RJ in Scotland (values, aims, interactions with the local criminal justice system)? (2) What are their views on the implementation of the new RJ policy? (3) What are the current challenges and future risks affecting the development of RJ in Scotland? and (4) What are their views on the future of RJ in Scotland?

Fieldwork took place in August–November 2019. The population was sampled purposively. First, key criminal justice agencies for the organisation of the delivery of adult RJ (i.e. involved in the referrals of cases to RJ providers) were identified: the police, Justice Social Workers (JSWs), Procurators Fiscal (PFs – Scottish public prosecutors), judges and lawyers. Then, the relevant Head of Strategic Communications and Engagement or the equivalent gatekeeper for each agency was contacted. In some cases, snowball sampling was used instead; this method was reserved for organisations which were proving challenging to contact. In total, 17 interviews were conducted. The final sample included participants from all of the previously outlined categories of criminal justice professionals (with the exception of the PFs), across eight different local authorities: seven JSWs, three JSW Managers; 2 Sheriffs (Judge); 1 Diversion manager; 1 Advocate; 1 High Court Judge; 1 Police Scotland Officer; 1 Young People's Services Manager.<sup>6</sup>

Data were generated by in-person semi-structured in-depth audio-recorded interviews. Individual respondents answered pre-set open-ended questions. Interviews were based on an interview guide in order to enable in-depth comparisons. The items in the guide comprised the core research questions (understandings, organisation, policy implementation) and associated relevant questions. Ethics approval was secured from the Edinburgh Napier University Research Integrity Committee. Due to the non-sensitive nature of the data gathered (professional views), ethically the research presented only general issues of confidentiality (achieved through data anonymisation), data storage (password protected storage and General Data Protection Regulation (GDPR) compliant), withdrawal from the project (possible before anonymisation, 1 month after the interview, without giving a reason) and positionality (due to Maglione and Buchan's

links with RJ networks in Scotland, the participants' recruitment and interviews were conducted by Butler).

Data analysis was carried out iteratively and concurrently with the fieldwork, using QSR NVivo. Data were cleaned in order to make it as comprehensible and useful as possible, by removing irrelevant repetitions within sentences, including in square brackets implicit subjects, adding punctuation and correcting typos.

In terms of limitations, apart from the general constraints of qualitative empirical research (O'Reilly and Kiyimba, 2015), there was a lack of participation from the PFs, which is a limitation particularly given their importance in decision-making around diversion from prosecution.

## Results

### *Views on restorative justice: Concepts, aims and values*

*Defining restorative justice.* There seemed to be consensus on 'what RJ is' across interviewees. Participants described it as a process involving some form of communication between the person harmed and the person who has harmed, in an effort to repair the consequences of the offence:

It's almost a dialogue between the person who has been harmed and the person that's harmed, so that actually they can have that *two-way*<sup>7</sup> conversation around the impact and the feelings that – on both sides – to reduce anxiety and reduce harm. (P16 Police Officer)

The inclusion of the victim's experience was highlighted as a feature of RJ, echoing the Directive 2012/29/EU and its emphasis on a 'victim-centred' RJ:

... it is trying to hear about a situation that has affected you, from the other person's point of view. Whether it's affected you because you've *committed* it, or it's affected you because you've been a *victim* of it [...] with the hopes that positive change can come out of it for both people. (P9 Justice Social Worker)

Although participants were open to RJ for any type of offence, they felt that the psychological harm resulting from certain offences (i.e. domestic abuse and sexual offences) requires specific caution, in line with Directive 2012/29/EU (s.46):

I think there are *obvious* challenges with anything involving the likes of domestic abuse [...] Or that sort of thing where the process would run the risk of becoming an opportunity for control or oppression of some kind. But having said that, I think there is a growing recognition that the idea of a restorative justice process with sexual or domestic abuse cases is no longer the taboo it used to be. (P17 Sheriff)

*Restorative justice and criminal justice.* Participants often defined RJ in contrast to a conventional criminal justice system run by out-of-touch elites and prone to reproducing stigma and inequality:

Sheriffs [. . .] are from a particular class of society, they're probably white, they're probably men, that being lectured in the dock by somebody wearing a wig, versus a process taking place in a community setting facilitated by people who are at your level? Looking you in the eye, it's a less – I think, I would *hope* – stigmatising process. (P14 Young People's Services Manager)

The absence of coercion was raised as a significant difference between RJ and criminal justice:

I don't think restorative justice should be something that's ever forced on people because I think they should come to it – both sides – as a voluntary, informed decision. (P9 Justice Social Worker)

Although participants advocated a non-coercive model of RJ, and saw its benefits as inhering in its being something *other than* criminal justice, there was unanimity *in favour of* integrating RJ into the current criminal justice system. Participants shared a vision of RJ improving criminal justice, rather than developing as a separate entity:

I think [restorative justice] it's something which could be a useful tool as part of our arsenal, when I say, I mean the justice system *overall*, not just the confines, or the remit of criminal justice social work. (P10 Justice Social Work Manager)

I can't imagine any way in which a restorative justice programme which deals with the consequences of criminal acts could exist completely independently of the police and the Procurator Fiscal service. [. . .] And if it's to be a diversion from prosecution, if it's to be a sentencing option, then it can't exist independently of the criminal courts either, because only the criminal courts can impose sentences. (P7 Sheriff)

Alongside, and not entirely separate from, these conceptual questions over what RJ is or should be, there were significant concerns about the Scottish RJ policy and how it would be implemented.

### *Implementing restorative justice policy*

*Symbolic support, factual scepticism.* There were mixed feelings around the Scottish Government's overall commitment to RJ, and significant scepticism around the plan to 'roll out' RJ nationwide. Participants stated that the Guidance may perform a symbolical function:

. . . What is then said in the guidance about what an RJ process is and the different types of restorative justice process [is] very instructive, it's a fantastic essay summary of what it's all about. (P17 Sheriff)

However, more experienced practitioners were unconvinced by the Scottish Government's recent engagement with RJ, highlighting that the vulnerability to political/economic pressures had decimated previous efforts to 'roll out' the service:



RJ just wasn't politically sexy [. . .] There just wasn't any political will around it I think for years [. . .] *pockets* of it continued certainly for young people, people kind of under 18, but [sigh] not a lot was around then for adults, it just wasn't *popular* for lots of reasons that people perceive RJ to *be*, who don't know much about it. (P1 Justice Social Work Manager)

One participant recounted that, originally, the Scottish Government had actively not included RJ within the 2014 Victims and Witnesses Act, possibly under the influence of victim support organisations:

. . . It was the EU guidelines [Directive 2012/29/EU] that had basically encouraged people to offer restorative justice to their citizens, that in the Victims and Witnesses Act that had just been messed up [. . .] They didn't just willingly miss it, they actively hadn't included it. [. . .] Justice was blocked on restorative justice and I do think that quite a significant feature of that was the extent to which [pause] Rape Crisis, Women's Aid, Victim Support Scotland had the ear of gotten around all that was *bad* about restorative justice. (P14 Young People's Services Manager)

Looking at the future, participants felt sceptical of the likelihood of achieving the 2023 goal:

There's definitely a *want* to do it and I think that [Action Plan] probably has helped that want. [. . .] BUT it is just guidelines [. . .] Cause the odds of *everybody* being done by 2023, yeah, no, it's a nightmare to set up [laughs]. (P16 Police Officer)

Criticisms predominantly centred around a lack of clarity from the Scottish Government on certain issues essential to any criminal justice innovation, while questioning policymakers' understanding of the issues 'on the ground':

Who is going to facilitate it? Who's going to fund it? And where is it going to sit? (P8 Justice Social Worker)

For me, it's people in suits that aren't in the real world that make these decisions. [. . .] You don't know anything about them other than the odd legislation or sometimes that gets pinged down to you in an email. (P13 Justice Social Worker)

Other criticisms centred on the lack of statutory responsibility placed on any services or organisations to develop, provide or even refer cases to RJ services:

I guess [. . .] it's a standalone sort of and there's no statutory duty placed on anybody to provide restorative justice, so what's that guidance for? Who's it for? (P1 Justice Social Work Manager)

Participants also identified a range of systemic challenges which affect criminal justice *generally* and have particular implications for the 'rolling out' of RJ.

**Referrals and partnerships.** The highly local nature of non-custodial penalties in Scotland places a particular onus of coordination on local services to provide, commission and/or refer cases to RJ services.



Information sharing was frequently cited as an operational challenge, specifically the introduction of GDPR (implemented in the United Kingdom by the 2018 Data Protection Act).

I think that that legislation [GDPR] has just caused *massive* inconvenience [. . .] And actually it's stopped the sharing of information between agencies that are trying to respond to crime. (P14 Young People's Services Manager)

A related issue was the lack of sharing best practice among services and between local authorities, in the context of very patchy and local-centred provision of RJ, with participants suggesting some form of coordination across providers and referrers:

. . . Whether it'd be to some kind of forum, and meeting the different staff in different councils and [. . .] having linkups [. . .] I would probably get more out of linking up with criminal justice workers but in different councils to see what they are trying and what they are doing. (P13 Justice Social Worker)

In general, the 'siloed' nature of partner services was considered highly detrimental for the development of RJ in Scotland:

I think it's the silo working, there needs to be a broader perspective on some of the issues that we address and face. (P6 Justice Social Worker)

It comes across like nobody really talks to each other? Even like councils when you go on training, different councils are doing different things and it's like we're not helping each other. (P13 Justice Social Worker)

**Lack of knowledge and funding.** The lack of solid knowledge around RJ, even among criminal justice professionals, was highlighted as a crucial barrier to the development of Scottish RJ:

[. . .] there was only about four people in the *whole* team that said they really knew what restorative justice was. (P9 Justice Social Worker)

Recalling the discussions around the 2014 Victims and Witnesses Act, and wider debates about offender versus victim-centred RJ, participants also shared difficulties they had encountered when working with relevant organisations who are not currently involved in (or not fully aware of the benefits of) RJ:

*They* [Victim Support Scotland] have been a bit of a block I think because they've *perceived* RJ as being all about the offender and there's been a bit of resistance on their part to contributing to the development of it. (P17 Sheriff)

The atmosphere of uncertainty around the referral process, alongside participants' reports of feeling both under-resourced and overworked, has led to some local authorities disregarding entirely the notion of implementing RJ, for the time being:

And at that point I think they'd only had *one* case and it hadn't gone particularly well [. . .] and when you've got people sitting in a room who've got competing priorities for funding, they're going to think, 'Well, you know what, let's wait until this gets better established'. (P11 Justice Social Worker)

Participants stated that it is difficult to envisage how RJ could currently be justified as a resource priority over other statutory services, given the requirement of voluntary participation:

I mean it needs to be properly funded, there needs to be a kind of a national strategy, so that there's not just pockets of practice 'cause I think it's a bit of a postcode lottery at the moment'. (P11 Justice Social Worker)

One participant warned that the lack of funding could lead to RJ being provided by a third-sector organisation commissioned by a local authority on a short-term contract, which they felt had been an issue with other new services they had observed:

So I would imagine that restorative justice, if it was being rolled out, it would probably start off as pilot areas. [. . .] And it would be short-term funding. And you're really then hostage to fortune. (P10 Justice Social Work Manager)

Short-term, inconsistent funding is not just a concern within RJ but more widely with third-sector provision of services, particularly in the context of highly locally organised Scottish criminal justice. This represents a crucial systemic challenge for Scottish RJ policy as well.

*Risks of mainstreaming restorative justice.* Participants were also aware of the risks involved in mainstreaming RJ, as promised by the Scottish Government's recent policy. One risk of integrating RJ with the criminal justice system is net-widening, particularly apparent when RJ is placed in the context of diversion from prosecution:

I suppose one issue that would have to be considered is about kind of *net widening* [. . .] Are you going to then get people put forward for it who if we didn't have that service, wouldn't have been progressed through the criminal justice system anyway? So, you have to be very clear about who you're *targeting* . . . I could see if information isn't managed properly, you would get people pulled into it for the wrong reasons. (P10 Justice Social Work Manager)

Participants seemed to support a separation between service providers and state agencies (e.g. JSW):

It's not really something that sits with statutory criminal justice social work at *all* because we work with people that are on orders, or we're writing reports for them [. . .] We wouldn't *want* to get involved in the kind of the mediation, the restorative justice side of things [. . .] There needs to be a kind of a clear demarcation of roles I think. (P11 Justice Social Worker)

Another possible risk when RJ is co-opted by the criminal justice system is the devaluation of RJ's victim-centredness, *contra* both the 2014 Victims and Witnesses Act and the Directive 2012/29/EU. When RJ is understood simply to be a method of reducing recidivism, and the victim is viewed as integral to this process, the justice system risks 'instrumentalising' the victim. One participant argued for a method of monitoring outcomes more suited to RJ (as opposed to criminal justice) values:

So for starters, let's put to bed the whole reduction in reoffending, so I think that is definitely something you would measure, but I wouldn't make that the measure of success, right? (P14 Young People's Services Manager)

Concerns over co-optation of RJ also related to the possible individualisation of conflicts, abstracting crimes from their social contexts. This occurs when intertwined social, political and cultural factors are downplayed:

You just need to read the papers and it's all like, 'The monster that did this' and 'The beast that did that' and stuff – and it's like they are *actual* people [. . .] And we are society, we created things, we made opportunities for *trauma* and people and calling them monsters means we don't have to do anything about it. (P9 Justice Social Worker)

However, the possible professionalisation of facilitators – entailing their partial socialisation into criminal justice values – was not perceived as problematic:

So you might find there's a [. . .] little professional body [. . .] of RJ practitioners – 'the association of restorative justice practitioners' might develop and they would be there as an independent body to provide practitioners who would go to different courts, different cases around the country. (P17 Sheriff)

### *The future of restorative justice in Scotland*

In discussions around the future of RJ in Scotland, participants advocated systemic reforms to promote partnership working and local control, as well as to stimulate demand by increasing referrals to RJ services.

*Joined-up work at local level.* Participants recognised a value in joining up related but currently disconnected services:

I'd probably follow the English model of Community Justice Boards where I'd have a sheriff, a fiscal, police officer, social worker, someone from the educational authorities, someone from housing and social work, and possibly even some of the local bar association around the table thinking about. (P4 Advocate)

Yet, participants were in favour of retaining control over RJ development at a local authority level, as opposed to a centralised model. In the years following devolution, Scotland experienced increasing centralisation and restructuring of criminal justice, which participants were critical of:

I was dismayed that just when other parts of the world [. . .] are waking up to the fact that the best justice is the justice that is delivered *locally*, we were going in *completely* the opposite direction and [. . .] we're allowing our managers to centralise everything [. . .] which is great for management, but sadly I think the *quality* of justice, the quality of experience for practitioners, for court users is diminished as a result. (P17 Sheriff)

Participants in rural areas were particularly resistant to increased centralisation. Some voiced concerns that centralisation could damage the ability of public services to engage with and respond to local concerns:

So when I was a councillor, one thing that was big was community planning, was the idea that individual communities would get together and try to do things. And they do different things in different places and there was no 'one size fits all'. (P4 Advocate)

This participant (P4) highlighted the importance of local innovation, which would allow them to develop a version of RJ which is designed with the most prevalent needs in that area in mind:

Probably what I would do is [pause] increase the *power* of the community justice social work teams to generate programmes, that would mean giving them more resources. (P4 Advocate)

**Development of referral pathways.** Participants felt that the police could and should play a vital role in informing the parties about RJ:

Somebody calls 999, and the police come, you're interviewed, you give a statement, and at no point does somebody say, 'Can I just check with you, in the event of the perpetrator being apprehended, and the possibility of a restorative justice intervention, would you be up for that?' (P14 Young People's Services Manager)

There was support for the idea of a system which allows victims to give consent to be contacted in the future, if the opportunity for RJ arises. Some also stated it would be helpful if police could provide parties with the details of RJ services, to raise awareness of the availability of RJ. The police could also inform referral authorities themselves about the suitability of a case, or whether they had provided consent to be contacted:

From the point of arrest, so the *police* are important, so you would want to get their view, because they write a report for the fiscal [. . .] So, they could perhaps put in their police report whether or not they think that somebody would benefit from restorative justice, which is what currently happens with young people. (P11 Justice Social Worker)

Participants also stressed the importance of the PF in this area, in their role as a conduit between victims and courts. They suggested the need for victims to be informed about RJ by the PF. This route would overcome the GDPR complications encountered by other referral authorities, as the PF is already in contact with the victim at an early stage:

So it would seem to me to be a very straightforward matter for the social workers to go to the procurator fiscal and say, 'We've identified this case as suitable for a restorative justice process and we're going to recommend to the sheriff that we do that'. And the process demands that the victim be given an opportunity of considering whether they want to become involved in it. (P17 Sheriff)

The PF was also crucial to referrals to RJ as a diversion from prosecution. As with all diversion interventions, the PF must approve the diversion team's decision before RJ can take place. One participant outlined the PF's role in RJ within diversion:

[When] there's an agreement [between victim and offender] the Procurator Fiscal would then say that's been a successful outcome, so we have an external 'auditor' if you want. (P2 Diversion Manager)

PFs decided not to participate in the current study, but the majority of our participants (10) spoke about the importance of their role in the referral process. Their involvement with both the victim and offender was one of the main reasons they were thought to be key to this process.

## Discussion

Our results touch on three questions significant for adult RJ in any jurisdiction: what adult RJ should be *like*, how it should be *organised and funded* and what should its *relationship* be to 'mainstream' criminal justice.

### *Conceptualising adult restorative justice*

Participants highlighted a common victim-centred, consensus-based, dialogue-driven and reparation-orientated understanding of RJ. This is different from how Scottish RJ professionals working in youth justice settings define RJ (Maglione et al., 2020), while resonating with findings from European literature on RJ (e.g. Gavrielides, 2007).

In fact, practitioners interviewed by Maglione, Buchan, and Robertson (2020) described Scottish *youth* RJ as a dynamic menu of options orientated to the young person's welfare, consistent with Scottish 'penal welfarist' rhetoric (Garland, 2001; McAra, 2005). 'Welfarism', here, refers to a range of values such as rehabilitation and reintegration into community (McAra, 2005: 297), and, more recently, multi-agency prevention and actuarialism (Gillon, 2018: 57), which form the basis of Scotland's youth justice system. Doing RJ within this context requires RJ values, aims and practices interacting with the welfarist ethos (cf. Braithwaite, 2000: 191; Winslade, 2019: 282). This means that welfarism, as a social-structural (offender-oriented) approach to crime, absorbs relational repair, while RJ, inserted in a welfarist context, confronts (and possibly reduces) its oft-lamented individualising effects on social conflicts (White, 2003: 147; Pavlich, 2005: 42).

Our interviewees instead emphasised RJ's victim-centred micro-social focus on the consequences of crime on victims (cf. Kirkwood and Hamad, 2019). Only in a few cases

did we detect some awareness of the necessity/opportunity of placing RJ in a wider context of social/transformational justice initiatives. Moreover, adult RJ seems to be much less anchored than youth RJ in any form of community, both theoretically and practically (Maglione et al., 2020).<sup>8</sup> While youth RJ in Scotland works through multi-agency partnerships integral with the WSA, adult RJ is dependent on individual criminal justice professionals and operated by isolated services. This has possible implications in terms of the amount of actual RJ done (significantly more youth RJ than adult RJ) and focus on type of crimes (minor offences in youth RJ, more serious crimes in adult RJ) (Maglione et al., 2020).

As mentioned above, this finding aligns with wider literature comparing youth and adult RJ, explaining how young people's unique needs usually require special offender-centred arrangements (cf. Gavrielides, 2007). The emphasis on micro-social intervention characterising adult RJ in Scotland echoes the evidence generated elsewhere on this subject, where RJ is more established, for instance, in Canada (Asadullah and Morrison, 2021; Crocker, 2016). However, in the Canadian context, professionals emphasise particularly the role of adult RJ in promoting offender responsibility and accountability (Crocker, 2016) rather than victims' needs while they also highlight the function of community organisations in driving the development of RJ, which instead is a phenomenon less significant in Scotland (Asadullah and Morrison, 2021).

### *Centralisation, coordination and local justice*

The relationship between localisation and centralisation of RJ was a key discussion point emerging from participants' views on the challenges of and future opportunities for RJ in Scotland. This issue should be placed in a broader political context, that is, the relationship between Scotland's central government and its 32 local authorities, within and beyond criminal justice, exacerbated by recent austerity public funding cuts (Maglione et al., 2020).

The Scottish response to 'austerity' has been to scale back local government funding in exchange for greater autonomy, reorienting services towards prevention rather than withdrawing them outrightly (McKendrick et al., 2016). This gives local authorities power, but also shifts risk to them to arrange services, hence fuelling variation while reducing either provision or staff levels.

In criminal justice, this took place in the context of an already distinctively local approach to non-custodial penalties, which has led to a series of renegotiations over central versus local organisation (Morrison, 2015). Most recently, the 2016 Community Justice (Scotland) Act created new partnerships at local authority level, responsible for coordinating and overseeing community justice commissioning and delivery – as well as creating a national body (Community Justice Scotland) to provide leadership and raise public and political awareness. This reform has created significant disruption and expense for providers and contributed to the further fragmentation of an already complex community justice landscape (Buchan and Morrison, 2020).

Funding for local non-custodial justice services has long tended to be limited in Scotland, with sharp inconsistencies between local authority areas resulting partly from the preservation of traditional allocations. As a knock-on effect of this, third-sector

providers of justice-related services, including RJ providers, are reliant on *short-term and unstable* funding which creates precarity for services and hinders their development and expansion (Audit Scotland, 2012).

Inadequate funding creates a further risk that the provision of RJ services will continue to develop in a fragmented manner, with implications beyond the organisation of services. In particular, it risks RJ being limited to prosperous areas with enough additional resources to justify introducing voluntary RJ services alongside their current statutory justice services (while other areas may struggle to provide even the *required* services). Thus, as Broughton (2012) states, RJ could become a service limited to middle-class (and above) communities and individuals. Woolford and Nelund (2019) also argue that RJ can end up as a 'soft' justice option for middle- and upper-class clients, while their 'risky' working-class counterparts remain subject to retributive justice. Within the context of RJ meetings themselves, Willis (2020) notes similar class dynamics playing out through unequal social and cultural capital.

This research highlights the need for not only adequate, but *equitable* distribution of funding across local authorities. Despite the difficult financial climate, it will be essential to allow local authorities budgetary 'space' to develop and commission genuinely effective RJ services, and to give them time to 'bed in'.

### *Institutionalisation and its nuances*

A crucial step in the recent global development of RJ is the proliferation of state policy on it. This 'institutional turn' (Poama, 2015) entails a significant transformation of RJ, born as a fluid set of crafty practices at the periphery of formal criminal justice systems, and designed as alternatives to formal criminal justice practices (Maglione, 2020a, 2022).

Participants reflected on the re-codification of RJ as an instrument of criminal justice reform, focusing on the challenges, risks and opportunities related to this transformation, questioning the prospects and taken-for-granted positive effects of enshrining bottom-up justice practices into state policy.

Overall, they held a nuanced position on this subject. They seemed to support the symbolic function of policy, that is, its potential to generate public legitimacy and social traction around RJ, while demanding more specific directives identifying responsibilities for the implementation of policy, funding and organisational protocols locally coordinated to be balanced against national standards. This position resonates with those 'maximalist' sections of the RJ movement which have hailed the transformation of RJ into a penal policy option as a normatively desirable stage in its institutionalisation (e.g. London, 2010; Walgrave, 2000).

However, our interviewees were also acutely aware of the detrimental co-opting effects of involving state institutions in the development of RJ, recalling the 'purist' (McCold, 2000) critique to the institutionalisation of RJ, particularly in its most radical expression (Maglione, 2020a). This nuanced position also resonates with empirical research findings generated in Europe and beyond, for example, Belgium (Lemonne, 2018), Australia (Suzuki and Wood, 2017) and Canada (Asadullah and Morrison, 2021), which show how the institutionalisation of RJ allows a significant growth in terms of provision while threatening the normative integrity of RJ, for instance, 'instrumentalising' victims' needs



to offenders' rehabilitation. This threat entails the possibility of bending restorative values to criminal justice aims (cf. Lemonne, 2018; Suzuki and Wood, 2017) or standardising top-down the provision (cf. Asadullah and Morrison, 2021).

In fact, the overall picture emerging from our study emphasises both the risks of sterilising the transformative potential of RJ due to the conflicting values underpinning criminal justice and RJ, *and* the operational necessity of relying on criminal justice institutions to enable the delivery of RJ services. This creates a tension between values and operations, widely perceived and clearly expressed by practitioners, confirming a position expressed within the critical criminological literature (Pavlich, 2005). In fact, RJ is often situated within criminal justice systems and increasingly tends to serve, and to be measured by, criminal justice objectives such as offender rehabilitation, compliance or reoffending rates, and less by the goals of repairing harm or meeting victims' needs (Pavlich, 2005). This perspective resonates with Johnstone's (2011) claim that institutionalisation entails turning RJ practices into professionalised processes, characterised by uniformity, lack of creativity, centralisation and as such unable to give conflicts back to communities. Similarly, Christie's (2013, 2015) late critical reflections on the co-optation of RJ have raised the specific issue of the language of RJ within policy which manifestly overlaps with 'conventional' criminal justice language (e.g. victim/offender dichotomy). The issue at stake is how the institutional developments of RJ may generate the danger of turning RJ into a mainstream penal policy option (Johnstone, 2012).

Participants argued that the use of operational protocols relying on criminal justice institutions is inevitable: they are the only instruments enabling the functioning of RJ as a response to crime. However, as highlighted by the literature (Maglione, 2020a), this approach seems to overlook how those means are themselves value-laden and may genetically transform the very ends they aim to achieve, producing a very costly compromise (cf. Woolford and Ratner, 2007).

## **Implications and recommendations**

Participants voiced a range of limitations affecting recent Scottish RJ policy. Those working in diversion felt that they could not use the Scottish Guidance, because the portrayal of RJ does not align with the reality of their work. The issues centred around the stigmatising effects of labelling associated with 'person harmed' and 'person who has harmed'. Adopting a more neutral language for RJ within diversion, such as 'parties' to describe those who participate, would help the development of RJ within this context.

The lack of acknowledgement for community involvement creates a focus solely on the victim and offender in the process. These individuals risk becoming token voices, participating in a RJ process developed within the criminal justice system, which fails to challenge the wider structural issues which drive criminalisation and criminal harm. Coordinated bottom-up interventions are necessary to halt the piecemeal development of RJ, which is currently underway.

There was a clear preference for RJ providers to be from an independent third-sector organisation. Participants believed this would ensure the impartiality of the facilitator and hence build trust in the RJ process. Therefore, the strengthening of the existing Scotland Restorative Justice Forum<sup>9</sup> is recommended.

Granting flexibility in how local authorities choose to develop and use RJ will help ensure a service which can respond to the specific issues affecting that area. In this way, the service should grow out of the needs identified locally by actively developing RJ in collaboration with community organisations.

Encouraging RJ to develop in a manner sensitive to the needs of that area also chimes with an earlier recommendation of avoiding a RJ service which isolates injustices from their broader social conditions. The current approach to RJ taken by the Scottish Government falls short of questioning the systems in place which contribute to social harms. Developing RJ at a community level but nationally coordinated through an independent national stakeholders forum can help increase the awareness and open up a conversation about how factors of the environment may contribute to the behaviour. Working towards enabling/increasing community members' participation in the RJ process may also contribute towards contextualising the situation in which the harm took place.

As RJ slowly continues to grow in Scotland, information sharing should become embedded in the practice of local authorities. This process will be invaluable in helping local authorities to navigate some of the barriers to implementation without any assistance, such as in the establishment of information sharing protocols.

Receiving input from a wide range of possible referral authorities is necessary to understand the nature of the future referral pathways. The PF's role was frequently cited by participants as vital, given their involvement at multiple stages of the justice process, and their interaction with both the victim and offender. As a result, their lack of participation in the current study may have affected how comprehensively the research could explore the future referral pathways. Future research in this area could focus on engaging this referral authority and their understanding of RJ (cf. Johnson, 2018).

Overall, the picture emerging from our research enriches the available scholarly knowledge on the institutionalisation of RJ, its opportunities and risks, while to some extent challenging the stark opposition between 'purist' and 'maximalist' approaches to the incorporation of restorative justice into policy frameworks. Legislation is seen as a necessary and desirable step towards scaling up RJ, a condition for increasing public recognition and pushing criminal justice agencies to accept the existence of RJ. There are two main issues with this process though. The first is that policy needs to be complemented by actual support, in the form of designing referral pathways and providing funding for services. But then, even when this is achieved, another major dilemma arises: the toll to pay for this systemic transformation (cf. Hudson, 2007: 62; Maglione 2020a). Mainstreaming, standardising and co-opting were raised as significant problems by our interviewees. These are well-known looming risks linked with the institutionalisation of RJ, as both empirical and normative research has shown. In the Scottish context, the problem with co-optation is mainly expressed by the possible individualisation of conflicts and the professionalisation of RJ practitioners, leading to the betrayal of core restorative values. When asked how they would address these potential risks, our informants remarked on the impossibility of detaching RJ from the criminal justice system, while proposing to invest in local and bottom-up processes and national referral pathways. This position suggests reflecting on the precarious normative balance which characterises at least some sectors of the RJ field and that will likely accompany those working within or alongside it, in the near future, in Europe and beyond. This is because

two different aims of different order are in conflict here: quantitative expansion (more RJ) and qualitative preservation (better RJ). Our research suggests that deciding which aim to prioritise and then striking a balance between them is still a crucial challenge for the RJ movement worldwide.

## **Conclusion**

This research was conducted to critically address the Scottish Government's public commitment to RJ. These ambitious policy developments provided the impetus for focusing on the local implementation of (adult) RJ policy, complementing recent research on Scottish youth RJ. Justice practitioners' voices are crucial to the future development of RJ throughout Scotland and certainly if the Scottish Government's aim of widespread RJ by 2023 is to be realised. As we write, Scotland has just undergone a Parliamentary election which returned another Scottish National Party (SNP, 2021) government; in its manifesto, the party recommitted to that ambitious goal, despite the impacts of Covid-19 on the justice system.<sup>10</sup>

Participants interpreted RJ as a voluntary process between the 'victim' and 'offender' which allowed them to explain the impact of the offence to the other party to be located organisationally within the criminal justice system. The research highlighted the support for RJ from criminal justice professionals involved in the delivery of RJ services, but also a number of important issues which could affect this development over the next few years. These issues were related to the risks of institutionalising RJ, referral processes, lack of information sharing and funding cuts. Participants were sceptical that the Scottish Government could provide the amount of support required to achieve this. There was often a juxtaposition between the intentions of the Scottish Government – encapsulated in their RJ publications – and the views of those who may be referring to RJ services in the future. Based on these findings, we recommended a locally driven nationally coordinated approach to the implementation of RJ, long-term fundings and practice sharing as strategic to a critical expansion of RJ.

The development of (adult) RJ in Scotland is in an embryonic stage. Efforts to impose the expansion 'from the top down', onto communities where RJ has yet to develop organically, appear especially problematic in light of the importance of local sensitivity and community involvement for RJ. This has implications not only for Scotland but for any jurisdiction seeking to 'roll out' RJ through criminal justice. It is critical to keep monitoring the effects, including unintended consequences, of the implementation of RJ policy, with the acute awareness that 'more policy on RJ' does not mean 'better RJ'.

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## Notes

1. For example, the Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime and the Council of Europe Recommendation CM/Rec(2018)8 of the Committee of Ministers to member states concerning restorative justice in criminal matters.
2. Sacro (Safeguarding Communities – Reducing Offending) is a Scottish charity active in the criminal justice area.
3. See Justice (Northern Ireland) Act 2002: §35A and Crime and Courts Act (England & Wales) 2013: Sch. 16.2.5.
4. In 2021, the Guidance was enshrined in legislation through The Restorative Justice (Prescribed Persons) (Scotland) Order 2021.
5. Implemented in Scotland through The Victims and Witnesses (Scotland) Act (2014) Section 5.
6. Participants were based in the following local authorities: City of Edinburgh, Glasgow, North Lanarkshire, South Lanarkshire, Aberdeen, North Ayrshire, Fife and Clackmannanshire.
7. All italics within the quotes are participants' own emphasis.
8. Mechanisms for involving communities affected by crime and harm are notably absent from both the 2017 Guidance and the 2019 Action Plan.
9. Advocacy group which gathers professionals, volunteers and researchers interested in RJ.
10. Notably, the Scottish Conservative manifesto (Scottish Conservative and Unionist Party, 2021) also includes support for expanding RJ.

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