



South Wales Police
RESTORATIVE JUSTICE
OPERATIONAL GUIDANCE
V 0.1

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1. Introduction

This guidance has been written to assist staff and officers in the management, application of, and decision making in the use of Restorative Approaches (RA). This guidance is designed to complement the NPCC (ACPO) guidance and minimum standards for Restorative Justice (RJ).

Restorative Justice is a victim focussed resolution to a crime or non-crime incident that holds offenders, either young people or adults, directly accountable to their victim. The use of this approach can help to problem solve, reduce re-offending and improve community cohesion and for low impact crimes and offers a proportional response with a tangible outcome for the victim.

Minimum Standards for use of Restorative Justice

For a disposal to be considered restorative it must have the following key elements;

- a) The offender must take responsibility
- b) Involvement of the victim, community or affected party
- c) A structured process that establishes what has occurred and what the impact has been
- d) An outcome that seeks to put right the harm that has been caused or an outcome that makes other reparation that may not be directly related to the original case.¹

Community Resolution or Restorative Approach?

Whilst Community Resolution (CR) and Restorative Approach (RA) are based in similar principles and desired outcomes, they are slightly different in that; CR is a more informal and proportionate response to lower level crime and incidents whereas RA is applicable to both crime and non-crime matters. There are three levels that are applied to Restorative Justice, each providing a different approach and delivery.

Level 1

This is an instant or on-street disposal where police officers or PCSOs use their restorative skills and training to resolve conflict in the course of their duties. This allows staff to deal with minor crimes and incidents, quickly and proportionately and is used as an alternative to a formal criminal justice process.

Level 2 (As an alternative to formal Criminal Justice Process)

This is used as an alternative to a formal Criminal Justice process whereby conference is arranged, where a typical level 1 process could not take place immediately or to tackle a more serious or persistent matter that is having a clear impact on the community. Level 2 conference(s) may involve more participants and risk assessment to develop a longer term solution.

Level 2 (In addition to a formal Criminal Justice Process)

This is used as part of a formal crime disposal [following custody, out of court disposal or post sentence]. This is aimed at rehabilitation where the offender is considered a risk of further reoffending.

¹ Restorative Justice Guidance and Minimum Standards; ACPO. 2011

Level 3

This deals with offenders mainly post sentence and can be undertaken whilst an offender is in prison. This is monitored by Integrated Offender Management (IOM) teams. There are circumstances when level 3 is undertaken pre-sentence and in these circumstances engagement and involvement with Probation, Crown Prosecution Service (CPS) and other relevant agencies involved in the case, applies.

2. Operational Guidance

As soon as it has been established that a crime has been committed the crime must be recorded. This should happen prior to the delivery of Restorative Justice and in most cases will be achieved by criming at source. Consideration for a Restorative Justice Disposal must be progressed in the following order.

- a) Suitability of the offence
- b) Suitability of the offender
- c) Victim agreement

Suitability of Offence:

Officers should apply the ACPO National Decision Model (NDM) in their decision making. Consideration should only be given to the use of RJ when:-

- *It is clear that a crime or incident has occurred;*
- *The offender accepts responsibility for the offence and agrees to participate and is capable of understanding the situation and process;*
- *The offender does not have not relevant offending history – if an offender has previous convictions or RJ outcomes but the officer feels that this is the most appropriate outcome (due to irrelevance of previous offending or timescales since last offence) it is recommended they refer the case to a supervisor for a second opinion and record the decisions made.*
- *The victim has been consulted and consent sought. In certain cases RJ may be appropriate without victim consent, or in the absence of an identifiable victim (e.g. drugs or public order), but in circumstances where victim consent is not secured it is recommended that a supervisor is consulted and the officer should make a record of the rationale behind the decision;*
- *It is a less serious offence – ‘Less Serious’ is not nationally defined but should be determined on a case by case basis taking into consideration the following;*
 - o *The type of offence;*
 - o *The offender’s previous record;*
 - o *The circumstances of the offence. (The classification of the offence may appear serious although the circumstances may be less so and a Community Resolution still be appropriate);*
 - o *Risk to the public and community confidence in the police;*
 - o *Likely penalty; and*
 - o *Whether CR is appropriate given the circumstances of the offence.*

The most appropriate offences for RJ are likely to be low-level criminal damage, low value theft, minor assaults (without injury) and anti-social behaviour.

There are occasions when RJ is inappropriate to use - for example, this includes when an Offender is subject to an existing court order, on bail for other offences, or is wanted on warrant, etc. The circumstances of the case may, therefore, require an alternative course of action, such as charge or caution. RJ should not be used to divert suitable cases from court.

Any Restorative Justice Disposals that fall outside of the guidelines must be referred to the relevant Inspector to liaise with the force Crime Registry to determine whether the crime can be recorded as a 'positive outcome' or remains undetected.

Offence Types

Offence	Advice	Example
HATE CRIME	A Restorative approach should not normally be used for hate crime where opportunities to take positive action and prosecute exist. However there may be certain hate crimes where this is an appropriate way of dealing with the crime. Officers should use their discretion and professional judgement. This should be applied where the victim wants to progress informally and there is the prospect of the offender being deterred from repeating the behaviour. Where possible officers should contact their divisional hate crime officer if considering an RJ disposal for a hate crime.	<i>A young boy was being bullied at school because of his father's German nationality. He was being called a Nazi at school and racially bullied, this would come under the heading of hate crime. The officer involved in this crime decided to bring together the victim and offenders with their parents. The victim's father talked about why it was so offensive to be called an Nazi given the association with crimes against humanity</i>
DOMESTIC INCIDENTS	Restorative approaches may not be used in connection with domestic incidents, defined as below: <i>'any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality. This can encompass, but is</i>	Consultation with the Public Protection Unit and BCU restorative justice lead should be carried out if any doubt exists as to whether an incident is domestic in nature, and its suitability for a restorative process.

Offence	Advice	Example
	<i>not limited to psychological, physical, sexual, financial and emotional abuse'</i>	
SEXUAL OFFENCES	RJ has been utilised for “low level” sexual offences e.g. - Consenting sexual activity where one or both parties are under the age of consent and neither has any relevant previous offences, and safeguarding concerns have been identified and addressed. - Exposure whilst under the influence of alcohol during urination, or as the offender finds it amusing rather than gaining sexual gratification from the act. Officers must seek the approval of the Public Protection Unit Detective Inspector if considering the use of RJ for a sexual offence.	Competent parties in a relationship, one or both aged 15 years, where mutually consenting sexual activity has occurred and no identified concerns over age difference, exploitation, controlling/coercive behaviour or safeguarding issues exist. Urination or ‘streaking’ in a public place.
DRUG OFFENCES	Possession of small quantities of drugs for personal use may be considered for RJ disposals in respect of Class B and C drugs only.	Personal possession of small quantities of cannabis, khat, new psychoactive substances – subject of consideration of community concern or proximity to relevant premises such as schools.
ASSAULTS	Level of injury is a key consideration but the circumstances, status of the offender and injured party and wishes of the victim must be taken into account.	Minor assaults, perhaps between parties who are otherwise friends where likelihood of escalation or recurrence is not made out.

2.1 Suitability of Offender

To be suitable for a restorative justice disposal the offender must admit the offence.

If they do not, they are unsuitable for this approach. Once they have admitted the offence a check on PNC and Niche must be conducted. This is a disposal intended principally for first time offenders of low-level offences. An offender should not have any previous cautions, reprimands etc., nor ideally should they have any previous Restorative Justice Disposals.

However there may be exceptions to this rule such as; where an individual has one other caution or reprimand for an unrelated offence which has occurred a significant amount of time previously (12

months or more ago). The same applies if the offender has received a restorative disposal for one other offence unrelated in type where a reasonable period of time has intervened.

For example; *'a juvenile had received a restorative disposal for shoplifting twelve months ago. They subsequently damaged a shed on school premises. In these circumstances an RJ solution could be appropriate'.*

The offender must also agree to the process and be told they will be recorded as the offender, but the final decision to progress with the restorative approach lies with the victim [if all other criteria is met].

It is recommended that for RJ to be used, offenders reside in the SWP force area. This is to ensure the follow up of outcomes and the ability to check if the individual has received a restorative disposal before. If they live outside the South Wales police area they may have an RJ recorded locally in their home force area.

2.2 Victim Agreement

The victim must have the process explained to them and the reasons why we are proposing this course of action. The decision is theirs as to whether to proceed. If the offender does not fit the "offender suitability criteria" and the offence does not fit the "offence suitability criteria", regardless of what the victim wants this process cannot be offered as a disposal.

This is to safeguard victims and maintain confidence in the justice system. Restorative Justice is an alternative disposal method and is not for repeat offenders or inappropriate offences; it is intended to divert (principally) first time entrants who have committed low-level crime.

3. Restorative Justice Disposal Checklist

3.1 Level 1 – Street/Instant RJ

	Check	Action
1	Is the offence eligible?	Guidance provided at (2) above to determine suitability.
2	Is the offender eligible?	Check PNC and Niche and refer to guidance at (2) above.
3	Does the victim agree to the process?	Check and record their views. If there is no identifiable victim or they do not agree, consult a supervisor and record rationale.
4	Does the offender admit the offence and agree to the process?	This is a mandatory requirement to proceed. If the offender does not co-operate, alternative disposals should be considered.

5	Is the offender under 16?	Contact parent or guardian to inform them of what you propose to do. If you are unable to get in contact with them consider postponing the process. (Restorative Justice disposals do not engage with detention under PACE so youths do not need to have an appropriate adult with them during the process but it is strongly recommend parents or appropriate adults are at least made aware of the intended process and offered the opportunity to be present).
6	Are there more stakeholders or multiple offenders/victims?	Consider deferring the process until full details can be established that demonstrate victim views and may influence severity assessment.
7	Are there wider community issues, is it a complicated offence that requires more exploration?	Consider deferring the process to consult with local NPT, Anti-social Behaviour co-ordinator, Hate Crime Officer, Schools Community Police Officer or Youth Offending Team as appropriate.
8	Does the offender understand the process?	Explain clearly the process to the offender ensuring they are aware that; ▪ At any time of the process the police can return to the traditional way of dealing with the offence should circumstances change. ▪ That the police will recommence with the traditional process if they fail to complete their agreed outcomes. ▪ That the crime report and their admission will be recorded on Niche.

Officers and staff must ensure the following at all times.

- FACT** Ensure you have established the facts for each of the persons involved.
- EFFECT** Explore the effect at the time and afterwards for the offender(s), victim(s) and community. Remember victims are not just the victim of the crime; they could also be the offender's parents who are also victims of the offender's behaviour.
- OUTCOME** The outcomes are those of the participants, not the outcome the police officer wants as the facilitator. You cannot impose actions on the offender without

their agreement. If a negotiated solution acceptable to both parties is not forthcoming then an RJ disposal is not appropriate.

3.2 Post Disposal

It is the officer in the case's role to ensure that outcomes have been completed, if they have not been completed then liaise with the victim / offender to decide on the next course of action, which may be drawn from the options below:

- Whether the crime will now be progressed in the traditional means
- Whether there is a justifiable reason why the actions haven't been completed
- Whether victim / offender can re-agree the timescale / action. E.g. the offender has agreed to buy a new fence for the victim within 3 days. The offender has now been made redundant from work so agrees to landscape the garden.

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	Offences to which it can be applied?	What are the options other than RA?	What would happen if RA was taken?	Would an admission of guilt be required?	Who would need to consent to RA?	If RA was agreed would this form part of a criminal record?	Who authorises?
LEVEL 1: Informal Restorative Solution	First time minor criminal offences: minor theft and criminal damage; consideration should also be given to including common assault (without injury). In all cases these must be offences with a personal victim.	For adults either a PND (penalty notice for disorder) or arrested and given a caution. For young people a youth restorative disposal in some cases.	No arrest. Either a one hour street resolution brokered by the police or, where appropriate, referral to other agency. Where a justice panel is used a face to face or written apology and a form of reparation.	YES	Victim and offender. If offender does not consent then police may move to level 2 which results in a criminal record or charge.	No, but may be disclosed as part of enhanced DBS check	Police
LEVEL 2: Restorative Conditional Caution	Any offence with a personal victim which the police deem appropriate for a youth or adult caution or conditional caution.	Offender is arrested and given a youth or adult caution or conditional caution.	A restorative conference arranged involving the victim, offender and the police. Most likely to take place at a police station after arrest but could be at another appropriate location (e.g. when there is more than one victim). At the end of the conference, offender apologises and agrees to a set of reparative conditions. Failure to comply means they are charged with the original offence.	YES	Victim and offender. If the offender does not consent then the police may charge providing an incentive to comply.	YES	Police

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	Offences to which it can be applied?	What are the options other than RA?	What would happen if RA was taken?	Would an admission of guilt be required?	Who would need to consent to RA?	If RA was agreed would this form part of a criminal record?	Who authorises?
LEVEL 3: In Court Between Conviction and Sentence	Any offence where the victim requests a restorative process.	Range of custodial or non-custodial options including fines, community penalties and orders.	There would be a pause between conviction and sentencing to allow a restorative conference to take place if both sides agree.	Conviction establishes guilt but if the offender disputes the outcome a conference would not be meaningful. In that case reparative conditions suggested by the victim could be included in the sentence by the judge or magistrate.	Victim and offender. But if the offender does not consent, the court can still impose reparative conditions in the sentence following discussion with the victim.	YES	Magistrates or Crown Court. The Probation Service manages the restorative process.