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## Evidence from Why me? to the Justice Select Committee's inquiry into Restorative Justice

### Introduction

1. Why me? is an independent charity that campaigns to promote restorative justice ('RJ') for the benefit of victims of crime. Our aim is for every victim who wants it to have access to RJ.
2. We have seen how RJ helps victims gain a sense of empowerment which criminal justice processes do not give them. Victims report high levels of satisfaction, saying that RJ helped them to combat post-traumatic stress and feelings of fear and powerlessness. They feel that their voices have finally been heard and a safe space given to them to ask questions and talk about the impact of the offence. Another factor also drives victims to seek out RJ: the conviction that offenders who go through the tough and challenging process of meeting the person they have harmed will be less likely to offend again. Many victims we work with want to do what they can to stop others going through the same ordeal.
3. Why me? works to raise awareness of the benefits of RJ. We do this by providing information and support to victims of crime, offering training and information to criminal justice professionals, and working to ensure that the statutory framework and guidance on RJ are geared towards maximizing opportunities for RJ.
4. Since July 2015 Why me? has also offered a direct RJ service to victims. We do this with a small team of qualified, volunteer facilitators. If we can refer victims to RJ services in their local areas we generally do this. Many of our cases to date have been 'serious and complex'. The following summary of a case we recently facilitated illustrates the value of RJ and the importance of improving access to it.

**Paul Kohler** was brutally attacked in his own home by four intruders; his wife and daughter were also at home. He was left with serious injuries and property was stolen. After deciding he wanted to meet the perpetrators, Paul was helped to access RJ by facilitators at Why me? Several months of work ensued: calls, prison visits, meetings with Paul, the convicted men (and interpreters), prison and probation staff: and a meeting with one of the men finally took place in prison.

Paul says he benefited hugely from the experience, and wants to see more resources devoted to RJ in prisons, probation, and police forces.

5. Like many crime victims, Paul instinctively knew that RJ could provide more answers than prosecution and imprisonment alone. But without our intervention, there would have been no 'trigger' for RJ. The seriousness of the charges made immediate and lengthy custodial sentences inevitable (and deportation likely after part of the sentences had been served). It is unlikely that RJ would have been proposed as part of any disposal, sentence plan or licence conditions. Yet it is in serious cases like this that RJ has seen the most striking results in reducing reoffending and helping victims.
6. Our casework service has identified regular themes about problems accessing restorative justice. Some typical examples are set out below. (Most of these cases are not in the public domain.)

**Ray and Vi Donovan**, whose son Chris was murdered, have told us how requests by the young men convicted of the offence to meet them were blocked on separate occasions by probation, a prison governor and a prison chaplain. The Donovans were eventually able to meet all three of the men but, in their view, this should have been made easier. They blame lack of professional awareness about RJ. They have also pointed out that some prisoners first learn about RJ during victim awareness courses but, when prison governors then refer their cases to facilitators, further progress is often blocked by the inability to obtain victims' contact details.

**Attempted murder** The victim wanted RJ and contacted various agencies without success before turning to Why me? She told us that due to the domestic violence element of the offence, a victim liaison officer had ruled out RJ, even if the offender agreed to take part. Eventually, the prison where the offender is held agreed in principle to assist, but no meeting has yet been fixed, as prison staff are too stretched to devote the necessary time to prepare for it.

**Assault and robbery** The victim was aware of RJ and sought a conference soon after the offence, in which she had briefly lost consciousness and suffered injury. Her initial attempts to access RJ were unsuccessful but, once a helpful police caseworker was involved, the case was passed to probation and, from there, to Why me? The offender pleaded guilty and, at sentencing, the judge recommended that RJ be considered. Due to our efforts liaising with resettlement staff and probation services, it seemed initially that a conference could take place, as the offender was willing. However, after agreeing to it in principle, he was informed that he would be deported the next day. The Home Office immigration caseworker said the deportation

could not be held off to allow RJ to take place. The victim therefore lost the opportunity to take part.

**Death by careless driving** As a result of the offence, the victim lost a close family member and her partner is now disabled. It was over three years after the offence that the victim's family counsellor told her about RJ, having attended a conference where it was discussed. She found the experience extremely valuable but only wished it could have taken place sooner.

7. All these cases demonstrate the need for more public and professional awareness of RJ and a greater commitment to enabling it to take place. This needs good liaison between victim and offender services and enough time in workloads to prepare for conferences. All agencies, including immigration services, need to understand the importance of allowing victims' voices to be heard, particularly when they themselves initiate RJ.

We now turn to the issues in the inquiry's terms of reference.

#### **Progress made by the Government in implementing the Restorative Justice Action Plan 2014, including any changes to this plan**

8. The first Action Plan was published in November 2012. It aimed 'to bring about a **step change** in the **delivery and provision** of restorative justice across England and Wales' [our emphasis]. The progress report on that plan<sup>1</sup> focused mainly on quality and training standards, where much has been achieved.
9. However, for a real step change in delivery and provision of RJ to occur, further work must be done to embed RJ into every stage of the criminal justice process. Changes are required to simplify and strengthen the processes around referral routes, victim contact information-sharing, and liaison between probation and victim services. If these barriers could be removed, a far greater number of victims would be able to benefit from a conference. A step change in delivery and provision should remain the Government's target.
10. There is little hard evidence against which to assess progress on the 2014 Action Plan. It would be helpful if the Ministry of Justice and NOMS made more information available about steps taken to achieve the objective of equal access to RJ for all victims, in particular.
11. The Transforming Rehabilitation (TR) programme caused disruption to the probation service's working practices and caseloads. On the positive side,

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<sup>1</sup> 'Restorative Justice Action Plan for the criminal justice system: report on progress one year on' November 2013. Ministry of Justice.

some features of the programme could increase the number of cases in which RJ is proposed by offender managers. In particular, the extension of the minimum obligatory probation period after release means that an estimated 50,000 more offenders will take part in rehabilitation in the community. To ensure that these changes lead to more conferences, RJ must be prioritised by the National Probation Service (NPS), the Community Rehabilitation Companies (CRCs) and the prison service.

12. Even in cases where it is the victim who initiates RJ, offender managers and prison authorities need to be closely involved in preparatory work with the offender. They need to liaise closely with victim representatives (organizations like Why me? or voluntary or private sector organisations contracted by PCCs). This work takes time and skill. Prison staff and offender managers must be resourced and supported to take it on.
13. Now that the restructuring of the probation service is complete, it is important that the Government takes stock of how provision of RJ has changed over the course of the current Action Plan. NOMS should establish what proportion of offenders CRCs consider will be suitable for RJ and what plans they have for providing it. Depending on what emerges, there may be an argument for imposing some specific RJ requirements or targets on CRCs through their service level agreements. Now that CRCs' contracts are being monitored and audited by NOMS, there is greater scope for transparency in this area.
14. The progress reports due to be published under the Action Plan by March 2016 provide an opportunity for the Government to give specific information about how well the Plan's objectives have been met. It would also be helpful to see reports from all PCCs on measures taken to improve RJ delivery for victims in their areas.
15. A proliferation of guidance and instructions on RJ would not be helpful. Rather, regular awareness-raising work and simple, accessible online information tools would be the best way to ensure staff in all the relevant agencies are clear about when RJ can take place, who is involved and what is available locally. Efforts to provide better information to victims and the public about RJ must also continue.

**How the entitlements to restorative justice in the Victims' Code are working, and their implications for any such entitlements in any future Victims' Law**

16. The Code's provisions on victims' rights to information about RJ and information sharing duties on statutory agencies are welcome as far as they go. However, they will have little impact until RJ services are consistently available nationwide and effective case referral routes are in place.

17. When police inform victims about RJ, this is usually soon after the offence, when the focus is on the investigation, evidence, prosecution and punishment. In our experience, it is only later that victims are ready to think about how they might benefit from an opportunity to meet the perpetrator and discuss the impact of the offence. When RJ is first presented by the police, the victim's initial reaction may be to refuse to take part. They may even ask the police at this point not to pass on their contact details in the event that RJ is raised as an option later.
18. It would be useful if victims could also be given information about RJ in all cases where the defendant pleads guilty, well before sentencing. One option would be for the police at this stage to give victims a leaflet about RJ explaining how to find out more about the process and local provision. At this stage victims might be more open to the idea and willing for their contact information to go to the local RJ provider. This would help to prevent situations whereby an RJ process is proposed by the court, approved in principle by probation, and agreed to by the offender, only to be blocked because the police had no authority to share the victim's details.
19. A Victim's Law could help to place the various RJ-related entitlements in the Victim's Code on a clearer footing and help statutory agencies fulfil their obligations. A clear advantage would be to enhance the enforceability of victims' rights. We note that the recent Private Member's Bill (HC80) makes provision for greater enforceability, including through the mechanism of reports laid before Parliament regarding complaints investigated by the Victims' Commissioner. This would be welcome, as would the proposed steps towards setting and monitoring national standards for victims' services, and the publication of victims' services plans for each police service area.
20. However, legislation would serve little purpose without clearer procedures in place for the provision and delivery of RJ and greater national availability: these must remain the priority.

**The impact and effectiveness of the National Offender Management Service's restorative justice programme to promote the development of victim-offender conferencing.**

21. A recent evaluation report on the NOMS capacity building programme<sup>2</sup> noted progress had been made in training facilitators and developing quality standards and frameworks. This was necessary, but it is not enough: other steps are required to ensure the availability of RJ for all victims who want it. Systems for RJ need to be simple, robust and properly funded. Sentencers, PCCs, and staff in prisons, the NPS and the CRCs must all collaborate to make RJ a viable, fully embedded option in the justice system.

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<sup>2</sup> 'The NOMS RJ Capacity Building Programme: A study of the quality of participant and implementation experiences', Hough M, Wigzell A, March 2015.

22. The ICPR report noted that RJ is seen by some probation staff as ‘a ‘priority’ but not a ‘target’’. It found various systemic and cultural factors to be thwarting RJ: funding restrictions, poor public and professional understanding of RJ, no universal system for obtaining victims’ contact details, complex and inadequate referral systems, lack of senior management ‘buy-in’ to the RJ concept, and poor liaison between offender and victim services.
23. This accords with our experience of helping victims get access to and information about RJ. We would like to see dedicated RJ roles in probation and prison staff teams and, in areas with large caseloads, an RJ team. This would improve the process for referring cases and enable staff to undertake more RJ activity and offer a higher quality service by virtue of having time to work on RJ and regular opportunities to develop expertise.
24. Another problem relates to future funding of the additional RJ capacity that the NOMS programme and PCC initiatives have created. CRCs may be less ready to invest the necessary resources to deliver high volumes of RJ conferences if they perceive more profit will come from less staff-intensive programmes, particularly if they can offer these on a standardised, bulk basis (community payback or ‘victim awareness’ sessions, perhaps). This would be unfortunate given the greater benefits of RJ conferences compared to these programmes, both for victims directly, and in reducing reoffending.
25. There are separate funding risks for offender-led RJ services. NPS-supervised and prison-led cases are directly funded by NOMS and may be subject to further budget cuts. Significant strain has been placed on prison involvement in RJ due to staff shortages and budget cuts. As far as we know, no extra funding was provided to cover the probation and prison services’ costs arising from the extension of mandatory post-release supervision. There is a risk that resources will be diverted away from RJ and used to fund what may be perceived as higher priority work, such as supervising high-risk offenders.

**The effectiveness of delivery of restorative justice across the range of service providers and funding arrangements, including provision made by Police and Crime Commissioners, the Prison Service, the National Probation Service, and Community Rehabilitation Companies**

***What is ‘effective delivery’?***

26. RJ’s effective delivery depends on a criminal justice system in which all the relevant agencies have a clear role in the process leading to a possible conference and are properly resourced to interact and share information safely and quickly. In short, we need good cooperation between criminal justice agencies, a safe but simple data-sharing process, and trained and well-supported RJ facilitators throughout England and Wales. There is an

important role for local volunteers and third sector bodies who support them.

27. Depending on the stage at which RJ is initiated, different agencies will have a greater or lesser role. A typical case will require input from at least two of the following: police, victim representative bodies, the courts, the NPS, CRCs, third party RJ providers and facilitators, prisons and prisoner welfare charities. If any one of these agencies is under-resourced or lacks the knowledge or capacity to fulfil its role, the path to a conference will be blocked. This may result in a promising RJ case never coming to fruition.
28. While recent statutory changes are capable of increasing the number of cases in which RJ could be initiated, research suggests that poor public and professional awareness of RJ, and procedural problems in making it happen, still need addressing. The Victim's Code could prompt victims to ask for information on RJ, but their rights are essentially limited to information: if there is no local availability, or if RJ is not actively pressed for by the court or the probation service, the Code cannot help.
29. RJ is usually triggered by criminal justice processes. Only in rare cases will victims themselves seek out an RJ opportunity without it first having been triggered by a court's sentence or a probation programme. Our court systems, probation and prison services are under pressure as a result of budget cuts. This pressure may increase further as a result of initiatives to speed up court processes and dispense with 'unnecessary' hearings, adjournments, and pre-sentencing reports. These factors must not be allowed to sideline RJ.

### ***The importance of probation's role***

30. In the new post-TR landscape following the associated changes to sentencing and rehabilitation legislation, the roles of probation staff are even more key to achieving the full potential of RJ and meeting the objectives in the Action Plan. No matter how proactive the police, prosecutors and sentencers are, RJ cannot happen without the input of probation services and their effective liaison with police and victims' services.
31. The NPS plays a vital role, having responsibility for the higher risk supervision cases in their six regions. Research shows that cases of greater seriousness (more prolific offenders and/or more serious offences) are the cases that yield the most positive results from RJ. As the courts' probation interface, it is the NPS officer in court who will advise the sentencer about local RJ capability, the victim's willingness and other aspects of suitability. The pre-sentence report is the usual vehicle for this, but with these being used less and less, especially in magistrates' courts, it will often be the knowledge or enthusiasm of the NPS officer in court that day that will enable the court to

decide to defer sentence for RJ, or order a rehabilitation activity requirement with RJ recommended.

32. Whether the offender is to be supervised by the NPS or a CRC, RJ will not happen unless there is local availability. It is very important that sufficient time and resource is allowed for NPS staff to assess local availability so they can give the court enough detail before sentencing. NPS officers' training and caseloads must be adjusted accordingly. Consideration should be given to making RJ assessment and provision by probation staff (whether at NPS or CRC level) a key performance indicator.
33. It is increasingly common for CRCs to provide victim awareness programmes to offenders under their supervision. Greater numbers of offenders take part in this programme than in RJ activity. In view of this we would propose that all offenders taking part in these programmes are given information on RJ during the programme and asked to state whether they are interested in learning more and taking part if the victim wishes to do so. This information can be logged and acted on, with the details of pre-screened, RJ-willing offenders being passed to PCCs, local police forces, and local victim services bodies for follow-up. Victim services (or the police) can then contact the victim to explain the service available and establish the level of interest. If victims wish to proceed, facilitators could then progress the case. Why me? has initiated work of this kind in some prisons and CRCs already and would like to see this approach replicated more widely.

### ***PCC funding***

34. It is unclear how effectively victims' RJ services have been developed by PCCs using the £30 million they have been allocated. It is difficult to assess whether PCCs are the right channel for these funds. It may be more efficient for all RJ funding to be channelled through a single budget-holder for onward local allocation, rather than paying for RJ through two separate funding streams depending on whether a service is 'for victims' or 'for offenders'.

### **Conclusion**

35. Most victims of a criminal offence are left with unanswered questions and a continuing sense of unrepaired harm, even if perpetrators are convicted. They often tell us that the sentence did not pay adequate regard to the impact they suffered and was of no reparative value. The trial (in the rare event that there is one) often leaves victims feeling marginalised in a process focused on interactions between criminal justice agencies.
36. RJ is capable of offering a more meaningful response to victims. It is crucial that they get the chance to take part in this powerful, transformative process. If the investments made in RJ are to pay off, and the potential benefits of Transforming Rehabilitation realised, Government and criminal



justice agencies must give careful thought to how the existing systems of referral, delivery, and funding can be strengthened and simplified.

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