

CONFERENCING

A WAY FORWARD FOR RESTORATIVE JUSTICE

A PRACTICAL GUIDE



**Conferencing:
A way forward for
restorative justice**

A practical guide

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Colophon

This publication is one of the outcomes of a two year research project entitled 'Conferencing: A way forward for restorative justice in Europe' run by the European Forum for Restorative Justice. This guide has been conceived, designed and developed by:

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Acronyms

CEPEJ	European Commission for the Efficiency of Justice
EFRJ	European Forum for Restorative Justice
FGC	Family Group Conferencing
NGO	Non-Governmental Organisation
RJ	Restorative Justice
UN	United Nations
VOC	Victim Offender Conferencing
VOM	Victim Offender Mediation

Introduction

Conferencing is a restorative justice practice which has started developing quite consistently since the 1990s. The first large scale programme to have been set up was in New Zealand and soon thereafter also in Australia. To this day this practice has in majority been developing in Anglophone countries such as the two mentioned above and in the USA, Canada or the United Kingdom and in particular with consistently promising results for juvenile justice in Northern Ireland. Some continental European, Latin American and African countries are also starting to introduce this innovative model, especially in the case of juvenile justice, with some equally promising results.

Conferencing programmes have developed in a number of shapes and sizes, some being state run, some community run, some with specific legislation having been introduced in order to be started, some being implemented on an informal basis, some with facilitators being civil servants and others working only with volunteers. Conferencing is indeed a very malleable mechanism and there are for example as many types of conferencing as there are crimes or cultures. That is probably why it is so difficult to find a definition that experts can agree on and which represents conferencing justly and comprehensively.

Painting with a broad brush, conferencing consists of a meeting, taking place after a referral due to an (criminal) offence. The condition *sine qua non* for it to happen is that the offender acknowledges the facts and takes responsibility for the crime. The meeting will be primarily between the offender, the victim (but it should never be an obligation for him/her), their supporters and a facilitator. Subsequently a number of other individuals may also take part, depending on the scheme or crime, such as a representative of the police, a social worker, a community worker, a lawyer etc. After a period of preparation, all this assembly will sit together and discuss the crime and its consequences. They will try to find a just and acceptable outcome for all, with an agreement including a number of tasks

to achieve for the offender in order to repair the harm committed to the victim, the community and society in general.

This practical guide on conferencing is the result of the work of a team working on a project entitled 'Conferencing: A way forward for restorative justice in Europe' during two years, co-funded by the European Commission and promoted by the European Forum for Restorative Justice. Additional general and in-depth information about the different topics developed here (such as restorative justice in general and conferencing in particular), may be found in the extensive research report also written for this project.¹ The report contains, amongst other findings, the analysis of the results of an international survey on conferencing and mediation and a series of reports of study visits to conferencing programmes in number of European countries. The practical guide takes a frequently-asked-questions (FAQ) format answering questions in a number of relevant areas. The choice of this format is the result of a reflection we had within the team regarding the best and most appropriate way to bring the idea across. We came to the conclusion that the FAQ format would be thought-provoking, informative while still being accessible .

The guide is addressed to practitioners, policy-makers, academics and really anybody else interested in the topic, considering the option or wanting to set up such a programme. It is not about imposing one set of values or ideas but to inform about international standards, accepted values, best practices, empirical data and providing many other informative data which may help get a good and rounded idea about what is conferencing, how it may run and what may be achieved with it.

The questions were gathered throughout the project: when going through all the existing literature on restorative justice

¹ Zinsstag, E., Teunkens, M. and Pali, B., *Conferencing: A way forward for restorative justice in Europe*, Leuven, European Forum for Restorative Justice, 2011.

and conferencing, when developing the survey on conferencing and mediation, when preparing the study visits we did to conferencing services but also by looking at other guides and asking relevant stakeholders to think of questions that should be included and would interest the end-users. We have tried to be as complete as possible and to give as comprehensive an overview as possible.

First the guide will address general questions about restorative justice, then secondly about conferencing. The third section addresses some issues concerning conferencing in comparison to mediation and the fourth section will give some arguments about why and how to choose conferencing. The subsequent sections go into more detail about the programme itself looking at participants, the session or the outcome.

Happy reading!

1. General questions on restorative justice

1.1 What are the relevant international instruments that should be consulted in relation to restorative justice?

Key international instruments have been issued by the United Nations (UN), the Council of Europe, and the European Union.

They are:

(a) United Nations - *Basic Principles on the use of Restorative Justice Programmes in Criminal Matters* (Commission on Crime Prevention and Criminal Justice, April 2002).

see also: UN Office on Drugs and Crime – *Handbook on Restorative Justice Programmes*.²

The Basic Principles contain, apart from guidelines on how to develop and apply restorative justice programmes, useful definitions of what can be understood as a ‘restorative process’, a ‘restorative outcome’, etc.

(b) Council of Europe - Recommendation R(99)19 concerning Mediation in Penal Matters³

The Recommendation does not only apply to Victim-Offender Mediation (VOM), but is also relevant to other restorative justice practices such as conferencing (see Explanatory Memorandum). It covers:

I. Definition

² The document is available from http://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf (you can find the text of the Basic Principles at the end of that manual).

³ The document is available from <https://wcd.coe.int/wcd/ViewDoc.jsp?id=420059&Site=CM>

- II. General principles
- III. Legal basis
- IV. The operation of criminal justice in relation to mediation
- V. The operation of mediation services
 - V.1. Standards
 - V.2. Qualifications and training of mediators
 - V.3. Handling of individual cases
 - V.4. Outcome of mediation
- VI. Continuing development of mediation

In particular, the operation of the services is considered in:

- Art. 19-21: Standards to be established
- Art. 22-24: Qualifications and training of mediators
 - Mediators should be recruited from all sections of society
 - Initial and in-service training is needed
- Art. 25: Receiving information from the Criminal Justice Authorities
- Art. 32: Reporting to the Criminal Justice Authorities

(c) Council of Europe - Recommendation Rec(2006)8 on Assistance to Crime Victims⁴

In this Recommendation, Article 13 concerns 'Mediation'. It states:

- The potential benefits; mediation is to be considered where appropriate
- The interests of victims should be fully and carefully considered; there are also potential risks for the victim
- There should be adoption of clear standards to protect the interests of the victims (concerning free consent, issues of confidentiality, access to independent advice, the possibility to withdraw from the process at any stage and the competence of mediators)

⁴ The document is available from <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1011109&Site=CM>

(d) Council of Europe, European Commission for the Efficiency of Justice (CEPEJ) - Guidelines for a Better Implementation of the Existing Recommendation Concerning Mediation in Penal Matters (December 2007)⁵

It covers, among other topics, the qualifications of mediators.

(e) European Union (EU) Council Framework Decision 15 March 2001 on the Standing of Victims in Criminal Proceedings⁶

In this, Article 10 states:

'1. Each Member State shall seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure;

2. Each Member State shall ensure that any agreement between the victim and the offender reached in the course of such mediation in criminal cases can be taken into account.'

A new EU Directive on victims, including restorative justice, has just been published (May 2011).

As well as the international instruments, practitioners who are developing new restorative justice legislative instruments, or wish to compare good practice, may also find it helpful to look at some of the **national statutory provisions** for restorative justice. Examples are the Children, Young Persons, and Their

⁵ The document is available from http://www.coe.int/t/dghl/cooperation/cepej/mediation/default_en.asp

⁶ The document is available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:082:0001:0004:EN:PDF>. The European Commission is planning to replace this Framework Decision with the new Directive on victims which they have been working on.

Families Act 1989 (New Zealand), as amended to 29 November 2010,⁷ and the Justice (Northern Ireland) Act 2002.⁸ Both deal with conferencing for young offenders.

Some **books and reports** which look at restorative justice in Europe, using a comparative perspective, are:

- Zinsstag, E., Teunkens, M. and Pali, B., *Conferencing: a Way forward for Restorative Justice in Europe*, Leuven, European Forum for Restorative Justice, 2011
- Shapland, J., Robinson, G. and Sorsby, A., *Restorative Justice in Practice*, London, Routledge, 2011
- Vanfraechem, I., Aertsen, I. and Willemsens, J. (eds.), *Restorative Justice Realities. Empirical Research in Europe*. The Hague, Eleven International Publishing, 2010
- Department of Juvenile Justice (Italian Ministry of Justice), European Forum for Restorative Justice and Psychoanalytic Institute for Social Research (Italy), *Restorative Justice and Crime Prevention*, Rome/Leuven, Department of Juvenile Justice/European Forum for Restorative Justice, 2010, at <http://www.euforumrj.org/publications.htm>
- Afford Ltd., Gyökös, M. and Lányi, K., *European Best Practices of Restorative Justice in the Criminal Procedure*, Budapest, Ministry of Justice and Law Enforcement, 2010
- Casado Coronas, C., *Restorative Justice: An Agenda for Europe. Supporting the Implementation of Restorative Justice in the South of Europe*, Leuven, European Forum for Restorative Justice, 2008 (<http://www.euforumrj.org/publications.htm>)
- Willemsens, J., *Restorative Justice: An Agenda for Europe. The role of the European Union in the Development of Restorative Justice*, Leuven, European Forum for Restorative Justice, 2008 (<http://www.euforumrj.org/publications.htm>)

⁷ For New Zealand the document is available from <http://www.legislation.govt.nz/act/public/1989/0024/latest/DLM147088.html>)

⁸ For Northern Ireland the document is available from <http://www.legislation.gov.uk/ukpga/2002/26/contents>.

- Mackay, R., Bošnjak, M., Deklerck, J., Pelikan, C., van Stokkom, B. and Wright, M. (eds.), *Images of Restorative Justice Theory*, Frankfurt am Main, Verlag für Polieziewissenschaft, 2007
- Aertsen, I., Daems, T. and Robert, L. (eds.), *Institutionalizing Restorative Justice*, Cullompton, Willan, 2006
- Mestitz, A. and Ghetti, S. (eds.) *Victim Offender Mediation with Youth Offenders in Europe*, Dordrecht, Springer, 2005
- Fellegi, B., *Meeting the challenges of introducing victim-offender mediation in Central and Eastern Europe*, Leuven, European Forum for Restorative Justice, 2005
- Miers, D. and Willemsens, J., *Mapping Restorative Justice. Developments in 25 European countries*, Leuven, European Forum for Restorative Justice, 2004
- Aertsen, I., Mackay, R., Pelikan, C., Willemsens, J. and Wright, M., *'Rebuilding Community Connections - Mediation and Restorative Justice in Europe'*, Strasbourg, Council of Europe Publishing, 2004

1.2 What is meant by the term and concept of community in the context of restorative justice?

Different forms of restorative justice relate to 'community' in different ways. Some forms, such as circles and panels, bring members of the local geographic or tribal community directly into the forum to take part in the discussion. Others search out all those affected by the offence in any capacity. In VOM, only the victim and offender participate in discussion, but outcomes may relate to community priorities (such as in indirect reparation). Conferencing typically involves the victim and offender being asked to suggest supporters to come with them and participate in the discussion, though the facilitator often has the final decision as to whether specific individuals can come (on safety grounds). Victims and offenders tend to bring those important to them: family, close friends, care workers or those who have been influential in their upbringing or lives, which results in the conference consisting of the 'community of care' or 'micro-community' which surrounds the victim and the offender.

2. General questions on conferencing

2.1 What are the main differences among the different conferencing models?

Conferencing has developed slightly different models in different places over time, with some key differences being:

- The extent to which it is associated with criminal justice – for example, whether certain criminal justice personnel should be present (such as the police, to give a criminal justice view of the offence; or a legal representative for the offender, to ensure human rights are respected)
- The means of referral and how outcomes should be reported back to the referrer – for example, whether a report needs to be made back to a judge or prosecutor who has referred the case, which would not be relevant if it were the victim or offender who had requested the conference
- The extent to which facilitators are trained to follow a particular order of topics closely, using a ‘script’, or whether there is more discretion in what is covered. This is linked to whether facilitators are directive (introduce topics, suggest solutions, suggest outcomes) or are trained to be non-directive (allowing the participants to discuss what they wish, within the scope of a broad question, such as ‘what happened’ or ‘what effects did that have’)
- The extent to which the conferencing model adopted intends to lead to an outcome agreement amongst the participants. This often depends upon the aims of those running the conference (for example, whether this is intended to be problem solving for the future, or to resolve past conflicts, or to promote reparation, or to address factors promoting offending and reduce them for the future)

2.2 Which aims can be aspired to by a conferencing programme?

Our survey⁹ indicates that conferencing programmes worldwide can have multiple aims. The aims that were marked as most frequently applying in the responses to the survey were:

- To reach an agreement which is acceptable to all participants
- To provide an opportunity for the victim to receive reparation and/or an apology from the offender
- To provide an opportunity for the victim to ask questions and receive information from the offender.
- To increase the offender's sense of responsibility for the offence

2.3 At which stages of the criminal justice procedure can/do conferences take place?

The survey indicates that conferences are being used:

- As diversion from the criminal justice system, with referrals being made by the police, by the prosecution, and by courts
- Before the sentence or disposal of the case (referral from the court)
- During a community sentence (referral from those supervising the sentence)
- Before release from prison (referral from those supervising the sentence, prison authorities or parole boards)
- At any time, upon reception of a request for a conference from the victim or offender.

⁹ Reference is made to the international survey that was developed for the aforementioned European project on conferencing. For further information concerning the survey, its results and their analysis, please see the report: Zinsstag, E, Teunkens, M. and Pali, B., *Conferencing: a Way forward for Restorative Justice in Europe*, Leuven, European Forum for Restorative Justice, 2011.

The most common referring authority is the court, though many bodies do refer to conferencing (see survey results). In common law countries, the guilt of the offender usually has to be established first, whereas in civil law countries, referral happens whether or not guilt has been established.

2.4 What are the steps taken to organise a conference?

- The first step is to talk to the offender and victim to see whether they would like to take part in a conference. Some conferencing schemes tend to talk to the offender first, only approaching the victim if the offender agrees; others consider it better to talk to both at the same time. It is important for both victims and offenders to be fully aware of what conferencing is and what part they would need to play, before they are asked to agree (i.e. to obtain informed consent). Both victims and offenders should be able to withdraw that consent at any stage.
- There is a need then to prepare both parties and their supporters. It is often helpful to provide written material or a DVD about conferencing, as well as giving the parties opportunity to ask any questions they have.
- When both parties have agreed, the conference needs to be arranged as soon as possible, but at a time and place convenient to both and which provides sufficient safety. Directions need to be given to all attending and any necessary interpreters arranged (where participants speak different languages).
- The facilitator needs to arrive first at the conference venue to ensure the surroundings are adequate, the furniture is arranged, relevant facilities are available, and there can be refreshments afterwards.
- After introductions, the conference meeting itself starts. If an outcome agreement is made, this should be written up by the facilitator, normally at the time and during a period of informal refreshments afterwards, and signed by all the participants who have agreed it. If this cannot occur, then

the written agreement must be sent to all afterwards by the facilitator. The outcome agreement should contain items which are specified clearly, have a definite time period during which it is expected items will happen, and specify how it will be followed up, as necessary.

- The facilitator should contact participants again after the conference, to ensure they are all right and to answer any questions.
- Items of outcome agreements should be followed up and it should be fed back to participants whether and how they have been achieved.

2.5 How many conferences can there be per offender or per victim?

Normally conferencing schemes only hold one conference, but there is no limit in principle how many should be held. It can sometimes be beneficial to break after a time and agree a time to resume, but it is important that the participants do not change if there is more than one session. If a previous participant cannot or does not wish then to attend a resumed conference session, it needs to be the decision of the facilitator, after consulting the participants, as to whether the conference should continue (clearly one supporter may be able to be replaced by another, but absence of the offender or victim would be more difficult).

2.6 Can one have another conference if the offender offends again?

Yes, the (new) victim will still have questions to ask about the (new) offence and wish to talk about the effects of the offence. Taking part in another conference may impact more upon the desistance of the offender (the rate at which the offender ceases offending).

2.7 Does the conference have to take place within a certain time period after the referral of the case?

From the survey, schemes vary as to whether they have time limits (sometimes those time limits are from referral of the case to those organising the conferencing; sometimes from the case reaching a particular stage of criminal justice). However, where a time limit is specified, this seems not generally to be linked to the participants' needs, but to referrers' and criminal justice system needs. Participants themselves seem most to require adequate preparation and time to consider whether to participate, but once they have agreed, they want to hold the meeting as quickly as convenient.

2.8 Where can conferences be held?

Wherever is safe, neutral for the participants, has sufficient space and is convenient. Many conferences have been held in community venues, but conferences have successfully been held in prisons and other custodial environments.

2.9 Who pays for conferencing?

Schemes have been funded by national governments, regional or local governments, criminal justice agencies, social welfare agencies, charities etc. Sometimes, co-funding at the local and national policy levels is helpful to involve society at large and to ensure they are also taking some responsibility.

3. Conferencing in comparison to mediation

3.1 What exactly is the difference between conferencing and VOM?

Mediation can involve a direct meeting between victim and offender, or be a process of shuttle mediation, with the facilitator/mediator passing information between the parties. VOM, however, is traditionally a direct face-to-face meeting between victim and offender. Traditionally, the key difference between a conference and a VOM meeting is that the conference is attended by one or more support persons for both the victim and the offender, as well as the victim, offender and facilitator/mediator, whereas the VOM meeting is just attended by the victim, offender and facilitator/mediator. However, because conferencing and mediation have developed in different parts of the world in parallel, this difference in attendance has sometimes been mirrored by differences in processes and the role of the mediator/facilitator. So, for example, conferences have tended to be more likely than VOM to have a future-oriented or problem-solving stage, to be intended to result in an agreement, to have a more formal script, and to use non-directive facilitation, with the facilitator not suggesting topics or solutions. Conferences may also tend to be used for more serious offences in certain countries.

However, the differences in terminology are not universally used. So, some mediation schemes invite offenders and victims to bring supporters (and allow those supporters to play a full part in the meeting). Whether a scheme is called 'mediation' or 'conferencing' seems now often to be a matter of its historical roots and the terminology used in any legal statute governing its work. It then becomes important to look at its processes, aims and desired outcomes to consider what it is achieving, rather than to conclude that a particular scheme is, for example, a typical VOM scheme just because it is called 'mediation'. In this report, the key difference used between 'conferencing' and 'mediation' is who is allowed to attend.

3.2 Does a conference have certain benefits that a VOM session does not have?

If we define the difference between conferencing and VOM as, primarily, the increased numbers of people attending a conference session (i.e. that conferencing includes supporters), then those supporters can provide benefits. One is that an offence may have significant effects on both victim and offender supporters, and so providing the opportunity for those supporters to attend the meeting allows them to say what has happened to them, and also enables the offender to appreciate the effects of the offence on those close to him/her, as well as victim supporters. A younger or more nervous victim or offender may also find it helpful to have a supporter present to enable them to communicate what they wish to say. Where the meeting has a future-oriented stage or is intended to result in an agreement, then supporters can be helpful in suggesting items for the agreement, working out how to solve problems, or agreeing to help others complete part of the agreement.

3.3 In which cases can we have conferencing and in which cases can we have VOM?

Both conferencing and VOM, like all forms of restorative justice, work best with a direct, individual victim, though both have successfully been conducted with corporate victims (of shop theft, damage, burglary etc.) and indirect victims (of public order or anti-social behaviour, etc.). There seems to be no intrinsic difference between the cases which should go to conferencing and those which should go to VOM. Larger meetings are though, naturally, more expensive and more difficult to organise, so it may be more useful to use conferencing for somewhat more serious offences (though where there has been a spate of anti-social behaviour affecting a neighbourhood or a group of people, conferencing with all present is also helpful).

3.4 Can we do conferencing (or VOM) in cases of sexual abuse and domestic violence?

Both conferencing and VOM have been used (in different countries) for cases of sexual abuse, particularly where the offender is young. So, for example, the statutory conferencing in Northern Ireland and in South Australia includes many cases of sexual abuse and, in South Australia, the experience of conferencing has been found more helpful by those victims who decided to attend a conference than the traditional criminal justice system alone. It is important, as with all other cases of serious offences or where the participants know each other, for the facilitator to consider carefully whether there are potentially imbalances of power between the offender and victim (or supporters) and whether a safe meeting can be held. It will not be possible to hold either a conference or a VOM meeting in all cases of sexual abuse.

Experience of using restorative justice in cases of domestic violence has been much more controversial, because of the greater potential for power imbalances. Some experience has been negative (participants found it unhelpful; abuse continued) but others report positive results.

3.5 Can relevant differences be identified concerning the way the facilitator conducts the actual conference and the way the mediator does so with a VOM face-to-face meeting?

The tradition in most conferencing is that the facilitator takes a very low profile role in the conference itself, just introducing the participants, setting the ground rules, making sure communication is not dominated by one or two participants, and moving the meeting along to the next topic at appropriate points. Mediators are often trained to be more active participants, though there are different schools of thought and practice about this. Mediators have tended, therefore, to sometimes introduce topics for conversation where they feel this would be helpful or they understand participants would

wish to discuss these, and to make suggestions about outcomes. However, there are clearly differences between schemes on these matters and we do not yet have much research on the effects of adopting particular styles for particular kinds of offence or participants.

It is very important that, whether facilitators/mediators adopt a more or less interventionist style, they remain neutral and ensure that all the participants are able to communicate, so that they are not overly dominant, inappropriately judgemental or seen as partial.

4. Choosing conferencing

4.1 Who should choose whether conferencing or mediation or other restorative processes should take place?

Schemes can only offer potential participants those types of restorative justice processes for which they have trained facilitators and which they are able to offer. Potential participants should be offered all available processes, but facilitators need to offer guidance as to which might be more suitable for that case and those particular participants, taking into account the available evaluation findings. Potential participants must be able to make an informed choice as to whether to participate. The choice of appropriate process needs to be that suitable for the likely participants, rather than being normally determined by criminal justice system or legal rules.

4.2 Which types of crimes can be referred to a conferencing programme?

Normally crimes with a direct, identifiable, personal victim. Schemes vary as to the types of offence they feel able to accept (young offenders, adult offenders, more or less serious offences) but there is no ban in principle on any particular type of legal offence. Care needs to be taken where there is the potential for power imbalances between the offender and victim (e.g. domestic abuse, abuse of power). Conferencing has been undertaken with sexual assaults and homicides. Some schemes use conferences for offences which affect the local community and use community representatives to provide the victim element.

4.3 Do schemes deal mostly with high or low level crimes?

So far, more schemes seem to be dealing with low to medium serious crimes, but there is some evidence that victims of more serious offences benefit more from restorative justice processes. It needs to be borne in mind that the amount of harm done does

not have a perfect correlation with the seriousness of the offence. As facilitators gain more experience they tend to feel more confident in dealing with more serious offences or offences which have caused greater harm. It has also been argued that conferencing, which tends to involve more participants, might be disproportionate and too time-consuming for dealing with very minor offences. The biggest schemes, which have statutory backing, have tended to make restorative justice, particularly conferencing, available for all criminal offences which would be prosecuted.

4.4 How does a scheme decide which cases to deal with?

The scheme can only offer to deal with crimes for which it has trained facilitators available and sufficient funding to offer a quality service. Some schemes have tended to be restrictive in what cases to take, being selective or 'cherry-picking' cases which the scheme feels may be more successful, but the evidence is that, if the participants agree, almost all types of case can be successfully 'conferenced'.

It is important that certain sections of the population are not disadvantaged by being refused conferencing. Conferencing can be undertaken well even if participants do not have a common language (by using interpreters) or have some mental or other difficulties in communication, but the possibility of some form of communication between participants is a pre-requisite for restorative justice of all types. Note also that purely taking referrals from criminal justice sources can also sometimes create selection effects, because some potential participants may find it difficult to report their cases to criminal justice or criminal justice personnel may decide not to deal with the case – hence allowing the possibility of self-referrals by victims and offenders can be helpful.

4.5 Who can refer a case to a conference?

The survey shows that cases can be referred at many stages of criminal justice, including by the police or prosecutor as a diversionary measure, or by the court pre-sentence, or whilst the offender is serving a sentence. Hence there are many different criminal justice referrers. Cases have also been referred by social welfare agencies, but normally this is relation to their civil, rather than criminal remit, for example, in relation to child welfare.

4.6 Are self-referrals or referrals from social organisations possible?

Many schemes accept self-referrals from victims or offenders, particularly if the offender is serving a custodial sentence. In countries where social organisations can represent victims, or classes of victims, such referrals may also be possible. However, it is important that restorative justice processes do not cut across existing or potential criminal justice processes, and so there need to be avenues of communication between referrers and criminal justice services. Currently there seems little evidence of schemes needing to cut down on self-referrals because of lack of funding or too much demand for their services but this might occur in the future.

4.7 How do you convince the criminal justice system to refer cases to conferencing?

It is important for restorative justice schemes to publicise what they do and for criminal justice personnel to be trained in what conferencing is and how to refer cases (including in continuing professional development for lawyers). CEPEJ guidelines from the Council of Europe indicate that restorative justice possibilities need to be better implemented and more visible to potential referrers at all relevant stages of criminal justice. It is always easier for criminal justice referrers to refer cases if the scheme has a statutory basis.

Undertaking good liaison between the restorative justice scheme and criminal justice referrers/partner agencies is also important. Restorative justice needs to be visible, so that managers are personally known to potential referral sources and sources which can provide outcome agreement possibilities. Several research evaluations in different countries have shown that, both for conferencing and VOM, it is important to build confidence with referrers.

5. Participants

(i) General questions

5.1 Who is it helpful to invite to a conference?

Primarily those who the victim and offender want there to support them - often it is relatives, work colleagues, key workers; some models also have community representatives but there needs to be agreement to these by victim and offender as part of informed consent. Some offenders (and some victims) may be quite isolated, e.g. prisoners, so facilitators may need to pursue with the affected party who they could think of to be there to support them, even if they have lost touch with them for a while (e.g. other relatives). Either victim or offender may wish to have a professional support person there for them.

It could also be argued that all those who have been impacted by the offence should be invited. It is, though, important to consider the overall size of the conference and whether this may produce difficulties in communication (and how these could be alleviated). It is important to think about the potential dynamics of the conference and whether all parties will feel able to speak. A large conference may also need more than one facilitator present to help with participants' needs.

Some schemes want a professional support worker to be there or the legislation requires them to attend (e.g. a social worker for a young offender), but unless this is specified in legislation the main principle needs to be who the victim or offender wishes to attend.

5.2 Who should decide on who should be present at a conference?

If they have decided to come, neither offender nor victim should have a veto over the other's supporters, but the facilitator must retain the ultimate power to decide whether someone should come, because it is the facilitator who is ultimately responsible for the safety of the participants at the conference.

5.3 Is there a limit to the number of persons, who can be present during a conference?

No, but having a large number of participants can create more difficulties in communication. If there are a large number of participants then it can be helpful to have two facilitators, though one should clearly be the main facilitator.

(ii) Victims

5.4 Is it required for the victim to attend for a conference to happen?

Many schemes require victim attendance in order to carry on with the conference. Some, however, will not stop the conference if the victim finds at the last minute that they do not feel able to attend. Though there is not much research available at present which can directly compare victim absent and victim present conferences using the same processes, where this is available, it tends to show that victim-absent conferences do not show such good results as victim-present conferences and offenders tend to be disappointed if victims are not present. Some representation by the victim (through a written letter etc.) is more helpful than no victim presence at all.

5.5 Should the victim be forced to take part in a conference?

No, the victim should never be forced to take part in a conference. All participants must have the right to withdraw their consent to participate at any stage.

5.6 What are the consequences when the victim does not participate?

The effect of the victim not participating in a direct meeting tends to be that communication within the conference is lessened. The legal consequences depend upon the nature of the

referral and its legal basis. Given that restorative justice demands voluntary consent from all parties, though, an offender should not be penalised in terms of legal consequences because the victim decides not to participate.

5.7 Can someone replace the victim if he/she is not present? If yes, by whom? When might it be appropriate to use victim representatives?

In some schemes, victims may nominate someone to represent them in the conference, briefing that person on what they want to say. This might be a family friend, someone from a victim support association, or someone from their neighbourhood. Commercial victims (shops, cafes, bars, factories) often have someone attending who is representing the company, though it is helpful if that person is either the manager or someone who was present at the time of the offence, so that they can talk about the effects on the staff as well as on the company.

Victims should always be encouraged to be present themselves and it is only if they are unable or do not wish to be present that a victim representative should be used. There is little research on the comparative effects of victims being personally present or a victim representative being present, but there is some suggestion that conferences are less successful with victim representatives.

The facilitator should never take on the role of a victim representative, even if the victim is unexpectedly absent. It would undermine the neutrality of the facilitator. If the facilitator reads out a statement written by the victim, the facilitator should then not be drawn subsequently into clarifying the statement or taking the part of the victim.

5.8 Are there other means for a victim to participate without having to be physically present at the conference?

Some schemes have the facility for video-conferences and in some, it is possible for a victim to remain behind a screen or one-way window and be in audio contact with the offender. Video-conferences can clearly be helpful if it is not possible (e.g. for reasons of distance) to arrange a face-to-face meeting. Screens, however, tend to reduce the possibility of communication, since they do not allow non-verbal communication to occur. It has proved very rare for victims to wish to use screens.

5.9 Is there a risk of re-victimisation when a victim takes part in conference?

Theoretically, re-victimisation could occur if a victim takes part in a conference. However, with good preparation and facilitation, victims generally say that, though they were worried beforehand, they found the conference itself helpful, that (some of) their questions were answered and that they found some closure. However, if communication breaks down, if the offender denies the offence or his/her part in it, or if victims feel the conference is primarily for the offender, victims can find the experience distressing.

(iii) Offenders

5.10 Why is conferencing mainly dealing with juvenile offenders?

Historically, more schemes have started by dealing with juvenile offenders. However, schemes are increasingly dealing with both juvenile and adult offenders and there is no evidence that one group benefits more than the other (if anything reoffending evaluation results are better for adult offenders). Criminal justice practitioners seem to be culturally more prepared to start using restorative justice processes if they are for juvenile offenders.

5.11 Are there differences between conferences which deal with juvenile or adult offenders?

Where the victim or offender is a juvenile, their parent or guardian needs to be invited to be present. There do not appear to be other practical differences between conferencing with adult or juvenile offenders.

5.12 What are the consequences when the offender does not participate?

Participation of all participants needs to be voluntary. The specific consequences in relation to criminal justice depend on the nature of the referral and the stage of criminal justice. The survey and case studies provide a summary of potential consequences in different countries.

5.13 Could someone replace the offender if he/she is not present?

No, because all restorative justice is about the offender taking responsibility for the offence.

5.14 Does the offender have to have admitted guilt before a conference can take place?

Yes, the offender has to have admitted guilt or at least acknowledged some responsibility for the offence at some point before the meeting of participants, before any restorative justice process can take place.

5.15 Are participants generally satisfied with / would they recommend the participation to a conference?

The majority of offenders (and victims) – normally the vast majority – say they are satisfied and would recommend conferences to others in a similar position to them. This is also

true of direct mediation (a direct meeting between victim and offender) but is less true of indirect mediation (communication via the facilitator between offender and victim with no meeting).

(iv) Supporters¹⁰

5.16 What are supporters?

Supporters are people the victim and offender indicate they would like to be at the conference to support them. In some countries, the term 'supporter' is not clear to people and the term 'your own people' is used, though this tends to emphasise the difference between victim and offender. As indicated above, supporters can be a whole range of people.

5.17 What is the contribution made by supporters?

Supporters often have a very important role in the conference. Typically, after the victim/offender is asked to speak about the offence and the effects of the offence on them, their supporters will also be asked the same question. This can show clearly to all present how widely the effects of the offence have gone and the different ways in which families are affected by offences.

Supporters may also help their own party by prompting them, particularly if the victim/offender is very nervous or tongue-tied. However, it is important that supporters do not speak 'for' the victim/offender and facilitators may need to take care over the balance of the conference and to make sure that everyone feels they can communicate.

¹⁰ We use the words 'supporters' and 'support persons' interchangeably in the guide and mean the same by the two terms.

Where there is an outcome agreement, supporters, particularly offender supporters, may sometimes offer to help in making sure it happens (e.g. in making sure the offender attends planned educational or treatment sessions).

5.18 How can supporters be found?

Initially, the victim and offender must be asked who they would like to attend the conference as their supporter. If they cannot think of anyone close to them (relative, friend, work colleague, support worker), then facilitators may find it helpful to talk through who has been important to them in the past and whether they could be approached (by the facilitator, if the victim/offender feels too embarrassed or is not able to do it themselves).

5.19 Can there be a conference without supporters?

Supporters, like all other participants, must agree voluntarily to attend a conference. If supporters do not exist, or cannot be present on the day, then the conference can go ahead without them.

(v) Professionals

5.20 Which professionals usually take part in a conference?

There is no consistency in which professionals take part in conferences in different schemes and countries. The overall principle must be that it is the facilitator who invites all participants, including professionals, and that the victim and offender should be allowed to invite a professional as their supporter (or one of their supporters) if they feel it would be helpful to them and if the facilitator agrees. The facilitator is in charge of the safety of the conference, so it must be the facilitator's decision as to who attends (subject to human rights requirements, see below).

In some statutory schemes it is stated that certain professionals should be present or may be present (e.g. a police officer) and clearly this needs to be followed.

5.21 Can a lawyer be present? If yes, what is his/her role?

If the conference is part of a criminal justice process, then human rights requirements mean that the offender's lawyer must be able to be present, to advise his/her client. There seems to be no equivalent requirement for victims. The offender's lawyer, if he or she decides to be present, is there purely to advise the offender, not to speak for the offender. The idea is that participants should speak for themselves.

A similar human rights requirement is that if any participant is a minor, then he or she should be accompanied by a parent or guardian or appropriate adult (as legally defined in that jurisdiction).

5.22 Why do judges never take part in conferences?

It is correct that judges do not normally take part in conferences, though it is not clear why this has occurred (judges do take part in sentencing circles, for example, which are equivalent restorative justice processes – though they would not act as facilitator). There seems to be no reason why judges should not be present, should the facilitator agree, though they may feel that if their decision will subsequently need to take account of what happened at the conference, they will wait to speak until then. They might thus take part as observers. It is common for judges to attend conferences for which they will not be adjudicating on that offence, to learn about conferencing methods and procedures.

(vi) Other

5.23 Who else may come to a conference? Observers? Trainee facilitators?

It is helpful if trainee facilitators and those who are referring cases to a conference can attend some conferences. However, this has to be at the discretion of the facilitator for the conference and it is important that the number of observers is not disproportionate to the number of participants. It is also helpful if those evaluating conferences as researchers can attend, but this needs to be with the agreement of both the facilitator and the participants in that conference (principle of informed consent for research).

5.24 Can the general public come and take part?

Conferencing, like other forms of restorative justice, is intended to be confidential to the participants (and to any others, such as referring agencies, judges etc. to whom they have agreed the outcomes can be given). Hence the general public, *que* public, is not permitted to attend conferences. Conferences involving young offenders or victims should also not allow the general public to attend because of the overall principle that youth justice is to be done out of the public gaze. Some schemes which do allow community representation will, however, invite members of that community to be present.

5.25 Can journalists come to a conference?

It follows that journalists and the media should not normally be invited to attend conferences. With the permission of all participants, sometimes a journalist is allowed to attend a conference as an observer in order to write about what conferencing is so that the public knows about it. Where criminal justice proceedings should be open to public gaze (for example, for adult cases), then the reporting of this stage (after the conference) will follow the normal course.

6. The facilitator

6.1 What are the skills of a good conference facilitator?

A good conference facilitator should be able to communicate with all types of people easily. They should have the capacity to encourage participants to come, but be sensitive to difficult issues and potential intimidation. They should have the confidence to intervene if there are problems in relation to communication at the conference, but should also be able to step back to facilitate the communication between the participants. Good verbal and non-verbal skills are important, as well as the capacity to listen, to listen actively and to summarise what has been said. Facilitators also need to be effective administrators, so that conferences are organised properly and on time, outcomes are fed back to participants and referrers, and paperwork is properly done. Facilitators also need to be able to represent to criminal justice personnel and other agencies what restorative justice means and to represent the aims of their scheme.

6.2 Can they be both a mediator and a facilitator?

Some practitioners do both, but it remains to be evaluated how easy it is to swop from one to another. Those who have tried both tend to suggest that mediation requires more active participation and direction, whilst it is more difficult to be non-directive.

6.3 Why are there professional facilitators in some countries and lay/volunteer facilitators in others?

Whether facilitators are paid or voluntary, all need to work to clear standards of competence, in-service training and to be accountable to the scheme. Some countries and schemes, particularly where restorative justice is on a statutory basis, have found it more effective to have paid facilitators whose main job is conferencing. Others see the community background of volunteer staff as important, whether those facilitators are paid

per session or just given expenses. Which will be most useful will depend upon the volume of cases, the time in which they need to be done (volunteer facilitators may tend to take longer over a case), and the geographical spread of the cases.

6.4 Do future facilitators have to have a specific professional background?

Facilitators do need to be trained (see below), but there is no specific requirement for any previous professional background. If the scheme is closely associated with criminal justice (e.g. outcome agreements form part of the sentence of the offender) then facilitators with previous criminal justice or youth justice experience can find their knowledge of the system helpful in being able to inform participants during preparation or in the conference what opportunities, programmes etc. are available.

6.5 Is training necessary to become a facilitator?

Yes, definitely. It is important that new facilitators have a good grounding in the values and aims of restorative justice and that they are trained in good communication skills, as well as having the knowledge necessary to undertake it. In-service training is also important, as new research and evaluation results become available.

6.6 What should determine the content of facilitator training?

See the European Forum for Restorative Justice Recommendation on the training of mediators,¹¹ and the whole report on the same topic.¹²

¹¹ The document can be found at <http://www.euforumrj.org/Training/Recommendations.pdf>.

¹² The document can be found at <http://www.euforumrj.org/readingroom/ReportMediators.pdf>.

On the content of training, the following was written in relation to mediation, but might also offer a framework applicable to conferencing:

'Knowledge, skills and personal qualities need to be addressed in training:

Personal qualities:

A mediator should be someone who is relatively open to discuss personal values and should have the capacity to reflect on his/her own way of dealing with conflict. Having the capacity for personal growth, i.e. being able to develop as a person, is important. The mediator needs to be supported and helped to deal with issues of personal growth during training. He/she should have the capacity for openness and sharing (for example, talking about his/her own values, about how he/she reacts, about his/her own vulnerabilities, about what kind of influence this could have on the mediation process, etc.) It is important during training to be exposed to one's own capacity to manage oneself in the mediation process, i.e. how to combine one's role as a mediator and as an individual. Another important element is to be able to give and accept feedback.

Training should also include the skill of self-management with particular regard to working with one's own prejudices and perspectives. One principal aim in training is to broaden the perspective of the mediators and to depend their capacity to grow as people who are willing to explore their own strengths and vulnerabilities. The value of this depth of training lies in enabling the mediator to develop capacities for congruence and empathy with clients.

Knowledge:

Any mediation course needs to contain specific themes on conflict, law, psychological and social processes and something specific about applied mediation.

Skills:

There are five main skills: to maintain impartiality, to remain neutral, to be accepted in one's role, to be able to keep confidentiality, and to ensure that participation in the process is voluntary. These are the skills which distinguish mediation from other forms of dispute resolution, e.g. arbitration.

Other skills that should be addressed during training include:

- How to act in the different stages of the mediation process
- How to show empathy
- How to create a 'safe environment'
- How to organize the practical work
- How to react on certain situations during the mediation process
- How to collaborate with other agencies.'

See also the CEPEJ Guidelines from the Council of Europe on mediation in penal matters (mentioned above). Items to be covered in training would include:

- Principles and aims of mediation
- Attitude and ethics of the mediator
- Phases of the mediation process
- Basic knowledge of criminal justice system
- Relation between criminal justice and mediation
- Skills and techniques of communication
- Role play and other practical exercises
- Specialist skills for mediation in cases of serious offences
- Various methods of restorative justice

Additionally for conferencing, one might expect that training (knowledge, skills) should also address:

- How to identify, approach and involve supporters of both victim and offender

- How to decide upon, and to include professionals in the meetings (police, probation workers, victim support workers, ...)
- Insight into group dynamics/meetings, including impact on offender.
- Developing/discussing/supporting a plan by the offender
- How to organise the follow-up of the agreement/plan.

7. The session

7.1 What are the ground rules which facilitators should set out to participants at the beginning of a conference?

It is important that conferences have ground rules for all participants, which should have been introduced to the participants during preparation. Different schemes have slightly different ground rules, but they would normally cover:

- Participants should respectfully listen when someone else is speaking
- Everyone should be given an opportunity to say what they wish to say
- Participants should stay seated in the circle, not move around or move towards another participant
- No threats should be issued to anyone else there.

7.2 To what extent should a facilitator participate in a conference?

The facilitator needs to make the introductions and ensure everyone understands the ground rules at the beginning. After that, the facilitator should only participate to the extent necessary to encourage others to participate. Often, non-verbal communication is better than words to encourage someone to speak (smile in their direction etc.) or discourage an over-enthusiastic or domineering participant (turn away from them, put up hand to stop them, turn to someone else). If the conference has a number of stages, then the facilitator will need to signal that it is time to move to the next stage and what that is. The facilitator will also need to sort out that everyone agrees any outcome agreement, write it out, give it to participants and provide refreshments after the conference.

7.3 Is there a particular order for the parties to intervene? Why in that order?

Conferencing models vary in terms of the order in which participants speak. Often the offender is asked to start, to say

what happened during the offence, so that the victim can then ask any questions he or she has about the offence. Sometimes, however, police or other criminal justice personnel will read out a statement about the offence, with the victim and offender then asking questions of each other. This practice allows participation of the state, but makes it more difficult for victim or offender to disagree with minor details of the offence as set out by the police (which can occur). It also can make it more difficult for participants to understand (by being couched in legal or criminal justice system jargon terms), whereas allowing the offender to say what happened can give personal meaning to the offence and other elements can then be added by the victim or others present.

Most conferences then move on to talk about the effects of the offence, asking the victim, then the victim supporters, then the offender, then the offender supporters, about what the effects have been on them. It is important that all participants are allowed to say what effect the offence has had on them (including community participants, if present). Some conferences, however, start with the effects of the offence (and therefore with the victim speaking), rather than with the offence itself.

Conferences finally then turn to talk about the future, about what would make the situation better, about what problems remain to be solved, about reparation and about factors which need to be addressed to prevent re-offending (depending on what aspects about the future the participants wish to raise and what the aims of the scheme are).

7.4 Are conferences intended to reach an agreement?

Conferences which do have this future phase normally tend to end in an agreement, though it is up to the participants whether they do agree. However, restorative justice processes can be experienced as meaningful even if they do not aim to or result in an agreement.

It is important that all participants present do agree, at the time, to the different items which form part of the agreement. It is hence helpful for the agreement to be signed by all those present to signify their agreement.

7.5 Which elements can be included in the agreement?

A major value of restorative justice is that each conference is individual, designed to deal with that particular offence, and including the participants affected by it. It is the participants who decide which elements should be included in any agreement – and hence each agreement is also individual to that offence. There are hence no ‘standardised’ elements for an agreement. Research into what elements tend to be included shows that they are typically:

- Apologies by the offender to the victim (and others)
- Reparation offered by the offender to the victim (financial compensation or direct work – these are less common)
- Actions which the offender agrees to take which it is thought will reduce the likelihood of reoccurrence of that offence or reoffending in general
- Preventative measures which participants can take if there seems to be a likelihood of reoccurrence of the dispute (particularly where participants know each other and will interact in the future).

It should be clear, for all items:

- Exactly what they entail
- Who is supposed to be doing them
- In what time scale they should occur
- Who should be monitoring their occurrence.

Items should be reasonable for the person concerned to undertake, and, in the view of some international instruments,

they should be proportionate to the seriousness of the offence being addressed.

7.6 Should everyone there agree and sign the outcome agreement?

As stated above, the outcome agreement must be agreed by everyone present, or else it is not an outcome agreement (though in a few countries, parties may indicate specific areas of disagreement if the agreement is then to be sent to e.g. a judge to decide what is to happen). Preferably everyone should sign it at the time. All participants should be sent a copy of the outcome agreement, but reminded that it is confidential to the conference participants (and criminal justice referrer if relevant).

7.7 Should participants be paid expenses?

Ideally, participants should be paid their expenses to travel to the conference venue. The organisers should pay for informal refreshments (which need not be elaborate) after the conference, so that participants can continue to converse if they want to. So far, schemes have not tended to have sufficient finance to pay for work income lost by participants in attending the conference.

7.8 Can an agreement be seen as an action plan for the offender? Or for any other participant?

Though most items in outcome agreements tend to be for the offender to carry out/achieve, this is not necessarily so. Outcome agreements can be seen as a kind of action plan for the next few months for those specified in them.

7.9 What happens to the case if an agreement is reached? And if it is not?

It depends upon the legal and criminal justice basis of the scheme (and on who is the referrer) as to what happens after

the conference. If, for example, the referral is a self-referral by the victim or offender, because they themselves want to do it, normally this will have no impact on the case or criminal justice process unless the conference or the outcome agreement are picked up by the criminal justice authorities. On the other hand, if this is a referral from the court or public prosecutor, then often the fact of the agreement and elements of the agreement will be picked up and made part of the disposal of the case/sentence (depending on the view of the criminal justice authorities on those elements). Most statutory schemes leave the final decision on what items may be included in the disposal of the case to the criminal justice authorities (because it is a matter which represents the view of society, as embodied in the criminal justice authorities).

Because, however, it must be voluntary on participants whether they participate and whether agreement is reached, it should not be held to the detriment of the offender if an agreement is not reached. The circumstances of each case will need to be examined by the criminal justice authorities.

7.10 Are agreements legally binding?

Agreements are not, in themselves, legally binding (whether through civil or criminal law), unless this is specified in the relevant legislation for the scheme (if it is statutory). To make an agreement legally binding in civil law, often a further stage is necessary, where it is agreed by a legal officer. Similarly, as above, criminal justice authorities will have to support the agreement to make it legally binding in criminal justice terms. It is important that the literature of the scheme and the documentation setting up the scheme make clear the legal status of agreements.

7.11 Does the facilitator have to write a report about every conference case? (including feeding back to referrers)

It is good practice for facilitators to make notes on each case as it proceeds, including when each participant agrees to

participate, who is present at conferences, what is dealt with at conferences, the outcome agreement and action taken thereafter (including feeding back to both referrers about the agreement and to participants about the progress made on the outcome agreement). These notes should be kept securely, as they are confidential, but can be used to answer subsequent questions from participants as to what did occur, or if questions are raised about malpractice at the conference. Facilitators only have to make a report to referrers if this is specified when the case is taken on (and it should be specified then what this report should contain).

8. Outcomes - after the conference

8.1 What is counted as ‘success’ for a conference – what are the expected outcomes of conferencing and who decides upon them?

What would be counted as success for a conference depends upon the aims of the scheme (see above). Since it is entirely up to the participants whether they agree to the conference, even the conference meeting being held cannot be seen as necessarily a ‘success’ measure. The participants’ own reactions to the conference, their preparation and the outcome agreement are relevant: the procedure must be seen as being in line with the values of restorative justice (voluntariness, inclusivity, respectful hearing of all parties, a perceived fair outcome agreement). Some ‘successes’ will depend upon particular participants’ wishes – were their questions allowed to be asked? Were they answered? Others will depend on their expectations – did they feel greater closure? Do they feel that the offender did take responsibility for his actions? Etc. Not all conferencing schemes have aims which are synonymous with criminal justice system aims, but if they do, then these are relevant too – was reoffending prevented? Did the dispute reoccur?

8.2 Is an apology a prerequisite for the conference to have a positive outcome?

An apology certainly cannot be a prerequisite for a conference (meaning that it should be made beforehand). Nor can offenders be expected to or required to apologise, but they can be expected to take responsibility for the offence. Similarly, if the offender does apologise, the victim cannot be expected always to accept the apology and certainly cannot be expected to forgive the offender. Particularly for very serious offences, apologies may not be possible or sufficient.

8.3 How should apologising be ‘organised’, indirectly (letter of apology) or directly (saying sorry during the conference)?

It is always better if the participants can meet directly, provided they are happy to do this, because communication and the likelihood of successful communication between offender and victim is better with a direct meeting. If there is a direct meeting, a direct apology is more natural and does not need to be followed up by a subsequent letter of apology (it can be simply an item in the outcome agreement that the verbal apology occurred). If there cannot be a direct meeting (i.e. indirect mediation, rather than conferencing, which is always a direct meeting), then letters of apology can be helpful, but they need to be written by the offender (not drafted by others on the offender’s behalf) and research has shown that letters can be misinterpreted by victims (too short, too long, too insincere, too easy to write, etc.).

8.4 Will someone support/monitor the offender to complete the agreement/action plan? Whom?

It is helpful if the offender is supported to complete the outcome agreement and progress should certainly be monitored. Different schemes in different countries have used different agencies. Social services/youth workers have often been used for conferencing involving young offenders. There is less clarity in relation to adult offenders, but given the difficulties which many such offenders will face accessing relevant educational or treatment programmes it is important that such support is built in to the scheme. Relevant agencies might be probation services, prison authorities or social services, depending on the offender’s circumstances. Each item on the outcome agreement should state who will support the offender though, preferably, there should be one monitoring body, which normally will be the conferencing scheme or referring criminal justice agency.

8.5 Does the victim have to be periodically informed about progress in fulfilling the plan?

The victim should always be informed periodically about progress on the outcome agreement/plan. If no other agency is charged with this, the conferencing scheme should take responsibility to do it. Evaluation results and the survey show, however, that this is an element which is often done less than optimally by schemes. Provision to do so and relevant finance should be built into the organisation of the scheme.

8.6 Is there something organised once the offender has fulfilled his/her plan? (i.e. mark the ending appropriately/ encourage the offender to stay away from crime)

Some restorative justice theories (such as reintegrative shaming) would suggest strongly that successful completion of the outcome agreement/plan should be marked, either by a second, congratulatory conference or by the issue of a certificate or some other occasion. Currently, this is only rarely done in practice by conferencing schemes, probably because of organisational pressures and finance (and also because many are not monitoring sufficiently progress on the agreement). The occasion is important to show that the offender should no longer be seen as an offender (the price has been paid for the offence) and is now a normal member of mainstream society. It is interesting that similar ideas (to mark successful completion) have now been taken up in other programmes which require continuous effort over time by the offender (such as drug courts and proclamation of expiry of criminal record time limits in the US). This is probably something which conferencing needs to aspire to in the future.

9. Miscellaneous

(i) Management

9.1 Does there have to be a manager or coordinator for a conferencing programme? What should be his/her role?

As with all other programmes dealing with individual cases, it is important that the programme or scheme has a clear point of contact for referrers and someone who is responsible for the performance of the scheme, its development and the work done by facilitators. This is normally the manager (who may be called the coordinator or director). Where there is only one facilitator who is working on a self-employed basis on their own, that facilitator will need to perform the functions of the manager in relation to other agencies and participants (and should have some professional mentor with whom difficult cases can be discussed). Very often the manager is supported by a steering or advisory group consisting of senior people from other agencies with which the scheme needs to work (from criminal justice, in relation to funding, and in relation to local government or social providers).

The manager should:

- Recruit, manage the caseload of, and ensure facilitators are trained appropriately
- Be the main point of contact for outside agencies and referrers
- Be responsible for ensuring that the values and aims of the scheme are appropriately maintained by staff
- Be responsible for maintaining good records, ensuring that there is good feedback to participants and referrers, and ensuring that accountability is maintained, including being responsible for the good operation of the complaints system (as below)
- Monitor the work of the scheme and its caseload, calling on more detailed evaluation as necessary

- Manage well the scheme's resources and ensure it is compliant with relevant international and national guidance and legislation.

9.2 Should specific training be offered to managers when they are appointed?

Yes, managers should be trained in areas where they do not have relevant previous experience (for example, in restorative justice techniques and principles if they have come from a different agency).

9.3 Is in-service training for managers necessary? By whom should this in-service training be offered? And how often?

In-service training for managers is important, because restorative justice practices are constantly developing and new research results becoming available – and it is the manager who needs to bring these to the attention of their facilitators and other staff. The national body for restorative justice practitioners (where it exists) and the European Forum for Restorative Justice are useful in advertising new material and training events.

9.4 What is the role of 'performance management' in conferencing?

Sometimes, it is perceived there is a tension between managing the performance of facilitators and facilitators being sensitive to the individual needs of participants. It is true that types of management which work solely on routines and targets are less appropriate – but having to provide a professional, accountable service demands the development of self-reflective practitioners/facilitators, which it is the task of the manager to undertake. Good, self-reflective practice is facilitated by, for example, keeping good records of cases, occasionally writing up cases as reflective diaries, talking through cases with supervisors, talking through particularly challenging cases with

other facilitators and managers, creating an atmosphere where each facilitator can learn from others' tips and practices, and encouraging facilitators to take part in training offered by outside institutions and providers. Periodic videoing of sessions and review by managers/supervisors/another senior practitioner can be helpful (and may be less intrusive than observation in the room).

9.5 How does a manager agree effective targets for practice staff?

Effective targets are those accepted as legitimate and important by practice staff. Hence it is helpful to discuss the nature of targets and any inadvertent unhelpful practices they may create (e.g. through 'rushing' to finish a case within a time target). Doing simple analyses of different practitioners' work patterns and times to complete cases can be helpful to encourage discussion, though it is important to anonymised cases. Having regular staff meetings to discuss the progress of the scheme and new challenges is vital.

9.6 What are the key outcomes for a business plan in a conferencing project?

The key outcomes for any programme/scheme should depend on its aims. If they are, for example, to ensure victim and offender satisfaction that the process was fair, there should be a targets which measure these. Business plans typically major on numbers of cases, time limits and costs. These are important – and managers should have both a plan for these and knowledge of the current status of the programme on them – but they are not the ultimate aim of the programme.

The most common mistake in business plans for restorative justice (and other criminal justice) programmes is to err in estimating the numbers of referrals to be expected from particular sources or geographical areas. It is bad if there is too little work (cost per case is high; facilitators are underused and

do not develop their skills well) and also bad if there is too much work (cases are refused; cases are 'cherry picked' and so restorative justice is not properly available in the area; cases are rushed). Doing proper 'environmental scanning' (what area will produce how many cases, of what type, from whom, how?) is vital and time spent on this and on setting up proper case information and cost monitoring systems at the start of a programme is never wasted. Programme managers should know how many offences of the types envisaged occur in that area and their likely paths through criminal justice or community justice mechanisms.

The second most common mistake is to underestimate the time it will take to publicise a new scheme and the extent to which it is necessary for managers to liaise with other agencies. In criminal justice, there are many agencies and personnel with whom to remain in contact (police, prosecution, judges, social work and probation staff, local government, funders etc.). There can be quite a high turnover in key personnel, so written agreements (which take time to negotiate) are useful, though personal contacts still tend to need to be made.

9.7 Should victim attendance and participation be corporate targets?

Victim attendance at conferencing or VOM is important, and rates of victim attendance can provide key messages about the willingness of staff to contact victims and take the time to explain the process to them and answer their queries. Where there have been low rates of victim attendance, it has been found in evaluation research that staff have tended either to find it difficult to work with victims, or to decide not to take much effort in contacting them and arranging meetings at suitable times. However, it must never be forgotten that victim participation and attendance is voluntary and so victims should never be pressurised into attending to meet targets.

9.8 What about data protection?

Strict legal rules on data protection apply in all countries and therefore also to restorative justice programmes. As a consequence, conference managers and facilitators are bound to these rules when receiving, using or disclosing information on persons involved in the process of conferencing. Additionally in restorative justice processes, the principle of confidentiality is of utmost importance. Conferencing programmes will have to adopt policies, often in conjunction with referral bodies and other agencies, on the type of information they are allowed to receive and to communicate to others. Furthermore, they will have to follow or establish clear rules on storing information about the persons who were involved in conferences (which information is to be kept on file, for how long, in which way files have to be removed). Data protection policies must be presented in a transparent way to the public.

(ii) Accountability mechanisms

9.9 To whom are conferencing programmes accountable?

Conferencing programmes are accountable to their communities and to public authorities as defined by law or official regulation. But, in a more direct way, the programme is accountable to the victims and offenders, and their support persons who take part in, or are affected by, the conference. Here, a ‘duty of care’ has to be taken into account by the facilitator in all circumstances. The facilitator should always assess, or be aware of, the personal and social needs that the participants might have, and he/she will act accordingly. Respect for every person in the process, victim or offender alike, should form the facilitator’s ground attitude. Special attention should be given to vulnerable victims and offenders, and the personal evolution of participants throughout the process should be followed up. Finally, facilitators must have the skills to evaluate personal problems, risks and questions and to refer individual participants to the right support or intervening agency.

9.10 Is there a complaint procedure?

All schemes should have a complaints procedure which can be used by both participants and referrers. It should be clearly pointed out to potential participants. In order to ensure that complaints can be properly dealt with, schemes should keep adequate records of all cases and facilitators should, as set out above, write notes on all conferences, their outcome agreements and the progress of the outcome agreement.

9.11 If yes, is there an independent body to which the parties can refer their complaints to?

Though the initial stage of complaints handling is normally by a senior person within the scheme, following good practice in complaints handling, the scheme should specify an independent person or body to whom complaints can be addressed.

9.12 Are there manuals of effective practice for conferences? Are there codes of practice or codes of ethics for conferences?

The international instruments (see the beginning of this guide) set out overall good practice for conferences and other forms of restorative justice. As research and evaluation has advanced, so national associations of restorative justice practitioners and international bodies are beginning to be able to produce manuals of effective practice and codes of good practice for conferences. This process is likely to accelerate in the next few years.

One example of a manual of good practice is 'Best Practice Guidance for Restorative Practice' (2011) produced by the Restorative Justice Council in the UK (see www.restorativejustice.org.uk). Moreover, the European

Forum, through its website, offers useful links to material concerning good practice, ethical guidelines etc.

9.13 Is there monitoring of the programmes? If yes, who does it?

Conferencing schemes need to undertake basic monitoring of their own cases themselves (e.g. details of participants, referring agency, dates, conference meetings, outcomes, notification of progress to participants). They should also, like all organisations dealing with the public, conduct periodic surveys of participants' satisfaction and views on the conferences they are running.

Evaluation of outcomes (reoffending, details of satisfaction, effects on victims, value for money etc.) requires specialist research evaluation skills, available, for example, from university researchers. A key aspect that needs to be considered, where schemes are run in conjunction with criminal justice agencies, is whether referrals are of appropriate cases and whether net-widening (use of conferencing or another process when a less onerous process or informal action would have previously sufficed) has occurred. Currently, some programmes have been evaluated in this way and details are given in the full report, but many have not yet been evaluated. Schemes do not normally have the skills to evaluate their own programmes themselves and it can be argued that independent evaluation is more appropriate.

Evaluation should not only look at the programme or scheme itself, but also examine whether the extent of offers of conferencing and the ways in which programmes are organised meet local needs in terms of the numbers and nature of known cases in the criminal justice system or from other referrers.

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