

RESTORATIVE JUSTICE COUNCIL PRACTITIONER REGISTRATION CONSULTATION

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IARS

Independent Academic Research Studies
Empowering young people to influence policy and practice

ABOUT INDEPENDENT ACADEMIC RESEARCH STUDIES (IARS)

IARS is an independent, social policy think-tank that was set up in 2001 to enable young people, especially those who are marginalised, to acquire a voice in society and engage with decision making structures and services as equal citizens.

Through the provision of high quality volunteering opportunities, youth-led work placements, training, skills-development programmes, accreditation, peer mentoring and research, IARS young people learn to inform and indeed influence practices that affect them at local, regional, national and international levels. Through a youth-led structure, young people from all walks of life learn to influence decision making, policies and the law and as role models participate in society and support their peers and youth-led organisations and groups in creating a tolerant and equal society where young people are respected and valued. IARS is unique in its structure and the only youth-led social policy think-tank in the UK.

IARS has expertise in the fields of restorative justice, criminal justice, youth justice, public legal education, human rights and equality.

AUTHOR

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INTRODUCTION

1. IARS welcomes the opportunity to respond to the **Restorative Justice Council (RJC) Practitioner Registration consultation**. IARS also wants to extend its thanks to RJC for undertaking this process. We believe that this is an important activity carried out at a very critical point in the development of restorative justice policy in the UK. Carrying out open and transparent consultations that respect agreed timeframes and guidelines is an obligation under [the Compact](#). The voluntary and community sector has worked hard in reaching this agreement with public sector bodies. IARS believes that the voluntary and community sector has to lead by example, if we are to expect code compliance.
2. Following from the above, public consultations also have to be worthwhile in the sense that they allow for the submitted evidence to genuinely inform and shape the consulted activity or policy. IARS is concerned that activities and strategies that are part of this consultation have already been initiated and that the submitted evidence will be of secondary rather than of primary significance.
3. This response was prepared by [Dr. Theo Gavrielides](#) and was preceded by an open [Call for Evidence](#). Several submissions were made by restorative justice experts and young people (Annex A). IARS also used its [on-going research programmes](#) on restorative justice, youth justice and criminal justice. We chose not to answer each consultation question separately, but to provide a narrative that we hope covers the RJC published consultation document.
4. IARS understands Restorative Justice as “an ethos with practical goals, among which to restore harm by including affected parties in a (direct or indirect) encounter and a process of understanding through voluntary and honest dialogue. Restorative justice adopts a fresh approach to conflicts and their control, retaining at the same time certain rehabilitative goals”¹ ([Gavrielides 2007](#)). In the literature, there is consensus that restorative justice practices consist of: direct and indirect mediation, family group conferences, healing/sentencing circles and community restorative boards (Walgrave and Bazemore 1998; Crawford and Newburn 2003; Gavrielides 2007).

¹ Despite a plethora of definitions and studies on the meaning of RJ, there is still conceptual ambiguity (Mackay 2002; Johnstone 2002; Gavrielides 2008).

THE RESTORATIVE JUSTICE MOVEMENT

5. Over the last forty years, restorative justice has caused a phenomenon of global interest stemming from a number of different stakeholders within the criminal justice system. The increasingly fast pace in which different theoretical claims and normative aspirations have been generated to support restorative justice practices has been unprecedented.
6. Since the early 1970s, restorative justice has been discussed in many international, regional and national fora, and attracted the interest of many commentators, reformers, policy makers and researchers (Braithwaite 2002a; Gavrielides 2007). These debates have been complemented with numerous evaluations of restorative practices (Kilchling 1991; Umbreit and Greenwood 1997; Miers 2001; Miers et al 2001; Wilcox and Hoyle 2004). Nevertheless, restorative justice continues to remain in the shadow of the law and used mainly for minor crimes or only within the juvenile justice system. Consequently, many commentators noted: “The evidence on restorative justice is far more extensive, and positive, than it has been for many other policies that have been rolled out. Restorative justice is ready to be put to far broader use . . .” (Sherman and Strang 2007: 4). **We remain sceptical with what drives public policy and although the current political interest is welcomed, we call on RJC and the restorative justice movement to remain cautious and true to the values underlying the restorative practice and ethos.**
7. There is consensus in the literature that there is still a long way to go before the restorative justice movement can safely claim that its practitioners, researchers and policy makers are all moving in the same direction. At the same time, the new UK coalition government has expressed its keen interest in restorative justice. On the 7th December 2010, the Ministry of Justice published the “[Breaking the Cycle](#)” Green Paper announcing its intentions for key reforms in the adult and juvenile sentencing philosophy and practice. This consultation set out the resulting proposals which aim to break the destructive cycle of crime and protect the public, through more effectively punishing and rehabilitating offenders and reforming the sentencing framework (Ministry of Justice 2010). IARS has produced two separate responses to this consultation one of which focuses exclusively on restorative justice. This can be downloaded from the IARS website (www.iars.org.uk) or by clicking [here](#) Our hopes and fears regarding the MoJ initiative have been published in this document.
8. Restorative justice is not a panacea and the majority of the evidence would suggest that it should be used only as a voluntary and complementary process. One practitioner who submitted evidence to our Call said: “When restorative justice works, it works really well, but that is not always the case”. Account will also need to be taken into the power battles that are often played in the mediation room as well as the ability of restorative justice to include specific communities of interest.
9. For instance, a practitioner working in the field of autism said to us: “Given the obvious promotion of RJ in the Green paper ‘Breaking the Cycle’, it is apparent that use will increase within the Criminal Justice Sector. That said there are occasions

when it is not appropriate (until such time as adaptations have been found, tested and piloted) and that is with people on the autistic spectrum (AS). Due to their inability to show empathy, poor central coherence meaning an inability to predict future consequences and their real problems with communication and social interaction.”

10. Their submission continued to say: “I fear that practitioners with no understanding of the condition will attempt RJ techniques with people with AS committing low level offending with potentially disastrous results, namely; increasing anxiety, stress and fear in the AS individual and potentially confusing them due to their literal interpretation of language and the issues mentioned above. I am aware that RJ interventions have been used successfully with AS children in school and care home settings but this is where the RJ practitioner has a long standing relationship developed with the individual and fully understands their particular behaviours and level of understanding. This will not be the case in a criminal justice setting”.
11. Furthermore, concurrently with the increase of numerous volumes of theoretical debates on restorative justice, fears have been created that these might not be in accordance – or at least at the same speed – with the practical development of the restorative notion. More importantly, they seem to pay none, or little attention to the alarming warnings principally coming from experienced practitioners in the field, who become increasingly concerned about a developing gap between the well-intended normative understandings of restorative justice and its actual implementation. I have argued elsewhere that the focus of RJ researchers should move away from arguments on the paradigm’s superiority and towards an understanding of what really works and when it works. “RJ might not be a ‘bed-time story’ any more, but is not a panacea for all the deficiencies of the current criminal justice system either” (Gavrielides 2007: 9). Despite the volumes of RJ literature, I continue to be “sceptical of hasty findings that present RJ to be a fully-fledged criminal justice alternative, disregarding the extant data literature and the evidence which is still accumulating. More importantly, it has to be acknowledged that normative accounts can never be fully reflected in practice” (Gavrielides 2007: 9). We call on the RJC to bear attention to this evidence and work with other keen stakeholders to help bridge the identified gaps in the field.

THE PRACTITIONER REGISTER

12. We recognise the need, and indeed the opportunity, to organise and professionalise the UK's restorative justice movement. There is a good body of evidence suggesting that restorative justice practices are found in all sorts of contexts (community, prisons, schools, work place etc), but without being mapped, evaluated or appreciated. This often means that practitioners receive little infrastructure support and recognition. It also means that they continue to operate in the shadow of the law and with very little funding.

13. We also acknowledge the need to raise and formalise, to some extent, the quality criteria of a restorative justice practice. We have published several research reports on the issue of restorative justice standards and accreditation while Gavrielides' ["Restorative justice theory and practice"](#) HEUNI edition covers this matter extensively. We also held several seminars on the matter including the Expert Meeting November 2010 in partnership with the [International Centre for Comparative Criminological Research](#) (ICCCR) at Open University. Over 40 experts in the restorative justice field attended the seminar. The Home Office, Youth Justice Board, Victim Support, Ministry of Justice, Prison Reform Trust, Probation and several universities were among the organisations represented. The event report can be downloaded from the IARS website or by clicking [here](#)

14. We have some real concerns about the proposed Register as we have evidence to believe that despite good intentions:
 - a) it may disengage and upset practitioners who are already involved in the restorative justice movement
 - b) it may be seen as a "top down" approach that does not relate to the "bottom up" structure and vision of the restorative justice notion
 - c) it may put financial constraints to practitioners, particularly voluntary mediators, and create unfair competition between those who can afford paid membership and those who can't
 - d) it may create a "closed shop" of likeminded professionals and exclude the diversity and richness that currently characterises the movement and its practice.

15. The practitioners in the restorative justice movement are RJ's heart and soul. Gavrielides argued that one of the biggest strengths of RJ is the passion and commitment that exists among mediators and RJ practitioners (Gavrielides 2007). Braithwaite also warned that if this passion is tampered with, there is real danger that RJ may lose its authenticity (Braithwaite 2002). IARS continues to be sceptical about top down approaches that attempt to define the future of RJ in the UK. We also remain dubious about the reasons that often drive current legislative and institutional proposals for a change in the philosophy and practice of sentencing and crime control.

16. For instance, one practitioner said to us: “This [the register] could potentially cause problems for training providers and existing practitioners who have already completed their training. You would also need to consider what legal restrictions are placed on non-members and what the benefits of membership are. I personally don’t think a register (or membership of one) would be worth the paper it’s written on. **Restorative justice is something that is delivered locally to local people in tailored ways for individuals and communities.** Sharing best practice and ideas would be a far more effective ways of unifying the practice. **A directory of services would be worth considering so that people are able to find services in their areas.** Before any kind of central register is held, RJ practice should be standardised and rolled out more broadly across the country. We are a long way from being in this position”.
17. The following statement is also relevant: “**I feel it will be more productive to improve the standard of RJ delivery by having national workshops to share best practice.** The implementation of a register will otherwise run the risk of being (perhaps unfairly) criticised for being a cynical money-making idea. I am aware that has happened in another discipline where the register for professionals was terminated due to the exposal of a rather cynical agenda on the part of its founders and the training providers”.
- 18. Over the last 10 years, IARS has presented evidence that witness a power battle within the restorative movement. This evidence has largely been ignored by RJC despite being used in academic and policy discussions in Europe and internationally.** This evidence included not only different professionals (e.g. practitioners vs theoreticians), but also types of practices (e.g. mediation vs family group conferencing) as well as fundamental restorative justice principles (e.g. voluntariness vs coercion). Although constructive debates are always essential for the advancement of criminal justice doctrines, it is IARS’ conclusion that if the restorative movement does not restore its own power struggles, the consequences will be severe. **We believe that the role of RJC should primarily be to provide a strong and independent voice for the restorative justice movement. This should be democratic and strong.**
- 19. Linked to the above is our concern that due to the limited capacity within RJC, the proposed Register will absorb all organisational capacity and as a result the much needed voice and representation service to RJ practitioners will disappear.**
20. As an independent think-tank, IARS has presented evidence that call for more infrastructure support for restorative justice practitioners. An independent, bottom up voice is needed if government and policy makers are to proceed with an evidence based strategy that has the buy in from communities and the restorative justice movement. We hope that our evidence and recommendations are read in a constructive and positive way. We have always offered our help and indeed are keen to work in partnership with likeminded organisations and individuals to achieve our shared vision and charitable mission.

OTHER RELATED COMMENTS

Implementing restorative justice in a punitive paradigm

21. There is a good body of evidence suggesting that restorative justice can generate a number of benefits for the victim, the offender and the community (e.g. victim satisfaction, victim material and other compensation, reduction of reoffending, offender satisfaction, community impact). However, IARS research participants pointed out that once introduced into the current criminal justice system, restorative justice poses some serious threads. Particular attention is given to the relationship between restorative justice and human rights (e.g. risks to suspects, double jeopardy, re-victimisation, power imbalances, risks to child defendants, principle of proportionality).

Standardisation vs innovation

22. The issue of accreditation and standards has already been raised in this response. Some IARS research participants asked whether accreditation in the field of restorative justice may be against innovation. Some practitioners reminded researchers that restorative justice is a bottom-up, community-led approach to conflict resolution. After much debate, there is consensus that innovation, standards and accreditation are complementary. However, practitioners stress that restorative justice is community born and that this must be accommodated. Top down approaches will fail. It is recommended that practitioners must be involved in formulating qualifications. Finally, it is not good to have people with qualifications but no practical experience while it would be a mistake to exclude those with experience but no formal qualifications.

RJ practitioners and researchers: a relationship break down

23. We have evidence to believe that a number of practitioners in restorative justice see researchers 'feeding' on their case-work and then dictating how they should do their work. Ben Lyon pointed out at the IARS November Expert Seminar on restorative justice that there is an imbalance that urgently needs to be addressed and that research should be carried out only into those areas which support original hypothesis. Conversely, practices which haven't been properly researched should be condemned by policy makers and funders. Lyon warned against arriving at a state of orthodoxy which threatens the growth of knowledge. There was a consensus that there is a need for practitioners to publish and promote their work and be involved in teaching and supervision. Research in partnership needs to be pushed even further and indeed encouraged by government. There is a need to bring together practitioners and agencies; more networking within the field is needed.

The restorative justice academic and research agenda is narrow

24. Prof. Johnstone argued at the IARS November Expert Seminar on restorative justice that the extant literature on restorative justice can be grouped into three broad categories: Exposition (overlap with advocacy), scientific Evaluation and (internal / external) critiques. Johnstone argued that researcher should not just focus on matters of immediate policy and practical relevance. Instead, he proposed a broader academic agenda and to become more detached. He also pointed out the need for distance between goals of restorative justice and goals of academic research. He asked: What is the political and cultural character of restorative justice and how would society be affected by the spread of the restorative justice ethos? Johnston proposed to look at the rise of restorative justice in a broader context and in tune with key aspects of the cultural mainstream. There is a need, he said to explore further the political and cultural contexts which underpin and shape the implications of restorative justice. He concluded by warning that true progressive implications of restorative justice cannot be taken for grants nor read off from intentions.

Policy gaps in the implementation of restorative justice

25. Graham Robb, YJB, argued at the IARS November Expert Seminar on restorative justice that those involved in restorative justice have not yet had sufficient argument and analysis of what the movement has to contribute to the wider narrative in a. Wider social goals b. Child development c. Understanding the dynamics of communities d. Leadership of institutions, communities and groups. Robb pointed out several dangers of modern culture such as the encouragement of the view that to be happy you have to be wealthy and beautiful (consumerism), the encouragement of a violent model of human relationships and physical inactivity and unhealthy living. He asked how does the restorative justice discourse position itself in relation to wider social goals? Robb argued that is easy to look at restorative justice as being around one problem. A narrow analysis of the problems in children's lives misses the chance to examine the complexity of the problems they face. He concluded by saying there is a need to place it in an overall objective of improving the 'every child matters' outcomes in Britain.

Genuine investment in restorative justice

26. This response has already raised concerns around the factors that drive social policy and criminal justice reform. A number of participants at the IARS November Expert Seminar on restorative justice made reference to the government's past commitment for a national strategy on restorative justice. Specific reference was made to the 2003 Home Office consultation document on the government's strategy on restorative justice (Home Office 2003). The debate and promises that were made at the time raised the restorative justice movement's expectations (Gavrielides 2003). Soon after the publication of the draft strategy and despite the plethora of evidence it collected through submissions from individuals and organisations, the flurry of activity and interest in restorative justice waned. The restorative justice unit that was set up within the Home Office was dismantled and the majority of the strategy's recommendations were left in draft format.

27. In 2010, the House of Commons Justice Committee said: “We are surprised by the cautious approach that the Government has taken towards RJ but we welcome its current commitment to revive the strategic direction in this area. We urge the Justice Secretary to take immediate action to promote the use of RJ and to ensure that he puts in place a fully funded strategy which facilitates national access to RJ for victims before the end of this Parliament” (Justice Committee 2010). In drawing up a strategy for a wider implementation of restorative justice, commitment needs to be made for proper investment into the infrastructure needed by practitioners. We would like the RJC to focus on this gap and provide an independent, strong voice for the restorative justice movement. To this end partnerships will need to be created.

ANNEX A: EVIDENCE SUBMISSIONS

Organisations & Networks

Autism West Midlands	Salford Council
Clinks	Kirklees Council
The Stadium Business & Leisure Complex	YMCA England
The Mediation Service	Youth Offending Teams
Winston Churchill Memorial Trust	
IARS Youth Policy Response Group	

Young people:

Meghan Bidwell	Steven Sutton
Ben Hickey	Liam Grove
Charled Sealy	Charled Malton
Kristian Bagger	Charlotte Hempstead
Lily Pinder	Ariane Moshiri
Michael Clark	Stratis Linnios
Sam Page	Nick Murray
Justin M	Charley Bird
Lorn Wright	Joseph Folwell
Reece Fletcher	Danni Briggs
Alex Amileke	

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