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## EVALUATION OF THE PRE-SENTENCE RJ PATHFINDER

February 2014 to May 2015

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# Summary

This report presents the findings of an evaluation by the Institute for Criminal Policy Research of a pre-sentence restorative justice pathfinder programme which was developed by Restorative Solutions and implemented by Restorative Solutions in partnership with Victim Support.

Restorative Justice (RJ) is intended to help those who have been harmed by the behaviour of others to describe the harm and how it has affected them; and to help those who caused the harm to understand and take responsibility for their actions. RJ can take place at different points in the criminal justice system and is often associated with the reintegration of offenders at the post-sentence stage or as a diversionary option at the pre-charge stage. Recently, there has been an emerging policy interest in implementing RJ at the pre-sentence stage; that is, after the point at which an offender is convicted (having pleaded guilty) but prior to sentencing. A statutory basis for pre-sentence RJ was established by the 2013 Crime and Courts Act which allows deferral of sentencing for the purposes of an RJ intervention.

Restorative Solutions received funding from the Underwood Trust and the Ministry of Justice to develop a 12 to 15-month programme offering pre-sentence restorative justice to victims and offenders in ten Crown Courts in England and Wales. The main features of this model of pre-sentence RJ were that it adopted a 'victim-focused' approach; it focused on serious acquisitive and violent cases which were due to be sentenced in the Crown Court; it situated RJ within the prosecution process; and it recruited volunteers to act as the facilitators of RJ activities. The pathfinder was implemented in ten Crown Courts in England and Wales. Eight of the ten sites went live in February and March 2014; while the ninth site launched in November 2014 and the tenth in April 2015. (Data from the tenth site were not included in the evaluation.)

Many RJ schemes have been initiated in England and Wales over the past two decades, but these have frequently underperformed in terms of take-up and numbers of activities completed. A key question addressed by this pathfinder is whether locating RJ at the post-conviction, pre-sentence stage could help to embed RJ principles and practice in the criminal justice system and thereby ensure that RJ becomes a mainstream and routine activity.

## Process and numbers

The specific processes of pre-sentence RJ that were implemented in the pathfinder sites differed between the areas and evolved over time in order to adapt to challenges encountered. In the most generic terms, the following was the approach to implementing pre-sentence RJ which all sites adopted:

- In-scope cases were identified from court lists and/or from local police systems.
- Victim details were accessed directly or indirectly from local police systems.
- The project manager or a volunteer facilitator contacted the victim of an in-scope case after the suspect had been charged and prior to the suspect's plea.

- If the victim expressed interest in RJ, the project manager contacted the defence lawyer and/or defendant shortly before or at the time of the plea hearing, to discuss the possibility of pre-sentence RJ.
- If the defendant entered a guilty plea and was willing to consider participating in RJ, an adjournment was requested from the judge, or court staff were requested to arrange an administrative adjournment.
- Where the court agreed to the request, sentencing was adjourned for six weeks for the RJ intervention to proceed.
- Subject to the continued engagement of both victim and offender and satisfactory risk assessment, the RJ activity was undertaken during the adjournment period.
- After completion of RJ, a report on the activity and any outcome agreement was submitted with the pre-sentence report to the court.
- In passing sentence, the court *might* choose to take the RJ and outcome agreement into account, but this would be entirely a matter for the individual judge.

In each site, the above process was directed by a full-time project manager; but its implementation was dependent on the active involvement of local criminal justice agencies including the police, court staff, the judiciary, probation, the Crown Prosecution Service, defence lawyers and prisons.

The data received by the evaluation reveal that, across all sites, a total of 55 pre-sentence RJ conferences and 38 alternative RJ activities were undertaken over the monitoring period (March 2014 to the end of the first week of May 2015). These conferences and other activities were the end-point of a complex process which began with the identification of victims in cases defined as within the scope of the pathfinder. A total of 2,273 victims were identified as such; of this number, contact was successfully made with 1,201, of whom 446 expressed an initial interest in RJ. The defendant pleaded guilty in 179 of the cases with interested victims, which resulted in 147 adjournments for RJ, which in turn resulted in the 55 conferences and 38 other RJ activities.

The overall number of completed RJ activities was lower than had been anticipated at the outset of the pathfinder; this reflects a number of significant challenges to implementation (discussed below). However, it is notable that most 'attrition' of potential RJ cases occurred at the earlier stages of arranging RJ. Of cases where there was both an interested victim and a guilty plea, the large majority (83%) proceeded to an adjournment – indicating that support for the project within the courts was well-established. And, once an adjournment had been granted, a pre-sentence RJ activity was successfully completed in most cases, despite the demands of delivering RJ within the limited adjournment window. There was evidently a large appetite for pre-sentence RJ among offenders, who rarely failed to engage following an adjournment.

# Summary

## Victim and offender perspectives

Feedback forms completed by victims and offenders who participated in the pathfinder, and evaluation interviews conducted with victims and offenders, present a picture of overwhelming support for pre-sentence RJ among those who participated in it.

Of 57 conference participants who completed the feedback form, 44 (77%) ranked their experience of the conference as 9 or 10 on a scale of 1 to 10; 54 (95%) stated that the conference had affected them in a positive way; and all but one said they would recommend participating in RJ to others. All 11 offenders and offender supporters who were interviewed for the evaluation talked in strongly positive terms about their RJ experiences; and 20 of 24 victim interviewees were wholly or largely positive, while three expressed mixed views and one was negative. Many of the victims spoke of having been driven to participate in RJ by a sense of moral or civic duty and an urge to offer help to the offender, and many offenders were evidently moved by this. Offenders and victims alike spoke of a sense of relief or of the lifting of a weight following their participation in RJ.

The results of the evaluation suggest that there are three main ways in which RJ at the pre-sentence stage offers particular benefits. First, it promotes the active engagement of both victims and offenders in the criminal justice process: a process within which they are otherwise frequently silenced and marginalised. Secondly, it provides victims with answers, sooner rather than later, to their questions about the offence. These answers can help victims to address their worst fears (for example, where they are offered the reassurance that they had not been targeted, or are helped to see the offender as a flawed human being rather than some kind of faceless threat) and to start the process of 'closure' or 'moving on' from the offence. Thirdly, pre-sentence RJ potentially provides an early and added impetus for offenders to start addressing their own patterns of harmful behaviour. At its best, pre-sentence RJ has the capacity to harness the energy of the raw emotions that both victims and offenders – in circumstances that are still uncertain or in flux – bring to their encounters with each other.

## Implementation

A number of challenges were encountered in the implementation of the pathfinder, among which was the local sites' limited access to data (particularly, victim contact details) in the initial phases. Data-sharing problems of this kind are a common feature of RJ projects; and, in this programme, were exacerbated by its non-statutory leadership. Eventually, access to the necessary data was secured in all sites, through a range of local arrangements with the police. Other barriers to implementation included the fact that fewer cases than had been anticipated fell within the parameters of the project. An increase in sexual offence cases appearing before the Crown Court reduced the numbers of cases defined as 'in-scope' for the purpose of the pathfinder; while relatively high rates of not guilty pleas ruled out a substantial proportion of cases which would otherwise have been in scope.

Throughout implementation of the pathfinder, there were concerns about the practice of approaching victims about possible involvement in RJ before the defendant had pleaded guilty. This posed the risk of 'wasted time' being put into preparatory work with victims whose cases could not proceed because of a not guilty plea by the defendant; there were also concerns about possible distress caused to victims whose hopes of participating in RJ were first raised and then dashed. Another contentious issue was that of whether, and in what way, participation in pre-sentence RJ could affect an offender's sentence. The message that participation in RJ might but would not necessarily impact on sentence was not always understood by victim and offender participants. Varying expectations or perceptions of impact on sentence among victims, offenders and indeed practitioners sometimes provoked disappointment or frustration.

Another concern that arose periodically during the pathfinder was that adjournments for pre-sentence RJ would cause unjustifiable delays to the judicial process – at a time of policy emphasis on achieving 'swift and sure justice'. This did not prove problematic within the pathfinder itself, as it had been agreed in advance with the Ministry of Justice and HMCTS that any impact on participating courts' performance targets on timeliness would be disregarded. However, the implications for 'swifter justice' of wider roll-out and larger-scale implementation of pre-sentence RJ remained a concern.

## Project management, partnership and facilitation

Each pathfinder site had a full-time, salaried project manager responsible for oversight and day-to-day management of pre-sentence RJ. Project managers also played a critical role in fostering multi-agency support for, and involvement in, the pathfinder – and, for the most part, were successful in this regard. Some difficulties in partnership working did arise in most sites, and tended to centre on the non-statutory nature of the pathfinder and ambiguities over its scope in the initial stages. Within some partner agencies (particularly, but not only, within some local police forces) questions were raised about the value of RJ at the pre-sentence stage. Inevitably, the rapidly changing policy landscape of the criminal justice system impacted on agencies' responses to the pathfinder. Nevertheless, the majority of local agencies demonstrated a strong and active level of engagement with the initiative. A clear demonstration of this was the fact that, after initial problems and delays, effective data-sharing arrangements were put in place in all sites. Well-attended multi-agency stakeholder meetings were held regularly in several sites and helped to promote and drive forward the initiative.

Across all sites, the pathfinder trained over one hundred volunteer facilitators from a range of occupational backgrounds. The three-day training course attended by facilitators was generally very well received; however, there were some unmet training needs in relation to the specific demands of RJ facilitation at the pre-sentence stage, and the preparatory work that facilitators are required to carry out with victims and offenders. Furthermore, while facilitators derived great satisfaction from their work on specific cases, there was evidence of a gap between some facilitators' expectations of their role and the reality.

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## Looking ahead: future development of pre-sentence RJ

Pre-sentence restorative justice offers significant benefits to victims and offenders. It can support engagement of both parties with the criminal justice process; provide swift resolution of victims' questions and fears; and lend a sense of urgency to offenders' reflections on their behaviour. On the other hand, RJ at the pre-sentence stage will be too early for some victims and offenders who are vulnerable; and there are various practical and legal constraints on the delivery of RJ between conviction and sentencing.

Notwithstanding the positive outcomes achieved by this pathfinder, the challenges it encountered throughout implementation suggest that pre-sentence RJ is, in itself, unlikely to provide the desired 'tipping-point' to a situation in which RJ practices and principles are fully embedded and mainstreamed within the criminal justice system. More promising, however, is the prospect of making pre-sentence RJ available as an integral part of wider, end-to-end, RJ provision. Advantages of integrating pre-sentence within wider RJ include:

- It permits a sensitive and flexible approach such that victims and offenders suited to RJ at pre-sentence stage can avail of the benefits this offers, while those for whom pre-sentence RJ is ruled out by practical or legal barriers, or by their own vulnerability, can be referred for other types of RJ intervention.
- Shared expertise, training and policies and procedures across all components of a wider RJ service will enhance the quality of service delivery.
- Within a local area, the data-sharing and other partnership arrangements for pre-sentence RJ can be embedded within wider structures, thus avoiding duplication of effort and ensuring consistency in multi-agency practices on RJ.
- A single pool of trained facilitators can be flexibly deployed across the different parts of a generic RJ service, in accordance with demand and availability.
- Efforts to build awareness and understanding of RJ within local communities can benefit from pooled resources and expertise, and from the high profile that a wide-ranging, multi-faceted RJ service can achieve.
- There are opportunities for joint commissioning of integrated RJ provision by PCCs and offender-based services.

## Other considerations for the future development of pre-sentence RJ also include the following:

- The requirement that one or two agencies (whether statutory or non-statutory) have responsibility for driving the work forward, with direct input from a range of key criminal justice partners including the police, courts and judiciary, Crown Prosecution Service, probation, prisons and defence lawyers.
- The need for careful consideration and resolution of the linked questions of when to make the initial approach to victims about the possibility of pre-sentence RJ, and when to request that the courts adjourn sentencing.
- The importance of developing and implementing a clear approach to managing participants' expectations and perceptions of any impact on sentence of an offender's involvement in pre-sentence RJ.
- The recognition that, while local arrangements for RJ provision are likely to differ substantially between areas, national guidance on designing and implementing initiatives is likely to have an important role to play.





# 1. Introduction

This report presents the findings of an evaluation by the Institute for Criminal Policy Research (ICPR) of a pre-sentence restorative justice pathfinder programme developed by Restorative Solutions and implemented by Restorative Solutions in partnership with Victim Support.

## 1.1 Restorative Justice

The development and implementation of restorative justice (RJ) initiatives within criminal justice systems across the world has expanded greatly over the past two decades. RJ is:

**a process whereby the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future (Marshall, 1999: 5).**

This definition was expanded by Rossner (2014: 9), who explained that the 'common aim' of restorative justice initiatives is to 'offer an alternative to the formal adversarial system so that families and communities can play a direct role in creating their own justice.'

RJ is intended to help those who have been harmed by the behaviour of others to describe the harm and how it has affected them; and to help those who caused the harm to understand and take responsibility for their actions. A process of 'reintegrative shaming' is often regarded as central to RJ: accordingly, disapproval of the offender's actions is clearly communicated while the offender's essential humanity and membership of the community are asserted.<sup>1</sup> RJ activities take a wide variety of forms, and include entirely informal processes. Victim-offender conferences are the best known formal type of RJ; these involve meetings between victims (or victim representatives) and offenders, together with appropriate facilitators, for discussion of the harms caused by the offending and the means by which amends can be made.

Restorative justice can take place at different points in the criminal justice system and is often associated with the reintegration of offenders at the post-sentence stage or as a diversionary option at the pre-charge stage. RJ can also be carried out entirely outside the criminal justice systems: for example, as a means of resolving conflict in schools or other institutions. Across England and Wales, there have been many attempts to establish RJ schemes, and the implementation and impact of RJ initiatives have been subject to various forms of evaluation.<sup>2</sup> The past ten years, in particular, have seen RJ become an increasingly prominent theme within criminal justice policy.<sup>3</sup> There has also been an emerging policy interest in implementing RJ at the pre-sentence stage; that is, after the point at which an offender is convicted (having pleaded guilty) but prior to sentencing. A statutory basis for pre-sentence RJ was established by the 2013 Crime and Courts Act which allows deferral of sentencing for the purposes of an RJ intervention; supporting guidance on this was issued by the Ministry of Justice (2014b).

Notwithstanding the policy commitment to RJ and the plethora of RJ schemes that have been set up in England and Wales, a recurring theme is that many of these schemes have underperformed, in the sense that the numbers of completed RJ activities have been disappointingly low. Reporting on an RJ 'Capacity-Building Programme' delivered by Restorative Solutions, which aimed to develop capacity within probation and prisons to conduct RJ conferences, Wigzell and Hough note that this programme, like many that preceded it, produced far fewer conferences than had been projected. Accordingly, Wigzell and Hough pose the question: 'what are the key preconditions for embedding RJ principles and practice in the justice system – for, clearly, it has not proved easy to date' (2015: 62).

One of the key issues addressed in this current report is whether locating RJ at the post-conviction, pre-sentence stage can help to embed RJ principles and practice. Could RJ become a more routinized, less seemingly extraneous or exceptional process where it has the weight of the sentencing court behind it, and it is undertaken *during* (rather than instead of or after) the prosecution process? In fact – to foreshadow the evaluation findings that are discussed over the course of this report – pre-sentence RJ, while offering many particular benefits to victims and offenders, has proved challenging to implement. Pre-sentence RJ, in and of itself, appears unlikely to provide the answer to the question of how to make RJ 'a viable and fully embedded option in the justice system' (Wigzell and Hough, 2015: 63); and it seems more likely that the answer lies in integrated provision of RJ, within which pre-sentence work is a core, but not the sole, component.

## 1.2 The pathfinder

Restorative Solutions, in partnership with Victim Support, received funding from the Underwood Trust and the Ministry of Justice to develop a 12 to 15-month programme offering pre-sentence restorative justice to victims and offenders in ten Crown Courts in England and Wales. This model of pre-sentence RJ had several distinctive features including:

- Adopting a 'victim-focused' approach, which involved placing the needs of victims at the centre of the process;
- Focusing on serious acquisitive and violent cases that were due to be sentenced in the Crown Court;
- Situating RJ within the prosecution process whereby the court granted an adjournment for RJ at the point at which an offender was convicted (having pleaded guilty) but prior to sentencing;
- Recruiting volunteers to act as the facilitators of RJ activities.

It was intended that victim-offender conferences would be the main type of RJ activity delivered by the pathfinder; and that, at each conference, the participants would collectively agree a set of actions – the conference 'outcome agreement' – to be undertaken by the offender in order to repair the harms caused

<sup>1</sup> The theory of reintegrative shaming was developed by Braithwaite (1989; 2002).

<sup>2</sup> See, for example, Shapland, J. et al. (2007); Shapland, J. et al. (2008); Wigzell, A. and Hough, M. (2015); Turley et al (2014).

<sup>3</sup> See, for example, Ministry of Justice (2012a), Ministry of Justice (2013a) Ministry of Justice (2014a)

# 1. Introduction

by the offending. Alternative forms of RJ activity – primarily, shuttle mediation and the provision of letters of apology from offenders to victims – were to be made available in cases where a conference was inappropriate or impracticable.

Delivery of the pathfinder was undertaken by Restorative Solutions with support from Victim Support. Two Restorative Solutions programme managers directed the work, and oversight was provided by an Executive Group comprising representatives of Restorative Solutions, Victim Support, the Judicial Office, the Ministry of Justice, HM Courts and Tribunals Service, the National Offender Management Service, and the Restorative Justice Council. Day-to-day operations were directed by an Operations Group comprising representatives of Restorative Solutions and Victim Support. In each of the pathfinder areas, a project manager was appointed to take the project forward with the assistance of trained volunteer facilitators whose role was to prepare victims and offenders for RJ activities; facilitate RJ activities; and undertake any follow-up work with the RJ participants.

The pathfinder was implemented in ten Crown Courts in England and Wales. In addition to this, two of the pathfinders were extended to local magistrates' courts in the course of the programme, and one pathfinder (the last one to go live) was launched in the local magistrates' court simultaneously with the Crown Court.

The first pathfinder went live in February 2014, with seven other sites launching in March. The ninth site was launched in November 2014 and tenth in April 2015; both of these latter pathfinders are still in operation at the time of writing. *This evaluation focuses on nine of the ten pathfinder sites; data for the tenth have not been collected due to the late stage at which it went live.*

## 1.3 The evaluation

ICPR was commissioned by Restorative Solutions to conduct a detailed process evaluation of the pathfinder. Prior evaluations of RJ initiatives have shown that, where properly implemented, these initiatives have tended to have positive results in terms of victim and offender satisfaction and, to some extent, reduced re-offending. These studies have also shown, however, that the 'devil is in the detail', and that effective implementation of RJ is often hard to achieve. In recognition of the difficulties associated with the implementation of RJ, and the fact that implementation at the pre-sentence stage was likely to pose particular challenges, the main aims of this evaluation were to: chart and assess the processes developed and put into practice in each site; identify the barriers encountered and how these have been addressed; and assess and review project outputs. Additionally, we have sought to assess whether and in what ways the experience of RJ at the pre-sentence stage offers particular benefits for victims and offenders, and/or poses particular risks.

The evaluation utilised a mix of methods to achieve these aims, including site visits, interviews and observations, and the collation of monitoring data and internal project forms. The following evaluation activities have been undertaken across the nine pathfinder sites:

- Analysed facilitator training feedback forms (n=117) and mentoring feedback forms (n=88)
- Collated and analysed monitoring data from each site; these data were collected by project managers and emailed to evaluators on a monthly basis
- Carried out visits to all sites for the purpose of conducting interviews and attending multi-agency meetings, facilitator mentoring days and facilitator meetings
- Conducted three rounds of interviews with project managers at the initial, mid-point and final stages of operation
- Interviewed 47 criminal justice practitioners (see Table 1.1 for a full breakdown of practitioner interviews)
- Interviewed members of the pre-sentence RJ Executive Group (n=8)
- Obtained feedback from a total of 27 volunteer facilitators through interviews, focus groups and email correspondence
- Analysed facilitator write-ups of conferences (n=57) and alternative RJ activities (n=35)
- Analysed feedback forms completed by RJ participants (n=57)
- Interviewed 24 victims, nine offenders and two offender supporters who had participated in RJ activities
- Observed six RJ conferences across five pathfinder sites.

**Table 1.1: Breakdown of practitioner interviews by role**

Role	No. interviewed
Crown Court staff	12
Crown Prosecution Service staff	2
Defence representatives	2
Judges	6*
Local Criminal Justice Board staff	1
Police representatives	8
Prison officers	3
Probation officers	6
Representatives from third sector agencies (inc. Victim Support)	7
<b>Total</b>	<b>47</b>

\*A further judge provided written feedback in the form of a report emailed to the evaluators (and some other stakeholders).

# 1. Introduction

This evaluation report begins by providing an overview of the pre-sentence RJ activities undertaken by the nine pathfinder sites. Chapter 3 looks specifically at the views of victims and offenders who participated in pre-sentence RJ conferences or alternative RJ activities; following this, the implementation of the pathfinder is examined in detail in Chapter 4. The penultimate chapter considers the place of pre-sentence RJ within wider RJ provision, while the final chapter draws conclusions and looks to the future of pre-sentence RJ.

Detailed descriptions of eight cases which proceeded to an RJ conference or other RJ activity are interspersed throughout the report in order to illustrate the various issues raised. The case studies draw on interviews with participants, facilitators and project managers, as well as observations of the conferences by the evaluation team and provide a sense of the diversity of individual responses to RJ, and the diversity of the circumstances in which RJ takes place.



## 2. Overview

### Case 1 (C16): RJ: 'a civic duty', like jury service?

The offence was a domestic burglary involving the theft of items of high sentimental, but low monetary, value, committed by a homeless teenage asylum seeker from central Asia. The victim, a middle-aged woman with a strongly developed sense of civic duty, had recently moved into a new flat ('a safe haven for a fresh start') following the death of her husband who had accumulated debts which she had had to re-pay by selling valuable possessions.

#### A sense of resolution

In the wake of a highly distressing episode for the victim, experience of the RJ process had proved cathartic, and had enabled her to appreciate, and come to terms with, what she had lost:

*I didn't really realise this until I did the RJ thing, that since the burglary my place had stopped being the place I loved, and that the fresh start that it symbolised for me had gone.*

But this realisation, combined with the emotional support provided by the RJ team, and a close friend who attended the RJ conference as her supporter, meant that she was now able to move on.

*I feel over it now, this feeling came to me during the RJ, that I was starting to have the desire to get things done again, and I've started to re-decorate.*

For the victim, involvement in RJ at an early, pre-sentence stage was beneficial. It had helped her to 'understand what was going through his mind' and gave her a sense of 'closure'. She concluded that while some who are deeply traumatized by their victimisation might not be ready for RJ at this stage, 'generally, I think that as soon as possible is really good'.

#### RJ with a purpose

The victim also gained satisfaction from feeling that by taking part in RJ, she had fulfilled her 'civic duty'. She 'wanted to help this young man'; and saw the fact that the offender was homeless as a particular impetus, given that she was actively involved in campaigning for a homelessness charity.

*I wanted to meet him and see why he did it, so to me it was akin to jury service...I really thought if we can stop people acting in a criminal manner, we should do all we can to do that.*

She also wanted him, during any prison sentence, to be able to use his time productively, by improving his education and particularly learning English. In the conference outcome agreement, the offender committed to this, but it failed to happen as, in the event, he served only a brief period in prison before being deported. No further news was received by the victim, leaving her feeling thwarted.

## 2. Overview

This chapter provides an overview of the pre-sentence RJ activities that were undertaken across the nine pathfinder sites included in the evaluation. First, we briefly outline the process that was implemented; we then detail the numbers, types and outcomes of RJ activities conducted; thirdly, we present data on 'attrition': that is, the different stages of the RJ process at which cases originally identified as within the scope of the project subsequently fell outside it. The final part of the chapter considers the costs of pre-sentence RJ. The data presented in this chapter largely derive from the monitoring forms submitted by project managers to the evaluation.

### 2.1 Process

The specific process of pre-sentence RJ that was implemented in the pathfinder sites differed between the areas. Furthermore, in many sites this process evolved over time as challenges were encountered – particularly in relation to the project's access to victim contact details, and concerns about whether it was appropriate to approach victims prior to there being an indication that the defendant was going to plead guilty. The more specific process and implementation issues are discussed in Chapter 4. In the most generic terms, the following was the approach to implementing pre-sentence RJ which all sites adopted:

- In-scope cases were identified from court lists and/or from local police systems.
- Victim details were accessed directly or indirectly from local police systems.<sup>4</sup>
- The project manager or a volunteer facilitator contacted the victim of an in-scope case – usually by telephone – after a suspect had been charged and prior to the suspect's plea.
- If the victim was willing to consider involvement in RJ after the initial phone conversation, a facilitator would arrange a meeting with the victim.
- If, on meeting the facilitator, the victim expressed interested in pursuing RJ at the pre-sentence stage, the project manager would contact the defence lawyer and/or defendant shortly before or at the time of the plea hearing and explain the possibility of RJ.
- If the defendant entered a guilty plea and was willing to consider participating in RJ, an adjournment would be requested from the judge – usually by the project manager, or sometimes by a facilitator attending court or one of the lawyers at court. In some cases, adjournment for RJ might be administratively arranged by court staff.
- If the court agreed to adjournment for RJ, sentencing would be adjourned for six weeks for the RJ intervention to proceed.

- Facilitators would meet with the victim and offender to prepare them for RJ.
- Subject to the continued engagement of both victim and offender and satisfactory risk assessment, the RJ activity would be undertaken during the adjournment period. Whether the activity was a conference or an alternative form of RJ would depend on the preferences and suitability of both parties, and any practical considerations.
- After the RJ activity was completed, a report on the activity and any outcome agreement reached would be submitted along with the pre-sentence report (if one has been ordered) to the court, to be considered by the judge when sentencing took place.
- In passing sentence, the court might choose to take into account (as mitigation, and/or in relation to the conditions attached to a suspended or community sentence) the fact that RJ had been undertaken, and the outcome agreement, in the sentencing decision. However, whether and how RJ was reflected in the sentence would be entirely a matter for the individual judge.
- Following completion of RJ, the outcome agreement might also be reflected in sentence planning by probation and/or the prison sentence, if a custodial sentence has been passed.

In each site, the above process was directed and overseen by a full-time project manager; but its implementation was dependent on the active involvement of local criminal justice agencies. The main roles played by partner agencies were the following:

- **Court staff** provided data on cases coming to court and arranged administrative adjournments, while the **judiciary** ordered adjournments in in-scope cases with interested victims;
- The **police** provided data on victims, offenders and offence, including victim contact details and information for use in risk assessments of both offenders and victims;
- **Prisons** hosted RJ conferences for offenders on remand and assisted with visits to prison for preparatory and follow-up meetings with offenders; prison staff also sometimes attended conferences, and contributed to risk assessments;
- **Probation** staff received reports on RJ conferences and other RJ activities and submitted these to the sentencing court with pre-sentence reports; they also sometimes contributed to risk assessments;
- **Crown Prosecution Service** staff occasionally requested adjournments when the project manager or facilitator was not in court, or liaised with the pathfinders on individual cases under consideration for RJ.
- **Defence lawyers** discussed the possibility of participating in pre-sentence RJ with their clients, and sometimes requested adjournments.

<sup>4</sup> Some sites had originally sought to identify cases and obtain victim contact details by other means, but ultimately all sites established systems which involved the use of court lists and police data.

## 2. Overview

### 2.2 RJ activities

Below, we present data on the nine sites' RJ activities undertaken between March 2014 and the end of the first week of May 2015 – the period over which we received monitoring data from the pathfinders. All but one of the nine sites, which is still operational, ceased identifying new cases by the end of April; however, most continued to work on existing cases over the course of May and into early June. Therefore the data presented here do not encompass all the RJ activities undertaken as part of the programme.

The data received by the evaluation reveal that, in total, 55 pre-sentence RJ conferences and 38 alternative RJ activities were undertaken over the monitoring period. These conferences and other activities were the end-point of a complex process which began with the identification of victims in cases defined as within the scope of the pathfinder. A total of 2,273 victims were identified as such; this number only includes those for whom contact details were made available to the sites. As shown in Table 2.1, 446 of these victims were successfully contacted and expressed some initial interest in participating in RJ; and the defendant then pleaded guilty in 173 of the cases with interested victims. These 173 guilty pleas then resulted in 147 adjournments for RJ, which in turn resulted in the 55 conferences and 38 other RJ activities. The number of completed pre-sentence conferences per site ranged from two in Area F to ten in Area E.

Of the 38 cases where an alternative form of RJ (that is, not a conference) was completed, 26 involved the provision of a letter of apology from the offender, while 12 involved some type of shuttle mediation – in practice, this was generally an exchange of letters between the victim and offender.

Table 2.1: Progress towards RJ activities

	Victims available to contact	Victims contacted	Victims interested in RJ	Guilty plea (w/ interested victims)	Adjournments	Pre-sentence conferences completed	Pre-sentence alternative RJ completed
Area A	131	95	41	24	18	7	6
Area B	115	96	57	22	17	8	1
Area C	138	102	34	30	29	6	15
Area D	919**	308	125	24	23	9	2
Area E	178	117	46	26	20	10***	4
Area F*	245	120	22	6	4	2	-
Area G	290	192	64	25	19	6	9
Area H	188	129	45	14	9	3	1
Area I	69**	42	12	8	8	4	-
<b>Total</b>	<b>2,273</b>	<b>1,201</b>	<b>446</b>	<b>179</b>	<b>147</b>	<b>55<sup>1</sup></b>	<b>38</b>

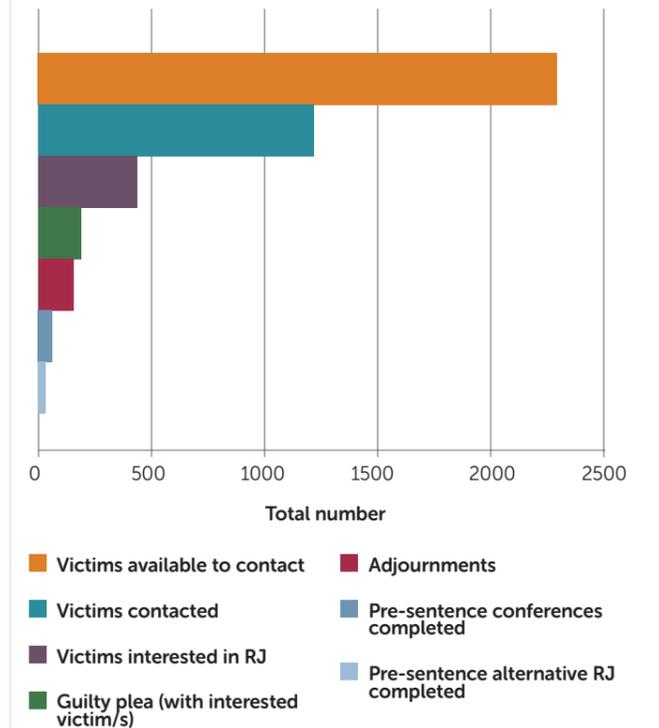
\*The data returns supplied to the evaluation by Area F were incomplete. The Area F figures for victims contacted and guilty pleas were supplied by Restorative Solutions.

\*\* The relatively high figure for victims available to contact in Area D reflects a referral process here that, in the early stages of implementation, differed significantly from other sites.

\*\*\*Includes two conferences in relation to cases sentenced at magistrates' courts.

<sup>1</sup>Involving a total of 57 victims from among those originally identified as interested in RJ.

Figure 2.1: Overall progress towards RJ activities



## 2. Overview

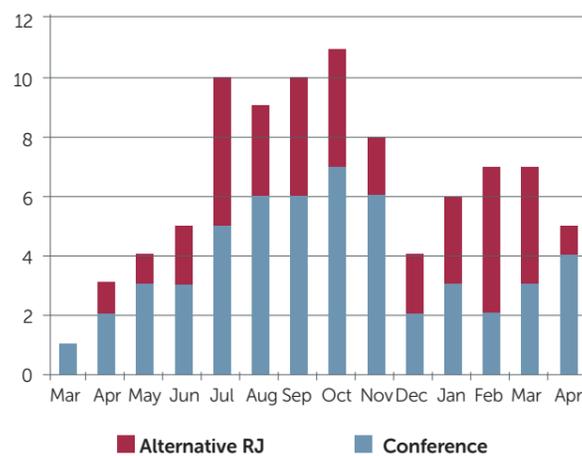
As noted in the introduction to this report, a large part of the story of multiple prior efforts to establish RJ schemes is that implementation has proved difficult and the resultant take-up of RJ and numbers of completed activities have been disappointingly low. The pre-sentence RJ pathfinder largely followed this pattern. Fewer RJ activities were completed than had been anticipated, reflecting a number of challenges encountered in implementation and, particularly, slow rates of referral and adjournment over the first weeks and months. (These challenges will be discussed in Chapter 4.)

**Table 2.2: Conferences and alternative RJ per month**  
March 14-April 15: all sites

	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	Total*
Conference	1	2	3	3	5	6	6	7	6	2	3	2	3	4	53
Alternative RJ	-	1	1	2	5	3	4	4	2	2	3	5	4	1	37

\*Excludes two conferences and one alternative RJ activity completed in first week of May.

**Figure 2.2: Total no. conferences and alternative RJ per month**  
March 14 - April 15



### 2.2.1 Conference outcome agreements

The specifics of the outcome agreements produced at RJ conferences are detailed in the conference reports that were submitted to the evaluation. A total of 57 such reports were received (comprising all but one of the reports for the pre-sentence conferences held, and three reports for conferences arranged pre-sentence but held post-sentence). These reports show that an outcome agreement was reached in 54 of the 57 cases. In one of the three cases without an agreement, the victim had stated that he did not want any kind of agreement with the offender; in the second, the offender was deemed unable to commit to any goals; in the third, the conference participants decided that there was no

In our interim evaluation report, which was based on data for the period March to August 2014, we observed that there had been a gradual build-up of momentum towards the end of this period, which boded well for further progress over the months to come. However, the monthly breakdown of RJ activity numbers, provided in Table 2.2, reveals that the momentum was not sustained and that, by December, levels of activity had dropped; this may also reflect the drop-off in numbers of cases coming to court over the Christmas and New Year holiday period. The pathfinder programme's 12-15 month time frame for implementation evidently provided limited scope for the systems and processes developed in local areas to become properly embedded.

need for further actions as the discussion at the conference was sufficient.

The specific points which were most commonly included in the outcome agreements are listed in Table 2.3. Here we can see that in about half of the conferences, an apology delivered at the meeting itself was considered part of the agreement. In a similar proportion of conferences, the offender's commitment to addressing drug problems and a commitment to making general improvements in lifestyle and behaviour were included as items in the agreement.

**Table 2.3: Items in conference agreements**

Item	No. inclusions
Apology delivered at conference	28
Address drug problems	27
Make progress in general terms	26
Write letter of apology	21
Undertake counselling/therapy/offending behaviour courses	14
Keep the victim informed of progress	14
Get involved in some form of education or training	11
Gain or seek employment	9
Address alcohol problems	7
Move to a new area to get away from peer influences	4
Try to return stolen property	3

## 2. Overview

### 2.2.2 Offences, sentences and conference participants

Table 2.4 presents a breakdown of the types of offence in relation to which RJ activities were held, and the sentences which the offenders received following RJ. It should be noted that missing data on sentence are excluded from the table. It is clear from the table that burglary was the dominant offence dealt with by the pathfinder: around half of all RJ activities, and as many as 32 out of the 55 conferences, involved burglary cases. In most but not all of these cases, the burglary was residential. This prevalence of burglary (which, according to the Crown Court Sentence Survey, accounted for just 13% of all cases sentenced in the Crown Court in 2013 [Sentencing Council, 2014]) reflects the fact that pathfinder programme explicitly excluded offences without an identifiable victim and those involving domestic violence or sexual assault

– thus ruling out a significant proportion of non-burglary cases sentenced at Crown Court. Moreover, it is possible that there were higher levels of interest in pre-sentence RJ among burglary victims compared to other victims, since the former were likely to have questions about the offence to which they were keen to have answers as soon as possible. (See the discussion of victims' views in Chapter 3, below.)

Two-fifths of the RJ activities involved offences of violence: that is, assault or wounding, robbery, affray and threats to kill. A little over half of all offenders who participated in pre-sentence RJ subsequently received a custodial sentence of between one and five years, while around one-quarter received a suspended sentence.

**Table 2.4: Offence type and subsequent sentence passed in completed RJ cases**

Offence	Offence			
	Conference	Alternative RJ	All RJ	% of all RJ
Burglary	32	14	46	49%
Assault/wounding	7	12	19	20%
Robbery	9	6	15	16%
Theft	4	4	8	9%
Affray	1	1	2	2%
Fraud	1	1	2	2%
Threats to kills	1	-	1	1%
<b>Total</b>	<b>55</b>	<b>38</b>	<b>93</b>	<b>100%</b>

Sentence following RJ	Sentence following RJ			
	Conference	Alternative RJ	All RJ	% of all RJ
Community order	2	3	5	6%
Suspended custodial sentence	13	8	21	26%
Custody – under 1 year	3	4	7	9%
Custody – under 1 year	26	16	42	53%
Custody 5 years +	1	4	5	6%
<b>Total</b>	<b>45</b>	<b>35</b>	<b>80</b>	<b>100%</b>

## 2. Overview

Figure 2.3: Offence type in completed RJ

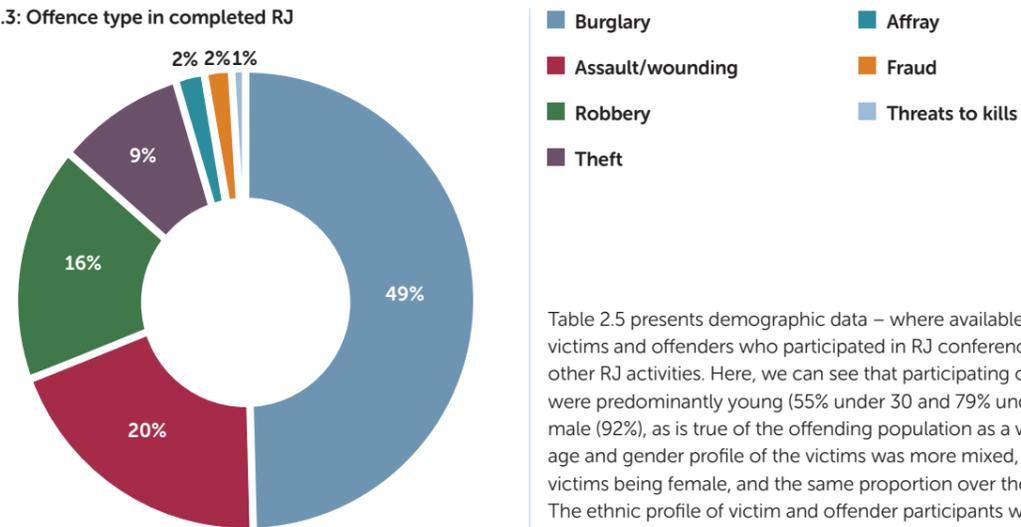


Table 2.5 presents demographic data – where available – on the victims and offenders who participated in RJ conferences and other RJ activities. Here, we can see that participating offenders were predominantly young (55% under 30 and 79% under 40) and male (92%), as is true of the offending population as a whole. The age and gender profile of the victims was more mixed, with 36% of victims being female, and the same proportion over the age of 50. The ethnic profile of victim and offender participants was similar, with over 80% of both groups being white.

Table 2.5: Characteristics of victim and offender participants in RJ conferences & alternative RJ activities

	Victims				Offenders			
	RJ Conf.	Alt. RJ	All RJ	%	RJ Conf.	Alt. RJ	All RJ	%
<b>Gender</b>								
Male	37	21	58	64%	53	33	86	92%
Female	19	14	33	36%	2	5	7	8%
<b>Total</b>	<b>56</b>	<b>35</b>	<b>91</b>	<b>100%</b>	<b>55</b>	<b>38</b>	<b>93</b>	<b>100%</b>
<b>Age</b>								
17-19	-	-	-	-	3	5	8	11%
20-29	5	4	9	16%	18	14	32	44%
30-39	10	5	15	26%	7	10	17	24%
40-49	7	6	13	23%	9	4	13	18%
50-59	6	3	9	16%	2	-	2	3%
60-69	2	1	3	5%	-	-	-	-
70-79	2	4	6	11%	-	-	-	-
80-89	2	-	2	4%	-	-	-	-
<b>Total</b>	<b>34</b>	<b>23</b>	<b>57</b>	<b>100%</b>	<b>39</b>	<b>33</b>	<b>72</b>	<b>100%</b>
<b>Ethnicity</b>								
White	32	22	54	83%	26	30	56	82%
Black	3	1	4	6%	4	-	4	6%
Asian	2	3	5	8%	2	1	3	4%
Mixed	-	1	1	2%	2	2	4	6%
Other	1	-	1	2%	1	-	1	1%
<b>Total</b>	<b>38</b>	<b>27</b>	<b>65</b>	<b>100%</b>	<b>35</b>	<b>33</b>	<b>68</b>	<b>100%</b>

## 2. Overview

### 2.3 Attrition

Table 2.1, above, presents a picture of the level of 'attrition' of potential RJ cases, from the point at which identified victims of in-scope cases are available to contact (2,273 in number) to the point when RJ activities are completed (55 conferences and 38 alternative RJ activities). Attrition occurs at all stages of the RJ process, from initial contact with victims to RJ delivery.

#### 2.3.1 Victim contact and interest

Across all nine sites, contact details were provided for a total of 2,273 victims in in-scope cases. For the most part, project managers and facilitators sought to make initial contact with victims via telephone and sometimes, where this proved not possible, by letter. As shown in Table 2.6, contact was successfully made with 1,201 of the 2,273 'victims available to contact'; in the 47% of cases where contact was not made, this was variously due to contact details not being correct, failure to obtain an answer to calls and letters, or lack of availability of personnel (such as the project manager, volunteer facilitators or staff from partner agencies) to make calls. Of the victims with whom contact was successfully made, 446 or 37% expressed potential interest in involvement in RJ. Levels of interest ranged between 18% in Area F and 59% in Area B.

Table 2.6: Levels of victim contact and interest

	Victims available to contact	Victims contacted	Victims interested in RJ	% interested victims of those contacted
Area A	131	95	41	43%
Area B	115	96	57	59%
Area C	138	102	34	33%
Area D	919	308	125	41%
Area E	178	117	46	39%
Area F*	245	120*	22	18%
Area G	290	192	64	33%
Area H	188	129	45	35%
Area I	69	42	12	29%
<b>Total</b>	<b>2,273</b>	<b>1,201</b>	<b>446</b>	<b>37%</b>

\*The Area F figure for number of victims contacted was provided by Restorative Solutions, as the data submitted to the evaluation from this site were incomplete.

The monitoring data received by the evaluators did not make clear the numbers of cases in which meetings were held with victims following the initial contact. Data collected separately by Restorative Solutions, presented in Table 2.7, show that the number of meetings held with victims ranged from 24 in Area I to 98 in Area D.

Table 2.7: Meetings with victims per site (Restorative Solutions data)

Site	No. meetings
Area A	68
Area B	85
Area C	73
Area D	98
Area E	48
Area F	35
Area G	82
Area H	97
Area I	24
<b>Total</b>	<b>610</b>

#### 2.3.2 Plea

In cases where there was a victim interested in RJ, the possibility of adjournment for RJ arose only if the offender pleaded guilty. In fact, as shown in Table 2.8, at least 140 (or around 30%) of offenders in the 446 cases with interested victims pleaded not guilty, and thereby ruled themselves out of the possibility of RJ; while 179 (around 40%) pleaded guilty. (It should be noted that because some cases had multiple interested victims and/or multiple offenders, there is not an exact match between number of pleas and number of victims – making the calculation of potential RJ 'cases' difficult. The significant amount of missing data on plea from Area D should also be noted.) After the plea stage, in short, the total number of offenders for whom RJ was an option amounted to 179.

## 2. Overview

**Table 2.8: Outcomes of plea hearings in cases with interested victims**

	Interested victims	Guilty plea	Not guilty plea	No plea entered	Plea not recorded on monitoring form
Area A	41	24	13	-	3
Area B	57	22	24	-	11
Area C	34	30	4	1	-
Area D	125	24	21	-	80
Area E	46	26	14	-	5
Area F	22	6*	n/k	n/k	n/k
Area G	64	25	33	2	5
Area H	45	14	30	-	1
Area I	12	8	1	-	3
<b>Total</b>	<b>446</b>	<b>179<sup>1</sup></b>	<b>140</b>	<b>3</b>	<b>108</b>

\*The Area F guilty plea figure was provided by Restorative Solutions, as the data submitted to the evaluation from this site were incomplete.

<sup>1</sup>Including 4 cases in each of which there were 2 offenders and 1 interested victim (counted as 8 guilty pleas in total), and 4 cases in each of which there was 1 offender and 2 interested victims (counted as 4 guilty pleas in total).

### 2.3.3 Adjournment

As shown in Table 2.9, in the large majority of cases – 82% overall – in which an offender had pleaded guilty and there was an interested victim, there was subsequently an adjournment for pre-sentence RJ. Area H had the lowest rate of conversion from guilty plea to adjournment, at 64%, while Area I – where only eight cases were in contention – had the highest rate at 100%.

**Table 2.9: Adjournments following guilty pleas**

	Guilty pleas	Adjournment for RJ	No adjournment	Status unclear	% guilty plea cases resulting in adjournment
Area A	24	18	5	1	75%
Area B	22	17	4	1	77%
Area C	30	29	1	-	97%
Area D	24	23	1	-	96%
Area E	26	20	6	-	77%
Area F	6*	4	2*	-	67%
Area G	25	19	4	2	76%
Area H	14	9	5	-	64%
Area I	8	8	-	-	100%
<b>Total</b>	<b>179</b>	<b>147</b>	<b>28</b>	<b>4</b>	<b>82%</b>

\*The Area F guilty plea and non-adjournment figures were provided by Restorative Solutions, as the data submitted to the evaluation from this site were incomplete.

## 2. Overview

On the monitoring form, project managers detailed a variety of reasons for non-adjournment in cases in which there was a guilty plea and interested victim. (Details were not provided for all such cases, however.) The reasons cited for non-adjournment were:

- Court declined to adjourn: 7 cases
- Concerns about victim or offender suitability or risk: 4 cases
- Victim withdrew: 3 cases
- Offender declined to participate: 3 cases
- Post-sentence RJ was under consideration: 2 cases
- Partial not guilty plea: 1 case
- Defence objected: 1 case

It is notable that in only three of the 21 non-adjourned cases for which details were provided, the reason for lack of adjournment was that the offender declined to participate in RJ. In cases where no adjournment was made but both victim and offender remained interested in RJ, the sites routinely made referrals for post-sentence RJ – whether this was then undertaken by the original facilitators who had conducted the initial preparatory work, or by other local services such as probation.

### 2.3.4 RJ delivery

As Table 2.10 shows, following 147 adjournments for RJ, a total of 55 conferences and 38 alternative RJ activities were completed. A further six conferences were in planning at the time data collection for the evaluation ceased; three cases were ongoing; and two had resulted in alternative RJ activities completed post-sentence. In 46 out of the 147 – or 31% – of adjourned cases, pre-sentence RJ was not completed or in progress. As also applied to ‘non-adjourned’ cases, in cases in which there was an adjournment but pre-sentence RJ was then ruled out because of practical or other constraints, referrals for post-sentence RJ were made wherever possible.

**Table 2.10: Post-adjournment outcomes**

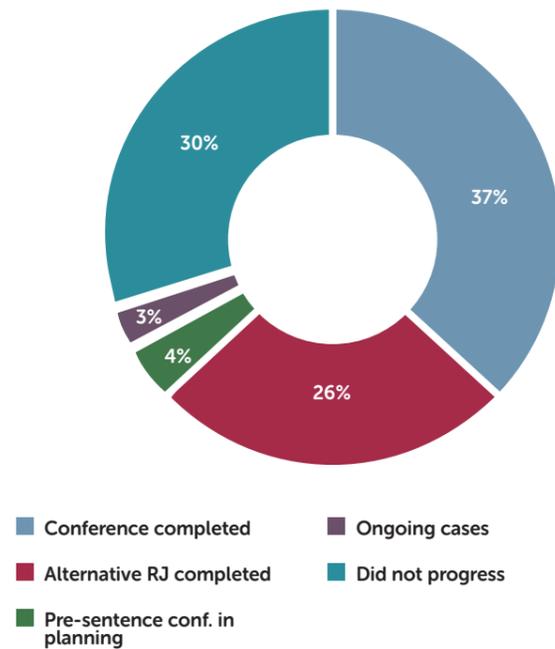
	Adjournments	Pre-sentence RJ completed		Pre-sentence conference in planning	Ongoing cases	Pre-sentence RJ ceased
		Conference	Alternative RJ			
Area A	18	7	6	-	-	5
Area B	17	8	1	1	-	7
Area C	29*	6	15	-	1	8
Area D	23	9	2	-	1	11**
Area E	20	10	4	4	-	2
Area F	4	2	-	-	1	1
Area G	19	6	9	1	-	3
Area H	9	3	1	-	-	5
Area I	8	4	-	-	1	3
<b>Total</b>	<b>147</b>	<b>55</b>	<b>38</b>	<b>6</b>	<b>4</b>	<b>45</b>

\*including 1 adjournment resulting in 2 separate activities (a conference and alternative RJ) with 2 separate victims.

\*\*including at least 3 cases in which a letter of apology was written by the offender but the victim opted not to receive it.

## 2. Overview

Figure 2.4: Post-adjudgment outcomes



Where cases did not proceed to pre-sentence RJ, various reasons for this were recorded on the monitoring forms, as follows:

- Victim withdrawal: 20 cases
- Offender withdrawal or disengagement from the project: 6 cases
- Concerns about victim or offender suitability or risk: 4 cases
- Lack of access to prison for conferences: 2 cases
- Offender absconded: 2 cases
- Victim could not be contacted: 1 case
- Victim out of the country: 1 case
- Victim unable to understand the process: 1 case
- Victim failed to attend conference: 1 case
- Post-sentence RJ planned in place of pre-sentence: 1 case

While victim withdrawal accounted for 20 out of 39 abandoned cases (where a reason was given), a further four cases failed to proceed because of other factors relating to victims' capacity or availability to engage. Causes of victim withdrawal were said to include fear about meeting the offender face-to-face; a belief that closure had already been achieved; work commitments making involvement in RJ difficult; and the effects of being told by the police that the offender would receive a lesser sentence following participation in RJ. Offenders' lack of willingness or capacity to engage accounted for eight of the adjourned cases which failed to proceed to RJ activities.

## 2. Overview

### Case 2 (C40): An unforgiving victim, nevertheless satisfied with RJ

The offender, a man in his 30s, had been friends with the victim, a man in his 40s, for several years. When the offender became unemployed the victim gave him a job in his retail business. The offender was subsequently promoted to manager - a position of trust - with access to the company safe. The offender then stole around £9,000 from the company. The company's business is seasonal, and the theft brought it close to collapse because it had insufficient funds to pay its bills during the winter. The offender was convicted of theft, and was sentenced to a 20-month prison term.

#### The conference

The victim agreed to participate in a conference primarily because he wanted to know what the offender had spent the stolen money on. The victim made it very clear from the outset that he would not accept an apology from the offender, saying to the facilitators prior to the conference:

*There's a post going round on Facebook - I don't know if you've seen it - it's a picture of a plate and it says, 'Drop the plate on the floor,' and the next image is of a smashed plate and it says, 'Now say sorry to it.' Did it fix the plate? That's how I feel.*

During the conference the victim described the effect the offence had had. 'We nearly went bankrupt; the staff would have lost their jobs.' He said to the offender: 'I defended you to the hilt ... I couldn't believe it when I found out... I felt completely betrayed.' In response, the offender explained that he had stolen the money to pay off his gambling debts and said how bad he felt that he had betrayed the friendship. He acknowledged the problems he had caused for the victim, his partner and staff. 'I felt really bad. It wasn't like I got a thrill out of it - there was no adrenaline rush. I just felt I had to do it. I've thought a lot about how it's affected other people and it's made me feel even worse.'

#### Victim reflections

Following the conference, the victim expressed anger at the offender's response to some of his questions. 'I couldn't believe that he was still actually lying ... at some points. He tripped himself up a couple of times with a few comments and I thought, "Yeah, he's still lying to me!" He was sceptical about how genuine the offender's apology had been and his reasons for participating in the conference: 'I think that he thought that if he went to this meeting he would get off lighter. That's what I feel.'

Despite his cynicism, the victim was glad to have participated in the conference. When asked if he would recommend the process to others he said, 'It's a good idea, to be fair. It would give people a chance ...to get some answers out of the people that have wronged them.' However, his main comfort came from the fact that, after the conference, the offender was given a custodial sentence:

*You read a lot about people doing things and they get a slap on the wrist ... It was nice to see some justice done. I've got a bit more faith in the justice system now. I was under the impression that he probably wouldn't get anything - nobody had built my hopes up. So it was fantastic to see justice done. It's a chunk of his life he can't get back. I can earn more money but he can't get his freedom back.*



### 3. Victim and offender perspectives

#### Case 3 (C15): A victim who takes control of the conference nevertheless satisfied with RJ

The offender had pleaded guilty to attempted burglary of the victim's home. The offender described this offence, at the conference, as a 'stupid act' of which he now had little memory, because he had been under the influence of drink and drugs at the time. The victim and his family (his wife and three children, including a baby) had been at home at the time of the attempted break-in; the victim had spotted the intruder and shouted at him, at which point the intruder ran away.

'I've got kids in the house – they're all shit scared now,' the victim told the offender.

#### The conference

The conference, held in the prison where the offender was on remand, was facilitated by two facilitators who tended to stick very closely to the RJ 'script'. The victim had initially been frustrated by this: 'They need to let people express their feelings... not just ask a question, hear the answer then stop.'

Over the course of the conference, the victim increasingly took control of proceedings. He had an assertive physical presence in the room, and affirmed his moral authority as a caring father, a hard worker (for the emergency services), and someone who had himself gone astray in his teenage years, before determining to lead a responsible life. He saw the conference as his opportunity to influence the offender for the better, and repeatedly and forcefully told the offender that he could and should change – for the sake of his children, above all. 'Be a Dad. Be a man.'

The offender listened and stated his desire to do as the victim was telling him. He had four children, he said – the youngest of whom had just been born when he was remanded into custody. He wanted the offender to understand that he was more than just a burglar and a drug addict: 'I wanted to let you know just a bit of me – that I'm not really that kind of person when I'm in my right mind.' And he said that he was aware that his current behaviour had set him on a dangerous path: 'One day – it might not be prison – I might be ten feet under.'

#### After the conference

The offender was subsequently sentenced to a three-year prison term for the attempted burglary and two other burglaries. He felt the sentence was 'quite heavy', and did not know if the judge had been aware of the RJ: he had struggled to hear the sentencing remarks as he was sentenced via video-link from prison. He was optimistic about the effects of RJ on him, as something which 'opens your eyes'.

For his part, the victim was satisfied overall with his experience of RJ and pleased that he had gone ahead with it – in the face of opposition from his wife who had been worried about possible 'repercussions' for the family, and had made it clear that she herself was too scared to meet the offender in prison. According to the victim, his wife's attitude mellowed somewhat after she read a letter of apology which the offender had provided at the conference: 'I showed her the letter, and she said that shows there's a little bit of human being in there, that everyone has got feelings.'

The victim was moderately hopeful about the impact of RJ on the offender:

*He may have listened, taken in a bit and will think about it a bit more. But there again, he might just put on a good poker face and go upstairs and say, 'What an idiot I've spoken to.' He might just think it might do his case some good ... I'd like to think that he was honest...he didn't come over as arrogant and that. I hope his attitude stays that way.*

### 3. Victim and offender perspectives

There is an extensive body of research evidence which points to the positive effects of RJ on those who participate in it: particularly in terms of victim satisfaction and wellbeing, offender satisfaction and (to varying extents) reduced re-offending.<sup>5</sup> The aim of this chapter is not to revisit the findings of prior research on the impact of RJ on participants; rather, we will consider more specifically how RJ at the pre-sentence stage is experienced and perceived by victims and offenders.

The main sources of data used in this chapter are the survey of and interviews with RJ participants, as follows:

- For the *participant survey*, all victims and offenders who participated in a conference (and some family members who had attended in supporting roles) were asked to complete a short feedback form. Originally it was intended that the project managers would administer the survey, either by telephone or face-to-face; in practice, however, the form was variously administered by project managers, facilitators or provided to participants for self-completion. In total, 31 victims and 24 offenders completed the form, along with one victim supporter and one offender supporter.
- *Participant interviews* were conducted by the evaluation team (following recruitment of interviewees by facilitators). Interviewees were asked about the offence and their views on the RJ process and outcomes. A total of 24 victims, nine offenders and two offender supporters were interviewed.<sup>6</sup> Five of the interviewees had participated in alternative RJ activities rather than conferences.

There are some limitations to the survey and interview data, since only around half of conference participants completed the survey, and fewer still took part in interviews. There may have been some selection bias towards more positively inclined participants in the administration of the survey and recruitment of interviewees; and inconsistencies in survey completion may have compromised the quality of the data. Nevertheless, the survey and interviews produced many rich insights into victims' and offenders' experiences of pre-sentence RJ; experiences that were very predominantly described in positive terms, albeit some challenges were also highlighted.

#### 3.1 Victims' and offenders' positive perceptions of pre-sentence RJ

Even allowing for data limitations, the survey and interviews present a convincing picture of overwhelming support for RJ among the victims and offenders. Table 3.1 summarises the responses to the closed-ended questions in the feedback form. Here we see that no respondents ranked conference preparation below 5 on a scale of 1-10, and 46 out of 57, or 81%, ranked preparation 9 or 10.

The conference itself was ranked 9 or 10 by 44 (77%) of respondents, with no one ranking it below seven. 54 (95%) out of 57 respondents stated that the conference had affected them in a positive way, while all but one (who did not know) said that they would recommend participating in an RJ conference to others.

<sup>5</sup> For example, for overviews of the existing research literature, see Latimer et al. (2005); Sherman and Strang (2007); Sherman et al (2015). For a detailed evaluation of three Home Office-funded RJ schemes, see Shapland et al (2007); Shapland et al (2008). For a micro-level analysis of processes and emotions in RJ conferences, see Rossner, 2013.

<sup>6</sup> 16 of the interviewees had also provided a survey response.

### 3. Victim and offender perspectives

**Table 3.1: Quantitative findings from participant feedback form**

How happy are you with how the facilitators prepared you for the conference? Scale of 1-10: 1=very unhappy, 10=very happy				
Score	Victims*	Offenders*	All	%
10	16	13	29	51%
9	12	5	17	30%
8	3	4	7	12%
7	1	1	2	4%
6	-	1	1	2%
5	-	1	1	2%
<b>Total</b>	<b>32</b>	<b>25</b>	<b>57</b>	<b>100%</b>

How happy are you with how the conference went? Scale of 1-10: 1=very unhappy, 10=very happy				
Score	Victims*	Offenders*	All	%
10	13	14	27	47%
9	12	5	17	30%
8	7	5	12	21%
7	-	1	1	2%
<b>Total</b>	<b>32</b>	<b>25</b>	<b>57</b>	<b>100%</b>

Overall, how do you think the conference has affected you?				
	Victims*	Offenders*	All	%
In a positive way	29	25	54	95%
In a negative way	-	-	-	-
No effect	2	-	2	4%
Don't know	1	-	1	2%
<b>Total</b>	<b>32</b>	<b>25</b>	<b>57</b>	<b>100%</b>

Would you recommend taking part in an RJ conference to others?				
	Victims*	Offenders*	All	%
Yes	30	23	53	93%
Yes (qualified)	1	2	3	5%
Don't know	1	-	1	2%
No	-	-	-	-
<b>Total</b>	<b>32</b>	<b>25</b>	<b>57</b>	<b>100%</b>

\*'Victim' numbers include the victim supporter who completed the form; 'offender' numbers include the offender supporter who completed the form. incomplete.

### 3. Victim and offender perspectives

In the interviews, the detail of victims' and offenders' experiences of RJ was discussed and probed. It is therefore to be expected that views expressed in the interviews were more nuanced and sometimes more ambivalent than those provided in the feedback forms. Nevertheless, it is striking that all eleven offender and supporter interviewees talked in strongly positive terms overall about their RJ experiences, as did 15 of the 24 victim interviewees. A further five victim interviewees were generally positive but with some qualification, while three expressed mixed views and one (who had been involved in an alternative RJ activity rather than a conference) was negative.

The very positive picture of RJ that is conveyed by the survey and interview findings is reinforced by our analysis of the conference reports completed by facilitators. A total of 57 such reports were submitted to the evaluation.<sup>7</sup> The report form included a section in which facilitators detailed 'Participants' views on conference'. In 48 of the 57 reports, the victim's response to the conference was described in positive terms, while 50 reports described a positive offender response. Six reports described ambiguous responses on the part of victims, while three reports described ambiguous offender responses. In just one report, both the victim and offender were said to have viewed the conference negatively. (Two reports had no information about the victim's response, and three had no information on the offender.)

The above findings beg an important question to which we now turn: Did the *pre-sentence dimension* of the RJ programme help to determine victims' and offenders' highly favourable views? In fact, the survey and interview responses point to three main ways in which RJ at the pre-sentence stage does offer particular benefits. First, it promotes the active engagement of both victims and offenders in the criminal justice process. Secondly, it allows victims' questions and fears relating to the offence to be resolved swiftly. Thirdly, it provides an early and added impetus for offenders to start addressing their own patterns of harmful behaviour. Below, each of these three points will be considered in turn, before we move on to discuss some apparent risks or challenges associated with pre-sentence RJ.

#### 3.1.1 Active engagement in the criminal justice process

There is ample research evidence that victims often feel silenced and marginalised by a prosecution and court process which they often assume is overly focused on defendants' rights and needs.<sup>8</sup> The introduction of Victim Personal Statements (VPSs) in 2001 is one of various policy efforts aimed at strengthening victim engagement with the criminal justice process. All victims should be given the opportunity to make a VPS – explaining how they have been impacted by the offence – when they give their witness statement to the police. While the content of a statement cannot be cited as evidence in a trial, it may be read out or referred to by

the judge at sentencing. To date, however, VPSs appear to have had little success in strengthening victims' sense of engagement with the formal criminal justice process (Roberts and Manikis, 2011). It is notable that in only 17 (or 30%) of the 57 conference reports submitted to this evaluation was it recorded that the victim had made a VPS.<sup>9</sup> (It is not known whether, in cases in which no VPS was made, victims had been offered the opportunity to make a VPS.)

In interview and in the feedback forms, several of the victims involved in pre-sentence RJ strongly indicated that the initiative promoted a sense of active involvement in the criminal justice process – such as one who commented in interview that:

*Strangely I quite looked forward to [the conference] because I wanted him to know what he'd done, what effect it had had, and tell him what I thought. You don't get that opportunity with the justice system as it currently stands - as he pleaded guilty we weren't involved in the court process (C14-V).*

Some victims welcomed the opportunity to be able to make their own, authentic voices heard: 'The conference gave me a voice, having lost confidence in the police' stated one victim; he went as far to say that, if it had been up to him, 'I would have dropped the charges at the court because restorative justice settles the matter' (C50-V). Another simply stated: 'I was given a voice, I said what I wanted to say' (C26-V), while another said that she had 'felt moved, seeing someone listen'. One victim who – as the manager of a supermarket – had had many prior experiences of the justice system following thefts from the store, could compare the traditional with the restorative justice response:

*It's a little bit more informal than what we're used to... Usually it's just standing up in court, confirming who you are, what you do and what happened from a solicitor's point of view so they have a prepared script and they ask you a set of questions and you give your answers ... whereas [with RJ] ... I guess there's more flexibility to ask the kind of things that you want to ask and get the kind of answers that we want to get (C1-V).*

### 3. Victim and offender perspectives

Some victims felt that participation in RJ meant that, in practical terms, they had more frequent and consistent contact with the criminal justice process than they might otherwise have had: such as one who stated that the additional contact with the facilitators made her feel part of what was going on (and, interestingly, also commented that she was pleased that her VPS was referred to in court during sentencing) (C55-V). Another who commented that 'In general I felt like the RJ [project] were much more open to being approached', and were in touch with him 'more so than what was going on with the court system' (C8-V). Beyond this, several victims evidently had a level of personal curiosity about crime and the justice system – and particularly prisons – that was satisfied through their involvement in RJ. As a result, they felt more informed and involved:

*Frankly it was an eye-opener, as I'd never been to a prison before ... I parked my car near a young mum with two little kids, and I realised the effect of crime on everyone else (C16-V).*

*[On hearing the conference would be held in a prison, I thought] that's quite interesting, cause I've never been in a prison, and I have to admit I had watched 'Prisoners' Wives', so I was intrigued to know what it was really like (C19-V).*

*I think it's good for citizens to be involved in the justice system somehow or otherwise you have no idea what's going on. ... Being involved in the process and seeing how it works or doesn't work ... - I think restorative justice has given us a little bit of a window into that. (C44-V).*

While many victims feel marginalised by the formal, traditional criminal justice process that they perceive to be all about the defendant, defendants themselves are often disengaged and passive figures within the process.<sup>10</sup> This is despite the fact that it is an established principle in law that, in order to exercise their right to a fair trial, defendants must be able to 'participate effectively' in court proceedings.

Although this was not a prominent theme in offenders' comments in interview and feedback, it was apparent that some offenders regarded participation in RJ as, to an extent, an antidote to being 'processed' by a large and impersonal justice system. This is a system which, in the words of one, operates in such a way that, 'Usually I get nicked, I go to court, I plead guilty I get it over and done with, I get my sentence, do my time and get out' (C14-O).

'The mass breeding of chickens in a warehouse' was how another offender characterised the traditional justice process, which he compared with an RJ process which 'gives you the opportunity to express yourself'. This offender especially valued having his voice heard at the conference, by the victim: 'I listened but she listened' (C13-O). The RJ process was 'more real and raw' than the kinds of offending behaviour courses to which he had previously been sent, said one offender (C17-O). Another said of RJ: 'I have been treated like a person, I was not just processed.' (C32-O).

#### 3.1.2 Resolving victims' questions and fears swiftly

For many victims, the most obvious and immediate benefit offered by pre-sentence RJ was that it provided them with answers, sooner rather than later, to their questions about the offence and why or how it had occurred. The question on one victim's mind was very specific: 'I got to ask him particular questions about what he had done with my bike, which to me were interesting ... Now I know that the bike is worth four bags of heroin' (A8-V). More often, victims were keen to know if they had been targeted by the offender, and were reassured to find out that this had not been the case:

*It was a relief instantly for us to know... he hadn't been watching us, there was no premeditated plan in place ... It kind of calms your imagination down a little bit. Now you know who came into your house, you know more about why he came into your house... It instantly cleared up any tinges of paranoia about what's happening in our neighbourhood (C44-V).*

*It contextualised what had happened ... we know why he did what he did, we weren't targeted particularly, we just happened to have a house in the wrong place at the wrong time (C41-V).*

<sup>7</sup> Comprising reports on all but one of the 55 pre-sentence conferences, and on three conferences organised pre-sentence but held post-sentence.

<sup>8</sup> See, for example, Fielding (2006), Doak (2008), Shapland and Hall (2010); Jacobson et al (2015).

<sup>9</sup> Similarly, in only 12 out of 35 reports on 'alternative RJ activities' was it stated that a VPS had been made. Both the conference and alternative RJ report form include specific questions about whether the victim had made a VPS or would like to make one. In one pathfinder site, the RJ facilitators were trained to take VPSs where victims wished to make or update a statement; other sites also sought to adopt this approach, but this was not accepted by the police.

<sup>10</sup> See Carlen (1976); King (1981); Jacobson et al (2015).

### 3. Victim and offender perspectives

But, for the victims, reassurance did not simply lie in getting factual answers to factual questions. Many victims wanted to know what the offender looked like, and this in itself - being able to 'identify the monster under the bed', in the words of one project manager - helped to reduce the fear that lingered after the offence. 'I just wanted to put a face to who was trying to get into my property,' one victim said; 'I didn't know what to expect. It was just to put my mind at rest to see who the person was' (C15-V). In putting faces to the offenders, victims were making them less threatening, and more human:

*We don't now fear that there's some shadowy figure, or gang, that might come back and attack us. You get a feeling of the person as a human being (C49-V).*

*The minute he walked in the room it became like he was like everyone else in the room... You big someone up in your mind to be something they are probably not. (C20-V).*

*I saw the perpetrator as a human being and saw the humanity of him (C36-V).*

The answers provided by RJ helped many victims to feel that they could start to overcome or move on from what had happened to them. The victim who (as quoted above) spoke of no longer fearing 'a shadowy figure' also said that participating in RJ at the pre-sentence stage enabled her and her husband to 'let it go much sooner, with a real, proper, thorough dealing with it'. Had she taken part in an RJ conference at a later stage, she said, it would have had the effect of 'bring[ing] it all up again', whereas 'this way it feels much fresher' (C49-V).

Feelings of relief, the lifting of a weight, and regaining control were recurring motifs in what a number of victims said:

*As the conference progressed I felt calmer and my anger left me... It really helped me to gain the answers I needed and also to put what happened behind me (C21-V).*

*I was emotional and couldn't help but to accept apologies from the offender and that gave me a very big relief (C50-V).*

*Felt as if a weight had been lifted from my shoulders ... I now feel as though I have control of my life back ... I feel so much better and back in control. (C24-V).*

*A big weight was taken off my shoulders (C30-V).*

*[The conference] helped us not feel like victims (C51-V).*

Even some who found the conference itself a challenging experience reported feelings of intense relief or release afterwards. One conference, for example, broke up without any outcome agreement and left the victim (C34-V) feeling drained and unhappy immediately afterwards. And yet, the victim reported in his feedback form that by the next day he was 'back to being my best and very proud of myself'. Here, again, we see the theme of a weight being lifted: 'I feel I have had a weight lifted off my body. I am happy with life again and more than empowered.' Another victim took part in a very difficult conference in which her own brother was the offender; moreover she was disappointed that her brother lied in the conference and felt that he was still not taking responsibility for his actions. Nevertheless, she stated in the survey form that she felt the lifting of a weight (C55-V).

Victims' comments about feeling relieved, unburdened or able to 'move on' seem to suggest that their participation in RJ at an early stage allowed the wounds caused by offending to heal rather than deepen and fester over time. Perhaps this applied particularly to those who viewed RJ as an opportunity to offer help and support to the offender, and thus to try to make something good out of the bad experience of victimisation. Several victims spoke of altruistic motivations for their involvement in RJ, of being driven by a sense of civic or moral (and sometimes explicitly religious) duty, and of the importance of forgiveness. 'I have learned over the years,' said one victim, 'that he was not the prisoner; if I hadn't have forgiven, it would have been me' (C25-V; more details of this case are in case study 7). A victim who took part in an exchange of letters with the offender, and was critical of what she believed to be the offender's 'glorifying' of his crime in what he had written, nevertheless felt that the process had helped her to put things in perspective and bring matters 'to a conclusion', and that 'if this helps one in ten to help them not commit a crime again then it would be worth it.' She also stated that 'as a Christian, I have to believe that he was sorry for what he did' (A8-V). Another victim who took part in a letter exchange, and spoke of being very moved by the letter she received from the offender, said that she had been married to a paramedic for 30 years and because of this felt that it was 'in her system' that she should 'help wherever I can' (A25; for more details, see case study 6).

However, there could also be some resolution for victims even in the absence of a sense of forgiveness and reconciliation. In one case, the victim was intensely angry towards the offender, who had been a former friend and employee, and had stolen from the victim's business. The victim remained angry throughout the RJ conference and thereafter, but had no doubt that his participation in the conference had benefitted him personally. He said of RJ:

*If it'll make you feel better within yourself, whether it be asking questions and getting answers or staring at them like you want to harm them... If I'd met him outside on the street anywhere it would have gone down completely differently because he would have been a bit cockier and I know for a fact I'd've lost my temper. So in that controlled environment it was excellent (C40-V). (For more details, see case study 2.)*

### 3. Victim and offender perspectives

#### 3.1.3 Early, added impetus for offenders to make changes

If pre-sentence RJ, by nature of its timing, offers swift resolution of victims' questions and fears, does it also lend more urgency and immediacy to offenders' thoughts of addressing their behaviour? It is plausible that at a time when they are imminently facing sentencing, and the offences are likely in the relatively recent past, many offenders would be more open and responsive to the words of their victims. On the basis of the survey data and the limited number of interviews conducted with offenders (some of whom were not very reflective in interview), it is difficult to assess the extent to which this was the case for the offenders involved in this pathfinder. However, there are indications from the survey and interview findings that participation in pre-sentence RJ did strike some offenders with a particular force. One offender reported in the feedback form that the RJ 'has made me think more. I feel good and bad about what I have done'. He had, he said, taken on board the victim's suggestion of planting a seed and making it grow. 'I have hope!' (C29-O).

Of particular significance to some offenders was the experience of meeting victims who expressed kindness and forgiveness; were 'incredibly understanding' (C42-O); were willing to shake hands with or even embrace the person who had harmed them. 'I was blown away that [the victim] was so understanding and respectful and he didn't want me to go to prison,' said one offender (C3-O). Another described feeling 'physically sick' with nerves before meeting the victim who then 'turned out to be such a nice lady'. So nice, in fact, that he felt more guilty than he had done before: 'I felt like shit on the floor'. The victim gave him a hug, he said, which was 'nice in a sense, but - like - do you realise what I've actually done to you?' (C13-O). One offender described his feelings after the conference as:

*Stunned. Shocked. Appalled. Regret. Sorrow. Shame. Heartache that I'd hurt someone in a way I'd never realised. I also felt gratitude that [the victim] had accepted my sincere apology and shook my hand several times, and also hugged me (C9-O).*

We have noted above that for some victims, participation in the conference helped to 'humanise' the offender in their eyes. The offenders' reports of being treated with warmth and kindness illustrate the profound effect on them of being humanised: as, for example, for the offender who stated, 'It meant a lot that I wasn't seen as a really bad person' (C23-O).

It is to be hoped (as many of the victims hoped, albeit often with a degree of scepticism) that offenders who were genuinely moved by contact with victims would be able to translate that positive emotional response into action to address their offending behaviour during whatever sentence was subsequently passed. In practical terms, the pathfinder provided opportunities for commitments made in RJ outcome agreements to be reflected in conditions attached to sentences or in sentence planning - thanks to the attendance of drug and other support workers at some conferences, and the submission of RJ reports to court

for consideration by the judge at sentencing. A prison officer involved in the pathfinder reported that pre-sentence RJ offers the offender the opportunity to 'start off [the sentence] on the right footing - it gives them an action plan to change while they serve their sentence, which can be empowering'. For his own part, one offender described wanting to go ahead with RJ because of his desire to start his sentence 'with a clean slate. I don't want to stay in prison as a bad person' (C15-O). Another offender described participation in RJ as, in itself, 'like an added sentence, but in a good way'. The experience, he said, 'opens your eyes'.

It is also notable that the theme of a weight being lifted as a result of RJ participation emerged in several comments from offenders and one offender supporter, as it did in victims' comments:

*[The conference] made me feel like a weight off my shoulders. I feel much calmer' (C1-O).*

*[After the conference I felt] tearful ... felt like something had lifted; I felt lighter (C3-O).*

*[After the conference I felt] A lot lighter in myself, I also got a lot of hope from the whole process (C17-O).*

*We all walked back to the station together and I felt a bit lighter in a sense, as I was worried up to the day I had to go, and I had felt guilty as well. (C49-M - offender's mother).*

#### 3.2 Risks and challenges associated with pre-sentence RJ

Above, we have looked at various benefits of participation in RJ at a time relatively close to the commission of the offence, and when the case is still in the process of making its way through the courts. The evidence from the evaluation is that RJ at pre-sentence stage also, however, poses risks or challenges for those who participate in it. While the immediacy of pre-sentence RJ can make it more meaningful for victims and offenders alike, the flipside of this is that emotions on either or both sides may still be so raw, or circumstances so uncertain and in flux, that RJ could add to rather than relieve the psychological and emotional burdens (or 'weight') carried by participants. As we will discuss below, there was indeed some evidence of vulnerability on the part of a few of the victims and offenders who participated in the pathfinder. We will then move on to consider another problematic aspect of pre-sentence RJ: that is, the scope for cynicism, confusion and unrealistic expectations with regard to the possible impact of RJ on sentencing.

### 3. Victim and offender perspectives

#### 3.2.1 Vulnerability of some victims and offenders?

This evaluation did not explore the views of victims who had been approached about RJ but did not wish to get involved, and therefore we cannot assess how many of these individuals may have found the initial approach intrusive. There was certainly an awareness on the part of project managers and facilitators of the need for caution and sensitivity in making first contact with victims. Among the victims who chose to proceed with pre-sentence RJ and whose cases resulted in a conference or other activity, the large majority (according to the survey and interview data) evidently emerged from the process feeling that they had coped well with it, and with the heightened emotions that it often generated. This is despite the fact that two-thirds of victims who completed the feedback form described feeling nervous, apprehensive, angry or (occasionally) scared immediately before the conference.

A small number of the victim participants referred in interview or the feedback form to their continuing feelings of insecurity in relation to the offence and their involvement in RJ. These included a victim of burglary who said of her participation in a conference, 'It has worked, but I have my own personal demons that I have to get rid of once I have re-decorated my whole house.' She said that she had found the interview for the evaluation anxiety-provoking as it made her recollect what had happened, and that once the interview was over she was 'going to have a little cry' (C13-V). Another victim, in response to the question in the feedback form about the effect of the conference: 'Want to say positive, but I still feel scared to speak to people' (C32-V). And another recorded his frustration at the offender's seeming lack of honesty during the conference, and stated that after the conference he had been awake all night and was 'still thinking about it. Can't forget' (C35-V).

One victim of a serious assault who did not wish to take part in an RJ conference, but agreed to accept a letter of apology from the offender, was subsequently very unhappy with the entire RJ process. He felt that RJ offered something to the offender, but did little or nothing to address his own serious needs – including practical needs – arising from the injury he had suffered. It seems that the idea of involvement in RJ had been introduced to him at a time when he simply was not ready for it; moreover, it had never been properly explained:

*Somebody rang me up - I'm confused about who it was - so much was going on then ... There was talk about meeting the bloke, but I didn't want to see him, to know what he looked like. ... Then they said he could write me a letter, and I thought well a letter's not going to hurt me ... All the people I saw [about RJ] looked the same to me (A10-V).*

(For more details on this case, see case study 4.)

As with the victims who participated in the pathfinder, the large majority of offenders did not reveal – in their interview and feedback responses – any adverse effects of involvement in RJ. However, their nervousness prior to the conferences was even more pronounced than that of the victims: 22 out of 24 who completed the feedback form referred to having felt nervous, apprehensive or fearful. Sometimes this was expressed in very strong terms – with reference, for example, to being 'petrified' (C12-O), or feeling like 'I was going to pass out' (C13-O).

These individuals were awaiting sentence; most were on remand; many had long been involved in prolific, often drug-related offending; and many appeared to have other social and psychological needs. All, in other words, could be described as vulnerable in one sense or another; but whether or to what extent exposure to the emotional demands of RJ added to that vulnerability remains an open question. The process of risk assessment in all the pathfinder sites should have reduced the potential for this. However, the poor physical demeanour of the offender who described himself as feeling like he would 'pass out' prior to the conference had caused concern to the victim, who believed he was experiencing withdrawal symptoms at the time:

*I've never seen that before, I've never experienced anything like that before and it was difficult to see him shaking; that wasn't nice at all. ... He looked like he was detoxing, he had the shakes the whole time. ... There was periods of stillness and then he would start again. That was disturbing (C13-V).*

Another offender (C49-O) who had been especially nervous prior to an RJ conference had thought about pulling out, and decided to proceed only after being reassured by the facilitators – who met him twice in the prison where he was being held on remand – that the victims would not be angry and confrontational. At the conference itself he felt relieved that the victims were forgiving and readily accepted his apologies, and was also greatly heartened to hear them say that they did not want him to receive a custodial sentence. Arguably, this discussion of sentencing with the victims provoked unrealistic hopes and expectations on his part, leaving him more vulnerable at the point at which he did in fact receive a custodial term, a month after the conference (see below for more on the question of impact on sentence).

Nerves before a conference could also translate into anxiety afterwards – such as in the case of one offender who described, after the conference, feeling 'Depressed, down, a couple of days not sleeping. My mind was working ten to the dozen: could I have done or said more?' (C32-O). Over time, however, the offender began to feel much more at ease and that, overall, the conference was 'a good thing. I have said sorry and that has helped me. I've made steps to achieve some of my outcome agreement'.

A few of the victims observed that at their RJ conference, the offender – once a threatening figure who had caused real harm to them – was reduced to a weak and almost child-like status. One victim described an offender who was shaking a lot and sweating

during the conference, looking very obviously scared and ashamed. 'It was almost like looking at a kid,' the victim said; 'he was a small lad and had made a lot of mistakes in life' (C23-V). For his part, this offender described feeling 'really nervous and scared about what the victim would say to me,' prior to the conference – but relieved when it was over and glad to have taken part, and 'really grateful when [the victim] shook my hand at the end of the conference' (C23-O). Another victim described the dynamics of the conference in the following terms:

*It was on his territory, but his territory where he is subservient to everybody else... It certainly wasn't an equitable situation really. I know anybody could have got up and walked out but he was sitting with his prison officer and we were going home – I don't know if that has an impact. I'm conscious of the dynamic of the meeting; he was in a defensive position from the word go and he was like an 11 year old ... caught ... stealing someone's tuck money. He didn't seem like a 29 year old criminal (C41-V).*

#### 3.2.2 Concerns about impact on sentence

It is probably unavoidable that, when RJ is conducted at the pre-sentence stage, many offenders and victims will have concerns about whether or not, or to what extent, offenders' involvement in RJ is likely to affect the sentence they will subsequently receive. As will be further discussed in the chapter that follows, the approach adopted by the pathfinder was that participation in RJ had no automatic impact on sentence, but, in any given case, the sentencing court could choose to take it into account.

The inherent ambiguity of this approach caused some difficulties for both victims and offenders. Some offenders were convinced that involvement in RJ would, or did, have a significant mitigating effect on their sentence. As observed above in relation to the case of C49-O (also discussed in case study 5), involvement in pre-sentence RJ can raise hopes of a reduction in sentence that are then dashed – particularly where, as in this case, the victims themselves strongly voice their desire for a lesser sentence. The custodial sentence in this case would undoubtedly have been a serious disappointment for the victims as well as the offender. We also heard from practitioners about some cases in which offenders' expectations of sentence had been confounded, potentially with a wider knock-on effect. A project manager, for example, described a case in which the defence counsel had made much, in the plea in mitigation, of how grateful the victim had been to take part in RJ; but the judge, from reading the conference report, knew that this was a misrepresentation of what had happened and told the barrister as much. The offender was given a significant sentence and returned to prison telling other prisoners not to bother with 'bloody RJ'. In another case, according to a solicitor, the offender's sentence appeared to be increased by the judge because the

offender had failed to retrieve stolen property as he had committed to doing during his RJ conference.

In contrast, some offenders were convinced that participation in RJ did have a significantly mitigating effect on their sentence – although whether this was in fact the case, or whether other factors had played a bigger part in the sentencing decision, is not possible to determine. One offender who had been much impressed by the victim's generous and forgiving attitude towards him, asserted after being sentenced to a community order that: 'I believe I'd still be in prison now if it weren't for that man [the victim]' (C3-O). Another commented, 'It was an easier option for me. If I would've went to court without that restorative justice thing then it would have probably sent me to jail' (C1-O).

While some victims, in a spirit of forgiveness, actively wished for a reduced sentence for 'their' respective offenders, others were unhappy about an anticipated or perceived sentence reduction. One victim, evidently having been misinformed about the policy on sentencing, or having misunderstood what she was told, commented that:

*I was under the impression that if I went through this process and I came out and said 'he's [the offender] such a nice guy, let's play nice' then he'd get a shorter sentence, that was the impression I was given and if I said 'he should be banged up', he'd get a longer sentence. This is what I was led to believe this process was about, it was about the victim rather than the offender but I feel, in terms of this whole situation, the offender was being looked out for (C13-V).*

The view of RJ as something that ultimately benefitted the offender by bringing down the sentence was echoed elsewhere, including in the case described in case study 4. In some cases, the victim believed that the offender had chosen to get involved in RJ only because, in the words of one, 'he thought his sentence would be reduced' (C35-V). In another case, the victims were deeply unhappy when the offender with whom they had participated in an RJ conference received a suspended sentence rather than the term of immediate imprisonment which had been anticipated. Although the judge had referred to various factors which had determined the sentencing decision, the victims were of the view – apparently having been told this by the police – that 'RJ helped him get off' (C14-V).

On the other hand, some of the participants in RJ had a clear understanding that an impact on sentence was by no means a foregone conclusion. This was the case for one offender who, when interviewed for the evaluation, was vague about various aspects of the conference and the events leading up to it, but repeated three times over the course of the interview that 'the judge doesn't really take [RJ] into consideration' (C15-O). At least two offenders (according to the conference reports) stated clearly in the course of the conference that they did not expect a sentence

### 3. Victim and offender perspectives

reduction, and that their participation in RJ had other motivations (C-54O; C56-O). One offender chose to make this point even more explicit by requesting that the conference be conducted *after* he was sentenced; a request which was followed through by the project (C17-O). It is also interesting to note that victims' views on sentencing were not necessarily straightforward, but could be ambivalent or nuanced. One commented in the feedback form that he had felt 'confused' after the conference, 'because I wanted him sent down but [my] humanistic [side] said I wanted him to have help.' The conference had given him 'a dilemma over what I wanted his sentence to be. I haven't been damaged. I don't consider myself to be a victim' (C37-V).

### 3. Victim and offender perspectives

#### Case 4 (A10): A letter of apology perceived as highly inadequate

The victim, a man in his late 50s living alone, was randomly and brutally, attacked by an assailant unknown to him as he left a pub in the early hours of New Year's Day. He regained consciousness a few hours later in hospital having sustained multiple skull fractures and a brain bleed. His injuries have caused memory loss and prompted personality changes, which have caused him to become reclusive. Since the attack he has been unable to continue working as a self-employed motor mechanic. He saw his injuries as life changing, and considered his outlook to be 'bleak'.

#### The RJ process

Not surprisingly, in view of the injuries he sustained, the victim was vague about the form and sequence of events surrounding the offence, or of the initial discussions about RJ. He recalled 'there was some talk of meeting the bloke, but I didn't want to see him, to know what he looked like. I was worried that I would see people who looked like him'. It was suggested that the offender should write a letter of apology, which was accepted by the victim on the grounds that 'a letter's not going to hurt me.' The letter of apology was duly written, and received by the victim, who then reacted cynically to its contents:

*He had said the right words; but he doesn't know what's wrong with me. I would want him to know what's really happened to me. This letter doesn't mean anything, only when he comes up for parole. It's not enough for me. He's given up his freedom for a short while. But I'll suffer for much longer.*

The offender was in due course sentenced to a three-year prison term. The victim was told of the sentence by the police, who he felt had been supportive through the process, as had the two 'good listeners' who made up the RJ team. However, the victim was adamant that justice had not been done in this case. He felt that the writing of the letter of apology had contributed to a reduction in the sentencing, and that a far harsher sentence should have been given. For him, the letter was 'just words', which had, critically, failed to establish why he had been singled out for attack. He believed that the offender had no conception of the terrible consequences of his attack.

#### More questions than answers

Receiving just one letter of apology, which raised more questions than it answered, was considered by the victim to have been counter-productive, and to have caused him to be cynical about the whole RJ process. He would have liked the questions about which he had most concerns to have been posed to the offender, but said that this had not been presented as an option. He was left with an enduring sense that the offender was being looked after in prison, to be released in a year's time to get on with his life (and potentially to re-offend), while he himself was left unsupported with little prospect of being able to improve his situation. He had reacted to a news story about the benefits of RJ with predictable cynicism.

## 4. Implementation

### Case 5 (C49): Effective process; questions over sentencing

The offence was a domestic burglary of an apartment, 'of our dreams', recently occupied by a young married couple. The male offender, in his mid-30s, spontaneously committed the crime to fund a long-standing crack cocaine addiction. He had recently been released from a three-year custodial sentence, and was on licence at the time of the burglary.

#### The conference

The RJ process largely proceeded to plan, following the early commitment of the victims to engage, based on their strong sense of moral (and explicitly Christian) duty to support, and potentially forgive, those who have transgressed and sincerely expressed remorse. The RJ facilitators had assessed the needs of the victims, and supported them throughout the process. In this they were helped by the local police. Both victims, and also the offender's mother, who attended the conference as a supporter, felt 'looked after all of the way.' From the outset, the offender expressed remorse and repeatedly stated his desire to apologise for his actions, although he stressed that he would be extremely nervous about meeting his victims face to face.

During the conference, the offender apologised numerous times. Both he and his mother were shocked when they heard that the burglary had coincided with some highly painful personal experiences for the victims, including a bereavement just two days before.

The victims made it clear that they were offering forgiveness, and wanted life to improve for the offender: 'There's no anger on our part ... We want you to have a bright future'. At this point, both victims and the offender leaned forward spontaneously and shook hands. This was clearly a pivotal moment in the conference:

*After each of us had listened to each other's stories you reach a point where you feel and say: 'look, I don't have any anger towards you, we want you to come out of this better', and when we said this ... he got up and shook both our hands, and his mum said thank you ... That was a big moment, emotional. At that point it felt like there was some chance of healing, that things were made right again (victim).*

*Listening to [victims] was so good, and I said thank you S-, thank you C-, for giving him the chance to say sorry, because we believe in forgiveness... We are similar Christians (offender's mother).*

*I felt a lot better. I had got things off my chest, I got the anxiety out. I had felt so guilty (offender).*

The outcome agreement specified that the offender would write a letter of apology and participate in a drug rehabilitation course.

The victims had no doubt about the potential value of RJ. 'The name "restorative", it implies there's a possibility of bringing some good thing from a negative event, and that you have a chance to play a positive role.' And, for them, the conference was successful in achieving these objectives. They felt a strong sense of both connection and closure.

#### Sentencing

In the course of the conference, there had been a brief exchange about sentencing. The offender informed the victims that he was due to be sentenced shortly. One of the facilitators then stated that the court would be receiving a report on the conference, and asked the victims if it was correct that they did not wish him to receive a prison sentence. Both victims firmly agreed with this, in response to which they received profuse thanks from both the offender and his mother. The offender added: 'I'm happy about what they said.'

In due course, however, the offender was sentenced to a prison term of just over three years. His mother was visibly very distressed at the sentencing hearing.

## 4. Implementation

This chapter examines the key issues raised by the implementation of the pre-sentence restorative justice pathfinder programme. The total numbers of completed RJ activities during the monitoring period – 55 conferences and 38 alternative RJ activities – was smaller than had originally been anticipated when the programme was launched. Drawing largely on interviews conducted with project managers, practitioners and facilitators, this chapter presents a picture of the interweaving factors that contributed to these relatively low numbers. It also considers the distinguishing features of the pathfinder which impacted on its implementation: namely, the integration of RJ within the criminal justice process; its ‘victim focus’; and the use of volunteer facilitators to deliver RJ activities. The chapter concludes with a discussion of project management and partnership working. It is worth noting at the outset that an underlying feature of many of the issues presented is the inherent challenge of implementing such a programme within the relatively short 12-15 month timeframe.

### 4.1 Data-sharing

Data-sharing was, at least in the early stages, one of the biggest challenges to the implementation of this pathfinder. Issues relating to data-sharing should be understood in the context of existing RJ initiatives and the broader criminal justice setting. The recent evaluation of the RJ capacity building programme cited inter-agency ‘reluctance to share data’ as a barrier to effective implementation (Wigzell and Hough, 2015); while practitioners from various agencies interviewed for the present evaluation noted the difficulties in establishing data sharing procedures between criminal justice agencies both for restorative justice initiatives and beyond. For example, one Executive Group member commented:

*It comes up over and over again: ‘What can we share; what’s the framework for sharing; who’s allowed to share?’ My overriding thought is that there’s got to be a better way to work with each other. There is so much conflicting guidance within departments, within organisations – [it] is [a] challenge across the CJS.*

In order to deliver pre-sentence restorative justice, project managers in each site required a) information on cases being brought before the Crown Court so that they could identify ‘in-scope’ cases and b) access to information on victims and offenders for cases that had been deemed in-scope. Due to the absence of a national agreement for data-sharing for the project, local

arrangements had to be negotiated in each site; a process which proved particularly challenging because of the non-statutory status of the programme. Thanks to a national agreement that was reached between HMCTS and the pathfinder programme, it was relatively straightforward for sites to arrange access to court data on forthcoming hearings, from which it was possible to identify in-scope cases. However, it proved more difficult for project managers to obtain data on the victims and offenders involved in the cases identified as in-scope, and particularly victim contact details.

Broadly speaking, it was originally conceived that existing data-sharing agreements between the police and Victim Support (which permit the police to provide Victim Support with victim details so that victims can be offered support) would enable project managers to access victim details for in-scope cases once a suspect had been charged. This proved problematic due to differing local interpretations of these data-sharing agreements. Moreover, even when data sharing practices permitted the sharing of this information, it was not always complete or accurate enough for sites to contact victims and, crucially, project managers were still prevented from being able to obtain contact details for a substantial number of victims who had not been referred to Victim Support by the police or taken up the offer of their services.

It clearly emerged over the early months of the pathfinder that the police were the only agency in a position to provide the essential victim data; moreover, the police were also able to provide further information on both the offence and the offender which was relevant to decisions about the suitability of cases for RJ and risk assessments. After what was generally a protracted process of negotiation, individual sites reached a range of agreements on access to police data. For the most part, these arrangements entailed provision by the police of some form of report on the cases which had been identified as in-scope. This variously involved provision of information by police Victim and Witness Liaison Unit staff, a court-based officer, and an officer who was semi-seconded to the project for this purpose; and, in one site, an automated system whereby reports were populated and sent by secure email was established. Two project managers, in contrast, were provided with direct access to the police database from which victim and other data could be accessed.<sup>11</sup>

### 4.2 Parameters of the project

In addition to the challenge presented by data sharing issues, a further primary factor contributing to the relatively low number of cases in which pre-sentence RJ was carried out was the limited number of ‘in-scope’ cases available to the project. In-scope cases were defined as:

*All cases of serious acquisitive and serious violent crime with an identifiable victim which are sent for trial or committed for sentence at the Crown Court (excluding cases involving homicide, attempted murder, sexual offences and domestic abuse).*

## 4. Implementation

Based on these parameters, it was originally thought that a substantial number of cases being heard at the Crown Court would fall within the remit of the project. However the number of in-scope cases across sites was lower than expected, due to the high proportion of Crown Court cases involving out of scope offences, particularly sexual offences. Many of the professionals interviewed as part of this evaluation – including members of the judiciary, project managers, police representatives and court staff – noted the increasing prevalence of sexual offence cases (and also, but to a lesser extent, domestic abuse cases) within the Crown Court. For example one judge, who had recent experience of sitting in both inner-city and provincial courts, noted that there has been a ‘radical change in cases’ coming to the Crown Court – ‘the purse snatch trials have all gone’. Another judge referred to the ‘plethora’ of serious sexual offence cases being held at the Crown Court. These comments were echoed by a member of court staff, who remarked that ‘our problem is that we now don’t do enough traditional type robberies and burglaries’.

For pre-sentence RJ to be considered, not only must the offence be classified as in-scope, but also a guilty plea is required from the defendant. In 2013-2014, the guilty plea rate for cases sent or committed for trial at the Crown Court was 73%; while 72% of defendants pleaded guilty at the magistrates’ court (Crown Prosecution Service, 2014). However, several pathfinder sites reported a higher than anticipated number of not guilty pleas being entered by defendants at the plea and case management hearing. To use the starkest examples, two thirds of defendants in Area H and just over half of defendants in Area G pleaded not guilty in cases where a victim had expressed an interest in pre-sentence RJ (see Table 2.8 in Chapter 2). In all sites, it is likely that a proportion of defendants who originally pleaded not guilty would have gone on to change their plea at a much later stage – sometimes as late as the first day of trial. While this did not automatically rule cases out of pre-sentence RJ, late guilty pleas made the practicalities of arranging adjournments difficult, and also were reported to have deterred some initially ‘interested’ victims from pursuing RJ because they were frustrated by what they perceived to be a certain amount of game-playing or dishonesty by the offender.

### 4.3 Victim focus

In addition to the offence being in-scope and the defendant entering a guilty plea, a further requirement for the court to consider granting an adjournment for pre-sentence RJ is a victim who is willing to participate. One of the elements of this model which distinguishes it from some other RJ projects is its strong ‘victim focus’; meaning that the interests and well-being of victims are placed at the forefront of the process. Practitioners across criminal justice agencies stressed the strength of the pathfinder in terms of giving the victim a role within the criminal justice process:

*It makes the victim part of the criminal justice system – they are not side-lined. (Defence solicitor)*

*It allows [victims] to express how they feel and ... gives them inclusion in the criminal justice process. They are heard not just by the judge but also by the defendant. We have been waiting too long for an approach like this. (Probation officer)*

However, the involvement of victims at the pre-sentence stage also generated mixed views among practitioners: some thought that it would provide victims with ‘closure’ and allow them to move on; others were concerned that carrying out RJ at the pre-sentence stage may be too soon – particularly for victims who had sustained physical injury or emotional trauma. For instance a police officer remarked ‘you are almost forcing the victim to make a decision and it may not be the best time’; while one project manager commented ‘it is up to the victim to decide when they are ready for RJ, not the project – people have different recovery periods’.

A point of contention throughout the pathfinder was the time at which the victim was contacted and informed about the possibility of participating in pre-sentence RJ. At the outset of the pathfinder programme, it was decided that, to ensure that the ‘victim focus’ was maintained, the victim would be contacted at or shortly after the point of charge, prior to any contact being made with the defendant. The defendant was only to be approached once the victim had expressed an interest in RJ.<sup>12</sup> However, contacting victims prior to the defendant’s plea hearing posed a significant obstacle to the pathfinder – and particularly to its intended ‘victim focus’ – because, as highlighted above, a higher than anticipated number of defendants in in-scope cases pleaded not guilty or entered a late guilty plea on the day of trial. Not only does this mean that a substantial amount of preparatory work was conducted with victims that did not come to fruition, but also it was potentially upsetting to victims who expressed an interest in RJ, but were not able to proceed with it. Many practitioners argued that maintaining a ‘victim-focus’ does not necessitate contacting the victim first and expressed concerns about this aspect of the pathfinder; particularly in relation to the issue of ‘raising expectations’ among victims or even contributing to feelings of ‘secondary victimisation’.

It is for reasons such as these that in, July 2014, the Executive Group proposed that victims should not be contacted until after the offender had pleaded guilty. This proposal was not implemented, however, because of concerns that it would lead to adjournments in cases that did not proceed to RJ on account of victims’ unwillingness to participate, leading to unnecessary delays to the court process. Sites therefore adopted other methods to address this issue, including strengthening their efforts to manage victim expectations at an early stage by informing them that RJ was only a ‘possibility’ until there was a willing offender and guilty plea, and endeavouring to ascertain the likelihood of guilty pleas (usually via the defence or probation) in individual cases in advance of approaches being made to victims. Nevertheless, it was consistently argued by many practitioners and facilitators that pre-sentence

<sup>11</sup> As also applied in Durham, the site set up towards the end of the evaluation period.

<sup>12</sup> It should be noted that this did not prevent defendants from proactively approaching the project (usually via their defence representative) to express an interest in pre-sentence RJ. In the small number of instances in which this occurred, the victim was then contacted (where possible) to ask if he or she would be willing to participate. See, for example, Case Study 7.

## 4. Implementation

RJ would benefit from victims only being contacted at the point at which a guilty plea is entered or there is a strong indication of a guilty plea:

*RJ is about enabling victims to feel better about their lives, being able to get on with their lives and having a better outcome of the CJS. ... The better option would be to ask when [defendants] plead guilty ... It is important to get the offender on board and [then] see if the victim is interested. (Judge)*

*Despite great care being taken to explain that the RJ cannot go ahead on this project if the offender pleads not guilty, those who were interested in RJ have all expressed disappointment about the RJ not going ahead. It is at this point that victims are in greatest danger of being disappointed and that the basic assumption that it is a project focused on victims is challenged. ... My view is that it is really important that the victims are not contacted until there is a guilty plea because you cannot justify upsetting people in this way. (Facilitator)*

### 4.4 Integrating RJ in the criminal justice process

The pre-sentence RJ pathfinder requires the court to adjourn between plea and sentence for an RJ activity to take place. The integration of the pathfinder in the criminal justice process raises significant questions in relation to how adjournments are carried out; legal and practical implications; and the potential impact of pre-sentence RJ on sentence.

#### 4.4.1 Adjournments

Over the course of the pathfinder programme, adjournment for RJ was done in two ways:

- 1 At the plea hearing at the Crown Court, the judge was requested to order an adjournment; where the judge agreed to this, the court then adjourned for six weeks for the RJ activity to take place. If the court was in any case adjourning for a pre-sentence report, the request would be that the usual adjournment of three

to four weeks be extended to six.

2. In cases being committed for sentencing from the magistrates' court, an administrative adjournment was requested from the Crown Court manager; subject to agreement, the sentencing date was then fixed for six weeks after committal without the need for an additional hearing. This process was adopted in some but not all the project sites.<sup>13</sup>

At the outset, some stakeholders were apprehensive about the potential impact of RJ adjournments on the wider criminal justice process. Concerns were raised in relation to, firstly, 'timeliness' and a possible adverse effect on court performance targets of additional or longer adjournments; and, secondly, the risk of 'clogging up the courts' with additional hearings, in a climate where increased emphasis is placed on court efficiency.<sup>14</sup> As one judge commented:

*The pre-sentence RJ idea is directly contrary to current policy...the idea now is to deal with cases with the fewest number of appearances, and the least possible amount of time ... we are being encouraged not to ask for a [pre-sentence] report at all.*

There were also concerns that defence representatives would not respond positively to possible adjournments as they would receive no additional fee for extra hearings.<sup>15</sup> Adjournment for pre-sentence RJ could also, potentially, mean that the length of time an offender spent on remand might be longer than it otherwise would be, if he subsequently received a non-custodial sentence.<sup>16</sup>

As part of the initial set-up arrangements, the courts participating in the pathfinder were informed by HMCTS and the Ministry of Justice that their performance targets on timeliness would not be negatively affected by adjournments for pre-sentence RJ; and, in practice, there was little disquiet raised among court staff and members of the judiciary about the impact that pre-sentence RJ had on the running of the courts. However, some did suggest that this was, in fact, due to the lower than anticipated number of cases being adjourned for RJ.

An additional concern was whether or not the pre-sentence RJ process could be completed in the relatively short time-frame of six weeks. As outlined in Chapter 2, an RJ activity was carried out in the majority (63%) of cases adjourned; and shortage of time did not appear to be a significant factor among cases which did not conclude at the pre-sentence stage. The relatively short adjournment period could be viewed in one of two ways. Some viewed it positively, as it gave a sense of 'urgency' to the process that other RJ initiatives were seen to lack; however, others thought that this was a weakness in the model, particularly as it gave victims a short window of opportunity in which to decide whether or not

<sup>13</sup> Additionally, in two areas the pathfinder was expanded to the local magistrates' court, therefore adjournments for RJ could also be granted at the magistrates' court.

<sup>14</sup> See Ministry of Justice (2012b).

<sup>15</sup> It is difficult to gauge the extent to which the pathfinder did encounter resistance from lawyers. Project managers reported a mixed response from the defence community, with some individual lawyers reacting very positively and even pro-actively contacting project managers about potential cases, whereas others were more reluctant to engage.

<sup>16</sup> Whether this did in fact occur in relation to any of the cases in the pathfinder has not been possible to establish for this evaluation.

## 4. Implementation

they would like to participate in pre-sentence RJ.<sup>17</sup> For example, one experienced RJ facilitator stated:

*You are only given a very short timescale – it can feel as though you are pestering people – it is conveyor belt-like rather than person-centred.*

Moreover, there was a sense among some project managers and facilitators – i.e. those responsible for ensuring that RJ was completed within the adjournment period – that the amount of work to be completed within the timeframe was very considerable. This raised concerns about the feasibility of the timeframe had the number of eligible cases been higher.

### 4.4.2 Legal and practical issues

Even with the adjournment process in place, there remained a number of legal and practical issues relating to the integration of pre-sentence RJ in the wider criminal justice process. Several practitioners noted the legal complications that could arise in contacting victims prior to obtaining a plea from the defendant; for example, if a victim disclosed anything that was not included in, or even contradicted, the existing evidence. This was also deemed to be a relevant consideration for both parties if the case progressed to a conference. Some project managers had a concern that facilitators might be called as witnesses if any such cases resulted in a defendant's change of plea from guilty to not guilty, and a trial was subsequently held. If there were negotiations between defence and prosecution over the precise charge to which the defendant was prepared to plead guilty, or over the defendant's 'basis of plea',<sup>18</sup> this resulted in the case being ruled out of scope. There were also some concerns about whether – in instances where lawyers discussed with defendants, prior to their entering a plea, the possibility of participating in RJ – this could be deemed an inappropriate influence on plea. And at least one project manager was alert to the risk that conducting pre-sentence RJ with an offender who had pleaded guilty could prejudice the trial of any co-defendants who had pleaded not guilty.

It should be noted that most of the above fears were raised as hypothetical issues. However, one case (see case study 8) did encounter significant difficulties which resulted from RJ being pursued while the case was still 'live'. The defendant in this case had originally pleaded guilty to a charge of aggravated burglary and an RJ conference was carried out at the pre-sentence stage. However, following the victim's account at the RJ conference about precisely what had happened during the burglary (specifically, in relation to what the offender had done with the hammer, which he admitted to having in his possession but not to using in a threatening way), and in light of CCTV evidence previously unseen by the offender

and his lawyer, the offender changed his plea from guilty to not guilty to the original charge (of aggravated burglary), but guilty to a lesser charge (of burglary and affray). This resulted in a delay of several months to the conclusion of the case as the prosecution was at first reluctant to accept the plea to the lesser charge and a trial was scheduled before, eventually, the new plea was accepted.

Various practical problems also emerged in relation to the integration of RJ in the criminal justice process. In some instances where the offender was on bail rather than remand, bail conditions needed to permit a conference to be held; for example, if a condition of bail was that the offender should have no contact with the victim. Project managers involved in these cases noted that courts were accommodating of this; the main issue was the need to ensure that the judge was alerted to the requirement for changes to bail conditions at the point of adjournment. Another potential issue was that, in cases involving multiple defendants, carrying out pre-sentence RJ with one defendant could delay the sentencing hearing of any co-defendants who did not wish to participate; for this reason, such cases were excluded from the programme. Project managers (and sometimes facilitators) often found that they were required to spend a larger than anticipated amount of time at court, for example to ensure that adjournments and matters such as those described above were dealt with, or to attend sentencing hearings.

Some practical issues also emerged with respect to RJ conducted with offenders on remand, as this required conferences to be carried out in custody. In most areas, access to local prisons was granted and pathfinder sites fostered strong working relationships with prison governors and other prison staff who demonstrated a receptive organisational ethos towards RJ. However, in one site the project did not initially have access to the local prison which held a substantial proportion of prisoners remanded from the court. This was eventually resolved, however it severely hampered the initial progress at this site and meant that RJ activities were ruled out in some early cases in which adjournments were granted. Furthermore, the security and risk assessment measures required in custodial settings sometimes hindered the completion of conferences. For example, one prison officer interviewed for the evaluation described having prevented a conference being held in his prison due to concerns about the offender's level of risk; he spoke of feeling particularly 'awkward' about this decision as the judge had granted an adjournment for RJ. Moreover, in some areas in which defendants were remanded to various local prisons, facilitators were required to complete separate security clearance for each prison. There were also cases where conferences could not be held because the offending history of the victim meant that they were not allowed to enter the prison – 'it is hard to explain this to victims without re-victimising them', remarked one project manager. A final concern was the potential impact of entering the prison environment on victims – particularly if they were required to travel a considerable distance from their homes in order to reach the establishment.

<sup>17</sup>The same could also be said for offenders; however this was referred to less frequently by those interviewed for the evaluation.

<sup>18</sup> That is, where a defendant pleads guilty to the charges but on the basis of facts that differ from the prosecution case.

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### 4.4.3 Sentencing

Situating RJ at the point between conviction and sentence raises the issue of whether or not the RJ intervention has any impact on the sentence that the offender receives. The Ministry of Justice (2014b: 11) guidance for pre-sentence RJ states that:

*At the sentencing hearing the court may have regard to the report and the offender's participation, willingness or lack of willingness to participate in a RJ activity and any outcome agreement. However, these considerations, together with considerations of other factors of the case remain entirely a matter for the courts to interpret and come to a sentencing decision about.*

Several information leaflets were produced at the outset of this project for victims and defendants and also for practitioners such as the judiciary and the defence. The leaflets were all worded slightly differently but all conveyed a similar message: it was up to the sentencing judge to decide what sentence to give to the offender, having been provided with all the relevant information about the case, including the RJ report. The sentence would primarily reflect the seriousness of the offence and was likely to be affected by many additional factors of which involvement in RJ was just one, such as factors relating to the context of the offence and the offender's circumstances.

There was, therefore, no clear way to ascertain the impact that a pre-sentence RJ intervention was likely to have on a sentence; or even, once the sentence had been passed, the impact that the intervention *did* have, even if the judge referred to the RJ in his or her sentencing remarks. Moreover, it was by no means a straightforward message for project managers and facilitators to convey – to local partners and, particularly, to victims and offenders – that pre-sentence RJ *could* have, but by no means was guaranteed to have, some impact on sentence, alongside all the other factors that a judge is likely to take into account.

Debate about the potential, perceived and appropriate impact of RJ on sentence recurred throughout this pathfinder evaluation. Victims' and offenders' comments on this issue have already been considered in the preceding chapter. Some practitioners from a range of criminal justice agencies were of the view that an anticipated impact on sentence could discourage victims from engaging with pre-sentence RJ, while – from the offender's perspective – an anticipated impact on sentence could produce a cynical motivation to participate:

*I worry about it being a bit of a carrot for the offender; I know in some areas it has been taken into consideration in the sentence ... If [offenders] think it could get them a lesser sentence then they are doing it for the wrong reasons, because for me it has to be voluntary. (Police representative)*

*With pre-sentence RJ you can't take away the fact that the victim thinks that it is being done to lessen the sentence; they believe that, you can't change their minds. (Facilitator)*

*There is the potential for defendants to receive a lesser sentence without being truly remorseful – if they play the system they could get a more lenient sentence. (CPS representative)*

Some practitioners, on the other hand, felt that it was fair to use the prospect of a potential impact on sentence (even if that prospect was remote) to incentivise offenders to take part in RJ, because of the wider benefits that RJ participation could bring:

*If offenders think it affects the sentence [then] fine because it has got them in a room with the victim. It would be a mistake for them to get a reduction in the sentence but you need to get them in the room with the victim. (Police representative)*

*A lot of defendants will simply see this as a way of trying to manipulate their sentence... they are looking for all kinds of ways of manipulating the system, so of course they would use this offer in this way... but even if this is the case it could have a beneficial effect. (Judge)*

Other questions raised by practitioners included whether it was appropriate for defence counsel to use the offender's participation in pre-sentence RJ as a 'mitigation tool' during the sentencing hearing. Another concern was that the provision of RJ at pre-sentence stage – if there was a possible impact on sentencing outcomes – would arguably lead to inequities in sentencing, since not all offenders had the opportunity to participate in RJ (and not all those who were offered it chose to participate).

The application of sentencing guidelines in cases where pre-sentence RJ was conducted generated conflicting views. For example, one judge stated that unless sentencing guidelines were amended to include RJ as a specific mitigating factor, then it was unlikely to have an impact on sentence. However, a defence solicitor expressed the view that an offender's participation in pre-sentence RJ could be regarded as a demonstration of remorse – a factor that is already cited in sentencing guidelines. A different judge observed that

*it is quite likely that different judges would react differently in response to a good RJ report, but that's not saying anything new, as one judge given the same evidence could*

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*give a suspended sentence, another [could] say four years' [custody]. Judges really do take different views; guidelines attempt to bring sentences together, but any additional report you introduce is bound to give an extra element of variation.*

Perceptions of pre-sentence RJ's impact on sentence sometimes had negative repercussions for relationships between local agencies – particularly between the police and other partners. One police representative interviewed for the evaluation reported that 'the cops were in uproar' after seeing an article in a local newspaper claiming that an offender had received a reduced sentence after having participated in pre-sentence RJ. Rapport between the police and other agencies in another site was severely dented when a prolific burglar who had offended while on licence received a suspended sentence following an RJ conference. The judge in this case (C14; also referred to in the preceding chapter) had indicated that a variety of factors had determined the sentencing decision, including a pre-sentence report; however, the police were of the view (and communicated to the victims in the case) that the sentence was largely a consequence of the offender's participation in RJ, and that justice had not been done. In a small number of cases it appeared that victims did not want to engage, or withdrew their engagement from the project, after being given a negative appraisal of pre-sentence RJ by individual police officers.

Notwithstanding the challenges, several practitioners pointed to the beneficial impact of pre-sentence RJ on the sentencing process. Some pointed out that the reports on RJ conferences and other activities could act as a valuable source of information for sentencers. For example, a prison officer who attended several pre-sentence RJ conferences referred to one offender receiving a 'bang-on community order', which he felt was at least partly attributable to the content of the conference agreement. Several practitioners commented favourably on the role afforded to victims who had been engaged in RJ during sentencing hearings:

*I had one RJ report sent to me... it didn't have any particular effect on the case in question... but in my summing up I did make reference to the courage of the victim, and this was then fed back to them, which I think the victim appreciated. (Judge)*

### 4.5 Facilitation

The delivery of RJ through the use of volunteer facilitators was another of the distinguishing features of this model, alongside its

pre-sentence setting and victim focus. The role was advertised locally and facilitators were recruited in each site. The project trained over one hundred volunteers from a range of occupational backgrounds including the police, probation, civil service, the magistracy, counselling and social work, while some were students studying law or criminology and others were retired; a substantial proportion of facilitators were recruited from victim services' organisations, including Victim Support. The facilitator role involved arranging and meeting with victims and offenders at the preparatory stage, facilitating RJ activities and carrying out post-activity work with victims and offenders.

#### 4.5.1 Training and preparation

All volunteers were provided with a three-day Restorative Solutions training course at which they learnt about the principles of restorative justice, how to initiate preparatory meetings with victims and offenders and how to facilitate conferences. The training was generally very well received by trainees; completed feedback questionnaires were received from 117 participants<sup>19</sup>, of whom 96% 'agreed strongly' or 'agreed' that the information they received was comprehensive and well detailed; 99% 'agreed strongly' or 'agreed' that the trainers were effective communicators; and 94% said that the course met their needs. Following the three-day training, facilitators received follow-up training in the form of two mentoring days at approximately two-monthly intervals. In addition to this, monthly meetings led by the project manager were held with facilitators in each site to address any emerging issues.

Facilitators who were interviewed or who provided feedback via email to evaluators spoke of feeling that the training had equipped them well for facilitating conferences; however, it seemed that they were less well trained for carrying out preparatory tasks, which occupied a substantial part of the facilitator role. Facilitators were required to carry out initial meetings with victims and offenders in order to ascertain their interest in RJ; subsequently, if RJ was pursued, facilitators continued to meet participants to prepare them for the activity and make practical arrangements. Even if RJ did not take place, facilitators were required to update all parties and ensure that they were supported. In cases where conferences did proceed, facilitators could also be required to carry out post-conference follow-up work with victims and offenders.

Unmet training needs in relation to RJ preparation were commented on by project managers, practitioners and facilitators themselves. As one project manager noted:

*The training is very much focused on conferences at the exclusion of things like the initial telephone call and the importance of doing the preparation. ...The prep[aration] is the biggest part of what you do!*

<sup>19</sup> This number slightly exceeds the total number of volunteers trained because feedback forms were sometimes completed by professionals from local partner agencies who also attended the training, including project managers and Victim Support staff.

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The pathfinders devised a range of approaches to enhance training on preparation; for example, the training programme for new facilitators was adapted to include a task on initial meetings with victims and several sites carried out workshops or produced a script to help facilitators make their first phone calls to victims. Some facilitators spoke positively of this additional support, particularly in terms of how it increased their confidence in making initial victim contacts:

*It was very useful to have templates provided for the preparatory meetings. I found that after the first few calls I became more confident in the initial telephone contact with victims. Recently I have not had any refusals by victims to attend a preparatory meeting. (Facilitator)*

### 4.5.2 Expectations of the role

A recurring theme in project managers' and facilitators' feedback to the evaluation was the gap between expectations of the facilitator role and the reality of the role once the project was implemented.

A significant issue at the initial stages of the project, when implementation was much slower than anticipated, was the substantial gap between the training of facilitators and the allocation of cases to individuals. This had the dual effect of hampering facilitators' sense of confidence in their skills and provoking a sense of frustration about the role. The scope for facilitators to develop their skills and experience was further limited by the overall low numbers of cases which required facilitation; moreover when facilitators did take on cases, they were perhaps unprepared for emerging problems that halted progress, such as a lack of victim engagement or a not guilty plea:

*The most challenging aspect has been the allocation of cases and the few that have come my way (until recently). Persuading victims to go ahead, can be difficult, and then [they are] frustrated by delays in court procedures. One victim, who we saw in March, is waiting until June for a plea hearing - she is exasperated, and so are we! (Facilitator)*

*As a volunteer I felt that I wasted my time because there was such a long period between training and referral. In addition, it was not made clear from the outset how much time was required to undertake a case. Most of the time I have invested in*

*this project has either been spent training, talking about RJ or visiting and talking to victims who cannot have RJ! (Facilitator)*

The latter quotation highlights a practical consideration that was possibly not fully evident to facilitators when they signed up for the role: that is, the amount of work to be done, and corresponding flexibility required, to complete a case from beginning (initial victim contact) to end (post RJ follow-up with victims and offenders). One facilitator lamented, 'I found that I was not nearly as flexible as I had thought I would be mainly because of the very short timescales involved'; another described the level of work required within the timeframe as a 'massive ask'.

Project managers made various efforts to keep facilitators engaged as the pathfinder progressed. This included inviting guest speakers to speak at monthly facilitator meetings, holding feedback sessions so that those who were facilitating cases could share their experiences with others, and linking with the police to enable facilitators to become involved in police-based RJ initiatives alongside pre-sentence RJ. Nevertheless, the retention, engagement and availability of some facilitators was problematic and meant that project managers often relied upon a 'core group' of facilitators to deliver the role. It also meant that project managers regularly carried out facilitation tasks themselves, such as preparatory and post-conference work, as well as co-facilitation of conferences. This often resulted in project managers feeling overburdened and, simultaneously, facilitators feeling under-valued:

*Me and my administrator are still making the first call to victims; there are only two of my volunteers who are happy to do it. When we set out, the training never covered the first phone call so it was us doing it ... now they haven't got the confidence so we are still doing it. It is really resource intensive. (Project manager)*

*As volunteers committing significant amounts of time to training and ongoing support of the project, we were unprepared for the level of disappointment arising. When referrals finally emerged the process of allocation to volunteers appeared opaque and arbitrary with some volunteers allocated multiple cases with others allocated none. (Facilitator)*

However, despite these difficulties, facilitators often derived great satisfaction when cases did proceed to completion; particularly in instances where they could see a positive impact of RJ on victims and offenders. One facilitator described the most satisfying aspects of the role as:

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*[Having] a sense of making a positive difference – both to victims and offenders – in one instance, [I] witness[ed] an offender seeing for the first time that there was a possibility that he could change. Also, witnessing criminal justice system professionals coming round to the idea that RJ might just work.*

### 4.5.3 Skills, experience, and knowledge required for effective facilitation

Project managers identified a range of requisite skills, knowledge and experience for effective facilitation. Flexibility, reliability and self-confidence were deemed critical: it was imperative that if facilitators took on a case, they were ready and able to see it through to completion.

A further set of skills required were those more generally applicable to RJ work and even wider volunteering. These included empathy, good listening skills and the ability to engage with both victims and offenders. The voluntary nature of the role elicited a particularly positive response from some individual victims and offenders, as observed by several project managers:

*People are really grateful - if they know this person has come to see them not because they are being paid but because they really believe it and want to help them - they have responded really well. There has been genuine surprise on behalf of offenders sometimes.*

*I had a case where one of my facilitators went out to meet with the victim and his father was aggressive about why they were there - he asked if she was on commission for this; when the facilitator told him that she was a volunteer the whole dynamic changed ... He realised that she was offering something that she believed in and that it was a good thing; a conference went ahead in that case.*

Project managers also noted the passion, dedication and enthusiasm on the part of facilitators in the course of carrying out their role; particularly as this sometimes involved working anti-social hours or traveling considerable distances to meet with victims and offenders. Neutrality was also perceived as an important feature of facilitation; however there were a few concerns (raised

by both project managers and facilitators) that some facilitators, particularly those from a victims' services background, were more sympathetic to victims' than offenders' needs. This might, in part, have been a reflection of the overall 'victim focus' of the project. And although facilitators came from a variety of occupational backgrounds, some project managers and facilitators were aware that their demographic profile did not reflect that of the wider local population, particularly in urban sites – despite efforts by the pathfinders to recruit volunteers from a range of backgrounds through open advertisements in local communities:

*There is a lack of diversity which doesn't reflect the community we are in. Facilitators in my area are really not representative in terms of age, gender [and] ethnicity. ... As a collective, there needs to be a mix of age, background, class, working and not working. I think we should have facilitators with previous convictions; there needs to be more representation of the communities we are working with. (Project manager)*

Some understanding of the legal process and familiarity with the criminal justice environment emerged as crucial to effective facilitation in the pre-sentence context. The role required facilitators to be sensitive to the legal issues involved in approaching victims and offenders about RJ when their case was still 'live'; facilitators could also be asked questions about elements about the criminal justice process, of which they may not have had prior knowledge. It appears that some facilitators encountered difficulties with this aspect of the role; perhaps particularly because the training was not fully tailored to pre-sentence RJ. One project manager reported holding further training herself in order to fill this gap. It was also perceived that having previous employment or voluntary experience within the criminal justice system – for example in the police, probation or as a Witness Service volunteer – helped pre-sentence RJ facilitation. Facilitators could be required to attend court hearings or prison visits and therefore needed to be comfortable working in these environments.

A particular challenge for facilitators was conveying to conference participants the somewhat complex message that (as discussed above) an offender's involvement in RJ might have some impact on sentence, alongside other factors, but would not necessarily do so. An important part of facilitators' preparatory work with victims and offenders was to reiterate this message in as clear terms as possible, to counter the risk that participants would have unnecessary worries about or unrealistic expectations of impact on sentence. One site adopted a practice that involved facilitators explaining to participants at the beginning of each conference that 'taking part in the conference did not mean a reduction in sentence and that any sentence passed was solely down to the judge's discretion'. Both parties were asked to agree to and acknowledge the statement made by the facilitator.

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### 4.6 Project management and partnership

Each pathfinder site had a full-time, salaried project manager who was responsible for oversight and day-to-day management of the project. In most sites, project managers were operationally line managed by the local Victim Support Divisional Manager and their work was overseen by one of the two Restorative Solutions programme managers. Most were given office space in court buildings, although some were located in police or Victim Support offices. The project managers were recruited ahead of the sites going live and came from a variety of occupational backgrounds including Victim Support, probation, the Crown Prosecution Service and the Local Criminal Justice Board.

The tasks assigned to project managers included: implementing the pathfinder and resolving any process-related issues; identifying in-scope cases, receiving referrals and conducting risk assessments on potential participants in liaison with other local agencies; ensuring that adjournments were requested; recruiting and overseeing the training and support of facilitators; assisting with the delivery of RJ activities and supporting participants through the process; completing, collating and submitting reports and monitoring data to all relevant agencies and the external evaluators within the required timeframe; and cultivating and maintaining relationships with local agencies. The role, therefore, required wide-ranging expertise and skills, proactivity and a high level of dedication and flexibility.

Project managers' role in establishing relationships with local agencies and facilitating communication between agencies was critical and their efforts in this regard were spoken of positively by local agencies in several sites. In many sites, the project managers' previous experience of working in criminal justice settings proved extremely advantageous in devising and establishing local processes, as they were able to build on existing relationships with agencies and individuals with whom they already occupied a position of trust – 'we are known faces in the court structure, we know how the court works, we have already established trust', remarked one project manager.

However, several practitioners expressed the view that the pathfinders were being driven by the personalities of individual project managers and there was a sense that project managers could easily be overstretched by the level of work required.<sup>20</sup> One project manager described the role as akin to having 'three jobs rolled into one' and, when asked if there were any common strands to cases in which pre-sentence RJ had been completed, she responded: 'the project manager dragging [them] over the finishing line!' Challenges to implementation, such as data-sharing difficulties and the overall low number of completed cases, were also sources of frustration to project managers. One described the role as 'almost impossible ... I was asked to deliver something and failed pretty miserably'; while others described a sense of 'isolation' or 'remoteness' caused by the need to balance multi-agency relationships from a non-statutory position. Nevertheless, project managers also spoke of feeling a sense of reward from the role, particularly in terms of working with facilitators, some of the multi-agency aspects of the role and – perhaps most importantly – being able to see the beneficial impact

of RJ on victims and offenders who participated in conferences and other activities.

Although project managers were largely successful in fostering multi-agency support for, and active involvement in, the pathfinder, certain difficulties in partnership working were encountered in most sites. These difficulties tended to centre on the non-statutory nature of the pathfinder and ambiguities over its scope in its initial stages. As discussed above, data-sharing proved problematic, and other difficulties included limited access to the local prison in one site.

Particularly among the police, but also within some other partner agencies, there appeared to be some ambivalence about the pre-sentence nature of the programme – including in relation to the likelihood or perceptions of impact on sentence. One judge stated that he had been 'sceptical' at the outset about the pathfinder and the low level of take-up had confirmed this view: 'My own view is that if [RJ] is to achieve anything, it will be better after sentence.' This view was echoed by a number of other practitioners. Furthermore, several described their frustration at the lack of impact of the pathfinder in terms of the low number of cases passing through the system. This was reflected in various comments describing the pathfinder as 'a damp squib', 'not very successful' and 'a pilot that has almost been invisible'. This disappointment was especially apparent for practitioners who had been strongly committed to the pathfinder at the outset:

*Everyone was up for it, the will was there, but there have only been three conferences [so far], so you have to say it's been a failure, which is a pity 'cos it's a good idea. (Police representative)*

Notwithstanding the evidence of certain practical difficulties relating to partnership, some ambivalence about pre-sentence RJ as a concept, and disappointment about slow or limited implementation, the majority of local agencies demonstrated a strong and active level of engagement with the pathfinder. A particularly clear demonstration of this was the fact that, following initial problems and delays, effective data-sharing arrangements were put in place in all sites, albeit some of these arrangements were relatively informal and had come about through the good will and commitment of individuals rather than high level, formalised protocols. Well-attended multi-agency stakeholder meetings were held regularly in several sites and helped to promote and drive forward the initiative. Some concerns, however, were voiced about the sustainability of the project and the multi-agency relations on which it depended:

*The project has probably relied on the good will of a lot of people and it has probably run because of the personalities involved and if you strip all that away, that is not the basis which you should build a project up on.*

<sup>20</sup> It is for this reason that paid administrative staff to support the project managers were recruited in most sites mid-way through the pathfinder.

## 4. Implementation

Levels of input from individual partner agencies, in terms of the amount of time committed to the project, varied widely from site to site. For the evaluation, the project managers were asked to estimate the total number of hours that each of the statutory agencies committed to the project over the six-month period of October 2014 to March 2015. These estimates excluded time spent on briefings, training sessions or other activities related to project set-up, and were intended to give an indication of time required from partners to support the delivery of the project, once it was up and running.

Table 4.1 summarises the information on partner input provided by project managers in seven of the sites; here, it can be seen that the

individual pathfinder projects vary widely in terms of the amount of input provided by partners – with total hours of police time, for example, ranging from zero to 135 hours over the six month period, and total hours of prison staff time ranging from zero to 120 hours. This reflects the diversity of arrangements for RJ delivery across the sites: in particular, the amount of police time given to the project depended on precisely how police data on in-scope cases were extracted and made available to project managers. In Area D, prison staff committed significant time to the pathfinder as several officers who had previously been trained in RJ were involved in the preparatory and follow-up work with prisoners participating in conferences, and also did some co-facilitation of the conferences.

**Table 4.1: Total number of hours committed to delivery of pathfinder by local statutory partners, October 2014 - March 2015 inclusive**

	Police	Prison	CPS	Court staff	Probation
Area A	16	13	4	6	12
Area B	26	24	-	2	1
Area C	20	16	4	-	1
Area D	-	120	2	-	-
Area E	135	2	1.5	-	3
Area G	83	19	12	16	6
Area H	1	-	-	6	2

The changing landscape of the criminal justice system over the past three years inevitably impacted partnership working on the pathfinder. The key changes, which have taken place in the even wider context of 'austerity Britain', include:

- The replacement of police authorities with elected Police and Crime Commissioners (PCCs). First elected in November 2012, PCCs are responsible for the commissioning of victims' services in the area in which they are elected (see Ministry of Justice, 2012c).
- The reform of the probation service under the Transforming Rehabilitation programme. Taking effect from June 2014, this included the creation of Community Rehabilitation Companies (CRCs) alongside a new public sector National Probation Service. The latter retained responsibility for most court-based probation work, including the production of pre-sentence reports (see Ministry of Justice, 2013b).
- Efforts to increase the efficiency and speed of the criminal justice system by doing away with unnecessary court hearings and tackling delay (see Ministry of Justice, 2012b).
- Reforms to criminal legal aid provision, as part of wider legal aid reforms, including the introduction of cuts to legal aid fees and a planned reduction in the number of contracts for solicitor firms covering criminal legal aid (see Ministry of Justice, 2014c).

The above developments were referred to by practitioners as potential or real barriers to the implementation of the pathfinder. Practitioners from a range of agencies including the police, prison staff, probation representatives and members of the judiciary spoke of the impact of resource constraints on their role in pre-sentence RJ; while one Executive Group member observed:

*I guess the major barrier to really successful implementation would be the fact that [pre-sentence RJ is] not really an offer that people [agencies] are desperately crying out for; especially at a time of huge change and uncertainty with changes to probation, PCCs taking over funding streams and LCJBs being disbanded. All these different things that have changed the landscape quite a lot over the last two and a half years.*

## 4. Implementation

### Case 6 (A25): A constructive exchange of letters

A 17-year-old boy, along with two co-defendants, broke into the home of an elderly victim (aged 75) whilst she was out at church. They turned out her drawers and cupboards in search of money and items to sell. When the victim returned home, she noticed that the windows were open and her dog was behind the door in the conservatory instead of in the garden where he usually would be. The dog was unharmed but the offenders had stolen the victim's jewellery. The jewellery was later recovered by the police.

#### The RJ process

The victim was invited to take part in an RJ meeting with the offender. When she asked, 'What would I say to him?' she was told that she could say how the crime had upset her and how it had contributed to her feelings of nervousness. The victim agreed to take part if it would help the 'young boy'. She said that she felt sorry for him, given his age.

Following a risk assessment by the RJ project manager and the young offender institution (YOI) in which the offender was being held, it was determined that an RJ conference would be inappropriate. It was reported that the young offender was showing no empathy or remorse, and had been placed in isolation in the YOI because of abusive behaviour to staff. There were concerns about the victim being 're-victimised'. Both victim and offender then agreed to take part in shuttle mediation, in the form of an exchange of letters.

In her letter to the offender, the victim said that she appreciated that he hadn't harmed her 'little dog'. The offender sent what the victim described as 'a lovely letter' back to her.

*... I am very grateful for you taking the time to write to me. When I read your letter, I felt ashamed and gutted what I have put you through. Until I received your letter, I had never thought about how my behaviour affected others. There is no excuse for my actions. I was not thinking about what I was doing, except for getting and taking drugs. I am so sorry that I have made you feel unsafe and I hope in time you can once again feel safe. ... I hope, in time, you and your family can forgive me. Once again, I am sorry for all the harm I have caused you.*

The victim reported feeling very moved by the letter. 'Oh, I cried ... It really upset me. It really did.'

#### After RJ

The offender received a 6 month custodial sentence, which the victim felt was fair. After being told that he had been using his time in prison to obtain some qualifications, she thought, 'Right, OK, I have helped in some small way,' and she hopes that he had not, since, returned to his old ways.

The victim's friends, to whom she had shown the offender's letter, had queried whether it had in fact been written by him because the spelling and grammar was so good. According to the conference report, the offender had in fact said that he wanted to hand-write the letter so that it would be more personal, and some time had been set aside for him to write the letter with the help of his keyworker.

Despite the scepticism of her friends, the victim was glad that she had taken part in RJ, and said it was something she would recommend to others: 'If there's a small chance of helping, yes, I would definitely ... Everybody needs a chance, a small chance, don't they?' She said, 'I still think about the boy... I tried my best and I would have gone to see him, even though it would have upset me.'





## 5. The place of pre-sentence RJ within wider RJ

### Case 7 (C25): Forgiveness: A key ingredient in an RJ conference?

The male offender, aged 32, received a 16 week custodial sentence for his part in a non-residential burglary. Along with two other men, the offender – who was under the influence of amphetamines at the time – had broken into a community hall in the early hours of the morning, causing damage to external doors and windows and stealing a projector and some other equipment. The victim was a 60-year-old Minister who used the hall to hold church meetings. The day after the burglary, he arrived at the hall with his wife, son and daughter to find that the fire doors had been left open and rooms in a mess following the offenders' untidy search of the building. The offender was arrested and charged after his DNA had been found on a carton of fruit juice that had been left behind.

#### The RJ process

The offender had approached the Restorative Solutions project manager saying 'I really want to do this,' following the project manager's briefing about the project at the prison where he had been remanded. Having had time to reflect on his behaviour and having seen photos of the damage he had caused, the offender 'did feel bad about it; it weren't the proudest moment of my life.'

Despite feeling nervous on the day of the conference, the offender said that 'once I got in the room and spoke to [the victim], the nerves went.' The offender explained that he had been a drug user for over 10 years and the crime was committed to 'fund the habit'. Before coming to prison the offender acknowledged that things had been getting out of control – 'if I didn't come to jail for this, I would have for something else'. Crime, like drugs, had become a hobby; it had become a vicious cycle. However, since being in prison, he had started a process of turning his life around by staying off drugs and even putting on some weight. Furthermore, the offender explained that being in prison had had a positive impact on his relationship with his mum; who once did not trust him to be in her house but had in letters stated that he could go and stay with her on his release from prison.

The victim described the impact of the offence on his children. He said that his 21-year-old daughter who does the cleaning in the hall in the mornings had felt as if the incident had violated her privacy and his son was angry. Yet, the victim told the offender, 'We forgave you straight away. Jesus teaches us to forgive, we hold no grudges... We are not your judge or jury. By releasing you, we are releasing ourselves.'

#### After the conference

The victim's commitment to forgiveness was restated in his post conference interview:

*I went there, having forgiven him before I got there. I have to be honest and say, that made it easier... I didn't go there with a preconceived list of things to ask or say because I really felt inside me, that if I went with that, I would have possibly not addressed the situation... Forgiveness means that you've let that person go... I had let him go.*

The incident had the unintended consequence of opening the victim's eyes as to what was 'going on in our local community' and the meeting was used by the victim as a platform to reach out to the offender: 'When you get out, will you look me up? See if we can help you in any way?'

For the offender:

*Meeting the victim was quite a shock. He came across too nice, I didn't expect him to be so laid back and so forgiving; it made it easier. ... I knew what we'd done was bad. Meeting the victim made me never want to offend again.*

## 5. The place of pre-sentence RJ within wider RJ

This final substantive chapter will look at the place of pre-sentence restorative justice in the wider context of RJ provision. Drawing largely on the evaluation interviews with practitioners, project managers and facilitators, we will first consider the potential role of pre-sentence RJ in promoting RJ more generally among victims, offenders and practitioners, and, beyond this, in promoting knowledge and understanding of RJ within local communities. With an eye to possible future developments in provision of pre-sentence RJ, the latter part of the chapter will consider the scope for integrating pre-sentence RJ within wider delivery of RJ, whereby there would be provision of an 'end-to-end' restorative offer to victims and offenders at all points in the criminal justice process.

### 5.1 Promoting restorative justice

Practitioners, project managers and facilitators involved in the pathfinder often spoke of the need to raise awareness of RJ among the wider public. Interviewees from several local agencies pointed to the role played by the pathfinder in building knowledge about restorative justice among victims and offenders and more widely:

*A definite positive [of the pathfinder] is building capacity and awareness of RJ around society and our community; involving volunteers to deliver is building interest and wider knowledge which is a plus for everyone. (Project manager)*

*Victims are being made aware of RJ – it has been around for a long time but they have never heard of it. I think that is a really positive thing; even if the pathfinder doesn't take off ... people are being offered it by people that are specially trained for pre-sentence RJ. (Police representative)*

The pathfinder also demonstrably helped to raise awareness of RJ and its potential benefits among the local agencies involved in it, including the judiciary, courts and probation. These agencies had opportunities to learn about RJ not only through their various practical contributions to the project itself, but also through attendance at multi-agency stakeholder meetings and some of the RJ training courses which were provided for facilitators and relevant practitioners.

*All the information we have had through so far suggests that [pre-sentence RJ] has been received very powerfully and has a cathartic impact. We are an offender-focused service and have developed victim tools and modules but it is difficult to measure the impact of these. With RJ you know it straight away, you can see it, you can feel it, it is there, it's in the room. It is a meeting of the minds between the victim and the offender – I don't think there is anything more powerful. ... [there have been] leaps and bounds in terms of understanding, knowledge and willingness to refer. (Probation representative)*

*It's raising awareness across the piste (Third sector practitioner)*

## 5. The place of pre-sentence RJ within wider RJ

Nevertheless, several practitioners thought that further promotion of RJ was necessary in order for it to become embedded in local criminal justice practices and to overcome implementation difficulties that are common to many RJ initiatives. Misperceptions and lack of understanding of RJ among the general public and within criminal justice agencies were considered widespread. One police representative commented of his colleagues, 'The police think that RJ means "out of court disposal"... RJ knowledge could be improved; particularly around the benefits of RJ'; while a member of court staff stated that 'There is probably work to be done to make the public more aware of what RJ actually is. It is probably not widely understood – post-sentence as well as pre-sentence.'

During the pathfinder's lifespan, the use of pre-sentence RJ generated coverage within the local press, on television and in social media, which would undoubtedly have raised the profile of RJ generally within local communities. The pathfinder has attracted some positive (and occasionally negative) response from the local press – 'when Hartcliffe teenagers appeared in court for trashing a local church they were supported – by their victims', reported one local newspaper of a pre-sentence RJ conference<sup>21</sup>; while conferences in two sites were filmed for an upcoming ITV documentary about restorative justice. One victim spoke of the value he found in relation to discussing his decision to participate in pre-sentence RJ by posting a Facebook status asking his friends what they thought of RJ:

*It turned out that one of my friends was quite involved with setting up RJ in [the local area] so recommended that I go ahead ... Another of my friends had been through the process and said it was awful and that I shouldn't do it. I obviously had a very different experience [to my friend]... [I] would recommend it (C8-V).*

A single case could have a wider ripple effect through participants' discussions of their experiences with friends:

*I would recommend it to anyone. I just think that it is a good concept, and the way it was run, handled, it made me think that it was a complete winner for us. ... Talking to friends, I say what a natural idea it is. The ethos of it we're completely behind, and if other people know we've met 'our burglar' - well - I think just talking about it helps spread the word' (C49-V).*

It also emerged, however, that the (rather academic) term 'restorative justice' was not always easy to use or explain to victims, offenders and the wider community. One offender interviewed repeatedly referred to participating in 'reorative justice'; noting that he found the term difficult to say, he suggested that a different phrase be sought to describe it. However, he did not struggle to provide a definition of RJ, which he explained is something that 'gives you the opportunity to express yourself and meet the victim and try and make amends - it gives you the opportunity to give them peace of mind as well as yourself' (C13-O).

Facilitators were discouraged from using the term 'restorative justice' when undertaking preparatory work with victims and offenders, on the grounds that the term could sound complex or abstract. However, victims and offenders interviewed for the evaluation frequently referred to having been contacted by the 'restorative justice project'. This suggests that facilitators, in practice, may have found it difficult to avoid using the term 'restorative justice' – particularly because, as volunteers working for a non-statutory initiative, they found that their own role and status was sometimes questioned by victims and offenders.

### 5.2 Pre-sentence RJ: Scope for integration?

As with any pathfinder project, its sustainability was a key concern for practitioners and managers involved in it. A strong theme emerging from practitioner interviews was that pre-sentence RJ was more likely to be sustainable if it could be integrated within wider RJ initiatives. Practitioners and project managers referred to a variety of ways in which integration could occur. Indeed this happened organically, to some extent, in several pathfinder sites while they were still live. In some instances, cases that were initially considered for pre-sentence RJ were subsequently referred to other agencies, such as probation, for the RJ to take place at the post-sentence stage. This occurred in various situations: for example, where the victim and/or offender was interested in RJ but did not yet feel ready for it, if there were practical or timing constraints on what could be achieved prior to sentencing, or if the defendant entered a late guilty plea on the day of trial. The previous chapter cites the example of the offender who specifically asked for the conference to be held post-sentence, in order that he could make it clear that his involvement in RJ was not driven by any wish to reduce his sentence.

There was a general view that a necessary aspect of integrating pre-sentence RJ within wider RJ was the extension of the pre-sentence work from cases sentenced at Crown Court to those sentenced at magistrates' courts. While the pathfinder was still in progress, the pathfinders in two sites expanded to the local magistrates' courts. Several practitioners, including members of the judiciary, probation and prison staff, voiced support for extending the pathfinder to magistrates' courts both because they believed that the (generally) less complex cases heard in the lower courts would be easier to progress, and because this would generate a

<sup>21</sup> <http://www.bristolpost.co.uk/Hartcliffe-Church-vandals-supported-court-victims/story-26480282-detail/story.html#ixzz3cYxGXbkD> [accessed 09/06/15].

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much larger pool of potential RJ cases. One practitioner shared his reasoning for supporting expansion to the local magistrates' court:

*My positive take on it would be that [the] limitations [of pre-sentence RJ] have been realised and I am pleased to hear that there is going to be a roll-out to the magistrates' court ... We agree that RJ is an excellent idea but it is a question of how you apply it, and also, when.*

Many practitioners asserted the importance of 'joining up' RJ initiatives across the criminal justice system, in order that opportunities for RJ are made available, in a consistent manner, to victims and offenders at all stages of the justice process. In particular, several practitioners stressed that it is essential to be able to offer victims the opportunity to participate in RJ at a time of their choosing. A few referred to the specific entitlement that victims now have, under the revised Code of Practice for Victims of Crime (Ministry of Justice, 2013c: 28), to 'receive information about Restorative Justice ... including how [to] take part':

*There needs to be an intelligent approach, whereby you undertake RJ at whatever stage is right for victims and offenders. [There] shouldn't be an artificial distinction between pre and post-sentence RJ. (Executive Group member)*

*RJ needs to take place when the victim is ready, whether this be at the diversion stage, the pre-sentence stage or the post-sentence stage. (Project manager)*

Closely related to these points was a concern with ensuring that communicative multi-agency approaches are in place, meaning that provision is consistent and 'streamlined' across the different parts of the criminal justice process. Various practitioners referred to the importance of developing 'RJ hubs' which bring together the range of statutory and non-statutory agencies engaged in RJ delivery work – and which can, potentially, be based within or linked to 'victim hubs' which offer wider services to crime victims. RJ hubs were seen as a way of building expertise and embedding RJ within local communities: including forms of RJ that are delivered outside the formal justice system, for example as part of diversionary work by the police or in schools:

*There is definitely scope for integration; this is what is missing at the moment. We already do a lot of restorative work here in schools and prisons which we want to integrate. It is better for victims to have a single, consistent contact ...*

*We should have a pool [of facilitators] so that there can be clarity around opportunities and supervision – there is enough multi-agency working to develop hubs. (Third sector agency representative)*

*RJ can be incorporated at many more stages where harm has been done [instead of] just having a specific pre-sentence RJ project or a post-sentence one; it should be something that covers the whole of the victim's and the perpetrator's journey through the criminal justice process. ... If there was an RJ hub it could incorporate [all elements]. (Third sector agency representative)*

The issue of integration of pre-sentence RJ within wider RJ, and the development of RJ hubs for this purpose, raises questions about what is the appropriate geographic level at which RJ should be organised, and the relationship between local, regional and national structures. A small number of practitioners commented that the option of extending RJ provision beyond the local area should be considered; and one judge remarked that 'any localised RJ scheme should fit into a flexible, national scheme ... Central government has got to be clearly involved ... Direction is required.'

Another significant question is whether, even where it is integrated within wider RJ provision, the delivery of pre-sentence RJ demands disproportionate investment of time, energy and other resources relative to other forms of RJ. It is clear from the discussion over the course of the preceding chapters that the provision of RJ at that critical period between guilty plea and sentence raises particular complexities and challenges. For the most part, those who were interviewed for the evaluation did not address this issue directly. However, one stakeholder did ask: 'At a time when budgets are tight and money is limited, [and] investment in RJ is not going to be everything we would like ... is [pre-sentence RJ] the best use of limited funding?'

## 5. The place of pre-sentence RJ within wider RJ Case 8 (C12): Surprises post-conference

The offender, a male in his 50s, had stolen goods from a local supermarket whilst under the influence of various prescription drugs and alcohol. Because he had a hammer in his possession, which he removed from his bag in the course of the carrying out the offence, he was charged with aggravated burglary, to which he initially pleaded guilty. He claimed to have no recollection of the offence.

### The conference and victim involvement

Initially, two victims – a male store security guard in his late 20s and a younger female cashier – were approached about the possibility of participating in RJ, and both agreed.

The offender was known to both as a regular visitor to their store, who had, on occasions, been relieved of items he had been attempting to steal. The security guard, who took pride in his role as protector of his employer's goods, and store staff, perceived the offender as a weak-minded, recidivist, shop lifter who needed help to change his ways. He did not consider the offender to be a danger either to himself or to others; in describing the offence at the conference, he spoke of how he had noticed his 'friend' with his face covered by a scarf and had said to him, 'Don't do it – go out'. While he felt personally unaffected by the offence, he reflected that the female cashier who was in the store at the time could well have been frightened by what had occurred.

He hoped that it would be helpful for the offender to 'meet me face to face and to realize the mistake that he had made' – a view reinforced by two letters of apology he had received, prior to the conference, from the offender. He saw himself as a witness rather than a 'victim'. Unfortunately, the female victim was at the last minute prevented from attending the conference because her employer – that is, the supermarket at which the offence had taken place – had not allowed her time off work for this.

In addition to the offender, the security guard and two facilitators, the conference was attended by the offender's partner and his mental health support worker. The offender committed at the conference to continue to attending alcohol awareness courses, and pledged never to drink irresponsibly again. He would also restrict his drug intake to what was required for mood stabilisation and avoid illegal drugs. His mental health worker confirmed that he would monitor progress, and give focused support in the period immediately following the conference. The security guard pronounced himself pleased to have participated in the conference, as 'just something that I felt I had to do - to make the defendant realise'. Emotional healing was simply not an issue for him.

### After the conference

Following the victim's account at the RJ conference about precisely what had happened during the burglary (specifically, in relation to what the offender had done with the hammer, which he admitted to having in his possession but not to using in a threatening way), and in light of CCTV evidence previously unseen by the offender and his lawyer, the offender decided to change his plea. After some time, a guilty plea to burglary and affray, in place of the more serious charge of aggravated burglary, was accepted by the court. The offender was thereafter sentenced to custody, but was released shortly afterwards as he had by now already spent six months on remand.

## 6. Conclusions and looking ahead

We conclude this report with a brief review of the key findings of the pathfinder evaluation, and consideration of the implications for future design and implementation of pre-sentence restorative justice.

### 6.1 Key findings

The pre-sentence pathfinder was an ambitious programme of work. The situating of RJ at the post-conviction, pre-sentence stage of the prosecution process; the Crown Court location, meaning that the focus was on relatively serious offences; the use of volunteer facilitators; the initiation of victim contact prior to obtaining offender agreement to RJ; and its non-statutory leadership all posed significant challenges to implementation. Other challenges include the fact that the programme spanned nine sites across England and Wales (with a tenth established at the end of the evaluation period), and that the time frame for implementation was just 12 to 15 months. The broader policy context of the pathfinder has also posed its own challenges – particularly with regard to the restructuring of the probation service under the Transforming Rehabilitation programme; governmental efforts to increase the speed of the criminal justice process; and reforms to legal aid provision. On the other hand, factors conducive to the establishment of pre-sentence RJ include the continuing promotion of RJ by government; the profound commitment to RJ on the part of many statutory and non-statutory criminal justice agencies; and the establishment of a statutory basis for pre-sentence RJ with the 2013 Crime and Courts Act.

Against this backdrop, and a history of RJ schemes that have often disappointed in terms of take-up, a key question for this pathfinder was whether it would indicate that pre-sentence RJ is a means of embedding RJ as mainstream and routine practice within the criminal justice system. The pathfinder certainly achieved many positive outcomes: in all sites, substantial work was undertaken by committed project managers, volunteer facilitators and criminal justice partners; a range of RJ activities were delivered; and victims and offenders who participated in the activities were overwhelmingly positive about their experiences. However, the total numbers of activities completed pre-sentence across all sites – 55 conferences and 38 other activities from March 2014 to May 2015 – were low relative to initial expectations. These low numbers reflect a variety of barriers to implementation, relating to the specifics of the pathfinder and to pre-sentence RJ more generally, that were encountered throughout the programme. Overall, the evidence from the evaluation suggests that pre-sentence RJ is, in itself, unlikely to provide the desired ‘tipping-point’ to a situation in which RJ practices and principles are fully embedded and mainstreamed. More promising, however, is the prospect of making pre-sentence RJ available as an integral part of wider RJ provision across and beyond the criminal justice system.

#### 6.1.1 Positive outcomes

The local pathfinders were driven forward by highly committed project managers who, by and large, successfully engaged the range of criminal justice partners – the courts and judiciary, the

police, prisons, probation and the CPS – from whom varying levels and types of practical input was required. Each project manager also managed a team of volunteers who prepared victims and offenders for RJ, facilitated conferences, and did follow-up work as required. While the pathfinder achieved relatively low numbers of completed RJ activities overall, the figures on attrition of cases from the time of initial victim contact through to RJ delivery reveal that most attrition occurred at the earlier stages of the process. Once there was both an interested victim and a guilty plea, the large majority of cases (83%) across the sites proceeded to an adjournment – indicating that support for the project within the courts was well-established. And, once an adjournment had been granted, a pre-sentence RJ activity was successfully completed in most cases, despite the demands of delivering RJ within the limited adjournment window. There was evidently a large appetite for pre-sentence RJ among offenders, who rarely failed to engage following an adjournment.

Above all, it is striking that the vast majority of both victims and offenders who participated in pre-sentence RJ reported – in their feedback forms and in interviews with the evaluators – that this had been of significant benefit to them. For example, of 57 conference participants who completed a feedback form, 44 (77%) ranked their experience of the conference as 9 or 10 on a scale of 1 to 10; 54 (95%) stated that the conference had affected them in a positive way; and all but one said they would recommend participating in RJ to others. All 11 offenders and offender supporters who were interviewed for the evaluation talked in strongly positive terms about their RJ experiences; and 20 of 24 victim interviewees were wholly or largely positive, while three expressed mixed views and one was negative.

Much of what victims and offenders said about the value of RJ, as they had experienced it, was not specific to RJ at the pre-sentence stage. However, their accounts of RJ do suggest that there were three main ways in which pre-sentence RJ offered particular benefits. First, it promoted the active engagement of both victims and offenders in the criminal justice process: a process within which they are otherwise frequently silenced and marginalised. Secondly, it provided victims with answers, sooner rather than later, to their questions about the offence and why or how it had occurred. These answers could help victims to address their worst fears – for example, where they were offered the reassurance that they had not been targeted, or were helped to see the offender as a flawed human being rather than some kind of faceless threat – and to start the process of ‘closure’ or ‘moving on’ from the offence. Thirdly, pre-sentence RJ potentially provided an early and added impetus for offenders to start addressing their own patterns of harmful behaviour.

What also emerged with great clarity from the victims’ and offenders’ accounts of their experiences of RJ is that, while there were common threads to many of these experiences, there was also considerable diversity. Offenders and victims had a range of motivations to get involved in RJ, and expectations of what would come out of it. However, many victims were driven to take part in RJ by a sense of moral duty and an urge to offer help to the offender, and many offenders were evidently moved by this. Offenders and victims alike spoke of a sense of relief or of the lifting of a weight following their participation in RJ. At its best,

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pre-sentence RJ clearly had the capacity to harness the energy of the raw emotions that both victims and offenders brought to their encounters.

### 6.1.2 Barriers to implementation

The total of 93 completed pre-sentence RJ activities demonstrates a high attrition rate from the total of 2,273 victims of in-scope cases who were available to be contacted by the local sites, the 1,201 victims who were actually contacted and the 446 who thereafter expressed interest in RJ. A variety of factors contributed to the low number of completed RJ activities, among which was the local sites’ limited access to data (particularly, victim contact details) in the initial phases. Data-sharing problems of this kind are a common feature of RJ projects; and, in this programme, were exacerbated by its non-statutory leadership. Eventually, access to the necessary data was secured in all sites, through a range of local arrangements with the police; but there is no doubt that the earlier problems impeded implementation over the first few months.

Other barriers to implementation included the fact that fewer cases than had been anticipated fell within the parameters of the project. An increase in sexual offence cases appearing before the Crown Court reduced the numbers of cases defined as ‘in-scope’ for the purpose of the pathfinder; while relatively high rates of not guilty pleas ruled out a substantial proportion of cases which would otherwise have been in scope.

The overall parameters of the pre-sentence pathfinder also posed some difficulties. It was, from the outset, described as a ‘victim-focused’ programme; and one aspect of the victim focus was the agreement that, in any given case, the victim would be asked if he or she was interested in participating in RJ *before* the offender had pleaded guilty or had been asked about RJ. Over the course of the project, however, the practice of making initial approaches to victims raised concerns about ‘wasted’ time put into preparatory work with victims whose cases could not proceed to RJ because of a subsequent guilty plea. There were also concerns about the potential distress caused to victims who expressed eagerness to get involved in RJ only to find that this could not happen because the offender had pleaded not guilty and/or did not wish to participate. Another issue that was somewhat contentious over the course of the pathfinder was that of whether, and in what way, participation in pre-sentence RJ could affect an offender’s sentence. The message that participation in RJ might but would not necessarily impact on sentence was not always understood by victim and offender participants. Varying expectations or perceptions of impact among victims, offenders and indeed practitioners sometimes provoked disappointment or frustration, and dented confidence in the concept of pre-sentence RJ.

One further concern that arose periodically during the pathfinder was that adjournments for pre-sentence RJ would cause unjustifiable delays to the judicial process – at a time of policy emphasis on achieving ‘swift and sure justice’. This did not prove problematic within the pathfinder itself, as it had been agreed in advance with the Ministry of Justice and HMCTS that any impact on participating courts’ performance targets on timeliness would be disregarded. In any case, the low numbers of adjournments that

took place ensured that they had little effect on the running of the courts. However, the implications for ‘swifter justice’ of wider roll-out and larger-scale implementation of pre-sentence RJ remained a concern.

### 6.2 Looking ahead

We turn now to consider how pre-sentence RJ might be developed in the future, following the end of the pathfinder. Below, we outline the main lessons that can be learnt from this evaluation:

1. Pre-sentence restorative justice offers significant benefits to victims and offenders. It can support engagement of both parties with the criminal justice process; provide swift resolution of victims’ questions and fears; and lend a sense of urgency to offenders’ reflections on their behaviour. On the other hand, RJ at the pre-sentence stage will be too early for some victims and offenders who are vulnerable; and there are various practical and legal constraints on the delivery of RJ between conviction and sentencing.
2. Provision of pre-sentence RJ, like other forms of RJ, requires one or two agencies (whether statutory or non-statutory) to drive it forward, and depends also on direct input from a range of key criminal justice partners. Most critically, it is likely that assistance will be required from the police, for access to victim and offender data; from the courts and judiciary, for the arrangement of sentence adjournments for RJ and for access to court lists; from probation, for liaison with offenders and the incorporation of RJ reports in their court reports; from prisons, for accommodating conferences and other RJ activities involving offenders on remand; and from defence lawyers, for dis with their clients about possible participation in RJ. However, once systems for support, liaison and data-sharing are established and routinized, partner agencies should not be required to make a substantial commitment of staff time to the ongoing delivery of pre-sentence RJ.
3. The linked questions of when to make the initial approach to victims about the possibility of pre-sentence RJ, and when to request that the courts adjourn sentencing, require careful consideration. The approach adopted by the pathfinder, whereby victims were approached at the outset and sentencing was adjourned only if the offender then pleaded guilty, was problematic. If, however, the victim is approached only after the offender pleads guilty and sentencing is adjourned for possible RJ, this can lead to unnecessary adjournments (and thus delays) in cases in which the victim proves to be uninterested in RJ. A potential compromise approach is to make pre-sentence RJ available only in either of the following scenarios:
  - a) In an in-scope case, where the offender pleads guilty and sentence is adjourned for reports, both victim and offender are approached as soon as possible after the plea, to ascertain their interest in RJ. If both agree to participate, the adjournment period is extended administratively and RJ takes place; if not, sentencing takes place as originally scheduled. This could be applied in cases which are being sentenced in both magistrates’ and Crown courts.

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- b) Where the offender pleads guilty at the magistrates' court and the case is committed for sentence to Crown Court, both victim and offender are approached about RJ as soon as possible after the plea. If both are interested in RJ, the date for Crown Court sentencing is administratively deferred to permit RJ to take place first; if not, sentencing at Crown Court proceeds as scheduled.
- While the above approach would rule out pre-sentence RJ in any cases in which sentencing immediately follows a guilty plea, it would have the considerable advantage of, first, ensuring that victims are approached about RJ only where there is a realistic prospect of it happening because the offender has already pleaded guilty and, secondly, minimising the scope for unnecessary adjournments and delays.
4. As part of any provision of pre-sentence RJ, there should be a clear approach to managing participants' expectations and perceptions of any impact on sentence. This should include ensuring that all practitioners who are directly or indirectly involved in the provision have a good understanding of the scope for impact on sentence, and that victims and offenders are given clear and consistent information about this throughout the RJ process – including at the outset of any RJ conference. The inclusion of 'participation in pre-sentence RJ' as a potential mitigating factor in Sentencing Council guidance could help to enhance consistency and transparency in sentencing decisions.
5. Pre-sentence RJ, in magistrates' courts as well as the Crown Court, is ideally made available as an integral part of wider provision of RJ across and beyond the criminal justice system. The advantages of integrating pre-sentence within wider RJ include:
- a) It permits a sensitive and flexible approach such that victims and offenders who are suited to RJ at pre-sentence stage can avail of the particular benefits this offers, while those for whom pre-sentence RJ is ruled out by practical or legal barriers, or by their own vulnerability, can be readily referred for other types of RJ intervention.
- b) Shared expertise, training and policies and procedures across all components of a wider RJ service will enhance the quality of service delivery.
- c) Within a local area, the data-sharing and other partnership arrangements for pre-sentence RJ can be embedded within wider structures, thus avoiding duplication of effort in the set-up and implementation of these arrangements, and ensuring consistency in multi-agency practices on RJ.
- d) A single pool of trained facilitators (whether volunteers, paid staff or both) can be flexibly deployed across the different parts of a generic RJ service, in accordance with demand and their own availability. At the same time, a sub-group of facilitators might largely focus on pre-sentence RJ and develop the specialist knowledge and skills required for this.
- e) Efforts to build awareness and understanding of RJ within local communities can benefit from pooled resources and expertise, and from the high profile that a wide-ranging, multi-faceted RJ service can achieve.

- f) There are opportunities for joint commissioning of integrated RJ provision by PCCs (with use of devolved Ministry of Justice funding for victims' services) and Community Rehabilitation Companies (with use of devolved NOMS funding for offender-based services).
6. Local arrangements for RJ provision – including how different types of RJ service are brought together, and systems for multi-agency working – are likely to differ substantially between areas. Nevertheless, national guidance or even direction on RJ may have an important role to play, especially in light of the recurring issues that hamper implementation of RJ of all kinds – particularly issues relating to data-sharing. The development of national guidance on pre-sentence RJ would help local areas to address the specific challenges associated with delivering RJ in the midst of the criminal justice process.

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