Restorative youth conferencing: involving victims in criminal justice

Roisin Devlin and **David O'Mahony** review research showing constructive community involvement in Northern Ireland's youth conferencing process.

The Northern Ireland youth justice system is unique within the United Kingdom and Ireland due to its adoption a of restorative justice approach, which has been mainstreamed through a process called 'youth conferencing'. The following provides an overview of this approach to youth justice and considers some recent findings from the perspective of victims who were involved in this process. The evaluation of the youth conference service was based on a pilot of the conferencing scheme. This operated mainly in two regions of Northern Ireland, Belfast and Fermanagh/Tyrone. The researchers observed 185 conferences and completed interviews with 125 victims and 171 young people who participated in the process. (For the full report see Campbell *et al* (2006) *Evaluation of the Youth Conference Service*, NIO Statistics and Research Report No. 12.)

Background

The Good Friday Agreement, which was a central part of the peace process in Northern Ireland, was endorsed by referendum on 21 May 1998. Among other matters, this recommended a wide ranging review of criminal justice. The 'Criminal Justice Review Group' (CJRG) was established to conduct this review, one aim being to "improve the responsiveness and accountability of, and any lay participation in, the criminal justice system" (CJRG 2000: 2).

The Review Group made several recommendations including integration of restorative justice in the form of 'youth conferencing' within the youth justice system (CJRG, 2000:205). The Criminal Justice Review Group also commissioned several research reports, two of which were particularly relevant to youth justice and conferencing (see Dignan, 2000 and O'Mahony and Deazley, 2000).

It is important to state that community based restorative justice projects have been in existence in Northern Ireland for several years (see McEvoy and Mika, 2002). These are not included within the state based youth conferencing scheme although they may offer input in relevant cases.

Youth conferencing: overview

The legal apparatus for implementation of youth conferencing is found in Part 4 of the *Justice (NI) Act 2002*. This contains a number of important provisions including:

1) Delivery: the new agency responsible for the delivery of youth conferencing in Northern Ireland is the Youth Conference Service.

2) Safeguards: A conference cannot take place unless the young person accepts responsibility for the offence and consents to attend.

3) Age range: young people aged from 10 to 16 years were eligible for youth conferencing and this was extended to 17 year olds in late 2005.

4) Attendees: The conference must have the following persons in attendance: a youth conference co-ordinator, the young person, the young person's supporter being an appropriate person over 18 years of age, and a police officer.

5) Other attendees: Where relevant, the victim(s) is invited to attend although his or her refusal does not prevent the conference taking place. The victim's supporters and other relevant persons may attend as the co-ordinator deems appropriate.

6) Operation: The scheme operates on two levels.

- Diversionary youth conferencing: the Public Prosecution Service offers referral to the youth conference in place of a court appearance.
- Court-ordered conferencing: the magistrate offers referral to a conference on a finding of guilt at court.

7) Outcome: participants decide on the content of a 'youth conference plan'. If agreed, this is presented for approval to the PPS or court.

There are few restrictions within the legislation for referral to a diversionary youth conference (The Public Prosecution Service in Northern Ireland has developed departmental guidelines to assist when making referral decisions for youth conferencing). This stands in contrast to the provisions for court-ordered conferencing. In general, the court must offer a conference unless the offence attracts a sentence of life imprisonment, or if it would be triable by indictment only if committed by an adult, or if it is 'scheduled' within the *Terrorism Act 2000*. In the latter two scenarios, the magistrate retains discretion to refer. Therefore, the offer of referral is mandatory for most offences with the result that conferencing has the potential to impact on the majority of offenders who come in contact with the youth justice system. As a protection against 'up-tariffing' (receiving a more onerous penalty than if sentenced by the court) the magistrate must not offer referral to a youth conference if minded to impose an absolute or a conditional discharge.

The youth conference process and conference plan

In a major research study evaluating the youth conferencing scheme (Campbell *et al* 2006) it was found that while the conference environment could encourage a natural dialogue in a restorative justice context, the proceedings were carried out according to a structured plan in order to aid conversation regarding the offence. In general, the process begins with an explanation of the conference rules and procedure. The participants are encouraged to introduce themselves and the police officer reads a 'statement of facts' regarding the offence. The young person should then discuss the offence and, if in attendance, the victim is invited to respond. At this point, the young person might apologise. However, during evaluation of the process it was observed that if an apology was relevant, it was often spontaneous and offered at various stages throughout the conference.

At the final stage, participants are directed toward discussing the conference plan. The legislation permits a range of activities to appear within the plan – for example, an apology, community or voluntary work, treatment programmes, reparation, compensation or restrictions on whereabouts. The only proviso is that the duration cannot exceed one year. When assessing the content of plans, the research found levels of variation and a tendency to focus on helping rather than punishing the young person (Campbell *et al*, 2006).

Once a conference plan is agreed, the final outcome depends upon the agreement of the Public Prosecution Service or the court. As such, the conference participants are not the final arbiters. This removes an important element of decision-making but it does facilitate a level of oversight, which may be necessary where conferencing is located within the mainstream criminal justice system. The legislation states that if the magistrate rejects a youth conference plan, reasons must be provided in court. This requirement is not stated for diversionary youth conferences, however in the period of evaluation there was a 100 per cent acceptance rate for diversionary conference plans.

Involving victims in the process

The research showed that the youth conferencing scheme was very effective in terms of engaging victims, enabling them to play an active role in their case and in the process of achieving justice. Unlike many other jurisdictions where restorative schemes are discretionary, which has often resulted in their marginalisation and low levels of victim participation, the Northern Ireland scheme managed to secure victim participation in over two-thirds (69 per cent) of conferences. Indeed, the fact that most conferences included a victim demonstrates the extent to which victims can be engaged in a process that seeks to bring them together with offenders to deal with the offence and its aftermath.

Victims were able to play a very constructive role in youth conferencing and surprisingly, rather than seeking retribution, most actually sought to help the offender. Some 79 per cent of victims said they participated in the process because they wanted to help the young person and 88 per cent said they wanted to hear what the young person had to say and to understand why they had committed the offence. Only 55 per cent said they attended to hear the offender apologise.

Victims were generally able to participate effectively in conferencing and it was apparent that many of the victims were more comfortable with the process than the offenders. The majority of victims (77 per cent) were observed to be relaxed at the beginning of their conference and 74 per cent said they did not feel 'at all nervous'. They described their experiences at the conference as generally positive and 83 per cent were observed to be 'very engaged' in the process. Importantly, they did not view it as adversarial and none chose to have legal representation.

On the whole victims were articulate when it came to describing how the offence had affected them and in expressing their feelings about the incident. It was also clear that what anger was expressed was directed at the incident and the consequences of the offence, rather than at the offender as an individual. Victims were generally willing to listen to the offender's account of the incident and the vast majority of victims accepted the offender's version of events.

One of the important aspects of a restorative process is the fact that it seeks to repair the harm caused by the offence. It does this through seeking to understand the impact of the offence and the circumstances surrounding the incident, and seeks to provide redress through reparation or 'making good' and through apology. The research showed that the apology was significant for the victim and offender. It underlined how important this aspect is to both parties in seeking closure. Nine out of ten (91 per cent) victims received an apology from the offender and 85 per cent said they were happy with it.

Victims were asked what they felt were the best aspects of their experience at the conference. Their responses mostly related to helping the offender in some way, helping prevent the offender from committing an offence again, or holding them to account for their actions. Victims saw the most positive aspects of conferencing as a way of moving forward for both parties, rather than any sense of satisfaction that the offender would be punished.

One of the most telling endorsements of the process from a victim's perspective was the fact that 88 per cent of victims said they would recommend conferencing to another person in a similar situation to themselves.

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everyday affairs, but they are now actually quite rare. I mean we have them, and we will deal with them, and so to me, of course I recognise that those stories are damaging, but frankly, if you look over the last two or three years, you'd be pushed to find ten.

BB So picking up on that, that in 1999, the then Commissioner, I suppose was more or less forced to admit the findings of the Lawrence Inquiry, that institutional racism was a problem for the Metropolitan Police, the attitudes, culture, and so on, leading to an inappropriate service for the black minority communities in London? Do you think that still applies?

IB Yes I do, I do think it does, and I think it will take a long time to change. The phrase that I particularly remember from the actual inquiry itself was the one about the minority communities being over-policed and under-protected. There are still touchstone issues, and Stop and Search is one of them, but again it's just a matter of progress. You can't walk around the Metropolitan Police, you can't go into a canteen, or a police station, without recognising this is a multi-cultural organisation. We are the largest single employer of minority staff in London.

BB But then there's the issue of one of the things that came out in the Lawrence Inquiry, of this idea of an unthinking assumption of a relationship between black people and crime, and the allegation was that that accounts for some of what we're seeing in terms of Stop and Search. Do you think that still applies?

...as my brilliant predecessor Robert Mark put it so well, the police service is the anvil on which society beats out inequalities and prejudice.

IB I think there are a number of things here. First of all there are legacies in any organisation, but secondly, as my brilliant predecessor Robert Mark put it so well, the police service is the anvil on which society beats out inequalities and prejudice, and yet to some degree criminality is a structural problem. If we look at some of the issues that disproportionately affect minority communities, they include dysfunctional families, they include educational exclusion, and then the police pick up criminality, because I'm afraid there is a connection between those things, so to some extent we are bound to have that. We are very concerned, for instance, about street robbery in London, and the continuing issue of the over-representation of the minority community groups in the suspect descriptions. I mean it's just there, and it's not the police officers saying, oh, of course it was a black man, it's actually the person who's been robbed saying that, and that leads to issues. But do I feel that we're moving in the right direction? Yeah, I feel we're massively moving in the right direction.

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Conclusion

The experience of youth conferencing shows that greater community participation in criminal justice can be achieved – particularly for victims – using a restorative justice model. Whilst victims are often marginalised or excluded in the conventional criminal justice system and their participation is limited to providing evidence to secure a conviction, this does not need to be the case.

Our research shows that victims appreciate the opportunity of taking part in a process which deals with the person who victimised them. Not only does conferencing facilitate this, it also results in high levels of satisfaction for victims, something clearly lacking in the traditional criminal justice framework. Victims can and do play a constructive role in criminal justice when given the opportunity. Restorative justice provides a framework which can help achieve considerably better levels of participation in justice and it has the potential to be constructive for all parties.

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