

# **Restorative Justice - Is More Better? The Experience of Police-led Restorative Cautioning Pilots in Northern Ireland.**

## *Abstract*

*In recent years there has been a considerable growth in the use of restorative justice schemes, particularly for young offenders. This article describes how two police-led restorative cautioning pilots for juveniles operated in Northern Ireland. The pilots were found to offer a number of distinct advantages over the traditional cautioning practice and helped secure some of the values of restorative justice. However, they were not without fault and the research found evidence of 'net-widening', whereby some offenders appeared to have been drawn into the schemes unnecessarily. It was also evident that the schemes required significant resources in order to involve participants (particularly victims) and to operate effectively. In light of the government's intention to greatly expand restorative practice in Northern Ireland generally, this article argues for the need to do so with care, if the quality of restorative justice is not to be compromised.*

## **Introduction**

In recent years, restorative justice has been catapulted onto the international platform, with many criminal justice schemes adopting various restorative processes in order to address some of the traditional concerns voiced over the effectiveness of orthodox criminal procedure.<sup>1</sup> Most of these practices are based around John Braithwaite's theory of reintegrative shaming (Braithwaite, 1989) which involves encouraging offenders to experience shame for their actions whilst allowing them to maintain their dignity. It endeavours to repair the relationship through a healing process designed to meet the needs of victims, whilst also reintegrating the offender into society.

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<sup>1</sup> Such concerns often focus on the fact that victims tend to feel excluded from the process (Shapland, Willmore and Duff 1985; Elias, 1986); that the offender does not seriously participate (Dignan and Lowey, 2000); and that outcomes are frequently unsatisfactory for both victims and offenders alike (McCold, 1996).

Proponents of restorative schemes have argued that the conventional criminal justice system has been overly focused on “public interest”, which effectively amounted to the state subsuming the interests of the other stakeholders. Restorative processes, on the other hand, which aim to address the victim’s material, emotional and psychological needs, seem to be perceived as procedurally fairer, with victims in particular emerging from the process with more respect for the police and criminal justice system than those whose cases were processed by the formal courts (Sherman and Barnes, 1997).

One model of restorative justice which is growing in popularity is that of police-based conferencing. Common in Australia, New Zealand, and parts of the USA and UK, police-based conferences are designed as an alternative to formal prosecution. They provide a forum for the police to bring together young offenders and their victims, with their respective families and supporters. The conferences are generally organised, managed and facilitated by a police officer, and examine ways of providing redress to the victim and reintegrating the offender, although solutions are never imposed by the facilitator. The goals of police-conferencing are to encourage young offenders to achieve empathy towards their victim and assume responsibility for their actions, to allow victims to move towards forgiveness and healing, and to empower citizens to address their own problems (McCold 1996; Moore and O’Connell 1994; Young and Goold 1999).

This article gives an insight into the effectiveness of police-led juvenile conferencing pilots in Northern Ireland.<sup>2</sup> Following a major review of criminal justice and the

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<sup>2</sup> The police in Northern Ireland have operated specialist Juvenile Liaison Schemes to deal with juveniles since 1975. These were aimed at diverting young offenders away from prosecution through an extension of the system of cautioning, and specialist officers are used to review cases and decide how they are best dealt with. The liaison schemes have largely been successful, in that the majority (over 90%) of juveniles referred to them are usually dealt with by means short of prosecution, such as by ‘advice and warning’, ‘no further action’ or by caution (O’Mahony and Deazley 2000).

publication of the Criminal Justice Review in March 2000,<sup>3</sup> the police instigated two pilot schemes: one was based in Ballymena, County Antrim and the other in Mountpottinger, Belfast. Both schemes adopted a restorative approach for dealing with juveniles (under 17 years of age) who committed an offence, but were diverted away from prosecution by way of a formal caution, delivered using a restorative framework.

This research is of interest for two main reasons. Firstly, it adds to the body of empirical studies evaluating various restorative justice schemes. Secondly, the research could inform the growth of emerging restorative practices for juveniles; in particular the growth of such practices in Northern Ireland that form part of the package of measures which the Government implemented in response to the Criminal Justice Review.<sup>4</sup> These measures will lead to a considerable growth in restorative work with juvenile offenders, beyond police led conferencing. It will be asked, in light of the present findings which highlight a number of implications, both positive and negative, whether in the context of restorative justice ‘more’ is always better.

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<sup>3</sup> The Review Group was established as a result of the Belfast Agreement of April 1998, as part of the attempts to ensure widespread participation in and acceptance of criminal justice institutions and processes in the province.

<sup>4</sup> In particular Part 4 of the Justice (Northern Ireland) Act 2002 greatly expands the use of restorative practices throughout the criminal justice system for juveniles by way of ‘youth conferencing’, see conclusions below for more details.

## The Research

The fieldwork for this research study covered a period from September 2000 to April 2001 in which all case files dealt with by the Juvenile Liaison Officers in two areas over the duration of the pilots were reviewed. The review explored the types of cases that came to the attention of the Juvenile Liaison Officers and how cases were disposed of, using, 'no further police action', 'advice and warning', 'caution' or 'prosecution'.

The researchers examined a total of 1,861 Juvenile Liaison referrals made between May 1999 to September 2000, including 969 cases from Mountpottinger and 892 from Ballymena. Information gathered included the nature of the incident and the outcome of the case. The team also collected more detailed information about the backgrounds of individuals and any previous contacts they had with the police from a random sample of 265 case files, including all cases dealt with by way of restorative caution or conference (n = 70).<sup>5</sup> The researchers observed a total of 29 restorative sessions during the period of the fieldwork, and conducted telephone interviews or sent out questionnaires to all past participants, to shed further light on the process from a 'consumer' viewpoint.

### 1. File Review: Profile and Outcome of Cases Referred to Juvenile Liaison

Of the 1,861 police case files opened, it emerged that the majority of young people referred to the Juvenile Liaison officers were boys (77%), mostly between 13 and 15 years of age (see Table 1). Typically the cases referred involved relatively minor criminal incidents, such as shoplifting or criminal damage and 95% of the cases related to a single incident or offence. However, just under a third (29%) were referred for non-criminal incidents, such as a missing persons report, or 'general misbehaviour'(see Table 2).<sup>6</sup>

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<sup>5</sup> Restorative cautions did not directly involve a victim, while restorative conferences generally involved input from a victim.

<sup>6</sup> 'General misbehaviour' was used as a catch-all for any non-criminal act construed as a nuisance and included things like hanging about making noise, breaking bottles, causing a disturbance etc.

**Table 1**

Age and sex of Juvenile Liaison referrals - May1999 to September 2000

	<b>Mountpottinger</b>	<b>Ballymena</b>
<b>Age:</b>		
<b>5-9 years</b>	<b>6%</b>	<b>5%</b>
<b>10-13</b>	<b>36%</b>	<b>36%</b>
<b>14-16</b>	<b>58%</b>	<b>59%</b>
<b>Sex:</b>		
<b>Male</b>	<b>78%</b>	<b>77%</b>
<b>Female</b>	<b>22%</b>	<b>23%</b>
<b>Number</b>	<b>969</b>	<b>892</b>

**Table 2**

Grounds for referral to Juvenile Liaison - May1999 to September 2000

	<b>Mountpottinger</b>	<b>Ballymena</b>
<b>Violence</b>	<b>12%</b>	<b>12%</b>
<b>Sexual Offences</b>	<b>1%</b>	<b>2%</b>
<b>Burglary</b>	<b>3%</b>	<b>4%</b>
<b>Robbery</b>	<b>*</b>	<b>0%</b>
<b>Theft</b>	<b>19%</b>	<b>15%</b>
<b>Fraud/Forgery</b>	<b>1%</b>	<b>*</b>
<b>Criminal Damage</b>	<b>13%</b>	<b>15%</b>
<b>Drugs</b>	<b>*</b>	<b>2%</b>
<b>Motoring Offences</b>	<b>4%</b>	<b>3%</b>
<b>Disorderly Behaviour</b>	<b>6%</b>	<b>7%</b>
<b>Taking and Driving Away</b>	<b>2%</b>	<b>3%</b>
<b>Harassment</b>	<b>1%</b>	<b>*</b>
<b>Under Age Drinking</b>	<b>2%</b>	<b>6%</b>
<b>Other Criminal</b>	<b>4%</b>	<b>5%</b>
<b>Missing Person**</b>	<b>5%</b>	<b>6%</b>
<b>General Misbehaviour**</b>	<b>27%</b>	<b>20%</b>
<b>Number</b>	<b>969</b>	<b>892</b>

\* less than 1%

\*\*i.e. non-criminal matters - see footnote 6.

Over half of the young people had not come to the attention of the police previously. Of those who had, most had been dealt with by 'advice and warning' or by 'no further police action' (60%). Only 15% had a criminal record. The most common outcome for a referral was 'advice and warning' or 'no further police action' (79%). Only 13% of cases resulted in prosecution and about 7%<sup>7</sup> resulted in some form of official caution, including 4% that were dealt with by restorative caution or conference (see Table 3).

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<sup>7</sup> 3% were given cautions, 2% given restorative cautions and 2% given restorative conferences.

**Table 3**

Juvenile Liaison Outcomes - May1999 to September 2000

	<b>Mountpottinger</b>	<b>Ballymena</b>
<b>No Further Police Action</b>	<b>17%</b>	<b>21%</b>
<b>Advice and Warning</b>	<b>67%</b>	<b>53%</b>
<b>Caution</b>	<b>2%</b>	<b>6%</b>
<b>Restorative Caution</b>	<b>4%</b>	<b>*</b>
<b>Restorative Conference</b>	<b>*</b>	<b>3%</b>
<b>Prosecution</b>	<b>10%</b>	<b>17%</b>
<b>Number**</b>	<b>946</b>	<b>783</b>

\* less than 1%

\*\*Total number is lower as 132 cases had no outcome recorded - these were pending a decision or outcome

*'Orthodox' Case Disposals*

It was evident that the police tended to classify offences in certain ways. Disposals such as 'no further police action' and 'informal advice and warning' were used for very minor offences, and many could not even be classed as criminal (such as a report of a missing person or for 'general misbehaviour'). These cases tended to involve very young juveniles (10-14 years), few of whom had been previously cautioned or prosecuted. By contrast, those given traditional cautions were generally older, with the majority (70%) being between 14 and 16 years of age. They were all dealt with for criminal matters and unlike those above, two-thirds had been dealt with by the police previously.

Those prosecuted generally had committed more serious offences, such as burglary, violent offences, theft and criminal damage. Most of these juveniles had been previously cautioned (66%) or prosecuted (67%) and 89% had been dealt with by the police previously. Overall therefore, it was evident that disposal decisions were made appropriately, taking into account factors such as the seriousness of the incident, age of the young person and the number and nature of previous contacts with the police.

### *Restorative Cases: General Profile*

On examination of cases that were dealt with using a restorative model it was found that there were clear differences in practice between the two pilot areas. In Mountpottinger where the restorative scheme evolved from traditional cautioning practice,<sup>8</sup> the sessions appeared to be used as an alternative to the traditional caution. Here, 39 of the 42 restorative cases were dealt with by way of a restorative caution (without the presence of the victim), and only three were dealt with by a restorative conference (including a victim). In Ballymena, however, the scheme had been developed from a local 'retail theft initiative', and generally only dealt with shoplifting cases. Here, 25 of the 28 cases resulted in a restorative conference, though these mostly used a surrogate victim who was drawn from a volunteer panel of local retailers and only three cases were dealt with by way of a restorative caution.<sup>9</sup>

It was evident from the cases we examined that the majority of conferences were not being used as an alternative to prosecution. Instead, they were used mostly for less serious cases involving young juveniles (12-14 years) that previously would not have resulted in formal action. For instance, over 90% of the restorative conference cases were for minor thefts, and 80% of these involved goods with values under £15. In over half the cases, goods were worth less than £5. Indeed, the profile of those given restorative cautions and conferences was more similar to those given 'advice and warning' than those cautioned previously and they were not at all similar to those referred for prosecution. This suggests a degree of net-widening was taking place which will be discussed in more depth below.

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<sup>8</sup> The 'traditional' caution was usually administered by a senior police officer at the station with the young person and their parents. It usually involved the young person being given a stern warning about the consequences of any further offending. See Hoyle et al (2002) for a good description of traditional cautioning practice.

<sup>9</sup> The distinction between restorative caution - not involving a victim, and restorative conference - involving a victim, was later removed by the police, with all restorative work being referred to as restorative conferencing.

### *Restorative Cases: Process and Delivery*

The restorative sessions were usually facilitated by a trained police officer. While the majority of the restorative cautions took place in a police station, most of the conferences (primarily in Ballymena) took place elsewhere.<sup>10</sup> Levels of victim participation were low. The actual victim attended only 20% of the conferences and in the Ballymena area (where most conferences took place), they invariably used a surrogate victim. The young person and their parent(s) usually attended, and occasionally a social worker or a teacher was also in attendance. The majority (over 90%) of the restorative sessions resulted in a written or verbal apology to the victim and in only 8% of the cases did the young person refuse to apologise. Few of the sessions resulted in any compensation or reparation, though the majority of cases in both locations involved retail theft, where goods were normally recovered immediately.

The restorative sessions were found to be resource-intensive. Though the restorative cautions generally took about a quarter of an hour to administer and the conferences usually lasted between half an hour to an hour, they took considerable time to set up and arrange. The research team concluded that a relatively conservative estimate of the time commitment for the police was on average about 4 hours for a restorative caution and about 4½ to 5 hours for a conference.

These findings raise important issues that have implications with regard to ‘best practice’. They show a number of particularly poignant problems including: the lack of meaningful involvement of the victim; the choice of a ‘neutral’ venue; possible ‘net-widening’, that is drawing petty, first time offenders into the criminal justice system; and the use of a very resource intensive process to deal with relatively low level offending. Before exploring these issues it is worth looking beyond the files to how the restorative sessions were handled in practice and what participants thought of the process.

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<sup>10</sup> Usually at a private room in a local shopping centre.

## **2. Observational Research**

The researchers observed 29 restorative sessions, 10 of which were restorative cautions and 19 were restorative conferences. What follows is a description of how the restorative work was carried out in practice and the reactions and interplay between the participants.

### *Restorative Cautions*

All of the restorative cautions that were observed were held in a police station. The offences varied considerably, and included five cases of criminal damage, motoring offences, arson and theft. The offences had taken place from one month to nine months prior to the caution. Most of the cautions took between 10 and 15 minutes to administer. The police officers wore plain clothes and were friendly, informal and well prepared. The facilities were comfortable and proceedings ran on time. The officers made clear opening statements, introducing everyone and explaining that they were not there to judge whether the young person was 'good' or 'bad' and respect was shown for all parties involved. The officers did not always clarify the voluntary nature of the process, however, and its legal implications. At the end of the process several parents and young people were still unclear about whether they would have to go to court and whether they would have a criminal record.

After introducing everyone the police officer would invite the young person to say in their own words what they had done. This was usually followed up by a question about what the young person was thinking when they committed the offence. The facilitator would then inquire about the actual and potential consequences of the act. In some cases the young person said very little and in such cases the facilitator sometimes seemed at a loss as to how to enable the young person to take responsibility for their behaviour and to acknowledge the harm it had caused, particularly to the victim. The effect on the victim (not present) and the young person's family would then be probed. In one case of stone throwing, the victim was actually an off-duty police officer. While in this case it did not seem to damage the process, the representation of the victim's views by the facilitator would risk placing in jeopardy the perceived neutrality of the process, given that the facilitator was himself a police officer.

Facilitators often found it difficult to engage the young person in the process. Dialogue worked best where officers moved proceedings along at a relatively easy pace and tried to maintain a natural conversational style. Some officers had the “script” with them but left it on their lap only to be used if they got stuck. This enabled a more personal style to emerge and this generally encouraged the young person to speak up more. Some officers did not feel comfortable with some of the language in the script and changed it to suit the language, maturity and culture of the young people. One officer had created a shortened script that only included the key questions and issues, which seemed a positive compromise between following the script rigidly and developing one’s own personal style. On occasions however, the reluctance of juveniles to communicate seemed to exacerbate officers’ own anxiety and lack of experience, which only contributed to making the atmosphere even more uncomfortable. For example, some officers tended to go through the process too quickly, often filling silences or prompting the young person with appropriate responses, and sometimes providing the young person with virtually all the answers. Furthermore, once the officers lost confidence they tended to lead rather than facilitate, thus effectively ceasing to be neutral facilitators.

Since the restorative cautions that were observed did not involve a victim (even in a surrogate capacity), the facilitator would often try to inject a ‘victim perspective’ into proceedings, through perhaps reading a letter or recounting a conversation with the victim. This approach had an impact in that the young person and parent had to respond to another perspective. However, since the victim’s view was not informed by an encounter with the offender, the value of this process was obviously limited by lack of interaction and exchange.

The restorative cautioning agreements that were observed included:

- Simple cautions, such as in road traffic cases in which there was no actual victim
- Expressions of remorse without any gesture towards the victim
- Agreements to pay for damage; sometimes coupled with written or verbal apologies

- Agreements such as: to avoid certain people who use drugs; to clean the house; or to make up for the distress caused to the offender's parents.

The formalities of the cautioning process were conducted with clarity, brevity and respect. After the relevant forms were completed, the facilitator summed up usually along the lines of how the young person had made a bad choice, but now, through agreeing to apologise, had made a good choice. This is regarded as an important element of the re-integration process (Braithwaite, 1989; Umbreit, 2000), although at times it did appear to get lost in the confusion of filling in forms.

### *Restorative Conferences*

The seventeen restorative conferences that we observed were all held in Ballymena. The offences were all theft (shoplifting) except for one of criminal damage. Most of the conferences lasted between 35 and 45 minutes.

In contrast to Mountpottinger, the conferences usually took place in a private room at the local shopping centre. This helped to emphasise the victims' stake in the process and avoided the stigma of them having to enter a police station. Only two cases in Ballymena were not held at the shopping centre,<sup>11</sup> but the organisation of these particular sessions gave rise to a number of serious concerns.

The facilitator was about ten minutes late for both the sessions, which led to some confusion. At the police station, the surrogate victim and the young person and his father had to wait in the same room for the facilitator to arrive. In one case, the parties did their best to have a friendly chat while waiting, but in the other the atmosphere was somewhat tense. Obviously this situation could have become even more difficult if the "real victim" had been present.

As with the restorative cautions in Mountpottinger, the young people in the conferences held at Ballymena were also generally reluctant to communicate. In some cases the facilitator or parent had to prompt the young person to respond to the

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<sup>11</sup> One of these conferences was held in a police station, and the other at the local office of a community organisation.

questions, and would often suggest answers in the process. On a few occasions, this was done even before the young person had the opportunity to speak.

In another case a 15 year old girl spent most of the conference crying. This meant that it was difficult to see whether she was taking any responsibility for her actions and their consequences. Significantly, when the facilitator and mother suggested that she should go to the shop and apologise, she became animated and said that she would not do that because the shopkeeper was “ignorant”. She then lapsed back into silence only to communicate as the apology was being negotiated, but without entering into any further dialogue. This suggests that young people’s silence may not just be due to immaturity, shame or shyness but may sometimes be used as a tactic when feeling threatened by a process led by adults.

The presence of a surrogate victim at the Ballymena conferences appeared to have more impact on the offender and family than a letter or a report from the facilitator of the victim’s experience (as used at Mountpottinger). The surrogate tended to describe the typical effects of theft for a retailer. Although this did enable the young person to appreciate the consequences of their behaviour, it nevertheless lacked emotional impact. Some retailers merely made their views known while others attempted to engage in a dialogue. This seemed to arouse more interest in the young person and presumably had a greater impact, although in two cases the victim representative tended to dominate the process.

Most conferences ended in an agreement to apologise to the victim either through a letter or face to face. Occasionally it seemed that the facilitator was only aiming for an apology, which meant that the offender was not asked to consider any other way of making amends. This may have been because of low expectations of the young person’s motivation, or because the young people were generally petty offenders and an apology was considered sufficient. Once an agreement had been made the facilitator asked the young person and parent to sign the relevant forms. These needed to be explained and this was generally accomplished effectively.

### 3. Interviews with participants

During the period of the fieldwork, the team conducted separate face-to-face interviews with the participants immediately after the 29 sessions which were observed. In addition, we also interviewed thirty families over the telephone who had participated in restorative sessions prior to the beginning of the fieldwork.<sup>12</sup>

#### *Attitudes of the Parents*

Almost all of the parents felt they had been kept informed about the arrangements of the conference, and around half praised the police for their flexibility in relation to organisation, and the timing of the conference. Satisfaction with the police was generally high. The parents were positive in relation to the way in which facilitators handled their role at the conference, over 90% of respondents using positive phrases such as “helpful”, “supportive”, “understanding”, “fair” and “sympathetic”.

Most parents described the conference as “informal”, “relaxed” or “friendly”: three quarters of interviewees described this as the “best part” of the process, although most of those who were interviewed in person immediately after the sessions just seemed relieved that it was over. Only three respondents described it negatively – one saying that he felt “tense and uneasy, and just wanted to get it over with”. Just under half said that they had felt tense and nervous to begin with, but that the facilitator had made an effort to make everyone feel at ease. Just over half of the parents identified the *reintegrative shaming* aspect of the process as its best feature (Braithwaite 1989). One parent stated in relation to her daughter that it had “shamed her into admitting that she’d done wrong”. Notably, none of the respondents felt that their son or daughter was stigmatised as a “bad” person, although there were mixed impressions as to whether the process was worthwhile. Two parents mentioned that they felt that the level of shame experienced during the conference was unjustified, but another parent interviewed in person said that he felt an “old fashioned telling off” would have been better. Indeed, in more than one case the parents actually expressed a preference for the imposition of more punitive measures.

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<sup>12</sup> Unfortunately only four juveniles were willing to speak on the telephone, and they were generally unresponsive, especially to some of the open-ended questions.

The team asked the telephone interviewees about the effect of the conference on the young person. About two-thirds of the parents agreed that the session helped the offender to understand the impact of the offence upon the victim. A clear majority were particularly impressed by the degree of regret shown by their son / daughter after the conference. One parent said:

“[My son] was really reflective afterwards and I think he felt really ashamed of himself for a while. From a parent’s point of view, it was a bit uncomfortable to know that he was feeling bad, but from the conference, I knew that this was part of the process and was very necessary”

Nonetheless, it was evident that while parents were, on the whole, supportive of the initiative, many also had reservations. One criticism of the Mountpottinger cases was that conferences were held at a neighbouring police station, Willowfield. While most respondents felt happy enough about this venue, three people from Belfast mentioned that they were unhappy with the stigma of going to a police station, and four respondents expressed relief that their conferences were held in a neutral venue.

One of the most important concerns of three parents, all from the Ballymena sub-division, was that their children had been unfairly dragged into the criminal justice system for committing very petty offences. One concerned father complained:

“[T]he theft was relatively minor as far as the value of the goods was concerned. He was very humiliated when he was brought in and fingerprinted and when they took a DNA sample and stuff...”

The mother of one girl, who was apprehended for shoplifting, commented:

“I think overall she was treated fairly, but I was just a bit surprised they told me she would have to go through all this for lifting sweets.”

Another notable reservation raised by three interviewees was the fear that the sympathetic attitudes displayed by the facilitator in the conference would not be matched by police attitudes on the ground. One parent felt that the police were out to

“bully children and will lift them for anything” and one said “they’re out to get everyone on our estate, no matter what age they are.” One juvenile’s father expressly mentioned the fact that police harassment of young people could “...undermine the good work he [the facilitator] did in the conference.”

#### *Attitudes of Offenders*

The four offenders to whom we spoke on the telephone were reluctant to respond substantially to open-ended questions. All agreed that the process has been handled fairly and most spoke highly of the facilitator. They all agreed that the conference had helped them to understand the impact of their actions, and two said it would make them less likely to get into trouble again. The juveniles we interviewed in person were slightly more forthcoming. Most were positive about the way the conference had been handled and felt they had been treated fairly, and were adamant that they would not re-offend.

#### *Attitudes of Victims*

The surrogate victims who attended conferences expressed a high degree of satisfaction and seemed to appreciate the remorse shown. However, the one ‘true’ victim who was interviewed was very dissatisfied with the conference, as the individual offender was not prepared to apologise or admit responsibility. This illustrates the importance of the facilitator making a home visit prior to the conference, in order to assess the young person’s level of remorse and whether he or she demonstrates a willingness to apologise. There is a clear onus on the facilitator to ensure that the victim is given a clear understanding of the risks as well as the potential benefits in attending a conference (Hoyle 2002). As this one case has shown, a conference with an offender who is not prepared to admit liability can result in a form of secondary victimisation.

#### *Police Officers*

The police officers we interviewed who facilitated the process were convinced of its value in comparison with the former cautioning practice, expressing a belief that it avoids the tendency to write young people off. They believed it was a fairer and more human and emotional process. The officers felt they had received adequate training and that the programme was being properly supported and resourced. There was no

evidence that the legitimacy deficit traditionally suffered by the police in certain areas of Northern Ireland had hindered their work. Indeed, there was a strong belief among officers that the schemes had the potential to assist community policing and build better relationships with families living in socially deprived areas.

## **Discussion**

It is often argued that, to avoid being marginalised, restorative justice practices must be placed firmly within the formal criminal justice system (Shapland 2003, Dignan 2003). It was clear that this was the case in the pilots as the police retained close control over the management of the schemes and were keen to see them develop successfully. All stakeholders valued the philosophy behind the schemes and thought highly of the way they had been managed. There were, nonetheless, a number of major concerns arising from the research. It was found that, on a number of fronts, the practices of the police service did not reflect internationally accepted standards of best practice.<sup>13</sup> These standards reach beyond superficial perceptions and act as benchmarks against which schemes can be evaluated. If the rights and interests of all parties involved in the process are to be respected, and if broken relationships are to be mended, those responsible for managing and implementing restorative programmes are under an onus to take active steps to ensure that principles of best practice are always observed.

There were two major areas which gave the research team cause for concern. These were the apparently high risk of net-widening and the lack of real victim participation in the schemes. A number of other issues were also identified as falling short of best practice. While these are perhaps less serious, action is nonetheless needed if the Northern Ireland system is to operate effectively and take advantage of the potential of restorative practices.

### **1. Net-Widening**

There has always been a danger that when informal alternatives are introduced into the criminal justice system they may serve to supplement rather than substitute for

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<sup>13</sup> See generally Umbreit 2000, Marshall 1999, Braithwaite 1994 and Dignan 1992.

existing procedures (Davis *et al.*, 1989; Dignan, 1992; O'Mahony and Deazley 2000). Since one of the aims behind most restorative programmes is to divert young people from court, prosecution, and the criminal process generally, it is crucial that new restorative schemes do not extend beyond the bounds of the previous system by drawing new cases into the system.

One of the greatest concerns arising from the pilots was that they appeared to draw in some very young and petty offenders who consequently experienced a very demanding process of accountability that, in our opinion, was disproportionate to the harm caused. Some 80% of cases that we examined were for offences concerning property worth less than £15. It was not uncommon to come across cases where a considerable amount of police time had been invested in arranging a full conference for the theft of a chocolate bar or a can of soft drink.

These findings all pertain to the question of whether it is appropriate to use restorative conferences, which are obviously costly and time-consuming, for mainly first-time offenders involved in very petty offences. It could be argued that a better course of action might be to deal with such cases by way of 'advice and warning', particularly where the value of goods involved is under £15-£20; the young person has had no previous contact with the police; and he or she shows remorse.

While the use of restorative conferences for such minor incidents may have a beneficial effect, in that it may help a young person realise the harm they cause and the impact on victims, such decisions place the young person higher up the criminal justice tariff. This is because they result in a formal caution, which is a police record that can be cited in court as part of a criminal record.<sup>14</sup> This thereby raises the prospect of prosecution, should the juvenile come to the attention of the police in the future. As such, there is a real risk that these practices may lead to net-widening by drawing less serious offenders further into the criminal justice system.

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<sup>14</sup> Whilst not strictly a 'criminal record' under the Rehabilitation of Offenders (NI) Order 1978, such police cautions can, and often are, cited in court as part of an individual's criminal record. Previous

It is possible that this could merely be a teething problem with these schemes. The police may have been overly enthusiastic to appear successful in implementing the new scheme widely across the board. There was, however, an assumption among stakeholders that a conference is less punitive than a prosecution and thus should generally be reserved for first or second time offenders. As the scheme develops and officers become more familiar with principles of good practice, the danger of net-widening may well address itself over time through effective gate-keeping.

Considering that the restorative sessions were very labour intensive, it might be better if they were targeted towards more 'at risk' and 'in need' offenders. Indeed, Maxwell and Morris (2001) has argued that because effective restorative work is so resource intensive, it should be directed towards more serious offenders and not at first time offenders who have committed minor offences. Such a change would result in a full restorative conference being put on a more equal footing with a prosecution, rather than being seen as the equivalent of (at most) a caution.<sup>15</sup> In this way the restorative justice philosophy would be seen as a real alternative to prosecution, rather than as a less serious response to offending. There are strong arguments in favour of making the restorative process at least as taxing as whatever sentence a court would impose, particularly on a first conviction, but it should *never* be more onerous in terms of what is demanded from the offender (Braithwaite, 1994; Davis et al, 1989; Dignan, 1992).

## **2. Victim Participation**

The low level of victim participation highlighted by our findings suggests a greater effort needs to be made to encourage victim participation. Though the lack of direct victim participation in the schemes was disappointing, it perhaps was unsurprising given that other evaluations of similar schemes in the UK have produced similar findings. Crawford and Newburn (2003) noted that victims attended youth offender panel meetings in only 13% of cases. Similarly Hoyle *et al.* (2002) found that just

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cautions are also taken into account by the police when deciding how to respond to any subsequent offending.

<sup>15</sup> Some police officers suggested that Magistrates should be given the power and encouraged to adjourn more serious cases for restorative conferences, thus avoiding convictions even when the police felt a prosecution was necessary.

16% participated in their evaluation of the Thames Valley scheme. In contrast, extremely high rates of victim participation have been reported from some Australian projects, notably the Canberra RISE experiment, and also the Wagga Wagga conferencing evaluation where recorded rates of victim participation were as high as 90 per cent (Moore and O'Connell, 1994).

It is difficult to pinpoint the precise reasons for this difference, although the fact that the UK schemes are comparatively new may indicate that they are still experiencing teething problems. Non-participation is unlikely to be attributable to the lack of effort on the part of the Juvenile Liaison Officers in Northern Ireland, who seemed extremely enthusiastic about the schemes. Hill (2002) has suggested that while any sort of coercion to attend would obviously be undesirable, there was a risk in Thames Valley that the police had become so over-sensitised to the need not to apply pressure, that they did not take the opportunity to explain fully the potential benefits of the process to victims. Similarly, Hoyle (2002) noted that many of the Thames Valley facilitators gave victims a misleading idea of restorative justice: for example, in many cases victims were not told that they could bring along a supporter. As such, victims may have been inadvertently dissuaded from attending. It is not possible to gauge whether this may also have been the case in these two projects since interviews were not conducted with non-participating victims. It should be stressed, however, that given the fact that non-participation is a major problem for more police-led schemes, it is probable that there are deeper issues at play, including a lack of understanding of the nature of restorative processes (Hill 2002; Daly 2003); fear of retaliation (Hoyle *et al*, 2002; Crawford and Newburn 2003); and/or simply not being able to attend (Hoyle *et al*, 2002).

Given that the UK schemes are still in comparative infancy in comparison to their Australasian counterparts, it could be that increased rates of victim participation will follow if current practices are fine-tuned and further developed. For example, greater emphasis could be placed on taking time to explain the various options to the victim, the different processes, their advantages and disadvantages as well as developing their capacity to participate. Capacity building may include transport and child-care arrangements, as well as arranging suitable dates, times and venues for conferences. Another clear issue of concern to many of the parents we interviewed was their

unhappiness about police stations being used as venues for the conferences. As a basic point of good practice, the venue should be a neutral, comfortable setting for all parties involved. Obviously the use of the police station as a venue could make both victims and offenders feel uncomfortable, particularly if they have had previous involvement with the police (Zehr, 1990). This also raises questions as to whether victims should be better prepared for the conferences so that they have a good idea of what to expect. There might be, for example, a further role for volunteers from Victim Support in effecting this end.

If implemented, such measures could undoubtedly go some way to addressing the problems which may discourage both victims and offenders from participating in conferences. While it would be entirely contrary to good practice to suggest that any sort of pressure be applied to either victims or offenders (Hill 2002), taking active steps designed to encourage and facilitate participation would add a great deal to the provisions already in place.

Another interesting issue in relation to victim participation was the use of surrogate victims. In Ballymena the practice of using surrogate victims was developed from an earlier retail theft initiative which used a panel of volunteer shopkeepers to impress upon young shoplifters the impact of their actions on local businesses, the livelihoods of shopkeepers and their staff. The panel was incorporated into the new restorative conferencing scheme, and panel members were used to represent the views of the victim, if the actual shopkeeper declined to participate. Since the vast majority of cases that were dealt with by conferencing in Ballymena involved shoplifting, the scheme appeared to work well. It addressed a problem whereby it was difficult to get shopkeepers to attend conferences, especially when the value of the goods was generally low and these had usually been recovered immediately when the young person was apprehended. So the surrogate victims offered the advantage of at least being able to get someone from a victims perspective to participate in the conference.

It was clear there were a number of advantages of involving surrogate victims in the conference process. The surrogates brought in a strong victim's perspective into the process and appeared to have had more of an impact on the young people than the facilitator simply reading a letter from a victim or recounting something the victim

had said about the offence. But using surrogate victims also had a number of distinct disadvantages, especially over using the real victim. For instance, it was probable that the impact of the restorative process on the offender was diminished by them not being confronted and having to explain their actions to the real victim at the conference. Using a surrogate also obviously detracted from the restorative goals of conferencing, where there should be a process of empowerment, dialogue, negotiation and agreement between *all* the parties. And from the victim's perspective there were obvious disadvantages as the victim does not get the opportunity to confront the offender, to have the offender explain their actions, and importantly to understand circumstances and reasons behind the offence (as well as negotiate compensation or restitution) - all of which are central to the conferencing process. Furthermore, there may be a danger of routinely using surrogates when they are easily available, rather than embarking on the difficult process of trying to get the real victims involved in the process. Though we found no evidence of this practice in the pilots, this would obviously be counterproductive towards achieving the restorative goals of conferencing. However, having said this, given the reality of low levels of victim participation in many police led conferencing schemes, surrogates offer another useful way of injecting the victim's perspective into conferencing proceedings and other programmes may wish to consider this approach in suitable situations.

More fundamental questions arise, as it is questionable whether a justice system in which victims rarely participate can be said to be truly 'restorative' (Daly 2003). Schemes can still be 'restorative' without the participation of the victim, although most commentators are in agreement that best outcomes are achieved when victims and offenders are brought together in a face-to-face meeting (Hoyle, 2002). In theory, victims should be able to 'enjoy the benefits of the restorative process even if they choose not to attend a meeting with the offender' (Hoyle, 2002 p102). However, as in Hoyle *et al's* evaluation of the Thames Valley scheme, there were very few occasions where an immediate, direct apology could be given and accepted. Financial restitution was very rare, and it is not clear how often offenders followed through with their promises to apologise to the victim. It is therefore doubtful whether the pilots can be described as *de facto* 'restorative', both in terms of process and outcome. However, as Roach (2000) argues, popular ideas in criminal justice will, by definition, mean different things to different people. Therefore labelling a scheme as 'restorative' or

‘unrestorative’ is perhaps unhelpful, given the policy objective behind the pilots was to deliver cautions using a restorative ‘framework’.

### **3. Other Concerns**

Other important aspects of these pilots also fell short of good practice. These included the lack of a holistic approach, problems regarding effective facilitation, and the absence of any follow-up process or monitoring of the agreements.

#### *The Lack of a Holistic Approach*

An effective working partnership is also required to realise the full potential of restorative solutions. There are limits on the ability of the police to organise and facilitate conferences without effective links with the statutory, voluntary and private sectors. Without such partnerships, there is little chance of a holistic picture being drawn up of the offender and his background circumstances, and underlying reasons as to why he may have committed the offence may remain hidden. The uncovering of such information can be effective in producing increasingly satisfying results at conference stage (Umbreit, 2000), although effective partnership is largely dependent upon skilled management, commitment and the investment of resources (Marshall, 1999). As far as possible, other statutory and community bodies should be involved in the process. (Pavlich 2001, Van Ness 2003).

Unfortunately, in the two pilot areas there were very few outside the police who were trained as facilitators: during the course of our observations we observed only one such case. There is nothing to suggest that the police discouraged outsiders to contribute, but the problem would instead seem to stem from the reluctance of other agencies to provide facilitators due to staffing or resourcing issues.<sup>16</sup> Undoubtedly increased participation by other agencies and community workers should nevertheless be encouraged, as it could enhance the reintegrative potential of the process.

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<sup>16</sup> Representatives of agencies we spoke to, such as Social Services, were very supportive of the approach but were over-committed with other work.

### *Problems regarding Effective Facilitation*

It is worth noting that the suitability of a police officer to effectively undertake the role of a conference facilitator has been questioned by a number of commentators (Braithwaite 1994; Umbreit and Zehr, 1996; Dignan, 1999). Concerns have included suggestions that the police may be more prone to coercion and less sensitive to the needs of the parties than lay persons; that young offenders may be intimidated in front of police-officers; and that there remains a risk of authoritarian behaviour. However, empirical evidence discussed by McCold (1998) refutes many of these concerns, and he also outlines a number of potential advantages to police-based models. These include the arguments that conferencing led by the police is perceived as being more “serious” and part of the mainstream criminal process; that the police are more likely to be successful in ensuring that undertakings are carried out; that victims feel safer with the police as facilitators; and that many of the skills required for facilitation are already developed in many officers who are involved in community policing. Braithwaite (1994) seems to share this view and argues that police can be trained to be “competent, empowering, facilitators.” Indeed, data from previous evaluations would seem to suggest that both victims and offenders trust police to organise a fair and non-authoritarian conference (McCold and Wachtel 1998, Hoyle *et al* 2002), and with a lack of empirical evidence to the contrary, it would appear that police-facilitation is consistent with restorative justice principles.

Our research found that each of the facilitators in the pilot areas seemed to be enthusiastic and sincerely committed to the restorative process. They had been well trained in the use of the script. In most cases they created safe and comfortable settings and atmospheres, sometimes in spite of the facilities. From time to time however, poor practice did seem to creep in: for example, there was generally too much use of suggestion, and most facilitators encountered difficulties in engaging the young person in the dialogue.

One of the main problems in relation to the facilitation was the apparent reluctance of many facilitators to encourage reparation. In one case, the juvenile’s offer to compensate the victim was actually turned down. In cases where the young person is struggling or is reluctant to offer a means of repairing the harm, consideration should be given to allowing private planning time for the family and young person to draw

up an action plan. This would reduce the anxiety and tension among all the parties, which may be inhibiting creative problem solving. This action plan may include a request for services for both the young person and the family.

### *The Absence of Follow-up*

A follow-up process is essential to encourage all parties to keep agreements which are not enforceable at law and to keep everyone informed (Claassen 1996, Umbreit 2000). Crawford and Newburn (2003) and Hoyle *et al* (2002) also noted that follow-up was deficient in terms of the quality of feedback delivered to victims. The facilitator should obtain regular updates from the offender, keep the victim informed and schedule additional sessions if required.<sup>17</sup> The conference agreements observed were adequately geared towards problem-solving, and sought to provide a pathway for the offender to reintegrate into the community. However, it was regrettable that in many of the cases in this study, follow-up work was not undertaken to ensure that undertakings given by the young person in the agreement were being met. Indeed, seven of the parents whom we interviewed cited this as the worst aspect of the process. Whilst infractions in individual cases may appear to be minor, a failure to address these would undoubtedly set a poor precedent and could potentially lead to future problems in receiving co-operation from individuals and local businesses. A system of monitoring should be put in place that assesses satisfaction with the process following all restorative sessions, and post-session monitoring needs to be completed to see whether agreements have been carried out to the satisfaction of all parties.<sup>18</sup>

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<sup>17</sup> For example, Umbreit (2000) points out that brief phone calls can reinforce the facilitator's role as a continuing source of information and referral for a period of up to six months after the conference.

<sup>18</sup> Even if this monitoring process is not enforceable.

## **Conclusions**

This study of two restorative justice pilot projects provides a useful insight into the practical, procedural and operational aspects of delivering a police-led restorative cautioning process for juveniles. The schemes were successful to some extent in securing the traditional aims of restorative programmes in that reintegration was achieved through avoidance of prosecution and through a process which emphasised that the young person was not 'bad'. It highlighted the impact of their offending on the victim and may even have helped foster better police community relations. In these respects the pilot projects represented a substantive improvement in quality on previous cautioning practice.

However, as noted in the discussion above there were drawbacks, not least of which was the fact that the process led to a degree of net-widening. This was evidenced by the fact that some of the people dealt with under the scheme were very young, had no previous police contact, committed trivial offences and previously would have been dealt with through informal means (such as 'No Further Police Action' or informal 'Advice and Warning'). There also appeared to be a tendency to include some offenders because it was seen as new, effective and a 'good thing' - something young people could learn from. Though intentions may have been admirable, the restorative sessions were part of the cautioning scheme, which meant that these young people ended up with a formal caution at the end of the process. Since cautions are recorded by the police and cited in court, they could have negative impacts in any subsequent proceedings. The restorative sessions were also shown to be very resource demanding. They took a lot of time and effort to organise and run, in order to be done properly. Despite this there was relatively little actual victim participation. This obviously limited their restorative potential in terms of reparation, reconciliation and getting young people to understand the real impact of their actions on their victims, or for victims to benefit by being involved in the process.

Even in spite of the low level of victim participation, however, the schemes have the potential to contribute to the spirit of transition in a 'post-conflict' society such as

Northern Ireland. McEvoy and Mika (2002) have illustrated the significant potential that community-led schemes hold in this regard. In Northern Ireland where criminal justice processes and institutions have suffered traditionally from a legitimacy deficit,<sup>19</sup> restorative practices hold tremendous potential to introduce new values into the criminal justice system (Dignan and Lowey 2000). Indeed, they also hold the potential to transform not only criminal justice systems, but also legal systems and even culture and politics (Bayley 2001, Braithwaite 2002). It could be said that police-led restorative justice could also aid the transitional process in Northern Ireland by helping foster improvements in strained police / community relations in many areas, even since the end of the conflict. Pollard (2001) has suggested that a shift has already taken place in policing in the Thamas Valley towards a more problem-orientated, community-based paradigm. It was clear from the interviews we conducted that the parents of the young people involved placed a high degree of trust in juvenile liaison officers and there was no evidence that either the parents or the young people felt that they were being ‘picked on’ because of their religious beliefs or political opinions. If the police are perceived as upholding restorative values, this may well help strengthen police / community relations which in turn may contribute to the broader social transitional process as we move towards a truly ‘post conflict’ society.

Since our evaluation the police have changed and improved their practice and formalised their cautioning policy so that all juvenile cautions in Northern Ireland are now delivered using a restorative framework. The Government is also greatly extending the use of restorative practices for juveniles throughout the criminal justice system in Northern Ireland under the Justice (Northern Ireland) Act 2002, which came into effect in the Winter of 2003. In Part 4 of the legislation, sections 53 to 57 allow for “youth conferencing” – which can either be of a diversionary nature, in which case the Director of Public Prosecutions will decide whether or not to refer the juvenile to youth conferencing, or they can be ordered by a court as a means of disposal subject to the conditions laid down in section 56 of the Act. Such changes will have profound implications for the operation of youth justice in Northern Ireland, as the vast majority

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<sup>19</sup> O’Mahony et al 2000 note from their findings of Northern Ireland Communities Crime Survey, that criminal justice agencies such as the police have experienced a significant legitimacy deficit especially in communities which are either strongly republican or loyalist.

of juvenile criminal cases brought for prosecution will now be dealt with through conferences.

A “conference plan” will seek to facilitate reparation to the victim, as well as providing a process by which reintegration of the young person back into society can occur. While such plans are subject to the agreement of all parties involved, and thereafter to the approval of the DPP, the Northern Ireland Human Rights Commission has recently expressed some concerns. These have included the possibility of the proportionality of conference plans being undermined, in that there is no linkage between the diversionary plan and the severity of the offence, and that some children may run the risk of being pressurised into agreeing to overly burdensome reparative tasks. Furthermore, the Human Rights Commission have expressed concerns that conference plans are not subject to any independent scrutiny.<sup>20</sup>

It is a matter of some concern that these types of issues have not been fully addressed in the legislation and this remains an issue that the Government may have to return to in future years. As such, it has become even more important that principles of best practice are given due regard by the criminal justice agencies when formulating internal protocols, policies and practices surrounding the use of youth conferences.

Our research has shown that if conferences are to be effective they will need to be mindful of avoiding net-widening, so that less serious offenders are not needlessly drawn into the criminal justice system simply because it is seen as a ‘better’ approach. They will need to ensure that requirements imposed on young people are not disproportionate to the seriousness of their offence. Youth conferences will require significant resources, as this study has shown that facilitation takes considerable time and effort to arrange and run. If they are to be effective the organisers will have to invest considerable effort in ensuring that victims actually participate in the process. The process should allow for meaningful victim /offender dialogue and reparation to

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<sup>20</sup> Submission by the Northern Ireland Human Rights Commission to members of the House of Commons, 27<sup>th</sup> February 2002, available on-line at [http://www.nihrc.org/files/justice\\_ni\\_bill\\_27\\_feb\\_2002.htm](http://www.nihrc.org/files/justice_ni_bill_27_feb_2002.htm)

occur if they are to achieve their restorative potential. Therefore, while it may be appealing to expand the use of restorative cautioning in principle, given the heavy resource demands of doing it properly, the obvious limited financial resources available and the dangers of net-widening, 'more' in this context does not necessarily mean better. Rather, we would suggest, based on the findings of this research, that it may be advisable to concentrate on delivering a higher quality restorative process with fewer, more serious cases.

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# **Restorative Justice - Is More Better? The Experience of Police-led Restorative Cautioning Pilots in Northern Ireland.**

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