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Evaluation of the Northern Ireland Youth Conference Service

Catriona Campbell, Roisin Devlin,
David O'Mahony, Jonathan Doak
John Jackson, Tanya Corrigan and
Kieran McEvoy



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**by Catriona Campbell, Roisin Devlin, David O'Mahony,
Jonathan Doak, John Jackson, Tanya Corrigan and Kieran McEvoy**

**Institute of Criminology and Criminal Justice,
School of Law,
Queen's University, Belfast**

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For additional copies, please contact:

Statistics and Research Branch
Criminal Justice Policy Division
Massey House
Stoney Road
Belfast BT4 3SX

Telephone: 028 9052 7534

Fax: 028 9052 7532

E-mail: crime.nio@nicos.gov.uk

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Restorative justice is now very firmly on the criminal justice agenda in many countries, with the rapidly increasing number of hits when searching the web testifying to the interest worldwide. However, despite the large number of such schemes in different countries, there is a relative lack of sound and searching evaluation of many of these schemes (with notable exceptions in New Zealand, Australia and England). This is why I so much welcome the decision of the Northern Ireland Office to support a full evaluation of the large pilot of youth conferencing in Northern Ireland, the introduction of which stems from the recommendations of the Criminal Justice Review and the subsequent Justice (Northern Ireland) Act 2002. I also applaud the very successful efforts of the team based at Queen's University Belfast to carry out that evaluation, the results of which are reported here. It is particularly important because this is a statutory scheme, its closest equivalent being the long-running youth conferencing in New Zealand, and these pilot results can inform the future running of conferencing in Northern Ireland, as well as providing feedback to everyone involved.

Restorative justice, when linked with the criminal justice system, as is the case with youth conferencing, involves a lot of different parties, amongst them: victims and their families and supporters; offenders and their families and supporters; the courts and judiciary; conference facilitators; criminal justice system agencies (such as the police) who are involved with the conferences themselves; people running programmes and supervising offenders undertaking those conference agreements made sentences of the court; local communities and victim support agencies. It has the potential to bring these parties together to address the consequences of offending and find imaginative possibilities to help in the future. If badly managed, it also has the potential to disturb and upset people. It is clear from the results reported here that, as implemented in the pilot, youth conferencing has a positive potential and that many of those involved have been very positive about it. There remain some issues, particularly about the interaction between restorative justice and criminal justice – but that is the point of evaluations: to draw out such issues so that they can be addressed.

Because conferencing does involve so many parties and is a complex process, the evaluation itself is a difficult task. I know, from directing the ongoing evaluation of three restorative justice schemes within criminal justice involving both adult and young offenders in England, funded by the Home Office, that it requires serious hard work and many hours to make sure that data on the cases involved are consistently gathered, conferences are observed, victims and offenders are able to give their views, criminal justice implications are considered and the views of criminal justice personnel sought. So I know how much effort has gone into the research reported here. The evaluation of youth conferencing in Northern Ireland is, in my view, a major achievement and a very good piece of work. It will be extremely useful, not only within Northern Ireland and for both practitioners and policy makers, but in many other countries as well.

Professor Joanna Shapland
University of Sheffield

Acknowledgements

This report is based on a major research evaluation into youth conferencing in Northern Ireland. Many people helped in the process of conducting the research. We are especially grateful to all of the participants – victims, offenders, parents and supporters, conference coordinators, police officers and other professionals - at the conferences we attended. They gave us their views and opinions in a frank and genuine manner and much of the report is about what they told us.

The research was facilitated by the good will of many in the criminal justice system. We are especially thankful to Mrs Valerie Brennan in the Courts Service for arranging access to the necessary courts and files. We were aided by a steering group which provided advice and direction throughout the research and in particular we would like to thank Jane Woods, Tony Kavanagh, Laura Hague, Tony O'Brien and Mathieu Decodts from the Northern Ireland Office; Alice Chapman and Yvonne Adair from the Youth Conferencing Service; Mandy Kilpatrick and Orla Bateson from the Courts Service; and Ken Preston from the Public Prosecution Service. Ken Preston also kindly helped access to prosecution materials and criminal record information.

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The research was conducted by a team including Helen Beckett who worked on the project in the earlier stages, as well as Andrea Burke. Catriona Campbell took on much of management of the research and she worked tirelessly with Roisin Devlin and Tanya Corrigan, thank you all.

Lastly we would like to thank the Northern Ireland Office for funding the research. We hope it will help in the roll-out of youth conferencing across Northern Ireland and more generally for those seeking to improve the delivery of restorative justice.

David O'Mahony
Queen's University, Belfast

Executive summary

Youth conferencing

The Northern Ireland youth conferencing service was launched in the Greater Belfast area in December 2003, and was subsequently expanded to Fermanagh and Tyrone in April 2004. Introduced as part of the Justice (Northern Ireland) Act 2002, this innovative response to young offending is based on the recommendation in the Criminal Justice Review that: “restorative justice should be integrated into the juvenile justice system and its philosophy in Northern Ireland, using a conference model [...] based in statute, available for all juveniles [...] subject to the full range of human rights safeguards” (Criminal Justice Review Group, 2000: 205). In contrast with more traditional models of justice, youth conferencing seeks not only to encourage young people to recognise the effects of their crime and take responsibility for their actions, but also to devolve power by actively engaging victim, offender and community in the restorative process.

The evaluation

This report seeks to examine the translation of the youth conferencing service into practice, identifying both strengths and weaknesses of the current system and determining to what extent it is proving effective in meeting its stated objectives and anticipated outcomes. In order to do so, the report presents a holistic overview of the process, examining all key stages from the initial conference referral through to the return of conference plans.

Following a review of the relevant literature, the primary research methods employed within the evaluation were those of observation, structured and semi-structured interviews. Observations took place with respect to both youth conferences and relevant court proceedings. In total, 185 conferences were observed. Structured interviews were completed with victim and offender conference participants, while semi-structured interviews were employed with both victim and offender non-participants and other key stakeholders such as Magistrates, police and representatives of the Public Prosecution Service (PPS).

The referral process

The research examined referrals to the Youth Conference Service from the court and Public Prosecution Service. Researchers observed proceedings in the youth court in both Belfast and Fermanagh and Tyrone regions. This permitted an evaluation of the issues surrounding court referrals and the extent to which legislative requirements were met.

- ◆ 362 referrals were received by the Youth Conference Service within the period of research. 31% emanated from the PPS and 69% from court.
- ◆ A range of offences were referred. The majority or 53% related to intermediate offences against person or property. Serious offences accounted for 23%, minor matters for 21% and very serious offences for 3% of referrals.
- ◆ The majority or 89% of young people referred for a diversionary conference had no previous offences for which they were sentenced. The remainder had one (7%) or two (5%) previous sentences. 44% of those referred by court had no previous sentences, 20% had one and 15% had two. The remainder had three (10%) and four or more (11%) previous offences for which they were sentenced.
- ◆ There was a high rate of acceptance by young people of diversionary referrals with 68% of PPS referrals accepted over the Greater Belfast and Fermanagh and Tyrone regions.
- ◆ Similarly, the majority of young people offered a conference at the youth courts (56%) accepted and were referred to the Youth Conference Service.
- ◆ On the whole, Magistrates offered referral to a conference in those cases deemed suitable by the legislation.
- ◆ The formality and established practice of the youth court suggested that, by the end of the research, some concerns remained about the manner in which courts requested consent to attend a conference.

Preliminary stages of the conference

The initial stages of the conference were considered including the convening of a conference, including practicalities and location, the pre-conference preparation process and participant composition. The research also examined the position of those victims and young people who declined to participate in a conference.

- ◆ The majority of referrals (75%) received by the Youth Conference Service successfully resulted in a conference. On average, diversionary and court-ordered conferences were completed within the required timescales.
- ◆ Most young people referred to a conference were male (86%) and aged 14-16 (77%). A significant proportion of young people referred to a conference were in the care system (29%), the majority of whom were referred by the court (88%).
- ◆ When compared to similar schemes internationally, victim participation in conferences was high at 69%. Of these, 47% were victim representatives, 40% personal victims and 13% were representatives attending where there was no identifiable victim. Most victims did not attend a conference with a supporter.
- ◆ Both victims and young people rated their preparation prior to the conference highly. Most felt well informed about the process and knew what to expect at a conference.
- ◆ Young people attended conferences to 'make up for what I had done' (85%), to be forgiven by the victim (79%) and to both help the victim (70%) and hear what they had to say (70%).
- ◆ For victims, the notion of punishment was secondary to meeting the young person and receiving an explanation for their actions. A significant number of victims (79%) attended because they wanted to help the young person.
- ◆ Findings indicate that not all victims wish to come face to face with the young person at a youth conference. A small sample of non-participating victims were interviewed and of these, the majority indicated personal reasons for non-attendance.

The conference

The evaluation of the conference process measured participant involvement and satisfaction at various stages of the proceedings. This included the extent to which co-ordinators introduced participants and explained the process and the involvement of participants when discussing the impact of the crime. Observations also recorded the presence or absence of an apology, shame and remorse and how the expression of this was received by the victim if present and other participants. Researchers then considered the involvement of participants in devising and agreeing the conference plan.

- ◆ Most victims appeared calm and relaxed at the start of the conference, and did not report feeling nervous. By contrast, 71% of young people displayed some degree of nervousness and avoidance or discomfort.
- ◆ Overall, co-ordinators were observed to introduce participants and the process very well. On some occasions, however, the confidential and voluntary nature of the process was not explained in adequate detail.
- ◆ Young people generally engaged well when discussing the offence, and were given the opportunity to explain it from their perspective (93%). Almost all young people (98%) felt that they were listened to when they did so.
- ◆ The vast majority (97%) of young people accepted responsibility for their actions either 'a lot' (61%) or 'a bit' (36%).
- ◆ Victims were generally very engaged in the conference process. All victims felt that conference gave them the opportunity to explain to the young person how the crime affected them.
- ◆ Both victim and young people's supporters were generally observed to feed positively into the restorative atmosphere of the conference. The vast majority of young people (93%) and all victims said that they found their presence 'helpful'.
- ◆ The majority of conferences considered contributory factors when discussing the crime. The most common were substance misuse, peer pressure and family difficulties.
- ◆ In the majority (87%) of conferences the young person apologised or agreed to apologise. The majority of conferences without an apology involved a victim representative and not a personal victim. Young people were observed to display some level of shame (77%) and remorse (92%) in most conferences.

- ◆ Both young people and victims were involved in devising the conference plan. In total, 89% of young people and 96% of victims were either 'a lot' or 'a bit' engaged when deciding the plan.
- ◆ During the period of the research, 95% of conferences reached agreement on a plan. The majority of young people (74%) and victims (87%) were 'happy to agree' to the plan.
- ◆ Both young people (93%) and victims (79%) believed the plan to be either 'very fair' or 'fair'. Similarly, 71% of young people and 79% of victims were 'very satisfied' or 'satisfied' with the plan.
- ◆ In terms of proportionality, young people (72%) and victims (69%) believed the plan to be 'neither too hard nor too soft'.

Overall evaluation of conferences

The overall levels of participation within conferences and the facilitation provided by co-ordinators were measured. The research considered overall input when discussing the crime and agreeing the conference plan, participant's evaluation of their conference experience and observations in relation to the skills of conference co-ordinators.

- ◆ In the majority of conferences, participants were involved when discussing the crime. 62% of young people and 80% of victims were involved 'a lot' at this point.
- ◆ The majority of young people, (91%), and victims, (81%), preferred the conference over court.
- ◆ 81% of young people and 48% of victims felt better following the conference. Of the 52% of remaining victims, the majority felt no different.
- ◆ 92% of young people and 78% of victims believed the conference had helped the young person realise the harm caused by the offence.
- ◆ The vast majority of young people, (86%) and victims, (88%), would recommend a conference to a person in a similar situation.
- ◆ Of the family members who provided their views on the conference process, the majority welcomed the opportunity to attend and believed the conference to have a positive impact on the young person.
- ◆ In 77% of conferences the co-ordinator was either 'very good' or 'good' at involving others and in 84% of cases, 'very good' or 'good' at progressing the conference toward agreement. Overall, co-ordinators displayed particular skill in their ability to be inclusive and to treat everyone in a respectful manner.

The return of conference plans and orders

Having examined both the referral and convening of youth conferences, the return of conference plans to the court or the Public Prosecution Service was then evaluated. The numbers of plans returned, and their varying outcomes, were examined as was the legislation governing the process and key issues arising with respect to it.

- ◆ Two-thirds of plans (67%) returned to the court or PPS were passed in their original form.
- ◆ All conference plans (100%) returned to the Public Prosecution service were passed, whilst just under two thirds of plans were accepted by the court (63%).
- ◆ Difference in decision making between Magistrates was evident between the Fermanagh and Tyrone and Greater Belfast regions, with plans much more likely to be passed in Fermanagh and Tyrone.
- ◆ When making youth conference orders, observations found that legislative requirements are generally being met within the courts.
- ◆ In most cases, reasons given by the court for the rejection of plans related to the nature of the offence. Whilst on some occasions the offence was believed to be too serious for the imposition of an Order, in others the offence was deemed not serious enough.
- ◆ Of those referred to a youth conference by the court, but did not receive a youth conference order, the most common alternative disposals were a conditional discharge or a period of custody.
- ◆ Just under half (47%) of plans passed were completed within the period of the research. On average, plans were completed within 67 working days, well within the year afforded by the legislation.
- ◆ Only a small minority (6%) of plans were subsequently revoked due to non-compliance.

Recommendations

The results presented within this report show that overall the implementation of youth conferencing in Northern Ireland progressed well. In addition, it is anticipated that the practice of youth conferencing and the knowledge of the service by others, will improve with experience and time. Nevertheless, there are certain matters that may be useful to consider in the further development of the youth conferencing service. The following are recommendations for future practice and research:

The referral process

1) Prosecution referrals: 31% of referrals for Youth Conferences emanated from the Public Prosecution Service and 69% from the youth court. The majority or 53% related to intermediate offences against person or property. Serious offences accounted for 23%, minor matters for 21% and very serious offences for 3% of referrals. The majority of 'minor property related and other minor offences' were referred to the Youth Conference Service by the court (71.4%) and not the Public Prosecution Service (28.6%) as might be expected. This suggests that the PPS is referring a substantial number of intermediate and some minor offences to the court. This conclusion is reinforced by the fact that courts made a conditional discharge in 15.9% of cases rather than accept the Youth Conference plan. The courts' resources might be best reserved for the most serious and complex cases, those raising issues of public interest and protection. In light of the very promising results reported in this evaluation particularly in the area of victim satisfaction it is recommended that the PPS increase the proportion of referrals for diversionary conference primarily on the basis of seriousness of the offence, though previous convictions should also remain a consideration.

2) Upper age limit: Where a young person becomes an adult in the course of youth court proceedings, article 30 of the Criminal Justice (Children) (NI) Order 1998 permits the youth court to make any order which it would have made had they not reached that age. In a number of court observations, a youth conference plan was rejected because the young person had reached 17 years of age before the plan returned to court. Although this was not the intention of the legislation, it is permissible, and consequently it may be useful to explain to the young person, at the stage of initial referral, that refusal due to age is a possible result. In this way, the young person can make a more informed choice about whether or not to attend the conference (3.5 Court-Ordered Referrals).

3) Mandatory penalties: At present, the Justice (Northern Ireland) Act 2002 prohibits a youth conference order in combination with a further court order¹. As a result, the court was unable to accept a youth conference plan in a number of motoring cases because the offence attracted a mandatory penalty. Furthermore, figures showing a high proportion of motoring offences amongst 17 year olds, means that the introduction of this age group to the youth court will have a significant impact in this regard. Attendance at a conference by the young person should not necessarily be prohibited, as exposure to the potential consequences of road traffic offences to victims may influence future behaviour. It is recommended that a legislative amendment be considered that would permit a youth conference order in combination with a mandatory penalty in appropriate cases and provided the young person consents. In either scenario, it is crucial that the young person is provided with the necessary details to enable an informed choice as to whether or not to attend the conference (3.5 Court-Ordered Referrals; 7.5 Return of Court-Ordered Plans: Court-Ordered Conference Plans).

4) Court-ordered conferences and consent: the established practice and formality of the youth court meant that there were varying levels of input from Magistrates when requesting consent to attend a conference. Although staff from the Youth Conference Service attend court and meet with the young person after each referral is made, it would seem more suitable for the court, either through the Magistrate or a legal representative, to ensure that in each case the young person has a full understanding of the process before accepting consent (3.5 Court-Ordered Referrals). It is recommended that this could be facilitated by young people, their parents or carers and their legal representatives being fully informed about the youth conference process in a standardised way by representatives of the Youth Conference Service outside the court room prior to being asked if they give their consent to participating in a conference.

5) Referrals from care system: A significant proportion of young people referred to a conference were in the care system, the majority of who were referred by the court. It is recommended that unless serious offences have been committed, steps should be taken to avoid court prosecutions of looked after young people.

¹ Section 60, 36J (9) of the Justice (Northern Ireland) Act 2002.

Preliminary stages of the conference process

6) Time from the offence to the conference: in all cases involving children and young people, it is important to avoid unnecessary delay. However, distance in time can also impact on the conference process by affecting the level of recall by the young person and / or the victim about the actual offence. The average length of time from the offence to the day of the conference was 120 working days. In interview, some victims expressed a concern at the lapse in time since the original offence. Although it is difficult to make a specific recommendation in this respect, it may be useful to bear in mind and to monitor the impact of this particular time distance in the further development of the youth conferencing service (4.3 The Convening of Conferences; 6.4 Overall Evaluation of Conferences: Best and Worst Aspects of the Conference Experience).

7) Conference length: the majority of conferences permitted a sufficient amount of time to deal with the relevant issues and to engage all participants. However, the average conference lasted for one hour and a number of conferences lasted for more than 90 minutes. A number of participants felt that this was too long. In observations, young people also appeared restless toward the end of proceedings and when agreeing the plan. Therefore, it is recommended to make more provision for a break or time out during the conference proceedings (4.3 The Convening of Conferences; 5.5 Discussing the Crime: Young Person: Engagement; 5.10 The Actual Plan: Proportionality; 6.4 Overall Evaluation of Conferences: Best and worst Aspects of the Conference Experience).

8) Conference venues: the majority of conferences took place in the purpose built Youth Conference headquarters in Belfast. Occasionally, community venues were used where this proved more convenient for participants. However, one young person supporter was concerned that the location was too local and an issue of privacy did arise. While achieving accessibility, it is recommended that it may be helpful to confirm with all participants that they are comfortable with the location of a community venue (4.3 The Convening of Conferences).

9) Observation room: in a few cases, the one-way observation room appeared to cause problems due to the presence of a mirror. To avoid this occurring, it is recommended to install a curtain or blind, which could be drawn over the mirror when the observation room is not in use (4.3 The Convening of Conferences).

10) Information on persons attending the conference: in most cases, young people and victims were well informed about the conference before attending. However, a very small number of victims felt they were not informed about who would attend and one victim felt particularly uncomfortable due to the presence of a person whom they did not know was attending. It is therefore recommended that participants are informed and provided with up to date information on the persons who are or even might be present at the conference (4.5 Preparation for the Conference: Victim).

11) Informational material: the majority of victims and young people were satisfied with information provided to prepare them for the conference. It is recommended that victim representatives have access to preparation materials, which include a business or community perspective and contain guidance on why victim representatives might attend (4.5 Preparation for the Conference: Informational Material; 4.6 Non-Participation: Victims).

12) Victim non-participation: Although the sample was small, the views from victims who chose not to participate in the conference process suggest two points to ensure good practice in these cases. It is recommended firstly, where the victim requests it, information should be provided to them on the progress of the case. Secondly, where the victim makes an alternative contribution such as a letter or a statement, it is important to offer information on how this input was received at the conference. Every effort should be made to facilitate alternatives when appropriate (4.6 Non-Participation: Victims; 4.7 Conclusion).

13) Delays: Where the conference was delayed, most victims (83%) and young people (80%) were kept informed, however 17% of victims and 20% of young people were not told why there was a delay. It is recommended that when delays occur, all parties are kept well informed of the causes and likely starting time.

14) Legal representation: When asked if they were informed of their right to legal advice, the majority (76%) of young people stated that they were. However 21% indicated that they were not and 4% could not remember. It is recommended that the Youth Conference Service ensure that all young people are informed of their right to legal advice.

The conference

15) Explaining the conference process: At the opening stages of the conference, it is important for the co-ordinator to establish the purpose and practicalities of the process. Results showed that in the majority of cases this was done well. Furthermore, the use of a flip chart acted as a useful tool to assist in explaining this process. It is recommended for continued training to ensure that visual aids are used appropriately and that they do not encourage the development of an overly standardised or prescribed format to conference proceedings (5.4 Opening Stages of the Conference: The Co-ordinator).

16) Confidentiality and voluntariness: continued training is required to build upon the positive aspects of the conference, in particular, to ensure a clear explanation at the start of the conference of the voluntariness of participation and the confidentiality of conference proceedings. When explaining the concept of confidentiality, it is important to state the circumstances in which information revealed within the conference might be disclosed to third parties, for instance, concerns regarding child protection or information regarding further offences (5.4 Opening Stages of the Conference: The Co-ordinator).

17) The facts of the offence: a statement of facts regarding the offence is provided in each conference by the police officer. In a number of cases the young person disagreed with the facts as read. However, participants should be helped to understand that there can be a difference between disputing the facts, a process and dialogue which the conference process might legitimately facilitate, and disputing the legal elements which make up the offence, a more serious matter suggesting that the young person has not accepted responsibility for the offence (5.5 Discussing the Crime: Statement of Facts).

18) Involvement when devising the plan: observations showed a minority of only 57 conferences where one or more participants should have had more say when devising the conference plan. However, in two thirds of these cases or 37 conferences this was identified as the young person. In some instances therefore it is recommended to facilitate the young person to have a more substantial part in determining the actual plan (5.9 Devising Conference Plans: Involvement).

19) Professional input when devising the plan: observations showed only 24 conferences where it appeared that one or more participants should have had less say when devising the plan. In a very small number of these cases the police officer or co-ordinator was observed to address the young person in a scolding tone. It is recommended that this practice issue could be addressed through ongoing development and training (5.9 Devising Conference Plans: Involvement).

20) Agreeing the conference plan: conference participants should be aware that the court might assess a conference plan according to how far it is proportionate to the offence. However, in a number of observations, there appeared to be a level of undue pressure due to a knowledge that the court would require significant content before it would approve the plan. Further training is recommended for co-ordinators to assist in ensuring that external demands do not overly influence participants when devising the plan. Indeed, the value of the process may be undermined if it appears that the court is directing the plan. (5.10 The Actual Plan: Agreement).

21) Plan content: though there were features common to many plans, such as an apology to the victim and / or an activity to address the causes of offending, each outcome varied in substance and length. Results showed that certain programmes or schemes were used regularly within plans whilst others appeared more peripheral. As such, mentoring and offence focused schemes appeared common whereas anger management, education or training featured for a minority of all plans. It is recommended to evaluate further the level of diversity within plans, given that schemes such as 'mentoring' and 'offence focused work' can involve young people in a wide range of opportunities, including the establishment of links to education and / or training (5.10 The Actual Plan: Plan Content).

22) Regional variation within conference plans: it is important to examine the development and content of plans to ensure against a substantial difference in plans by region. This is particularly important in relation to the inclusion of restrictions, with results showing 55% of plans from Fermanagh and Tyrone compared to only 20% of plans from the Greater Belfast region including one or more restriction. As such, it recommended to monitor regional inconsistencies to ensure against any perception or practice of 'justice by geography' in relation to the content of conference plans (5.10 The Actual Plan: Plan Content).

Overall evaluation of conferences

23) Co-ordinator skills: results showed that in the vast majority of conferences, co-ordinators displayed particular skills in their ability to be inclusive and to treat every participant in a fair and respectful manner. It is recommended that training continue to build upon and reinforce this positive aspect of the conference process (6.5 Overall Evaluation of Co-ordinator's Role).

The making of conference plans and orders

24) Return of court-ordered plans: the results showed a geographical inconsistency in relation to the acceptance and refusal of court-ordered conference plans. While all conference plans resulted in a youth conference order following referral from the youth courts in Fermanagh and Tyrone, over half of all referrals made by Belfast youth court did not result in an order. This presents a considerable variation in outcome by region and is perhaps an issue for further monitoring. The practical result is that court-ordered conferences in Belfast are far less likely to result in acceptance of the youth conference plan, (7.5 Return of Court-Ordered Plans: Court-Ordered Conference Plans).

25) Issuing a conditional discharge in place of a youth conference plan: the most frequent order made by the court following refusal of a youth conference plan was a conditional discharge. The Justice (Northern Ireland) Act 2002 provides that the court should not offer referral to a youth conference where it is minded to impose an absolute or conditional discharge². It seems that this is a legislative safeguard to ensure that less serious cases do not proceed by way of youth conference. It is recommended that if the court anticipates a conditional discharge, it would seem more within the spirit of the legislation not to offer referral to a youth conference. If following this practice, there might be a reduction in the number of plans refused on the grounds that the offence is not serious enough to warrant a youth conference order (7.5 Return of Court-Ordered Plans: Court-Ordered Conference Plans).

26) Amending court-ordered plans: given the high rate of rejection of youth conference plans at the Belfast youth court, it might be helpful to provide further training on the possibilities for amending a youth conference plan. This can facilitate the identification of suitable cases where it might be more positive to amend rather than to refuse the youth conference plan (7.5 Return of Court-Ordered Plans: Amendment of Youth Conference Plans).

27) The value of youth conference plans: it appeared from court observations that the value of a youth conference outcome was at times assessed according to the quantity or level of content within the plan. Therefore, a conference plan might be rejected on the grounds that 'two points' are insufficient to address a 'serious' offence. However, the worth of any conference plan is a complex measurement and may rest in the nature of the agreement rather than the number of elements appearing within the plan. As such, it may be useful to develop further training and educational materials in this regard (7.5 Return of Court-Ordered Plans: Amendment of Youth Conference Plans).

Further research

In order to appreciate the impact of youth conferencing on participants and relevant stakeholders and to assess how it is received by the youth justice system in Northern Ireland, it is crucial that its development is carefully monitored. Although it is not possible at this early stage of implementation to be aware of all aspects of the service that might benefit from research, there are certain areas that would be important for further examination:

28) Post conference perspectives: further research can assist in the development of the youth conferencing service by exploring the perspectives of young people, victims, families and other participants in the period following the actual conference proceedings. For instance, it may be important to learn about the perceptions of and impact upon participants following acceptance or refusal of the youth conference outcome and issues arising from fulfilment or breach of the final conference plan (7.5 Return of Court-Ordered Plans: Amendment of Youth Conference Plans).

29) Completion and revocation: the results showed a high rate of completion of youth conference plans and orders. However, given that youth conferencing is in an early stage of implementation, this research was unable to investigate this aspect of the service in detail. It would be useful to explore further the completion of youth conference outcomes and the consequences of breach. Indeed, where youth conference orders are revoked, it will be important to monitor and establish any trends in relation to final sentencing outcomes (7.7 Completion and Revocation of Youth Conference Plans and Orders).

30) Recidivism: although recidivism should not constitute the sole indicator when evaluating youth conferencing schemes, it would be of value for additional and longitudinal research to assess the level of reoffending following engagement by young people with the youth conferencing service and assess what elements of the process appear to have the most beneficial results (10.4 Conclusion).

² Section 59, 33 C (5) Justice (Northern Ireland) Act 2002.

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Introduction

A mainstreamed restorative approach to youth offending has recently emerged as part of a package of wider criminal justice reforms in Northern Ireland. Following the Agreement, which was signed on Good Friday of 1998 in Belfast, a holistic evaluation of the criminal justice system was undertaken with the objective of making the system more accountable and responsive to the community as a whole (Criminal Justice Review Group, 1998). Amongst other themes, it examined rights issues, prosecution, the courts and judiciary, community safety, sentences and probation, victims and witnesses, youth justice and restorative justice. After an initial consultation period and the publication of an implementation plan, many of the recommended changes were passed into law in the form of the Justice (Northern Ireland) Act 2002. One of the most significant reforms to emerge was that “restorative justice should be integrated into the juvenile justice system and its philosophy in Northern Ireland, using a conference model [...] based in statute, available for all juveniles [...] subject to the full range of human rights safeguards” (Criminal Justice Review Group, 2000: 205).

The Northern Ireland ‘youth conferencing’ model of restorative justice has much in common with the New Zealand family group conferencing system, although it places greater emphasis on the victim than the family. The New Zealand model has served as a benchmark for many restorative justice schemes worldwide and in a report commissioned as part of the Criminal Justice Review (Dignan and Lowey, 2000), was highlighted as a potential restorative model for Northern Ireland. Nevertheless, it is apparent that differing local contexts can make the transposition of models of justice into discrete environments problematic. In Northern Ireland, there exists a background of 30 years of inter-community conflict which has created an institutional legitimacy deficit. This is characterised by mistrust and hostility towards the police in some areas and has resulted in the growth of a crime prevention vacuum and the emergence of informal community justice measures (Dignan and Lowey, 2000).

Implementing a model of restorative justice without examining contextual factors could perhaps be viewed as misguided, particularly as much of the success of the New Zealand model has been attributed to its contextual and cultural sensitivity to New Zealand’s Maori population. In Northern Ireland, the new youth conferencing service has emerged within a growing climate of restorative justice, reflected in the burgeoning number of community-based restorative schemes which emerged in the late 1990s (McEvoy and Mika, 2002). It was however determined that for reasons of accountability, certainty and legitimacy the model of restorative justice implemented should be based in statute and fully integrated into the formal justice system.

The Northern Ireland Youth Conferencing Service

The Northern Ireland youth conferencing service has statutory footing in Part 4 of the Justice (Northern Ireland) Act 2002. In addition, The Youth Conference Rules (Northern Ireland) 2003 establish the procedures to be followed when convening and facilitating a conference. The newly created Youth Conference Service of Northern Ireland has the distinct role of managing the implementation of youth conferencing in Northern Ireland. The Youth Conference Service is part of the wider Youth Justice Agency established by the Northern Ireland Office (NIO). Among the staff employed by the Youth Conference Service are Youth Conference Co-ordinators who are responsible for the preparation and facilitation of actual conference processes. The Youth Conference Co-ordinators also have post-conference responsibilities including preparation of conference reports for the Public Prosecution Service (PPS) or youth court and to act as a support for the young person in completing the final conference plan. Also within the Youth Conference Service are ‘Case Managers’ whose role is to facilitate the day-to-day running of the youth conference service, including the receipt of referrals and the return of conference outcomes to the Public Prosecution Service or to the youth court.

The youth conferencing service was introduced in December 2003 and was initially available for all 10-16 year olds living in the Greater Belfast area who admit to, or are found guilty of, offences committed after 1st December 2003³. In April 2004 the service was expanded to cover young people living in the Fermanagh and Tyrone regions. Section 63 of the Justice (Northern Ireland) Act 2002 provides for the extension of the current youth justice system to 17 year olds. When this provision comes into force this age group will also be eligible for referral to youth conferencing.

³ The Magistrate is required to refer a young person to youth conferencing except in the cases of offences with a penalty of life imprisonment, offences which are triable, in the case of an adult, on indictment only and scheduled offences which fall under the Terrorism Act 2000.

As in New Zealand, two types of conferences are provided for in the legislation: diversionary conferences and court-ordered conferences. Both types of conference take place with a view to a youth conference co-ordinator providing a recommendation to the Prosecutor or court on how the young person should be dealt with for their offence. Two preconditions must be met for a diversionary conference to occur: firstly, the young person must admit that they have committed the offence and secondly, they must consent to the process. Similarly, the admission or establishment of guilt and the consent of the young person are prerequisites for a court-ordered conference to take place.

Typically, a youth conference will involve a meeting in which a young person is provided with the opportunity to reflect upon their actions and offer some form of reparation to the victim. The victim, who is offered the choice whether or not to attend, can explain to the young person how the offence has affected him or her as an individual. In theory, this means that a conference gives the young person the chance to understand their crime in terms of its impact, particularly on the victim, and the victim the chance to separate the young person from the offence. Following group dialogue on the harm caused by the young person's actions, an 'action plan' will be devised. This plan will take the form of a negotiated 'contract', with implications if the young person does not follow through what is required of him or her. Agreement is a key factor in devising the 'contract', and the young person must consent to its terms. Ideally, the 'contract' will ultimately have some form of restorative outcome, addressing the needs of the victim, the young person and wider community.

The youth conferencing service marks a radical departure from previous approaches to young offending in Northern Ireland. It is hoped that youth conferencing will significantly alter how victims and young people experience the criminal justice system as, in theory, it offers both parties increased involvement in the process and the opportunity to 'reclaim' their case from a professionalised, often alienating system (Christie, 1977; Shapland et al, 1985).

Structure of the report

Chapter 1 presents an overview of the current body of restorative justice literature, examining both the philosophy and claims of restorative justice and the various forms in which it has been implemented thus far. Chapter 2 proceeds with an explanation of the methodology employed in the research, while Chapters 3 to 7 (inclusive) present the findings of the research in terms of initial referrals to the service, the convening of conferences and the return of referrals to either court or the Public Prosecution Service. Chapter 8 presents a summary of findings arising from key stakeholder interviews with Magistrates, the police and the Public Prosecution Service. Finally, Chapter 9 concludes this report by offering comments on the findings of the research and ends with a number of recommendations, which may assist in the further development of youth conferencing in Northern Ireland.



Chapter 1

Review of the literature and research

1.1 Introduction

This section reviews the literature and research carried out on restorative justice, setting its development in Northern Ireland within an international context. In providing such an overview, it seeks to inform the research of potential issues that may be encountered by the Northern Ireland model. It begins with a brief introduction to the philosophy and claims of restorative justice, outlining the purported benefits to the victim, the young person, the community and the state. Informed by restorative justice in theory, it then proceeds to examine how these programs operate in practice, with a particular focus on restorative ‘conferencing’ schemes. By examining how effectively restorative justice is implemented and operated elsewhere, examples of best practice and effective delivery are identified. In the concluding section, issues critical to the present evaluation - such as the rights of participants, satisfaction with the process and outcome and preventing re-offending - are addressed.

1.2 Restorative justice in theory

Defining restorative justice

In the past decade, support for restorative justice has gathered great momentum, given testimony by the large number of schemes in operation internationally (Miers, 2001). It has been argued that restorative justice emerged as a critique of traditional forms of justice (Crawford and Newburn, 2003) and many of its proponents depict it as an oppositional paradigm to retributive justice (Zehr, 1990)⁴. In spite of its growth, arriving at an agreed definition of ‘restorative justice’ has proved problematical (Roche, 2001). An examination of restorative justice programs worldwide presents us with a diverse range of processes, which incorporate different levels of ‘restorativeness’. In effect, it could even be said that ‘restorative justice has come to mean all things to all people’ (McCold, 2000). It is perhaps more useful to describe restorative justice as an ‘umbrella’ concept as its diverse implementations in practice are theoretically derived from a number of key principles. Van Ness and Strong (1997) have identified these principles as encounter, reparation, reintegration and participation. Daly (2002: 58) further suggests that common features of restorative justice include:

- ◆ An emphasis on the role and experience of victims
- ◆ The involvement of relevant parties to discuss the offence, its impact, and what should be done to ‘repair the harm’
- ◆ Decision making which is carried out by both lay and legal actors.

That there is no rigid definition has been described by Braithwaite (2002: 15) as necessary; “standards must be broad if we are to avert legalistic regulation of restorative justice, which is at odds with the philosophy of restorative justice.”

Restorative justice takes a number of forms. Ideally, it will involve a meeting between victim and offender resulting in an agreed outcome requiring the offender to undertake some form of reparation in order to repair the harm that they have caused. In practice, the way in which this is facilitated and the extent to which ‘restoration’ is achieved will differ. Models of restorative justice include family group conferencing (Maxwell and Morris, 1993; Dignan, 2005:), police led restorative justice programs (O’Mahony et al, 2002; Hoyle et al, 2002) victim-offender mediation, sentencing circles, panels (Crawford et al, 2003; Karp et al, 2001) and community facilitated schemes (McEvoy and Mika, 2002). As will be illustrated later, although these schemes all operate within the broad framework of ‘restorative justice’ they often differ significantly.

The claims of restorative justice

The benefits of restorative justice are typically set out with reference to the failings of the traditional criminal justice system. Advocates of restorative justice argue that it resolves many of these criticisms by addressing the needs of the victim, offender and wider community. The claims of restorative justice will now be analysed with reference to each of these.

⁴ Daly (2002:59), however, has questioned this depiction and argues that such a “contrast is a highly misleading simplification which is used to sell the superiority of restorative justice and its set of justice products.”

(i) The victim

Zigenhagen (1977) defines a 'crime victim' as "one who has experienced harm as a result of an offence" (cited in Strang, 2002:2). It is widely acknowledged that victims of crime often feel dissatisfied and marginalised by their experience of the traditional criminal justice process (Shapland et al, 1985). In recent times, a number of reforms have been implemented in an attempt to address this. In the UK these reforms include the introduction of a Victim's Charter (HMSO, 2002) which establishes basic standards outlining the treatment a victim should expect to receive, and 'victim impact statements' which endeavour to provide victims with a greater voice in the court process (Sanders et al, 2001). In addition, the issue of victims was of central focus to the Criminal Justice Review in Northern Ireland. Such victim-aware practices have developed in a context in which the victim is increasingly viewed as a 'consumer' of criminal justice, demanding high standards of quality when their case is dealt with (Zauberman, 2000). However, whilst many advances have been made since the formative stages of the victim movement, critics argue that they have been minor in nature and involve a 'tinkering' with the existing system rather than any substantive reform (Roche, 2003: 8). In a review of international research Strang (2002: 2-3) outlines six prevailing needs of victims:

1. Victims want a less formal process where their views count;
2. Victims want more information about the processing and outcome of their cases;
3. Victims want to participate in their cases;
4. Victims want to be treated respectfully and fairly;
5. Victims want material restoration;
6. Victims want emotional restoration, especially an apology.

These concerns highlight the importance attached to *involvement, information, fairness and restoration* by the victim (Doak, 2005).

Proponents contend that restorative justice addresses many of these concerns. It claims to offer the victim direct involvement in their case where the traditional justice system would otherwise marginalise them. A professionalized court-based criminal justice system has resulted in what Christie (1977) famously terms as conflicts being 'stolen' from the involved parties whereby the state takes over 'conflicts' between citizens. This leads to a form of 'double victimisation' where, in addition to the crime, the victim also loses participation in their case (Christie, 1977: 25). In theory, the restorative process can overcome the victim's marginalised position. It is said to give the victim a 'voice' by offering them direct involvement whilst avoiding direct responsibility for outcomes. Research with victims in restorative justice shows that victims wish their views to be taken into account by decision-makers but do not necessarily want decision-making power (Wemmers et al 2004: 268). Restorative processes also offer victims the opportunity to meet 'their' offender. In its policy on restorative justice in criminal justice Victim Support submit that for some victims there can exist a psychological need for information, which can be provided only by the perpetrator (Victim Support, 2003). Within restorative justice victims are provided with the opportunity to ask basic questions such as 'why did the crime happen?' or 'why was I victimised?' (Johnstone, 2001). Restorative programs may also allow the victim to obtain reparation directly from the offender, something which is unlikely to occur in court. Where full compensation is not possible, the offender may provide symbolic reparation, which is said to be often more important to victims (Retzinger and Scheff, 1996; Braithwaite, 2002). Importantly, the restorative process claims to empower the victim and enable them to regain control; "their sense of personal autonomy has been stolen from them by the offender, and they need to have this sense of personal power returned to them" (Zehr, 1990: 27; see also Barton, 2000).

(ii) The offender

Restorative justice is also said to offer numerous benefits to offenders. Many restorative programs draw inspiration from John Braithwaite's (1988) theory of 'reintegrative shaming'. 'Reintegrative shaming' proposes that the offence, and not the offender, should be the focus of disapproval. Braithwaite contends that when an offender is negatively stigmatized by being labelled as a criminal and punished they will often find it difficult to reintegrate back into the community. The restorative process, which is based on mutual respect, is said to facilitate the 'positive shaming' of an offender by bringing him or her face to face with those affected by the offence. This is in marked contrast to the conventional criminal justice process to which the offender is typically a bystander: "pre-trial and trial procedures do not engage them; they rarely participate directly; they are generally expected to communicate with the court through their lawyer [...] they remain fundamentally untouched by both processes and outcomes" (Morris and Young, 2000: 17). The direct involvement of the affected parties enables the offender to see the human consequences of their actions and the process "builds on the insight that crime comes easily if the victim is denied" (Hudson, 2002:180). Consequently, the offender is held to account by those most affected by their actions. If a restorative practice is

diversionary, it can hold the offender accountable for their wrongdoing whilst avoiding a potentially stigmatizing criminal record. Restorative programs may also provide a supportive forum in which the causes of offending behaviour can be addressed. Outcomes may be tailored in respect of this – for example counselling or re-education for drug or alcohol abuse may be undertaken. Finally, restorative justice claims to increase procedural justice. When offenders feel that they have been treated fairly by the criminal justice system, it is argued that they are more likely to respect and obey the law in future (Tyler, 1990).

(iii) The community

Many advocates of restorative justice emphasize the central role of ‘community’ to restorative practices. There exists some dispute as to what constitutes a ‘community’ and if traditional conceptions of ‘community’ in fact exist (Johnstone, 2001: 29; Walgrave, 2000). McCold and Watchel (1998a: 71) suggest that ‘community’ is not necessarily a ‘place’ but better understood in abstract terms; a “personal connectedness both to other individual human beings and to a group.” Indeed, McCold submits that restorative justice differs from other forms of informal justice because of its view of ‘community’. In this sense, restorative justice seeks closed networks or communities of care known to the victim and offender. Unlike community justice, restorative justice rejects other communities, which embodies many of the power imbalances associated with wider social injustice, (McCold, 2004). On another view, however, a more inclusionary view of community enhances the potential for restorative processes to work with and connect to a wider range of individuals and agencies, (Umbreit et al, 2004; Karp, 2004).

In practice, the degree of direct community involvement in restorative programs varies. Some programs are entirely community-led as evident in some areas of Northern Ireland, (McEvoy and Mika, 2002) whilst others are state-based and may make use of representatives or facilitators drawn from the community. The rationale behind community involvement is twofold. Firstly, the community is said to be a “key resource for achieving restorative goals” (Johnstone, 2001: 152). It accomplishes this by acting as a positive force encouraging the offender to repair the harm that has resulted from their actions whilst providing them with support in ceasing their offending behaviour⁵. Secondly, the restorative process is said to empower and strengthen communities by enabling them to become involved in problem-solving and conflict resolution (McCold, 1996).

(iv) The state

Walgrave (2000: 264) identifies the involvement of a ‘collective third party’ as crucial to restorative justice. This third party is often identified as ‘community’, yet to many commentators the state is also an important actor in the development of a “fully fledged restorative justice system”⁶. If restorative justice is to become a mainstream approach to offending, it is clear that it must demonstrate tangible benefits to the state and community. Advocates assert that restorative practices can generate such benefits - including increased public confidence and satisfaction with the criminal justice system (Crawford and Newburn, 2003: 219). Justice, in its new participatory format, will literally be ‘seen to be done’. The decentralised nature of restorative justice is further said to yield cost benefits, particularly when compared to the expenses involved in formally processing, detaining or imprisoning offenders. Reduced re-offending is commonly cited as a core advantage of restorative justice (Maxwell and Morris, 2002). Those who attend a restorative program are said to be “much less likely to commit further crimes than similar offenders who go through a conventional punitive process” (Johnstone, 2001: 21), although evidence to support such claims is far from solid. On a much broader scale, Roche (2002: 24) suggests that the establishment of restorative justice can revitalize the general ‘health’ of the state by “offering the potential to reinvigorate democratic governments and their laws”.

Nevertheless, there are those who may question the role of the State in implementing restorative justice. In a recent critique of restorative justice, Pavlich identifies what he terms an ‘imitor paradox’ within restorative governmentalities (Pavlich, 2005). This ‘imitor paradox’ arises from a simultaneous defiance and imitation: restorative justice defines itself in defiance of basic concepts within adversarial justice processes but relies for its survival upon conventional criminal justice beliefs such as notions of, ‘crime’, ‘offender’ and ‘victim’ (2005: 14). One implication is that restorative justice beholds wide political appeal; by situating itself both inside and out of the traditional justice system it offers elements favourable to an array of groups (2005: 107) including traditional State actors. However, Pavlich warns that this sympathetic process may come to serve the very system, which it sought to replace (2005: 108). As such, situating restorative justice within the apparatus of State risks absorption by the conventional justice system.

⁵ Notably, Crawford and Newborn (2003:52) point out that ‘community reintegration’ rests upon the assumption that this is a desirable aim, with little questions as to the legitimacy of the community which may have abused or marginalised the offender.

⁶ Community restorative justice schemes can often have an uneasy relationship with state led practices. See McEvoy and Mika (2002) and Roche (2002) for further discussion.

Nevertheless, those who perceive a supportive role for the State in restorative justice behold a more pragmatic approach: the role of State as gatekeeper or as final arbiter ensures a crucial guard against the common criticism that informal justice processes lack the procedural mechanisms necessary to safeguard due process and participant's rights (Vanfraechem et al, 2004: 73; Vanfraechem, 2005: 281).

Process and outcome

At this juncture, it is important that a distinction is made between restorative process and restorative outcomes (Braithwaite, 2002; Roche, 2001). Procedural definitions view process as inherently 'restorative'. Daly (2002: 57) states this is typified by Marshall's (1999:4) description of restorative justice as "[a] process whereby all 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". In this sense, once the victim and the offender meet and an agreed outcome is achieved, restorative justice is said to have taken place. On the other hand, outcome definitions consider "every action that is primarily orientated towards doing justice by repairing the harm that has been caused by crime." (Bazemore and Walgrave, 1999: 48). The 'restorativeness' of the outcome is therefore more important than the way in which it is achieved. Morris (2002: 600) favours a flexible model which balances both process and outcome. She suggests that: "the essence of restorative justice is not the adoption of one form rather than another; it is the adoption of any form which reflects restorative values and which aims to achieve restorative processes, outcomes and objectives".

Measuring 'restorativeness'

Roche (2001:351) suggests that it is no longer useful to simply assert whether or not a practice is restorative, but instead it is important to be able to determine how restorative it is by assessing both its process and values (see also Braithwaite, 2002). Depending on how it operates in practice, the 'restorativeness' of a program may be measured on a sliding scale. The overall restorativeness of a program can be determined by the level of victim reparation, offender responsibility and reconciliation with 'communities of care' achieved (McCold, 2000). Where all these criteria are met, the model can be described as 'fully' restorative. Where only one or two of the criteria are achieved the model is either 'mostly' or 'partly' restorative; for example, a restorative program which has no victim in attendance is, in theory, only 'partly' restorative. Likewise, outcomes that involve reparation to the wider community rather than to an individual victim are only 'partly' restorative.

The subsequent section will examine restorative justice's potential for application - whether the theory surrounding it is capable of transferring into practice. Following a selection of case-studies illustrating restorative justice in operation, the schemes will then be critically examined to ascertain whether these values and claims are in fact being achieved.

1.3 Restorative justice in practice

As already mentioned, the difficulty in establishing an accepted definition of restorative justice is reflected in the diversity of how it operates in practice. A closer examination of the many programs defined as 'restorative' presents us with a wide range of schemes which renders it problematic to pinpoint a single 'definitive' model of restorative justice. Practices differ depending on, amongst other things, the level of formality, the stage of intervention, the facilitating body, the parties involved and the type of offences dealt with. For example, some programs are based in statute, whilst others are more informal. The offender may be referred to a scheme at different stages - some programs operate as a diversionary intervention, others as a means of sentencing by the court. Programs can be organised by different bodies. Some are police-led, such as the restorative cautioning scheme in Northern Ireland (O'Mahony et al, 2002), whilst others are local community initiatives (McEvoy and Mika, 2002). Many programs involve the offender meeting the victim face-to-face, others facilitate indirect mediation, and some involve no victim. A model may provide for the inclusion of the wider community whilst others can take the form of private sessions involving only those directly affected by the offence. In many jurisdictions, the seriousness of offences dealt with will vary, ranging from very serious crimes to minor offending, such as shoplifting. These brief illustrations highlight enormous potential for divergence amongst restorative models in practice.

The Northern Ireland youth conferencing service has its roots in the ‘family group conferencing’ model as established in New Zealand (Maxwell and Morris, 1993). Consequently, models, which have developed under this framework warrant particular attention⁷. Family group conferencing typically involves a meeting of the offender, their family and the victim(s). The process aims to facilitate inclusive dialogue and offer a solution or way forward, which addresses both the impact of the offence and the offending behaviour (Dignan, 2005: 115). The following section will consider how ‘conferencing’ models operate examining their development, characteristics, and implementation with reference to evaluative research. It is often difficult to make direct comparisons between programs, owing to variance in both research methodology and the delivery and philosophy of different schemes. Indeed, Miers warns that when evaluating programs it “is necessary to be alert to the differing types of restorative justice being offered” (Miers, 2004: 35). However, most evaluations carried out to date have focused upon common themes of participant satisfaction, procedural justice, rights issues, ‘restorativeness’ and recidivism (Kurki, 2003). This section will firstly examine legislated conferencing models operating in New Zealand, New South Wales and England and Wales and then will proceed to assess the non-legislated, police-led ‘Reintegrative Shaming Experiment’ (RISE) conferencing scheme in Canberra, Australia.

New Zealand - Family group conferencing

(i) Background

Introduced in 1989 as part of the Children, Young Persons and their Families Act, the family group conferencing process is fully incorporated into the formal criminal justice system and deals with a majority of young offenders. The New Zealand model is perhaps the most widely known restorative scheme and has served as a benchmark for many other programs. The family group conferencing model emerged during a shifting political climate characterised by a questioning of the existing welfare-driven youth justice system and increased Maori activism and debate over the cultural appropriateness of a western colonial model of justice. The New Zealand model has often been described as a revived “indigenous” justice practice with direct roots in Maori tradition. This has been rejected by some commentators who instead depict it as a mixed model of informal justice which offers a potentially “culturally sensitive” and “culturally appropriate” way of dealing with young offenders (Daly, 2002). Nevertheless, intrinsic to both the family group conferencing model and Maori culture is the idea of whanau (extended family) as a key channel of change and support. The New Zealand model emphasises inclusive participation and collective decision making and the achievement of “social balance [...] by reintegrating young people in their family and community and by determining appropriate means of redress for victims.” (Maxwell and Morris, 1998)

(ii) What are its characteristics?

The underlying philosophy of the New Zealand youth justice system is that criminal proceedings should only be instigated against a young person where there are no alternative means of dealing with the offence. Young offenders can only be arrested in strict circumstances and in 1996 only 11% of young offenders were arrested (Morris and Maxwell, 1998), a significant reduction from previous practice⁸. Instead, the principle of diversion underpins both family group conferencing and the New Zealand youth justice system as a whole. The key aims of the New Zealand model are:

- ◆ to divert the young person away from the formal justice system;
- ◆ to facilitate family participation and empowerment ;
- ◆ to accommodate and involve the victim;
- ◆ to operate in a culturally appropriate manner;
- ◆ to arrive at decisions through consensus.

Any young person aged between 14 and 17 years old who admits to an offence is eligible for family group conferencing. Conferences can be convened for any offence with the exception of murder and manslaughter. Consequently, very serious offences such as rape and robbery can be dealt with through conferencing. Formal court proceedings are often alienating to both victim and offender and, in acknowledgement of this, a conference usually takes place in an agreed informal setting, such as the offenders family’s home or a Maori meeting house (Marae). The most common venue for a conference, however, is Department of Social Welfare premises, which, it is argued, may

⁷ Due to constraints of space alternative models such as victim-offender mediation and sentencing circles will not be examined. Dignan and Lowey (2000) and Miers (2001) provide good overviews of further models of restorative justice in operation.

⁸ A young person will only be arrested to ensure their appearance before court, to prevent them from re-offending or to prevent the loss or destruction of evidence

be less intimidating for the victim (Maxwell and Morris, 1993). Those entitled to attend include the offender and their (extended) family, the victim and their supporters, a police officer, a lawyer and anyone else the family feels should be present. The number of participants will vary - conferences involving Maori young people are often attended by their extended family, some conferences having taken place with up to twenty-seven participants (Maxwell and Morris, 1993: 77).

(iii) How is it implemented?

The Department of Social Welfare is responsible for the administration of family group conferences. Cases may be referred in two ways; (i) by the police following an admission of guilt as a pre-charge mechanism to determine whether prosecution can be avoided or (ii) by the youth court as a post charge mechanism to determine how to deal with young people who admit guilt or are found guilty⁹. A conference is convened and facilitated by a youth justice co-ordinator who is expected to assume a low-key role and enable the participants to regulate a conference how they 'think fit'¹⁰. The New Zealand Ministry of Justice illustrate a typical conference process as involving:

- ◆ Introductions / mihi, and karakia (prayer);
- ◆ An explanation of the procedure by the Youth Justice Coordinator;
- ◆ The presentation of the summary of facts of the offence by the police;
- ◆ An opportunity for the offender to comment on the accuracy of the police statement;
- ◆ A formal admission by the young person;
- ◆ An opportunity for the victim (or representative) to present their view if the offender admits the offence;
- ◆ A general discussion of possible outcomes;
- ◆ A discussion of options among the offender's family;
- ◆ General negotiation and the formulation of a plan, response or outcome by the FGC participants;
- ◆ Agreement from participants;
- ◆ Recording of the agreed plan and closure of the meeting¹¹.

In practice, many conferencing schemes have followed the same basic outline as the New Zealand model. The main objective of a conference is the agreement of a plan – however, in some cases, a number of conferences may be required before an agreed outcome is reached. In order for a plan to come into effect it must be ratified by the court which has the power to impose additional sanctions if recommended by the family group conference. A plan is monitored by a youth justice co-ordinator for compliance and, if successfully completed, proceedings against the young person are normally withdrawn. If the young person fails to carry out the requirements of a plan, a second conference may be convened to address this. If this proves unsuccessful the court can then proceed to act as a 'quality control' mechanism by exercising its own sentencing for the offence (Dignan and Lowey, 2000: 27).

(iv) How is it working in practice?

The most comprehensive study of the family group conferencing system has been undertaken by Maxwell and Morris (1993). They concluded that the Children, Young Persons and Their Families Act (1989) was generally successful in meeting many of its named objectives. Satisfaction levels for offenders and their parents who participated were high, with 84% conveying approval towards family group conferencing. With regards to reconviction, findings from a six year follow up study have suggested that "restorative processes and practices can have a positive impact on helping people to avoid reoffending" (Maxwell and Morris, 2002: 133). On the other hand, victim participation levels in family group conferences were somewhat low at 41%. Of the victims who participated, only 51% expressed satisfaction and a third of victims who attended reported feeling worse afterwards. This suggests that overall benefits to the victim are somewhat inconclusive, although it appears that conferencing can clearly be a positive experience for many victims.

However, a more recent study shows that the overall results from FGC remain largely positive (Maxwell et al, 2004). The results show an improvement in victim attendance with a victim present for half of the conferences studied. In addition, 87% of victims reported feeling better following the conference with only 5% stating that they felt worse, (2004: 158). Nevertheless, the authors contend that there remains room for improvement including ensuring that victims feel involved in making decisions, that there exists sufficient victim support and that follow-up information is provided for both attending and non-attending victims, (2004: 181). Young people reported positively on their

⁹ Family Group Conferences: Practical Implementation - <http://www.justice.govt.nz/youth/fgc.html>

¹⁰ Section 256, Children Young Persons and their Families Act (1989)

¹¹ Family Group Conferences: Procedure: The Conference and the Plan - <http://www.justice.govt.nz/youth/fgc.html>

experiences of conference processes and indicated high levels of satisfaction. On the other hand, it is important to note that one-third felt stigmatised with half agreeing that the, “way I was dealt with made me feel like a bad person” (2004: 124)¹². Even with this result the vast majority felt that they were treated fairly and with respect (2004: 127). Re-offending and positive life outcomes were related to earlier life experiences and events subsequent to the FGC. However, certain conference features such as good preparation, enabling feelings of remorse and being able to repair harm were identified as important if re-offending is to be less likely (Maxwell 2005: 63). In addition, it was noted that re-offending might be reduced where the young person acquires a sense of forgiveness and an intention not to re-offend, (Maxwell et al, 2004: 248). In a further presentation of this research Maxwell notes that few of the young people were given the opportunity to engage in meaningful or effective programmes, (Maxwell, 2005: 64). Therefore, it is possible that a development in the quality of programmes could impact further on the positive results from conference processes, (2005: 64).

New South Wales - Youth justice conferencing

(i) Background

Established in 1991 in New South Wales, the Wagga Wagga conferencing pilot scheme was one of the first restorative programs to be introduced in Australia. The scheme’s theoretical roots can be located in John Braithwaite’s concept of ‘reintegrative shaming’ (Braithwaite, 1988). The Wagga scheme emerged around the same time as the New Zealand model, but differed significantly in two ways: it was not based in legislation and the program was entirely administered by the police. Each week, a police “adjudication panel” examined juvenile cases and, where the young person admitted guilt, they could choose to divert them from the formal court system by referring them to a conference (Moore and Forsythe, 1995). Conferences were facilitated by police officers who initially used a general set of protocols to guide the process. These were eventually formalised into a script devised by Sergeant Terry O’Connell to ensure that procedural restorative justice took place¹³. In 1994, a new pilot scheme of community youth conferencing was introduced in New South Wales, replacing the Wagga Wagga pilot¹⁴. This was later passed into legislation in the form of the Young Offenders Act (1997).

(ii) What are its characteristics?

In New South Wales, young offending is dealt with using a legislated ‘hierarchy of interventions’ (Trimboli, 2000) administered depending on the offence and any previous contact the young person may have had with the justice system. The first and least restrictive of these interventions is a police warning, followed by a formal police caution and finally a youth justice conference will be convened where previous interventions have proved unsuccessful. Youth justice conferences are therefore not intended for first time offenders. Young people aged between 10 and 17 who commit summary or indictable offences are eligible for youth justice conferencing (Section 8, Young Offenders Act). These offences include “assault, robbery, break, enter and steal, motor vehicle theft, theft, receiving, property damage and disorderly conduct” (Strang, 2001: 7). The guiding principles of youth justice conferencing are:

- ◆ to ensure that the child accepts responsibility for what they have done
- ◆ to empower the family
- ◆ to prevent further offending by providing support for the child
- ◆ to enhance victims rights and have regard to the victim’s interests
- ◆ be culturally appropriate

One of the main criticisms directed at the previous Wagga Wagga scheme was that, as it was led by the police, conferences were held at police stations. It was argued that this choice of venue made it difficult for participants to view the process as neutral and independent from the day to day functions of the police (Blagg, 1997). The new youth justice conferencing scheme addressed these concerns by using a non-police body to facilitate the conferences and by adding the requirement that they be held in a neutral venue.

¹² The research incorporated two samples, a restorative sample of 520 young people who had participated in a conference with an interview sample of 105 young people, (2004: 23 and 36).

¹³ An overview of it’s development is provided at: http://iirp.org/library/nacc/nacc_oco.html

¹⁴ Although succeeded in New South Wales by a legislated model of youth justice conferencing, the influence of the Wagga Wagga police-led model has been far-reaching inspiring practices in Thames Valley, England and Canberra, Australia.

(iii) How is it implemented?

The New South Wales scheme is facilitated by a Youth Justice Conferencing Directorate, a branch of the Department of Juvenile Justice. It was decided that the conferencing system should not be administered by the police as in Wagga Wagga but by an agency “not only neutral and independent of specific interest groups, but [with] an established infrastructure across NSW” (Trimboli, 2000: 3). A referral to a conference can be made by a specialist youth police officer as a diversionary intervention or by a court. The young person and their supporters, the young person’s legal representative, the victim and their supporters, a specialist youth officer, investigating official and anyone else who the convenor deems useful are entitled to attend the conference. The conference is facilitated by convenors recruited from the community on a contractual ‘pool’ basis who are allocated individual conferences depending on their appropriateness to the individual case (Trimboli, 2000)¹⁵. If a conference is successful, an outcome plan will be drawn up by the participants. A plan may contain:

- ◆ the making of an oral or written apology, or both, to any victim,
 - ◆ the making of reparation to any victim or the community,
 - ◆ participation by the child in an appropriate program,
 - ◆ the taking of actions directed towards the reintegration of the child into the community.
- (Section 52(5), Young Offenders Act)

However, this is not a prescribed list and it is up to the participants to decide upon an appropriate outcome¹⁶. Importantly, the legislation requires that plans are proportionate - they should contain “realistic and appropriate sanctions that are not more severe than those that might have been imposed in court proceedings for the offence” (S 52(6)). Adherence to a plan is compulsory and the young person will be monitored by a conference administrator for compliance.

(iv) How is it working in practice?

The New South Wales youth justice conferencing scheme was subject to a major evaluation in 1999 by the New South Wales Bureau of Crime Statistics and Research (Trimboli, 2000). The evaluation focused on participant satisfaction and whether statutory objectives and the general principles of the conferencing scheme were being achieved. 969 participants took part in the study and, overall, there were high levels of satisfaction: 79.1% of victims and 90.2% of offenders were satisfied with the way in which their case had been dealt with by the justice system. Attendance by victims at conferences was high at 72.5% and they indicated that they were provided with the opportunity to explain the impact of the offence (98.1%). Indeed, both victims and offenders reported that they felt involved in the process: 91% of offenders and 98% of victims agreed or strongly agreed that they were given the opportunity to express their views. In terms of what was agreed, participant satisfaction was also high: 89% of victims and 91% of offenders agreed or strongly agreed with the statement “you are satisfied with the conference outcome plan”. Research comparing reoffending levels between conferencing and court in New South Wales found that “conferencing produces a moderate reduction of up to 15 to 20 per cent in reoffending across different offence types [...] regardless of the gender, criminal history, age and Aboriginality of the offender” (Luke and Lind, 2002). Overall, these findings indicate high levels of satisfaction reflecting positively on the conferencing process in New South Wales for both victims and offenders.

England and Wales – Referral orders

(i) Background

In 1997, the Labour government produced a White Paper entitled *No More Excuses* calling for action to be taken to “maximise the impact of the youth court on young offenders, making it as effective as possible at tackling offending behaviour, especially for young people appearing before the court for the first time” (Home Office, 1997). These reforms were brought about in the form of referral orders, introduced in England and Wales in Part 1 of the Youth Justice and Criminal Evidence Act (1999). In April 2002, following an 18 month pilot scheme and evaluation (Newburn et al, 2001), referral orders became available as the primary court disposal for first time offenders between the ages of 10 and 17 throughout England and Wales. Referral orders divert a young person away from court to a Youth Offender Panel designed to provide them with the opportunity to “make restoration to the victim, take responsibility for the consequences of their offending behaviour, and achieve reintegration into the law-abiding community” (HMSO, 1999). Youth Offender Panels are said to draw inspiration from a diverse range of restorative programs and theories including the Scottish Children’s Hearing system, New Zealand’s family group conferencing model, John Braithwaite’s theory of “reintegrative shaming” and ‘restorative cautioning’ as practiced by the Thames Valley Police (Crawford and Newburn, 2002: 479).

¹⁵ For example, it may be culturally appropriate to allocate an Aboriginal convenor where the young person is Aboriginal

¹⁶ Section 52(1) states that “the participants at a conference may agree to make such recommendations decisions as they think fit”.

(ii) What are its characteristics?

Referral orders are available as a mandatory disposal for first time offenders aged between 10 and 17 who are found guilty and convicted by a court. They are designed to “provide a forum away from the formality of the court where the young offender, his or her family and, where appropriate, the victim can consider circumstances surrounding the offence(s) and the effect on the victim” (Crawford and Newburn, 2003: 59). They are therefore intended as a diversionary measure to curb offending at an early stage. A young person is referred by the court to a Youth Offender Panel whose function is to address the young person’s offending behaviour and decide what form of action should be taken. If the victim wishes, they may attend the panel meeting and convey to the young person how the crime has affected them. In many jurisdictions, a young person must consent to taking part in a restorative program; however, this is not the case with referral orders which are ordered by the court. Equally, the parents (or parent) of a young person under the age of 16 are compelled to attend the panel, a power which the court may extend to apply to older offenders. A significant characteristic of the referral order process is the direct involvement of community: panel meetings are chaired by two Community Panel Members and practice guidelines suggest that they should be convened in community venues. As such, referral orders mark a step towards decentralisation and a considerable departure in the delivery of youth justice in England and Wales.

(iii) How is it implemented?

Youth Offender Panels are facilitated by a Youth Offending Team member and two trained volunteers from the local community¹⁷. Panel meetings are usually held in the evening at informal community venues. The young person, their parents (or appropriate adult), Youth Offending Team members and Community Panel Members must attend a meeting. A victim (or their representative), a supporter of the victim and anyone “capable of having a good influence on the offender” may also attend¹⁸. Notably, government guidelines state the young person should not have legal representation at the panel meeting as it may prevent them from becoming fully involved in the process (Home Office, 2002: 32). If a solicitor does attend a meeting, it should instead be in the role of a supporter.

The intended outcome of a panel meeting is the agreement of a “challenging but achievable” (Crawford and Newburn, 2003: 134) contract which will provide reparation to the victim or community and include interventions which address the young person’s offending behaviour. Possible interventions can include family counselling, mentoring, victim awareness sessions and drugs or alcohol programs. In order to maintain the restorative nature of the meeting a contract must be negotiated and not imposed on a young person. The amount of reparation in the plan should be directly proportionate to the offence and length of the order imposed. If the meeting fails to reach an agreed outcome the Youth Offending Panel will report back to the court, who will then reconsider how the young person should be dealt with. A contract is enforceable and subject to monitoring and review by the Youth Offending Team. If the young person fails to comply with the terms of the contract, the Youth Offending Team will refer the young person back to the court to consider re-sentencing.

(iv) How is it working in practice?

An 18 month evaluation of referral orders was undertaken for the Home Office throughout the eleven pilot areas across England and Wales in 2000 and 2001 (Newburn et al, 2001). Referral Orders were subsequently introduced in April 2002 as a court disposal nationwide. The research focused on the recruitment and training of youth offender panel members and the implementation and overall impact of referral orders. Certain of the results related to the actual scheme of the legislation, namely the mandatory nature of Referral Orders and the fact that they apply to first time offenders. Therefore, in interview, Magistrates indicated dissatisfaction that Referral Orders were issued for minor offences and that their preferred disposal would often have been a conditional discharge or fine (Newburn et al, 2002: 21-22).

As for the observational findings these suggest that young people participated actively in the panel meetings and that they and their parents were generally happy and well informed about the purpose of the meeting. In 74% of cases, contracts were successfully completed. Almost a quarter (23%) of young people who completed contracts went on to re-offend but, given the narrow timeframe of the research, this may not be indicative of overall recidivism rates. Victim participation rates proved to be very low at 13%, particularly when compared to other restorative schemes in operation worldwide. As such, the majority of reparation in contracts was community-based rather than directed towards individual victims. In terms of panel composition, government guidelines require that panel members are ‘properly representative’ of the community (Home Office, 2000). In practice, this balance proved difficult to attain,

¹⁷ The selection and recruitment of Community Panel Members is not based on qualifications but personal qualities such as good character, communication skills, understanding and judgement (Home Office, 2000).

¹⁸ Youth Justice and Criminal Evidence Act Part 1 s7(4)b.

and it was found that the majority of panel members were white, female, professional, and over 40 years old (Crawford and Newburn, 2002: 483). Overall, the study reflected rather positively on referral orders, concluding that “within a relatively short period of time the panels have established themselves as constructive, deliberative and participatory forums in which to address young people’s offending behaviour” (Newburn et al, 2001: 62).

Canberra – Reintegrative shaming experiment (RISE)

(i) Background

In Australia, two divergent approaches to restorative conferencing have been taken. As illustrated previously, New South Wales adopted a legislated model of conferencing administered by the Department of Juvenile Justice. Canberra took a different approach, and developed a model similar to the non-legislated police conferencing scheme established in Wagga Wagga. Consequently, the Canberra program differs from the legislated conferencing models illustrated previously, however due to fact that research into its operation explicitly compares experiences of conferencing to court it nevertheless warrants attention. The Reintegrative Shaming Experiment or ‘RISE’ experiment was established in 1995 and ran until 2000. It aimed to test the validity of three hypotheses:

- ◆ Both offenders and victims find conferences to be fairer than court;
- ◆ There will be less repeat offending after a conference than after court;
- ◆ The public costs of providing a conference are no greater than the cost of processing offenders in court.

It further aimed to examine the use of ‘shaming’ in conferences, theorising that conferences would produce more positive ‘reintegrative’ shaming (Braithwaite, 1988) than court.

(ii) What are its characteristics and how is it implemented?

To facilitate a comparison between participant’s experiences a randomised controlled trial was implemented which saw offenders randomly allocated to either court or conferencing (Strang, 2002: 70-72). The RISE project was not confined to juvenile offenders but instead focused on four distinct offence groups:

- ◆ Drink driving offences of any age;
- ◆ Shoplifting by under 18 year olds;
- ◆ Property crime with victims and offenders under 18 years of age¹⁹;
- ◆ Violent crime by offenders under 30 years of age²⁰.

To be eligible for conferencing the offender must admit to the offence and be resident in the area covered by the project. They must be informed that their case was diverted to conferencing randomly and they have the choice to be dealt with by a court if preferred (Strang, 2002:73). The format of the RISE conferences is very similar to the New South Wales and New Zealand models; however it follows a more scripted pattern, as first established in the Wagga Wagga scheme.

(iii) How is it working in practice?

The RISE project was the subject of a major research project carried out by the Centre for Restorative Justice at the Australian National University. This evaluation has provided a valuable comparative insight into how victims and offenders experience court and conferencing. Overall, the research looked more favourably on the conferencing experience and came to the ‘inescapable’ conclusion that “both victims and offenders can name many ways in which they prefer conferences to court” (Sherman et al, 1998: 165). Perceptions of fairness amongst victims and offenders were higher and observations reported greater participation, emotional intensity, procedural justice, apologies, forgiveness and time and effort given to justice in conferences than in court (Sherman et al, 1998). Conferences were also said to increase offenders respect for the law and the police. In terms of testing Braithwaite’s theory of reintegrative shaming the research interestingly reported more stigmatic shaming in conferences than in court. This, however, was attributed to the fact shaming rarely occurs in court in any form. Data analysing repeat offending has been less conclusive. Recidivism patterns were assessed over a one year period and it was found that there was no

¹⁹ Specifically, the offences eligible for the property experiment are burglary, theft, criminal damage, shoplifting, fraud, car theft, vehicle break-ins, possession of stolen property or attempts at any of these.

²⁰ Offences eligible for the violence experiment are assault occasioning actual bodily harm, common assault, act endangering life, fighting, possession of an offensive weapon, arson or attempts at any of these.

difference for property offenders and shoplifters, and a very slight increase in reoffending (4%) amongst drink driving offenders. Conferences did however lead to a 38% drop in offending amongst violent offenders suggesting that the impact of conferencing varies depending on the type of offence.

Victim analyses were carried out only on juvenile property crime and youth violence. High levels of victim participation were reported with 82% of property victims and 91% of violence victims in attendance. By contrast, victims whose cases were assigned to court attended very infrequently, primarily when giving evidence or appearing as a witness²¹. Conferencing enabled many victims to receive an apology, whereas apologies were never made in court. In terms of satisfaction, victims found conferencing fairer than court. Interestingly, there was some difference in satisfaction amongst property and violence victims but there was nevertheless “moderately high level of satisfaction regarding procedural justice” (Sherman et al, 1998: 151) amongst both. This discrepancy in satisfaction levels may be explained by the nature of the crime – victims of violence were said to have suffered substantial harm, illustrated by the fact that 62% of these victims required medical treatment. By in large, the research reflects positively on the RISE experiment and concludes that “as long as there is at least no difference in both costs and recidivism, the advantages of increased respect for police and greater victim involvement” (Sherman et al, 1998: 160) suggests that conferencing is a desirable addition to the criminal justice system.

This section has set out how a number of key conferencing models are implemented and operate in practice. These schemes are founded upon the same basic framework as the Northern Ireland model and, as such, how they work in practice raises a number of pertinent issues relevant to the new youth conferencing scheme. These issues include the effectiveness of restorative programmes vis-à-vis the traditional justice system and whether they are successful in safeguarding participant’s rights. The subsequent section will now establish what critical issues are arising from restorative justice in practice and proceed to examine them in greater depth.

²¹ Only 5% of property victims attended court and 13.3% of violence victims attended court.

Comparative overview of conferencing models

Model	Legislation	Aims	Who is referred?	How is a referral made?	Who convenes a conference?	Who can attend a conference?	Who ratifies outcome?	Is a plan supervised for compliance?
Northern Ireland youth conferencing	Justice (NI) Act 2002	Consider how child should be dealt with for offence; make reparation for the offence; balance needs of victim and offender	Young people aged 10-17 who are resident in the pilot area. Must consent and admit to/ be found guilty of offence	Diversionsary referred by Public Prosecution Service Court-ordered on admission or finding of guilt	Youth Conference Coordinator (employee of Youth Justice Agency)	Must attend: offender, coordinator, police officer, appropriate adult May attend: offender supporter(s) and solicitor, victim (or rep.) and supporter(s), other person of value	Diversionsary Public Prosecution Service Court-ordered Court	A plan is supervised by a Youth Conference Co-ordinator. Non-compliance will be referred back to court or Public Prosecution Service
New Zealand family group conferencing	Children, Young Persons and their Families Act (1989)	Diversions; accountability; strengthen and involve families; due process; victim involvement; consensus decision making; cultural appropriateness	Young people aged 14-17 who admit to/ are found guilty of an offence	Diversionsary referred by the police pre-charge Court-ordered referred by a court post-charge	Department of Social Welfare	May attend: Youth justice co-ordinator, offender, offender family, police officer, lawyer, victim and supporters	Youth court	Co-ordinator is responsible for reviewing a plan. Non-compliance may lead to 2nd conference
England and Wales youth offender panels	Youth Justice and Criminal Evidence Act (1999)	Confront consequences of crime and prevent re-offending	Young people aged 10-17. First time offenders only	Court-ordered on pleading guilty and on conviction by court	One Youth Offending Team member and two trained Community Panel Members	Must attend: offender, parents or appropriate adult, YOT member, two Community Panel Members. May attend: victim (or rep.), victim supporter, offender supporter and other person who may be a 'good influence' towards offender.	Youth Offending Panel. Panel will report to court if no outcome is agreed	Supervised by Youth Offending Team. Referred back to court in the event of non-compliance. Will often contain voluntary elements
Australia New South Wales youth justice conferencing scheme	Young Offenders Act (1997)	Discuss crime; support young person; restore harm done by way of agreed plan	Young people aged 10-17 who commit summary or indictable offences	Diversionsary Pre-court by specialist youth police officer Court-ordered As sentencing option	Department of Juvenile Justice Facilitators who are recruited from community on contractual 'pool' basis	May attend: Offender, offender family, victim (or rep.) and supporter(s), police, lawyer, conference co-ordinator	Conference co-ordinator will report to court if no outcome agreed	Conference Administrator monitors plan for compliance
Australia Canberra reintegrative shaming experiment (RISE)	Not based in legislation	To analyse the difference between offender and victim's experience of court and conferencing	-Drink driving offences of any age -Shoplifting by under 18 year olds - Property crime with victims and offenders under 18 years of age - Violent crime by offenders under 30 years of age	Allocated randomly to either court or conferencing	Facilitated by police officers	May Attend: Offender, offender family, victim, victim supporter(s), police officer	Information not available	Information not available

1.4 Critical issues

The claims put forward by both theorists and practitioners of restorative justice demand careful consideration. Informed by conferencing schemes in practice, this section examines critical issues arising from restorative justice practices highlighting contentious areas and potential discrepancies between discourse and practice. These issues are set out with reference to the experiences of the key actors in the restorative process: the victim and offender.

The victim

(i) Victim participation

Victims take part in restorative programs for a number of reasons. Maxwell and Morris (1993: 81) found that many victims attend for their own interests whilst others may attend to support the young person. Reasons why victims take part in restorative programs include:

- ◆ To regain a sense of empowerment;
- ◆ To ask basic questions of the offender; for example 'why me?';
- ◆ To confront the offender and explain the impact of the crime;
- ◆ To obtain some form of reparation;
- ◆ To help the offender;
- ◆ Curiosity.

Additionally, Strang (2002: 123) found that some victims "felt a responsibility to attend" whilst others believed "offenders need to be confronted with what they've done" and wanted to "make sure he never does it again".

Victim participation is reported as high in a number of programs. In the South Australia Juvenile Justice (SAJJ) conferencing scheme, 74% of conferences had victims present (Daly, 2003), and in New South Wales, 73% of victims attended (Trimboli, 2000). However, victim participation rates are not consistently high. In Northern Ireland, an 'actual' victim was only present in a minority of police-led restorative cautions, more often victim representatives or 'surrogate' victims were used (O'Mahony et al, 2002)²². Similarly, only 13% of victims took part in Youth Offender Panel meetings in England and Wales (Crawford and Newburn, 2003: 186). Researchers carrying out an evaluation of victim's experiences of the criminal justice system in Northern Ireland explained the concept of youth conferencing to a selection of victims and asked, hypothetically, if they would be willing to take part in the process. Overall, only 27% of respondents said that they would be willing to participate (Northern Ireland Office, 2004: 66)²³. When a victim does not participate, either directly or indirectly, questions clearly arise as to how 'restorative' the process really is (McCold, 2000). Resolving the issue of how to increase the number of victims attending restorative meetings whilst being mindful of their right not to participate is an important one for practitioners. Crawford and Newburn (2003: 54) suggest that a concern raised by restorative justice is that it "imposes new pressures, obligations and responsibilities upon victims" who may feel obligated to participate. Victim attendance should always be voluntary, and it is essential that they do not feel coerced into taking part (Brown, 1994: 1266; Reeves and Mulley, 2000). In practice it is difficult to gain effective and high levels of participation, but without this questions have to be raised as to how restorative such programs actually are. Nevertheless, Victim Support urge that rather than having as a target 'increased victim participation' a more victim-sensitive measure would focus on the proportion of victims given the opportunity to make an informed choice as to their involvement in a restorative justice process (Victim Support, 2003a: 10).

The literature identifies a number of reasons highlighting why victims choose not to attend restorative programs. Victims may wish to move on, be anxious about meeting the offender, be worried about retaliation or feel the offence was too trivial. If the victim is a business they may not possess the time or staff resources to attend. Other reasons highlight problems of implementation, such as failing to inform victims, unsuitable timing, lack of notice and the victim not being invited (Maxwell and Morris, 1993: 80). Such difficulties can be overcome by good practice. For example, it may be unfeasible for a victim to attend during working hours, in which case an evening conference should be facilitated. Research in New Zealand supports greater flexibility, finding that a victim was more likely to participate if a conference was held after 6pm (ibid).

²² One of the schemes (Ballymena) dealt solely with retail theft. Surrogate victims, who were comprised of a panel of volunteer shop owners, attended to represent the views and describe the impact of the theft on the business.

²³ It must however be noted that the number of respondents was small.

Overall, practice indicates that willingness to participate is not universal amongst victims, and that restorative programs will not always be suitable in addressing a victim's needs. When a victim chooses not to participate, a number of pertinent issues arise. Hoyle (2002: 98) and Dignan, (2005: 4), warn that there is potential for a division of treatment and experience between victims who participate and those who choose not to. Hoyle suggests that those who decide not to take part:

"[...] will not only be less satisfied with the process than those who do, but will also remain afraid, confused, and ignorant about the offender, the decision making of criminal justice agents and the likely recurrence of the offending behaviour."

It is therefore vital that, if they wish to receive it, information regarding the outcome of the conference is fed back to non-participating victims. Hoyle further highlights the experiences of victims who do not attend in person but use some other means of participation, such as a letter or tape recording describing the impact of the offence. She states that it is important that such statements are conveyed accurately to the offender, and their impact reported back to the victim, therefore 'closing the loop'. This means that victims who do not participate may still receive some of the benefits of restorative justice by being kept informed of both the process and outcome. The receipt of such information is highlighted as being "particularly important where there is a chance that the offenders and victims will have further contact" (Hoyle, 2002: 108).

(ii) Victim satisfaction

When victims do take part in restorative programs, many find it to be a positive experience and reported feeling better after the conference. In New Zealand, 49% of victims expressed some satisfaction with the outcome (Maxwell and Morris, 1993) and in later research 87 per cent of victims agreed with conference outcomes, (Maxwell et al 2004: 158). In addition, these recent findings suggest differing levels of satisfaction in relation to conference outcomes depending on whether or not the victim attends. Therefore, those attending report higher levels of satisfaction with conference decisions than non-attending victims, (Maxwell et al, 2004: 158-160). In the Canberra 'RISE' project, 70% of victims who participated in the program expressed satisfaction. Factors which may help in achieving a positive experience are identified as:

- ◆ Being involved in the process;
- ◆ Being given the chance to explain impact of crime;
- ◆ Understanding why the crime happened;
- ◆ Receiving an apology from the offender;
- ◆ Receiving reparation;
- ◆ Obtaining an insight into the offender and their background.

Differences in satisfaction amongst victims become apparent when the nature of the offence is taken into account. When broken down into offence type, victims of property offences are more likely to be satisfied with outcomes than victims of violent offences. In the RISE project, Strang (2002) discovered that 80% of property victims were satisfied whilst only 53% of violence victims reported satisfaction. This may be explained by the nature of violent offences; according to Strang they "were usually intensely personal, and it was more difficult to reach an outcome agreement that was truly satisfactory to the victim" (Strang, 2002: 136). This suggests that the type of offence may impact on victim's experience of the conferencing process. However, it could also be argued that such victims may be equally or even more dissatisfied with how they are treated in the conventional criminal justice process; i.e. court. Indeed, in a study comparing the experiences of victims at conference with the experience of sexual assault victims in court, Daly concludes that conferences might offer more potential and provide procedures that are less cumbersome, (Daly 2005). The same study further suggests that variation in outcome for victims may be linked to more intricate details. Therefore, the level of victim distress in the "aftermath of victimisation" may be an important indicator of victim satisfaction. In a reanalysis of the SAJJ data, she found that most distressed victims experienced greatest difficulty in acting restoratively in the conference, (2005: 160). Furthermore, through her focus on distress Daly indicates that it may be useful to consider within as well as between offence differences, that is, the effect of a crime rather than type. Therefore, while we might compare the experiences of victims of violence to those of property offences it may be insightful to consider a within offence perspective. Daly notes that certain property victims, namely personal, may be more distressed than others, for example, those who become victims as a result of an offence against a business property, (2005: 161).

Although restorative programs benefit many victims, a number of victims emerge from the conferencing experience feeling worse. In New Zealand, for example, 25% of victims reported feeling worse following a conference (Maxwell and Morris, 1993) although this figure did fall to only 5 per cent in later research, (Maxwell et al 2004: 158). Reasons for negative experiences identified by victims in New Zealand, consistent with other evaluations, included:

- ◆ Lack of support;
- ◆ Intimidated by large numbers of the offender's family;
- ◆ Having to relive the crime;
- ◆ Felt the outcome was inadequate;
- ◆ The offenders lack of remorse/ defiance.

In practice, as each case is individual, it is difficult to foresee if a conference will be a positive or negative experience for a victim. Predictors may include the type of offence and level of remorse displayed by the offender at early meetings with the co-ordinator. Best practice suggests that a facilitator should prepare the victim for possible outcomes and provide them with realistic expectations. It is also important to distinguish between a victim's satisfaction with the process and their satisfaction with the overall outcome. Indeed, a victim may leave a conference dissatisfied but in the long term, the experience could in fact aid the healing process (Morris, Maxwell and Robertson, 1993: 314). This indicates that longer-term evaluations may be more accurate in determining a victim's overall satisfaction.

(iii) Information

Victims have routinely identified poor levels of information as their case progresses as a source of dissatisfaction. Restorative approaches claim to remedy this by offering victims direct participation in their case. In the RISE program in Canberra this appears to have been achieved. It was found that victims were provided with more information in conferencing than in court: 77% of property victims were given notice for the conference in good time, while only 15% of court cases were. However, the availability of follow-up information has not always been consistent in restorative programs (Maxwell and Morris, 1993; Hoyle, 2002). Evaluations suggest that the degree of information received by a victim has a significant impact on their overall satisfaction. It is therefore imperative that victims are kept informed at all stages. This includes preparing the victim for their role, making them aware of what they should expect from the process and informing them of potential outcomes. Indeed, thorough pre-conference preparation is essential in securing a positive experience for victims. In New Zealand, nearly a third of victims who took part expressed dissatisfaction with the outcome of the conference. This led Maxwell and Morris to question "the extent to which they were fully informed that, when they were present at a FGC, their agreement was necessary for the outcome to be accepted" (Maxwell and Morris, 1993: 121). Their observations confirmed that there was often failure to ascertain whether victims were in agreement with the proposed plan (ibid). It is therefore paramount that a victim has realistic expectations as to what they can expect to achieve from a conference.

Finally, information regarding the completion of agreements has not always been facilitated well. In New Zealand, Maxwell and Morris (1993: 124; see also Maxwell et al, 2004: 182) identified poor follow up information as a factor impacting on victim's overall level of satisfaction:

"...few [victims] had been informed of the eventual success or otherwise of the outcome. This was a source of considerable anger for them and absence of this type of information made victims who did attend re-evaluate the experience."

To illustrate this, Strang (2002: 140) describes a case in Australia's 'RISE' project in which 'a missing letter of apology' and police failure to follow up on this led to the victim questioning their decision to take part in the conference. As such, to many victims, the quality of follow-up information appears to be equally important as the process itself.

(iv) Reparation and outcomes

It is submitted that there exists relatively little evidence to suggest that restorative justice can consistently restore victims in terms of the consequences of victimisation, (Dignan, 2005: 164). A key aspect of restorative justice, however, is that it enables the offender to provide the victim with some form of symbolic or material reparation. Indeed, victims often identify the possibility of obtaining reparation as an important reason behind their decision to take part. In England and Wales, it was found that 82% of contracts agreed at Youth Offender Panel meetings involved some form of reparation. However, this should be understood in a context of victim participation levels of only 13%. In reality, only 7% of contracts involved direct reparation to the victim or payment of compensation (Crawford and Newburn, 2003: 136). As such, much of the 'restorativeness' was general and directed towards the community as opposed to an individual who has suffered harm. In New Zealand, 30% of outcomes involved reparation. This figure increased slightly to 42% where victims attended, which suggests that victim presence, may have an impact on the chance of reparation (Maxwell and Morris, 1993: 93). In New South Wales, the 'worst feature of the plan' was most commonly identified (23.4%) as "insufficient" or "untimely compensation for damage" (Trimboli, 2000: 48). Comments made by victims include; "the cost of stolen goods was not recovered", "the difference between the loss and the compensation paid" was not met and "repayment activity was made to appear enjoyable" (Trimboli, 2000: 49).

When given the opportunity to make suggestions for a plan in a conference, some victims expressed uncertainty as to what would be appropriate. A victim interviewed by Maxwell and Morris (1993: 120) in New Zealand felt that "we couldn't say what we felt in front of them. We were fearful of revenge if I said what I felt about the penalty". In England and Wales, concerns were raised as to what form of reparation was suitable to be carried out by 10, 11 and 12 year olds. Crawford and Newburn have highlighted the difficulties encountered in devising suitable reparative activities appropriate to the offence (Crawford and Newburn, 2003: 136). Financial reparation is a significant issue when dealing with young offenders who often have no income to make monetary amends for their actions. In such a situation, the responsibility may then fall upon their parent or guardian to recompense for the wrongdoing.

Finally, some have voiced concern should outcomes of restorative justice processes become 'routinized' or similar in substance to sentences issued at court (Dignan 2005: 153). Dignan submits that even written apologies can become standardised and that this threat is greater where there exists an emphasis on community as opposed to direct victim involvement, (2005: 153). Following evaluation of a restorative project in England it was found that the writing of a letter of apology whilst appearing to affect the goal of direct victim reparation could embody a more hidden agenda, (Gray, 2005). Certain practices, including reported instances of letters not forwarded and simply held on file, prompted the question of whether the apology constituted an exercise in offender responsabilisation rather than any resolve to assist victims or achieve restoration, (Gray 2005).

(v) 'Model' victims

A further matter and perhaps most compelling as far as victim advocates are concerned is the fact that restorative justice programmes are often directed by the circumstances of the offender and the definition of the offence, (Victim Support 2003a: 4). Therefore, restorative justice is available only where the perpetrator has been caught, where he or she agrees to forgo the court process and where the crime is within a list of offences eligible for a restorative measure. This has led Zehr to ask, "are we being as victim-orientated as we claim?" (Zehr, 2005: 298). Dignan submits that whilst restorative justice can assist certain victims it is unlikely to benefit all victims equally, (Dignan, 2005: 167). He questions whether or not there exists sufficient evidence to advocate restorative measures, (or indeed traditional measures), for certain categories of victim including: non-stranger victims, for instance, those victimised as a result of domestic abuse, (see also Victim Support, 2003), representative victims such as persons targeted as a result of hate crime, (see also Pavlich, 2005: 79), 'culpable' victims and non-personal or corporate victims, (Dignan, 2005: 168). Nevertheless, it is feasible that restorative justice in its rejection of strict formality is more suited to the complexities in each case. As Zehr submits, restorative justice can accept that, "...the truths about justice are contextual", (Zehr, 2005: 302). Therefore, in considering the 'culpable' victim, Dignan acknowledges that restorative justice can embrace a more nuanced approach. Unlike traditional court processes the restorative dialogue permits differing perspectives without allowing a denial by the offender for the offence. However, he concludes that in practice this approach is difficult to realise and might be restricted where restorative measures attach to the framework of a traditional justice system, (Dignan, 2005: 174).

The offender

(i) Offender participation and satisfaction

By and large, most evaluations indicate that offenders are satisfied with their experience of the restorative process. In New Zealand, for example, 84% of offenders and 80% of parents said that they were satisfied with the outcome of the family group conference. By contrast offender perceptions of their involvement in the process were much lower: 34% of young people felt involved and only 9% felt that they ultimately decided the outcome (Maxwell and Morris, 1993: 115). Results from more recent research suggest some level of improvement with around half of the sample of young people reporting that they felt involved in the conference process, (Maxwell, 2005: 59). Arguably, the inclusion and active participation of the offender is vital to the restorative process and the extent to which it is achieved may impact upon their perception of fairness and justice. Offenders are said to be more likely to obey the law where procedural justice takes place (Tyler, 1990) and achieving this is therefore an important benchmark in restorative practice. The RISE experiment suggested that this is occurring in conferences, indicating that conferencing is more conducive to perceived procedural justice than court (Sherman et al, 1998).

The active participation of the offender should not be assumed to be inherent to the restorative process. Although many programs require that the offender consents to take part they can often fail to engage in the process, show a lack of remorse, or appear defiant. Roche (2003: 33) reminds us that positive accounts of restorative justice describing "how people should respond are confused with the reality of how people do respond." Rather, offender engagement is something that should be worked towards and "actively encouraged by those arranging youth justice processes" (Maxwell and Morris, 1993: 128). Two important steps towards securing active offender participation are an admittance of guilt and agreement to take part. If an offender is coerced into attending, attends a restorative program against their will, or disputes their guilt, there may be little prospect for a positive outcome (Strang, 2002: 142-143). Where this occurs, it may also prove to be an extremely unsatisfactory experience for the victim.

As a final matter, certain forms of restorative justice, notably the New Zealand FGC, place importance on the role of the young person's family or whanau in considering overall satisfaction within the restorative process. Research by Maxwell et al, (2004) shows an improvement in the experience of families or whanau when compared to the results from 1990/91, (Maxwell and Morris, 1993). At least 80% of families or whanau interviewed felt satisfied with their preparation for the conference, (2004: 164), and were overwhelmingly positive about their experience of the process, (2004: 166). In relation to outcomes, 85% agreed with the decisions at the conference, (2004: 167). However, only half indicated that they were given ideas about how to respond to the offending and over a quarter indicated feeling like a bad person, (2004: 167). Comments from the families suggest that these feelings are often related to feeling, "like a failure" and feeling responsible for the actions of the young person, (2004: 167). Observations of Vermont Reparative Boards found that parents adopted the role of passive participant and understood their role to be only secondary within the process, (Karp et al, 2004: 209-210). This research further suggests that while families may not understand what restorative justice means they should be assisted to understand why the young person is agreeing to perform particular tasks, (2004: 209). This is crucial where families often share responsibility for enforcing restorative justice outcomes, (2004: 209; Clairmont, 2005: 263). In considering the experience of conferencing in Nova Scotia results from follow-up interviews with families show that the majority remain in agreement with outcomes, are happy with progress post conference and feel better able to cope with the young person, (Clairmont 2005: 255).

(ii) Rights issues

The United Kingdom criminal justice system operates within a relatively new 'rights' framework underpinned by the Human Rights Act (1998). Of particular importance is Article 6 ECHR, establishing the right to a fair trial²⁴. With this in mind, careful attention must be paid to any potential breaches of offender's rights which may occur as a by-product of the restorative process. Braithwaite (2002) contends that amongst restorative proponents the belief that fundamental human rights should be respected in restorative practices is "near universal". Disagreement, he states, lies in exactly what rights these should be. Where these are not clearly defined he warns that restorative justice may potentially "trample rights because of impoverished articulation of procedural safeguards" (1999: 101). Warner (1994) highlights a number of contentious aspects of the conferencing process as; breaches of due process, pressures to plead guilty, power imbalances, disproportionate or inconsistent penalties, "net widening" and "double jeopardy". In

²⁴ The European Convention of Human Rights and Fundamental Freedoms 1950. The majority of provisions within the convention have been translated into UK domestic law via the Human Rights Act 1998.

general however, the European Court of Human Rights has recognised that while the prospect of appearing in court can create a willingness to compromise, options to forgo court processes should not breach Article 6 provided that the pressure is not compelling and that the provisions of Article 7 are respected, that is, the right of persons not to receive sanction for conduct not amounting to an offence nor to receive harsher sanction than that applicable at the time of the offence²⁵. This must of course be read in light of the judgment in *T&V v United Kingdom* where the court determined that ensuring the Article 6 rights of children and young people requires particular care including assisting their participation and understanding of relevant justice procedures²⁶.

Several International instruments provide rights applicable to children and young people in general and to the specific circumstances of those accused or found guilty of a criminal offence²⁷. While it is noted that the informal processes of restorative justice sit uneasily with due process and fair trial rights, (Muncie 2005: 47) certain provisions of children's rights instruments advocate the informal resolution of cases, For instance, Article 40 of the United Nations Convention on the Rights of the Child provides the following for children in conflict with the law:

"Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected", (Article 40 (3) (b) UNCRC).

Similarly, Rule 11 of the Beijing Rules recommends that whenever appropriate consideration should be given to addressing the offence behaviour of children without resort to formal trial. However, informal measures must always ensure respect for legal rights and adhere to Article 3 CRC, which demands that in all matters concerning the child his or her best interests are of primary consideration. Maxwell et al (2004: 254), note that an important factor in considering whether or not the rights of the young person have been respected include the extent to which they are given an opportunity to query the police officer's summary of facts at the conference and, in adopting a more holistic approach, the extent to which rights are respected through the entire process including treatment on arrest and the performance of legal representatives appointed to represent the young person. Finally, it is argued that when assessing whether or not restorative based outcomes are suitable for children and young people one essential element is to question how far they promote restorativeness but also the best interests of the child, (Haines and O'Mahony, forthcoming, 2006).

(iii) Net-widening and the referral process

Net-widening occurs when very minor offenders who would have previously fallen outside the justice system are drawn in. Critics warn that restorative practices may widen the net of social control and lead to "a juvenile justice system that is larger, that has expanded its coercive control into new arenas of youthful behaviour, and that is drawing in clients who previously would have been ignored" (Polk, 1994: 135; see also Cohen, 1985). When assessing the likelihood of net-widening, regard must be had to the type of offenders a restorative program is aimed at (Morris, 2002). Consequently, schemes dealing with more serious offences are less likely to result in net-widening, whilst diversionary schemes directed at low-level offending have increased potential to draw in minor offenders. Paradoxically, although diversionary in principle, such schemes could lead to an increase in the number of young people being brought into the criminal justice system.

Evaluations have proved inconclusive in determining if net-widening is occurring in practice. In New Zealand, Maxwell and Morris (1993) found no evidence that family group conferencing was resulting in new cases being drawn in, although recent research has noted a rise in police referrals to youth court and an increase in youth court orders, (Maxwell 2005: 61). However, it is suggested that this rise may be due more to limited resources available to FGCs and a lack of commitment to diversion on the part of some Police Officers, (Maxwell 2005: 62). In a police-led scheme in Bethlehem, Pennsylvania, it was concluded that "cases were successfully diverted without net-widening effects" (McCold and Watchel, 1998: 108). By contrast, in an evaluation of the police—led restorative cautioning scheme in Northern Ireland, net-widening was identified as a key concern. The authors warned of a potential influx of "very young juveniles into the criminal justice system for very petty offences". They found that the restorative cautioning process used considerable resources and the experience proved particularly onerous for minor offenders (O'Mahony et al, 2002: 7). Best practice requires that effective 'gate-keeping' is established with careful attention paid to the referral process. In order to guarantee consistency and to ensure only appropriate cases are referred this should entail careful monitoring of who is being referred and for what.

²⁵ *The Deweer Case*, 5 February 1980 Eur.Ct.HR. at para. 51(b).

²⁶ *T v UK; V v UK* App. No. 24724/94, 16 December 1999.

²⁷ Notably, United Nations Convention on the Rights of the Child, (CRC), November 1989; The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, (The Beijing Rules), November 1985, The United Nations Guidelines for the Prevention of Juvenile Delinquency, (the Riyadh Guidelines), 1990.

(iv) Proportionality

The principle of proportionality requires that the outcome reflects the seriousness of the offence (Von Hirsch and Ashworth, 2000). It places emphasis on due process and determinate, consistent sentencing. Critics warn that proportionality may be compromised in restorative practices where the victim, whose level of forgiveness will inevitably differ from case to case, has a say in what happens to the offender. This appears to contradict 'desert theory' which has informed much of recent judicial practice (Von Hirsch, 2000). Maxwell and Morris (1993) reported some evidence of disproportionate outcomes in New Zealand; on a number of occasions the end result appeared to "outweigh the gravity of the offence" (Maxwell and Morris, 1993: 96). In addition, research has noted that 60% of plans incorporate restrictive elements, which are not always necessary for public safety or in accordance with the aims of New Zealand legislation, (Maxwell 2005: 58). In relation to Referral Orders in England and Wales it is insightful to note that substitution effects in terms of traditional court orders occurred at the relatively lower levels displacing disposals such as the conditional discharge and fine, (Newburn et al, 2002: 51). There is a further risk that referrals to restorative programs may be made on an arbitrary basis and allocated with a focus on 'welfare' rather than 'deserts'. Potentially, if a conference is viewed as more 'beneficial' to an offender other stages such as cautions or warnings may be bypassed. In such circumstances this could lead to more intensive treatment than the offender would otherwise have received (Roche, 2003); the process itself may be viewed not as an alternative to punishment but an 'alternative punishment' (Daly, 2000; Young, 2001).

Ashworth suggests that to counter disproportionate sentences, upper limits should be established and "decided by reference to publicly debatable and democratically determined policies that show respect for the human rights of victims and defendants" (Ashworth, 2001: 359). Braithwaite (2002) concurs, asserting that outcomes should never be in excess of punishments enforced by the courts for the same offence. However, Cavadino and Dignan (1997) reject the idea of strict proportionality. They warn that, if enforced, it could potentially limit the scope for the victim and offender to be actively involved in shaping reparation, as the tariff is pre-determined. Strang (2002: 14-15) notes that research rejects the notion of a 'vengeful victim' and instead suggests that victims prioritise involvement in the process rather than involvement in deciding the outcome (see also Hough and Mayhew, 1985: 35). This is particularly important in a restorative context where the victim may be less likely to demand a punitive outcome after meeting the offender face to face and learning more about them.

(v) Consent

The UN guidelines on the administration of restorative justice programs require that they "should be used only with the free and voluntary consent of the parties" (United Nations, 2000). Indeed, many restorative schemes require that the offender fully consents to taking part in the process. Theoretically, the young person's decision should be an informed one, with a full awareness of all the options available to him or her. In practice, given that the alternative is often sentencing by a court, whose sanctions may be perceived as potentially more punitive, a young person may feel there is no 'choice'. Cuneen (2003: 189) asserts that 'consent' may be obtained in a context of no "independent legal advice, pressures to admit an offence to obtain the benefit of a diversionary alternative to court and the avoidance of a criminal record".

In New South Wales a small-scale qualitative study of young people's experiences of the justice system questioned whether informed consent was always exercised when referred to a conference. Two-thirds (66%) of participants were either not told, or were unsure whether they had been told, that they had a right to legal advice (Turner, 2002). In England and Wales, solicitors are explicitly excluded from acting in an advisory capacity in Youth Offender Panel meetings. The rationale behind this is that the presence of a solicitor may prevent the young person from becoming fully involved in the process; however Crawford and Newburn (2003: 223) note that this could potentially lead to challenges under Article 6 of the European Convention of Human Rights. Warner highlights that, given the complexity of the justice process, conferencing may not always be an appropriate forum to deal with questions of culpability: "issues of guilt and innocence are not always black and white [...] the availability of legal defences such as intoxication and self-defence may not be appreciated" (Warner, 1994: 143).

(vi) Power imbalances

Article 12 of the UN Convention on the Rights of the Child states that a child should have the opportunity to be heard in any proceedings affecting them and be allowed to express their views freely. Careful attention must be paid by practitioners to ensure that this occurs in practice. Problems may be encountered in a conference scenario where the 'negotiation' of a plan has the potential to be undemocratic. The young person may feel that they have no leverage and are obligated to agree to suggestions put forward, regardless of their willingness or suitability. It is submitted that the, "potential for coercion" must be considered given that the young person is in, "a room full of adults", (Haines and O'Mahony, (forthcoming, 2006). Maxwell and Morris (1993: 85) report that professionals often held a substantial amount of leverage when devising plans and what they suggested was more likely to be the outcome when parents and young people were given little opportunity to consider the plan. The recent research by Maxwell et al (2004) finds that families and young people more often play a central role but observations continue to show some co-ordinators, police officers and legal professionals dominating final decision-making, (Maxwell 2004: 172; Maxwell 2005: 59). Although New Zealand Legislation requires that family or whanau and young person be offered the opportunity to consider matters in private this occurred in less than two-thirds of the cases examined, (Maxwell 2004: 250). Unlike in earlier research, (Maxwell and Morris 1993), there was no evidence that failure to avail of private time resulted from undue pressure to continue with the conference discussion, (Maxwell 2004: 250). Nevertheless, parity in decision-making might be assisted where there exists space for private time and reflection. In restorative pilots in Belgium, private time is a vital component for the identification of underlying issues by the young person with the help of his or her family and friends, (Vanfraechem 2005: 279.). Indeed, it is believed that an important 'pathway to agreement' is time and space in whatever its form, (Bazemore and Schiff, 2005: 173). In considering the process of repairing harm in various conference environments, Bazemore and Schiff, (2005), found that practitioners valued the process of agreement rather than the actual result but faced a practical challenge when training facilitators to resist input when agreeing outcomes, (2005: 174 and 175). However, observations did show that facilitator domination was not always down to power but emerged in response to participants' requests for help. In this event, a suitable response challenged the participants with exploratory or probing questions. A less effective reaction occurred when facilitators encouraged the group to devise a routine list of outcomes, (2005: 175).

Power imbalances may arise from compulsion, however, Roche (2003: 86) argues that the possibility that a case referred to a conference may be re-routed to court can act both as an incentive to participate and an 'escape route' where there is too much pressure or domination directed towards the offender. In this scenario, however, there is the added danger that an offender is doubly penalised where a conference fails to reach an agreed outcome. The offender may be "punished by the court for the failure of the conference as well as the offence" (Warner, 1994: 180). To prevent this from happening courts must probe into why a conference failed to reach agreement and "be able to discern a justifiable refusal to reach agreement from one without foundation" (Roche, 2003: 86).

(vii) Recidivism

It is suggested that preventing offending is not a primary claim of restorative justice, but instead it aims to hold offenders accountable and make amends to victims (Daly, 2002). However, in order for it to gain centrality to the criminal justice system and to be taken seriously by policy makers proving more effective than established practices in preventing reoffending is paramount. The ability of restorative justice to address repeat offending has been described by some as "modest, if not inconsequential" (Levrant, Cullen et. al, 2003: 420). A number of studies have examined the impact of conferencing on future offending. An evaluation of recidivism in a police-led conferencing scheme in Bethlehem, Pennsylvania could not confirm that recidivism was reduced as a direct result of conferencing. Instead, it was suggested that "lower recidivism was more a function of offender's choice to participate than the effects of the conferencing" (McCold and Watchel, 1998: 4). In the Canberra 'RISE' project recidivism patterns were assessed over a one year period and it was found that, when compared to court, conferences resulted in a 38% drop in offending rates amongst violent offenders. At the same time, there was found to be no difference for property offenders and shoplifters, and a very slight increase in reoffending (4%) amongst drink driving offenders. In New Zealand, Maxwell and Morris examined reconviction rates amongst 195 offenders who participated in a family group conference from 1990-1991. Six years later, between 1996 and 1997, 67% of the sample was re-interviewed to assess levels of reconviction. Results indicated that "more than two fifths of a sample of young people were not reconvicted or convicted once only and not much more than one-quarter were classified as being persistently reconvicted" (Maxwell and Morris, 2002: 143). Based on this evidence, the authors suggested that "restorative processes and practices can impact on reconviction" (Maxwell and Morris, 2002: 144). Further evaluation on restorative cautioning within the Thames Valley project in England finds no evidence to support the contention that

restorative justice is more effective than traditional measures in reducing recidivism, (Wilcox, et al, 2004). However, a recent meta-analysis of restorative justice literature shows restorative justice processes to be significantly more effective than traditional court measures, however, the authors note that the results are due mostly to a self-selection bias, that is, restorative justice participants have consented to participate in a conference suggesting a resolve to accept responsibility for their actions, (Latimer et al, 2005). Research in New Zealand found life events, both pre and post conference, to be highly predictive of reoffending but so to was the level of involvement in the criminal justice system, (Maxwell et al 2004; Maxwell, 2005). While certain conference features impacted positively on recidivism adolescent and adult life circumstances remained highly determinative.

Significantly, research indicates that where certain restorative aspects are achieved a conference may have a greater impact on preventing re-offending. These were identified as a successful family group conference, a completed plan, and the feeling of 'remorse' from the young person. The attendance of a victim, the young person apologising, feeling involved in the process, not feeling shamed and agreeing to the outcome further contributed to the young person not being reconvicted (Maxwell and Morris, 1999). Hayes and Daly analysed levels of recidivism in the SAJJ scheme and produced similar findings: the offender was less likely to re-offend where they took responsibility for the offence, were actively involved in the process and were not defiant (Hayes and Daly, 2003). This would appear to validate Braithwaite's (1988) theory of reintegrative shaming which suggests that positive shaming is more likely to prevent reoffending. However, analysis by the same authors of data from a conferencing pilot in Queensland shows that individual conference features are not significantly related to reoffending and that a more likely determinant is the characteristics of the young person. Therefore, Hayes and Daly found age and offence history to be significant. There was evidence that younger offenders aged 10 to 12 years are less likely to reoffend where their first offence is dealt with by conference rather through traditional caution or court appearance, (Hayes and Daly, 2004: 181). A reanalysis by Hayes of the data from the Bethlehem, (Pennsylvania) Restorative Policing Experiment shows variation in outcome if restorative processes are compared to court, (Hayes, 2005). Therefore, while no differences were recorded for property offenders following either form of intervention, violent offenders assigned to conference had a lower reoffending rate compared to violent offenders at court, (2005: 91). An examination of offender characteristics on reoffending between conference and court indicated that females attending conference are less likely to reoffend than males attending conference but no significant difference in gender for those attending court, (2005: 94).

Ultimately, it is difficult to determine the overall effectiveness of restorative programs in preventing re-offending due to differences in practice and research. Arguably, curbing recidivism should not be the only measure of success and the benefits gained in other areas may be just as important, (see for instance Lawson et al, 2004: 186). McEvoy et al. (2002: 469) suggest that as evaluations have indicated greater participant satisfaction in restorative programs than in the conventional justice process, success should primarily be measured by participant satisfaction. An important factor when analysing recidivism is the proposition that much young offending is transitory, and that many young people cease offending as they mature (Rutherford, 1992). Finally, it is important to appreciate that "great faith is placed on the conference process to change offenders, when the conditions of their day to day lives which may be conducive to getting into trouble, may not change at all" (Daly, 2003:230; see also Maxwell et al, 2004 and Maxwell, 2005).

1.5 Conclusion

This review has examined both the philosophies underpinning restorative justice and the operation of restorative programs in practice. In doing so, it has sought to alert the reader to the overarching issues facing practitioners. By examining how restorative justice operates elsewhere, it has placed the Northern Ireland model within an international context that has witnessed significant growth in the use of restorative practices as a response to offending.

Overall, the research and literature on restorative justice suggests that it often proves to be a more satisfying experience than the conventional criminal justice process for both victim and offender. This is a clear advantage given the sustained criticism directed towards the conventional criminal justice system in recent years. However, it is important to appreciate that participant satisfaction is not universal and the restorative 'ideal' will not always be met in practice. Evaluations have found that restorative programs are not intrinsically suitable for all types of victims – for example, victims of violent, interpersonal crimes often have lower levels of satisfaction than victims of property crimes²⁸.

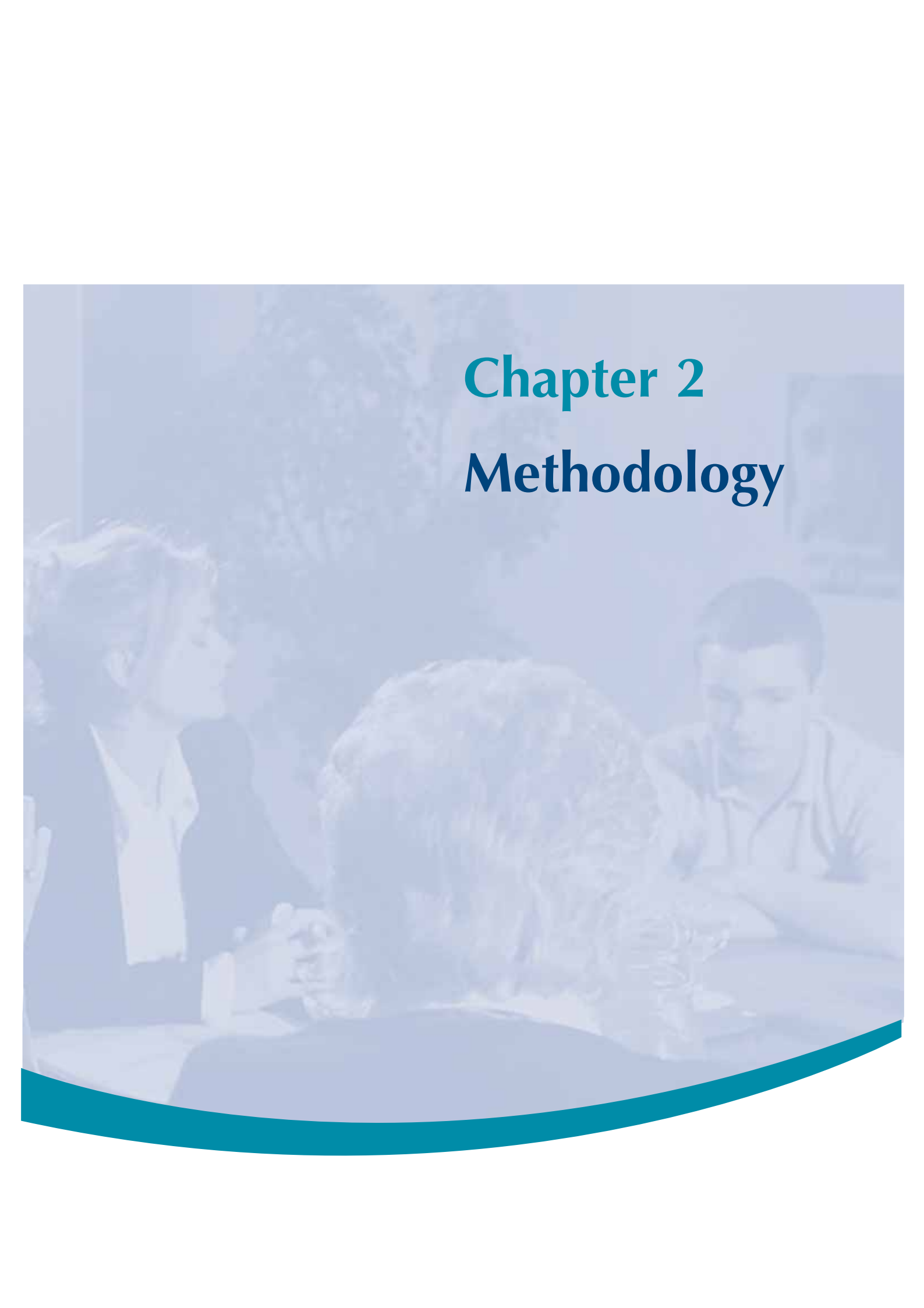
Victim participation is often said to be instrumental in determining how 'restorative' a program is (McCold, 2000). Research shows that some jurisdictions have experienced particularly low levels of victim participation. Increased participation can often be facilitated through better practice, such as ensuring that the victim is notified and arranging a conference at a time suitable to them. However, it is clear that a balance must be struck between safeguarding a victim's right not to participate whilst ensuring that the 'restorativeness' of the intervention is maintained. Furthermore, it is important that victims who decline to participate are not marginalised and, if requested, they are kept informed as to the outcome of their case. This, it is suggested, will prevent a 'two-tier' system in which victims who choose to participate in restorative programs have a more positive experience than those who do not (Hoyle, 2002).

Proponents of restorative justice often state that a key advantage of restorative interventions is that it reduces reoffending. Evaluations have proved inconclusive in this respect, however it is suggested that restorative interventions can impact on recidivism where a number of factors are achieved (Maxwell and Morris, 2002). These include where the conference is a positive experience for the offender, they are not negatively shamed and they believe procedural justice to have taken place.

International research underscores a number of key rights issues that practitioners must be alert to when implementing restorative interventions. These include net-widening, consent and proportionality of outcomes. The literature suggests that to ensure that participant rights are protected restorative interventions should operate within a culture of accountability in which effective gate-keeping procedures are implemented. This is particularly important in Northern Ireland as the youth conferencing model operates within a 'rights' framework underpinned by the Human Rights Act (1998).

With an awareness of how restorative justice - and in particular conferencing models - have been implemented in other jurisdictions this report will proceed to examine how the youth conferencing service is operating in Northern Ireland.

²⁸ This may be equally true of victims of violent and interpersonal crimes where the case is dealt with through the court process.



Chapter 2

Methodology

2.1 Aim of the research

The overall aim of the research is that of evaluating the youth conferencing service operating in both the Greater Belfast and Fermanagh / Tyrone regions of Northern Ireland²⁹. Funded by the Northern Ireland Office, the research seeks to examine the translation of the service into practice, identifying both strengths and weaknesses of the current system and determining to what extent it is proving effective in meeting its stated objectives and anticipated outcomes. Recommendation 147 of the Criminal Justice Review Implementation Plan (2003) sets out some of these objectives and anticipated outcomes:

We recommend that a Northern Ireland system should focus on:

- ◆ reparative justice and meeting the needs of victims, so giving them a real place in the youth conference, rather than just regarding it as a means to reform the offender;
- ◆ rehabilitative justice, where what is important is the prevention of re-offending by the young person, so that the youth conference focuses on offending behaviour
- ◆ proportionality, rather than pure retributive justice
- ◆ reintegrative shaming, where the offender acknowledges the harm done, but where the youth conference clearly separates the offender from the offence and focuses on the potential for reintegrating the offender into the community in the plan and on the prevention of re-offending
- ◆ repairing relationships which have been damaged or broken by crime
- ◆ devolving power to youth conference participants to create the youth conference and the plan, but requiring subsequent approval for the plan from the court for cases which have gone to court
- ◆ encouraging victims to bring one or more supporters (who might be, but need not necessarily be, a member of Victim Support)
- ◆ encouraging offenders to bring significant others (especially their families, but also particular members of the community important to them) to the youth conference, but not placing strong emphasis on the responsibility of the family to deal with offending as is done in New Zealand

2.2 Data collection techniques

The primary research methods used within the evaluation, in the context of data-triangulation, are those of observation, structured and semi-structured interviewing and statistical analysis of relevant data.

Observations took place with respect to both youth conferences and relevant court proceedings in Belfast and Fermanagh and Tyrone youth courts, with every attempt made to be as unobtrusive as possible. Structured interviews were completed with participating victims and young people, whilst semi-structured interviews were employed with victim and offender non-participants and other key stakeholders. In addition, short interviews were conducted with a small number of family members who had participated in a youth conference in support of the young person. Finally, researchers interviewed several young people who have had contact with the youth justice system but who reside outside the area eligible for youth conferencing. Researchers made written notes in interviews, and no recording equipment was used. A statistical analysis was undertaken between all cases appearing before the youth court in the year prior to the introduction of the youth conferencing and those appearing post-introduction of youth conferencing. This was used as a comparative sample in order to understand more fully the impact of youth conferencing upon cases appearing before the court.

Observations

Conference observations

Detailed observations of youth conference proceedings formed a central element of the research. Attending conferences in a non-participative role, researchers positioned themselves outside the circle of participants, taking care to physically distance themselves whilst ensuring a clear view of the young person and, if possible, the victim. Researchers focused on, amongst other things, the conference process, levels of participant engagement, group

²⁹ The Youth Conferencing Service began in Greater Belfast in December 2003 and Fermanagh and Tyrone in April 2004. At the time of writing (October 2005) it is also operating in Banbridge, Newry and Armagh.

dynamics, adherence to practice guidelines and conference outcomes. Detailed notes were made throughout the conference in a discrete and sensitive manner and these were subsequently transferred into a standardised observation schedule.

Researchers observed a total of 185 conferences, 167 of which were in the Greater Belfast area and 18 in the Fermanagh and Tyrone region. Consent was always sought from the victim and the young person via the co-ordinator with respect to researcher presence at the conference. In the vast majority of cases consent was obtained via co-ordinators in pre-conference meetings with the victim and young person. In a few cases consent was not obtained until the day of the conference however no observation proceeded without the consent of victim and young person.

Court observations

Having obtained consent from the relevant Magistrate(s), court observations took place in Belfast, Enniskillen, Dungannon, Strabane and Omagh youth courts throughout the period of the research. Researchers positioned themselves at the back of the courtroom in order to observe and take notes on the relevant proceedings. These observations were qualitative in nature, focusing both on initial court-ordered referrals to the Youth Conference Service and the making or refusal of youth conference orders by the court. Particular attention was paid to the role of Magistrate, Public Prosecution Service, Youth Conference Service, young people and their appropriate adult and legal representatives. Researchers also noted the degree to which legislative requirements were fulfilled³⁰. Observations served not only as an insight into the decision making processes of the court, but also as a useful contextualisation of court-ordered conferences.

Interviews

Participant interviews

Following each conference observed, researchers completed individual interviews with the young person and / or the victim(s) (see Appendices 1 and 3). In most cases, consent was obtained via the co-ordinator prior to the conference, however, before commencing the interview consent was reaffirmed with each participant. This was done in a clear and straightforward manner covering issues such as the voluntary nature and purpose of the interview, confidentiality, anonymity and anticipated use of data. In addition, participants were given the opportunity to ask questions or seek clarification from the researcher.

In total, interviews were completed with 171 young people (92%) and 125 victims (86%) following the conference. Out of the 171 young people interviewed, 137 completed a full interview. The remainder completed an abridged interview schedule (see Appendix 2). In these instances a shorter interview was administered due to time constraints, the young person's preference, or where the researcher felt that a shorter interview would be more appropriate. Participant interviews lasted an average of 10-15 minutes, with abridged interviews lasting approximately 5 minutes. For reasons of confidentiality and freedom of expression, all interviews took place in a private room with only the researcher and interviewee present, unless the presence of another individual was requested and consented to. This was typically the young person's or victim's supporter. Finally, a small number of telephone interviews (5) were conducted with family members who had attended a conference in the role of the young person's supporter. These focused on family member's views of the process and the progress of the young person following the conference.

Non-participant interviews

Interviews were also completed with a number of young people and victims who chose not to participate in a conference. These took the form of a semi-structured telephone interview, exploring individuals' reasons for not attending and their thoughts on both the conferencing process and how their case was dealt with in the criminal justice system (see Appendices 4 and 5). Interviews were carried out with eleven non-participating victims and eight non-participating young people.

Stakeholder interviews

Stakeholders were identified as both individuals with a direct interest in the administration of Youth Conferencing - for instance youth conference staff, Public Prosecution Service, Magistrates, police (Youth Diversion Officers) and the Northern Ireland Office - and those with a more general interest in the development of restorative justice in Northern Ireland - for example service providers³¹ and members of the legal profession. These interviews were exploratory in

³⁰ As set out in the Justice (Northern Ireland) Act 2002 and the Youth Conference Rules (Northern Ireland) 2003.

³¹ Organisations providing services for elements of a youth conference plan, for example mentoring schemes.

nature and focused on pertinent themes which were either identified or emerged throughout the period of the research. The majority of stakeholder interviews took place in two phases, the first in September – November 2004, the second in the same period of the subsequent year. This enabled developing perspectives to be identified as the implementation of the conferencing process progressed.

2.3 Comparative analysis

It was intended to complete a comparative analysis in order to shed light on the impact of the conferencing process on the business of the youth court. This involved gathering quantitative information, including offence type, criminal record history and disposal type. This element of the research was intended to compare the criminal record histories of young people appearing before the youth court in the year preceding the introduction of the youth conference system (1st June 2002 – 31st May 2003) to those receiving diversionary and court-ordered conferences in the subsequent year (1st March 2004 – 30th June 2005). However, due to data problems and issues relating to criminal record data, the information was not used in this analysis.

Finally, a small qualitative element of comparative analysis was completed. This involved undertaking semi-structured interviews with young people residing outside areas eligible for youth conferencing who had recently come into contact with the youth justice system. Interviews sought to gain insight into young people's perceptions of the traditional criminal justice system. An equivalent qualitative study was not undertaken with victims due to difficulties in access³², however in order to provide a comparative victim perspective this report draws upon current research on victim's experiences of the traditional criminal justice system.

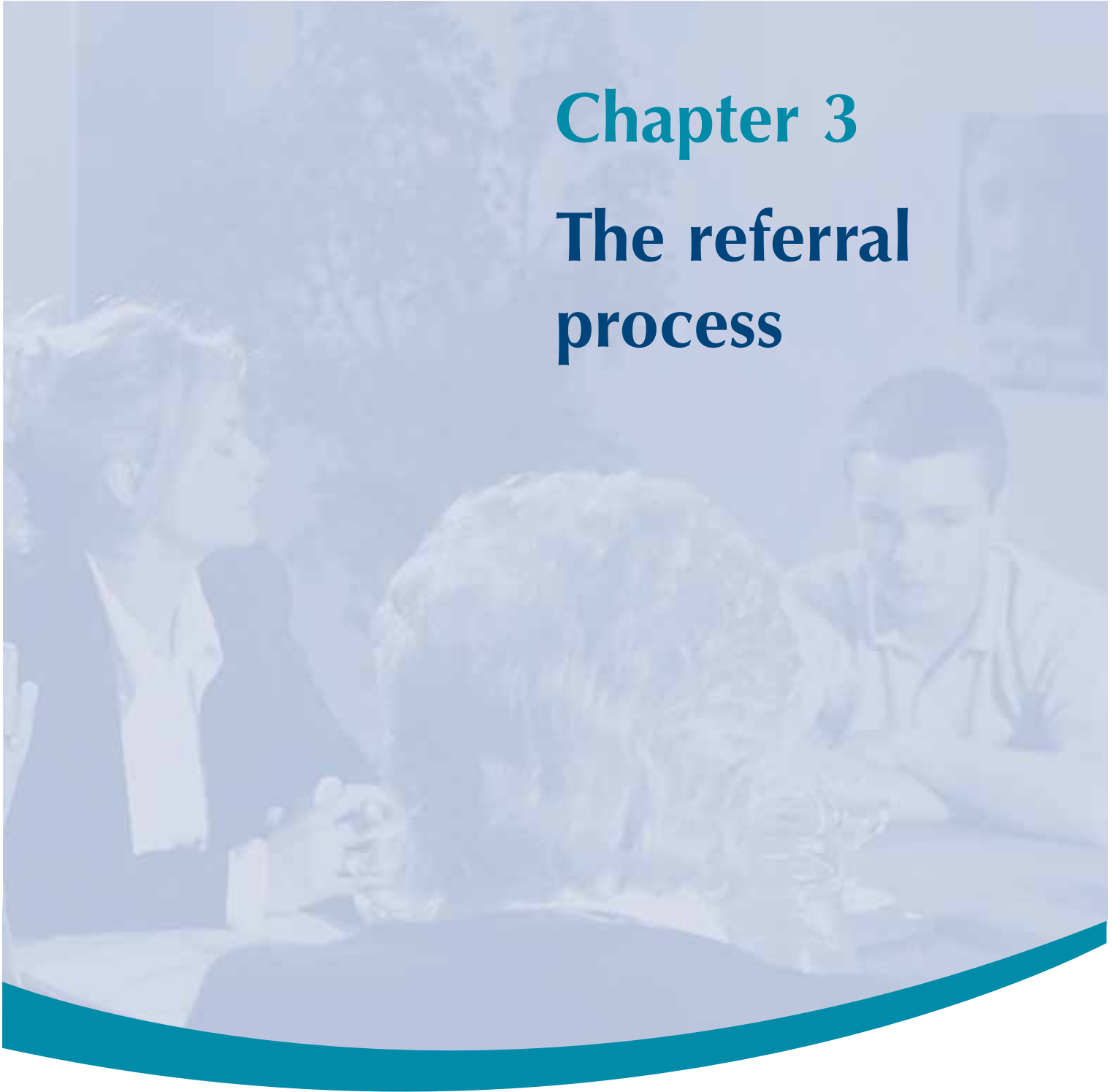
2.4 Data analysis

Prior to commencing fieldwork, researchers created substantial SPSS and Access databases in which to record gathered information for subsequent analysis. All quantitative data was entered into SPSS and analysed in terms of frequencies and cross-tabulations. Qualitative data from observations and participant interviews were referenced and organised according to case, participant and theme and then entered into Access. Data from court observations, non-participant interviews and interviews with other key stakeholders were qualitative and was therefore analysed in this way. Information from the Youth Conference Service and the Northern Ireland Court Service databases was used to cross-reference and verify primary data.

³² The research team did not have access to contact information for victims of youth crime in non-pilot areas due to data protection issues.

Chapter 3

The referral process



3.1 Introduction

Young people can be referred to the Youth Conference Service in one of two ways, a 'diversionary' referral through the Public Prosecution Service or a court-ordered referral by a Magistrate at the youth court. In each case, there exist certain legislative requirements which must be fulfilled before a referral can be made. This chapter will consider the referral process in light of the legislative provisions and from information gathered over the period of the research.

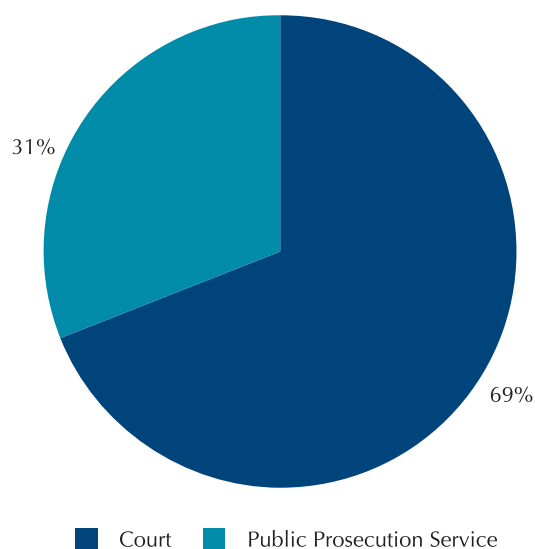
3.2 Summary of findings

- ◆ 362 referrals were received by the Youth Conference Service within the period of research. 31% emanated from the PPS and 69% from court.
- ◆ A range of offences were referred. The majority or 53% related to intermediate offences against person or property. Serious offences accounted for 23% and minor matters for 21% of referrals.
- ◆ The majority or 89% of young people referred for a diversionary conference had no previous offences for which they were sentenced. The remainder had one (7%) or two (5%) previous sentences. 44% of those referred by court had no previous sentences, 20% had one and 15% had two. The remainder had three (10%) and four or more (11%) previous offences for which they were sentenced.
- ◆ There was a high rate of acceptance by young people of diversionary referrals, with 68% of young people offered diversionary referrals accepting them.
- ◆ Similarly, the majority of young people offered a conference at the youth courts (56%) accepted and were referred to the Youth Conference Service.
- ◆ On the whole, Magistrates offered referral to a conference in those cases deemed suitable by the legislation.
- ◆ The formality and established practice of the youth court suggested that, by the end of the research, some concerns remained about the manner in which courts requested consent to attend a conference.

3.3 Referral to the Youth Conferencing Service

A total of 362 referrals were received by the Youth Conference Service in the period covered by this report (1st December 2003 – 30th June 2005). Just under one third (31%) of these referrals emanated from the Public Prosecution Service, whilst the remaining 69% were referred by the youth courts.

Figure 3.1: Referral to a youth conference by referral source



The referral process

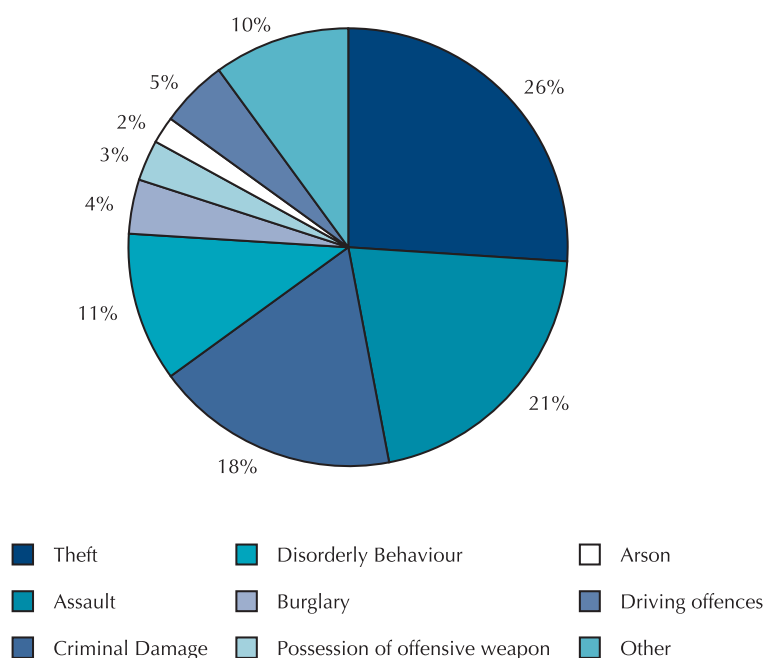
When broken down into region, there is virtually no difference in the proportion of referrals made by the Public Prosecution Service and court. In Greater Belfast 30% of referrals were diversionary and 70% court-ordered; in Fermanagh and Tyrone the split was 31% and 69% respectively (see Table 3.1).

Table 3.1: Referral to a youth conference by region and referral source

	Diversionary		Court-ordered		Total	
	Number	%	Number	%	Number	%
Greater Belfast	78	30	186	70	264	100
Fermanagh and Tyrone	27	31	61	69	88	100

Referrals to the Youth Conferencing Service were made for the offences of theft (26%), assault (21.1%), criminal damage (17.5%) and disorderly behaviour (10.8%).

Figure 3.2: Referral to a youth conference by offence category



An offence seriousness scale was devised to examine the seriousness of offences referred to youth conferencing³³. When these referrals are analysed according to the offence seriousness scale included in Appendix 6, the majority of offences (53.2%) referred related to 'intermediate offences against person and property'. 'Serious offences against person and property' accounted for 23.4% of referrals whilst 'minor property related and other minor offences' accounted for only 20.5% of referrals. Interestingly, the majority of 'minor property related and other minor offences' were referred to the Youth Conference Service by the court (71.4%) and not the Public Prosecution Service (28.6%) as might be expected. Only ten offences were classified as 'very serious violent offences and serious harm to the person' were referred to youth conferencing, six of which were referred by the PPS and four by the court. Given that quite serious offences are sometimes referred to a conference by the PPS, it would appear that the category of the offence is not the only factor that is taken into account when prosecuting, for example, whether it is the young person's first offence.

Indeed, an analysis of the criminal records of young people referred for a diversionary conference shows that the majority or 89% had no previous offences for which they were sentenced (see Table 3.2). The smaller proportion (5%) of cases showing two previous sentences were most probably referred for a diversionary conference because of the facts of the offence or that there had been a significant lapse in time since the last previous conviction.

³³ See Appendix 6 for a detailed explanation of how this was devised, and the categorisation of offences.

Table 3.2: Number of previous sentences for young people by source of referral

	Number of Previous Sentences					
	%					
	0	1	2	3	4	5
Diversiory Referrals	89	7	5	0	0	0
Court Referrals	44	20	15	10	5	6

As expected, the figures for court-ordered conferences differed from those appearing for diversionary conferences. Therefore, while the majority (64%) had between none and one previous sentence and 15% had two, a significant proportion (21%) had a record of three or more sentences. These figures show that diversionary and court-ordered referrals appeared to be targeted correctly, as diversionary conferences are intended for young people with little previous contact with the criminal justice system. Indeed, the higher level of previous sentences for young people attending conference from court explains why some less serious matters were referred to the Youth Conference Service via court.

3.4 Diversionary referrals

Youth conferencing introduces a new and additional role for the recently established Public Prosecution Service (PPS) in Northern Ireland. Whereas the function of the previous Department of Public Prosecutions (DPP) had been to make decisions on whether or not to prosecute, Section 58, 10A (1) of the Justice (Northern Ireland) Act 2002 requires the PPS to determine prosecution decisions and to decide if referral to a youth conference is appropriate. Although the Justice (Northern Ireland) Act 2002 does not include guidance on the types of cases that might be suitable for a diversionary conference it was anticipated that conferencing will constitute an option for many young people recommended for prosecution.

In all instances, the PPS must establish that the case is suitable for prosecution. This requires sufficient evidence to give a reasonable prospect of conviction in court and a determination that it is in the public interest to prosecute. Once this has been confirmed, the PPS have a number of options including referral back to the Police Service of Northern Ireland (PSNI) for a less formal restorative caution or an informed warning; or to offer to the young person a diversionary youth conference or to proceed to court. Publicly available guidelines are not yet available for this decision-making process but decisions are based on a combination of factors including the nature of the offence and any history of offending by the young person.

There is a two-staged legislative obligation that exists prior to referring a young person to a youth conference. Therefore, the PPS must be satisfied that the young person accepts responsibility for the offence and that he/she consents to attend the conference³⁴. Consent and responsibility are vital given that the practical implication is an agreement to forego the court process and the right to trial. If it is agreed to offer referral to a diversionary conference a letter is forwarded to the young person and a copy to his or her legal guardian. This letter outlines the nature of the conference and what is required in order for the young person to attend. In order to proceed, the PPS must receive within a specified time period two signed consent forms, one from the young person and the other from the parent or guardian. Statistics available over the period of the evaluation indicate a high level of acceptance by young people with 68% of diversionary referrals accepted in the Greater Belfast area and 67% in Fermanagh and Tyrone³⁵.

³⁴ Section 58, 10A (3)(a) Justice (Northern Ireland) Act 2002.

³⁵ These statistics were made available to the research team by the Public Prosecution Service.

Table 3.3 Acceptance of diversionary referrals by region

	Number of Acceptances	Acceptance Rate %
Greater Belfast	86	68
Fermanagh and Tyrone	33	67
Overall	119	68

Once a diversionary referral is accepted the case is forwarded to the Youth Conference Service who is obliged to report the outcome of the conference to the PPS within a time period of 30 days³⁶. It is at this point that the PPS must decide to accept or reject the diversionary youth conference plan, a process which is explored in detail in Chapter 5.

3.5 Court-ordered referrals

Prior to examining the way in which the court refers young people to the Youth Conference Service, it is useful to consider some of the legislative requirements that must be adhered to when making a referral. The two overriding prerequisites are that of guilt and consent. With regard to the former, Section 59, 33A (1) of the Justice (Northern Ireland) Act 2002 states that:

“A court must refer the case of a child who has been found guilty of an offence by or before the court to a youth conference co-ordinator for him to convene a court-ordered youth conference with respect to the child and the offence”.

Referral to a youth conference is therefore mandatory where guilt has been admitted or established. There are, however, certain caveats: the court is not required to refer a young person to youth conferencing on the following three occasions:

1. Where a diversionary youth conference has been completed for the offence and the youth conference co-ordinator recommended that they be subjected to a youth conference plan;
2. If the court proposes to deal with the young person for the offence by making an order discharging him absolutely or conditionally;
3. If the offence carries a penalty of life imprisonment; if it is triable, in the case of an adult, on indictment only; or is a scheduled offence falling under the Terrorism Act 2000.

With regard to the latter, the court may, where it considers it appropriate, refer a young person to a youth conference for offences triable, in the case of an adult, on indictment only or scheduled offences falling under the Terrorism Act 2000. It may not, however, do so for offences with a penalty of life imprisonment. Furthermore, the court cannot at present refer a young person to youth conferencing unless they reside in the pilot area and the offence occurred post 1st December 2003³⁷.

Where offence eligibility has been established, Section 59, 33A (6) of the Justice (Northern Ireland) Act 2002 highlights the importance of consent and requires that a conference must not proceed “unless the child agrees that he will participate in a court-ordered youth conference with respect to the offence”. The court is required to exercise transparency in its decisions and if it fails to refer a young person to a youth conference it is required by Section 59, 33C (4)(b) to:

- ◆ Give its reasons in open court; and
- ◆ If it is a Magistrates' court, it must cause the reason to be entered in to the Order Book.

The introduction of youth conferencing marks many new changes within court, not least of which is a new presence in the form of the Youth Conference Service. Typically, there are at least two representatives from the Youth Conference Service in attendance at each sitting whose primary role is to receive referrals from the court. When a referral has been made, a representative from the Youth Conference Service speaks to the young person outside the

³⁶ Rule 7(1) The YouthConference Rules (Northern Ireland) 2003.

³⁷ For the purposes of the research the pilot area covered Greater Belfast and, from April 2004, the Fermanagh and Tyrone regions. However, at the time of writing the area has been extended to include other regions within Northern Ireland.

courtroom, ensuring they understand what they have agreed to and providing any further information and advice required. They also explain what will happen next and ensure receipt of the young person's details from the court so they can pass them on to the designated youth conference co-ordinator.

Observations of youth court sittings in both Greater Belfast and Fermanagh and Tyrone showed that the introduction of conferencing was received and progressed well. On the whole, Magistrates offered referral to a youth conference in those cases deemed suitable by the legislation. Overall, the majority of young people offered a conference at court (56%) accepted and were referred to the Youth Conference Service. When broken down into region, 49% of young people offered a conference in Belfast accepted, whilst 95% of young people offered a conference in Fermanagh and Tyrone accepted. In most cases, young people were not referred to a youth conference by the court because they refused consent (49%) or consent was refused by their legal representative (7%). Other reasons for non-referral include that the Magistrate adjourned the young person's case for a pre-sentence report (6%) and that the young person was given an absolute or conditional discharge (6%).

While results were positive overall a number of issues did arise and observations suggest that these fall into one of three categories. The first relates to initial or 'teething' problems that have been mostly resolved, the second to certain technical matters not referred to in the legislation and the third to a concern about the nature of referrals, which was evident throughout the research.

In terms of early concerns, difficulties arose due to a number of administrative and technical issues including:

- ◆ Uncertainty regarding the boundaries of the pilot area covered by youth conferencing and eligibility in terms of time limits, the offence needing to have taken place on or after December 2003;
- ◆ Inaccurate referrals including referral of a number of cases where the court later imposed a conditional discharge (as noted above, the legislation advises against referral where the court is minded to impose an absolute or conditional discharge);
- ◆ A lack of familiarity with the Youth Conference Service and the new professional role in the youth court.

For the most part these issues were remedied and improvement was observed over the duration of the research. The language used within the court was observed to develop over time. Therefore, though the Youth Conference Service was referred to as the 'Youth Justice Agency' and conference staff as 'social workers' such matters were resolved with terms such as 'co-ordinator' becoming part of the routine terminology of the court room. Misunderstanding over eligibility for referral was also related to experience and residence requirements did become more established as implementation of the youth conference rollout progressed. Legal representatives and other staff were also observed to experience a progressive learning process. In an early observation, the Youth Conference Service indicated to the court that referral was inappropriate because the young person resided outside the pilot area. The legal representative stated that he thought the young person was eligible because the offence took place in Belfast. The Youth Conference Service pointed out that the young person had to "reside or appear to reside in the pilot area". On the whole therefore, initial problems were of limited concern and related to practical implementation and improvement of the process over time.

While the courts responded positively to initial concerns, certain technical issues remained. This included a small number of instances where the conference plan was not accepted because the young person had turned 17 years of age between the conference taking place and the return of the plan to court. In general, where a young person reaches the age of 17 years before the conclusion of youth court proceedings, section 30 of The Criminal Justice (Children) (NI) Order 1998 permits the court to make any order which it would have made had they remained under 17³⁸,

Where any proceedings in respect of a child are commenced before a youth court and he attains the age of 17 before the conclusion of the proceedings, the court may continue to deal with the case and make any order which it would have made if he had not attained that age.

³⁸ At present, for the purposes of youth court proceedings, a 'child' is defined as a person who is under 17. However, this will change to 18 years, once 17 year olds are brought within the remit of the youth court (see section 63 and Schedule 11 of the Justice (Northern Ireland) Act 2002, which makes provision for the introduction of 17 year olds into the jurisdiction of the youth court).

Therefore, it is permissible for the court to reject a youth conference order for those aged 17 but it is not a required response. Given that refusal is possible in these circumstances it may be a factor for the court and all interested parties to consider at the time of initial referral³⁹. A further issue emerged in relation to offences attracting a mandatory sentence. The legislation prohibits a second court order in combination with a youth conference order. Section 60, 36J (8) of the Justice (Northern Ireland) Act 2002 provides⁴⁰:

Where the court makes a youth conference order, it may not exercise any other power it has to deal with the offender for the offence.

Thus, in certain instances (mostly driving offence cases) mandatory penalties meant that the young person had completed a conference but the court could not accept the plan. This is illustrated by one case where the Magistrate clearly stated, "We are not making a youth conference order because we are not at liberty to combine this order with another order". The Magistrate was obliged to issue a mandatory Disqualification Order in place of the agreed plan. In this scenario, attendance at a conference by the young person should not necessarily be prohibited, as in two cases the young person indicated a wish to continue with the conference process even though there would be no conference plan. However, it may be useful for guidance to be issued that would assist the court where a mandatory outcome is anticipated⁴¹. Certainly, guidance may prove useful in future months when 17 year olds are brought within the remit of the youth court⁴². A high proportion of offences recorded for 17 year olds are motoring related offences. The most recent Northern Ireland Crime Statistics (2005) show that for seventeen year olds, motoring offences accounted for 234 or 31% out of a total of 754 offences for which they were found guilty in 2003. In comparison, motoring offences accounted for only 94 or 11% of offences for those age ten to sixteen years found guilty in all courts⁴³. As such, the business of the youth court should experience a significant rise in the number of motoring matters and hence offences attracting mandatory sentence.

Finally, a concern was observed in the context of Magistrates offering to young people the option of attending a conference. On the one hand, observations were positive and showed that the process of offering a conference had become assimilated into the standard dialogue of the court. On the other hand, this meant that there was little time to explain to the young person the purpose and implications of a referral. Over the course of court observations it was evident that Magistrates would seek consent but often delegate the process of explaining the conference to the solicitor. One Magistrate was observed to have addressed the young person in the following terms:

"These are offences that fall under a new scheme called youth conferencing – your legal representative will explain it all but basically it's a way of trying to take you away from the normal court process...won't work unless you participate but I'm obliged to give you the option ...if it was successful it would be to your benefit. Are you willing to go down that route" Young person, "Aye". Magistrate, "Fair enough. I can't expect you to give an informed decision without knowing all about it".

In other instances, consent was sought through the legal representative who was sometimes observed to explain the consequences of attending a conference to the young person. There were however a few cases in which the Magistrate did not seek consent. In these instances, the conference appeared to be compulsory. As an example, one Magistrate stated, "youth conference then" in response to the summary of facts. Neither the Magistrate nor solicitor explained to the young person the nature of the conference or the fact that referral was voluntary. This observation should be considered in light of the fact that issues of consent are explored with the young person by a member of the Youth Conference Service outside the court room. Therefore, there is an opportunity for the young person to appreciate the implications of a conference and to clarify matters of consent. However, it seems important for agreement to be established at the time of referral⁴⁴. This is necessary for ethical and for practical reasons because if the young person withdraws consent a significant time delay ensues before they can return to the youth court for sentencing. Furthermore, it might be more challenging to withdraw consent than to refuse to offer it in the first place.

³⁹ See recommendation 1.

⁴⁰ Section 60, 36J(9) of the Justice (Northern Ireland) Act 2002 states that the court may impose a custodial order with the youth conference order but only if this is recommended by the Youth Conference Co-ordinator following the conference and if the young person consents.

⁴¹ See recommendation 1.

⁴² Section 63 and Schedule 11 of the Justice (Northern Ireland) Act 2002 makes provision for the extension of the Youth Justice System to 17 year olds.

⁴³ See Lyness, D, Campbell, P and Jamison C (2005) A Commentary on Northern Ireland Crime Statistics 2004, Northern Ireland Statistics and Research Agency, p.41, Table 4.10 'Persons found guilty (all courts) by age and gender 2003 and rates per 10,000 population'.

⁴⁴ See recommendation 1.

3.6 Conclusion

The administration of PPS and court business as it related to the new youth conference provisions progressed relatively smoothly throughout the period of evaluation. Overall, the profile of cases referred for diversionary and court-ordered conferencing was as expected. While a number of serious matters proceeded by way of diversion and less serious cases from the court, this can be attributed to additional factors including criminal record history, which could mitigate or aggravate the response to the offence. By the end of the research, many of the start-up or 'teething' problems in the referral process had been largely addressed. There remained ongoing issues in relation to the level of information provided to young people on referral to conferencing by the court. However, this may relate more to the formal environment and an apparent lack of time available to the Magistrate due to the large number of cases appearing in the youth courts.



Chapter 4

Preliminary stages of the conference process

4.1 Introduction

This chapter provides an overview and analysis of the preliminary stages of the conference process following a referral by the Public Prosecution Service or court. It focuses on the logistics involved in convening a conference, including practicalities and location, the pre-conference preparation process and participant composition. It concludes by considering the position of those victims and young people who decline to participate in a conference.

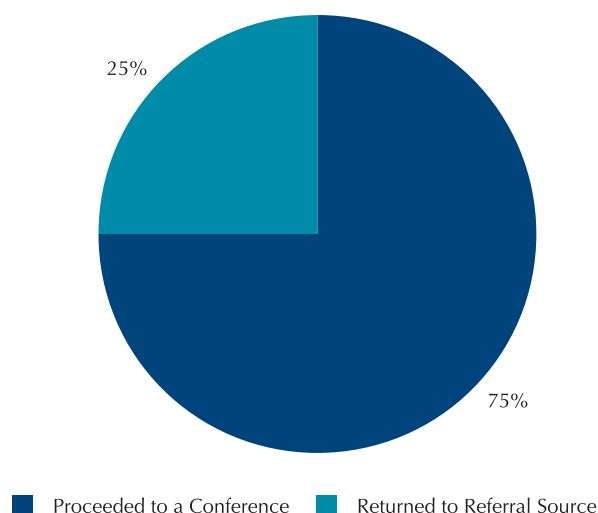
4.2 Summary of findings

- ◆ The majority of referrals (75%) received by the Youth Conference Service successfully resulted in a conference. Most diversionary and court-ordered conferences were completed within the required timescale(s).
- ◆ Most young people referred to a conference were male (86%) and aged 14-16 (77%). A significant proportion of young people referred to a conference were in the care system, the majority of who were referred by the court (88%).
- ◆ When compared to similar schemes internationally, victim participation in conferences was high at 69%. Of these, 47% were victim representatives, 40% personal victims and 13% were representatives attending where there was no identifiable victim. Most victims did not choose to attend a conference with a supporter.
- ◆ Both victims and young people rated their preparation prior to the conference highly. Most felt well informed about the process and knew what to expect at a conference.
- ◆ Young people said they attended conferences to 'make up for what I had done' (85%), to be forgiven by the victim (79%) and to both help the victim (70%) and hear what they had to say (70%).
- ◆ For victims, the notion of punishment was secondary to meeting the young person and receiving an explanation for their actions. A significant number of victims (79%) attended because they wanted to help the young person.
- ◆ Findings indicate that not all victims wish to come face to face with the young person at a youth conference. A sample of non-participating victims were interviewed and of these, the majority indicated personal reasons for non-attendance.

4.3 The convening of conferences

Of the referrals made, three quarters (75%) successfully resulted in a youth conference. Those referrals that did not proceed to a youth conference (25%) were returned to the court or the PPS at either the request of the young person or by the Youth Conference Service.

Figure 4.1: Referrals proceeding to a conference or returned to referral source



Preliminary stages of the conference process

When broken down into referral type, diversionary referrals were more likely to result in a conference. A total of 90% of diversionary referrals resulted in a conference, whilst 69% of court referrals did the same. This discrepancy may be related to the young person's understanding of what the conference process entails. As explained in Chapter 3, the nature of referral to a diversionary conference allows the young person time to consider and make an informed decision about whether or not to participate in a youth conference⁴⁵. Observations found that the nature of court process does not particularly lend itself well to such decision making. For example, after agreeing to a conference at court, several young people subsequently withdrew their consent when informed of the nature of the conference process.

Out of all referrals that did not result in a conference, the majority (47 or 57%) were as a result of the young person withdrawing their consent following their initial agreement to participate. Reasons given by young people for withdrawing consent include not wanting to discuss the offence in a group environment, not wanting to meet the victim, they subsequently denied committing the offence, that the offence was 'victimless' or that they were advised against taking part by their solicitor. In all but five cases, in which the young person withdrew consent mid-conference, consent was withdrawn prior to the conference taking place.

Most cases returned to the court or PPS by the Youth Conference Service were a result of the young person failing to engage with the co-ordinator in the pre-conference preparation stage or being deemed 'unsuitable' to participate in the conference. Other reasons for return include that the young person failed to turn up to conferences, the young person did not accept responsibility for their actions and the young person was ineligible for conferencing by virtue of the date of the offence or residing outside the pilot area.

The average length of time from the offence to referral was 120 working days⁴⁶ (115 days for diversionary referrals and 122 days for court referrals)⁴⁷. Following the referral, an average of 21 days passed before the conference took place (24 days for diversionary referrals and 19 days for court referrals). Article 7 of the Youth Conference Rules (Northern Ireland) 2003 requires that all diversionary conferences are completed within 30 days of referral. Court-ordered conferences are expected to be returned to the court within 4 weeks of referral. As such, most conferences were therefore successfully completed within the required timescales.

The majority of conferences convened (82%) took place during working hours (9am -5pm). Only 18% of conferences took place in the evening. Conferences lasted an average of one hour, however the duration of conferences often varied. The shortest conference - in which the young person withdrew consent during the conference - lasted a mere 6 minutes whilst the longest continued for 115 minutes. Only 8% of conferences lasted more than 90 minutes. Most conferences appeared to last long enough to fully deal with the relevant issues and engage all participants, however several participants commented that they felt the conference was "far too long"⁴⁸. One victim representative stated that they felt a break would have been appropriate in these circumstances;

"It would have been useful if a break took place. The conference was 1 hour and 15 minutes and requires concentration. Having a break so the young person had the chance to think about what has been said rather than running conference 1hr 15 minutes - an opportunity for talk and support."

Conference facilities were rated in terms of heat, light, spaciousness, refreshments, audibility and visibility and in most cases the overall facilities were good. Two thirds of conferences (66%) took place within the purpose-built Youth Conference Service headquarters in Belfast. These facilities are very well equipped with private waiting areas, two conference rooms, several 'time out rooms' for reflection, video-link facilities and an observation screen for victims who are unwilling to meet the young person face to face. In the Fermanagh and Tyrone areas community venues or Youth Justice Agency community premises were used to hold all observed conferences, as purpose-built premises in which to hold conferences were not yet available. Occasionally, community venues were used in the Greater Belfast region when it was more convenient for participants. Although often well equipped, the standard of these venues varied with the most frequent problems including that the room was too small to facilitate all participants and / or there were distracting noise levels. The issue of privacy and community venues was particularly apparent in one conference, in which other young people at the venue recognised the young person and called out to him⁴⁹. The young person's supporter was concerned that the location was too local, and that the young person would be subject to "20 questions in school tomorrow."

⁴⁵ Conversely, it could be argued that faced with the prospect of a court appearance and possible criminal conviction young people referred to a diversionary conference are more reluctant to withdraw consent.

⁴⁶ All time periods are measured in working days throughout this report.

⁴⁷ See Recommendation 4.

⁴⁸ See Recommendation 5.

⁴⁹ See Recommendation 6.

Six conferences took place in the Juvenile Justice Centre⁵⁰, two of which the victim attended remotely via video-link. Only one victim chose to use the one-way observation mirror in the YCS headquarters. The victim knew the young person, but indicated that they felt more comfortable not meeting them face to face. Another co-ordinator sat with the victim in the observation room as support, and an empty seat was left in front of observation screen to allow a full view of all participants. Despite the inherent difficulties in encouraging dialogue in this manner, this victim’s participation was facilitated well. The presence of a mirror did however pose problems in a few other conferences, as a number of young people expressed concerns and / or agitation regarding it; “Is there someone in there watching us?”; “There is someone in there. I know there is. You are recording this!” Prior to the conference, several co-ordinators were observed to reassure the young person by bringing them into the room to confirm that they were not being observed. Given such concerns, it might be prudent to install a blind or curtain over the large observation screen⁵¹.

Though conferences generally did not start on time (63%), the average delay of 17 minutes was quite short. Only a minority of conferences (18%) were delayed for more than 30 minutes. Delays were typically caused by one or more of the participants failing to arrive on time. Where the conference was delayed, most victims (83%) and young people (80%) were kept informed, however 17% of victims and 20% of young people were not told why there was a delay.

4.4 Conference participants

Section 57, 3A (2) of the Justice (Northern Ireland) Act 2002 requires that a co-ordinator, young person, appropriate adult and police officer must be in attendance for a conference to proceed. As such, these participants were present at all conferences. The victim is entitled, but not obliged, to attend the conference. Where appropriate, the victim and young person may bring along a supporter or supporters. The legislation permits the young person to attend with a legal representative however their role is limited to participating in an advisory capacity. If the co-ordinator considers it would be of benefit, other relevant parties may also be invited to attend. Such persons may include, for example, an Education Welfare Officer if the young person is experiencing difficulties at school.

Table 4.1: Age and gender of young people referred to a conference

	Number of Males	Number of Females
Ten	2	0
Eleven	7	3
Twelve	14	2
Thirteen	50	2
Fourteen	73	12
Fifteen	87	21
Sixteen	73	11
Seventeen	1	0
Total	307	51
Total percentage	86	14

As illustrated in Table 4.1 above, the vast majority of young people referred to a conference were male (86%) and aged between fourteen and sixteen (77%). Only two young people were aged ten – the lower limit of age eligibility – and both these conferences were diversionary. Most young people (58%) were living in their parental home or with a step parent at the time of the conference; however a surprisingly high proportion (29%) of young people who participated in a conference were residing in a children’s home or a care environment. When broken down into referral type, the majority (88%) of young people in care were referred by the court whilst only 12% were referred through the diversionary route. This is perhaps because many may have had previous convictions. These figures differ noticeably from young people living with parent(s) or step parent(s), 50% of whom were referred by the court and 50% by the PPS.

⁵⁰ The Juvenile Justice Centre (JJC) provides secure accommodation for 10-16 year olds remanded or sentenced to custody.

⁵¹ See Recommendation 7.

Preliminary stages of the conference process

On most occasions, the young person's appropriate adult was female (77%). The young person's mother fulfilled this role in most conferences (57%), followed by their social worker, key worker, or staff from care home (21%), their father (9%), extended family member (4%) or sibling (3%). Other appropriate adults included a mentor, probation worker or friend. In 113 (61%) conferences the young person attended with a second supporter, a third supporter in 31 conferences (17%), a fourth in six conferences (3%) and a fifth supporter in one conference. Additional supporters included the young person's social worker (20%), father (18%) and mother (9%). Other extended family, the young person's teacher, probation worker and youth justice worker were all present in 7% of conferences with an additional supporter. Most young people did not avail of the opportunity to attend with a legal representative, who was only present in twenty eight (15%) conferences.

A victim was present in just over two-thirds (69%) of conferences observed. When compared to similar schemes in operation internationally, this high level of victim participation is a positive result⁵². Victim attendance in the Greater Belfast region was generally higher (71%) than in Fermanagh and Tyrone (47%). Two thirds (66%) of participating victims were male, and one third female (34%) Although most victims (62%) were aged 30-50, a significant proportion were under the age of 18 (17%)⁵³. As illustrated in Table 4.2 below, the majority of participating victims were victim representatives (60%), rather than personal victims (40%).

Table 4.2: Victim attendees by victim type

Victim Type	Percentage
Personal Victim	40
Victim Representative	47
'Victimless crime' (representative attends)	13

Personal victims' are defined as those individually affected by the offence who have experienced either direct or indirect contact with the young person. Victim representatives were not directly affected by the offence, but instead attended to explain the general impact of the young person's actions. Victim representatives included employees of the business affected by the offence. For example, in the case of shoplifting, the manager of the store may attend to explain the financial impact or impact on staff morale.

When broken down into offence type, the majority of participating personal victims (47%) were victims of assault, whilst most victim representatives attended conferences relating to offences of theft (39%) or criminal damage (30%). A further distinct category of victim representatives were those who attended conferences with no identifiable victim (13%). Such offences include disorderly behaviour, driving offences and drug-related offences. In these cases community representatives, police officers or relatives attended to explain the general impact of the offence.

Most victims did not attend a conference with a supporter. A total of seventeen victims (14%) brought one or more supporters with them to the conference, and all but one were personal victims. Six of these victims attended with a second supporter. All but one of these supporters was a family member, with the remaining supporter a member of staff from the victim's care home. Of the victim supporters, 61% were female and 39% male. Interestingly, the overwhelming majority of victim supporters were a member of the victim's family and attending conferences involving a personal victim less than eighteen years of age. Given the age, potential vulnerability and inter-personal nature of the offences involved, these can perhaps be seen as cases in which the presence of a victim supporter is most vital. No victims attended a conference with a legal representative.

⁵² Though direct comparisons are difficult due to the differing nature and operation of programmes, only 13% of victims took part in Youth Offender Panel meetings in England and Wales (Crawford and Newburn, 2003), while between 41% and 50% of family group conferences in New Zealand were attended by a victim (Maxwell and Morris, 2002; Maxwell et al, 2004).

⁵³ The presence of young victims may pose additional challenges for the co-ordinator with regards to, for example, rights issues, understanding and consent, interaction, and participant domination.

4.5 Preparation for the conference

Prior to the conference itself, the co-ordinator will meet with the young person and victim in order to prepare them for the conference. On first meeting the young person, the co-ordinator will listen to their perspective, establish their readiness to engage and, after confirming that they still consent to participate, will begin preparing them for the conference. Informational material, in the form of leaflets, a DVD and work-sheets should be provided and explained to the young person to ensure they fully understand the process. The co-ordinator will typically meet with the young person several times to prepare them for the conference.

The victim is not contacted about the option of attending a youth conference until after the young person has been visited by the co-ordinator and confirmed that they are willing to participate. This is to avoid any potential re-victimisation by offering the victim the opportunity of a conference before the young person agrees to take part. When the co-ordinator visits the victim for the first time the voluntary nature of the process should be emphasised and the co-ordinator should explain the various means by which they can participate. Again, informational material should be supplied and explained so the victim is fully aware of the nature of process and any potential outcomes.

Young person

On average, young people were first informed about the option of a youth conference 30 days before the conference itself. When asked who first informed them about the option of a conference, the most frequent responses were the court (43%), followed by the Youth Conference Service (26%) and PPS (15%). All young people received pre-conference visit(s) by a co-ordinator before attending a conference. Overall, young people were positive about the co-ordinator's visit(s), with the majority rating it as either 'good' (40%) or very good (37%): "It's the first time I've ever been doing this – I didn't know what to expect [...] the co-ordinator explained everything nice and clearly." Most young people (90%) were also told of potential outcomes of the conference.

An overwhelming majority of young people stated that they were told 'a lot' about what the conference would be like (96%) and what was expected of them during the conference (98%). Although the majority (74%) of young people were told what would happen to their case if they did not attend the conference, just over a quarter did not. The majority (74%) of young people, however, did not have any questions about what would happen at the conference, and of those that did all responded that, when asked, these questions were answered to their satisfaction.

When asked if they were informed of their right to legal advice, the majority (76%) of young people stated that they were, however 21% indicated that they were not and 4% could not remember. Most young people (66%) did not receive legal advice before attending a conference, with only a third (34%) availing of this right. When broken down into referral type, it is apparent that those referred to the Youth Conference Service by the court were much more likely (80%) to have received legal advice than those referred by the diversionary route (21%). The increased propensity for young people referred by the court to have received legal advice has interesting implications. The very nature of the court process means that most young people will already have legal representation. Those referred via the Public Prosecution Service, whilst participating in the same process, may be seen to be at a disadvantage, as in order to get legal advice they must actively seek it out.

Victim

The majority of victims (74%) were first informed about the option of a youth conference by the Youth Conference Service. Some victims were already aware that the conference process was occurring because they knew the young person whilst others, particularly victim representatives, stated that they knew of youth conferencing because they worked 'in the field'⁵⁴. Victims were informed of the option of a conference an average of 31 days before it took place. The majority of victims were first contacted in person (47%), followed by telephone (29%) or by letter (22%). Victims received a follow-up contact in most (93%) cases⁵⁵, and this took place predominantly via telephone (81%). Those victims that received follow-up contact rated it as 'very good' (61%) or 'good' (34%). No victims rated this contact as 'bad'.

⁵⁴ Just under half of victims (47%) interviewed knew the young person before the offence. In the majority of these cases, the victim was a member of staff from the young person's care home (42%). Others knew the young person in their role as a police officer (17%), were a member of the young person's family (15%) or were related to the young person (11%).

⁵⁵ It is important to note that the cases in which no second contact was made (7%) typically involved victim representatives who had previously attended a conference and had therefore already undergone preparation.

Interviews show that victims felt well informed about the conference process before attending. The vast majority believed that they were told either 'a lot' (90%) or 'a bit' (8%) about the conference: "The co-ordinator explained it all so well. Left no stone unturned". Victims were also well informed as to who would attend the conference; 88% were told either 'a lot' or 'a bit' about who would be at the conference. A very small number (4%), however, said that they were not fully informed as to who would be attending. In interview, one victim admitted feeling uncomfortable when the young person brought a supporter whom they did not know was attending; "I didn't know their friend would be there". Obviously, it is important that such information is made clear to the victim prior to the conference in order to avoid any potential re-victimisation or negative experiences⁵⁶.

Almost all victims said they had a full (89%) or partial (8%) understanding of their role in the conference. For example, when asked 'were you told what was expected of you' victims commented: "I was briefed about what part I would play...explained well, so straightforward" and "I was told a lot, asked to explain what happened from my point of view." Only four victims (4%) – all attending in a representative role - stated that they were not told what was expected of them at the conference. In terms of expectations, the majority of victims reported being told either 'a lot' (82%) or 'a bit' (12%) about what the outcome of the conference could be. Of the seven victims (6%) that were not told, two were personal victims and five victim representatives.

Almost half (48%) of all victims indicated that they had questions before coming to the conference; "I wanted to know who the co-ordinator was representing and who was running this. I had heard rumours that it was community restorative justice" but the vast majority (94%) of victims stated that these were answered 'very well' or 'well'; "I had a lot of questions – [answered] very clearly and precisely" and that they were given opportunity by the co-ordinator to consider any questions they might have: "the co-ordinator called at tea-time and asked me to think about questions. Gave me time to think about it." Victims were asked if any other information would have been helpful in preparing them for the conference. Most victims felt that no other information was necessary, however 17% responded 'yes'. When asked what would have been helpful, victims identified information on the young person's background, more information on what the conference would be like, more information on possible outcomes, and a more realistic depiction of the young person's attitude.

Victim Representative: *"Guidance on proportionality for plan suggestions"*

Personal victim: *"What the young person's attitude was to the conference? I didn't feel I received this sufficiently. I felt this was a very important factor. [The co-ordinator] said they couldn't disclose information on the offender's attitude in other conferences – leaves you not knowing whether you're going to get more of the same"*

Although for reasons of confidentiality some of this information (for example on the young person's background) cannot be disclosed, it is important that victims have as full an understanding as possible.

Informational material

Almost all young people (98%) were provided with informational material as part of the preparation process. This included a leaflet explaining the youth conferencing process, a worksheet preparing them for what might happen in a conference scenario and / or a DVD portraying a 'mock' conference. In several conferences observed, the young person brought with them a completed worksheet to refer to at times when they were having difficulty articulating answers.

When asked if they watched or read this informational material, nearly all (92%) responded 'yes'⁵⁷. Young people were asked to rate the preparation material they had been given, and again feedback was mostly positive, with most rating it as 'ok' (42%) or 'good' (31%); "definitely showed what it would be like. It definitely helps to do the leaflets." A minority of young people, however, felt that it was 'bad' or 'very bad' (16%).

"The acting is terrible - but it did show what would happen."

"[The DVD] was just talking about a victim and there was no victim in my case...it was a bit long."

"The booklet was helpful, but the DVD didn't relate to me."

⁵⁶ See Recommendation 8.

⁵⁷ The majority of those that did not state that they had already done so for a previous conference.

Negative responses however generally related to the young person's perception of the characters and acting in the DVD and / or its lack of relevance to their own situation, as opposed to a failure to provide information. To illustrate, young people were asked if any other information would have been helpful, the vast majority (93%) responded 'no'.

Victims received preparation material similar to that of the young person – leaflets, worksheets and a DVD portraying a conference – which was specifically tailored to a victim perspective. Most victims (91%) read or watched this information before attending. Those that did not stated that they were 'too busy' to do so. On the whole, feedback regarding the preparation material was positive: "the leaflets helped me to understand what it was all about. The DVD gave an example of how it worked". One victim representative, however, felt that the materials did not directly relate to them: "I didn't watch the DVD, but I read the leaflets. The leaflets definitely applied to a victim. I don't feel like I'm a victim. It's my place of work. It's completely different to breaking into your home. I read them but put them in the bin." Indeed, many of the questions in the preparation sheet focus upon the personal impact of the offence, which may be less relevant to a representative not personally affected by the offence. Although helpful for personal victims, given that the majority of victim participants are representatives (60%), this perhaps indicates a shortfall of information relating to this specific role⁵⁸.

Willingness to participate

Young people

Consent is a vital prerequisite for the restorative process, and almost half of young people (48%) stated that they were 'keen' to participate in the conference:

"Definitely keen after the co-ordinator came to see me. She guided me and told me how I could make up for it."

"Keen to come because I wanted to show I was sorry and all that."

A significant number (28%), however, indicated that they 'didn't want to' take part. When broken down into referral type the majority of young people (70%) who 'didn't want to' take part were referred by the court. As explored in Chapter 3, this may, in part, be related to the court environment and the potential for the young person to feel under increased pressure to consent to a conference. On the other hand, this may indicate a level of reluctance to participate from the young person, rather than a lack of consent. Although not all young people were keen to attend, when asked if they felt pressure to attend, the majority said it 'was' their decision 'all me' or 'mostly me' (72%). A small number of young people however stated that their decision to attend was 'all' (23 or 14%) or 'mostly' (12 or 7%) due to pressure. When asked where this pressure came from, most young people identified their supporter (14 or 41%), usually a parent, or 'a combination of both their supporter and the court (14 or 41%)' the court (13 or 38%): "The court made me go" and "It was scary ... I was worried about what would happen [...] Mum wants to get it over and done with so I played along with her." Others did not identify a specific individual as the source of pressure, but simply felt they 'had to' attend: "I didn't want to come, but I knew I had to."

Victims

The majority of victims interviewed (79%) indicated that they were 'keen' to participate in the conference, whilst only 2% of victims reported feeling 'neither keen nor unkeen'. In total, eleven victims stated that they initially 'did not want to' attend the conference. When broken down into victim type, seven of these were personal victims and four victim representatives. Regardless of whether or not they were 'keen' to attend most victims (91%) did feel that their decision to attend was their own. Three victims claimed their decision to attend was entirely the result of pressure (two personal victims and one victim representative). One victim representative commented: "I had to be shoved down here by staff ... I was told I had to go by my bosses - to see what its like."

Reasons for attending

Young people

In interview, young people were asked a series of questions in order to establish their reasons for coming to the conference:

⁵⁸ See Recommendation 9.

Table 4.3: Young person: What were your reasons for attending the conference?

	Yes %	Sort of %	No %
Wanted to make up for what I had done	85	8	7
Wanted to hear what the victim had to say	70	11	19
Wanted to help the victim	70	16	14
Wanted people to hear what I had to say	75	12	13
Wanted the victim to forgive me	79	7	14
Thought punishment would be easier than via court	75	9	15

As illustrated in Table 4.3, the most common reason (85%) for attending a conference was to ‘make up for what I had done’. Many young people appreciated the opportunity to interact with the victim, indicating a wish to be forgiven (79%), to help the victim (70%) and hear what the victim had to say (70%):

“I wanted to come and apologise to the victim and show him and his family that I am very sorry for doing it.”
“To see what the victim felt and to say sorry.”
“I wanted to see the victims and let them know how I felt.”

This desire to ‘restore’ however is contrasted by a general perception amongst young people that any ‘punishment’ resulting from the conference would be in some way ‘easier’ than that dispensed by the court. Only a small minority (15%) felt that the conference would result in greater punishment. Indeed, the vast majority (95%) of young people who participated in a diversionary youth conference indicated that one of their reasons for attending was to avoid going to court. Other reasons given by young people for attending a conference included:

“I thought it would help me.”
“I wasn’t keen to do it, but I was keen ‘cos I didn’t want it going on my record. Better option than court [...] for myself and my future, it was something I had to do.”
“I wanted to take responsibility and put it all behind me.”
“I want to change and I think this will help me.”

For many young people, therefore, the conference provided an opportunity to both take responsibility for their actions and look towards the future.

Victims

Victims were also asked a series of questions to determine their reasons for attending, as displayed in Table 4.4 below. Interestingly, for many victims the reason was altruistic; 79% attended ‘to help the young person’; “I wanted to help the young person get straightened out” (personal victim); “I didn’t come for myself but for the young person ... the offence didn’t really affect me in a big way” (personal victim). Of the personal victims interviewed, only half (50%) attended a conference in order to ‘find out why the young person victimised me’. Of the victims who did not know the young person before the offence, the majority (60%) attended to find out more or ‘sort of’ (18%) attended to find out more about them. The most frequent reason given for attending, however, was to both hear what the young person had to say (88%); “I wanted to hear their side of the story”; and to explain the impact of their actions to the young person (87%); “I wanted the young person to see how much it hurt me, and not how much they thought it hurt me.”

Table 4.4: Victim: What were your reasons for attending the conference?

	Yes %	Sort of %	No %
Wanted to hear what the young person had to say	88	4	8
Wanted the young person to know how their actions affected me	86	5	9
Wanted to help the young person	79	9	12
Thought it would help me move on*	56	9	33
Wanted to hear the young person apologise	55	14	31
Wanted to hear why they victimised me*	50	11	39

*This question was only asked of personal victims.

Although many victims attended because they wanted (55%) or ‘sort of’ (14%) wanted to hear the young person apologise, a significant proportion did not (31%). When examined more closely, for participants not directly affected by the offence the need for an apology may be either marginal or irrelevant. This is reflected in the fact that the majority (72%) of those who did not attend to hear the young person apologise were victim representatives.

Additional reasons for attending a conference given by victims included a curiosity about how the process worked; “it was my first experience of the process, I wanted to know what it was like”; to find out more about the young person; “to see what type of person the young person is”; to see the young person’s attitude; “I wanted to know why they felt they had to smash the place up”; to make the young person realise they had done wrong; “young people should see the error of their ways and that they can’t get away with it” and to stop the young person from re-offending; “wanted to see the wee lad and try and convince him not to do it again.” From these comments, it would appear that the desire to ‘punish’ the young person is less important than meeting the young person and receiving some sort of explanation from them.

4.6 Non-participation

Victims

Overall, victim participation in the conferencing process was high, with a victim or victim representative present in over two-thirds of conferences (69%). Although a positive outcome, this finding confirms that not all victims wished to engage in the conferencing process. It is important to gain insight into the views of the 31% of victims who did not attend a conference and to this end, a number of semi-structured telephone interviews were carried out. These interviews explored respondents reasons for non-participation, their thoughts on the conferencing process and their subsequent experiences of the criminal justice system (see Appendix 5). Unfortunately, the process of obtaining these interviews proved problematic and the number of interviews carried out was significantly lower than was anticipated. Consequently, only 11 interviews were completed with non-participating victims. Although a small sample, these interviews nonetheless provide valuable insight into the experience of victims who do not wish to come face to face with the young person.

For some victims, reasons for non-attendance related to practical difficulties, such as transport, illness within their family or problems arising from requiring time off work and loss of earnings. One respondent was dissuaded from attending, stating that “I would have went and seen the young person and reddened his face but I was told not to attend by my manager.” Although representing a minority of cases, of concern was the finding that two victims did not attend a youth conference due to what may only be considered an administrative error – they were not informed of the date or venue of the youth conference.

Preliminary stages of the conference process

A number of victims reported their lack of desire to meet the young person face to face: “I didn’t want to attend; I’ve been through enough already.” Indeed, five respondents explicitly expressed fear at the prospect of a direct meeting with the young person. Five interviewees reinforced both a desire to move on and a reluctance to act in a way they felt may have negative repercussions on them:

“We just didn’t want to highlight ourselves. We live in a small community, the young person is known and the family could come back on us.”

Others felt that the offence committed was not serious enough to warrant their involvement in a conference, “I didn’t think it was worth it, not a big enough offence.” Finally, one person indicated that they were never engaged with the Youth Conferencing Service, stating that “I informed the co-ordinator that I had nothing to do with the charges being brought about. The police informed me that this incident was only one of many and they were prosecuting it.”

When asked “could anything else have been done to persuade you to attend a conference” most non-participating victims (8) responded ‘no’. One, however, conceded that “it’s possible some good will come out of it ... we’ll see.” Victims were asked if they were told of other opportunities (other than attending) to contribute to the conferencing process and only four responded that they were. These were identified as someone attending the conference on their behalf or the writing of a letter or statement describing the impact of the offence. No victims availed of these alternative options due to ‘time constraints’, that they “felt it was better just to drop it” or an unwillingness to participate in any form; “I’d made me mind up. That’s that.”

Where victims choose not to participate in a youth conference, it is important that, where it is requested, they receive feedback and are made aware of the outcome of the conference. Despite this, only four were contacted in some way offering this information⁵⁹. Victims stated that “the Youth Conference Service wrote and told us what happened at the conference” and several described receiving a letter of apology from the young person. The fact remains, however, that seven victims “heard nothing from the Youth Conference Service”. There were mixed reactions to this, with some victims expressing no particular feelings, while others stated that “I would have liked to see what the result was”. Some furthermore felt that their decision not to attend effectively terminated their “role” or usefulness in the process.

Although every effort should be made to accommodate a victim’s presence at the youth conference, some problems are simply unforeseeable or without remedy. Nonetheless, particularly in the case of businesses in the community, it is arguable better education with regard to the positive impact their representative may have on the young person and the conference is required: “I didn’t feel it would benefit me or the company to meet the young person”⁶⁰.

The ideal ‘restorative’ scenario would, of course, be to have a victim or victim representative in attendance at each youth conference that takes place. This, however, is problematic to realise in practice. It is difficult, if not impossible to overcome the reluctance that a small number of victims have in participating in this kind of process and it is important not to subject them to any degree of re-victimisation. On the other hand, it is vital that every effort is made to engage victims in the restorative process as it is all too easy for victims to be marginalised.

Young people

As with non-participating victims, young people who initially consented to a youth conference, but subsequently withdrew their consent were interviewed in order to gain insight into their experience. Again, the practicalities of obtaining these interviews proved difficult given that some young people no longer resided at the given address (some having moved within the care system or juvenile justice system) and the fact that some listed telephone numbers were no longer in use. As such this sample was also small, with only eight young people interviewed, however feedback received from young people nevertheless proved insightful.

Young people were asked why they decided not to take part in a conference. The types of response varied from “no real reason, I just wanted to go to court and get it over with”, or “I don’t want to attend a meeting with a police officer”, to “I have already completed a youth conference and didn’t want to do another”, and “cos I’m not sorry for it”. When asked if fear about meeting the victim or nerves about talking in front of others were decisive factors, the majority of young people said “no”. “I just didn’t want to sit in a room and talk about it” and similar phrases were commonly used. Some mention was made, however, of the tension that may arise if offender and victim were confronted with one another, in particular if they are not known to each other and have had no contact since the offence.

⁵⁹ See Recommendation 10.

⁶⁰ See Recommendation 9.

When asked whose decision it was to refrain from engaging with youth conferencing, all young people stated that it was their own decision. One young person did continue, however, saying that “my solicitor also advised me against it. He didn’t think it would be a good idea”. Young people were asked if anything could have been done to change their minds, and all responded ‘no’. They reported being satisfied with how the work of the YCS had been explained to them and that they had no unanswered questions about it. As for regrets of opting for the straight court disposal route, the young people replied with a resounding “no regrets”. One young person did say that he would like to have done a youth conference, “but not for that offence but I would do it for another”.

4.7 Conclusion

Most cases referred to the Youth Conference Service subsequently resulted in a conference. In line with the philosophy that “any delay in dealing with children is likely to prejudice their welfare” conferences were generally completed within the required timescale⁶¹. A victim was present in over two-thirds of conferences. This may be seen as a positive achievement when compared to victim attendance rates in similar schemes in operation elsewhere⁶².

For the vast majority of victims and young people conference preparation was seen to equip them with sufficient knowledge about the process and realistic expectations as to what could be achieved at a conference. The pre-conference process provided an additional opportunity to both re-affirm the young person’s consent and ensure that it is informed. Victims did not attend conferences through a desire to see ‘punishment’ dispensed, but instead a significant number attended to ‘help the young person’. For victims, a face to face encounter in which they could both explain their point of view and listen to the young person’s perspective was most important. Young people appreciated the opportunity to interact with the victim, indicating a wish to make amends, be forgiven, help the victim and hear what the victim had to say.

Though the sample was small, victim non-participation was primarily a consequence of personal reasons, as opposed to a failure on the part of the Youth Conference Service. It is important, however, that information on the progress of the case is made readily available where non-participating victims have requested it. It is similarly important that, where the victim has made an alternative contribution such as a letter or statement, information is given on how it was received at the conference⁶³.

⁶¹ Section 53(3) Justice (Northern Ireland) Act 2002.

⁶² See Chapter 2 for a comparative analysis of restorative models operating internationally.

⁶³ See Recommendation 10.

Chapter 5

The conference



5.1 Introduction

This chapter focuses on the conference process itself, following it from the opening stages to the signing of the action plan. Key issues examined include engagement and interaction, participant satisfaction levels, reparation, remorse and the agreement and content of conference plans.

5.2 Summary of findings

- ◆ Most victims appeared calm and relaxed at the start of the conference, and did not report feeling nervous. By contrast, 71% of young people displayed some degree of nervousness and avoidance or discomfort.
- ◆ Overall, co-ordinators were observed to introduce participants and the process very well. On some occasions, however, the confidential and voluntary nature of the process was not explained in adequate detail.
- ◆ Young people generally engaged well when discussing the offence, and were given the opportunity to explain it from their perspective (93%). Almost all young people (98%) felt that they were listened to when they did so.
- ◆ The vast majority (97%) of young people accepted responsibility for their actions either 'a lot' (61%) or 'a bit' (36%).
- ◆ Victims were generally very engaged in the conference process. All victims felt that conference gave them the opportunity to explain to the young person how the crime affected them.
- ◆ Both victim and young people's supporters were generally observed to feed positively into the restorative atmosphere of the conference. The vast majority of young people (93%) and all victims said that they found their presence 'helpful'.
- ◆ The majority of conferences considered contributory factors when discussing the crime. The most common were substance misuse, peer pressure and family difficulties.
- ◆ In the majority (87%) of conferences the young person apologised or agreed to apologise. The majority of conferences without an apology involved a victim representative and not a personal victim. Young people were observed to display some level of shame (77%) and remorse (92%) in most conferences.
- ◆ Both young people and victims were involved in devising the conference plan. In total, 89% of young people and 96% of victims were either 'a lot' or 'a bit' engaged when deciding the plan.
- ◆ During the period of the research, 95% of conferences reached agreement on a plan. The majority of young people (74%) and victims (87%) were 'happy to agree' to the plan.
- ◆ Both young people (93%) and victims (79%) believed the plan to be either 'very fair' or 'fair'. Similarly, 71% of young people and 79% of victims were 'very satisfied' or 'satisfied' with the plan.
- ◆ In terms of proportionality, most young people (72%) and victims (69%) believed the plan to be 'neither too hard nor too soft'.

5.3 The structure of conferences

Rule 6 of the Youth Conference Rules (Northern Ireland) 2003 provides that the co-ordinator may “conduct a youth conference in such manner as appears to him to be appropriate”. Most conferences observed followed a semi-structured format, which allowed room for a degree of flexibility and potential innovation. This structure was as follows:

- ◆ Welcome by co-ordinator and group introductions
- ◆ Purpose of conference, confidentiality, voluntary involvement, ground rules, and practicalities explained
- ◆ Police officer invited to summarise facts of offence
- ◆ Young person provided with the opportunity to respond to this and explain the offence from their perspective
- ◆ Victim given the opportunity to respond to the young person’s account and explain the impact of the offence
- ◆ Opportunity for young person to apologise
- ◆ Other participants offered chance to explain their perspective on the offence
- ◆ Co-ordinator summarises offence and impact of the offence to the group
- ◆ Discussion of possible outcomes for action plan amongst participants
- ◆ Negotiation of action plan
- ◆ Agreement of action plan
- ◆ Closing remarks
- ◆ Signing of the action plan

On the whole, this structure proved logical and worked well in practice. Although following a basic progression, with the exception of the reading out of the facts of the case by the police officer conferences were unscripted and, as such, no two observed conferences were the same.

5.4 Opening stages of the conference

In almost all conferences (82%), the victim and their supporter(s) were observed to enter the room in which the conference was held before the young person and their supporter(s). This appeared to be a conscious decision on the part of the co-ordinator, with obvious power / territorial implications given that the victim’s presence was firmly established in the room prior to the young person entering. On arrival, participants generally waited in separate rooms and did not meet face to face before entering the conference room. In some cases, the young person and victim both arrived and entered the conference room together, however this was generally where participants had a pre-existing relationship, such as staff from the young person’s care home or a family member.

The victim

Reaction to the young person

Most victims (51%) were observed to greet the young person on first seeing them at the conference. This was followed by no reaction / no observable reaction (30%) or avoidance (9%). The majority of victims (77%) appeared relaxed at the beginning of the conference. This finding, however, must be viewed in light of the fact that 60% of participating victims were victim representatives, many who had little or no personal involvement in the offence itself. To illustrate, of those described as ‘calm/controlled’ 28% were personal victims and 72% were victim representatives. Only ten victims appeared ‘very nervous’ at the start of the conference, 8 of whom were personal victims. On seeing the young person, one victim said that they felt “awful, that is why I rushed out to the toilet. I panicked. Felt like saying I couldn't face her.” Although representing a minority of victims, it is important to recognise that for some victims coming face to face with the young person is a difficult process.

Regardless of victim type, the overwhelming majority (93%) of both personal and representative victims displayed no signs of anger at the start of the conference. In some cases, this may be related to passage of time, one victim explained that as the conference began they felt “ok. It was nine months ago since it happened – the anger wears off you.” Only one victim – a personal victim – appeared to be ‘very angry’ at the start of the conference.

Nervousness

Most victims were not nervous about coming to the conference; almost three quarters (74%) reported feeling 'not at all' nervous. The majority of victims also indicated that they were not nervous at the prospect of meeting the young person (84%), or speaking at the conference (79%). Findings indicate that personal victims were slightly more likely to be 'very nervous' about attending the conference; of the fifteen victims (12%) who reported feeling this way, eleven were personal victims. In the interviews it was found that where the victim was nervous, it was often at the prospect of coming face to face with the young person and/or their supporter(s). One personal victim stated that they were "nervous cos I hadn't faced her since it happened", whilst another was "nervous about the parent's reaction and what would happen". For one young victim, communicating in a group and "trying to get my point across to be understood properly" led to pre-conference anxiety. Interviews with victims found that the decision to attend a conference may be an entirely different experience for personal victims and victim representatives: "If it was my house I would have been nervous. I would have had to think twice about the wisdom of coming." Nevertheless, there are common uncertainties felt by both personal victims and victim representatives:

Victim representative: "I was in two minds as to whether to come" "I was worried about his parents being here - scared about how they would react" "the co-ordinator told me that the young person's father was very relaxed - that's partly why I came in the end" The victim refers to staff from their place of work, "I had to be shoved down here by staff"

The young person

Reaction to the victim

At the beginning of the conference, the reaction of the young person was generally very different to that of victims. Although many young people (34%) either greeted the victim or responded to their greeting, the predominant reaction was one of avoidance (35%) or no reaction/no observable reaction (17%). Reactions of avoidance and nervousness suggest that many young people found the start of the conference an uncomfortable experience. Young people tended to respond to this apparent discomfort in two ways, by either 'closing up'; "I'm here because I was sent here" or 'opening up'; "I'm here to apologise and say why I have done these things."

Similar to victims, most young people (86%) did not display anger or aggression at the start of the conference. In seventeen cases, however, the young person was observed to display 'a bit' of anger whilst in nine conferences 'a lot' of anger / aggression was displayed.

Nervousness

Most young people (71%) displayed some degree of nervousness at the beginning of the conference, with just over a quarter (28.6%) of young people appearing 'not at all' nervous. Observations reflect what young people reported in interview; 37% said they were 'very nervous' and 21% said they were 'a bit nervous'; "on a scale of 1 to 10 I was a 14." The remaining 41% of young people stated that they did not feel nervous about the conference. However, on many occasions nervousness was visibly apparent throughout the conference and was often an impediment to interaction. One young person's supporter commented on their uncharacteristic withdrawal: "I've been watching [young person]. What is wrong with him today?" One young person described experiencing nervousness initially, but as the conference progressed they felt more at ease; "I was nervous when I first heard, but really not nervous today ... I was nervous for the first five minutes, but then it was easy to talk."

After the conference the young people interviewed were asked about nervousness in relation to specific aspects of the conference. Many young people (59%) stated they were either 'very' or 'a bit' nervous about speaking at the conference; "I didn't want to speak. Every time I spoke I had a red face"; whilst half (50%) were 'very' or 'a bit' nervous about meeting the victim; "I was shocked when I saw him - he's massive!" The finding that half (50%) of all young people were 'not at all' nervous about meeting the victim, should be read in light of the fact that over a third (38%) of young people knew the victim before the offence⁶⁴, and that many of the attending victims were representatives. Indeed, the existence of a previous relationship with the victim could potentially make such an encounter less intimidating: "I wasn't nervous 'cos I knew everyone there", "I wasn't nervous - I see the victim every day".

⁶⁴ Young people reported knowing the victim in the following ways; worker in the young person's care home (22%), relative / guardian (17%), police officer in local area (17%), pupil at the same school (15%).

The Co-ordinator

A crucial time in the facilitation of the conference is the opening stages, in which the co-ordinator establishes the purpose of the conference, ground-rules and practicalities and ensures that participants understand the process. In observations, co-ordinators were generally observed to perform well in explaining these matters. In the vast majority of conferences, participants were observed to be introduced very well and encouraged to introduce themselves to the group by the co-ordinator. The role of each participant in the conference was explained well in all but ten conferences. The case study below demonstrates a well-facilitated opening:

Case study A: Start of the conference

Robert has been charged with supplying a class C drug, and has been referred to a diversionary youth conference. His parents, Linda and John, have attended to support him. Katherine, the manager of the premises where the offence took place, is attending in the role of a victim representative.

The co-ordinator begins introducing themselves and thanking all participants for coming. They direct the group's attention to a flipchart on which the progressive stages of the conference are displayed. Using this as a guideline, they explain how the conference will progress and each participant's role in the conference. The co-ordinator then asks each member of the group to introduce themselves in turn. Robert's mother, Linda, begins: "I'm Linda, and I'm here to hopefully get as much help as we can and make it clear to Robert that his actions were totally unacceptable", Robert: "I'm Robert and I'm here because of the trouble I did and to apologise", John: "I'm here to give every bit of help that I can to my son". The police officer introduces themselves and explains their role. Finally Katherine, the victim representative explains she is "here representing the [organisation]. I know Robert well. I'm glad to be here to see him and help in any way I can."

Following the introductions, the co-ordinator explains the practicalities of the conference, including fire exits and the location of toilets. They inform the group that breaks can be called for a chat or 'time-out' if participants feel it is necessary. The co-ordinator continues by describing the process as voluntary and acknowledges that Robert "has made an effort to be here, and that is commendable." The confidentiality of the conference and exceptions to this are explained well, and the ground rules, which are also displayed on a flipchart are described in detail. The co-ordinator checks if anyone has any questions or concerns, and as there are none, they then invite the police officer to read the statement of facts.

When asked how well they felt the co-ordinator explained what would happen at the start of the conference most young people answered 'very well' or 'well' (79%). Victims were similarly positive; 95% felt that this was done 'very well' or 'well'; "brilliant – they went through it in fine detail and explained everything." A small number of young people indicated that there were certain aspects at the start of the conference that they did not understand. These often related to language and concepts used; "the co-ordinator used complicated words"; "the idea of the general public as a victim". Similarly, a minority of victims (5%) indicated that there were aspects that they did not understand, namely; 'my role in deciding the plan', 'words the co-ordinator used', 'the role of the mentor' and 'the role of the solicitor'. The co-ordinator generally performed well in checking that participants understood what would happen; this was done 'well' or 'ok' in 87% of conferences. Participants had questions in only sixteen conferences and in all but one conference these were answered 'very well' (8), 'well' (4) or 'ok' (3).

In most conferences, the ground rules of the conference were displayed on a whiteboard or flipchart. This acted as a visible reminder, and where necessary, the co-ordinator would refocus participant's attention to the rules. Prior to discussing the offence, the co-ordinator would often ask the group if they agreed to adhere to the rules. In conjunction with the ground rules on display, this proved to be a useful way of establishing a 'contract' of behaviour. Several co-ordinators also used a flipchart or whiteboard outlining the progressive stages of the conference. Whilst this was often valuable, particularly where the young person had difficulties in maintaining attention, it may be seen to detract from the spontaneity of conferences by making them overly prescribed⁶⁵. For example, in one conference 'opportunity to apologise' was listed as a stage of the conference.

⁶⁵ See Recommendation 11.

Two further issues of note are that of confidentiality and voluntariness. In the majority of conferences the co-ordinator explained that the process was voluntary, however this was not well explained in over a quarter (29%) of conferences⁶⁶. The re-iteration of voluntariness at the beginning of the conference is important given that the UN Guidelines stipulate that the process “should be used only with the free and voluntary consent of the parties” (United Nations, 2000). In terms of confidentiality, this was done ‘well’ or ‘ok’ in 93% of conferences. In 13 conferences, however, the confidentiality of the process, and the exceptions to this⁶⁷, was not made sufficiently clear. A lack of appreciation that the process is confidential could be seen as an obstacle to participant interaction⁶⁸.

5.5 Discussing the crime

Statement of facts

Following the opening stages in which the co-ordinator will introduce participants, explain the process and establish the conference’s ground-rules focus is then directed towards the offence and its impact. In the vast majority of conferences observed, the co-ordinator began this stage of the conference by asking the police officer to read out a pre-prepared statement of facts. This is put forward as ‘neutral’ perspective after which the young person and victim can explain what happened from their perspective. Once read, the young person is provided with the opportunity to comment on the accuracy of the police officer’s account. In the majority of conferences (84%), this account was unquestioned, however, in 29 conferences young person or supporter(s) did dispute some of the facts as read out.

Case study B: Disputed facts

Henry has been referred to a diversionary conference for the offence of disorderly behaviour. He is attending with his mother, Henrietta. Following the opening stages of the conference, the co-ordinator invites the police officer to read out the facts of the case and Henry then proceeds to tell his story. Following some questions by the co-ordinator, the police officer reads from the statement again: “The young person was shouting “I’m going to f**kin’ kill you!” Henry: “I didn’t say that now ... I might have shouted something else but I wouldn’t shout that.” Co-ordinator: “You agree you were acting in a frightening and aggressive manner, but you don’t agree with what the police officer says you said?” Henry: “No.” Co-ordinator: “Why?” Henry: “Cos I wouldn’t have said that.”

Focus then turned away from this disputed fact to the general impact of the offence. This issue was not resolved in the conference, however it was implied that the police officer’s account was correct as Henry was intoxicated at the time of the offence. Co-ordinator “you drank eight cans in 1.5 hours”, Henry: “Yep, it went straight to my head.”

It should be stated that the conference can offer an environment for participants to discuss and debate the facts surrounding the offence. However, on a few occasions, denial or disputation of facts was more substantial and, as illustrated in the case study below, led to the conference being terminated:

Case study C: Disputed facts (conference terminated)

Ainsley has been referred to a diversionary youth conference for the offence of assault. Ainsley’s mother, Beth, is attending as his appropriate adult. Also supporting Ainsley are Callum, his mentor, and David, his social worker. No victim is in attendance.

Following the co-ordinator’s introductions and explanation of the ground rules the police officer is invited to read out the statement of facts. The police officer describes how Ainsley kicked the victim in the leg three times and spat in their face. The co-ordinator asks Ainsley how he felt at the time; “I know it was nearly a year ago.” Ainsley has his hands on his head and is leaning back in his chair: “I was angry that she took my cigarettes off me. I didn’t spit in her face. I only hit her in the leg once.” Co-ordinator: “What do you think now?” Ainsley: “Don’t know”. There is a silence.

David, Ainsley’s supporter, questions Ainsley on what he is admitting to: “You should be open about it – either you are not telling all or she is lying. She has no reason to lie.” The co-ordinator checks that

⁶⁶ See Recommendation 12.

⁶⁷ Namely, issues relating to child protection and other offences.

⁶⁸ See Recommendation 12.

Ainsley is only admitting to kicking the victim once. The police officer then reads out the victim's statement and medical report. David speaks gently to Ainsley: "Two areas of bruising indicate more than one blow. You need to take responsibility. You have nothing to lose by being honest - that was in the past. You've changed. Be straight about it." Ainsley becomes agitated: "I am being straight about this!" The co-ordinator reminds Ainsley that they have signed a form admitting to the offence. Ainsley: "I never. I only signed a document that I kicked her once. I remember that." The co-ordinator asks Ainsley how the victim received the other bruises, Ainsley responds aggressively: "I don't know! I kicked her once. That's it." The police officer asks Ainsley if it is possible that he doesn't remember because he was angry, Ainsley: "No. I remember. I hit her once." The co-ordinator reminds Ainsley that they are required to write a report to the PPS that he has not fully admitted guilt. David "We need to deal with this." Ainsley: "They don't f**kin' believe me! What is the point in coming here?"

The co-ordinator reminds Ainsley about his language and warns that the conference will have to be stopped. Ainsley indicates that he wishes the conference to be stopped and a break is called. Ainsley then withdraws his consent and the conference process is terminated.

Although such a scenario is representative of a small minority of cases, it may be beneficial if the young person is presented with the facts as they have been recorded for the offence. While in legal terms it is not necessary for the young person to share participant's views on the surrounding facts, it might be useful to explain to the young person and other participants that there is a difference between debating the facts and disputing the actual offence⁶⁹. Therefore, in terms of the former, the restorative philosophy of the conference might facilitate disagreement and dialogue around the facts of the offence. However, in the latter scenario, that is, in agreeing to the actual crime, the young person must consent to the legal elements that make up the offence. Indeed, meetings between young person and co-ordinator in the pre-conference preparation process may be seen to act as an important safeguard in this respect and can help to re-establish that the necessary admission of guilt is in place.

The young person

Engagement

Observations found that young people generally engaged well in the conference process, with the vast majority being either 'very' (47%) or 'a bit' (51%) talkative when discussing the offence. In only five conferences was the young person observed to be 'not at all' talkative. Whilst some spoke freely about the offence without any need for prompting, others successfully engaged by responding to a series of questions asked by the co-ordinator. As an aid, several young people brought a worksheet they had completed in preparation for the conference, and one young person attended with their own notebook containing handwritten notes.

In the majority of conferences (56%) the young person was focused, and did not appear agitated or restless. However, in about a quarter of conferences (29%) the young person was 'a bit' restless / agitated and 'a lot' in a further 16%. Such restlessness was evident by the young person fidgeting, sighing, slouching, looking around the room and moving about in their seat⁷⁰. Given that the young person was present in a room with adults, this seems understandable and indeed normal. Whilst a number of young people were restless throughout the entirety of the conference, in several conferences, as will be discussed later in this Chapter, this restlessness was particularly visible when the plan was being devised.

As established earlier, many young people (75%) attended a conference because 'they wanted people to hear what I had to say'. Observations found that in the majority of conferences the young person successfully explained the offence from their perspective either 'a lot' (49%) or 'a bit' (44%).

Young person: "Every time I am in that area the police always stop me, search me, be cheeky with me and I thought you were them so I was cheeky to you. I thought you were someone else."

Co-ordinator: "How did you feel when you were arrested?" Young person: "I was scared 'cos I didn't know what would happen to me and 'cos I damaged him so much. I didn't mean to injure him that much. I was scared I'd get sent to jail. He couldn't stand up, he was just lying there. He couldn't move at all."

⁶⁹ See Recommendation 13.

⁷⁰ See Recommendation 5.

In 12 conferences (7%), however, the young person did not explain his or her perspective on the offence. This was typically due to non-engagement or withdrawal by the young person as opposed to domination by another participant. Where the young person was having difficulty articulating responses, the co-ordinator would often assist them by asking a series of questions. Whilst often very effective, some young people failed to respond to this approach, providing 'yes', 'no' or 'don't know' answers. On occasion, repeated questioning by the co-ordinator led to frustration and / or agitation on the part of the young person; "It was a long time, nearly a year ago. I've already told you. I don't know why I did it. Why do you just ask and ask and ask?" That some young people were under the influence of alcohol or drugs at the time of the offence also caused difficulties in recollection: "I can only remember when I was being chased. I can't remember being in the shop. I was drinking and on glue."

On the whole, there was a general perception amongst young people that their views were listened to at the conference. When asked if they felt people listened to what they had to say the vast majority of young people said yes (93%) or 'sort of' (5%). Most young people also appeared to listen to the victim when they explained their perspective of the offence. This was apparent through eye contact, nodding, sitting forward or by verbal assent; "uh-huh, uh-huh"; as the victim explained the impact. For a small number of conferences (10 or 6%) the young person appeared not to listen to the victim. Of these, eight involved victim representatives and only two involved personal victims.

For many victims, the extent to which the young person made eye contact was important, particularly with regard to perceptions of sincerity; "he was saying the right things but they just felt like words. He made bad eye contact"; and "he looked me in the eye when apologising." Half of all young people (50%) were observed to engage directly and did not avoid eye contact with any of the participants; however, in 29.4% of conferences the young person avoided eye contact 'a lot' and 'a bit' in 24.3%. Such lack of direct eye contact is perhaps unsurprising and may be related to nervousness and discomfort experienced by young people.

Most young people did not appear visibly upset in the conference (90%). In thirteen conferences the young person was observed to be 'a bit' upset, and in six they were 'very upset'. In none of the conferences observed did the young person become 'very upset' as a direct result of victim input. Instead, all but one of the young people became 'very upset' upon hearing the impact on their supporter(s), particularly their parents; "I'm sorry for what I did and had to bring you's into it"

Acceptance of responsibility

In terms of accepting responsibility for their actions, observations found that nearly all young people accepted responsibility (97%) either 'a lot' (61%) or 'a bit' (36%); "we all take responsibility. None of us can say we didn't do it because we did. We've changed now". In only five conferences did the young person fail to accept responsibility, two of which had a victim in attendance. Those that accepted partial responsibility were sometimes observed to attempt to mitigate their own role in the offence or 'justify' their actions. This was particularly apparent when the offence was against the police; "I don't like the police so I didn't see any reason to give my right name to them." Although most young people did not attempt to explicitly 'shift the blame', 21.7% did to some extent: "I wouldn't have done things if I hadn't been grabbed in the first place." In interview, victims were asked if they felt that the young person had taken responsibility for their actions. The majority of victims felt that the young person had accepted responsibility for their actions at the conference either 'a lot' (67%) or partially (19%). Only seventeen victims (14%) did not believe that the young person accepted responsibility.

The victim

Engagement

Following the young person's account of the offence, the victim was then invited by the co-ordinator to respond by describing the offence from their perspective. Overall, victims were observed to be very engaged at this stage of the conference; 83% were 'very' talkative and 15% 'a bit' talkative. The forum of the conference was observed to successfully provide victims with the opportunity to explain the impact of the offence on them or those who they represented:

Personal victim: *"I know you were messing around, but you hurt me. I felt sick. I went to the office and told them, but I said I didn't want anything done. I was sick and light headed. I go around [the area] all the time and I'd be worried in case you go near me. I don't want you to go near me. You can say hello, but nothing else. Don't hurt me again. I don't want you punished."*

Personal victim: *"After it happened I wouldn't go to school cos I was terrified of you. When I saw you going into school I ran away. I was terrified. I was shaking. You hurt me."*

Personal victim: *"I was working in a club to get extra money. It was my first car. Took me three years to save up for it [describes damage to car] off the road for 5-6 days. It took me two buses to get to work. Frustrating. Not the worst thing that could happen, but I was pissed off. I'm glad you are here, that you are owning up and facing me face to face. You are due respect for that. It is difficult to put into words how pissed off I was that night and when I got the bill a few weeks later."*

Victim representative: *"You could have set yourself on fire....you could have caused millions in damages, people could have lost their jobs...Firemen could have been needed elsewhere. You were putting other people's lives in danger."*

In interview, victims were asked 'if there was anything you wanted to say that you didn't get a chance to'. Most victims (92%) indicated that they had said everything that wanted to in the conference. Some victims, however noted that there were some specific questions that they would have liked to asked, for example, 'why pick on me' and more general questions relating to, for example, the young person's background or drug use.

Personal Victim: *"I wanted to ask her more questions – like to know, 'why did you threaten to put me in hospital?'. I asked her why would you want to put someone else through the pain you've been through but she didn't answer."*

Other responses to this question included a wish to tell the young person 'they have got the easy option' and to 'wise up and take responsibility'. When asked why they did not ask these questions in the conference one young victim stated that: "There were a couple of questions I didn't want to say out in case I was being rude ... just in case it offended the supporters." This statement suggests that there may be some form of perceived boundary at a conference that participants feel uncomfortable crossing. One victim articulated this, explaining that when discussing the impact of the offence: "I don't think I would have been allowed to go much further ... I got the feeling you weren't to say too much against the young person." The difficulty they encountered in explaining the true impact of the offence to the young person was revealed by one victim, who felt that doing so would leave them vulnerable:

Personal Victim: *"I didn't want to be asked to tell the young person how their actions affected me...I was shaking and in tears at the time – reduced to a quivering lump. It wouldn't have touched them; it would have given them a laugh ...I felt very guarded about what I was saying...I was apprehensive about their attitude ...I wasn't prepared to tell the young person how it affected me because it was a professional incident. I told the co-ordinator this and they respected it"*

The majority of victims (67%) did not appear to be relieved or unburdened at the conference itself, with no significant difference between victims and victim representatives⁷¹. Only 30% appeared 'a bit' unburdened and four victims – two representatives and two personal victims – appeared 'a lot' unburdened; "it's really great me being able to say this to you personally. It gets a lot of frustration off my mind." Similarly, a relatively small number of victims

⁷¹ This was measured by observing the victims' demeanour throughout the conference. For example, if they appeared agitated at the beginning of the conference but expressed or displayed relief as the conference progressed.

appeared to be 'empowered' by the process; 22% were 'a bit' empowered, and 2% (two victims) appeared to be empowered 'a lot'. Just under three-quarters (74%) of victims displayed no sign of empowerment. When discussing the offence, the majority of victims (81%) did not appear angry or 'wound up'. However, 27 victims (19%) did display some degree of anger, twelve of whom were personal victims.

Reaction to the young person

All victims felt they were given the opportunity to tell the young person how the crime impacted upon them or those who they represented either 'a lot' (97%) or 'a bit' (3%). No victims indicated that they were not given the opportunity to explain the impact of the offence. In this respect, the conference process was very successful in meeting victim's expectations given that the majority (86%) cited this as a reason for attending. Victims were asked if they felt the young person listened to them when they did so, and just under three quarters (74%) believed that they did, or did to some extent (16%). Only ten victims (8%) - six representatives and four personal victims - felt that the young person did not listen to them.

Most victims (71%) displayed some degree of frustration or anger towards the young person at the conference. Observations found that 28 victims (19%) appeared 'a bit' frustrated and 15 victims (10%) were very frustrated. In some cases, this frustration was due to the particulars of the offence and how it was dealt with. For example, in cases where there was one victim but a number of co-defendants, some victims attended the conference of each of the young people involved. In several conferences, a lack of consistency between the young people's accounts led to the victim becoming frustrated. To illustrate, in one conference, the victim stated on several occasions that he was unsure if the young person was being honest as none of the other young people were admitting to causing the damage. In another, the victim told the young person: "I was party to the other conference and they said the opposite, so someone is telling lies." Whether or not it is appropriate to deal with these cases separately is a practice issue and something that might be best to determine on a case-by-case basis. On the one hand, separate conferences may support a more focused discussion about the offence and the contributing forces as identified by the individual young person. On the other hand, it may be difficult for the victim and other participants to resolve or make sense of different accounts of the offence where each young person attends a separate conference.

The vast majority of victims accepted the young person's version of the offence either 'a lot' (69%) or 'a bit' (25%). In total, nine victims (6%) did not accept the young person's version of the crime. Although most victims (89%) were not emotionally moved by the young person's account, many victims (74%) expressed a degree of empathy towards the young person, as is illustrated in the following case study:

Case study D: The sympathetic victim

Peter has been charged with shoplifting and common assault and was referred to a youth conference by the Public Prosecution Service. He has come to the conference with his mother, Rhonda, his mentor, Simon and his key worker, Terry. Gary, the victim of assault, has decided to attend without a supporter.

Following discussion of the offence, the co-ordinator begins exploring contributory factors and mentions the fact that Peter should have been in school at the time of the offence. Gary asks Peter if he is going to do it again. Peter: "No, I have been changing my ways and everything", Gary: "You remind me a lot of me when I was younger. We come from a similar background, but I made a decision to change. You've come to that point in your life now." Gary speaks directly to Peter and appeals for him to change his ways. The co-ordinator asks Rhonda, Peter's mother, how the offence affected her. Rhonda: "I was just angry, guilty ... I didn't think he'd do this. He wasn't brought up to do these things." Peter: "Don't feel guilty, Rhonda. It's not your fault. You haven't failed." Peter begins to cry. The co-ordinator offers a break and Peter, Rhonda and the co-ordinator leave the room. Gary is sympathetic, "that poor lad was dumped on by his mates." Simon, Peter's mentor, tells Gary that "he has done a hell of a lot of work to change."

Impact of the offence

The offence affected the victim 'quite a lot' in a third (33%) of cases, followed by 30% of victims whom the crime affected 'a little'. According to the remaining eighteen victims (11%), according to their account, the offence had no effect⁷². Of these eighteen cases, when the nature of the offence is examined only 4 were 'personal' offences. The remainder were 'victimless' offences (eight) and offences against a business or organisation (six). A significant proportion of victims (24%) indicated that the crime had affected them a lot, and in four cases it 'totally changed their life'. Specific effects referred to by victims include:

Table 5.1: Effects referred to by victims at a conference

	Percentage
Financial effects	45
Fear	31
Feeling unsafe	25
Anger	23
Anxiety	14

Other effects referred to by victims included the impact on their colleagues (31 victims), physical injury (21), loss of trust (15), sleeplessness (4), need for counselling (3), depression (1) and stress (1).

5.6 Conferences without victims

As previously explained, when visiting the victim for the first time a co-ordinator should describe the various alternative methods by which they can participate if they do not wish to attend in person. A total of 31% of conferences did not have a victim present, and as illustrated in Table 5.2 below, most conferences that proceeded without a victim did have some alternative form of victim input. As such, although some victims may not wish to be directly involved in the conference, unlike the court process it still may be seen to offer them a forum in which they can present their views.

Table 5.2: Alternative forms of victim participation

Form of Participation	Percentage
Co-ordinator summarising previous meetings/ discussions with the victim	34.5
Co-ordinator speaking of the likely impact on the victim	23.6
A letter or written statement	18.2
Police officer summarising the victim's statement	1.8
A tape recording	5.5
Other	16.4

Despite the fact that direct interaction with a victim appeared to have a greater impact on the young person than any alternative form of participation, indirect contributions to the conference sometimes proved successful. The following case study presents an example of when the victim's perspective was successfully integrated into a conference:

⁷² Notably, 60% of victims were representatives who may not have been personally impacted by the offence.

Case study E: No victim present

Peter has been referred to youth conference by the court for the offence of common assault. He is attending the conference with his mother and father, Rose and Steven. The victim is unable to attend, but is happy that the conference proceeds without him and has prepared some questions for the co-ordinator to ask Peter. Peter has engaged well in the conference, has shown remorse and has given a full account of what happened from his point of view.

The co-ordinator explains the victim's physical hurt, time off work, loss of pay and having to stay in the police station until 4am. They also speak of the emotional effect and explain how it felt to see their friend also getting assaulted. The co-ordinator reads out one of the victim's questions: "what gives you the right to attack someone you don't know?" Peter: "There is no right ... we were just being a**holes." In their statement the victim explains that the mobile phone that was stolen that night was a present from his girlfriend. Peter nods. The co-ordinator asks Peter if he understands. Peter: "Yes, that he is shocked. It's not right." The co-ordinator goes on to explain that the victim still has the incident in mind when he is in the area and that he hopes it will not happen again, but would like reassurance. The co-ordinator again asks Peter if he understands: "Yeah, he has been hurt ... losing money. I regret it like. I'm feeling sorry to them for that there happening." Peter appears to be impacted by the victim's statement.

After the conference, in interview, Peter shows further remorse "I regret ever even doing that - it's my stupidity". He explains that he would have liked to have met the victim: "I wish the victim had have been down - to try and express to him my regret."

When we examine alternative forms of input more closely, however, it is apparent that where there was no victim attending their direct input (for example, a letter or tape recording) was only present in a minority (36%) of cases. In most conferences the victim's views were either summarised by the co-ordinator or the likely impact on the victim was conjectured. Notably, where no victim was present direct input was often seen to have a greater impact upon the young person than discussions of the likely impact on the victim.

Interestingly, the lack of a victim was on some occasions observed to have an impact on the process and the mere fact that a victim did not attend was seen to affect the young person. This is particularly true where non-participation was a consequence of fear. In a written account read by the co-ordinator, a relative of the victim explained that the victim was "scared to meet the young person ... scared they would come back." In another conference, the co-ordinator explained to the young person: "we would usually talk to the victim now, but I have had a telephone call from the victim's mother and she says he didn't want to get involved in the conference. I did ask for a written statement, but it didn't come." This appeared to impact on the young person who responded "it makes me feel bad" and explained that they had attended in the hope of apologising to the victim face to face.

Conferences with no identifiable victim(s) - such as drug related or driving offences- posed a challenge in the restorative context where victim / offender interaction is argued to be integral. The lack of a 'victim' proved problematic at some points, particularly in a process in which the structure, language and outcome is very victim / offender orientated. To illustrate, in one conference involving the offence of disorderly behaviour the young person had difficulty grasping the somewhat abstract concept of the 'general public as victim': "what is the general public? I don't understand what that means."

Young person supporter(s)

Engagement

As mentioned previously, the legislation requires that each young person referred to a youth conference must attend with an appropriate adult or 'supporter'⁷³. The level of input and engagement amongst supporters varied between conferences, with some actively engaging and others assuming a more passive role. Observations show that most supporters were engaged to some extent when discussing the crime; 22% were involved 'a lot' and 55% 'a little'. In 43 conferences the young person's supporter was not involved at this stage.

⁷³ Section 57, 3A (4) Justice (Northern Ireland) Act 2002.

When discussing the offence, most supporters spoke up on behalf of the young person either 'a lot' (26%) or 'a bit' (45%). Many, by invitation of the co-ordinator, described positive aspects of the young person's life; "he is very talented academically"; "he has a very nice side to him that people don't see"; and "he has improved at least 90% from when this happened. He has left school now and got a job". Where the young person was quiet or having difficulty articulating their response, several supporters were seen to actively step in; "he finds it difficult to put it into words - finds surroundings daunting. He has told us how sorry he is and he wishes he could turn back time." In interview, one young person appreciated the presence of a supporter for this reason; "when you are on the spot and you don't know how to say the right thing they can help." Whilst most young people's supporter(s) positively engaged and supported the young person in the course of the conference, this was not, however, universal. In 30% of conferences the supporter did not speak up at all on behalf of the young person, and in nine conferences there was visible tension between the young person and their supporter.

Observations found that most supporters (84%) fed positively into the restorative atmosphere of the conference and did not in any way mitigate or excuse the young person's behaviour. Some degree of justification was apparent in twenty-five conferences (14%) and 'a lot' in only four conferences. Most supporter(s) were seen to express 'a lot' (59%) or 'a bit' (35%) of disapproval that the offence had taken place. In one conference, a supporter disputed the fact that the young person had been referred to a conference and was defensive of them throughout. Whilst admittedly acting in support of the young person (who had consented and was willing to participate in the conference) their negative attitude created a hostile environment and ultimately resulted in a bad experience for the victim. In a further conference, the supporter made it known to the conference that they felt that the offence was extremely trivial and that the police were responsible for creating it.

Impact of the offence

Following the young person's and victim's account of the offence and its impact, the co-ordinator was observed to invite the young person's supporter to provide their perspective on the offence. In most conferences observed, the young person's supporters described the impact on them a lot (21%) or to some extent (42%). A total of 37% did not discuss the impact on them. It should be noted, however, that not all those attending as supporters – for example social workers or mentors – will have been personally affected by the offence and such discussion may therefore be irrelevant. Observations found that the young person's supporter, particularly where they were a family member, often assumed a 'dual' role in a conference. On the one hand, they provided support to the young person however many were also negatively impacted by the young person's offending behaviour and therefore were, in a sense, 'victims'. This was particularly apparent when the co-ordinator asked the supporter to describe the impact upon them. For many supporters, this was a difficult and upsetting process and many spoke of feelings of regret, disappointment and shame which no doubt added to the impact of the conference on the young person;

"I felt angry with him and ashamed. I felt guilty ... That I failed him as a mother in some way."

"Its [young person] who has done it, but you feel like you have done it...you brought him up...shocked, disgusted with him, ashamed"

"I'm annoyed and ashamed. I had a good relationship with [the victim] and now I suffer from stress related pain...I didn't bring him up to be like this."

"I'm really gutted. I mean, I cried like a baby when I heard what happened. I could never have believed it" and "I felt totally ashamed, everyone would have seen the police coming to the door, sticking a label on him".

Often, depictions of the impact of the offence were contrasted with words of support for the young person, "I was completely shocked and disappointed, however I have to accept that this was his first thing" and "I was disappointed and sad ... I'm not going to defend him – he was in the wrong – but he is not a bad child." Many supporters therefore, whilst making the young person aware of the negative consequences of their actions, still assumed a supportive role. Occasionally, however, some supporters displayed signs of frustration or exasperation towards the young person and their offending behaviour:

"It's no big shock he is in trouble, before and since. I can see him ending in the Young Offender's Centre. He has done things to me, and I'm his mum. He says sorry and then does it again... he has been caught on CCTV, but would still argue that it wasn't him ... Straight to YOC for [young person] - a short sharp shock is what he needs."

Such reactions were nevertheless uncharacteristic, and generally the young person's supporter contributed positively to the conference.

Relationship with young person

An additional issue of note is that of the relationship between the young person and their supporter, specifically with regards to young people in a care environment. In a small number of conferences, there was little or no pre-existing relationship between the young person and their supporter; "she doesn't know me very well". In such cases, the supporter appeared merely to be fulfilling a legislative requirement rather than acting in a meaningful supportive role. The issue of potential role confusion is also of importance as in some conferences, the role of the young person's supporter was not clearly delineated. The blurring of roles is not necessarily a negative aspect of conference processes however, in intra-familial or care contexts this is an issue with which the process must deal. In one conference the young person's supporter – who knew both young person and victim – acted more in the role of a victim supporter. In another, where the young person had two conferences, the young person's mother was the victim in the first conference and their supporter in the subsequent one. This blurring of roles was most apparent in cases involving a young person in care; one victim commented "I can't be a victim and a social worker at the same time ... the victim has to enforce the young person's plan".

Overall, most young people interviewed were positive when asked about their supporter; the vast majority viewed their presence as either 'helpful' (23%) or 'very helpful' (70%); "when you are on the spot and you don't know how to say the right thing they can help"; "they help stick up for you without making it sound less of a crime. They backed up the suggestions I made for the plan."

Victim supporter(s)

Engagement and impact of the offence

Although only seventeen victim supporters attended a conference, all were observed to participate well and contribute to discussion about the offence and its impact, with fourteen speaking 'a lot' and three 'a bit'. Most supporters were observed to engage directly with the young person and explained both the impact on the victim and themselves:

Victim supporter: "When we got the phone call saying [victim] had been stabbed I was really upset. First I thought it was a practical joke, but at the end of the day you could have been in jail for it." ...
Second victim supporter: "I couldn't go down to the school. I thought he was going to be lying there." Victim supporter: "This is very serious."

Ten victim supporters were seen to express some level of anger towards the young person or their supporter(s). This is perhaps unsurprising given the fact that the majority of victims with a supporter were young people and the offences were personal in nature, namely assault (12), robbery (1) and possession of an offensive weapon (2)⁷⁴.

As illustrated in the case study below, the input of the victim's supporter can often help in exploring the consequences of the offence to a greater extent. However, there is a danger of supporter domination, particularly where the victim is a young person:

⁷⁴ See Shapland, J., Willmore, J., and Duff, P., (1985) *Victims in the criminal justice system*, Aldershot: Gower, where it is submitted that due to feelings of guilt, victim supporters might feel more able to display anger and emotion than the actual victim.

Case study F: Victim supporter

Anthony has admitted committing the offence of assault, and is attending a diversionary youth conference. He is attending with his mother, Barbara, and father, Carl. The victim, Damien, goes to the same youth club as Anthony. Damien is also attending the conference with two supporters – his father Ethan, and mother Frances.

Damien and Anthony interact directly with each other and engage well in the conference. At times, however, it appears that Damien is almost trying to downplay the impact of the offence. The co-ordinator asks Damien to explain how he felt, Damien: “they recognised me from the youth club - just teasing each other. There was physical harm but no emotional damage or permanent feelings.” At this point Damien’s supporter, Ethan, steps in and explains how he viewed the impact of the offence: “The bit that annoys Damien is that he was concerned there was going to be comeback – three ganged up on him. He felt like he couldn’t defend himself. He will not go outside the youth club now – he will wait for someone to collect him.”

Ethan looks directly to Anthony’s parents and explains why the offence was reported, “If it happened to me I would have went to the police. Why should I not because it was kids?” Barbara, “if it had been my child I would have been horrified. It knocks their self-esteem and confidence. I would have done exactly the same. Anthony knows what it is like to be bullied.”

The two groups of supporters continue to discuss the subject of bullying amongst themselves at length. The co-ordinator tactfully interjects to successfully bring Anthony and Damien back into the discussion.

All victims attending with a supporter valued their presence, describing them as either ‘very helpful’ (94%) or ‘a bit helpful’ (6%). None indicated that their presence was unhelpful or that they would have preferred to come alone. One young victim explained that it was “better having someone beside you who can help you and explain things in words you understand”.

The small number of victim supporters attending conference can in part be explained by the fact that 60% of victims were victim representatives, many of whom felt that they did not need a supporter as they were not personally affected by the offence. A number of victim representatives indicated that attending was “my job. I don’t really feel like an injured person” whilst another acknowledged that although attending was “just part of the job” they could “understand a member of the public would be different”. One victim representative felt confident attending alone: “I didn’t feel the need to have one. I knew it was a safe environment.” This contrasts with a personal victim who was concerned that “something might have happened if [their supporters] weren’t there”.

In order to better understand the victim’s decision in attending without a supporter, all victims who attended without a supporter were asked why they attended alone. The most frequent response was “I didn’t need a supporter” (30%) whilst others included “I didn’t think about it” and “I had no-one to come with me”. One victim representative felt that an additional supporter would put the young person “under pressure with a lot of people there”. In some conferences victims felt that other attending victims acted as a de facto victim supporter; “two of us here as victims – didn’t see the need to have anyone else here.” Victims attending a conference alone were asked if they would have liked a supporter and whilst the vast majority responded ‘no’ (90%), 7% indicated that they would have liked a supporter. A few victims indicated that they would have liked a supporter but “my choice of supporter couldn’t attend” and there was “not enough notice” given for their supporter to attend. Given the important role of the victim supporter, it is imperative that their presence is facilitated and the conference is held at a suitable time for them.

5.7 Contributory factors

Discussion of factors contributing to the offence is a crucial part of the conference process. The restorative philosophy of conferencing seeks to deal with the causes of the offence but also to look toward addressing these causes of offending for the future. Facilitating dialogue around the reasons or explanations for the offence is therefore an integral part of the conference process. Indeed, observations found that conference discussions did reach beyond describing the circumstances of the actual offence to consider the young person's background and the causes of his/her offending. In the majority or 88% of conferences contributory matters were raised when discussing the crime. Within this 88%, the most compelling factors emerging for young people when discussing offence behaviour were substance misuse (43% of conferences), peer pressure (39%), family difficulties (35%), and the lack of a structured lifestyle (26%).

In general, discussion about these matters injected a positive dynamic, allowing the discussion to become constructive and directed toward remedying the causes of the offence. In this way, conference discussions delved beyond the facts of the offence to seek some form of resolution for the young person and remaining participants. The following is illustrative of an instance where a number of contributory factors were discussed.

Case study G: Contributory factors (alcohol, family difficulties and anger)

Aileen is charged with assault against another young person. Aileen consents to attend a conference with her mother, Bevin as main support and her friend Colleen. Dorian, the victim in this case, also attends with her parents, Eve and Frank for support. The police officer is present. Some time after the start of the conference Aileen's solicitor arrives and joins the group. During the proceedings the Co-ordinator invites participant's to look at the reasons behind the assault.

The co-ordinator suggests that Aileen could stop drinking. A long pause ensues Police Officer interjects, "Do you do a lot of drinking then? I mean what age are you?" Aileen, "Sixteen" [SILENCE] Police Officer, "So how would you address the drinking?" Aileen, "What do you mean?" Police Officer, "How would you control it, stop?" Aileen, "Don't know". Eve, (victim supporter), "When you drink do you always end up in a bad way?" Aileen, "No". Eve, "You don't always drink Buckfast do ya?" Aileen, "No". Eve, "Cos I've never drank it but I've heard its lethal stuff" (Eve laughs and Aileen smiles). Co-ordinator, "Bevin, would you like to add something?", Bevin, (Aileen's supporter), "It's not a way of life...she does it inside, more controlled. I think once she's eighteen and can go properly to bars she'd be much happier".

Eve, Dorian's supporter, and Aileen's mother Bevin chat about alcohol use by young people. Bevin indicates that Aileen's use of alcohol has caused difficulties in the past and refers to problems at home and the break up of the family. The co-ordinator continues to facilitate and the group engages well.

Co-ordinator, "So, we've talked about drink and family problems. Would you agree with that Aileen?" Aileen, "Yeah" Police Officer, "I'm just wonderin, is it just through drink?" Aileen, "Yeah". Discussion continues about the offence. Co-ordinator turns to the Police Officer, "Any thoughts?" Police Officer, "If you think drink is a problem there are organisations out there" Aileen, "I don't have a problem with drink". Police officer, "And you don't have a problem with anger?" Aileen, "No, I do. I want to do anger management for that" Police officer, "That's a positive step and there is local projects".

The group goes on to devise and agree the action plan. The co-ordinator places suggestions for the plan on the flip chart visible to everyone in the group. The co-ordinator explains what will happen with the plan and ensures that everyone is content with what has been agreed.

While it is important to look beyond the facts of the actual offence and to address the causes of offending it is important for background issues to be discussed in an appropriate and confidential environment. In cases where the young person is known to participants it may be useful to emphasise the respectful nature of proceedings. The potential for unwanted discourse was conveyed in one instance where the supporter referred to the young person's family circumstances,

Young person's supporter, "It's brave of [the young person]. There is so much going on in this head – he probably remembers bits ... his family were unable to look after him." Young person [angry]: "You don't need to bring that into it!" Young person supporter: "It's the reason behind this." Young person: "But you don't need to bring that up!"

Underlying matters raised within other conferences included difficulties experienced with education and schooling and the absence of a structured lifestyle. This latter point often related to a concern that local areas failed to offer suitable leisure facilities for young people, "Nowhere for kids to go – other than street corners. Where are they supposed to go? It really is very, very difficult for them", (young person supporter). A further cause of offending identified within the conference was bullying. One young person described how the experience of bullying from the start of the school term had left them worn-out:

"I was so sick and tired of everything - annoyed at everyone calling me things from the beginning of the school year". Young person supporter: "she was called a slut; things written on the toilets at her school"

In other instances, conference participants discussed emotional issues such as difficulties with concentration and temper, problems due to living arrangements at the time of the offence including cases where the young person had experienced difficulties in care, and the context of intimidation by one or more paramilitary organisations. In one case it seemed that the entire background to the offence derived from a paramilitary threat but the young person felt unable to divulge any information. Discussion about the causes of the young person's offending behaviour tended to centre on alcohol. When the co-ordinator tried to encourage an explanation of why the young person had carried an offensive weapon they did not respond. However, another participant later stated that the young person was "under threat" in the local area.

Although observed in only one conference, an issue contributing to the offence included one young person's desire to return to a custodial unit. It appeared that levels of unhappiness due to current living arrangements had caused the young person to sense that custody was a preferable option,

Young person, "I wanted to go back to [custody]. I went to court and got bail. Didn't want to get bail – wasn't ready to go back [to residential unit]. Phoned social worker and told him if he didn't get me out I'd go mad".

Finally, in a number of conferences participants discussed problems due to the young person's relations with the police. There existed a feeling among some that being known to the police meant that they were a target for questioning and arrest,

Victim representative: "Why do you have issues with us (the police)?" Young person: "Just. Some police officers don't seem to like me." Young person supporter: "You feel harassed?" Young person: "Yeah." Co-ordinator: "Would you like to respond?" Victim representative: "All police in the area know [young person] now. I know him because of his actions, which are uncalled for... we have to drive around and if anyone gives you abuse you have to stop them. ... You don't know my background" Young person: "You are just cops to me." Police officer: "You just see a uniform".

However, often the conference offered a unique environment for the young person and police officer to converse. In many instances, this kind of interchange allowed the young person to emerge with a changed perspective regarding the police. In interview, one young person stated, "The peelers and me - they were doing their job and I made it hard for them."

5.8 Apology and remorse

The apology

In the course of conference proceedings the young person may agree to apologise for the harm caused. This may take the form of a verbal apology to a personal victim where he or she is present or a written apology or both. The majority of cases involved a verbal apology (52%) and in one fifth (19%) of cases the young person agreed to apologise both verbally and in writing.

The progressive staging of the conference would suggest that the apology follows discussion about the impact of the crime and this would seem to be the most natural course. However, observations showed that participant input was often not as standardised and the young person might feel it appropriate to apologise at any point or even through the entirety of the conference, as illustrated by the case study below.

Case study H: Spontaneity and sincerity

Steve attended a conference with his mother, Rachael as his appropriate adult and his mother's partner Tom as additional support. The conference is for an assault against a 17 year old victim Vincent. Vincent brings with him his mother, Yvonne and father Bert. The co-ordinator begins by thanking every one for their attendance and explains the conference rules. The police officer reads a statement of facts outlining the assault stating that the victim was, "punched in the face". Steve is apologetic towards Vincent from the beginning of the conference,

Steve, "I was attacked three months before and on my guard. Your fist clenched, not going to let it happen again so I struck out. I shouldn't have done it. Why would I hit you. Only one of me and two of you". Steve and Vincent chat about the circumstances of their encounter. Steve, "Wished I hadn't done it. It was a stupid reaction. I should have waited to see if anything happened". Vincent explains his version of events and states that Steve has apologised, "He did say sorry for doing it. I accept your apology. Thanks for saying sorry and coming here". Steve has brought a letter of apology to the conference, "Can I give him the letter now?". Steve hands Vincent a letter of apology.

Vincent's parents talk about the impact of the offence from their perspective. Yvonne feels that Steve may have lashed out because of Vincent's school uniform which in the context of Northern Ireland may have indicated a different religion. Steve responds, "Definitely sorry for doing it and what I've caused. Uniform? Definitely nothing to do with the uniform or religion [...]". Yvonne, "Religion shouldn't matter".

Steve's supporters indicate their disappointment regarding the offence but speak in support of Steve stating that he is a, "sensitive lad". The co-ordinator summarises this discussion and moves discussion towards the plan. Steve talks to Vincent about the letter of apology, "Sorry about the spelling". Vincent, "Don't worry about that. Fantastic that you wrote it. I appreciate that". Vincent then suggests several ideas for the plan, "...If you see anyone different walk on by, no further repercussions for me – even if I saw you in town". Steve, "I'd actually shake your hand if I saw you after this". Yvonne to Vincent, "You would too". Co-ordinator, "Do you want to now?" Steve and Vincent stand and shake hands and the group proceed to agree a plan.

Nine out of ten victims (91%) who attended a conference received some form of apology from the young person. Of the seventeen victims who failed to receive an apology only one was a personal victim of the crime. The young person agreed to apologise in 87% of conferences with or without a victim. Put another way, in all but 23 of the conferences observed the young person apologised. Therefore, there was a high rate of apology from young people whether or not a victim attended.

A closer look at the results from conference observations shows that while victim attendance had limited bearing on the young person's propensity to apologise where victims did attend the likelihood of receiving an apology was also influenced by victim type.

Table 5.3: Did the young person agree to apologise to the victim?

Victim Type	Yes	No
Personal Victim	59	1
Victim Representative	60	9
Victimless Crime (Representative Attends)	12	7

Therefore, those attending a conference who failed to receive an apology were most often persons representing a victim view and not actual victims. In interview young people indicated that they did not apologise for various reasons including that, ‘the actual victim wasn’t there’ and that, ‘the crime was victimless’.

Victims were also asked why they thought an apology had not been received. They indicated a number of reasons including that the young person did not want to apologise, “the young person claimed he had nothing to apologise for and he wouldn’t apologise to anyone – made this extremely clear at the conference and apparently during his meeting with the co-ordinator”, (Victim Representative); or that an apology had not been received because they were not the actual victim, “[Apology] never arose. If any apology, it would have been to the police. They were more the injured party”, (Victim Representative).

In interview, researchers explored participants’ views on whether or not the apology was prompted and whose idea it had been to apologise. The majority of young people felt that the apology had been their own idea, (84%), “To apologise was my idea from the start, from the word go”, but fifteen young people indicated that the apology had been the co-ordinators idea. Just under two thirds or 63% of young people felt they had apologised because they wanted to with the remainder or one third stating that there had been some degree of pressure. Of this one third, 57% (31) stated that they had apologised because they ‘had to’. However, one young person explained how it is possible to have an element of pressure but for the apology still to have derived from free will,

“It was my own will but it was helped out of me. I would have done it, but I needed reminded.”

Young people were also asked about their views on the impact or meaning of the apology. The majority indicated that they thought it had made both themselves (86%), and the victim (84%) feel better or ‘sort of’ better. One young person however expressed an amount of uncertainty due to the absence of a direct victim at the conference, “Did the apology make you feel better?” Young Person: “It did and it didn’t because the victim wasn’t there.”

From a victim perspective, the majority believed that the apology had been the young person’s own idea though some felt it may have been prompted by others, “kept turning round to his mum though but I think it was his idea”, (personal victim). The fact that more young people than victims perceived the apology as natural and unprompted suggests a potential for misinterpretation within the conference group environment. Over one quarter (26%) of victims felt that the apology had been prompted by the co-ordinator and 14.5% felt the impetus came from the young person’s supporter.

Victim Representative, *“The young person probably spoke to his parents and keyworker and thought it was a good idea to apologise.”*

Personal Victim, *“I felt the social worker had a lot of impact. It was also the social worker’s idea to shake our hands [on the way out].”*

Although 38% of victims stated that the young person had apologised because they wanted to, 30% felt the young person believed they ‘had to’, “He knew he had to – it’s like water off a duck’s back”, (Victim representative); “I’d like to think it was his own idea...he did want to apologise but he was told as well”, (Victim Representative). Nevertheless, acceptance of the apology was overwhelmingly positive with only two victims observed to decline acceptance of the young person’s apology.

This is perhaps supported by the views of victims in interview where the majority or a total of 85% of victims, were either 'happy' or at least 'sort of' happy with the apology received (see Table 5.4 below).

Table 5.4: Victim: If there was an apology from the young person, were you happy with it?

	Frequency	Percentage
Yes	78	72
Sort of	14	13
No	17	16

Victim Representative: *"He knew he had done wrong and was annoyed about it. At least he had the guts to look the victim in the eye. It showed a wee bit of maturity"*

Personal Victim *"He apologises a lot". "I know he is not going to do it again because me and him are friends"*

As the majority of victims accepted the young person's apology, the vast number also expressed some level of forgiveness toward the young person, (81%). As one victim stated, "there is not all that would come here, but you've got the courage to do it. I'm very grateful to you. You've had the guts to do it and I don't want to see you punished". Of those who did not express any forgiveness, over half (15 or 55%) were victim representatives and community representatives or police officers attending in the case of a 'victimless' crime. In these instances and not being a direct victim of the crime the tendency to express forgiveness may have been irrelevant.

Overall, most young people attending a conference apologised. This was so whether or not a victim attended the conference. However, within those conferences with a victim, a lack of apology or remorse appeared to be related to the type of victim present. Therefore, the absence of apology within conferences with victim presence had a high relation to victim representatives or persons attending in the case of 'victimless' crimes. An explanation is further suggested from the qualitative interview data from young persons and victims indicating that at times an apology was inappropriate in the absence of an actual victim.

Case study I: Uncertain victims

In this case, Henry is charged with the 'victimless' crime of disorderly behaviour. Henry attends the conference with his mother, Henrietta as a support. The police officer and co-ordinator make up the other attendees. The co-ordinator begins by introducing everyone and explains that there is no victim present because, "the victim is the public". This is not explained further and Henry appears somewhat confused. The police officer provides a brief outline of the offence. Henry is listening well and making good eye contact with the police officer and proceeds to explain his version of events. Henry speaks about how he had acted aggressively towards another man whom he thought had threatened his friend. Henry states that as he went towards the man he was arrested,

Henry, "If he wants me to apologise I will". Co-ordinator, "Why?" Henry, "Cos he deserves it. I started it". Co-ordinator, "Does anyone else have any views?" Police officer, "I wouldn't go that way because this man didn't make a complaint. We're here because of what happened slightly after that. I won't go into the legal issues here". The police officer explains that the offence is not against a person, it is against the 'general public'. Henry, "What is the general public? I don't understand what that means?" The police officer attempts to elaborate on the concept of the general public as victim. The police officer refers to criminal behaviour that takes place in a public place,

Police Officer, "Offence against the state therefore no need to apologise to him 'cos no complaint is being made. I suggest you apologise to my Commander" Henry, "But how would I do that? Write a letter?" Police officer, "The co-ordinator will guide you".

The conference continues to consider how Henry can make up for the offence. Henry's mother Henrietta feels that the letter is a good way to make amends. The co-ordinator checks again whether or not Henry and his mother have understood the nature of the offence. The group agree a plan and the police officer explains to whom Henry should address the letter of apology and that he should apologise for the waste of police time and consequences for the public.

Shame and remorse

In over three-quarters of conferences (77%), the young person was observed to display either ‘a lot’ or ‘a bit’ of shame. In just under a quarter of conferences (23%) the young person did not appear shameful. The presence of a victim appeared to have an impact on whether the young person displayed shame. In 81% of conferences with a victim the young person displayed some degree of shame, whilst shame was displayed in 70% of conferences without a victim.

Similarly, observations showed a high rate of remorse. Therefore, in 92% of conferences the young person expressed some form of remorse. Out of those victims who attended a conference in which the young person did not express direct remorse, the majority, (13 or 72%) were made up of victim representatives. As with the apology, this result may be explained by a peculiarity that arises when asked to express direct remorse toward a person who is not the actual victim. In interview, comments from some victim representatives indicated that direct remorse was not always appropriate:

Victim Representative, “I don’t think he used the word ‘sorry’. Nobody asked, ‘can I hear you apologise’ or put him on the spot. But who would he be apologising to? He was sorry he did it.”

Nevertheless, a number of victim representatives expressed annoyance at the absence of remorse but this appeared to occur where the young person failed to express any level of regret for his/her actions, “The young person just had no remorse – it makes me feel bad...he accepted that he did it, but there was no responsibility in his acceptance”, (Victim Representative).

5.9 Devising conference plans

Following discussion of the offence and, if relevant, an apology from the young person participants are directed towards the process of agreeing or devising a conference plan. At this point, the co-ordinator usually summarises participants’ discussion about the impact of the crime and explains that the purpose of the plan is to repair the harm and to address the causes of offending.

In order to gauge the extent to which participants were involved in the process of arriving at a plan various matters were explored including who had most and least say in devising the plan, levels of engagement, perceptions of fairness and overall satisfaction with the actual process. On the whole results were very positive and showed high levels of involvement from conference participants. Although there were a small number of concerns, such as a few instances of domination by professionals, co-ordinators were observed to facilitate and encourage an inclusive dialogue when devising the conference plan.

Involvement

Overall, young people and victims indicated approval at the extent to which they were involved in devising the plan. One young person understood the process of devising the plan thus, “It gives you a chance to say what you want to do and what you are comfortable with; victims have a say in what you do too”. When asked if they would have liked more say the vast majority of young people responded ‘no’ (Table 5.5 below).

Table 5.5: Young person and victim: Would you have liked more say in devising the plan?

	Young Person		Victim	
	Frequency	Percentage	Frequency	Percentage
A lot	7	4	4	4
A bit	8	5	10	9
No	143	91	93	83
Don’t Know	0	0	5	5

Similarly, most victims were happy with their own contributions although, as shown in Table 5.5 a slightly higher proportion of victims than young people would have liked further input,

Personal victim, "I wasn't part of the action plan. The only thing I asked was financial – willing to be flexible over time period. My main thing was the financial thing. Down the list was his recidivism being addressed – this has been addressed."

In order to comprehend more fully perceptions of involvement, participants were asked to identify who they believed had most say in agreeing the plan. The most commonly named participant was the co-ordinator, identified by 64 or 41% of young people and 41 or 37% of victims. However, this result might be expected given that the co-ordinator is required to facilitate agreement of the plan. Interestingly, in observations the co-ordinator was identified as having most input in just over one third or 35% of conferences followed by the victim in 13%. In contrast, the young person was identified as having most input in 11 or 6% of conferences.

Observations showed a minority of only 57 conferences where one or more participants should have had more say when devising the plan. In two thirds or 37 conferences this was identified as the young person and it may be that in some cases the young person should have had a more substantial part when determining the actual plan⁷⁵. In eight conferences it was felt the victim should have had more say when making suggestions for the plan,

Personal victim, "I felt when it came to that bit [devising the plan] it was between the co-ordinator and young person. Felt my job was done – felt I wasn't a big part."

In as little as 14% or 24 conferences, it was observed that one or more participants should have had less say. In seven conferences this was the co-ordinator and in another seven, the police officer. Although small in number, the co-ordinator or police officer was at times observed to address the young person in a moralizing or scolding tone⁷⁶. This is of course a practice issue but something which should be addressed. In only two conferences the victim was identified as the participant who should have had less say suggesting that the notion of a dominant or overpowering victim did not emerge from this research. Similarly, in two conferences it was felt that the young person should have had less say at the stage of devising the plan.

A not infrequent observation was a sense that a number of plans may have been predetermined. In one conference the co-ordinator was observed to ask the young person what they could do to repair the harm caused by the offence. The young person replied, "The things we talked about". Nevertheless, it is appropriate to assist participants in making suggestions for the conference plan, and some victims indicated how this might have helped,

Victim Representative, "I think the co-ordinator directed us towards an appropriate plan for the offence"

Although it is crucial to facilitate contributions when devising the plan, it is important that this does not remove from others the more restorative or healing elements of involvement and decision-making power. In any event, observations found that this delicate balance was usually achieved.

Engagement

An additional perspective on devising the plan was sought by looking beyond involvement to a consideration of participant engagement. While the foregoing discussion showed that under involvement by the young person or victim was in some respects related to domination by others, an examination of participant engagement suggests that low levels of contribution may relate also to feelings of reluctance or even an uncertainty as to how to engage.

One young person stated how they, "...didn't have much to say and didn't know what way to say it, so I didn't say anything". The case study below provides an example of an instance where the young person struggled to engage when devising the plan.

⁷⁵ See Recommendation 14.

⁷⁶ See Recommendation 15.

Case study J: Reluctance devising the plan

Todd attends a diversionary conference for driving offences with his father Oliver as a main supporter. Todd's mother is also present. Rodger, a community representative attends to provide a victim perspective including the impact of vehicle crime on the community. After introductions and an outline of the facts participant's ask Todd why he committed the offence. Todd replies but is not overly keen to elaborate, "Don't know. Nothin else to do. Felt like doing it so I did it". Rodger asks a few questions from Todd and talks about the consequences of his behaviour. Todd's parents speak about the negative impact of his behaviour but also provide a positive view of their son. Participants turn to consider a plan,

Co-ordinator, "How could you make amends to the community Todd?", Todd, "Do something in the community" Rodger, "What interests do you have? What do you like doing?" Todd, "Anything, football, PC, X box". Father, "He can build things, create things, have a go at fixing things". Rodger, "It would be good if he could do something he enjoys". The co-ordinator pushes for some suggestions from Todd to help the community but there is no response. Rodger indicates that Todd could tidy-up in the area or cut grass but Todd shakes his head in refusal. The co-ordinator asks the police officer for suggestions. Rodger then suggests painting and Todd agrees and suggests designing a mural. The group discuss time scales and hours required but Todd appears bored and disengaged. The co-ordinator asks for input from Todd but there remains no response.

Oliver, Todd's father, "Don't really think he needs anything – he just flips sometimes." Co-ordinator, "I don't think the PPS will accept this unless there is something to prevent reoffending". Police officer, "Could do some sessions on road safety and a letter outlining the consequences of the offence to the local police commander". The police officer also mentions sessions with the traffic education officer and attendance at a local community project to address why Todd got into trouble. Todd's parents indicate that they would not object to this. Oliver, "Feel this is a good opportunity to look to the future and get back on the right path". Todd reluctantly agrees but does not respond further.

Silence follows and then the co-ordinator asks Todd, "Are you doing this because you want to do it or feel you have to?" Todd, "I want to do it", Co-ordinator, "Plan, twenty-four hours reparation, one session with road traffic police, a minimum of eight sessions with a local project. Anything else?" Todd, "No". Rodger asks if they can include sessions to work towards career ambitions. Todd agrees. Co-ordinator, "Investigate future career prospects within three months. Mentoring project activities once a week?" Todd agrees. Co-ordinator, "Mentor, six months". The co-ordinator checks if anything has been excluded and draws the conference to a close.

As Table 5.6 illustrates, the overwhelming majority or 89% of young people were observed to show some level of engagement, (41% 'a lot'; 48% 'a bit'), when deciding a plan. In only 11% of conferences it was felt that they did not, (see Table 5.6).

Table 5.6: How engaged was the young person in deciding the plan?

	Frequency	Percentage
A lot	71	41
A bit	84	48
Not at all	20	11

In one instance, the young person requested the co-ordinator to make suggestions for the plan, "You come up with things and I'll answer them". The young person was then observed to look around the room and fidget while co-ordinator and supporters discussed options for the plan. In another case, the young person appeared somewhat overwhelmed at the prospect of having to present ideas to the group:

Co-ordinator asks the young person what he could do to “make reparation / recompense”. Young person (arms folded sullen): *“I don't know. You said to me it's the victim who asks you what to do.”* Co-ordinator: *“What can you do to show the victim you won't do this again?”* Young person: *“I don't know. How am I supposed to know? I don't know about these things.”* Co-ordinator asks again later. Young person: *“I told you earlier. I don't know nothing to do”.*

However, in most instances, engagement by the young person proved to be constructive and contributed to a positive dialogue when devising the plan. In one case, the young person persistently refused suggestions arguing that the activities proposed would be of little help to others, “No. I’m not doin that. That’s not helping them”. Participants continued to raise suggestions until the young person’s supporter suggested a donation to a hospice, Young person supporter, “Something for the Children’s Hospice. That’s for sick children”. The young person responded with strong agreement, “Yeah! I know. I’ll do that when I finish the other stuff”.

As shown by Table 5.7, 96% of victims were observed to engage ‘a lot’ or ‘a bit’ in the process of devising a plan. Only 6 victims were noted not to have engaged at all and of these, three were personal victims, three representatives or community members attending for a ‘victimless’ crime.

Table 5.7: How engaged was the victim in deciding the plan?

	Frequency	Percentage
A lot	88	63
A bit	46	33
Not at all	6	4

For some victims, a lack of engagement may have related to a perception that they had received what was required in order to repair the harm. Indeed, some victims indicated that their needs had been adequately met,

Victim: *“I'm not sure if there is anything else I want. The main thing I want is that it doesn't happen again.”*

The young person’s supporter asks the victim if there is anything the young person can do for him. Victim: *“Nothing direct. My two things were to get some money and an apology. I've got those. He is already doing voluntary work in the community. I'm not going to turn around and say 'help me with my garden' or anything. He's damaged cars but as his father said earlier people make mistakes. If there is a change in his attitude that is enough”.*

Comments from other victims suggested that they misunderstood their role in determining the plan and felt uncertain as to the type of suggestions they could make. One victim believed their role had ended following discussion of the crime, “I don’t think the plan has anything too do with me”, (personal victim). For some, feelings of fear either of retaliation or of exposing themselves as vengeful meant they could not speak freely about what they would have liked to see in the plan,

Personal victim, *“I felt uneasy in that I would have loved to say he should walk round the avenue [to avoid the victim’s house] but my wife and I felt we could be victims again if we suggested that. He might put our windows in if we suggested too much”*

Personal Victim, *“The victim won’t speak out – makes them seem bitter and twisted. I won’t say I want revenge – it would be counterproductive. Leave [plan] to someone else. If he breaks it I want him before the courts. No excuses. Want him before the court. If you walk you can do it”*

Overall, participants appeared to engage well when devising the plan. However, out of those failing to engage the greater number were young people. The overwhelming majority of participants appeared to be satisfied with the process of determining the conference plan. Again, more victims (93 or 66%) than young people (70 or 40%) appeared ‘very’ satisfied and more young people (29 or 17%) than victims (7 or 5%) were observed to be dissatisfied (i.e. ‘not at all’ satisfied) though this was a small number overall (see Table 5.8).

Table 5.8: How satisfied was the young person / victim with the process of determining the plan?

	Young Person %	Victim %
Very	40	66
Somewhat	43	29
Not at all	17	5

In so far as young people are concerned, an element of unease or discontent in relation to the actual process may be expected due to the reality of making a commitment to complete a binding conference plan. Nevertheless, caution is required to ensure that the differential in satisfaction does not relate to the contrasting positions of conference participants, most notably the fact that the young person is most often the only person below the age of eighteen.

5.10 The actual plan

Agreement

During the research period almost all conferences, (238 or 95%), reached agreement on the content of a plan. Observations showed that, on the whole, there was a high level of agreement amongst all participants with 59% of conferences where there was either ‘unanimous’ or ‘a lot’ of consensus. Only 4% appeared to have little agreement.

Table 5.9: How much consensus was there amongst participants about the plan agreed?

	Frequency	Percentage
Unanimous	44	25
A lot	63	36
Quite a lot	61	35
A little	7	4
None	0	0

Results show a minority of twelve conferences with no agreement. However, in a number of these instances, certain practical or technical reasons meant that a plan could not be agreed. Therefore, in one case, the offence attracted a mandatory court sentence and in another, heavy involvement in community work meant that it would be impossible for the young person to partake in a plan. In this case, it was recognized by participants that the young person had apologized profusely and expressed remorse. Interestingly, in one case it seemed that suggestions were made by the young person only because they did not wish to attend court. As such, and given that the young person appeared not to appreciate why an element of reparation might be included, an agreement on the final plan was not reached.

Case study K: Devising the plan

The police officer asks the young person if he would give money to the store. The police officer suggests £28.00, which was the value of the item stolen. The young person is defiant: “do I have the jacket? I'd be earning money for nothing. It's like throwing £28 out in the rain and saying goodbye to it.” Co-ordinator: “That is what it was like for the store - you're feeling what the store manager felt.” Later the young person concedes to offer a smaller amount to avoid sentencing in court; “I am prepared to do it but not £28.00...I'm giving ten pound, fifteen pound but you are sitting there saying that's not good enough and that's what's putting me off”. Co-ordinator: “Amount doesn't matter. You haven't been genuine and that's why I think we should leave it”. Young person: “No but I don't think that. If you leave it to [judge] something bad will happen to me and I don't want that”. Co-ordinator: “We can't come to agreement – you leave me no choice”. Young person: “But I have come to agreement- fifteen pounds”. Young person supporter: “Leave it to [the judge]. [Young person] is the most selfish wee boy I know”. Young person: “But I'm giving fifteen pounds. The co-ordinator says I can give whatever I want”. Young person supporter; “It's your attitude – you should be happy to give – show you're sorry”. Co-ordinator ends conference. The young person states that he does not want to go to court.

In a few of the conferences where a plan was not agreed the young person withdrew consent. However, in one such case, withdrawal did not negate expressions of remorse and the young person was noted to have apologized to the victim outside of the conference arena. In this instance, the victim was moved by the young person's reaction and felt the young person to be sincere.

For the most part, young people indicated in interview that they were willing to agree to the conference plan with 121 or 74% indicating that they had been 'happy to agree', (Table 5.10 below). The experience for the remainder, (42 or 26%), was either that they 'had to' agree or that they were unsure if their agreement was due mostly to pressure or free will, “Plan tries to make you do stuff you don't really want to”.

Table 5.10: Young person / victim: Were you happy to agree or did you feel you had to?

	Young Person %	Victim %
Happy to agree	74	87
Bit of both	12	9
Had to agree	14	5

A smaller number of five (5%) victims felt that they had to agree to the plan. Given that the majority of victims attending conferences were adults, (the majority were aged between 31 and 50 years), this may raise a question of power imbalance due to age. That the conference environment may be restrictive for young people is perhaps supported by a greater level of reluctance observed toward conference plans from young people than from victims or indeed any other participant.

Table 5.11: Was there any reluctance to the plan from young person / victim?

	Young Person %	Victim %
A lot	14	1
A bit	32	8
Not at all	54	91

Therefore, Table 5.11 above shows that while no more than 1% or two victims were observed to display a lot of reluctance when agreeing the plan it was felt that 14% or 25 young people showed opposition to the plan.

Co-ordinator: "what could you do for the plan?" Young person: "Nothing - he is a policeman." Co-ordinator: "What do you think now?" Young person: "I don't know ... I shouldn't have done it." Co-ordinator: "What would you do now?" Young person: "Walk away (why?) don't want another one of these stupid conferences. Sitting listening to you all day." Police officer: "If it was me?" Young person: "if it was a woman, I would say sorry." (Conversation continues) Young person: "Alright, I'll write it (why?) for trying to head butt him ... right, I'll write it. Can I go now please?"

However, in several conferences it was apparent that pressure to agree derived from knowledge that the court required a significant content before the Magistrate would approve the plan. In one instance the young person agreed to engage with a local community service whilst remarking, "Don't want to do it...does my head in". The context of negotiations indicated that though the young person did not wish this activity to be included s/he nevertheless hoped for court approval of the plan. Pressure from court exerts hefty demands and removes from the conference an important element of voluntariness⁷⁷. In these instances, questions arise as to the authenticity of the young person's consent. One co-ordinator was noted to caution participants and reminded the group that, "The conference is about making amends". The following is illustrative of an instance involving an element of persuasion due to knowledge of what would be expected by the court.

Case study L: Voluntariness

Ally has agreed to complete a court-ordered conference for the offence of criminal damage. At the conference Ally's keyworker Ned attends as main support. There is no victim present however the police officer and co-ordinator relay to Ally the impact of the offence. The group progresses well. Following a discussion about the offence participants consider options for the plan,

Ally, "Is this the only conference I'm going to have?" Co-ordinator, "Don't know". Ally, "When you go back to court what will you say?" Co-ordinator, "We need to make a plan. How to make up for the harm" Ally, "Don't know. I've said I'm sorry". Ned, (Ally's supporter), "Do you want the police officer to apologise on your behalf?" Ally, "Yes". Co-ordinator, "My suggestions would be a letter". Ally, "Aye".

The discussion continues. Co-ordinator asks Ally if he has any other ideas. Ally, "You come up with things and I'll answer them". Ned, "Ally is very keen to get involved in things that have accreditation. How quickly do you need to know what he'll do?" The co-ordinator and Ned talk through the options but Ally is disengaging. Ally then tells the group about a boat he is making, "Can I make something in woodwork?". Ally then asks, "What's the purpose of this - all this here? Does this go back to court. Am I going to get done for criminal damage? What's this youth conference - I don't understand this. Will I still get sentenced after doing all this?". The police officer explains. Ally, "So what happens to the case? Is that it done?" Co-ordinator, "It's in court on Monday- we don't do anything until we see if the Magistrate passes it" Ally, "They said no to the last one".

The co-ordinator and police officer continue to explain what can happen at court. Ally is restless and asks, "What time is it?" The co-ordinator draws the conference to a close. Police Officer, "The Magistrate may want to add to this" Ned, "He could do three items". Ally, "Is the boat not enough?" Ned, "I think you need more". Ally, "What else? I could make a wee coffee table with fancy legs and a drawer" Co-ordinator, "Minimum of twelve hours to complete the project". The co-ordinator brings the conference to a close and explains the plan to Ally.

⁷⁷ See Recommendation 16.

Plan content

Though there emerged features common to many plans, such as an apology to the victim or an activity to address the causes of offending, each outcome varied in substance and length. Indeed, it was observed that for the most part plans resulted from group negotiation and consensus albeit varying in degree. It was difficult to find a 'typical' plan as linked to a particular offence category and given the diversity of offences in any particular category and the informal and exploratory nature of the conference process, this is an expected result. The following pages include examples of plans agreed for different offences at court-ordered and diversionary conferences.

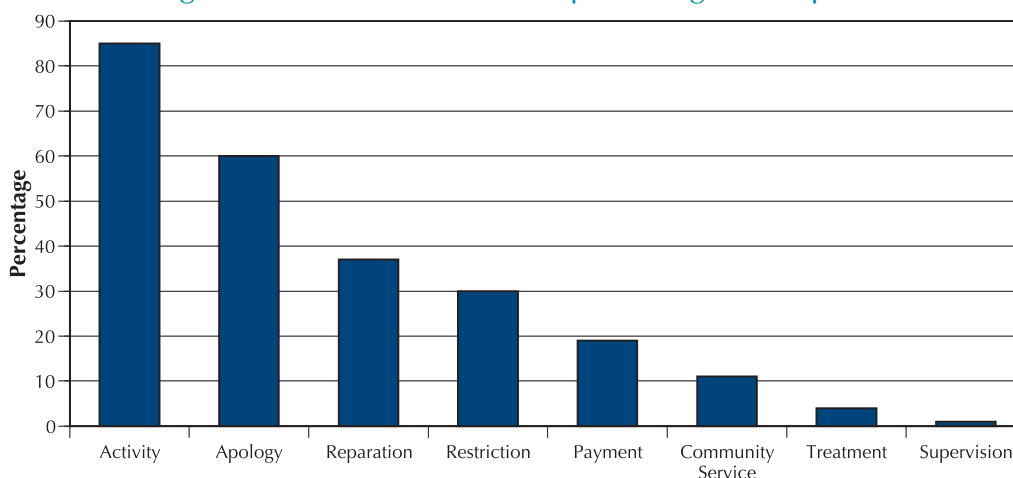
Offence:	Criminal damage
Source:	Court-ordered
Apology	Written apology within two months of ratification
Payment	Donation of £40 to Named Charity at £5 per week for 8 weeks
Activities	One session of drugs awareness counselling organised
Activities	Four sessions addressing negative peer influence facilitated
Reparation	Reparation work for 2 hours for 4 weeks
Offence:	Common assault and possession of offensive weapon
Source:	Court-ordered
Community Service	40 hours service for the community in a local project designed to assist the disadvantaged in locality
Activity	12 sessions focusing on anger management and other offending-related issues
Restriction:	Fully commit to school contract until the end of April 2005
Offence:	Handling stolen goods
Source:	Court-ordered
Apology	A written apology within one month of the order being imposed
Offence:	AOABH, criminal damage and possession of offensive weapon
Source:	Court-Ordered
Activities	6 sessions (1 hour each) of Anger Management
Activities	1 session (1 hour) in respect of improving her relationship with others
Reparation	5 hours of "good deeds" within named organization
Offence:	Assault and robbery
Source:	Diversionary
Payment	Donate an undisclosed amount of pocket money to named charity.
Activity	Make an object for local hospital.
Activity	Undertake individual work with named project once a week for 6 months to address dealing with difficult situations
Offence:	Deception
Source:	Diversionary
Reparation	60 hours reparation within the community
Treatment	Undertake a psychological assessment and undertake follow-up deemed necessary
Activities	Complete an intergenerational programme with named charity within 12 months of plan being ratified
Payment	Contribute £120 to a charity of choice at a rate of £5 per week
Apology	Write a letter of explanation for the offending to each person directly affected by behaviour
Activities	Complete 6 sessions with named project on offending issues
Activities	Provide 3 monthly progress reports to the victims, through named charity
Activities	Continue to progress at school. This will be monitored by parents for 12 months or until plan is completed.
Offence:	AOABH
Source:	Diversionary
Activity	Mentoring

In line with the restorative framework of conferencing researchers observed the extent to which the outcome incorporated notions of help or assistance for the young person, punishment and re-education in relation to crime. It was noted that 83% of plans included some degree of help for the young person. Just over one quarter of plans, (47 plans or 27%), comprised some degree of punishment and over one half (90 or 52%) an element of re-education regarding the young person’s offending behaviour. In all, retributive notions of punishing the young person featured neither frequently nor heavily, noting that it was present ‘a lot’ in only three plans. Assistance for the young person was certainly the most prevalent trait and this was reflected by the comments of some victims,

Personal Victim, *“Positive and constructive rather than destructive for his self esteem...benefit others...has committed himself to a lot of things.”*

Victim Representative *“All the suggestions as a package will only benefit the offender – keep him occupied and distracted.”*

Figure 5.1 Plan elements as a percentage of all plans



As shown, community service, payment, supervision and treatment elements were absent from the overwhelming majority of plans. In terms of the actual programmes recorded for all plans, mentoring comprised a customary feature whereas other schemes traditionally aligned with a ‘helping’ or welfare perspective, peer influence education, personal development and family support, constituted a minority aspect of all plans, (Table 5.12)

Table 5.12: Type of scheme / programme in conference plan as a percentage of all schemes recorded.

Scheme	Number	Percentage of all Schemes
Mentoring	69	20
Offence focused work	48	14
Reparation work	47	14
Drug/alcohol awareness	42	12
Victim/offence awareness	42	12
Voluntary/community Work	26	8
Anger management	20	6
Re-engage with existing scheme	13	4
Education/Training	11	3
Peer influence/education	10	3
Diversionsary activities	6	2
Personal development	4	1
Attitude toward authority	4	1
Other	4	1

Education or training schemes were noted in only eleven instances of all elements recorded for the 238 plans. However, it should be stated that the actual content of many schemes appearing within conference plans, such as mentoring and voluntary or community work, may have offered education and / or training opportunities for the young person⁷⁸. Although the actual substance of plans was often practical and constructive, one victim believed that the plan included enjoyable activities that would fail to offer benefits to the young person,

Personal Victim, "Eight hours doing something he enjoys and he thinks he's helping someone and wants paid for it. It shouldn't have been something he likes to do. It shouldn't be something pleasurable and enjoyable. I felt it was missing the point. It may look good on paper but it won't help him at all. To a Magistrate reading it who doesn't know the young person it may look positive but I don't see it as an effective solution to the young person's problems."

Interestingly, restrictive elements did not appear regularly across a wide range of plans. However, 72 plans did demand a restriction on the young person's physical whereabouts and of these seven incorporated two restrictions and one plan included three. Of note was a significant geographical inconsistency in this regard. Therefore, out of the 67 plans agreed within the Fermanagh and Tyrone area, 55% incorporated one or more restrictions. This contrasts with conference plans emerging from the Greater Belfast area with only 20% including a restriction. The reason for this result may be due to professional preference on behalf of some co-ordinators. Indeed, in this respect, it may be important to monitor the development of plans to ensure against a trend in regional variation⁷⁹. The following provides an example of the type of restrictions that may feature in a plan.

Offence:	Criminal damage, burglary and theft
Restrictions	Exclusion from the premises of named place for the duration of the conference plan. To be monitored by PSNI and relevant staff
Apology	Written apology
Reparation	Thirty hours of reparation activities to the community
Activity	Six sessions with named project
Activity	Mentoring
Offence:	Disorderly behaviour
Activity	Referral to named organisation to complete six sessions to address alcohol consumption.
Restriction	Four week curfew to remain at home between midnight and 7 a.m. each night. To be monitored by PSNI.
Restriction	Over the next four weeks when undertaking work placement young person must make way to/from place of work without entering named town. To be monitored by PSNI.
Restriction	Make way home directly from college on [specified dates] whilst recognizing this necessitates travel through named town centre around 12 midnight. To be monitored by PSNI.
Activity	Continue to attend training programme for the next 6 months.

Finally, victim-focused aspects such as reparation and payment were absent from a significant number of plans. Indeed, observations found that in the majority or 66% of cases, the young person did not offer any form of compensation or reparation. However, this must be viewed in light of the fact that the majority of victims, (85 or 57%), did not request any form of reparation or material recompense and where victim representatives attended, direct reparation was often inappropriate. Moreover, in a number of cases reparation was not necessary as either no financial harm had been caused or the property had been recovered undamaged.

⁷⁸ See Recommendation 17.

⁷⁹ See Recommendation 18.

Participant perspectives on the actual plan

Perceptions of fairness in relation to the actual plan were extremely high amongst both young people and victims.

Table 5.13: Young person / victim: Do you think the plan is fair to you?

	Young Person %	Victim %
Very fair	29	29
Fair	64	50
Neither fair/unfair	3	15
Unfair	4	3
Very Unfair	1	4

In fact, as Table 5.13 shows, Young people and Victims displayed a positive view in this matter, with 93% of young people and 79% of victims believing the plan to be ‘very fair’ or ‘fair’.

Victim Representative, *“He might think that it is too much but in terms of balance it is fair. It can’t be all roses for him”.*

Personal Victim, *was that fair to you? “In the circumstances, yes. If he only earns £30 a week. A token thing – you could probably dig your heels in and ask for more but there is no point. In reality you are not going to get what you ideally want. More important that the offender sees the harm caused and is held accountable for what he has done meeting face to face”.*

High levels of satisfaction with the actual outcome were also indicated by victims and young people. Table 5.14 shows that 71% of young people and 79% of victims were either ‘very satisfied’ or ‘satisfied’ with the actual outcome.

Table 5.14: Young person / victim:
Overall, how satisfied were you with the outcome of the conference?

	Young Person %	Victim %
Very satisfied	22	44
Satisfied	49	35
Neither satisfied/dissatisfied	27	12
Dissatisfied/very dissatisfied	3	9

For those who felt dissatisfied, one young person believed the plan was unjustified because he/she was the only one apprehended, “I thought the plan was a bit hard ... ‘cos there’s a lot of people who do it and I’m just the one who gets caught!”. Another young person indicated that the duration of activity was unnecessary, “I felt 10 weeks at [programme] was too much. Ripping the back out of it”.

As a final matter, an interesting result emerges if considering satisfaction by victim type. Though only five victims felt ‘very dissatisfied’ with the outcome two were personal victims. Similarly, when considering perceptions of fairness most believed the plan to be fair. Of the small number of victims, (seven in total), who felt the plan was ‘unfair’ or ‘very unfair’ six were personal victims.

Personal Victim, *“Very unfair – certainly not designed for victims. If designed for victims the government would reimburse you”.* Fair to the young person? *“Very fair – more designed for them, to help them rather than the victim.”*

While this should not detract from the positive experiences of victims overall, it is interesting that the minority reporting a negative experience are often personal victims. Though there might be many explanations for this result, it may also imply a differing perception of conference events for victims depending on whether or not they have been personally hurt by the crime.

Nevertheless, victim satisfaction in terms of the conference outcome did not appear to relate to the seriousness of the offence. Therefore, the small number of eleven (9%) victims indicating a degree of dissatisfaction with the plan attended for offences ranging in severity, from less serious property matters to more serious offences against persons and / or property. Moreover, out of the seven victims who attended a conference for an offence involving 'very serious' personal harm, the majority or five were either 'satisfied' or 'very satisfied' with the outcome. Similarly, 28 or 93% of victims attending for 'serious' offences against persons and / or property were satisfied (15 'very satisfied'; 13 'satisfied')⁸⁰.

Proportionality

A further indicator of the equity of conference outcomes is the extent to which the plan is deemed proportionate to the gravity of the offence. Though a concept that fits uneasily with the individualistic and participant-led tenets of restorative justice, it is an important tool to assess fairness and an essential constraint where conferencing operates within the realm of a traditional justice system. In order to determine individual opinions on proportionality, young people and victims were asked whether they believed the plan to be 'too hard' or 'too soft'.

**Table 5.15: Young person / victim:
Do you think the plan is too hard or too soft given the crime?**

	Young Person %	Victim %
Far too hard	3	0
A bit hard	10	6
Neither too hard/too soft	72	69
A bit soft	13	13
Far too soft	1	13
Don't know	2	1

As shown in Table 5.15, the majority stated that the plan was 'neither too hard nor soft' suggesting that from a participant perspective plans did correspond to the seriousness of the offence.

Victim Representative, "It is difficult to know what is proportionate but the plan is neither excessively severe or too lenient."

Interestingly, out of the six victims who viewed the plan as onerous the majority (four) were personal victims including one injured party who was the victim of the more serious offence of assault causing actual bodily harm. However, at the other end of the scale the majority of those who viewed the plan as too soft were also personal victims (57%). The absence of a consistent response from personal victims on the appropriateness of conference plans suggests that matters other than the nature of victimisation may influence perceptions of proportionality. This may include factors such as the distance in time from offence to the actual conference, how the victim feels following the conference, views about the young person and the nature of the offence. However, results showed little relation between offence seriousness and victims perceptions of proportionality. Therefore, out of the twenty five victims believing the plan to be too soft, the majority attended the conference for offences ranging in seriousness, with 11 or 44% attending for 'intermediate' offences against person or property, 8 or 32% attending for 'serious' matters, and a small number of three present for 'very serious' crimes against the person⁸¹. The following provides some comments from victims, who believed the plan to be soft,

^{80, 81} The seriousness of each offence was categorised using an 'Offence Seriousness Scale' devised for the purposes of this research. A full explanation and details of the Offence Seriousness Scale are provided in Appendix 6.

Personal Victim, *“With victims nothing is fair, it’s not severe enough. Wanted to lock her up. Don’t think we had any say – thought the courts set out what to do in the plan”*,

Personal Victim, *“Far too soft...but I don’t think he could handle anything else.”*

Personal Victim, *“Apparently this is his third offence [the plan] should be harsher”*,

In interview victims were asked if there was anything left out of the plan that they would have liked included. Rather positively, the majority answered ‘no’. When questioned further about this, twelve victims identified elements that they would have liked included, for instance,

- ◆ Help with drugs/alcohol
- ◆ Help with confidence
- ◆ Mentoring
- ◆ Voluntary work with an animal sanctuary
- ◆ Compensation and to address a lack of schooling
- ◆ Restitution and return of stolen items

Notably, the majority of elements identified by these victims related to helping the young person rather than any desire for punishment. However, three victims did feel that the young person should have received a ban on entering a certain area and one felt that s/he should have experienced a period in custody.

In order to gauge more clearly the views of young people in relation to the content of the plan, they were asked if there was anything that they disliked. In response, the vast majority or 80%, of young people replied ‘no’. Commonly identified features for the 20% of young people who indicated a dislike included community work, mentoring, and drugs or alcohol courses.

As a further measurement of conference plans participants were asked to evaluate whether or not the young person would complete the plan in light of its level of difficulty. As illustrated in Table 5.16, the majority or 75% of young people felt positive in this regard and believed that they would be ‘definitely’ successful in completing the plan, *“They probably could have got more out of me. Definitely not going to be hard.”* Though victims tended to be less optimistic than young people on whether the plan would be completed, a majority of two thirds (66%) felt definite or mostly sure that this would be so.

**Table 5.16: Young person / victim:
Do you think the young person will be able to complete the plan?**

	Young Person %	Victim %
Definitely	75	39
Think so	20	28
Not sure	4	17
Don’t think so	1	9
Don’t know	1	8

These are some of the responses received from victims when asked if the young person would complete the plan:

Personal Victim, *“If he puts his mind to it”*.

Personal Victim, *“Possibly – I will be pleasantly surprised. Depends on the environment”*.

Whilst over one quarter of young people responded ‘nothing’ when asked to identify the most difficult aspect of the plan, the most frequent element identified as difficult was the apology, *“The letter – I have to express it in my own words and I don’t know what to say”*. However, one young person was concerned that an apology was insufficient to remedy the harm caused to the victim,

“All the victim representative asked for was a letter of apology. I know it was a lot of money, but I don’t know. Could have done a lot more for the victim. More than a letter of apology [...] I think it’s fair but I could have done more for the victim.”

One final issue relates to the degree of recollection among young people of the content of the plan although it might be expected and even normal for young people to not to recall the full details of the outcome. In interview, some had difficulty recalling the terms of the plan and a number had no level of recollection of the plan details. In one instance, where the plan agreed involved five significant elements, the young person was asked if he/she could tell the interviewer what was involved in the plan, “once a week some thing, that’s it”.

The lack of recall from young people followed high levels of explanation from the co-ordinator regarding the details of the plan. Therefore, as illustrated in Table 5.17 below, in over one third of conferences the co-ordinator was observed to explain the plan ‘very well’ and in 47% ‘well’.

Table 5.17: How well did the co-ordinator explain the plan to participants?

	Frequency	Percentage
Very well	62	36
Well	82	47
Ok	15	9
Badly	13	8
Very badly	2	1

In only a small number of conferences the plan was explained badly. This suggests something other than clarity causing difficulties for young people in recalling the plan. Indeed, the lack of recollection does not mean that the young person did not understand or agree to the plan. More often, this lapse may have been due to the lateness of the plan within the layout of the conference and a feeling of restlessness among young people⁸². The following is a response from one young person when asked if he could recall the terms of the plan,

“Aye, some drug thing. Jesus, I forgot it all already – a mentor and that football thing and two or three things at [Youth Justice Agency project]. But see when I was sitting there the stuff in my head was just too much, felt like I was going to crack up. Last 15 minutes I wanted to crack up. Felt too much in a week like and too long – six months.”

5.11 Conclusion

By the end of the research, observations showed that the facilitation of conferences and participant involvement in conferences had progressed well. This is reflected in feedback from interviews in which the majority of participants were positive about their involvement in the conference. Generally, victims were not nervous or fearful at the prospect of meeting the young person. By contrast, observations and interviews show that young people had a degree of nervousness and discomfort suggesting that the conference was not an ‘easy’ process for many. Overall both young people and victims felt the conference provided a forum in which to present their views and to have their perspective taken into account. In addition to the offence itself, conferences also examined factors contributing to the young person’s offending. From this, the most common background factors were found to be substance misuse (alcohol, drugs and solvents), peer pressure and family difficulties.

In contrast to court, the conference offered the opportunity for the victim to receive an apology from the young person. Indeed in the overwhelming majority of conferences the young person did apologise. Young people were seen to accept responsibility for their actions and display both shame and remorse. The majority of conferences resulted in agreement of a plan. Overall, there were high levels of engagement and consensus when devising and agreeing the conference plan. Indeed, most participants indicated that they were happy to agree to the plan and felt the plan was proportionate to the offence.

The subsequent chapter will continue by providing an overall evaluation of participation within the conference, facilitation by co-ordinators and levels of satisfaction.

⁸² See Recommendation 5.



Chapter 6

Overall evaluation of conferences

6.1 Introduction

This chapter considers the overall levels of participation within conferences and the quality of facilitation provided by co-ordinators. It considers overall input when discussing the crime and agreeing the conference plan, participants' evaluation of their conference experience and observations in relation to the skills of conference co-ordinators.

6.2 Summary of findings

- ◆ In the majority of conferences, participants were involved when discussing the crime. 62% of young people and 80% of victims were involved 'a lot' at this point.
- ◆ The majority of young people, (91%), and victims, (81%), preferred the conference over court.
- ◆ 81% of young people and 48% of victims felt better following the conference. Of the 52% of remaining victims, the majority felt no different.
- ◆ 92% of young people and 78% of victims believed the conference had helped the young person realise the harm caused by the offence.
- ◆ The vast majority of young people (86%) and victims (88%), would recommend a conference to a person in a similar situation.
- ◆ Of the family members who provided their views on the conference process, the majority welcomed the opportunity to attend and believed the conference to have a positive impact on the young person.
- ◆ In 77% of conferences the co-ordinator was either 'very good' or 'good' at involving others and in 84% of cases, 'very good' or 'good' at progressing the conference toward agreement. Overall, co-ordinators displayed particular skill in their ability to be inclusive and to treat everyone in a respectful manner.

6.3 Overall participation

Discussing the crime

Observations found that for the overwhelming majority of conferences all participants were involved to some degree when discussing the crime. Indeed, as shown in Table 6.1, only 2% or four young people and 2% or three victims were observed to be detached when discussing the offence.

Table 6.1: How involved were participants in discussing the crime?
By percent (%)

	Young Person	Victim	Young Person Supporter	Co-ordinator	Police Officer
A lot	62	80	22	88	35
A little	36	18	55	12	64
Not at all	2	2	23	0	1

In one conference, opportunity for the young person and victim to engage in discussion did not arise due to withdrawal of consent though, as mentioned earlier, the young person did talk with and apologise to the victim outside of the conference arena. In another instance though the young person apologised then refused involvement throughout and offered a guarded response when prompted by the co-ordinator to talk about the crime,

Co-ordinator: "it's very important that you tell us so that [victim] understands". Co-ordinator prompts young person about previous meeting in which he "did really well". Young person "Can't remember what happened...drove down the road and back up. I drove it down the road and got caught...hit a curb and saw lights and pulled over. Police officer has already told you how I got caught".

Overall evaluation of conferences

While most participants were ‘a lot’ or ‘a little’ involved when discussing the crime this did not detract from the challenging nature of the conference. One young person required a number of breaks in order to deal with the group context of the conference. Observations showed that they experienced difficulties communicating in the group environment. The young person’s stress and lack of recall resulted in constrained discussion about the circumstances of the offence,

“No. I just can’t remember it. It was last year. Can you remember what you did last year?” Young person is frustrated. A ten minute break is called after which the young person returns. The co-ordinator asks the young person if s/he recalls the offence, “No. I can’t remember. Heat of the moment. I just got angry. I can’t remember nothing about it, getting lifted or nothing”.

Such difficulty was not the sole experience of young people and indeed one victim could not verbalise the personal impact of the crime. Although it was not clear whether the nervousness resulted due to the victim’s experience of the crime, or due to the conference environment, or both, the victim as a young person asked for their supporter to communicate the effects of the crime. The victim was observed to pass their personal notes to the victim supporter who provided all input on the victim’s behalf. Interestingly, this did not detract from the young person’s appreciation of the impact of the offence and may have encouraged a heightened sensitivity toward the victim. In interview, the young person stated that the account and realisation of the impact of their behaviour, “nearly made me cry”, and that the best thing about the conferencing was, “apologising to [victim] and knowing that she knows I meant it”. In one other instance where the victim (who was under the age of 18) refrained from a discussion about the crime the conference operated via video link. It is difficult to ascertain whether or not this lack of engagement can be attributed to the physical distance or loss of immediacy between the victim and young person, but there is little doubt that the victim remained disinterested resorting to monosyllabic answers throughout.

Devising and agreeing the plan

There were high levels of involvement in discussions concerning the scope of the conference plan. Interestingly, relative to other participants, young people were not as active as other participants when devising the plan. As shown in Table 6.2, in the majority of conferences the young person was either ‘a little’ or ‘a lot’ involved in suggesting the terms of the plan. However, in 40 instances or 22% of conferences the young person did not propose suggestions for the content of the plan.

**Table 6.2: How involved were participants in making suggestions for the plan?
By percent (%)**

	Young Person	Victim	Young Person Supporter	Co-ordinator	Police Officer
A lot	31	49	22	71	18
A little	46	38	49	27	58
Not at all	22	13	29	2	24

This may relate to levels of nervousness on behalf of young people or a perceived difficulty in forwarding suggestions in the context of a group environment. However, it may also be due to not knowing what to suggest for the plan. Nevertheless, an extremely positive result was observed in terms of actually agreeing the plan with 92% of young people either ‘a lot’ or ‘a little’ involved in agreeing the final plan, (see Table 6.3).

In terms of victim participation, the vast majority engaged when discussing the plan. Therefore, 105 or 87% were involved in making suggestions for the plan. Of the small number of victims who did not appear to be involved at this point, results showed no correlation between victim types. There was no indication from observations that these victims opposed or did not agree with the plan.

Finally, as shown in Table 6.3 below, the overwhelming majority of participants were either 'a lot' or 'a little' involved when deciding the final plan.

**Table 6.3: How involved were participants in deciding the plan?
By percent (%)**

	Young Person	Victim	Young Person Supporter	Co-ordinator	Police Officer
A lot	51	43	24	79	16
A little	41	44	57	20	48
Not at all	8	13	19	1	36

It is positive that, on the whole, young people and victims were involved at the stage of agreeing to the plan and this may lend weight to the previously mentioned observation, which showed a high level of consensus amongst participants when determining the plan, (Table 5.9: 25% 'unanimous'; 36% 'a lot'; 35% 'quite a lot' of consensus).

Verbal input

As a further method to consider overall involvement, researchers observed the levels of verbal input by each participant. Though levels of speech provide a crude indicator of involvement, it can identify the principal conversant within the overall conference dynamic. Perhaps, unsurprisingly, co-ordinators were observed to speak most (in 134 or 72% of conferences). This may be expected due to their facilitative role. Levels of verbal input were followed by the victim, with most input in twenty conferences and the young person in fourteen. In the majority of conferences the participant who spoke least was the police officer followed by the young person's supporter.

This highlights an interesting point about the role of the police officer within the conference. Therefore, they often played a peripheral though not unimportant role providing an outline of the facts of the offence. However, observations showed that the exact function of the police officer was sometimes difficult to place. Therefore, in many instances they were observed to move beyond providing a summary of the offence and sometimes acted as a support. In one conference the police officer was observed to praise the young person stating that they had provided a comprehensive version of events. When the co-ordinator requested further response the police officer stated, "You basically got all the answers you needed from [young person's] opening statement...". The police officer later provided encouragement to the young person who was visibly upset, "It's to your credit you are here kid". In another conference the police officer commended the young person's behaviour since commission of the offence, "From a police point of view we have had no bother from you since. Would like it to stay that way – please keep at it".

Nevertheless, there were a small number of cases in which the police officer was observed to dominate proceedings. This usually occurred when explaining the impact of the young person's behaviour or when discussing options for the plan. In one instance the police officer introduced the notion of an Anti-Social Behaviour Order, "If I hear you're causing problems in the area, first thing I'll do is take out an Anti-Social Behaviour Order on you". When the young person indicated that they did not understand, the police officer explained in brief and stated, "Stay out of the area because police will clamp down". On other occasions, the police officer was observed to demand greater plan content arguing that the court would reject the group's suggestions unless further detail was agreed. Though occurring in a minority of cases it is important to address over-involvement by the police officer or any other conference participant.

6.4 Overall evaluation of conferences

In order to understand participants opinions on the conference process overall, young people and victims were asked various questions including whether they would recommend the conference, how they felt after the conference, and perceptions of fairness and satisfaction. An understanding of the most dominant themes from a participant perspective was sought by asking young people and victims whether or not they could identify the best and worst features of their conference experience. Finally, a small number of family members were contacted post-conference to provide a family and supporter perspective on the conference process.

Conference or court

For the most part young people and victims expressed a preference for the conference process over court, (91% of young people and 81% of victims).

Table 6.4: Young person / victim: Would you rather the case had gone to court?

	Young Person		Victim	
	Number	%	Number	%
Yes	8	5	13	11
No	147	91	95	81
Don't know	7	4	10	9

For young people, reasons for preferring the conference were varied. Interestingly, while observations showed that the conference presented a challenging process for most young people, many felt that it might offer an easier sentence than court. However, this often related to negative perceptions of the court, many young people stating that they would prefer the conference in order to avoid the appearing in court. Table 6.5 shows some of the reasons why young people preferred the conference process.

Table 6.5: Young Person: If you prefer the conference to court, why?

Reason	Percentage
Easier sentence than court	63
Avoid appearing in court	22
Court process too lengthy	1
Face to face interaction is better	6
Conference is more helpful	4
Don't know	3

When asked if they believed that the court sentence would have been better or worse, 90% of young people felt that it would have been worse, (36% 'worse'; 54% 'much worse'). Nevertheless, from the perspective of many young people, the formal atmosphere and impersonal setting meant that the court and outcome was worse, "I think it's less formal and an easier environment – less stress [...] it's a better atmosphere than something as formal as court. A court is about punishment, whereas this is about what is fair to me."

The preference for conferencing was apparent for victims independent of victim type, therefore, the overwhelming majority of personal victims favoured the conference as did the majority of victim representatives and those attending for a 'victimless' crime. Of the small number of thirteen victims stating that they would rather the young person had gone to court six were personal victims. Interestingly, all but two actual victims preferring court felt that a court sentence would be more severe though earlier in interview they did not indicate that the conference plan was too soft in light of the offence. Some comments from victims preferring court included:

Personal Victim, "This process would not have been my first choice for the offender. The offender would have had more respect for the court process regardless of the outcome".

Personal Victim, "Court would have been harder. If you can't do the time don't do the crime. She needs to learn a hard lesson".

Nevertheless, believing the court to be more difficult did not mean participants viewed the conference as an easy or effort-free option. Indeed, an element of irony results because while the majority of young people felt that the conference offered a more manageable sentence the apology, a feature predominantly absent from court, was identified as the most difficult aspect of the conference. On the whole, a mutual feeling emerged among victims and young people that the conference offered an environment that was more meaningful,

Young person, *"This is definitely better – face to face. You can sit down and talk to people about what you done instead of being told what to do."*

Young person, *"It gives you a chance to see where the victim is coming from and for them to see not everyone who does stupid things is an evil person. It gives you a second chance."*

Personal Victim, Rather court? *"No, because [the young person] wouldn't have got help with his addiction, wouldn't have got the opportunity he has now. He has six months of help". Court more lenient? "Not sure. Basically a sentence over and done with. Now he has time to reflect on what he has done to make amends as such. He has to engage in the help people are offering. It's his own fault if he doesn't take that chance."*

Personal Victim, *"It's too easy for the perpetrator [in court]. The victim is invisible in the process. Statistics show that young people through court reoffend and statistics show in other countries that this impacts reoffending".*

Only a small number of young people felt that they would cope better with the court setting. One young person expressed a familiarity for the court process and an uneasiness regarding the unknown bounds of the conference environment, "I know how to deal with court but not how to deal with this". Again, this confirms results from observations and interviews suggesting that the conference can be a meaningful but challenging task for young people.

Personal impact of the conference

Overall feelings reported by young people and victims post conference were mostly optimistic. The majority expressed a series of positive or neutral emotions such as, 'good / happy', 'alright / ok', and 'relief'. Many also stated that they felt better following the conference although this was a more frequent response for young people than victims.

Table 6.6: Young person / victim: Having finished the conference, do you feel better or worse?

	Young Person		Victim	
	Number	%	Number	%
Much better	47	28	17	14
Better	89	53	41	34
Same	30	18	53	44
Worse	1	1	4	3
Much worse	0	0	5	4
Don't know	1	1	1	1

However, on reading from the results in Table 6.6, we see that of the victims who did not feel better the majority felt no different. Therefore, only 4 victims stated that they felt worse and five much worse. Feeling worse did not appear to be related to victim type and indeed four out of the five victims who felt much worse were victim representatives. This should not mean a less concerning result, but simply that a decline in outlook experienced by victims was neither exclusive to nor common for those directly affected by the offence. It seems that negative perceptions of the young person's attitude may have spawned feelings of regret,

Personal Victim, *"I'm more negative about the process than I was before". Felt much worse because of "the offender's attitude and the fact that it was tolerated...no-one is reaching the real offender. People are just reacting to his anger, not addressing it". "I now want to slap it to him."*

In terms of the perceived impact of the conference, two thirds (45% 'yes'; 17% 'sort of') of victims felt that the process and the plan would help the young person refrain from crime. However, whilst over three quarters of young people believed this to be the case, 17 or 10% felt the action plan would have no bearing on their future behaviour.

Overall evaluation of conferences

This does not mean that these young people felt they would reoffend but rather that the physical act of completing the plan was not rated significantly in their outlook. One young person noted that with or without the conference they had decided to remain crime free,

Young person, *“The co-ordinator thinks it was to help me and the victim, but I don’t think it will help me anymore than I will help myself. I didn’t need to come here to know I was being stupid.”*

As for influencing young person perspectives the majority or 92%, (82% ‘yes’; 10% ‘sort of’), stated that the conference had made them realise the harm caused by the offence, “It’s helpful because it makes me understand what harm I’ve done – damaging property”. The response from young people is illustrated in Table 6.7 below.

Table 6.7: Young person: Did the conference make you realise the harm you caused?

	Frequency	Percentage
Yes	110	82
Sort of	14	10
No	10	8

As with young people, the majority, (95 or 78%) of victims believed that the conference had made the young person realise the impact of the crime. However, one quarter of victims, (24 or 20%), compared to only ten or 8% of young people felt that the young person remained unaware of the personal cost of the offence. Of these victims, there appeared to be no correlation between victim type with actual and representative victims similarly inclined to view the young person as not realising the impact of the offence. Interestingly, the lack of convergence between victim and young person perspectives is similar to the disparity of views in relation to the apology. Therefore, some victims sensed the apology to be prompted when the young person felt that this was not the case. Again, this supports the idea that differing communicative styles may result in a level of disconnection between the individual’s meaning and the interpretation of his/her intent as conveyed through the group environment.

Purpose of the conference

Victims and young people were similarly positioned in their view on the purpose of the conference with most believing it to assist the young person, “Help me instead of punishing me. Court would have punished me and then I would have done it again. The way they did this I agreed to things. Court would have just told you to do things. Nobody should have the right to tell people what to do”, (young person,); or to help both young person and victim “To give the victim a voice – making them a real part of the process and giving the perpetrator an insight”, (personal victim). Interestingly, a very small number of young people (ten) and three victims stated that the sole aim of the conference had been punishment.

Perhaps not unrelated to the perceived lack of chastisement and reprimand was the fact that perceptions of fairness and satisfaction were extremely high. Out of all young people, only one reported feeling very unsatisfied with the process. In this case, a belief that the basis for prosecution was unjustified meant that the young person regarded the entire proceedings as unfair,

Young person, *“I was doing the same thing as every other person was...”* Police Officer, *“The police got lots of complaints from people in the area – swoop the place”*. Young person, *“And they arrested one person! You’re a police officer and see it from one point of view. I see it as a stupid system. I was the only one stopped and prosecuted. I could prove it in court. I sat and drank in front of them loads of times and they do nothing about it”*.

In order to gauge perceptions of fairness among victims, each was asked whether they believed their opinions were taken seriously. The results were extremely encouraging in this regard, with 92% of victims experiencing the process as having been fair and 98% stating that their views were definitely or ‘sort of’ taken seriously. Notably, out of the

three negative responses recorded, two related to one person tasked with representing a victim perspective in two conferences. These conferences related to the same young person and had progressed one following the other. In this instance the victim representative was dissatisfied with the young person's attitude, which s/he perceived as nonchalant and blasé, "Positive things were offered. He is going to work with the police to keep him out of [custodial unit]. His first question was 'What night?'. Cheeky git. People in his area can't get those opportunities".

An important indicator though not an exhaustive determinant of revictimisation is the extent to which victims report feeling safe within the conference arena. Out of all victims interviewed only two in total stated that they felt unsafe, "I felt anxious and scared. I just wanted to get away from her, to get out of the room", (personal victim). This should not undermine the overall positive outcome of 98% victims feeling safe, though any level of insecurity is a serious matter to be addressed. It seems that while there was potential to feel unsafe certain factors ensured a secure environment. When asked if they felt safe, one victim responded, "Yes - because the police man was there", (personal victim). In this sense, though causing a degree of discomfort for some, the presence of authority in the form of the police brought a sense of security for several conference participants.

Recommending the conference initiative

Table 6.8 shows that, overall, 86% of young people and 88% of victims stated that they would recommend a conference to persons in a similar situation.

Table 6.8: Victim: Having done the conference, would you advise another victim to attend one?

	Young Person %	Victim %
Yes	86	88
No	8	1
Depends on the offence/situation	1	11
Don't know	6	1

When questioned further the most common response from young people related to perceptions regarding the outcome. Almost half (46%) of young people who stated that they would recommend a conference believed it to be more positive than court. Some young people indicated that the environment of the conference offered something more than a routine appearance at court and provided the option to say sorry,

"It's far better than court – you get to meet everyone and say sorry. It's brilliant."

"Do a conference. It's better than a judge shouting at you and you thinking 'F off I'll do it again' 'cos they are punishing you instead of helping you."

"Aye, 'cos it makes you feel better. 'Cos you get to say sorry but probably feel better saying it to their face."

Of the thirteen young people who would not recommend conference, various explanations were received including, 'the conference is s**t/ boring', 'you talk too much and it does your head in', and 'it's embarrassing'. When asked whether they would advise a friend to attend conference or court, one young person explained how the group setting might be excruciating, "Court! 'Cos it's annoying this here. Speakin' up and everyone is lookin' at ya". Indeed, as noted in the previous chapter, a number of observations showed shifting movements, fidgeting, nervous outbursts and giggles, supporting the view that there was a level of discomfort experienced for some young people.

Only one victim stated that they would not recommend a conference and for the overwhelming majority who would, reasons related to numerous matters such as having the opportunity to express their views and to confront the young person, achieving closure, and the opportunity for the young person to meet the victim face to face, "gives them [the victim] the opportunity to speak their mind and to see what sort of character the offender is. Also gives them a choice in deciding what their punishment should be", (victim representative). Notably, a further 11% of victims felt that they would recommend conferencing but it would depend on the offence, the general view being that personal crimes and/or serious offences would be more difficult to conference,

Victim Representative, *"It depends on the offence. If it was a more serious offence I'd probably say no but for offences like theft yes."*

Personal Victim, *"Depending on what for. For minor crimes yes. But serious crimes no. If the intent is to mug someone but could end up with this absolutely not. Crimes with actual harm to people- no. Robbery, being held up with a knife. Once they lay a finger on someone they have overstepped the mark. The first time you do that is difficult – but then there is no way back."*

Best and worst aspects of the conference experience

Key elements of the conference process from a participant perspective were highlighted by asking young people and victims to isolate the best and worst features. A vast array of responses was received and whilst they are difficult to group it is possible to extract key themes. On the positive side participants referred to the opportunity for input and the chance to state ones view. Interestingly, some young people identified apologising as the best feature of the conference, "Just that I got the chance to say I'm sorry"; "You get a chance to apologise and you are not overpowered by a judge". Other aspects identified by young people included, 'meeting the victim', 'having my say' and 'everyone talking / taking part'.

Victims identified the following when discussing best features,

Victim Representative, *"The honesty of the young person involved – answering questions I put to him directly"*.

Victim Representative, *"Having restorative justice done as I firmly believe in it" [the conference] "gives both the victim and young person a good chance for the future."*

Victim Representative, *"Being given the opportunity to talk to the wee lad and hope that he won't do it again. Also, I think the best part was talking to his mum and understanding her position."*

Considering the negative aspects of the conference, as many as one fifth of young people indicated that there were none. However, other elements included 'having to talk', 'having to meet the victim', and 'being told to do things in the plan'. Interestingly, one young person did perceive that the role of the conference was to "tell you what to do". A common issue emerging for young people was the difficulty of the environment whether due to numbers or to the presence of adults and authority or both,

*"Sitting talking to all those people ... it was sh**e."*

"Having to go in and sit in front of the victim's parents."

"Sitting with two police officers."

"Walking in [to the conference]. There were too many people, and the police officer."

For victims the main predilections related to outcomes and certain practicalities such as location and the distance in time from the offence to the actual conference⁸³,

Personal Victim, *"That I will not know the outcome of his action plan. My involvement is more or less over"*.

Victim representative, *"The location – noise outside. I had to tell them to be quiet – young children looking in the window"*.

Personal Victim, *"It was too late after the offence – having to remind the child and me which one it was..."*.

⁸³ See Recommendation 4.

Lastly, a number of isolated but important points were made by some participants, which may be useful to consider. Firstly, one victim queried the appropriateness of adopting particular victim representatives on regular occasions fearing they would become, “hardened” by the process. Indeed, attendance by one individual over a period of time may result in them becoming weary of the process. A second issue raised regarded social workers and other professionals within care environments who might attend as actual or representative victims but in time become responsible for monitoring the conference plan, “I can’t be a victim and a social worker at the same time...the victim has to enforce the young person’s plan”. Professional victims within the care context will often or at least at times fulfil a supervisory role and this may create unease when also adopting the position of victim. Lastly, there was an indication from some victims of the sensibilities of a break or the availability of a private room to deliberate the plan⁸⁴,

Personal Victim, *“It might be appropriate when discussing the plan to have a separate room so you can discuss it privately.”*

Family perspectives

As a follow up on the main observations and interviews after the conference, a small number of five family members who attended in support of the young person, were contacted and agreed to provide their views on the conference experience. The conferences attended comprised both court-ordered and diversionary and concerned a range of offences from minor to more serious matters. In addition, a direct victim or victim / community representative attended each conference and all resulted in agreement of a plan, which was passed, unaltered, by the PPS or court.

In terms of expectations, the majority of family members reported having “no idea” what the conference might be like but appeared willing and open to attend. One family, however, reported their reluctance, “I didn’t even want to go. He had done damage, not us. I felt embarrassed, he had to be punished, not us, it was nothing to do with us.”

With regard to perceptions of their role within the conference, interviewees considered themselves to fill a supporting role, “so he doesn’t feel on his own and get crucified.” The value of having a family member present was also highlighted insofar as they gained a better understanding of what was expected of the young person post conference, in terms of the content of an agreed plan or issues of returning to court.

A very personal element was present when discussing with families how the young person had participated in the conferencing process. On the whole, families reported being proud of the young person, “he did his very best in the situation.” However, some did recognise that the conference presented a difficult undertaking for the young person, “He was like any other teenager, sits, head down, hard to get anything out of him.”

Immediately post conference, the young person’s family supporters reported reasonable satisfaction with the process. Nevertheless, one respondent did state that, “I couldn’t wait to get out.” This may also suggest some level of discomfort in the situation, due to any number of factors such as embarrassment, relief or being bored or tired. In addition, family members were asked in retrospect if the youth conference and its outcome had benefited the young person and / or the family as a whole. In four out of five cases, it was recorded that the conference had some kind of positive impact on the young person,

“It changed his whole outlook on life.”

“He’s quietened down and he’s working with a mentor now and he enjoys it.”

“[The young person] is now much more aware of the thin ice he was treading on and how close he got to being in serious trouble.”

The value of youth conferencing from a family perspective might be considered by determining if they would recommend others to take part. In interview, four out of the five interviewees would “definitely” advise other families to support the young person by attending the youth conference, “it was worthwhile.” One respondent took a more pragmatic approach, highlighting the reality of the situation in that the ‘success’ of youth conferencing very much

⁸⁴ See Recommendation 5.

depends upon each individual young person, their attitude and approach to it and the support network that can be built up around them. This family member, however, did not reject the idea of recommending a conference stating, “but I suppose it can’t do any harm.”

Though a small number overall, this response is important to offer a view of the conference process and its aftermath from a supporter and family perspective. On the whole, the reaction from families suggests that conferencing can be a positive experience and while it was not an easy task to participate most welcomed the opportunity to attend in support of the young person.

6.5 Overall evaluation of co-ordinator’s role

As a final appraisal and taken as a whole co-ordinators displayed high degrees of quality in facilitation skills. As shown in Table 6.9, the ability of the co-ordinator to progress the conference toward agreement was either ‘very good’, (27%) or ‘good’, (57%), as was his/her involvement of others, (‘very good’ in 35% of conferences; ‘good’ in 42%).

Table 6.9: Co-ordinator’s overall skills of facilitating participant involvement and progressing the conference towards agreement.

Progressing toward agreement	Frequency	Percentage
Very Good	50	27
Good	104	57
Ok	27	15
Bad	3	2
Skills of facilitating involvement	Frequency	Percentage
Very Good	64	35
Good	78	42
Ok	35	19
Bad	7	4

Overall, the performance of co-ordinator’s was extremely positive with observations showing that on the whole there was an endeavour to engage participant’s and this was achieved well. Although not questioned directly about their opinion of the co-ordinator a number of young people praised the co-ordinator, and their approach,

“The co-ordinator was excellent through it all – helped mum and dead good to us.”

Young person supporter. “Couldn’t have done it without the co-ordinator. Fantastic the whole way through.” Young person, “She helped us a wild lot.”

“The co-ordinator is brilliant. Has been really good, really helped me. It’s been really good doing this today. Was nervous but co-ordinator told me ‘don’t be’.”

The following case study provides an example of positive facilitation as observed by researchers. It presents particular skills in assisting input despite reluctance to engage from the young person.

Case study M: Facilitating engagement

Alex agreed to attend a diversionary youth conference for a number of driving related charges namely taking and driving away, driving whilst disqualified and driving without insurance. The vehicle involved in commission of the offence belonged to Alex's mother Betty who attends the conference as a victim. Alex's father attends as his appropriate adult with the police officer and co-ordinator making up the remaining conference participants. The co-ordinator begins by thanking everyone for their attendance and invites introductions. The co-ordinator outlines the purpose of the conference and elaborates on the principle of voluntariness explaining to Alex that he does not have to attend, "You had a choice Alex". The co-ordinator details the ground rules and points to the flip chart highlighting all points in clear language. The co-ordinator talks directly to Alex and explains the concept of confidentiality before checking whether anyone wishes to ask any questions. S/he then summarises the proposed course of events – "The police officer will summarise, Alex can provide his account and Betty can respond..."

The police officer provides a summary of the offence and the co-ordinator asks Alex how it was that he became involved. Alex provides a limited response and appears disengaged. Co-ordinator, "It's very important you tell us so your mum understands". Co-ordinator then reminds Alex of a previous meeting in which he did, "really well". Alex responds with further information about the offence but his responses remain brief. The co-ordinator goes on to clarify several words with Alex. When the police officer states that Alex was, "driving erratically" the co-ordinator turns to Alex, "Do you know what erratically means?" and explains this concept. The co-ordinator facilitates well and invites Betty to provide input and encourages discussion about the impact of Alex's behaviour and asks Alex to think about what might have happened. The co-ordinator progresses the conference toward agreeing a plan,

Co-ordinator, "How can you guarantee it will not happen again Alex?" Alex, "She knows" [...] Co-ordinator mentions that Betty, Alex's mother, feels that Alex might need support. Alex looks at the co-ordinator. The co-ordinator states that Alex has already made payment and asks Betty, "What needs to be put right?" Betty, "I think the car being vacuumed and a regular clean" Co-ordinator, "That's up to you Alex" Alex, "Aye", (scratches head). Co-ordinator, "We are not going to make you do anything you don't want to do". The co-ordinator explains the implications should Alex breach the conference plan and helps Alex appreciate the aim of the plan, "We need to make sure it is sorting your mummy out for the harm caused". Co-ordinator to Alex, "What would help you need to stay out of trouble and keep going down the good road?" Alex, "Not going to be in trouble so don't need no help" Betty, "Maybe that mentoring support...you don't want to go for overload – doing well at school. Does behaviour stuff at school". Co-ordinator, "Do you know what Betty means?" The co-ordinator explains mentoring to Alex, "...enjoyable and interesting. It's not a social worker or probation officer. Someone who wants to be with you. What do you think?" Police officer, "The word often puts them off, 'mentor', it's not someone posh", Alex, "My mates brother does that there – aye".

The co-ordinator checks with Alex how long he would like to be involved with mentoring and asks the group if there is anything else they would include in the plan. Alex and the police officer discuss a local scheme involving young people in sport and football and Alex agrees to talk to the organisers about this. The co-ordinator ensures that Alex and others understand the plan and consequences.

Co-ordinator, "Alex will get support from me in carrying out the plan", s/he explains his/her role as co-ordinator in ensuring the plan is complete and asks Alex's father if there is anything he would like to offer. The co-ordinator mentions that they have not introduced anything within the plan to address issues related to driving and that the DPP might wish to see this,

Co-ordinator, "The DPP might want to see something to do with the driving aspect of the offence. Road safety have a video package. I could include a session about that?" Alex does not appear keen. Co-ordinator, "I don't want to be pushing you into stuff you are not happy with". Alex then agrees. The co-ordinator outlines clearly the elements suggested for the plan and explains the implications of breach. The co-ordinator asks Alex if he understands and if he feels the plan is fair. The group nods in agreement.

An important attribute held by the co-ordinator is an ability to use appropriate language and to present the proceedings in a way that permits all participants to understand. A number of victims felt that this aspect of facilitation was extremely important,

Victim Representative, *“Important to think about the young child’s level – learning difficulties – and how things are worded. Words used were sometimes too jargon-y due to the number of people there”.*

Personal Victim, *“A lot of stuff that was addressed was over the offender’s head, we lost his attention”.*

In no instance was the co-ordinator observed to speak in an inappropriate manner. However, certain legal concepts presented difficulties, including the idea of ‘general public’ as victim and that certain criminal charges involved no tangible victim. Some instances of misunderstanding did relate to more routine use of language and wording. Observations noted difficulty with certain phrasing, for instance, terms such as, ‘reiterate’, ‘ratified’, and ‘DPP’.

As the co-ordinator is the main facilitator they can be expected to be one of the primary discussants within the conference proceedings. However, assisting the process is a different matter than domination and in a minority of cases the co-ordinator was observed to dominate proceedings. While this was seen to occur in a small proportion of conferences overall, it is important for facilitators to balance their own role if others are to gain fully from the process. Domination or inappropriate levels of input by participants other than the co-ordinator did occur, most notably the young person’s supporter followed in eleven cases by the victim and eight instances by the police officer. Nevertheless, it was found that on the whole, the co-ordinator dealt with this well.

In the vast majority of conferences, it was observed that the co-ordinator was effective and displayed particular skills in their ability to be inclusive and to treat every participant in a fair and respectful manner⁸⁵. One victim noted how the co-ordinator worked to achieve a balance in their approach towards the young person and victim,

Personal Victim, *“It’s not a courtroom. I can’t say it wasn’t fair. The co-ordinator was fair in chairmanship of it – they had to be seen not to be on the young person’s side or my side. The co-ordinator is not a judge but unfortunately it is pushed on the co-ordinator.”*

6.6 Conclusion

Overall, results showed that the involvement of participants and the facilitation of conferences by co-ordinators was overwhelmingly positive. In the majority of conferences most participants were involved when discussing the crime and the vast number had some degree of input when devising and agreeing the conference plan. In interview, young people and victims often reported feeling better following the conference. Most indicated that they preferred the conference process over court and felt that they would recommend the conference to a person in a similar situation. Family members were also positive after the conference and appreciated the opportunity to attend in support of the young person. On the whole, co-ordinators performed extremely well in facilitating the conference and displayed particular skills in ensuring the involvement of all participants.

Having considered the overall evaluation of conference proceedings, the next chapter will explore the return of conference plans to the court or Public Prosecution Service and varying outcomes.

⁸⁵ See Recommendation 19.



Chapter 7

The making of conference plans and orders

7.1 Introduction

Having examined both the referral and convening of youth conferences, we proceed now with an overview of the return of conference plans to court or the Public Prosecution Service. The numbers of plans returned, and their varying outcomes, are examined here, as is the legislation governing the process and key issues arising with respect to it.

7.2 Summary of findings

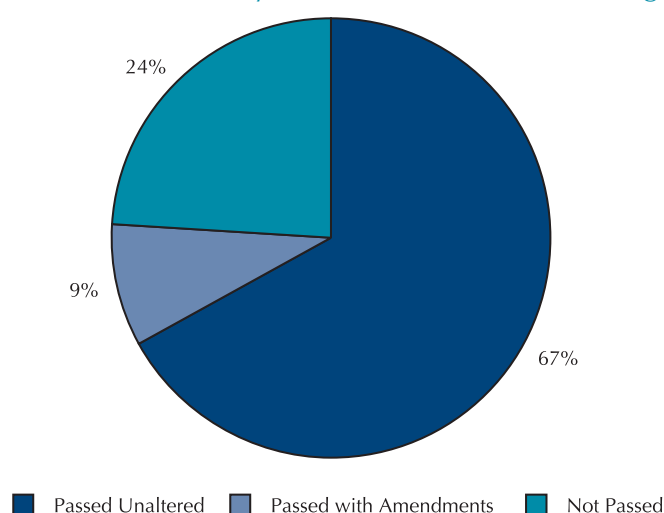
- ◆ Two-thirds of conference plans (67%) were passed in their original form.
- ◆ All conference plans returned to the Public Prosecution service were passed, whilst just under two thirds of plans were accepted by the court (63%).
- ◆ Differences in decision making between Magistrates were evident between the Fermanagh and Tyrone and Greater Belfast regions, with plans much more likely to be passed in Fermanagh and Tyrone.
- ◆ On the making of Orders, observations found that legislative requirements are generally being met within the courts.
- ◆ In most cases, reasons given by the court for the rejection of plans related to the nature of the offence. Whilst on some occasions the offence was believed to be too serious for the imposition of an Order, in others certain cases were not deemed serious enough.
- ◆ Of those referred to a youth conference by the court, but did not receive a youth conference order the most common alternative disposals were a conditional discharge or a period of custody.
- ◆ On average, plans are being completed within 67 working days, well within the year afforded by the legislation.
- ◆ Only a small minority (6%) of plans were subsequently revoked due to non-compliance.

7.3 Overview of plans returned

Following the convening of a conference the co-ordinator is required to submit a report to the court or Public Prosecution service. This report will contain information on the pre-conference process, attendees at the conference, an outline of the conference, the views of others⁸⁶, and will conclude with a summary and the co-ordinator's recommendations. The court or Public Prosecution Service will then consider this report, and may accept or reject any suggestions presented within.

Two thirds (67%) of all plans agreed at a conference were, upon their return to court or the Public Prosecution Service, passed in their original form. A small proportion of plans (9%) were passed after receiving amendment(s), whilst one quarter (24%) of plans were rejected in favour of an alternative disposal.

Figure 7.1: Decisions by PPS and Court on returning plans



⁸⁶ For example, any agencies with which the young person may have contact or involvement.

When broken down into referral type, as displayed in Table 7.1 below, we see that all diversionary plans returned were passed. By contrast, just under half of all court-ordered plans were passed (49%) and were much more likely to receive either amendment (14%) or rejection (38%). This marks a clear difference in decision making when plans are returned between the two referral sources.

Table 7.1: Decisions by PPS and Court on returning plans (by referral source)

	Diversiónary %	Court Ordered %
Passed unaltered	100	49
Passed with amendments	0	14
Not passed	0	38

7.4 Return of diversionary plans

Following the convening of a diversionary youth conference, Section 58, 10A (2) of the Justice (Northern Ireland) Act 2002 provides that co-ordinators may recommend one of the following options on returning the case to the Public Prosecution Service:

- ◆ that no further action be taken against the child in respect of the offence
- ◆ that proceedings against the child in respect of the offence be continued or instituted
- ◆ that the child be subject to a youth conference plan in respect of the offence

In the overwhelming majority (98%) of cases the co-ordinator recommended a youth conference plan. Only two diversionary conferences were not recommended to the PPS for plans - a plan was not agreed in one and no further action recommended in another⁸⁶.

All plans agreed at diversionary conferences were subsequently ratified by the Public Prosecution Service. On one hand, the content of the conference plans could generally be viewed by the PPS as acceptable and proportionate to the offence. It may also be the case that once the PPS has rejected the option of prosecution in favour of a diversionary conference, they are satisfied to accept that participation in a conference and agreement to a plan is an acceptable 'punishment'. Such an approach suggests an adherence to the restorative philosophy that an outcome should be accepted where it is a result of genuine consensus. However, it is important that such outcomes are framed within a context that takes into account the rights of the young person and that plans should be carefully scrutinised to ensure that the outcome is proportionate to the offence⁸⁷.

7.5 Return of court-ordered plans

With regards to court-ordered conferences, Section 59, 33A (5) of the Justice (Northern Ireland) Act 2002 states that co-ordinators may recommend one of the following options to the court following a conference;

- ◆ that court exercise its powers to deal with the child for the offence
- ◆ that the child be subject to a youth conference plan in respect of the offence
- ◆ that the court exercise its powers to deal with the child for the offence by imposing a custodial sentence and the child be subject to a youth conference plan in respect of the offence

In the vast majority of cases (94%) the co-ordinator recommended that the young person be subject to a youth conference plan. In nine court-ordered conferences no plan was agreed and it was instead recommended that the court should exercise its powers to deal with the offence. In one case, a conference plan was not recommended because the offence carried a mandatory sentence which could not be combined with a youth conference order.

⁸⁷ See generally Ashworth (2001), Braithwaite (2002) and Cavadino and Dignan (1997) for further discussion regarding proportionality

Making of youth conference orders

Section 60, 36J of the Justice (Northern Ireland) Act 2002 states that the court must not make a youth conference order unless (a) it is of the opinion that the offence was serious enough to warrant it and (b) the young person consents to the Order. When making a youth conference order, the legislation requires the Magistrate to explain clearly why it is of the opinion that the offence is serious enough to warrant an order. They must also explain to the young person ‘in ordinary language’:

- ◆ why it is making the order;
- ◆ the effect of the order and of the requirements proposed to be included in it;
- ◆ the consequences which may follow under Schedule 1A if he fails to comply with those requirements; and
- ◆ that the court has power under that Schedule to review the order on the application either of the offender or of the responsible officer. (Section 36(K)2)

In most cases Magistrates were observed to explain the making of a youth conference order to the young person. On a few occasions, this was not covered in the depth that the legislation requires, however this generally occurred in the early stages of the service and was seen to improve as Magistrates became more familiar with the process. The following excerpt from court observations provides an illustration of these requirements being carried out in full when making an order:

Case study N: Making a youth conference order

The young person’s solicitor informs the Magistrate that the young person has “fully accepted responsibility and the harm caused. The goods were fit for resale and they are keen to take this opportunity”.

The Magistrate asks the young person’s solicitor if the young person “consents to the terms of the youth conference order” and the solicitor responds ‘yes’. The Magistrate then speaks directly to the young person, “I note with approval the way you have dealt with the offence. You have fully engaged with youth conferencing and this is an opportunity to put this behind you. I am making a youth conference order because of the serious nature of this offence.” The Magistrate then proceeds to outline each term of the order and checks that the young person understands them and the consequences of non-compliance. The Magistrate explains that the court can review the order at either their request or the request of the Youth Conference Service. The court then rises for a copy of the youth conference order to be issued to the young person and their appropriate adult.

Court-ordered conference plans

In total, 63% of conference plans recommended by the co-ordinator were either accepted outright (49%) or passed with amendment (14%). Over a third of plans (38%), however were rejected by the court in favour of an alternative disposal. When broken down into region, as detailed in Table 7.2 below, we see that no court-ordered plans were rejected by the rural youth courts, whilst 54% of plans were not passed by the Belfast youth court.

Table 7.2: Return of court-ordered conference plans (by region)

	Greater Belfast %	Fermanagh & Tyrone %
Unaltered	32	89
Amended	15	11
Not passed	54	0

Therefore, over half of all referrals made by the Belfast youth court did not result in a youth conference order. Such regional variation is striking and suggests significant difference in decision making between Magistrates. A practical implication of such a discrepancy is that young people in Belfast are far less likely to have their plan passed than those in the rural regions⁸⁸. The difference in decision making did not appear to relate to offence type, as results showed a similar distribution of offence seriousness for plans returned to Greater Belfast and Fermanagh and Tyrone courts. Therefore, at the high end of the offence seriousness scale, only three plans (3%) returned to the Belfast youth court and none in Fermanagh and Tyrone related to ‘very serious offences and serious harm to the person’. Similarly, 27 or 26% of plans returned to Belfast youth court and 12 or 26% in Fermanagh and Tyrone related to less serious property offences (Table 7.3).

Table 7.3: Return of court-ordered conference plans by region and offence seriousness⁸⁹

	Greater Belfast %	Fermanagh & Tyrone %
Very serious offences / harm to the person	3	0
Serious offences against person and property	20	11
Intermediate offences against person and property	51	63
Not passed	26	26

In terms of the profile of offences for which plans were rejected in the Belfast youth court, the majority (24 or 42%) related to ‘intermediate’ offences against person and property, followed by 16 or 28% for ‘serious’ offences against person and property, and 15 or 26% for ‘minor’ property related offences. Two or 4% related to plans agreed for ‘very serious’ offences and harm to the person. Of course, as shown in Table 7.2, no plans were rejected by Fermanagh and Tyrone courts. Finally, there was some correlation apparent between rejection of plans and levels of previous involvement within the criminal justice system. Therefore, from the criminal record information available, the results showed that 20% of plans rejected related to young people with a history of two or three previous sentences, 12% to those with a history of four and 17 % to those with a record of five previous court sentences. However, the results showed that the majority (51%) of plans rejected by the court related to young people with lower levels of involvement in the criminal justice system, that is, with a history of one or no previous court sentences.

The Justice (Northern Ireland) Act states that⁹⁰ “if the court does not make a youth conference order under paragraph (2) (a) in a case where it has power to do so, it must give its reasons in open court.” Interestingly, observations found that the reasons provided for rejection of plans were most frequently linked to the nature and/ or seriousness of the offence. This notion of ‘seriousness’ appears to refer to the specific circumstances surrounding the offence rather than eligibility, as the legislation clearly defines which offences are eligible for conferencing⁹¹. Section 60, 36J (4) of the Justice (Northern Ireland) Act affords the Magistrate some guidance in determining whether the offence is ‘serious enough to warrant’ an Order:

In forming any such opinion the court must take into account all information about the circumstances of the offence, or of the offence and the offence or offences associated with it, (including any aggravating or mitigating factors) which is available to it.

The most commonly observed reason given for not passing a plan was “the offence is not serious enough for a youth conference order” (19%). In half of those cases in which a youth conference order was deemed too onerous, a conditional discharge was imposed. This finding is interesting given that the Justice (Northern Ireland) Act stipulates that a court must not refer a young person to a youth conference where “it proposes to deal with the child for the offence by making an order discharging him absolutely or conditionally”⁹². In practice, this appeared not to be strictly adhered to as a total of fifteen conditional discharges were issued following the rejection of a youth conference plan. Rejecting a conference plan outright, without taking the opportunity to amend it, on the grounds that the offence is not serious enough to warrant it and then imposing a discharge may be counterproductive not least for the young person⁹³.

⁸⁸ See Recommendation 20.

⁸⁹ Offence seriousness was determined using an ‘Offence Seriousness Scale’ devised for the purposes of this research. An explanation and details of the scale are provided in Appendix 6.

⁹⁰ Section 60, 36J (7) Justice (Northern Ireland) Act 2002.

⁹¹ Section 59, 33 A (2) Justice (Northern Ireland) Act 2002.

⁹² Section 59, 33 C (5) Justice (Northern Ireland) Act 2002.

⁹³ See Recommendation 21.

The second most common reason for rejection was that the offence was “too serious” for a youth conference order. The case study below presents a situation in which the Magistrate determined that the returning plan did not adequately reflect the seriousness of the offence:

Case study O: Seriousness of the offence

The Magistrate impresses that the offence is extremely serious, and would attract a period of detention if appearing in an adult court. The young person’s solicitor argues for the youth conference plan to be passed, stating that the young person has no previous record, was fully remorseful, has demonstrated a mature attitude and that the offence was a ‘one off mistake’. The Magistrate continues by considering the youth conference plan in light of the seriousness of the offence:

Magistrate: “We’re not happy that two points on a youth plan will meet the justice required here - not happy having read it...The questions is do we have the plan looked at again or refer to probation?...I think we will probably do both - it may not be possible given that the conference has taken place for the co-ordinator to come up with more than two points...He is very fortunate. He has a good family...What I fail to understand is when a human being is lying at your feet, incapable of defending himself you don’t wait ‘til he staggers to his feet, you bury your foot in his head. You and your mate probably wouldn’t have stopped if it wasn’t for the intervention of the police...two points don’t even go one-quarter of the way to meeting the justice of this offence.”

“I think, with respect, the Youth Conference Co-ordinator has missed the seriousness of this offence...We’ll adjourn for four weeks for new youth conference report and a pre-sentence report...youth conferencing can review their plan and come up with something much more than this. Does he even know how serious this offence is? Totally, totally inadequate...if not for the fact that it is his first offence and the fact he made a plea this would be much more serious...Consider what you think will satisfy this court to make reparation not only to the victim but to society at large”

Other reasons given by the Magistrate for not accepting youth conference plans included that it was “not appropriate to put a plan in place where there was no empathy”, that it was not appropriate for the young person to have four youth conference orders running concurrently, the case was to be adjourned for a psychiatric report, and that the offence had two victims but only one was offered involvement in the conference. Further reasons, as illustrated below, related to the young person now residing outside the Pilot area⁹⁴, that the plan was inappropriate, that the plan was unworkable in light of new developments and that a youth conference order could not be combined with another order⁹⁵:

Magistrate: *“I have a small problem with this. He is now resident in Ballymena and therefore is not resident in the area covered by Youth Conferencing ... Can’t consider youth conferencing as he is not living in territory covered by it. I will have to adjourn for a pre-sentence report.”*

Magistrate: *“I’m not going to impose this youth conference order. Firstly, I think it is wrong that a child should pay money at this age. Secondly, the community element is already provided for by probation, and your report says that this element of the plan would be overseen by probation, so if he does not go to one probation meeting he can be breached twice.”*

Magistrate: *“It is entirely no fault of the youth conference service but in light of developments the plan is now redundant since a central part of the plan is that he cooperates with probation and he has shown, even a few minutes ago, that he’s not willing to do that.”*

Magistrate: *“We have not imposed a youth conference order for traffic offences. We have to disqualify.” The young person’s solicitor argues that the youth conference plan is excellent. Magistrate: “That may be, but I cannot impose it.” The solicitor asks the Magistrate to pass the case temporarily. When the case is called, the Magistrate re-iterates that the plan cannot be imposed, “As I have said, driving with no insurance means compulsory penalty points. We are not imposing a youth conference order.”*

⁹⁴ Section 59, 33C (1) (a) Justice (Northern Ireland) Act 2002 states that a youth conference order can only be made where “provision for youth conferences has been made for the area in which it appears to the court that the child resides or will reside”.

⁹⁵ See Recommendation 2.

Amendment of youth conference plans

That plans are returned to the referral source for approval may be seen as an additional level of oversight to ensure that plans are both proportionate and appropriate. This is of particular importance where plans have the potential to be quite onerous; as the only legislative restriction is that a plan must last no longer than one year. As illustrated in Case Study N above, the court has the power to amend a plan agreed at a conference. The court may only amend a plan with the consent of the young person, as the court must not make a youth conference order without consent. The option to amend was observed to be used on occasions where the plan was viewed by the Magistrate as either too severe or not strong enough⁹⁶. A number of observations did suggest that the courts measured the severity of the plan according to the number of points or elements agreed, (see Case Study P below). This is perhaps a matter for further development given that the meaning and value of a conference outcome may rest in the nature of a plan rather than the number of elements appearing within it⁹⁷.

The amendment of plans was generally administered in two ways; by adjourning to enable conference participants to suggest amendments (see Case Study O below) or the court itself amending the plan on the day of its return to court (see Case Study P below):

Case study P: Amended plan

Offence: Possession of an offensive weapon

The solicitor asks the Magistrate if they would accept the plan. "I'm not saying we wouldn't consider it, but two points in a plan is not enough for matters involving carrying an offensive weapon. I couldn't adopt it. I have read plans with four or five points for lesser offences." Plan is adjourned in order to consider amendments. (Sept 04)

The amended plan is returned to court two weeks later. The Magistrate informs the young person's solicitor that they have "given consideration to the amended plan ... I take it your client consents?" Solicitor, "Yes". The Magistrate asks if the young person has any previous offences. Magistrate, "Taking into consideration your previous findings and the nature of the matters before the court I feel it is sufficient to impose a youth conference order." The Magistrate then summarises the order – a letter of apology to the victim within eight weeks, attend named programme for six months to work on anger management, alcohol education and victim awareness, 48 hours voluntary work with names organisation. The Magistrate explains that if the young person breaches the order it will return to court and that they can revoke it and replace it with a period of detention – "you would need to have a pretty exceptional reason to avoid this." The order is made, and the court rises whilst copies of the order are created for the young person, their parent and the Youth Conference Service.

Case study Q: Amended plan (2)

Offences: Shoplifting and disorderly behaviour

The young person has two youth conference plans back at court. Magistrate: "I can see you got off to a bad start but things have improved." Solicitor: "I have gone through the report with her and subject to you she is happy with it." The Magistrate then asks for the facts of the case to be outlined. The Magistrate then asks the Youth Conference Service if they want to add anything, and they do not. The Magistrate then speaks directly to the young person; "we have read your first report and saw how well you did – we are very pleased and you have to be congratulated. We are very impressed that you haven't committed any offences in the past six months and hope you continue to reap the benefits of youth conferencing. We will grant you these youth conference orders. These are not here to punish you; they are for your benefit. We don't want you committing other offences."

The Magistrate then goes through the two plans one element at a time, and checks that the young person is happy to agree to them. They add that "we are going to reduce your curfew from three months to one month to give you credit for how well you co-operated." They check that the Youth Conference Service has no objection. The plan is made, but the Magistrate does not explain breach or potential return of the plan to the young person.

⁹⁶ See Recommendation 22.

⁹⁷ See Recommendation 23.

If the court has difficulty with a plan it is perhaps better to amend it as rejection punishes the young person by having to take part and may also leave the victim unhappy that something they have both invested time in and agreed to will not be put in place. Although this was a matter not covered by the remit of this research, it may be useful to explore the views of victims post conference following the courts' decision on the plan⁹⁸.

7.6 Final court disposals

Table 7.4 below presents the outcome of cases referred to a youth conference by the court and subsequently disposed of in the period covered by the research. The most common disposal is that of a youth conference order, which occurred in half of all referred cases (49.7%). Interestingly, the next most common outcomes represent different ends of the range of disposals available, namely a conditional discharge (15.4%) and a period of custody (13.4%). These outcomes reflect the frequently observed reason given for rejection that the offence was either 'too serious' or 'not serious enough' to warrant a youth conference order. It would appear, at this early stage of the court's experience with conference orders that offences falling in between these most frequently result in a youth conference order.

Table 7.4: Final disposal of all those referred to a court-ordered youth conference⁹⁹

Disposal	Number	Percentage
Youth Conference Order	97	49.7
Conditional Discharge	30	15.4
Custody	26	13.4
Probation Order	16	8.2
Attendance centre order	9	4.6
Fines Imposed	4	2.1
Withdrawn	2	1.0
Suspended Sentence	2	1.0
Absolute Discharge	2	1.0
Community Services Order	1	0.5
Community Responsibility Order	1	0.5
Referred to the Adult Court	1	0.5
Other	4	2.1
Total	195	100

⁹⁸ See Recommendation 24.

⁹⁹ This table refers to all those referred in the Belfast youth courts; where a final disposal was reached i.e. those young people who both completed a conference and those that withdrew consent before the conference took place.

7.7 Completion and revocation of youth conference plans and orders

On average, conference plans were completed in 67 working days. This is well within the given timeframe of one year. Likelihood of completion does not appear to relate to the source of referral; this was almost equal as 46% of completed plans were diversionary and 54% court-ordered.

The revocation of youth conference plans or youth conference orders is generally viewed as a last resort, and the Youth Conference Service will endeavour to provide the young person with every opportunity to address the issues relating to non-compliance. This includes, where necessary, the scheduling of a second youth conference. Extenuating circumstances beyond the young person's control - such as family conflict or homelessness - may be identified as the source of non-compliance, in which case the plan may be temporarily suspended. In the case of diversionary conferences, the legislation states that "proceedings against the child in respect of the offence may not be continued or instituted unless the child has failed to comply with the requirements specified in the youth conference plan to a significant extent." In the case of breach of a court-ordered plan, Schedule 10 of the Justice Northern Ireland Act (2002) provides the court the option of imposing an attendance centre order in addition to the youth conference order, or imposing a new order whilst revoking, amending or extending the youth conference order. In addition, it has the power to re-sentence the young person for breach "if he had just been found guilty of the offence by the court."

In total, eleven plans (6%) were revoked following ratification, six of which were court-ordered and five diversionary. At the time of writing, no information was available on the sentencing outcome of these cases¹⁰⁰.

7.8 Conclusion

The majority of plans agreed at a conference were passed by the court or the PPS unaltered. All diversionary referrals were passed without amendment, and two thirds of court-ordered plans were passed either unaltered or with amendment. However when examined more closely, there exists significant disparity in decision making between the Belfast and rural courts. On the making of youth conference orders legislative requirements were generally carried out, particularly with regards to the degree of explanation offered to the young person. This was something observed to have improved as the period of the research progressed. Refusal of conference plans by the court was most often related to the nature of the offence, namely that the offence was either too serious or not serious enough to warrant an order. Practice might be improved by amending plans to fit the offence rather than rejecting them outright, which would be of greater benefit to the victim, young person and indeed the spirit of the legislation. Just under half of all young people successfully completed their conference plan within the period of the research, on average well within the timescale defined by the legislation with only a small minority of plans or Orders being revoked.

¹⁰⁰ See Recommendation 25.

Chapter 8

Interviews with stakeholders



8.1 Introduction

As part of the research interviews were conducted with key stakeholders linked to the youth conferencing process. These included representatives from the Police, the Youth Conferencing Service, Community Restorative Groups, the Public Prosecution Service, Northern Ireland Office Youth Justice Policy, Probation Board and Youth Court Magistrates. The interviews sought to get an insight into how the new youth conferencing arrangements were operating from the perspective of these different agencies and individuals. The interviews aimed to identify how the new policy was being received and how any problems and difficulties were being dealt with.

8.2 Interviews with police officers

The research team interviewed four police officers involved with youth conferencing. The officers were based in Belfast, Whiteabbey and Carrickfergus.

Overall impressions

All of the officers expressed enthusiastic support for the restorative principles that underpinned the conferencing process. All believed that it helped the young person to appreciate the true impact of the offence, and most thought that it was helping to prevent repeat offending. One officer estimated that 50% of those who had attended a conference since the service began had not re-offended. One officer felt that conferencing 'created a sense of ownership for the crime' and brought about a 'realisation factor':

'Court is a joke for juveniles. The solicitor does everything and they don't have to think or reflect about what they've done and they can get away without saying a word. The conferencing system is far better in getting the child to think about what they've done.'

Two officers were particularly keen to provide anecdotal evidence of conferencing turning young people away from crime. One reported that the re-offending rates were 'noticeably lower', and another officer expressed his particular satisfaction with one case where the young person had actually been offered a permanent job with a victim.

All officers, however, mentioned that there was a small minority of cases that were unsuitable for conferencing, either because the offences were extremely petty, or because they were habitual offenders:

"There are a small minority of offenders who will never take responsibility for their actions. Conferencing is just a waste of time and resources in these cases."

Two officers also noted that a number of 'problem cases' had arisen from offences committed by children in care against social workers. One officer suggested that some sort of special provision be made for such cases, the same individuals were committing minor assaults on their carers on a regular basis. He said that it was impossible for the young person to recall the specific circumstances surrounding any one particular incident. Another officer stated:

'Conferencing isn't suitable for children's home offences. These are quasi-domestic situations, and a conference is not the appropriate forum to resolve these issues... These sorts of things go on all the time, and it's not possible to deal with all the factors that led to one specific offence occurring'

This officer recalled one such conference where a young person had committed six different assaults against care workers within a short period of time. When told of the circumstances of the offence in the conference, he simply replied 'if you said I did it, I must have done it'. The officer felt that the young person was genuinely unable to recall the incident.

Workload

All the interviewees acknowledged that the nature of their work had changed substantially since the new system came into operation. Concern was expressed by two officers that the work seemed to come 'in fits and bounds', and considerable uncertainty was expressed about the prospect of 17 year-olds being introduced into the system. A number of officers noted that while workload would definitely increase, it was unclear by how much and whether the police would be able to cope with such an increase in their workload with the existing resources.

Training

All officers expressed high levels of satisfaction with the training they had received. It was described as 'excellent', 'very comprehensive' and 'very thorough'.

Relationship with the PPS

The officers all felt that although conferencing was working well from their perspective, there were certain logistical problems with referrals from the PPS. One officer noted that it took 90 days for the PPS simply to register a case onto their system once they had received it. This then reflected poorly upon the performance of his office, since it made it seem that the police had taken three months to despatch the file in the first place.

The timing of an actual disposal decision was described as 'very much a lottery'. One officer said that it was impossible even to give an average estimate of the turnaround time as it was 'simply far too unpredictable'. He cited one case where a conference was held around 9 months after the date of a very petty offence which the young person could not even remember. Another officer noted that incidents currently being investigated by the police (in August / September) were unlikely to result in a conference before the New Year. Another officer said that turnaround time would 'frequently be up to six months', and recounted one case where a decision had been taken 18 months after the police had referred the case to the PPS. There was a feeling among several officers that the PPS were inadequately equipped to deal with the volume of referrals, although one officer felt that these were merely 'teething problems' which would eventually be ironed out. Concerns were also expressed that such problems may be exacerbated once cases involving 17 year-olds were introduced into the system.

In addition, a number of the officers also expressed regret that they had been 'left out of the loop' in relation to deciding on the appropriate disposals. Although it was unusual for the PPS to depart from a recommendation by an officer, there was a feeling that mandatory referrals to the PPS in all instances resulted in unnecessary delay and wasted resources:

'A lot of stuff shouldn't be going to the PPS at all. They shouldn't have to deal with very minor offences. It creates a lot extra paperwork and makes the whole system more inefficient.'

'The PPS don't know the young person and aren't familiar with their background. They don't have the information we have from social services or education & welfare. Decisions should be taken by Youth Diversion Officers.'

Such a delay is obviously undesirable in relation to conferencing, which is widely believed to work best when the conference is held in close proximity to the offence. One officer believed that the delay meant that the diversionary function of the service had been 'thwarted'.

Relationship with other statutory agencies

The lack of firm protocols for the sharing of information was identified as a major weakness by a number of the officers. Some of the officers spoke of very little contact between statutory agencies and the police. One officer stated:

“The lines of communication are very poor. We can’t paint a picture of the young person’s background in the way we used to.”

One mentioned an ‘unwritten agreement’ had been entered into with Education & Welfare concerning when information would be shared. Another officer said that Education & Welfare were reluctant to share information in the absence of formal protocols, whilst the probation service were ‘snowed under and didn’t want to know’. The police seemed to find that the onus largely rested on them in gathering information about a young person’s background. One officer suggested that he intended to organise regular, though informal, ‘bureau-style meetings’ to facilitate the sharing of information. Another suggested that more information should be readily accessible on a computer database that could be accessed by different agencies.

Relationship with the Youth Conferencing Service

Officers were asked about the nature of their relationship with the Youth Conferencing Service and how they felt conferences were being handled.

All interviewees spoke highly of the way in which conferences were facilitated. Co-ordinators were described as being ‘very well prepared’ and having ‘excellent techniques in getting the young person to open up’. It was clear that many officers felt they had built up relationships with individual co-ordinators which resulted in a ‘good working partnership’. Within conferences themselves, most officers saw their function as working closely alongside the co-ordinator. All the officers felt they were given ample opportunity to participate. There were slight differences in the way the officers perceived their role. One said that his purpose was ‘there to feed in all the background information’ and another asserted that he usually took the time to explain to the young person why the incident in question was a criminal offence. Two officers, in particular, saw one of the primary purposes of their role as assisting the co-ordinator. One described their role in the conference as a ‘double act’ and another characterised it as a ‘team effort’:

‘I see my role mostly to present the facts... I also try to support the co-ordinators if they get into a sticky situation or if they get stuck for words... Sometimes co-ordinators actually look to the police to ask a few questions, just to give themselves time to gather their thoughts or prevent the whole thing just becoming a one-on-one between the co-ordinator and the juvenile.’

All officers stated that the atmosphere at the conferences was very positive, with the exception of a handful of cases, including one instance where a young person’s father had been asked to leave the conference because ‘he had a bad attitude to the police’. One officer noted that most offenders were very keen to talk, although they seemed ‘very relieved’ when the conference finished.

Monitoring and follow-up

There were evidently quite a few cases where the police were involved in the monitoring of conference agreements. Two of the officers we spoke to considered that this function was particularly problematic. One officer felt that ‘the police should not be involved in monitoring anything’ and felt strongly that this responsibility should lie solely with the Youth Conferencing Service. He expressed a fear that once the system was rolled out to cover 17 year olds, the police would not be able to afford the time commitment to assist in the monitoring of agreements. He also suggested that many retired police officers would be willing to work with young people in a supervisory capacity as they carried out their action plans.

8.3 Interviews with youth conference co-ordinators

Nine conference co-ordinators were interviewed. The research team sought to gauge the opinions of the co-ordinators as to how well the conferencing system had run to date. More specifically, co-ordinators were asked about how well they had been trained; the nature of their work; their overall impression of both the philosophy and practice of restorative conferencing; and the particular strengths and weaknesses of the service, including its future direction.

Overall impressions

It was clear that all the co-ordinators with whom we spoke were highly motivated and deeply committed to their jobs. The 'working atmosphere' in the Youth Conference Service was described 'notably different' from other statutory agencies by one co-ordinator and another described it as 'a breath of fresh air'. A number of interviewees also spoke of how they felt their views and opinions were taken on board by senior management, and felt strongly valued by the Service. Co-ordinators used terms such as 'exciting', 'creative' and 'innovative' in describing the nature of their work. One co-ordinator remarked:

'Ever since I came here I've loved the way I can be creative in my job. New ideas are always welcomed, never dismissed. From the start we've all been encouraged to think outside the box. Compared to other agencies I've worked with, I feel I really have the opportunity to develop myself professionally here.'

Another reflected:

'I get a lot from this job – enjoyment, emotion, pain. But the most satisfying aspect of it is seeing the turnaround in a relationship between offenders and victims.'

All co-ordinators felt they had been very well trained and showed a strong awareness of the values and aims of restorative processes. Many believed that it had underlined to young people the need to take some form of responsibility for their actions and gave communities and victims the potential to play a role in a system that had 'previously shut them out'.

Organisation and workload

The workload itself was seen as acceptable, although it was noted by several co-ordinators that it tended to come in 'bursts':

'The PPS is very slow. Ideally we'd like a steady flow, but that's not the way it works. Any day now we're expecting an avalanche of referrals.'

Some co-ordinators voiced some apprehension that they may become overburdened when 17 year-olds were incorporated into the system.

Co-ordinators were asked whether they felt any of the cases they had handled were unsuitable for conferencing. Three co-ordinators reported some concerns over the fact that resources were occasionally being devoted to processing some very minor cases which, in their opinion, should have been disposed of in an alternative fashion. One co-ordinator told us:

'One case I dealt with involved a child taking £1.34 worth of confectionary from a petrol station. I had to ask myself – is this really worth it, for the sake of £1.34?'

Another remarked:

'The service shouldn't be taking on really petty cases. That just devalues the entire conferencing process.'

However, these co-ordinators did make it clear that such cases were very much in an exceptional category and felt that conferencing was appropriate for the vast majority of the cases they had handled.

Several co-ordinators also expressed doubts as to whether it was worthwhile to run a second conference about the same issues that had been dealt with in an earlier conference. Some co-ordinators stressed the need to rethink those cases where multiple offences had occurred, and whether they ought to be dealt with in separate conferences or in the same session. One co-ordinator recalled an incident where a young person had been referred for two conferences for two incidents of criminal damage which occurred on the same day within a few hours of each other.

Like many of the police officers we spoke to, some of the co-ordinators questioned whether conferencing was suitable for young people who had committed assaults against staff in children's homes. One interviewee described the approach of the PPS as being 'overly clinical' in that they tended to draw very clear boundaries around individual offences, without taking into account the factors which gave rise to the offending behaviour within a particular period of time.

One co-ordinator voiced concerns that the PPS had referred a number of very serious cases which he felt were unsuitable for youth conferencing. One case concerned an offender who was currently in custody for a very serious assault. The Youth Conference Service had received five referrals for this particular individual in relation to three criminal damage charges and two assaults. In the opinion of this co-ordinator, this case was a 'clear waste of time'.

A final issue that arose in relation to their working practice concerned the nature of the database where information was recorded. A number of co-ordinators felt this database was inadequate, as it did not give them a space to insert an explanation for any delays that had occurred. One co-ordinator reported:

'It can seem at times we aren't meeting our targets because of the information that's on the database. We can't explain or enter any sort of explanation. Sometimes a young person might be on holidays, for example, or other agencies have created some sort of difficulty. That sort of thing isn't the fault of individual co-ordinators, and yet we don't have a chance to explain that.'

Experiences of conferences to date

On the whole, there was a broad consensus that most conferences ran smoothly and had gone according to plan. Co-ordinators expressed a high degree of satisfaction with the outcome of the vast majority of conferences. On occasions, young people could be very uncommunicative, but for the most part, co-ordinators felt that they had engaged with the process and held genuinely good intentions to meet the terms of the conference plan and avoid future offending.

Some co-ordinators expressed regret about the lapse of time that had occurred between the incident in question and the conference. It was noted that, on many occasions, a young person would have committed other offences in the interim, which may have a 'blurring effect' upon the conference in question. A co-ordinator cited an example of a conference which had been held in April 2005 in connection with an assault that had occurred in a children's home in December 2003. The co-ordinator commented that the young person genuinely was unable to remember the details of the offence, which were particularly important for raising emotions within the conference setting.

Relationship with conference participants

All co-ordinators expressed a very positive opinion of their working relationship with the police officers who were involved in conferencing:

'All the ones I've come across are really dedicated officers who know the score. There's a lot of trust between us, and we've built up a very effective working relationship.'

The police were described as 'very well prepared', 'very sympathetic', 'proactive', 'committed', 'supportive' and 'evangelical'. The value of police input was particularly discernable in those conferences where victims had not attended:

'It's good the way the police officer will often step into the victim's shoes, and tell the young person how the victim would have felt in a particular situation.'

Two co-ordinators expressed some concern about the attitudes of certain individual police officers. One noted that a 'certain officer' tended to 'write certain kids off' before the conference had begun:

'There's one policeman in particular who has a bad attitude and talks about certain children as a "bad lot", a "lost cause" or a "waste of time", and he always seems to pre-judge the kids. I wonder why he got involved in this area of work to begin with.'

Although the co-ordinators generally regarded the role of the police positively, another co-ordinator was critical of an officer who 'keeps trying to take over' and 'treads on my toes' but felt that he had been able to handle this situation when it arose.

Some co-ordinators expressed disappointment with the number of solicitors who had attended conferencing. Co-ordinators were keen to stress that they advised young people to seek legal advice, but many young people didn't seem particularly keen to have a solicitor present. However, a number of instances were cited where solicitors had agreed to attend conferences but had failed to do so. This resulted in a number of conferences starting extremely late.

It was also noted by a majority of the interviewees that solicitors who attended youth conferences did not generally play an active role in the conference, and failed to understand the process or goals.

The co-ordinators felt that, with the exception of a handful of cases, family members and community representatives who had attended conferences had played a positive role in the conference. Most were quite keen to participate in the discussion and contribute their thoughts towards the formulation of action plans. Some families clearly had a mistrust of state agencies, but many had made an effort to engage with the process once they saw that the co-ordinator and other participants were not intent on stigmatising the young person.

The formulation of conference plans

A number of co-ordinators reported that they felt a sense of pressure towards the end of conferences, in trying to devise a plan that would not only satisfy all the parties, but also get through the courts:

'The hard thing is... that you have to work for two different audiences – victims and the courts. Victims want their questions answered and want some sort of respect and acknowledgement of their status. But you have to always bear in mind what the court is going to do with the plan.'

Co-ordinators agreed that the formulation of plans was really a matter for the conference participants, rather than for themselves. One noted that their function was 'to facilitate, not to dictate'. Some co-ordinators had mentally formulated action plans in their heads prior to the conference to prevent them getting 'stuck', or in case the conference participants were non-communicative. Others said that they preferred to leave the formulation of the plan as much as possible for the conference participants.

Most co-ordinators believed that it would be helpful to have a broader range of programmes that could be used as part of conference plans. One co-ordinator argued that there needed to be more options for reparation for under-16's, but that the courts were more concerned with the potential educational benefit to the young person, rather than the reparative needs of victims.

Co-ordinators were asked how they sought to preserve proportionality within the plans. Most said that they relied on their previous experience of orthodox disposals and had kept the awareness of the tariff in the back of their minds. The individual needs of the offender; his or her age, background, record, and harm caused to the victim were also factors that were taken into account. One co-ordinator stated that while it was important to ensure some degree of consistency in the way cases were treated, strict proportionality was not required as the primary goal of a conference plan was to ensure justice was delivered to both the victim and the offender. Another felt that proportionality 'is not always possible in restorative justice'. A third interviewee believed that proportionality was really part of the oversight function of the courts, and that the plan was primarily formulated to take into account the circumstances of a specific offence.

The youth court

All of the co-ordinators perceived a very clear difficulty in relation to the way plans were dealt with by a magistrate at the Youth Court in Belfast. Two interviewees expressed the view that the magistrate was not aware of the fact that plans were devised by conference participants, rather than the co-ordinators themselves. Three co-ordinators felt that they had been treated in a 'demeaning' way in court. One remarked:

'The magistrate has their own views and feels very strongly about them. But every time I go up in front of (a Magistrate) I feel like my professionalism is being questioned.'

The co-ordinators were also keen to make clear the effects of plans being rejected by magistrates. Several of them commented that they felt time, effort and resources had been wasted, whilst others drew attention to the fact that many victims felt let down when the plans were rejected by the court. Other comments from co-ordinators concerning their experiences at the Youth Court included:

'The worst part of it is when you have to go back and tell a victim that the youngster can't complete the plan that was agreed because the court won't let him. That's a real slap in the face for a victim. It's like telling him the system doesn't care about the harm he's suffered after all.'

'The worst thing is that the magistrate won't use their powers to vary the plans. If (a Magistrate) doesn't like it, the whole thing gets thrown out.'

Three of the co-ordinators also observed that the fact that so many plans were being rejected by the courts meant it was much more difficult to persuade victims to participate within the process:

'You have to be really careful what you say to victims now, because in realistic terms, there's a 50/50 chance that the court isn't going to approve the plan. You have to be up front with victims and tell them this at the outset, because there's no point in giving false hope. They tend to end up quite angry and upset if they go through the motions then have it all thrown back in their face.'

It was also felt by one co-ordinator that the attitudes of a magistrate resulted in something of a 'vicious circle', whereby fewer and fewer conference plans would end up getting approved in the courts. Another interviewee noted that solicitors 'don't like to rub up the magistrate the wrong way'.

Several of the interviewees made a point of contrasting the approach of magistrates in different areas:

'It's strange in a way that they are all magistrates dealing with similar cases in the same legal system. Some magistrates seem to see conferencing in a very different way.'

Monitoring conference plans

Some concern was expressed that much of their time was spent monitoring conference plans. One co-ordinator feared that this may 'take away energy for conferencing' and another said that monitoring was 'the most difficult part of the job'. Several co-ordinators reported a conflict of priorities during busy periods between arranging / attending conferences and monitoring agreements:

'Quite a bit of time is spent running around and chasing up letters of apology, that sort of thing. We anticipate a major increase in our workload when the scheme is fully rolled out, and I'm not quite sure how we'll be able to juggle conferencing alongside very extensive monitoring.'

Another stated:

'Our role is very divided at the moment, between conferencing and monitoring. Monitoring should actually be dealt with by probation, or someone else... They need to find people who can specialise in monitoring. When the programme is rolled out across the province, we are going to have an influx of referrals which will make monitoring very difficult.'

A number of co-ordinators also expressed regret that a number of monitors had been withdrawn from the Probation Service and noted that the monitoring function would require some form of fundamental review in the near future.

Relationships with solicitors

Many of the co-ordinators believed that there was some degree of reluctance within the legal profession to accept both the philosophy and practice of youth conferencing. One commented that solicitors were keen to 'make as much money as possible' and had thus had no interest in cases being resolved quickly. Another noted that youth work was seen as a 'low priority' within the legal profession and it was usually young and relatively inexperienced solicitors who attended the Youth Court:

'These young solicitors don't really want to get bogged down in youth work for the rest of their careers. They've no real interest in it and have no idea of the philosophy behind the restorative approach.'

One co-ordinator described a recent conversation with a solicitor in the Youth Court who had described conferencing as 'pointless'. The co-ordinator continued:

'Many solicitors we've come into contact with have been nasty and dismissive of our work ... they don't respect our skills and have no faith in the restorative philosophy. They see us as liberal do-gooders and don't want to have to engage with us.'

Another co-ordinator remarked:

'Solicitors display a really negative attitude towards conferencing. They haven't made any effort to get themselves up to speed with the process and very rarely attend conferences.'

This co-ordinator also expressed the view that the introduction of a system of specialist 'youth advocates', similar to that in place in New Zealand, could overcome the problem of the legal profession not wanting to embrace restorative-based reforms to the youth justice system.

Future of youth conferencing

All co-ordinators felt that there was a bright future for youth conferencing. Most expressed the opinion that conferences did frequently work, in terms of diverting young people from future offending. It was felt that conferences were especially effective for first-time offenders, although some co-ordinators were keen to stress that there had been some notable successes even in the case of serial offenders.

One of the major obstacles for the future was the way in which co-ordinators believed conferencing was perceived by both magistrates and solicitors. Two co-ordinators suggested that more training was needed, while another suggested that some of the problems could be overcome if the magistrates would be prepared to meet co-ordinators prior to the hearing in the Youth Court. However, there was a consensus that the attitudes of the courts needed to be changed if conferencing was to be successful in the medium to long term:

'Some Magistrates aren't allowing the process to be rolled out and take shape. Something needs to be done to address this, or victims won't want to know.'

One interviewee felt that the negative attitudes was a mere symptom of a wider scepticism towards restorative justice amongst the general populace:

'The key thing for the future is that we get the public on board. We've got to gain their respect and their confidence. I worry about the way restorative justice is sometimes portrayed in the media as a soft option. That's not the case, and people have got to understand what the process is all about.'

Many co-ordinators also felt there was a potential to work much closer with community-based groups, including Greater Shankill Alternatives and Community Restorative Justice¹⁰¹. One co-ordinator expressed a particular frustration that they were having minimal contact with non-state restorative schemes:

'It seems a bit daft just to keep them at arm's length, when we're essentially working towards the same thing. We need to get protocols put in place pretty quickly so we can get some sort of relationship established with them.'

Another remarked:

'We've been told that we're only to work with groups that acknowledge the work of the police.'

Most co-ordinators believed that it was desirable for the Youth Conference Service to forge a much stronger link with these organisations. One co-ordinator described communities as the 'listening ear' on the ground, and questioned how effective conferencing might be in the long run if communities themselves felt excluded from the process. Indeed, there was a broad consensus that the agency ought to work extensively outside its own organisational boundaries and work to develop partnerships with other agencies and community groups.

From the point of view of their own working practice, some uncertainty was expressed about what the future may hold:

"We're a very new agency, and not quite a full agency, in the sense that conferencing still has to be rolled out province-wide. I worry a bit that as we get bigger, the red tape and paperwork might drag us down"

Fears were expressed about the influence that bureaucracy may begin to creep in over time. Some co-ordinators noted the need to constantly review practice. While all anticipated that their workload would increase, one described a feeling of 'fantastic fear'.

In spite of such difficulties, most of the co-ordinators were optimistic about the future of the service and there was a consensus that, given time, many of the problems could be effectively ironed out.

8.4 Interviews with Public Prosecution Service (PPS)

The principle of PPS involvement

Prosecutors in the PPS office were keen to make it clear that that the PPS strongly supports the recommendation of the Criminal Justice Review that prosecutors should be involved in the decision to refer cases to a youth conference. The PPS also supported the decision taken by the Criminal Justice Review implementation team that prosecutors become responsible for all diversion decisions. This is a radical new departure for the Prosecution Service as hitherto the PPS has only considered the more serious cases where diversion may not often be appropriate. Where the police recommended a caution, the PPS could send the papers back to the police, but there was a tendency for cases which passed the evidential test to be prosecuted where there were no obvious public interest grounds for non-prosecution. With the new Public Prosecution Service taking over all decisions to prosecute, it was appropriate that diversion decisions should also be taken by the PPS. One of the advantages of this was that greater consistency could be brought into decision making. For example, there could be a situation where you have two youths who are suspected of committing a quite serious offence. If one of them denies the offence, he/she would be charged and prosecuted by the police but if the other youth admitted the offence he/she would be given a caution. In such a case it is better for a prosecuting authority to decide whether it might more advisable to prosecute both the youths together.

¹⁰¹ A number of community-based restorative programmes have emerged in some republican and loyalist areas of Northern Ireland, which mostly deal with low level crime and neighbour disputes, see generally McEvoy and Mika 2002 for a good description. The government has also recently issued draft guidelines for consultation as to how such schemes should operate. These guidelines are currently under consultation.

There was general agreement amongst prosecutors that youth conferences gave prosecutors an extra “tool to work with.” They stated that it was always best to keep young persons out of court where possible, but sometimes they could be faced with young people who had committed quite serious offences. As a matter of proportionality, these situations called for something more than a warning or a caution and without the option of a youth conference, such persons would have to be prosecuted. The advantage of a youth conference is that, while keeping young persons out of court, it signals that they are being given a final chance. Another advantage is that plans drawn up for addressing offending behaviour have to be agreed by the prosecutor. This means that account is taken of the need for proportionality. Moreover the plans are enforceable as young people will be referred back to the prosecutor and prosecuted if they fail to complete them. Youth conferences are therefore a useful means of keeping young people out of court, whilst still enabling them to be prosecuted if their conference plan is breached.

Prosecutors were upbeat about youth conferencing and confident that full use was being made of conferences. The PPS had adopted a practice of going through files with the Youth Conferencing Service every quarter to explain decisions to them and in general the Youth Conferencing Service seemed to accept that full use was being made of the Youth conferencing option. There had been a backlog of cases built up in recent months caused by recruitment problems within the new PPS which was launched as a new Service on 13 June 2005 so not as many cases were being referred both in Belfast and in Fermanagh and Tyrone, but this would change. Youth conferencing had been rolled out to Newry and Armagh as well as Fermanagh and Tyrone.

Prosecutors were heartened by the recent Youth Conferencing newsheet indicating that 100% of victims would recommend conferencing to other victims and 91% would prefer conferencing to court disposals. These were very positive indications that Youth Conferencing was working. On the other hand, the real test was down the line when the question would be how successful conferencing has been in changing young persons’ behaviour and it was too early to make an assessment of this.

Another positive benefit which seemed to be coming through was that court time was being saved. One prosecutor estimated that in Fermanagh and Tyrone at any rate, the lists in the Youth Court had gone down.

Processes and procedures

Prosecutors acknowledged that there were a number of cases where consent forms were not being returned by young persons. Another phenomenon that was noted in Fermanagh and Tyrone was that young persons were returning the forms with only a partial admission and this meant that prosecutors had no choice but to prosecute. One prosecutor in Fermanagh and Tyrone said that the PPS were trying to engage with solicitors in these circumstances to see if the young person really was denying the full extent of the charge. If it transpires that the young person was not really contesting the charge then it was possible to review the case and go for a youth conference. This was far more advantageous for the young person because once the case gets to court, although the court can order a Youth conference, the young person will receive a criminal conviction if convicted which will go against his record. If the case is kept out of court on the other hand, this has less serious repercussions for the young person.

Some solicitors, according to one prosecutor in Fermanagh and Tyrone, are beginning to engage with the PPS before cases get to court and to make written representations that for example their client is admitting the charges before court. But with others “the shutters go down”, a contest is assumed until the case reaches court and by this time the case is being prosecuted and it is too late to go for a diversionary option instead. It was felt that solicitors need to get on top of cases when they are not present at the police interview. Often what can happen is that the young person’s parent acting as an appropriate adult encourages the young person to deny the offence at the interview stage (“My Johnny would never do such a thing”). In reality the young person may be happy enough to admit the offence but this may never come across in the police file. When the solicitor speaks to the young person, however, he or she may find the young person is happy to admit the offence and if this is communicated to the PPS a diversionary option can be considered. The PPS however only has the papers to go on and solicitors need to make written representations so that the PPS can proceed down the caution or Youth Conference route. In one case a boy was charged with stealing a quantity of sweets from a tuck shop. At interview his mother was there and he denied the offence. The PPS had to prosecute because of the denial. But the solicitor later made representations that the boy wanted to admit the offence. The police were then able to go for a simple caution with the father, not the mother, present at the caution.

Making youth conference decisions

Prosecutors are still awaiting a protocol which would set out the various boundaries between informal warnings, cautions, youth conferences and prosecution. At first all cases were looked at by very senior staff but as the pilot has been rolled out this is no longer possible and prosecutors accepted that there is now a need for written guidance.

A good starting point, however, is the Code for Crown Prosecutors which was published on 13 June 2005. Before there can be any question of diversion, there must be a decision made that the test for prosecution has been met. The Code makes it clear that there are two considerations here – an evidential consideration and a public interest consideration. The evidential test is satisfied where there is sufficient evidence to provide a reasonable prospect of conviction. Once the evidential test is met the next consideration is whether the public interest requires prosecution. According to the Code (para 4.3.3), the presumption is that the public interest requires prosecution where there has been a contravention of the criminal law and this provides the starting point for consideration of each individual case. However, there are cases where although the evidence is sufficient to provide a reasonable prospect of conviction, prosecution is not required in the public interest. The Code states that prosecutors should positively consider the appropriateness of a diversionary option if the defendant is a youth. In the case of young people then, the public interest does not require a prosecution. And broadly speaking, the policy is that young people should not be prosecuted.

In many cases it will be easy to determine what if any diversionary option is appropriate. In many respects going for a Youth Conference is a last ditch attempt to keep someone out of the criminal justice system. For if you go down the Youth conference route and this for whatever reason does not work out, the only alternative is a prosecution. Generally speaking, you have to weigh up the severity of the offence and the prevalence of the offence against the attitude of the young person – have they previous convictions, do they admit the offence? Some cases are easy but others are more difficult. One example given was of a 15 year old girl who was charged with a girl of 19 with trashing school property causing extensive damage to school project work. The girls had no previous record, they admitted the offence but it was decided that it was necessary to prosecute because of the seriousness of the offence. Another example was where a 15 year old boy who had been out drinking, he had a knife with him and picked an argument with someone outside a bar, he then followed the person into the bar and stabbed him in the back. Again, in this case the seriousness of the circumstances would mean that you would have to go for prosecution.

Prosecutors said that with experience you get a feel for what is right, but it is a good policy for prosecutors to note the reasons for decisions. It was important to make a note of the reasons in the file, taking into account factors X, Y and Z. This was needed in case the decision ever had to be justified in a judicial review.

When it comes to approving the Youth Conference plans, the figures showed a 100 per cent approval rate. One prosecutor said that he was happy to give the Youth Conference Service a fair degree of latitude over the plans. They were the experts in this matter as they were the ones who had got the plans agreed. He accepted that there is a need to ensure that the plans are reasonably proportionate but there had to be a degree of give and take in these matters. If professionals were always challenging each other, the system would break down.

As regards breaches of the plans, a prosecutor in Fermanagh and Tyrone said there had been one or two breaches and in these instances, prosecutors would have little choice but to proceed with a prosecution.

Problem areas

Prosecutors considered that there were still delays in the system. They were trying to prioritise cases but one prosecutor said that there was a problem with the quality of police files. He had come from England and in his view the quality of PSNI files was lower than in England and Wales. His impression was that young police officers were not receiving adequate training in presenting files. Prosecutors could only act on the papers given to them and if there was incomplete information this could hold things up. Prosecutors needed to know not just about the circumstances of the offence but about the background of the offender and the attitude of the offender. Including, does the officer think that the young person would admit to the offence?

It was important that these matters were dealt with now as it was envisaged that there would be a considerable increase in youth cases now that 17 year olds were being brought within the youth justice system.

According to another prosecutor who deals with Youth Court cases in Fermanagh and Tyrone was that here the Youth Court sits only once a month. The result was that when there is a court ordered Youth Conference which has to be later approved by the court, there can often be a delay of a number of weeks before the next sitting of the court. All this is not good for the young person. The intention behind youth conferencing was that young people are quickly brought to account for their offending behaviour. A court ordered conference is often one that should have been diverted for youth conferencing in the first place without the need for court intervention but for one reason or another was not able to. You then get a further delay because of the infrequency of court sittings after the court order is made before the plan can be approved by the court at a later sitting.

Generally speaking, prosecutors appeared to be happy with the way in which the youth conferencing system was working. There was a challenge for the PPS in getting the cases turned round quickly. All cases tended to be dealt with as they came in, but there was a case for a fast stream for young persons. The dynamics of the present arrangements will change quite considerably when 17 years olds are brought within the youth diversion system.

8.5 Interview with Northern Ireland Office, Youth Justice Policy representative

This interview sought to gain an insight of the youth conferencing initiative from the more general youth policy perspective.

Background to conferencing

It was noted that youth conferencing was one of the most significant developments in youth justice policy for some time. It provides a new role for the victim in the criminal justice process, while holding young people accountable for their actions and provides for the opportunity to develop responses to offending that can be tailor made to suit the offence.

From the outset there was a desire to keep conferencing within the criminal justice system and give the courts and prosecution service oversight of the process. This was seen as important, as it would engage the elements of the criminal justice system in the process of delivering plans which actively involve victims and offenders. The aim of the legislation was to empower both the courts and prosecution service in this process, giving them oversight of plans and the ability to add, detract or reject plans if necessary.

Youth conferencing also fitted in well with the more general policy of trying to divert young people away from the formal criminal justice system where possible. It was pointed out that much of the evidence shows that once young people end up in court they often go on to re-offend and move further and further into the system. Conferencing was an opportunity to keep less serious offenders out of court and to speed up the system of justice. As such it could provide another way of dealing with young offenders, which holds them accountable and gives the victim an input, while not drawing young people further into the criminal justice process. To this end, diversionary conferences were seen as especially useful as a way of dealing with less serious offenders.

The practice

It was noted that there had been a relatively slow start to the process when it was first introduced, but this appeared to be a result of the whole system coming to grips with the new ways of working. However, after the first couple of months things picked up and the number of cases increased significantly.

One of the difficulties noted in terms of translating the policy into practice has been the problems caused by delay in the criminal justice system. Cases take a considerable amount of time to deal with, from the date of the offence to the time the courts deal with the matter. Delays in the system can undermine the restorative process and it was noted that there is a need to make the system more efficient so there is less delay in delivering justice. The policy intention was that conferencing would speed up the delivery of justice, and it has the potential to do so, however, there are significant delays for example in getting cases to the attention of the conferencing service which need to be addressed.

Another issue noted in relation to the process of translating policy into practice were difficulties experienced in the Belfast court. It was apparent that the magistrate in this court was resistant to conferencing and this had resulted in problems in terms of granting some conferencing orders. The relationship with the court became difficult over conferencing and this was a disappointing obstacle. Despite this, it was felt that the overall project was working well and it continues to develop towards its potential.

From a policy perspective it was noted that the involvement of the courts was not meant to be a simple rubber stamping exercise. Rather the involvement of the court was supposed to give the conferencing process a measure of oversight and to involve the courts in meaningful and innovative responses to offenders and their needs, as well to victim's needs. To further this objective the courts need to be fully engaged in the process so they feel more ownership and there is a clear recognition of their important role.

For the future, it was felt that increased use could be made of diversionary or prosecution led conferences. It was suggested that diversionary conferences could be used for a broader range of offenders and offences than is presently the case. Since young people effectively go through the same process when a conference is convened, whether referred by the court or prosecution, it may be more efficient if more use is made of diversionary conferences, as they are quicker than going through the courts. The courts could then be reserved for the most difficult cases. This could speed up the process and make diversionary conferences the main-stream approach to offending. However, it was noted that this will be a matter for the prosecution service to decide.

8.6 Interview with probation manager

Probation supports the Youth Conferencing approach, using a restorative justice model, as it is consistent with their philosophy which emphasises the importance of getting young people to take responsibility for their actions and behaviour. Though conferencing is now dealing with many young people who probably would have been given probation orders in the past, there is still room for the probation service, especially for young people who are not suitable for conferencing, such as high risk offenders and young people who are repeat offenders.

It was felt that at the early stages when the Youth Conferencing Service was being set up there could have been more thought given to the whole of the criminal justice system and how it works as a system. This might have aided its early development. The process was not as inclusive as it could have been and probation was not fully consulted during the development of the youth conferencing service. Though they were informed they felt they were not fully consulted. This left probation somewhat confused about their role in the process and how they would relate and work with the conferencing service.

Despite this there has been a lot of progress in developing good working practices between the two organisations. This is important as probation has been working with many of the young people that conferencing is dealing with, so there is a need to share information and work together. Protocols have been developed recently with community services and the conferencing service so there are clearer directions and good practice in sharing information and working together. This is something that could have been developed at a much earlier stage if there had been better consultation in the early development of the service and it would have been better if such things had been put in place at the outset.

Effects on workforce

The introduction of the conferencing also impacted the work force of the probation service. Posts were advertised for conference coordinators and the pay levels were above probation levels, so a whole group of staff were lost when the service was set up.

'In effect we felt they poached our existing staff base and left us short in some respects.'

This was also problematic, as it was noted that the pool of qualified staff in Northern Ireland is quite limited. Again it would have been better if there had been more coordination and collaboration between the players so arrangements could have been put in place to better manage the recruitment of staff. However:

'Having said that, those that have gone have done very well and have moved to the restorative justice approach successfully.'

It was felt that by and large the relationship between PBNi and conferencing has moved forward and it is now working well, and this has largely been out of necessity.

'There has been some conflict, but the general relationship is very positive and this is largely down to the good will of the people on the ground, who generally know each other or have worked together in probation in the past. There have only been a few instances where there have been problems between probation and the youth conference service and these have occurred because of a lack of communication, and they have been resolved.'

Probation and youth justice

In relation to the bigger picture and how restorative justice fits into the rest of the criminal justice system, it was suggested that less thought had been given to this.

'There still appears to be a lack of coordination which is now starting to be addressed by the Youth Justice Board. This will be important as players and stakeholders need to work together for a common purpose rather than seeing themselves in some form of competition.'

When conferencing rolls out to the rest of Northern Ireland it is hoped that things will further settle down and people will be more comfortable with their roles and good working arrangements and protocols will develop further.

The experience with the development of conferencing has made probation think about better partnership approaches and how we can improve working practices with other agencies.

'The partnership approach could be improved further so different agencies work together more effectively delivering services to our client base and one model that might be worth exploring here is the use of teams, which has been used successfully in England and Wales.'

It was suggested the Northern Ireland Office regard youth justice as something looked after by the Youth Justice Agency, but there are other elements - such as probation – and this should be addressed in terms of the planning and the delivery of services to young people, so the elements are more joined-up and logical in terms of their practical delivery.

The conferencing service has organised seminars on their work which probation staff have attended and have found these very useful for staff.

'They have also helped communications between our organisations and staff which is a positive thing and something we would encourage. In terms of bettering our communication, we have recently encouraged conferencing representation at our probation team meeting which we feel facilitates better working practices and communication.'

8.7 Interview with youth conferencing service manager

Development and implementation of youth conferencing.

The manager felt that the development of youth conferencing in Northern Ireland was a very intense process and it has taken a lot of work to translate the basic policy intentions into practice. This process was aided considerably by an advisory group and much of the early work was undertaken with staff in the Northern Ireland Office and criminal justice policy section.

The early roll out of conferencing in Belfast was slow, and initially there appeared to be only a small number of cases making it through the system for referral. This was due to the system adjusting to the changes that had occurred, and after a couple of months many more cases started coming through.

In the early days there were also many challenges that had to be faced. These were mostly due to the fact that this was such a different way of working and people needed time to understand and get used to the new process. The changes caused difficulties for some as it challenged how they worked. For others the conferencing service was now operating with clients they would have dealt with in the past. This led to a degree of resistance, especially when it was understood that conferencing was to become the main platform for work with young offenders. However, this resistance has mostly moved to accommodation and to acceptance over time.

Generally speaking there was an acceptance of the changes that were made following the introduction of conferencing and most supported it, especially the restorative principles underpinning the process. For some groups it presented real challenges, for example to the legal profession. This was due to the fact that it meant a completely different way of operating, that practitioners had to get used to. Solicitors on the whole, however, proved to be very adaptable and they have been willing to shape their role to fit with the process and the new ways of working. They have actively engaged in the process of training and the conferencing service has given a number of presentations about conferencing at the Law Society which were well attended and fruitful.

The introduction of conferencing caused challenges for the probation service in the early days. It seemed there was some organisational resistance in probation to conferencing when it started and this appeared to have been caused by the fact that conferencing was moving into an area that probation had occupied previously. However, things settled down we were able to work together and develop methods of sharing information, such as how reports would be produced for the courts, how the services would cooperate together and how we would share information. This has been an ongoing process which has been necessary, but it has also been positive and levels of communication and cooperation are now very good.

The relationship with the police has also been positive. However the youth section of the police is only a small part of what is a very big organisation. Conferencing has worked with these officers since the beginning of the initiative. There have been a number of joint training sessions held with the police and these have been useful in building up relationships and getting to know each others' perspective. Though there have been one or two police officers who have been sceptical, the vast majority have been very helpful and the practical work has been facilitated by a willingness to share information and work together towards a common purpose.

It was also noted that sometimes police officers are victims of crime themselves. On a number of occasions, however, the officers have not been able to attend conferences due to other duties or work commitments. The conferencing service would like the police service to recognise the importance of such officers attending conferences and facilitating their attendance as part of their duty.

In relation to the prosecution service there has been a good working relationship since the outset. Both conferencing and the prosecution service worked together since the original planning for the service. In many respects the relationship was not difficult because they were not a threat to each other in any way and had a common purpose.

'There are clear working procedures and they have an ongoing review system and meet quarterly with prosecutors in the various areas to look at systems, processes and outcomes, which is working very well.'

Similarly it was reported that the relationship with the court service has been very good since the outset. The whole process of how cases are listed, how warrants are issued etc have all developed through the courts. The conferencing service is also currently developing working practices in the rural areas which have recently introduced conferencing. There have been some general problems of communication with the courts however:

'Though there have been difficulties at times in communication with particular magistrates, conferencing and the conferencing service has been largely accepted by the courts as a productive way of dealing with young offenders which gives victims a stake in the process.'

Current challenges facing the conferencing service

A number of challenges facing the conferencing service were discussed, these included the inclusion of 17 year olds in the youth court. It was noted that this will significantly increase the number of cases eligible for conferencing. They will also bring different types of problems and needs, such as drug and alcohol issues, dependent children and many more will be living independently of their parents.

'The conferencing service will have to adapt to meet these needs and provide effective conferences for such cases.'

More generally it was commented that there needs to be a continued effort to raise public awareness of conferencing to keep the current high levels of victim involvement. Victims need to be made aware that conferencing is productive and a positive way of dealing with crime and the role of the victim is essential in that process.

It was recognised that the inclusion of 17 year olds will also mean many more motoring offences. It was felt that there is no place for the conferencing process in the business of imposing fixed penalty points or fines for minor motoring incidents such as no MOT or tax certificate. However, conferencing could have a valuable input when dealing with motoring incidents that involve or potentially involve victims, such as dangerous driving, or driving with excess alcohol. The current position is that all such cases are dealt with directly through the court's powers, excluding conferencing. It was felt that it would be beneficial if the legislation was changed to allow the conferencing service to work with such individuals, particularly as this could have the potential to give such offenders a much clearer understanding of the impact of their behaviour from a victim's perspective and a deeper understanding of the consequences of their actions.

'The conferencing service also has to look at how it can engage with the community further. In particular, the service is aware of the work of community based restorative programmes in some areas. The service wishes to work with such groups in the future and recognises that there is a wide diversity of community organisations and groups that represent a range of diverse interests.'

In relation to working with the other criminal justice agencies, it was noted that there needs to be an ongoing process of dialogue, so that working practices are effective and the conferencing service operates in an efficient and effective manner. This is particularly important in relation to the service's relationship with the courts, so there are clear channels of communication and the service is able to have a good working relationship and is able to respond to the needs and concerns of magistrates.

Lastly, it was suggested that there is the potential to extend the number of cases that are dealt with by conferencing through referral by the prosecution service. This was the case in all areas, but especially in the rural areas, where some cases with few prior convictions are presently being dealt with through the courts. It was suggested that since young people go through the same conferencing process whether they are referred by the court or the prosecution service, there is scope to increase referrals through prosecution. This would have the added advantage of speeding up the process, particularly given that youth courts only sit once or twice a month in some of these areas.

8.8 Interviews with magistrates

Two sets of interviews were completed with magistrates from the Belfast and Dungannon area youth courts and one interview was completed with the magistrate from Omagh youth court. The magistrates were asked about the introduction of youth conferencing and how it was operating in their areas, they were asked about how well the new arrangements were working and the problems and opportunities it presented.

General principles

All of the magistrates supported the general principles of restorative justice and thought it was a good idea in theory, particularly as it is supposed to make offenders take responsibility for their actions and it can help them understand the impact of their actions on victims. The fact that victims are involved and the conference is a forum for the victim to express themselves and receive some form of reparation was also seen as positive.

The magistrates felt they were well prepared and trained for the introduction of conferencing and the court staff were also well trained for the changes. There was less satisfaction with the manner in which the legislation was introduced and it was felt that there could have been more consultation before the legislation was 'imposed' on the courts.

In the first months of operation there were a number of problems that emerged and these mostly related to people getting used to the new arrangements. The solicitors, for example, had to come to terms with a whole new process and represent their clients in a different manner than they were used to. However as time passed they generally learned how the new system operated and adjusted to the changes.

'The first months were more difficult as it was a period of adjustment, especially for the youth conference staff appearing in the court.'

The conferencing staff needed to establish their role in the court and while this went well in most of the courts, it was seen as a more difficult process in the Belfast court.

Issues and concerns

The mandatory nature of the legislation was an issue for one of the magistrates, who felt this inappropriately took the decision making power away from the court. However other magistrates felt that it needed to be mandatory as it was supposed to be the main avenue for dealing with young offenders. The mandatory nature of the legislation was also seen as a difficulty for cases where magistrates felt that conferencing might not be suitable. For example, where the young person had committed a number of offences and was not responding to previous conference orders. It was felt that such young people should be sentenced immediately by the court and not referred time and time again. Similarly, it was felt that imposing a conference order on someone who had breached an existing order was not appropriate.

Delay was an issue that was raised and it was felt that the conferencing process can cause added delays to a system that is already very slow. The rural court was used as an example of this, because the court only sits once per month. Therefore any adjournment automatically adds at least another month of delay to the process.

'The mandatory nature of referrals also can impact delays whereby cases which are not suitable for conferencing have to be referred. They are then returned to court at a later date simply to be dealt with using the court's sentencing powers which obviously adds delay.'

The plans presented to the courts were generally seen as good and it was noted that they have been improving over time, though a number of issues were raised with respect to them. One magistrate felt plans were generally very similar irrespective of the offence and bore little relation to the seriousness of the offence. However other magistrates pointed out that most of the plans they had seen were good, though some were either too severe or too lenient in relation to the offence. It was clear that magistrates felt it important that plans reflect the relative seriousness of the offence, so they are proportionate. The method of achieving this differed, with some plans being rejected outright by courts, while other magistrates sent plans back for reconsideration giving clear directions as to what elements of the plan needed addressing.

In general it was felt that youth conferencing was most appropriate for less serious offences and for offenders that did not have a long list of previous convictions. These cases could be easily processed and dealt with through conferencing. However for more serious offences, especially those that would normally attract a custodial sentence, there was less willingness to see conferencing as a viable method of disposal. One magistrate felt that it was counterproductive to allow individuals to receive multiple conferences and felt that such cases should automatically be sentenced by the court. It was felt that:

'these individuals play the system, know how to manipulate things in the conference and are not being dealt with effectively.'

On the other hand, it was noted that some children may end up with very restrictive plans simply because they are willing to agree to anything that is put to them. This was seen as a danger as plans have the potential to be very onerous.

Concern was expressed about children in children's homes being pushed into the court system and through conferencing because some homes have a policy of automatically prosecuting children, even if they commit minor offences. This was considered a waste of resources and damaging to the children themselves. It was felt that such cases issues should be dealt with in the home or through diversionary means.

Diversionary or prosecution referred conferences were mentioned and two of the magistrates felt that more use could be made of such conferences. It was suggested that court ordered conferences should be reserved for contested cases or serious offences.

Overall the magistrates felt that youth conferencing was a good idea in principle and that the practice and operation of the system had improved since it was first implemented. Issues remain about how it is working, especially for the more problematic cases and repeat offenders. However, there was agreement that levels of communication between the court and the conferencing service have improved over time and that many difficulties could be dealt with through better communication and planning. Indeed one magistrate suggested that it might be useful to develop protocols for types of offences or offenders who are clearly not going to benefit from the conferencing process. Such arrangements could reduce delays and improve operation.

8.9 Conclusion

From the interviews conducted it was apparent that the major stakeholders endorsed the restorative principles that underpin the reforms of the youth justice system. There was enthusiastic support from some for the ideas behind youth conferencing and it was largely seen as a very positive development to youth offending. Although there were some concerns around how conferencing had been introduced, and some felt there could have been a better process of consultation, most expressed general confidence in the overall direction of the reforms. However, there were concerns and issues that were raised, which in many respects are to be expected in the aftermath of such a substantial change in policy and practice.

Concerns were raised about the impact of delay on the conferencing process. It was noted that it is often many months after the young person has offended before they are dealt with through the criminal justice system. Delays appear from the time the young person is arrested, to preparation of a file for the prosecution service, to the stage the prosecution refers the case and again until the case is actually dealt with or disposed of. It was evident that much of the delay takes place before cases are referred to the conferencing service and all concerned agreed that it is important to avoid delay. Delay undermines the whole process and the beneficial effects of conferencing are jeopardised if the participants feel the offence was something that was remote in time. Indeed participants have often 'moved on' themselves and dealt with the aftermath of the offence. In effect, delay makes the offence seem as something that was distant and in the past, and this is counterproductive for the restorative process. The importance of avoiding delay, especially when dealing with young people, is underlined in the Justice (Northern Ireland) Act 2002 which stipulates '...that any delay in dealing with young people is likely to prejudice their welfare.'

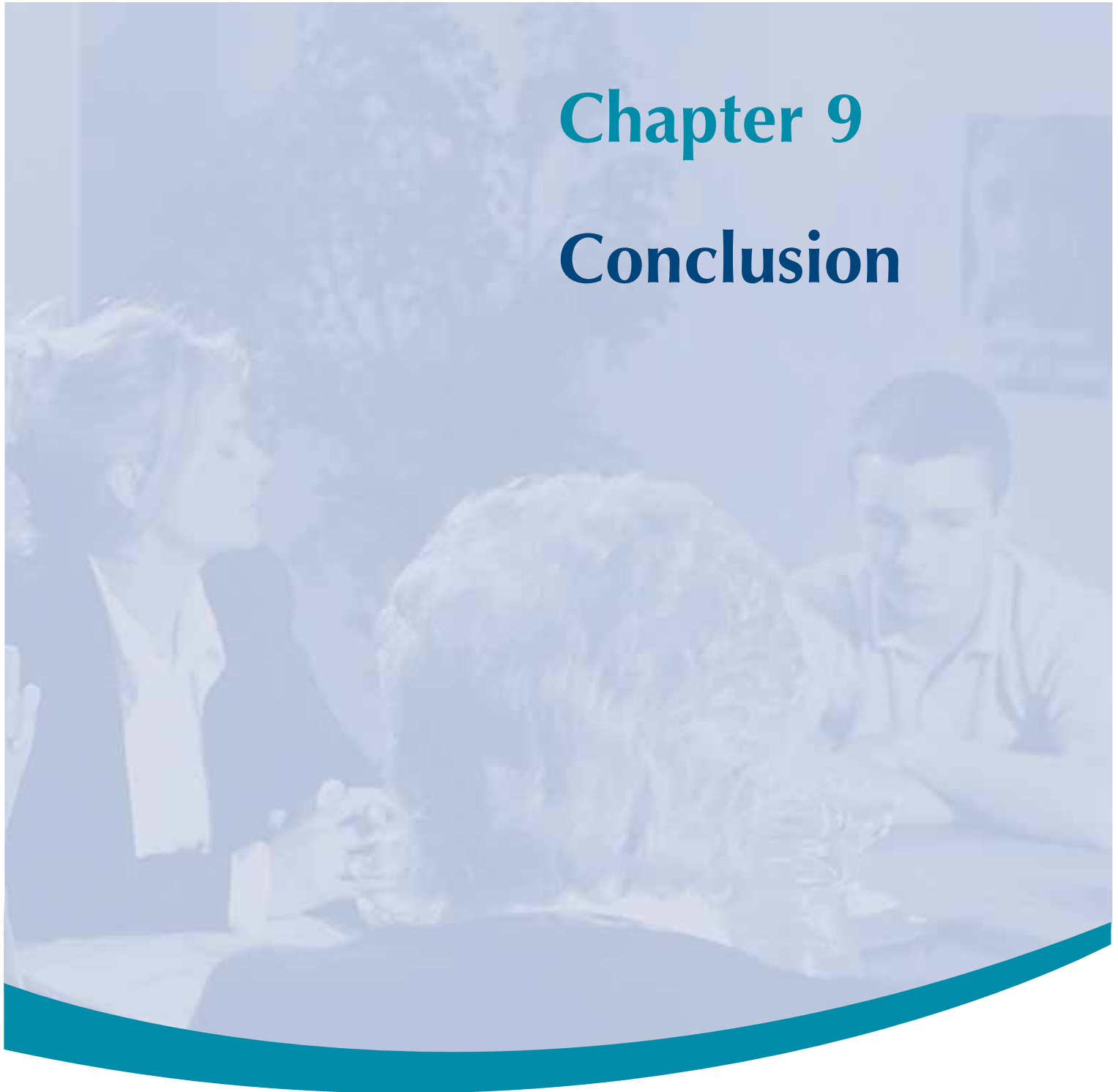
Some stakeholders noted that conferences were sometimes held for very minor or even petty offences. This was considered counterproductive given the significant resources necessary to convene a conference. It was suggested that very minor offences would be better off being dealt with by way of a police caution or warning. Similarly, a number of stakeholders felt that more use could be made of diversionary or prosecution referred conferences, than is presently the case. A reduction in the number of cases sent for prosecution through the court and instead referred directly for conferencing by prosecution could increase the speed at which cases are dealt with. Also, it was noted that young people go through the same conferencing process irrespective of whether the court or prosecution referred them. Indeed, the Magistrates supported an increase in the use of diversionary referrals, thereby reserving the court for more serious or contested cases.

The issue of children in care committing relatively minor offences and being dragged through the criminal justice system and put through conferencing was also raised. This was seen as a problem by stakeholders. A number of the magistrates felt this was inappropriate and suggested that these types of incidents should be dealt with in the children's home or through some diversionary means, but not through the criminal justice system. If anything, it was felt that drawing such children, who are often already vulnerable, into the formal criminal justice system only reinforces their feelings of rejection.

A general point that was made by many of the stakeholders was the importance of fostering good lines of communication between all those involved in the process of delivering justice to young people. It was apparent that when difficulties have arisen, they were usually caused by ineffective means of communication. The importance of developing and strengthening working practices which allow for the effective delivery of services in a sphere that is multi-agency requires that communication is of paramount importance. Many of the stakeholders felt the development of agreements and protocols were useful tools of communication which helped foster effective working practices.

Chapter 9

Conclusion



9.1 Introduction

This report has examined the implementation and progress of the new youth conferencing service within Northern Ireland. Covering the period from the service's inception on the 1st December 2003 until the 30th June 2005, the research has sought to identify both strengths and weaknesses of the conferencing initiative and to determine to what extent it is proving effective in meeting its stated objectives and outcomes.

Despite some initial 'teething problems' the implementation of youth conferencing has progressed well. This is explored here, with reference to issues identified previously within the review of the literature.

9.2 Victims

Victim participation

By the end of the research period, results showed over two-thirds or 69% of conferences with a victim present. This figure compares favourably with international research and suggests that the Northern Ireland youth conferencing service has achieved a high rate of victim attendance. While victim presence is important, the decision to attend should always be voluntary (Reeves and Mulley, 2000). Indeed, the literature points out that a crucial indicator when measuring the progress of conference initiatives is the extent to which victims feel able to provide or refuse consent (Victim Support, 2003a). Rather positively, the majority or 79% of victims interviewed stated that they were 'keen' to attend and 91% felt that the decision to attend had been entirely their own.

As alluded to in the literature, where a victim does not attend, alternative forms of input are important for a number of reasons (Hoyle, 2002). First, they provide the victim with a voice in the process even where he/she does not wish to attend; and second, they inject an individual perspective, which may influence the dynamics of the conference. In the majority of conferences without a victim, some form of victim perspective was included. On the whole this involved a summary of previous meetings between the victim and co-ordinator, a letter from the victim or a reference to the probable impact in light of the facts of the offence. In terms of restorative potential, observations showed victim statements or letters to have more bearing than indirect contributions, such as a summary of the likely consequences of the offence.

Victims expressed a number of reasons for participating in the conference process and, in line with the literature, these often related to a desire for information and a forum in which to state their views. Therefore, 88% of victims attended to hear what the young person had to say and 86% wanted the young person to know how the crime had affected them. Restorative justice literature suggests that there may be a wish for vengeance on behalf of victims (Ashworth 2001; Strang, 2000), however, this was not evident from the research; with many or 79% of victims stating that they had participated in the conference in order to help the young person. Overall therefore victim participation was prompted by altruistic or welfare concerns rather than any desire for 'punishment'.

Finally, it is useful to learn about the views of victims who did not participate in the conference process. International research suggested that low rates of attendance may have been due to practical matters including a lack of suitable timing and facilities (Maxwell et al, 1993). Research also highlights numerous reasons for victim non-participation including a desire by victims to move on or fears of retaliation. Interestingly, the majority of non-participating victims referred to personal reasons for their decision not to attend, such as not wishing to meet the young person face to face or a belief that the offence was not serious enough to warrant attending the conference. In general therefore non-participation by victims was not related to the level of organisation or service provided by the Youth Conference Service.

Victim satisfaction

If avoiding the problem of secondary victimisation, victims should feel satisfied following their conference experience. Indeed, much of the literature on victimology highlights negative experiences of the justice process as exacerbating and creating feelings of victimisation by victims. In this research, the majority of victims were satisfied with the conference and 92% perceived the process as either 'very fair' or 'fair'. Similarly, most victims felt that their views had been taken seriously and reported a series of positive feelings immediately after the conference.

Early research on Family Group Conferencing in New Zealand found a significant number or one third of victims reporting feeling worse following the conference process (Maxwell et al, 2003). In the post conference interview, however, the majority of victims stated that they felt better or no different. In the literature, positive victim experiences have been related to a number of factors including the chance to explain the impact of the crime, receiving an apology, or understanding why the offence occurred. Therefore, the fact that all victims believed that the conference provided an opportunity to explain the effect of the crime and that the majority of young people either apologised to the victim or displayed a degree of remorse, may have contributed to the overall positive results from victims participating in the conference process.

As a further appraisal of the conference from a victim perspective, the research found 81% of victims preferring the conference over court and most willing to recommend a conference to a victim in a similar situation. The reasons provided for favouring the conference included the opportunity presented to express a personal view and to confront the young person, achieving closure, and the unique circumstance of meeting the young person face to face. Interestingly, some victims sensed that the experience of the conference process might differ depending on the level of victimisation. Therefore, 11% of victims interviewed stated that they would recommend a conference but it would depend on the offence, serious or violent offences warranting more cautious consideration.

Information

The provision of information about the conference process and how the case is progressed is important to avoid feelings of re-victimisation. Though the extent of victim needs remains unknown, victims should be kept updated on the progress of the case (Strang, 2000). Throughout the research, victims reported feeling well informed and prepared for their participation in the conference. The majority also stated that they had been told of possible outcomes, which meant that victims entered the conference with realistic expectations. This is particularly important given that outcomes must be approved by the PPS or court and in light of the fact that, within this research, 50% of conference plans were rejected by the Belfast youth court.

While a small number of non-participating victims were contacted during the period of research, most attributed a level of importance to being kept informed about the final conference outcome. Indeed, the literature points out that those victims who choose not to participate can continue to experience an element of the restorative process if they are informed of the progress of the conference and outcome (Hoyle, 2002). In this instance, four out of the eleven non-participating victims stated that they had been fully informed about the outcome.

Reparation and outcomes

When evaluating restorative processes from the point of view of the victim, it is important to consider the extent of involvement and individual victim views on the actual outcome. Very positively, the majority of victims were observed to engage when devising the plan and 95% appeared satisfied with the process of the conference at this point. The majority of victims were also satisfied with the actual outcome and believed the conference plan to be fair. Although only a small number of five victims felt 'very dissatisfied' with the final conference outcome and seven perceived the plan as unfair, several of these (eight in total) were personal victims directly affected by the crime. This is an interesting result and not dissimilar to existing literature, which attributes a difference in victim experiences to the type or level of victimisation. Therefore, those having a more difficult experience in the aftermath of victimisation might report less satisfaction with the restorative proceedings (Daly, 2005). Nevertheless, low levels of victim satisfaction in relation to the conference outcome did not appear to relate to the seriousness of the offence. Therefore, the small number of eleven (9%) victims indicating a degree of dissatisfaction with the plan attended for offences ranging in severity, from less serious property matters to more serious offences against persons and / or property. In terms of reparative outcomes and meeting victim needs, nine out of ten victims received an apology from the young person. Those who failed to receive an apology were victim representatives for whom a direct apology was often inappropriate. Indeed, in interview a number of representatives felt that receipt of an apology was irrelevant. Although the majority of conference plans contained some level of re-education for the young person in relation to further offence behaviour, only a minority of plans incorporated payment or material reparation for the victim. However, given that the majority of victims did not want any level of compensation or reparation from the young person, this outcome fits well with the overall results from the research.

9.3 Young people

Engagement and satisfaction

Young people's perceptions of the procedural aspects of the conference process appeared to be as positive as for victims. However, and perhaps surprisingly, results showed that young people could find involvement in the conference to be more challenging and difficult. Overall, young people were observed to engage well in the conferencing process and expressed satisfaction with the way their case had been dealt with. The majority (93%) contributed well when discussing the crime and, when provided with the opportunity to tell 'their story', they felt that their views were listened to (98%). Any failure to engage on the part of the young person was generally a result of nervousness, embarrassment, lack of recall (as a result of passage of time or consumption of drugs and/or alcohol), the lengthy nature of conferences, and, in a few cases, defiance. Almost all (93%) young people felt that the conference was fair, and it is argued that where young people feel they have been treated fairly by the criminal justice system they are more likely to respect and obey the law in future (Tyler, 1990). The positive perception of young people towards the process is clearly reflected in the fact that 86% would recommend the process to another young person in their situation.

Although there was a general perception amongst young people that the conference process was in some way 'easier' than court, this was not borne out by observations, in which many young people displayed discomfort and found the conference to be a challenging experience. Indeed, the youth conferencing process does not end with the conference itself and it will be interesting to see if, and how, these perceptions change upon completion of the agreed conference plan.

Referral and informed consent

The UN guidelines on the administration of restorative justice programs state they "should be used only with the free and voluntary consent of the parties" (United Nations, 2000). Although interviews suggest that, for the majority of young people the decision to attend a conference was their own some did indicate that they felt pressurised into attending a conference and that this could emanate from any number of sources. The issue of consent is particularly relevant to court, where observations found that the manner in which consent was obtained did not appear to fully provide the young person with the opportunity to make a considered and informed choice. Of course, it should be stated that in interview few young people indicated that they had attended due to pressure from court (13 in total). The pre-conference process offers the young person the opportunity to reaffirm consent on learning more about what conferencing entails. Indeed, one quarter (25%) of young people subsequently withdraw their consent following referral (89% of which were referred by the court) suggesting that this does occur in practice. Some young people may, however, be reluctant to withdraw consent after initially accepting in fear of being frowned upon by the court or Public Prosecution Service.

A surprising finding was the disproportionate number of young people (29%) referred to a conference who resided in a care environment, the vast majority (88%) of which were referred by the court. On the whole, many offences for which young people in care were referred were specific to the context of being in care, for example assault on a member of staff or criminal damage to furniture in the residential unit. These conferences present particular difficulties as highlighted by the comments of victims; "I can't be a victim and a social worker at the same time" and "I wasn't prepared to tell the young person how it affected me because it was a professional incident." The extent of overrepresentation and the appropriateness of such cases going through the conferencing process or indeed the courts raise important questions.

Power imbalances

Power imbalances may occur in conferences as a result of three factors (i) the perceived roles of participants, (ii) lack of knowledge and (iii) external factors. In terms of perceived roles, when positioned in a room of adults the young person may be seen to be at a disadvantage. Although the practice and philosophy of youth conferencing does not encourage it, the young person may arrive at the conference with the preconceived notion that as they are 'in the wrong' they have little say in the outcome. Every effort should therefore be made to ensure that the youth conference is a democratic process in which the young person is fully included and that their input and contributions are valued. Overall, observations found that this was facilitated well and young people were both encouraged and involved throughout the various stages of the conference.

'Knowledge imbalances' may occur when the young person and their supporter(s) have little idea on what to suggest for a conference plan, in terms of what is both available and appropriate. In several conferences, the co-ordinator and / or other professionals were observed to dominate on occasions where other participants were not forthcoming in making suggestions for the plan. A successful pre-conference preparation process and perhaps time during the conference for the young person and their supporter(s) to consult in private before the plan is devised will go far in ensuring that this does not happen. Indeed, interviews found that the vast majority of young people felt well prepared for the conference itself, and were satisfied with their level of input into the plan.

As plans must be ratified by either the PPS or court, these bodies may be seen as exerting an 'external' influence. On some occasions, this was explicitly observed where conference participants emphasised the importance of devising a plan which would satisfy the Magistrate. Pressure to come up with a proportionate plan can detract from the restorative philosophy of the process, and may result in the young person agreeing to something they are not entirely comfortable with. It is vital that any plan agreed within a conference is a result of genuine consensus amongst conference participants and not as a result of external pressure. Indeed, interviews found that most young people were indeed 'happy to agree' to the conference plan and felt that it was proportionate to their offence.

Outcomes

Overall, young people were very involved in agreeing the plan, were satisfied with its content, and felt that it was proportionate. Plans generally did not focus primarily on punishment, but rather on ways in which to address the young person's offending behaviour. This reflected the desire of many victims, who valued involvement in the process rather than punishing the young person. As such, many plans contained positive elements which constructively looked at ways to deal with factors contributing to the young person's behaviour, the most common being substance misuse, peer pressure and family difficulties.

It is interesting that one court in particular chose to reject a significant proportion of plans. In terms of meeting the needs of both the young person and victim, it may be worthwhile for the court to consider amending rather than simply rejecting plans. For many young people and victims, the conference process was a challenging experience and for the plan to be rejected outright may be viewed as a 'double' punishment, and negatively impact upon their perceptions of fairness.

9.4 Conclusion

In conclusion, the majority of findings within this report show that the implementation of the new conferencing service in Northern Ireland is progressing well. In the period of the research it has become established as a mainstream approach to young people who come in contact with the criminal justice system. Overall, participants report high level of involvement and satisfaction with the process and outcomes. As the system of youth conferencing develops it will be interesting to consider whether this process impacts on recidivism¹⁰². However, it is important to note that the process itself may be seen to have inherent value, given the high rates of satisfaction and perceptions of fairness indicated by victims and young people.

¹⁰² See Recommendation 26.

Recommendations



The results presented within this report show that overall the implementation of youth conferencing in Northern Ireland progressed well. In addition, it is anticipated that the practice of youth conferencing and the knowledge of the service by others, will improve with experience and time. Nevertheless, there are certain matters that may be useful to consider in the further development of the youth conferencing service. The following are recommendations for future practice and research:

The referral process

1) Prosecution referrals: 31% of referrals for Youth Conferences emanated from the Public Prosecution Service and 69% from the youth court. The majority or 53% related to intermediate offences against person or property. Serious offences accounted for 23% and minor matters for 21% of referrals. The majority of 'minor property related and other minor offences' were referred to the Youth Conference Service by the court (71.4%) and not the Public Prosecution Service (28.6%) as might be expected. This suggests that the PPS is referring a substantial number of intermediate and some minor offences to the court. This conclusion is reinforced by the fact that courts made a conditional discharge in 15.9% of cases rather than accept the Youth Conference plan. The courts' resources might be best reserved for the most serious and complex cases, those raising issues of public interest and protection. In light of the very promising results reported in this evaluation particularly in the area of victim satisfaction it is recommended that the PPS increase the proportion of referrals for diversionary conference primarily on the basis of seriousness of the offence, though previous convictions should also remain a consideration.

2) Upper age limit: Where a young person becomes an adult in the course of youth court proceedings, article 30 of the Criminal Justice (Children) (NI) Order 1998 permits the youth court to make any order which it would have made had they not reached that age. In a number of court observations, a youth conference plan was rejected because the young person had reached 17 years of age before the plan returned to court. Although this was not the intention of the legislation, it is permissible, and consequently it may be useful to explain to the young person, at the stage of initial referral, that refusal due to age is a possible result. In this way, the young person can make a more informed choice about whether or not to attend the conference (3.5 Court-Ordered Referrals).

3) Mandatory penalties: At present, the Justice (Northern Ireland) Act 2002 prohibits a youth conference order in combination with a further court order¹⁰³. As a result, the court was unable to accept a youth conference plan in a number of motoring cases because the offence attracted a mandatory penalty. Furthermore, figures showing a high proportion of motoring offences amongst 17 year olds, means that the introduction of this age group to the youth court will have a significant impact in this regard. Attendance at a conference by the young person should not necessarily be prohibited, as exposure to the potential consequences of road traffic offences to victims may influence future behaviour. It is recommended that a legislative amendment be considered that would permit a youth conference order in combination with a mandatory penalty in appropriate cases and provided the young person consents. In either scenario, it is crucial that the young person is provided with the necessary details to enable an informed choice as to whether or not to attend the conference (3.5 Court-Ordered Referrals; 7.5 Return of Court-Ordered Plans: Court-Ordered Conference Plans).

4) Court-ordered conferences and consent: the established practice and formality of the youth court meant that there were varying levels of input from Magistrates when requesting consent to attend a conference. Although staff from the Youth Conference Service attend court and meet with the young person after each referral is made, it would seem more suitable for the court, either through the Magistrate or a legal representative, to ensure that in each case the young person has a full understanding of the process before accepting consent (3.5 Court-Ordered Referrals). It is recommended that this could be facilitated by young people, their parents or carers and their legal representatives being fully informed about the youth conference process in a standardised way by representatives of the Youth Conference Service outside the court room prior to being asked if they give their consent to participating in a conference.

¹⁰³ Section 60, 36J (9) of the Justice (Northern Ireland) Act 2002.

5) Referrals from care system: A significant proportion of young people referred to a conference were in the care system, the majority of who were referred by the court. It is recommended that unless serious offences have been committed, that steps should be taken to avoid court prosecutions of looked after young people.

Preliminary stages of the conference process

6) Time from the offence to the conference: in all cases involving children and young people, it is important to avoid unnecessary delay. However, distance in time can also impact on the conference process by affecting the level of recall by the young person and / or the victim about the actual offence. The average length of time from the offence to the day of the conference was 120 working days. In interview, some victims expressed a concern at the lapse in time since the original offence. Although it is difficult to make a specific recommendation in this respect, it may be useful to bear in mind and to monitor the impact of this particular time distance in the further development of the youth conferencing service (4.3 The Convening of Conferences; 6.4 Overall Evaluation of Conferences: Best and worst Aspects of the Conference Experience).

7) Conference length: the majority of conferences permitted a sufficient amount of time to deal with the relevant issues and to engage all participants. However, the average conference lasted for one hour and a number of conferences lasted for more than 90 minutes. A number of participants felt that this was too long. In observations, young people also appeared restless toward the end of proceedings and when agreeing the plan. Therefore, it is recommended to make more provision for a break or time out during the conference proceedings (4.3 The Convening of Conferences; 5.5 Discussing the Crime: Young Person: Engagement; 5.10 The Actual Plan: Proportionality; 6.4 Overall Evaluation of Conferences: Best and worst Aspects of the Conference Experience).

8) Conference Venues: the majority of conferences took place in the purpose built Youth Conference headquarters in Belfast. Occasionally, community venues were used where this proved more convenient for participants. However, one young person supporter was concerned that the location was too local and an issue of privacy did arise. While achieving accessibility, it is recommended that it may be helpful to confirm with all participants that they are comfortable with the location of a community venue (4.3 The Convening of Conferences).

9) Observation room: in a few cases, the one-way observation room appeared to cause problems due to the presence of a mirror. To avoid this occurring, it is recommended to install a curtain or blind, which could be drawn over the mirror when the observation room is not in use (4.3 The Convening of Conferences).

10) Information on persons attending the conference: in most cases, young people and victims were well informed about the conference before attending. However, a very small number of victims felt they were not informed about who would attend and one victim felt particularly uncomfortable due to the presence of a person whom they did not know was attending. It is therefore recommended that participants are informed and provided with up to date information on the persons who are or even might be present at the conference (4.5 Preparation for the Conference: Victim).

11) Informational material: the majority of victims and young people were satisfied with information provided to prepare them for the conference. It is recommended that victim representatives have access to preparation materials, which include a business or community perspective and contain guidance on why victim representatives might attend (4.5 Preparation for the Conference: Informational Material; 4.6 Non-Participation: Victims).

12) Victim non-participation: Although the sample was small, the views from victims who chose not to participate in the conference process suggest two points to ensure good practice in these cases. It is recommended firstly, where the victim requests it, information should be provided to them on the progress of the case. Secondly, where the victim makes an alternative contribution such as a letter or a statement, it is important to offer information on how this input was received at the conference. Every effort should be made to facilitate alternatives when appropriate (4.6 Non-Participation: Victims; 4.7 Conclusion).

13) Delays: Where the conference was delayed, most victims (83%) and young people (80%) were kept informed, however 17% of victims and 20% of young people were not told why there was a delay. It is recommended that when delays occur, all parties are kept well informed of the causes and likely starting time.

14) Legal representation: When asked if they were informed of their right to legal advice, the majority (76%) of young people stated that they were. However 21% indicated that they were not and 4% could not remember. It is recommended that the Youth Conference Service ensure that all young people are informed of their right to legal advice.

The conference

15) Explaining the conference process: At the opening stages of the conference, it is important for the co-ordinator to establish the purpose and practicalities of the process. Results showed that in the majority of cases this was done well. Furthermore, the use of a flip chart acted as a useful tool to assist in explaining this process. It is recommended for continued training to ensure that visual aids are used appropriately and that they do not encourage the development of an overly standardised or prescribed format to conference proceedings (5.4 Opening Stages of the Conference: The Co-ordinator).

16) Confidentiality and Voluntariness: continued training is required to build upon the positive aspects of the conference, in particular, to ensure a clear explanation at the start of the conference of the voluntariness of participation and the confidentiality of conference proceedings. When explaining the concept of confidentiality, it is important to state the circumstances in which information revealed within the conference might be disclosed to third parties, for instance, concerns regarding child protection or information regarding further offences (5.4 Opening Stages of the Conference: The Co-ordinator).

17) The facts of the offence: a statement of facts regarding the offence is provided in each conference by the police officer. In a number of cases the young person disagreed with the facts as read. However, participants should be helped to understand that there can be a difference between disputing the facts, a process and dialogue which the conference process might legitimately facilitate, and disputing the legal elements which make up the offence, a more serious matter suggesting that the young person has not accepted responsibility for the offence (5.5 Discussing the Crime: Statement of Facts).

18) Involvement when devising the plan: observations showed a minority of only 57 conferences where one or more participants should have had more say when devising the conference plan. However, in two thirds of these cases or 37 conferences this was identified as the young person. In some instances therefore it is recommended to facilitate the young person to have a more substantial part in determining the actual plan (5.9 Devising Conference Plans: Involvement).

19) Professional input when devising the plan: observations showed only 24 conferences where it appeared that one or more participants should have had less say when devising the plan. In a very small number of these cases the police officer or co-ordinator was observed to address the young person in a scolding tone. It is recommended that this is a practice issue which could be addressed through ongoing development and training (5.9 Devising Conference Plans: Involvement).

20) Agreeing the conference plan: conference participants should be aware that the court might assess a conference plan according to how far it is proportionate to the offence. However, in a number of observations, there appeared to be a level of undue pressure due to a knowledge that the court would require significant content before it would approve the plan. Further training is recommended for co-ordinators to assist in ensuring that external demands do not overly influence participants when devising the plan. Indeed, the value of the process may be undermined if it appears that the court is directing the plan. (5.10 The Actual Plan: Agreement).

21) Plan content: though there were features common to many plans, such as an apology to the victim and / or an activity to address the causes of offending, each outcome varied in substance and length. Results showed that certain programmes or schemes were used regularly within plans whilst others appeared more peripheral. As such, mentoring and offence focused schemes appeared common whereas anger management, education or training featured for a minority of all plans. It is recommended to evaluate further the level of diversity within plans, given that schemes such as 'mentoring' and 'offence focused work' can involve young people in a wide range of opportunities, including the establishment of links to education and / or training (5.10 The Actual Plan: Plan Content).

22) Regional variation within conference plans: it is important to examine the development and content of plans to ensure against a substantial difference in plans by region. This is particularly important in relation to the inclusion of restrictions, with results showing 55% of plans from Fermanagh and Tyrone compared to only 20% of plans from the Greater Belfast region including one or more restriction. As such, it recommended to monitor regional inconsistencies to ensure against any perception or practice of 'justice by geography' in relation to the content of conference plans (5.10 The Actual Plan: Plan Content).

Overall evaluation of conferences

23) Co-ordinator skills: results showed that in the vast majority of conferences, co-ordinators displayed particular skills in their ability to be inclusive and to treat every participant in a fair and respectful manner. It is recommended that training continue to build upon and reinforce this positive aspect of the conference process (6.5 Overall Evaluation of Co-ordinator's Role).

The making of conference plans and orders

24) Return of court-ordered plans: the results showed a geographical inconsistency in relation to the acceptance and refusal of court-ordered conference plans. While all conference plans resulted in a youth conference order following referral from the youth courts in Fermanagh and Tyrone, over half of all referrals made by Belfast youth court did not result in an order. This presents a considerable variation in outcome by region and is perhaps an issue for further monitoring. The practical result is that court-ordered conferences in Belfast are far less likely to result in acceptance of the youth conference plan, (7.5 Return of Court-Ordered Plans: Court-Ordered Conference Plans).

25) Issuing a conditional discharge in place of a youth conference plan: the most frequent order made by the court following refusal of a youth conference plan was a conditional discharge¹⁰⁴. The Justice (Northern Ireland) Act 2002 provides that the court should not offer referral to a youth conference where it is minded to impose an absolute or conditional discharge¹⁰³. It seems that this is a legislative safeguard to ensure that less serious cases do not proceed by way of youth conference. It is recommended that if the court anticipates a conditional discharge, it would seem more within the spirit of the legislation not to offer referral to a youth conference. If following this practice, there might be a reduction in the number of plans refused on the grounds that the offence is not serious enough to warrant a youth conference order (7.5 Return of Court-Ordered Plans: Court-Ordered Conference Plans).

¹⁰⁴ Section 59, 33 C (5) Justice (Northern Ireland) Act 2002.

26) Amending court-ordered plans: given the high rate of rejection of youth conference plans at the Belfast youth court, it might be helpful to provide further training on the possibilities for amending a youth conference plan. This can facilitate the identification of suitable cases where it might be more positive to amend rather than to refuse the youth conference plan (7.5 Return of Court-Ordered Plans: Amendment of Youth Conference Plans).

27) The value of youth conference plans: it appeared from court observations that the value of a youth conference outcome was at times assessed according to the quantity or level of content within the plan. Therefore, a conference plan might be rejected on the grounds that ‘two points’ are insufficient to address a ‘serious’ offence. However, the worth of any conference plan is a complex measurement and may rest in the nature of the agreement rather than the number of elements appearing within the plan. As such, it may be useful to develop further training and educational materials in this regard (7.5 Return of Court-Ordered Plans: Amendment of Youth Conference Plans).

Further research

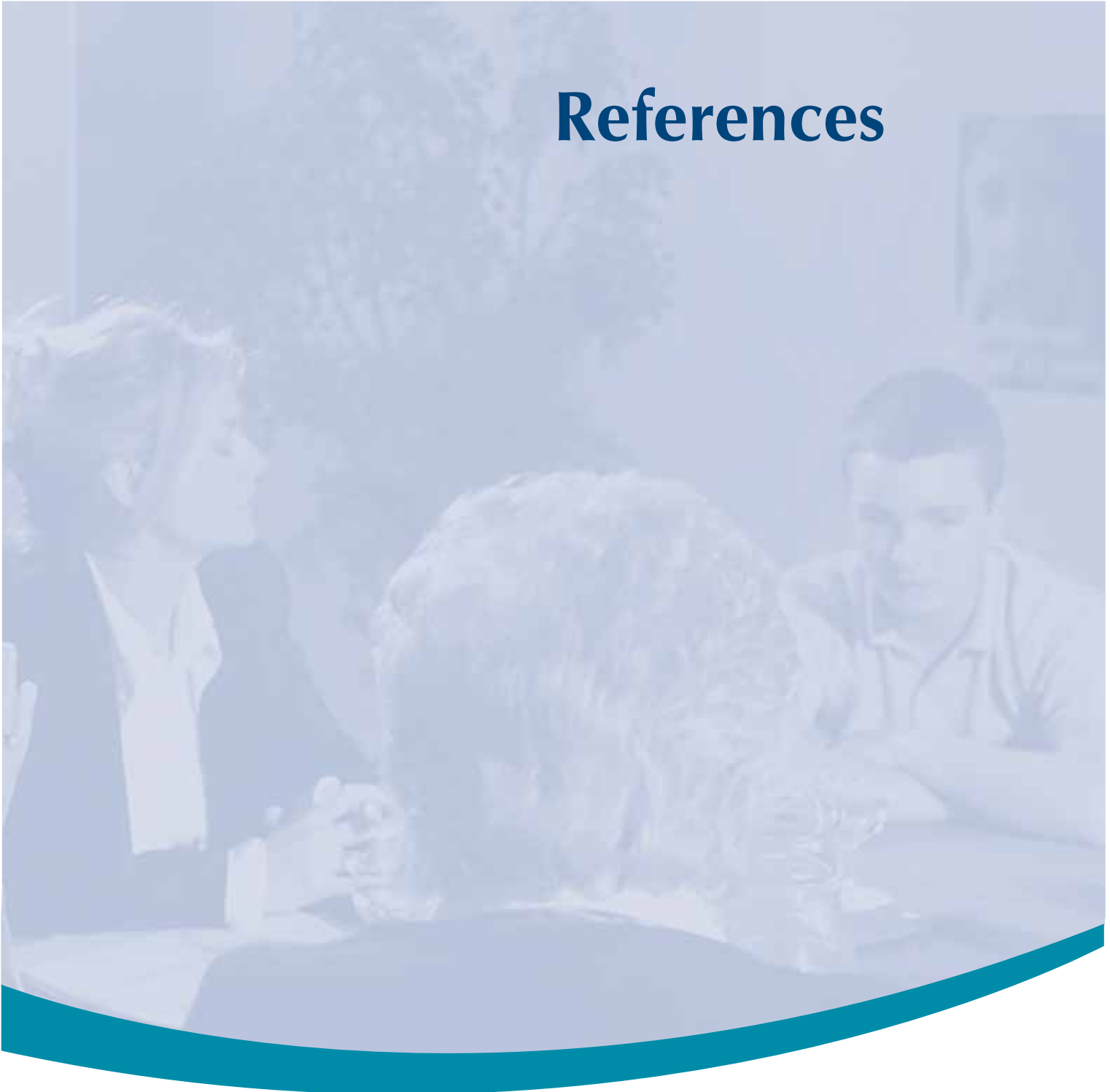
In order to appreciate the impact of youth conferencing on participants and relevant stakeholders and to assess how it is received by the youth justice system in Northern Ireland, it is crucial that its development is carefully monitored. Although it is not possible at this early stage of implementation to be aware of all aspects of the service that might benefit from research, there are certain areas that would be important for further examination:

28) Post conference perspectives: further research can assist in the development of the youth conferencing service by exploring the perspectives of young people, victims, families and other participants in the period following the actual conference proceedings. For instance, it may be important to learn about the perceptions of and impact upon participants following acceptance or refusal of the youth conference outcome and issues arising from fulfilment or breach of the final conference plan (7.5 Return of Court-Ordered Plans: Amendment of Youth Conference Plans).

29) Completion and revocation: the results showed a high rate of completion of youth conference plans and orders. However, given that youth conferencing is in an early stage of implementation, this research was unable to investigate this aspect of the service in detail. It would be useful to explore further the completion of youth conference outcomes and the consequences of breach. Indeed, where youth conference orders are revoked, it will be important to monitor and establish any trends in relation to final sentencing outcomes (7.7 Completion and Revocation of Youth Conference Plans and Orders).

30) Recidivism: although recidivism should not constitute the sole indicator when evaluating youth conferencing schemes, it would be of value for additional and longitudinal research to assess the level of reoffending following engagement by young people with the youth conferencing service and assess what elements of the process appear to have the most beneficial results (10.4 Conclusion).

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Appendices

- Appendix 1:** Young Person Interview Schedule
- Appendix 2:** Young Person Abridged Interview Schedule
- Appendix 3:** Victim Interview Schedule
- Appendix 4:** Non-participating Young Person Interview Schedule
- Appendix 5:** Non-participating Victim Interview Schedule
- Appendix 6:** Offence Research Scale

SECTION 2: PREPARATION FOR CONFERENCE

2.1 When did you first hear about the option of a conference? - From who?

2.2 Did a coordinator come out to see you after that? Yes/No

2.3 How helpful was that? very good good ok bad very bad

2.4 Did you get any advice from a solicitor about today? Yes/No

2.5 Were you told you had a right to legal advice? Yes/No

If yes, by who? _____

Before today:-

2.6 Were you told what the conference would be like?

a lot a bit no

2.7 Were you told who would be there?

a lot a bit no

2.8 Were you told what was expected of you during the conference?

a lot a bit no

2.9 Were you told what the result could be?

a lot a bit no

2.10 Were you told what would happen if you didn't attend? Yes/No

2.11 Did you have any questions about what would happen? Yes/No

IF YES:-

2.11.1 How well were they answered?

very well well ok badly very badly

2.12 Were you given any leaflets, CDs or DVD's about the conference? - what?

() leaflets () dvd () video
 () other _____ () No () Can't remember

2.13 **IF YES, did you read/watch them?** Yes/No

IF NO:- why not?

IF YES:- how good were they? very good good ok bad very bad

2.14 Is there any other information that would have been helpful? Yes/No

If yes _____

2.15 How keen were you to take part in today's conference?

keen neither keen/unkeen didn't want to

Why? _____

2.16 Was taking part something you wanted to do or something someone else made you feel you should do?

all me mostly me both mostly pressure all pressure

If pressure, from who? _____

I now want to read you some reasons why people might take part in these conferences. As I read each one, can you tell me if it was one of your reasons for coming today

2.17 I wanted to hear what the victim had to say

yes sort of no

2.18 I wanted to help the victim

yes sort of no

2.19 I wanted to make up for what I had done

yes sort of no

2.20 I wanted people to hear what I had to say

yes sort of no

2.21 I wanted the victim to forgive me

yes sort of no

2.22 If diversionary, I didn't want to have to go to court

yes sort of no

2.23 I thought my punishment would be easier than if I went to court/was sentenced by the court

yes sort of no

2.24 Any other reasons?

SECTION 3: COMING TO THE CONFERENCE

3.1 How nervous did you feel about:

a. Coming to the conference today?

very a bit not at all

b. Having to speak at the conference?

very a bit not at all

c. Meeting the victim/hearing what they had to say? (if more than one victim, record separate answers for each)

very a bit not at all

3.2 Did you know the victim before the crime? (if more than one victim, record separate answers for each)

Yes/No

If yes, how? _____

3.3 Did you have any problems getting here today?

Yes/No

- () transport () finding the venue
- () cost () time off school/work/training
- () childcare etc. () other

Details _____

3.4 If conference started late, were you told why?

Yes/No

What reason? _____

SECTION 4: THE CONFERENCE ITSELF

The start of the conference

4.1 How well did the co-ordinator explain what was going to happen during the conference?

very well well ok badly very badly

4.2 Was there anything you didn't really understand?

Yes/No

If yes, details _____

4.3 I see you had _____ with you today - How helpful was it having them with you?

very helpful a bit helpful not helpful

Explain _____

4.4 Would you have liked to have anyone else with you as well?

Yes/No

If yes, who? _____

Your treatment during the conference

I'm now going to ask you some questions about how you felt you were treated during the conference

4.5 Do you think you were treated fairly by :

the coordinator?	Yes	sort of	No
<u>if present, the victim ?</u> (if more than one victim, record separate answers for each)	Yes	sort of	No
<u>if present, the victim's supporter(s)?</u>	Yes	sort of	No
the police officer?	Yes	sort of	No

4.6 Was there anyone who treated you badly?

Yes sort of No

If yes, who & how _____

Appendix 1

4.7 If victim involved, do you think you were treated as well as the victim was?

yes sort of no No victim present

4.8 Do you think people listened to what you had to say?

yes sort of no

4.9 Was there anything you wanted to say that you didn't?

Yes/No

If yes:-

4.9.1. what _____

4.9.2 why didn't you say it _____

4.10 Is there anyone you think should have said more during the conference?

4.11 Is there anyone you think should have said less during the conference?

The Victim **(IF NO VICTIM (REP) INVOLVED, GO TO SECTION 5)**

I'm now going to ask you a few questions about the victim (if more than one victim, record separate answers for each)

4.12 How did you feel when you saw the victim at the conference today?

() angry () embarrassed
() nervous () guilty/ashamed
() felt nothing () other _____

4.13 Had your opinion of the victim changed by the end?

Yes No Don't know

expand _____

4.14 Did you understand how the victim felt?

yes sort of no

4.15 Did what they said make you feel sorry for what you had done?

yes sort of no

4.16 Did young person apologise to the victim during the conference? (if more than one victim, record separate answers for each)

Yes/No

IF NO:- why not?

IF YES:- (complete whether or not V present if apology offered/agreed to)

4.17 whose idea was this?

- your own
- your supporter
- the victim
- victim supporter
- the police officer
- the coordinator
- other _____

4.18 Did you apologise more because you wanted to or because you felt you had to?

wanted to had to bit of both

4.19 Do you think your apology made the victim feel better?

yes sort of no

4.20 Did apologising make you feel better?

yes sort of no

SECTION 5: THE ACTION PLAN**A. IF NO ACTION PLAN AGREED:****5.1 I see no plan was agreed today; why do you think that was?**

Move to section 6

B. IF ACTION PLAN AGREED:

I now want to ask you a few questions about the action plan that was decided.

5.2 Can you remember what the action plan says you have to do?

happy to agree bit of both had to agree

If had to, who made you feel this way? _____

5.4 Do you think the plan is fair to you?

very fair fair neither fair/unfair unfair very unfair

5.5 Do the think the plan is fair to the victim? (if more than one victim, record separate answers for each)

very fair fair neither fair/unfair unfair very unfair

5.6 Do you think the plan is too hard or too soft, given what you've done?

Far too hard a bit hard neither too hard/too soft a bit soft far too soft

5.7 Is there anything you really don't like in the plan? Yes/No

If yes, expand _____

5.8 Do you think you'll be able to complete all of the plan?

definitely I think so not sure don't think so no

5.9 What bit do you think will be hardest for you?

5.10 Who do you think had most say in what went in the plan?

5.11 Would you have liked more say in what went in the plan?

a lot a bit no

5.12 Would you rather have gone to court/been sentenced by the court than come to the conference?

yes no don't know

Why? _____

5.13 Do you think a court sentence would have been better or worse?

much better better same worse much worse

SECTION 6: IMPACT OF THE CONFERENCE

You'll be glad to hear we're near the end now - just a few more questions.

6.1 Having finished the conference, how do you feel?

6.2 Do you feel better or worse than before the conference?

much better better same worse much worse

6.3 Why do you think they had this conference? (give options)

to punish you to help you
 to help the victim to help you and the victim
 other _____

6.4 Did the conference make you realise the harm you caused?

yes sort of no

6.5 Do you think the action plan will help you stay out of trouble in the future?

yes sort of no

6.6 Do you think taking part in the conference will help you stay out of trouble in the future?

yes sort of no

6.7 Overall, what was the best thing about the conference?

6.8 Overall, what was the worst thing about the conference?

6.9 Overall, how satisfied are you with the outcome of the conference?

Very satisfied satisfied neither satisfied/unsatisfied unsatisfied very unsatisfied

6.15 Having taken part in the conference today, what would you tell another young person in your position who couldn't decide whether or not to come to a conference?

Any other questions or comments?

Appendix 2

PRE-CONFERENCE

Did the co-ordinator come and see you before today's conference? Yes/No

How good was that?

Very good Good OK Bad Very Bad

Did you get any advice from a solicitor about today? Yes/No

Were you told you could speak to a solicitor? Yes/No

How keen were you to come today?

Keen Didn't really care Didn't want to

Why? _____

Did anyone make you feel you had to come - or did you want to come?

All me Mostly me Both Mostly pressure All pressure

If pressure, from who? _____

Why did you decide to come? (prompt - help victim; easier than court; say sorry?)

How nervous did you feel about coming here today?

Very a bit not at all

If nervous, what were you nervous about? (prompt - speaking; meeting victim?)

THE CONFERENCE

How well did the co-ordinator explain what would happen during the conference?

very well well ok badly very badly

Was there anything you didn't really understand? Yes/No

If yes, details _____

I see you have _____ with you today - how helpful was it having them with you?

very helpful a bit helpful not helpful

Would you have liked to have anyone else with you as well? Yes/No

If yes, who? _____

Do you think people treated you well during the conference?

Yes sort of No

Was there anyone who treated you badly?

Yes Sort of No

If yes, who & how _____

APOLOGY

Did what the victim said make you feel sorry for what you had done?

Yes sort of No Don't know

If apology, Did you say sorry because you wanted to or because you felt you had to?

wanted to had to bit of both

Did saying sorry make you feel better?

Yes sort of No

ACTION PLAN

Can you tell me what the action plan says you have to do?

Were you happy to agree to the plan or did you feel you had to?

Happy to agree Bit of both Had to agree

If had to, who made you feel this way? _____

Do you think the plan is fair?

Very fair fair neither fair/unfair unfair very unfair

Appendix 2

Do you think the plan is too soft or too hard on you?

far too hard a bit hard neither too hard/too soft a bit soft far too soft

Do you think you'll be able to do everything in the plan?

Definitely I think so Not sure/Don't think so No

What bit do you think will be hardest for you?

Who do you think had most say in what went in the plan?

Would you have liked any more say in what went the plan?

a lot a bit no

Would you rather have gone to court/been sentenced by the court than come to the conference?

yes no don't know

Do you think a court sentence would have been better or worse?

much better better same worse much worse

POST CONFERENCE

How do you feel now its over? (prompt)

Do you feel better or worse than before?

much better better same worse much worse

Why do you think they had this conference?

() to punish you () to help you
() to help the victim () to help you and the victim
() other _____

Do you think the action plan will help you stay out of trouble in the future?

Yes sort of No

Overall, what was the best thing about the conference?

Overall, what was the worst thing about the conference?

How satisfied are you with the outcome of the conference?

Would you tell a friend to do one? - Why?

SECTION 2: PREPARATION FOR CONFERENCE

2.1 Who first told you about the option of a conference? – how?

2.2 When was that?

2.3 Did anyone get in touch after that to tell you more about the conference? Yes/No

IF YES:-

2.3.1 Who? _____

2.3.2 How?

() in person () by telephone () by letter

2.3.2 How helpful was this?

very good good ok bad very bad

2.4 How long ago were you given the date of today's conference?

2.5 Did this give you enough time to prepare? Yes/No

2.6 Did you get any advice from a solicitor about today? Yes/No

Before today:-

2.7 Were you told what the conference would be like?

a lot a bit no

2.8 Were you told who would be there?

a lot a bit no

2.9 Were you told what was expected of you during the conference?

a lot a bit no

2.10 Were you told what the outcome could be?

a lot a bit no

2.11 Were you told about other options if you didn't want to attend? Yes/No
(Live link, video, letter etc)

What? _____

Appendix 3

2.12 Did you have any questions about what would happen? Yes/No

If yes, how well were they answered?

very well well ok badly very badly

2.13 Were you given any leaflets, CDs or videos about the conference?

() leaflets () dvd/cd-rom () video
() other _____ () No () Can't remember

2.14 IF YES, did you read/watch them? Yes/No

IF NO:- why not?

IF YES:- how good were they?

very good good ok bad very bad

2.15 Is there any other information that would have been helpful? Yes//No

If yes _____

2.16 How keen were you to take part in today's conference?

Keen Neither keen/unkeen Didn't want to

Why? _____

2.17 Was taking part something you wanted to do or something you felt pressured into doing?

All me Mostly me Both Mostly pressure All pressure

If pressure, from who? _____

2.18 What were your expectations in coming to today's conference?

I now want to read you some reasons why people might decide to take part in these conferences. As I read each one, can you tell me if it was one of your reasons for coming today

2.19 I wanted to help the young person

yes sort of no

2.20 I was curious to find out what the young person was like

yes sort of no

2.21 I wanted to hear what the young person had to say

yes sort of no

2.22 (P) I wanted to find out why they victimised me

yes sort of no

2.23 I wanted the young person to know how their actions affected me/us

yes sort of no

2.24 I wanted to hear the young person apologise

yes sort of no

2.25 (P) I thought it would help me move on

yes sort of no

2.26 Any other reasons why you decided to take part in the conference?**SECTION 3: COMING TO THE CONFERENCE**

Record: In person or Video link? _____

3.1 How nervous did you feel about:**(a) coming to the conference today?**

Very a bit not at all

(b) having to speak at the conference?

Very a bit not at all

(c) meeting the young person/hearing what they had to say?

Very a bit not at all

3.2 Did you know the young person before the offence?

Yes/No

If yes, how? _____

3.3 Did you have any problems getting here today?

Yes/No

() transport

() cost

() childcare

() finding the venue

() time off school/work/training

() other _____

details: _____

3.4 If conference started late, were you told why Yes/No

What reason? _____

SECTION 4: THE CONFERENCE ITSELF

The start of the conference

4.1 How well did the co-ordinator explain what would happen?

very well well ok badly very badly

4.2 Was there anything you didn't really understand? Yes/No

If yes, details _____

4.3 Did you have a supporter with you today? Yes/No

If supporter present:-

4.4 Who? _____

4.5 how helpful was it having them with you?

very a bit not at all

Explain _____

4.6 Would you have liked to have anyone else with you as well? Yes/No

If yes, who? _____

4.7 Would you have preferred to come on your own? Yes/No

If no supporter present:

4.8 Would you have liked to have anyone with you today? Yes/No

If yes, who? _____

4.9 Why did you decide to come alone?

Your treatment during the conference**I'm now going to ask you some questions about how you felt you were treated during the conference.****4.11 Do you think you were treated fairly by :**

the coordinator?	yes	sort of	no
the young person?	yes	sort of	no
the young person's supporter(s)?	yes	sort of	no

4.12 Was there anyone who treated you badly?

Yes sort of No

If so, who & how _____
_____**4.13 (P) Do you feel your needs, as a victim, were properly addressed?**

Yes sort of No

4.14 Did you get a chance to tell the young person how their crime impacted upon you/the business

Yes sort of No

4.15 Do you feel the young person listened to you?

Yes sort of No

4.16 Do you think the young person accepted responsibility for their crime?

Yes sort of No

4.17 Was there anything you wanted to say that you didn't get the chance to? Yes/No**IF YES:-****4.17.1. what** _____**4.17.2 why didn't you say it** _____

_____**4.18 Is there anyone you think should have said more during the conference?****4.19 Is there anyone you think should have said less during the conference?**

The young person

I'm now going to ask you a few questions about the young person

4.20 How did you feel when you saw the young person at the conference today?

4.21 Had your opinion of them changed by the end?

Yes No Don't know

expand _____

4.22 Were you satisfied with the young person's contribution to the conference?

yes sort of no

4.23 Were you upset by anything they said?

yes sort of no

4.24 Did the conference help you understand why they committed the crime?

yes sort of no

4.25 Did the young person apologise to you during the conference? Yes/No

IF NO:- why do you think they didn't?

IF YES:-

4.26 whose idea did that seem to be?

- () the young persons
- () yours
- () the police officer
- () other _____
- () young person supporter
- () your supporter
- () the coordinator

4.27 Do you think they apologised more because they wanted to or because they felt they had to?

wanted to had to bit of both

4.28 Were you happy with their apology?

yes sort of no

SECTION 5: THE ACTION PLAN**5.1 Was an action plan agreed**

Yes/No

5.1.1 If no action plan agreed, why do you think that was?

Move to section 6

B. IF ACTION PLAN AGREED:**I now want to ask you a few questions about the action plan that was decided.****5.2 Were you happy to agree to the plan or did you feel you had to?**

happy to agree bit of both had to agree

If had to, who made you feel this way? _____**5.3 Do you think the agreed plan is fair to you?**

very fair fair neither fair/unfair unfair very unfair

5.4 Do you think the plan is fair to the young person?

very fair fair neither fair/unfair unfair very unfair

5.5 Do you think the plan is too hard or too soft, given what the young person did?

far too hard a bit hard neither too hard/too soft a bit soft far too soft

5.6 What do you think is the best feature of the plan?**5.7 What do you think is the worst feature of the plan?****5.8 Was anything left out, that you would have liked to be in the plan?** Yes/No

If yes:

5.9 Do you think the young person will be able to complete all of the plan?

Definitely I think so Not sure Don't think so No

5.10 Who do you think had most say in deciding the plan?

5.11 Would you have liked more say in what went in the plan?

a lot a bit no

5.12 Would you rather the young person had gone to court/ been sentenced by the court?

yes no don't know

Why? _____

5.13 Do you think a court sentence would have been harsher or more lenient?

a lot harsher harsher same more lenient a lot more lenient

SECTION 6: IMPACT OF THE CONFERENCE

You'll be glad to hear we're near the end now - just a few more questions.

The young person

6.1 Do you think the young person now realises the impact their crime had on you?

yes sort of no

6.2 Do you think they're happy with the outcome of the conference?

yes sort of no

6.3 Do you think the action plan will help them stay out of trouble in the future?

yes sort of no

6.4 Do you think having taken part in the conference will help them stay out of trouble in the future?

yes sort of no

On you

6.5 Having finished the conference, how do you feel?

6.6 Do you feel better or worse than before the conference?

much better better same worse much worse

why _____

6.7 What do you think was the main purpose of this conference? (give options)

- to punish young person to help young person
 to help you to help young person and V
 other

6.11 Do you think the conference was fair overall?

Very fair fair neither fair/unfair unfair very unfair

6.12 Do you think your views and opinions were taken seriously?

Yes sort of no

6.13 Did you feel safe during the conference?

Yes sort of no

6.14 What was the best thing about the conference for you?**6.15 What was the worst thing about the conference for you?****6.17 Overall, how satisfied are you with the outcome?**

Very satisfied satisfied neither satisfied/unsatisfied unsatisfied very unsatisfied

6.17 Having taken part in today's conference, would you advise another victim to attend?

Yes/No

Why?

Any other questions or comments?

Q6. Do you now wish you had done a conference? - Why?

Outcome of case (if known):

Q5. Did you use any of these options? Yes () No ()

If no, why not?

If yes, which?

If yes, how satisfied were you with this?

Very satisfied satisfied neither satisfied/unsatisfied unsatisfied very unsatisfied

Q6. Have you received any feedback on the outcome of the conference? - details?

Q7. Are you satisfied with the level of feedback received? Yes () No ()

If no, why not?

Q8. If outcome known, are you satisfied with the outcome of the conference? Yes () No ()

If no, why not?

Q10. Do you regret not attending the conference at all?

Why?

Appendix 6: Offence Research Scale

Youth Conferencing Research

Offence Research Scale

June 2004

The following is an outline of our Offence Research Scale for the Youth Conferencing Research. In devising the scale we took into consideration a number of sources of information and scales that had been used elsewhere. The core aim was to construct a basic seriousness score for offences (rather than offence classification) that was easily understandable and makes practical sense in terms of ranking seriousness.

The core sources of information that were used in devising the scale included: a scale use by Newburn et al in the evaluation of restorative schemes in England and Wales (devised from a classification scheme used by the Probation Service and Home Office in 1994); the Code for Crown Prosecutors applied by the Crown Prosecution Service to determine whether offences should be brought for prosecution in the public interest; an assessment of the maximum penalties available for offences in Northern Ireland; and information from a recent study by Quinn and Jackson which looked at a sample of juveniles arrested for a range of offences in Northern Ireland.

Whilst none of the above sources in and of themselves gave us a complete answer to our questions, taken together and with a number of other factors, they provide the background for a practical model of offence seriousness that can be used for the present research. Other factors that were also taken into consideration included: the degree, type and potential for harm; the degree of malice and intent to cause harm; the degree of violence; whether the offence was directed at property or at the person; whether the offence involved violence; the relative value of property involved; whether the offence was arrestable or not and whether the offences were classified as triable summarily, either way or by indictment.

Type 1. Extremely serious offences - attracting life sentences

Including: Manslaughter, Robbery with firearm, Arson with intent to endanger life, Rape, Orchestrating a riot

Type 2. Very serious violent offences and offences causing serious harm to the person - only includes offences resulting in serious harm or the potential for serious harm, excludes purely property related offences.

Including for example: Threat to kill, Wounding with intent, Assault occasioning grievous bodily harm, Very serious sexual offences, Robbery with weapon, Arson, Serious public disorder, Aggravated taking and driving away, Causing death by dangerous driving, Supply of controlled substances, Abduction, Possession of firearm, Aggravated burglary

Type 3. Serious offences against the person and property related offences - offences which cause harm or the potential for harm and property related offences which involve goods with a value of at least £250.

Including for example: Assault occasioning actual bodily harm, Theft/Handling over £250, Obtaining by deception over £250 value, Criminal damage over £250, Burglary dwelling, Robbery, Taking and driving away, Allowed to be carried, Dangerous driving, Riotous behaviour, Bomb hoax, Possession drug class A, Other sexual offences (eg indecent assault)

Type 4. Intermediate offences against the person and property related offences - offences that are intermediate in terms of their seriousness and result in minor injury or involve goods or property with a value between £50 to £250.

Including for example: Common assault, Assault police, Theft/Handling (£50-£250), Obtaining by deception under £250, Criminal damage (£50-£250), Theft from a vehicle, Possession of drugs, Disorderly behaviour, Resisting arrest, No licence, No insurance, Excess Alcohol, Driving whilst unfit, Failing to provide breath specimen, Possession of offensive weapon, Going equipped, Burglary non-dwelling, Careless driving, Possession drug class B, Indecent exposure

Type 5. Minor property related and other minor offences - non-violent and minor property related offences with a value of under £50, that do not result in physical injury.

Including for example: Theft (under £50), Criminal damage (under £50), Handling stolen goods (under £50), Interference with vehicle, Obstruction, Simple drunk, Breach of peace, Failing to give details, Minor motor vehicle and driving offences (e.g. speeding, bald tyres), Obstruct police

Northern Ireland Office

Criminal Justice Directorate
Statistics and Research Branch
Massey House
Stoney Road
Belfast
BT4 3SX

Email: statistics.nio@nics.gov.uk

Telephone: 02890 527534

Facsimile: 02890 527532

www.nio.gov.uk

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