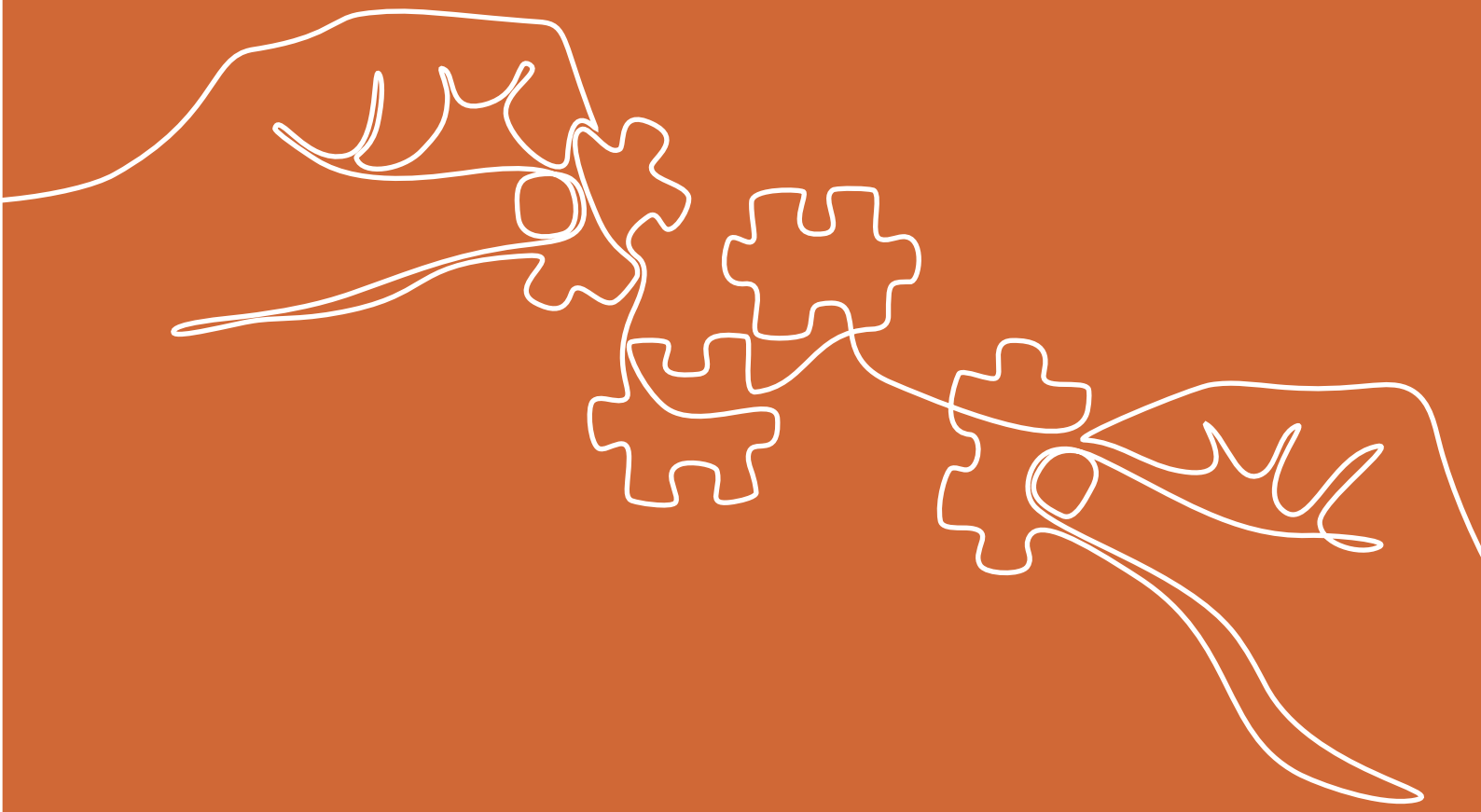

THE RJ4ALL RESTORATIVE JUSTICE PRACTICE FRAMEWORK

VALUES, DEFINITIONS AND COMPLIANCE WITH INTERNATIONAL AND UK STATUTORY OBLIGATIONS

RESTORATIVE JUSTICE SERIES NO 60

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First published in the UK in April 2024 by RJ4All Publications

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British Library Cataloguing in Publication Data

ISBN: 978-1-80463-003-7

DOI: 10.13140/RG.2.2.24975.80803

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Professor Dr.
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RJ4All Founder and Director
April, 2024

FOREWORD

The fall and rise of restorative justice practice through history signifies not only its strengths, but also its weaknesses as an alternative form of conflict resolution, and as a peace-making process that aims to restore harm (**Gavrielides, 2011**). I have written and spoken openly about the evidence I have been collecting for over 2 decades, highlighting the community-led and community-born nature of restorative justice. This very organic nature of restorative justice is what creates its underlying ethos (Gavrielides, 2007), and which we must safeguard.

And there is a difference between restorative justice and restorative justice practice. While the former can guide our ethics and way of living (**Gavrielides 2005; 2013**), the latter can intercept formal justice procedures whether these belong to the criminal or civil law sphere, institutional conflicts or indeed any dispute that has taken a top-down resolution route.

Restorative justice can return conflicts to parties but while doing so we must take into consideration its fluid and adjustable nature. At the same time, it must be delivered according to its founding values and original purpose of providing restoration when other processes either failed or were not preferred by parties. Luckily, there are not many disagreements as to what constitutes the core restorative justice values. However, this is not the case when it comes to its standards, who gets to practise and who doesn't, what practice to choose and how to certify or accredit. I have written extensively about the power-interest battles that have weakened the restorative justice movement (Gavrielides 2021b; 2021c; 2008). It is not the intention of this Framework to either address, nor endorse these battles (or join them)!

Putting together a practice framework for the safe and proper delivery of restorative justice practice was difficult. The key purpose of this Framework is to guide practice within the Restorative Justice for All International Institute (RJ4All). However, our ambition is that others who practise restorative justice will want to use it independently of their location. In drafting the Framework, I was faced with a dilemma. How do we honour the RJ4All narrative for a community-led, community-born organic restorative justice, while ensuring that there is a blueprint for what is expected in practice? Thankfully, my trusted contacts within the field helped me to overcome this hurdle, and with their help and a lot of research, I constructed this Framework. I am particularly grateful to Ben Lyon (RJ4All Vice-president and independent senior restorative justice practitioner), Chris Straker (independent senior restorative justice practitioner), Robert E. Mackay (RJ4All Associate and independent senior restorative justice practitioner), Janine Carroll (Restorative Now), and my team at RJ4All. Two important initiatives supporting and informing this Framework are the **RJ4All International Fellowship of Restorative Justice Practitioners (IFRJP)** and the **The RJ4All International Restorative Justice Pledge.**

Together these three initiatives aim to advance both the quality as well as the uptake of restorative justice internationally. Just like restorative justice, they are living instruments and adjusted according to the needs of our communities and times. I hope that together we can help create a world restorative justice peace movement.

DEFINITIONS

RESTORATIVE JUSTICE

The EC defines it as "*any process* whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party" (European Parliament, 2012)

The CoE defines it as "*any process* which enables those harmed by crime, and those responsible for that harm, if they freely consent, to participate actively in the resolution of matters arising from the offence, through the help of a trained and impartial third party" (Council of Europe, 2018).

A maximalistic definition from the literature is also helpful: "It is *an ethos* with practical goals, among which is to repair harm by including affected parties in a (direct or indirect) encounter and a process of understanding through voluntary and honest dialogue. Restorative justice adopts a fresh approach to conflicts and their control, retaining at the same time certain rehabilitative goals" (Gavrielides, 2007; Gavrielides, 2020).

RESTORATIVE JUSTICE PRACTICE (DIRECT/ INDIRECT)

Direct restorative justice practice involves a face-to-face and/or online encounter between harmed and harming parties, including Victim-Offender Mediation (VOM), Family Group Conferencing (FGC), Restorative Justice Circles (RJC) and Restorative Justice Boards (RJB).

Indirect restorative justice involves an indirect communication between harmed and harming parties including letter exchange, video or audio file exchange.

VICTIM - HARMED PARTY

The EC defines a victim as: "(i) a natural person who has suffered *harm*, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence; (ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death" [1] (European Parliament, 2012).

In restorative justice, emphasis if given on "harm" vs. "crime" and thus a more accurate term is "harmed party".

OFFENDER - HARMING PARTY

An offender is a natural person (or a group) who has harmed an individual (or a group), an institution or a community of people.

The EC does not have a single definition for this term. The common denominator amongst its relevant statutes is that an offender is typically someone who has breached the law and may face legal consequences such as punishment, rehabilitation, or other forms of sanction.

In restorative justice, emphasis is given on "harm" vs. "crime" and thus a more accurate ter mis "harming party".

COMPLEX RESTORATIVE JUSTICE CASES

Complex cases are defined as harms involving a power imbalance between the harming and harmed party, and where this imbalance may generate re-victimisation and risks for all parties involved[2].

[1] Introductory paragraph no.19, extract: "A person should be considered to be a harmed party regardless of whether a harming party is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between them" (Victims Directive, 2012).

[2] Examples of complex cases include sexual abuse, child sexual abuse, hate motivated incidents, gun crime, knife crime, organised crime. Cases considered as not complex include shoplifting, theft, physical or property violence, neighbourhood disputes.

RESTORATIVE JUSTICE PRACTITIONER & SENIOR RESTORATIVE JUSTICE PRACTITIONER

A restorative justice practitioner is an individual who has practised restorative justice unsupervised for at least 6 months and had received appropriate training. The EC expects restorative justice practitioners "to receive adequate training to a level appropriate to their contact with victims and observe professional standards to ensure such services are provided in an impartial, respectful, and professional manner" (European Parliament, 2012). Therefore, "qualification" cannot be deemed as the result of any registration with a private legal body.

A senior restorative justice practitioner is an individual who has practised unsupervised for at least 2 years (including managing complex cases) and has received appropriate training as described in the Victims' Directive.

RESTORATIVE JUSTICE SERVICE

Restorative justice service involves at least one senior restorative justice practitioner and one restorative justice practitioner.

HATE SPEECH

The EC defines it as "Certain forms of conduct [that] are punishable as criminal offences:

- public incitement to violence or hatred directed against a group of persons or a member of such a group defined on the basis of race, colour, descent, religion or belief, or national or ethnic origin;
- the above-mentioned offence when carried out by the public dissemination or distribution of tracts, pictures or other material;
- publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in the Statute of the International Criminal Court (Articles 6, 7 and 8) and crimes defined in Article 6 of the Charter of the International Military Tribunal, when the conduct is carried out in a manner likely to incite violence or hatred against such a group or a member of such a group.

Instigating, aiding or abetting in the commission of the above offences is also punishable. The initiation of investigations or prosecutions of racist and xenophobic offences must not depend on a victim's report or accusation" (European Council, 2008).

HATE CRIME

The EC defines it as "all cases [whereby] racist or xenophobic motivation shall be considered to be an aggravating circumstance or, alternatively, the courts must be empowered to take such motivation into consideration when determining the penalties to be applied (European Council, 2008).

VIOLENCE

The World Health Organisation (WHO) defines it as "The intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation (World Health Organization, 2002: 5).

The WHO (2002) accepts three broad categories of violence. These are based on the characteristics of those committing the violent act: (1) self-directed violence (2) interpersonal violence (3) collective violence or group violence.

GROUP VIOLENCE

Violence as definited by the WHO, distinguished from violence that occurs between individuals who do not act as part of, or on behalf of, particular groups. According to the WHO, group violence is subdivided into social, political and economic violence. The term 'group' is defined as per Olzak (1992) and Tilly (Tilly, 1978; 1975), encompassing five or more people acting in concert.

PREAMBLE

PURPOSE & OBJECTIVES OF THE FRAMEWORK

This practice framework ("The Framework") sets the legal and ethical principles for practising restorative justice according to its founding values and legislative requirements. It is drafted for anyone wishing to practise restorative justice whether in the form of victim-offender mediation, circles, conferences or boards. For RJ4All, this framework also constitutes as an internal regulatory policy. It is mandatory for anyone practising restorative justice on behalf of the Restorative Justice for All International Institute ("RJ4All").

The Framework aims to ensure that when delivering restorative justice, the practice:

- Complies with international legal standards and obligations.
- Follows best practice guidance as this is outlined by:
    - The United Nations
    - The European Commission
    - The Council of Europe.
- Complies with legislation in the United Kingdom including:
    - England and Wales
    - Scotland
    - Northern Ireland.
- Delivers to the highest standards, respecting the rights and freedoms of all parties involved.
- Is consistent in its application and able to articulate the reasons where variations may take place.

SCOPE OF THE FRAMEWORK

This Framework applies to cases that fall within the youth justice and criminal justice systems, as well as private and civil law cases, common law disputes and cases diverted from internal disciplinary and administrative bodies.

Cases can be the result of either a self-referral or a formal referral from youth justice[3] and criminal justice[4] agencies, other formal justice sector agencies, institutions as well as from other public sector organisations[5] and third-party reporting centres[6].

The Framework applies to direct encounters in-person or online. Where indirect restorative justice is delivered, the Framework is also applicable[7].

REGISTRATION FRAMEWORKS & PRE-REQUISITES

RJ4All operates an open, inclusive and transparent International Fellowship of Restorative Justice Practitioners (IFRJP) that is free to join either online or in-person[8]. Applying to the IFRJP and being approved is a pre-requisite for practising under the auspices of RJ4All, and for using this Framework[9].

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[3] Examples: youth offending teams and panels, Local Authorities, youth offending services, pupil referral units, the secure estate.

[4] Examples: police, Safer Neighbourhood Teams, Crown Prosecution Service, courts, prisons, probation service.

[5] Examples: hospitals, schools, universities, social services, children services.

[6] Examples: complex cases centres, community organisations, charities, help lines.

[7] The Framework does not apply to RJ4All services that do not involve a referral/self-referral and where restorative justice may be used as a methodology to achieve other outcomes other than restoring harm e.g. healing and well-being circles, circles of support, and community circle consultations.

[8] To apply to join the Fellowship https://rj4all.org/ifrjp/

[9] RJ4All does not believe in the value of paid registers for restorative justice practitioners. The extant literature and many restorative justice leaders have advocated against such initiatives as they go against the very nature of restorative justice as a community-born and a community-led justice alternative (Braithwaite, 2002; Johnstone, 2018; Gavrielides, 2023). Despite good intentions, paid Registration Frameworks run the risk of creating top-down structures that control communities instead of protecting them. They can exclude (e.g. only for those that can afford to be registered), and discriminate (e.g. accessible only to mainstream groups) while limiting the innovative nature of restorative justice practice.

NATURE OF THE FRAMEWORK

The Framework constitutes an internal mandatory Policy (workplace regulation). As such, any claims of breaching this policy, will be investigated in the same manner as the workplace disciplinary and grievance procedures. The appeal process and stages of these procedures will also apply. Depending on the severity of the breach, the practitioner may be removed from the IFRJP, and sanctions will apply as per their contractual agreement (depending on whether the practitioner is an employee, or a consultant). Where the breach relates to a statutory obligation, RJ4All will be obliged to inform relevant authorities, and hand over the case to them for processing.

COMPLAINTS

Complaints will be handled as per the RJ4All Complaints Policy.

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The Framework has been put together in consultation with restorative justice practitioners and is based on the extant literature and available best practice evidence. It has been drawn in line with RJ4All's position against the standardisation of restorative justice. The Framework aims to honour the agreed core restorative justice values and principles for delivering a safe, impartial, confidential, fair, voluntary and high-quality restorative justice practice that is free from domination, discrimination, bias and power abuse.

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