

YOUTH JUSTICE PILOTS EVALUATION

**INTERIM REPORT ON REPARATIVE WORK
AND YOUTH OFFENDING TEAMS**

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Youth Justice Pilots Evaluation

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Introduction

As part of the ongoing evaluation of the pilot Youth Justice Pilots, visits were made to each of the full YOT pilots during May/June 1999 to investigate the processes relating to victim contact, mediation and reparation work being undertaken under the auspices of the Crime and Disorder Act. Within each pilot area interviews were conducted with at least one member of the YOT with responsibility for reparation work, together with a representative from any other agency contracted to deliver reparation services to the YOT¹. This brief report is intended to provide a snapshot of progress made and, in particular, to identify issues that have arisen during the first six months that the pilots have been operational. It is intended to inform the guidance that will be provided to future youth offending teams to enable them to increase the effectiveness of the reforms.

The report provides an overview of restorative interventions being developed under the auspices of the Crime and Disorder Act, and progress to date in implementing the Act's victim consultation and reparation provisions. The report discusses issues relating to victim consultation and assessment, mediation, reparative interventions and the role and expectations of the courts. It also provides a summary of key policy recommendations and 'good practice' proposals suggested by this evaluation.

¹ Interviews were conducted in Sheffield, Wolverhampton, two of the three London YOTs (Hammersmith & Fulham and Kensington & Chelsea,) and in three separate locations within the Wessex YOT (covering six out of the seven operational units for which that YOT is responsible).

Summary of recommendations and proposals

Key policy recommendations

- Problems relating to the (non) disclosure of victim details to those responsible for consulting with them need to be addressed and the data protection issues clarified.
- Each YOT needs to ensure it has access to enough suitably qualified and experienced mediation and reparation workers, whether these are employed directly by the YOT or are commissioned to undertake referrals from it.
- Each YOT needs to ensure that it has established appropriate and effective mechanisms for assessing cases as to their suitability and for referring them to those responsible for delivering the reparative interventions.
- Mediation and reparation staff should where possible be involved at the outset in planning and implementing procedures relating to victim consultation, and the assessment for and delivery of restorative interventions.
- YOTs need to ensure that the procedures which they devise, and the arrangements they make with local courts, will ensure that there is sufficient time to carry out the necessary assessments and also prepare all the parties for any reparative activity that the courts might impose.
- The emphasis on fast-tracking poses a particular challenge which will need to be addressed by both YOTs and the courts if victims are to be properly and adequately consulted while striving to avoid unnecessary delays. In meeting this challenge, it may be helpful to remember that fast-tracking is best regarded as a means of achieving the aims of increasing the accountability of offenders, reducing the risks of reoffending and meeting the needs of victims rather than as an unyielding end in its own right.
- Likewise, determining the most appropriate and practicable reparative activities to be carried out by an offender also calls for a constructive partnership to be forged between magistrates and YOTs.
- The responsibility for determining the appropriate length of a reparation order should always lie with the court, which is under a duty to ensure that the demands that are placed upon an offender are commensurate with the seriousness of the particular offence.
- In determining the kind of reparation that might be most appropriate and practicable, the court needs to be guided by the assessments undertaken by the YOT, and should be mindful of the fact that victim consultation may be an ongoing process that might not necessarily have been finally concluded by the time of the hearing.

- While the legislation requires the nature of the reparation to be indicated in the order (whether to a named person or to the community at large), the precise content of the reparation to be undertaken is usually best left to the YOT to determine, particularly in cases where consultations with victims may still be ongoing. Where appropriate, courts may wish to direct YOTs to explore the possibility of the offender making direct reparation to the victim named in the order or, should this prove impossible, to arrange for reparation to be made to the community at large.
- There is an urgent need for more training to be provided, to ensure that court personnel, YOT staff and those from other relevant criminal justice agencies are conversant with the restorative justice ethos that underlies the Crime and Disorder Act; and are able to put this into effect when dealing with offenders who come before them. In addition, those responsible for such training should themselves be fully conversant with the aims of the government's youth justice reform programme, including those that are based on a restorative justice approach.

Main 'good practice' proposals

- Victims should routinely be consulted (unless there are good grounds for thinking that this might be harmful to the victim) since there is a danger that otherwise their views may be treated as if being of secondary importance.
- Early contact with victims is required, and sufficient time is needed to ensure that the consultation is meaningful, and does not impose undue pressure on victims to come to an early decision.
- It seems probable that some form of personal contact with victims (either by telephone or by a phone call combined with a follow-up visit) is more likely to elicit a response than a simple letter, which effectively requires the victim to actively 'opt-in' to the process.
- YOTs may be well placed in some cases to respond directly to the current unmet needs of younger victims and their families for advice, information and assistance.
- Consulting with victims before a case comes to court does raise genuine concerns – for example, over the raising of false hopes and expectations in the event of a not guilty plea. But the risks involved are more appropriately dealt with by sensitive handling on the part of YOT teams rather than by a blanket restriction on pre-court liaison with victims.
- Courts must ensure that victims have been consulted and have given their consent before requiring an offender to undertake any form of direct reparative activity with a victim.
- There is a strong case for ensuring that the person who consults the victim in a given case should also be responsible for interviewing the offender in order to assess the scope for a mediated settlement or one involving direct mediation. Where possible, it is preferable for those undertaking these assessments to be trained mediators. However, it is also desirable for the YOT team as a whole to embrace the new victim-focused approach that is prescribed by the Crime and Disorder Act, rather than compartmentalising this responsibility too restrictively.

- Although the arguments are finely balanced, ‘best practice’ is probably consistent with assessing the offender before consulting with the victim, but only so long as victims are always consulted thereafter, whether or not it appears that mediation or direct reparation are realistic propositions.
- Offenders should only be asked to apologise to victims (or perform other acts of direct reparation for them) where they are prepared to acknowledge their responsibility for the harm caused by an offence and have indicated a willingness to do so.
- Offenders should in particular not be required to take part in mediation when they do not fully acknowledge their responsibility for the harm or loss that a victim may have sustained as a result of the offence for which the offender has been convicted.
- The strong focus on victims raises doubts about the appropriateness of reparation orders in cases where there are no obvious victims; for example in cases involving possession of cannabis.²
- The strong focus on offender accountability suggests that direct reparation should not be ordered (whatever the wishes of the victim might be) where an offender who has been convicted following a not guilty plea maintains that s/he is not responsible for the harm caused to the victim.
- If offenders are to be held accountable, care is needed to avoid a ‘tokenistic’ or mechanical response on the part of offenders. Particular care is needed with regard to victim apology exercises that involve little more than the writing of a letter of apology, especially if the victim has indicated that they do not wish to receive direct reparation.
- Training is most likely to be effective, and possible misunderstandings avoided, where it involves staff from YOTs, courts and other relevant criminal justice agencies.

² In other cases where there is no apparent victim, for example driving without insurance, it may be possible to devise appropriate programmes for those subject to a reparation order as one or two of the pilot YOTs have done. But these are focused specifically on the offender’s responsibilities towards potential victims. Other forms of reparation, for example to the community, seem far less appropriate in cases such as these.

Restorative justice and the Crime and Disorder Act

The Crime and Disorder Act represents the first attempt to introduce elements of a ‘restorative justice’ approach into English criminal justice procedure. The term ‘restorative justice’ is a convenient short-hand expression that is commonly applied to a variety of practices which seek to respond to crime in a more constructive way than is conventionally achieved through the use of punishment. At the risk of over-simplification, the philosophy on which it is based can most helpfully be summarised in terms of the ‘three R’s’ of Responsibility, Restoration and Reintegration. One of the primary aims of most restorative justice approaches is to engage with offenders to try to bring home the consequences of their actions and an appreciation of the impact they have had on the victim(s) of their offences. A second aim is to encourage and facilitate the provision of appropriate forms of reparation by offenders towards either their direct victims (provided they are agreeable) or the wider community. A third aim is to seek reconciliation between victim and offender where this can be achieved and, even in cases where this is not possible, to strive to reintegrate both victims and offenders within the community as a whole following the commission of an offence.

The Act itself makes it possible for a range of restorative interventions to be applied, where appropriate, as part of one of the following disposals:

- a ‘rehabilitation programme’, linked to a final warning
- a reparation order
- an action plan order
- a supervision order.

Responsibility for developing these interventions rests with the youth offending teams, either on their own or in conjunction with other statutory or non-statutory agencies including those operating in the voluntary sector. A wide range of broadly restorative interventions is being developed by the pilot YOTs under the auspices of the Crime and Disorder Act. These are briefly described below.

However, the following preliminary points should also be noted. Firstly, not all YOTs are offering the full range of restorative interventions described below, and there are significant differences in the way these interventions are being delivered in the different pilots. This is to be expected with a developmental initiative of this kind, and is one of the things we will be examining as part of our overall evaluation. Secondly, although we have differentiated between a number of different kinds of interventions, for the purposes of analytical clarity, the differences between them may be much less clear-cut in practice. In particular, it is quite possible that a reparation order, for example, could entail more than one kind of reparative activity. Thirdly, as noted above, any given reparative intervention may be applied in the context of more than one disposal. This point needs to be borne firmly in mind, even though the present report focuses primarily on the process-related aspects of the reparation order (since this is the context in which the issues are likely to be raised most starkly). Fourthly, as well as being important in their own right, the views of the victim may significantly influence the type of reparation that an offender is required to undertake. For that reason, the following typology deals firstly with those forms of restorative interventions that involve the victim(s) or require their consent.

A brief typology of restorative justice interventions

Victim consultation

Under the Crime and Disorder Act, the consent of the victim has to be obtained before an offender can be ordered to make reparation to that person. Moreover, youth offending teams are advised (by the accompanying guidance) to take the wishes of the victim into account when considering what other kinds of reparative activity might usefully be included in a reparation report. This falls short of a statutory entitlement for victims to be consulted in all cases in which some form of reparative activity is under consideration.

Nevertheless, victim consultation is an important part of a restorative justice approach, and is not just a procedural nicety. Rather, it represents an official acknowledgement that the victim has suffered an injustice, and is entitled to have his or her views taken into account when considering the form of reparation that might be appropriate. Consequently, good practice suggests that victims should routinely be consulted (unless there are good grounds for thinking that this might be harmful to the victim) since there is a danger that otherwise their view may be treated as of secondary importance.

Support and assistance for victims and their families

Victims and their families may often find it difficult to cope with the consequences of an offence, and may well require the kind of advice and assistance that is normally associated with Victim Support. This includes the provision of practical advice and assistance for younger victims, for example in respect of claiming from the Criminal Injuries Compensation Board, or helping a family cope with the behavioural fall out that may occur when a child of a family is victimised. Indeed, Victim Support do provide such support where it is requested, either directly or through parents or carers depending on the age of the victim. However, such support is unlikely to be requested unless parents and carers recognise the effect that an offence may have had on their children or charges. In the experience of one of the pilot YOTs, parents and carers frequently fail to appreciate the need for such support. Consequently, this particular team sees it as an important part of its response under the Act to meet any needs of this kind, even though this may not necessarily involve any reparative responsibilities on the part of the offender. Providing information, advice and emotional support is in line with what victims say they want and can therefore play an important part in helping victims get over their offences. In this sense, they are also reparative activities in their own right, though they could easily be 'overlooked' in the quest to undertake higher profile interventions. YOTs may not always be in a position to respond to such needs themselves, but should be encouraged to liaise closely with local Victim Support schemes to ensure that when they are identified, appropriate assistance can then be provided.

Letter of apology (or equivalent) written by the offender

A sensitively written and sincere letter of apology from an offender might not only help the offender to empathise with the victim but – in acknowledging the wrong that was done to the victim, and the harm it must have caused – it might also help the victim to come to terms with the offence and draw a line under it. Good practice suggests that offenders should only be asked to apologise to victims (or perform other acts of direct reparation for them) where they have acknowledged their responsibility for the harm that has been caused by their offence and have indicated a willingness to do so.

Direct practical reparative activities performed for the victim

As with an apology, direct reparation has the dual aim of expressing in a tangible way the offender's sense of responsibility and contrition for the offence while providing some form of practical recompense for victims that might enable them to come to terms with the offence.

Direct or indirect mediation

Mediation is as much a reparative process as it is an outcome. The exchange of views which it involves – either directly in the context of a face to face meeting, or indirectly via a go-between – offers the possibility of

increased understanding and a greater sense of empowerment on both sides. For the victim it may provide increased understanding of an offender's motives and circumstances and may help to repair some of the emotional harm caused by the offence. For the offender it represents a chance to 'do right' by the victim and thus begin to rebuild the offender's own sense of self-esteem and self-worth. However, mediation has to be a voluntary process and, for that reason, both good practice and the law require the active consent of all parties. It follows that offenders should not be required to take part in mediation when they have pleaded not guilty or do not fully acknowledge their responsibility for committing an offence.

Family group or restorative conferencing

In contrast to mediation, which is essentially a two-party exchange convened and facilitated by a neutral mediator, a 'family group' or 'restorative' conference seeks to bring together others who might also have been affected by an offence. This might include victims' and offenders' families, close friends and relevant officials. The aim is to address the issues raised by the offence, and resolve what needs to be done both to make amends to the victim, and to help the offender avoid offending again in the future.

Reparation that is made to the community at large

Practical reparative activity which the offender is expected to perform for the benefit of the community provides an alternative way of requiring offenders to make amends for what they have done. In some instances this may be because the victim has indicated a desire not to receive direct reparation of any kind (though the guidance advises that they should still be offered feedback on the kind of reparation that is ordered by the court, and again upon completion, if they so choose). In other cases, the victim may express a preference for the offender to be asked to make reparation for the community, and might express a view as to the form this should take. In addition, Home Office guidance also recommends that the nature of the reparation should be linked as closely as possible to the type of offence for which it is imposed, wherever possible. This is important if offenders are to understand why they have been asked to perform it, and may be assisted if suitably trained workers with skills in youth work are used to supervise the activities.

Victim awareness exercises

Even where the victim does not wish to receive any form of reparation or be involved in any way, it may still be possible to develop an offender's understanding of the consequences of the offence and the effect it is likely to have had on the victim, albeit indirectly. Victim awareness, or victim empathy sessions are intended to do just that, though the content is variable, ranging from victim apology exercises (even though the letter will not be delivered to the actual victim in cases where the victim has not consented to this) to a more structured approach involving initial assessment followed by focused activities. Some sessions are based on a cognitive behavioural approach in which offenders are required to confront their behaviour and its consequences. Such an approach is not dissimilar (at least in terms of its aims) to the specified activities that were developed for more serious or persistent juvenile offenders during the 1980s in the context of intensive intermediate treatment programmes. Others may concentrate more on anger management techniques or drugs therapy.

Use of 'surrogate' victims

Another possibility is to recruit volunteers who have also been victims of the kinds of offences that are likely to be referred to YOTs, and who would be willing to meet with offenders as part of a victim awareness programme. However, care is needed when assessing the suitability of victims for this kind of engagement with offenders (see below).

Implementing victim consultation and reparation provisions of the Crime and Disorder Act

The way in which a youth offending team responds to the responsibilities that are placed upon it by the Crime and Disorder Act are likely to be influenced by a number of factors. They include:

- the presence of a victim / offender mediation and reparation scheme, or suitably trained mediators who have experience of this kind of work³
- the structure that is adopted for ensuring that the YOT has access to such services: whether suitably qualified staff are integrated into the YOT team (the 'integrated model') or are 'contracted in' to provide specified services (the 'outsourced model')
- the extent to which such staff have been involved from the outset in planning and implementing the delivery of restorative interventions
- the extent to which the staff who are appointed to undertake the assessment work and delivery of restorative interventions are conversant with and imbued with a victim-focused restorative justice ethos
- the extent to which such staff are constrained by pragmatic or bureaucratic factors relating to the overall context in which they are required to work (since YOTs have multiple responsibilities, not all of which are easily reconciled)
- the attitude and expectations of other YOT staff, and also the courts.

Consequently, it is not at all surprising that during the first months of the pilot period, progress in implementing the victim consultation and restorative justice measures contained within the Crime and Disorder Act has been uneven across the four main pilot areas. Although the take-up of reparative interventions (notably reparation orders and action plan orders) has been fairly strong in all four areas, progress in setting up effective victim consultation procedures has been much slower. Partly as a result of this, relatively few cases were referred for either direct (face-to-face) mediation or indirect (shuttle) mediation in most of the pilot areas during this initial period.

³ At present there are very few victim offender mediation schemes, though some criminal justice agencies, notably probation, and some voluntary sector agencies such as Crime Concern, NACRO and SOVA employ people with appropriate skills and experience. Community mediation schemes are more likely to be in place, though their mediators will not necessarily be able or willing to take on victim offender mediation work. However, they may be able to assist with other activities relating to the Crime and Disorder Act, such as the use of mediation before the imposition of an anti-social behaviour order.

An important factor which has considerably lengthened the time required to develop effective victim consultation procedures and reparative interventions in two of the main pilot areas – west London and Wessex – has been the decision to contract out the delivery of many of the reparative activities to external agencies. Because of the time it took to agree terms with the Home Office and let these contracts, it was not until April or May 1999 that the Wessex agencies took up their responsibilities within the YOTs. Although a restricted range of reparative activities was offered to the courts in Hampshire prior to their appointment, very little attempt was made to work with victims during this interim period. Although there was very little delay in west London before the reparative agency began to accept referrals, here too the project was hampered in the early days by a lack of sufficient time for development. And there is some evidence that the restriction in the range of reparative activities on offer may have had an adverse effect on the way reparation was perceived by magistrates within these areas.

In the other two main pilot areas – Sheffield and Wolverhampton – agencies with experience of victim offender mediation work were already well established. This enabled a much earlier start to be made in developing victim consultation and referrals procedures because staff from these agencies were integrated from the outset within the YOTs themselves, even though agencies external to the YOT may be involved in the delivery of some reparative activities.

This distinction – between YOTs which have out-sourced their reparative interventions, and those which have integrated them within the YOT itself – is an important one, and features prominently in the rest of the report. However, the choice of model may depend to some extent on the availability of agencies with experience of reparation and mediation within a given YOT area.

Despite the limited period that the Crime and Disorder Act has been in force in the pilot areas, recent interviews with those responsible for developing victim consultation and reparation procedures have raised a number of important issues that may influence the successful implementation of these new measures. It is therefore important that these are considered in the run-up to the national roll-out.

One policy issue which we consider to be of particular importance, and which we therefore highlight at the outset is the advisability of ensuring that all staff who will be involved in assessments for and the delivery of restorative interventions are actively involved from the outset in the planning and implementation process. The other essential prerequisite which also calls for early and repeated emphasis is the need to ensure that all who are involved in the imposition and delivery of reparative interventions under the Act (and those who train them) are fully conversant with the restorative justice ethos that underlies the Act. This preliminary report will highlight the need for much more thorough training on the part of court and YOT staff, preferably on a joint basis. Where this is not possible there needs to be full and regular consultation between court and YOT staff if serious implementational problems are to be avoided.

Victim consultation and assessment

Home Office guidance relating to the reparation order emphasises the need for effective liaison with victims of crime if the reparation order is to operate successfully. Our initial process evaluation has highlighted a number of policy issues relating to the consultation process itself, and we will also be suggesting some good practice recommendations arising from our preliminary discussions.

Policy issues

- a) Youth offending teams should seek to ensure that all victims are consulted, and their views made known to the court if possible before a reparation order is imposed by the court.*

One or two youth offending teams appear to have adopted a policy of not contacting victims where the offender's attitude appears negative or hostile, or there are concerns over the revictimisation of victims. The rationale which underlies this policy – of not raising unrealistic expectations on the part of victims where there is no reasonable prospect of 'empowering them' – is a laudable one, but it does run the risk of treating the victim's views as secondary. Even though there may be little prospect of a 'mediated' outcome in such cases, victims might still wish to express a view on the subject of community reparation, and may reasonably wish to be kept informed of the outcome in such cases. The timing of the victim consultation process (particularly in relation to the assessment of offenders) is considered below.

In two of the pilot areas, the adoption of a 'contracting out' model for the provision of reparation activities has had the effect of delaying the development of reparative interventions, and in one of the areas it delayed the introduction of an effective victim consultation process for six months.

- b) Early contact with victims is required, and sufficient time is needed to ensure that the consultation is meaningful, and does not impose undue pressure on victims to come to an early decision.*

The amount of time that is available for victim consultation depends on a number of factors. They include the timing and method of the initial contact with victims, the length of time a case takes to come to court and the procedure that is adopted by the court in order to ensure that it has sufficient information to enable it to pass sentence on an offender. The pilot YOTs vary considerably in respect of each of these factors.

Timing and method of initial contact with victims

In one of the YOTs, victims are contacted as soon as notification is received from the police that an offender has been charged⁴. Other teams also aim to contact victims shortly after receiving details from the police (within 48 hours in one case). At the other end of the spectrum, one external service provider indicated that because of their own diary commitments it often takes them between one week and ten days to establish contact with a victim

⁴ This practice has since been discontinued as a direct result of the renewed emphasis that is now being placed on fast-tracking in preparation for the implementation of the Narey reforms. As a result, all victim consultation in this pilot now takes place after conviction, whereas previously the very early timing of the initial victim contact enabled substantial progress to be made in many cases in advance of the first court appearance.

once they have received a referral from the YOT. There are some logistical difficulties to do with the geography of the area to be covered, but it does mean that victims in this area have very little time to reflect before coming to a decision. Good practice requires a much higher priority to be placed on the need for early contact with victims in order to avoid such delays.

A number of other teams have encountered problems in liaising with victims prior to the first court appearance, particularly where the responsibility for this is allocated to someone other than a police member of the YOT. In several cases the problems relate to police concerns over data protection issues. (These appear to have been successfully resolved in one of the teams we visited, but there are continuing problems in several other areas.) Although the Data Protection Act does not on the face of it require consent from the victim before an approach is made, further clarification would be helpful before the Crime and Disorder Act provisions are extended beyond the pilot areas.

In one area the local Crown Prosecution Service has instructed that victims should not be contacted prior to a plea of guilt or a conviction, on the ground that to do so could interfere with the line of evidence. Consequently, in this particular area the process of victim consultation cannot even begin until after the case has come to court. This restrictive line is at odds with current Home Office guidance and scarcely acknowledges the reality that the vast majority of young offenders do plead guilty. Consulting with victims before a case comes to court does raise genuine concerns – for example over the raising of false hopes and expectations in the event of a not guilty plea. The victim's role as a potential witness in the event of a not guilty plea does need to be borne in mind. But the risks involved are more appropriately dealt with by sensitive handling on the part of YOT teams rather than a blanket restriction on pre-court liaison with victims⁵.

Length of time prior to court

The length of time before a case comes to court is another important variable that can significantly affect the amount of time that is available for victim consultations to be conducted. Two of the pilot areas are involved in either formal or informal fast-tracking initiatives, and YOT members in both areas have voiced serious concern over their ability to engage in any meaningful victim liaison prior to the case coming to court. In one area the introduction of a new 'quick file system' is designed to reduce the time between charge and first court appearance to just four working days. In a second area the aim is to reduce the time between arrest and court appearance to three days, though the case is then frequently adjourned because the paperwork is not ready. Here, the emphasis on speed has also resulted in the simultaneous scheduling of a 'trial court' and a 'sentencing court'. When, as frequently happens, the trials cases collapse this court then also switches to sentencing matters, though YOT staff may not then be in a position to service the court adequately by ensuring that victim consultations are complete and reports available to inform the sentencers.

From November 1999 all parts of the country will be expected to have implemented most of the Narey 'fast-tracking' reforms. This makes it all the more important to find a way of accommodating the need to avoid unnecessary delays while ensuring that victim consultation procedures are effective. While there is an undoubted tension between the emphasis on fast-tracking and the obligation to consult meaningfully with victims, this tension can be reduced where fast-tracking is regarded as a means of achieving the aims of increasing the accountability of offenders, reducing the risks of reoffending and meeting the needs of victims rather than an unyielding end in its own right. None of these ends is served by perpetuating an 'adjournment culture'; but equally, they may each be compromised (as can the pursuit of justice itself) where the quest for speed becomes an end in itself.

⁵ Arguably, the risks that are involved may strengthen the case for undertaking the assessment of offenders before that of victims; see below for fuller discussion.

Court procedures for ensuring adequate information is available

Before imposing a reparation order, a court needs to have obtained a written report. In the early days of the pilots, there was a tendency for courts to request a pre-sentence report rather than the more limited form of reparation order report which was introduced by the Crime and Disorder Act. Courts do now appear to be making increasing use of the latter, though there is still a tendency in some areas for 'all-options' PSRs to be insisted upon, even in cases that would appear suitable for 'sentence specific' reports, for fear of tying the hands of the sentencing bench.

In most areas, cases are normally adjourned for two weeks to allow the report to be written, though in one area courts appear to be willing to adjourn for three weeks in appropriate cases. YOT staff are universally of the opinion that, at least in cases involving individual victims, two weeks is not nearly sufficient to enable all the necessary consultations to take place which would enable them to provide the very detailed recommendations for reparative interventions that some courts seem to prefer and, in many cases, insist upon. It is particularly difficult to prepare the ground for a possible mediation, or even direct reparation, within this limited time frame, and this could well restrict the scope for direct reparation, despite its potential benefits for the victim and value in bringing home to offenders the consequences of their behaviour.

Not all courts are willing to adjourn a case to enable a reparation report (or PSR) to be completed, however. Several YOTs reported on their local court's preference for stand-down reports which allow very limited time indeed for consultation or assessment of any kind. In some cases this has resulted in reparation orders being imposed following an assessment of the offender only, without making any attempt to contact victims (though this practice may become less frequent as more victim-focused reparative activities are developed by the newly appointed service providers in those areas). In other cases victims have been telephoned by YOT staff from court during the 'stand-down' interval, particularly in the case of corporate victims. Despite their apparent convenience, these short cuts are not in line with good practice.

These procedural issues are important since there is a direct (though perhaps less obvious) relationship between the effectiveness of the victim consultation process and the nature of the reparative order which the court is able to impose on an offender. Since victims have to consent before an offender can be required to undertake direct reparation, courts do need to allow sufficient time for this consultation to take place, and to acknowledge that this may be a legitimate reason for a case taking longer to come to court whatever fast-tracking arrangements might be in place.

c) Courts must ensure that victims have been consulted and have given their consent before requiring an offender to undertake any form of direct reparative activity to a victim.

Although the final decision on whether to impose a reparation order, and what form this should take, remains with the court, both the Crime and Disorder Act and the accompanying guidance state clearly that the consent of the victim(s) needs to have been obtained before such an order is made. However, several instances were cited, from more than one pilot area, of cases in which this appears not to have happened. In one instance the court adjourned the hearing of a not guilty plea in such circumstances in order to investigate the possibility of a face to face meeting involving an apology. In another instance from the same YOT area the court proposed to refer a s.18 wounding case for a face to face meeting, again without assessing its suitability for mediation. When questioned by the YOT, the offender maintained that she had indeed wanted to kill the victim whom she had violently assaulted.

Other examples were cited of courts ordering mediation to be undertaken without a proper victim consultation or, in one case, trebling the amount of direct reparation that had been proposed in a reparation report, again without reference to the wishes of the victim. This was unfortunate in the latter case because it overlooked the need for supervision to be provided by the YOT and, more importantly, the limited time within which the school- aged offenders were able to complete the reparation before the victim went on holiday. Another YOT complained of the courts directing letters of apology to be written and delivered to store managers without any reference to the youth offending team or the victims (though the absence of any effective victim consultation procedure at the time might have been a contributory factor in this particular instance).

The point about these particular examples, and also the following ones, is that they strongly suggest that the courts in some pilot areas clearly do not understand the restorative justice ethos which underpins the reparation order or the safeguards and practicalities that need to be observed if problems are to be avoided. However, the same appears to be true of other criminal justice agencies such as the Crown Prosecution Service and even defence solicitors. For example, in one pilot area the CPS is said to ask victims in shoplifting cases – in the ante-room – if they would be prepared to accept a letter of apology and then report this to the Bench. Defence solicitors in the same area are also reported to be advising their clients to send a letter of apology direct to the victim in the hope of putting a stop to the case. Practices such as these increase the risk that reparation may become ‘tokenistic’ (see below), thereby devaluing its restorative potential.

d) The strong focus on victims raises doubts about the appropriateness of reparation orders in cases where there are no obvious victims.

Although the Crime and Disorder Act does not specifically restrict the use of the reparation order to offences involving victims, this is nevertheless the logic which underlies the reforms. Yet in at least one pilot area, instances were cited of reparation orders being imposed for possession of cannabis cases and routine driving offences. Here the problem was attributed to the zealotry of a court clerk who reminds every bench that they ought to be thinking about reparation irrespective of the type of offence that is involved. In a different YOT it was pointed out that reparation orders would not be appropriate in police-mounted ‘sting’ operations involving the theft of valuable items from specially prepared cars, though this does appear to have been acknowledged by all the agencies concerned.

e) The strong focus on offender accountability suggests that direct reparation should not be ordered (whatever the wishes of the victim might be) where the offender refuses to accept responsibility for the harm that a victim has experienced as a result of the offence.

The Crime and Disorder Act does not require the consent of the offender, though the guidance notes point out that good practice suggests the need to accommodate the views of the young person (and parents) where possible. Moreover, the guidance notes also properly advise of the need to avoid raising unrealistic expectations on the part of victims, which could then result in them becoming disillusioned. If victim disillusionment is to be avoided, it would seem unwise for courts to impose a reparation order involving direct reparation (particularly where this takes the form of a letter of apology or direct or indirect mediation) if the offender persistently refuses to accept responsibility for the harm sustained by the victim, as appears to have happened on occasion⁶.

⁶ This does not necessarily rule out the use of direct reparation for a victim following a not guilty plea. Offenders may be prepared to accept that they were responsible for the harm sustained by a victim, while even though they may deny that they are guilty in a formal legal sense of the charge that has been brought against them; for example, when they deny that they wounded the victim ‘with intent’.

- f) *If offenders are to be held accountable for their actions, care is needed to ensure that the reparation they undertake does not involve a 'tokenistic' or mechanical response on their part.*

Special care is needed in handling letters of apology and other forms of direct reparation where these are ordered by the court, even following a guilty plea, because of the obvious danger that they will appear to both victim and offender alike as ritualistic and formulaic. One of the main challenges for youth offending teams will be to develop approaches which help offenders to appreciate the consequences of their behaviour and encourage them to genuinely accept the need to sincerely make amends for this, to the victim. For if the offender is not sincere, and is merely 'going through the motions', it is difficult to see how this will enable victims to come to terms with what has happened without being further victimised by the 'reparation' that an offender is only undertaking because s/he has been ordered by the courts to do so. This suggests that offenders need to be seen, and assessed, before victims are asked to express a view on the kind of reparation they would like to receive from the offender (see below).

Practical issues relating to victim consultation

Under the Crime and Disorder Act and the accompanying guidance, youth offending teams have a good deal of flexibility in deciding how to engage in consultation with victims. This discretion is reflected in the variety of arrangements that have been established by the different pilot teams. The main differences relate to the procedures for contacting and consulting with victims, the persons entrusted to undertake this responsibility and the way the victim consultation process relates to the assessment procedure for determining the kind of reparation that might be most suitable in a given case.

Mode of contact with victims

In the majority of teams visited, initial contact is by letter, on the basis of an 'opt-in' system. This means that the victim is only contacted (usually by telephone, but sometimes by means of a home visit) after they have responded to either the initial letter or a follow-up. In a couple of cases the initial letter not only provides information about the reparative options that are available but also proposes a date for a home visit unless the victim indicates that they do not wish to be contacted. In one area this procedure has been adopted with some reluctance, instead of the preferred system of 'cold calling', and in spite of concerns that a letter received out of the blue might be more likely than a home visit to cause anxiety or resentment. A second possibility is for the victim to be contacted initially by telephone, and one or two areas use both approaches. In only one area are home visits routinely used (as an alternative to a telephone call) for the initial contact. One of the issues the outcome evaluation will be seeking to investigate is the different response rates that are associated with each of these approaches, and victims' attitudes towards them. However, it seems probable that some form of personal contact with victims (either by telephone or by a follow-up visit) is more likely to elicit a positive response than a simple letter, requiring the victim to 'opt-in' to the process.

Allocation of responsibility for victim consultation

With regard to the allocation of responsibility for conducting the victim consultation, the commonest arrangement is for the police members of the YOT to undertake at least the initial contact with victims. This has the advantage of minimising any delay since the police will already have the relevant contact information for victims, they are clearly experienced in dealing with victims of crime and their involvement may help to allay concerns that might otherwise be raised relating to data protection issues. On the other hand, police officers are rarely trained to assess victims or offenders in terms of their suitability for mediation. So assuming a victim may

be willing to consider the possibility of accepting direct reparation including mediation, it will almost certainly be necessary for someone else to be brought in to undertake this assessment. In practice, this usually means that once a victim has indicated a willingness to consider the possibility of some kind of direct reparation, the case is then referred on to another person (either a specially trained mediation officer working within the YOT or a statutory or non-statutory agency contracted to provide reparative services on behalf of the YOT).

However, this 'split' responsibility is cumbersome and is likely to be more time consuming. It not only increases the number of people with whom the victim will have to negotiate but also depends on good and timely communications between all who are involved in the process. The most extreme example of this arrangement is a team in which the initial consultation is conducted by the police members of the YOT, who then pass on the relevant information concerning the victim's attitude to the reparation report writer. The latter liaises with the agency that has been contracted to provide reparative services to the YOT with regard to the possibility of some form of victim input or direct reparation. But this agency has no part to play in the assessment process itself, whether in respect of victim or offender, because this falls outside the terms of the service contract which has been negotiated with the YOT. The agency itself is unhappy with this arrangement, which is difficult to reconcile with good practice.

In another team, in which the agency is responsible for both assessing the parties and delivering the reparative interventions, there is evidence of poor and tardy communications between the agency's staff and the YOT personnel who make the initial referral. The 'best practice' approach would be to involve a trained mediator in all aspects of the victim consultation process and also for interviewing offenders in order to assess the scope for a mediated settlement or one involving direct mediation⁷. (However, this approach makes it all the more important to resolve any 'data protection' issues relating to the disclosure by the police of victims' names.) Only one of the teams visited appears to have adopted such a model. An alternative approach where police members of the YOT are used to undertake the initial consultation with victims would be to provide them with additional training in victim-focused and reparative approaches.

Victim's consent: should it be written or oral?

Another 'best practice' issue which Home Office guidance nevertheless leaves to the discretion of the teams themselves relates to the issue of obtaining written consent from victims, indicating the kind of reparation they are prepared to accept from offenders. Most teams acknowledge that this does represent best practice but only one team appears to have a firm policy of asking for written consent and advising victims that they are at liberty to change their minds if they so choose. A number of other teams propose to introduce such a practice. But one team is reluctant to ask for written consent within the limited time available to undertake the consultation with victims, for fear of either raising unrealistic expectations or making it appear that the only way they will be able to receive direct reparation is by making a firm commitment before the offender is sentenced in court. Victims in this area are told what the recommendation will be, and are advised that they will be contacted again if the court decides to order reparation

⁷ Ideally, these assessments could be conducted jointly by the mediator and a member of the regular YOT staff, which would have the additional advantage of reinforcing a 'victim focused' approach within the YOT team in general, rather than 'compartmentalising' it.

Mediation work

Prerequisites for effective mediation work

Victim/offender mediation is widely acknowledged to offer a powerful and effective way of encouraging offenders accept the consequences of their offending behaviour while at the same time addressing many of the concerns that victims have, and which would otherwise almost certainly not be attended to. At the same time, mediation is a voluntary process, and neither party can be forced to mediate against their wishes. Nor is it suitable in all cases, even those in which both parties appear to be favourably disposed towards it. Moreover, all aspects of the mediation process – from initial consultation, through to assessment and handling of the mediation itself – require the availability of suitably trained and qualified personnel. They also require there to be adequate time and sensitive support from other key participants within the criminal justice system.

Consequently, there are at least four essential prerequisites if mediation's full potential is to be realised within the context of a youth offending team. The first, and most obvious, requirement is access to a suitably experienced and qualified victim offender mediation service, whether provided by the statutory or voluntary sector. Second, there has to be an appropriate and effective mechanism for assessing cases as to their suitability and for referring them to the mediation service where appropriate. Third, there has to be enough time to both carry out the assessment and also prepare the parties for what is likely to be viewed on both sides as a somewhat traumatic encounter. And finally, all the agencies concerned – police, Crown Prosecution Service, YOT and courts (both clerks and magistrates) – need to be aware of the distinctive ethos that underlies the mediation process, and need to be sensitive to the conditions under which it is most (and also least) likely to succeed.

Within the four main pilot areas, as we have seen, only two had ready access to established victim/offender mediation schemes at the outset, and were thus able to build on existing experience. In the other two areas it has clearly taken much longer to arrange for such services to be provided by non statutory agencies and, as a result, assessment and delivery mechanisms are still under development within the youth offending teams servicing these areas.

Assessment process

The assessment process itself raises a number of important issues quite apart from the victim consultation procedure which we have already discussed. They include the order in which the two parties are seen for assessment purposes, the mechanism for assessing offenders and the effectiveness of communications between all those involved in the process.

Order of assessment

Among the pilot YOTs, there is a sharp difference of opinion with respect to the order in which it is preferable for the two parties to be seen, which reflects a continuing debate among restorative justice practitioners. Just under half of the teams visited make contact with victims first, as a matter of principle, before assessing the suitability of the offender. The rationale for this approach reflects a desire to 'put the victim's interests first' by respecting the entitlement of all victims to have a say on the subject of reparation, and in this way to 'put the victim in the driving seat'. Although the Crime and Disorder Act does not insist in so many words on this order of proceeding, the repeated emphasis on the need for routine and early consultation with victims is certainly consistent with this approach.

Nevertheless, there are also powerful arguments in favour of assessing the offender's attitudes towards direct reparation, and also the prospects for mediation before contacting the victim. The strongest argument is a desire not to raise expectations on the part of victims, which might prove unrealistic after assessing the offender, and which could therefore have a disempowering effect on them. Only when the offender's attitude is known is it possible to present victims with realistic and attainable reparative options. The drawback with this approach (which is acknowledged by some of its exponents) is that a negative assessment of the offender could result in a decision not to consult the victim(s) at all, in order to 'protect' them from further distress and disappointment.

Although the arguments are fairly finely balanced, 'best practice' would probably favour the assessment of the offender before consulting with the victim, but only so long as victims are always consulted thereafter, whether or not it appears that mediation or direct reparation are realistic propositions. For victims are still entitled to be consulted as a matter of principle, both in relation to the possibility of the offender performing indirect reparation for the benefit of the community as a whole, and in relation to their own desire for financial compensation. They are entitled to have those views communicated to the court before their offender is sentenced. Moreover, the YOT may still be able to address some of the victim's needs or concerns even if the offender is unwilling to participate in the process.

Mechanism for assessing offenders' suitability for mediation or reparation and communications issues

Youth offending teams also differ markedly in respect of the procedures they have developed for assessing offenders' attitudes towards, and suitability for, reparative interventions. We have already noted that the two teams which have adopted an 'integrated' model for delivering reparative interventions got off to an earlier start, partly because right from the outset they contained staff with considerable experience of victim offender mediation and reparation. So it is not surprising that their assessment procedures are also more highly developed at this stage in the piloting period.

In one of these teams, a trained mediator (who is seconded from the probation service) handles all the reparation order referrals and carries out both the offender assessment and the victim consultation (in that order). This has the advantage of eliminating communication problems and makes it much easier to assess both the potential 'dynamics' of an encounter between the two parties and also the scope for other forms of direct reparation. This team also believes it enables a more 'holistic' approach to be developed within the multi-agency setting of the YOT itself, since it is easier to call upon the skills of other members of the team, where appropriate, or to refer to specialist services outside the YOT.

The other team which has adopted an integrated approach uses the police members of the YOT to undertake the victim consultation, which is normally done very early on, and it is then up to one of the other members of the team to assess the offender around the time the case comes to court. All the papers are then referred to a PSR panel – comprising four or five members of the team – which pre-dates the establishment of the YOT itself. The panel makes the recommendation as to the kind of reparation (including mediation) that might be appropriate.

Among the YOTs that have adopted an 'outsourced' model, some do allocate responsibility for both the victim consultation and the assessment of offenders to the service provider. In others, YOT staff are responsible for the offender assessment while the service provider consults with victims, though there are acknowledged to be difficulties with this 'split allocation' approach, particularly with regard to communications between the YOT-based assessors and the service providers to whom a referral might be made.

In another two of the YOT teams which were visited, the procedures for assessing offenders were still at a formative stage. In one team, the tasks of victim consultation and offender assessment have both been retained within the YOT, even though the (police-based) members of the team have no training in mediation and do not feel competent to assess offenders' suitability for this kind of reparation. This leaves only the reparative interventions themselves to be performed by the external service providers, who (understandably) expressed some anxieties about such an arrangement.

In the other team, there is some support for the adoption of a joint assessment of offenders, involving a member of the youth offending team and someone from the external service provider, at least in cases where there are individual victims. Some doubts were raised from within the agency about the resource implications of this, and also fears that joint assessments might compromise the neutrality of the potential mediators in the eyes of victims. However, such concerns are likely to be outweighed in practice by the benefits to be derived from this kind of joint working, which should ensure both that YOT workers are involved in the victim-focused and reparative aspects of their work while the agency staff are aware of the legal implications that may be raised in a particular case.

Another issue which is raised by the 'outsourcing' model relates to the relative involvement of trained volunteers as opposed to staff who are employed by the agency for the purpose of delivering reparative interventions on behalf of the YOT. The commonest arrangement is for most of the work relating to victim consultation, assessment of offenders and mediation to be undertaken either by members of the YOT or by paid staff who are employed by the agency to whom these tasks have been contracted out. Most of the agencies are proposing to make use of volunteers, mainly for the purpose of supervising community reparation work (dealt with below).

However, in one area, the agency that has undertaken responsibility for reparative interventions is proposing to recruit and train volunteers to undertake virtually all of these tasks, including the consultation, assessment and mediation work. In another area the relevant agency has recruited and trained 11 volunteer mediators. While such arrangements could have considerable cost-saving potential, they do raise a number of concerns to do with resourcing and 'quality assurance'. The voluntary sector has a long and distinguished record in developing and providing victim offender mediation programmes and other forms of reparation. However, it is important not to view this as a 'no-cost' option since mediators need to be carefully selected, adequately trained and properly resourced, whether working in the voluntary or statutory sectors. And service providers who are relying on volunteer mediators will need to satisfy themselves that the volunteers they recruit are suitable, properly trained and properly supported in the services they provide, and to be mindful of the resource implications if the quality of service is to be assured.

Whatever mechanism is adopted for assessing whether mediation might be an appropriate way of dealing with a particular offence, the process is likely to be much more time-consuming than for other forms of reparation. In part this is because of the degree of consultation and advance preparation that is likely to be required, but also because of the need to avoid pressurising victims into making a decision that they may feel uneasy about, particularly to begin with. All the pilot YOTs are strongly committed to using mediation where appropriate, but all have expressed strong concern at the speed with which they are expected to conduct the assessment and consultation process. Moreover, some of the examples cited above raise serious doubts concerning the extent to which magistrates and their clerks are fully in tune with the restorative justice ethos which underpins this aspect of the Crime and Disorder Act reforms.

Delivery of reparative interventions

Support and assistance for victims and their families

One YOT which operates with an 'integrated' model for the provision of reparative activities and which employs some very experienced reparation and mediation workers places considerable emphasis on the potential benefits that victims might derive from advice and assistance provided by the YOT itself. In some cases this might involve the relaying of information from or about the offender to the victim. But it also includes the provision of information and assistance by the reparation officers both to victims and their families. In the case of young victims, for example, this could include information about court proceedings or criminal injuries compensation procedures. Or it could involve help and support for the victims and their parents, since the latter may find it difficult to cope with the sometimes traumatic effects which an offence might have on their children. Other agencies, notably Victim Support, may be able to provide such support where a need is identified but, as noted above, parents or carers may not be aware of the effect an offence has on a young victim. YOTs may consequently be in a position to identify needs that may otherwise go unmet. In some instances they may be able to meet such needs themselves. (However, only one of the pilot YOTs appears to explicitly see this as part of its role.) In other cases, it might be more appropriate to refer such cases to Victim Support for assistance. Appropriate support from whatever source could clearly have a reparative or healing effect on victims, even if it may not directly involve the offender.

The YOT also advocates the adoption of a 'holistic' approach towards the problems presented by a given offence which has placed the greatest emphasis on meeting the needs of victims. Attending to the needs of the direct victims remains a paramount priority within this approach, but it also extends to the provision of assistance to offenders on occasion, for example in cases where the offenders themselves might have been victimised as a result of an unrelated offence. Or there may be cases in which the relationship between parent and child needs to be placed on a firmer footing in order to improve the prospects of a reparation order being successfully completed by a young offender.

Letters of apology and other forms of direct reparation for all victims

In addition to mediation, which virtually all teams stress is a major priority for them, they all claim to be able to facilitate at least some form of direct reparation for victims. However, in several areas this has until very recently amounted to little more than an exercise involving the writing of a letter of apology, pending the allocation of reparative intervention contracts to external agencies. Moreover, in the absence of any effective victim consultation procedures, the reparative value of even this limited exercise has been minimal, at least as far as the victims themselves are concerned. And it may also have had an adverse effect on the way reparation has been perceived by the court in those areas. Following the appointment of external agencies in these areas, they are looking to be able to offer much more meaningful direct reparation for victims. In YOTs which have adopted an 'integrated' model for the provision of reparative services, direct reparation for individual or corporate victims has been available from the outset.

Community reparation

YOTs have responded to the challenge of identifying and setting up appropriate community-based reparative activities in various ways, and with varying degrees of success, though it is still very early days for some of them as a result of delays in the appointment of external service providers. In general it appears easier to set up general reparative tasks, such as the performance of basic conservation work than ones that are particularly suited to particular types of offences or offenders. In some areas they are still restricted to offering, for example, a maximum of two three-hour sessions of practical conservation work.

Other areas appear to have devised very imaginative placements. For example one area has gone to great lengths to set up placements that are sensitive to the racial or ethnic background of particular groups of offenders (for example with a day centre catering for black elders; and a community project aimed at assisting Asian women). This same area has also devised a special motoring project for aggravated TWOC offenders. Another area is planning to set up a scheme in which offenders will help to distribute to needy community groups boxes of tea bags that have been rejected by a local supplier because of defective packaging.

Several providers of reparative intervention services have criticised the emphasis that the courts and others have placed on the performance of practical reparative tasks to benefit communities. They are apt to speak of this dismissively as a form of junior community service with minimal reparative benefits (particularly for individual victims). While there is a risk that it could degenerate into a somewhat tokenistic response – particularly as a result of financial or time constraints – this is not an inevitable outcome⁸. Other reparation workers attached to YOTs readily acknowledge that the performance of suitable practical reparative tasks could have a powerful and salutary impact on offenders; but they also stress the importance of appointing skilled and supportive supervisors and acknowledge the difficulty in establishing sufficient numbers of ‘quality’ placements.

Victim awareness exercises

One or two YOTs report that there is relatively little interest on the part of victims in the offer of direct reparative activities. One reason for this may be the high proportion of reparation orders that are imposed for shoplifting offences, which means that there are relatively few individual victims. Another factor could be the difficulties encountered in establishing effective victim consultation procedures, which were referred to previously. A number of YOTs are responding to the shortage of victims who are willing to become actively involved by developing victim awareness or victim empathy sessions for offenders who are made subject to reparation orders. The content and format of these sessions varies somewhat from area to area but most are aimed at challenging the young person’s offending behaviour. The most structured of the programmes involves an initial assessment of each offender, which is conducted by a pair of mediators, followed by two or three sessions. The standard programme which is being developed is based on a cognitive behavioural approach, but this can be adapted if necessary to encompass anger management or drugs therapy. In other areas the victim awareness programmes are mainly linked with victim empathy and apology exercises.

Some YOTs organise victim awareness sessions on a one-to-one basis, while others arrange them for groups of offenders. Although the latter may appear to be more cost effective, they may be more difficult to run where the group contains incompatible or disruptive offenders. However they are organised, victim awareness sessions are often combined with practical reparative tasks and are intended to make the latter more meaningful for offenders who are required to perform them.

⁸ There is also a risk that the adoption of an excessively ‘purist’ line on the part of service providers may prove counter-productive if it results in magistrates and others becoming antagonistic towards the concept of reparation in general.

Not all YOTs have developed such programmes, and some areas which do use them reserve them for offenders on supervision orders or action plan orders rather than those on reparation orders. Other areas would be keen to develop this kind of programme but are prevented from doing so because the courts in those areas appear reluctant to concede that this kind of activity is consistent with a reparation order. Those who favour this approach feel that it not only comes within the spirit of the Crime and Disorder Act but also makes better use of the mediators' skills than the supervision of practical reparative tasks which initially they were also expected to do.

Surrogate victims

Another response to the shortage of individual victims who are willing to become involved in the process of mediation and reparation involves the use of surrogate victims, and two areas appear to be actively exploring this possibility. One of these areas is advertising for people who have been victims to volunteer their services to work alongside reparation officers. The aim will be to enable young offenders to understand and appreciate the consequences which their offence may have had for their actual victims. Care is needed in selecting and recruiting surrogate victims, however, to ensure not only that they are suitable and well informed about the nature of their involvement but also that they themselves are not likely to feel further victimised or undermined as a result of their experience.

Role of volunteers in the delivery of reparative activities

In most pilot YOT areas this supervisory responsibility is being allocated to volunteers who are recruited and trained by external voluntary sector agencies. Some pilot YOTs have taken this approach a step further by advertising for volunteers to act as mentors for young offenders who wish to take advantage of this additional form of support. Several YOTs report that their attempts to recruit community volunteers to undertake these tasks have met with a surprisingly positive response, which is of interest since a number of restorative justice advocates believe that the community should also accept responsibility for dealing with offending behaviour and that, in doing so, communities themselves may be strengthened. One area has linked the training for volunteer supervisors with an eight session 24-hour accredited training programme. This is organised by the Open College network and covers child protection, youth justice, work with young offenders and mentoring.

Consistency and commensurability

Although the guidance accompanying the reparation order makes it clear that the courts are responsible for ensuring that any reparation that is ordered is commensurate with the seriousness of the offence, their task is likely to have been complicated by the newness of the order, a consequent lack of initial guidance and also by the marked variations in the kind and quantity of reparative activities that have been offered in the different areas. Consequently, and not surprisingly, there appear to be considerable variations both in relation to the types of offences for which reparation orders are imposed, and also in the range of hours they entail. This is something that will need to be monitored as the evaluation progresses and may be an issue on which further guidance could be helpful.

Supervisory arrangements

Under the Crime and Disorder Act courts are obliged to appoint a Responsible Officer, whose duties include instructing the young offender, monitoring compliance with the terms of the order, liaising with those delivering reparative activities and, where necessary, taking enforcement proceedings in the event of a breach of the order. In most of the YOT areas, this is a purely nominal responsibility, since day to day supervision is exercised by external agencies or other members of the youth offending team itself. Only one or two YOTs appear to have set up procedures that would enable the responsible officer to monitor progress on a regular basis. In other areas, they would not normally expect to be involved unless there is a report notifying them of non-compliance. One

area appears to operate a rota of 'acting' responsible officers for the purpose of court hearings, though cases may then be assigned to a different member of the YOT who will technically be responsible for monitoring compliance. Another area would favour the appointment of reparation workers as responsible officers but feels unable to do so because of a local insistence that only probation officers are eligible for appointment. This seems an unnecessary and unhelpful restriction which does not appear to be required by the Crime and Disorder Act itself.

Breach procedures

There have been relatively few breaches to date, but a number of problems have nonetheless been encountered. Most of them have to do with uncertainties over the timing of the breach process and, in particular, whether it is sufficient for the information supporting the application to be put before the court before the reparation order itself expires, or whether the breach procedure has to have been completed before this happens. The former interpretation seems preferable, and is in line with the breach provisions relating to other penalties, but further clarification appears to be needed before the orders are extended beyond the existing pilot areas.

Another pilot area has encountered difficulties because the court insists on information in support of a breach application relating to the original offence, which the YOT maintains it rarely receives at the time the reparation order is initially made. This is said to be because forms from the police or Crown Prosecution Service are missing when the file is passed on to them by the court itself.

Role and expectations of the courts

One of the most contentious ‘process’ issues relating to the implementation of the reparation order concerns the state of relations between the courts and the YOTs. Relations appear to be strained in most of the pilot areas largely because of a number of contradictory pressures that are inherent in the Act itself. One of these has to do with the emphasis on fast-tracking which, as we have seen, severely limits the time available for victim consultation and preparation of a case for mediation. The general emphasis within the Act and the accompanying guidance on the need to avoid delay is compounded in at least two of the pilot areas by local ‘fast-tracking’ initiatives which limit still further the opportunity for meaningful and effective victim consultation. Courts in other areas appear to have adopted a more sympathetic stance, and accept the need for proper victim consultation as grounds to support an adjournment. As noted, however, the pressures resulting from the fast-tracking initiatives are likely to increase following the implementation of the Narey reforms in November 1999⁹.

Another problem has to do with the way courts appear to be interpreting their duties under the Act with regard to the level of detail that is required before imposing a reparation order. Several courts appear to insist on being given precise details of each proposed reparation order before coming to a decision. This not only poses practical difficulties for Youth Offending Teams, because even a simple reparative exercise may frequently involve complex, and sensitive negotiations, but is also resented because it is perceived as a slight on their own integrity and professionalism. Meanwhile, YOT staff who are involved in the delivery of reparative interventions complain that some magistrates and their clerks do not fully grasp the restorative justice ethos which underpins the restorative justice measures contained within the Act, which frequently result in inappropriate orders being made.

Their response, which appears to be almost universal¹⁰, is to call for a much more flexible approach to be adopted by the courts whereby they would prescribe the number of hours a reparation order should last for, and specify the type of reparation to which the order relates (either for a named victim, or for the community). Beyond that, however, they should leave the detailed nature of the reparative activities to be undertaken to be determined by the YOT. In appropriate cases, this might involve the YOT exploring the possibility of mediation or direct reparation to the victim (particularly where consultations with the victim are still ongoing at the time the offence is dealt with in court). Then, if this proves impossible or inappropriate, they would be expected to arrange for indirect reparation to be undertaken, which could include reparative tasks for the community, where appropriate, or victim awareness sessions, or a combination of the two.

⁹ See above, for fuller discussion of this issue. It is also supported by several of the senior court clerks within the pilot areas, whom we have also interviewed.

¹⁰ Although it should be noted that in the contract, para 10 (i) of schedule No.2, Services, refers to the provision of ‘a total of 15 hours on 7 days a week’ time out of cell.

This shared allocation of responsibility between court and YOT for determining the nature of the reparative tasks to be carried out under a reparation order might be expected to have a number of benefits. It should greatly alleviate the current time constraints, help to improve relationships on both sides and, arguably, could result in a higher completion rate if it were possible to 'switch' activities when unforeseen problems prevented the completion of an order as originally envisaged.

Finally, the other important issue that is highlighted by this report relates to the evident need for appropriate training, particularly on the part of court personnel, but also for those from other criminal agencies including the YOTs themselves. Ideally, such training should be conducted in conjunction with training for YOT staff so that both sides may be better able to appreciate not only the restorative justice ethos which underlies the Crime and Disorder Act, but also the problems and concerns experienced by the other agencies that are involved in implementing its provisions.

The need for joint training is underlined by the fact that in one of the pilot areas, the agency that has been contracted to provide reparation services has so far been unable to gain access to the court user's group to discuss some of the operational issues that need to be addressed if the victim consultation and reparative processes enshrined in the Act are to succeed.

Final comment on the evaluation

This report has emphasised the ‘process’ lessons relating to the victim-focused and reparative activities of the pilot YOTs. This is just one aspect of a much broader evaluation of the government’s youth justice reforms which is being undertaken by the Universities of Sheffield, Hull and Swansea. Outputs and outcomes (including levels of satisfaction, comparative costs and effects on reconviction rates) also form part of the larger evaluation project, and will be reported separately in due course. The evaluation commenced in October 1998 and the final report is due in July 2000. Two interim reports have been published to date which are available on the Home Office web site www.homeoffice.gov.uk/cpd/jou/jou.htm

The Youth Justice Pilots Evaluation is a Home Office funded project to evaluate the establishment and development of the pilot Youth Offending Teams, and the delivery of the new disposals introduced by the Crime & Disorder Act 1998. Two interim reports have been produced, both of which are available on the Home Office Website: www.homeoffice.gov.uk/cpd/jou/jou.htm

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