

National Violence Against Women Network Position Statement on Restorative Justice

May 2021

About the National VAW Network

[Equally Safe: Scotland's Strategy to Prevent and Eradicate Violence Against Women and Girls](#) (VAWG) highlights the need for agencies across every area of Scottish life to work together to tackle violence against women and girls. At a local level, Violence Against Women Partnerships are recognised as the strategic driver for this multi-agency work and bring together the key third sector and public sector partners working to improve outcomes for women and children who have experienced VAWG in each local authority area.

To support the local implementation of Equally Safe, the National VAW Network brings together local VAW Partnership Coordinators/ Lead Officers across Scotland and other key national stakeholders to share information, learning and resources and ensure that there is meaningful engagement and a coordinated approach taken on relevant issues.

Aims of this Position Paper

The [Restorative Justice Action Plan](#) sets out the Scottish Government's vision for Restorative Justice services to be widely available across Scotland by 2023, available to anyone who wishes to access them, and at a time that is appropriate to the people and case involved. The Plan notes the importance of such services being consistent, evidence-led, trauma informed and of a high standard and highlights the need for strong leadership, commitment and meaningful collaboration between national and local partners to ensure this happens.

The National Violence Against Women Network is concerned that wider and meaningful collaboration with professionals working across the violence against women sector has not taken place. As a result, in taking the Plan forward and developing restorative justice approaches and services, the potential risks to the safety and wellbeing of survivors of VAWG who may engage with restorative justice services have not been adequately considered. This position paper is intended to outline some of the key concerns of the sector which the Network feel must be addressed before further work is undertaken to promote a Restorative Justice model which may act to undermine the priorities and commitment set out in Equally Safe.

This paper has been developed by the National Violence Against Women Network in partnership with Scottish Women's Aid.

Policy Context and Legislative Drivers

International standards on violence VAWG **prohibit mandatory alternative dispute resolution** processes in relation to all forms of gender-based violence and specify that women should always be able to access formal justice process.

The UN's Committee on the Elimination of all forms of Discrimination Against Women (CEDAW) has set out necessary safeguards:

"The use of those procedures should be strictly regulated and allowed only when a previous evaluation by a specialised team ensures the free and informed consent of victims/survivors and that there are no indicators of further risks to the victims/survivors or their family members."

CEDAW also highlights that:

"Procedures should empower the victims/survivors and be provided by professionals specially trained to understand and adequately intervene in cases of gender-based violence against women, ensuring adequate protection of the rights of women and children and that interventions are conducted with no stereotyping or re-victimisation of women".ⁱ

The Istanbul Convention, likewise, prohibits mandatory alternative dispute resolution and the Explanatory Report to the Convention highlights the power imbalance between victims and perpetrators and the risks of re-traumatisation, reminding states of their obligations to provide access to formal justice processes.ⁱⁱ

We are aware that the current imperative for the provision of restorative justice within the *Victims and Witnesses (Scotland) Act 2014* was derived from Directive 2012/29/EU of The European Parliament establishing minimum standards on the rights, support and protection of victims of crime. In relation to the use of restorative justice in the context of violence against women, specifically domestic abuse and the role that the criminal justice system plays in generating service-generated – victimisation of women and children, we would draw your attention to the requirements of paragraph 9, which states:

"...Victims of crime should be protected from secondary and repeat victimisation, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice...."

We would also refer to the terms of paragraph 46, which states:

"Factors such as the nature and severity of the crime, the ensuing degree of trauma, the repeat violation of a victim's physical, sexual, or psychological integrity, power imbalances, and the age, maturity or intellectual capacity of the victim, which could limit or reduce the victim's ability to make an informed choice or could prejudice a positive outcome for the victim, should be taken into consideration in referring a case to the restorative justice services and in conducting a restorative justice process."ⁱⁱⁱ

Assessing Needs of, and Risks to, Women, Children and Young People

The *Restorative Justice Action Plan* highlights the importance of ensuring a robust risk assessment and support process is in place for all cases where Restorative Justice activities are being considered, to enable an informed decision to be made as to the appropriateness of the model.

The risk assessment must be carried out by a professional with an in-depth understanding of the causes, impact and dynamics of domestic abuse and other forms of VAWG on women, children and young people, who has been fully trained on how to assess risk, including risks of control, coercion and traumatisation. We would like to see a process developed for referral pathways into specialist services to enable this to happen.

Additionally, the VAW Network and Scottish Women's Aid recommend that it is vital for victims/survivors to access support from specialist VAWG services, and that this must be made available to any victim/ survivor who wants it before, during and after they engage with the restorative justice process to ensure they have the necessary information and support to meet their individual needs, and to minimise potential risks of re-traumatisation. Given the significant pressures currently being placed on specialist VAWG services in local communities across Scotland, additional resources would need to be provided to specialist services to enable them to respond to increased levels of demand for this support.

CEDAW also recommends that free or low-cost legal services are available for victims of VAWG and legal aid should include:

"all stages of judicial or quasi-judicial proceedings, including alternative dispute resolution mechanisms and restorative justice processes".^{iv}

Where there are children and young people involved in cases where restorative justice processes are taking place, it is also critical that processes are in place to identify, assess and respond to any risks that they may directly or indirectly experience through the process. In cases involving domestic abuse, this may include the risk that the perpetrator uses the child to pressure the victim/ survivor into engaging with restorative justice processes or the victim/ survivor's decision not to participate is interpreted negatively by professionals within child protections and child contact systems.

Such processes are imperative in protecting women and children from secondary and repeat victimisation and in ensuring the protections set out in the EU Directive.

Training

The *Restorative Justice Action Plan* also highlights the importance of ensuring stringent guidelines and highly trained facilitators are in place where Restorative Justice processes are being considered for use in sensitive or complex cases of harm, including cases where harmful and/ or coercive behaviours have taken place over a prolonged period of time.

Given the complex dynamics of VAWG and the fact that the harms to victims/ survivors are often hidden, the VAW Network and Scottish Women's Aid believe that there is a need to ensure that all restorative justice professionals undergo robust training to ensure they have the necessary knowledge and skills to identify and respond to victims/ survivors of VAWG in an appropriate way. This should include, as set out in the EU Directive, whether even consideration of engagement in restorative justice processes is appropriate and safe for women, children and young people. To ensure it is of a high-quality, this training should be designed by specialist VAWG agencies and adequate resources should be put in place to support the delivery of training, monitoring and evaluation and wider workforce development on an ongoing basis.

It is vital that any training put in place upskills professionals in identifying tactics that may be used by perpetrators of VAWG to undermine the victim/ survivor, such as manipulation and coercion, as well as identifying and responding to risks to victims/ survivors themselves. It is also vital that robust guidelines are in place to ensure best practice is being followed at all times.

Adopting a Trauma Informed Approach

The VAW Network and Scottish Women's Aid believe it is essential that all Restorative Justice processes are underpinned by the five key principles of trauma informed practice: safety, collaboration, trust, empowerment and choice.

Of key importance is ensuring that the process is wholly "victim led" but within that, no victim/ survivor of VAWG ever feels pressured into engaging with restorative justice processes by the perpetrator, their family/ friends or professionals. Given the role of coercive control, and in order to ensure the safety of women and children and protect the integrity of the criminal justice process, we have grave concerns around restorative justice processes being promoted before or during prosecution and sentencing or in any way influencing these processes. This is a particular concern given the known high rates of attrition for victims relating to participation in, and engagement with, criminal justice processes including prosecution of the abuser. It is also critical that engagement in restorative justice processes by perpetrators of VAWG is not automatically seen as sign of positive behaviour change or a reduction in any previous risk posed by the perpetrator.

We believe that it is imperative that both victims/ survivors of VAWG, and the specialist services that support them, have meaningful opportunities to shape how restorative justice services are designed and promoted, in order to ensure it helps in their recovery and supports safety and wellbeing.

While we are aware that some consultation with adult survivors has taken place to date to support this work, we are concerned that specialist VAW organisations were not involved from the outset in shaping the approach taken to these consultations and as a result, they may not have adequately

captured the diverse views of victims/ survivors or the complexities of domestic abuse in a meaningful way.

We are particularly concerned about the lack of targeted consultation with women with protected characteristics and/ or women experiencing socio-economic disadvantage given research repeatedly shows that these women are often likely to face additional barriers and risks when engaging with non-specialist services. This includes: minority ethnic women and girls; refugees and asylum seekers; disabled women and girls (including those with learning disabilities); LGBTI people; and women at different ages and stages of life (including older women). Additionally, VAWG victims/ survivors with multiple, complex needs including problem alcohol and drug use, a history of offending behaviour, homelessness and/ or mental health issues and trauma who are experiencing, or may experience, additional challenges, risks and support needs when engaging with restorative justice processes and it is essential that these are also fully considered as part of any consultation activities.

We are also concerned about the lack of consideration that has been given to understanding the needs of children and young people who will be impacted by restorative justice processes. We believe that separate consultation will be required with children and young people which, as noted above, should be co-designed with specialist VAWG organisations and the survivors they support.

Given the importance of ensuring that all aspects of restorative justice in Scotland are developed in consultation with victims/ survivors of VAWG in a way that recognises and captures the diversity of their experiences, we believe it is vital that members of local VAW Partnerships - including those representing specialist VAWG and equality support services - are actively involved in shaping these consultation activities and fully resourced to do so. Without this commitment, it is unlikely that women with lived experiences of VAWG will be supported to shape the next phases of this work in a meaningful way, leading to a significant risk that restorative justice processes may act to prevent rather than support the recovery of victims/ survivors of VAWG.

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ⁱ CEDAW, General Recommendation 35, para 32 (b), UN DOC CEDAW/C/GC/35

ⁱⁱ Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, para 251-252

ⁱⁱⁱ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=en>

^{iv} CEDAW General Recommendation 33 on Access to Justice, para 37(a)