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COVID-19 pandemic and the challenges in providing restorative justice services in Scotland: a qualitative study

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Abstract

Restorative justice is a process in which victims and offenders voluntarily deal with the crime's aftermath. It is one of the significant developments in criminal justice in the past decades. Many scholars and practitioners promote it worldwide in recent years as not simply an alternative but a complementary mechanism to the conventional criminal justice system. However, from the beginning of 2020, due to the COVID-19 pandemic, lockdowns and public health measures were imposed worldwide. As a result, the restorative justice service providers of various countries have faced new challenges in implementing this justice mechanism. This article explores the challenges that the COVID-19 pandemic has posed to the restorative justice professionals (i.e. managers and practitioners) in Scotland. It uses semi-structured interviews to collect data and thematic analysis to analyse the data. This article reveals that due to the COVID-19 pandemic, the professionals had to provide restorative justice services in Scotland entirely through digital platforms and, therefore, they faced challenges in transforming emotion in the restorative justice processes, ensuring community participation and guaranteeing privacy and safety to the parties. It also indicates the fact that hybrid restorative justice services in Scotland seem to be a practical alternative for certain parties at times.

Keywords: criminal justice, COVID-19 pandemic, digital platforms, community involvement, emotional transformation.

1   Introduction

Restorative justice is an effort that involves the voluntary participation of both victims and offenders to address the aftermath of the offence (Mainwaringa, Bardib & Meeka, 2019; Marshall, 1999). Zehr (1990) attempts to define restorative justice by comparing it to a 'lens' through which one perceives criminal activity as damage inflicted upon individuals. Subsequently, Marshall (1999) provided an

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exhaustive definition of restorative justice, which has garnered most of the interest from policymakers and researchers. As he puts it,

> Restorative Justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future (Marshall, 1999: 5).

In a recent endeavour, Mainwaringa et al. (2019) integrated fundamental characteristics from the definitions of Zehr and Marshall to simplify the definition of restorative justice. They specify that restorative justice is a voluntary procedure in which victims and offenders negotiate to repair the harm caused to an individual by the crime; supporters of the parties (i.e. communities) are sometimes involved. Every definition of restorative justice emphasises its purpose of rectifying the harm caused by the crime through active involvement of the victim and the community (Kirkwood, 2018; Louw & van Wyk, 2016).

The restorative justice process necessitates the application of certain foundational principles that have been derived from its definition to accomplish its objectives. Primarily, 'ensuring voluntariness' dictates that the participants in the restorative justice process must provide informed consent voluntarily and retain the ability to revoke it at any time (Kirkwood & Hamad, 2019). In accordance with this principle, prior to selecting a case for restorative justice, the facilitators are additionally obligated to ascertain whether the rights and liabilities of the parties can be balanced (Marshall, 1999). Restorative justice conferences must be 'independent and impartial' (Scottish Government, 2017), presuming that the family of the victim may face a future risk of violence. Moreover, the rights of all parties, particularly the victim, must be respected (Scottish Government, 2017). In contemporary times, the utmost importance is attributed to the 'principle of confidentiality' (Saulnier & Sivasubramaniam, 2015). Therefore, the facilitators are obligated to apprise the involved parties that any violation of confidentiality may potentially impede their ability to participate in restorative justice (The United Nations and Rule of Law, 2000).

Restorative justice practices have been instrumental in mitigating victim harm, recidivism and reconviction since the implementation of their foundational principles (Bonta & Andrews, 2017). Although restorative justice has been criticised for lacking a genuine connection to the theory on rehabilitation (for further details, see Ward et al., 2015), it decreases recidivism by actively involving the communities that offenders typically interact with (Braithwaite & Mugford, 1994). Furthermore, restorative justice assists victims in regaining 'self-respect' and avoiding 'self-blame', as it allows the offenders to apologise for their actions and rectify any harm caused (Morris, 2002; Strang, Sherman, Mayo-Wilson, Woods & Ariel, 2013).

Restorative justice processes generally involve a complex set of stakeholders, for example, victims, offenders, broader community (including supporters of parties) and service providers (Bazemore & Umbreit, 2003). This study aims to empirically explore the impacts of COVID-19 lockdowns on carrying out restorative justice adult services in Scotland. To this end, it explores the key challenges that restorative justice professionals – namely, managers and practitioners in this study,

have faced while providing services during COVID-19 lockdowns in Scotland. It also indicates some of the advantages of online restorative justice services and considers the feasibility of a hybrid restorative justice service for convenience in Scotland. Methodologically, it draws primarily on qualitative data generated empirically through semi-structured interviews, existing literature and relevant organisational reports.

Some readers may perceive the use of the terms *victim* and *offender* to refer to the restorative justice discourse as problematic in this study. Certain terms are frequently employed to designate the individual who has been affected by the harm done, including affected person, harmed party, receiver of harm and complainant (Bargen, Edwards, Hartman, Haslett & Lyons, 2018: 11). While it is recognised that the term *victim* is inadequate, it is employed in this research primarily because it is a prevalent self-identification among individuals who have encountered various forms of victimisation (Bargen et al., 2018). It also employs the term *offender*, which has frequently been used to stigmatise individuals by the criminal justice system, while this study's objective is not to stigmatise those who offend by linking their identity to their harmful actions.

2   Overview of restorative justice in Scotland

In Scotland, the government fully recognised the existence of restorative justice by adopting the Guidance for the Delivery of Restorative Justice in 2017 (hereinafter the Guidance) (Scottish Government, 2017). However, the Safeguarding Communities – Reducing Offending (SACRO) first began its operation of restorative justice services as an alternative to prosecution of minor offences in three specific Scotland-based locations in the late 1980s (Maglione, Buchan & Robertson, 2022; Warner, 1999). These restorative justice efforts lacked legislative support (Butler, Maglione & Buchan, 2024). Moreover, the progress and acknowledgement of restorative justice services in Scotland have been very slow-moving, resulting in a rather limited contribution to the local criminal justice system (Maglione, 2020).

As a response to juvenile delinquency, the Scottish Executive funded restorative justice services throughout Scotland in the beginning of the 2000s (Kearney, Kirkwood & MacFarlane, 2006). Children's reporters used to refer to most cases as an alternative or in conjunction with a children's hearing, while the harmed individuals were extended support and young offenders were invited to participate in victim awareness sessions (Kirkwood, 2018; Scottish Government, 2008). Specifically, 'Police Restorative Warnings' were implemented by the Scottish police in 2006 to assist the juvenile in developing a greater understanding of the harm inflicted by their offence (Scottish Executive, 2006).

The Criminal Justice and Licensing (Scotland) Act (2010) provided a policy basis for implementing restorative justice within the adult criminal justice system in Scotland. This system, however, was administered by local authority social work departments rather than a centralised national criminal justice agency. Furthermore, this Act does not specifically mention restorative justice or include detailed regulations about it. In the context of severe criminal offences, specific

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restorative justice initiatives were applied – namely, 'Talk After Severe Crime' and 'Restoration in Serious Crime' (Whyte & Kearney, 2017). These initiatives were designed to assist in providing explanations, offering a chance to ask queries and extending apologies. It thus appears that there were a variety of restorative justice processes, but most of these activities were limited in scale and geographical reach in Scotland.

Examining criminal justice social work (CJSW) in Scotland from a restorative justice perspective, Kirkwood and Hamad (2019) highlight the broad range of services offered by qualified social workers through local authorities to people subject to the criminal justice system. The primary objectives of CJSW are to ensure community safety, prevent reoffending and promote social inclusion to support individuals in moving away from criminal behaviour (Scottish Government, 2010; see also Kirkwood & Hamad, 2019). The services provided include the supervision of individuals on community sentences and those who are under supervision after being released from prison. They also offer diversion from prosecution services, bail supervision, voluntary care services for individuals transitioning out of prison, group work programmes and reports to the courts to assist in sentencing decisions.

Restorative justice has recently made substantial progress in becoming formally acknowledged as an essential component of the youth justice system. The policy framework known as the 'Whole System Approach' in Scotland has been crucial in offering institutional backing for restorative justice (Scottish Government, 2016). Nevertheless, its implementation is not yet uniform across all local areas. In 2017, the Guidance in Scotland defines restorative justice as

> a process of independent, facilitated contact that supports constructive dialogue between a victim and a person who has harmed (whether this be an adult, child, young person or representative of a corporate or other body) as a result of an alleged offence (Scottish Government, 2017).

In 2019, the Scottish Government adopted a restorative justice Action Plan with the commitment to offer restorative justice services across Scotland by 2023 (Kirkwood, 2018). While the Guidance stresses the requirements of clients' voluntariness, privacy and confidentiality of the processes and empowerment of communities, the Action Plan underscores the importance of partnership among the local authorities and third-sector agencies to provide restorative justice services nationwide (Scottish Government, 2019). However, the lockdowns and public health measures imposed due to the COVID-19 pandemic from the beginning of 2020 have affected the restorative justice service providers and created new challenges in implementing mainly the Guidance in Scotland (Hays & du Sautoy, 2020; Scottish Government, 2021).

3 Research methodology and limitations

This section outlines the research design and sampling techniques employed in this study, as well as the data-gathering and analysis methods undertaken. It also

addresses the limitations of this study that can downplay the actual scope of the restorative justice services during the COVID-19 pandemic in Scotland.

3.1 Research design and sampling

The primary aim of this study is to investigate the effects of the COVID-19 pandemic on restorative justice infrastructure in Scotland, with a specific emphasis on the difficulties encountered by restorative justice professionals in carrying out their professional and ethical responsibilities while providing restorative justice services during this unprecedented time. For this purpose, this study employs a qualitative research design, which helps gather an extensive understanding of individual perceptions and is appropriate to the specific context of research (Flick, 2008; Maxwell, 2012). It gathers empirical data from three restorative justice professionals, a criminal justice coordinator and a researcher in Scotland.

This study selects five key informants (KIs) in three steps. A few criminal justice agencies that provide restorative justice services in Scotland were initially identified through their websites. These agencies included community organisations, charitable organisations and local administrations. Furthermore, in collaboration with the criminal justice agencies, three KIs were selected through the convenience sampling method. Finally, two more KIs were selected using a snow-ball technique – a sampling method wherein ongoing research participants find additional individuals from their personal networks (Parker, Scott & Geddes, 2019). The following Table 1 presents the occupation, pseudonyms and interview focus of the KIs:

Table 1   *Background of the KIs*

Occupation	Pseudonym	Focus of Interview
RJ Manager	Participant 1	RJ Adult Service
RJ Practitioner (I)	Participant 2	RJ Adult Service
RJ Practitioner (II)	Participant 3	RJ Adult Service
CJ Coordinator	Participant 4	Policy Implications
CJ Researcher	Participant 5	Policy Implications

Note: The table uses RJ and CJ for Restorative Justice and Criminal Justice, respectively.

3.2 Methods of data collection and analysis

This research data were collected during the summer of 2022, primarily through semi-structured interviews with five KIs based in Scotland. Considering the inconveniences of conducting face-to-face interviews due to the COVID-19 pandemic and unavailability of the KIs during their ordinary working hours, the KIs were interviewed through zoom video conferencing (Archibald, Ambagtsheer, Casey & Lawless, 2019).

At the beginning of each interview, a brief introduction to this research's aim, methods, end-use and potential risks were explained. A set of open-ended questions

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was administered during the interviews. Based on responses of the KIs, they were posed follow-up questions and/or asked for clarifications. All the video conferencing interview sessions were recorded with the prior permission of the KIs. Each interview lasted for 35 to 40 minutes. The recorded interviews were transcribed verbatim. The consent of the KIs to participate in this research was taken via an informed consent form.

In an exceptional setting, a KI did not feel comfortable and safe to attend a zoom video conference and, thus, the asynchronous email interview method was used to collect qualitative data from that KI. That KI was sent the questionnaire consisting of open-ended questions via email, along with required explanations regarding this research. They completed the questionnaire and returned it electronically.

Thematic analysis has been used to systematically code and analyse qualitative data collected by interviewing the participants (Daly, Kellehear & Gliksman, 1997). Each interview transcript was thoroughly reviewed during data analysis to identify and emphasise anything pertinent or potentially engaging. Following a thorough examination of the transcripts, all the data were compiled into coded groups. The codes were merged into some interconnected themes that have addressed the main question surrounding the challenges of the online shift in restorative justice services in Scotland. For ensuring the confidentiality of the KIs' identities, this study has used pseudonyms to represent the statements made by them.

3.3 Research limitations

There are certain limitations to this study. To begin with, it has exclusively employed the qualitative research method, while a mixed-method study could have produced a deeper understanding of the experiences of restorative justice professionals in relation to the effects of the COVID-19 pandemic on restorative justice services (Robson & McCartan, 2006). Additionally, it should be noted that the research sample is restricted to restorative justice professionals, a criminal justice coordinator and a researcher. However, diverse viewpoints could have been gathered from other relevant stakeholders, including victims, offenders and communities. Last but not least, in comparison to the total number of restorative justice service providers in Scotland, the sample size for this study is quite small.

4   Interview analysis and interpretations

This section provides the analysis and interpretations of interview data categorised into three themes – namely, the effects of COVID-19 on restorative justice infrastructure, the obstacles faced by restorative justice professionals and the reasons why a hybrid approach to restorative justice services may be convenient for some parties in Scotland.

4.1 Impacts of COVID-19 pandemic on restorative justice infrastructure

This study reveals that due to the lockdowns and various public health measures imposed during the COVID-19 pandemic, the restorative justice professionals had

to adopt certain new methods to conduct restorative justice meetings with victims and offenders over online platforms. The staff members were equipped with laptops for remote work, which were designated as their new workstations. Participant 1 stated that they received training to operate online restorative justice services. Additionally, a new case management system was implemented, allowing restorative justice staff to access case notes and handle paperwork related to offers, preparations, agreements and follow-ups using their smartphones. With regards to the platforms used for restorative justice conferences, Participant 1 stated that:

> We switched to Microsoft Teams (sometimes Zoom) for our meetings with restorative justice parties. We also got smartphones to make calls on WhatsApp. We even made normal telephone calls if service users were uncomfortable joining video conferences.

The restorative justice facilitators are ordinarily responsible for ensuring that the persons involved in the process provide their consent freely and voluntarily and that they have the right to withdraw their consent at any stage (Kirkwood & Hamad, 2019). Also, they must guarantee that victims believe that fair and respectful processes have taken place to get their permission (Marshall, 1999). Participant 1 stated that they used email communications and frequently made phone calls to get the approval of the parties before the meetings.

Participant 2 mentioned that a new formality was introduced in online meetings, namely obtaining the parties' authorisation to record video conferences prior to the meetings. However, she stated that the refusal to record meetings resulted in the retraction of consent by one or both parties in one or two instances. In addition, she expressed: 'If a party became silent or discontinued participating in the conversation, we inferred that their Internet connection was disrupted.' This prompted a question as to whether the intentional omission of information is deliberate or if the use of silence is an effective means of conveying discomfort. Further research is warranted regarding this matter in the specific context of restorative justice services in Scotland.

Rossner (2013) highlights that not all conferences are of high quality and that, when certain aspects of the process go awry, participants may end up feeling worse than they did before the contact. Therefore, the use of restorative justice methods requires the explicit and un-coerced agreement of all involved parties. Also, individuals should possess the prerogative to revoke their consent at any given moment. This study demonstrates that despite COVID-19 considerably affecting the overall infrastructure of restorative justice services, the adherence to procedural standards was considered crucial in delivering restorative justice services by the specific service providers in Scotland.

4.2 Challenges facing restorative justice professionals

This study has identified three specific obstacles that professionals of restorative justice faced while delivering their services in Scotland amidst the COVID-19 pandemic. It emphasises that the emotional exchange between the parties involved and community participation were both impeded by online restorative justice

services and that the parties' privacy, safety and vulnerabilities were not adequately taken care of.

4.2.1 *The online restorative justice practices significantly impeded emotional transformation*

The concept of emotional intelligence allows both victims and offenders to express their own emotions at restorative justice sessions (King, 2008; Sherman, 2003). Rossner (2013) refers to the approach of emotional intelligence as central to restorative justice. This approach distinguishes it from other interactions within the criminal justice system. This study demonstrates that the use of virtual restorative justice services has a substantial negative impact on the process of emotional transformation (Rossner, 2013). Participant 3 narrated that:

> I felt that during COVID-19, it was great that we were still able to continue restorative justice services using online means, but we usually get body language cues and observe the parties when they handshake, maintain eye contact and hug each other … But it became much harder for that to happen because the emotional connection was often missing.

This statement indicates that the restorative justice professionals faced challenges in comprehending verbal cues and interpreting body language and eye contact of the parties involved due to the absence of physical presence. Additionally, maintaining eye contact throughout online sessions proved to be problematic. It is crucial for the professionals to have the ability and opportunity to read the body language and eye contact of the parties involved, as they typically remain in the same room during face-to-face meetings. Online restorative justice meetings thus have a detrimental effect on emotional exchange, which is critical for the process of healing of victims and reintegrating offenders into society as law-abiding individuals (Rossner, 2013).

Typically, when people are physically present in a room together, engage with each other and have a common focus and mood, it leads to a coordinated and synchronised rhythm in their conversations, physical movements and emotions (Collins, 2004). Rossner (2011: 95-115) categorises various manifestations of nonverbal communication in restorative justice meetings, including anxiety, smile, anger, lack of engagement, sadness and fear, anger and disgust, and lack of focus. These expressions capture the participants' immersion in the conversational flow and contribute to the development of emotional intensity (Collins, 2004). Armour and Umbreit (2018) suggest that the transfer of emotional energy often leads to the expression of apology and forgiveness.

In this study, one of the participants, referred to as Participant 3, expressed the following:

> I have experienced both in-person and video conferencing of restorative justice and there is a noticeable difference between the two. For instance, when it comes to apologies, we often miss out on the sincerity conveyed in person, rather than through electronic means like messaging or computer screens.

This statement indicates that when it comes to conveying an apology, it is more effective to have face-to-face interactions to transfer emotional energy between the offender and the victims of an offence. In a face-to-face meeting, the offender and the victim typically exchange narratives, communicate their emotions and make agreements to compensate for any harm caused as well as offer an apology (Jackson, 1998). Supporters of the offender and the victim may attend the meetings. According to Morris and Maxwell (2003), victims sometimes ask for indirect interactions rather than in-person ones. In a somewhat different arrangement, victims may choose a surrogate victim as a representation if they are unwilling to take part in conversations directly (Morris & Maxwell, 2003; Strang et al., 2013). In addition to the victim, others impacted by the offender's harm in the community, family and friends are also involved in the process of transferring emotional energy (Meléndez, 2021). This process aids in the restoration of community relationships and encourages active participation from all stakeholders in decision-making. That said, Participant 1 noted in relation to online meetings that:

> They [the victims and offenders] need the emotional connection when they are dealing with something for them to be able to either forgive or forget. If [emotional transformation] is not there, it becomes a sort of plastic apology to some people. But as we have had good feedback too, we cannot say [online restorative justice service] is completely a flawed process.

Both the aforesaid participants' statements indicate that the historical aspect of the guilt-apology-forgiveness trade-off, which serves as a symbolic reparation for victims in a restorative justice process, is significantly hindered by the COVID-19 pandemic. Moreover, restorative justice practitioners face challenges in accurately gauging the real empathy of victims towards offenders and the sincere regret shown by offenders for the harm they have caused. This understanding is crucial in assessing the impact of restorative justice on future criminal behaviour.

4.2.2 The online restorative justice service hinders community involvement

The involvement of community members, typically consisting of immediate family and friends of the victims and that of the offenders, as well as volunteers representing community interests, plays a crucial role in the restorative justice process (Karp & Drakulich, 2003; McCold, 2004). In this study, Participant 1 provided a detailed description of how this element has been impacted by the COVID-19 pandemic:

> In some situations, it was difficult to engage the family members in meetings to control the virtual environment and sometimes, due to lack of coordination from the end of community participants. But in a face-to-face conference, there is tea and coffee over there and that is where proper reconciliation happens. Offenders and their families want to meet victims and their families, they say sorry to them and continue informal interactions.

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During online sessions, participation was restricted to family members of both victims and offenders, if not all. On the other hand, the idea of community includes every member of the community who has suffered because of the offender's wrongdoing. This includes neighbours, representatives of community organisations or groups and even individuals beyond the immediate family members of the parties involved in restorative justice (McCold, 1996).

Braithwaite (1989) has distinguished the notions of stigmatisation and re-integrative shaming. The former refers to irrevocable attachment of the stigma to the offender or treating the offender as a bad person. On the other hand, the latter emphasises re-acceptance of the offender into the community (Braithwaite, 1989: 55). Re-integrative shaming effectively controls crime by redirecting offenders away from criminal subcultures, while stigmatisation has the opposite effect. Subcultures provide an opportunity for offenders to 'reject her rejectors' and preserve their self-esteem (Braithwaite, 1989: 14). In contrast, re-integrative shaming has the effect of making criminal subcultures seem less appealing to the offender.

Edwards (2015) indicates that the actual communities' unpredictability (which Braithwaite himself acknowledges) could be a matter of concern of the re-integrative shaming model. He highlights

> The potential for community judgments to be distorted by existing power relations and the operation of a tyranny of the (respectable) majority and the possibility of offenders being subjected to burdensome and even stigmatising pressure in the cause of shaming. (Edwards, 2015: 140)

Before Edwards, Shapland et al. (2006: 509) have pointed out some factors involving the participation of the community in the restorative justice process – namely, '[h]earsay, reputations, gossip relating to the offence, group dynamics and community politics' – that require further examination. She also (somehow) challenges the existence of an actual community by indicating that neighbours or people representing community organisations or groups could be involved but that they tend to be absent in restorative justice processes. Instead, in most cases, the victims' and/or offenders' relatives and/or partners are involved in the process. Edwards (2015: 141) argues that due to the absence of community members 'to whom both the victim and offender could be expected to defer', the readmittance of the offender to the community becomes problematic. He thus suggests that restorative justice mechanisms need to reconsider promoting relationships of interdependency for the community to provide offenders their place in the society within which inequalities and power relations exist.

In this study, the statement from Participant 1 noted above poses a significant obstacle to the implementation of re-integrative shaming because it hinders community representatives' ability to defer to the victim and the defender, as well as to shame the offender for their offence (Braithwaite, 1989). As a result, online restorative justice meetings are likely to have negative impact on the effectiveness of re-integrative shaming as a significant tool for social control. This means that offenders may be attracted to criminal subcultures because of a lack of effective

participation of the community. Consequently, this gives rise to a concern regarding the creation of a sense of reintegration within the community, which could potentially facilitate the offender's reintegration (Edwards, 2015).

It is worth noting that concerning the existence of a tangible community and its involvement in restorative justice processes, the extant literature demonstrates a dearth of conceptual coherence (Morris & Maxwell, 2000; Rossner & Bruce, 2016; Shapland et al., 2006). Nevertheless, this study highlights that community involvement ought to be prioritised in restorative justice meetings conducted both in-person and online, as its influence extends beyond symbolic levels. It enhances the fluidity and emotional intensity of the restorative justice process, while also aiding offenders in managing the risk of recidivism (Crawford & Newburn, 2002).

4.2.3 Serious concerns have been raised about the privacy of restorative justice processes and the parties' safety and vulnerabilities

It is a widely accepted concept that restorative justice facilitators are obligated to ensure the upholding of confidentiality, impartiality and the safety of all parties (Corrado, Cohen & Odgers, 2003). The legitimacy of restorative justice processes is compromised if either of these elements is not ensured (The United Nations and Rule of Law, 2000). In this study, Participant 2 recounted that:

> In one case, we realised that someone from the offender's family was closely observing the computer screen during the conference, who was seeking not to be known that he was somehow there in the meeting.

This statement suggests that protecting the privacy and confidentiality of the process has been an issue regarding video conferences. It should be underlined that the UN principle requires the restorative justice process to provide the parties with information regarding the process's essence and potential consequences for implementing confidentiality (The United Nations and Rule of Law, 2000). Additionally, it is crucial to notify the parties that their participation in restorative justice may be impacted in the event of a breach of confidentiality (The United Nations and Rule of Law, 2000).

Daly (2006) argues that restorative justice practices may generate power imbalance among the parties and, thus, the victims of family abuses are most likely to be at risk of future violence. Therefore, it appears that the restorative justice practices address the question whether a meeting is independent and impartial and equally respects rights of the parties and ensures their safety. The Guidance provided by the Scottish Government in 2017 regarding the implementation of restorative justice in Scotland affirms that the restorative justice process ought to be, among other things, fair and respectful.

Information on whether restorative justice happened between the parties and the outcome is typically included in a report on the process (Saulnier & Sivasubramaniam, 2015). In extraordinary cases, the courts may request evidence to learn more about the offenders' attitude towards providing consent for the restorative justice process (Saulnier & Sivasubramaniam, 2015). Therefore, one of the principles that the UN adopted to use restorative justice calls for the

implementation of confidentiality in the processes. This requires that, in addition to explaining to the parties the purpose of the process and any potential consequences, it also explains to them that a breach of confidentiality may have an impact on their ability to participate in the process (The United Nations and Rule of Law, 2000).

Keeping with the matter of confidentiality, it is possible to emphasise that the absence of confidentiality in the restorative justice process may suggest that the participants in online platforms are not adequately protected. Significantly, this research demonstrates that participants who encounter nervousness while participating in virtual meetings do not receive adequate support. For example, Participant 1 stated that:

> Some of the parties sometimes seemed nervous while using technological devices … It was harder for the co-facilitators to support the parties when they seemed nervous in video conferences.

In a recent study, Marder and Rossner (2021) have highlighted that individuals may develop a deceptive sense of psychological security in an online environment, which serves to conceal their true anxiety as the meetings progress. As a result, this study concludes that while it is a fundamental tenet of restorative justice that participants should receive assistance if they feel vulnerable (as is the case with online conferences), the effects of a false sense of psychological security on virtual meetings are novel and warrant additional research.

4.3 Towards a new approach: hybrid restorative justice service

This study suggests that in Scotland, face-to-face meetings are generally more favourable as a restorative justice approach. Nonetheless, certain advantages of virtual platforms should be considered, for example, (a) there is no geographical barrier between the parties in online meetings and (b) online conferences save time and money for all participants. Pertaining to these advantages, Participant 5 asserted that:

> We are aware that some services, nationally and internationally, have moved to use more digital technology in their restorative justice processes, while others remain concerned about privacy or security issues. The Scottish Government is open to these technological opportunities, but only to the extent that they can be deployed appropriately and safely and in a way that is consistent with our guidance and forthcoming codes of practice.

According to this participant, considering the adverse impact on the objective of achieving widespread accessibility of restorative justice services throughout Scotland by 2023, policymakers have maintained communication with the Stakeholder Group to ensure that their perspectives are considered when determining the most effective course of action to implement the Guidance. In addition, they have continued to assess the application of technology in restorative

justice service to develop novel strategies for addressing the obstacles associated with implementing online procedures.

When it comes to a new approach, this study points out that 'hybrid' restorative justice services would be significant for a ground-breaking reason specified by Participant 1 that 'Victims and offenders' meeting in the same room may not be comforting and, sometimes, video calls may make them feel safer than in-person conversations.' Sometimes, restorative justice practitioners can use the technological resources they have adopted during the COVID-19 pandemic to set up face-to-face meetings in a hybrid way, thereby saving time, money and the effort required to have staff organise necessary materials.

Significantly, Participant 4 emphasised that:

> Individuals with learning disabilities or autistic spectrum disorder may find online communication more convenient. Hence, they may feel more secure using a hybrid approach due to the distance of the screen.

Equally, however, numerous individuals struggle to operate technological devices. There is limited empirical research on the reasons why face-to-face interactions during the restorative justice process cannot be fully implemented for individuals with disabilities. Bolitho (2018) has conducted a study in New South Wales, Australia, where she examined sixteen victim-offender conferences. The study focuses on conferences where at least one participant has a recognised disability. She finds that disability was never seen as an impediment to continuing with the conference or as a determining factor in its overall success. Restorative justice responses may pose potential risks in cases where the offender lacks proficiency in oral language, according to Hayes and Snow (2013). The authors highlight that offenders face the risk of being seen as disrespectful and may feel inadequate owing to challenges in engaging, while victims may face the possibility of enduring additional harm if offenders do not demonstrate empathy or fail to behave as expected.

As noted by Goggin and Newell (2003), technology opens new possibilities for individuals with disabilities, allowing them to overcome limitations and experience newfound freedoms. However, they have argued that technology can sometimes give rise to new forms of disability, rather than eliminating them altogether. Disability disclosure in electronic forums and the perception of what constitutes an obvious or visible disability can be quite unpredictable. The present study thus acknowledges that there are specific circumstances in which disability can hinder persons from engaging in restorative justice processes. It also emphasises the need for additional research in the specific context of Scotland to better understand this issue. It merely implies, in accordance with the statement made by Participant 4, that restorative justice conferences have the potential to be face-to-face or online; thus, they may alleviate some of the concerns that victims have historically held regarding their presence in the same room as the offenders.

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5   Conclusions

The most apparent conclusion of this study regarding the effects of COVID-19 is that it critically affected the infrastructure of restorative justice services in Scotland, as providers were compelled to migrate their workstations from physical to digital platforms. The findings of the online restorative justice services confirm the parties' voluntariness but go against some of the themes identified in the literature and the Guidance of Scotland. Firstly, restorative justice professionals encountered difficulties in comprehending nonverbal and emotional signals, sustaining eye contact and interpreting body language. As emotional transformation is critically missing in the virtual environment, the statement made by Participant 1 that 'video conferencing is instead a softer approach' can be echoed. The second issue is that lay participation can be challenging to coordinate in online meetings, which can sometimes lead to inadequacies in the restorative justice process. Lastly, the concerns involving privacy of the restorative justice processes and lack of support for the parties when they feel nervous can affect the credibility and sustainability of restorative justice service.

Based on the findings of this study, hybrid restorative justice services may be useful for many, primarily for people with learning disabilities or autistic spectrum disorder, as they can benefit from the distance provided by the screen. Therefore, it is recommended that forthcoming efforts concentrate on defining the precise elements that would comprise a hybrid strategy for restorative justice services in Scotland. Primarily, as indicated earlier, additional exploration would be beneficial to determine whether any party's wilful exclusion of information is intentional or if the use of silence effectively conveys discomfort in online restorative justice conferences. Furthermore, it is crucial to conduct further research on the unprecedented impacts of a misleading perception of psychological safety in virtual meetings.

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