



Restorative justice in road traffic offences

A manual for professionals and victim-volunteers

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VICTIMS OF ROAD TRAFFIC OFFENCES



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INTRODUCTION

This manual is, amongst other products developed within the framework of the EU-funded project “Victims of road traffic offences (further: RTO)”. Restorative justice (further: RJ) was one of the project’s main topics. This manual aims to guide professionals and volunteers close to road victims through the world of restorative justice. Apart from some brief background information on restorative justice and its variety of practices, this manual will focus on personal motivations for participation in RJ, outcomes of RJ processes, keys to success and concrete tips and tricks for fieldworkers. Many examples, quotes and narratives of people who were involved in restorative processes are included, to make this manual more vivid and accessible for the reader.

In this manual, the words “victims” and “offenders” will be used. In fact, the term “offender” is not always suitable since some cases are legally speaking not an offence and this may differ from country to country. In road crashes, for instance, there are quite some and positive experiences in restorative justice, whether they are considered as criminal offences or not. However, the term offender will be used for the readability of the text and due to the absence of another suitable English term.

This manual is based on interviews with victims and offenders, my own experiences in victim-offender mediation in serious crashes, contacts with other professionals in the field and the most recent scientific insights. I wish to thank those people who shared their experiences with me. I am also very grateful to my supervisors Katrien Lauwaert and Pieter Verbeeck and my colleagues Davy Dhondt, Lien De Clercq, Dominique Bataillie, Muriël Booms (KULeuven) and Emanuela Biffi (European Forum for Restorative Justice) for their valuable feedback.

Chapter 1: Restorative Justice

1. What is restorative justice?

Restorative justice is a process which focuses on repairing the harm caused by an offence. In the context of a restorative justice process, the active cooperation of all parties involved in the offence is crucial. Those parties are in the first place the direct victims and offenders, their relatives and community of care. However, even the broader community can be involved. Restorative justice processes are always voluntarily, confidential and are most of the time facilitated by an impartial third person: the mediator or facilitator.

Restorative justice is not primarily about forgiveness and reconciliation. Although RJ can provide a context where the offender might be forgiven, this choice is entirely up to the participants.

In an RJ process, the focus is on giving a voice to the participants and facilitating a dialogue between them.

In the Victims Directive 2012/29/EU (see further), restorative justice is defined as "*any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party*"¹.

Tony Marshall defined restorative justice as "*a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future*" (Marshall, 1999).

The European Forum for Restorative Justice points out that: "*Restorative justice is an inclusive approach of addressing harm or the risk of harm through engaging all those affected in coming to a common understanding and agreement on how the harm or wrongdoing can be repaired and justice achieved.*" (Biffi, 2016).

2. A variety of restorative justice practices

Since the 1990s, a variety of restorative justice practices (RJ-practices) has emerged. Victim-offender mediation (further: VOM) is performed in the majority of cases and is most widespread in Europe. But even within VOM, there is a great variety. Besides VOM, other restorative justice practices are conferencing, peacemaking circles, offender reparation programs,...

RJ-practices can differ in "who takes part", "how they are carried out" and in "where they are positioned in relation to the criminal justice system".

¹ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, Art. 2.

Who?

Participants can be victims, offenders, their relatives or representatives from the harmed community. In some RTO, there is no direct victim. In this case, RJ-practices often include community members to represent the harmed community.

Example: E. is 12 years old and was heavily injured in a road crash. Her mother participated in a mediation process with F., the person who caused the crash. She could tell him about the consequences for her and her daughter's life.

Example: S. is volunteering at Restorative Justice Services in Ireland. As a community member, she often talks with offenders of road traffic offences and tries to sensitise them about their driving behaviour and the possible consequences of such behaviour.

How?

The procedure and methodology of restorative practices can differ. Victim-offender mediation can be direct (face to face) or indirect (shuttle-mediation). Group-conferencing and peacemaking circles are practices where the (harmed) community is included. Offender reparation programs follow a certain trajectory, where the direct victim is not always participating.

Example: V.'s son died in a road crash. He was a passenger in a car with a drunk driver. A direct confrontation with the driver was too difficult for V, but through an indirect mediation, she got some answers and she could show the driver her point of view about him and his driving behaviour.

Example: M. participated in a road safety panel. He was referred to the program by the judge after driving without insurance and excessive speed. Together with other offenders he watched a presentation on road safety and driving behaviour and had a dialogue with a police officer about this. He wrote a personal reflection on his behaviour.

Position?

Some RJ-practices are embedded or strongly linked with the judicial procedure. Those RJ-practices often function as diversional measures: if the offender carries out the agreement or contract made during the RJ-practice, the case can be dismissed or mitigated. This may be problematic for some victims to accept. It is important to inform victims clearly about this possibility so that they can make a conscious choice.

Other practices are additional or parallel to the criminal procedure. In these cases, the criminal procedure and the RJ-practice proceed independently from each other. Developments regarding the practice can be communicated to the judicial authorities (e.g. by a written mediation-agreement), however only when both parties give their consent.

Example: G. lives in Hungary. He caused a road crash because of excessive speed driving. S. was seriously injured by this crash. Before the trial took place, G. and S. met in a victim-offender mediation. As a result of the dialogue, G accepted to pay the damage that was not covered by the insurance company. G. accomplished the agreement and the judge decided to mitigate the sentence.

3. Restorative Justice in Victims Directive 2012/29/EU

Since 2012, all member states of the European Union are bound by a European Directive, the so-called 'Victims Directive', which provides minimum standards on the rights, support and protection of victims of crime. According to the Victims Directive, member states have the obligation to ensure that victims are informed about the possibility of restorative justice and to facilitate referrals to RJ-practices.

In addition, the Directive outlines important safeguards to prevent the occurrence of secondary victimisation² through RJ processes.

Safeguards

- Restorative justice should be in the interest of the victim;
- Restorative justice is always voluntary. Victims can choose to stop the RJ process at any time;
- Victims should be fully informed about the procedure and potential outcomes of RJ-processes;
- RJ-practices can only be used when the offender acknowledges the basic facts of the case;
- The content of RJ-processes is confidential;
- Agreements between parties are achieved voluntarily and after permission of the parties.

² Secondary victimisation relates to further victimisation following on from the original victimisation. For example, victim blaming, treating victims with scepticism, inappropriate post-assault behaviour or language by medical personnel or other organisations with which the victim has contact further exacerbates the victim's suffering. (https://en.wikipedia.org/wiki/Victimisation#Secondary_victimisation)

Chapter 2: Restorative justice and road traffic offences

1. Road traffic offences

The Victims Directive provides rights to all victims of criminal offences. From practice, we know that RJ can be applied fruitfully in almost all kinds of RTO: from neglecting a red sign to offences such as involuntary injuries, hit-and-run and drunk driving. However, the legal framework of a country determines whether RJ can be offered in specific cases, regardless of their potential. Severe or fatal road crashes are not considered as criminal offences in every country. As a consequence, road crashes are not always regarded as potential cases for RJ.

Example: Belgian legislation stipulates that everyone involved in a judicial procedure can apply for victim-offender mediation. This mediation is parallel to the criminal procedure and is kept strictly confidential.

A. was involved in a car crash. He could not avoid hitting an elderly person suddenly crossing the road by bike. After the investigation, the case was dismissed. The driver participated in a mediation process with the daughter of the deceased elderly person. The driver wanted to express his feelings, the daughter wanted to have more information about the details of the crash. The mediator organised a shuttle-communication between both parties.

2. Who is involved?

RTO occur quite regularly. In 2015 more than 1 million road crashes occurred in Europe. More than 26.000 individuals lost their lives in a car crash. For every deceased individual, four persons are permanently injured, eight persons suffer serious injuries and fifty persons suffer from minor trauma. The impact of a car crash widens to families, friends, colleagues, classmates, neighbourhoods, communities and society as a whole.

The consequences are felt at various levels: material, physical, psychological, economic, social,... and this on the short, medium and long-term.

Victims and offenders of RTO can participate in RJ-practices. The most common practice is a victim-offender mediation where both parties meet directly or indirectly to discuss the offence and the consequences. In cases without a direct victim (e.g. excessive speeding) or cases where the victim cannot be involved, community members or victim volunteers can take part to express the voice of the victim.

Shortly after the crash, positions are not always that clear: who caused the crash? Who is the victim? Sometimes both parties are injured. After the judicial/police investigation the legal responsibility often becomes clear, but not always: sometimes there can be a shared liability.

For some kinds of RJ-practices, this vagueness is problematic. Those practices embedded in the judicial procedure, cannot start when none of the parties is deemed responsible.

However, for those practices located outside the criminal justice system, this clarification is not really necessary. For all parties involved in these crashes or offences, it is a big advantage that RJ-processes can possibly start almost immediately after the crash. Victims and offenders have the free choice with regard to the starting point and the duration of the process.

Example: G. was seriously injured due to a crash. Her car was hit in front by a van. The driver was intoxicated and was distracted by using his cell phone. After a period of coma, G. had to learn everything again: sitting, walking, organising her daily life,... She agreed to participate in VOM, requested by the offender and choose to have an indirect mediation. An impartial mediator facilitated a shuttle communication between them. Both could ask questions and exchanged information on their respective points of view.

3. Why do people involved in a road crash/road traffic offence want to participate in RJ?

RJ-practitioners point out that people involved in road crashes/RTO are more often willing to participate in an RJ-process. How come?

First, mutual understanding and feelings of empathy towards the other party are more common in the case of road crashes/RTO. We all participate in traffic situations, and thus we can all imagine being victimised by or even being the author of a road crash/RTO. Moreover, most road traffic offences are unintentional, which creates more room for mutual understanding.

Second, victims of RTO such as severe crashes often hope to hear something from the other party shortly after the crash. Victims indicate that a simple act of sending a card or informing about their health condition is so important. This can be sufficient to create a more nuanced and human image of the person who caused the road crash. In many cases, this is favourable for the healing process of all persons involved.

"I did not hear from the person who caused the road crash. After what happened, I expected to hear something from her. That was the least she could have done."

However, getting in touch with the other involved party after a road crash is easier said than done. Professionals often discourage people to contact the other side; contact information may not be available due to privacy issues; medical information cannot be revealed to strangers.... In addition, offenders might experience deep feelings of shame that inhibit them to contact the other, while victims just expect them to take the first step. Conse-

quently, a direct or indirect mediation can facilitate such contact.

People have nevertheless various good reasons to participate in RJ-processes and often these reasons do not differ much between victims and offenders. A lot of these motivations are similar to those in the context of other types of crime. The most frequent reasons are described below. This division is obviously somewhat artificial. In reality, motivations are often mixed up.

Wanting to know why

Getting information on the circumstances and the causes of the road crash/RTO is one of the most frequent reasons for victims to participate in an RJ-process. Information from the other involved party helps people to complete the puzzle they try to make on the basis of the information from the judicial file and the medical file.

"Our son died as a passenger, but the driver of that car was a stranger to us and our son. We had to know why our son stepped into the car of a stranger. We had so many questions. For us, it was extremely important to get some answers."

Motivations related to the other

Feelings of empathy towards the other party are quite regularly heard after a road crash. These feelings may be present at both sides. Some victims want to tell the offender that they realise it is not easy for him/her either. Offenders, on the other hand, realise that the consequences of the crash are huge for the victim and/or the bereaved family and want to know whether they can contribute somehow to restore as much as possible.

Furthermore, victims might feel the need to confront the offender with his/her driving behaviour and want to hear or see how (s)he deals with the consequences.

Sometimes, parties are known to each other and want to take part in an RJ-process to avoid problems in the future.

"I was not angry. That would be pointless. I was sad because I lost my parents, but I also felt sorry for the driver. He was only 25 years old. He has to carry this burden for the rest of his life. It was important for me to talk to him and to know how he experienced it. It must be horrible to live with the idea that you took the life of two persons."

"Partly, I participated because of the offender. I wanted to confront her with the fact that she was drunk while driving. I hope she will be more conscious about that in the future."

Motivations related to oneself

Victims and offenders may feel strong internal needs to invest in a mutual dialogue. Being able to tell your story, to point out the consequences and the way you deal with the situation, can be meaningful in the healing process of both parties. Getting recognition from the offender is for many victims a crucial element in the recovery process. For the healing process of offenders, being given the opportunity to express apologies and being able to do something for the victim may be very meaningful. This can bring relief and light into the lives of both parties, enabling them to go on and obtain some kind of closure.

"I wanted to put a face on him. I wanted to know what kind of person he is, how he reacts and whether he shows regret or not. That was important for me."

"I felt guilty after the crash. Therefore, I wanted contact with the family of the victim as soon as possible. I needed a personal contact, to apologise, to tell them that it was unintentional, that I was so sorry. That was my greatest concern. The mediation helped me to achieve this."

4. Possible outcomes of restorative justice processes in road traffic offences

Earlier research pointed out that among victims there is a high rate of satisfaction regarding restorative justice programmes. Even when the outcomes are not what victims were hoping for, most of them are satisfied because of being heard, being treated honestly and respectfully by professionals. An RJ-practice can result in a subjective feeling of justice and fairness of the procedure, which can mean a lot for the healing process of victims.

"The way I was treated during the mediation process was very special. The mediator prepared well and summarised all my questions. I could take a family member to the encounter. Afterwards, there was a follow-up meeting with the mediator."

Other empirical research showed that participation of victims in RJ-processes can have important positive psychological effects, like reduction of anxiety or restoration of one's self-esteem.

Victims and offenders report positive and negative outcomes after a mediation process.

POSITIVE

"I did forgive him and I could tell him that in person. Being able to do this, was a healing experience for both of us. It gave me rest and peace in my heart."

"For my own healing process, it was necessary to have an encounter with the offender. I wanted him to know that I was not the only victim, that he, in a way, was a victim as well. That's the way I am, that's what I wanted to tell him in person."

"It was important for me to tell my story and the way I experienced the crash. I helped me to let go."

"For us, it was a very good solution. Through the mediator, we could ask our questions. She went to talk to him and came back with information on how he was and thought about the event. Let's say, that made him more human. If we hadn't done it, we would hold onto all our frustrations. It gave me some kind of rest. I'm still angry because he took my child, but I can also see the human part of him."

NEGATIVE

"I wonder whether it was really sincere, just show or an attempt to reduce sentence?"

"For me personally, I did not benefit from the encounter. I'm glad I've participated, but for me personally, it wasn't so meaningful."

"I had expected more. I wanted to save her. She was crying. That inhibited me to ask more. I thought she would tell more, spontaneously, but that didn't happen."

Whether an RJ-process has a positive or negative outcome, can never be predicted. Therefore RJ-processes should always be voluntary. Victims and offenders should be fully informed about the aims, expectations and procedures of practices like mediation so that they can make a well-informed choice. An important task of mediators or RJ-practitioners is to reduce the possible negative outcomes as much as possible. It is crucial they build trust with both parties and approach the case in an individualised manner. Temporarily the RJ-process can be necessary to increase the chance of a positive outcome. Individual contacts with the parties as well as an encounter between them should be carefully prepared.

Chapter 3: Keys to success

Starting a dialogue between those involved in a RTO is easier said than done. Taking the first step may be difficult for both, for various reasons:

- Victims expect the offender to take the first step; offenders do not dare to take the first step out of respect for the victim.
- Victims, in general, are not requesting help and offenders may feel too ashamed to take the first step.
- The main focus of the victim or his/her family might be on mourning, revalidation, reintegration and reorganisation of daily life.
- Victims, offenders, professionals, victim-volunteers,... are not sufficiently informed about RJ-projects.
- Victims and offenders are often not actively referred to RJ-services.
- Victims and offenders are even discouraged by professionals (like police-officers, insurance companies,...), or by their social environment (friends, relatives,...) to participate in RJ-processes.
- ...

"After the crash, I did not take the initiative to seek contact with the family of the victims. I had no contact details. I asked for it, but it was refused."

"It was the mediator herself who contacted me. After the crash, I received lots of flyers and documents, but – to be honest – I was not capable to read that or even to call for an appointment."

"When I received the information letter about mediation, I hesitated about participation. I was surprised such possibility existed. At that moment, it wasn't my main concern. I was focussing on my recovery process and getting out of the hospital."

Keys to success are: providing information on RJ after a road crash/RTO, together with an active referral policy, creating an encouraging environment for those involved and a firm cooperation of (semi-)professionals on different levels. These topics will be discussed in the following sections.

1. Information and referral policy

Informing people

The Victims Directive was a considerable step forward. It established minimum standards with regard to informing victims about their rights in general and about how to access support specifically. However, since victims of road traffic offences are not always recognised

as victims of a criminal offence and/or sometimes “disappear” from the radar of police-officers (e.g. because of being hospitalised, closure of the police investigation, other priorities, ...), they do not always benefit from the rights granted by this European Directive. In the following, the concrete standards defined by the Directive with regards to information on RJ are discussed.

When?

As already said, victims are not always able to absorb information for a short or long time after being victimised. In addition, the need for RJ can differ in time from person to person. Some persons will have a strong need for communication shortly after the crash, for others some time has to pass, still, others may remain with lots of questions after the trial,... Therefore, it is important that information (general, but also specifically on RJ) is repeated several times in the aftermath of the RTO. Information on RJ can be given shortly after the crash by police-officers, victim support workers and victim-volunteers, health service workers,...

During the judicial investigation and the settlement of the damage, information on RJ could be added to standardised letters people receive from judicial authorities or insurance companies. When the case is referred to RJ-services by prosecutors or judges, the involved parties should receive more personalised and detailed information on RJ.

“I was informed by a letter from the prosecutor’s office. Later, I received a reminder from the mediation service. At first, I did not react because I thought I did not need it. Later, I agreed on participating, because at that moment, it seemed interesting to me.”

How?

There are various ways in which the information, that can be given at every stage, can be communicated: specific flyers can be developed, general information can be added to the copy of the police report or to the correspondence of judicial authorities and insurance companies. Written information can be explained or individualised in a face-to-face contact with both parties.

***Example:** In most jurisdictions in Flanders (Belgium) persons involved in a serious RTO automatically receive an information letter from the prosecutor’s office. The letter informs about the possibility of RJ in their specific case and the safeguards that are taken into account during the process and refers to the mediation services in their neighbourhood for more information.*

What?

Which information is given depends on the countries' legal framework and the concrete methodology of the specific RJ-process. In any case, the relevant safeguards included in the Victims Directive (see chapter 1) should be integrated as well as the possibility to gain legal advice and assistance from lawyers or insurance agents.

Referral policy

In addition to providing information, an active referral of victims and offenders to RJ-practices is important. Due to the fact that in many countries RJ-programmes are offender-initiated, offenders generally find their way to RJ-practices more easily. They are often actively referred by judicial authorities. More problematic is the active referral practice for victims. This is not only the case for RJ. Victims of RTO are also not always referred to other kinds of support services, such as victim support.

An active referral policy for victims assumes extensive cooperation between all stakeholders: police-officers, victim support services, judicial authorities, social health services, insurance agencies,... not only at the level of practice but also at the policy level.

"The police officer brought me into contact with the mediation service. I had a phone conversation with the mediator. When he told me that the father of the victim was requesting mediation, I certainly was willing to participate."

"I was referred to the mediation service after a conversation with the social worker of victim support. She realised I needed some answers to my questions that could only be given by the offender."

2. Encouraging policy

Informing and referring victims and offenders in an active way is one step. Another key to success, however, is encouraging them to participate in RJ-processes. The environment of victims and offenders is not always that supportive. Victims can be discouraged by their personal environment, which is very understandable. These (close) relatives are often harmed by the crash as well and contact with the offender can be felt like a kind of betrayal to the victim. Shortly after the crash, the emotional impact is high whereby the added-value of mediation for the victim is not always understood by his/her community of care.

In order to encourage people, professionals and volunteers should have sufficient knowledge about the principles, methodology and possible outcomes of RJ-processes. It also assumes that victim support professionals and volunteers dare to bring in actively the perspective of the offender in their conversations with victims. Training and coaching of professionals and volunteers can be very useful in this regard.

Example: Victim Support The Netherlands has developed a protocol for professionals and volunteers. Victim support workers are asked to bring in actively the perspective of the offender and the possibility of victim-offender mediation. Victim support workers and volunteers are trained to integrate this theme in a caring and respectful way in their contacts with victims. At the national level, follow-up and monitoring are foreseen.

3. Interdisciplinary cooperation

Interdisciplinary cooperation is the third and probably most fundamental key to success. Providing information and encouraging referrals can only be achieved through cooperation with all stakeholders in this field. In contrast to other types of crime, the societal sectors involved in the aftermath of a RTO are wider and more complex. Usual stakeholders like police-officers, judicial authorities and victim support agencies are relevant actors, next to more specific stakeholders such as medical services, rehabilitation services, insurance agencies. Cooperation should take place in policy matters and in individual cases and this at various levels (national, regional, local).

Next to guiding victims through the complex field, intensive interdisciplinary cooperation can also help (semi-)professionals to share and enhance their knowledge about victims and offenders of RTO and their expertise and skills in working with these clients.

Only with well-functioning interdisciplinary cooperation victims and offenders will have sufficient access to RJ-practices and will feel fully supported by the professionals and volunteers they meet on their way.

Example: In Mechelen (Belgium) practitioners of diverse organisations (police, social welfare, hospitals, health insurance funds, restorative justice...) meet at a regular basis to share knowledge and good practices in the field of road crashes. They got to know each other better, which enhanced the cooperation between them.

Chapter 4: Tips and tricks for professionals and victim-volunteers³

Talking about the possibility of restorative justice is not always easy. Victim support workers and victim-volunteers are used to fully support the victim and, as a result, talking about the offender might feel uncomfortable. However, it is the right of victims to be informed about the possibility of RJ in their case. This fourth chapter contains tips and tricks that might help victim support workers and victim associations to inform and to discuss RJ with victims in a non-offensive and respectful way.

- Be aware that the need to have contact with the other party can be a legitimate need for victims. Informing them in an adequate and respectful way about the possibility of RJ is not victimising.
- Be well informed about the RJ-practices in your country. Gain information on methodology, purpose, aim, legal framework, safeguards,...
- Build working relationships with RJ-professionals and other relevant stakeholders to enhance interdisciplinary cooperation and optimize referral policies.

Example: Victim Support The Netherlands developed some fact-sheets about RJ and victim-offender mediation. These fact sheets provide short and clear information on the legal framework, methodology, possible outcomes,...

- Be aware of some signals that the victim gives which might open the possibility to talk about RJ.

Possible signals

- The victim asks questions that can (only) be answered by the offender.
 - The victim wonders what kind of person the offender is.
 - The victim is angry or anxious about the offender.
 - The victim seeks recognition.
 - The victim wants to confront the offender with the consequences of the offence.
-
- If the victim does not give any of the above-mentioned signals, do not wait. Choose your own moment to discuss the possibility of RJ with the victim.
 - Think about a good way to introduce the theme. Focus on the needs of victims. Discuss this with colleagues or other volunteers. Get inspired by some good questions.

³ We are very grateful to Victim Support The Netherlands (www.slachtofferhulp.nl) whose factsheets and training materials were very useful for the elaboration of this chapter.

Inspirational questions

- What makes you sad, angry or anxious? Who or what could help you to feel less sad, angry or anxious?
- How do you think/feel about the other party?
- If the offender would like to apologise, would you be open for this?
- Imagine the offender feels sorry for what happened. Would you like to know this?
- Is there a possibility that the offender can make it up with you? What is needed for this?
- Can, what is done to you, be restored in some way? How?
- Do you have questions that can be answered by the offender? And would you like to have answers to these questions?
- Would you like to inform the offender about the consequences of the offence for you?
- If the offender is sentenced, is the case then finished for you?
- What is needed for you to pick up your life again? Can contact with the offender mean something here?

- Remind the victim regularly of the possibility of RJ in his/her case. Victims might need some time to think it over, to get used to the idea, to handle other things first,... Their point of view may change over time.
- Be aware of the fact that some victims might react with resistance. This is a normal and understandable reaction. Don't get discouraged. Try to find out which needs are beyond this resistance.
- Avoid closed questions like: Do you want to meet with the offender? Do you want to participate in mediation?
- Do not decide for the victim. Victims do generally not have a help-seeking attitude but that does not mean they cannot decide for themselves. Emphasise their free choice, the professionalism of mediators and the possibility of support persons. Do not fill in the victim's needs yourself.
- Emphasise the potential beneficial outcomes for the victim. Focus on possible common points instead of on differences. Focus on what might strengthen the parties.
- Involve RJ-professionals for a better explanation or exploration of the case.
- Use information that is adapted specifically to the context of road traffic offences since it is different from other offences.

RJ-practices in The Netherlands, Belgium and Ireland use adapted flyers to inform people after a road traffic offence. This allows using a different terminology (author vs. offender) or methodology.

Chapter 5: Victims and offenders speaking

Each person is unique, each case is different and each story is particular. Therefore, it is the RJ-practitioner's duty to connect the stories of those involved in such a manner that their needs toward each other are addressed in a respectful and dignified way. The described cases below only give a glimpse of what an RJ-experience could be. Some of these testimonies can be viewed in the format of digital stories. Those digital stories can be found on several websites:

- European Forum for Restorative Justice: www.euforumrj.org
- European Federation of Road Traffic Victims: www.fevr.org
- Moderator – Forum for Restorative Justice and Mediation: www.moderator.be
- The YouTube channel of Moderator: <https://youtu.be/MaAUQblRa1Q>

Story 1: Marc lost his father in a road crash and meets with the driver of the car.

"On a sunny Sunday afternoon, my father was cycling through the open polders. He was on a priority road. Suddenly a car crossed the road and hit my father in the back. He was hurled away and fell on his head. The driver, a doctor, started the reanimation on the spot, but the brain damage was too big. My father passed away in the hospital.

Shortly after the crash, my sister had a telephone conversation with the driver. The contact was established through the police. Later on, the victim support worker asked us whether we felt the need to get in contact with the driver. We agreed and so we were brought into contact with the mediation-organisation.

I had one main question about the way the crash happened and whether my father had yelled something or did something. We were very curious about that.

The mediator came to our house to check our expectations. She also provided some information from the conversation she previously had with the driver. She told us that he couldn't remember much from the crash. Nevertheless, we decided to meet with the driver, to give it a chance. But, we were prepared not to expect too much.

The meeting with the driver was burdened. I asked about the way the crash had happened and he said he could not remember much of it, and that he could not have foreseen it. He apologized and said he felt sorry. The fact that he apologized was important to me. I knew it was not on purpose. As a human being, I thought it was important he could express this. I was able to listen to this, without feeling compassion. That would have been asking for too much.

He told me that he was treated by the police as a suspect, while he was not drunk, at best somewhat tired. He wanted to turn the page and go on with his life. That was, for me, a bit uncomfortable. Obviously, he had not caused this on purpose, but he also presented himself as a victim. That was something I did not expect. On the other hand, I have to recognize that he did everything to save my father's life. That was not easy for him either.

I was nervous and stressed to go to the meeting with the driver. Luckily my wife was present to support me. The mediator arranged that we could come earlier so that we did not have to meet with the offender already at the front door. She also organized a follow-up meeting for us. It was done in a right and careful way.

The mediation brought me some rest. It helped me to stay away from all kinds of negative thoughts and biases about the driver. I got a different, adjusted image of him. That would not have been possible without mediation. I would have kept wondering what kind of person he was or I would remain with a feeling of suspicion."

Story 2: Annick lost her parents in a road crash caused by Martijn, a truck driver.

Annick

"On 8 December 2015, both my parents were involved in a serious traffic crash. They were hit by a truck that had neglected a red light. My father passed away on the spot. My mother fought a few weeks for her life, but then also passed away.

I am the daughter of my parents. They taught me the important things in life; values I try to transmit to my children. Our bond was strong, we lived together in the same house, we were a family.

After the crash, the police took care of my family and me in a very good way. They brought us into contact with victim support. Those people helped me so much. They brought me into contact with the mediation service.

I could not leave room for anger in my heart. That did not make sense. I had lost my father. At that moment, my mother still needed me. I was not angry with the driver either. I realized that he didn't want this. I also knew that my parents would not have blamed him.

I wanted to know who the driver was. He was there when it happened. I also wanted to know what the last moment of my parents' life was like. He shared his story with me, even though it was a man of few words. He really did his best for that.

I really needed to see him. I wanted to know how he had experienced it. What was most important to me, was to forgive him, because I knew it must be horrible to live with such an experience. He is still so young. It was also important to me to tell him who my parents were. I was able to show a photo. He accepted to listen and look at the picture. Therefore, I am eternally grateful to him.

In one way or another, we are connected to each other. He has - unintentionally - caused the death of my parents. That is the reality. My life is now divided into a life before and after the crash. That is so tough that I had to see him. Otherwise, I would have wondered for the rest of my life what kind of person he is.

I got to know him now. I saw him suffering too. He regrets and that has brought me peace and rest."

Martijn

"Shortly after the crash, I fell into a black hole. I am still there today. The crash has completely messed up my life.

It happened around 4 o'clock in the afternoon. I was in a kind of state of shock. The deceased man has been there for two hours in front of my eyes. Nobody did an effort to get me out of there. I was treated as the biggest gangster, even though I did not cause this on purpose.

After the crash, I wanted to contact the family, but I had no contact details. I informed about that, but I did not get them. I wanted to let them know something. My employer had sent a mourning card and a letter. He also went to the funeral. I wanted to go there myself, but it had passed before I had knowledge about it.

At a certain moment, I received a letter with information about mediation. I did not expect the daughter of the victims would want to mediate with me. I expected her to be angry or hateful. I did not hesitate when the question came up to meet and speak together. That was the least I could do. I took away the life of her parents.

I was afraid that she would start screaming or blaming me. Then I would have stopped the conversation. The mediator told me that I had the right to do so. It was however not necessary. I could hear her side of the story, who her parents were. She also had a folder with photos and texts from the funeral. That was not easy for me to see and hear.

The conversation itself was thoroughly prepared. I could indicate what I wanted to discuss and what not. I was also allowed to write a letter, but I did not do that. That's not my kind of thing. I mainly wanted to say how much regret I felt. That cannot be said enough.

Afterwards, I collapsed again. Yet, I do not regret that I participated in this mediation. It has given me peace and rest. It has allowed me to conclude one chapter of that 10-volume book."

Story 3: Mary lost her son in a car crash. He was a passenger in the car of Boris.

Mary

"In 2014, my son died in a serious road crash. Together with his friend, he stepped in the car of another boy. His friend was heavily injured. My 18 years old son died on the spot. The driver was under the influence of alcohol and drove too fast.

We did not know the driver. We had so many questions. For us, it was very important to get answers. Those unanswered questions were a torment. I wanted to complete the puzzle, but I did not have the pieces. Nobody helped me to find them and I did not have the strength to do it myself.

I was not able to make contact on my own. At one moment, I was called by the mediator.

She asked me whether I was willing to have contact with the offender? We were happy and relieved that someone finally called us, that we at least could get some answers.

I did have the fear that he would expect us to forgive him. He wanted to show who he was as a person and not just as an offender. Really, that was not what we needed. So we decided to participate in an indirect mediation. The mediator wrote down our questions and passed them to him. He wanted to meet us, but we did not. I was especially afraid of our reaction towards him. We did not want to scream or get angry. I prefer not to know who he is. We are not hateful, but he did take our child.

Through the mediator, we received answers to our questions. The mediator was a neutral person. She was very respectful to us about him and vice-versa. She not only transmitted his answers but also tried to explain what his point of view was, how he had experienced it. She made him more human.

Later we also communicated through letters, in which he apologized and wrote how he looked back on it: like "It keeps me up at night" and "I feel guilty about it". These are things that you, as a parent, want to hear. That his life is not always puppies and sunshine.

When I later heard that he drank a lot and drove without a license, I wrote him an angry letter. I had to get rid of that. Otherwise, I would have remained frustrated. He accepted that. He wrote back that he fled from his responsibilities and offered his apologies again.

Many pieces could finally be included into our puzzle. Through the criminal file, through the information from the emergency doctor, but also through the offender. It was painful to hear, but it also gave us some rest.

Many people ask me: don't you hate him? No, I don't. I still see that human part of him. I'm angry, he took my child. But he also gave me the answers I needed. And knowing that he has remorse, was also important."

Boris

"I wanted to contact the families of the victims as soon as possible after the crash. I felt guilty. I wanted to show them that it was not on purpose. That I was sorry. I could do that through the mediation.

I also was in shock after the crash. It seemed like I was in another world. Everything was mixed up. That was very strange.

I had meetings with the mediator. I could tell my story. The mediator also helped me to deal with the emotions. These were very positive conversations.

I preferred to meet them directly. It was too early for them. Yet I was satisfied that they wanted to listen to my side of the story. That helped me to give it some kind of place; however, it is something that will always remain with me.

We had contact with each other through letters. The mediator went back and forth with these letters. In the letters, I read that there was a lot of anger, but also that there were many questions. Through the mediation, I learned to deal with my feelings, with the situation, with what I had caused in the lives of the others, the victims.

I understand that they did not want to speak to me directly. That it was too early and too difficult for them. I can imagine that. For me, it is so difficult. For them, it must be even more difficult. They have lost someone.”

Chapter 6: Some good practices in Europe

In this final chapter, we will focus on good restorative practices in RTO with a direct victim, and mainly in severe road crashes. Examples of good practice are found in Belgium, The Netherlands and Hungary.

However, many RTO's occur without any direct victim involved. In offences such as drunk driving, excessive speed, driving without insurance or licence, there is not always a victim. Even in those offences, RJ is possible and useful. Offering RJ to those offenders can prevent future offending and victimhood. Therefore, also an Irish example will shortly be discussed.

Not in every EU-country, restorative justice in road traffic offences is possible. Free access for victims and offenders is not always guaranteed. For more information on the situation in your country, you can contact the European Forum for Restorative Justice (www.euforumrj.org) or the victim support service in your country (www.victimsupport.eu).

Belgium and the Netherlands have large experience and practice in victim-offender mediation in RTO (mainly severe road crashes), complementary to the criminal justice system. VOM is carried out by NGO's and is available nationwide. Victims and offenders have direct access to these RJ-practices. No referral is needed. In many jurisdictions in Belgium, victims and offenders are informed by a personalized letter of the prosecutor's office. In the Netherlands, Victim Support has a strong partnership with the RJ-service, which results in a good referring practice.

Belgium:

"Moderator" and "Mediante" are recognized by the government to carry out victim-offender mediation with adult offenders. Mediation is possible in all types of offences and in every phase of the criminal procedure. Further information: www.moderator.be (Dutch-speaking) and www.mediante.be (French-speaking)

The Netherlands:

"Perspectief Herstelbemiddeling" is an organisation that carries out victim-offender mediation in the Netherlands. Mediation is also possible in all types of offences and in every phase of the criminal procedure. "Perspectief Herstelbemiddeling" works with adult and minor offenders. Further information: www.perspectiefherstelbemiddeling.nl

In **Hungary**, victim-offender mediation is embedded in the criminal justice system. Around 35% of all cases with adult offenders are RTO, mainly road crashes with bodily injury. Victims can request mediation via their lawyer, but the prosecutor or judge has to authorize the referral. Post-sentence mediation is not possible. Further information:

<http://www.kormany.hu/hu/igazsagugyi-miniszterium>
<http://igazsagugyiinformaciok.kormany.hu/partfogo-felugyeloi-szolgalat>
<http://www.kormany.hu/en/ministry-of-justice>

In **Ireland**, a local NGO, “Restorative Justice Services (RJS)” is running an innovative project since 2016. The Road Safety Panels are a mainly offender-orientated program, based on a panel methodology. Currently, most of the cases are without a direct victim, referred by the courts. The panel-methodology focuses on a future positive attitude in traffic situations. The voice of the harmed community is expressed by volunteer community members. RJS is a small NGO, working in the Dublin area. Further information: www.rjs.ie

LITERATURE

Biffi, E. (2016). *Practice Guide for RJ Services. The Victims' Directive: Challenges and opportunities for restorative justice*. Leuven: European Forum for Restorative Justice. Retrieved from <http://www.euforumrj.org/wp-content/uploads/2017/03/Practice-guide-with-cover-page-for-website.pdf>

Booms, M. (2018). *Report on good practices of inter-sectoral cooperation*. KU Leuven. Berchem: Rondpunt vzw.

Booms, M. (2018). *Victims of road traffic offences: A summary of existing knowledge*. KU Leuven. Berchem: Rondpunt vzw.

Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, s. a. (2012). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN>

Howard Zehr, A. G. (2003). *The little book of Restorative Justice*. Pennsylvania: Good Books. Retrieved from <https://www.unicef.org/tdad/littlebookrjpakaf.pdf>

Marit, I. (2018). *Restorative Practices for road traffic offences in Europe*. Moderator - Forum for Restorative Justice and Mediation. Berchem: Rondpunt vzw.

Marshall, T. F. (1999). *Restorative Justice An overview*. London: the Home Office Research Development and Statistics Directorate. Retrieved from http://www.antoniocasella.eu/restorative/Marshall_1999-b.pdf

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Associate partners

**Victim Support Europe
European Federation of Road Traffic Victims
European Forum for Restorative Justice**

Information on the project: www.rondpunt.be

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