Myths and Misunderstandings about Family Group Conferences

Judge Andrew Becroft
Principal Youth Court Judge / Te Kaiwhakawa Matua o Te Kooti Taiohi

Myth 1
"Every young person who commits an offence "gets" a Family Group Conference (FGC)"

Reality

This is far from the case. In most situations, the Police will not even consider charging young persons and bringing them to court; therefore an FGC will not be held (unless there are other reasons to do so eg care and protection). Around 70% of cases will be resolved without an FGC occurring; 26% will result in warnings from the Police; and, 43% will result in the Police using what is called "alternative action" - which is a formal, community based diversion process. It can include such components as informal community work, counselling, agreements to pay reparation, apology letters, maintenance of school attendance, or completion of an assignment about the effects of offending etc.

Myth 2
"FGCs are always ordered by the court"

Reality

Around 30% of FGCs are "intention to charge FGCs" (meaning, conferences where the police have not arrested the child or young person but are considering laying a charge). These FGCs are not (and cannot be) ordered by the Court as in fact no charges, by definition, have been laid. These FGCs may result in a decision that the young person does not go to Court. Note: FGCs can also be ordered when Police believe a child offender (aged 10-13) needs care and protection because there is serious concern for his or her wellbeing due to the number, nature and magnitude of a child's offending.

Myth 3
"All the young person got was an FGC"/ "The FGC is the only sentence he/she got"

Reality

The FGC is not the sentence at all. It is primarily a decision making forum, convened to formulate a response to a young person's offending which will hold the young person accountable, address the victim's views and needs, and prevent future offending. The FGC will create a "plan" for the young person. This plan will include detailed agreements as to what action should be taken. This could include participation in programmes, paying reparation, community work, interventions to address addictions or parenting issues, a placement under Child, Youth and Family's formal supervision, or a placement in a youth justice residence. The plan can be as creative as the conference wishes it to be. There is no limit to the imagination of FGC participants. The plan is then presented to the Youth Court for approval or modification. The young person is given an agreed time and encouragement to complete the plan. If the young person does complete the plan, he or she may receive a discharge as if the charge were never laid (under s 282 of the Children, Young Persons and their Families Act 1989). This means that the young person can enter adult life with a clean slate, a "second chance". If the plan is not complied with, the Court will step in and impose an appropriate order.

Myth 4
"The FGC is a soft option, a weak response, a slap on the hand with a wet bus ticket"

Reality

FGCs can result in a decision to take any form of action that is appropriate for the young person and the offending that he or she has committed. There is no time limit on how long plans can last, and they can require the young person's involvement in a huge variety of different activities and programmes. The FGC can agree to some very serious interventions - this could include time in a youth justice residence or a community based intervention. It is not unknown for an FGC to even decide on a prison sentence. Furthermore, if the FGC decides on a sentence that the Judge believes will not sufficiently hold the young person to account, or provide any punishment, the Youth Court maintains the right to modify the plan. Finally, the idea behind FGCs is that it holds a young person accountable in an even more powerful way than a normal court sentence may. FGCs have a blank cheque to formulate a comprehensive response to a young person's offending, and a variety of people have the opportunity to formulate this response. This means that the young person is accountable not only to a Judge but, to their family and community who attended the FGC, and had a say in the plan.

Most importantly, the FGC provides the opportunity for a face to face encounter with a victim, which can be very emotional and raw. This is the restorative power of the FGC. And finally, the young person him or herself has had a say in the FGC plan. This can be extremely powerful: it means that he or she is accountable to his or her own word.

Myth 5
"FGCS are entitled to make orders"

Reality

An FGC is not an order, but can recommend that a court order be made. If the charge is admitted, the FGC can create a plan that will often be as comprehensive as a Youth Court order. But the important thing is, the young person is given the opportunity to complete it voluntarily. About 80% of offending in the Youth Court is resolved by (eventual) completion of a FGC plan rather than a formal Court order.

Myth 6
"FGCs are only for minor cases"

Reality

The reality is that the only most serious 20% (approximately) of offences will come to the Youth Court in the first place. All other offending is managed by either Police Youth Aid (approximately 70% is dealt with through warnings or alternative action), or Child Youth and Family (who, with the Police, convene intention to charge FGCs). Whenever a young person comes to Court and does not deny the charge, a FGC **must** be ordered. This means that FGCs are often held for very serious cases such as aggravated robbery, arson, sexual violation, and very serious assaults including assault with intent to cause grievous bodily harm. Murder and manslaughter are the only types of offending for which there will not be a FGC. Minor or moderate offending is usually dealt with by the Police without coming to Court – so, in practice, FGCs are reserved for medium to serious offences and serious youth offenders.

Myth 7
"FGCs are all about the family of the offender"

Reality

FGCs are partly about including the family in the response to stop the young person re-offending. However, the primary encounter is between the young person and the victim. The victim is not only an entitled, but an extremely valuable, participant at the FGC. The victim is also entitled to bring people to provide support. However, these support people are not entitled to contribute to the creation of the Plan.

Myth 8
"The FGC is an indigenous, Māori response to offending"

Reality

A groundbreaking element of the New Zealand Youth Justice system is its partial amalgamation of traditional Māori and European approaches to criminal justice in the form of the FGC. In Māori custom and law, tikanga o ngā hara (the law of wrongdoing) is based on notions of collective rather than individual responsibility. Understanding why an individual has offended, and addressing the causes collectively, is seen as a benefit to society as a whole.

The whānau (family) meeting model, used by extended families in some areas to resolve disputes, was seen as a prototype for a new method of resolving disputes within families in a way that was culturally appropriate for Māori and also an empowering process for all New Zealand families. The adoption of this model accords with a shift in modern Western legal systems towards alternative methods of dispute resolution, such as mediation.
Two specific factors promote participation by a young Māori offender in the FGC process:

- the inclusion of whānau, hapū and iwi in repairing the harm; and
- the opportunity to have the conference in chosen familiar surroundings, including on marae (traditional meeting area).

However, it is important to recognise that the Family Group Conference is **not** (as is sometimes unrealistically touted) the wholesale adoption of an indigenous method of dispute resolution and a rejection of the Western legal system. The model certainly originated, in part, from the perceived failure of the previous paternalistic/welfare-based system to include Māori worldviews. However, it is better understood as a modern mechanism of justice that is culturally appropriate. It contains some elements of traditional Māori systems of whānau decision-making, but also elements that are foreign to it (such as the presence of representatives of the State). It also modifies elements of traditional systems, such as the roles played by family and victims. This is an important feature of the system because Māori children and young people comprise around half of all youth apprehended by Police, and over half of those prosecuted in Court.

Myth 9
"FGCs don't work"

Reality

It is important to bear in mind that FGCs are restricted to the most serious 30% (approximately) of youth offending. Results from a comprehensive study of FGCs (including interviews with over 500 young people who had been through the FGC process) found that 33% had not reoffended after two years, a further 22% had reoffended but to a minor degree, and 45% had reoffended in a medium or seriously persistent way. See *"Achieving Effective Outcomes in Youth Justice" (2003)*

Myth 10
"The FGC is a statutory restorative justice model"

Reality

It is clear that FGCs certainly have the potential to be restorative processes, given that the young offender, his or her family and the victim with supporters are entitled participants.

In practice, the New Zealand system does provide the potential for restorative practice by including the victim in the decision-making process and encouraging the mediation of concerns between the victim, the offender and their families to achieve reconciliation, restitution and rehabilitation. The FGC has been practised as a restorative justice model, though this was not necessary to conform to the provisions of the Act. Restorative justice is not mentioned in the CYPF Act. Nor is there any express or indirect provision in the legislation for FGCs to be conducted in a restorative manner. Yet a restorative justice approach is entirely consistent with its objects and principles. In fact, "restorative justice" thinking and practice had barely emerged at the time the CYPF Act 1989 was being developed. So, the system follows restorative justice techniques although the black letter law did not (and still does not) explicitly envisage this outcome.

Regrettably not all victims – key players in any restorative process – attend FGCs. They are strongly encouraged to do so but, of course, cannot be compelled to attend. Recent advice from Child, Youth and Family (the government agency responsible for youth justice and providing FGC Coordinators) suggests that 22% of victims attend FGCs in person, and 39% make written submissions. When victims do attend FGCs, research suggests that in general, they are satisfied with the outcome. In a survey of 100 victims who attended FGCs in New Zealand, 90% reported having being treated with respect, 88% reported understanding what was going on, 83% reported having had a chance to explain the effect of the offending on them, 86% reported having had the opportunity to say what they wanted, and 71% maintained that their needs were met. See *"Achieving Effective Outcomes in Youth Justice" (2003)*