



Northern  
Ireland  
Office

## Consultation on draft guidelines for community-based restorative justice schemes

Comments are invited and should be made to  
the following address by 24 February 2006:

Criminal Justice Policy Branch  
Room G33  
Massey House  
Stoney Road  
BELFAST  
BT4 3SX

December 2005

## FOREWORD

1. The Government has recognised that community-based restorative justice (CBRJ) schemes, as recommended by the Review of the Criminal Justice System in Northern Ireland (Recommendation 168), can have a role to play in dealing with the types of low-level crime that most commonly concern local communities. However, that role must be subject to the safeguards set out in the Review, which include upholding the human rights of all participants; receiving referrals from the criminal justice system; being open to inspection by the independent CJINI; and adhering to high standards.

2. It is for the Police Service of Northern Ireland to investigate crime and for the Public Prosecution Service to decide how offences should be dealt with. CBRJ schemes must therefore have an acceptable and appropriate relationship with the criminal justice system including the police, as envisaged in the Review. The criminal justice agencies and the NIO have accordingly produced the attached draft guidelines, which are designed to establish a framework which operationalises the Review safeguards. These have been discussed at earlier stages with the CBRJ schemes. The Government is now circulating the draft guidelines to the Policing Board, the political parties and other key stakeholders as part of a wider consultation process. Decisions on the way forward will only be taken once this stage of the process has been completed and all comments received have been fully considered. Views will be welcomed on any aspect of the draft guidelines; but some particular questions are listed below to help respondents focus on some of the key issues:

- i. Do the draft guidelines provide adequate safeguards for the human rights of those with whom schemes deal?
- ii. Is the referral process between the criminal justice system and schemes adequately addressed?
- iii. In relation to individuals occupying posts in schemes:
  - (a) What impact should criminal convictions have on the suitability of individuals to work in schemes?
  - (b) Assuming as a general rule that no one with a conviction for an offence against a child or vulnerable adult should work in schemes, should other types of offence be regarded as automatically disqualifying? If so, which?
  - (c) What weight should be given to the date of the offence? Would it be appropriate to discount serious offences which were committed many years ago? And if this were appropriate, how long ago should offences have been committed for them to be discounted?

- iv. Do the provisions on complaints adequately safeguard the rights of those using the schemes' services?
  - v. Do the draft guidelines help or not help to achieve a broad equality of standards between individuals in areas covered by schemes and in other areas?
5. All views and comments should be forwarded by **24 February 2006** to Criminal Justice Policy Branch, Northern Ireland Office, G33, Massey House, Stoney Road, Belfast, BT4 3SX (or by e-mail to: [cjpb@nio.x.gsi.gov.uk](mailto:cjpb@nio.x.gsi.gov.uk)). The draft guidelines may be made available, on request, for persons with particular needs from that location. An electronic version of this document is available on the NIO website ([www.nio.gov.uk](http://www.nio.gov.uk)). Printed copies of this consultation document may be obtained by ringing 02890 527525.

**5 December 2005**

## DRAFT FOR CONSULTATION

### COMMUNITY-BASED RESTORATIVE JUSTICE SCHEMES: GUIDELINES

#### Introduction

This paper recognises the finding of the Review of Criminal Justice that community-based restorative justice schemes (“schemes”) can have a role to play in dealing with the types of low-level crime that most commonly concern local communities. It seeks to establish a framework for relations between the criminal justice system and the community-based schemes by setting in place guidelines for the operation of the schemes in line with the Review’s recommendations. We acknowledge the importance of giving those representing schemes the opportunity to engage in discussion on the guidelines.

2. These guidelines apply only to those cases where schemes seek to deal with low-level criminal offences and offenders. It would not be appropriate to refer more serious offences, including sexual offences or cases of domestic violence, to schemes. In addition, the guidelines do not relate to non-criminal matters, or to anti-social behaviour which does not reach the criminal level. The guidelines will be subject to review in the light of operational experience and to reflect developing circumstances and relationships.

3. The Review described restorative justice as:

*“a more inclusive approach to dealing with the effects of the crime, which concentrates on restoring and repairing the relationship between the offender, the victim, and the community at large, and which typically includes reparative elements towards the victim and/or the community.”<sup>1</sup>*

This should be a common vision for all involved in restorative justice, including community-based schemes.

4. In addition, the Review notes that

*“A core value and objective of the criminal justice system is that it should have the confidence of the community it serves.”<sup>2</sup>*

The Review also points to the strong divisions of opinion which exist in the community in relation to schemes<sup>3</sup>. These clearly have the capacity to damage confidence in the criminal justice system. Against this background, it should be

---

<sup>1</sup> Review of the Criminal Justice System in Northern Ireland, paragraph 9.5

<sup>2</sup> Review of the Criminal Justice System in Northern Ireland, paragraph 3.31

<sup>3</sup> Review of the Criminal Justice System in Northern Ireland, paragraph 9.20

a common aim and responsibility of all those involved in operating the guidelines, including the schemes, to promote confidence in the criminal justice system.

## **Principles and Roles**

5. Schemes will operate in full accordance with the Human Rights Act 1998 and all current equality legislation. It is important that crime is reported to the police. Schemes should note the provisions of Section 5 of the Criminal Law Act (Northern Ireland) 1967 in respect of those crimes deemed to be arrestable offences.

6. Subject to the other provisions of these guidelines, schemes will adhere to the relevant sections of the UN 'Basic Principles on the use of Restorative Justice Programmes in Criminal Matters', in particular the following:

- restorative processes should be used only with the free and voluntary consent of the parties (which may be withdrawn at any time);
- agreements should be arrived at voluntarily and should be reasonable and proportionate;
- disparities leading to power imbalances, and the safety of the parties, should be taken into consideration in referring a case to, and during, a restorative process;
- parties should have the right to legal advice about the process;
- before agreeing to participate, parties should be fully informed of their rights, the nature of the process, and the possible consequences of their decision;
- neither victim nor offender should be coerced, or induced by unfair means, to participate in the process or to accept the outcome.

7. The general duty of police officers, as defined by section 32(1) of the Police Act 2000, is

- a) to protect life and property;
- b) to preserve order;
- c) to prevent the commission of offences;

- d) where an offence has been committed, to take measures to bring the offender to justice.

The Police Service of Northern Ireland (PSNI) has responsibility for the investigation of crime, and carries out its functions with the aim of securing the support of, and acting in cooperation with, the local community. As noted above, community-based schemes share the responsibility of helping to promote confidence in the criminal justice system, including the police.

8. The Public Prosecution Service (PPS) has responsibility, following an investigation, for deciding how an offence will be dealt with in accordance with the test for prosecution, including whether it should be referred to a scheme.

9. The Probation Board for Northern Ireland (PBNI) and the Youth Justice Agency (YJA) may assist in the communication of information to PSNI, who will forward such information to the PPS. The PPS will inform PSNI of all decisions reached.

## **Guidelines**

*Community restorative justice schemes can have a role to play in dealing with the types of low-level crime that most commonly concern local communities.*

*[Community schemes should:]*

*receive referrals from a statutory criminal justice agency, rather than from within the community, with the police being informed of all such referrals.<sup>4</sup>*

10. When a community-based scheme becomes aware of an offence or an offender, it will communicate promptly either to a dedicated police officer, or to an identified representative of the PBNI or YJA, the details it has about the offence, the offender and the victim, including such categories of information as the agencies may indicate they require. It should indicate in broad terms how it would plan to deal with the offence and offender if these were referred to it. (This should be a forecast based on previous practice: it is accepted that details would not be firmed up at this stage.) On receipt of information from a community-based scheme regarding an offence or an offender the representative of the PBNI or YJA will communicate that information immediately to the police.

11. As an alternative to the arrangements set out in paragraph 10, an advisory panel may be formed including representatives of the PSNI, PBNI, YJA and the scheme. The scheme will bring the information it has to this panel and there will

---

<sup>4</sup> Review of the Criminal Justice System in Northern Ireland, paragraph 9.98(i)

be a preliminary and without prejudice discussion of the suitability of the case(s) for disposal by community-based restorative justice.

12. The PSNI will consider the information received (including any provided through a panel discussion) and determine whether it is necessary to undertake investigations to verify and add to the information. Depending on the nature of the offence, offenders will be fingerprinted and DNA taken<sup>5</sup>. On receiving a report from the police, the PPS will consider the evidence and information provided and inform police promptly of the decision reached. The police will inform the scheme or the PBNI or YJA of that decision. Where the PPS judges it appropriate to refer a case to the scheme, the latter may proceed to handle the case. Where the PPS does not decide to refer the case, the scheme will take no further action with regard to the disposal of the case, although it may offer support to the victim or the offender where its relationships with them are already established. However, this should not extend to involving them in restorative processes. The police and PPS will seek to fast-track the consideration of cases forwarded by schemes.

13. In determining whether it is in the public interest to refer an offender to a scheme, the PPS will take into consideration the evidence and information reported including the following:

- is there an admission of guilt, confirmed by a police investigation
- previous offending history of the offender
- the gravity of the offence
- the views of the victim
- such other information as is considered relevant.

14. When a community scheme has a case referred to it following a decision by the PPS, it may proceed to engage with the person involved in strict accordance with these guidelines. The PPS will decide whether referrals to schemes should include an informed warning or a restorative caution, and in such cases such a warning or caution may be given by a police officer or an

---

<sup>5</sup> The police take fingerprints and DNA from all offenders in custody at a police station. This helps to identify the offender, aids in detecting future crime, prevents further offences and therefore protects the public. In addition to these reasons, the recording of DNA and fingerprints as part of a community restorative justice process is necessary to ensure the offender has not carried out a more serious crime(s), which would make that offender's participation in the process inappropriate. It also ensures equality of treatment for those offenders in areas where community-based schemes do not exist. An offence will only be suitable to be dealt with by a community-based scheme if the offender consents to providing fingerprint and DNA samples. Arrangements could be made to take such fingerprints and DNA samples at a location other than a police station.

identified representative of the PBNI or YJA. This will form part of the plan for dealing with the offender. Following delivery of an informed warning or restorative caution, the police officer or criminal justice agency representative will ensure that appropriate details are recorded for insertion in the criminal record of the offender.

15. In the course of any processes undertaken by a scheme when dealing with an offender, any disclosure of specific instances of offending, other than that which was the subject of the original referral, must be dealt with in accordance with these guidelines, and the offender informed accordingly (as is the case for any criminal justice agency). If this arises, the scheme should suspend dealing with the offender until further decisions are reached by the PPS.

16. Appropriate protocols will need to be agreed to assist in the implementation of the above referral arrangements.

*[Community schemes should:]*

*be accredited by, and subject to standards laid down by the Government in respect of how they deal with criminal activity, covering such issues as training of staff, human rights protections, other due process and proportionality issues, and complaints mechanisms for both victims and offenders.<sup>6</sup>*

17. Each community-based scheme will confirm to the Criminal Justice Inspectorate (CJINI) in writing its willingness to adhere to these guidelines. If the Inspectorate is satisfied, having inspected the scheme, that the standards and requirements set out in these guidelines are being met, it will so inform the Northern Ireland Office (NIO), which will maintain a list of accredited schemes. A scheme may be removed from the list if it is no longer meeting these standards and requirements.

18. Schemes will need to operate to high standards in order to comply with human rights requirements and help promote confidence in the criminal justice system, and they must assess the suitability of their staff in the light of this. It would clearly be unacceptable for anyone involved in paramilitary activity or criminality to work in schemes. An important method of determining if an individual is unsuitable will be through use of the Protection of Children and Vulnerable Adults (POCVA) machinery which became operational in 2005, and schemes must become accredited to POCVA for this purpose. This is required practice for all organisations which work with children and/or vulnerable adults. The POCVA check will indicate the existence of a criminal record or other information which might show an individual to be unsuitable for the post. The Criminal Justice Inspectorate will inspect how schemes deal with this issue. It will consult with the PSNI, other statutory agencies and the community about the

---

<sup>6</sup> Review of the Criminal Justice System in Northern Ireland, paragraph 9.98(ii)

operation of schemes and the suitability of individuals occupying posts in them, and generally, and any statutory agency may provide information to the Inspectorate in relation to these matters.

19. Community schemes will arrange for their staff to receive training, on induction, on human rights and equality legislation; on their obligations under the criminal law; and on the workings of the criminal justice system, including issues of due process and proportionality. Training will be updated regularly, and will cover any relevant changes to the law. Training will be provided by accredited trainers, and by use of accredited training materials.

20. In addition schemes will provide training in communication, conflict mediation and victims' issues. All training, trainers and training materials will be subject to inspection by CJINI.

21. Schemes will ensure that offenders are aware of all the information on them and their offence which has been brought to the attention of the scheme and of all allegations made against them. In addition, a written description of the scheme, its range of interventions, and the guidelines within which it operates will be given to each offender and every victim who comes into contact with the scheme.

22. Schemes will provide for both offender and victim to be supported during the process by one or more appropriate people (in the case of young offenders this might be the parents/guardians of the young person).

23. Schemes will establish a qualified independent point of contact for advice on human rights issues and legislation. This advisor will be named when the schemes sign their undertaking to abide by the guidelines.

24. Schemes will establish a system for handling complaints, which will be subject to regular and random inspection by the Inspectorate. This must provide access to an independent external complaints mechanism which is similarly subject to inspection. Information on how to complain will be provided to every offender and every victim who comes into contact with the scheme. The information will identify a named individual for either offender or victim to contact if, at any time during the process, either of them is or fears being subject to undue pressure. Where a victim or offender has a complaint that amounts to a criminal offence, this should be referred to the PSNI for investigation. Any complaints against police officers should be referred to the Police Ombudsman.

*[Community schemes should:]*

*be subject to regular inspection by the independent Criminal Justice Inspectorate<sup>7</sup>.*

25. Schemes will agree to undergo an initial inspection before commencement of operation under these guidelines. Once schemes are operating, inspections will be conducted regularly thereafter (at least biennially) and, if thought appropriate by the Inspectorate, at random. These inspections will initially take place on a pilot basis. They will include, as appropriate, examination of records of offenders and offences dealt with; systems for ensuring that agreed programmes are completed; complaints mechanisms and actual complaints; training initiatives; compliance with the decisions of the PPS on cases appropriate and inappropriate for referral to community schemes; up-to-date awareness of human rights issues; and safeguards for ensuring that for offenders who admit the offence this is done on the basis of informed consent. Access may also be required to the records of the scheme in relation to non-criminal activity. Inspectors will have access to all published material on the scheme or the interventions it provides. Cases will only be referred to accredited schemes. Accreditation will be regularly monitored and reviewed.

26. It is recognised that some schemes will provide interventions designed to help prevent young people re-offending. These may be in the form of treatment programmes or diversionary activities. These interventions should also be open as appropriate to offenders dealt with by statutory youth conferences or through the Youth Diversion Scheme.

27. Schemes will keep records, which may be accessed on request by the CJINI, of all offenders and victims who are brought to their attention, including those who do not participate further in any way, and of how they are dealt with. Records will be held securely and in compliance with the Data Protection Act, and CJINI will be consulted on the format used for record-keeping. Schemes will have regard to the provisions of the Freedom of Information Act in relation to disclosure of information.

---

<sup>7</sup> Review of the Criminal Justice System in Northern Ireland, paragraph 9.98(iii)

*[Community schemes should:]*

*have no role in determining the guilt or innocence of alleged offenders, and deal only with those individuals referred by a criminal justice agency who have indicated that they do not wish to deny guilt and where there is prima facie evidence of guilt.<sup>8</sup>*

28. Schemes will have no role in determining the guilt or innocence of alleged offenders, and will deal with them only as outlined at paras 10-16 above.

29. If, at any time, an offender indicates that he wishes to deny the offence, the scheme will immediately stop any process or programme which is ongoing in respect of that offender and will inform the PSNI, PBNI or YJA of this development. The case will then be referred by police to the PPS for further consideration.

**December 2005**

---

<sup>8</sup> Review of the Criminal Justice System in Northern Ireland, paragraph 9.98(iv)

# **COMMUNITY-BASED RESTORATIVE JUSTICE**

## **SUMMARY OF CONSULTATION ON DRAFT GUIDELINES**

### **Introduction**

This note summarises, thematically, the responses received by the Northern Ireland Office to the consultation on 'Draft Guidelines for Community-based Restorative Justice Schemes'. It also details Governments' response to the key issues raised by respondents to the consultation and outlines proposals for the way forward.

### **Consultation Responses**

The consultation on draft guidelines ran for a period of 13 weeks from 5 December 2005 to 3 March 2006. The consultation had been extended by one week, at the request of some key stakeholders, but responses continued to be received for some weeks after the extended deadline. All responses received were considered. The consultation generated submissions from 56 organisations and individuals across the statutory and voluntary sectors as well as from members of the public. A list of those responding is attached at Annex A. The summary represents a distillation of the views expressed by respondents on 10 main themes which emerged from the consultation. It does not attribute views to individual respondents.

### **Themes Emerging from the Consultation**

#### **1. CBRJ Schemes' Relationship with PSNI**

**Context: The guidelines outlined proposals for the relationship which schemes would have with criminal justice agencies including the police.**

1.1 42 of 56 (75%) respondents specifically commented on the nature of schemes' relationship with the police (in some cases simply to endorse another respondent's submission).

1.2 Of those 42 respondents 27 (64%) actively favoured CBRJ schemes having a direct relationship with police commenting that an unambiguous relationship with police should be central to the process.

1.3 11 (26%) respondents thought an indirect reporting relationship would be acceptable. Of these, one respondent specifically commented that the UN Basic Principles on Restorative Justice do not require the involvement of police and expressed the need to have regard for local circumstances.

1.4 4 respondents make more general observations but did not express a definitive preference. Of these, 2 recognised both the difficulty in reporting directly to police in certain circumstances and also the need to ensure the proper administration of justice.

## 2. Criminal Threshold

**Context: The draft guidelines relate solely to schemes dealing with low-level offences considered suitable for referral to them by the Public Prosecution Service. The guidelines state that they do not apply to non-criminal matters or to anti-social behaviour which does not reach the criminal threshold.**

2.1 28 of 56 (50%) of respondents commented on this issue, even if only to endorse another respondent's submission.

2.2 20 of the 28 respondents (71%) who expressed a view, believed that there should be a clear definition of the types of low level criminal offence which are, and are not, appropriate for CBRJ schemes to deal with.

2.3 9 of the 28 respondents (32%) expressed views about the extension of the guidelines to schemes' non-criminal caseload. 5 respondents were firmly of the view that guidelines should apply to all aspects of a CBRJ scheme's work whilst, conversely, 4 respondents welcomed the statement in the guidelines that they applied only to criminal matters.

2.4 One respondent suggested that inspection of CBRJ schemes should extend to their work in non-criminal matters, as the boundary between criminal and non-criminal matters was likely to be hard to define in some circumstances.

## 3. Inspection

**Context: The draft guidelines identified arrangements for the regular inspection of accredited schemes, operating to the guidelines, by the Criminal Justice Inspectorate (CJINI) on (at least) a biennial basis.**

3.1 27 of 56 respondents (48%) commented on inspection arrangements.

3.2 All respondents who commented recognised the need for independent inspection.

3.3 7 respondents suggested that an oversight body should be appointed to oversee inspection, and other matters, working in conjunction with CJINI.

3.4 7 respondents identified a need to define the sanctions which would apply should CBRJ schemes fail inspection. The general view was that accreditation should be removed and funding withdrawn.

3.5 6 respondents commented on the frequency of inspection. It was felt that inspection on a biennial basis was inadequate. Only one of these respondents specified an alternative suggestion – which was to inspect annually.

3.6 One respondent expressed the view that CJINI did not have sufficient powers to inspect CBRJ schemes adequately.

## 4. Complaints Mechanism

**Context: The draft guidelines identified that schemes would establish a system for handling complaints - and provide access to an independent external complaints mechanism - which would both be subject to regular and random inspection by CJINI.**

4.1 29 of 56 respondents (52%) commented on the proposed complaints mechanism.

4.2 25 of the 29 respondents expressed the view that any complaints mechanism should be independent. Very few respondents expressed a view on how this might be achieved. Those who did comment on this aspect had no single view on who might best fulfil the role. Some of the suggestions included the Police Ombudsman, Prisoners' Ombudsman, Criminal Justice Inspectorate, Northern Ireland Commissioner for Children and Young people and an oversight body responsible for monitoring all the schemes' activities.

## 5. Individuals Occupying Positions in Schemes

**Context: The consultation document sought respondents' views on whether, and in what way, past criminal convictions should impact on individuals' suitability to occupy a position, dealing with offences and offenders, in CBRJ schemes.**

5.1 36 of 56 respondents (64%) commented on this issue.

5.2 26 respondents commented directly on the issue of suitability of individuals. Other respondents examined the issue more broadly but failed to come to any firm conclusions as to how this should be addressed.

5.3 Of the 26 respondents who commented directly, 3 were of the view that the assessment of suitability should be at the same level as that for applicants to the Police Service of Northern Ireland.

5.4 The remaining 23 respondents accepted that it may be appropriate to allow those with past criminal convictions to participate but that this must be subject to robust safeguards and scrutiny. Very few ventured a view on the level of offending and time lapse since offending which might impact on determination of suitability. There was however widespread support for the application of suitability assessment procedures contained in the Protection of Children and Vulnerable Adults (NI) Order 2003.

5.5 4 respondents additionally commented that responsibility for determining the suitability of individuals should lie with the schemes themselves.

5.6 2 respondents commented specifically on the suitability of certain individuals already participating in existing schemes.

## 6. Training

**Context: The draft guidelines set out the requirements on schemes to arrange for accredited staff training on human rights and equality legislation; obligations under the criminal law; the workings of the criminal justice system; and communication, conflict, mediation and victims issues.**

6.1 27 of 56 respondents (48%) commented on training issues, all of whom agreed that a programme of appropriate training was necessary.

6.2 12 respondents specifically identified a need for a central body to coordinate training as they felt this would ensure uniformity of training standards across schemes.

6.3 2 respondents highlighted the need for such training to be adequately resourced.

6.4 6 respondents highlighted that existing schemes already have extensive training arrangements in place with some identifying a need for staff in statutory agencies, who will liaise with CBRJ schemes, to have a similar high standard of training.

## 7. Referral Process

**Context: The draft guidelines set out the process by which the Public Prosecution Service would refer suitable low level criminal cases to accredited schemes. The consultation document specifically asked if the mechanism between the criminal justice system and schemes was adequately addressed.**

7.1 31 of 56 respondents (55%) expressed a view on the referral mechanism to CBRJ schemes.

7.2 9 respondents reiterated the premise that all referrals to CBRJ schemes should be from a statutory agency, not from within the community, as recommended by the Criminal Justice Review.

7.3 4 respondents expressed concern about the length of time the referral processes, described in the guidelines, might take and the negative impact this might have on the impetus of a restorative disposal and local community confidence.

7.4 3 respondents expressed the view that an appeal system should form part of any referral process.

7.5 One respondent pointed out that, at the inception of a restorative intervention, the roles of victim and offender are not necessarily clear cut and that it may be difficult to ascertain whether a crime has been committed and its level of seriousness. Schemes would also have to deal with the complications arising out of

any delay or fall-out from the criminal investigation or prosecution determination of the requirement to impose an informed warning or restorative caution in particular cases.

## **8. Human Rights**

**Context: The consultation document specifically asked respondents to consider if the draft guidelines provided adequate safeguards for the human rights of those with whom schemes deal.**

8.1 30 of 56 respondents (54%) commented on a range of human rights issues.

8.2 9 respondents highlighted the importance of schemes' adhering to international standards on Human Rights, of which 5 specifically stated that guidelines should encompass the United Nations Convention on Human Rights.

8.3 9 respondents recommended that a central body should be responsible for monitoring schemes' compliance with human rights obligations.

8.4 4 respondents advanced the view that Section 5(2) of the Criminal Law Act (Northern Ireland) 1967 enshrines in law the right of a victim to choose a restorative solution and removes the obligation, from the victim and an assisting third party, to inform the police about an arrestable offence if "reasonable recompense" is made for any loss or injury.

8.5 One respondent commented that the draft guidelines did not fully reflect the UN Basic Principles on Restorative Justice and offered to review human rights training materials and to discuss other possible supporting mechanisms including direct provision of human rights training.

## **9. Equality Issues**

**Context: The consultation document specifically asked whether the draft guidelines helped, or did not help, to achieve a broad equality of standards between individuals in areas covered by schemes and other areas.**

9.1 16 of 56 respondents (29%) commented on equality issues.

9.2 8 respondents highlighted a potential difficulty with Section 75 of the Northern Ireland Act 1998, as individuals in areas which are not currently covered by existing CBRJ schemes would not have access to their services. It was also pointed out that "fast-tracking" CBRJ cases would also disadvantage those who cannot avail of their services.

9.3 3 respondents highlighted the necessity to ensure that rights will be safeguarded to the same degree in CBRJ schemes as in the statutory Criminal Justice system.

9.4 2 respondents were of the view that anyone should be able to avail of any CBRJ scheme with one suggesting that government should promote cross-community CBRJ schemes.

9.5 3 respondents identified the importance of equality screening the proposals and engaging in consultation, particularly with young people, on equality implications.

## **10. Funding**

**Context: Neither the draft guidelines nor the consultation document made any reference to the funding of schemes.**

10.1 24 of 56 respondents (43%) expressed a view on the funding of CBRJ schemes.

10.2 8 respondents stated that CBRJ schemes should be funded by Government whilst one respondent objected to schemes being funded under any circumstances.

10.3 4 respondents queried if any future funding of CBRJ schemes would divert money from other community initiatives.

10.4 3 respondents queried if withdrawal of funding would be a sanction against CBRJ groups who do not conform to required standards.

10.5 5 respondents recommended that funding should be the responsibility of an oversight body.

## **The way forward**

The consultation, whilst revealing general support for restorative justice as a concept, highlighted strong concerns about the way in which some aspects of schemes might operate. There was a broad consensus that the draft guidelines were not sufficiently robust to address the concerns expressed by respondents in four key areas: (i) the ability for schemes to use third parties to distance themselves from direct engagement with the police; (ii) arrangements for determining the suitability of persons occupying posts in schemes; (iii) the need for an independent complaints mechanism; and (iv) the need to set demanding standards for schemes underpinned by an effective inspection regime.

Having considered all of the responses from the consultation exercise, the Government has decided to fundamentally strengthen provisions in these four key areas in a way which it believes will substantially address respondents' concerns.

The Protocol has addressed these concerns by:

- removing the provision for schemes to report offences to the Police Service of Northern Ireland through a third party emphasising the centrality of the police to the way in which schemes operate. The Protocol now requires that

schemes engage, and have a direct relationship, with police on all matters governed by the Protocol.

- establishing arrangements for a panel, comprising representatives of relevant statutory bodies, to determine the suitability of individuals to work in posts governed by the Protocol. The Panel will consider criminal records and other pertinent information provided by statutory agencies, including the police, in determining the suitability of any individual in accordance with published criteria contained in the Protocol.
- establishing, under the auspices of the Probation Board for Northern Ireland, an independent complaints mechanism for victims and offenders who may have cause to raise concerns about how a scheme has handled their case.
- ensuring that the new Protocol sets exacting standards which schemes must meet to achieve accreditation, with continued compliance tested by a rigorous, regular and unannounced inspection regime undertaken by the Criminal Justice Inspectorate who shall publish their inspection reports.

The Protocol establishes the framework of the relationship between schemes and the criminal justice system in dealing with low-level criminal offences and offenders and, by definition, governs cases which have both achieved the criminal threshold and been deemed suitable by the Public Prosecution Service for referral for a restorative disposal. It would not therefore be possible, as requested by some respondents to the consultation, to formally extend the Protocol to schemes' other activities. However, as part of the inspection regime records of non-criminal cases handled by schemes would be examined to help ensure that all cases attaining the criminal threshold have been referred to the police. Schemes which achieve accreditation will, as organisations, also have demonstrated the attainment of the high standards required in the Protocol which is expected will be reflected in all aspects of their activities.

A number of respondents raised the issue of funding of schemes. It has never been a direct corollary that schemes which sign up to the Protocol will receive NIO funding. However, it is expected that accredited schemes meeting the exacting standards set out in the Protocol should be in the best position, where they meet the appropriate grant criteria, to apply for funding from whatever statutory or charitable sources are currently available to them. Conversely any scheme which does not sign up to them will not receive any funding whatsoever from Government for Community-based Restorative Justice.

## **Next Steps**

David Hanson made an announcement, by means of a Ministerial Statement, in the House of Commons on 25 July 2006 indicating that he had produced a revised framework – renamed a 'Protocol for Community-based Restorative Justice Schemes' - which would set a gold standard for schemes seeking to work with offenders and victims of low level crime.

Due to the significant nature of the changes which are proposed Government has decided that there should be a further period of consultation to seek the views of key stakeholders and interested parties on what is proposed in the new Protocol. It will run in parallel with an Equality Impact Assessment which will explore the potential for any of its measures to adversely impact on equality of opportunity for any of the nine categories set out in section 75 of the Northern Ireland Act 1998. This will be launched shortly and will involve a 12 week public consultation period. No decisions on community-based restorative justice will be taken before Ministers have had the opportunity to consider responses to the consultation.

July 2006

**LIST OF RESPONDENTS TO THE CONSULTATION**

Armagh District Policing Partnership  
Ballymagroarty Community Restorative Justice Project  
Ballymagroarty Hazelbank Community Partnership  
Ballymena Community Safety Partnership  
Ballymoney District Policing Partnership  
Bogside & Brandywell Health Forum  
British Irish Rights Watch  
Castlereagh Borough Council  
Castlereagh District Policing Partnership  
Children's Law Centre  
Coleraine District Policing Partnership  
Committee on the Administration of Justice  
Community Relations Council  
Community Restorative Justice (Ireland)  
Community Restorative Justice North West Region  
Craigavon Borough Council  
Craigavon Community Safety Partnership  
Criminal Justice Inspection Northern Ireland  
Democratic Unionist Party  
Derry District Policing Partnership  
Gasyard Wall Feile  
Grand Orange Lodge of Ireland  
Include Youth  
Institute for Conflict Research  
Irish Government  
Kilcooley Community Forum  
Lady Hermon MP (Ulster Unionist Party)  
Limavady District Policing Partnership  
Link Community Association  
The McCartney family  
Mrs K Campbell  
National Society for the Prevention of Cruelty to Children  
Newry and Mourne District Policing Partnership  
Newtonabbey District Policing Partnership  
North Down Borough Council  
North Down District Policing Partnership  
Northern Ireland Alternatives  
Northern Ireland Association for the Care and resettlement of Offenders  
Northern Ireland Commissioner for Children and Young People  
Northern Ireland Council on Voluntary Action  
Northern Ireland Housing Executive  
Northern Ireland Human Rights Commission  
Peace & Reconciliation Group  
Police Federation for Northern Ireland  
Police Ombudsman  
Policing Board  
Probation Board for Northern Ireland  
Rt. Hon David Trimble MLA  
Sinn Fein  
Social Democratic and Labour Party  
South Down Action for Healing Wounds Victims Support Group  
The Superintendents Association of Northern Ireland  
Ulster Unionist Party  
Women's Aid Federation  
Women's Aid Foyle  
Youth First