



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

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<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

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<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

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<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

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<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.

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<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**

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