



Northern
Ireland
Office

A Protocol for Community- based Restorative Justice Schemes:

Consultation and Equality Impact Assessment

September 2006

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PART ONE: PURPOSE AND FORM OF CONSULTATION

1. Consultation Process

1.1 Purpose

1.1.1 The purpose of this document is two-fold. Firstly, it provides an opportunity to consult with interested parties on a new draft Protocol for Community-based Restorative Justice Schemes (“CBRJ schemes”) governing the relationship between the criminal justice system and CBRJ schemes seeking to deal with low level criminal offences and offenders. The draft Protocol has addressed concerns raised by key stakeholders during the consultation, earlier this year, on a previous set of draft guidelines and affords the opportunity for further comment before Government makes a final determination in relation to this policy. Secondly, this document provides the basis for consultation on an Equality Impact Assessment (EQIA) of the measures in the new draft Protocol on equality of opportunity for the nine categories detailed in Section 75 of the Northern Ireland Act 1998.

1.2 Format of document

1.2.1 For ease of navigation this document is divided into four parts:

1.2.2 **Part One** describes the purpose of the paper and the consultation process;
Part Two comprises the Equality Impact Assessment (EQIA) and sets out the issues on which views would be particularly welcomed;
Part Three outlines the changes reflected in the draft Protocol published for consultation (following earlier consultation on a set of draft guidelines) and sets out the issues on which views would be particularly welcomed; and
Part Four sets out the next steps in the process.

1.3 Equality responsibilities

1.3.1 As a public authority under Section 75 of the Northern Ireland Act 1998, the Northern Ireland Office, in carrying out all its functions, powers and duties in Northern Ireland, is required to have due regard to the need to promote equality of opportunity:

- Between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- Between men and women generally;
- Between persons with a disability and persons without; and
- Between persons with dependants and persons without.

1.3.2 The legislation requires public authorities to identify whether a policy has a differential impact upon the relevant groups; the nature and extent of that impact; and whether such impact is justifiable.

1.3.3 The NIO was designated for the purposes of Section 75 in July 2000 and its Equality Scheme was approved by the Equality Commission in November 2001. This consultation is conducted in accordance with the requirements of NIO's Equality Scheme.

1.4 Duration of Consultation

1.4.1 The consultation on the draft Protocol and EQIA will run for a period of 12 weeks from 20 September 2006. All responses to the consultation should be submitted for receipt by NIO by 5pm on 13 December 2006 and comments are welcomed by post or e-mail. All responses will be acknowledged on receipt.

1.4.2 All queries and responses to this document should be made to:

CBRJ Consultation Coordinator
Criminal Justice Policy Branch
Northern Ireland Office
Room G.33
Massey House
Stoney Road
Belfast
BT4 3SX

E-mail: CJPB.Public@nio.x.gsi.gov.uk

Telephone: 02890 527299

Text phone: 02890 527668

1.4.3 An electronic version of this consultation document is available on the NIO website (www.nio.gov.uk). Copies of the document in other formats, to accommodate particular needs, can be made available on request. If there is any alternate format which may assist your participation please let us know and we will do our best to assist you.

1.4.4 If you have any concerns about the consultation process you should contact the Northern Ireland Office's consultation coordinator whose contact details are provided below:

Miss Donna Knowles
Central Management Unit
Northern Ireland Office
Stormont House
Stormont Estate
BELFAST
BT4 3SH
E-mail: donna.knowles@nio.x.gsi.gov.uk
Telephone: 02890 527015

1.5 Confidentiality of responses

1.5.1 Unless individual respondents specifically indicate that they wish their response to be treated in confidence, their name and the nature of their response may be included in any published summary of responses. Respondents should also be aware that the NIO's obligations under the Freedom of Information Act may require that any responses, not subject to specific exemptions in the Act, may be disclosed to other parties on request.

PART TWO: EQUALITY IMPACT ASSESSMENT (EQIA)

2. Policy Background and Context

2.1 Introduction

2.1.1 The purpose of this section is to provide information on the background to the policy, its aims and development within the overall context of the criminal justice system in Northern Ireland.

2.2 Policy background

2.2.1 Restorative justice is widely seen as an inclusive way of dealing with low level crime, which focuses on restoring the relationship between the offender, the victim and the community and typically includes reparative elements in the agreement reached between the parties. Although restorative justice does not have to be a state-run process, international experience of restorative approaches developed at community level have largely been complementary to the formal justice system.

2.2.2 The Review of the Criminal Justice System in Northern Ireland, a key component of the Good Friday Agreement, made a series of recommendations on development of restorative justice initiatives which the authors felt might complement the conventional criminal justice approach and provide a more constructive and flexible way of dealing with certain types of low level crime through community rather than court-led disposals.

2.2.3 The Review recommended (at recommendation 143) that a restorative justice approach should be developed for juvenile offenders. This was achieved with the implementation by NIO of a statutory Youth Conference Service which receives referrals from the Youth Court and the Public Prosecution Service and manages conferences between the victim, juvenile offender and the police to agree a plan which details what the offender will do to both repair the harm they have caused to the victim and to stop re-offending. The Service has been operating successfully in pilot areas since 2003 and should be fully

implemented across Northern Ireland by 2007 (in line with the roll-out of the Public Prosecution Service).

2.2.4 The Criminal Justice Review also looked at the potential for a broader based community-based restorative justice (CBRJ) approach in dealing more generally with incidences of low level crime in local communities. To assist them in their consideration of these issues the Criminal Justice Review Group (CJRG) commissioned a report⁽¹⁾ on relevant research relating to the concept and practice of restorative justice and its applicability to Northern Ireland.

2.2.5 As part of its consideration, the CJRG also looked at a number of community-based restorative justice schemes which had evolved in certain republican and loyalist areas in Northern Ireland in the late 1990s. The CBRJ schemes operating in both communities describe their role as providing a non-violent alternative to paramilitary intervention on issues of criminality, anti-social behaviour and localised disputes which concern the residents within their communities

2.2.6 The Review, while recognising the concerns expressed by a wide range of interested parties about how such schemes might operate and the risks inherent in CBRJ schemes in Northern Ireland, proposed (in recommendation 168) a role for community-based restorative justice schemes in dealing with low level crime subject to specific safeguards set out in the Review. The text of the recommendation is replicated below:

Recommendation 168

“ We believe that community restorative justice schemes can have a role to play in dealing with the types of low level crime that commonly concerns local communities. However we recommend that community restorative justice schemes should:

- (i) receive referrals from a statutory criminal justice agency rather than from within the community, with the police being informed of all such referrals;*

(1) Restorative Justice Options for Northern Ireland: A Comparative Review. Published in March 2000

- (ii) *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;*
- (iii) *be subject to regular inspection by the Criminal Justice Inspectorate which we recommend in chapter 15; and*
- (iv) *have no role in determining 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.”*

2.3 Policy Development

2.3.1 The Criminal Justice Directorate of NIO is responsible for developing proposals to implement recommendation 168 of the Criminal Justice Review. A set of guidelines for community-based restorative justice schemes, encapsulating the safeguards identified in the Review, were developed by a steering group comprising senior representatives of the Criminal Justice Directorate of the Northern Ireland Office, the Youth Justice Agency, the Police Service of Northern Ireland, the Public Prosecution Service and the Probation Board for Northern Ireland. As part of that process members of the steering group held discussions with interested parties including representatives of political parties and Community Restorative Justice Ireland and Northern Ireland Alternatives who operate a number of existing restorative justice projects in Northern Ireland.

2.3.2 Flowing from this work, in December 2005 Government published for consultation draft Guidelines setting out a proposed framework to govern the relationship between the criminal justice system and community-based restorative justice schemes seeking to deal with low level criminal offences within local communities. Responses to the consultation, whilst supportive of restorative justice in principle highlighted a number of serious concerns about the way in which some key aspects of schemes might operate. A summary of the consultation responses is attached at Appendix 1.

2.3.3 In response to those concerns Government is publishing for consultation a draft 'Protocol for Community-based Restorative Justice Schemes' which it believes substantially addresses those issues in a way which will promote public confidence in the process. A copy of the draft Protocol is attached at Appendix 2.

2.4. Policy Assessment Framework

2.4.1 The policy assessment framework, at Table 1, defines the aims and objectives of the Protocol.

Table 1: Policy Assessment Framework

What is the policy?	The establishment of a Protocol for Community-based Restorative Justice Schemes governing their relationship with the criminal justice system
What is the aim, objectives and purpose of the policy?	<p>The Protocol is intended to:</p> <ul style="list-style-type: none"> • extend where possible the restorative justice principle, which has been developed successfully in Youth Conferencing, to a wider community base; • establish a robust framework defining the relationship between accredited CBRJ schemes and the criminal justice system in dealing with appropriate cases of low level offending in local communities; • make offenders confront the direct impact of their offending behaviour on the local community and empower victims through offering them the opportunity for a say in how the harm caused to them can best be repaired; and • promote community confidence in the concept by regulating the activities of pre-existing CBRJ schemes, seeking to work with offenders and victims of low level crime, in line with the stringent safeguards encapsulated in the Criminal Justice Review.
Who implements the policy?	The Northern Ireland Office is responsible for implementing the policy and maintaining a list of accredited schemes. Its role and responsibilities, and those of other agencies and schemes are detailed in the draft Protocol (attached at Appendix 2).

<p>What outcomes do we want to achieve with the policy and for whom?</p>	<p>To provide that appropriate cases of low level offending may be dealt with by community-based restorative justice schemes where this is the wish of both the offender and the victim. The Protocol seeks to provide a framework which allows this to be achieved in line with recommendation 168 of the Report of the Review of the Criminal Justice System in Northern Ireland and in a manner which promotes public confidence in the criminal justice system.</p>
<p>Who are the main stakeholders in relation to this policy?</p>	<p>Police Service of Northern Ireland Public Prosecution Service Probation Board for Northern Ireland Criminal Justice Inspection Northern Ireland Youth Justice Agency Policing Board District Policing Partnerships Community Safety Partnerships Community-based Restorative Justice Schemes NICCY Political Parties Victim Support Northern Ireland National Society for the Prevention of Cruelty to Children Groups representing victims' interests Groups representing children and young persons' interests NIACRO EXTERN</p>
<p>How do these outcomes meet or hinder other policies, values or objectives of the public authority or of Government?</p>	<p>The outcomes are consistent with recommendation 168 of the Criminal Justice Review (which itself flowed from the Good Friday Agreement) and satisfies the appropriate requirements of the 'UN Basic Principles on the use of Restorative Justice Programmes in Criminal Matters'.</p>
<p>What factors/forces could contribute/ detract from the outcomes?</p>	<ul style="list-style-type: none"> • A failure by schemes to either seek accreditation or to attain standards required in order to gain accreditation • Reluctance of offender or victim to elect for a restorative disposal • Political factors could either contribute or detract from the outcomes depending on parties' positions on policing in NI.
<p>How does the public authority interface with other bodies in relation to the implementation of this policy?</p>	<p>The interface between NIO and other bodies with responsibilities in this area are detailed in the draft Protocol which is attached at Appendix 2.</p>

<p>Are there any groups which might be expected to benefit from the intended outcomes but which do not?</p>	<p>The policy impacts on individuals who have committed certain types of low level criminal offence, who do not wish to deny their guilt, and the victims of those offences. The suitability of a case for referral to a scheme will be a matter for the Public Prosecution Service to determine on the basis of the evidential and public interest tests. It is an entirely voluntary arrangement and no case would be referred to a scheme for a community-based restorative justice disposal without the consent of both offender and victim.</p> <p>The policy provides the opportunity for communities who wish to engage in restorative justice to do so within the framework of the criminal justice system. The policy itself imposes no limitations on access to such services or the location or number of such schemes across Northern Ireland. However, it is recognised that access will initially be limited to areas where schemes have gained accreditation in order to receive referrals from the Public Prosecution Service. This may mean that individuals in areas where no scheme is yet accredited, or in areas where no scheme currently exists, may not be able to benefit from a restorative disposal of this nature in the short term. This is not as a consequence of the policy but rather is reflective of the pace of development of local community structures necessary to support restorative justice initiatives.</p>
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2.5 Equality Screening of Policy

2.5.1 Following the consultation on draft guidelines, and subsequent policy development of the draft Protocol to take account of issues raised by respondents, the policy was subject to equality screening in July 2006.

2.5.2 In line with the NIO Equality Scheme, the draft Protocol was screened against the following criteria:

a) Does the policy involve any action which is likely to have an adverse differential impact on the basis of:

- Religious belief
- Political opinion
- Racial group
- Age
- Marital status
- Sexual orientation
- Gender
- Disability
- Dependants

b) Does the policy omit any action which would promote the equality of opportunity, social inclusion or welfare of any person on the basis of the same categories as above?

c) Is there any conflict between the rights of any one person and those persons contained within the effects of this policy?

d) Is there any evidence of higher or lower participation or uptake by different groups within any of the nine categories?

e) Is there any evidence that particular groups have different needs, experiences, issues and priorities in relation to the policy?

f) Is there an opportunity to promote equality of opportunity or good relations by altering the policy referred to?

g) Have consultations in the past with relevant representative organisations or individuals within the groups indicated that the particular policy creates problems that are specific to them?

2.5.3 The screening exercise identified that there was a potential for adverse impact on individuals on the basis of political opinion. It also identified the potential for lower participation by certain pre-existing CBRJ schemes in nationalist communities who identified they had different needs and experiences in relation to the policy. These issues are explored fully in sections 4 & 5 of this document.

2.5.4 Some respondents to the earlier consultation on draft guidelines for CBRJ schemes raised what might be described as broader equity issues which they perceived might impact adversely on individuals in general rather than specifically in relation to their inclusion in any particular equality category. These are explored in the relevant parts of sections 4 & 5 of this document.

3. Consideration of Available Data and Research

3.1 Key Data Sources

3.1.1 In considering the Equality Impact Assessment, the Northern Ireland Office took into account research, statistics and commentary – on issues associated with the draft Protocol - from a wide range of sources. This involved reviewing both quantitative and qualitative information which had itself been informed by desk research and evaluation; evaluating information which was provided through direct meetings with interested parties and the analysis of commentary from respondents to the consultation on draft guidelines for CBRJ schemes.

3.1.2 The key data sources used to inform this review are detailed in table 2.

Table 2: Summary of available data sources

SOURCE	DATA
NIO Research & Statistics Unit	(a) Low level crime statistics & data on victim profile with a particular emphasis on breakdown (where available) by section 75 category. (b) Evaluation of the Northern Ireland Youth Conference Service (QUB commissioned research)
Publication: J.Auld, B.Gormally, K McEvoy & M Ritchie	'Designing a system of restorative community justice in Northern Ireland'
Criminal Justice Review (Research Paper by J Dignan & K Lowey)	Research Report 10: Restorative Justice Options for Northern Ireland: A Comparative Review.
Independent Monitoring Commission (IMC)	Extracts of IMC Reports dealing with community-based restorative justice.
Institute for Conflict Research	(a) Evaluation of Creggan CRJ Scheme (b) 'Crime and Anti-social Behaviour in Sunningdale': A collaboration between young people in Sunningdale, North Belfast Alternatives, LINC and Institute for Conflict Research.
Criminal Justice Inspection (CJINI)	Extracts of Report: 'Improving the Provision of Care for Victims and Witnesses within the Criminal Justice System in Northern Ireland'.
Direct Meetings	Qualitative data gained through discussions with key stakeholders on policy
Key Stakeholders and other interested parties across NI	Submissions by respondents to the consultation on draft Guidelines on policy, operational and equality issues.

4. Assessment of Impacts

4.1 Political Opinion

4.1.1 No quantitative data was available to assist in determining the impact of the policy on any individual in respect of political opinion. The available data did not provide information in relation to the political opinion of either offenders, who commit what might be considered as qualifying low level criminal offences, or on victims of such crimes. Similarly there was no data available on the political opinions of individuals who have participated in the activities of existing community-based restorative justice schemes in nationalist or unionist communities.

4.1.2 Qualitative data gathered through the consultation on draft guidelines did indicate some concerns about equality of opportunity, in terms of political opinion, in relation to pre-existing restorative justice schemes. Those concerns centred on three broad issues: (i) perceptions about the association of pre-existing CBRJ schemes with particular political viewpoints or parties; (ii) a perceived disadvantage to individuals who did not live in a community where CBRJ schemes currently existed; and (iii) specific issues within the draft guidelines or draft Protocol which it was perceived might disadvantage one community more than the other. These issues are explored in more detail below:

(a) Perceptions about pre-existing CBRJ schemes

4.1.3 A number of largely estate-based projects across Northern Ireland – under the umbrella name Community Restorative Justice – currently operate in predominantly nationalist/ republican communities from which the Republican Movement and Sinn Fein have traditionally drawn their support. A smaller number of projects – largely using the umbrella name Alternatives – currently operate in Belfast and North Down in predominantly unionist/ loyalist communities from which the UVF and PUP have traditionally drawn their support. It is recognised that their development within those communities has given rise to a perception that the pre-existing CBRJ schemes might deal

exclusively with individuals who share their particular political viewpoints or the aspirations of particular political parties. It has been argued that this might impact adversely on individuals of a different political opinion, or no opinion, who as a consequence might feel less inclined to engage with their local community-based restorative justice scheme.

(b) Accessibility to a CBRJ disposal

4.1.4 It has been identified by some interested parties that pre-existing CBRJ schemes are likely to be in a better position initially, than other community groups, to meet the criteria for accreditation under the Protocol and receive restorative referrals. It has been suggested that this might constitute a potential adverse impact on equality of opportunity, in terms of accessibility to a CBRJ disposal, for individuals living in areas where CBRJ schemes do not currently operate. This was seen as having the potential to adversely affect two groups in equal measure: (i) those sharing the same political opinion, or supporting the same political parties, as others in communities which currently have access to CBRJ schemes; and (ii) individuals with no affiliation to any particular political opinion or political party.

(c) Protocol related issues

4.1.5 Equality screening of the policy identified that the central role for police in the proposals detailed in the draft Protocol might potentially impact adversely on one community more than the other. The schemes which operate in nationalist areas have been reluctant to support the role of PSNI in the community-based restorative justice process ahead of securing a political resolution of the policing issue more generally. The strengthening of the draft Protocol to remove third party reporting provisions and to require schemes to have a direct relationship with PSNI may therefore be perceived as having an adverse impact on individuals in those communities. The existing schemes which operate in loyalist areas already engage directly with police to a much greater extent and are unlikely to experience the same concerns about any strengthening of that relationship.

4.1.6 Taking account of these issues, the equality screening exercise conducted on the policy proposals identified the potential for an adverse impact on individuals or groups on the basis of political opinion. It also identified the potential for a lower uptake from schemes within nationalist communities as a consequence of an aspect of the policy which might generate difficulties specific to them. These issues are addressed in section 5 of this document which considers whether there are any opportunities for mitigation or whether any potential impact may be justified in overall policy terms.

4.2 Religious Belief

4.2.1 There is no data available which might provide a breakdown of convictions for the type of low level offences governed by the draft Protocol in terms of the religious belief of the offender. The quality of postcode data in relation to such offenders has also proved insufficient to allow for an estimation of religious belief - on a proxy basis – using information on the area in which they reside. It is therefore not possible to determine if certain crimes – which might qualify for a community restorative disposal – are more prevalent in one community than another.

4.2.2 Whilst there is clearly a correlation between religious belief and political opinion we do not believe that the potentially adverse impact identified for political opinion extends to religious belief. This view is based on research ⁽²⁾ which indicates that in a study conducted in 2003 36% of Catholics did not consider themselves to be nationalist or unionist and 29% of Protestants did not consider themselves to be unionist or nationalist.

4.2.3 No concerns were raised by respondents to the consultation on draft guidelines in respect of this equality category. On the basis of the available information, we do not believe that this policy would impact adversely on equality of opportunity for any individual in terms of their religious belief.

(2) Northern Ireland Life and Times Survey 2003

4.3 Age

4.3.1 Crime statistics⁽³⁾ clearly show that persons under 30 years of age make up over half of the sentenced population in Northern Ireland. In 2003 27% of offenders were aged 21 or under; 40% under 25; and 55% under 30 years of age. This is not as a consequence of any particular policy relating to the criminal law but principally reflects the choice of individuals in those age groups self-selecting to commit more criminal offences than other age groups.

4.3.2 The policy on which we are consulting is not age-specific and relates to arrangements for the restorative disposal of appropriate low level criminal cases irrespective of the age of the offender or victim involved in any individual case. A restorative disposal will only be considered where both parties freely consent to it. It cannot be known, at this stage, what the age profile might be of those in the prospective caseload of referrals from the Public Prosecution Service to community-based restorative justice schemes. Each case will be assessed on its relative merits in line with the evidential and public interest tests which shall be applied by the Public Prosecution Service and the individual circumstances of the case.

4.3.3 In terms of making an assessment of the potential age profile of the offenders most likely to be affected by this policy, we examined data ⁽⁴⁾ relating to persons receiving low level disposals from the Youth and Magistrates' courts in 2004 (the last year for which such data is currently available). This indicates that: less than 5% were under 18 years of age; 36% were in the 18-25 age group; 39% were aged between 26-40; and 21% were aged 41 and over. We do not therefore believe that the policy would have any significant adverse impact on any particular group of offenders in terms of age.

4.3.4 There is no data available currently which identifies the age profile of victims of low level crime but it is not believed that the policy would have any adverse

(3) A Commentary on Northern Ireland Crime Statistics 2004

(4) Data on low level disposals by age group provided by NIO Research & Statistics Branch

impact on individual victims in terms of their age. Data available from users of the Youth Conference Service – which operate a similar reparative approach - would seem to indicate that they achieve a very high level of satisfaction from both victims and offenders who have participated in a restorative conference in preference to a court hearing. The recently published evaluation of the Youth Conference Service indicates that 79% of victims were satisfied or very satisfied with what was proposed in the restorative justice plan and 88% would recommend the process to a person in a similar position.

Other age-related issues raised by interested parties

4.3.5 A number of respondents to the consultation on draft guidelines raised points relating to broader equity issues specifically in relation to children and young people. Four main issues were highlighted and our response to these issues is addressed below:

(i) The basis for determining whether statutory youth conferencing or community-based restorative justice might be more appropriate in individual cases.

4.3.6 The Public Prosecution Service will only refer back, to community-based restorative justice schemes, cases which schemes bring to the attention of police and which the Public Prosecution Service assesses are appropriate for such a disposal. The Public Prosecution Service, and the Youth Court, will continue to consider referrals for Youth Conferencing in other cases where they consider it appropriate to do so. Both processes will be entered into voluntarily by the offender; be subject to high operating standards and stringent safeguards in respect of human rights and equality legislation; and apply common procedures in relation to informed warnings and restorative cautions as part of the reparative plan.

(ii) concerns about how young persons would give informed consent to a referral to a community-based scheme age-related issues;

4.3.7 In line with UN 'Basic Principles on the Use of Restorative Justice Programmes in Criminal Proceedings' the draft Protocol provides that all parties will, before agreeing to participate, be informed of their rights, the

nature of the process and possible consequences of their decision. Additionally, the draft Protocol provides that young persons will have support of an adult, for example a parent or guardian, or may seek legal advice in order to make informed choices and be supported throughout the process. Where an individual withdraws consent at any point in the process a halt will be brought to the proceedings and the case referred back to the Public Prosecution Service for reconsideration.

(iii) the potential for ASBO powers to be exercised more readily, in relation to young persons, in areas where community-based restorative justice schemes do not operate;

4.3.8 The draft Protocol is concerned with low level offences which achieve the criminal threshold. Anti-social behaviour is a civil matter and the powers of statutory authorities in relation to anti-social behaviour legislation would continue to operate across Northern Ireland irrespective of whether a community-based restorative justice scheme operate in a particular area or not.

(iv) whether such schemes are more appropriate to adults than young people.

4.3.9 The Youth Conference Service will extend to all parts of Northern Ireland during 2007 and will continue to provide reparative conferencing in any case, involving an offender under 18 years of age, which the Public Prosecution Service (or the Youth Court) determines as appropriate to be dealt with in this way. The draft Protocol for CBRJ schemes provides for a similar alternative to a court hearing which voluntarily brings together the offender and the victim to reach a determination on a reparative solution to the harm caused by the offender in their local community. The Public Prosecution Service will determine – as it does in cases involving Youth Conferencing - which cases may be suitable to be dealt with by community-based restorative justice schemes. The draft Protocol has been developed to provide a process which offers equality of opportunity to all participants and encapsulates stringent safeguards to ensure the rights of all individuals are respected.

4.3.10 We believe that the process set out in the draft Protocol will ensure that the policy will not impact adversely on any individual on the basis of their age.

4.4 Gender

4.4.1 It is a recognised phenomenon worldwide that a significantly higher percentage of males, than females, commit criminal offences. Northern Ireland reflects this trend with statistics showing that in 2003 86% of all offenders found guilty of offences were male. There are however no gender differences in relation to the rates of conviction with the same proportion of males and females (86%) against whom proceedings are taken being convicted of offences.

4.4.2 The policy on which we are consulting is gender-neutral and relates to arrangements for the restorative disposal of appropriate low level criminal cases irrespective of the gender of the offender or victim involved in any individual case and with the free consent of both parties. Determination of the appropriateness of a case for referral to CBRJ schemes will be made by the Public Prosecution Service who will consider each case on its individual merits. Issues to be considered will include the nature and circumstances of the offence, the offender's past criminal record, offender's acknowledgement of guilt and consent to a restorative disposal and the appropriateness of any associated informal warning or restorative caution. The gender of an offender will not be a material consideration. It is to be expected that the gender profile of those referred will be consistent with that of those convicted of criminal offences.

4.4.3 We believe that the draft Protocol will not have any significant adverse impact on any individual on the basis of their gender.

4.5 **Persons of different racial group, marital status or sexual orientation, persons with dependents and those without and persons with a disability and those without.**

4.5.1 No quantitative data was available to assist in determining any impact which the draft Protocol may have on persons within these particular equality categories. Public consultation on the draft guidelines for community-based restorative justice schemes offered an opportunity for consideration of any potential equality impacts of the policy. None of the respondents to the

consultation raised concerns to suggest they believed there was any differential impact on people from within any of these groups.

4.6 Equity Issues Raised by Interested Parties

4.6.1 One respondent to the consultation on draft guidelines identified an issue which, whilst not associated with any specific Section 75 category, they characterised as having the potential to provide for an inequity in treatment between individuals. They contended that the proposed diversion of cases from the court system to CBRJ schemes amounted to a 'fast-tracking' of these cases. They saw this as placing other cases, to which a CBRJ disposal might not be available, at a disadvantage in that they had to await due process through the courts.

4.6.2 It would be our view that the objective of any 'diversionary' approach in criminal justice matters is to take suitable low level criminal matters – where the accused has admitted their guilt - out of the court system in circumstances where it could be dealt with effectively by other means. The decision as to whether any particular low level criminal case is suitable for referral to a community-based restorative justice scheme will be made by the Public Prosecution Service. There is no data available to suggest that referral to a community-based restorative justice scheme necessarily represents a speedier overall resolution of the case. Schemes will develop an appropriate reparative plan in each case which will be delivered and monitored over the period necessary to execute it fully.

4.6.3 It is a reasonable assumption that comparable cases - i.e. where the accused has pleaded guilty at the outset - which remain in the court system would also proceed more quickly than cases which are contested. One might also expect that the removal of a number of low level cases from the court system would also serve to improve the timeliness of other cases reaching court.

4.6.4 We do not believe that the referral of cases for a community-based restorative justice disposal creates any particular advantage or disadvantage for any individual in terms of case progression over other uncontested cases taken forward within the court system.

5. Consideration of Opportunities to Mitigate Identified Impacts

5.1.1 Available data reviewed in the course of this assessment suggests that there is no evidence of the policy adversely impacting:

- On persons of different religious belief, racial group, age, marital status or sexual orientation;
- Between men and women generally;
- Between persons with a disability and persons without; or
- Between persons with dependants and those without.

5.1.2 The assessment identified the potential for differential impact in respect of political opinion. The potential differential impacts identified in paragraphs 4.1.2 to 4.1.5 of this document were characterised as relating to perceptions, accessibility and Protocol-related issues. Our consideration of each of these perceived impacts is detailed in table 3 below.

Table 3: Consideration of identified Impacts

IMPACT	CONSIDERATION
<p><u>PERCEPTIONS</u></p> <p>A number of respondents to the consultation on draft guidelines expressed the view that without stringent operational safeguards there was the danger that certain schemes could be perceived as representing a particular political opinion or political agenda. Given the historical association, of pre-existing CBRJ schemes, with particular parties or shades of political opinion there could be a perception that such schemes might deal only with those who share those viewpoints. In this way the policy might conceivably impact adversely on an offender or victim of a different political opinion, or of no particular political opinion, who might otherwise have elected to seek a community-based restorative justice disposal involving those schemes.</p>	<p>The draft guidelines already provide that schemes will operate in full accordance with the Human Rights Act 1998, all current equality legislation and within the ‘UN Basic Principles on the use of Restorative Justice Programmes in Criminal Matters’. Government has however acknowledged the concerns expressed by interested parties about how some aspects of schemes might operate and has chosen to further strengthen a number of key provisions within the new draft Protocol in order to promote public confidence in the process (see part 3 and appendix 2). The draft Protocol creates a number of additional safeguards for participants in the process through mechanisms which ensure that all accredited schemes adhere to the highest standards in their relationship with the criminal justice system. Schemes’ adherence to the demanding standards which the Protocol has established will be subject to rigorous independent inspection on a regular and unannounced basis.</p> <p>Conclusion: In this way Government believes that all participants can have confidence that they will be treated fairly and equally by any accredited scheme. Should any individual feel that the high standards set by the Protocol are not delivered they will have direct access to an independent complaints service.</p>

IMPACT	CONSIDERATION
<p><u>AVAILABILITY</u></p> <p>It has been indicated that the absence of a network of community-based restorative justice schemes covering all parts of Northern Ireland would place those living in an area where no scheme currently exists at a disadvantage to those living in areas where there are pre-existing CBRJ schemes through which they could more readily avail of a community-based restorative justice disposal.</p>	<p>The draft Protocol is intended to regulate the activity of <u>any</u> community group, seeking to receive restorative referrals from the criminal justice system, who can demonstrate the attainment of the standards required of an accredited community-based restorative justice scheme. It is recognised that, in the short term, existing CBRJ schemes may be in a better position than other community groups to meet the required standards. This is not a consequence of the policy but rather a reflection of differences in local community infrastructures.</p> <p>NIO sees the value in low level crime being dealt with in a reparative way at local community level but recognises that this must progress at a pace which can be supported by individual communities. It is not the role of the NIO to promote the establishment of community restorative justice schemes but rather to set the standards for schemes seeking accreditation and ensure that there are appropriate mechanisms to ensure continued compliance with those standards.</p> <p>Conclusion: We do not believe that communities with schemes which are ready to adopt the Protocol should be prevented from being accredited because other communities may not yet have garnered sufficient community support for establishing restorative justice structures.</p>
IMPACT	CONSIDERATION
<p><u>PROTOCOL-RELATED ISSUES</u></p> <p>Relationship with police</p> <p>A number of respondents to the consultation on draft guidelines on community-based restorative justice indicated that some of the particular requirements of the Protocol might impact more adversely on schemes operating in nationalist areas than it would on schemes operating in unionist areas. The issue which was identified as having the most significant potential impact related to the nature of the relationship between the schemes and the Police Service of Northern Ireland (PSNI). Existing CBRJ schemes operating in nationalist areas have indicated that their communities would have</p>	<p>One of the key themes to emerge from the consultation on draft guidelines was the importance, to public confidence in community-based restorative justice, which stakeholders placed on PSNI playing a central role in the process. Many respondents felt that schemes dealing with matters of criminal justice should not be permitted to distance themselves from direct engagement with the police. Serious concerns were expressed by stakeholders about the draft guidelines making provision for schemes to be able to report matters to PSNI through nominated third parties. As a consequence Government felt it necessary to further strengthen these provisions, in the draft Protocol, by removing third party reporting and requiring that schemes deal directly with PSNI.</p> <p>Conclusion: It has not been possible to identify any</p>

particular difficulties in supporting the central role for police in the process envisaged in the Protocol ahead of the wider political resolution of the policing issue.

options which might ameliorate the potential impact on schemes in nationalist areas whilst still promoting a high level of public confidence in the overall process. In these circumstances we believe that any potential adverse impact which may arise as a consequence of the requirement for schemes to engage directly with PSNI would be justified.

6. EQIA: KEY CONSULTATION QUESTIONS

- 6.1.1 This Equality Impact Assessment (EQIA) has been conducted on the basis of the quantitative and qualitative information that was available to us and we would be happy to consider any additional data which respondents believe may be pertinent.
- 6.1.2 Views are invited on any aspect of the EQIA and in particular on the potential impacts identified and the assessments we have made both in terms of the opportunity to mitigate any differential impact or the conclusion that a differential impact may be justified in overall policy terms. Some specific questions on which views would be particularly welcomed are detailed in Table 4.

Table 4: Key Questions relating to the EQIA

1	Are there any ways in which we can improve equality of opportunity/ promote good relations through the Protocol for CBRJ Schemes?
2	Do you agree that public confidence in the process requires all accredited schemes to have a direct relationship with the police on matters governed by the Protocol despite any potentially adverse impact on any particular scheme?
3	Do you feel that there is an issue of inequality in accredited schemes receiving referrals from the criminal justice system in some areas of Northern Ireland and not others due to different levels of community support for local restorative justice initiatives?. If so, how would you see this being addressed?
4	Are there any options for potentially mitigating the impact on persons of different political opinion that you feel we have not considered?
5	Apart from political opinion do you feel that the Protocol impacts adversely on any of the Section 75 categories?
6	Are there any additional areas where you feel we could promote equality of opportunity through this policy?

PART THREE: CONSULTATION ON DRAFT PROTOCOL

7.1 Changes to the Draft Protocol Post-Consultation

7.1.1 The consultation on draft guidelines conducted earlier this year, 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.

7.1.2 Having considered all of the responses from the consultation exercise, Government concluded that – in order to promote public confidence in the process - it was necessary to substantially strengthen provisions in these four key areas. The draft guidelines were revised to address these issues and renamed a ‘Protocol for Community-based Restorative Justice Schemes’ to affirm its status as a document requiring full compliance by all parties.

7.1.3 The draft Protocol (at Appendix 2) has addressed respondents’ key 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 draft 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.

7.2 Schemes' Non-Criminal Justice Activities

7.2.1 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.

7.3 Funding

7.3.1 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.

7.4 Key Questions on the Draft Protocol Consultation

7.4.1 We are happy to accept and consider comments on any aspect of the draft Protocol but would particularly welcome views on the issues identified in Table 5.

Table 5: Key Questions relating to the draft Protocol

1	Does the draft Protocol now adequately address concerns about the nature of the relationship between schemes and the police?
2	Do the proposals for a Suitability Panel address concerns about ensuring the suitability of individuals for CBRJ scheme posts?
3	Do the arrangements for regular and unannounced inspections of accredited schemes by the Criminal Justice Inspectorate help to promote confidence in the process?
4	Does the proposal for an independent complaints mechanism meet the needs of those using the schemes' services?
5	Do the provisions safeguard the rights of those with whom schemes deal?
6	Do the overall provisions in the draft Protocol adequately address issues of public safety?

PART FOUR: NEXT STEPS IN THE PROCESS

8. Consultation Summary

- 8.1 This document provides an opportunity for respondents to comment on two separate but inter-related processes. The first concerns the draft Protocol for Community-based Restorative Justice Schemes (attached at appendix 2 of this document) which establishes the framework for the relationship between the criminal justice system and schemes seeking to deal with low level criminal offences and offenders. The second is the Equality Impact Assessment of the measures detailed in the draft Protocol (which is described in Part 2 of this document).
- 8.2 Views are welcomed from all interested parties on the twin aspects of this consultation and a series of questions on which views are particularly welcome are detailed in this document in Table 4 (for the EQIA consultation) and Table 5 (for the consultation on the draft Protocol).
- 8.3 Any queries, comments or consultation responses should be directed to the Consultation Coordinator whose contact details are listed in paragraph 1.4.2 of this document. Responses to the consultation must be received by NIO on or before 13 December 2006.

9. NEXT STEPS

9.1 Decision by public authority

- 9.1.1 At the end of the consultation period Ministers will wish to fully consider the views of respondents on both the draft Protocol and the EQIA before making any announcement of their final determination on the way forward on this policy.

9.2 Publication of results

9.2.1 When a decision has been reached NIO will publish a summary of responses to the consultation on the draft Protocol and make a copy available to all respondents. The final report of the EQIA will include an annex summarising the responses received and detail how the issues raised have been considered and, where appropriate, any action that has been taken as a result. The published EQIA report will be made available to all respondents. Both documents will also be placed on the NIO website www.nio.gov.uk and can be produced in alternate formats, to meet particular needs, on request.

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.

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
Newtownabbey 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



Northern
Ireland
Office

Appendix 2

Draft Protocol for Community-based Restorative Justice Schemes

July 2006

COMMUNITY-BASED RESTORATIVE JUSTICE SCHEMES: PROTOCOL

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 a Protocol for the operation of the schemes in line with the Review’s recommendations. That framework is based on schemes’ compliance with the rule of law and full cooperation with statutory agencies, including the police, in implementing this Protocol.

2. This Protocol applies to all cases where schemes deal or seek to deal with criminal offences. All such cases must be passed via the police to the Public Prosecution Service, who will refer suitable low level offences back to schemes to be dealt with in accordance with the Protocol. Schemes should not deal with more serious offences, including sexual offences or cases of domestic violence. In addition, the Protocol does not relate to non-criminal matters, or to anti-social behaviour which does not reach the criminal level. It 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.”¹

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.”²

The Review also points to the strong divisions of opinion which exist in the community in relation to schemes³. These clearly have the capacity to damage confidence in the criminal justice system. Against this background, it should be a common aim and responsibility of all those involved in operating the Protocol, including the schemes, to promote confidence in the criminal justice system.

¹ Review of the Criminal Justice System in Northern Ireland, paragraph 9.5

² Review of the Criminal Justice System in Northern Ireland, paragraph 3.31

³ Review of the Criminal Justice System in Northern Ireland, paragraph 9.20

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 must comply with 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 this Protocol, 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.

Protocol

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.⁴

9. If a community-based scheme becomes aware of an offence or an offender, it will communicate promptly to a dedicated police officer the details it has about the offence, the offender and the victim, including such categories of information as the PSNI may indicate it requires. 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.)

10. An advisory panel may be formed including representatives of the PSNI, PBNI, YJA and the scheme for a preliminary and without prejudice discussion of the suitability of the case(s) for disposal by community-based restorative justice.

11. 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 by the police⁵. 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 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.

12. 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.

13. 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 this Protocol. 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 will be given by a police officer. This will form part of the plan for dealing with the offender. Following delivery of an informed warning or restorative caution, the police officer will ensure that appropriate details are recorded for insertion in the criminal record of the offender.

14. 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

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

⁵ 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.

with this Protocol, 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.

15. Appropriate procedures 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.*⁶

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

17. Schemes will need to operate to high standards in order to comply with human rights requirements and 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 be involved in this work. 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. To help determine suitability a Panel, comprising representatives of statutory bodies, will be established. The Panel will have access to relevant information (including criminal records). The procedures to be followed by the Panel are detailed in the Annex. Schemes will be required to accept the determination of the Panel as a condition of their accreditation.

18. 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,

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

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

19. 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 Protocol within which it operates will be given to each offender and every victim who comes into contact with the scheme.

20. 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).

21. 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 this Protocol.

22. An independent, external, complaints mechanism, provided by the Probation Board, will be available to every offender and every victim who comes into contact with the schemes. The schemes will ensure that information explaining clearly how a complaint can be made is provided as a matter of course to all with whom the schemes deal. The Inspectorate will inspect the schemes' processes on a regular and unannounced basis to ensure that appropriate arrangements are operating properly. The effectiveness of schemes in responding to any decisions reached by the complaints mechanism will be taken into account in deciding on their accreditation. 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 Inspectorate⁷.

23. Schemes will agree to undergo an initial inspection before commencement of operation under this Protocol. Once schemes are operating, unannounced inspections will be conducted regularly. 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

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

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.

24. 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.

25. 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.

[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.⁸

26. Schemes will have no role in determining the guilt or innocence of alleged offenders, and will deal with them only as outlined at paras 9-15 above.

27. 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 of this development. The case will then be referred by police to the PPS for further consideration.

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

CBRJ SUITABILITY PANEL: PROPOSED MODEL

The objective of the system set out below is to help ensure public safety and confidence in the arrangements for community-based restorative justice (CBRJ) schemes to handle cases referred by the criminal justice system.

1. There will be a Panel to consider the suitability of individuals used by CBRJ schemes seeking accreditation under the Protocol.
2. The Panel will be comprised of representatives of relevant statutory bodies and will receive information from the police.
3. Schemes will identify to the Panel individuals they want to continue or begin to use on the basis of competence for those scheme activities governed by the Protocol.
4. The Panel will first consider if individuals should be deemed unsuitable for such work in accordance with the criteria set out in the Appendix. Schemes will be advised where an individual is deemed unsuitable because of the application of these criteria. Where this is not the case, the Panel will proceed to consider the overall suitability of the applicant using all of the available information.
5. The Panel will examine a range of information to enable them to reach a decision, in the round, as to the individual's overall suitability for such work. The sources of information are identified in the Appendix.
6. The Panel will advise schemes of individuals who appear to be unsuitable, on the basis of the available information, providing an indication of their reasons and offering the opportunity for the individual to make written representations, if they wish, before a final decision is made by the Panel.
7. The Panel will consider any written representations from the individual, and where it still determines that he or she is unsuitable for appointment the sponsoring scheme will be advised and asked to inform the individual. It will be a condition of accreditation that schemes accept the rulings of the Panel.

FACTORS TO BE CONSIDERED BY THE PANEL

Criteria for Unsuitability

1. An individual will be considered unsuitable to participate in community-based restorative justice activities governed by the Protocol in circumstances where:

- His or her name appears on the Disqualification from Working with Children List maintained by DHSSPS or Department of Education List of those unsuitable to work with children;
- He or she is the subject of a Disqualification Order imposed under provisions in the Protection of Children and Vulnerable Adults (NI) Order 2003;
- He or she has committed, after 10 April 1998, a serious arrestable offence within the meaning of Article 87 of and Schedule 5 to the Police and Criminal Evidence (Northern Ireland) Order 1989, or such equivalent offence as may be subsequently prescribed in this or another jurisdiction;
- He or she has completed a term of imprisonment for a serious arrestable offence, or such equivalent offence as may be subsequently prescribed in this or another jurisdiction, within a period of three years from the date of the individual's identification to the Panel by a Scheme.

2. Where the above criteria do not apply, the Panel will review all relevant information before determining the overall suitability of individuals to engage in scheme activities governed by the Protocols.

Information to be considered by the Suitability Panel

3. The information available to the Panel will include:

- Any information provided by the individual and the community-based restorative justice scheme in support of his or her application;
- Any information provided under the provisions of the Protection of Children & Vulnerable Adults legislation;
- The individual's full criminal record (if any);

- Any information provided by statutory organisations which might indicate the individual's involvement in criminal or paramilitary activity, or otherwise indicate that he or she would be unsuitable for appointment on the grounds that this would compromise public safety or have a significant adverse impact on public confidence in the process;
- Any representations made by the individual to the Panel.