

9 Restorative and Reparative Justice

Introduction

- 9.1** Our terms of reference require us to consider “... measures to improve the responsiveness and accountability of, and any lay participation in the criminal justice system”. This chapter considers the concept of restorative justice and how it is being applied, describes how it has been developed and applied in other countries, and examines its applicability in Northern Ireland.
- 9.2** We were not invited specifically to address restorative justice, or its application in Northern Ireland. We were, however, aware that the issue had been discussed by the participants in the multi-party Talks, and that there were some concerns about how the concept was being applied in Northern Ireland. The paper *Restorative Justice*, which was published at Annex D of our consultation paper,¹ was based on a government paper tabled during those talks. The paper outlined the concept and set out what action was being taken to develop the idea within the criminal justice system in Northern Ireland. We sought views on the Government’s approach, as set out in *Restorative Justice*.
- 9.3** As part of our work on this issue we commissioned a report² to inform us on relevant research relating to restorative justice, and to advise us on its applicability in Northern Ireland. We draw upon the research report’s findings extensively throughout this chapter.

1 Review of the Criminal Justice System in Northern Ireland: A Consultation Paper (1998) Criminal Justice Review Group, page 39, Belfast: HMSO.

2 Dignan and Lowey, Research Report 10.

What is Restorative Justice?

- 9.4** The term “restorative justice” has come to mean different things to different people in Northern Ireland. With this in mind and to set the context for the rest of the chapter, we believe it right to set out in some detail what we mean by restorative justice and how the term is defined internationally.
- 9.5** Much of the modern thinking about restorative justice developed out of the victim-offender mediation or reconciliation movement that began in Canada and the United States in the early 1970s. The term has been used as an expression that covers a variety of practices that seek to respond to crime in what is seen to be a more constructive way than through the use of conventional criminal justice approaches. It is a concept which is not easy to define, but one definition was put forward by Marshall³ when he defined restorative justice as “a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future”. It is 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.
- 9.6** As the research report notes, “even within a criminal justice setting, restorative justice initiatives display considerable variations, which is why it is difficult to formulate a precise definition that would apply to all of them”.⁴ The research report identifies a number of key attributes which underpin criminal justice-based restorative justice and which tend to be absent from more conventional approaches. These are:
- the principle of “inclusivity”;
 - the balance of interests;
 - non-coercive practice; and
 - a problem-solving orientation.
- 9.7** Restorative approaches can be described as “inclusive” in three main respects: they take account of the interests of victims, offenders and, sometimes, the wider community, in addition to the public interest in deciding how best to deal with a case; they extend the range of those who are entitled to participate in the process of dealing with the offence, and bring the victim and the offender more fully into the process; and they extend the range of potential outcomes of the process to include restoration for the victim and reintegration of the offender back into the community.

3 Marshall (1999), *Restorative Justice: An Overview*. London: HMSO

4 Dignan and Lowey, Research Report 10.

- 9.8** Restorative approaches are more sensitive to the need to strike an appropriate balance between the various interests at stake, including those of the victim and the offender, as well as the public interest. A key requirement is voluntary participation: neither the victim nor the offender should be forced to take part in a restorative justice process, or to participate in the outcome of that process. The restorative justice process is not itself a tribunal of fact: if guilt is disputed, then it is for the courts to decide. The final attribute often involves a problem-solving orientation that is forward looking and which aims to prevent future offending, and which goes beyond dealing with the aftermath of the particular crime. This is reflected most clearly in the aim of reintegrating offenders back into the community.
- 9.9** Restorative justice approaches in other jurisdictions are described at length in the research report⁵ and are set out briefly later in this chapter. Approaches differ, but are often based upon the following elements:
- engaging with offenders to try to bring home the consequences of their actions and an appreciation of the impact they have had on the victims of their offence;
 - encouraging and facilitating the provision of appropriate forms of reparation by offenders, towards either their direct victims (provided they are agreeable) or the wider community; and
 - seeking reconciliation between the victim and offender where this can be achieved and striving to reintegrate offenders within the community.

Human Rights Background

- 9.10** Restorative justice processes in the criminal justice setting are subject to many of the rights and protections afforded by international instruments to offenders and victims. Both the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (the Beijing Rules) and the *United Nations Convention on the Rights of the Child* encourage states to promote diversion from judicial proceedings for juveniles, providing that human rights and legal safeguards are respected. Rule 25.1 of the Beijing Rules also calls for “volunteers, voluntary organisations, local institutions and other community resources... to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit”.
- 9.11** The *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985* includes provisions relating to fair treatment, restitution and assistance for victims, and describes mechanisms for improving the responsiveness of judicial and administrative processes. It focuses primarily on compensation issues.

5 Dignan and Lowey, Research Report 10.

9.12 Most relevant of all to the issue of restorative justice, because restorative justice tends to be a community-based process, are the *United Nations Standard Minimum Rules for Non-Custodial Measures 1990* (The Tokyo Rules). The Tokyo Rules are intended to provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment. They also promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as encouraging among offenders a sense of responsibility towards society. They cover such issues as legal safeguards for offenders (such as Rule 3.4, which requires that “non-custodial measures imposing an obligation on the offender, applied before or instead of formal proceedings or trial, shall require the offender’s consent”, and Rule 3.6 which requires that “the offender shall be entitled to make a request or complaint to a judicial or other competent independent authority on matters affecting his or her individual rights in the implementation of non-custodial measures”), the powers of prosecutors to dispose of cases at the pre-trial stage, and the range of non-custodial sentencing dispositions which should be available to the courts. They also cover supervision of offenders in the community; the duration of non-custodial measures; the conditions that may be applied; treatment programmes; breach procedures; and public participation.

9.13 The Council of Europe issued *Recommendation R (99) 19 of the Committee of Ministers of Member States Concerning Mediation in Penal Matters* on 15 September 1999. The Recommendation notes developments in Member States in the use of mediation in penal matters. It recognises mediation in penal matters as a flexible, comprehensive, problem-solving and participatory option that enhances active participation in criminal proceedings of the victim, the offender, others who may be affected, and the community. The Recommendation sets out general principles for mediation in penal matters and suggests a legal basis, operational standards and qualifications/training which governments of Member States should consider when developing mediation in penal matters. Many of the issues that it covers apply equally to the use of mediation in a more general criminal justice context. In considering the issues that have been raised with us concerning restorative justice we have reflected upon all of the above instruments. We have also sought to apply the standards that they set in developing our recommendations.

Current Position in Northern Ireland

9.14 Restorative justice is a recent development in most countries, but its application in Northern Ireland is at a particularly early stage. It has become an issue of public debate in Northern Ireland in recent years, primarily because of the emergence of community restorative justice

schemes in some Republican and Loyalist areas. Also, there are occasions on which restorative principles are applied to individual cases that arise in the normal course of the criminal justice process.

SCHEMES WITHIN THE CRIMINAL JUSTICE PROCESS

- 9.15** Two pilot schemes established by statutory agencies operate as part of the formal criminal justice process. They are both at an early stage of implementation, have dealt with only a small number of offenders, and have not yet been fully evaluated. They involve offenders who have admitted their offences and are a means of diversion away from prosecution and court appearance. Juvenile Liaison Bureaux participate in, and are responsible for, referring offenders to the schemes. Both are aimed at juvenile offenders, and they involve a restorative conference in which the offender and his or her family and the victim and his or her supporters will participate, if they so choose (the participation of both the victim and the offender is entirely voluntary). The conference gives the offender the opportunity to learn how his or her behaviour has affected the life or business of the victim, and the victim an opportunity to confront the offender.
- 9.16** The first is the restorative justice scheme in Mountpottinger, which is a police led “caution plus” model dealing with a variety of minor offences. The scheme uses a mix of trained facilitators from the police and from the other agencies involved. Where the victim agrees to participate a restorative conference will be held. Where the victim does not, the police will deliver a “restorative” caution. Early indications are that most of those who have participated have reacted positively to the experience, although the scheme is still at a very early stage and has yet to be formally evaluated.
- 9.17** The second scheme, in Ballymena, targets retail theft and is operated by the police in co-operation with retailers in the town. In this scheme the offender and the “victim”, who is a local retailer drawn from a panel to represent the victims of this type of offence, will be brought together in a restorative conference convened by a trained police facilitator. We understand that consideration is being given to replicating the scheme in Belfast city centre and Lurgan. There are also some other approaches being developed within the formal criminal justice system with restorative elements. Some sentencers are using the power to defer sentences to allow victims and offenders to meet, and the Probation Service’s Watershed Programme has a restorative aspect.

SCHEMES OUTSIDE THE CRIMINAL JUSTICE PROCESS

- 9.18** A number of community restorative justice schemes have developed in some Republican and Loyalist areas. These operate outside the formal criminal justice process, and would aspire to

be based on restorative justice principles. The Northern Ireland Office, the RUC and the Probation Service have devised a joint protocol⁶ based on the published document *Restorative Justice*,⁷ setting out the principles and safeguards to be incorporated in community based schemes if the criminal justice agencies are to work with them. Those running the schemes in Loyalist areas have generally made efforts to involve the police and operate in a way that is (sometimes loosely) complementary to the normal criminal justice process. Those in Republican areas have no contact with the police, although they have developed links with other statutory agencies, and have no links with the formal criminal justice process at all.

9.19 Dignan and Lowey⁸ set out the origins of these schemes and the contextual factors that led to their development.⁹ They also draw attention to the dangers of such approaches - a theme we explore further in considering the way forward.

Views Expressed during the Consultation Process

9.20 We heard a wide range of views about restorative justice in the course of the consultation process, in the written submissions we received and in the course of the meetings and seminars that we held. Most of those who commented on this issue were broadly supportive of the concept of restorative justice although understanding of what it meant in practice varied widely. Opinions were divided, however, on how restorative justice should be delivered and fell broadly into two camps: those who supported the delivery of restorative justice processes within and by the community, with few or no links with the formal criminal justice system; and those who favoured restorative justice being integrated into and delivered as part of the formal criminal justice process and who opposed community restorative justice delivered without links to and accreditation by the formal criminal justice process. Opinions were strongly and sincerely expressed. We also heard a range of views between these extremes.

9.21 Restorative justice was seen as a valuable tool for dealing with young offenders in particular, and as a means of involving victims more fully in the process of dealing with offenders. Many felt that restorative justice would provide a useful additional tool for dealing with crime and criminality and that it was a more positive means of dealing with juvenile offenders, since it encouraged them to take responsibility for their actions. It did not preclude the use of

6 The *Community Response to Crime* protocol confirms the Government's commitment to restorative justice but sets out guidelines within which local schemes should operate. It also states that local schemes should be complementary to the criminal justice system, not an alternative, and that they should work with elements of the formal system, including the police.

7 *Review of the Criminal Justice System in Northern Ireland: A Consultation Paper* (1998) Criminal Justice Review Group, page 41, Belfast: HMSO.

8 Dignan and Lowey, Research Report 10, chapter 3.

9 See also Auld, Gormally, McEvoy and Ritchie, *Designing a System of Restorative Community Justice in Northern Ireland: A Discussion Document* (1997), published by the authors.

traditional sanctions, including imprisonment, but it opened up the potential for victims to seek explanation from offenders, express their feelings and to receive apology and/or reparation for their losses. By comparison the formal system did little to engage offenders and address the underlying causes of their offending behaviour.

- 9.22** Opinions differed on the types of offences for which restorative processes should be used, and the circumstances in which they should be used. Many felt that restorative processes were suitable only for minor crimes or for first time offenders, suggesting that some offences were too serious or sensitive to be dealt with by other than the traditional criminal justice process, or that persistent offenders should be excluded. Sexual crimes and domestic violence cases were often cited as unsuitable or fraught with danger for the victim, because of the risk of unequal power relationships and possible revictimisation. Others believed that they were particularly suitable for a restorative approach, arguing that the victims of such crimes should not be denied the opportunity to engage directly with the offender. Indeed in their submission the NSPCC argued that “the current adversarial system... rarely resolves the problem, repairs the damage or addresses the harm to relationships... a restorative justice process might operate as a model in some [child sexual abuse] cases to address these issues particularly where there may be reintegration of the offender into the family at a later point in time”. Some felt that restorative processes were capable of being used for all crimes, even the most serious, and that they could be used at any stage of the criminal justice process.
- 9.23** Some argued that persistent offenders were those most in need of a restorative approach, in that the criminal justice system had obviously failed to address the underlying cause of their offending behaviour, or to challenge it in any meaningful way. A few argued that adults might benefit even more than juveniles from a restorative approach, since they were more likely to understand and empathise with the views and concerns expressed by their victims.
- 9.24** There was general support for the proposition that those involved in delivering restorative justice programmes, whether as part of a community-driven or a criminal justice agency approach, should receive substantial human rights training as well as specialist training in mediation and dispute resolution, through accredited and specifically designed training programmes. In addition, some suggested that all restorative justice schemes should be subject to explicit codes of conduct, to ensure that they operated in a lawful and fair way, respecting the rights of all participants. They argued that such codes should be based on domestic law and international human rights standards. One group argued that they should also be subject to an explicit child protection policy. Some also suggested that all restorative justice schemes should be subject to regular, rigorous and independent inspection to ensure that standards were being met, that schemes should be evaluated, and that inspection and evaluation reports should be published.
- 9.25** Supporters of community restorative justice schemes argued that the pace at which such schemes developed links with criminal justice agencies, and in particular the police, should be determined by the community, not the criminal justice system. This argument hinged on the

perceived lack of legitimacy of the RUC and other criminal justice agencies in the areas that most needed the development of a restorative approach. Those communities, whether Nationalist or Unionist, which most needed a community-driven restorative justice approach were precisely those where the criminal justice agencies and the criminal justice process were distrusted most. Community restorative justice was seen as a way of harnessing the energy of local communities and enabling them to deal in a legitimate way with crime-related problems, where often it was felt that the criminal justice system had failed. Government insistence that such schemes should work in co-operation with the RUC was rejected by some. One party commented: “if the RUC were to be involved [in restorative justice schemes] this would immediately take away any legitimacy which such programmes had built up in many Nationalist areas. To insist on RUC involvement is to emasculate the community participation which is precisely the strength of such schemes.” However, the involvement of the police and other criminal justice agencies was not ruled out for the future: “the establishment of new institutions for policing and criminal justice may allow more organic links to develop.”

9.26 Another submission suggested a “sensitive and pragmatic approach from government towards such programmes. Such an approach would recognise that statutory involvement from different criminal justice agencies... may occur in different ways and over differing timeframes in the context of evolving projects”. The same submission went on to say that, “provided that activists are suitably trained, and acting within the law, the relationship between restorative justice projects and the various elements of the criminal justice system should be permitted to evolve at the chosen pace of local communities”, a view which was echoed by at least one other submission.

9.27 A majority of those who put forward views on restorative justice were extremely wary of or, in some cases, absolutely opposed to the development of community restorative justice schemes. They believed that restorative justice should be developed as an integral part of the criminal justice process, and delivered by or with the explicit sanction of criminal justice agencies. We heard a wide range of concerns expressed about community restorative justice schemes and their relationship to paramilitary punishment beatings, including:

- The motivation for the development of community restorative justice schemes. Many believed that community restorative justice schemes were being developed by paramilitaries because of the growing unacceptability of punishment attacks within the community, and the need to replace such attacks with other methods of controlling their communities.
- The risk that those involved in meting out sanctions arising from such schemes would resort to or threaten punishment beatings.

- The perceived or potential involvement of those with paramilitary links in such schemes, and the risk of schemes being driven by people who did not represent the community as a whole, for reasons which had little or nothing to do with concerns about crime.
- The risk that the rights of offenders would be abused, that such schemes would use unlawful means for dealing with alleged offenders, or that offenders and victims would be coerced into participating.
- The risk of such schemes acting as community courts, determining not only what should happen to the offender, but also guilt.
- However human rights-proof the schemes were internally, they operated within and were sustained by an environment of coercion and threat, including the threat of punishment attack.

9.28

Some favoured particular models of restorative justice. The New Zealand family group conferencing model was cited by many as an example of a proven approach that was fully integrated into the criminal justice process for juvenile offenders, and as an approach that bound in a wide range of stakeholders. This model was particularly attractive to some sentencers. Others favoured police-led models, such as that being piloted in Mountpottinger, or in some of the Australian states. Others suggested a partnership approach, in which the statutory agencies, the voluntary sector and local communities worked together to deliver restorative justice processes, within an overall statutory framework.

9.29

A number of issues concerning the operation of restorative justice were also raised with us in the course of the consultation process, including:

- the need for participation of victims and offenders to be truly voluntary, and for the victim and offender to have the right to opt out of the process at any stage;
- the possibility of a dedicated agency or group of staff in a statutory agency being responsible for the operation of restorative justice schemes, and in particular, fulfilling the role of co-ordinator/facilitator in a conferencing model;
- the need for broadly based community support and the development of sufficiently varied local programmes to allow restorative “packages” to be developed; and
- the avoidance of piecemeal development of restorative justice schemes, and the need for schemes to be universally available across Northern Ireland.

Research and International Comparisons

- 9.30** The research report¹⁰ reviews the available research on restorative justice and provides a detailed description and analysis of the development and operation of restorative justice in a number of other countries, including England and Wales, Canada, the USA, Australia, New Zealand, South Africa, and Scotland. We had the opportunity to hear a great deal about the application of restorative justice in New Zealand and Australia during our visit to New Zealand (which coincided with an Australasian conference on youth justice¹¹). We also learned much from our visits to Canada, the Netherlands, South Africa and England and Wales.
- 9.31** We do not intend to repeat much of the material in the research report, but we do wish to emphasise that we concur with many of its conclusions, and agree with its analysis of the dangers inherent in a communitarian approach to restorative justice. There are, however, a number of lessons that we wish to draw out from the report and from our study visits. We also wish to describe briefly the New Zealand and Australian models, since they are central to our considerations.
- 9.32** Various restorative justice approaches have been developed, but the main variants include, victim-offender mediation, family group (or community) conferencing, and sentencing circles.

VICTIM-OFFENDER MEDIATION

- 9.33** Victim-offender mediation originated in Canada in 1974, and is heavily influenced by the Mennonite movement. It involves the quest for reconciliation between victim and offender, and a process of dialogue between victims and offenders relating to the offence in the presence of a trained mediator. It can occur face-to-face, or by shuttle mediation, where the mediator acts as a go-between. It offers victims the chance to tell offenders about the physical, emotional and financial impact that their offence may have caused, and gives them an opportunity to put unanswered questions to the offender.
- 9.34** Outcomes can include: an apology to the victim for the harm caused, reparation of various forms, including financial recompense, work for or on behalf of the victim, specific undertakings in relation to their behaviour (for example to undertake counselling or treatment), or a mix of all of these.
- 9.35** Schemes operate in a number of countries, including North America and England and Wales. In England and Wales they have tended to operate at the pre-court and court stages of the criminal justice process. Pre-court schemes offer mediation with a view to securing an agreed package of reparation in conjunction with a police warning or caution. This is known as a

10 Dignan and Lowey, Research Report 10.

11 “Youth Justice in Focus”, conference held in Wellington, New Zealand, 27-30 October 1998.

“caution-plus” programme. Court-based schemes operate on adjournment between conviction and sanction, or following deferment of sentence and, if successful, will lead to a reduction in the sentence, or to some form of reparation being included in the disposal of the court.

FAMILY GROUP (OR COMMUNITY) CONFERENCING

9.36 Family group (or community) conferencing emerged in New Zealand and Australia in the late 1980s and early 1990s. It differs from victim-offender mediation in a number of ways. Firstly, in victim-offender mediation participation is normally limited to the victim and offender, whereas conferencing can encourage the participation of a much wider group, including those who are concerned for the well-being of either the victim or the offender, those who have concerns about the offence and its consequences, and those who may be able to contribute to a solution to the problem presented by the offence. There are two principal variants of the conferencing model.

THE NEW ZEALAND VARIANT

9.37 The first variant is the family group conferencing approach which originated in New Zealand, and which is an integral part of the youth justice system (applying to 14-17 year olds inclusive). It has a variety of goals, a number of which accord with a restorative approach. These include: an emphasis on young offenders paying for their wrongdoing in an appropriate way; the involvement of families and offenders in decision making arising from the offending; the participation of victims in finding solutions; and consensus decision making. There are both pre-prosecution and court level systems, with the family group conference having a central role in both systems.

9.38 In the pre-prosecution process, once the police have established an intention to charge, they are able to direct a youth justice co-ordinator to convene a family group conference without reference to the court. If the conference achieves agreement about what should be done and the young offender completes the plan, then the matter will not proceed to court. Where agreement is not reached, or when the members of the family group conference agree that the young offender should appear in court, the police are able to refer the case to the court.

9.39 If a young offender is arrested and charged the formal youth justice process operates. The young offender will appear in court without entering a plea. If the charge is not denied, the judge will direct a youth justice co-ordinator to convene a family group conference. Otherwise, the case will proceed to a defended court hearing at which if the charge is proved, the court must order a family group conference and consider the outcome prior to imposing an order on the young offender.

- 9.40** A family group conference involves the victim (or the victim's representative), the offender and members of the offender's family. It is attended by the police and facilitated by a youth justice co-ordinator who is employed by the Department of Social Welfare. Others, such as a social worker and a legal advocate for the young offender, may attend the conference at the request of the co-ordinator or the offender.
- 9.41** The legislation allows for considerable variation in practice at family group conferences, with the family of the offender applying the procedures they wish. In practice, youth justice co-ordinators have played a key role in advising families about how to proceed. They inform those entitled to attend of the conference details, discuss the process with the family and invite other interested parties, such as social workers, sports coaches or teachers.
- 9.42** A family group conference may proceed even if some participants who are entitled to be there decline to attend. It is not dependent on the attendance of victims. Offenders do not have to attend either, although conferences rarely proceed without them.
- 9.43** The objective is that those who attend the family group conference should agree a plan or recommendation. The conference has to designate a named person to be responsible for ensuring that the plan is carried out. If there is no agreement, the matter must be referred back to the youth court. The proceedings of family group conferences are confidential. Neither the enforcement agency (usually the police) nor the court may use information from the conference, even if there is no agreement and the matter goes on to a contested trial.
- 9.44** Similar models have been introduced in other jurisdictions, notably Australia, and there are small-scale pilot projects in South Africa and England and Wales.

THE AUSTRALIAN VARIANT

- 9.45** The second main conferencing model originated in a police district in Wagga Wagga, New South Wales. This variant was originally police-led, in that the police decided which cases were appropriate for conferencing and convened and facilitated the conferences. The conference itself was carefully scripted (the New Zealand model is not), partly to ensure consistency and partly to ensure that the restorative nature of the conference was maintained, even though those delivering it might have been unfamiliar with it, and relatively untrained. It was sometimes referred to as restorative policing, and had been seen by some as a method for transforming police attitudes, role, perceptions and organisational culture.
- 9.46** Police-based restorative conferencing techniques have been introduced in a number of other Australian jurisdictions, to a number of police departments in the USA, to parts of Canada, and to three police forces in England and Wales, including Thames Valley (on which the

Mountpottinger scheme is modelled). Ironically, responsibility for conferencing in New South Wales has been moved from the police to the Office of Juvenile Justice because the police were not seen to be the most appropriate agency to have responsibility for conferencing.

SENTENCING CIRCLES

9.47 The third restorative justice variant is known as sentencing circles. These were developed in Canada. They bring together victims and their supporters, offenders and their supporters, judge and court personnel, prosecutor, defence lawyer, police and all community members who have an interest. The aim is to work consensually to devise an appropriate sentencing plan to meet the needs of all the interested parties. Sentencing circles have been used in some of the Canadian provinces, and in some US states, such as Minnesota.

OUTCOMES

9.48 The research report¹² assesses the extent to which each of the two main restorative justice models - victim-offender mediation and family group conferencing - are successful in achieving their objectives. They stress that while both models have been reasonably intensely evaluated, including the process itself, implementation and reconvictions so far, the evaluations have not yet addressed the cost effectiveness of the models in comparison with conventional criminal justice processes, nor their preventive potential.

9.49 In general, however, the research report draws the following broad conclusions:

- The majority of victims are willing to meet with their offenders, provided they are adequately informed of the arrangements, and these are convenient.
- A high proportion of cases result in an agreement being reached, and high levels of compliance are reported for agreements that involve the payment of compensation or other types of reparation.
- For many victims, material reparation is less important than symbolic forms of reparation, such as an apology.
- The majority of victims are satisfied with the process, and the outcomes secured, although victim satisfaction rates vary across the different types of schemes.
- The majority of offenders report both the process and the outcome to be fair. At the same time, offenders frequently report that the experience of meeting their victim is likely to be emotionally challenging, and many say that it is harder than going to court.

12 Dignan and Lowey, Research Report 10, chapter 5.

- It is too soon to draw conclusions on the effect of restorative processes on re-offending rates, although some studies have shown slight reductions in re-offending and reductions in the seriousness of offences subsequently committed.
- There is little to choose between victim-offender mediation and family group conferencing as regards the extent to which they achieve their goals, but the conferencing model provides a forum in which a much broader range of interests can be represented, and the plan of action can also reflect this wider set of interests. A police-based model can only be suitable for more minor offences as it operates pre-prosecution.
- There is some evidence that involvement in restorative justice approaches can help change police attitudes and culture.

IMPLEMENTATIONAL STRATEGIES

9.50 The research report¹³ also considered the relationship between restorative justice and the rest of the criminal justice system. The report noted four principal options:

- (i) the “subsidiary” model, which leaves in place the main features of the conventional retributive criminal justice system, subject to the development of reparative outcomes, such as court-ordered compensation by the offender to the victim, and community service orders;
- (ii) the “stand-alone” model, where restorative schemes that are locally based or designed to deal with specific problems are encouraged to develop in a way that is complementary to, but not an alternative to, the formal criminal justice process;
- (iii) the “partially integrated” model, in which approaches incorporating restorative justice principles are partially integrated into the criminal justice system including the “Halt” scheme in the Netherlands and the new “reparation order” in England and Wales (descriptions of which are set out in Chapter 10 on juvenile justice);
- (iv) the “fully integrated” model, in which a restorative justice approach is fully integrated into and underpins the philosophy of the criminal justice system, of which New Zealand and some of the Australian conferencing approaches are examples, at least in relation to juvenile justice.

9.51 The report concludes that “the most effective way of securing restorative justice’s undoubted potential is to adopt a fully integrated approach. By establishing restorative justice as a mainstream response that operates at the heart of the criminal justice system it is much more likely that the problems of marginalisation and subordination which are associated with stand-alone programmes or a partially integrated compromise approach will be avoided”.

13 Dignan and Lowey, Research Report 10.

Evaluation and Recommendations

- 9.52** We were struck by the widespread support for the concept of restorative justice put forward in the consultation process, not only across a wide spectrum of political opinion, but also amongst the voluntary and community groups whose views we heard. We were taken also by the sharp differences of opinion on how restorative justice should be delivered. On the basis of what we have heard during the consultation process, what we have seen in the course of our study visits, and what we have learned from the research we commissioned, we believe that the application of restorative justice has much to offer in Northern Ireland.
- 9.53** We believe that restorative justice might be particularly useful in dealing with juvenile offenders without a long history of criminality but whose offending is a matter of real concern to local communities. It is no accident that many of the restorative justice approaches developed in other jurisdictions have focused upon juvenile offending, and no coincidence that those countries who have integrated a restorative justice approach into their criminal justice systems have done so primarily for juveniles. As a result, **we recommend the development of restorative justice approaches for juvenile offenders.** The discussion in this chapter focuses primarily on the application of restorative justice to that age group.
- 9.54** That is not to say, however, that its application to older offenders should be neglected or ignored; indeed, those schemes in other jurisdictions that have targeted adults have shown some very promising results. There is less experience in other countries upon which to draw, however, and we believe that while the underlying principles of restorative justice apply equally to all age groups, the application of restorative justice to adults and young adults may demand different processes, bring in a different range of interests and deal with different offending behaviour. **We recommend that restorative justice schemes for young adults (i.e. those between 18 and 21 years of age inclusive) and adults be piloted and evaluated carefully before final decisions are made on whether and how they might be applied across Northern Ireland as a whole.**
- 9.55** In the remainder of this section we focus on the broad parameters that need to be addressed in designing a court-based restorative justice process for juveniles, and on the potential for pre-court restorative justice processes for juveniles. However, the detail of precisely how restorative justice should be delivered will need to be considered more fully in discussing, developing and implementing our recommendations. We consider the following questions:
- where restorative justice should stand in relation to the criminal justice system;
 - the choice of aims and guiding principles which should underpin restorative justice in Northern Ireland;
 - how restorative justice might be delivered, and at what levels;
 - the potential outcomes of restorative justice;

- who should participate, and who should co-ordinate; and
- who should be involved in developing and delivering options and programmes?

CHOICE OF IMPLEMENTATIONAL STRATEGY

9.56 We considered at length the options available for implementing restorative justice for juveniles, including:

- encouraging the development of community-driven schemes with few or no formal links to the criminal justice system;
- encouraging the development and spread of stand-alone schemes, such as the Ballymena Retail Theft Initiative and the Mountpottinger Restorative Justice Scheme;
- developing a partially integrated approach, along the lines of the Dutch “Halt” scheme or the English youth panel and reparation order approach; and
- developing a fully integrated approach, along the lines of the conferencing approaches in New Zealand.

9.57 Community-based schemes, which have no or only tenuous links with the formal criminal justice system, will by definition not lie at the heart of mainstream approaches for dealing with offending behaviour on the part of juveniles. We do not therefore see these as central to our approach, but, in view of the interest in them and their existence in parts of Northern Ireland, we address the issues that they raise at the end of this chapter.

9.58 We have also seen evidence that most stand-alone mediation and reparation schemes in other countries have only had a limited impact in their locality. Because they have only received a small number of referrals, have been seen as separate from criminal justice, and have often been treated as an add-on or by-way to mainstream criminal justice. Some have also tended to ignore victims, focusing on solely rehabilitative principles. Often they have been restricted to “minor” offences or the types of offences which the criminal justice system finds it difficult to deal with, such as those arising from neighbour disputes and disputes between people who know each other. While, they can have a role to play, we do not see stand-alone or partially integrated schemes in themselves enabling the full potential of restorative justice to be realised in Northern Ireland.

9.59 The New Zealand scheme, in contrast, aims to be the mainstream option for youth justice. No case can reach sentence at court except through a family group conference. Conferencing can result in custody as part of the plan. In Australia, however, family group conferences are restricted to minor offences. The result has been that they only account for some 10% of youth justice resolutions, with many cases going straight to court. In both countries, the

police are still able to deal with minor cases through informal warnings or formal cautions. **We recommend that in Northern Ireland the police continue to have the option of issuing informal warnings or cautions to juveniles.**

9.60

We note the research report’s conclusion¹⁴ that “the research evidence... is overwhelmingly supportive of an integrated approach in which restorative justice is fully incorporated within the criminal justice system as a “mainstream” response. This does not imply, however, that restorative justice measures will be used in all cases, or to the exclusion of all other responses”. We support that view. **We recommend that restorative justice should be integrated into the juvenile justice system and its philosophy in Northern Ireland, using a conference model (which we term a “youth conference”) based in statute, available for all juveniles (including 17 year olds, once they come within the remit of the youth court as we recommend in the next chapter), subject to the full range of human rights safeguards.**

CHOICE OF AIMS AND GUIDING PRINCIPLES

9.61

Since the parameters of any restorative justice system and its implementation must stem from its principles, deciding which of the several philosophies a future Northern Ireland system might adopt for juvenile justice is crucial. Some principles we have identified in other jurisdictions are:

- *Meeting the needs of victims*, emphasising victim as well as offender needs, and stressing such outcomes as practical reparation, financial compensation, or an apology. This involves giving victims a real place in the process, not just regarding them as a means to reform the offender.
- *Devolving responsibility for determining restorative outcomes* to a conference, so that traditional criminal justice participants (judges, police, prosecution) neither dominate the process, nor become involved to an unnecessary extent with the development of an agreed plan. The youth court would need to *approve* plans for any case where the conference has been ordered by the court, but would not amend the plan unless it was deficient.
- Focusing on *families*, and giving families a measure of responsibility for deciding plans and monitoring them, so devolving power to the family (of the offender) and also putting in mechanisms to strengthen the family to work with the offender in addressing his or her offending behaviour.
- Focusing on *the community*, by developing mechanisms to listen to the concerns of the local community, and by the community supporting youth conferencing in their area by developing facilities and programmes.

14 Dignan and Low e y, Research R eport 10, chapter 7.

- *Rehabilitative justice*, where what is important is the prevention of offending by the young person. The youth conference focuses on the offending behaviour and what can be done creatively to produce a plan and programme for the offender that will reduce his or her offending.
- *Retributive justice*, where the aim is for plans to reflect the seriousness of the offence, but insisting on *proportionality*, in the sense that a plan should fall within the range of what a youth court would give as a sentence for that offence (this principle is included in the Australian legislation).
- *Reintegrative shaming*, where the offender acknowledges the harm that the offence has done, but where the youth conference subsequently clearly separates the offender from the offence, indicates the worth of the offender as a person, and focuses on the potential of the offender in the plan. It is noteworthy that where conferences in the New Zealand research have been reintegrative, rather than just shaming the offender, offenders both find them fairer and also are less likely subsequently to reoffend.
- *Repairing relationships*, which is a fundamental aspect of restorative justice. Crime represents a ruptured relationship between the victim and the offender. Even if they had no previous relationship, the crime creates one. Where possible and appropriate, an aim should be to repair the relationship between the victim and the offender, or at least to reduce the possibility of future hostility and conflict.

9.62

Differing approaches to restorative justice will give differing emphases to these principles, and it is unlikely that such principles will all be applicable in any one case. **We recommend that a Northern Ireland system should focus on:**

- **reparative justice and meeting the needs of victims, so giving them a real place in the youth conference, rather than just regarding it as a means to reform the offender;**
- **rehabilitative justice, where what is important is the prevention of re-offending by the young person, so that the youth conference focuses on offending behaviour;**
- **proportionality, rather than pure retributive justice;**
- **reintegrative shaming, where the offender acknowledges the harm done, but where the youth conference clearly separates the offender from the offence and focuses on the potential for reintegrating the offender into the community in the plan and on the prevention of re-offending;**
- **repairing relationships which have been damaged or broken by crime;**
- **devolving power to youth conference participants (see below for discussion of who those participants might be) to create the youth conference and the plan, but requiring subsequent approval for the plan from the court for cases which have gone to court (see below in relation to police/prosecution referrals);**

- encouraging victims to bring one or more supporters (who might be, but need not necessarily be, a member of Victim Support);
- encouraging offenders to bring significant others (especially their families, but also particular members of the community important to them) to the youth conference, but not placing such a strong emphasis on the responsibility of the family to deal with offending as is done in New Zealand.

9.63 A youth conference would be particularly suitable where there are family, school, mental health, drug, alcohol or substance abuse problems, and where there is agency involvement already. Such issues, and their impact on the offender's criminality, can be addressed in the conference. A youth conference will provide an opportunity to develop creative plans to meet the needs of victims and the needs of juvenile offenders. **Even where there is a need for custody or a traditional criminal justice community sanction (such as probation, community service or a compensation order), we recommend that these should be capable of being combined with other elements within a youth conference order (allowing a number of elements to be incorporated into a plan, not all of which can be combined at present).** Youth conference orders should also be able to include an apology (where there is an identifiable victim) and reparation (where necessary using a compensation order or the new reparation order we propose in the next chapter, on juvenile justice).

REFERRALS TO A YOUTH CONFERENCE

9.64 In all that follows, we are assuming that a youth conference is only used where the offender admits the offence, or where a court has established guilt, and that formal admission of the offence (whether or not there has been any previous admission to the police or in court) takes place at the beginning of the youth conference. Such an admission would have no legal standing in any subsequent court proceedings. We consider first the court-based model, before moving on to schemes that are driven by prosecutors or the police.

COURT-BASED CONFERENCING

9.65 We recommend that a court-based youth conferencing scheme should operate on the basis of court referrals, with the youth conference resulting in a report to the court which contains a draft plan. **If approved by the court, the plan will form the basis for the court disposal** (which might, depending on the plan, contain one or more traditional disposals, for example probation or custody). **Court-ordered referrals should be required after guilt has been admitted or determined, but before disposal. They should be discretionary for offences that are triable only on indictment.**

- 9.66** Where the court orders a youth conference, we recommend that there should be no requirement to request a pre-sentence report, so as to avoid introducing a further cause of delay. We envisage that preparation for the conference and the conference plan will often incorporate the type of information presented in a typical pre-sentence report and will involve input from the Probation Service where it would be relevant or helpful. The youth conference will, therefore act as a source of advice to the sentencer which includes the views of relevant statutory agencies, the victim, the offender, and the offender’s “significant others”. There may, of course, be confidential matters for a report to the sentencer that could not be shared with all conference participants. The relationship between the conference, pre-sentence reports and the information needed by the court will have to be examined in developing detailed proposals.
- 9.67** Determining the disposal would be a matter of the youth court receiving and checking the plan, amending it where necessary, and the plan becoming the basis for the youth conference order or another disposal determined by the court.

THE ROLE OF VICTIMS

- 9.68** The position of victims is central to our philosophy of restorative justice. It follows that they should have the opportunity, if they wish to attend youth conferences and contribute to the discussions that will result in a plan to be recommended to the court. We believe that **every effort should be made by the conference co-ordinators to contact victims, to encourage them to attend and to organise conferences in such a way as to facilitate the attendance of victims.** In this context, we should stress that the term “victim” relates to all those people who may have suffered directly as a result of any offence being considered by the conference.
- 9.69** However, there can be no question of compelling or pressurising victims to attend against their will. Nor should they be expected to take responsibility for what happens to the offender or the outcome of the conference; these are rightly matters for criminal justice personnel and the courts. Great care must be taken not to allow restorative justice to result in victims feeling intimidated or put upon.
- 9.70** The question arises of whether the victim should be able to send a representative to a conference in his or her place, an arrangement that is possible in New Zealand. In the Northern Ireland context we do not think that this is a good idea; we see the youth conference as focusing on those who are directly involved in the circumstances of the case and on the relationship between those people. That is the factor that will govern attendance. However, particularly given that this could be a difficult experience for them, **victims should**

be able to be accompanied at the conference by a supporter (or, at the discretion of the co-ordinator, more than one supporter – a restriction on numbers would be inappropriate, especially in the case of child victims).

- 9.71** If the victim does not wish to attend the conference, then he or she should be offered the alternative of submitting a written statement (describing the effect of the offence and indicating whether an apology, reparation or compensation would be received positively). If there is no input at all from the victim, should the conference proceed? The New Zealand and Australian models do not require the attendance of victims; indeed in New Zealand there was concern in the early years that victims attended only about half the conferences, apparently in some cases because not enough effort was made to take account of the convenience of victims in organising conferences. Provided that every effort is made to encourage and facilitate their attendance, **if victims do not wish to attend a youth conference that should not prevent it from going ahead. Victims should not have a veto on conferences taking place.**

THE OFFENDER, THE FAMILY AND SIGNIFICANT OTHERS

- 9.72** The involvement of an offender’s family in contributing to a youth conference is likely to be an important factor affecting the success of the outcome. We would envisage the offender’s parents or guardian attending a conference in almost all circumstances. In New Zealand and Australia, the term “family” is seen as a very broad concept and, especially (but not only) if the offender is estranged from blood relations or has no family, co-ordinators will seek to include “significant others” in the process. These might be teachers, youth club leaders, church leaders or people in the community who know the young person well. **We recommend that in Northern Ireland, for purposes of attendance at youth conferences, “family” should be viewed in its broad context to include those, such as church or youth leaders, who play a significant role in the offender’s life.**
- 9.73** We think that there are many circumstances where the attendance of “significant others” from the offender’s extended family or the community could have a positive impact on a youth conference. However, we do not believe that the concept of the extended family is such that people from this group should be able to attend youth conferences as of right, especially if that were to be against the wishes of the young person. While the offender should have no veto on the attendance of parents or guardians, it will be for the co-ordinator, in the preliminary contacts, to try to persuade the young person that any “significant other” who might contribute to the production of a conference plan, should attend.
- 9.74** The offender should have no veto over the attendance of the victim and his or her supporter(s), or over that of representatives of agencies who provide information and advice

to the youth conference. Nor should the victim have a veto over the attendance of anyone (though it will be important to ensure that the victim is not intimidated or threatened during the conference and active steps may be necessary to adjourn the conference if this occurs).

9.75 In exercising discretion over whether a “significant other” should participate in a conference, the co-ordinator will take account of whether the person’s position and relationship with the offender are such that he or she will have a positive contribution to make. That does of course mean that the co-ordinator will have the discretion to decide that people from the community should not attend.

WHO WOULD PARTICIPATE IN THE YOUTH CONFERENCE?

9.76 We recommend that the following should always take part in a youth conference:

- the co-ordinator;
- the juvenile and the juvenile’s parents or guardians; and
- either a police officer or prosecutor.

9.77 We recommend that the following *may* participate in the youth conference:

- the victim (if he or she agrees) and the victim’s supporters;
- significant others relevant to the offender (at the co-ordinator’s discretion);
- a defence solicitor or barrister (where this is wished by the offender or his or her guardian); and
- where appropriate, professionals such as probation and social services, who can provide information to the conference about possible options for the plan and about the offender’s background (but only as information providers and at the co-ordinator’s discretion).

THE ROLE OF THE YOUTH CONFERENCE CO-ORDINATOR

9.78 We see the role of the youth conference co-ordinator as being to:

- contact the offender, the offender’s family, the victim, the defence solicitor or barrister and any others who should attend, to explain the purpose of the youth conference and to arrange a time and venue;

- identify, with the offender, his or her family and other agencies, the possible range of outcomes, drawing from available programmes in the offender's locality as well as traditional disposals;
- identify the victim's needs and wishes;
- run the youth conference;
- present the agreed plan to the court or, if no plan is agreed, report to the court why that was so; and
- monitor the implementation of the plan and, where necessary, initiate breach proceedings.

9.79 We recommend that the youth conference co-ordinator should have the same type of monitoring and breach powers as probation officers in relation to monitoring probation orders and their requirements. If offenders do not complete their plans in their entirety or, in the judgement of the co-ordinator, sufficiently, then breach proceedings would start. For court referrals this would mean the case being brought back before the court. In all instances, the youth court should review the case at a predetermined point.

WITHIN WHICH AGENCY SHOULD CO-ORDINATORS BE BASED?

9.80 New Zealand conference co-ordinators are based nationally within the government department that deals with social work and social welfare, though within a separate agency (the Children, Young Persons and their Families Service). Some, including senior members of the judiciary, believe that this is not the ideal model, because the priorities for the department have been child protection and residential accommodation for young people, rather than family group conferencing.

9.81 We think it is very important to indicate firmly, in the Northern Ireland context, that the youth conference is a youth justice matter, not a welfare option or community alternative justice. We therefore think that the youth conference and the youth conference co-ordinators need to be located within a department or agency which is seen publicly as epitomising justice values. It should not be located within the prosecution service since there could be conflicts of interest between trying to mediate a youth conference plan and prosecuting. We see similar difficulties in locating responsibility for conferencing within the police.

9.82 We recommend that the youth conference and youth conference co-ordinators should be housed within a separate arm of the Department of Justice (which we discuss at Chapter 15 of this report) or one of its agencies.

9.83 Co-ordinators would be employed by the organisation within which they were based. They should be specially trained for their task. We would not wish to specify any particular

previous experience for co-ordinators, but we recognise that they may be drawn from a number of backgrounds, including former or seconded police officers, prosecutors, probation officers, social workers etc, or have no previous criminal justice experience.

INTER-AGENCY STRUCTURES

- 9.84** The most difficult issues for the New Zealand model have been the development of options and programmes that can be used for young people in conference plans. We heard concerns in New Zealand that there was a lack of suitable options, particularly for more serious offending. We think attention needs to be given to this well in advance of starting the youth conference programme in Northern Ireland.
- 9.85** **We recommend that the development of restorative justice, and in particular the development of the menu of national and local programmes and projects which the youth conference can draw upon, should be driven at both national and local level.** It will need a great deal of careful inter-agency planning to develop the detailed arrangements and to deal with accreditation, evaluation and training. To achieve this, new inter-agency arrangements at both central and local levels will be necessary. **We recommend that a national level inter-agency body responsible for youth conferencing should be established; it might be a sub-group of the Criminal Justice Board** (which is described in Chapters 3 and 15). **It could have responsibility for ensuring the availability of programmes across Northern Ireland to support community sanctions, restorative justice generally, and youth conferences in particular. It should deal with the accreditation and setting of standards for restorative justice, including those that apply to community restorative justice schemes, and encourage the spreading of good practice.**
- 9.86** The Community Safety and Policing Partnerships, which we recommend in Chapter 11, might also have a role in assisting in the development of local programmes and options that might form part of youth conference plans. By doing so they would contribute to community safety within their local area. They might also help to publicise the youth conference system locally. **We recommend that youth conference co-ordinators should take the lead in developing networks and inter-agency arrangements in local areas, and should co-ordinate the development of a local menu of programmes and options that might form part of a youth conference order. They should develop close links with a variety of organisations and groups with an interest in youth conferences in local areas, including funders, programme providers, community groups, sentencers, the police, probation, social services and education authorities.**

FUNDING AND RESOURCE ISSUES

9.87 In implementing the youth conference model, **we recommend that priority be given to establishing facilities for court-referred youth conferences, and that the system be expanded to provide for police and prosecutor referrals more slowly.**

9.88 Around 2,000 juveniles appear before the youth court annually. This may increase to around 3,000 once 17 year olds are brought within the jurisdiction of the youth court. On the assumption that youth conference co-ordinators would deal with an average of four youth conferences each week, and on the assumption that most cases appearing before the youth court would require a youth conference, then we estimate that around 20 full-time co-ordinators would be required at around staff officer level to cover the workload, together with leave and sick absence, led by a chief conference co-ordinator, and with a small support staff. Staffing might, therefore, cost in the region of £750,000 per annum. Accommodation costs for the staff are excluded from this estimate, as are the costs of providing facilities for holding youth conferences (although we would expect that existing court or agency facilities might be used). Nor are the costs of providing programmes included (although we would expect these to be offset, to some extent, by a reduction in the use of traditional disposals, including custody). We do not believe that the work of conferences would add substantially to the workload of other agencies involved. In particular the Probation Service is unlikely to incur additional costs related to youth conferencing per se. Resources devoted to youth conferences will to some extent be offset by a reduction in the effort devoted to the preparation of pre-sentence reports for juveniles.

YOUTH CONFERENCE OUTCOME

9.89 We noted that the youth conference co-ordinator would submit a conference plan to the court for consideration before sentencing. Such a plan would contain a variety of information about the circumstances of the offender, the nature of the offence, a brief description of who attended the conference and how it went, and the elements of the plan that emerged from the conference. We envisage that a plan might include a combination of any or all of the following elements:

- an apology to the victim;
- financial compensation;
- reparation in kind;
- service to the community;
- participation in programmes to address offending behaviour and/or related social problems, e.g. substance, alcohol or drug abuse, gambling, employment related training, etc;

- other traditional disposals, including probation orders, community service and custody; and
- a youth conference order, which might combine any of the above elements (including traditional sentencing options that cannot currently be combined).

PRE-PROSECUTION RESTORATIVE JUSTICE SCHEMES

9.90

We have focused in this section on the arrangements for a court-based restorative justice system for juvenile offenders. We recognise, however, that it is important to develop pre-prosecution restorative justice diversionary schemes, in appropriate cases building upon the initiatives already being developed. We also believe that many aspects of the court-based model we have proposed are equally applicable pre-prosecution. Whilst the energies of youth conference co-ordinators must, initially, be directed towards developing the court-based scheme and providing a service to the courts, **we believe that in the longer term, as resources permit, youth conference co-ordinators should assist with pre-court conferences as part of a diversionary strategy.**

9.91

We envisage the development of two principal forms of pre-court restorative justice diversion, the first of which would be driven by the police as part of their discretionary power to issue informal advice and warnings, and formal cautions, and the second of which would be driven by prosecutors. The two models would comprise:

- referral by the police (at the discretion of the police), prior to a decision to prosecute, with the youth conference resulting in no official record of the offence (informal warning level) or resulting in the equivalent of a formal caution;
- referral by the prosecutor (at the discretion of the prosecutor), with the youth conference resulting in no official record of the offence (informal warning) or the equivalent for official record purposes of a formal caution.

9.92

Other types of restorative schemes should also be available for police and prosecutor driven pre-trial diversion, such as those that are currently being developed in Northern Ireland, or processes akin to the “Halt”¹⁵ scheme in the Netherlands. The Milton Keynes caution plus scheme has, however, demonstrated the difficulty of losing potential offenders to schemes because they have been arrested and then rapidly charged, rather than referred for consideration for a caution. New Zealand experience is similar. Given the pressure for speedy processing of juvenile offenders and the possible future introduction of strict time limits, we think it possible that many offenders who might otherwise benefit from a diversionary approach, will be referred by the police to prosecutors for prosecution. Any need for

15 See the next chapter on juvenile justice for a description of the “Halt” scheme.

prosecutors to refer back to the police for caution in order to permit a youth conference would introduce more complication and delay than if they had the option to refer directly to youth conferences. **We think it is important that, when resources permit, youth conferences, as with other forms of diversion, should be available through prosecutor referral as well as police referral.**

- 9.93** For prosecutor referrals, the right to prosecute should remain until the plan has been completed. If there is a breach of the elements of the plan, this should be reported by the co-ordinator to the prosecution. We see this as important in public confidence terms, given the likelihood that more serious cases will be reported to the prosecutor, and to reassure people that offenders are not being given the opportunity to “get away with it”. **In the case of police referrals the co-ordinator should monitor the implementation of any agreed plan and report back to the police, but the police should not have the option of proceeding further.** This is consistent with the current position in relation to police cautions.

DEFERRED SENTENCES AND COMPENSATION ORDERS

- 9.94** We note in passing that it is not possible at present for a sentencer to make a compensation order at the same time as deferring sentence. That means that in using deferral of sentence as part of a restorative or reparative approach for adults and young adults any agreement entered into by the offender involving direct financial compensation must be entirely voluntary, and there are no established mechanisms for monitoring the payment of the compensation nor for receiving the money from the offender and passing it onto the victim. **We recommend that the courts’ sentencing powers be reviewed to facilitate the possibility of restorative interventions, including the formal payment of compensation before sentence is finally passed.**

COMMUNITY-BASED RESTORATIVE JUSTICE

- 9.95** In considering our approach to community restorative justice, we took account of the existence of such schemes in Northern Ireland but also concerns expressed by a wide range of people, organisations and political parties. The research report¹⁶ points in very clear terms to the dangers inherent in the sort of model advocated by Auld and others.¹⁷ In Northern Ireland in particular, coercion or threat, real or implied, are ever-present dangers which cannot be ignored, even with well-intentioned schemes which on the face of it include safeguards for the rights of offenders and victims. There are concerns about double jeopardy,

16 Dignan and Lowey, Research Report 10, chapter 3.

17 Auld, Gormally, McEvoy and Ritchie, *Designing a System of Restorative Community Justice in Northern Ireland: A Discussion Document* (1997), published by the authors.

if a juvenile finds himself or herself involved in a community-based scheme and also faces action through the formal criminal justice system; and in a community-based scheme, it may be difficult to ensure that the alleged offender is able to receive professional advice about his or her rights.

9.96 We are also aware there can be a thin line between voluntarily agreed measures where an offence is committed on the one hand, and community-based schemes that effectively determine guilt and impose sanctions. These concerns do not mean that the state should ignore, or worse still, seek to stifle the undoubted energy and commitment of those in the community who wish to make a real contribution to dealing with crime in their locality. Nor is it for us to comment on those schemes that are directed at dealing with non-criminal behaviour, such as the mediation of civil disputes. It does, however, mean that those within the community who wish to contribute to the way in which criminal activity is dealt with should work in partnership with, take referrals from, and be subject to accreditation and monitoring by the criminal justice system if the rights of individuals, both offenders and victims, are to be protected and upheld. We note the requirement in Rule 3 of the Tokyo Rules that non-custodial measures imposed on the offender before or instead of formal proceedings shall require the offender's consent. We believe that individuals who are referred to schemes which are able to impose non-custodial measures on offenders should have the right to be able to refer to a solicitor or another appropriate adult before agreeing to consent to such measures.

9.97 We think it important that only statutory criminal justice agencies should be able to refer offenders to community-based schemes, so that the state retains ultimate responsibility for criminal justice. This will mean that individuals who claim that their human rights have been denied may be able to seek a direct remedy against a public authority under the Human Rights Act 1998. We cannot, therefore, endorse schemes that act outside the criminal justice system, which are without links to the criminal justice system, and yet which purport to deal with criminal activity.

9.98 In the light of the above considerations, however, **we believe that community restorative justice schemes can have a role to play in dealing with the types of low-level crime that most 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;
- (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 independent Criminal Justice Inspectorate which we recommend in Chapter 15; and
- (iv) 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.

10 Juvenile Justice

INTRODUCTION

- 10.1** Our terms of reference invite us to “... address the structure, management and resourcing of the publicly funded elements of the criminal justice system and... bring forward proposals for future criminal justice arrangements...”. Juvenile justice is an important and integral part of the criminal justice system. Early in our consultation process it became clear that a number of organisations were anxious that we should examine the ways of dealing with juvenile crime and the arrangements for managing and delivering juvenile justice. What we say in this chapter must be read in conjunction with our proposals for youth conferencing in Chapter 9. Those proposals form the heart of a new approach, and our thinking on other aspects of juvenile justice is, to an extent, built around them.
- 10.2** This chapter addresses the issues which have been raised with us in the course of our consultation process, including:
- the aims and human rights standards to which the Government should adhere in developing and delivering juvenile justice arrangements;
 - the arrangements for the management of the juvenile justice system;
 - the range of disposals which are available to the courts in respect of juvenile offenders;
 - the way in which the prosecution process and the courts operate in respect of juvenile offenders;
 - the arrangements for the provision of custodial facilities for juveniles; and
 - the age range that the juvenile justice system should cover.
- 10.3** Juvenile offending is a concern in almost every country, and Northern Ireland is no exception. People are most likely to offend when they are young, and for many young people involvement in crime is something that occurs as they make the transition from childhood to adulthood, and which then tails off. A minority of young people appear to start their offending at a very early age and continue to offend more frequently and persistently into adulthood. Juvenile offenders account for much of the petty criminality in society, and for a significant proportion of more serious crimes. It is the responsibility of society as a whole to

provide the opportunities and mechanisms that minimise the likelihood of young people committing offences, and to provide an effective and helpful means to deal with offending that does occur. That is why most countries have developed criminal justice systems and processes which take account of the special needs of juveniles and which emphasise and uphold their fundamental rights.

Human Rights Background

10.4 A range of international instruments bear upon juvenile justice arrangements in Northern Ireland, most notably:

- the *European Convention on Human Rights 1950* (ECHR);
- the *International Covenant on Civil and Political Rights 1966* (ICCPR);
- the *United Nations Convention on the Rights of the Child 1989* (UNCRC);
- the *United Nations Guidelines for the Prevention of Juvenile Delinquency 1990* (the Riyadh guidelines);
- the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985* (the Beijing Rules); and
- the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990* (RDL).

10.5 Not all of these instruments have the same nature and status. The ECHR is one of very few instruments to be formally incorporated into the domestic law of the United Kingdom. The other instruments can be divided into two types: those that are considered internationally binding, and those that are not. We consider the nature and status of each of these instruments briefly, noting that they are examined in more detail in the research report on juvenile justice¹, which is published along with this report, and that the meaning of the terms “binding” and “non-binding” were considered in Chapter 3.

THE EUROPEAN CONVENTION ON HUMAN RIGHTS

10.6 The Human Rights Act 1998 formally incorporates the ECHR into domestic law by making it unlawful for a public authority to act in a way that is incompatible with a Convention right. The Convention and the jurisprudence around it, as they relate to juvenile justice, are

¹ O'Mahony and Deazley, Research Report 17.

regarded as somewhat less advanced than subsequent human rights instruments on the rights of children. The Convention continues, however, to be used to address juvenile justice issues, such as the issues surrounding the trial and detention of T and V in the Bulger case.²

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR) AND THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (UNCRC)

- 10.7** Juveniles are entitled to benefit from all the rights contained in the ICCPR. It was the first global document to contain specific provisions relating to the administration of youth justice including:
- the separation of accused juveniles from adults, and speedy adjudication (Article 10(2)(b));
 - the incarceration of juvenile offenders separately from adults (Article 10(3));
 - provisions relating to public adjudications where the offender is a juvenile (Article 14(1)); and
 - a requirement that criminal procedures shall take account of the age of juvenile offenders and the desirability of promoting their rehabilitation (Article 14(4)).
- 10.8** The UNCRC is more recent and important in relation to juvenile justice. It spans the spectrum of civil, political, economic, social and cultural rights. It focuses specifically on the rights of children up to the age of majority. Articles 37 (torture, capital punishment, and deprivation of liberty) and 40 (juvenile justice) create international standards in relation to juvenile justice.
- 10.9** Although the ICCPR and the UNCRC are not directly applicable in the domestic law of the UK, the courts may use them as persuasive authority in their interpretation of the law. They may also have an impact on the operation of the juvenile justice system and wider criminal justice system in other ways. Although the United Nations does not have the power to enforce binding international instruments directly, it has established a number of international institutions to monitor their implementation and make reports on member countries. Examples include the Human Rights Committee of the United Nations (established under the First Optional Protocol to the ICCPR) and the UN Committee on the Rights of the Child (established under the UNCRC). In addition, the Belfast Agreement specifically invites the Northern Ireland Human Rights Commission to draw on such instruments in defining the scope of additional rights to be constituted in a specific Bill of Rights for Northern Ireland.

² Cases of *T & V v United Kingdom*, at the European Court of Human Rights (App. Nos. 24724/94 and 24888/94), judgments, 16 December 1999.

NON-BINDING INTERNATIONAL LAW

- 10.10** There are three non-binding international instruments concerning the operation of the juvenile justice system: the *United Nations Guidelines for the Prevention of Juvenile Delinquency 1990* (the Riyadh Guidelines); the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985* (the Beijing Rules); and the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990* (RDL). Together these instruments address the full range of juvenile justice issues. They set standards covering the prevention of crime, the child's involvement in the criminal justice process, and the conditions under which children may be deprived of their liberty.
- 10.11** These instruments are non-binding in that they have no direct legal impact upon either international or national legislative bodies, and they are purely recommendatory. They serve, however, to identify current international thinking on human rights for juveniles and to inform national and international debate on juvenile justice issues. They represent the minimum recommended standards.
- 10.12** In considering the issues that have been raised with us in the course of the consultation process, and the options for change, we have reflected upon all of the above instruments and sought to develop recommendations that meet and build upon the standards that they set.

Operation of the Juvenile Justice System in Northern Ireland

- 10.13** There have been very recent changes in juvenile justice legislation, which have led to significant changes in the way in which juvenile justice operates in Northern Ireland. Some of these have only been in operation for a matter of months. This section of the report sets out in brief how the juvenile justice system currently operates. A more detailed description of the history and operation of the system is set out in sections 5 and 6 of the research report.³
- 10.14** The juvenile justice system in Northern Ireland deals with those aged 10 years or over and under 17. Because the law presumes children under ten to be *doli incapax* (incapable of crime) they cannot be prosecuted for criminal offences. If they come to the notice of the police in connection with a criminal act they are drawn to the attention of social services and dealt with under child welfare legislation. Those aged 17 or over are deemed to be adults, and are dealt with in the adult courts.

3 O'Mahony and Deazley, Research Report 17.

10.15 The first point of contact with the juvenile justice system is the police, who have considerable discretion in how they deal with juvenile offenders. Specialist officers deal with juveniles as part of the Juvenile Liaison Scheme. The officers have four broad options open to them:

- (i) To take no further action.
- (ii) To issue an “informal warning and advice”, in which case the juvenile is warned about the consequences of the behaviour and is given advice about staying out of trouble. This does not form part of the juvenile’s criminal record, but the police do keep a record of the warning for their own purposes.
- (iii) To administer a “formal caution” which does not form part of the juvenile’s criminal record but which can be cited in court at a later date.
- (iv) To prosecute the case through the courts, usually where the offence is particularly serious or the juvenile has a history of previous offending behaviour, and where a formal caution is considered inappropriate.

10.16 In 1997 just under 13,000 cases were dealt with through the Juvenile Liaison Scheme. No further action was taken in 22% of cases, 56% resulted in informal warning or advice, 12% resulted in a formal caution, and 10% were prosecuted. Trends over the period from 1987 to 1997, and the nature of juvenile offending in Northern Ireland, are set out in the research report.⁴

10.17 A recent innovation has been the introduction of Juvenile Liaison Bureaux, which built on the Juvenile Liaison Scheme and involve representatives from the police, social services, probation and education. The Bureaux consider cases where the juvenile has admitted the offence and advise on whether he or she should be prosecuted or diverted, for example by way of a formal caution. The final decision remains with the police. Until recently only seven Bureaux were in operation in Northern Ireland. A full-time co-ordinator was appointed in 1998 to extend the number of Bureaux to cover the whole of Northern Ireland and to standardise their operation. Twenty-one Bureaux have now been established across Northern Ireland and there are plans to establish the remaining seven necessary to complete coverage of Northern Ireland in coming months. There are also some plans to extend the role of the Bureaux into “children’s panels”, which would consider cases referred by any of the agencies involved, and which would aim to identify children who are “at risk” of offending, and offer them and their families help before problems arise.

10.18 A Diversionary Working Group was established in 1997. It is chaired by a Northern Ireland Office official and comprises representatives from the Department of Health and Social Services, Department of Education, the RUC, Health and Social Services Boards, Probation Service, the Youth Service, and Whitefield. Two major voluntary organisations - the Extern Organisation and the Northern Ireland Association for the Care and Resettlement of

⁴ O’Mahony and Deazley, Research Report 17, section 5.

Offenders - are also represented on the Group. The aim of the Group is to encourage the development of diversionary approaches for juveniles across Northern Ireland. Whitefield plays a major role in diversionary activity. It operates under the aegis of the Juvenile Justice Board (see below) and is funded by grant from the Northern Ireland Office. It works in partnership with other statutory and voluntary agencies and has developed 12 community-based projects across Northern Ireland. It works with and supports young people who are at risk of involvement in crime, and receives almost two thirds of its referrals from Social Services, the remainder coming from the education sector, Juvenile Liaison Bureaux, the courts and a number of other sources. It can also deal with adjudicated referrals from the Probation Service. It provides programmes tailored to the needs of individuals and their families, with an emphasis on developing life skills, education, training and work opportunities, and individual support to sustain young people in the community.

10.19 Juveniles are normally dealt with in the youth court, unless they are charged with adults or, in the case of certain serious offences, they are tried in the Crown Court. The youth court has jurisdiction to hear and determine cases brought against children under 17 for offences other than homicide. It is normally constituted by a resident magistrate and two lay panel members drawn from the Divisional Juvenile Court Panel, one of whom must be a woman. The youth court is less formal than the adult magistrates' court, and the public is excluded from the proceedings. There is no dock, there are no wigs and gowns worn in court, and most of the participants sit on the same level. The bench at which the resident magistrate and the two lay panel members sit is normally raised a little above floor level, but not so much as in the adult courts. The prosecution process, however, can be lengthy, and the average time juveniles spend on remand is around 4.5 months.

10.20 In 1997, 1,814 criminal cases were disposed of in what was then termed the juvenile court and only 22 juveniles appeared in the Crown Court as defendants. Most juveniles appearing before the youth court pleaded guilty and of those who plead not guilty most were acquitted. The nature of juvenile offending is different from that of adults. As the research report notes:

“... the majority of juveniles are proceeded against for property related offences. Proportionately, more juveniles are proceeded against for theft, criminal damage and burglary than adults. Adults are more involved in serious crimes such as violent and sexual offences. It is also clear that the vast majority of juveniles dealt with are male and at the older end of the age spectrum, mostly 14 to 16 years of age, and that the vast majority plead guilty and are simply sentenced by the courts after considering the facts and relevant reports.”²⁵

10.21 The range of disposals available to the courts in Northern Ireland for juveniles includes:

- an absolute or conditional discharge;

5 O'Mahony and Deazley, Research Report 17.

- a monetary penalty such as a fine, recognizance or compensation order;
- a community order, such as probation, community service (which is only available for those 16 years or over) or an attendance centre order (which is not available in every area in Northern Ireland); and
- a custodial order, such as a juvenile justice centre order (which is available for 10-16 year olds inclusive), detention in a young offenders centre (which is available for 16-21 year olds, inclusive), or for grave crimes, detention at the Secretary of State's pleasure (which is available for 10-16 year olds inclusive) or detention under Article 45(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (which is available for 10-16 year olds inclusive). In the case of the latter two orders, it is for the Secretary of State to determine where the juvenile should be held.

10.22 In 1997 probation accounted for 33% of all disposals, conditional discharges 25%, while custody accounted for 19%. The least used were fines (6%), recognizances and absolute discharges (5%) and suspended custodial sentences (3%).

10.23 The Criminal Justice (Children) (Northern Ireland) Order 1998, which came into force in January 1999, introduced a number of significant changes into the juvenile justice system. The principal aims of the Order were to reduce the number of juveniles remanded in custody and reduce the time sentenced children spend in a custodial setting. The changes that the Order made included:

- the introduction of criteria for remands in custody and a presumption of bail other than in exceptional circumstances;
- the introduction of seriousness and persistent offending as criteria for custody;
- the renaming of the juvenile court as the youth court and training schools as juvenile justice centres;
- the creation of a new determinate juvenile justice centre order of between six months and two years duration, the second half of which is served under close supervision by the Probation Service in the community, to replace the old semi-determinate training school order; and
- allowing time served on remand in custody to count as part of a custodial sentence.

10.24 Responsibility for the provision of custodial facilities for juvenile offenders rests between the Northern Ireland Office, through the Juvenile Justice Board, which is responsible for the provision of juvenile justice centres, and the Northern Ireland Prison Service. The latter provides young offenders centre facilities and adult prisons. Juvenile justice centres fall into two types: those which are funded by the Northern Ireland Office, but managed by voluntary boards; and those which are managed and funded directly by the Northern Ireland Office. St

Joseph's in Middletown (which provides a very small number of places for female offenders) and St Patrick's in Belfast fall into the former category, while Rathgael in Bangor and Lisnevin in Millisle fall into the latter. Rathgael and Lisnevin are managed by a "Juvenile Justice Board", which is comprised of Northern Ireland Office officials (although it must be said that this arrangement was intended to be temporary, and that it had been decided by the Northern Ireland Office that changes in this area would be delayed pending our report). All juveniles sentenced to or remanded in custody by the courts are sent first to Lisnevin, which is a closed institution, with the possibility of being moved to another centre after their case is considered at a case conference. Case conferences are held weekly.

Views Expressed During the Consultation Process

10.25 From a very early stage of the consultation process it became apparent that despite the recent legislative reforms, which were generally welcomed, there were still concerns about the operation and management of the juvenile justice system and the way in which juvenile offenders were treated in Northern Ireland. Around 25% of the written submissions received in the course of the consultation process referred, amongst other issues, to juvenile justice. Issues concerning the treatment of juvenile offenders also generated a great deal of constructive debate in the consultation seminars. Restorative justice emerged as a theme throughout the discussions relating to juveniles, as it does in international comparisons, but comments on the potential application of restorative justice to juveniles, young adults and adults were addressed in the previous chapter.

10.26 A wide range of issues was raised in the course of the review, including:

- the principles underlying the juvenile justice system;
- the age of criminal responsibility and the age at which young people make the transition from the juvenile justice system to the adult system;
- the need for development and use of diversion at all stages of the juvenile justice process;
- the impact on juveniles of the laws of evidence and in particular those on the right of silence;
- the use of bail and remands in custody for juveniles;
- the way in which the youth court operates;
- the range and nature of disposals available to the courts for juveniles, including the use of indeterminate sentences for grave crimes (Secretary of State's pleasure cases);
- restorative justice;

- the way in which the juvenile justice system, particularly the custodial elements of that system, is operated and managed;
- where political responsibility for juvenile justice should lie, and whether there should be a Minister or Commissioner for children;
- the development of partnership approaches to dealing with juvenile offending;
- the training needs of all juvenile justice personnel, including the legal profession;
- the needs of ethnic minority children and those with learning or other disabilities;
- the need for research into the effectiveness of juvenile justice disposals and diversionary techniques;
- the need to focus resources on dealing with juvenile offenders in the community;
- finding ways in which the views of young people can be taken into account in developing juvenile justice; and
- the extent to which the staff within the juvenile justice system are reflective of the general population.

10.27 A number of organisations commented upon the need for principles to underpin and inform the operation and development of the juvenile justice system. Some advocated that the principles that might formally be established for the criminal justice system in respect of children and young people should be closely and explicitly based on those underpinning the Children (Northern Ireland) Order 1995. Some argued that the principles underlying the juvenile justice system should be based upon and informed by the Human Rights Act 1998 and international rights instruments as they relate to juvenile justice. Others argued that the welfare of the child should be *the* paramount concern of the juvenile justice system. One consortium of organisations with an interest in children’s rights argued, “an agreed set of principles and values for the criminal justice system as a whole... is to be commended provided they represent legally enforceable standards”. The same group went on to suggest that any statement of principles and values should include statements relating specifically to children to the effect that “... the best interests of the child shall be the primary consideration in all matters affecting him or her... the rehabilitation and reintegration of the child shall be assisted as far as possible... the promotion of the development of the child to full and responsible citizenship shall be supported”. Others expressed similar comments, but argued that the need to protect the public should be the primary concern in the case of serious, persistent and violent crime.

10.28 Some of those who commented on juvenile justice issues called for the age of criminal responsibility to be reviewed. Some argued that the age should be raised to 14, others that it should be kept under regular review. One noted that “... one of the specific recommendations of the United Nations Committee on the Rights of the Child [in its response to the first

United Kingdom report] was that consideration should be given to raising the age of criminal responsibility”, and that the former Standing Advisory Commission on Human Rights had recommended an inquiry and research into the issue. Others argued that children aged 10-13 years old inclusive must be held accountable for their actions and pointed to the fact that the rebuttable presumption of *doli incapax* had been abolished both in England and Wales and Northern Ireland.

- 10.29** Some organisations recommended that 17 year olds should be brought within the juvenile justice system, rather than being dealt with as adults, suggesting that the current situation was in contravention of the provisions of the *United Nations Convention on the Rights of the Child*. Others agreed but pointed out that there were both practical and welfare problems in housing 10 year olds and 17 year olds together in a custodial environment.
- 10.30** Several of those who commented supported the development of diversion. One commented that “... any criminal justice system which relates to children and young people should have at its core the aim of reducing the number of children who are caught in the system... this is best served by investing in the community and developing projects to divert children from offending”. Another suggested that the opportunities for diversion should be maximised and to this end that the partnership model of youth offending teams introduced in England and Wales should be developed in Northern Ireland. Some also recommended that the resources that the Government expected to save as the use of juvenile custody declined should be ploughed back into diversionary, community-based schemes.
- 10.31** There were calls from some for a review of the law of evidence as it relates to juveniles. Many called for juveniles to be exempted from the provisions of the Criminal Evidence (Northern Ireland) Order 1988 and from the provisions of the Prevention of Terrorism (Temporary Provisions) Act 1989, the Northern Ireland (Emergency Provisions) Act 1996, and the Criminal Justice (Terrorism and Conspiracy) Act 1998. Two groups called for those representing juveniles in criminal cases to undergo specific training in relation to obtaining information from a child and advising a child, and for training about the *United Nations Convention on the Rights of the Child* and other international instruments.
- 10.32** Some groups raised concerns about the use of remands in custody by the courts, believing that too many juveniles continued to be remanded in custody for long periods, despite recent legislation. Some recommended that research should be conducted into the reasons for remands. Others suggested that a lack of bail support and bail hostel facilities might contribute to the perceived over-use of remands in custody by the courts.
- 10.33** There were concerns about the disposals available to the courts for juveniles. Some believed that while prison accommodation is rarely used for children under 17, the use of custody should be restricted further, in that it should not be possible to hold 15, 16 and 17 year olds, whether girls or boys, in prison or young offenders centre accommodation. They wanted the power to transfer those 15 years or over to a young offenders centre to be severely restricted

or removed altogether. Others argued that the courts should have the power to commit 17 year olds to a period of custody in a juvenile justice centre. Some felt that the range of community disposals available to the courts for juveniles was limited, and that some form of community service should be made available for those under 16. Others argued for the abolition of, or at least the review of, the use of indeterminate sentences for juveniles, arguing that their use contravened international instruments.

10.34 Many of those who commented on the operation of the juvenile justice system recommended a review of the way in which the youth court operates, advocating the development of a more “child-friendly” court. Issues commonly cited were the design and layout of the court, the use of plain English, the need for all those participating in the proceedings to make themselves heard, with procedures which cater for the needs of ethnic minorities and children with learning or other disabilities.

10.35 We heard a range of views and proposals about the way in which the juvenile justice system should be operated and managed, particularly the custodial elements of that system, and where political responsibility for the system should lie. Many called for a coherent and co-operative approach across agencies to developing and delivering juvenile justice, suggesting ideas such as a Minister with overarching responsibility for children, a Children’s Commission, a Children’s Ombudsman, a Juvenile Justice Board drawing together all those agencies and actors with an interest in juvenile justice, and the creation of a Department for Children. Others called for the management of juvenile facilities to be separated from the development of policy, criticising the current management arrangements, or for responsibility for the provision of care and justice services to be combined within a single organisation. Some were concerned about the centralisation of custodial provision for juveniles, and recommended small, local units to provide custodial facilities. Others took the opposite view, and recommended centralisation to ensure that the scale of the centre was sufficient to enable appropriate education and rehabilitative programmes to be provided for all those in custody or on remand. Some also drew attention to the perceived deficiencies of the complaints mechanisms for juveniles, particularly in custodial institutions, noting the absence of an independent element.

10.36 We also heard of the need to ensure that staff in the juvenile justice system were reflective of the population of juveniles for which they were responsible, and the need to ensure that staff and sentencers were adequately trained to deal with the particular needs of juvenile offenders.

10.37 A strong case was made for research into the effectiveness of juvenile justice disposals and diversionary techniques. Most of those who commented on these issues advocated the development of a programme of research into “what works” in Northern Ireland. Some also suggested that the Government should develop innovative new mechanisms for involving young people in the development of policies and services for juveniles, citing a number of participative and consultative models emerging in other fields.

10.38 This section does not aspire to be comprehensive. A rich variety of issues was raised with us in the course of our consultation process and it is impossible to record all of the views expressed.

Research and International Comparisons

10.39 We commissioned a review of relevant research information in respect of juvenile justice, to look at models and systems of juvenile justice in other jurisdictions, to consider accountability mechanisms, to consider the international instruments which bear upon the issues of juvenile justice, and to consider what options existed for juvenile justice in Northern Ireland. As mentioned above, the research report is published along with this report.⁶

10.40 We do not intend to reproduce the bulk of the material that is included in the report in this chapter. We do, however, think that it is important to draw upon the report and the information we gathered in the course of our study visits to set out a number of themes that are emerging in approaches to juvenile justice in other jurisdictions.

10.41 The arrangements for juvenile justice were particularly interesting in a number of the jurisdictions we visited. We found Canada, England and Wales, the Netherlands, New Zealand, Scotland and South Africa particularly instructive, for a number of reasons. New Zealand had possibly the most comprehensive care and justice legislation of any of the jurisdictions we visited, and was particularly notable for the development of a comprehensive statutory statement of principles relating to juvenile justice and the development of an integrated mainstream approach to restorative justice for juveniles. Canada had just introduced new juvenile justice legislation which was rights-based, and which also incorporated a statement of guiding principles. Approaches to juvenile justice in England and Wales have been developing apace in recent years. Scotland has long had a very different approach to juvenile justice, based more on a welfare model, while the Netherlands has developed an innovative, simple, and quick approach to dealing with petty juvenile crime that we felt was worthy of consideration. South Africa did not have a recognisable juvenile justice system as such, but is fast developing a comprehensive, rights-based approach as a result of a Law Reform Commission project. We also consider the juvenile justice developments that are likely to flow from the Children's Bill currently before the Oireachtas in the Republic of Ireland.

CANADA

10.42 New legislation is being introduced in Canada designed to build upon the arrangements set out in the Young Offenders Act 1984. Important principles of the new Act are:

⁶ O'Mahony and Deazley, Research Report 17.

- proportionate sanctions;
- clear differentiation in the approach to be taken between violent and non-violent offenders; and
- non-court processes for all non-violent first time offenders.

10.43

The intention is that the law should be clear and that custody should be a last resort and used only for violent offenders. To achieve this the Act sets out explicit sentencing principles. It will also introduce a mix of rehabilitative and restorative measures and a number of more punitive measures. The Act contains a preamble and declaration of principles that make clear the purpose of the youth justice system. The preamble and principles underscore that protection of society is the primary objective of the youth justice system. The preamble also recognises the UNCRC to which Canada is a signatory. The core principles of the Act state that:

- the protection of society is the paramount objective of the youth justice system, which is best achieved through prevention, meaningful consequences for youth crime and rehabilitation;
- young people should be treated separately from adults under criminal law and in a separate youth justice system that emphasises fair and proportionate accountability, keeping in mind the dependency and level of development and maturity of youth. A separate youth justice system also includes special due process protections for youth as well as rehabilitation and reintegration;
- measures to address youth crime must: hold the offender accountable; address the offending behaviour of the youth; reinforce respect for social values; encourage repair of the harm done to victims; respect gender, ethnic, cultural and linguistic differences; involve the family, community and other agencies; and be responsive to the circumstances of youth with special requirements; and
- parents and victims have a constructive role to play in the youth justice system, and should be kept informed and encouraged to participate.

ENGLAND AND WALES

10.44

The Crime and Disorder Act 1998 and the Youth Justice and Criminal Evidence Act 1999 have introduced a range of new arrangements and disposals relating to juvenile justice. Under the Crime and Disorder Act all the agencies involved in dealing with juvenile justice at the local level are brought together into youth offending teams. The Act establishes a duty on local authorities to establish such teams and requires chief officers of police, probation committees and health authorities to co-operate. It also sets out the aims of the youth justice system and provides the courts with a number of new sentences for juveniles, including

action plan orders, which require the offender to comply with a three month action plan, supervised by a probation officer, social worker or other member of a youth offending team, and a final warning scheme to replace juvenile cautions.

10.45 The Act also established the Youth Justice Board, a non-departmental public body, with a monitoring and advisory role. This includes a role in disseminating best practice, providing training, and commissioning and purchasing secure juvenile accommodation.

10.46 The Youth Justice and Criminal Evidence Act 1999 creates a new sentence of referral to a youth offender panel, available for juveniles convicted for the first time, lasting for a period of between three and 12 months, depending on the seriousness of the offence. The youth offender panel will work with the juvenile to agree and implement a programme for the juvenile to follow. The panel comprises a member of the youth offending team and at least two other members who will be directly recruited from the community by the youth offending team. The parents or guardians of the juvenile can be ordered by the court to attend meetings with the panel.

10.47 The programme, which takes the form of a contract agreed between the panel and the juvenile, will be guided by the following three principles:

- (i) making reparation to the victim;
- (ii) achieving reintegration into the law-abiding community; and
- (iii) taking responsibility for the consequences of offending behaviour.

10.48 Contracts should always include an element of reparation to those affected by the offence, if those individuals consent, and this could involve a direct apology or financial or other reparation. Where there is no identifiable victim, reparation can be made to the community. Any additional elements of the contract will depend on the factors that appear to have led to the offending behaviour.

THE NETHERLANDS

10.49 A major role in the juvenile justice system in the Netherlands is played by the “Halt” system, whereby petty offenders (vandalism, petty property crime up to a value of £500 and shoplifting up to a value of £80) are diverted, primarily by the police, but also by prosecutors, to one of 63 local Halt schemes.

10.50 In general the scheme operates within tightly defined legislation and regulations as follows:

- When a juvenile is arrested for a petty crime, the nature of the crime and the circumstances of the crime are considered by the police. If they match the criteria laid

down in regulations for referral to a Halt scheme, and the juvenile and juvenile's parents or guardians consent, the case is referred to a Halt office. If the police are in any doubt, they consult the Halt staff or the local prosecutor.

- The case is normally referred to a Halt scheme on the day of arrest, and the first interview with Halt staff would take place within one week of the arrest. In the meantime the Halt staff contact the victim, if one exists, and find out the nature and cost of any damage caused.
- Within two weeks of arrest the Halt staff will have negotiated a package with the offender and his or her parents, which may include up to 20 hours of community service, payment for the damage caused, and could include an educational assignment. The entire process is completed within seven weeks of arrest.

10.51 The Halt scheme is respected by the police, the prosecutors, Parliament and the public. It is believed to work well, and offers the advantage of being a quick and effective response to petty juvenile crime. A reparative element is central to the scheme, and the community service often brings the offender face to face with the victim. It is common, for example, for shoplifters to work for the shop from which they have stolen, and for property damage to be repaired by the offender. Victims are generally happy with the Halt process. It is not, however, used for more serious cases, or for very minor cases for which a police warning is more appropriate.

NEW ZEALAND

10.52 The Children, Young Persons and their Families Act 1989 underpins the operation of both the child welfare and justice system in New Zealand. The Act contains two separate processes: one concerned with care and protection and one focusing on youth justice. The aims and principles, which underlie the Act in respect of youth justice, are clearly set out in it.

10.53 The family group conference is the mainstream response by the juvenile justice system to juvenile offending in New Zealand. The way in which the family group conference works, and the philosophy which underlies it, are set out more fully in the last chapter, but at this point we should note that the family group conference can be and is used as both a police diversionary measure and a tool of the court. The family group conference produces a plan that normally includes:

- a punitive element, such as community work, a condition not to drive a motor vehicle, or to abide by a curfew or a non-association clause;
- a restorative element, such as an apology, either face to face or in writing, community service, or the payment of reparation by money or in kind; and

- a rehabilitative element for the offender, such as drug and alcohol counselling, change of residence and lifestyle, or psychological counselling and treatment.

SOUTH AFRICA

- 10.54** The juvenile justice system in South Africa is not separate from that for adults. In December 1996 the South African Law Commission established a project committee to investigate the development of a separate juvenile justice system. The project committee published an issue paper in 1999,⁷ which identified a wide range of issues to be considered, including those surrounding the operation of a juvenile justice system and the incorporation of international principles on juvenile justice in legislation.
- 10.55** The issue paper made it clear that any legislation should aim to promote the well being of the child and to deal with each child in an individualised way. The central focus of the system that the Law Commission subsequently recommended was on the diversion of cases away from the criminal justice system, either to the welfare system or to suitable diversion programmes. The involvement of the family and the community was seen as of vital importance, as was sensitivity to culture, tradition and the empowerment of victims.
- 10.56** The Law Commission also advocated that where a child did go through the criminal justice system, he or she should be tried by a competent authority, with legal representation and parental assistance, in an atmosphere of understanding. It strongly recommended that the child should participate in decision making and that all proceedings should take place within the shortest appropriate period of time, with no unnecessary delays.

SCOTLAND

- 10.57** The Kilbrandon Committee Report in 1964 led to the passing of the Social Work (Scotland) Act 1968, which replaced the juvenile jurisdiction of the Scottish courts in respect of care cases, and all but the most serious criminal cases, with a more specialised welfare orientated children’s hearing system. This was implemented in 1971, and operated without fundamental change until 1997 when the 1968 Act was replaced by the Children (Scotland) Act 1995.
- 10.58** The 1995 Act incorporates principles within specific provisions, and conforms to the provisions of the UNCRC. The children’s hearing system considers cases involving juveniles under 16 referred to it by the “Reporter”,⁸ who in turn will receive referrals from the police

7 South African Law Commission, *Discussion Paper 79: Project 106: Juvenile Justice*.

8 The Kilbrandon Report envisaged that the decision to refer children to a children’s hearing should be that of a single individual, namely the Reporter. The Reporter is involved in all aspects of the hearing procedure - the referral of cases, the hearing of cases and the recording and transmitting of decisions.

and, in more serious cases, the prosecutor. The hearing is conducted by a panel of lay people. It decides on the measures that should be taken to help the individual child. If the facts of the case are in dispute, the case will be considered by a court to determine innocence or guilt, and referred back to the children's hearing.

- 10.59** A number of outcomes are possible from a children's hearing, including: a decision to take no further action; the imposition of a supervision requirement; the imposition of a residential requirement (including secure detention); or the imposition of conditions restricting contact with other children. The courts consider appeals against the decision of a children's panel. The 1995 Act also introduced the concept of a "Safeguarder", appointed by the panel or the court where they consider it necessary, to represent the child's best interest in children's proceedings. Reparative and restorative interventions are rarely used.

THE REPUBLIC OF IRELAND

- 10.60** The juvenile justice system in Ireland is in the process of significant change. A comprehensive Bill to modernise and improve the law relating to children is currently before the Oireachtas. The Bill includes a range of provisions relating to juvenile justice, with the aim of diverting children away from court and custody. The Bill's provisions include:

- raising the age of criminal responsibility from 7 to 12 years;
- putting in place a system of police-led "family conferences", which will include parents and victims, and will produce action plans which could include curfews, school attendance, and compensation for the victim; and
- a power for the courts to require parents to get treatment for addictions, to attend a parenting course, to compensate victims or to control their children.

EMERGING THEMES

- 10.61** A number of themes emerged from our examination of juvenile justice arrangements in other jurisdictions. These included:
- the inclusion in statute of clear statements of principles, firmly based upon international instruments, for the juvenile justice system which set out the purpose it serves and what it hopes to achieve;
 - the increasing use of diversion as a means of dealing with juvenile offenders;

- the development of approaches which aim to address offending behaviour and so reduce the propensity of juveniles to commit crime, and which build restorative elements into the operation of the juvenile justice process;
- a move away from court-based retributive approaches to juvenile justice, except for serious and persistent offenders;
- a move away from welfare-based models towards models which focus more on justice outcomes, and which are evidence-based and subject to rigorous evaluation;
- the development of open and transparent processes at all levels which enhance the accountability of the juvenile justice system and, ultimately, its credibility;
- the trend towards conferencing, panels and other means of determining programmes for offenders in settings other than formal courts; and
- the trend in many other jurisdictions to place juvenile justice policy and practice centre-stage in the response to the problems created by crime and criminality, and to devote considerable resources to tackling youth crime.

Evaluation and Recommendations

10.62 We were struck by the range and complexity of the issues raised with us in relation to juvenile justice in the course of our work. The juvenile justice system is a microcosm of the wider criminal justice system, and many of the issues that bear upon the system for adults are thrown into even sharper relief where juveniles are concerned. Given the limited time and resources available to us to carry out this review, it has not been possible to examine many of the issues raised with us with the rigour they deserve. We do, however, have a number of recommendations to make in several areas.

THE AIMS AND PRINCIPLES OF THE JUVENILE JUSTICE SYSTEM

10.63 Other countries, such as New Zealand, Canada and South Africa, have drawn upon all the international instruments to which we have referred in this chapter to develop the aims and principles of the juvenile justice system that are enshrined in their legislation. We considered what those principles and aims might be, and whether they might be incorporated into future legislation on juvenile justice in Northern Ireland.

10.64 We believe that there would be value in drawing up and agreeing the aims and principles of the juvenile justice system, drawing in particular upon the *United Nations Convention on the Rights of the Child*, the *International Covenant on Civil and Political Rights*, the

United Nations Guidelines for the Prevention of Juvenile Delinquency, the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, and the *United Nations Guidelines for the Protection of Juveniles Deprived of their Liberty*. We believe that such a set of aims and principles would inform the development of juvenile justice policy, providing a yardstick against which policy and practice can be measured, and that it would inform the work of all those involved in the administration of the juvenile justice system. We note that the Northern Ireland Office published a set of aims for the juvenile justice system in 1999,⁹ and we suggest that these should be reconsidered and, if necessary, revised in the light of the international instruments.

10.65 We believe that the focus of the juvenile justice system in Northern Ireland should be the prevention of offending. It should embrace the rehabilitation of the offender and diversion. It should provide meaningful consequences for those juveniles who commit crime. It should pay particular regard to the provisions of the *United Nations Guidelines for the Prevention of Juvenile Delinquency*, and the duty to regard the best interests of the child as a primary consideration under Article 3 of the *United Nations Convention on the Rights of the Child*. We also believe that there is considerable merit in enshrining such a statement of aims and principles in future juvenile justice legislation.

10.66 **We recommend that in drawing up legislation flowing from this Review, the Government should develop, agree and incorporate a clear statement of the aims of the juvenile justice system in Northern Ireland and a statement of the principles which should guide those who exercise the powers conferred by the legislation with due regard to the international human rights standards to which the United Kingdom has given commitment.**

THE AGE OF CRIMINAL RESPONSIBILITY

10.67 International instruments and practice in other jurisdictions provide only limited guidance in respect of the age of criminal responsibility. International practice varies widely. England and Wales, Northern Ireland and most Australian states set the age at 10. Canada sets the age at 12, and Germany and many other countries at 14.

10.68 Article 40(3)(a) of the *United Nations Convention on the Rights of the Child* requires states to “promote the establishment of a minimum age below which children shall not have the capacity to infringe the penal law”. Rule 4.1 of the Beijing Rules also states that the age of criminal responsibility “shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity”. Whilst providing no precise guidance, the UN Committee on the Rights of the Child constantly refers in its Concluding Observations on

⁹ *Aims of the Juvenile Justice System* (1999), Northern Ireland Office, available from Juvenile Justice Branch, Criminal Justice Services Division, Massey House, Stoney Road, Belfast, BT4 3SX.

State Party Reports to the desirability of setting the highest possible minimum age. Countries where the minimum age of criminal responsibility has been set at 10 or below have been criticised.

- 10.69** We have heard persuasive arguments for the raising of the age of criminal responsibility, but we are also aware of broader societal concerns about youth offending. We do not share the views of some that the criminality of 10-13 year olds is rapidly rising; there is little evidence to support this. We do, however, believe that 10-13 year olds should be held accountable for their actions, but that the means of doing so need not necessarily be the same as for older children. We believe that, where appropriate, 10-13 year old children should continue to be criminally responsible for their actions, but that they should not be drawn into the juvenile custodial system and that the presumption should be that they will be diverted away from prosecution unless they are persistent, serious or violent offenders. Where there is a need for accommodation outside the family home for children in this age group, we believe that it should be provided by the care authorities, rather than the juvenile justice system. **We recommend that children aged 10-13 inclusive who are found guilty of criminal offences should not be held in juvenile justice centres, and that their accommodation needs should be provided by the care system.** This will require discussion with the social service authorities about practicalities and funding.

THE DEFINITION OF A CHILD

- 10.70** The international view on the age at which a young person should be separated from the adult criminal justice system is clear. Article 1 of the UNCRC defines a child as a person below the age of 18 years "... unless, under the law applicable to the child, majority is attained earlier". Those below the age of 18 attract, therefore, the protections of the Convention. The Beijing Rules (Rule 2(2)(a)) define a "juvenile" as a "child or young person who under the respective legal system may be dealt with for an offence in a manner which is different from an adult". The age of majority in Northern Ireland is 18, and it is clear that the current exclusion of 17 year olds from the juvenile justice system is contrary to the UNCRC. **We recommend that 17 year olds be brought within the ambit of the youth court.**
- 10.71** We noted that in England and Wales 17 year olds come within the remit of the juvenile justice system and are dealt with by the youth courts. Some we spoke to in England and Wales suggested that the inclusion of 17 year olds had changed the character of the court in that many more motoring offences and offences of violence were being dealt with by the court than had been the case previously, and that it had also increased disproportionately the volume of cases before the youth court. Others, including the Magistrates' Association for England and Wales, believed that the experience of bringing 17 year olds into the juvenile justice system had been positive. The experience of England and Wales will need to be taken account of in preparing for the inclusion of 17 year olds within the youth court in Northern

Ireland. Resource issues for the relevant agencies will also have to be considered. The Northern Ireland Court Service, for example, has indicated that business in the youth court will increase by 50% and that it will require funding in the region of £150,000 per annum for additional judicial and staff support.

THE AVAILABILITY OF DISPOSALS TO THE COURTS

- 10.72** We considered what disposals should be available for juveniles at the various stages of their development. We first of all considered whether the juvenile justice centre order should be available for 17 year olds (which it is not at present). If the option of sending 17 year olds to the juvenile justice centres were available to the courts, it would open up the possibility of almost doubling the size of the population at the centres. This would in our view change the nature and ethos of the centres to an extent that would make it more difficult to provide properly for the younger age group of 14-16 year olds. Moreover we believe that 17 year olds should benefit from the sort of regime that is available at the young offenders centre for young people up to the age of 21. **In the particular circumstances of Northern Ireland we recommend that it should continue to be the practice for 17 year olds to be remanded and sentenced to the young offenders centre.** We gave some thought to the position of 17 year olds who might be vulnerable by reason of lack of maturity or for other reasons; we recognise that this could equally apply to some in the 18 to 21 year old age bracket. **We recommend that the staff at the young offenders centre pay particularly close attention to the 17 year olds in their care and be prepared to take special measures, including the provision of separate accommodation, for any who are assessed as being vulnerable or immature.**
- 10.73** Rule 18.1 of the Beijing Rules sets out a number of community-based disposals which should be made available to the courts so as to avoid institutionalisation to the greatest extent possible (and should be read together with Rule 19.1, which advocates the least possible use of institutionalisation and for the minimum necessary period). Article 40(4) of the *United Nations Convention on the Rights of the Child* also encourages states to provide “a variety of dispositions... and other alternatives to institutional care”.
- 10.74** We believed that it was necessary to consider how the range of community based disposals for juveniles might be expanded, particularly given the proposal we put forward in Chapter 9 to introduce youth conferencing and youth conference orders. The courts already have some community-based disposals available to them, but not necessarily of a sufficient variety for all age groups and to deal with offences of varying degrees of seriousness. For example, community service orders are only available for 16 year olds and above. We do not believe that traditional community service orders are best suited to the needs of those under 16, both because of the hours involved (which might interfere with the education of the young person) and the nature of the activities undertaken. We believe, however, that there is scope

for providing a form of community service order for those under 16, with a reduced maximum number of hours to be served and with the activities tailored to the needs of the age group. **We recommend that a form of community service should be developed for those under 16 years of age, with a maximum period of service of 40 hours. The service to be undertaken should be tailored to the needs of juveniles of that age group and be of a nature most likely to maintain and promote the development of the juvenile in responsible, beneficial and socially acceptable ways. The arrangements should be piloted and evaluated rigorously.**

10.75 We also considered whether there was a need for “reparation orders” introduced by the Crime and Disorder Act 1998 in England and Wales. Such orders are available where a child or young person is convicted of any offence other than one for which the sentence is fixed by law. By allowing the offender to undertake some form of practical reparative activity that will benefit the victim (if the victim so wishes), it is hoped that the victim will gain a greater insight into the reasons for the offence, and will therefore be able more easily to come to terms with it. Reparation to the victim will also help the offender to realise the distress and inconvenience that his or her actions have caused, to accept responsibility for those actions, and to have the opportunity to make some amends either directly to the victim, or to the community as a whole. We believe that reparation orders would provide the courts with an additional community-based disposal while addressing the needs of victims. **We recommend the introduction of reparation orders in Northern Ireland.** We believe that the introduction of reparation orders and the new form of community service for those under 16 years of age will provide useful additions to youth conference co-ordinators and sentencers in creating imaginative, appropriate and proportionate youth conference plans. We considered whether there was a need to introduce “action plan” or “referral to a youth offender panel” orders but concluded that the types of activities that are envisaged as part of those orders would be encompassed within our proposals for youth conferencing and youth conference orders in Chapter 9.

10.76 We were asked to consider the use of the sentence of detention at the Secretary of State’s pleasure for grave crimes. We have considered the international instruments which bear upon the issue and can find no reason why the courts should not have the ability to commit a juvenile to custody for an indeterminate period where that is a proportionate response to the nature and circumstances of the crime. There are mechanisms for review and release for those detained at the Secretary of State’s pleasure, as there are for adults detained under mandatory or discretionary life sentences. As a result the current arrangements do not appear to contravene Article 37 of the UNCRC which requires that “neither capital punishment nor life imprisonment *without possibility of release* shall be imposed for offences committed by persons”, or Rule 19.1 of the Beijing Rules. We do, however, consider the adequacy of current release mechanisms for such sentences at Chapter 12.

BAIL AND REMANDS

10.77 We note the concerns about the use of bail and remands in Northern Ireland. In considering the issues raised, we were mindful of international instruments, most notably Rules 13.1 to 13.5 of the Beijing Rules, particularly Rule 13.1, which states that “detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time”. Rule 13.2 states that “whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home”. However, we are also aware of concerns that some juveniles who should be remanded in custody are being freed, and that they continue to commit offences while on bail. In addition we are aware of the risk, and the perception, that the juvenile justice system may be used by other agencies to “offload” their difficult cases. These are difficult and complex issues which merit close attention.

10.78 We recommend:

- (i) the piloting and evaluation of bail information and support schemes to provide the courts with information and advice to assist them with making bail and remand decisions in respect of individual juveniles;**
- (ii) the development of bail hostel accommodation specifically for juveniles, particularly within Belfast;**
- (iii) that those remanded in custody should be assessed as quickly as possible to determine the nature of the regime required, including the degree of supervision; and**
- (iv) that remands in custody should be for the shortest period of time possible.**

JUVENILE CUSTODY

10.79 We visited Lisnevin Juvenile Justice Centre to see for ourselves what it was like and to hear of the facilities and programmes that it provides. We agree with the views expressed by some that it is unsuitable as a facility for holding juveniles, and we feel that its remote location makes it very difficult for families to maintain contact with those held there. However, we were impressed by some of the programmes which it offers to those on remand and those held under a juvenile justice centre order, and by the dedication and professionalism of the staff we met. We would not wish to see these positive features lost. We believe that the retention of the current arrangements is neither feasible nor desirable. Lisnevin is not suitable for holding juveniles; there are no secure facilities for girls (which has necessitated the holding of a young girl in Maghaberry young offenders centre in recent times); and the falling population of the centres has made the provision of the full range of facilities difficult. That

is not to say that each of the current centres is not doing good work at present; rather their work is hampered by the fractured nature of custodial provision. **We recommend that Lisnevin Juvenile Justice Centre be closed.**

10.80 We have considered a number of options for the future of juvenile custodial facilities, including:

- the creation of a single juvenile justice centre, providing both secure and open facilities for girls and boys of all denominations;
- the creation of a number of small, locally-based custodial units across Northern Ireland; and
- the retention of the current arrangements.

10.81 The creation of a number of small custodial units across Northern Ireland, each providing five or six places, would enable juveniles to be placed closer to their families than is currently the case. But it would create difficulties in a number of respects, such as providing the necessary individual assistance which Rule 13.5 of the Beijing Rules calls for, including social, educational, vocational, psychological and medical, and physical facilities. It would also be difficult to provide secure facilities with such an arrangement, and it might necessitate in addition the creation of a single secure unit for Northern Ireland.

10.82 The creation of a custodial complex on a single site, with a mix of both secure and open facilities, might not ease the difficulties of maintaining ties between juveniles and their families: no single site will be readily accessible for all of the families of juvenile offenders. A site in the Greater Belfast area would be most likely to ease the difficulties of family visits, since the majority of the population of juvenile justice centres come from the Greater Belfast area; but it would also be necessary to take account of accessibility of transport links from other parts of Northern Ireland. In addition, and bearing in mind that the custodial population is likely to settle to a total of less than 40 remand and committed juveniles, the development of a single centre would enable the full range of facilities to be provided, and for secure and open facilities to be provided for both girls and boys on a single site. We note, however, that there are likely to be difficulties in finding a suitable green-field site in the Greater Belfast area and that it might be necessary to develop the new centre on an existing site.

10.83 We understand that work is currently being undertaken by the Government on the future of the juvenile justice custodial estate. This will, of course, require detailed consultation before final decisions are made. From our consideration of the issues we think that the balance of argument points towards a single site solution. We wish to stress the importance of the diversity of needs of juvenile offenders being met by juvenile justice centre staff whose competence and expertise is based on professional education and training, in-service training and on the job instruction and development. Whatever the outcome of the review of the juvenile justice centre estate, it would make sense to draw on suitably qualified staff from, and the expertise developed at, existing juvenile justice centres.

- 10.84** We wish to stress the importance of ensuring that there is good liaison between the juvenile justice centres and community-based agencies. Co-operation and co-ordination are necessary if programmes are to be planned in order to secure an effective transition from the custodial to the community setting, which is a feature of the juvenile justice centre order. Such an approach is also required if the educational, care, welfare and housing needs of the juveniles are to be properly catered for when they are released back into the community. Accordingly, we wish to emphasise the importance of the Probation and Social Services ensuring good liaison arrangements with the juvenile justice centres, for example, by way of allocation of staff to the centres to help prepare for release and ensure that the care needs of those held on remand or on foot of a juvenile justice centre order are met.

DIVERSION AND PARTNERSHIP APPROACHES

- 10.85** Rules 11.1 to 11.4 of the Beijing Rules and Article 40(3)(b) of the *United Nations Convention on the Rights of the Child* encourage states to promote diversion from judicial proceedings, providing that human rights and legal safeguards are respected. Rule 25.1 of the Beijing Rules also calls for “volunteers, voluntary organisations, local institutions and other community resources... to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit”.
- 10.86** We note that there is already a range of diversionary and partnership activity. Police diversion by informal advice and warning and formal cautions is already well established. “Caution-plus”, Juvenile Liaison Bureaux, children’s panels, and other inter-agency approaches are also developing. Whitefield House provides a number of community-based projects, developed in partnership with other statutory, voluntary and community organisations. A wide range of voluntary and community resources already contributes to dealing with juvenile offenders in the community. All of this is to be welcomed and endorsed.
- 10.87** We agree, however, that there are opportunities to further develop diversion at all stages of the process. Other changes that we recommend in this report in respect of the role of prosecutors (who will have a significant role to play in inter-agency work on juveniles, including Juvenile Liaison Bureaux in future), the application of restorative justice, and community safety will help in that context. We agree also that more resources will be necessary to develop these approaches. **We endorse the development of further diversionary mechanisms based on a partnership approach and recommend that any savings arising from the rationalisation of the juvenile justice estate should be reallocated to diversionary programmes and other community-based sanctions for juveniles. We recommend also the development of prosecutor-driven diversionary schemes for juveniles, including the power to refer back for a police caution and the development of agreed guidelines on good practice in diversion at police and prosecutor level.**

THE RIGHT OF SILENCE AND EMERGENCY LEGISLATION

- 10.88** Concerns about the application of emergency legislation to juveniles were drawn to our attention. Our terms of reference explicitly excluded us from considering emergency legislation, which was the subject of a parallel review. We felt that it was right, however, for us to draw to the attention of those reviewing the law on terrorism the concerns that have been raised with us, and we have done so.
- 10.89** As for the law on the right of silence, we note that there has been little research into the effects of the Criminal Evidence (Northern Ireland) Order 1988, and none on its specific effects on juveniles. The law on silence is considered in more detail in Chapter 3. **In respect of juveniles, we recommend that the Government should commission independent research into the effects of the Criminal Evidence (Northern Ireland) Order 1988 on juvenile defendants as a matter of urgency, and that the findings of that research should be published.**
- 10.90** We have also considered the training needs of “appropriate adults”, who play an important part in facilitating communication and ensuring fair procedure whilst a juvenile is in police detention. **We recommend that those who volunteer to act as appropriate adults should receive training by a wide range of agencies, to include training on the needs of those who have learning or other disabilities, or who are suffering from a mental disorder, and children’s rights and broad human rights awareness.**

COURTS ISSUES, CHILDREN’S EVIDENCE AND DELAY

- 10.91** Article 40(2)(b)(iii) of the *United Nations Convention on the Rights of the Child* guarantees the right “to have the matter determined without delay by a competent, independent and impartial authority and judicial body in a fair hearing according to law”. Article 12(2) also guarantees the right of the child to be heard in any judicial or administrative proceedings affecting him or her. Rule 14.1 of the Beijing Rules provides a similar guarantee, and Rule 14.2 adds that “the proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely”.
- 10.92** No-one has argued that the youth court is not an “independent and impartial judicial body”, but concerns have been raised about the way in which the youth court operates, and about the length of time it takes for cases to be disposed of (we recognise, however, that delays are not caused solely by the youth court: other agencies and procedural requirements contribute to the time taken to deal with criminal cases involving juveniles). It is possible that in some

locations relatively infrequent sittings of youth courts might contribute to delay. We have heard some suggestions put forward for developing the court as a more child-friendly venue, whilst retaining a measure of dignity and authority to bring home the gravity of the proceedings.

10.93

We have also visited a youth court while it was in session, and have observed the proceedings. We were impressed by the way in which the court operated, and by the professional and understanding way in which the panel handled the cases before them. We also noted that the court itself was much less formal than its adult equivalent, and that the magistrates and advocates wore no wigs or gowns. We were less impressed by the way in which the prosecution and defence advocates handled the cases, and noted the limited opportunities afforded to the defendant to participate and for his or her parents to participate and express themselves freely. We also noted that there were audibility problems in court, and that it was apparent that the defendant and his or her parents could not always hear what was being said. We are conscious of the development of the Child Witness Service in Belfast and the Child Witness Pack by the NSPCC, which we welcome and endorse. We have a number of recommendations to make that we believe will enhance the effectiveness of the youth court and make it a more user-friendly venue.

10.94

In respect of the operation of the youth court we recommend that:

- (i) Guidelines should be developed for the layout and operation of the youth court, emphasising the need for all the participants in court to sit at the same level, the need for all participants to be able to hear what is being said in court, the need for simple and plain language to be used during the proceedings, and the need for the defendant and his or her parents to be given opportunities to participate and express themselves freely.**
- (ii) Defence and prosecution advocates should be encouraged, through professional education and development, to enhance their expertise in respect of handling juvenile cases and their awareness of the human rights instruments and jurisprudence as they relate to juveniles. This should not interfere with the juvenile's right to the lawyer of his or her choice. Professional and lay members of the bench should receive similar training under the auspices of the Judicial Studies Board.**
- (iii) In the light of the outcome of evaluation, the child witness scheme should be made available at all criminal court venues in Northern Ireland, including youth courts.**
- (iv) Efforts to deal with delays in cases being brought before the youth court should continue.**

- (v) Given the need to tackle delay and the impact of extending the jurisdiction of youth courts to include 17 year olds, there should be an examination of youth court sittings and consequential implications for magistrates' courts.

10.95 The judgments of the European Court in the cases of *T & Vv United Kingdom*¹⁰ emerged as we were finalising this report. They raise important issues in relation to juvenile justice. We have not had an opportunity to consider fully the implications of the judgments for juvenile justice in Northern Ireland. Therefore, we recommend that the Government should consider carefully the implications of judgments of *T & Vv United Kingdom* for the operation of the juvenile justice system in Northern Ireland.

COMPLAINTS AND INSPECTION ISSUES

10.96 The main international instrument that deals with the administration of juvenile facilities is the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*. Rules 24-25 and 72-78 relate to the information that should be provided to juveniles when they arrive in custodial facilities, inspection arrangements for juvenile custodial facilities, and the nature of complaints mechanisms that should be made available to the juvenile.

10.97 Concerns were raised with us about the adequacy of the complaints and inspection arrangements for the juvenile justice system, particularly within juvenile justice centres. We discuss in Chapter 3 the principles that should apply to complaints mechanisms throughout the criminal justice system. Mechanisms for inspecting the elements of the criminal justice system are considered in Chapter 15. These apply equally to the juvenile justice system.

10.98 We make the following recommendations in respect of the complaints mechanisms and inspection arrangements:

- (i) Complaints mechanisms should be reviewed as a matter of urgency to ensure that they conform to the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, and to ensure that they include an independent element.
- (ii) On admission to a juvenile justice centre, all juveniles should, as now, be given a copy of the rules governing the juvenile justice centre and a written description of their rights and obligations in a language they can understand, together with a description of the ways in which they can make complaints, as well as the address of public or private agencies and organisations which provide legal assistance.

¹⁰ *Cases of T & Vv United Kingdom*, at the European Court of Human Rights (App. Nos. 24724/94 and 24888/94), judgments 16 December 1999.

- (iii) For those juveniles who have difficulty in understanding the written guidance, the guidance should, as now, be explained to them.
- (iv) All agencies providing facilities and services for juvenile offenders, including juvenile justice centres, should come within the remit of the Criminal Justice Inspectorate, in respect of those services or facilities.
- (v) Each juvenile justice centre should have a local advisory committee that brings in local professional and community representatives, including representatives of nearby residents.

THE MANAGEMENT OF THE JUVENILE JUSTICE SYSTEM

10.99

We have considered how the juvenile justice system should be managed at the operational level, and where policy responsibility for juvenile justice issues should lie. We note that the current arrangements for managing the juvenile justice system are intended to be temporary and do not believe that they represent a satisfactory long-term solution, given the mix of policy and direct management responsibility associated with the Juvenile Justice Board as constituted at the time of writing. In considering how best to structure and manage responsibility for juvenile justice services, we considered the following issues:

- whether and how operational management responsibility for juvenile justice custodial and community services could be brought together;
- how policy responsibility for juvenile justice could be separated from service delivery, and where political responsibility for the juvenile justice system should lie, both before devolution of criminal justice issues and after;
- how co-operation and co-ordination between the agencies responsible for children's services, including juvenile justice services, could be encouraged;
- whether there was a case for combining responsibility for the delivery of juvenile justice and probation services; and
- whether there should be a Minister responsible for the co-ordination of all policy on children.

10.100

We considered a number of options for the delivery of juvenile justice services, including: the creation of a non-departmental public body; a government department purchasing services from statutory agencies and the voluntary sector; the incorporation of juvenile justice in the Probation Service; and the creation of a next steps agency within a government department. On balance, we are not convinced that non-departmental bodies are the ideal vehicles for securing effective management, accountability and co-operative working between agencies in this environment. The purchaser/provider model has its attractions, but does not necessarily

make for co-operative working between service providers. As for incorporation in the Probation Service, we have some reservations about whether it would be appropriate for juvenile justice to be located within an organisation that has as its primary focus adult offenders, although we should stress that we see a continuing role for Probation in working with juveniles.

10.101 On balance we favour the next steps agency option. This would facilitate the development of a strong professional management team responsible for the provision of juvenile justice services in the custodial and community settings. They would act in accordance with a framework document that would make the clear distinction between their responsibility for services and the sponsor department's responsibility for policy development. We should stress that this would still allow for purchaser/provider arrangements. The agency would have responsibility for direct service provision but would also be required to consider buying in services from the voluntary sector. It would be subject to the full range of accountability mechanisms that apply to next steps agencies, and to the accountability mechanisms that we set out in Chapters 3 and 15 of this report. Accordingly, **we recommend the creation of a next steps agency which would take on responsibility for the range of responsibilities which fall to the current Juvenile Justice Board as are set out in Article 56(5) of the Criminal Justice (Children) (Northern Ireland) Order 1998.** These responsibilities include:

- (i) making and giving effect to schemes for children who are subject to attendance centre orders or juvenile justice centre orders and schemes for the prevention of crime by children; and
- (ii) entering into arrangements with voluntary organisations or any other persons (including government departments and public bodies), or providing voluntary organisations or any other persons with facilities for the purposes of, and to give effect to, the schemes at (i) above.

In effect this would mean that the agency would be responsible for the provision of custodial and community facilities for juvenile justice orders, attendance centre orders, and schemes of the type provided by Whitefield. Other agencies would continue to provide services for juveniles. For example, the Probation Service would be responsible for securing compliance with probation orders and community service orders.

10.102 **We recommend that the development of juvenile justice policy should be separate from the functions of the juvenile justice agency and should be a matter for a separate unit in the department within which the agency is placed. That unit should be responsible for advising the Minister in relation to policy and legislative proposals. The unit should also be responsible for developing a strategy for the delivery of juvenile justice services, and should develop and publish aims, standards and**

performance indicators. In doing so it would work in partnership with the Juvenile Justice Agency we propose at paragraph 10.101 and the advisory board we propose at paragraph 10.103 below.

10.103 We do see value in having a broader input into the work of the agency and juvenile justice matters generally through drawing on expertise from outside the sponsor department. This could be achieved through the establishment of an advisory board bringing together senior professional and administrative representatives from the other agencies and departments with a stake in providing services for children, such as probation, education, health and social services, together with representatives of some of the major community and voluntary organisations with an interest in juvenile justice issues. The head of the Juvenile Justice Agency would attend the board, together with his or her senior managers and representation from the sponsor department. The board would have a consultative and advisory role in relation to the Minister on matters relating to policy and service delivery. However, we believe that additional benefits would be secured, in terms of encouraging co-operative working and consideration of best practice across agency boundaries, if this juvenile justice advisory function were combined with that proposed for probation and prisons in Chapter 12. Accordingly, **we recommend that an overarching Probation, Prisons and Juvenile Justice Advisory Board be adopted.** It would of course always be possible for specific juvenile justice issues to be addressed by a sub-committee of such a board.

10.104 We also considered where political responsibility for the juvenile justice system should lie, and whether there should be a Minister for all services relating to children (as there is for women’s issues, for example). **We recommend that, pending devolution, political responsibility for the juvenile justice system should remain with the Secretary of State for Northern Ireland and that policy and legislative advice should continue to be provided by the Northern Ireland Office. After devolution, we believe that ministerial responsibility should lie with whichever Minister is responsible for prisons and probation.** We make no recommendation in respect of whether there should be a Minister responsible for all children’s issues, and suggest that the Northern Ireland Executive Committee might consider this after devolution of responsibility for criminal justice issues.

THE ROLE OF RESEARCH, CONSULTATION AND COMMUNICATION IN POLICY FORMULATION AND EVALUATION

10.105 We endorse Rules 30.1 to 31.4 of the Beijing Rules, and **we recommend the use of research as a basis for developing an informed juvenile justice policy. We recommend that all new initiatives and legislation should be routinely monitored and subject to rigorous and independent evaluation.**

10.106 We found in the course of our consultation process that there was considerable ignorance of juvenile justice policy and practice in Northern Ireland, and that much effort was required to tease out people’s views on current juvenile justice institutions. That people knew very little about juvenile justice practice was not surprising, since juvenile justice policy has received little attention in the media in Northern Ireland, and because the Government has not sought to raise the awareness of the public about juvenile justice issues. We believe this has contributed to the widespread belief that the juvenile justice system doesn’t work, a belief that has, in part, led to support for and acceptance of so-called “alternative justice”. As a result, **we recommend that in developing policy and practice the views of the public and of young people in particular should be taken into account. To achieve this, innovative approaches to consultation should be developed, and consideration should be given to how best to seek out the views of young people. We also recommend that, to enhance public confidence in the juvenile justice system, a communication strategy be developed to advertise successes, develop public awareness of existing practice and new initiatives, and to provide information to sentencers on the availability of programmes and other community disposals.**

Community Safety



11 Community Safety

Introduction

- 11.1** This chapter considers the development of partnership approaches to reducing the level of crime, reducing the fear of crime, and enhancing community safety both locally and nationally.
- 11.2** The Policing and Justice section of the Belfast Agreement set out what the participants to the multi-party negotiations believed were the aims of the criminal justice system. These included the need to “... be responsive to the community’s concerns, and encouraging community involvement, where appropriate...”. The terms of reference of the review also required us to consider “... measures to improve the responsiveness and accountability of... the criminal justice system”. As a result we believed that it was right to consult on and consider the arrangements for community safety in Northern Ireland, and ways in which the criminal justice system can target its resources more effectively in preventing crime.

What is Community Safety?

- 11.3** No one would deny that crime constitutes a significant social and political issue, in Northern Ireland and in many other countries. Rising crime rates have fuelled public concern in most countries, and whilst Northern Ireland has enjoyed a relatively low rate of “ordinary” crime, it is nonetheless a cause for concern amongst the public here. The growing awareness of drugs, so-called “joy-riding”, domestic violence and general anti-social behaviour are but a few examples of crime-related issues which the people of Northern Ireland are worried about. People are not necessarily most concerned about “big” crime issues: they often focus more on the types of crime of which they have experience and which are problems in their own area. In parallel there is a growing realisation that the formal criminal justice processes - through the detection, apprehension, prosecution, sentencing and punishment of offenders - have only a limited effect on controlling crime. This was a message that came across to us very clearly in the course of our work, from the literature reviews we commissioned, from

our study visits to other jurisdictions, and through our consultation process. That is why the approach to preventing crime has changed in recent decades in Northern Ireland and in many other countries, and why it continues to change.

11.4 Until relatively recently the term “crime prevention” was perceived as a by-product of the formal criminal justice process. For most people it meant a visit from the local police crime prevention officer to explain how they could make their home more secure. Crime prevention is much more than this. Jan van Dijk defined it as “the total of all policies, measures and techniques, outside the boundaries of the criminal justice system, aiming at the reduction of the various kinds of damage caused by acts defined as criminal by the state”.¹ As the research report on the literature on community safety notes: “More recently it has become acknowledged that preventing crime requires the combination of approaches which seek to address the development of criminality among young people, reduce criminal opportunities and act upon the social conditions that sustain crime.”²

11.5 The term “community safety” is wider again and addresses not only criminal behaviour as such but also anti-social behaviour and other factors that affect people’s perceptions of safety. It is now understood as an approach which is local, in that local problems require local solutions. It is delivered through a partnership approach, drawing together a variety of organisations in the public, voluntary, community and business sectors. In the United Kingdom the Morgan Report³ came to the view that the term “crime prevention” was often narrowly interpreted, and reinforced the view that it was solely the responsibility of the police. The report advocated the use of the term “community safety” as it was open to wider interpretation that would encourage greater community participation from all sections of the community in the fight against crime. Other countries have followed a similar path, as our research and study visits have shown, and many of those we have studied have developed mechanisms both within central government and at local level for developing and delivering community safety policy and practice.

Current Arrangements in Northern Ireland

11.6 A wide range of organisations and sectors are involved in crime prevention and community safety in Northern Ireland. Their activities in this area include situational crime prevention aimed at reducing opportunities for crimes to be committed, diverting people who are most likely to commit crimes away from offending behaviour and addressing broader policy and

1 van Dijk (1990) “Crime Prevention: Current State and Prospects”, in Kaiser and Albrecht, (eds) *Crime and Criminal Policy in Europe*, Freiburg: Max Planck Institute, 205.

2 Crawford and Matassa, Research Report 8.

3 Morgan, *Safer Communities: The Local Delivery of Crime Prevention Through the Partnership Approach, Standing Conference on Crime Prevention* (1991), London: Home Office.

service provision issues which can impact on the level of criminal behaviour. There is already a considerable amount of activity in this field in Northern Ireland, with the RUC, Police Authority, Probation Service and the Northern Ireland Office having taken initiatives, as have a range of other statutory agencies in the field of social provision, including those responsible for housing, social services, local government and education. Voluntary and community organisations are also playing an important role in delivering services across Northern Ireland, working in partnership with public agencies, and the business sector is increasingly involved in community safety initiatives.⁴

11.7 Community safety activity is not, however, a core activity of any of the above organisations and agencies. It can therefore be difficult for agencies to find resources for community safety initiatives from their current budget structure. In addition, no agency has been given or has taken overall responsibility for setting crime prevention and community safety policy, or for funding, monitoring or evaluating community safety initiatives, either at local level or across Northern Ireland as a whole. A recent innovation, in the form of the development of the Community Safety Centre, has sought to encourage and advise those who wish to develop community safety initiatives, and to spread good practice in community safety to all those organisations and groups with an interest in making communities safer for those who work and live within them. The Centre is funded by the Northern Ireland Office, and is managed by an inter-agency board, but does not itself have a budget for funding initiatives. We were impressed by the work of the Centre and its growing track record and knowledge base, but we were also concerned that it was being asked to do a difficult job in the absence of a clearly defined and articulated community safety strategy, a point which was drawn out in a review of the Centre which is published as a research report along with this report.⁵

11.8 At present there are several mechanisms for funding community safety initiatives. Those who wish to develop a community safety project in their area can look to a variety of sources of funding, including the European Special Fund for Peace and Reconciliation or charitable sources. They must also contend - as do many other projects in the social and economic spheres - with the short-term nature of funding arrangements and the uncertainty, which such funding engenders. Short-term funding makes it difficult to mount long-term community safety initiatives, such as those aimed at preventing criminality, and to retain skilled and experienced staff.

11.9 A number of local councils have set up community safety partnerships and projects, several of which are funded from the European Special Fund for Peace and Reconciliation. In some cases these are being taken forward, under contract, by voluntary organisations. In others the projects are being delivered directly by council staff. None of the projects are at an advanced stage. CCTV schemes are being introduced in many towns across Northern Ireland funded by the Police Authority.

4 See Feenan, Research Report 13, section 2, for a fuller description of community safety partnership activity.

5 Crawford and Blair, Research Report 7.

- 11.10** The Crime Prevention Panel, led initially by the RUC, was established in 1977. The Panel comprises representatives of government departments, voluntary organisations, the Community Safety Centre, the RUC, the business sector and employers' organisations. A representative of an organisation other than the RUC chairs the panel. Its aim is to identify concerns about crime and, where possible, to co-ordinate partnership approaches to reducing crime and the fear of crime. At present the Panel's work is focused on property crime.
- 11.11** Despite the existence of a range of activities that are community safety related, the concept is still in its infancy in Northern Ireland. This is partly because of the understandable focus on terrorist crime by the Government, local politicians and the public over the past 30 years, and partly because of the relatively lower rate of "ordinary" crime, which Northern Ireland has experienced both before and during that period. If, as we all hope, peace is sustained in Northern Ireland, the focus will shift and "ordinary" crime will assume the importance in local political debate that it has in many other countries. We are also conscious of concerns that ordinary crime may be increasing. That is why we believe it is important to consider the structures for delivering community safety policy and initiatives, the funding mechanisms, and the arrangements for ensuring that those involved in delivering community safety services are held properly accountable to political structures and the public. These are, therefore, the issues on which we concentrate in this chapter. We commissioned a number of research projects to inform our consideration of these issues. We also examined the arrangements in other jurisdictions at first hand, in the course of our study visits. Most importantly of all, we listened to what people had to say to us in the course of our consultation process.

Research and International Comparisons

- 11.12** We recognise the dangers of comparing arrangements in different jurisdictions, and acknowledge that what works in one country may not work in another country with a very different institutional, social and economic context. There are no universal approaches to preventing crime. We believed, however, that we should consider the lessons learned elsewhere, both good and bad, in considering what, if any, changes we should recommend for the delivery of community safety in Northern Ireland.
- 11.13** We commissioned a literature review of community safety structures in a number of other jurisdictions as part of our research programme. The review is published along with this report.⁶ Much of the material used in this chapter, particularly in the descriptive sections, draws directly upon that review, which considered the recent experience of community safety in France, the Netherlands, Canada, New Zealand, Scotland, the Republic of Ireland, and

6 Crawford and Matassa, Research Report 8.

England and Wales. It looked in particular at the structure of central and local institutions for community safety. It also considered different models of inter-organisational relationships within and between central and local arrangements, and set out a number of the key issues to be considered in the context of Northern Ireland. Another research report also considered community safety partnership models in Scotland and the Republic of Ireland.⁷

11.14 As part of our research into community safety issues we also commissioned a literature review of research on crime reduction and reducing criminality. The review, which is published along with this report, drew together a summary of the research literature.⁸ The review reinforced the point that many governments were beginning to require proof of effectiveness from those programmes that claimed to reduce crime or criminality. A number of tentative lessons emerged from the review, the most important of which is that it is important to build in rigorous monitoring and evaluation of all new initiatives at the design stage, and to fund the evaluation of the initiatives properly to ensure that the evaluation is both rigorous and relevant. Only by doing so can a government determine the worth of a new initiative and whether it should be extended, subjected to further evaluation, or discontinued.

11.15 In addition we had the opportunity to study the arrangements for community safety at first hand in some of the jurisdictions considered by the literature review, most notably England and Wales, the Netherlands, New Zealand, Scotland, and the Republic of Ireland.

FRANCE

11.16 The French approach to crime prevention flowed from the Bonnemaïson Committee Report (1983) that had been commissioned as a result of widespread urban disorder in the summer of 1981. It led to the creation of a three-tiered structure in 1983 involving:⁹

- a national council for the prevention of crime, which was chaired by the Prime Minister, with a total membership of over 80;
- departmental councils, which are chaired by the chief administrator for the region, with the chief judicial officer as vice-chair; and
- local crime prevention councils (CCPDs), which co-ordinate preventative action at the local level, define local aims with particular reference to victims, and monitor implementation (over 850 have been established in almost all the large and medium sized French cities).

7 Feenan, Research Report 13.

8 Blair, Research Report 4.

9 The administrative structure in France below national level consists of three tiers:

- 22 regions - for which there is no crime prevention structure;
- departments; and
- towns or cities.

It is these last administrative levels which have been used to co-ordinate the delivery of crime prevention.

This structure was reorganised in the late 1980s and early 1990s and the focus moved to structures concerned with urban regeneration, ensuring that concerns about social exclusion and community safety were taken account of in the policies and services of a wide range of agencies.

- 11.17** Contracts negotiated between central government and most local CCPDs were developed as a way of funding and integrating local initiatives. Some were focused on urban regeneration with a crime prevention element, and others were specifically directed towards crime prevention. These contracts set out commitments for a period of three years to facilitate medium and longer term planning, and have recently been based upon a local crime data analysis to identify the nature and scale of local crime problems, an assessment of the fear of crime in local populations, and an analysis of the existing responses to crime and insecurity by public authorities.

THE NETHERLANDS

- 11.18** The approach to crime prevention in the Netherlands was set out in the Dutch Government report *Society and Crime* in 1985. It argued that crime prevention should be the focus of action against petty crime, and that the formal criminal justice process should be used as a last resort in relation to such crime. It set out three guiding principles for preventive policies:

- (i) the strengthening of surveillance of, and control over, potential offenders, by those who are well placed to do so;
- (ii) the development of urban and environmental planning, to limit the opportunities to commit crime; and
- (iii) the reinforcement of social integration (through family, school, work and recreation).

- 11.19** National crime prevention policy is primarily the responsibility of a Directorate of the Ministry of Justice (the Prevention, Youth and Sanction Department) co-ordinated through an inter-ministerial committee. The Directorate has a substantial budget and is on a level with the other Directorates in the Department. It has four main responsibilities:

- (i) promoting crime prevention among municipalities and businesses;
- (ii) supporting police-based crime prevention;
- (iii) co-ordinating victim policies; and
- (iv) regulating the private security industry.

- 11.20** Co-operation between the government and corporate sectors has been an important feature of crime prevention. A consultative body, the National Platform on Crime Control, comprises representatives from the public and private sectors. It has a number of steering groups which

focus on particular issues, such as IT-related crime and organised crime. Wider crime prevention policy is delivered as part of the “Major Cities Policy”, which was introduced in 1993 and covers four main policy areas: education; employment; health and welfare; and public safety. The policy now covers 19 major cities. It aims to strengthen the social and economic base and quality of life, and relies on a neighbourhood-based approach to social problems, delivered through a partnership between central and municipal government, criminal justice and social agencies, businesses, neighbourhood groups and individuals. The Government set aside £100 million over the period 1995-1999 and £40 million per year thereafter to combat juvenile crime, and an additional £8 million to tackle drug-related crime. Prime responsibility for designing and delivering initiatives occurs at the municipal, district and neighbourhood level, in partnership with other agencies, including police and prosecutors. Each of the municipalities has crime prevention co-ordinators and local crime prevention committees.

- 11.21** The Netherlands have also developed a pragmatic, evidence-based approach to developing policy and to the initiation, planning and implementation of projects. This places considerable emphasis on the role of evaluation and research, which is a requirement of any crime prevention funding. Around 10% of funding is devoted to evaluation.

NEW ZEALAND

- 11.22** New Zealand provides an interesting model, because of the similar size of its population (3.7 million), its mix of different communities, and because of the relationship between, and respective powers of, central and local government, which are similar in many respects to those in Northern Ireland. New Zealand’s interest in crime prevention and community safety policy began in the mid-1980s. The Roper Report¹⁰ recognised that the responsibility for crime prevention did not lie solely with the police, but with the community as a whole. The Government proceeded to develop a model based on the French system, setting up four pilot Safer Community Councils in 1990, overseen by a Prime Ministerial Safer Communities Council, and managed by the Crime Prevention Administration Unit.
- 11.23** In 1992 the Government created an inter-departmental working party, the Crime Prevention Action Group, to develop a coherent crime prevention strategy. It developed a strategy for crime prevention that co-ordinated policy, research and service delivery from government agencies, local government and the wider community within one strategic crime prevention framework. In 1993 the Crime Prevention Unit was established within the Department of the Prime Minister and Cabinet to advise the Government on crime prevention, develop a crime prevention plan based on a knowledge of “what works”, and ensure co-operation between concerned groups. Seven key areas were given to the Unit by Ministers:
- (i) Supporting “at risk” families.

¹⁰ *Report of the Ministerial Committee of Inquiry into Violence* (1987).

- (ii) Reducing family violence.
- (iii) Targeting youth “at risk” of offending.
- (iv) Minimising formal involvement of casual offenders within the criminal justice system through diversion schemes.
- (v) Developing an approach for the management of programmes that address the misuse and abuse of both alcohol and drugs.
- (vi) Addressing the incidence of “white collar crime”.
- (vii) Addressing the concerns of victims and potential victims.

11.24 The Unit supports the development of Safer Community Councils (SCCs), which are usually formed under the sponsorship of a local authority, or the Maori equivalent of a local authority, the *iwi*. (It is worth noting that local authorities in New Zealand have very limited powers and responsibilities, and are closer to local authorities in Northern Ireland than those in many other jurisdictions.) The SCCs are responsible for preparing a community safety profile of their area, and for developing crime prevention strategies based on that profile. Sixty-one SCCs had been formed, representing around two-thirds of local authorities. Local authorities were given a small amount of funding to support the establishment and maintenance of the SCC, and a small amount of seed-corn money to fund small-scale local crime prevention projects. SCCs engage in both situational and social crime prevention, working closely with the police and business community.

ENGLAND AND WALES

11.25 Crime prevention and community safety policy and practice in Northern Ireland has tended to follow developments in England and Wales, at least until recent years. There has been some divergence in practice more recently because of the very different institutions of government, particularly at the local level, which exist in the two jurisdictions.

11.26 In England and Wales the approach to crime prevention and community safety has been heavily influenced by two circulars and a major report. The first document, an interdepartmental circular in 1984, recognised that:

“A primary objective of the police has always been the prevention of crime. However, since some of the factors affecting crime lie outside the control or direct influence of the police, crime prevention cannot be left to them alone. Every individual citizen and all those agencies whose policies and practices can influence the extent of crime should make their contribution. Preventing crime is a task for the whole community.”

11.27 The 1980s and early 1990s saw the development of a number of central government initiatives to promote crime prevention, most notably the Safer Cities Programme launched in 1988. The second document, a follow-up circular in 1990,¹¹ reinforced the concept of a partnership approach to combating crime, and was accompanied by a good practice booklet which provided advice on what constituted good practice in designing and implementing crime prevention policy.

11.28 The Morgan Report¹² in 1991 provided the philosophy and structure which underpin community safety policy in England and Wales today. The report elaborated on the term “community safety” and advocated specific institutional structures and arrangements, including a three-tiered structure of responsibility. It also recommended additional funding from central government to support the proposed new duty on local authorities. Its principal recommendations included:

- giving local authorities statutory authority, working with the police, to develop and stimulate community safety and crime prevention;
- appointing a co-ordinator with administrative support to the local authority structure;
- the nomination by chief constables for each local authority area of the “most senior local operational police officer” in order to promote coterminous boundaries;
- paying particular attention to young people and crime in local partnerships;
- making best use of the voluntary sector;
- involving business as a partner instead of regarding it solely as a source of funds;
- consideration by the Government of how a strong focus at the centre could be provided;
- the need for a clear statement of crime prevention training needs and an action plan to address those needs; and
- the provision by central government of a community safety impact statement for all new legislation and policy initiatives.

11.29 The Morgan Report’s principal recommendations were taken forward, albeit with some important changes, by the Crime and Disorder Act 1998. The Act:

- places a new statutory duty on local authorities and the police, requiring them *together* to co-ordinate and promote local community safety partnerships (the guidance on which requires the police and local authority to produce a joint crime audit, consult and involve a wide range of other agencies, including the voluntary and community sectors, and produce and publish a “community safety strategy”);

11 *Crime Prevention - The Success of the Partnership Approach*, 11/90.

12 Morgan, *Safer Communities: The Local Delivery of Crime Prevention Through the Partnership Approach*, Standing Conference on Crime Prevention (1991), London: Home Office.

- requires local authorities, in exercising their various functions, to consider the crime and disorder implications and the need to do all that they can do to prevent crime and disorder in their area;
- requires local authorities to establish one or more multi-disciplinary “youth offending teams” to bring together “the experience and skills of relevant local agencies to address the causes of a young person’s offending and so reduce the risk of re-offending”, and to encourage children and young persons not to commit offences; and
- creates a number of new orders, including the anti-social behaviour order, the curfew order, the child safety order, and the parenting order.

11.30 In addition, as a result of the Comprehensive Spending Review, a “Crime Reduction Programme” was announced by the Government in July 1998, together with the publication of a research review of national and international evidence of “what works” to reduce crime.¹³ Under the programme £250 million is to be invested in crime reduction over a three-year period from April 1999, overseen by an inter-departmental committee, and with up to 10% of the budget devoted to the evaluation of initiatives.

11.31 Both the Crime Reduction Programme and the new arrangements under the Crime and Disorder Act 1998 are in their infancy, and it is too early as yet to make a judgement as to their effect. The arrangements for implementing the latter are still being developed, and there is evidence of local authorities adopting a variety of structures to meet the requirements of the Act. No new resources have been made available to enable local authorities or the police to fulfil their new responsibilities under the Act.

SCOTLAND

11.32 The police in Scotland have played, and continue to play, a central role in crime prevention. Recent government initiatives have, as in other countries, sought to develop an awareness that crime cannot be tackled by the police alone, and that responsibility for tackling crime needs to be shared amongst the statutory, voluntary and community sectors.

¹³ Goldblatt and Lewis, *Reducing Offending: An Assessment of Research Evidence on Ways of Dealing with Offending Behaviour* (1998), Home Office Research Study 187, London: Home Office

11.33 In 1992 the Scottish Office launched a new strategy document¹⁴ which led to the creation of the Scottish Crime Prevention Council to carry the strategy forward. Following a review of the Council in March 1999, Ministers agreed to wind up the Council and replace it with a less formal body with an extended membership to reflect the growing prominence of community safety and community planning. A new body, the Scottish Community Safety Forum, will shortly be formed. Its remit will be to advise the First Minister of the Scottish Executive on crime prevention and community safety policy; create wider partnerships in community safety and crime prevention; stimulate innovative approaches to crime reduction and community safety. It will also promote the joint Scottish Executive, Association of Chief Police Officers in Scotland (ACPOS) and the Convention of Scottish Local Authorities (CoSLA) Strategy, which is designed to improve community safety in Scotland through partnership between public, private and voluntary bodies.

11.34 The Community Safety Strategy *Safer Communities Through Partnership*¹⁵ promotes the idea that local authorities and the police should lead local partnerships involving public, private and voluntary bodies to tackle community safety issues at local level. Out of 32 local authorities in Scotland, 29 have community safety partnerships. Guidance in the form of *Safer Communities in Scotland*¹⁶ has been issued to the police, local authorities and other community safety partners and will be enhanced with training for community safety practitioners. The Scottish Executive Crime Prevention Unit and CoSLA will review the partnerships' action planning process to ensure initiatives are being monitored and evaluated to improve the delivery of "safer communities". The Scottish Executive Crime Prevention Unit has a budget of £3m to fund community safety projects. Half will go to projects identified by partnerships as addressing wider community safety issues and the other half will fund CCTV projects.

THE REPUBLIC OF IRELAND

11.35 Crime prevention policy in Ireland is developed by the Department of Justice, Equality and Law Reform in conjunction with the Garda Síochána. Crime prevention was, and still is, one of the core functions of the Garda. Since 1992 and the publication of the report *Urban Crime and Disorder*,¹⁷ there has been a growing consensus, in line with international trends, that crime prevention is delivered most effectively through inter-agency co-ordination at a local level. This, together with the Strategic Management Initiative (SMI),¹⁸ led to a shift in

14 *Preventing Crime Together in Scotland: A Strategy for the 90s* (1992), The Scottish Office, Edinburgh: HMSO.

15 *Safer Communities Through Partnerships: A strategy for Action*, (1999), The Scottish Office, Edinburgh: HMSO.

16 *Safer Communities in Scotland*, (1999), Scottish Executive, Edinburgh.

17 Report of the Interdepartmental Working Group (1992) *Urban Crime and Disorder*, Dublin: Stationery Office.

18 The SMI was launched in 1994 with the purpose of improving the service of government departments to the public. The first stage of the initiative was a requirement that departments produce a strategy statement.

government policy. The Department of Justice, Equality and Law Reform published its developing crime prevention policy as part of its strategy document *Community Security – Challenge and Change*.¹⁹ The report emphasised the need for the Department to adapt its management structures in line with international views on how to plan and implement policy on crime.

- 11.36** The discussion paper *Tackling Crime* followed in 1997.²⁰ This highlighted the need “to secure community involvement and support for anti-crime measures, so that effective partnerships are forged between the general public and the relevant statutory and voluntary agencies in the fight against crime.” The debate stimulated by the 1997 discussion paper led to the formation of the National Crime Forum, which reported in 1998.²¹ The report recommended a more coherent and co-ordinated strategy at central government level aimed at reducing poverty and social exclusion. It recommended the creation of a National Crime Council (which was established in July 1999 and which comprises 16 representatives from the judiciary, the Garda Síochána, the Department of Justice, Equality and Law Reform, and a range of statutory, voluntary and community organisations and individuals with an interest in crime and the effects of crime). At local level, the report commended the use of partnership models, citing the 13 local drugs task forces as good examples, and recommended the creation of local crime councils, organised at local government level, to complement the National Council. Both tiers would involve representatives of the relevant statutory agencies, together with a range of voluntary and community groups.

SOUTH AFRICA

- 11.37** Although not covered by the literature review, we had the opportunity to hear of the arrangements for crime prevention in South Africa in the course of our study visit. The concept of crime prevention was relatively new, but had become an issue of central importance to the government as a direct result of escalating crime levels post-apartheid, and a crisis of confidence in the effectiveness of the formal criminal justice process and the agencies of the criminal justice system. Crime was seen as the single most important issue facing the Government. It was seen to constrain development, undermine the process of reconciliation and undermine public confidence in the Government. It also threatened the building of a human rights culture and compromised the process of transformation to democracy. As a result the Government had initiated the development of a National Crime Prevention Strategy in 1995, driven by an inter-departmental committee consisting of the Ministers for Safety and Security, Justice, Correctional Services and Defence.

19 *Community Security - Challenge and Change* (1996), Department of Justice, Dublin: Stationery Office.

20 *Tackling Crime - Discussion Paper* (1997), Department of Justice Dublin: Stationery Office.

21 *Report of the National Crime Forum* (1998), Institute of Public Administration, Dublin: IPA.

- 11.38** The strategy consisted of four elements, which set the framework for the development of crime prevention programmes at all levels of government (national, regional and local). The four elements were:
- (i) reform of the criminal justice system, to reduce delay and improve efficiency and effectiveness;
 - (ii) environmental design of communities to make it harder for criminals to operate, and to strengthen social networks and cohesiveness;
 - (iii) changing public values and attitudes to crime, by educating the public as to the costs of crime and the role they can play in preventing crime; and
 - (iv) measures to combat transnational crime.
- 11.39** We were briefed on the scale and nature of reforms to the criminal justice system, and on the way in which the three tiers of government were bound into the process. Of particular interest was the development of “Community Safety Forums”, which had originated in 1994 as a means of building relations between the new South African Police Service and the community and developing the legitimacy of that service. These were in the process of being transformed into local authority-led institutions, and their remit was being broadened to include community safety and crime prevention at the local level.

Views Expressed during the Consultation Process

- 11.40** Crime prevention and community safety issues generated a good deal of comment during the consultation process, both in the formal written and oral submissions to the Review, and in the consultative seminars. There was a good deal of agreement across all shades of the political and social spectrum as to how effort on crime prevention and community safety might best be co-ordinated and delivered, and what arrangements were necessary to ensure that the most effective use was made of available funds in reducing crime.
- 11.41** It was widely recognised that it was not for the police or the formal criminal justice process alone to deal with crime and criminality, and that many of the underlying causes of crime could only be addressed by well co-ordinated social, economic and criminal justice policies. No one dissented from this view. A small minority believed, however, that it was the function of government to deliver community safety, through the co-ordination of policies at the macro level, and that the Government should not seek to foist its responsibilities upon the community. The majority view was that the statutory, voluntary and community sectors, and individuals all had a role in developing and delivering community safety. One viewpoint put forward strongly at a seminar in Omagh was that “the widest involvement possible of the community is desirable in developing policy and services in this area”. This was echoed in

Belfast, where the comment was made that “deprivation cannot be tackled by throwing money around. There needs to be empowerment of communities to help them help themselves.” However, money, or more explicitly the lack of long-term funding, was identified as a particular problem: communities did not have the resources to devote to community safety activity, and if the Government was serious about empowering communities then it needed to provide the necessary resources. Some also suggested that the balance of government spending was wrong, and that resources should be shifted away from the prosecution and punishment of offences to the prevention of crime.

- 11.42** Others were mindful of the pervasive paramilitary presence in some communities, and the danger of paramilitary elements being involved in delivering community safety initiatives. They did not dissent from the view that community involvement was important, particularly in respect of dealing with minor crimes, but they counselled that those representing communities in such activity must be truly representative, to avoid influence from paramilitary or organised crime creeping in. One group envisaged “...community co-operation by way of existing state agencies or recognised private sector bodies e.g. Chambers of Commerce, local churches, local government or police liaison committees, etc, in order to protect against possible abuse”. Another group noted that there might be limitations to community involvement where issues of specific sensitivity were being dealt with, such as the issue of how sex offenders are dealt with in the community on release from prison.
- 11.43** The concept of a partnership approach to dealing with community safety and crime prevention received considerable support. Many respondents favoured an inclusive approach in which partnerships were developed amongst the statutory, voluntary and community sectors to address local problems identified in local areas. Some recommended that the structures and institutions which develop and implement a community safety strategy should themselves embody the principles of partnership, in that all sectors of society should be involved in the development of policy at the strategic and local level, as well as in the delivery of services and programmes in the community.
- 11.44** As to who should be involved in such partnerships, a number of those who commented suggested that, within the statutory sector, the police, probation, education and housing authorities, health and social services, and local councils all had a role to play. There was a wide range of potential partners suggested in the voluntary sector, including Extern, the Northern Ireland Association for the Care and Resettlement of Offenders, Victim Support, Women’s Aid, Mediation Network and the National Society for the Prevention of Cruelty to Children, to name but a few. There was also a wide range of community organisations and individuals that could contribute, depending on the nature of the local problems to be addressed. These might include the churches, young people’s organisations, local politicians, women’s groups, and parent-youth support groups.
- 11.45** A minority of those who commented recognised that there would be difficulties in involving statutory sector partners, and in particular the police, in some areas where they were

mistrusted by the community. This view was expressed by a number of groups and individuals, from both the Nationalist and Loyalist traditions. However, they all acknowledged that under a new political dispensation, when the agencies of the state were under the control of and accountable to local political structures, and in a situation where the police service had been reformed, the difficulties of involving such partners would lessen considerably.

11.46 Most individuals and organisations agreed that effective co-operation and information sharing between statutory agencies was vital, and that mechanisms were necessary within central government to ensure that departments and agencies worked co-operatively to achieve agreed objectives. This was of particular importance in the area of community safety, where the causes of crime and criminality were seen as a complex mix of social and economic deprivation and the breakdown of local communities, demanding complex, multi-faceted, well co-ordinated responses. As a precursor to this, however, it was argued that central government should develop and articulate a clear and overarching strategy for community safety, which set out the roles and responsibilities of the agencies and groups involved. One group suggested that the Community Safety Centre should establish a strategic overview and planning system for the field of crime prevention. Others suggested that responsibility for community safety issues should be brought together under a single governing body, department, or Minister, to ensure co-ordination of policy development and service delivery. One group suggested that there should be a department devoted to youth justice with responsibility for crime prevention. Another counselled against a “corrective or punitive” agency leading the development of community safety strategy. Many also commented that it was difficult for some statutory agencies to participate without a statutory duty to prevent crime in their remit.

11.47 At local level, many pointed out that there was no single body or structure which took responsibility for community safety. However, there was no consensus on what, if any, body should be responsible for leading or facilitating community safety efforts at the local level. Indeed many argued that that it would be counterproductive to have one (or even two) lead bodies for community safety as in England and Wales, because different local areas had different problems, which would require different bodies to come together to create solutions. Some argued, however, that local authorities should take the lead in encouraging the development of community safety initiatives in their areas, since councillors were elected representatives of the community they served. Others suggested that the social partnership model, which had been used successfully to bring together political, business and community interests in disbursing European funding, should be used in each council area. Some suggested that community police liaison committees would serve as a useful forum for discussing community safety issues. Yet others suggested that no fixed model should be adopted, and that arrangements should develop organically and in response to local needs, and that no one agency or organisation should have a predetermined leadership role.