



Northern
Ireland
Office

Draft Protocol for Community-based Restorative Justice Schemes

July 2006

COMMUNITY-BASED RESTORATIVE JUSTICE SCHEMES: PROTOCOL

Introduction

This paper recognises the finding of the Review of Criminal Justice that community-based restorative justice schemes (“schemes”) can have a role to play in dealing with the types of low-level crime that most commonly concern local communities. It seeks to establish a framework for relations between the criminal justice system and the community-based schemes by setting in place a Protocol for the operation of the schemes in line with the Review’s recommendations. That framework is based on schemes’ compliance with the rule of law and full cooperation with statutory agencies, including the police, in implementing this Protocol.

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

3. The Review described restorative justice as:

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

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

4. In addition, the Review notes that

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

The Review also points to the strong divisions of opinion which exist in the community in relation to schemes³. These clearly have the capacity to damage

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

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

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

confidence in the criminal justice system. Against this background, it should be a common aim and responsibility of all those involved in operating the Protocol, including the schemes, to promote confidence in the criminal justice system.

Principles and Roles

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

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

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

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

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

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

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

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

Protocol

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

[Community schemes should:]

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

9. If a community-based scheme becomes aware of an offence or an offender, it will communicate promptly to a dedicated police officer the details it has about the offence, the offender and the victim, including such categories of information as the PSNI may indicate it requires. It should indicate in broad terms how it would plan to deal with the offence and offender if these were referred to it. (This should be a forecast based on previous practice: it is accepted that details would not be firmed up at this stage.)

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

11. The PSNI will consider the information received (including any provided through a panel discussion) and determine whether it is necessary to undertake investigations to verify and add to the information. Depending on the nature of

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

the offence, offenders will be fingerprinted and DNA taken by the police⁵. On receiving a report from the police, the PPS will consider the evidence and information provided and inform police promptly of the decision reached. The police will inform the scheme of that decision. Where the PPS judges it appropriate to refer a case to the scheme, the latter may proceed to handle the case. Where the PPS does not decide to refer the case, the scheme will take no further action with regard to the disposal of the case, although it may offer support to the victim or the offender where its relationships with them are already established. However, this should not extend to involving them in restorative processes. The police and PPS will seek to fast-track the consideration of cases forwarded by schemes.

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

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

13. When a community scheme has a case referred to it following a decision by the PPS, it may proceed to engage with the person involved in strict accordance with this Protocol. The PPS will decide whether referrals to schemes should include an informed warning or a restorative caution, and in such cases such a warning or caution will be given by a police officer. This will form part of the plan for dealing with the offender. Following delivery of an informed warning or restorative caution, the police officer will ensure that appropriate details are recorded for insertion in the criminal record of the offender.

14. In the course of any processes undertaken by a scheme when dealing with an offender, any disclosure of specific instances of offending, other than that

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

which was the subject of the original referral, must be dealt with in accordance with this Protocol, and the offender informed accordingly (as is the case for any criminal justice agency). If this arises, the scheme should suspend dealing with the offender until further decisions are reached by the PPS.

15. Appropriate procedures will need to be agreed to assist in the implementation of the above referral arrangements.

[Community schemes should:]

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

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

17. Schemes will need to operate to high standards in order to comply with human rights requirements and promote confidence in the criminal justice system, and they must assess the suitability of their staff in the light of this. It would clearly be unacceptable for anyone involved in paramilitary activity or criminality to be involved in this work. An important method of determining if an individual is unsuitable will be through use of the Protection of Children and Vulnerable Adults (POCVA) machinery which became operational in 2005, and schemes must become accredited to POCVA for this purpose. This is required practice for all organisations which work with children and/or vulnerable adults. The POCVA check will indicate the existence of a criminal record or other information which might show an individual to be unsuitable for the post. To help determine suitability a Panel, comprising representatives of statutory bodies, will be established. The Panel will have access to relevant information (including criminal records). The procedures to be followed by the Panel are detailed in the Annex. Schemes will be required to accept the determination of the Panel as a condition of their accreditation.

18. Schemes will arrange for their staff to receive training, on induction, on human rights and equality legislation; on their obligations under the criminal law; and on the workings of the criminal justice system, including issues of due process and proportionality. Training will be updated regularly, and will cover

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

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

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

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

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

22. An independent, external, complaints mechanism, provided by the Probation Board, will be available to every offender and every victim who comes into contact with the schemes. The schemes will ensure that information explaining clearly how a complaint can be made is provided as a matter of course to all with whom the schemes deal. The Inspectorate will inspect the schemes' processes on a regular and unannounced basis to ensure that appropriate arrangements are operating properly. The effectiveness of schemes in responding to any decisions reached by the complaints mechanism will be taken into account in deciding on their accreditation. Where a victim or offender has a complaint that amounts to a criminal offence, this should be referred to the PSNI for investigation. Any complaints against police officers should be referred to the Police Ombudsman.

[Community schemes should:]

be subject to regular inspection by the independent Criminal Justice Inspectorate⁷.

23. Schemes will agree to undergo an initial inspection before commencement of operation under this Protocol. Once schemes are operating, unannounced inspections will be conducted regularly. These inspections will initially take place on a pilot basis. They will include, as appropriate, examination of records of offenders and offences dealt with; systems for ensuring that agreed programmes are completed; complaints mechanisms and actual complaints; training

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

initiatives; compliance with the decisions of the PPS on cases appropriate and inappropriate for referral to community schemes; up-to-date awareness of human rights issues; and safeguards for ensuring that for offenders who admit the offence this is done on the basis of informed consent. Access may also be required to the records of the scheme in relation to non-criminal activity. Inspectors will have access to all published material on the scheme or the interventions it provides. Cases will only be referred to accredited schemes. Accreditation will be regularly monitored and reviewed.

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

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

[Community schemes should:]

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

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

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

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

CBRJ SUITABILITY PANEL: PROPOSED MODEL

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

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

sponsoring scheme will be advised and asked to inform the individual. It will be a condition of accreditation that schemes accept the rulings of the Panel.

FACTORS TO BE CONSIDERED BY THE PANEL

Criteria for Unsuitability

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

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

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

Information to be considered by the Suitability Panel

3. The information available to the Panel will include:

- Any information provided by the individual and the community-based restorative justice scheme in support of his or her application;
- Any information provided under the provisions of the Protection of Children & Vulnerable Adults legislation;
- The individual's full criminal record (if any);
- Any information provided by statutory organisations which might indicate the individual's involvement in criminal or paramilitary activity, or otherwise indicate that he or she would be unsuitable for appointment on the grounds that this would compromise public safety or have a significant adverse impact on public confidence in the process;
- Any representations made by the individual to the Panel.