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From: Community Relations Council
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Issue: Draft guidelines for community-based restorative justice schemes.

The Community Relations Council was established as an independent body in 1990 to lead and support change in Northern Ireland towards reconciliation, tolerance and mutual trust. In a changing environment, the Council works by promoting constructive and relevant dialogue, by actively supporting those taking real risks for relationship building, by acting as a practical bridge between groups in society and between the public, private, voluntary and community sectors and by promoting wider learning through developing better practice. The aim of CRC is

“to lead and support change towards a peaceful, inclusive, prosperous, stable and fair society founded on the achievement of reconciliation, equality, co-operation, respect, mutual trust and good relations”.^[1]

The Community Relations Council’s response will examine how the draft guidelines support our principles and values.

Restorative Justice Schemes

There are many definitions as to what Restorative Justice means but Tony Marshall, an early pioneer of the scheme, stated

“Restorative Justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how do deal with the aftermath of the offence and its implications for the future”.^[2]

There have been numerous developments in the area of restorative justice and various schemes are now in operation around the world, such as New Zealand, USA, Australia and the UK; and there is growing evidence that these schemes significantly reduce levels

^[1] CRC, Strategic Plan 2004-07.

^[2] Restorative Justice Consortium, Implementing Restorative Processes in the Adult Criminal Justice System, 2005, P13.

of re-offending e.g. the Thames Valley Police's retail theft initiative in Milton Keynes (a third reduction in re-offending). The context within which restorative justice schemes in Northern Ireland have emerged is in areas that have been badly affected by the NI conflict and often have fractured relationships between the police and local community. This creates numerous difficulties which will require sensitive handling to ensure acceptability both to local people and a clear adherence to human rights principles.

A Shared Future states that 'Law and order will be a key cornerstone' in delivering 'a more equal and inclusive society'^[3] and in moving towards A Shared Future, justice procedures and the principles under which these schemes operate need to be cemented with trust and protection of rights. There are challenges in this for criminal justice agencies, particularly the PSNI, to understand and overcome difficulties created by this legacy in line with Section 75(2)...the promotion of good relations. Restorative justice schemes can be a positive addition to the criminal justice system as they offer an opportunity for the "victim, offender and the community...to repair the damage caused by the offender's crime through dialogue and negotiation, direct or indirect".^[4]

Human Rights/Accountability/Protection/Safeguards

The primary value of restorative justice is the contribution it makes to delivering better justice for all. The additional contribution which restorative justice makes is to offer a more active role for the victim and to orientate justice towards restitution and restoration rather than simple punishment. This contribution accords well with the principles of community relations and the Council therefore welcomes this debate on the practical steps required to ensure that restorative justice delivers real justice for the individuals and communities concerned and for Northern Ireland as a whole. Before moving forward, the Council believes that the following factors need to be taken fully into account:

I. Human Rights Standards: Restorative Justice must be underpinned by the same standards that underpin the whole of the justice system. There should be no room for the accusation that restorative justice could compromise the fundamental rights of either offender or victim. There are international standards that provide a framework for the development of restorative justice schemes and international human rights conventions which have influenced the development of schemes ensuring that they provide protection for all parties; they include the United Nations Standards Minimum Rules for the Administration of Justice (the Beijing Rules), and the United Nations Declaration of Basic Principles of Justice for Victims and Abuse of Power 1985. It is essential that all schemes both adhere to these international standards and be seen to adhere to those standards, including public accountability around process, the opportunity for any party to seek redress through the normal criminal justice system and a transparent and credible complaints procedure.

^[3] A Shared Future, OFMDFM, 2005. P 13.

^[4] Rethink, RJ, An idea whose time has come, March 2004

2. Safeguards: Justice cannot be delivered by postcode, dependent in quality on address or location. All schemes need to be embedded with appropriate safeguards, checks and balances and the guiding principles of equality, diversity, non discrimination, information, choice and safety. This code of practice will guarantee protections.

In undertaking justice functions, restorative justice organisations, while independent, must be subject to a proper level of scrutiny. CRC believes that restorative justice schemes should be subject to safeguards which ensure the same standards of transparency and scrutiny as all other elements of the justice system including PBNI, Police, and the YJA and subject to regular inspection.

3. Protection: Nobody concerned with justice could support any scheme that places individuals or communities at risk, or into the hands of systems which are not subject to full public scrutiny. With this in mind CRC advises that all schemes are subject to binding rules and guidelines regarding all engagements with the offender, victim and the wider community. These rules need to be monitored regularly and enforceable in law. The rules must guarantee that:

- **Involvement is mutual and voluntary. No-one should be coerced into a scheme.** Before any organisation is licensed or funded to operate restorative justice schemes, there must be credible assurances that restorative justice is always voluntary. Against the backdrop of punishment beatings and paramilitarism, this is not a matter that can be evaded. A restorative justice system sponsored by the justice system which cannot credibly guarantee this requirement will undermine rather than promote justice.

A model of good practice is the Youth Conferencing System, whereby its facilitator reiterates the principle of voluntary participation on 3 occasions during the process, and also makes provisions for young people who may have learning difficulties. It is crucial that all schemes underline the voluntary nature of restorative justice and stress that the offender or victim can withdraw at any stage, with no consequences. In the case of the offender withdrawing then the case must be passed on to the criminal justice system. In addition to this, those suspected of committing an offence should be entitled to legal advice and/or representation during any part of the process.

- **Vetting.** A guiding principle of CRC is reconciliation. Ex-paramilitaries and ex-prisoners have made and are making a positive contribution to our society. We believe that past imprisonment should not normally be a permanent bar to engagement with restorative justice provided that anyone involved in restorative justice can demonstrate that they have spent a minimum of five years without coming to the attention of the police on criminal matters. Furthermore that there is no evidence of ongoing involvement with paramilitary activity and that each person voluntarily signs an oath to the principles of restorative justice (ex internees should be exempt from this process). CRC would like clarification around the issue of working with children and vulnerable adults – how will

- **Transparent management and recruitment procedures:** The management and public accountability of restorative justice schemes must inspire confidence. Any organisation involved in restorative justice should be licensed and subject to an enforceable code, recruitment should be open and in accordance with strict equal opportunities procedures.
- **Accredited Training.** Appropriate accredited training needs to be given to all those involved in managing and leading a scheme.
- **Licensing and ownership.** No community restorative justice scheme should be able to claim a territorial monopoly which would raise the allegation of coercion. The public licensing of agencies to carry out restorative justice should be open, subject to time limits and carry the possibility of suspension. The membership of all management committees should be a matter of public record. The mechanism for joining management committees needs to be open and clearly distant from any political affiliation. Justice and political ownership cannot co-exist.
- **Complaints Procedure.** There needs to be a safe, transparent, public, independent and external complaints procedure. The guidelines need to ensure that schemes operate in a safe environment, that it is a place where individuals can discuss the difficult questions and make amends but also feel protected if they wish to withdraw or make a complaint about the process.
- **Cooperation.** The Community Relations Council acknowledges that a huge level of mistrust still remains for different sections of our society, especially in relation to criminal justice. The development of restorative justice offers an opportunity for all parties to engage on a transparent basis, based on common standards of justice and human rights principles. “Trust building is an arena where everyone has a contribution to make.....trust and dialogue must not only be learned in theory but embedded in public and community life.....”^[6].

Trust will only be extended, however, if all parties operate within a common and transparent system. A multi agency approach is essential when it comes to tackling crime. CRC welcomes local led initiatives but we are of the firm belief that restorative justice schemes should be accountable within the Criminal Justice System and this means safeguards and procedural transparency.

^[6] CRC, Strategic Plan 2004-2007, P7

It is incumbent on the police to recognise past difficulties and to ensure that all of their dealings with communities are fair, open and subject to human rights norms. Where special institutional arrangements are considered because of a history of poor relationships with policing, they must be able to demonstrate that they are a response to client requirements and compliant with normal third party reporting arrangement and that both agencies and arrangements are compatible with the proper administration of justice.

Leading the Way

As with any criminal justice work, Restorative Justice Schemes must act independently from special interest or undue political influence. Any organisation wishing to operate a community restorative justice project must be politically independent, operate according to human rights principles, clearly non-violent and subject to licence and inspection. Ideally, individuals should be able to access restorative justice from any licensed provider and not forced through residence or territory to use one particular agency.

Conclusion

CRC principles and values dictate that every scheme, statutory or voluntary, has to ensure respect, fairness, equality, co-operation and reconciliation. The Community Relations Council acknowledges the benefits of restorative justice schemes, provided that they operate under the rules of the criminal justice system. Confidence and the preservation of constitutional rights cannot be compromised.

The issue of confidence in justice cannot be avoided in coming to conclusions about the future. In a society moving from political unrest, conflict and a history of paramilitarism, the goal is the spread of justice to all, not a politically expedient compromise which leaves justice compromised. The Community Relations Council is happy to play its part in the development of a criminal justice system which endeavors to achieve this goal

CRC recognizes there is considerable expertise in the field of criminal justice and we are happy to comment in this debate; our comments should be taken under our commitment to promote equality and good relations. We recognise it is likely as a result of this process that many issues will remain unsolved in the first instance. The Community Relations Council would like to continue with the dialogue and discussion around this vital issue and would be happy to facilitate these discussions further.

Yours sincerely

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