



**Response to the Northern Ireland Office Consultation on
Draft Guidelines for Community-based Restorative Justice
Schemes**

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*'The development of these community restorative justice schemes which was recommended by the Review and has been accepted by government is a matter of considerable importance and should be pursued in an active, forward-looking, co-operative, sensitive and open-minded spirit.'*¹

*'Schemes can help integrate official law enforcement and justice procedures into communities which have for too long been estranged from them, and can do so in a manner which reflects the circumstances and traditions of those communities.'*²

Introduction

Include Youth promotes best practice with young people at risk of social exclusion. We achieve this through the development and promotion of resources, the provision of training, information and support of practitioners and organisations. We also undertake activities aimed at influencing public policy and public awareness - locally and nationally.

Include Youth promotes the development of positive choices and opportunities for vulnerable and challenging young people in the community, residential care or custody. Include Youth promotes the use of community alternatives to care and custody for children and young people.

Amongst the young people at risk with whom, and on whose behalf, Include Youth works are young people from socially disadvantaged areas, those with a learning disability, those with special needs, those who have been truanting, suspended or expelled from school, those from a care background, those who have had a negative parenting experience, young people who have committed or are at risk of committing crime, misusing drugs or alcohol, undertaking unsafe sexual behaviour or other harmful activities, or of being harmed themselves.

Include Youth runs the Young Voices project, which is a participation project for young people who have been involved or are at risk of becoming involved in the criminal justice system, with the aim of supporting these young people to become involved in decision-making processes which impact upon their lives. Currently the

Young Voices project supports young people in two groups – one drawing its members from the Greater Belfast area, and the second based in the Juvenile Justice Centre, Bangor.

In addition, Include Youth runs the YOYO Practitioners Forum, which draws together professionals from a range of statutory, voluntary and community organisations working directly with young people in need or at risk, and meets on a quarterly basis.

Generic comments on consultation document

Political Context

It is important to acknowledge that a number of the issues relating to CBRJ schemes sit outside the content of the draft Guidelines. In particular we refer to the fact that Northern Ireland is in a process of transition, and we submit it is necessary to locate the discussion on CBRJ schemes in this context of transition and the special circumstances out of which it has arisen. The special circumstances to which we refer include the politicisation of restorative justice in the Northern Ireland context, the fact that it appears to be inextricably linked to the legacy of the conflict, and in the current climate to issues around acceptability of policing within certain communities and the activities of paramilitary organisations. In addition, special circumstances include the persistence of divided communities in Northern Ireland – i.e. the on-going reality of sectarianism which has meant that punishment and exiling have continued within some of these communities. Finally, it is important to acknowledge that the CBRJ schemes have grown up in communities, many of which experience the highest rates of poverty and material deprivation in Northern Ireland and the UK.

Therefore the current discussion on draft Guidelines for CBRJ schemes must be approached in a manner which understands the delicate, complex and unique nature of community-based restorative justice in the Northern Ireland context, which has arisen in response to a combination of these special circumstances.

Having located the issue of community-based restorative justice in the wider political context, Include Youth's response will focus primarily on how we anticipate the

Guidelines will impact on children and young people, concentrating on the rights of and best practice with young people in whatever context.

General Comments

Include Youth welcomes the opportunity to participate in the Northern Ireland Office's Consultation on draft Guidelines for Community Based Restorative Justice Schemes. In the course of preparing our submissions, Include Youth has consulted widely with young people at risk, many of whom have direct experience of engaging with a variety of restorative processes through Young Voices, with professionals working with them through YOYO Practitioners Forum, and with colleagues from the voluntary and community sector.

This is a very important consultation exercise which has the potential to impact enormously on the lives of children and young people, and the communities within which they live. It is therefore vital that we get it right. Restorative justice approaches have been used in Northern Ireland to deal with children and young people who engage in offending and or problematic behaviour, since 1997/98 and increasingly since the changes introduced following the Review of Criminal Justice in 2000:

*'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.'*³

Include Youth is committed to working with all partners to ensure that the rights of children in conflict with the law are promoted and protected at all stages throughout the criminal justice system.

Young People

As mentioned earlier, Include Youth's Young Voices project carried out a number of consultations with young people in both community and custody settings, some of whom had first-hand experience of the Community-based Restorative Justice Schemes, others who had not. As the following statements illustrate, there exists a degree of mistrust among young people in relation to the Schemes, and in order to

overcome these clear issues of trust, young people require reassurance about how and by whom the Schemes are run.

I wouldn't trust them [paramilitaries], but I'd give it [community-based restorative justice] a go. It's better than getting beat. But I'd still be suspicious, on my guard.

You might go for it [community-based restorative justice], but I still wouldn't trust them [paramilitaries].

You'd do it [participate in a community-based restorative scheme] out of fear.

You would give it [community-based restorative justice] a try.

You would do it [community-based restorative justice] to get the paramilitaries off your back. But you still wouldn't trust them.

These comments are a stark reminder of the challenges and harsh realities involved in brokering a shared and common vision of community-based restorative justice in the transitional society in which we live. Recognising this dilemma, the IMC has observed that ‘Community restorative justice can under the right conditions help offer alternatives to paramilitary violence or intimidation. With the right standards and safeguards we believe community restorative justice has its part to play in the transition from paramilitarism’.⁴ We submit that Guidelines for Community-based Restorative Justice Schemes which take account of Include Youth’s recommendations as outlined below, and which call for full compliance with human rights and children’s rights standards, can create the right conditions, and will play an important role in helping to build that trust and make the transition to a peaceful society.

International Standards

It is our view that in the way forward for community-based restorative justice in large part lies in adherence to and full compliance with international standards, and we believe that there is a duty on all agencies working with children and young people – whether statutory or non-statutory – to demonstrate compliance. We are therefore disappointed that while the draft guidelines make reference in the Principles and Roles section to the UN Basic Principles on the use of Restorative Justice Programmes in Criminal Matters, no mention is made to other relevant international human rights instruments. The Review of Criminal Justice states: ‘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’.*⁵

It is our view that the draft guidelines will have a direct and significant impact on children and young people, and should therefore be set within the framework of the United Nations Convention on the Rights of the Child. The principles of the UNCRC are all relevant, and in particular Articles 2 (principle of non-discrimination); 3 (best interests principle); 6 (right to life); 12 (right to meaningful participation); 37(right to be free from cruel, inhuman or degrading treatment and deprivation of liberty); 39 (duty to promote recovery and social reintegration of children who have been the victims of armed conflicts, neglect, maltreatment, exploitation or abuse) and 40 (administration of justice). Other international standards which we recommend are relevant in providing a framework for the current draft Guidelines, include the European Convention on Human Rights as incorporated by the Human Rights Act 1998, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and UN Standard Minimum Rules for Non-Custodial Measures 1990 (The Tokyo Rules). Moreover, the guidelines should take into consideration all relevant recommendations of the United Nations Committee on the Rights of the Child.

Include Youth recommends that paragraph 1 of the Guidelines, which makes reference to the need to have community-based restorative justice schemes subject to the safeguards set out in the Criminal Justice Review, should extend to include additional safeguards such as the need for training on Children’s Rights, Child Protection and how to effectively communicate with children and young people. Such training should be mandatory for all services working with children and young people. In addition, Include Youth strongly recommends that the UNCRC is included as one of the underpinning standards in the Principles and Roles section of the guidelines.

Consultation

Include Youth understands that the draft Policy has been discussed at earlier stages with the CBRJ Schemes, and circulated for comment to ‘the Policing Board, the

political parties and other key stakeholders', but it is not clear whether children and young people were directly consulted in the drawing up of this document. Children have a right to be consulted about decisions affecting them (Article 12 UN Convention on the Rights of the Child), and if the policy is to be effective it is important that children and young people are given the opportunity to contribute to the policy process, at all stages.

In addition, Include Youth submits that a version of this draft policy should have been produced in forms accessible to children and young people of different ages and abilities, telling them about the policy. We would therefore be grateful if you would forward copies of your child accessible format of this document, and if you could provide us with details of how you have or intend to consult directly with children and young people as one of the groups likely to be most impacted upon by this policy. This is essential not only in order to ensure compliance with Section 75 of the Northern Ireland Act 1998 but also to ensure Government's compliance with Article 12 of the UNCRC.

We are concerned that the draft policy provides very little mention of the NIO statutory duty to equality as contained in section 75 of the Northern Ireland Act 1998. In respect of the process of consultation the policy omits any mention of how consideration was given to, or consultation undertaken on, issues around section 75. There is no information as to whether a screening exercise has been conducted, as required by section 75, which we believe should be included in the current document, together with information on the process and outcomes of any screening exercise. In addition, it is our view that this policy will have potential adverse impact on a number of named groups under s75, including children and young people, and therefore requires an equality impact assessment.

Finally regarding consultation, we would be grateful if you would respond with details of the system which you intend to use to analyse responses to this consultation process including the degree of weight which will be attributed to both individual and organisational responses. This is a vital element to drawing conclusions from responses and progressing with identified areas for immediate action or otherwise.

For this reason, we would appreciate information both on the system itself and on its operation for the purposes of analysis.

Community Safety

‘Community safety is about delivering local solutions to local problems that have been identified by local people’⁶

Include Youth believes that CBRJ schemes should underpin our approach to making communities safer in Northern Ireland. Community-based restorative justice should be a pillar of government’s Community Safety Strategy – because CBRJ schemes are about empowering communities that have experienced problems to help themselves; to engage and support individuals who have caused harm to take responsibility, recognise the consequences of their actions, and make reparation; to support and empower victims to be engaged in the process, to tell their story, be heard, and regain control over their lives. It is essential that local communities are supported and equipped to work within a restorative framework, enabling them to support victims living in the locale, in addition to supporting children and young people who have been involved in offending behaviour to integrate or re-integrate into community life and to ensure that they have opportunities to make amends to their victims.

Schemes cannot work unless they are of the community, something that statutory and voluntary organisations find challenging. If we bring schemes too close into the formal system, we run the risk of alienating them from the communities from which they have come.

Informed consent

‘Whether State or community-based, programmes should not be offered to children under threat of other, more punitive options’⁷

In order to be children’s rights compliant it is essential that involvement with the Community-based Restorative Scheme is not only ‘free and voluntary’ (paragraph 6), but is also **fully** informed. There are also issues of capacity in the area of informed consent for both the formal justice system, and the CBRJ system proposed under the Guidelines, for example, for those with a learning difficulty or disability.

This is evidenced by research into the detention and questioning of young persons by the police in Northern Ireland which found that *'many young persons were considered to have great difficulty understanding the cautions that are delivered under the Criminal Evidence (NI) Order 1988.'*⁸ Furthermore, through our direct work with children and young people at risk, and our work with the practitioners engaging with them, we are aware of cases where children have admitted guilt and agreed to receive a caution, without fully being aware of the consequences of their actions, in terms of diminished employment opportunities.

In the context of the current consultation, we require further information and clarification on what systems will be established to ensure that the child's right to give informed consent will be protected as is required under Article 12 UNCRC, and Article 6 ECHR. Who will speak to the child and family to ensure that they are fully informed before deciding whether or not to make an admission of guilt? Will they have received training on children's rights, especially regarding issues around informed consent and on how to speak to children in a language and manner appropriate to their age and understanding? Will appropriate adults/legal representatives be able to attend? At what stage in the proceedings will this crucial interaction take place?

We also require further information on what implications participation in a Scheme will have for a child's criminal record. Will it form part of their record; how long will it remain on their record etc.

Delay

We have serious concerns around how the guidelines as currently drafted could result in unacceptable delay in due process being administered. One of the advantages of the community-based restorative approach is that it is less bureaucratic and therefore can more swiftly seek to find a resolution to the problems identified. However, the current proposals set out a structure which in our view could result in undue delay and therefore justice denied to those (young people, victims and communities) who would participate in the Scheme. We are concerned that this could both seriously diminish the positive impact which the scheme could have in the lives of individuals and families, as well as undermine confidence and standing within the local communities.

While the guidelines state that the police and PPS will ‘seek to fast-track the consideration of cases forwarded by schemes’ we wish to see a clearer indication of the timescales envisaged by the NIO as being reasonable and proportionate, given that this is low level crime.

Right to privacy

Include Youth believes that children and young people participating in CBRJ Schemes must have their right to anonymity and privacy protected, in compliance with both domestic (Children (NI) Order 1995; Human Rights Act 1998) and international law (UNCRC). Under no circumstances would it be acceptable to ‘name and shame’ children and young people in their local communities. The strict protection of children’s identity must be a core component to the guidelines and the operation of any Scheme, and therefore must also be subject to inspection by the CJINI. These protections must also extend to the monitoring of information sharing between police, statutory agencies and the Schemes.

Response to specific questions posed in the consultation document

Do the draft guidelines provide adequate safeguards for the human rights of those with whom the scheme deals?

Include Youth fully supports the principles and ethos of restorative justice, and diversionary measures which seek to steer children and young people away from the criminal justice system. We believe that there is a positive role for Community-based Restorative Justice in Northern Ireland within this process.

Recognising the positive contribution made by CBRJ in Northern Ireland, in its most recent report to Government the Independent Monitoring Commission in January 2006, stated: *‘we know that properly structured community restorative justice schemes have addressed the cases of hundreds of persistent young offenders and that many of these people have as a result been saved from threats, exiling or violence at the hands of paramilitaries’*⁹

Include Youth strongly believes that, alongside all interventions, whether statutory, voluntary or community based, CBRJ measures must be fully compliant with domestic and international human rights and children's rights standards.

We need one set of standards to address how to work with children and young people, which will apply to both the statutory system and to the non-statutory system. We believe that the litmus test of this process will be to ensure that any two children, who commit the same offence in different locations within Northern Ireland, only one of which operates a CBRJ, will be treated equally. We need to guarantee complimentary processes for both contexts and welcome the draft Guidelines as an attempt by government to find such a mechanism. We note the observations of Lord Clyde in respect of the complementarity of both formal and CBRJ systems:

*'These organisations [Community Restorative Justice (Ireland) and Northern Ireland Alternatives] are engaged in valuable and effective work in their respective communities. Their growth gives evidence of the value they have. They share a common intention and a motivation to make a positive and peaceful contribution to the welfare of the communities which they serve... They are not and do not seek to be an alternative to the criminal justice system. They should be complimentary to it.'*¹⁰

Include Youth believes that CBRJ, can help break the cycle of low level offending in which some children and young people may have become involved. Within Article 40 of the UNCRC is the expectation that States will take measures without resort to judicial proceedings and will also establish a range of dispositions as alternative to custody. Therefore, we recommend that restorative justice is offered as a real alternative not only to children who have committed a first offence, but also to those children who have been involved with the formal criminal justice system for some time. Giving children the choice of a community-based restorative process could potentially divert them away from escalating upwards through the system.

Is the referral process between the criminal justice system and schemes adequately addressed?

We have made detailed comments later in this response to specific paragraphs in the draft Guidelines which deals with aspects of the referral process. However, at this point we wish to also include a number of general comments on this issue. It is the view of Include Youth that whatever structures are agreed in relation to the operation of CBRJ schemes these should address the complexities and tensions which exist between on the one hand diverting children and young people away from the criminal justice system, and ensuring that all interaction children have with a scheme is human rights and children's rights compliant – i.e. fair, proportionate and voluntary etc. - on the other.

Lord Clyde raised this issue in his Second Periodic Report when he said:

*'It is recognised that there are problems in establishing the appropriate interface with the state system and a clear relationship between the work of these bodies and that of the criminal justice agencies.... it is recognised that local restorative justice schemes are not an alternative to the state system; **but to require all cases to be processed through any elaborate state monitoring before they could be dealt with by the local scheme might well take the edge of the efficiency and effectiveness of the local scheme. What may have to be found is a simple but acceptable procedure for enabling the local scheme to proceed in any given case.**'¹¹ (emphasis added)*

Given the special circumstances of transition, as outlined earlier in this response, there has to be a careful and considered negotiation of this relationship. While acknowledging that CBRJ cannot be an alternative to the formal system, and accepting Lord Clyde's statement above, we believe that the issue goes further than that of efficiency and effectiveness of local schemes and be must considered in light of the credibility CBRJ schemes have within local communities. This acceptance in communities which continue to experience the most difficult circumstances, where children grow up in a climate of exclusion and marginalisation, is one of the major strengths of CBRJ schemes. We need to maintain the credibility of the Schemes

within communities whilst simultaneously ensuring that there are necessary checks and balances to protect children and young people at all stages of the process.

Include Youth accepts that there has been considerable controversy around certain CBRJ schemes. This is partly due to questions which would be asked regarding projects that emerged from ‘community politics’. While accepting the delicacy of this situation, the positive work of CRBJ is well-established and future guarantees of the credibility of schemes should be established through the adoption of and compliance with international standards. In this context, it would be expected that principles of good governance, sound management and auditing would apply to the schemes. In part this will also be met by proposals to introduce CJINI Inspection. We recommend that this work is acknowledged, supported and consolidated.

Response to specific paragraphs in the consultation document

Paragraph 2 - Remit and Definition

We note at paragraph 2 that the draft guidelines propose to deal with ‘low-level criminal offences and offenders’, but ‘do not relate to non-criminal matters, or to anti-social behaviour which does not reach the criminal level’. We wish to raise two matters in relation to this point. Firstly, Include Youth believes that a much clearer definition of what is meant by ‘low level crime’ and ‘behaviour which does not reach the criminal level’ is essential, a point which has been raised by Lord Clyde, the Justice Oversight Commissioner in his Second Periodic Report where he expressed the need to devise *‘a sufficiently precise definition of the phrase...or at least...a workable mechanism which may serve as a sufficient means of identification.’*¹²

Whilst the draft guidelines state clearly that more serious offences, including sexual offences or cases of domestic violence will not be eligible for referral to the schemes, there is ambiguity around what behaviour is defined as criminal and what constitutes ‘anti-social’ but ‘does not reach the criminal level.’ Include Youth is of the view that the current lack of clarity in the guidelines will lead to confusion, not only for those administering the Schemes, but also for the statutory agencies working alongside them. In addition, the absence of clear parameters on remit will also potentially serve

to frustrate local communities and undermine credibility of the Schemes at a local level. Our concern arises in part due to the serious ambiguities which exist in respect of current definitions of anti-social behaviour in both statute and guidance.

Moreover, in the context of the consultation, we recommend that a clear definition should also address the question of how and by whom decisions will be taken to determine whether behaviour reaches the threshold of criminal behaviour, and what criteria will be applied to ensure consistency of decision making and an objective and transparent process. We recommend that the Guidelines include clear criteria regarding the types of offences that will be considered suitable, and to what extent criminal record of the young person will be taken into account.

The second issue which Include Youth wishes to raise in respect of the remit of the draft Guidelines extending only to criminal matters, is that much of the work in some existing community-based restorative justice schemes much of the work conducted is non-criminal in its focus. For example, the work of existing schemes includes victim support, prevention, community safety, community mediation, and work in schools. No statutory funding is available to support this work, despite positive evaluations, and we are concerned that children, young people and the communities in which they live are being denied access to a comprehensive service that could be made available through CBRJ schemes. Indeed, while the Justice Oversight Commissioner in his Second Periodic Report acknowledged that his remit is not strictly concerned with this issue, as the Criminal Justice Review Group did not comment on non-criminal matters, he stated that *'unless there are good grounds [i.e. serious concern...about the other activities] there should be nothing to prevent at least these other activities receiving encouragement and support.'*¹³ We recommend therefore that the Government clarifies the position with regards to the status of CBRJ schemes engaging in work which is defined and verified as 'non-criminal' and undertake any measures necessary to ensure their survival.

Paragraph 6 - Principles and Roles

Include Youth is unclear why at paragraph 6 the NIO states that 'schemes will adhere to the *relevant* sections of the UN Basic Principles on the use of Restorative Practices in Criminal Matters', yet has been selective in fully outlining some of these

provisions, while paraphrasing and omitting others. For example, two omitted clauses which we consider relevant include *‘Restorative processes should be used only where there is sufficient evidence to charge the offender...’*¹⁴ and *‘fundamental procedural safeguards guaranteeing fairness to the offender and the victim’*.¹⁵ We wish to know what decision-making process will be invoked to determine which of the provisions will be considered ‘relevant’. This raises the question as to whether the NIO considers the points included in the Guidelines to be more ‘relevant’ than those omitted from the Basic Principles. We wish to know whether those provisions currently contained in the draft Guidelines will be given more weight than those omitted in the operation of Community-based Restorative Justice Schemes.

Include Youth recommends that the NIO agree following consultation with key stakeholders, an exhaustive set of principles which derive from the UN Basic Principles and other relevant international and domestic human rights standards, and which should expressly include reference to the UNCRC.

Paragraph 10

We agree with the statement at paragraph 28 of the draft Guidelines that Schemes should have no role in determining the guilt or innocence of alleged offenders. However, we are concerned that at paragraph 10, the Guidelines provide that the Scheme ‘should indicate in broad terms how it would plan to deal with the offence and offender if these were referred to it.’ This sentence is problematic in that it appears to pre-empt an outcome prior to any investigation having been conducted, nor is there any information as to whether the child has been spoken to at this stage and whether a fully informed admission of guilt has been received. Include Youth recommends that this sentence should be deleted as it raises potential breach of Article 6 Right to Fair trial issues.

Paragraph 11 - Panel

Paragraph 11 sets out an alternative panel method of sharing information between PSNI, PBNI, YJA and the Scheme. We recommend more detail be included with regards to the role of this panel. For example, clarification is required with regards to how decisions will be taken regarding the ‘suitability of cases for disposal’. We recommend that the NIO in consultation with key stakeholders, devise clear criteria

for deciding suitability of cases for referral to a Scheme and prepare separate guidance on how the function of said panel will operate. These guidelines should be subject to a full consultation of all key stakeholders. Such guidance should include:

- 👉 the need for all panel members to have received training on children's rights and child protection.
- 👉 the involvement of the child or young person, their family and victim in the panel process,
- 👉 the role and remit of the panel including the level of involvement of the CBRJ Scheme.
- 👉 that an independent person with human rights expertise sit on the panel,
- 👉 possibility that victims or families should be able to go directly to the police and state that they would prefer their case to be dealt with through the CBRJ process, and that their wishes should be fully taken into account in determining the suitability of the case for referral.

Paragraph 12 - Role of PSNI and PPS

We wish the NIO to provide additional information about how this process as outlined in the draft Guidelines will be administered by the PSNI. What criteria will be applied to determine whether it is 'necessary to undertake investigations to verify and add to the information' already provided by the Scheme/Agency/Panel? We are also deeply concerned about the proposed use of fingerprinting and DNA evidence gathering techniques on children in these circumstances, and believe these to be disproportionate and unnecessary, and in breach of children's rights. We therefore strongly recommend that neither is used with children either in relation to their being considered for referral to a Scheme or for a formal police caution.

In addition, we would suggest that a named officer has responsibility within each District Command Unit to take forward work with the Schemes. At a more general level, Include Youth has concerns around how these procedures will sit within policing structures especially around recording and meeting performance targets - how will these referrals to Schemes be recorded for the purposes of police statistics - will they be considered 'cleared'; will there be any difference in the way referrals which have followed a police investigation are recorded in comparison to those which have not.

Include Youth recommends that the Guidelines should clearly state the process by which the PPS will decide whether to refer a case to a Scheme. We recommend that when a referral comes from the Community Scheme and meets the established criteria, then it should be referred back to the Scheme unless there are exceptional circumstances as to why it should not; and on such occasion, reasons should be clearly articulated and communicated in an open and transparent manner. There is a concern that in the cases of children and young people who are engaging in offending or other problematic behaviour, these Guidelines could actually facilitate the 'neutering' of Community Based Restorative Justice Schemes, in favour of the statutory processes.

Include Youth believes that there should be consistency between the CRBJ system and the formal system preceding a police caution, i.e. following referral of a case, a fully informed admission of guilt is obtained in a manner compliant with children's rights standards and independent evidence is obtained to verify a prima facie case. Then the child and family where appropriate are given the choice of being dealt under the Scheme or going through the formal system. If the child chooses to engage with the Scheme then this should be recorded (by police?) as an equivalent to either an Advice and Warning or No Further Action. The Scheme takes over the case and proceeds to work with the child, family, victim etc in a restorative process in accordance with the guidelines.

Paragraph 13 -Role of PPS

Include Youth fears that the involvement of the PPS could add a layer of bureaucracy which could delay the process unduly. If the PPS is to be involved Include Youth recommends that it identifies a senior official who has overall responsibility for the operation of these Guidelines. In addition, the PPS should identify a named Prosecutor within the Service who will be responsible for working with the Schemes on a day-to-day basis and will make decisions speedily at the panel. We believe that this is essential to ensure continuity and smooth running of the process, and no delay.

Paragraph 18 - Recruitment Issues

In terms of recruitment issues, Include Youth believes that the appointment of staff is the responsibility of the Approved Scheme, as it is for all other voluntary

organisations. We recommend that the statement in paragraph 18 should be amended to read ‘it would clearly be unacceptable for anyone *currently* involved in paramilitary activity or criminality to work in schemes.’ We believe that child protection and human rights compliance demands this. However, we also believe that people have the capacity for change, and a past criminal conviction should not bar a person from being considered for a position within a CBRJ scheme. We believe that the safeguards required through POCVA go some considerable way to help ensure that only suitable persons will take up and hold positions within the Community-based Restorative Justice Schemes. These protocols represent essential employment practice. In addition, in order to make informed choices about the relevance of criminal convictions there are useful guidelines, *Working with Conviction – A guide for Employers*, which has been produced by NIACRO, and provides both the legislative context and practical assistance to organisations who wish to employ personnel who may have committed an offence in the past, including politically motivated ex-prisoners, and which addresses such issues as relevance and seriousness of offences.

We also believe that people once appointed have the right to security of tenure subject to the terms and conditions of their contract of employment. We are somewhat concerned with the final sentence at paragraph 18, and would require clarification on what exactly is meant. On one reading it appears to suggest that the CJINI can inspect the suitability of individuals who have been appointed and employed in approved Schemes, and in the course of this allows the PSNI, other statutory agencies and the community to provide information about such ‘individuals occupying posts’. There is no information around how this process would be handled, for example, how would the worker be informed that such an investigation was being conducted? Would they be suspended on full pay pending the outcome of an investigation? Would they be given an opportunity to defend themselves against the allegations made, through legal and / or trade union representation? What evidential threshold would be required; who would make this decision; how long would this process take?

Include Youth recommends that the CJINI oversees the recruitment system and that the Human Rights advisor or the CJINI be involved in an advisory capacity pre-appointment on specific individual cases.

Paragraph 19 - Training

Include Youth strongly recommends that anyone involved with Community-based Restorative Justice Schemes should receive training on Children's rights, Child protection, and how to communicate effectively with children and young people. In addition, we recommend that the Child Protection training should take place before an employee starts working with the Scheme.

Paragraph 22 - Support during process

Include Youth believes that it is important that participants in the restorative process should have a right to access support at all stages. Whilst we agree that the Scheme should provide such support, we believe that the starting point on this issue is one of choice for the child or young person – and we therefore recommend that paragraph 22 be amended to state that 'both parties will have the right to be supported during the process', and we further recommend that in the case of children and young people, express reference should be made to their right to access support from a lawyer as an appropriate person.

Paragraph 24 - Complaints

In line with good practice, it is essential that an independent external complaints mechanism is in place, which has been approved by the CJINI prior to the Scheme being accredited and the efficacy of which is tested under the Inspection processes of the CJINI. This external mechanism is good practice within both the statutory and voluntary sector. We wish to request further information from the NIO as to the detail of this independent external mechanism.

Paragraph 25 - Inspection

Include Youth agrees with the external and independent inspection role which is detailed in the draft Guidelines and agrees that this role should be carried out by the CJINI, as recommended by the Criminal Justice Review. We agree that Schemes should be subject to an initial inspection prior to commencement of operation under the Guidelines, and regular announced inspections thereafter. We agree that the inspection process should be far-reaching, and that the remit should extend to matters of both criminal and non-criminal nature, and we recommend that the Schemes should be inspected on the same criteria as statutory organisations are subject to. We believe

that the Guidelines should also make reference to the need for the Inspectorate to examine up-to-date awareness of children's rights, and ensure that all staff and volunteers have received up to date training on child protection issues.

Conclusion

Include Youth intends the above as a constructive and useful submission and would welcome the opportunity to discuss any issues raised in our response. We wish to be kept fully informed of progress in the development of this important policy initiative and look forward to the issues raised and recommendations made in this response being addressed and taken forward. We also look forward to receiving your response to the questions we have asked in the response and receiving the additional information requested including the child accessible version of this consultation document. In addition, we would be grateful to receive a copy of your analysis of responses when same becomes available.

¹Second Report of the Justice Oversight Commissioner, page 102, June 2004

²Eighth Independent Monitoring Commission Report, paragraph 2.8, published February 2006

³Review of The Criminal Justice System in Northern Ireland, Paragraph 9.53, March 2000

⁴Third Independent Monitoring Commission Report, paragraph 6.4, published November 2004

⁵Op cit, note 3, paragraph 9.10

⁶Community Safety Unit Website

⁷Kilkelly, U. et al. *Children's Rights in Northern Ireland 2004*, NI Commissioner for Children and Young People, Belfast 2004, p196

⁸Quinn, K. and Jackson, J. *The detention and questioning of young persons by the police in Northern Ireland*, NIO Research and Statistical Series: Report No. 9, Chapter 7.3, page 97ff

⁹Op cit, note 2, paragraph 2.9

¹⁰Op cit, note 1, page 101

¹¹Ibid

¹²Op cit, note 1, page 102

¹³Ibid

¹⁴United Nations Basic Principles on the use of Restorative Practices in Criminal Matters, Annex II. 7

¹⁵Ibid, Annex III. 13