



**Submission to the Northern Ireland Office Public
Consultation and Equality Impact Assessment on draft
Protocols for Community-based Restorative Justice Schemes**

December 2006

Introduction

1.1 Include Youth is an independent organisation that actively promotes the best interests of and best practice with young people in need or at risk. 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.

1.2 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.

1.3 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 which runs two groups, one community-based and the second based in custody at 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.

2. General Comments

2.1 Include Youth welcomes the opportunity to participate in the Northern Ireland Office's Consultation on the draft Protocols for Community Based Restorative Justice Schemes and Equality Impact Assessment. Include Youth made a detailed and comprehensive response to the NIO Consultation on the draft Guidelines for Community-based Restorative Schemes in February 2006 which was informed by an extensive consultation with young people at risk, many of whom have direct experience of engaging with a variety of restorative processes through our Young Voices project, with professionals working with them through our YOYO Practitioners Forum, and with colleagues from the voluntary and community sector. We have attached a copy of our earlier response for your information, as we are of the view that the points raised therein are still of relevance to the current consultation and wish this document to be treated as an integral part of our current submission.

2.2 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, and welcome government efforts to introduce a structure where community based restorative justice schemes are recognised and have a place in the overall diversionary system for children and young people who are at risk of offending or offending further. We strongly believe that Community Based Restorative Justice measures, as with all interventions whether statutory, voluntary or community based, must be transparent, independently regulated and fully compliant with domestic and international human rights and children's rights standards.

3. Confidence Building

3.1 It is our view that it is somewhat unusual for government to embark on two rounds of extensive consultation, and that this fact alone illustrates the contention

which surrounds this debate in some quarters. We recognise that the draft Protocols are an attempt to reassure and build confidence in some parts of our society. Include Youth accepts that there has been considerable controversy around certain CBRJ schemes. This is in large part due to the special circumstances of transition out of which these Schemes have arisen, including 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.

3.2 As the following statements from young people involved in our Young Voices project illustrate, confidence building measures are also needed for some children and young people as there exists a degree of mistrust among young people in relation to the Schemes – both those in unionist / loyalist and nationalist / republican communities. 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.

3.3 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. We submit that Protocols 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 confidence and make the transition to a peaceful society.

3.4 In the context of building confidence in the Schemes, Include Youth agrees that a core value of the criminal justice system is that it should have the confidence of the community it serves, and further agrees with the draft Protocols which call for the Schemes to comply with the rule of law and cooperate fully with all statutory agencies, including the police. It is our strong view that an open and transparent process which is human rights and children's rights compliant and subject to robust independent inspection will go a considerable way to addressing the issue of community confidence in relation to the Schemes.

3.5 We further agree that and that all those involved in the Criminal Justice System should have a common aim and responsibility to promote confidence in the criminal justice system. This point is extremely important in the context of the current debate,

given that some communities in Northern Ireland, from both nationalist / republican and unionist / loyalist traditions have historically had difficult relations with and negative experiences of policing. There is therefore an onus on the Police Service of Northern Ireland to continue to engage in confidence building measures within all communities, particularly those which may mistrust or be reluctant to engage with police. Include Youth has been working within a number of communities in inner-city Belfast, through our Young Voices project, and it is very clear that many communities continue to be very wary of police.

3.6 Furthermore, in terms of promoting confidence, Include Youth believes that with proper safeguards in place, community-based restorative justice should underpin our approach to making communities safer in Northern Ireland and form a central tenet of government's Community Safety Strategy which states that '*community safety is about delivering local solutions to local problems that have been identified by local people*'¹.

3.7 We make this assertion because CBRJ schemes:

- empower communities that have experienced problems to help themselves
- engage and support individuals who have caused harm to take responsibility, recognise the consequences of their actions, and make reparation
- support and empower victims to be engaged in the process, to tell their story, be heard, and regain control over their lives.

3.8 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, and which they seek to serve.

4. International Standards

4.1 Include Youth supports the draft Protocol requirement that Schemes must operate in full accordance with the Human Rights Act 1998, all current equality legislation and adhere to relevant sections of the UN 'Basic Principles on the use of Restorative Justice Programmes in Criminal Matters'. However, we are disappointed that the draft Protocols have not taken on board our recommendation to include express reference to the United Nations Convention on the Rights of the Child.

5. Delay and Bureaucracy

5.1 We have significant concerns around how the Protocols 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. Evidence shows that the more quickly an incident is dealt with, the more effective and positive outcomes are likely to be for both the young person who has engaged in the problematic behaviour and the person who has fallen victim to this behaviour. However, the current proposals set out a structure which is potentially cumbersome and 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 Protocols 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. We recommend removal of the phrase 'seek to'. Include Youth recommends that both the police and PPS identify a senior official who has overall responsibility for the operation of these Protocols. 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.

5.2 We note that paragraph 15 of the draft Protocols provides for the possibility to have a degree of flexibility in regards to the implementation of referral arrangements – we strongly suggest that there is a presumption that these cases would be dealt with speedily – and that this needs to be defined – with a maximum period by which the vast majority of cases referred to PSNI should be processed and a decision taken and communicated to refer to the relevant Scheme. Much of this communication could take place by telephone or email, in the majority of cases.

5.3 Include Youth is of the view that the current lack of clarity in the Protocols will lead to confusion, not only for those administering the Schemes, but also for the statutory agencies working alongside them and that clear criteria is needed to help ensure consistency of decision making and an objective and transparent process.

5.4 Moreover, we recommend that the Protocols 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 in decision-making processes regarding appropriate referrals.

6. Remit

6.1 Other issues concern the fact that much of the work in some existing community-based restorative justice schemes 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. 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.

6.2 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 every community in Northern Ireland should have some form of community restorative justice or early intervention scheme, and whilst this is being rolled out across the jurisdiction, we trust that children who currently do not have

access to current Schemes will not be penalised. Moreover, 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.

7. Suitability Panel

7.1 The current draft Protocols introduced the concept of a Suitability Panel, whereby representatives from relevant statutory agencies would receive information about current and prospective CBRJ personnel and make decisions as to their suitability to work on the Scheme. Include Youth believes this proposal to be problematic for a number of reasons, many of which we have enunciated in our earlier response to the February consultation. Firstly, Include Youth believes that the appointment of staff is the responsibility of the relevant Scheme, as it is for all other independent organisations, in line with formalised and robust recruitment and selection practices. The proposed introduction of a Suitability Panel we submit interferes with the Schemes' governance arrangements and independent status. 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. In addition, there are useful guidelines produced by NIACRO entitled *Working with Conviction – A guide for Employers* which 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.

7.2 Secondly, this proposal undermines Schemes attempts to increase wider public confidence in their activities, something which must form a central tenet of their role to work with all criminal justice bodies to increase public confidence in the criminal justice system. It is our view that the creation of a Suitability Panel will only serve to undermine the role and credibility of CBRJ Schemes. It is our assertion that there is an appropriate support role for relevant statutory agencies.

7.3 Furthermore, given the historical and political context in which this debate is set, Include Youth would submit that as currently drafted, this model could potentially undermine wider issues of confidence in the criminal justice system and policing. The Suitability Panel proposes that decisions be taken by statutory agencies about appointment of individuals to voluntary sector organisations in private, using information which is not shared to either the individual or the organisation. In addition, there is no proper mechanism for appeal. It is our strong view that open and transparent processes in respect of recruitment are essential, and must provide in a systematic way the opportunity for any applicant who has been deemed unsuitable for employment to seek and be given reasons as to his unsuitability, and to be afforded the opportunity to appeal such a decision.

8. Informed consent

8.1 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 as is required under Article 12 UNCRC, and Article 6 ECHR. 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 Protocols, for example, for those with a learning difficulty or disability.

9. Use of fingerprinting and DNA

9.1 We are disappointed that our observation regarding the proposed use of fingerprinting and DNA evidence gathering techniques on children in these circumstances, have not been taken on board. We believe these measures 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.

10. Training

10.1 Include Youth is disappointed to note that the recommendation in our previous response, namely 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, has not been included in the current draft Protocols.

11. Complaints

11.1 We note the proposal that the Probation Board for Northern Ireland will take on the role of independent external complaints mechanism. This will clearly have both resource and training implications on PBNI. In addition, it would appear that PBNI could potentially have up to five different roles in relation to the operation of the CBRJ Protocols and wonder whether there might not be a potential conflict of interest, in relation to PBNI role as funder of individual Schemes and investigating complaints.

12. Inspection

12.1 As stated in Include Youth's previous response, Include Youth agrees with the external and independent inspection role which is detailed in the draft Protocols and agrees that this role should be carried out by the CJINI, as recommended by the Criminal Justice Review. 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 Protocols 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.

Equality Impact Assessment

We are pleased that the NIO has carried out an EQIA in respect of the draft Protocols. We are further pleased to have received the Summary of Responses to the earlier consultation. Include Youth is of the view that this draft policy will have an adverse impact on one of the named groups under Section 75, namely age, and is disappointed that the current consultation has failed to identify this factor during the course of conducting the EQIA.

Include Youth is unclear whether the NIO has consulted with children and young people in relation to the draft Protocols, and would be grateful 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. We submit 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. 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.

Table 1: Policy Assessment Framework

We note throughout the document that reference is made to the statutory Youth Conference Service, established following recommendation from the Criminal Justice Review, and the acknowledgment that 'restorative justice does not have to be a state-run process' (2.2.1) Include Youth agrees with the proposition, however, we are a little concerned with the second point in Table 1 which sets out the aims, objectives and purpose of the policy, one of which is to 'extend where possible the restorative justice principle, which has been developed successfully in Youth Conferencing, to a wider community base'. Our concern arises as we believe this wording implies that the same Youth Conferencing model will be extended to communities, which is clearly somewhat different than the model which is operating within the CBRJ Schemes and envisaged in the draft Protocols. We recommend that the meaning of this sentence is clarified.

Table 1: Main stakeholders

We believe that the list of main stakeholders is both confusing and incomplete. In particular we are concerned to note the absence of children and young people, victims and members of local communities from the list of Key Stakeholders. And although it is important to have representative groups listed as among key stakeholders, it is also fundamental to include the constituent groups of people. We also note the anomaly that while some over-arching terms are used to describe various types of representative groups, a number of individual bodies are separately named – e.g. Victim Support and NSPCC. We recommend a consistent and comprehensive list of key stakeholders is developed, which should make reference to the list of respondents to earlier and current consultation.

15. Conclusion

15.1 Include Youth intends the above as a constructive contribution to the Northern Ireland Office's current consultation and would welcome the opportunity to discuss any issues raised in our response. 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. We strongly believe that community-based restorative justice schemes have played and should continue to play an important role in delivering positive outcomes for children, families, victims and communities in Northern Ireland. We welcome government's attempts to provide a framework which will allow such schemes to develop and enhance the positive work in which they have been engaged for almost ten years. We believe that future guarantees of the credibility of schemes can be established through the adoption of and compliance with international standards, including principles of good governance, sound management and auditing, which will also be met by proposals to introduce CJINI Inspection. We recommend that this work of CBRJ Schemes is acknowledged, supported and consolidated. Finally, it is our view that it will be prudent and necessary to undertake a process of Review of the Protocols to ensure that they

continue to be relevant in the coming years in line with societal and political developments.

¹Community Safety Unit Website