



House of Commons
Northern Ireland Affairs
Committee

**Draft Protocol for
Community-based
Restorative Justice
Schemes: Government
Response to the
Committee's First
Report of Session
2006–07**

**First Special Report of Session 2006–
07**

*Ordered by The House of Commons
to be printed 18 April 2007*

HC 475
Published on 30 April 2007
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

The Northern Ireland Affairs Committee

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First Special Report

The Committee published its First Report of Session 2006-07 on 25 January 2007. The response from Mr David Hanson, MP, Minister of State, Northern Ireland Office, was received in the form of a letter and attachments dated 3 March 2007, and is published as the appendix to this report.

Appendix: Government Response

Letter from the Minister of State for Northern Ireland to Sir Patrick Cormack MP

I am grateful to you and the members of the Northern Ireland Affairs Committee for your very thorough inquiry into the draft Protocol for Community-based Restorative Justice Schemes. As I explained in my letter of 5 February I have concluded, after careful reflection on all the points made to me, that the finalised protocol now provides the proper structure for effective engagement between schemes and the criminal justice system. I undertook to provide a more detailed response to the conclusions and recommendations of the Committee's investigation and this is enclosed.

I have written to the schemes inviting them to announce their intentions to conform to the Protocol by 6 April 2007 and thus take the first step in the accreditation process. The Chief Inspector of Criminal Justice stands ready to undertake inspection of schemes and advise on their state of readiness for formal accreditation under the Protocol.

I thank you and the Committee for their support and trust that you will feel that the concerns raised in the report have been adequately addressed in the enclosed response.

Conclusions and Recommendations

1. (Paragraph 44) The requirement in the draft Protocol for CRJ schemes to refer offences directly to the PSNI is critical to building public confidence in the work of the schemes and the wider criminal justice system in Northern Ireland. We welcome the Minister's commitment to ensuring that the requirement for cooperation with the police is non negotiable and will be fully enforced. While we recognise that a political resolution to the issue of policing has not yet been achieved, we are disappointed that CRJ Ireland has decided not to formalise its relationship with the police by signing up to the draft Protocol, particularly since it expressed to us in public session an unambiguous wish to cooperate more fully with the police. Securing and sustaining confidence in CRJ schemes requires them to communicate fully and directly with the PSNI.

The protocol requires that CBRJ schemes communicate directly and promptly with police when they become aware of a criminal act. The practicalities of this communication will be developed by PSNI in cooperation with the schemes, but contact will be direct and meaningful, and include such categories of information as the PSNI may indicate it requires to consider the reported offence or to undertake further investigations.

2. (Paragraph 48) The draft Protocol proposes that the advisory panel may be established so that the suitability of cases can be discussed in detail. We received evidence from the Public Prosecution Service, the PSNI and others that this would introduce an additional layer to an already complex referrals process. We recognise the importance of the work that the advisory panel would do, but are persuaded by this evidence, because we believe that inordinate delay would mitigate the effectiveness of the schemes. However, we believe that there should be a formal consultative process involving the police.

It has been accepted by Government that the value of an advisory panel may be outweighed by the delay it would inevitably introduce to the referral process. Consequently the provision in the draft Protocol for an advisory panel has been removed, and schemes will consult promptly and directly with police.

3. (Paragraph 54) We heard strong evidence that the Public Prosecution Service requires discretion when weighing the individual circumstances of each case referred to it, and that having a definition would impede this. We also acknowledge that in coming to a decision on any particular instance, the prosecutor would necessarily have to take into account not merely the crime itself but the record of the perpetrator. We welcome the Minister's assurance that the non-criminal aspects of CRJ schemes, which make up the majority of their workloads, will be subject to proper inspection by the Chief Inspector of Criminal Justice.

The Protocol provides for the exercise of Prosecutorial discretion in determining the suitability of referred offences for CBRJ disposal.

The Protocol requires that schemes maintain full records on all criminal and anti-social behaviour incidents they deal with (to a standard acceptable to CJINI), so as to assist inspectors in determining that schemes are observing the distinctions between the two correctly.

4. (Paragraph 55) If the Protocol is to have the desired effect, it is essential that the Government monitor its workings very closely, conducting regular periodic reviews (at least once a year) of the type of offences that are being dealt with by CRJ schemes.

Schemes wishing to sign up to the Protocol will be subject to baseline inspections by CJINI, and subject to regular and random inspection thereafter. The review panel will be looking at the effectiveness of outcomes of referrals and CJINI will liaise with the Panel in relation to the inspection of individual schemes. Reports of inspections will be published.

5. (Paragraph 62) We recognise the extremely valuable work being carried out by CRJ schemes in local communities in Northern Ireland and the cost-effectiveness of that work. We regret that the debate on the schemes' work and their funding has become so heavily politicised. NIA has demonstrated its commitment to engaging with the police

and has been successfully, although inadvertently, granted funding by the Department of Social Development (DSD). We recommend that the Government provide gap funding to those schemes that would qualify under the draft Protocol and that involve the PSNI. We believe that public funding should be made available for all restorative justice schemes which meet the standards of the draft Protocol through a dedicated DSD budget line, and not through seemingly haphazard allocations of different DSD budgets.

There is no dedicated budget to fund community-based restorative justice schemes' activities. The Government will not be establishing via DSD a dedicated budget line. However, schemes who are engaged with the accreditation process will be free to apply for funding, in the same way as any other voluntary or community organisation, from existing funding sources where they meet the appropriate grant criteria. All funding streams will be subject to the constraints of the current Comprehensive Spending Review.

6. (Paragraph 63) We note that those schemes that sign up to the draft Protocol will receive formal recognition from the Government which will help them to obtain Government funding, but also funding from charities and businesses. Until the draft Protocol is finalised, we call on the Government to provide support and encouragement to schemes to seek out funding from other sources.

The position is as outlined at NIAC recommendation 5. The Protocol was published on 5 February 2007 and schemes invited to announce their intention to conform to the Protocol. Once the accreditation process is under way, schemes will be able to seek access to appropriate funding, subject to meeting the requisite grant criteria. The Government would encourage other voluntary forms of funding for accredited schemes.

7. (Paragraph 64) Both our witnesses from the schemes and also the Chief Constable pointed out that those living in parts of Northern Ireland not covered by the schemes were at something of a disadvantage. The general impression that we received from those whom we met was that depoliticised schemes should cover the whole of Northern Ireland. This is a judgment with which we concur.

The Government is prepared to accept requests for accreditation from CBRJ groups from any locale within Northern Ireland.

8. (Paragraph 67) It is vital that the independent external complaints mechanism commands widespread support and confidence. The evidence we received reveals concerns about the independence of the Probation Board given their role within the management committees of Northern Ireland Alternatives and the fact that they could potentially fund CRJ schemes in the future. We urge the Government to acknowledge these misgivings and ensure that any committee of the Probation Board asked to tackle this task be reinforced with representatives from the wider community and the voluntary sector.

Government is satisfied that the Probation Board – who already undertake the investigation of complaints from offenders and victims on all probation-related matters – have the capacity to undertake the investigation of CBRJ complaints and provide a professional, experienced and independent service. The PBNI complaints process already

incorporates independent members who represent the wider community and voluntary sector.

9. (Paragraph 74) Like the Chief Constable, we recognise that there can be constructive opportunities within these schemes for individuals with previous criminal convictions to serve their communities, but there has to be a sensitive mechanism to ensure that those who have repudiated their past have indeed done so. Ensuring that CRJ schemes are staffed by suitable individuals with no current paramilitary connections and or involvement in paramilitary organisations is crucial to building confidence in the schemes and to removing suspicion that they are a front for paramilitary organisations. We were told that the POCVA framework will be used by schemes to determine whether a person has previous criminal convictions or been charged with an offence. We believe that this framework, backed up by the Suitability Panel, could be an appropriate and suitably rigorous means of determining suitability so long as the panel is able to take fully into account intelligence received from the police and the local community.

The Suitability Panel will carefully consider not only the relevance of previous convictions but also information from the police or other statutory sources which indicate that an individual is currently involved in criminality or paramilitary activity. The panel will reach their determination on the basis of criteria clearly set out in the Protocol.

10. (Paragraph 79) Many witnesses expressed deep concern about the potential for the various processes of the draft Protocol to create delay in the delivery of justice to those engaged in CRJ schemes and to undermine the informality of approach which has worked so successfully and has meant that the schemes are able to deal with cases quickly. While there is a commitment in the draft Protocol that the police and PPS will seek to fast track cases referred to them from schemes, no discussions have taken place between the Government, the PSNI and the PPS on how fast tracking will work in practice and the potential for the referrals process to give rise to debilitating delays. This is wholly unacceptable and has the potential to undermine the effectiveness of CRJ schemes and their key benefit of delivering swift, efficient and fair outcomes for victims and offenders. We recommend the Government hold discussions immediately with the PSNI and the PPS on the practical operation of all aspects of the referral process, and to keep this issue under regular review.

The PSNI and PPS have met and discussed a model for a fast track referral process. This will be kept under review on the basis of operational experience.

11. (Paragraph 80) The Chief Constable felt that expedition in dealing with cases would be materially assisted if there were, as in other parts of the UK, a prosecutor attached to every major police station in Northern Ireland. We believe that this suggestion is an eminently sensible one.

The attachment of Prosecutors to police stations is under consideration by the Public Prosecution Service in the context of the rollout of PPS services to regional offices.

12. (Paragraph 84) Inspection of schemes is key to maintaining public confidence in the schemes by demonstrating that they adhere to the standards laid down in the draft Protocol. We welcome the fact that the inspections to be carried out by Criminal Justice

Inspection Northern Ireland will cover both the criminal and non criminal aspects of the schemes' work, particularly since the latter activities are outside the scope of the draft Protocol. This will provide a more comprehensive and complete insight into the schemes' work. Mr Kit Chivers, Chief Inspector of Criminal Justice, argued that inspections should be carried out annually and on an unannounced basis. We agree with this proposal.

Please see action point for conclusion\recommendation number 4.

The frequency of inspection of a scheme will be determined by the CJINI based on his judgment of that individual scheme.

13. (Paragraph 85) We have just one concern in this regard. Mr Chivers did point out to us that in order to mount regular inspections he would have to divert resources from other tasks, and whilst he made no specific request for an increase in the size of the Inspectorate, we think this is a matter which ministers should monitor and be prepared to address.

The Government will monitor the number of schemes seeking accreditation and respond appropriately.

14. (Paragraph 86) In his paper, Dr Fitzgerald stresses the importance of making provision for adequate independent training for CRJ staff to be undertaken by an independent body such as Criminal Justice Inspection Northern Ireland (CJINI). We believe that this suggestion should be implemented.

The consistency and quality of training provided by CBRJ schemes will be subject to inspection.

15. (Paragraph 87) We are deeply concerned by any evidence of paramilitary involvement in CRJ schemes and the opportunities that this creates to perpetuate paramilitary control of communities. No support should be given to any organisation that purports to be a separate system of justice or serves as a front for paramilitaries.

The draft Protocol sets out the criteria directly affecting the suitability of an individual. Certain offences – relating to children and young people – will render an individual unsuitable, as will convictions for any serious arrestable offences after 10 April 1998 or a term of imprisonment for such an offence in the last 3 years before making application.

Criminal convictions will not be the only criteria considered. Any information from police or other statutory sources suggesting an individual is currently involved in criminal or paramilitary activity will be grounds for finding an individual unsuitable.

16. (Paragraph 88) However, we were impressed by the work done by the community restorative justice schemes that we visited. There are a number of schemes that successfully work in close cooperation with the police. We believe that community restorative justice has an important role to play in the criminal justice system in Northern Ireland, and provides a very cost-effective means of dealing with low-level criminal activities and anti-social behaviour. However this role must be complementary to and not parallel to the work of the police, the PPS and the courts.

Under the Protocol schemes will have no policing function. The schemes will only deal with crime-related cases which are referred by the statutory agencies. The investigation of crime is exclusively the responsibility of PSNI, and all cases to be dealt with by schemes will be referred to the police.

17. (Paragraph 89) We fully endorse the requirement proposed in the draft Protocol for schemes to communicate knowledge of offences directly to the police. However, we conclude that the proposed panel to advise on the suitability of an offence to be dealt with through a community restorative justice system would be an unnecessary bureaucratic burden. We also conclude that attempts to define in precise terms the scope of “low level crime” appropriate for the schemes to deal with would be counterproductive.

Please see responses to conclusions\recommendations 2 and 3.

18. (Paragraph 90) We are particularly concerned that IMPACT and other NIA schemes, which claim that they are willing to sign up to the draft Protocol without delay, are concerned that an interruption in their funding will jeopardise their work. We call on the Government to ensure that these schemes do not become victims of the “political” negotiations over policing. We also recommend the setting aside of earmarked government funds for the support of these schemes in the future

The Minister has written to CBRJ schemes inviting them to express their intention to seek accreditation under the Protocol by 6 April 2007. Schemes which indicate their willingness to sign up to the finalised Protocol and are actively seeking accreditation may seek to access available sources of Government funding, where they meet the relevant criteria.

19. (Paragraph 91) While we endorse the need for an independent complaints system to be available to those who are affected by these schemes, we are unconvinced that the Probation Board is the body likely to command the greatest degree of confidence.

Please see response to conclusion\recommendation 8.

20. (Paragraph 92) We endorse the case for vetting of those working on the schemes by a Panel to ensure that the public can be confident that they are not staffed by people with any serious criminal convictions since Good Friday 1998 or any paramilitary involvement since then.

Please see response to conclusion\recommendation 15.

21. (Paragraph 93) Any restorative justice scheme must be transparent and open to inspection. It is essential that schemes sign up to the fundamental standards of the draft Protocol and develop close associations with the agencies of the formal criminal justice system. If they do not, they can have no claim on public confidence in their operations and will continue to arouse suspicion that they are a front for paramilitaries.

Schemes must operate in accordance with the Protocol, which is a public commitment to the attainment of certain operating standards, and be open to inspection in order to achieve accreditation. Schemes which are not accredited under the Protocol will receive no recognition or support from the statutory sector.

22. (Paragraph 94) However, any system of regulation must balance the need to maintain public confidence in these schemes with a recognition that their effectiveness depends, at least in part, on their informal and community-based nature, and the speed with which they can operate. The Department needs to take urgent steps to ensure that the more formal approach enshrined in the draft Protocols does not compromise this efficiency.

In implementing the Protocol, the Government is committed to making the process as expeditious as possible within the constraints of the necessary safeguards set out in the Protocol.

23. (Paragraph 95) With the reservations outlined above, we endorse the draft Protocol as the basis for encouraging the development of community restorative justice schemes and building confidence in them. We are bound to agree with those of our witnesses who felt that the Government had taken an inordinately long time to address this issue and produce the draft Protocol. We therefore urge the Government to respond to this Report before 7 March 2007.

The Government published the draft Protocol on 5 February, and has invited CBRJ schemes to make expressions of interest in seeking accreditation by 7 April 2007.

Reports from the Northern Ireland Affairs Committee since 2005

The following reports have been produced since the start of the 2005 Parliament.

Session 2006-07

First Report	Draft Protocol for Community-based Restorative Justice Schemes (HC 87)
Second Report	The Work of the Committee in 2006 (HC 294)
Third Report	Tourism in Northern Ireland and its Economic Impact and Benefits (HC 119)

Session 2005-06

First Report	Education in Northern Ireland (HC 726)
Second Report	The Work of the Committee in 2005 (HC 928)
Third Report	Organised Crime in Northern Ireland (HC 886)
First Special Report	The Work of the Committee in 2004: Government Response to the Committee's Fourth Report of Session 2004-05 (HC 393)
Second Special Report	The Functions of the Office of the Police Ombudsman for Northern Ireland: Responses by the Government and the Office of the Police Ombudsman for Northern Ireland to the Committee's Fifth Report of Session 2004-05 (HC 394)
Third Special Report	The Parades Commission and Public Processions (Northern Ireland) Act 1998: Government Response to the Committee's Second Report of Session 2004-05 (HC 395)
Fourth Special Report	The Challenge of Diversity: Hate Crime in Northern Ireland: Government Response to the Committee's Ninth Report of Session 2004-05 (HC 396)
Fifth Special Report	Air Transport Services in Northern Ireland: Government Response to the Committee's Eighth Report of Session 2004-05 (HC 529)
Sixth Special Report	Ways of Dealing with Northern Ireland's Past: Interim Report – Victims and Survivors Government Response to the Committee's Tenth Report of Sessions 2004-05 (HC 530)

Seventh Special Report	The Functions of the Northern Ireland Policing Board Responses by the Government and the Northern Ireland Policing Board to the Committee's Seven Report of Session 2004-05 (HC531)
Eight Special Report	Decision to Cease Stormont Prosecutions (HC814)
Ninth Special Report	Organised Crime in Northern Ireland: Government Response to the Committee's Third Report of Session 2005-06 (HC 1642)
Oral Evidence	Political and Security Developments in Northern Ireland: Rt Hon Peter Hain MP, Mr Jonathan Phillips and Mr Nick Perry – Wednesday 26 October 2005 (HC 621)
Oral Evidence	The Police Service of Northern Ireland: Sir Hugh Orde and Mr Paul Leighton – Wednesday 9 November 2005 (HC 665)
Oral Evidence	Political and Security Developments in Northern Ireland: Rt Hon Peter Hain MP, Mr Nick Perry, Mr Robert Hannigan – Wednesday 10 May (HC 1107)