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Northern Ireland Affairs
Committee

Draft Protocol for Community-based Restorative Justice Schemes

First Report of Session 2006–07

*Report, together with formal minutes, oral and
written evidence*

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The Northern Ireland Affairs Committee

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1 Introduction

1. Community Restorative Justice (CRJ) is a process based in the community in which low level crime¹ and anti-social behaviour is addressed through mediation. CRJ schemes have operated in Northern Ireland since 1996 under two main umbrella organisations: Northern Ireland Alternatives (based in mainly loyalist areas); and Community Restorative Justice Ireland (based in predominantly republican areas).² The schemes emerged in response to a growth in “punishment attacks” carried out by republican and loyalist paramilitary organisations on young people who had allegedly engaged in anti-social behaviour.³ The stated primary aim of the schemes was to provide a non violent alternative to such attacks through restorative justice activity in which anti-social behaviour is addressed through a process of mediation between perpetrators and victims.

2. In addition to restorative justice, the work of CRJ schemes involves the resolution of neighbourhood and family disputes, the diversion of young people from possible offending behaviour, and crime prevention. It is important to stress that all the schemes are voluntary, funded mainly by charitable sources, and currently operate without any formal regulation.

3. In March 2000, the Criminal Justice Review Group, which had been set up following the Belfast Agreement signed on Good Friday in 1998, recommended that community based restorative justice schemes could play a role in addressing “the types of low-level crime that most commonly concerns local communities”, but that safeguards were required.⁴ The report made clear that the schemes should be accredited and subject to standards laid down by Government in respect of how they dealt with criminal activity, staff training, due process and proportionality. It recommended that CRJ schemes should receive referrals from a statutory criminal justice agency, rather than from within the community, with the police being informed of all referrals.

4. In December 2005, the Government issued “Guidelines” for public consultation to govern the operation of community restorative justice (CRJ) schemes.⁵ The consultation ran until 24 February 2006. In response to concerns raised, the Government amended the Guidelines and relaunched them as a “draft Protocol” in September 2006.⁶ Public consultation on the draft Protocol ran until 13th December 2006.

¹ The question of defining “low-level crime” is discussed at paragraphs 49 to 55

² Community Restorative Justice Ireland was formally set up in 1999.

³ An evaluation of the work of CRJ Ireland and Northern Ireland Alternatives in promoting non violent alternatives to paramilitary punishment attacks has been carried out by Professor Harry Mika, Queen’s University Belfast, and is due to be published soon. Lady Sylvia Hermon was interviewed as part of the research for this evaluation

⁴ Review of the Criminal Justice System in Northern Ireland, para 9.98, p 216. The Review Group was charged with conducting a wide ranging review of the criminal justice system in Northern Ireland (other than policing and certain aspects of the emergency legislation). The Group was made up of four civil servants and five independent assessors.

⁵ Northern Ireland Office *Consultation on draft Guidelines for Community based Restorative Justice Schemes* December 2005

⁶ See further paragraph 30

5. Given the seriousness of the concerns raised in the responses to the Guidelines, the Committee decided on 12th October 2006 to undertake an inquiry into the draft Protocol, specifically to examine:

“the provisions of the draft Protocol and the responses of interested parties to the Protocol.”

6. We are grateful to the Rt Hon Lord Clyde, former Justice Oversight Commissioner, Mr Kit Chivers, Chief Inspector of Criminal Justice in Northern Ireland, Mr Brian McCaughey, Chief Probation Officer, Mr Ronnie Spence, Chairman of the Probation Board for Northern Ireland, Ms Olwen Lyner, Chief Executive of the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO), Mr Pat Conway, Director of Services, NIACRO, and Dr Duncan Morrow, Chief Executive of the Community Relations Council for giving oral evidence to the Committee in Westminster.

7. On 4th December 2006, we visited, and held informal meetings with, two CRJ schemes in Northern Ireland: IMPACT in Kilcooley, Bangor, a project of Northern Ireland Alternatives; and CRJ Ireland in West Belfast. We are very grateful to Mr Mark Gordon, Manager of Kilcooley Community Forum, Mr Jim Martin, Senior Project Officer, IMPACT, and Mr Jim Rea, Assistant Project Officer, IMPACT, for making arrangements for our visit to Kilcooley and for the accounts they provided of the project's work. We are also grateful to the project volunteers, the local PSNI Inspector and Community Beat Officer, and community representatives, who attended the informal meeting, and to the young people we met who told us about their experiences of IMPACT. We are also very grateful to Mr Jim Auld, Director of CRJ Ireland and Mr Harry Maguire, Training officer, CRJ Ireland, for arranging our visit to their premises in West Belfast. We also thank the project officers and volunteers, the victims, offenders and others who had engaged in the schemes who kindly gave up their time to meet us and to discuss their experiences of community restorative justice. Both visits were invaluable to the Committee.

8. During our visit to Northern Ireland, we also took formal evidence from Mr Tom Winston, Manager, and Ms Debbie Watters, Training Officer, Northern Ireland Alternatives, and Mr Jim Auld, Director, and Mr Harry Maguire, Training Officer, CRJ Ireland, Sir Hugh Orde, Chief Constable of the PSNI, and Assistant Chief Constable Drew Harris. We are grateful to all those who gave public oral evidence to the Committee in Northern Ireland. The day after our return, we also took formal evidence from Mr David Hanson, MP, Minister of State at the Northern Ireland Office with responsibility for Criminal Justice. Before concluding our deliberations on this Report, we had an informal evidence session with Dr Garret FitzGerald, former Taoiseach; no detailed notes were made, but Dr FitzGerald presented and spoke to a paper that is printed together with the other evidence that we received.⁷

⁷ Ev 104-106

2 Community Restorative Justice Schemes in Northern Ireland

9. The Committee met representatives of Northern Ireland Alternatives and Community Restorative Justice Ireland during its visit to Belfast and Bangor. In this section we give an account of the schemes based on conversations we had with those involved in their operation. It is fair to point out that we have also received evidence from others who expressed varying degrees of scepticism about the work of the schemes and we will return to these concerns at later points in the Report.

Northern Ireland Alternatives

10. Northern Ireland Alternatives (NIA) explained that it was the umbrella organisation for four community restorative justice schemes based in mainly loyalist areas of Northern Ireland: Greater Shankill Alternatives (West Belfast), North Belfast Alternatives, East Belfast Alternatives, and IMPACT, Kilcooley, Bangor. Greater Shankill Alternatives is the oldest of the programmes and was set up in 1996 to address paramilitary punishment attacks and anti-social behaviour in the Greater Shankill Community. Young people who were involved in anti-social behaviour were targeted for attack by paramilitary organisations. Paramilitary sanctions took the form of threats or warnings, curfew, exiling, public humiliation, punishment attacks, including severe beatings and shootings, and in exceptional circumstances, “execution”. Greater Shankill Alternatives was set up to provide young people who had engaged in anti social behaviour with an alternative to sanctions meted out by paramilitary organisations. The growth in paramilitary style punishment attacks also influenced the creation of IMPACT in April 2003 followed by East Belfast Alternatives in October 2003 and North Belfast Alternatives in November 2003.⁸

11. NIA has a staff complement of approximately 18 and about 268 volunteers, who are drawn from the communities in which the programmes are based.⁹ We were told that the age profile of those going through programmes of NIA ranged from children as young as nine years old up to adults in their mid 20s with a 60:40 male to female ratio.¹⁰

12. The vast majority of the cases being dealt with by NIA involve anti-social behaviour which does not reach the criminal level. We were told in evidence that the type of offences being dealt with by NIA includes “low level crime, anti-social behaviour, vandalism, petty theft” and low level nuisance, but not “anything of a sexual nature”, or violent crime.¹¹ We were also told that the pattern of anti social behaviour in the Shankill (West Belfast) and North Belfast areas was changing and that the NIA programmes in those areas were no longer dealing with young people who have stolen cars or broken into homes, but with young people “who are hanging out on street corners and drinking [...] kicking balls against gable walls [...] stealing from shops”, in other words “extremely low level nuisance

⁸ IMPACT operated from 2000 on a voluntary basis and received referrals. It functioned formally from 2003.

⁹ Qq 232, 317

¹⁰ Qq 263, 264, 265

¹¹ Q 241

behaviour”.¹² Since 2003, NIA has collectively worked with 1,964 young people, 1,719 victims and 268 volunteers.¹³ Tom Winston, Manager, NIA, told us that NIA programmes are committed to the “non-criminalisation of young people”, and “the engagement and empowerment of victims of crime and anti-social behaviour” and to addressing the fear of crime within local communities”.¹⁴

13. The range of work in which NIA programmes have become involved has also widened. IMPACT, for example, has provided personal development courses, IT skills training, and from August 2005, a Key Steps to Employment programme. It has also established an “intra-community cohesion project”, bringing together leading paramilitaries to discuss community issues. We were told that the project has also mediated between the Ulster Defence Association (UDA) and the Ulster Volunteer Force (UVF) over the use of lamp posts for the flying of paramilitary flags in Kilcooley and has negotiated a reduction in the flying of such flags and painting of murals and kerbstones.

14. We were told that NIA’s work had contributed to a steady decline in the number of paramilitary punishment attacks.¹⁵ Such attacks had been previously rife in Kilcooley, but were now virtually non-existent and any attacks that had occurred were paramilitary “internal disciplinary measures”. This progress had led to an increase in demand for housing in Kilcooley.¹⁶ We were also told that for those people who had gone through NIA’s programmes there was a 2% reoffending rate, which was significantly lower than reoffending rates in the formal criminal justice system.¹⁷

15. In the early years of their operation, the programmes of NIA received referrals predominantly from paramilitary organisations, but they now receive referrals from the communities in which they are based, including from victims, offenders, families, schools and Churches. It also receives referrals from statutory agencies, including the PSNI, the Probation Board for Northern Ireland (PBNI), social services, and the Northern Ireland Housing Executive.¹⁸ All four programmes have working relationships with the Police Service of Northern Ireland (PSNI). Representatives of the police, the Probation Board for Northern Ireland, social services, and the Northern Ireland Housing Executive sit in an advisory capacity on each programme’s management committee.¹⁹ We were told that the participation of these statutory agencies in management committees is evidence of their formal endorsement of NIA’s work.

16. Between 2003-2006, NIA received £800,000 in funding from Atlantic Philanthropies, an American benefactor supporting peace and reconciliation in Northern Ireland. This funding came to an end in June 2006. In October 2006, funding for £200,000 over two and a half years was approved by the PEACE II programme funded by the EU and is due to be

¹² Q 262

¹³ Q 226

¹⁴ Ibid

¹⁵ Q 267

¹⁶ Ibid

¹⁷ Q 238

¹⁸ Q 226

¹⁹ Ibid

released to NIA in January 2007.²⁰ Both Shankill Alternatives and IMPACT have received funding of £50,000 (over two years) and £85,000 (over three years) respectively from the Esme Fairbairn Foundation. This funding ran out, in the case of IMPACT, in March 2006, and in the case of Greater Shankill Alternatives, October 2006. The Northern Ireland Office does not currently fund CRJ schemes. We return to the issue of funding at paragraphs 56 to 64.

17. NIA was at pains to point out that it is very anxious indeed to work closely with the PSNI and the PSNI in turn acknowledged this. We return to this issue later in the report.

Community Restorative Justice Ireland

18. CRJ Ireland said that their origins lay in a desire “inside and outside the republican movement to develop a peaceful alternative to violent punishments for alleged anti-social offenders in Nationalist areas”.²¹ In 1996, discussions took place between republican activists, representatives of the voluntary sector and academics from which “a proposed model for developing peaceful projects in the community” emerged.²² Mr Jim Auld, Director of CRJ Ireland, told us that republican paramilitaries, similar to loyalist paramilitaries, had been carrying out punishment beatings and shootings on anti-social offenders “in the belief that it was stopping them [the offenders] carrying out those activities but clearly it was not because there was ample evidence that six or eight weeks after someone was shot they would be back out doing the same thing”.²³

19. CRJ Ireland was formally established in 1999. It now acts as the umbrella organisation for 15 projects across Northern Ireland, including West Belfast, East Belfast, North Belfast, Lisburn, Londonderry, Downpatrick, Newry and South Armagh, and has further projects in the course of development.²⁴

20. It has a management committee of 16, 11 full-time, and 4 part-time staff, and approximately 160 volunteers drawn from the communities in which the schemes are based.²⁵ We were told that the age profile of those going through CRJ Ireland schemes initially appeared to be between 14 and 21, but it subsequently became clear that the majority of cases being dealt with by CRJ Ireland involved family or neighbourhood disputes and accordingly the age profile was and remains much higher.²⁶

21. The work of CRJ Ireland focuses on addressing low level crime through mediation. It also addresses anti-social behaviour which does not reach the criminal level, and the resolution of neighbourhood and family disputes. It deals with approximately 400 cases a

²⁰ PEACE II is an EU funded programme for all of Northern Ireland and the border regions of the Island of Ireland (Cavan, Donegal, Leitrim, Louth, Monaghan and Sligo). Its main aim is to promote reconciliation and help build a more peaceful and stable society.

²¹ Community Restorative Justice Ireland, General Information Leaflet.

²² Ibid.

²³ Q 327

²⁴ The North Belfast project operates without any funding.

²⁵ Qq 387, 398, 401

²⁶ Q 335

year, involving approximately 2000 people.²⁷ Twenty per cent of those cases involve people under threat from “armed groups”, but the vast majority of cases are classified as “neighbourhood disputes”.²⁸

22. We were told that CRJ Ireland’s approach to addressing low level crime and anti social behaviour by promoting non violent alternatives had contributed to a reduction in the number of paramilitary punishment shootings and beatings. Reoffending rates for those going through the schemes were estimated at 8%, again lower than the reoffending rates of the formal criminal justice system. We were also told that CRJ Ireland had trained approximately 160 volunteers from the “nationalist population” last year who had been advised on resolving disputes without resorting to violence and that the impact of this information exchange “should not be underestimated”.²⁹ The result was that volunteers were going back into their communities and families with the ability to deal with conflict situations in a more positive way.³⁰

23. CRJ Ireland receives referrals from within the community, including the victims and sometimes offenders of low level crime, as well as from a range of community organisations (including women’s centres and youth groups) and from “the republican movement”, but also statutory bodies such as the Northern Ireland Housing Executive, Social Services, and, “on occasion”, the PSNI.³¹

24. One of the key differences between CRJ Ireland and Northern Ireland Alternatives is the absence of a formal relationship with the PSNI. Mr Jim Auld, Director of CRJ Ireland, explained that the communities in which CRJ Ireland projects are based have historically had a low level of confidence in policing and have “serious misgivings” about the role of the police.³² However, he told us that CRJ Ireland “is coming to a position” where it would go, or would encourage people in the community to go direct to the police to report an offence, particularly serious criminal offences.³³ We return to this issue at paragraphs 31 to 44.

25. Until April 2006, CRJ Ireland was funded by Atlantic Philanthropies. It received £936,000 over three years which funded its central office, four projects in Belfast and one in Londonderry.³⁴ It has also received funding from the Oak Foundation and an application for £30,000 of funding from the PEACE II programme has recently been approved. We were told that while the funding received from Atlantic Philanthropies will run out in March 2007 with other funding ending later in the year, CRJ Ireland would continue to function on a voluntary basis. The lack of funding has meant that CRJ Ireland’s projects in North and East Belfast and Newry are on the verge of closing down. We return to the issue of funding at paragraphs 56 to 64.

²⁷ Community Restorative Justice Ireland, General Information leaflet.

²⁸ Ibid

²⁹ Q 401

³⁰ Ibid

³¹ Community Restorative Justice Ireland, General Information leaflet.

³² Q 354

³³ Q 338

³⁴ Q 333

3 The Guidelines and draft Protocol for CRJ schemes

The Review of Criminal Justice

26. The Criminal Justice Review Group recommended in March 2000 that community based restorative justice schemes could play a role in tackling the low level crime that commonly concerned local communities, but that safeguards and a regulatory framework were required. To this end, the report recommended that CRJ schemes should:

- receive referrals from a statutory criminal justice agency rather than from within the community, with the police being informed of all such referrals;
- be accredited by, and subject to standards laid down by Government in respect of how they deal with criminal activity, covering issues such as training of staff, human rights protections, other due process and proportionality issues, and complaints mechanisms for both victims and offenders;
- be subject to regular inspection by the independent Criminal Justice Inspectorate; and
- have no role in determining the guilt or innocence of alleged offenders, and deal only with those individuals referred by a criminal justice agency who have indicated that they do not wish to deny guilt and where there is prima facie evidence of guilt.³⁵

The Guidelines

27. In December 2005, in line with the recommendations of the Criminal Justice Review Group, the Government issued for public consultation “Guidelines” to govern the operation of CRJ schemes. The Guidelines included a requirement for any CRJ scheme to communicate any information it had about an offence or an offender to a dedicated police officer, or to an identified representative of the Probation Board for Northern Ireland (PBNI) or the Youth Justice Agency (YJA). The Guidelines also made provision for the inspection and accreditation of CRJ schemes, a complaints system to be established by the schemes, along with an independent external complaints mechanism, and a framework for schemes to determine the suitability of their staff.

28. Responses to the consultation revealed serious concerns focused on four key areas: the ability of the schemes to use third parties (i.e. PBNI or the YJA) to distance themselves from direct engagement with the police; the need for strengthened arrangements for determining the suitability of persons occupying posts in the schemes; the absence of a

³⁵ This is recommendation 168 of the *Review of the Criminal Justice System in Northern Ireland*, para 9.98, p 216

strong independent element in the proposed complaints system; and the absence of “rigorous standards for schemes underpinned by a thorough inspection regime”.³⁶

29. In light of the concerns expressed, the Government amended the Guidelines and reissued them for public consultation as the Draft Protocol for Community-based Restorative Justice Schemes in September 2006.³⁷ The Minister acknowledged, in evidence to the Committee, that he had listened to those who had criticised the Guidelines for not being “robust enough to command public confidence”, and the draft Protocol had been strengthened accordingly.³⁸

The draft Protocol

30. Many of the original provisions of the Guidelines remain, but important amendments have been made. The introduction to the draft Protocol makes clear that its provisions apply to all cases where CRJ schemes “deal or seek to deal with criminal offences” of a low level nature.³⁹ The draft Protocol is a voluntary code and has no statutory basis. The key provisions of the draft Protocol are set out below.

Referral arrangements: Police and Public Prosecution Service

- When a CRJ scheme becomes aware of an offence/offender, it would communicate details about the offence, the offender, and victim to a dedicated police officer. It should indicate broadly how it would deal with the offence and offender if the case were referred to it.
- An advisory panel may be formed, including representatives of the CRJ scheme, the PSNI, PBNI, and YJA for a preliminary discussion on the suitability of resolving the case through community based restorative justice.
- The PSNI would consider the information provided by the scheme and decide whether it is necessary to undertake investigations to verify and add to the information. Depending on the nature of the offence, offenders would be fingerprinted and DNA will be taken by the police. The police would send a report of the case to the Public Prosecution Service (PPS) and a prosecutor would consider the evidence and information provided and inform the police promptly of its decision. Where the PPS judges it appropriate to refer a case to a CRJ scheme, the police would inform the scheme and the scheme can proceed with the case in accordance with the draft Protocol. Where it decides not to refer to a scheme, the scheme can take no further action in relation to the case. The police and PPS “will seek to fast-track the consideration of cases forwarded by schemes”.⁴⁰

³⁶ Northern Ireland Office A Protocol for Community based Restorative Justice Schemes: Consultation and Equality Impact Assessment, September 2006

³⁷ The Draft Protocol is printed in full in the evidence appended to the Report.

³⁸ Q 476

³⁹ Northern Ireland Office A Protocol for Community based Restorative Justice Schemes: Consultation and Equality Impact Assessment, September 2006 Appendix 2, para 2

⁴⁰ Ibid para 11

Inspection and accreditation of schemes

- Schemes would be required to confirm in writing to Criminal Justice Inspection Northern Ireland that they are willing to adhere to the draft Protocol. They would agree to undergo an initial inspection before commencing their operations under the draft Protocol. Having inspected the scheme, and if the Inspectorate is satisfied that the requirements of the draft Protocol are being met, it would inform the Northern Ireland Office (NIO), which would maintain a list of accredited schemes. A scheme may be removed from the list if it is failing to meet the requirements of the draft Protocol. Cases would only be referred to accredited schemes.
- Once operating, schemes would be subject to regular unannounced inspections. Inspections would initially be carried out on a pilot basis and will include, among other things, the examination of: records of offenders and offences; complaints mechanisms and actual complaints; up to date awareness of human rights issues; and training initiatives. Access may also be required to the schemes' records on their wider, non-criminal activities.

Suitability of staff

- In order to comply with human rights standards and to promote confidence in the criminal justice system, schemes would be required to assess the suitability of their staff. The draft Protocol states that “it would clearly be unacceptable for anyone involved in paramilitary activity or criminality to be involved in this work”.⁴¹ The Protection of Children and Vulnerable Adults (POCVA) framework will be used as a method of determining individuals' suitability and schemes must become accredited to POCVA for this purpose.⁴² The POCVA check would uncover whether a person has a criminal record and other information which might demonstrate a person to be unsuitable for the post.
- To help determine suitability, a Panel would be established, comprising representatives of “statutory bodies”, and will have access to relevant information, including criminal records.⁴³

Complaints system

- An “independent, external, complaints mechanism” provided by the Probation Board for Northern Ireland would be available to victims and offenders who come into contact with the schemes.⁴⁴ Schemes would have to ensure that they provided

⁴¹ Northern Ireland Office A Protocol for Community based Restorative Justice Schemes: Consultation and Equality Impact Assessment, September 2006, Appendix 2, para 17

⁴² The Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 came into force in April 2005 with the aim of improving existing safeguards for children and vulnerable adults by preventing unsuitable people working with them in paid or voluntary positions. POCVA requires the Department for Health, Social Services and Public Safety in Northern Ireland to maintain a list of individuals who are considered unsuitable to work in a paid/unpaid capacity with children and vulnerable adults.

⁴³ Northern Ireland Office A Protocol for Community based Restorative Justice Schemes: Consultation and Equality Impact Assessment, September 2006, Appendix 2, para 17

⁴⁴ Ibid, para 22

information explaining clearly how a complaint could be made to all with whom the schemes deal. The Criminal Justice Inspectorate would inspect on a “regular and unannounced basis” schemes’ processes to ensure that they are operating properly.⁴⁵ Where a victim or an offender has a complaint that amounts to a criminal offence, the complaint should be referred to the PSNI for investigation.

Training

- Schemes would be obliged to arrange training for their staff, on human rights and equality legislation, their obligations under criminal law, the workings of the criminal justice system, communication, conflict mediation, and victims’ issues. Training would be regularly updated and cover any changes in the law.

⁴⁵ Northern Ireland Office. A Protocol for Community-based Restorative Justice Schemes: Consultation and Equality Impact Assessment, September 2006.

4 Responses to the draft Protocol

Direct referral from CRJ schemes to the PSNI

Existing arrangements

31. Since their inception, the programmes of NIA have engaged directly with the PSNI and police representatives sit in an advisory capacity on their management committees.⁴⁶ Through management committee meetings, the police are kept informed of the cases being dealt with by NIA. Mr Drew Harris, Assistant Chief Constable with responsibility for Criminal Justice, told us that while the police had a “full” relationship with NIA in relation to its community based restorative work, it did not “have a close insight”, or the insight it would wish, in terms of their restorative work”.⁴⁷

32. CRJ Ireland has no relationship with the PSNI and has no police representation on its board of management. Nor does it have regular communication with the police on the nature of the cases it is dealing with or the outcome of those cases. Until recently, it referred serious cases that had come to its attention to Social Services, or the Probation Board, rather than directly to the police.⁴⁸ Mr Jim Auld, Director of CRJ Ireland, told us that this situation was changing and that CRJ Ireland was coming to a position whereby “in a case of a serious nature”, the first option that it would give an informant is “that they should go to the PSNI”.⁴⁹

33. We were mindful of the concerns expressed by the Independent Monitoring Commission (IMC) in February 2006 about the referral process, in particular, the reports it had received that CRJ schemes were actively discouraging referrals to the police and dealing with serious crimes outwith their remits⁵⁰. The IMC noted information it had received about people known for their involvement in CRJ schemes (and sometimes paramilitary connections) who had exerted improper pressure on victims, alleged offenders, or members of their family, engaged in CRJ schemes. This pressure was seen by those on whom it was exercised as “intended to secure the disposal of the crime without recourse to the criminal justice system, including the police, for example, by requiring the alleged offender to move to another location or to refrain from visiting certain places in the future”.⁵¹ An additional feature of the accounts reported to the IMC was the nature and seriousness of some of the offences that were being dealt with by CRJ schemes which fell “outside the scope of ordinary restorative justice schemes”.⁵² The Commission was of the view that the accounts demonstrated:

⁴⁶ Q 226

⁴⁷ Q 421

⁴⁸ Q 352

⁴⁹ Qq 338, 354

⁵⁰ Eighth report of the Independent Monitoring Commission, 1 February 2006, para 2.12

⁵¹ Ibid

⁵² Ibid

“[...] restorative justice being invoked as a means of continuing to exert paramilitary control within communities, and of what seems to at least some people living and working in those communities as paramilitarism operating under the guise of restorative justice”.⁵³

34. During our inquiry into organised crime,⁵⁴ we received first hand evidence in private that members of CRJ schemes, who were also involved in paramilitary organisations, were actively discouraging victims of serious crimes from reporting those crimes to the police and encouraging their resolution through CRJ schemes. We were told that schemes were being used by paramilitaries as a means of exercising control over communities, creating an informal system of justice. When we asked Mr Jim Auld, Director of CRJ Ireland about reports that CRJ schemes were discouraging recourse to the police and acting as an alternative to PSNI, he told us that CRJ Ireland is complementary to the police service:

“I do not know anyone in the organisation who wants to be a policeman or women. We have no desire to be an alternative to the police. There is only one police service and there can only be one police service.”⁵⁵

35. Mr Harry Maguire, Training Officer, CRJ Ireland said that reports that CRJ Ireland was acting as an alternative to the PSNI were based on a misunderstanding of its work, and that it did not see itself as an alternative to the police.⁵⁶ He also pointed out that PSNI had made referrals to CRJ Ireland where it had received complaints which could be resolved more effectively through the scheme.⁵⁷ Mr Auld told us that CRJ Ireland officially recognised the PSNI as the only legitimate police service in Northern Ireland.⁵⁸

36. Representatives of NIA were keen to point out that it was having a positive impact in communities because its work was respected. This respect, they argued, had arisen over time and was not the result of paramilitary involvement in the scheme’s work and the fear that this created in communities. NIA were emphatic that the schemes dealt only with low level crime and anti-social behaviour.⁵⁹

Direct Referral under the draft Protocol

37. One of the key concerns that emerged from the consultation on the guidelines was the capacity for CRJ schemes to use third parties, including the Probation Board, to avoid direct engagement with the police. The draft Protocol now makes it a requirement for CRJ schemes to refer all offences and offenders that come to their attention directly to the police.

⁵³ Eighth Report of the Independent Monitoring Commission, 1 February 2006, para 2.13

⁵⁴ Organised Crime in Northern Ireland, Third Report, Session 2005-06, HC 886

⁵⁵ Qq 362, 363

⁵⁶ Qq 364,365

⁵⁷ Qq 411, 412

⁵⁸ Q 379

⁵⁹ Q 241

38. Northern Ireland Alternatives told us that they would continue to work closely with the police under the draft Protocol and would directly refer cases to the PSNI.⁶⁰ Despite accepting the PSNI as the only legitimate police service in Northern Ireland in public session, CRJ Ireland has since made it clear in its response to the draft Protocol that it will not participate in its “practical implementation” on the grounds that “a large majority of the people” in the areas in which it works are “opposed to active engagement with the Police Service of Northern Ireland”.⁶¹ When there is a political resolution to policing, it states that it “will take the necessary risk to develop a direct relationship with the PSNI”.⁶² In the interim, it notes that people should be free to choose to go directly to the PSNI and that its projects were “increasingly advising people to seek assistance from the police in appropriate cases”.⁶³

39. Dr Garret Fitzgerald expressed concern that the requirement for CRJ “to communicate” details about offences and offenders to the police (paragraph nine, draft Protocol) left it open to the schemes to “merely write to the police [...] without having any direct personal contact with them or being available to discuss the matter with them”.⁶⁴ He argued that the word “communicate” needed to be qualified to allow the police to request, if necessary, personal contact with members of CRJ schemes to clarify any outstanding matters.⁶⁵

40. Sir Hugh Orde, Chief Constable of the PSNI, told us that he saw police involvement in community based restorative justice schemes “as utterly non negotiable” and that their integration into the formal criminal justice system was essential.⁶⁶ He believed that the confidence which the Nationalist community had in policing was increasing and that while CRJ Ireland was in a process of transition, there was a need for immediate direct engagement between CRJ Ireland and the police.⁶⁷ He said:

“We have got to make that leap of faith, as has he [Mr Jim Auld], and say it [CRJ Ireland] now needs to be embedded in the system and not ancillary to it”.⁶⁸

41. Sir Hugh Orde believed that if Sinn Fein decided to support policing, it would make the process easier in that police officers would be “seen as more acceptable to the wider republican community”.⁶⁹ Mr Drew Harris, Assistant Chief Constable, told us that the police expected to have a fuller exchange of information with schemes under the draft Protocol, particularly NIA, and to be more informed of their activities. The PSNI envisaged

⁶⁰ Q 245

⁶¹ Ev 96

⁶² Ibid

⁶³ Ibid

⁶⁴ Ev 105

⁶⁵ Ev 105

⁶⁶ Qq 418, 424

⁶⁷ Q 446

⁶⁸ Q 446

⁶⁹ Ibid

that those police officers who have worked in the communities in which the schemes are based and are aware of local issues, would develop relationships with the schemes.⁷⁰

42. Mr David Hanson MP, Minister of State at the Northern Ireland Office with responsibility for Criminal Justice, acknowledged that he had “got it wrong” in relation to the guidelines and that he had reissued them in the firm belief that there was a need for greater police involvement in the referral process.⁷¹ He told us that it was important that the police and the PPS have central roles in determining whether low level criminal offences should be referred to CRJ schemes because it would be entirely unacceptable for the schemes themselves to act as the police and to judge what cases should be prosecuted and which should not.⁷² He added that:

“[...] we need to put the police at the centre of it because we cannot have, particularly in the fiery circumstances of parts of Northern Ireland, an alternative policing and criminal justice system that dishes out its own level of justice with no relation to that criminal justice system”.⁷³

43. The Minister was emphatic that those schemes that did not sign up to the terms of the draft Protocol and refused to cooperate with the police “will not receive Government support, will not be engaged formally with the criminal justice system, and will not be eligible for funding from the Government in any way, shape or form”.⁷⁴

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 advisory panel

45. The draft Protocol states that an advisory panel may be set up to have a preliminary discussion about the suitability of dealing with an offence by way of community restorative justice. The Panel would include representatives of the CRJ scheme, the PSNI, the Probation Board and Youth Justice Agency.

46. A number of witnesses questioned whether there was a need for the advisory panel. The Rt Hon Lord Clyde argued that the draft Protocol “engages in excessive procedures”, particularly in relation to the referral process which “could gum up the whole smooth

⁷⁰ Q 427

⁷¹ Q 428

⁷² Q 426

⁷³ Q 506

⁷⁴ Q 479

working of the scheme and [...] prejudice its proper operation.⁷⁵ The view of Drew Harris, Assistant Chief Constable, was that the panel added an unnecessary layer to the referral process.⁷⁶ He told us that advisory panels are used in England and Wales “post sentence to consider restorative outcomes” and that the idea had been brought across to Northern Ireland, but that it was not appropriate in the draft Protocol.⁷⁷ The Northern Ireland Policing Board held the view that there was no need for the panel and argued that it should be removed.⁷⁸

47. The Minister explained that the purpose of the proposed advisory panel is to discuss “broad issues”, including the type of low level offence that should be referred to a scheme, but the final decision on whether to refer a case to a CRJ scheme would rest firmly with the PPS.⁷⁹

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.

Defining low level crime

49. The draft Protocol applies to cases where CRJ schemes deal, or seek to deal with low level criminal offences.⁸⁰ Those offences “must be passed via the police to the Public Prosecution Service who will refer suitable low level offences back to schemes to be dealt with in accordance with the Protocol”.⁸¹ “More serious offences, including sexual offences, or cases of domestic violence” are outwith the schemes’ remits.⁸² The draft Protocol does not apply to “non-criminal matters, or to anti-social behaviour which does not reach the criminal level”.⁸³

50. No definition of “low level crime” is provided in the draft Protocol and we heard mixed views on whether there was a need to define it more fully. Dr Duncan Morrow, Chief Executive of the Community Relations Council, told us that it was essential that the draft Protocol provide a list of those crimes which were capable of being dealt with by CRJ schemes, or minimally a list of those crimes which the schemes cannot deal with. He believed that the latter list should include “[...] violence against the person, threats against

⁷⁵ Q 6

⁷⁶ Q 437

⁷⁷ Ibid

⁷⁸ Northern Ireland Policing Board’s response to the original guidelines

⁷⁹ Qq 503, 504

⁸⁰ Northern Ireland Office A Protocol for Community based Restorative Justice Schemes: Consultation and Equality Impact Assessment, September 2006, Appendix 2, para 2

⁸¹ Ibid

⁸² Ibid

⁸³ Northern Ireland Office A Protocol for Community based Restorative Justice Schemes: Consultation and Equality Impact Assessment, September 2006, Appendix 2, paragraph 2

the person or anything which would constitute a direct violation of a person's safety."⁸⁴ The view of Mr Brian McCaughey, Chief Probation Officer, Probation Board for Northern Ireland, was that the term "low level crime" was vague and that a definition, along with examples, of low level crime was required.⁸⁵

51. However, the Rt Hon Lord Clyde told us that it was "extraordinarily difficult to devise a sufficient definition" and that low level crime could be easily identified by those who worked in CRJ schemes, the police and PPS.⁸⁶ Mr Jim Auld, Director of CRJ Ireland, shared this view.⁸⁷ Ms Olwen Lyner, Chief Executive of NIACRO, told us that the Association would welcome discussions between criminal justice agencies on the concept of low level crime, but that it was against having "overly tight definitions" which could "work against the development of the schemes and public confidence in them".⁸⁸ The view of Mr Tom Winston, Manager of NIA, was that defining low level crime would make "things very rigid" and would prevent schemes from working flexibly.⁸⁹ Sir Alasdair Fraser, Director of Public Prosecutions, whom the Committee met in private, was opposed to the suggestion that a list of low level offences could be defined and argued that discretion should be left to the prosecutor to weigh the individual circumstances of each case. Sir Hugh Orde told us that having a "hard definition" of low level crime would be unhelpful, that flexibility was required and that police officers tended "to know what low level crime is when they see it and what is appropriate and what is not".⁹⁰

52. The Minister told us that the draft Protocol deliberately did not define low level crime "because the police and Public Prosecution Service have wished to have flexibility".⁹¹ He explained that if a person commits an assault, but has had no previous record of assault, it may be more satisfactory for that person to go through a restorative rather than court process. However, if the person has carried out serial assaults, the Public Prosecution Service (PPS) would decide to put that person through the courts.⁹² The Minister's view was that having a strict definition of low level crime would restrict the flexibility of the police and PPS in deciding the best course of action for individual cases.⁹³

53. The "non-criminal" activities of CRJ schemes, which make up the majority of their day to day work, does not fall within the draft Protocol and will remain unregulated. When we asked the Minister about whether this could give rise to semi-policing of a community, he said that the non-criminal activity work of the schemes would form part of the inspection regime of the Chief Inspector of Criminal Justice and would be fully inspected.⁹⁴

⁸⁴ Q 191

⁸⁵ Q 84,

⁸⁶ Q 15

⁸⁷ Qq 405 - 411

⁸⁸ Qq 126, 141, 142. Ev 89, 90

⁸⁹ Q 241

⁹⁰ Qq 418, 434

⁹¹ Q 481

⁹² Qq 481, 482

⁹³ Q 481

⁹⁴ Q 491

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.

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.

Funding

56. The majority of funding received by both CRJ Ireland and NIA is from charitable sources. We were told that the funding provided by Atlantic Philanthropies had run out, in the case of NIA, in June 2006 and would formally end for CRJ Ireland in March 2007. See paragraphs 16 and 25.

57. Ms Debbie Watters, Training Officer, NIA, told us that the ending of funding from Atlantic Philanthropies had led to staff cuts.⁹⁵ IMPACT had already lost two full time members of staff and the manager of East Belfast Alternatives was due to leave at the end of December 2006.⁹⁶ She anticipated that NIA would lose several other members of staff between December 2006 and Easter 2007 because of funding shortages.⁹⁷ It was her view that the consultation process on the guidelines had been "dragged out" to pander to "the wider policing debate and, more specifically, the policing debate with Sinn Fein and republicanism" and that delay had exacerbated the funding problems.⁹⁸ Ms Watters told us that there was an embargo on Northern Ireland Office funding for all CRJ schemes until Sinn Fein supported policing.⁹⁹ Despite this apparent embargo, Greater Shankill Alternatives had recently been awarded £60,000 from the Department of Social Development. When NIA sought an explanation as to why this programme had secured Government funding while others had failed, it was told by the Department, that the application had "just slipped through the net".¹⁰⁰

58. Mr Jim Auld of CRJI told us that the ending of funding from Atlantic Philanthropies meant that two of the scheme's Belfast projects were not "far off closing" and that a project in Newry was about to close.¹⁰¹ We were told, however, that CRJ Ireland schemes would

⁹⁵ Q 243

⁹⁶ Ibid

⁹⁷ Q 244

⁹⁸ Q 245

⁹⁹ Q 246

¹⁰⁰ Q 246

¹⁰¹ Qq 332, 333

continue to function on a voluntary basis.¹⁰² Mr Auld had a view on where the blame lay for the position in which NIA found itself :

“The difficulties that Alternatives find themselves in are entirely our fault because of the politics of the situation. For me it shows up that the whole difficulty with restorative justice is political [...] The fact that the NIO are insisting that we need to have a relationship with the PSNI in order to gain funding gives a lie to Alternatives who do have a relationship with the police and they still cannot get funding”.¹⁰³

59. We were told that the politicisation of the debate had tarnished the reputation of CRJ schemes. Mr Tom Winston, NIA, said that one of the key problems was that a clear distinction had not been drawn between CRJ Ireland and Northern Ireland Alternatives.¹⁰⁴ He pointed out that NIA had a productive relationship with CRJ Ireland but that the debate on CRJ schemes had not highlighted the key differences between the schemes, including NIA’s cooperation and engagement with the police.¹⁰⁵

60. We were also told about the cost-effectiveness of restorative justice schemes. Ms Watters told us that the cost of keeping a person in prison in Northern Ireland for a year was approximately £85,000 while it cost only £1,000 to put a young person through NIA’s “intensive support programme” which kept a young person out of the formal criminal justice system.¹⁰⁶ She also estimated that the work that NIA had carried out in preventing punishment beatings and shootings had saved the criminal justice system a substantial sum of money given that the average cost to the system of a punishment attack was between £30,000 and £100,000.¹⁰⁷ Sir Hugh Orde agreed that CRJ schemes provided value for money.¹⁰⁸ He emphasised that the schemes were keeping young people out of the judicial system, avoiding criminal convictions for minor offences, which by definition was “an awful lot cheaper than locking someone up”.¹⁰⁹

61. The Minister was adamant that until “minimum standards” had been agreed for the operation of CRJ schemes, the Government could not consider funding CRJ schemes in the future.¹¹⁰ He hoped that the schemes would sign up to the draft Protocol in the early part of the new year, receive accreditation from the Northern Ireland Office, and be able “to apply legitimately for any source of funding available” within the Northern Ireland Departments.¹¹¹ While there was no specific budget allocation for restorative justice, the Department for Social Development (DSD) had a resource stream for neighbourhood renewal and it would be open to accredited schemes that were complying with the

¹⁰² Q 397

¹⁰³ Q 396

¹⁰⁴ Qq 250, 252

¹⁰⁵ Qq 255, 260

¹⁰⁶ Q 247

¹⁰⁷ Q 318

¹⁰⁸ Q 462

¹⁰⁹ Ibid

¹¹⁰ Q 478

¹¹¹ Ibid

standards of the draft Protocol to apply to DSD and other Departments.¹¹² The Minister also believed that if schemes failed to sign up to the terms of the draft Protocol, funders from the charity sector and private funders should be made aware that the scheme was operating outwith the draft Protocol and without Government support.¹¹³

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.

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.

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 independent, external complaints mechanism

65. The draft Protocol states that an “independent, external complaints mechanism” available for victims and offenders who come into contact with the schemes will be provided by the Probation Board for Northern Ireland. Mr Tom Winston, Manager, Northern Ireland Alternatives believed that a complaints mechanism was necessary, but that it should not be provided by the Probation Board on the basis that it gave rise to a conflict of interest.¹¹⁴ He argued that this conflict arose from the fact that representatives of the Probation Board sit on NIA’s management committees and the Probation Board was a potential funder of the scheme’s work. He believed that the complaints mechanism should represent the wider community and could benefit from the input of the community and voluntary sector.¹¹⁵ Include Youth believed that the Probation Board “could potentially have up to five different roles” under the draft Protocol and that there could be a conflict between the Board’s role as a potential funder of the schemes and its proposed role in

¹¹² Q 479

¹¹³ Q 515

¹¹⁴ Q 295

¹¹⁵ Q 285

providing the complaints mechanism.¹¹⁶ Ms Olwen Lyner, Chief Executive of the Northern Ireland Association for the Care and Resettlement of Offenders shared this view and argued that greater transparency could be achieved if the complaints mechanism was provided by “an ombudsman outside the system”.¹¹⁷ She explained that Northern Ireland had an Ombudsman for the police and for prisoners and that there was a need for a criminal justice Ombudsman to examine complaints about the criminal justice system, including CRJ schemes.¹¹⁸

66. The Minister told us that the Criminal Justice Board had considered in detail the question of who should provide the independent complaints mechanism and had concluded that it should be the Probation Board.¹¹⁹ The Government did not wish to establish “an alternative expensive bureaucracy which may or may not have a severe input”.¹²⁰ The Board already has a complaints mechanism operated by three of its members and is “generally regarded as successful, very independent, impartial”.¹²¹ The Minister acknowledged that the Probation Board could be a potential funder of the schemes but that he had to look at the issue “in the round”.¹²²

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.

Suitability of CRJ Staff

68. The draft Protocol notes that CRJ schemes must assess the suitability of their staff. The Protection of Children and Vulnerable Adults (POCVA) framework will be used to determine an individual’s suitability and schemes must become accredited to POCVA for this purpose. To help determine suitability, a Suitability Panel will be set up, comprising representatives of “statutory bodies”, which will have access to relevant information, including criminal records.¹²³

69. Include Youth believed that the proposed Suitability Panel interfered with the schemes’ “governance arrangements and independent status” and that responsibility for assessing suitability of staff should remain with CRJ schemes.¹²⁴ It also noted that there was no

¹¹⁶ Ev 84

¹¹⁷ Qq 172, 174, 181

¹¹⁸ Q 172

¹¹⁹ Q 530

¹²⁰ Ibid

¹²¹ Q 533

¹²² Q 532

¹²³ Northern Ireland Office A Protocol for Community based Restorative Justice Schemes: Consultation and Equality Impact Assessment, September 2006, Appendix 2, para 17

¹²⁴ Ev 83

mechanism in the draft Protocol to provide applicants, who have been deemed unsuitable, with reasons for their unsuitability.¹²⁵ Nor had provision been made for an appeals process to allow applicants to appeal decisions of the Suitability Panel. The Probation Board argued that, in the interests of natural justice, applicants should be able to appeal a decision of the Panel.¹²⁶ Ms Olwen Lyner, NIACRO, told us that while it agreed with the use of the POCVA framework as a check on an individual's suitability, it did not believe that the Suitability Panel should have responsibility "for making decisions about people's appropriateness for employment" and that the schemes should retain that responsibility.¹²⁷ She too argued that the Panel interfered with the schemes' governance arrangements and independent status, a view shared by the Northern Ireland Human Rights Commission.¹²⁸ Dr Garret Fitzgerald told us that while the POCVA framework would uncover whether someone had a criminal record, it was "not equipped to determine whether a staff member is currently involved in paramilitary activity or criminality".¹²⁹ He also believed that a provision should be inserted into the draft Protocol to ensure that people whom the police have good reason to believe, on the basis of knowledge from the local community, have engaged in "intimidatory behaviour or punishment beatings", cannot be employed by CRJ schemes.¹³⁰

70. Dr Duncan Morrow, Chief Executive of the Community Relations Council, agreed that a person involved in working with young people should be vetted and that there was a need for a procedure to ensure that those charged with carrying out justice were fit to do so.¹³¹ However, it was the view of the Community Relations Council that because of the circumstances of Northern Ireland, there were large numbers of people who had "histories" but who had moved on in a constructive way. He believed that "where that is evidenced to be the case" there should be no barriers to their engagement in the future".¹³²

71. We were told that both CRJI and NIA employed staff who were former paramilitaries. Mr Winston, Manager of NIA, told us that while former paramilitaries are employed by NIA, the majority of staff had no paramilitary background.¹³³

72. Sir Hugh Orde told us that people must have confidence that the staff of CRJ schemes are "people [...] one would expect to have a role" in the schemes, that they have "no substantial previous convictions" and "there is no intelligence to suggest they are members of illegal organisations".¹³⁴ Assistant Chief Constable Drew Harris explained that the POCVA framework required the police to supply information about an individual's criminal convictions, but also reports of criminal offences for which no prosecution followed, and any intelligence demonstrating, for example a person's involvement in

¹²⁵ Ev 84

¹²⁶ The Probation Board's response to the draft Protocol, December 2006

¹²⁷ Qq 154, 181

¹²⁸ Q 154

¹²⁹ Ev 105

¹³⁰ Ibid

¹³¹ Q 210

¹³² Ibid

¹³³ Q 270

¹³⁴ Qq 438

punishment beatings.¹³⁵ His view was that the POCVA arrangements “have been in place for some time and work well”.¹³⁶

73. The Minister noted that the Panel is likely to be made up of representatives of the Youth Justice Agency, the Probation Board and Northern Ireland Policing Board who would receive advice from the police on the suitability of individuals.¹³⁷ The police would have access to information that would demonstrate whether a person is involved in a paramilitary organisation.¹³⁸ The Minister said that his assessment was that if anybody had a conviction of a serious nature, since the Belfast Agreement (1998) then “they are automatically excluded from working in these schemes”.¹³⁹ He made clear that:

“Any individual who is still involved in paramilitary activity [...] cannot legitimately, in my view, work on the schemes and entrench [...] the paramilitary role in society”.¹⁴⁰

He said that the Government had laid down a clear break line but those with serious convictions before the Belfast Agreement 1998 would be able to work on the schemes.¹⁴¹

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 potential for delays

75. A number of witnesses expressed concern that the draft Protocol sets out an over-elaborate process which could slow down the delivery of justice and create delays. The Rt Hon Lord Clyde told us that while the draft Protocol states that the police and PPS will seek to fast-track the consideration of cases, he did not believe that was “good enough”.¹⁴² Mr Kit Chivers, Chief Inspector of Criminal Justice, also expressed concern that the schemes envisaged under the draft Protocol are likely to be “quite bureaucratic” and the processes

¹³⁵ Q 439

¹³⁶ Q 441

¹³⁷ Qq 486, 487

¹³⁸ Q 517

¹³⁹ Q 517

¹⁴⁰ Q 518

¹⁴¹ Qq 517, 518

¹⁴² Q 6

over legalistic.¹⁴³ He accepted that there was a need to regulate CRJ schemes, but argued that part of the advantage of the schemes as they are was the “informality of the approach, the fact that you can handle cases [...] very quickly” and that there was a risk of losing these benefits under the draft Protocol.¹⁴⁴ He was not convinced that justice would be delivered quickly under the draft Protocol:

“What I am constantly striving for is a system which produces legitimate summary justice [...], but summary justice which is administered quickly and flexibly and actually responds to the needs of the community in relation to particularly delinquent people. I am not sure that we have actually got a structure here which provides those sort of benefits. We are guarding against the risks, which is perfectly right to do, but we are losing some of the benefits”.¹⁴⁵

76. This view was shared by Ms Olwen Lyner, Chief Executive of NIACRO.¹⁴⁶ She argued that it was important for young people in particular to be able to see and understand “the impact of their inappropriate actions as quickly as possible”.¹⁴⁷

77. Sir Hugh Orde expressed concern about the “high level of legal involvement” in the draft Protocol.¹⁴⁸ He told us that there needed to be a quick and seamless transition between the police, PPS and the outcome, but that if there were delays in the transition, the benefits of CRJ schemes would “be minimised”.¹⁴⁹ He believed that the process would “sink” if the PPS required “a huge amount of additional material” before it formed a view and made a judgment on whether a case should be referred to a CRJ scheme. Assistant Chief Constable Drew Harris said that the detail of how the arrangements would work in practice “had not been worked through”.¹⁵⁰ He said that he envisaged having dedicated police officers who work in the areas in which the schemes are based so that inquiries on cases could be conducted and a conclusion submitted to the PPS “within a few days”.¹⁵¹

78. The Minister told us that a “considerable amount of work” was currently being undertaken to reduce delays in processing cases through the criminal justice system. He argued that the processes outlined in the draft Protocol “will be a potentially quicker way of resolving issues rather than taking them through the courts”.¹⁵² He said that discussions will be held once the draft protocol had been agreed on how the fast tracking of cases by the police and PPS will work in practice.¹⁵³ The Minister accepted that the draft Protocol would “create an extra workload” and “an extra responsibility on a number of agencies”,

¹⁴³ Qq 39, 41

¹⁴⁴ Q 39

¹⁴⁵ Q 41

¹⁴⁶ Q 176

¹⁴⁷ Ibid

¹⁴⁸ Q 418

¹⁴⁹ Ibid

¹⁵⁰ Q 427

¹⁵¹ Q 427

¹⁵² Q 494

¹⁵³ Q 494, 495

but that the outcome would be “a greater level of confidence” in the ability of the schemes to carry out their work in local communities.¹⁵⁴

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.

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.¹⁵⁵ We believe that this suggestion is an eminently sensible one.

Inspection

81. Schemes will be inspected before they commence their operations under the draft Protocol and, once operating, will be subject to regular unannounced inspections.¹⁵⁶

82. Mr Kit Chivers, Chief Inspector of Criminal Justice, who will carry out the inspections, believed that it was essential that his remit for inspection covered both the criminal and non criminal aspects of the schemes’ work.¹⁵⁷ He said that there could be no question of a scheme deciding that a case falls below “the level of what needs to be reported to the police” and that he was very keen to inspect the non criminal activity of the schemes.¹⁵⁸ We were told that pilot inspections would be carried out initially to allow “first hand observations” of the work of the schemes.¹⁵⁹ Mr Chivers pointed out that inspections would be carried out “without fear or favour” and his Office would report “publicly and frankly” about its findings.¹⁶⁰

83. The Schemes themselves welcomed the proposals for the inspection of their work. Ms Debbie Watters, Training Officer, NIA, said that NIA had “nothing to fear from

¹⁵⁴ Q 534

¹⁵⁵ Q 431

¹⁵⁶ Northern Ireland Office A Protocol for Community based Restorative Justice Schemes: Consultation and Equality Impact Assessment, September 2006, Appendix 2, para 23

¹⁵⁷ Q 45

¹⁵⁸ Q 45

¹⁵⁹ Q 48

¹⁶⁰ Q 61

inspection” and that it was “an honourable and transparent organisation”.¹⁶¹ She said that NIA had met Kit Chivers and encouraged him to carry out inspections of its current work, but that he was unable to do so without the consent of the Secretary of State.¹⁶² Mr Jim Auld, Director, CRJ Ireland, told us that he was supportive of the inspection proposals and had similarly encouraged Mr Kit Chivers to conduct inspections of the projects under the CRJ Ireland umbrella.¹⁶³ He was keen to stress, however, that CRJ Ireland should be inspected “on a like for like basis” and that it should not be inspected “more rigorously than any other organisation”.¹⁶⁴

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.¹⁶⁵ We agree with this proposal.

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.

Training

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).¹⁶⁶ We believe that this suggestion should be implemented.

¹⁶¹ Q 298

¹⁶² Q 298

¹⁶³ Q 402

¹⁶⁴ Ibid

¹⁶⁵ Criminal Justice Inspection Northern Ireland response to the original guidelines

¹⁶⁶ Ev 106

5 Conclusions

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.

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.

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.

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.

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.

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.

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.

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.

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.

Conclusions and recommendations

1. 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. (Paragraph 44)
2. 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. (Paragraph 48)
3. 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. (Paragraph 54)
4. 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. (Paragraph 55)
5. 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. (Paragraph 62)

6. 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. (Paragraph 63)
7. 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. (Paragraph 64)
8. 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. (Paragraph 67)
9. 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. (Paragraph 74)
10. 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. (Paragraph 79)

11. 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. (Paragraph 80)
12. 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. (Paragraph 84)
13. 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. (Paragraph 85)
14. 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. (Paragraph 86)
15. 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. (Paragraph 87)
16. 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. (Paragraph 88)
17. 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. (Paragraph 89)
18. 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. (Paragraph 90)

19. 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. (Paragraph 91)
20. 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. (Paragraph 92)
21. 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. (Paragraph 93)
22. 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. (Paragraph 94)
23. 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. (Paragraph 95)

Formal minutes

Wednesday 17 January 2007

Members present:

Sir Patrick Cormack, in the Chair

Mr David Anderson	Mr Denis Murphy
Mr John Battle	Mr Stephen Pound
Mr Christopher Fraser	Mr Sammy Wilson
Lady Hermon	

Draft Report (The Draft Protocol for Community-based Restorative Justice Schemes), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 91 read and agreed to.

Paragraph 92 read.

Question put, That the paragraph stand part of the Report.

The Committee divided.

Ayes, 6	Noes, 1
Mr David Anderson	Mr Sammy Wilson
Rt Hon John Battle	
Mr Christopher Fraser	
Lady Hermon	
Mr Denis Murphy	
Mr Stephen Pound	

Paragraph agreed to.

Paragraphs 93 to 95 read and agreed to

Resolved, That the Report be the First Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Ordered, That the provisions of Standing Order No. 134 (Select Committees (reports)) be applied to the Report. – (*The Chairman*,)

Ordered, That the Appendices to the Report be Reported to the House. – (*The Chairman*.)

[Adjourned till a date and time to be announced by the Chairman

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Rt. Hon Lord Clyde, Former Justice Oversight Commissioner, **Mr Kit Chivers**, Criminal Justice Inspection Northern Ireland, **Mr Ronnie Spence** and **Mr Brian McCaughey**, Probation Board for Northern Ireland

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Wednesday 22 November 2006

Mr Olwen Lyner and **Mr Pat Conway**, Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO), **Mr Duncan Morrow**, Community Relations Council

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Monday 4 December 2006

Ms Debbie Watters and **Mr Tom Winston**, Northern Ireland Alternatives, and **Mr Jim Auld** and **Mr Harry Maguire**, Community Restorative Justice Ireland

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Tuesday 5 December 2006

Sir Hugh Orde and **Drew Harris**, Police Service of Northern Ireland (PSNI)

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Wednesday 6 December 2006

Mr David Hanson, a Member of the House, Minister of State, Northern Ireland Office and **Mr Stephen Leach**, Criminal Justice, Northern Ireland Office

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10	Dr Garret FitzGerald	Ev, 104
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List of unprinted written evidence

Additional papers have been received from the following and have been reported to the House but to save printing costs they have not been printed and copies have been placed in the House of Commons library where they may be inspected by Members. Other copies are in the Record Office, House of Lords and are available to the public for inspection. Requests for inspection should be addressed to the Record Office, House of Lords, London SW1. (Tel 020 7219 3074) hours of inspection are from 9:30am to 5:00pm on Mondays to Fridays.

- 1 North Down District Policing Partnership
- 2 Criminal Justice Inspection Northern Ireland
- 3 Probation Board Northern Ireland
- 4 Newtownabbey District Policing Partnership
- 5 British Irish Rights Watch
- 6 Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO)
- 7 Community Relations Council
- 8 Mrs Kathleen Campbell
- 9 Northern Ireland Alternatives
- 10 Community Restorative Justice Ireland
- 11 The Superintendents' Association of Northern Ireland
- 12 Ballymena Community Safety Partnership
- 13 Craigavon District Policing Partnership
- 14 Police Ombudsman for Northern Ireland

Oral evidence

Taken before the Northern Ireland Affairs Committee

on Wednesday 1 November 2006

Members present:

Sir Patrick Cormack, in the Chair

Mr David Anderson
John Battle
Mr Gregory Campbell
Mr Christopher Fraser

Mr Stephen Hepburn
Mr Denis Murphy
Sammy Wilson

Witness: Rt Hon Lord Clyde, a Member of the House of Lords, Former Justice Oversight Commissioner, gave evidence.

Q1 Chairman: Lord Clyde, could I, on behalf of the Committee, welcome you. Thank you very much indeed for coming. We much appreciate your willingness to come and discuss this important subject with us and we are anxious to make a response from the Committee to the Government's suggestions, and so on. In your sixth report you noted the very slow progress made by the Government in bringing forward initial guidelines for the CRJ scheme. Perhaps you would tell us a little bit about that—and if you would like to make an opening statement as well, please feel free to do so—whether you were satisfied with the Government's reasons for delay and what was the impact of the delay, and so on? If you would like to just expand on those things, that would be extremely helpful.

Lord Clyde: Yes. As will be evident, I think, from my successive reports, I found the length of time which 168 was taking to reach implementation enormously frustrating. I recognised that there were difficulties and sensitivities and I had to live with that, but it does seem to me regrettable that it has taken so long even to reach this stage. When I sought reasons, I understood that there were political considerations behind the scenes which were far beyond the scope of my work, and I rested content with that, so what I was doing was trying to move the thing forward so far as I could and to try to open up discussion and consideration of any problems which might exist. In my fourth report, at p.101, I did notice one possible adverse consequence of continued delay and that was the risk of the loss of the experienced volunteers within the schemes, which is experience which had been built up over the years, and if the future of the schemes was under threat then there was going to be a loss of that ability and that experience. In addition to that, it was perfectly evident from all the schemes that there was a very real sense of frustration and some lowering of morale, and that did not help in improving the relations between the schemes and the government organisations. The main fear was that of their financial sources drying up. That, I understood, became very real, I think it was last April, to the extent that I tried to take some steps to give warning at that stage of the possibility of

alternatives collapsing because of lack of funding. What the position has been since then, I do not know, but I understood then that it was only a very short period that was left in which funding might be available. I think that generally would express my views about the delay, the causes and the consequences.

Q2 Chairman: Thank you very much indeed. Did you yourself feel you had sufficient input into the guidelines and the subsequent Protocol?

Lord Clyde: Yes, in the sense that I hardly did. I was very conscious of the terms of my remit and that was, of course, to oversee the implementation by others of the recommendations. I did extend that remit to include facilitating the implementation, and I think from the outset that was recognised as proper and possibly useful. So I did accordingly engage in discussions about how problems might be overcome, how progress might be made, and both in the reports and in informal discussions I did suggest ways forward, but generally I felt it was inappropriate for me to take part in the drafting of documents, and in particular inappropriate for me to enter the fray on the precise form which the guidelines should take. It was very important for me, I felt, to establish and preserve my independence as Oversight Commissioner from anyone else, including the NIO, and I felt that if I entered that area then that independence might be slightly sullied. I did make, as I say, suggestions such as a pilot scheme, I encouraged conferences and I did indeed even in the first report suggest a timetable for moving the thing forward, but no timetable was ever produced. So my input has been very indirect and I deliberately did not take a conscious part and express part in the drafting or the amending of the guidelines.

Q3 Chairman: As you look back upon your period as Commissioner, do you feel that you were taken sufficient note of by those to whom you were reporting, or do you feel—the two questions are not mutually exclusive—that at any stage anyone sought to put undue pressure upon you?

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Lord Clyde: I am not conscious of occasions of any undue pressure and I would have certainly resisted it if there had been any attempt in that direction. I can think of one or two occasions when there were informal conversations about how the job should be done, particularly at the outset, but that was not a matter of pressure at all. It was left pretty much to me. I am sorry, so far as the first part of your question was concerned—

Q4 Chairman: Was your role and were your views taken sufficiently into account?

Lord Clyde: I find that a very difficult one to answer. I can think of several examples where my views certainly were taken into account, for example when I did question courteously whether it was really useful to progress a particular recommendation relating to the establishment of yet another committee or body, and that observation was taken up and the recommendation was dropped. But how far views I expressed have been taken into account, I find that very difficult to say because I was not within the counsels of those who were considering what I said.

Q5 Chairman: Just a final question from me, and it is really a follow-up to the last. Did you have, in your view, sufficient access to the people you felt you needed to have access to, or were you fobbed off to see lowly officials and things?

Lord Clyde: No, at no time. In fact, I would like to think I had a very good relationship with the senior members of the NIO and the members of the Criminal Justice Board. I engaged with them relatively regularly and the heads of the agencies. I cannot think of any occasion when I was discouraged from seeing anybody whom I wanted to see. The co-operation of the NIO was extremely satisfactory.

Chairman: Thank you very much indeed.

Q6 Mr Fraser: Lord Clyde, you have talked about the loss of experienced volunteers, your remit, and how suggestions you put forward were perhaps not on occasions taken up. Can you give us a picture, if you can, further to the questions you have already been asked, about the benefits of the scheme and the downside, given the problems you have had?

Lord Clyde: At the very outset when I first looked at the Criminal Justice Review, 168 struck me at once as being a very remarkable recommendation and once I started thinking about it I began to see its enormous merit and its enormous potential. That is why, I think in the sixth report, I describe it as one of the most important ones, or something to that effect. I think it is. There is a variety of benefits which one can immediately identify. One is, of course, that these two schemes have expressly set out to provide a significant counter to the appalling practice of punishment beatings which were so current in the past, and I think it can be said that there has been a substantial decrease in such practices and I think it can be said that that decrease is substantially due to the work of the schemes. The approach of community restorative justice promotes the practice

of a better way of conflict resolution, and that helps to achieve an alteration in the mindset of those who were previously minded in the way of violence as a solution to everything. Another benefit as against the state system, the youth conferencing system, as matters stand at the moment is that it deals, of course, with adults as well as young people and that is providing what the review did anticipate in the long term might become part of the state system but achieving it effectively already. Then again, I think these schemes provide a sense of community responsibility which is wholly healthy and a wider public responsibility in making people aware of the responsibilities they have both to their own locality and to the wider public. I think one of the most exciting parts of the whole approach and one of the most important ones is that essentially it serves the interests of the victim. It is a victim-led operation, a victim who does not want to have prosecution, and that spirit of it is something which I think has to be remembered when one is looking at the Protocol to see how far the victim is still calling the tune. On a practical level, yet another benefit is that it provides a simple and expeditious resolution of minor offending behaviour, and that removes a burden on the police, on the Prosecution Service and on the courts. It takes out the minor dross from the criminal justice system and achieves a very satisfactory resolution of it. Perhaps it would be just simpler if I stop on the benefits at that stage and simply note a reference to my sixth report, paragraphs 2.21 and 2.22, where I do say something about some of the benefits of it. I think I may have covered these already in that, but there is a little note on it. So far as the downside is concerned, may I answer this one in relation to the Protocol rather than the generality of the principle. So far as the Protocol is concerned, one of the concerns I have in general about it is the extent to which it seems to engage in excessive procedures. Paragraphs 9, 11 and 12 particularly set out a regime of referring and after referring, and referring back, which potentially could gum up the whole smooth working of the scheme and indeed prejudice its proper operation. I know the Protocol says that the agencies, the police and the Prosecution will seek to fast track these cases. I do not think that is good enough. I would have thought one would be looking to have this been done in a matter of hours rather than days, far less weeks. Excessive bureaucracy, excessive procedure on this simply makes burdens on the work which would make the operation more complex, or indeed, as I fear, just snarl it up altogether. One can see ways in which what is set out at length, perhaps quite properly as the kind of courses which should be followed, could be short-cut. For example, take the case of Alternatives. If you go to a meeting of Alternatives, you will see sitting around the table a member of the Police Service, perhaps a member of the social services and others of the agencies. If there is a member of the Police Service on hand, he could immediately cope with any question which arises and, if authorised, be able to give an immediate decision to it. Equally, so far as the Prosecution is concerned, that could be dealt with in the same way,

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and by avoiding the passing of paper and the enormous delay which will occur if agencies have to study these things and go into them in depth, the whole matter might be resolved. That is where I think paragraph 15 is of importance, although I am not quite sure whether this was the purpose of putting it in. This is the one which anticipates that there will be a need for further discussions and agreements, because what could be done on that course is simply to arrange and structure the thing in such a way that representatives of the Police Service and of the Prosecution were on hand to give instant decisions in what are in nearly every case very, very simple questions and avoid the delays which otherwise might occur. I fear that is rather a lengthy answer to your question.

Chairman: It is very helpful. It is helping to set the scene.

Sammy Wilson: Just to follow on with some of the benefits—and I have to say, Lord Clyde, not everyone is convinced of the benefits of Community Restorative Justice Schemes, including the communities in which they operate—I would just like you to maybe outline for us, when we are trying to assess the benefits, apart from victims who perhaps the schemes put up for evidence, what evidence did you have from the communities within which those schemes operated that they were welcomed and that they were not simply seen as schemes which people had to go to because of the connections of some of the people who were involved in them? Secondly, as far as the punishment beatings are concerned, punishment beatings have fallen, but they have also fallen in a certain political climate. Have you made any assessment as to whether or not the fall in punishment beatings was due to the change in the political climate as much as due to the schemes themselves? The last question is, you have mentioned the involvement of the police, but since the police were not involved in any of the Republican schemes at present, can any of the benefits which you have suggested here today about quick decisions being made, et cetera, be attributable to the vast majority of these Restorative Justice Schemes anyway?

Q7 Chairman: Could I just ask you, as you are answering, Mr Wilson, to bear in mind comments which have been brought to our attention by the former Taoiseach, Garret Fitzgerald, who is very exercised on these issues and who did send an article which this Committee has had a chance to read in which he was very, very critical on some of these aspects and also very fearful that the wrong people would be taking charge of these schemes in many areas. Perhaps with your great benefit and the freedom, as well as the wisdom, of hindsight, you can tell us whether you think some of these fears are misplaced or whether they are accurate, whether you share them, or whatever?

Lord Clyde: I can understand them, but I came from an innocent background without the experience of the Troubles and so in a way I come with perhaps too open a mind on it, perhaps too innocent a mind, I do not know, but I did not feel, when I visited the

schemes that these fears should be taken to the depth to which, certainly in some reports, they have been. I have not explored and I did not explore around the communities to see their reactions. What I did not pick up was any fear of oppression in the operation of the schemes. I did not pick up any hint that in fact people were being persuaded or were fearful when they entered them and were not giving consent willingly. On that approach, when one sees the kinds of figures of people, cases, passing through these schemes it does seem that there are quite a lot of people in the community who did find this service of value and use. That may be too innocent a view and, as I say, those with much greater experience of the past may have a much more accurate understanding of it, but that is what I picked up from the visits I made. So far as the cause for the decline in punishment beatings is concerned—and I am sure there is more than one element responsible for it—I am not in a position to assess the extent to which one influence or the other has played a part, but I was impressed by articles I have read which do suggest that the establishment of these schemes has been one significant element at least in that and I am very conscious from talking with the members of the schemes that this, of course, is one of the principal objects for which they were set up. Your question about the non-involvement of the police, I am sorry, I am not quite sure that I have caught the full significance of the problem there.

Q8 Sammy Wilson: You mentioned one of the benefits and you gave the example of the alternative that with the police sitting around the table quick decisions can be made, but since the police are not involved in the majority of schemes, can you still maintain that that is a benefit of such schemes?

Lord Clyde: I beg your pardon, I suppose I may have been answering the wrong question. I am saying it is a benefit when it is operating in the way in which 168 intended it should operate. At the moment, as you of course rightly say, the police are not deeply involved in the CRJI schemes and accordingly they do not stand as examples for what I was looking for. The merit that I was speaking of was the merit of the scheme as it will eventually be implemented.

Q9 Sammy Wilson: I just have one follow-up question. Were you aware, or did you become aware at any stage during your examination of these schemes that, to put it bluntly, some of them tout for business around the areas and when problems arise they volunteer to look after the issues for people, and that may be one of the reasons why you find the schemes to be so popular or so many cases being dealt with by them?

Lord Clyde: I cannot speak from my own knowledge as to the extent of that. As I say, I did not go around the streets to see them in action to that extent, and that would probably be the best way of discovering the position.

Q10 Chairman: Do you think you should have gone around the streets?

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Lord Clyde: No, I do not think I should. I was really here to oversee the implementation by others of 168, not to explore into these matters.

Q11 Sammy Wilson: Do you accept that in the light of not having that insight, perhaps your view of these schemes could be somewhat skewed?

Lord Clyde: Of course I can accept that my view may be incorrect. I can only tell you what my view is from the experience I had about it. As I say, I came from outside to this area and that brought an innocence and brought, perhaps, an objectivity, I do not know, which may be different from those who see it day in, day out, on the ground. I would not be too worried if the members of the schemes were available in the area, not, I suppose, touting for business because I think they have got enough business to keep them going without asking for more, but being available as a means of resolving local domestic and other social difficulties arising around the streets or in the locality. I would see nothing too alarming about that.

Q12 Chairman: As a supplement to the police and not a replacement for it?

Lord Clyde: Absolutely, yes. There is no question of this being an alternative in that sense.

Q13 Chairman: But you are aware, Lord Clyde, that in certain parts of the Province of Northern Ireland it is suggested that that is precisely what they are?

Lord Clyde: That is right. I have read a very large number of articles in the press saying all sorts of things about these schemes and, of course, so long as certain communities are opposed to the police, or at least are not prepared to support the police, then there is a major problem. What I found regrettable, if I am not straying too far from the question, is that where the schemes were operating with a readiness to support the police, little encouragement was given to advancing schemes in those areas. There seemed to be a policy of no movement at all until the whole picture is clear. I was not quite understanding why, for example, alternatives could not have been processed and advanced and then, even as a pilot, demonstrated as to how the system can work, which might open the eyes of others to the advantages which those areas were enjoying.

Chairman: Thank you. Can I bring in Mr Battle and then Mr Campbell?

Q14 John Battle: Forgive me, I am very new to the Committee and this ground is new to me, so if my questions are completely naive, just tell me so, but I have still not got the clear impression in my mind of how many schemes there are. I think I have got the names of two schemes, but I do not know whether there are two, 10 or 20.

Lord Clyde: There are two umbrellas. One is Community Restorative Justice Ireland, which is, if you like, the Republican area and operates in the Republican communities. The other is called Alternatives and that is also an umbrella. So far as CRJI (although I have always tried to avoid these acronyms), Community Restorative Justice Ireland

is concerned, they have got or had about 14 other organisations, other schemes. The Alternatives have about four.

Q15 John Battle: I do not know about the people involved, but it is really about the types of offences and the scope of the Protocol. If I could just draw a quick parallel, there are real arguments in my city, Leeds, about the role of community police support officers, whether they displace the police, wandering around the community, or do the same job, what is the interface and the rules of play between them and the “normal police,” but more importantly we also have this terrible acronym, the ASBO, the Anti-Social Behaviour Order, and they are very different offences from the offences the police can deal with. I am not clear in the Protocol what is the difference between low-level crime and serious crime. The CPSOs in my city cannot deal with domestic violence or child abuse, for example, they are kept clear of those areas. Are there guidelines and rules of which offences constitute low-level crime and which are serious matters? Are they spelt out in the Protocol so that there are clear directions on the ground?

Lord Clyde: No. It is a matter which has been exercising people, I think, ever since I got involved in this area at all and that is now over three and a half years, should there be a definition for low-level crime, which was the phrase used by the authors of the Criminal Justice Review. My feeling has been that there should not be, because it is extraordinarily difficult to devise a sufficient definition. I think you can identify low-level crime when you see it and provided there is a police or a Prosecution presence, they will know when they see it whether that is or is not low level crime. If one wanted to seek a definition—and I do not think one should—one might have a look, I suppose, at s5 of the 1967 Act, the phrase about arrestable offences, which would solve any anxieties anybody may have about the application of s5 in these cases. But I would not be favouring that course myself.

Q16 John Battle: So would there be guidelines given to the people implementing the policy on the ground? It may be clear to a court, but would it be clear on the ground?

Lord Clyde: I think it is clearer on the ground than it is to a court, and I do not think this would be a matter which would be an issue for a court in any event. I think when a neighbour sees a young person breaking a window he would say that is low level stuff. If you see them murdering someone, that is not, and if you start working through examples in most cases I think it is easy enough.

Q17 John Battle: And domestic violence?

Lord Clyde: It depends on the degree of it. Of course, it may not be into the criminal sphere at all. There is a kind of grey area, which is quite difficult to define. If there is domestic violence, almost certainly the schemes will be ready to resolve differences. That is part of the functions which they carry out, and it may even be short of crime altogether.

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Q18 Mr Campbell: Lord Clyde, you have mentioned in answer to the previous question the issue of the policing, or in the context of the Republic the CRJI and the Republican groups, the lack of policing involvement. Given that the Protocols, as we understand them to be, are going to require the police to be involved, taking that in the political context where there is not yet Sinn Fein or Republican support for policing, what do you see emerging over the next few months? I know you are the former overseeing Commissioner, but given your experience, if Republicans continue not to give support to the police and we have a context emerging of Protocols which require direct contact with the police, what do you see as the possible outcomes there?

Lord Clyde: The CRJI schemes, the Republican schemes, will not be able to be recognised under the Protocol.

Q19 Mr Campbell: Yes, I think that much is clear, but the crime, low level crime as it is sometimes called in those areas, one assumes will continue?

Lord Clyde: Yes.

Q20 Mr Campbell: In the absence of those schemes and in the absence of support for the rule of law by the people who give political leadership in those areas, what do you think that is likely to lead to?

Lord Clyde: One thing which I hope it would not lead to is the vacuum which I expressed concern about in past reports. I do not have the confidence to make a strong forecast of what is likely to happen, but I can certainly envisage a situation in which the CRJI groups would carry on as they are and the alternative groups would be, as it were, brought into the fold in partnership with the state system.

Q21 Mr Campbell: So how would you see the CRJI schemes continuing, as they are?

Lord Clyde: Provided they have got the financing. If they do not have any financing, then they will wither and die and a lot of good work and good people will be lost.

Q22 Mr Campbell: We understand that previous funding which CRJI would have had access to is now about to be discontinued. If that were the case in the context we are currently talking about, then they would wither and die, as you have said?

Lord Clyde: Yes.

Q23 Mr Campbell: Then coming back to my question, what is likely to happen in those areas in the context of people who give political leadership in those areas continuing not to give support to the rule of law, to the police?

Lord Clyde: I would be very alarmed at that situation, because that is the kind of vacuum which could well open the way to going back 10 years and just opening up the very kinds of practices which these schemes were created to counter. So that is a doomsday scenario which I hope is hypothetical. I took some comfort from reading the report of the St

Andrews statement (if that is the appropriate way to describe it), which did indicate that perhaps at last there is a breakthrough on the policing issue.

Q24 Chairman: Lord Clyde, if there is not a breakthrough on the policing issue—and I devoutly hope there will be—is there any place for a continuation of schemes which are in fact alternative policing in communities which do not recognise the police?

Lord Clyde: You are, Chairman, if I may say so, to an extent taking me outside the areas with which I have been concerned. I am dealing with recommendation 168. That requires the schemes to be working in partnership with the state and that was the end object of the review.

Q25 Chairman: I appreciate that, but the fact is that some of them are not working in co-operation, and should they continue to work if they continue not to co-operate?

Lord Clyde: By the standards which are set by the review, no, that is right, and I think, as I am understanding it, the problem of financing (of which I was aware as a possibility) is perhaps now more real than it was even six months ago. Then there is a possibility that they will fold of their own accord. As I say, I think that would be a real loss.

Q26 Mr Hepburn: Where does the authority come from to make the schemes work? For example, in the rest of the country we find it hard to believe that law and order can be stamped on a community without the work of the police, so when we hear about areas like the Republican areas where the police are not involved, where does the authority come from? What I am getting at is, what role do the paramilitaries play in this? Obviously this scheme is going to be working towards gaining greater confidence in the police and at the end of the day hopefully getting Republican areas working with the police. How do you see the scheme bringing that about at the end of the day?

Lord Clyde: I hope I am understanding the anxieties correctly. There can be no question but that actual persons engaged in paramilitary activities cannot be allowed to take part in these schemes. The Protocol says that, and that must be right. I can see a much more difficult question with former paramilitaries. If there has been a conviction and one is dealing with an ex-prisoner, then one could, I think, accept that they may after perhaps a reasonable time or something of that kind be trusted to be acting responsibly and in a reformed and positive way, but I hope that this is a matter of history which will fade in time. I do also suspect that the views which I am trying to express are views which the schemes themselves would immediately accept. I am not sure I understood the second question.

Q27 Mr Hepburn: How do you think the schemes at the end of the day will get these areas in the mainstream policing? How will they build

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confidence that policing actually works? Do you see it as a role of those particular schemes to build that, or to lead to that?

Lord Clyde: Yes. That is part of it. I find confidence a very difficult thing to deal with, in fact I made some observations in the sixth report, if I could just briefly give a reference, paragraphs 2.8 to 2.11, trying to analyse how confidence works. I do not think it is easy. One essential, if it is a matter of public confidence, is that the public understands what the system is and how it works and there may be some uncertainties or even misunderstandings about the policies and practices of the existing schemes even. Information is one thing for it. I do think that if the general principle is understood the merits of it can be recognised. I think there are very few people who are denying that restorative justice as a principle and as a process is a very sound approach to dealing with minor offending in particular cases. So there should be no difficulty about confidence in the principle or the philosophy of the approach, although it is novel, so that may frighten some people. The particular difficulty of the existing schemes and the feared connection with past paramilitaries, of course, is a real one and understandable, but if it can be shown that all the persons engaged in this work are innocent, have a responsible approach to the problem and do not have baggage brought with them which would give even the appearance of unjudicial or partial behaviour, then I would hope that there would be sufficient confidence created. Then if one can show and demonstrate that the schemes are working and that they are working effectively and well, that should just secure the confidence which they deserve.

Q28 Mr Anderson: Given what you have just said, that we would get there, can you comment on the suitability of staff who would be recruited? In the consultation which went on, 26 of the respondents actually said they believed that people should be at the same level as if they were joining the PSNI, which I would have thought was a very, very high level for anybody to meet. Do you think that the Protocols they put in place will actually make it possible to recruit sufficient numbers of people to actually carry out the job properly?

Lord Clyde: Yes. At the moment, the schemes do have their standards of staff. They have training procedures and they have accreditation for the staff, so all that is already in place. Particular standards, if somebody thinks they are not high enough, can be imposed or suggested and introduced, but I have not been aware of any anxieties or shortcomings on the part of those who are actually working in these areas. One thing I would have thought was certainly undesirable was to have some procedure set up for the appointment by the state of people who had participated in the voluntary sector. These schemes are part of the voluntary sector of the whole criminal justice system and it is not appropriate, I would suggest, for the state sector to be going to a voluntary body and saying, "You are to improve your standards." The voluntary bodies which operate, such as NIACRO and the many other

bodies which are voluntary organisations which help in the criminal justice system have their own independence, their own standards and their own procedures. If they are not good enough, then the state will not employ them.

Q29 Chairman: I accept what you say about voluntary bodies, I am sure we all do, but in the United Kingdom in general voluntary bodies, particularly those which register as charities, for instance, have to abide by certain rules and if they do not then they are no longer allowed to officiate. If you are dealing with voluntary bodies which are going to be involved with the resolution of crime, however low level, then unless those people manning those voluntary bodies are of a sufficient standard and that standard is monitored, surely their validity is in question?

Lord Clyde: I think I, and the schemes, would immediately agree with that. Yes, indeed. I am just wondering what is the shortfall or deficiency at the moment in the staffing arrangements.

Q30 Mr Murphy: To go back to the policing issues, if it was not possible to resolve politically the policing issues, in your view, Lord Clyde, would you still prefer the funding to continue in those areas without the police being involved?

Lord Clyde: From charitable sources?

Q31 Mr Murphy: Yes.

Lord Clyde: Well, I take the view that these bodies are contributing something to the locality and recognising the dangers and possibly the past histories which may be involved in them, that is certainly a danger or a disadvantage, but I think their disappearance would be far worse a fate, because in their vacuum I would not know what would take their place.

Q32 Sammy Wilson: Could I just take you, Lord Clyde, back to the point you were making about voluntary bodies and that you would not like to see interference in the employment practices, or whatever, of those voluntary bodies? These are no ordinary bodies. First of all, they are involved partly in the criminal justice system itself, a very sensitive area. They have assumed unto themselves a role in many places as an alternative to the police and I must say I am surprised at the complacency you have demonstrated about the suitability of some of the people who are involved. We have received evidence, for example from the McCartney sisters, that some of those who were involved in the cover-up of the murder of their brother are actually involved in the Community Restorative Justice Scheme. Does that not give you some cause for concern about the guidelines which are required to ensure that only suitable people are involved in these and does it not also give you some cause to think that maybe some unsuitable people have already crept into some of the schemes?

Lord Clyde: Of course I would share that concern, that must be right, and that is why I say there is absolutely no question but that those engaged in

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paramilitary or terrorist activities cannot sit on these bodies. That is absolutely right. I am only going by what I have seen and I did not meet, so far as I was aware, but this may be an over-innocent view, people who were currently engaged in undesirable activities who were actually at the same time sitting on these Restorative Justice practices. I may be wrong. If there are, then I quite agree, they should not be.

Q33 Sammy Wilson: Would you not also agree then that given the concerns which have already been expressed, and some of the evidence which has been produced, that there is a need for interference in the employment practices of these groups even though they are, as you have described, voluntary bodies because of the sensitive nature of the work?

Lord Clyde: I am certainly accepting, if you like, interference. I am certainly accepting that those who are, I hope, going to work with the schemes will want to be satisfied that the people who are operating the schemes are responsible and appropriate people. That is certainly so. What I would hesitate to say is that the state must appoint the people who are doing this because this is an operation which is in partnership with the state; it is not part of the state side, as it were. This is not another agency in the criminal justice system on the state side.

Q34 Sammy Wilson: Should a state agency have the job of vetting those whom the groups decide to recruit?

Lord Clyde: I would have no difficulty, and I do not think the schemes would, if there was a concern raised and the question was asked.

Chairman: I will just bring in David Anderson for the final question.

Q35 Mr Anderson: My concern on this was that I attended a meeting earlier this year in this place hosted by the Member for South Belfast, but he is not here today, with some of his constituents who had actually gone through this process and they were very, very concerned about some of the people they were working with and who were officially the representatives of the CRJ in their area. Do you

believe, as we have been advised, that the Protection of Children and Vulnerable Adults Act will form the basis of this? Do you think we can avoid that happening in the future? Do you think what has been put in place will work?

Lord Clyde: I think these schemes can work, yes, and I would have thought that disclosure for working with children and others who require particular care was perfectly appropriate. I cannot say with accuracy precisely what qualifications are sought at the moment, but those are the quite appropriate requirements in amongst the various ones for saying who were the appropriate people to sit, or not.

Q36 Chairman: Lord Clyde, I think we could pursue this for a great deal longer, but we are grateful to you for coming. We have some other witnesses to see, and of course you are most welcome to stay and listen to the other sessions if you wish. I infer from what you say that you do believe these schemes have a real place, but you also do seem to accept the absolute necessity of high standards and an equality across the community so that you cannot have some schemes which are masquerading as the police and others which are genuinely supporting and upholding the police. That would not, I hope, be putting words into your mouth, would it? Well, it would, but I hope it would not be misinterpreting you.

Lord Clyde: My only hesitation, with the greatest of respect, Chairman, is in relation to the last part, if it is suggesting that one has to stand back and wait until everybody is ready and every area has a scheme and every scheme complies with the high standards. I do not see why one can not start and find some area, or even start a new one, which would give a demonstration of whether this does work or not, or how well it works, or how badly it works. It would be, I suspect, an example to all the others of what can be achieved and it would be, I think, a matter of very great distinction for Northern Ireland if this exciting and innovative kind of process could be part of the criminal justice system.

Chairman: Thank you very much, and thank you for what you have sought to do for Northern Ireland. We are grateful to you as a distinguished public servant. Thank you very much indeed.

Witness: **Mr Kit Chivers**, Chief Inspector of Criminal Justice in Northern Ireland, gave evidence.

Q37 Chairman: Mr Chivers, we are delighted to welcome you. Thank you for coming. You have heard what Lord Clyde has said and the answers to the questions which he has given. Before I ask you specific questions, would you like to take up anything Lord Clyde has said?

Mr Chivers: No, I think we can proceed straight to fresh questions, Chairman.

Q38 Chairman: Thank you very much indeed. Give us your assessment of the existing CRJ schemes and what you see as the main risks and the main opportunities.

Mr Chivers: Before I answer that question, Chairman, could I emphasise the difference between the current schemes, the schemes as we know them, and the schemes as they would be under the Protocol, because the schemes as we know them were devised for a different world, a world which hopefully is now moving into the past, and the Protocol is designed for schemes in the future in a regime in which there is full communion with the police in all parts of the Province. I think the calculation of the costs and benefits, the risks and opportunities of the schemes is completely different in the two scenarios, so anything I could say about the schemes as they were would not necessarily bear

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on the schemes as we are looking to the future. If I could then answer your question, or rather fail to answer it. I fail to answer it because inspectors generally only talk about things which they have actually inspected, and I have not inspected the schemes. I have had some conversations with representatives of the schemes, but I have quite deliberately stood back from them and not inspected them for maybe three reasons. Firstly, because it was not in my authority to inspect them. Secondly, because there would be a danger, if I had gone in and purported to inspect them, that I would have been appearing to endorse them. I do tend to go around expressing interest and enthusiasm, and so forth, and that could have been prejudicial and could have raised false expectations in the schemes. It could, likewise, have prejudiced views about the role of the inspectorate because I have to be a dispassionate inspector. At the time when I am asked to go and inspect them, I must be seen to be doing so with complete neutrality and without any partiality to the schemes. So for that reason I have stood back, I have not inspected them. I have listened very carefully to things which Lord Clyde has found out about them, I have listened to things which the Independent Monitoring Commission has said about them, and other people who have commented on them, but I have not myself, as it were, taken evidence on them.

Q39 Chairman: Thank you very much indeed. You talked about the difference between what we hope is the past and what we hope will be the future. What are your overall impressions, therefore, of the provisions contained within the draft Protocol and do you think that if these provisions are implemented we will have the sort of scheme which is necessary in an increasingly normalising Northern Ireland, if I can put it that way?

Mr Chivers: The schemes as envisaged in the Protocol, I share Lord Clyde's fear that they are likely to be quite bureaucratic. Part of the advantage of the schemes as they were was the informality of the approach, the fact that you could handle cases, very low level cases, quickly and do some good, hopefully, in that way; whereas if you move to the perfectly safe position which is created by the Protocol with all its legal provisions in it you lose the opportunities, maybe, which the schemes would offer, but the advantage is clearly that you have a watertight scheme which provides complete control by the police and the Prosecution Service of all the decisions which are being made and there is, therefore, a different calculation of costs and benefits.

Q40 Chairman: Are you suggesting that you would prefer not to have a Protocol?

Mr Chivers: I am not. I can see advantages in the schemes in the new highly regulated form, and indeed that must be the world that we prefer to move to. So definitely that will be a good thing, but I think we have to be careful that we do not lose the distinctive character of the schemes as Community

Restorative Justice Schemes just because we are making them fully police compliant and an integral part of the criminal justice system.

Q41 Chairman: Just expand on that a bit for me. If we are going to lose, what would you most regret about what you think would be lost? Just give us examples, if you can.

Mr Chivers: Yes. I used to be the Chief Inspector of the magistrates' courts in England and Wales and I have a long-running concern that the way we administer criminal justice is over-legalistic in many ways, that we bring in lawyers at every stage, and bringing in lawyers is not the only way of protecting people's human rights and ensuring that justice is done. You do not have to do that in an adversarial context, and the thing which really made my spirits sink in the Protocol is the idea that legal advice is going to be available at every stage with every minor dispute which comes into the context of these things. It is good that all decisions under the new regime will be taken by police officers. We would not want people in the schemes to be taking quasi-judicial decisions, even if they are decisions not to regard something as a crime. We all know that what is a crime and what is not is potentially a fuzzy area, that you could regard every playground scrap as an assault and every bit of minor criminal damage as crime. Police officers all the time exercise discretion about these things. It is absolutely right that if anyone is going to be exercising discretion it should be police officers, but if you are bringing things into this structure you have got to retain that degree of flexibility and responsiveness because the great advantage of this is that you keep things outside the formal criminal justice system. Once things get into the formal criminal justice system it can take four months for a police officer to give a caution to a child and the purpose is completely lost on the child. What I am constantly striving for is a system which produces genuine, legitimate summary justice; not kangaroo courts or anything, but summary justice which is administered quickly and flexibly and actually responds to the needs of the community in relation in particular to delinquent young people. I am not sure that we have actually got a structure here which provides those sorts of benefits. We are guarding against the risks, which it is perfectly right to do, but are we losing some of the potential benefits.

Q42 Chairman: Have you made these views known to ministers?

Mr Chivers: No, I have not yet, Chairman.

Q43 Chairman: Well, you are doing now. You realise that, do you not?

Mr Chivers: Indeed.

Q44 Sammy Wilson: Could I just follow up on that. I agree to a certain extent with the need to have flexibility, but given the fact that in many areas these groups are simply seen as an extension of paramilitary organisations, almost vigilante groups with some kind of formal structure to them, do you

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not agree that if we are going to remove some of the bureaucracy then there needs to be two things? First of all, there needs to be even closer involvement of the police in the schemes and not, as the Government envisages on some of the schemes, a very loose involvement of the police, and secondly there needs to be strict vetting of the people who are involved in administering and operating these schemes. If those two things were tightened up, would you accept that that may well be a balance to the involvement of solicitors or barristers, or whatever, at every stage of the process?

Mr Chivers: Chairman, in fact I think the Protocol does actually provide for that. It is very clear there will be vetting of people working in the schemes and the police will be fully involved. In the original guidelines, if you remember, they were constructed in a world in which it was a question of trying to build little walkways across to the police and maybe working through intermediaries, and so on and so forth. That is not the case in the new Protocol. It is very clear the police will be directly involved in the administration of the schemes. All the decisions will come before police officers and be referred to the Public Prosecution Service where necessary.

Q45 Sammy Wilson: I am not quite sure that that is the case, because my understanding is that 80% of the cases which these groups deal with currently will be outside the Protocols, they will not be subject to the guidelines, and therefore you will not have that degree of involvement. That is one of the concerns I have, and I have got great concerns about the scheme anyway in many areas, but with 80% of their work being outside the guidelines then of course you do not have the kind of involvement that you are talking about.

Mr Chivers: Mr Wilson raises a very important point, Chairman. There is a question in the Protocol about whether I should inspect the non-criminal activities of the organisations as well as the criminal and I have always taken the view—I did on the original guidelines and I shall do in my submission on the new Protocol—that it is essential I should look at both, because this borderline is crucial. There will be cases when people will come to the schemes and register that something has happened, apparently criminal, but will be prepared to make a statement to the scheme and will not want to make a statement to the police, and we shall need to be crystal clear that anything you say to the scheme is also repeated to the police. There can be no question of the scheme deciding that something falls below the level of what needs to be reported to the police, and that is something I would very much want to inspect, because that could vitiate the whole process.

Q46 Chairman: You are making it plain now, clearly, and we are grateful for that, but you intend to make this a major point of your official submission?

Mr Chivers: I think it is an essential point, yes, Chairman.

Q47 John Battle: I think we get a very clear impression of that interface between the discretionary element and the formal element, if you like, and your appeal for common sense. I just think that the difficulty to me seems to be the difference between what you described as summary justice turning into rough justice, and if you are dealing with a drug dealer under a shop awning that is very different from dealing with a litter lout somewhere on the ground, and I think there could be real challenges with the interface, even for the person who is accused of the offence having the proper back-up procedures. I think there are whole areas there around the Protocol. Who did the Criminal Justice Inspection Northern Ireland, your services, consult when developing your draft inspection proposals back in January? Who did you go to to get such a strong view that you express here?

Mr Chivers: I have a team of inspectors who are full of thoughts on these subjects and I did not need to go any further than that to do it, but I did in fact share the draft you have seen with the schemes and with their professional adviser, Professor Harry Mica, who has done a great deal of work in this field. I offered them the opportunity to comment on them, but in fact there was no comment.

Q48 John Battle: Would you intend to have closer contact with the schemes to see how they were working, the inspections and the rest, in the future to get involved in them in detail?

Mr Chivers: Certainly, if the Secretary of State authorises me to do this work I shall, particularly in the early stages, devote considerable resources to doing this. It would be essential. It would be essential first of all to do a pilot study in which there were some actual first-hand observations of what the schemes are doing because it is poorly documented at the moment. Professor Mica has done a lot of work on the subject and published some articles on the subject, but in terms of actual statistics or numbers of people being dealt with, satisfaction and the views of the community, systematically gathered views of the community, checking out that people are satisfied with the way the schemes are operating, there is no public information on that.

Q49 Chairman: Do you have enough inspectors? You want to do this. Do you have enough inspectors to do it?

Mr Chivers: It would certainly stretch my resources to start with. It would have to be prioritised.

Q50 Chairman: How many do you have at the moment?

Mr Chivers: I have a deputy inspector, five inspectors and two assistant inspectors.

Q51 Chairman: A pretty small team?

Mr Chivers: It is a small team.

Q52 Chairman: If you were going to prioritise this, would other aspects of your work, in which also the Committee is obviously interested, have to suffer?

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Mr Chivers: Things would have to be put back. We would have to make room for it if the Secretary of State asks me to do this. It is clearly a subject of great public and political concern, so I would prioritise it, but I must say I would be reluctant in the long term for this to consume a large part of my resources because it would be an odd way to use a small team, to devote maybe a third of my resources to this tiny aspect of the criminal justice system.

Q53 Chairman: This Committee, of course, can decide to recommend that you have more people, if it wants to. Would you like that?

Mr Chivers: It would be more work for me, Chairman, but no, I do not. I have always tried to run the inspectorate—when I say “always”, for three years I have tried to run it as a very economical outfit with a very small team. Northern Ireland is a small place and I think we would do better to have a small, highly motivated little team. I would not want to expand it unless I absolutely have to.

Q54 John Battle: I get the strong impression that you and your inspectorate wants to make this scheme work. Am I right, that you have a passion to see it through in a way?

Mr Chivers: No. I come from the Treasury, in which the word “enthusiast” is a term of calculated abuse! If the Secretary of State asks me to do something, I shall do it, and I have said that whenever I inspect an organisation, if I have been asked to do it, I inspect it in a supportive way. So if I am asked to do it and these schemes are running and the Secretary of State has asked that they be running, I would inspect them in such a way that I help them to improve, rather than setting out to destroy them, but that is the limit of my enthusiasm.

John Battle: That is not unhelpful.

Chairman: Perhaps I can ask Mr Fraser to probe your restrained enthusiasm.

Q55 Mr Fraser: That is a marvellous answer. I like your candour. You have given us candid views on the schemes. I wrote down “schemes envisaged in the Protocol are bureaucratic”; that was one of your points. Another point was that there are advantages in the scheme in a regulated form, and a positive point you made was the fact that you felt it was good that the police officers take decisions under the new scheme. Given all that you have said and given your reluctance to go further in terms of help with what you are trying to do, how do the schemes as they currently are proposed help you fulfil your role, which is primarily to enhance public confidence in the criminal justice agencies? How do they help you?

Mr Chivers: One of the great challenges, the great challenge probably, in Northern Ireland is extending policing to the whole of the community and this is being tackled on a great number of fronts and Community Restorative Justice Schemes have all along been seen (by the Independent Monitoring Commission amongst others) as one of the means by which you can spread the influence of law and order into areas where it has not been present before. It is a question of building up confidence in parts of the

community where it has not been. I know these schemes have a reputation, which means there is a risk of losing confidence in other parts of the community, but the crucial thing, I think, is to begin to make approaches, to bring people into the family of law and order, to bring individuals who are natural leaders of the community into the fold in so far as you can do so by properly checking that they are no longer involved in criminal activity. Some of these people need to be brought in and this is a way of doing so.

Q56 Mr Fraser: So from 2003, which is when you were appointed, to this meeting today have you achieved that objective of enhancing public confidence in criminal justice agencies, given the even-handedness you would like to see between the communities as well?

Mr Chivers: I have done no work in relation to Community Restorative Justice Schemes. I hope that some of the other reports I have done have helped to increase public confidence. I have done work on police and prisons, forensics, *et cetera*, which I hope have helped to improve confidence, but as yet I have done nothing in this field.

Q57 Mr Hepburn: How does the relationship work in practice for people who are not involved in this area, between the police and the schemes in forms of communication and daily contact? How does it work? To give us an idea, can you compare each side of the community.

Mr Chivers: What sort of contacts they would have, you mean?

Q58 Mr Hepburn: How does the relationship work in practice in the Republican area and how does it work in the Loyalist area?

Mr Chivers: In the Loyalist areas the Northern Ireland Alternatives has a representative of the police on its board and so there is direct contact with the police. In Republican areas it is not the case that there are no contacts. There are police officers operating in west Belfast particularly, and north Belfast, who will have informal contacts but obviously in the current political environment there are great obstacles to that on both sides and it has to be done with great discretion and care. The question is how you develop those contacts and actually move into a world in which these problems are eased and everyone can have full support for the police.

Q59 Mr Hepburn: When you say “on both sides,” from the reports we have been getting the impression I got was that it was the Republicans who were certainly reluctant to get involved with the police, but you say there is reluctance on the Loyalist side when you say “both sides”? With low level crime I did not think that would be an issue in the Loyalist areas.

Mr Chivers: There are certainly Loyalist communities where the police are not very popular either. I think wherever you are dealing with working class estates, poor estates, in any area there will be areas in which the police find it more difficult

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to operate. I think it is a constant struggle for the police to establish trust and confidence in areas of this sort. There are areas of great deprivation in some Protestant parts of Northern Ireland, as you well know.

Q60 Sammy Wilson: Chairman, Mr Chivers used the phrase that he saw one of the roles of these schemes to bring people into the family of law and order. Could I just ask, given first of all the evidence which we have had to date—Women’s Aid, for example, in Foyle have indicated that the CRJ there indicated that they would only refer cases to their organisation if they promised not to involve the police. There is a considerable amount of evidence—and I am talking about Loyalist, because I know some of the schemes in the Loyalist areas better than I would in the Republican areas, but it comes through in both—that many of them see themselves (I used the term earlier on) touting for business as alternatives to the police and will actually go to people and say, “We will deal with this, rather than the police.” That is hardly bringing people into the family of law and order. There is resistance to involving the police in the schemes, and indeed the Government had to be dragged screaming and kicking to even include direct involvement with the police under the guidelines because of resistance from these groups. Many of those who are involved in them have got, if not current paramilitary involvement, past paramilitary involvement. Given all of that, is it really not a bit optimistic to say that any of these schemes are likely to encourage people to come into the family of law and order? They see themselves as an alternative to the existing law and order system, and indeed some of them are politically motivated as well to ensure that people are pushed away from law and order as exercised by the state.

Mr Chivers: Yes. That is exactly the challenge, Chairman. The challenge is a challenge to the community. It is not just a challenge to the scheme, it is a challenge to the communities. If they want involvement with the administration of justice to be devolved to the local level, all concerned in that process will have to be acceptable people to deal with that. That is why rigorous processes are envisaged, not just for new people coming into the schemes but for existing people, people who are at present working with the schemes. It is proposed that all of them should go through a rigorous scrutiny process to establish that whereas they may have had paramilitary offences in the past, because all manner of people have had paramilitary histories in the past, in the Troubles, and were released under the Good Friday Agreement. It must be absolutely clear that they are now committed to the path of peace and are proper people to engage in these sorts of activities.

Q61 Sammy Wilson: I know that you have not done any inspections of these schemes, you told us that at the very outset, but you have had conversations with people about them. Given the kind of background which you have accepted there and given the fact that this is largely about turf wars as well, that they want to justify their own existence, what do you base

any optimism on that these schemes can actually achieve the objective which you have said you would like from that, that is to integrate people who are currently alienated into the family of law and order?

Mr Chivers: I believe in setting people challenges and I think that inspection is a way in which you do that. If they do not meet the criteria, then I write adverse reports about them and they get de-accredited. It is as simple as that. We set the criteria and we are very clear about what are the conditions on which this is an acceptable thing to do. The Criminal Justice Review was very clear about it, Lord Clyde was very clear about it, the Independent Monitoring Commission likewise. We all understand what are acceptable things to do. Exilings are not acceptable things to do. Extorting money from people with threats and menaces is not an acceptable thing to do. Turf wars and protecting drug dealers are not acceptable things to do. All these things are unlawful, for heaven’s sake, they are not just bad practice. All these things are unacceptable. We shall inspect without fear or favour and we shall report publicly and frankly what we find about them.

Q62 Chairman: Will you publish the criteria against which these things are judged?

Mr Chivers: I think the criteria are well set out in the guidelines. They are not my criteria in that sense.

Q63 Chairman: You are happy with that?

Mr Chivers: Absolutely, but I would be happy in a sense with whatever criteria were set. The policy is not for me. Whatever the criteria are which the Secretary of State establishes, I shall inspect against them and I shall report publicly and openly what I find.

Q64 Chairman: Does your Treasury background, which prevents you being an enthusiast, allow you to be an optimist?

Mr Chivers: I do believe that people are redeemable, yes. I do not think it is my Treasury background, but I have a profound belief that people are redeemable.

Chairman: I share that view, yes.

John Battle: That is technically an economic expression!

Q65 Mr Murphy: I understand, Mr Chivers, that currently there are approximately 18 schemes operating, 14 in the Republican areas and four elsewhere. Given the fears which have been expressed and given the conversations you have had, is there not a real danger when the Protocol comes into action that quite a large number of the current schemes will disappear?

Mr Chivers: It is certainly possible. I think there are great challenges for the schemes because the demands on them will be very great. It will involve all their people going through a vetting process, which will not be a popular thing. The Government is not offering any funding to the schemes actually. Unless the schemes are able to obtain funding from other agencies or from charitable sources, which seems increasingly unlikely, it may be that some of the schemes go out of business just because there is

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no funding, and it may be a less attractive environment for volunteers to work in. At the moment they have depended very heavily on volunteer support. What you are looking at under the Protocol is much more like a professional part of the criminal justice system and whether you can get people to volunteer to do that, I am more doubtful. So I do think there are big questions. I think it is quite possible that some of them will disappear. Like Lord Clyde, I have met some good people in this business and I think there are some volunteers there whom it would be sad to lose and I hope that the good will survive and will survive inspection and regulation and all the tests we impose upon them.

Q66 Chairman: Could I be so impertinent as to ask you a personal question? You referred to your implicit beliefs, and so on, a moment or two ago. I see from the biographical notes which we have been supplied with that you have had extensive experience, before you went to Northern Ireland three or three and a half years ago, in one of the more difficult areas of London. You have dealt with aspects of multi-racial community problems, and so on. Does your last three and a half years in Northern Ireland lead you to the judgment that the problems there are comparable, far worse, or not so serious as the ones you had to deal with south of the river?

Mr Chivers: Oh, totally different, Chairman.

Q67 Chairman: I appreciate that.

Mr Chivers: Totally different, in that Brixton, where I worked in my spare time for many years, was certainly in the latter years a very prosperous area, an area in which there was great economic opportunity, so the background environment was one in which the large minority community was very well placed to advance and not just survive. I think the challenges in Northern Ireland are challenges of inequality and deprivation, which are much more difficult to tackle and which need serious continued attention.

Chairman: That is very helpful and a very sobering thought. I think we are all very grateful to you for what you have said. I hope we will be able to meet you wearing other hats, because we do want to look at the prisons in Northern Ireland, and when Anne Owers came to see us she strongly recommended our talking to you and obviously we wish to do that. There are only so many things we can do at once, but thank you very, very much for your evidence. If there are other points which occur to you, obviously let us know, and please feel free to stay and listen to the third set of evidence if you would like to do so. Thank you very, very much indeed.

Witnesses: **Mr Ronnie Spence**, Chairman, and **Mr Brian McCaughey**, Chief Probation Officer, Probation Board for Northern Ireland, gave evidence.

Q68 Chairman: Welcome, Mr Spence, and welcome, Mr McCaughey. Mr Spence, you are the Chairman of the Probation Board and you, Mr McCaughey, are the Chief Probation Officer. As there are two of you—we have had single witnesses up until now this afternoon—you have heard it all, would either of you like to comment on what we have heard and to reflect on the observations either of Kit Chivers or of Lord Clyde?

Mr Spence: If it would be helpful to you, I might say a few words by way of introduction. The Probation Board's view is that restorative justice is a good thing, provided it is done well. It is internationally recognised and respected as an appropriate way to deal with certain types of offences, bringing victims, offenders and communities together to create appropriate positive action, but it has to be complementary to, and supportive of, the formal justice system. It must not be seen to be, or treated as, an alternative. That is a very fundamental part of our position on it. The Probation Board already uses restorative justice principles and practices in dealing with offenders at present where that is appropriate. We believe it has the potential to enable us to work more effectively with even more victims and offenders. We see restorative justice as an integral part of our general philosophy of trying to work effectively with the community, and we have a history of doing so with a fair degree of success, including gaining community acceptance for the work we try to do. We have over the last few years tried to work constructively with the Northern

Ireland Office and those promoting Restorative Justice Schemes to try and work our way through consideration of the very tricky issues involved in developing the approach in Northern Ireland. The present set of proposals which the Northern Ireland Office has been bringing forward are a response to the existence of the two umbrella organisations and that response reflects the context from which the two umbrella organisations come. We have tried to be as supportive as we can of what the Northern Ireland Office has been seeking to achieve. We are very strongly behind them in their emphasis in doing things in a way which gains community confidence. The Board itself has made responses to the earlier guidelines and we will, towards the end of this week, be considering our detailed response to the Protocols, and indeed I think it is fair to say that we share some of Kit Chivers's concerns about how all this will work in practice. Will it be too complicated? Will it be too bureaucratic? Will it actually work smoothly enough? In our view—and we have said this very clearly in one of our responses to the NIO—we have made it very clear that if we introduce restorative justice approaches, particularly in the very difficult conditions in Northern Ireland, if we introduce them in a way which fails, that will devalue the whole process and will make it very difficult to introduce restorative justice quickly. In an ideal world we would not want to be starting from here, but Northern Ireland is very far from being an ideal world. You can make that statement about many aspects of life in Northern Ireland, but I think it is

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valid for us to say that if we had had a blank sheet here we would have been arguing that the Probation Board should have been given the central role in taking forward restorative justice. We would have seen that as part of our work, part of all we have been trying to do over the years, to work with adults to reduce offending and re-offending.

Q69 Chairman: Could you still do this?

Mr Spence: That is certainly a possibility. We see restorative justice approaches as a natural development of our long history of working with offenders in the community and seeking to re-integrate them and seeking to help victims. Our hope would be that if the present approach being promoted by the Northern Ireland Office proceeds and works, then we will work with them to try and make sure that it does. It should be seen in a sense as a pilot approach, as a response to the particular circumstances created by the emergence of the umbrella organisations. Our hope would be that in due course if the present approach is introduced and is seen to largely work, we can then step back and say what should really happen generally. We can, over time, maybe within the next five years, get to a situation where we would have a comprehensive approach to restorative justice solutions which could operate right across Northern Ireland, not just in areas which have suffered from paramilitary influences, and you could see restorative justice approaches being applied in other areas, including those which currently we would not be considering, including middle-class and settled parts of the community. That is our position.

Q70 Chairman: Thank you for that. I intervened briefly when you said what your ideal would have been and could you do that still, and your colleague, the Chief Probation Officer, nodded vigorously at that point. Could you? Would you like to? Are you going to make it part of your submission that you should?

Mr Spence: No, I think we are where we are. A lot of work has gone into the analysis of the issues and the development of proposals which might be acceptable. I think the right thing to do is to put that in place and try it. But if it works, I think we should try to look at a more comprehensive approach, which would place restorative justice techniques in the right context as just one of the tools which the Probation Board would and should use.

Q71 Chairman: So accepting that you are accepting the reality, and also recognising that you have not yet made your formal submission, would you like to tell the Committee a little bit about how you would ideally see the Probation Service playing a part in the new scheme?

Mr Spence: If we are talking about the blank sheet situation and we have not got the problem of dealing with organisations which have come up with a paramilitary background, we would see a situation in which we would, on a regular basis, advertise and invite applications from organisations which wanted to develop community restorative justice

approaches in their community and we would get responses, we would hope, from Loyalist communities, Republican communities, from middle-class towns and from disadvantaged communities, it would not be confined to any particular part of Northern Ireland. We would commission those projects, as we commission other work from the community, from the voluntary sector. We would commission them to carry out particular services, which we would specify. We would have standards and we would seek the same sort of inspection arrangements which Kit Chivers is going to provide on the NIO approach. We would see that being very appropriate in that blank sheet situation.

Q72 Chairman: Could you do that with your existing resources, or would you need to have a significant increase in them?

Mr Spence: I think what we are going to see over the next few years is greater use of the Probation Board in managing offenders in Northern Ireland. That will need extra resources, and this would be just one of the additional areas where we would have to work.

Chairman: That is very fascinating.

Q73 Sammy Wilson: Could I just come to the Protocols, because there are two which directly involve the Probation Board. The first one is the actual involvement of the Probation Board and the people who go through the schemes and the monitoring of their conduct. Originally you were to be the message boys for these groups to the police, the conduit along which the information flowed. Reluctantly, the Government has agreed that the police should have direct involvement. From my understanding—and I just want you to clear this up, if you could, for me—is that the only involvement of the police is that when somebody comes to the notice of one of these schemes they must pass on to the police as quickly as possible any appropriate information they believe the police would require. A letter would do. They would never have to involve the police directly in the structure or whatever. Is that your understanding of how the scheme has to operate or the minimum which is required from the scheme to have contact with the police to meet that part of the Protocol?

Mr Spence: Yes. We are happy with the general thrust of the approach which is now being proposed. We did not like being the post office. We prefer the approach which is now being proposed. I think the difficulty is we do not know how it is going to work. There is a danger that it becomes very bureaucratic and paper-bound. It needs to work in a flexible way with all the players having—I will not say an equal role, but all the players being seriously involved and being seriously involved in the decisions about how somebody should be treated and managed.

Q74 Sammy Wilson: You talked about the role you would see for the Probation Board and you have outlined a bit of that, and I am happy with that, but do you see that as the same as the role the police

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would have to have, because this is what the Protocol says, that they must pass on to the police as quickly as possible all the information the police would require? Does that simply mean that the scheme could get away with sending to the police, “By the way, we’ve got Sammy Wilson. He broke a window and we’re now dealing with him,” end of story?

Mr McCaughey: May I attempt to answer that, Mr Wilson? That is not how I understand it. I understand that the information was to be immediately brought to the attention of the police. They would have a number of checks in relation to that individual because that individual may have come to their attention for other matters. Examples, for instance, which have come to my attention is the example where a name is given to the police in connection with a car crime and the police may be investigating that individual for a number of other matters and therefore in their discussions with the Public Prosecution Service would say, “No, that matter cannot be dealt with through that scheme because there are wider issues.” So it is not just, “Here’s the information. Can we go ahead?” There is some investigation. That is my understanding.

Q75 Sammy Wilson: Yes, and that is fair enough. The police can then, if the individual is known to them or they suspect he has been involved in other things, or he has been involved in a number of other serious things, say that this is not an appropriate way. But if it is decided that yes, in the light of the information which has been received by the police, this person can go through the scheme, what involvement is there for the police at that stage, because according to the Protocol the scheme has done all that it is required by passing the information on to the police? There is no indication that the kind of thing which Ronnie has outlined the Probation Board would like to do, or involvement that they would like to have, but the police will have that. Not according to this Protocol. What do you see as the role for the police after the information has been passed on and after the police have said, “Yes, we believe that the scheme is the appropriate way of dealing with this individual?”

Mr McCaughey: I think the roles are two entirely different roles. The Probation Board has a history, since 1982, of working in, with and through communities and helping to form partnerships and schemes with community groups, and that is what these groups are. They are not voluntary organisations, they are community groups, and there was some discussion about that earlier on. So we have got a long history in allocating a significant amount of our budget to forging these partnerships, to help to reduce crime in local areas. The job of the police is to investigate crime and in the instance I have described it would be them who would say to the scheme, “Yes, go ahead. This is appropriate.” But I had understood also that they would be issuing some sort of informal warning or there would be some mark against the individual who actually decided to participate in the scheme.

Q76 Sammy Wilson: But the police will have no involvement. This is at variance with what we have been given earlier. I did not take it up at that stage because I did not believe that we were getting an accurate picture of it anyway, but I wanted to follow it through with you because you are actually dealing with the day-to-day running of these things. There will be no direct involvement of the police in the schemes on a day-to-day basis, looking at what is happening to the individual, monitoring whether the action taken is appropriate, or whether, indeed, it is what the police would have envisaged as happening once the person is in the scheme. The involvement of the police is still an arm’s length involvement. In so far as the information is passed on to them, they okay a person under the scheme and they can be blanked out after that, is that correct?

Mr McCaughey: Again, I repeat, I think there are two different roles. I think the role of the police is investigatory and to give permission to the schemes to go ahead. I think the other role you describe is one of quality assurance. Are they doing it properly? Have they got the knowledge, the skills and the competence and are they carrying out what they have said they would do properly?

Q77 Sammy Wilson: Well, you see, that is not correct because earlier on when Lord Clyde was giving his evidence, the advantage he saw was that people would be sitting around a table and the police officer would be there and would be able to exercise a certain amount of discretion and quickly get decisions made. Now you are telling us that the Probation Board sees this totally different. I suspect that your picture is more correct than his.

Mr McCaughey: Chairman, if I could give my experience, having been involved with both schemes.

Q78 Chairman: Please do, and feel free to expand on it. I want to bring in Mr Battle, but Mr Wilson has raised a very important point.

Mr McCaughey: I think, Mr Wilson, what has been described to you is the management committee of some of the particular schemes. I think that was the example provided where you had the police officer and a member of social services and the local community. That is the management committee meeting on a quarterly basis. That is not how I understand they manage the cases. So I would agree with you, there is not a multi-agency case discussion but an individual referral. Do you follow?

Q79 Sammy Wilson: I do follow, and now you have confirmed the concern which I have, because my understanding was—and this is what is being sold now by the Government—that there will be total involvement of the police with these Community Restorative Justice Schemes. Lord Clyde’s understanding was that the police would be involved in the individual case, able to go to and fro, and people would be very happy with that. But now we are back and you are describing the situation which many of us feared, that the police would simply be told, “Here is an individual. They would then pass

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over that individual to the scheme, or not pass him over to the scheme and would have no further input.”

Mr McCaughey: Chairman, that is not what I described. I said my interpretation of what you had heard earlier on was a description of their management committee.

Sammy Wilson: The management committee would hardly discuss individual cases, and that was the context in which that was described.

Q80 Chairman: Let the witness answer as he thinks appropriate and we can always take it further. You are saying that there has been a confusion between two parts of the same body, between the management committee and the regular administration of justice within the body? That is what you are saying, is it?

Mr McCaughey: That is correct, and I believe that the new Protocols as outlined do give a role for the police, and a strong role for the police, in giving schemes permission to go ahead or not to go ahead. I understand that they have also a role in ensuring that that is linked to some sort of informed warning or caution.

Q81 Chairman: But in the overall management of the scheme the role of the police is participatory but slightly arm’s length? That is what you are saying?

Mr McCaughey: It is not what I would call case management.

Chairman: No. I understand the difference between the two and it is very important to have it on the record.

Sammy Wilson: I want to develop the role of the Probation Board.

Chairman: I want to bring in John Battle at this point.

Q82 John Battle: I want to take what Sammy Wilson has said a bit further. I think it is a great first session of the Committee, if I may say so, Chairman, because I am going to go away now with a lot more questions than I came with. The reason for that is that I do share their concerns in a way and I would like to be absolutely clear in my mind whether a body, a community group—I do not know the context, but I am just imagining it, others know it better than I—make the decision of referral to the police, because if they are in a position to make the referral, they may decide not to refer someone when it is quite a serious matter. If I turn the question around the other way and ask it in the form of a question, as I asked the other witnesses, am I worrying unnecessarily about the nature of the crimes referred to in the scheme? Should I be worrying about distinctions between low level crime and more serious crime? I am massively in favour of a scheme which deals with low level crime in the neighbourhood and saves the whole court system, the legal aid, and all the rest of it, but what I worry about is that line and interface between low level crime, as we may describe it, and where it sheers into

more serious crime where the decisions are left in the community even, perhaps, without referral to the police. Could that happen?

Mr Spence: I am going to try to answer the question and my colleague can tell me where I am wrong. I think in my ideal world we would have this process whereby everyone agrees that this individual should be referred into one of these schemes. The schemes are highly professional. They have well-trained people. They have protocols, they operate to a high standard, and those schemes decide what is the best way to treat this individual to make sure he does not re-offend, to make sure that he goes to see the victim and deal with the problem, and that the community now accepts that this individual has now behaved improperly. That is all done within the schemes. The schemes themselves are subject to scrutiny by the Criminal Justice Inspectorate. So they are going in every now and again, looking at individual cases if necessary, looking at how the organisation is performing. There is also a complaints process so that someone who is dissatisfied with the way an individual has been treated—it could be the victim, it could be the offender himself—can come to the Probation Board and we have got a formal complaints process in position. If, in working with this individual, who is not complying with what we have suggested, that is not going well one might expect the police and the Probation Board to get formally involved again because it was not working; the referral had not worked, and it would be either an informal or a formal return to the criminal justice system of that individual because the process was not operating in the way we thought. So the police would not be involved in the day-to-day management of the offender, but there would be safety nets to try and pick up cases which did not work effectively.

Q83 Chairman: Do you wish to add anything?

Mr McCaughey: I do, a slightly different take on the question. Communities must refer to the scheme under the Protocols. They have no option but to refer to the police. That is the first thing.

Q84 John Battle: They must refer to the police?

Mr McCaughey: They must refer. However, a concern we would have is with the definition of “low level crime”. I think it is a vague area, a grey area, and we could debate for the next hour where the cut-off point is from anti-social behaviour to low level crime. In my experience, the schemes have dealt with not low level crime.

Q85 Chairman: Would you like to amplify that a little?

Mr McCaughey: I have examples where we had a conversation about car crime. Car crime is a very serious crime.

Q86 John Battle: Stealing cars or smashing them up, you mean, when they are parked on the street? What do you mean?

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Mr McCaughey: Stealing them.

Q87 Chairman: I really think it is important to get this on the record. If you could expand on this with some examples, it would be very, very helpful.

Mr McCaughey: I have had contact with the schemes for many, many years now and the Criminal Justice Review and the guidelines and subsequent Protocols have introduced the term “low level crime”. These schemes have been in existence for a long, long time. We are imposing the term “low level crime” on the schemes, but to my knowledge they certainly do not get involved in offences of a sexual nature or domestic violence. I think they do see that as outside their area of expertise, at least that is what I am told. I have no direct experience of that. But they are really directed by the victim. The victim is central in restorative justice and if the victims are saying they do not wish to go through the formal justice system that seems to be the priority for support to be necessary. Is it low level, medium or high level crime?

Q88 Chairman: Is it true that a certain amount of physical violence, including knee-capping, has on occasions been so treated?

Mr McCaughey: Can I firstly clarify that “Alternatives” originates from alternatives to punishment beatings and knee-capping, it is not alternatives to the criminal justice system or formal justice. It was set up as an alternative to reduce and prevent punishment beatings, punishment shootings. I have no knowledge of where people have been knee-capped or punished in the nature of these schemes.

Q89 Sammy Wilson: It is correct, Mr McCaughey. We have actually had people from Women’s Aid speak to us where some of these schemes have tried to deal with rape cases and have tried in fact to persuade women to remove their evidence because some of those involved were involved with the IRA.

Mr McCaughey: Chairman, I have no knowledge of that and I would not accept that practice whatsoever. That is a very, very specialist area and if this Committee has received evidence in that regard, I cannot dispute it. I have no experience of that.

Q90 Chairman: You have no experience. That is absolutely fair. It is a very fair question and that is a very categorical and helpful answer, but you did say—and you did not actually give us many examples—that you were unhappy about the definition “low level crime”.

Mr McCaughey: I have been engaged in conversation with the schemes about the type of work, but I have not investigated them, I have not examined the case files, but in conversations and meetings I have asked them of the type of work they would be involved in. It has been quoted to me, car theft, and I queried would they actually see that as legitimate. They would take their lead from the victim and if the victim did not want to raise car

crime, be it car theft or damage to a car, or criminal damage to a car, they would take their lead from the victim.

Q91 Chairman: So it is victim-driven?

Mr McCaughey: We then entered into discussions, is that one car or could that be five cars, and who actually would have that information? The police, and my argument was part of the discussion and the debate as to why the information needed to go to the police to make the overall decision as to whether schemes should or should not deal with the matter.

Q92 Mr Murphy: Could we take that a stage further? Could the victims, therefore, say that they did not want any police action if they were assaulted?

Mr McCaughey: That is a matter for the victim, who may well say in the circumstances, “I do not want to go through the formal justice system.”

Q93 Mr Murphy: But could the police not therefore intervene in that case? Rather than allow the scheme to deal with it, could the police not say, “Well, whether you like it or not, I am afraid it’s that serious, we know who it is, it’s a crime”?

Mr McCaughey: Absolutely. That is the strength I see in the Protocols. We are comparing what may have happened in the past and what must happen in the future, and in the new world when everybody has signed up to the Protocols, I would anticipate situations with the police and the Public Prosecution Service, because it will be their decision to bring a prosecution, the Public Prosecution Service, not the police. The police detect crime and bring it to the Prosecution Service and they will decide whether to prosecute, but the weight of evidence will probably lean towards prosecution through the formal justice system.

Q94 Mr Murphy: There is always the fear that the individual who has been attacked could also be intimidated not to give evidence?

Mr McCaughey: Yes. I appreciate that.

Q95 Sammy Wilson: I just want to ask, in this rose-tinted world of yours do you not see the chance of somebody coming round and saying, “You really don’t want this reported to the police, do you?” I have got to say, we are not living in a new world yet. We are living in a world where you have got schemes which are occupied and are run by people who have, at best, past criminal records, and indeed maybe even current criminal involvement, and to simply say, “Well, of course, if something like this happened, the police could still deal with it,” the danger is that we are giving legitimacy to the very people who are in these schemes who do not want people to go near the police because they want to protect individuals, or whatever?

Mr McCaughey: My response to that is, yes, I did participate fully with the Northern Ireland Office in moving the process along from guidelines to Protocols. The Probation Board does believe that restorative justice is a positive way of working and will be beneficial to solving crime in communities.

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The Protocols as presented by the Northern Ireland Office do provide us with a real opportunity to involve communities, to place victims central. In my world, when groups sign up to these Protocols they have no choice but to report the matters, no choice and, whether it is through complaints or inspection, if somebody reported under the scheme we would hope that we would be able to establish that.

Q96 Chairman: I do not think anyone would dispute your good faith. I do not think any of us would not share your hopes, but this Committee produced a detailed report on organised crime in the summer—you may have seen it—and we received a lot of our evidence, we had to, *in camera* because people were not able to give it in public, and the reason they were not able to give it in public (it is spelt out very clearly in our report and the recommendations which we made) was that in many, many cases they were too afraid to give it in public. I am not talking of old ladies, I am not talking of young children; I am talking of men who had served in the Armed Forces, I am talking of men running businesses, and so on, who frankly were afraid to give their evidence in public because of the intimidation which they knew they or their families would be subjected to. We all devoutly hope and pray that Northern Ireland's society in a few years time will be so radically different that that just will not apply, but at the moment it does, and we are worried, therefore. Your remarks, set in the context of what we, from our investigations, know to be the case, do make us worried.

Mr Spence: There are certainly dangers that victims could be intimidated or persuaded not to allow their case to go through the formal justice system or to have a case proceed under restorative justice which should be dealt with by the police and the courts. That danger is there. That is why we have said we should only introduce these schemes if we are confident they are really going to work and that the safeguards are there. Our call at this time is that the safeguards which we are trying to build in through the Protocols, the complaints process, will be there. The presence of people from the statutory bodies in managing the offenders in relation to the schemes, the intelligence which we will have on the ground of what is actually happening will help to pick up some cases, and the penalties are there because the schemes can be removed from accreditation by the Northern Ireland Office, and the criminal justice inspector can go in and look at what they are doing generally. So there are safety nets there, as I said earlier, but I do not think they can totally guarantee that, given our troubled history in Northern Ireland, the risk of intimidation can be totally removed at this point.

Q97 Chairman: But it is incumbent upon all of us to see that that risk is reduced to the absolute minimum, is it not?

Mr Spence: Exactly.

Q98 Mr Campbell: I just want to follow on one point there and then a subsequent question, if I can, Chairman. Just to be more precise about this, let us say we have a position under the new schemes with the new Protocols in place where a person is suspected of a low level crime, the police have insufficient evidence to charge him through the formalised structure either for that crime or for other criminal activities, and someone somewhere arrives at the victim's door and says, "Look, it's not really appropriate for you to accept CRJ involvement." Would there not be a de-incentivisation for the police, who may be thinking, "Well, we haven't got enough evidence on this guy and he's going to CRJ anyway," and then somebody somewhere puts the pressure on the victim to ensure that CRJ do not get involved either because the victim has been persuaded not to bother and it is more than their life's worth to allow them to?

Mr Spence: I think in the real world of Northern Ireland that could happen, yes.

Q99 Mr Campbell: And when it does, what happens?

Mr Spence: You hope over time that those incidents get smaller and smaller as the policing situation improves and as the community accepts more genuine ownership of trying to deal with those situations and with those offenders, but I do not think anybody could say at this point in time you could eliminate that sort of danger.

Mr McCaughey: Chairman, I will be absolutely clear so that the Committee is clear. We are supportive of Restorative Justice Schemes but only when the police have a full role to play, when there is no paramilitaryism and when there is no resort to violence or pressure, or coercion, if the Committee hears that. We do think that it is an opportunity to bring criminal justice closer to communities. We actually do believe that it is a possible way of enhancing policing in communities. There are threats around as well, and we are aware of that, in terms of threats to the existing ways of doing things, to my own staff practices, but I think in the interests of involving communities and having a comprehensive scheme it is worth the effort to pilot and test that.

Q100 Mr Campbell: Chairman, if I could just develop a different theme? Mr Spence, you said some time ago when answering another question on the issue of the existing schemes, where they are and the number of them, that you envisage other communities and schemes emerging. Given that there are 18 at the moment, or thereabouts, if we looked ahead two or three years, whether through rose-tinted spectacles or any other colour, realistically speaking if you are talking about rolling out some sort of revised CRJ with the Protocols in place, hopefully everybody giving their support to the police, how many would you see in three years' time?

Mr Spence: There is a danger there could be too many, but if you take one of the quieter towns in your constituency, you could see a situation where responsible people in the community would come

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together and say, “We’ve got to find a better way of managing the young hoods here. Putting them through the formal justice system is too slow, too convoluted and does not really work. Let’s all work together to try and manage those people in the community and lead them in a more positive way and try and deal with the damage they have created in the past.” I could see that happening, but we would have to deal with it in response to demand. You could get the situation where it is so badly awry that you cannot cope with it. The position we are in now is that we are responding to these umbrella organisations, who are working predominantly in areas where paramilitary organisations have been strong. I am saying that over time you could see Restorative Justice Schemes developing in more settled parts of the community and having considerable community support.

Q101 Mr Campbell: Yes, although the converse of what we have been talking about for 25 or 30 minutes is that if you got over all the difficulties and there was no question in two or three years’ time of any paramilitary involvement or influence, past or present, you might actually find, in some of the areas where there are anti-social behavioural problems by young people, if all those problem areas had been resolved, a resource implication if it was the case that large numbers of organised community groups, totally divorced but not involved in any way with paramilitaries, might see this as a much better and more effective way of dealing with very low level anti-social activity. How would you cope with that if you have hundreds of these schemes springing up?
Mr Spence: Yes. I have to hold my hands up to that, yes, but I think you have to rely on the good sense of local communities. I think as a whole we remain in accord that it is better and cheaper to deal with these people at an early stage of their offending career rather than them carrying out some more serious crime which carries even greater penalties for the victims and for society as a whole.

Q102 Chairman: Mr Spence, reliance, trust and hope are wonderful things and I believe in them, but unless they are guided by experience they can cause all manner of problems. Is not the key to the success of these schemes the people who man them, and are you content and is Mr McCaughey content that the Protection of Children and Vulnerable Adults framework is sufficient to weed out, and where would you draw the line as to who should be allowed to serve and who, because of his or her background, should either never be allowed to serve or not be allowed to serve for a very long time? Would you like to reflect on those points?

Mr Spence: We have agreed with the approach which the Northern Ireland Office is suggesting to deal with the suitability question and we have agreed in principle to take part in the process to decide whether individuals are suitable and in principle whether the probation officer should form part of that suitability assessment. There are doubts in our own organisation about the evidence which will be available to make some of those judgments, and that

is one of the things we want to tease out with the Northern Ireland Office, how this will actually work in practice, what information will be available to the panels which are deciding suitability, but the general principles which the Northern Ireland Office has set out we are comfortable with and we think we can work along with them.

Chairman: Yes, general principles, fine, but you have just said you are not absolutely sure this is going to weed out the right people. We are concerned on that front and we would be interested in hearing from you, after your further conversations with the Northern Ireland Office whether you, as the people on the ground, are satisfied by the reassurances you have been given.

Q103 Sammy Wilson: May I add to that, one of the other Protocols is that there is to be an independent and external complaints procedure. That will be carried out by the police involved. Given your enthusiasm for these schemes as demonstrated by your evidence here today, and also the fact that the Probation Board of Northern Ireland will actually be involved in these schemes, and that you are a non-statutory body as well, how independent can your assessment of any complaint be?

Mr Spence: The difference between our enthusiasm for the concept of restorative justice—

Q104 Sammy Wilson: And your involvement as well.
Mr Spence:—and our involvement in deciding whether an individual should be referred to a Restorative Justice Scheme, we would envisage the complaints process being managed by a senior and experienced probation officer, who would be separate from the processes within the Probation Board dealing with restorative justice. He would be quite separated from the other parts of the organisation. We have a long standing complaints process within our own organisation to enable people to complain about the way we have behaved, so that is another safety net. One of the questions which are going to be asked is whether there should be a higher tier of complaint and the Probation Board itself has just commissioned some work to look at our complaints procedures to see whether they now comply with best practice. The Northern Ireland Office asked us if we would be willing to provide this complaints role, and we said yes. If they decide, in the light of responses to the recent consultation about the complaints role, it should be somewhere else, we are quite happy with that.

Q105 Sammy Wilson: In effect, you will be investigating schemes on which some of your people will have played a role anyway and, leaving aside your enthusiasm, given the fact that some of your people are going to be involved in these schemes, for the Probation Board to investigate them is hardly going to be an independent investigation?

Mr Spence: We already have situations where somebody could complain, a victim or somebody on probation could complain, about the way in which we had managed their case and we organise someone

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independent, the line management or the decision-making process, to look at that. We already do that and, if necessary, we would bring in somebody from outside if it is particularly serious.

Q106 Sammy Wilson: That used to happen in the police as well, where you had the internal investigations branch, and it was deemed that that was not sufficiently independent and that you had to have a police ombudsman. If the police investigating the police is not independent, why should the Probation Board investigating the Probation Board be regarded as independent?

Mr Spence: We agreed to help the Northern Ireland Office by undertaking this role. If Government decides to have a different complaints procedure, we would happily co-operate with it.

Mr McCaughey: Mr Wilson, I have found five roles for us within these Protocols—referral, the appropriateness of the workers, complaints, funding, and there is as a referrer ourselves. So there

are five possible roles. I believe we have an independence because of the Board's status as a non-departmental public body. I think we have a track record in investigating complaints, and ultimately if there was an appeal against the Board and its independence then it can go outside the organisation.

Chairman: Thank you very much indeed. I think we have heard some very interesting evidence this afternoon. Some of it has been concerning; it has all been helpful. Thank you very, very much. I do not think anybody in this Committee can have any doubts whatsoever about the wholly good and honourable intentions of all our witnesses this afternoon and we must just hope that between your recommendations and ours at a later date we find ourselves with a scheme which is truly workable, truly even-handed, truly complementary and supplementary to the police and not in any sense seeking to replace it. Let us hope that we can achieve that. Thank you, gentlemen, and I wish you a safe journey back.

Wednesday 22 November 2006

Members present:

Sir Patrick Cormack, in the Chair

Mr David Anderson
Mr Gregory Campbell
Mr Christopher Fraser
Mr John Grogan
Lady Hermon

Dr Alasdair McDonnell
Mr Denis Murphy
Stephen Pound
Sammy Wilson

Witnesses: **Ms Olwen Lyner**, Chief Executive of Northern Ireland Association for the Care and Resettlement of Offenders, and **Mr Pat Conway**, Director of Services, Northern Ireland Association for the Care and Resettlement of Offenders, gave evidence.

Q107 Chairman: Could I welcome both of our witnesses? We have before us this afternoon Olwen Lyner, chief executive of the Northern Ireland Association of Care and Resettlement of Offenders, and Mr Pat Conway, director of services. Thank you both very much indeed for coming. You know that this is part of our inquiry into community restorative justice. Is there anything that either or both of you would like to say to the Committee before we begin the questioning?

Ms Lyner: Yes. Just to give you a little background, NIACRO is a voluntary organisation that has been working for just over 35 years to reduce crime and its impact on people and communities in Northern Ireland. We do have a range of formal partnerships with probation, the Prison Service, the Community Safety Unit and the Youth Justice Agency from whom we receive our funding. By way of context, in the 1970s and 1980s when the number of punishment beatings and shootings was inflicting serious harm on the fabric of Northern Ireland, NIACRO, in the absence of any other organisation though numbers were asked, agreed to host a and subsequently managed what became known as the Base Two Project. Central to our commitment to this programme was our value then and still our value of non-violence. It was our view then—and it remains—that the emergence of the Community Based Justice Group is an opportunity for the schemes to contribute to the building of community infrastructure which can move our communities on. In the context of the recommendation that we are looking at in the protocols, it is NIACRO's own view that the criminal justice review probably missed an opportunity to encourage as much lay involvement in the criminal justice system as is possible. If we are tasked with the issue of building confidence in criminal justice, it is important that there is community involvement. It has been through our community development approach that we have been working both at a diversion and crime reduction level. That is where this engagement fits in for us.

Q108 Chairman: By way of a few facts, how big an organisation are you? Do you cover the whole of Northern Ireland or are you just really Belfast? How

many people do you employ? Your funding, as you have indicated, comes from official sources but do you raise money as well?

Ms Lyner: The organisation has 85 staff at the moment. It has 200 volunteers. It has a turnover of around 3.5 million PA and the majority of our services are across Northern Ireland, so services to families, to adults on probation, young people in need of a friend are all across Northern Ireland.

Q109 Chairman: Right across the two communities?

Ms Lyner: Absolutely.

Q110 Chairman: It would appear that your engagement with CRJ schemes has reduced over the years. Could you tell me whether that is indeed so and why?

Mr Conway: We would follow a community development model and what we would try and do is support various community organisations and groupings within all communities. I suppose we would try and lend support, build up a degree of infrastructure and where there were projects that were ready to stand on their own two feet we would withdraw. Our reduction in terms of restorative justice programmes follows that line.

Q111 Lady Hermon: Can I ask whether there was any involvement with the Impact scheme in my own constituency in North Down? Was NIACRO involved?

Mr Conway: I think the Impact scheme came along after the Greater Shankill Alternatives were established and then Northern Ireland Alternatives were established. The Impact scheme in North Down grew out of that. We would not have been involved at that stage.

Q112 Lady Hermon: Have you been involved at any stage in trying to support the Impact scheme?

Mr Conway: No.

Q113 Chairman: What is the age profile of those going through the CRJ scheme?

Mr Conway: I do not think we can talk as an expert in terms of the internal profiles because we are not responsible for them.

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Q114 Chairman: I know you are not responsible but you have no real observations?

Mr Conway: Broadly speaking, they would fit in the 16–25 age range because that is when most criminal behaviour would occur in terms of mainstream criminality, if you like. I would imagine both schemes, if you were to look closely at the age profile of their referrals, would probably reflect that particular profile.

Q115 Lady Hermon: Is it mostly young men within that age profile or a mixture?

Mr Conway: The majority, I would imagine, would be young men.

Q116 Stephen Pound: Could I join in the welcome to you? When you introduced NIACRO at the beginning, I realised to my horror that about 30 years ago I was working with Mike Goodman with NACRO in GB. At that time, it was very much orientated towards offenders and prevention of offending. Did you say something to the effect that it was to do with crime reduction in your introduction?

Ms Lyner: Yes.

Q117 Stephen Pound: Has there been a recasting? Are NACRO and NIACRO sister and brother organisations?

Ms Lyner: No, they are two quite independent organisations. NACRO was established a couple of years ahead of NIACRO partly to follow that model. The organisation was established in 1971.

Q118 Stephen Pound: Their emphasis was very much more towards the offenders and prevention of reoffending, whereas yours is a wider community remit.

Mr Conway: It evolved to that because we had to get more sophisticated. I do not think anybody at the beginnings of NIACRO would have been perceived as advocates of a group of people who had nobody to represent or articulate the issues that they were facing. Now, whilst we would still maintain that, we would also locate ourselves within the crime reduction part of the criminal justice system and I suppose we are therefore part of the criminal justice system and are scrutinised accordingly.

Q119 Stephen Pound: On the draft protocol, a lot of us are very grateful for the comments you have made with regard to the draft protocol. One of the original arrangements was for there to be a CRJ PSNI link via a third party. In the new draft protocol there has to be direct transfer of information. What are your views on that?

Ms Lyner: We feel it will be when we move to the situation where the protocols are in place. In looking at the evidence of others coming today, we need to look at what is happening at the moment when the protocols are not in place. Obviously there has to be a direct link when the protocols are in place.

Q120 Stephen Pound: Is it practicable? I am thinking particularly of the inherent stresses for CRJ operation in areas of particular domination by one particular group. I am choosing my words with agonising care.

Ms Lyner: We are looking at a changed situation when these protocols are likely to be signed so in that situation those things should follow through.

Q121 Stephen Pound: I appreciate they should follow through but you are the experts. You are at the coal face. You are dealing with the people, not at a theoretical level but at a practical, street level. Do you think it is practical?

Mr Conway: We raised the issue about public confidence which we believe is central to the establishment of a well working criminal justice system. To enable that to happen all parties within the criminal justice system are part of that development of public confidence. There is an onus on the police, for example, to develop public confidence in respect of their organisation. There is an onus on the Public Prosecution Service. There is an onus on NIACRO, because we are part of that, and there is an onus on the restorative justice projects. Once they enter into that arena, they have to develop public confidence within their own communities and other communities. There is a whole issue of public confidence right across the board that needs to be addressed, but it is not the responsibility of one party to take responsibility for the public confidence of the other party.

Q122 Chairman: Do you have confidence that this will all fall into place?

Mr Conway: In the long term, yes.

Q123 Stephen Pound: Many of us would have concerns where there is an area of particular domination by one particular group that it would be extremely difficult to operate. I am certainly delighted to hear that you have confidence and I very much hope that your optimism is borne out. Can I ask you a question about the advisory panels? Within the draft protocol there is an assumption that an advisory panel may be set up. What is NIACRO's view on the benefits or otherwise of the advisory panels in particular cases, discussing a particular CRJ scheme to involve wider community group organisations?

Mr Conway: In terms of recruitment of staff?

Ms Lyner: It is not a term we are familiar with.

Q124 Stephen Pound: The advisory panel is to discuss the suitability of dealing with a case under the CRJ mechanism. I am sure there is a much more appropriate bureaucratic and exact form of phrase but that is what it means. What is your view?

Ms Lyner: That is how it should happen, undoubtedly. It needs to be an inclusive panel that does look at particular cases. I also think that one of the issues that should be raised is a definition. It would be helpful if we could move towards what is low level crime. We need to spend a bit of time and work through what that means. It may be that there

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will be some or many of the parties on those panels every time something moved forward. It would not be possible for everybody to be in the room on every occasion. That is the way it works for other issues.

Q125 Stephen Pound: You would be excluding low level crime?

Ms Lyner: I do not understand exactly the term, “low level crime”. We need to do a piece of work to identify what we are talking about.

Q126 Chairman: What do you think it means?

Ms Lyner: I do not have a clear view. I am quite happy to be involved in a discussion that takes that through. Most of the other witnesses have said exactly the same. We need to spend a bit of time on what might be a recommendation that will come out of this process and work out not a prescriptive list of what it would be but a set of examples of what it would be.

Q127 Chairman: One person’s low level crime is somebody else’s acute aggravation.

Ms Lyner: That is why we would have the discussion. Otherwise we would for ever be at odds with each other. We need to clear that up. I think that would be helpful. There are clearly things that would not be low level crime to do with sexual crime, sexual abuse, violence, *et cetera*. In order to factor in what would be a process of clarification would be helpful.

Q128 Stephen Pound: In your evidence you express concerns about fingerprinting and the taking of DNA evidence. This is obviously an issue across the whole of Europe. Could you elaborate for the record your particular concerns about the retention of that sort of information?

Mr Conway: I think that was in reference to an article that appeared in one of the Sunday broadsheets, probably *The Observer*, at roughly about the time our submission was submitted. I cannot source that article but at the time it made a claim that there were 40,000 young people who were subject to DNA tests who were innocent; yet whose records were apparently maintained on some database somewhere. The point was that, where there is innocence, those records should be destroyed.

Q129 Stephen Pound: Is that still the collective view?

Mr Conway: I do not know.

Ms Lyner: Yes. If people are innocent, the records will not be kept.

Stephen Pound: We could argue that but possibly not in this forum.

Q130 Lady Hermon: Since these protocols have taken a very, very long time to see the light of day, I am surprised that there has not been more work done on the definition of low level crime.

Ms Lyner: I think it would be a very helpful process to get to a shared understanding.

Q131 Chairman: Is it not a necessary prerequisite rather than a helpful process? It seems to me that we are all shadow boxing unless we have a schedule of what constitutes low level crime. It should not be beyond the wit of man or woman to devise that. Would you like to say to the Committee the sort of things that you would say in such an exercise that would be low level crime?

Mr Conway: We would be reluctant to get into that debate at the moment in this forum because we have had a look at the previous submissions—

Q132 Chairman: Because you are on the telly, yes.

Mr Conway:—made by the three parties about a fortnight ago. There was some confusion that was evident to us and there was some confusion between very learned experts. At this stage we would be reluctant to engage. We could say a broken window looks fairly minor and low level but the victim of that broken window in the circumstances might not view it as low level.

Chairman: It depends what it is broken with. If it is a brick that goes through the window and smashes the furniture as well—

Stephen Pound: Or if it is a bullet.

Chairman: That is something very different, but yes. It is abundantly clear to me, and I am sure to my colleagues, that we are not going to get off the ground unless there really is an agreed definition of what sort of offence constitutes low level crime. Although I understand your reluctance to engage in that debate publicly at the moment, would you be prepared when you leave this Committee to give a bit of further thought to this with a view to communicating to us some of your reflections? You have the journey back to Belfast today. You can employ yourselves profitably by drafting a letter to our clerk giving us your ideas of what low level crime is.¹

Stephen Pound: Our Chairman was a school master, as you can probably gather.

Q133 Lady Hermon: We need to have a little more in depth explanation of how your organisation expects this to operate. I have referred to the Impact scheme which is based in Kilcoole, a very large housing estate, one of the largest housing estates in Northern Ireland, a housing estate which I am very proud to have in my constituency. This is a letter that we have received as Committee Members from the community development manager. This is an estate which in the past has been dominated by Loyalist Paramilitary violence and unfortunately Loyalist Paramilitaries have not downed their weapons and have certainly not indicated their willingness to do so. I am quoting here: “Although Impact has always agreed to sign up to NIO protocols, the NIO refuses to associate with this type of scheme as they have “associated links” for mediation purposes with paramilitaries. If this was not the case, how could they receive referrals or how could they have alleged what is verified and addressed?” Could you respond to that point, raised in a very volatile way?

¹ (See note from witness Page Ev 92)

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Mr Conway: Let me bring the Committee back to the earlier points that Olwen was raising in respect of the history of NIACRO's involvement in this. We still run the Base Two Project which looks at verifying people who claim that they are under threat from Paramilitaries and from others within the community. There has been a history in Northern Ireland of people being aware that these threats exist and obviously people are interested in finding out if they do exist or not. People come to us and we would ask people who would have local knowledge and an insight in terms of Paramilitary organisations if those threats existed or not. It is a sad fact that at the moment that project still exists and is dealing with referrals at the rate of about 900 per annum. Of those, when we verify if those threats exist or not, there are about 600. Of those, the ratio is four to one emanating from Loyalist areas. We are not saying it is Loyalist organisations or Republican organisations. Sometimes it is difficult to pin that down. This problem has been going on for a long time. The restorative justice projects grew out of people who saw it as an imperative to deal with it in a non-violent manner and to reduce the activities of Paramilitary organisations in what was effectively running a parallel justice system.

Q134 Lady Hermon: When you said that you attempt to verify whether the threats are for real or not, presumably you contact the PSNI, the Police Service in Northern Ireland, and ask them for a threat assessment to arrive at whether the threats are real or not? Is the PSNI involved at every stage within your organisation or is it just phone calls to people?

Mr Conway: It is phone calls to people.

Q135 Chairman: But you have a close relationship with the PSNI, surely?

Mr Conway: We would like a closer relationship with them.

Q136 Lady Hermon: Why has it not been close until now? When you say "a closer relationship", does that mean it is at an arm's distance?

Mr Conway: Not from our point of view.

Q137 Chairman: Do you mean they are keeping you at an arm's distance?

Mr Conway: No. We would try and have a relationship with every part of the criminal justice system. We have regular bilateral meetings with the Prison Service and probation. Sometimes it works very well. Other times not, I would not attach any malign analysis to that.

Q138 Chairman: If you say that you would like a closer relationship with the PSNI, that obviously implies that it is not as close as you would like it to be at the moment. In what particular ways could it be improved?

Ms Lyner: The two key areas where we have a connection at the moment would be in the area of high risk sex offenders and issues where we are involved in community safety partnerships. In both

of those settings it would be us who would be approaching the police for the connection. It does not necessarily happen the other way round. It does not always happen the other way round with the rest of the criminal justice system either, but that is the way it is. It is not that the police are not aware of this service. They were very aware of the service when it was being set up and they would also be very aware where people come forward under some form of threat. There are warrants or other processes ongoing where we would be involved with the police in those sorts of situations as well. I think people understand the piece of work that we are doing in relation to the humanitarian purpose of it and in that case it is not particularly questioned. We publish a report on an annual basis. It goes to the police. The stats that come back from them verify very much the sorts of activities that we are reflecting in that report. It is not either a conflict or a disinterest. It is not particularly engaged but, beyond that, that is what it is.

Dr McDonnell: You are very welcome and I certainly would like to congratulate you for the broad thrust of the good work that you do. I would be a firm supporter of CRJ in the broad sense but I am very conditioned by CRJ as I see it. Effectively, in the areas that I operate in, there have been those who have established themselves as CRJ proponents, who propagate themselves as a parallel justice system in terms of policing. I am not for a moment holding you accountable for that, but it is a challenge for people in my position. We have to get a CRJ system that is open and beyond reproach. The sort of system that exists that I have experienced I, quite frankly, do not want anything to do with. I do not believe it would make any contribution. My views are substantially but not entirely coloured by the murder of Robert McCartney and the aftermath where some of those people claiming to be CRJ people went out of their way to pervert the course of justice. It has left fairly significant question marks hanging over whether we can have a CRJ system that is not controlled by one or other Paramilitary interest. Certainly the principle is wonderful but the practice in our case appears to be, in my personal experience, that in many cases last month's knee capper reinvents himself as the effective arm of the CRJ and it leaves a very sour taste. Have you any suggestions as to how we might work to prevent that happening or create CRJ systems that are not always dependent on Paramilitary interests but are substantially controlled by them? If there are outside interests, by and large, they are for decorative purposes rather than being effective.

Q139 Chairman: There you have it: ideas jaundiced by experience. Can you give us some comfort?

Mr Conway: The bottom line is people's and organisations' adherence to non-violence in terms of practice. We would not have been involved in any organisation that was going to coerce a particular individual and threaten them with violence if they did not go along with the CRJ argument.

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Q140 Dr McDonnell: I am not implying that.

Mr Conway: We identified that there was a small cadre of people within particularly the provisionals and also the UVF who were interested in pursuing non-violent responses to crime in their particular areas. We sought, supported and make no apology for supporting the restorative justice projects. The money that initially came to those projects was channelled through us. At every stage, had there been evidence that there was coercion and the threat of violence existed, we could not organisationally have supported that. The difficulty is that in the current climate where there is lack of trust politically, projects are seen as having involvement with ex-prisoners, which is true and undeniable because that is where the impulse came for their establishment. We would like to have seen broader society encourage and support those moves so that those influencers were given a fair wind and encouraged the development of lay engagement, where previously none or very little existed. We are disappointed that that did not happen. It now seems to have become a party political issue. We can fully understand, if you are outside areas, communities, geographical areas, people are going to have a particular view of what happens within areas and who runs, who controls and all the rest of it because we are emerging from 35 years of conflict. It is not over yet and there are still unresolved issues. Policing is central to that. However, we are unhappy about the location of this debate within a policing construct and we believe it should take place within criminal justice so that the contribution those projects can make to the development of a criminal justice system is fair, equitable, transparent and ultimately reduces crime.

Q141 Mr Murphy: There seems to be a reluctance from the people we have spoken to to identify exactly what constitutes low level crime. I can understand that.

Mr Conway: The background of the introduction of restorative justice was imported from jurisdictions outside Northern Ireland. There were people who argued that restorative justice could be used in very high levels, prisons and schools. "57 different varieties" I think was the phrase used to me on one occasion. The debate seems to be locked into what constitutes low level crime and we are saying yes, certainly there should be discussion and debate as to what that means but, going back to the original precept of restorative justice, it has been used in other jurisdictions in medium to high level crime.

Q142 Mr Murphy: That is a fair point and I was coming on to that. Would it not be easier for the benefit of everyone involved in the scheme to define quite clearly what levels of crime the schemes cannot deal with which need to be dealt with directly through the justice system? Are you aware of any schemes dealing what obviously is high level crime?

Ms Lyner: In Northern Ireland, no. Part of the point of calling for a discussion of the process is it would be a way of trying to bring people together. We have a lot of discussions in one place and discussions in

another place but the process of those parties that have an interest in giving life to the protocols, coming together and by developing some sort of agreement would be a step in the direction of building some of the trust which is so absent and would also help to change the tone of the debate from what is quite a heated, conflicting debate as opposed to somebody saying, "There is a role for restorative justice; there is a role for communities in crime prevention and in taking responsibility for some of the things that are happening in their own community." That is a positive thing. We have some negative history with all of that but if we want to transform we are going to have to take that forward. We do not want to put a view on the debate at this stage because we think it would be a healthy thing for those parties who want to sign up to the protocols to take that forward as a first step. It would be a useful engagement.

Q143 Chairman: It must be a first step that is completely associated with the police and not as a substitute for or divorced from.

Ms Lyner: Absolutely. That is one of our concerns, to set it within a policing context because we do not accept that it is an alternative. I do not think the schemes actually see themselves in that respect either.

Q144 Chairman: I suspect some do.

Ms Lyner: Various stories get passed on. The reality is that it does look at it in the much broader, criminal justice arena. We are talking about diversion for young people and crime prevention and youngish children. That is a very positive thing, that we create diversionary opportunities as opposed to putting young people through processes with a possibility of inevitably criminalising them and leading them on to be a much greater cost to society and the system later on.

Q145 Mr Campbell: On the issue of wider communities' concerns about some aspect of CRJ schemes, part of the rationale for the protocols was to try and deal with some of those concerns. If we set aside violence and the threat of the use of violence by people who may or may not be in CRJ schemes, it is a view in the wider community that Paramilitary groups want to try and retain control in certain estates and ghettos in Northern Ireland; and that they may well see CRJ schemes as a way of maintaining that control, so the alternative system of justice can be worked through in their mind through a possible CRJ scheme, which I presume is what the Chairman was alluding to. In your view, coming from where you are coming from, how essential is it that the protocols are very clearly defined in precluding that from happening?

Mr Conway: I am not sure the protocols of themselves can prevent it from happening. If you take the two groups that are associated with these projects, I have worked in both areas. When the IRA said that they were no longer militarily involved, they would dump arms and all the rest of it, I was quite struck by the reaction within communities in

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West Belfast as to what that meant. My understanding was that the IRA put the word out that, when it comes to solving social problems or “policing problems”, do not come to us. That was clearly the message that was going out.

Q146 Mr Campbell: The concern was that they said that and then in part said, “Go to CRJ instead”.

Mr Conway: If you get into whatever bits of Republicanism say, there are other bits that say, “Go to whoever you feel more comfortable with.” The point is that that organisation was very clearly saying, “We are not involved in this any more so do not be coming to us to problem solve.” That is reflected in the statistics in terms of what we are getting and what the police are getting. I do not think anybody is saying that the organisation is sanctioning threats. Your question is are the projects fronts for Paramilitarism. Is that fair?

Q147 Mr Campbell: Can Paramilitary groups or those associated with them use the CRJ to retain an element of control in an area?

Mr Conway: I do not think so. That is not my view or experience. It is not what I hear. They are not part of those movements.

Q148 Chairman: Is that your experience across the whole of Northern Ireland?

Mr Conway: In terms of Paramilitary organisations on the Republican side, there were linkages with mainstream Republicanism or the Provisional IRA. In terms of Loyalism it would be the UVF. As far as I am aware there is no interest from the UDA in terms of developing restorative justice programmes. That is what I am hearing. It may change. I do not know.

Q149 Mr Campbell: Would you accept that most of the main Paramilitary groups—and I suppose it is more particularly acute in Republican areas, the Provisional IRA—do not want people in their community, if they are suffering from antisocial activity, for example, to go directly to the police?

Mr Conway: I do not think it is as clear as that. I think there is movement. It is only a sense but when you get spokespersons saying, “Go to whoever you feel most comfortable with”, that is a different message than what was coming out five years ago.

Q150 Mr Campbell: If in a serious issue like, for example, in West Belfast political representatives in the area are asked, “Should people who know anything about this go to the police?” and the response is along the lines that you have given, that they should go to whom they are comfortable with rather than saying they should go to the police, is that not part of the problem in the wider community assessing the CRJ scheme when they hear that sort of response, rather than saying, “If you have any information, any evidence, anything at all, you go directly to the police”?

Mr Conway: I do not think there would be any difficulty about that but I cannot talk for politicians. Organisationally, we would say, “Go to the police”, very definitely.

Q151 Chairman: I am sure you would but we have received an amount of anecdotal evidence, including from the police, that there are parts of Northern Ireland where this is most definitely not the case. Are you telling us that is wrong?

Ms Lyner: I also think we are talking about what is the situation at the moment. We are talking about protocols, what would happen if the protocols were signed and how we would expect things to operate when the protocols are signed. I think that will be very different. People either will or will not sign the protocols and as such they will be in or out of the system. It will be much clearer at this stage. At the moment, there is a lot of talk about if, when and but. We cannot test that. We are in quite a different situation. If we could move to a situation where people are able to sign the protocols and be themselves, with a degree of regulation around that, they are the sorts of issues if we have rumours and stories, whatever, and independent complaints processes. These things can all be tested.

Q152 Mr Campbell: That is the case if the protocols are absolutely crystal clear and there is no doubt and no room for ambiguity. We will wait and see what the response is. On the issue of the distance or closeness that you have with the police in terms of your approach to this issue, have NIACRO ever gone along to District Policing Partnerships to make presentations or been requested by them to go along?

Ms Lyner: No. We would be very active in the community safety partnerships through Northern Ireland. There is an interface there between those and the DPP. For example, where I am in Belfast there are representatives from the DPP and we have a range of engagements together. We have not been invited. So that we do not unduly focus on the police, it would be exactly the same with the Prison Service. They are not always seeking to meet us. We are much more likely to be looking to meet them. Similarly with other agencies in the criminal justice system. We would welcome a more robust, two-way process with a range of those criminal justice agencies.

Q153 Chairman: You do not think your partnership is as highly regarded by the other partners as you would regard them?

Ms Lyner: Reflect on the size.

Q154 Mr Anderson: Could I ask you about the staff in CRJ? It is suggested that the method of selection would be the framework on the protection of children and vulnerable adults. Do you think that would work?

Ms Lyner: Yes. It would be our view that staff or volunteers who are already in schemes should be going through processes of that nature. There are POCVA checks; there are criminal record checks; there is a range of issues. Are those processes

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appropriate? Yes, they would be. We would definitely take issue with the notion that it would be some process set aside from the proper governance and management of those schemes that would make those decisions, partly because as an NGO ourselves, which is exactly what these organisations would be, we would feel that would be an interference in our governance if we were not in a position to make decisions about our own staff and our own volunteers. What we would be suggesting is that it would be important for any scheme that was to be recognised under the protocols to submit for inspection what their recruitment and selection standards would be, what that process would be, and to allow perhaps for independent assessors to be part of those panels. Unless we provide for the integrity of those schemes to run those issues themselves, we undermine the community development model which we espouse. Undoubtedly there would need to be transparency around what processes were being used, whether they have signed up to POCVA and a range of other things. Those would be prerequisites to being engaged. We do have a problem if it was to be set aside to a group of eminently worthy individuals who were aside from the scheme to be making decisions about who could or should be employed.

Q155 Mr Anderson: When you talk of transparency, I take it that should be both ways. If there is evidence that says this person either should or should not be employed, that should be scrutinised in a way that can be watertight?

Ms Lyner: It would be scrutinised in a way that should be watertight and it should be available to the individual on whom the information is held so that they can challenge whether or not they are the actual subject of this information. It also needs to tie up with other initiatives that are ongoing, following on from St Andrews, issues to do with long term, politically motivated prisoners and how the commitment to include them in society, both by working and through community engagement are to be followed through. What we are talking about in relation to CRJ needs to fit with initiatives being taken through the OFM and DFM as well. The two things need to synchronise.

Mr Anderson: If somebody had been involved in Paramilitary activity, would there be a level of that that would slow any of the work in these schemes? If, for example, somebody sold raffle tickets as opposed to somebody who had thrown hand grenades, would you think there should be a line drawn?

Q156 Chairman: Is there an acceptability threshold?

Ms Lyner: The Good Friday Agreement has provided an acceptability threshold in that individuals have been released under the Good Friday Agreement and are available in the community. Those people who have been involved in activities or have been suspected of being involved have been recalled. There are a few of those. We have a set of procedures in place. We have very inadequate rehabilitation of offenders legislation

that suggests people who have served anything over two and a half years will never have their records spent. We know that the reality is that the majority of people who have gone through processes for conflict related troubles have not reoffended and pose very little risk to children. We do need something sophisticated to ensure that there is not inappropriate discrimination because individuals have a huge contribution to offer to the wellbeing of our society. On the other hand, it needs to be looked at on a case by case basis and a process to take that forward. There is no issue about the scrutiny; it is about the transparency and the fairness, recognising that we need to provide people with reasons for them to invest positively in society as well.

Mr Conway: We have recruitment guidelines that we give out to employers on matters such as this and we would be prepared to submit those to you.

Chairman: That would be very helpful. That shows us what judgments you make.

Q157 Lady Hermon: Are any of your staff ex-paramilitaries or offenders?

Ms Lyner: Yes.

Q158 Lady Hermon: That has worked very well?

Ms Lyner: Yes.

Q159 Chairman: Is that your paid staff or volunteers or both?

Ms Lyner: Both.

Mr Conway: We would be asking employers right across Northern Ireland not to discriminate against people *per se*, automatically that have a criminal or prison record.

Q160 Chairman: You both employ and use the voluntary services of those who have criminal convictions from both communities?

Ms Lyner: Yes.

Mr Conway: Politically, conflict related and "ordinary".

Q161 Chairman: What sort of percentage? You told us you had 80 and 200.

Ms Lyner: I honestly could not tell you off the top of my head.

Q162 Chairman: Could you give the Committee a general steer?

Ms Lyner: At any one time it would be between five and 10 individuals².

Q163 Chairman: If you could let us have those figures, that would be very useful.

Ms Lyner: I do not know whether we can because the question comes through in posts which are vetted as opposed to the posts which are not vetted. Some of it would be what people would disclose to us.

² Note from Witnesses Page Ev 92.

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Q164 Chairman: If, when you go back and look through your books, the figures that you have given us have been inadvertently misleading, will you put it right?

Ms Lyner: Yes.

Q165 Sammy Wilson: I am alarmed by some of the evidence that you have given and I suspect that probably from the area that you are coming from you are much more tolerant of some of these schemes than many of those who have to live with the consequences of them would be. You made a comment, Mr Conway, that “these schemes are not part of those movements.” I presume you meant the Paramilitary movements.

Mr Conway: They are not controlled by those movements. That might be a better way of phrasing it.

Q166 Sammy Wilson: Controlled or part of?

Mr Conway: I prefer to use the word “controlled”.

Q167 Sammy Wilson: Given the fact that, first of all, on the Republican side the flag wavers for these schemes are Sinn Fein, given the fact that these schemes on the Republican side have adamantly refused to cooperate with the police and have jumped up and down at the prospect of guidelines which indicate that they have to cooperate with the police and are peopled by a large percentage of those who have IRA Paramilitary backgrounds because they have already served time for those offences, we have already had evidence from the Rape Crisis Centre, from the McCartney sisters, that these schemes have refused to pass on, for example, rape cases unless the Rape Crisis Centre gives an assurance they will not go to the police or, in the case of the McCartney sisters, we were told that some of those who were intimidating the family were part of the CRJ. How can you say they are not part of or controlled by Paramilitary movements?

Mr Conway: We are aware obviously that there is a lot of information swirling around. We would like to operate on the basis of actual evidence. In terms of what I said previously, we would not condone or countenance support of any group that uses violence to coerce people into a particular course of action. Nobody has come to us and said, “Here is a particular case where a named individual or individuals have used or been part of a restorative justice project.” When we get that evidence, we would act on it straight away.

Q168 Sammy Wilson: You are not denying the first three things I have said. First of all, the main flag wavers for these schemes are Sinn Fein. Secondly, these schemes have adamantly refused to cooperate with the police and have jumped up and down at the guidelines requiring them to do so. Thirdly, there is a large number of people involved directly in them who have Paramilitary backgrounds and have served sentences for Paramilitary crimes. In light of that, how can you say that these schemes are

divorced, not part of, not controlled, or whatever terminology you want to use, by a Paramilitary movement?

Mr Conway: Take it in reverse order. We went into this eyes wide open and addressed that. We know that restorative justice projects have ex-prisoners who are from Paramilitary backgrounds. I think we have addressed that point.

Q169 Chairman: The concerns that are being expressed by Mr Wilson are being expressed in a rather different manner but they are essentially similar to some of the concerns expressed by Dr McDonnell earlier. This Committee has received in writing a submission from Dr Gareth Fitzgerald who has expressed very real concerns on this issue. The leader of Dr McDonnell’s party circulated earlier this year a paper in which he expressed, in very forceful terms, concerns about this. Are you saying to the Committee that you accept that these people are there and they are playing their part in these schemes but at the same time they are not unduly influencing or controlling these schemes? Is that what you are saying?

Mr Conway: I do not believe that the projects are controlled by political parties.

Q170 Sammy Wilson: This is the difficulty I have. On the one hand you are telling us that you can only deal with facts. Now you are telling us it is an act of faith. You do not believe that they are controlled by Paramilitary organisations. Either factually you know that they are not controlled by Paramilitary organisations or you simply wish to believe that that is the case.

Mr Conway: As far as I am concerned, I have no evidence to support the contention that the projects are controlled by Paramilitary organisations or Sinn Fein.

Q171 Sammy Wilson: You would not accept that the circumstances that I have described to you and some of the written evidence we have received would at least perhaps cause some doubt as to whether or not these are an extension of a Paramilitary organisation and simply another means by which Paramilitary organisations will seek to exercise controls on communities?

Ms Lyner: One of the points we made before you joined us was the importance of changing the tone of the debate. We also want to focus on what the protocols will bring. The reason why there has been a lot of energy on some people’s part more than on others’ perhaps to take these guidelines to a stage where we will gain acceptance for them is the very point that regulation will follow and come with and probably be part of the very start of the process. People will have to evidence the standards they are working to, recruitment selection guidelines and so on. While it is important to reflect, it is important at this stage to see whether or not we have robust enough protocols in place for us to be able to move forward.

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Q172 Sammy Wilson: Regulation may well control what happens. We know that so far with 20% of the cases it is not regarded as some minor offence. How does regulation ensure that someone does not call round at my house or Mr Murphy's house and say, "By the way, you see the complaint you have about the youth down the street? Do not be going to the police about it. We will deal with it"?

Ms Lyner: There will be a complaints procedure. If that is what happens, people need to come forward and say what is happening. There is an awful lot of rumour and information that passes round. Very little of it is challenged. When you ask, "What is it you know? Who is the individual?" even elected representatives find it difficult to pass on the information. We need a robust complaints process. In the protocols it has been suggested that it may be a player within criminal justice who would take on that role. We believe that would be a conflict of interest. We have an Ombudsman for the police and for a lot of what we would call our devolved processes in Northern Ireland but we have no Ombudsman looking at the lot of criminal justice. Bar prisoners, we do not have anybody looking at the other agencies. It certainly would be useful to consider whether there could be the development of a role beyond that of the Prisoner Ombudsman looking at criminal justice generally³. That would regulate ourselves and probation. It would be around the Juvenile Justice Centre at Bangor, a range of areas, and it would also look at the complaints process.

Q173 Sammy Wilson: The wee woman who is afraid to report a person to the police who has broken the window will feel quite happy to make a complaint through the complaints procedure? Get real.

Ms Lyner: That is the very tone that we are having difficulty with. We are asking prisoners in prisons to make responses to Ombudsmen. I think it is appropriate that we would ask people to use complaints procedures where they exist.

Q174 Mr Fraser: You talked just now about complaints mechanisms. In your response to the draft protocol you say that, "If the Probation Board for Northern Ireland provides the independent external complaints mechanism there are likely to be training and resource issues." What could they be?

Ms Lyner: I thought in our response we said that if probation were funding the project there would be a potential conflict of interest issues in relation to being the funder and then a complaint comes forward. Their organisation can also be sitting on some of the processes in terms of the individual as well. That is our key concern, that there is a conflict of interest.

Q175 Mr Fraser: You said there is no Ombudsman. How frequently do you think CRJ schemes should be inspected?

Ms Lyner: The Ombudsman's role would be different from an inspector's role. The inspectors are laying down a process that they would inspect on an annual basis with notice and, whenever they wish, without notice. If that is accepted by the schemes as part of the protocol, I think that is appropriate.

Q176 Mr Fraser: With regard to evidence we received on 1 November, there was a lot of concern about existing flexibility being lost under the draft protocol and things becoming bureaucratic. Do you agree with that?

Ms Lyner: There is potential for things to get gummed up in the way that they are in the formal system. One of the benefits of any community based scheme is that people can be dealt with more quickly. The fact that people are dealt with more quickly does not necessarily mean that they are not dealt with or their rights are not protected. I am not sure and certainly our clients would not reflect that they feel their rights are protected when they have to wait for very long times to be processed through the formal system. It is important that young people particularly are processed in a way that they feel the impact of their inappropriate actions as quickly as possible. Therefore, anything that adds to bureaucracy beyond that which is appropriate is too much.

Q177 Mr Fraser: Are there specific changes you would make that you would put forward now?

Ms Lyner: No. The way forward is to test several pilots with all the robust engagements of all parties. Out of the piloting of one or two programmes we will learn a lot. That is generally how we move forward.

Q178 Lady Hermon: I am sure I misunderstood what was said when you said there is no criminal justice inspectorate. There is of course the chief inspector of criminal justice. Was the point that you wanted a greater involvement by the chief inspector?

Ms Lyner: No. I am not making any point about the inspectorate. The inspectorate is an important resource in Northern Ireland and sets standards. It requires us then to live up to the standards that it sets, but the inspector does not have a role in the pursuit of individual complaints.

Q179 Chairman: An inspector and an Ombudsman are two very different things.

Ms Lyner: Yes.

Q180 Chairman: You are accepting the reality and helpfulness of the one and arguing for the presence of the other?

Ms Lyner: Absolutely.

Q181 Chairman: I think we are coming towards the end of this hour, which has been very interesting and very helpful. I do not wish to put words in your mouth but, as I understand it, trying to sum up the evidence you have given the Committee, you are

³ NIACRO would like it to be made explicit that one of the recommendations proposed was in respect of extending the role of the Prisoner Ombudsman to include acting as the complaints body with respect to community restorative justice projects. This was a central tenet of NIACRO's submission and it was not clear as to whether the Committee fully understood this.

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saying that at the moment the schemes work patchily, that you do not have direct evidence of what has been called “control”. One has to accept control and influence are two different things, where influence becomes control is difficult. You accept the concerns, but you think the protocols, if robustly implemented and accompanied by a schedule definition of low-level crime, would improve the situation considerably. Is that a fair summary?

Ms Lyner: Yes. I think there were a couple of points: low-level crime, a definition there, and some shared understanding would be important. The protocol we have a difficulty with is in relation to a panel outside the employer making decisions about people’s appropriateness for employment. We feel there needs to be more work done in relation to that. We feel a complaints process operated by somebody who is potentially a funder and a player in the

operation of the schemes would not be as transparent as an ombudsman outside the system. We also would suggest that a way of moving forward would be through some pilot engagement.

Chairman: Thank you very much. You have already promised that you will write to our clerk on two specific points, one is some thoughts on definition and the other is to clarify and, if necessary, correct the figures you have given us. We do accept that it may be necessary to correct those and we certainly would not hold you accountable if you got them significantly wrong because you were not expecting that question. You can come back to us on those points and we may come back to you on others. Thank you very much indeed. We wish you a safe journey back to Belfast.

Witness: Dr Duncan Morrow, Chief Executive, Community Relations Council, gave evidence.

Q182 Chairman: Could I welcome Dr Duncan Morrow, Chief Executive of the Community Relations Council. Dr Morrow, is there any brief comment or statement that you would like to make to the Committee before receiving questions?

Dr Morrow: Very briefly, I suppose the position is as stated in our written submissions.

Q183 Lady Hermon: Would you like to summarise those?

Dr Morrow: The broad summary position is that the principles of restorative justice are to be welcomed and we do believe in terms of re-integrating the victim and engaging the community at low-level criminality, particularly with young people, there are strong indications this is a good way to go within criminal justice both in building victim confidence in the system and in stopping crime before it gets onto an escalator. Simultaneously with that, the particular issue is that it must enhance justice. The priority is not so much in any particular scheme but that there is confidence in the community that justice itself is enhanced through whatever process it is engaged with. What the Community Relations Council is anxious to see is that those safeguards are put in place to ensure some of the anecdotal, but probably fairly widely anecdotal, views that are expressed widely are guarded against and to ensure justice is seen to be above political interference.

Q184 Chairman: Did you hear all of the last session?

Dr Morrow: No, I only heard the very last bit.

Q185 Chairman: But you have, presumably, seen the transcripts of the previous evidence sessions?

Dr Morrow: Yes, I have.

Q186 Chairman: So you are familiar with what our witnesses said?

Dr Morrow: If I can remember them!

Q187 Chairman: It will come up, do not worry. Before we embark on the detailed questions, Dr Morrow, could you tell us very briefly the extent of your own involvement in the schemes and a little bit about the Community Relations Council and its remit across Northern Ireland.

Dr Morrow: We are not a criminal justice agency, so we have no direct involvement with the administration of justice in any way. We are, however, a body with the responsibility to engage with community life across the whole of Northern Ireland. Therefore, the issue of justice, the absence of it or the nature of it, comes up by all sorts of levels in the work that we do, both in terms of on the ground community relations but also in terms of relations with the PSNI, for example. We have had engagement with a number of criminal justice agencies at an indirect level trying to work with them through the implications of the historical legacy of division in Northern Ireland around this issue, because it is particularly vexed, and how we move forward with something which really delivers justice to everyone and is seen to deliver justice to everyone and there is a seamless web of all the agencies which do it. The Community Relations Council’s role first and foremost is to raise difficult topics and to try to find practical and principled ways forward to deal with those and in that regard justice comes up fairly regularly.

Q188 Chairman: You would consider that you are in a good position, therefore, to be an objective observer and commentator on these schemes and how they have worked to date?

Dr Morrow: I would love to claim to be so, but I am sure there would be many people who would doubt it.

Dr McDonnell: I will assert that claim for him.

Q189 Chairman: You will assert that claim for him, excellent. Dr Morrow, could we try to separate our questions, how it works now and how you think it will or will not be improved by the protocol. I think

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there was a degree of confusion in the earlier session perhaps looking at what is happening on the ground now and what has happened to date, and how this will or will not be improved by the implementation of the protocol. Would you just like to say a few words about those two things?

Dr Morrow: I suppose one of the difficulties about restorative justice in Northern Ireland is that it has not emerged from a single source. There is a kind of broader global movement towards this as an enhancement of the criminal justice system, particularly at lower levels, and that has affected Northern Ireland and is obviously in the work that both the Justice Agency and various organisations are attempting to do, including the PSNI. That is broadly in line with developments across Western Europe. On top of that, partly and particularly in areas where there have been particular difficulties with paramilitarism and policing, restorative justice has emerged also as a grass roots idea in which various organisations with particular local roots, and with often political roots as well, have developed restorative justice. Mostly and certainly it was presented as a mechanism to break the cycle of punishment beatings which had emerged as one of the critical ways of dealing with justice in local areas but also to fill a gap where the PSNI was not active—and that leaves a whole gap as to why they were not active which I am not going into at this point—but there would be all sorts of reasons given as to why that was the case. The result is a patchwork in which restorative justice has become not a single item but whatever is delivered under its rubric and, therefore, it is many different things. I think the opportunity which these protocols offer and the real essential nature of them is to provide fundamental standards and to ensure that anything that happens under the public rubric meets those standards and are acceptable to the rest.

Q190 Chairman: Do you think they will do this?

Dr Morrow: I think that part of the issue, and I would there agree with NIACRO, is the proof of the pudding of this is going to have to be in the eating because we are not moving from a simple place. The protocols certainly begin to offer the opportunity to have a full engagement, but how these things are put into place will probably determine the outcome as much as the words on the page, because what is important is that the outcome is a broad development of constitutional law as opposed to a packaging out of a notion of justice onto a local basis where there is no proper supervision.

Q191 Chairman: May I ask you just two brief questions before I bring in Mr Pound and then go around the table. I do not know whether you heard this, but there were two points that came out in the comments from our previous witnesses on the protocols. First of all, they felt it would be very helpful if a schedule definition of low-level crime was included and, secondly, that it would be necessary—and I inferred from your remarks that

you probably did agree with this—to have pilots to see how they would work. Could you comment on those two points before I bring in my colleagues?

Dr Morrow: I think it is absolutely essential that a list of crimes which are possible to be dealt with under this method is published, minimally a list of those things which cannot be dealt with under this kind of approach. Those must include violence against the person, threats against the person or anything which would constitute a direct violation of a person's safety.

Q192 Chairman: Could I ask you if you would do the same as the previous witnesses have promised to do and that is, when you reflect on this session, to send us your suggested schedule?

Dr Morrow: I should also add that where serious sexual offences are involved, there can be no question of this being dealt with at the level of restorative justice without the proper intervention. I have to say the protocols, however, in their suggestion that these matters will be referred will only be those things which are referred as a safety level to this, but I do think a schedule would be extremely important.

Q193 Chairman: And the pilots?

Dr Morrow: I believe that is the only mechanism to go forward here, with a review date appointed, on which some of these things are put into practice, there is proper oversight during that period and then as far as possible there is an independent review of how far the purposes of the legislation have been met in practice.

Q194 Stephen Pound: Dr Morrow, it is a delight and pleasure to see you again. I always feel there is hope for community relations in Northern Ireland while your energy stands as a beacon. Could I press you on your point about the operation of the PSNI in certain areas? I understand your reluctance to be more specific in your words, but you said where they either “could not operate” or “not able to operate” when you implied it was their decision or a decision of local community. The concern many of us have with CRJ is it can segregate gangsterism and protectionism and we have had many families against drugs groups in various parts of the island of Ireland who fell victim to some of these policies. Do you honestly believe that the protocols and structures that we are talking about today can provide an effective mechanism whereby community restorative justice can be taken away totally not just from paramilitaries but also from regional and geographical gangsters?

Dr Morrow: I think it is extremely important. First of all, that is the test that has to be raised here for us and the protocols at least engage with the issue on a practical level and say, “Right, now let us test this”. That is the first thing. So that is why I am suggesting pilots and reviews, this is a suck it and see kind of situation. From the point of view of the Community Relations Council, one of the very important things is the nature of the licensing that will be involved. It seems to me to be very different

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to say in general that there should be a movement within criminal justice at a certain level of offence to encourage restorative justice as a useful mechanism and a protocol which is to simply engage any single or multiple political organisations. It seems to me that the protocols should state the nature of what the justice to be carried out is and then it is incumbent on any agent to demonstrate how they are going to meet that. One of the issues which will be very important—this is not concentrating on any particular one—is that people are not territorially obliged to deal with simply one agency, that there is any kind of sense that an organisation is the alternative justice system for one given territory. Minimally, it would need to be the development of something akin to the Citizens Advice Bureau which runs across localities to enable certain important things are available to people not simply on a local basis because quite often, paradoxically, as the agent of restorative justice the local agent may not be the best one; sometimes they are and sometimes they are not. That is number one. The second thing I think would be important to say is there needs to be clarity that the management of these organisations is also transparent, that it is not simply a question of boys and friends of certain people getting on and other people not getting on. The mechanisms by which these schemes are managed would also need to be clear and transparent and a possible avenue of complaint were it to be clear that justice was now subordinated to a certain type of local political control rather than the other way around, that all parties at a local level were now carrying out something which we call justice. The terms of trade of this are extremely important. The protocols, if they are applied properly, are not just a vehicle to bring in people without change, they are a mechanism through which everybody can move forward onto a common platform, but it will take somebody to apply them. Somebody will have to make some hard judgment calls and say, “Actually, unless there are changes here, unless there are proper engagements with the system and proper guarantees in place, then we will have to say we cannot apply them”.

Q195 Stephen Pound: I entirely take your point. Is the temptation not that we are franchising justice here and are you not in effect saying what should be done is that you should be subcontracting? It seems to me that there is always going to be that internal tension.

Dr Morrow: Of course, there is an internal tension, but the inspection regime is important and the complaints regime is important.

Q196 Stephen Pound: Is it a subcontract model rather than a franchise model?

Dr Morrow: Absolutely, I think it has to be.

Q197 Chairman: You would favour an ombudsman, would you?

Dr Morrow: Yes.

Q198 Stephen Pound: You anticipated me, Chairman.

Dr Morrow: I think if you go down the subcontract model you almost logically arrive at it.

Chairman: Yes, quite. Again, that is a point which you will argue.

Q199 Mr Murphy: Dr Morrow, are you not concerned that particularly in Republican areas the requirement of the PSNI to be involved directly in the schemes may lead to quite a number of them not signing up to the protocols?

Dr Morrow: I think that is a really significant problem. On the other hand, I do not see how it can be resolved by a cheap solution which pretends it is not a problem. I think that there are issues in the training of and the development of PSNI officers as we move forward as to how they engage with communities where there is no history of engagement. I think the notion that you can have a justice system which is *prima facie* excluded from connection to the rest of the criminal justice system, or aspects of the criminal justice system, would undermine the credibility of the system to such a degree that public funding would therefore lose its central purpose within this area which is to ensure that there is consistency of purpose. I have to say to you that I understand the problem, I understand that not all the problems will be resolved by the community, but unless there is a basic bottom line which ensures that the thing is joined-up then, in fact, public money will be subverted, or at least seem to be subverted, and will in effect permanently establish a problem which we hope is temporary, which is that it will establish parallel agencies which then would have an incentive to work together. I think as we move forward it is very important to ensure that the criminal justice system delivers a single product.

Q200 Chairman: Cohesion or nothing.

Dr Morrow: Yes.

Lady Hermon: Duncan, it is delightful to have you here. So far this afternoon you have done very well.

Chairman: The accolades are flowing.

Q201 Lady Hermon: I have three questions. A conundrum in my head as we have gone through this afternoon is where do we expect the relationship to be between ASBOs and restorative justice schemes? In Northern Ireland we fought very hard to have ASBOs introduced, unfortunately much later than in England and Wales, we have had them available in Northern Ireland since August 2004, if my memory serves me well. We still only had a handful of ASBOs. Where do you expect that relationship to be? Are ASBOs the last resort or is restorative justice because of the low level of crime that restorative justice is going to deal with? Is it ASBOs first and then everything else down to restorative justice, or is it restorative justice first and then the last resort an ASBO? How do you think it is going to relate?

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Dr Morrow: I think it must logically be restorative justice first and ASBOs second in as far as one of the purposes of restorative justice must be to divert, particularly young people, from the path of further alienation from their community and down the criminal line. The caveat is that it will depend on what the crime is. If there is a persistent pattern of crime, one presumes that there have already been attempts at interventions and ASBOs would not be given out normally for a single act except that there is a pattern of persistent nuisance crime or whatever it is. My feeling is that this is something which the PPS is called—the panel which refers these—needs to take a view on the level of the crime, the appropriate remedy and the stage that the individual person is at in terms of their criminal record. The purposes of restorative justice are three for me, one is that the victim gets the possibility to engage directly with the person who has done them damage; the second one is that through that process the reality of what crime means is brought to bear on the person who is doing it and there is an opportunity to act on that recognition before moving on and the third one is that the community itself is able to express a view about that harm and to express that to the offender too. The three processes are all useful things at low level crime. There may be some things which have to be dealt with by ASBOs, but my own hope would be that restorative justice would reduce the need to use ASBOs. I certainly think it would be more difficult to move after an ASBO into a purely restorative situation rather than the other way round.

Q202 Lady Hermon: You have very kindly mentioned that you would prefer an ombudsman. Can I put the alternative of that to you. Again, with a great song and dance by the Government they introduced the role and office of the Chief Inspector of Criminal Justice and again have managed to build up a very good staff team. The Chief Inspector is there, there is a statutory provision where other agencies and other areas can be listed to come within his remit. Surely to goodness, should—if it is your view—not the Chief Inspector of Criminal Justice have a formal role to review restorative justice schemes when they are up and running in Northern Ireland?

Dr Morrow: It may be that if we are moving down the pilot model the current position of the Chief Inspector of Criminal Justice is sufficient to enable us to pilot that. I think it is a question of confidence. The independence of a single person allows them freedom simply to concentrate on the issues at hand in terms of complaints. The council, in thinking about this I have to say, did not come down strongly to say that there was a problem with the Chief Inspector, in fact, Kit Chivers has done a very good job in terms of joining up.

Q203 Lady Hermon: He is a constituent of mine and I am very glad to hear you say that.

Dr Morrow: He has been extremely keen paradoxically to engage the system with the community in creative ways. Speaking on behalf of

my council at this point, our view would be that there is logic to an ombudsman's place. We are not insisting that it is the only model that could be tested provided you can keep the integrity and the lack of conflict of interest in the system.

Q204 Chairman: Would it be your view that the ombudsman role could be an extension of the police ombudsman rather than have another creature established?

Dr Morrow: I am slightly out of area here if you do not mind, Chairman. I am getting into my own views here and on behalf of my council I am going to retreat and say I can go back and consult with them and write to you about that.

Q205 Chairman: I think that would be very helpful. There is a danger of having a proliferation of ombudsmen and therefore as you have an office, I am not suggesting it can all be done by the same number of people, but as long as it exists and there is a considerable degree of public confidence to graft this on to it as part of the indivisible system, that would appear to me to make a degree of sense. I think if you could consult, again, I do not wish to put you in an embarrassing position but you are not dismissing it yourself and I think if you can consult on it and come back that would be very, very helpful.

Dr Morrow: The critical issue for us is confidence in the justice system, that this is an extension of the human rights framework within which we are working but it is also an extension of the possible criminal justice for local communities and it begins to join-up. If that confidence is maintained through the system then we will have succeeded, if we damage it we have done really dangerous damage.

Q206 Chairman: Confidence can only be built on trust.

Dr Morrow: Absolutely.

Q207 Lady Hermon: The police ombudsman is there to investigate complaints against the police and I do not think that it would be appropriate for restorative justice to be added to that particular remit of the police ombudsman. However, moving on to the third point, and it is a key point, it was a point that was raised by the Chief Inspector of Criminal Justice himself, and that is this really serious issue of funding. Duncan, I am looking here at the impact scheme within a Loyalist Community and the Loyalist estate of Kilcooley in my constituency. Two members of the staff of the impact scheme have had to be let off because of lack of funding. Why are we not getting funding, because we have not got the protocol signed up to. Is it not a great shame that very good schemes within Loyalist communities which have operated with close police involvement have had to pay a very high price for the slowness of the movement by the Republicans in signing up to this?

Dr Morrow: It is certainly very important to move forward as quickly as possible with these because, as you say, there are a number of schemes which could

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make a real contribution now and the sooner we have agreed standards to which everybody can sign up, the better. However, the other side to that, it is certainly worth the effort to try to ensure that we have gone the extra mile to ensure that the critical golden thread running these protocols is the issue of ensuring that justice is better done. I think that the issue of funding for all organisations of the voluntary sector is a hand-to-mouth existence. There are instances all the time of good organisations going to the wall that should not be allowed to go to the wall. The fundamental point that we need to move forward now on testing out the viability of these protocols is absolutely well made.

Q208 Sammy Wilson: Can I go to the very start of what you said, Dr Morrow. You outlined the theoretical advantages and benefits of CRJ schemes, bringing the victims and the perpetrators face to face, et cetera. Have you any evidence that those theoretical benefits have happened with the schemes that there are in Northern Ireland and, if so, on what do you base that?

Dr Morrow: I have to say, we do not have our own independent research on this. However, in two areas I think there is some evidence of quite useful advances. One is in low level issues of crime involving young people and people of other ages, there is anecdotal evidence, and it really is anecdotal, but it is not simply coming from the organisations, it is coming from local evidence. Restorative justice provides a better mechanism to deal with this than the alienation of young people fully which was leading down to the punishment shooting and punishment beating route. There is a relief in some communities that there are alternatives there that is number one. Number two, there is some evidence that these schemes have improved over time in terms of the reputation that they have. If there is a problem it remains the problem of a strong allegation, which again I cannot formally prove, of direct political linkage and that they effectively run in territorial areas rather than providing a system which is for everyone and is open access and therefore there is a danger that they act as an alternative policing mechanism unless they are joined in now to common standards. Our concern would be that nothing should be done to suggest that there are differential standards of local justice, or that where you live would depend on who was the local restorative justice team or that there was some formal approval for a group who had not been vetted against important national and international standards.

Q209 Sammy Wilson: Would I be wrong in paraphrasing and saying that as far as you are concerned there is no empirical evidence that any theoretical benefits, which should come from these schemes, have been evidenced on the ground in Northern Ireland.

Dr Morrow: What I am trying to get at here is a complicated issue. There are micro level individual stories which suggest that this works in certain cases, and I have heard case after case rehearsed on this. The concern comes less on those micro cases where

there is some evidence of people engaging than at a structural level which is that there is no guarantee that consistency can be maintained across the board. There are allegations, and they are at the level of allegations where political considerations come into play at various points, there are different types of allegations that certainly complaints are difficult to make. I cannot say how true those are but it is essential, because trust in justice is so critical and justice has to be seen to be done, that the protocols directly engage those issues of transparency, reporting and complaints, of the notion that that can be at the level of individual cases, but it also needs to be made clear that justice is not being delivered by any single political group but all political groups are working up to justice.

Q210 Sammy Wilson: Just one other question then on the people employed in the schemes. I note that your position is that past imprisonment should not be a barrier to engagement. However, you have said there should be a minimum of five years where the person has not come to the attention of the police and also an issue of no evidence of ongoing involvement in paramilitary activity. Does that mean you would accept anyone employed in these schemes should be subject to police vetting since that is probably the only way in which evidence of whether or not they have been involved in paramilitary activity could be established?

Dr Morrow: In line with the kind of vetting that applies to the Social Care Councils which requires people to put forward their criminal records. Anybody engaging with young people I think, first of all, would have to be vetted in relation to young people. The second thing is I do think, yes, there needs to be a procedure whereby anybody charged with carrying out justice that there is no obstacle in their own behaviour to then be seen to be agents of justice. I have to say, having said that, it would be the view of the Council that the particular circumstances of Northern Ireland have left us with a legacy and there are large numbers of people who have had histories and a degree of distance who have moved forward now in a quite constructive way and, where that is evidenced to be the case, that should not now be a barrier to their engagement in the future.

Q211 Chairman: Would you favour scheduled criteria?

Dr Morrow: Yes, I think so but, as I say, I think those schedules are readily available in organisations such as the Social Care Councils, in youth work and in agencies where vetting is already required because of potential dangers.

Q212 Sammy Wilson: How would you identify whether or not there was evidence not of being convicted of a paramilitary offence but evidence, to use your own terminology, of "ongoing involvement" in paramilitary activity? Do you not accept that would require police vetting of applicants for jobs in these schemes?

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Dr Morrow: If it is a panel I think it would almost certainly require police advice in some of that stuff, although the question of what constitutes evidence would need to be drawn. It would have to be something like visible evidence of their involvement, but I do think you are right, yes, probably at some level or another police advice would have to be gained.

Q213 Mr Fraser: Taking you up on those points—Mr Wilson has put some of the points I was going to put—just because somebody has not come to the attention of the police does not mean that in a five-year period police vetting will not uncover anything. Do you therefore accept by virtue of the fact that they have not come to the attention of the police it does not necessarily mean they are not involved in paramilitary or criminal activity, they just have not been detected, and, therefore, some people do slip through the system?

Dr Morrow: I think that is true. That is a risk as soon as you involve any vetting process, the holes in the vetting process are there. The Community Relations Council believes on balance that a five-year absence can be taken as at least *prima facie* evidence that there is nothing standing in the way of the principle of innocent until proven guilty. We believe this should be sufficient at this point to allow people to participate especially where we are now.

Q214 Mr Fraser: Then you say that each person voluntarily signs the principles of restorative justice. What happens if they do not sign it?

Dr Morrow: If they do not sign?

Q215 Mr Fraser: Because it is a voluntary signature. You also argue: “There must be no evidence of ongoing involvement in paramilitary activity and that each person voluntarily signs”.

Dr Morrow: I suppose “voluntarily” means that they agree to sign it and if they do not then I suppose the conclusion can be reached they do not accept the principles and, therefore, cannot participate.

Q216 Dr McDonnell: Duncan, thank you very much for coming here and thank you for all your work over the years, tremendous work in developing the whole community relations programme. Just a simple question, I know you have alluded to it and touched on it a number of times, but could I come back to the nub of the thing because the nub of the thing for many people is that, yes, some form of community restorative justice is a good thing but that is in theory; in practice, there is a paramilitary connectivity and I cannot call it any more than connectivity. How can we get the groups moved on to a point where they are open and transparent? How do I contribute to move groups on? How do I use influence? How does this Committee here use its influence in terms of developing the trust and removing groups that are perceived and how do we strike the balance between former prisoners and perhaps the misplaced impression that they still retain paramilitary connections?

Dr Morrow: The protocols must fundamentally focus on improving justice. The problems which are then created for individual groups, people that need to be dealt with in terms of how it is made possible for them to ensure that they meet those standards. That does create certain difficulties for some areas, but I do not think they are difficulties that should be avoided, they are real ones. If we do not go there I think we cannot afford to franchise justice out in any other way. This is not a scheme to bring in certain named, specific organisations on whatever basis anybody wants on a contract which is of somebody else’s design and I think there is tension in that. I think what individual Members of Parliament, local representatives and communities can do is where an obstacle emerges to a justice scheme work through with that justice scheme as to how they begin to address those specific difficulties which are causing their obstacles. I think that is where the balance of trade has to be. The balance of trade cannot be that the standards are weakened to allow everybody to get in. The balance of trade has to be that work is done to ensure people who are currently not meeting standards begin to think about those standards. Maybe there is support and development that can be done there and maybe there are things which the public authorities can also do to make that easier. What cannot happen is that the terms of trade are: how do we skew the fundamental obligation to provide justice to bring people in? It has got to be the other way around, it has got to be: how do we engage with groups to ensure they begin to come in and deliver something that all of us can stand over as a product which is visible everywhere?

Q217 Dr McDonnell: How do you relate to the suggestion which exists in many places that there are double standards, those who lead the schemes have one standard for their friends and another for the rest of us?

Dr Morrow: The difficulty is there is no proof but the allegation itself and its persistence means that the necessity for justice to be seen to be done is raised because trust in the justice system is critical, so I have no allegation or extra allegation to bring to this table about anybody’s behaviour. I only know that because the allegation is made it eats into the potential that restorative justice brings here and anybody who is truly in favour of restorative justice needs to engage with us in making sure that allegation cannot be made. That is where I see the protocols as being critical, which is in the licensing. All this boring bureaucracy, which I understand, is partly there because we do not start against a backdrop of absolute trust. We are trying to move together to somewhere whereby that pattern of behaviour we would arrive there, so I strongly suggest that we set a common goal and then work together to reach it rather than try to engage everybody on whatever basis everybody will engage in and then try to sort out the justice system.

Q218 Chairman: If there are lies to be nailed they must be publicly nailed as an absolute prerequisite?

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Dr Morrow: Can I understand a little bit of what the background to your question is so I can answer it directly?

Q219 Chairman: You have said you heard all these allegations. The very existence of these allegations undermines trust, and therefore confidence, and so what I am saying is if these allegations are wrong, then these lies have got to be nailed publicly with all the evidence that goes with that before you can move forward.

Dr Morrow: I am not sure if it is quite as strong as that. What I am saying is minimally as we move forward to a public, universal scheme through the protocols of justice that it must be seen, as we move forward, those allegations can never be vindicated. Therefore, that means transparency in all proceedings, no pattern of complaints along a particular pattern begins to emerge, the protocols in terms of what happens can be tracked, that there is an inspection regime where the inspection regime knows it can go and inspect at appropriate moments and that there is a point of review in a three-year, five-year type of cycle at which the whole thing is reviewed and some of these allegations are proven or can be set aside and that may allow us then to loosen up some of the protocols.

Q220 Chairman: Along the line of all of this there must be an indissoluble link with the PSNI.

Dr Morrow: Absolutely. I think that indissoluble link though does not need to be daily contact, but it does need to be very clear that people are participating in a criminal justice system of which the PSNI is a critical element. I do not see there is any other mechanism by which to do it.

Chairman: I must say that you have given extremely clear and helpful evidence to this Committee and we are very grateful to you. If there are points that occur to you—you will write on the points we have already agreed—feel free to write to us or communicate with our clerk and likewise it may well be that as we are

formulating our proposals there will be things we will put to you. Mr Grogan wants to come in with a question before I finish off.

Q221 Mr Grogan: The protocol makes a reference to the frequency of inspections. I wonder whether or not you had any view on how frequent the inspections should be?

Dr Morrow: My own view of inspections is there is a formal cycle of inspections which needs to occur. I am not professional enough to say what that is, but a professional guess from Kit Chivers' office will be able to tell you when is an appropriate time for that. I think also, given these are pilots, there needs to be provision made for occasional and unannounced inspections, informal inspections in which people simply arrive, so therefore the evidence at the end of the three-year review is from the formal inspections. I was once a university lecturer and may yet be one again—

Q222 Chairman: Is that in hope or expectation?

Dr Morrow: I am not sure! We had this thing called “the quality assurance exercise” and it was telegraphed about six months in advance. You always knew which department had the quality assurance exercise because their rooms were being painted, their carpets were being renewed, the windows were being polished and they were getting lots of new technology. My feeling is the formal inspections are important because they allow people to present themselves at their best, but we do need to have a system whereby unannounced and shorter-term inspections are part of their regime and understood as a necessary part at this time of transition.

Q223 Chairman: Thank you very much indeed. We truly are grateful to you and, as I said, if there are other points you want to put to the Committee, feel free to do so. If not, we may come back to you. I wish you a very safe journey back and continued success in your important work.

Dr Morrow: Thank you very much.

Monday 4 December 2006

The Committee met at the Stormont Hotel, Belfast

Members present:

Sir Patrick Cormack, in the Chair

Mr David Anderson
John Battle
Mr Gregory Campbell
Mr Christopher Fraser

Lady Hermon
Dr Alasdair McDonnell
Mr Denis Murphy

Written evidence from Northern Ireland Alternatives is printed on page Ev 93

Witnesses: **Mr Tom Winston**, Manager, and **Ms Debbie Watters**, Trainer, Northern Ireland Alternatives, gave evidence.

Q224 Chairman: Good afternoon to both of you, Mr Winston and Ms Watters. I understand Baroness Blood is not able to be here.

Mr Winston: No. Apologies from the Baroness, who is unwell.

Q225 Chairman: I am sorry she is not well. Give her our best wishes for a speedy recovery. Can I give an instruction for all Members of the Committee and, indeed, everybody in the public gallery too, and even witnesses, to turn off their mobile phones. You are very welcome. As you know, we are conducting a brief inquiry into restorative justice schemes as part of our response to the Government's consultation exercise. We have seen witnesses in London. We have taken evidence formally. We have had informal meetings here. We also visited one of your schemes, IMPACT, this morning and we shall be visiting one of the republican schemes this afternoon in Belfast. You call yourselves Northern Ireland Alternatives. Perhaps you would like to just say a word or two about the "alternative" as you see it, about your relationship with schemes like IMPACT, how integrated you are, and how you operate.

Mr Winston: Thank you, Chairman. Before I do that I would like to do a little bit of an opening statement and then I will go on to explain how we came about.

Q226 Chairman: Of course, absolutely.

Mr Winston: Thank you for the opportunity to be here today to talk about the work of Alternatives and, I suppose more importantly, the Protocol for Community-based Restorative Justice Programmes. Northern Ireland Alternatives is a centrally co-ordinating body for the development and support of community-based restorative justice programmes in protestant areas of Northern Ireland. Alternatives has been in existence since 1996. It was the first community-based restorative justice programme in Northern Ireland and, I believe, paves the way for other programmes, both statutory, voluntary and community. Alternatives is an indigenous model of practice initially emerging to address the issue of paramilitary punishment violence and anti-social behaviour, but this remit has widened considerably over the years. Much of our initial learning was gained from the Centre for Community Justice,

Elkhart, Indiana—the first restorative justice programme in North America started by the restorative justice guru, Howard Zehr. I am sure you have heard his name on many occasions. Northern Ireland Alternatives now has programmes in the Greater Shankill area, North Belfast, East Belfast and in the Kilcooley Estate in Bangor, where I believe you were this morning. Since its inception, Alternatives has engaged positively with all statutory agencies, including the police. Representatives from the police, probation, social services and the Housing Executive sit on each of our management committees in an advisory capacity. Over the years we have received referrals from the police, probation, social services, and have participated in and/or helped to implement a number of Youth Conference Plans with no additional resources. We have been independently evaluated by Professor Harry Mika, Central Michigan University and Queens University, Belfast, and adhere to strict standards of good practice and human rights compliance. Our three year evaluation programme will be available hopefully sometime in December of this year. All participation in our programmes is strictly voluntary. We are committed to the non-criminalisation of young people and support Article 40 of the United Nations Convention on the Rights of the Child which states that Member States will take measures without resort to judicial proceedings and will also establish a range of dispositions as an alternative to custody. We are committed to the engagement and empowerment of victims of crime and anti-social behaviour and to addressing the fear of crime within local communities. Since 2003 we have worked with a total of 1,964 young people, 1,719 victims and trained 268 volunteers. That is the opening statement.

Q227 Chairman: Thank you very much indeed. Could you just expand a little and tell us precisely how you work with these schemes that are under the broad general umbrella? What is your relationship with them, how often do you have contact with managers and what, if anything, do you contribute to their funding, *et cetera*?

Mr Winston: Northern Ireland Alternatives is the umbrella organisation for all of the agencies I mentioned earlier. Alternatives started off in the Shankill area of Belfast in 1996. In 1998–99 Bangor was getting involved with us and in 2002–02 we opened offices in North Belfast and also in East Belfast. From the concept of Alternatives in 1996, which started in the Shankill area, and because of its success we were inundated with inquiries from other areas of Belfast and Northern Ireland. We have inquiries from all over Northern Ireland but, due to the limited resources that we have, those are the areas we are working in. We do the training for all the organisations. Everyone is trained to the standard that Shankill started off with. Managers meet on a monthly basis. There is what we call our Practitioners Forum where all practitioners meet on a monthly basis as well and share experiences of the programmes, how they are working, the anxieties that they face, the difficulties that they face and the successes they have reached. All in all there is a very much hands-on approach from Debbie and myself.

Q228 Chairman: Funding, do you control the funding?

Ms Watters: Somewhat. It depends on the funder. For example, Atlantic Philanthropies requested that the funding be co-ordinated centrally so it comes through Northern Ireland Alternatives.

Q229 Chairman: But the Esmee Fairburn goes direct to IMPACT, does it?

Ms Watters: It goes directly to IMPACT but Esmee also funds Shankill and it goes directly to Shankill. Bigger pots of money tend to go through the financial procedures of Northern Ireland Alternatives. Recently we have received Peace II extension money and that will all go through the central office of Northern Ireland Alternatives.

Q230 Chairman: So there are two sources, there is earmarked funding which a particular charity or organisation will say they want to go here or there, and then there is the general funding which comes through your umbrella organisation.

Ms Watters: Northern Ireland Alternatives, yes.

Q231 Chairman: The two of you and your colleagues then decide how much of it would go, say, to IMPACT and how much to Shankill, is that right?

Ms Watters: We make a bid for money and in that bid we submit a budget. When the money is given to us the budget is already clear what the needs are locally and where the money will go.

Q232 Chairman: How many people are employed directly or indirectly within the umbrella of Northern Ireland Alternatives?

Ms Watters: We have a staff team of 17–18 people.

Q233 Chairman: That is spread across?

Ms Watters: That is spread across all the sites, yes.

Q234 Chairman: Mr Winston, you indicated when you spoke a moment or two ago that you have a lot of requests for help. If your resources were not limited, would your human resources potentially allow you to open up throughout Northern Ireland?

Mr Winston: The staffing that we have at the moment probably would not allow that but the training that we could provide would.

Q235 Chairman: And there would be sufficient people coming forward in other parts?

Mr Winston: Very much so, yes.

Ms Watters: We have already trained the areas that have expressed an interest, for example Ballymena and Londonderry. Free of charge we have trained volunteers in those places so they are ready and waiting, and maybe even informally doing restorative justice in their own community work day-by-day.

Q236 Chairman: Ballymena is an area that could presumably benefit very considerably.

Ms Watters: Very much so. The Ballymena, Antrim direction could really benefit.

Q237 Chairman: Yes. What do you see as the main benefits?

Ms Watters: Of restorative justice?

Q238 Chairman: Yes.

Ms Watters: I think there are several key benefits. One is that it provides rapid, effective response to anti-social behaviour within local communities. Restorative justice provides a sustained response in that we are there 24/7 and we are there for the long-term. When we work with a victim of crime it is not just a one-off intervention. We can support that victim for as long as they need support, so it could be two months to two years. We are also extremely cost-effective compared to the formal criminal justice, which I think is important. We offer an intensive response. Our work with young people predominantly is very intensive and often daily contact. I think that is why we have a 2% recidivism rate, which is very low compared with the formal criminal justice system.

Q239 Chairman: In this inquiry we are looking particularly into the draft Protocol. How would the implementation of this Protocol affect your work? Would the effect be beneficial or detrimental?

Ms Watters: I think we could both respond to that. As the Protocol sits currently it would both enhance our work and be detrimental to our work. I have to be honest about that, I think.

Q240 Chairman: In that case, would you just like to tell us in what respects it would enhance your work and in what respects it would be detrimental to your work? Remember that we will be making recommendations and before we make those we shall want to take account of what you have told us.

Ms Watters: Okay. I think it would enhance our work very positively in terms of formalising and making public the formal relationships we already

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have with statutory agencies. The Protocol as it sits also would give statutory agencies the go-ahead to go public with the work they are already doing with us because some of them do work privately with us but are afraid to talk about it publicly. I think that would be extremely positive, the formalising of those relationships. The negative side of that is if those relationships are so formalised that there is no room for flexibility. Restorative justice, just by its very nature, needs to be flexible because it is person-centred and case-centred and you need to respond to each case differently and individually.

Q241 Chairman: One final question from me at this stage. A number of witnesses, both formally and informally, have suggested that the Protocol would be materially improved if there were an attempt to define low level crime. Others have suggested that this would be such a difficult job that it would be best left alone and there be no attempt to put in such an appendix. What is your view?

Mr Winston: I suppose there are conflicting views on that. What is low level crime? What is anti-social behaviour? I think the difficulty when you try to define that is you are making things very rigid, which is fine at one degree, but not flexible enough for a programme to work at another degree. The types of offences that we would like to be working with, and do work with, is low level crime, anti-social type behaviour, vandalism, petty theft, things of that nature. What we do not do, and what we have no intention of doing, is working with anything of a sexual nature, of a violent nature on a sliding scale upwards. It is the low level nuisance behaviour that is high up the list of priorities for the community but maybe not so high up the list of priorities for the police and others.

Chairman: Thank you very much. Mr Fraser.

Q242 Mr Fraser: May I just go back to the point you made about funding. You talked about the Atlantic Philanthropies organisation and your funding from that ended in June.

Ms Watters: That ended formally in June.

Q243 Mr Fraser: What impact has that had on the work you are doing and your staffing arrangements, *et cetera*?

Ms Watters: As you could see from Kilcooley this morning we have already lost two staff members in Kilcooley and at the end of this month the manager of East Belfast Alternatives leaves.

Q244 Chairman: The manager?

Ms Watters: The manager. Then several other staff members between now and Easter will be gone. The funding situation has had a significant impact on our work. This is one of our dilemmas with the process involved in the NIO consultation. In our opinion it has been dragged out to such an extent to pander to wider political agendas that we may not even be in a good place to sign up to the Protocol whenever it is formalised.

Q245 Chairman: Be a bit more particular. What do you mean by “pander to wider political agendas”?

Ms Watters: What I mean by that is in our opinion it is pandering to the wider policing debate and, more specifically, the policing debate with Sinn Fein and republicanism. For us that is not an issue, we have always worked with the police, we want to continue working with the police and we want to enhance our working relationship with the police.

Q246 Mr Fraser: In terms of what you have said, you argue the unwillingness of the Northern Ireland Office to engage in this scheme which has resulted in your funding crisis. What has been their response to your applications? How have they been handled? Do they just ignore them, or what?

Ms Watters: We have really faced a double standard on this one. The mixed messages that we are receiving are incredible. We are saying in some documents that we do not receive NIO funding. In the past we have received some funding from police, from the Housing Executive, from the Department of Social Development—DSD. NIO are saying that they are not allowed to fund and there is an embargo on funding, but within the past few months Greater Shankill Alternatives has received approximately £60,000 of DSD funding, which is government funding. We have been told that application just slipped through the net. To me it met the criteria, so we got the funding on merit. That is an indication that we do definitely meet the criteria, we tick all the boxes. The funding embargo is a political decision.

Q247 Mr Fraser: Particularly as you described just now, your own words were you are cost-effective.

Ms Watters: Hugely. I do not know if you are aware of some of our statistics here. To keep someone in the prison system in the UK for a year is £37,000 a year per head; in Northern Ireland it is £85,000 a year. To put a young person through our intensive support programme, keep them out of the formal criminal justice system and possibly keep them out of custody, costs approximately £1,000.

Q248 Chairman: What do you do in order to try and get funding? Of course I fully understand about the statutory agencies, and this Committee may well decide to recommend that more money is made available, we have to deliberate on that, and I equally understand, because you talked about the North Atlantic one and Esmee Fairburn, that there are charitable trusts to which you appeal. Do you make any appeal to the business community within Northern Ireland?

Mr Winston: We have not but we have made an appeal to business communities outside of Northern Ireland and have been successful, but not to a great degree.

Q249 Lady Hermon: Where has this been?

Mr Winston: In America and one particular one from Dublin.

Q250 Chairman: Why not from within Northern Ireland?

Ms Watters: Chairman, the debate that has been raging on community-based restorative justice has been quite rigorous and it has affected people's opinion of restorative justice. I must be honest and say that in Northern Ireland a lot of people are very afraid to come near us, people who even two or three years ago would have wanted a relationship with us. Because of the way this debate has escalated, and because of the way I feel certain political parties have escalated it, it really has done our profile significant damage.

Q251 Chairman: Which parties?

Ms Watters: I have said publicly before that I think the SDLP have escalated this debate to a level where it does not need to be and it does not need to sit.

Q252 Chairman: You do know that there are, of course, others who have publicly expressed misgivings, not about your schemes necessarily. The Committee was circulated with an article by Garrett FitzGerald, the former *Taoiseach*, and I am sure you know about it, it was widely publicised. It is not just a question of a political party within Northern Ireland.

Mr Winston: In response to your question, in fairness you said where did it come from and I think the SDLP put it on the map over the last two years as well as other political parties, the UPL-Unionist Alliance and others. The problem for us is restorative justice has been heavily politicised over possibly the last three years and a lot of it has been edged towards CRJ Ireland. Our problem with that is there has not been enough differentiation between the two schemes.

Q253 Lady Hermon: You see them as quite different?

Ms Watters: Very different.

Mr Winston: It is like a bowl of fruit, like apples and oranges.

Q254 Chairman: Do you have any contact with the others?

Ms Watters: Yes.

Q255 Chairman: Are those contacts amicable and productive?

Ms Watters: Yes.

Mr Winston: We do not work together but we speak at conferences, we speak at different events that go on throughout Northern Ireland. From time to time we might work directly along a peace line, for example.

Q256 Chairman: So your work is complementary?

Ms Watters: It can be complementary, but I think the difficulty is that too many people are putting restorative justice in the one camp and not differentiating between the good work that goes on and perhaps the work that is maybe seen as not so good.

Q257 Dr McDonnell: I have just a couple of questions. Would you care to speculate as to where the SDLP have been wrong in this because I am quite

interested and I have said little from time to time and my position is I feel I have not said enough. Secondly, are you implying that where fairly grave matters have been concerned that we should stay quiet?

Mr Winston: No.

Q258 Dr McDonnell: My experience of this is born very simply out of the horrific murder of Robert McCartney and associated events. Indeed, much of the SDLP conditioning arises out of that. Are you suggesting that we should be quiet on that?

Ms Watters: No, that is definitely not what I am suggesting. When we have met with your party colleagues within the SDLP what we have asked is that they make it clear when making a critique of restorative justice, is it a critique of CRJ Ireland or is it a critique of Northern Ireland Alternatives, because we are two very different models of practice. That is all we have ever asked for. The broad-brush sweeping statements have detrimental implications for us and our practice and our profile. When we have met with people and talked to them, we have asked, "Have you received any formal complaints about Northern Ireland Alternatives?" and in 11 years of work we have not had one formal complaint. We do not always get it right, we do make mistakes and we need to learn from those. If people have concerns about the practice of restorative justice they should be talking publicly about them very definitely, but they should be talking publicly in a more precise manner. That would be my point and response.

Q259 Dr McDonnell: Is it not your responsibility to highlight that rather than mine?

Mr Winston: In fairness, we are trying to highlight that. The difficulty we face is it is easier for you to get the press coverage of negative stuff, and I am not saying that you are wrong to do that, I would support you in doing that in those complaints that people have about CRJI, but there is not enough differential put between CRJI and Northern Ireland Alternatives.

Chairman: This is a public session, so let us hope some of the things you are saying—

Q260 Lady Hermon: will be picked up by the media.

Mr Winston: Northern Ireland Alternatives tends to be lumped in together with it and there is not enough blue water between the two schemes. Through the Northern Ireland Office over the last two years the blue water is starting to develop, but prior to that both schemes were treated exactly the same and even when politicians, dare I say, and others talk about restorative justice it is always "the schemes" and the schemes are put together, there is no differential between the two.

Q261 Mr Campbell: I think this is a useful discussion we are having because the distinction has to be preparedness to work with the police and you have made it clear that has always been your position, so

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hopefully that will get across. The question I really want to ask is in response to what Ms Watters said. You said there was a 2% re-offending rate.

Ms Watters: Yes.

Q262 Mr Campbell: Have you any way of establishing the effect that has on the wider community? There are those who argue the traditional justice system acts as a deterrent, and sometimes does not, but you can establish whether or not the wider community, the would-be criminals, the would-be anti-social elements, are deterred by virtue of that. Have you any facts, figures or anything you can bring to bear for the Committee to indicate that is happening in your community, that younger people are deterred from carrying out activities because they know someone who is going through your scheme?

Ms Watters: I suppose the only figures that we could use for that are the numbers of young people on our intensive youth support programme, which is an intensive programme working with young people involved in crime and anti-social behaviour. Those figures are going down each year. The numbers of young people we are working with in terms of prevention work, in terms of extremely low level nuisance behaviour, are going up. The kinds of anti-social behaviour are changing. I think that is a good pattern, that we are not working in the Shankill and North Belfast with young people who are stealing cars, we are not working with young people who are breaking into homes, we are working with young people who are hanging out on street corners and drinking, young people who are kicking balls against gable walls, young people who are stealing from shops.

Q263 Chairman: Young people of what age? 13–18?

Ms Watters: Probably as young as nine or 10.

Q264 Lady Hermon: Mostly boys?

Ms Watters: That has shifted. I would say it is 60% boys and 40% girls.

Q265 Chairman: Between the ages of nine and . . .

Ms Watters: Twenty-five.

Chairman: A big age range.

Q266 Mr Campbell: I am just trying to get a picture of this. If you are working on an estate or in an area where you are seeing some success in terms of the output you get at the other end of it, are there then adjacent areas that perhaps you have not been working in where there are similar rates of anti-social activity and that sort of thing and you then get the wider community asking you to come in?

Ms Watters: Yes.

Q267 Mr Campbell: Could you elaborate on that.

Ms Watters: Bangor is a great example of that where Kilcooley has been such an incredible success that within the last nine months I have trained volunteers from Bloomfield, from Rathgill Estate, getting them ready for transferring the model on to their estates. In working class communities there is a real hunger

for something different, a real desire to treat young people differently. For me, Kilcooley has been amazing. There has not been a punishment beating, shooting, anything in Kilcooley for several years. That is another success story, another indicator of our success that young people are no longer being abused in that violent way by paramilitaries, which was a horrendous violation of their human rights. That is one of the reasons why we started to exist, to put an end to that hopefully.

Mr Winston: Prior to IMPACT starting in Kilcooley people were leaving it in their droves but now there is a waiting list to get into it.

Q268 Chairman: We were told that.

Mr Winston: I am not saying that is all down to that but it is a great deal down to that.

Q269 Lady Hermon: We took evidence this morning that the Housing Executive has several hundred people waiting to get back into Kilcooley.

Mr Winston: It is amazing.

Q270 Chairman: The other thing we were all rather taken by this morning was we met a number of people there who had self-confessedly a paramilitary background but who did genuinely seem to have repented and embarked upon this more constructive course. They were quite key figures within the Kilcooley scheme. Is that typical of the other schemes within your umbrella? Are former paramilitaries key figures there as well?

Mr Winston: There are former paramilitaries involved in all our schemes but more people involved in the schemes not with that type of background than with it. It is not surprising, taking into account the communities they are from and where they are living, that people with a background—

Q271 Chairman: I am not saying—

Mr Winston: I am not suggesting that you are. I am just putting on record that it is not surprising that people with that type of background are willing to do something on a positive basis.

Q272 John Battle: You gave some figures right at the end of your statement. I wrote down 1,903 young people you had trained. There was a cluster of three figures that I lost, could you just read those out for me again?

Mr Winston: In 2003 we worked with 1,964 young people, 1,719 victims and trained 268 volunteers for the programme.

Q273 Lady Hermon: That was in one year?

Ms Watters: No, that is since 2003.

Q274 John Battle: There was a phrase you used before that, and I just want to clarify some confusion in my mind. You said that you were committed to the non-criminalisation of young people. I really like that phrase but I am now confused about what you do because I am from inner city Leeds and that is exactly the phrase that sums up the work of the

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Youth Service. I am coming here to see what is new and different. When Debbie says about the level of crime, I want someone to deal with youngsters at the age of 12 who nick cars and ram them into somebody's house or shop. I am not looking just at youngsters who, as was suggested, kick footballs against a pensioner's bungalow or are sitting on a wall, they are all manageable. I know if you bring drink and drugs into it there is another set of issues. How much is it really, really low level and what I would call perhaps traditional youth work if you could do that well, and of course you have to train people to do that well? How much do you extend into that bracket of other crimes which is quite criminal activity, such as destroying property, whether it is even scratching cars, attacking houses, bricking windows or violence, and perhaps up the age range a little bit, although not under-estimating the capacity of kids at 12 and 13 to do damage if they have dropped out of school and things? Do you get up that scale a bit more?

Ms Watters: We have worked with young people involved in those types of crime but they have also been involved in the formal criminal justice system. It has worked quite well because of a partnership approach. For example, if a young person chooses to be on our programme and is involved in the criminal justice system we can go to court with them, we can submit a report on their behalf, and on several occasions the juvenile magistrate has sent the young person back to us to complete their work with us and then that went back to court. That is a way in which the Protocol can work really, really well.

Q275 John Battle: It digs into the criminal justice system in a way that youth work would not.

Ms Watters: Yes. We all know once a young person gets into the system it is a downward spiral, so there has to be a way creatively of keeping them out of it for as long as possible but we cannot ignore the fact that a crime has been committed. When we heard about the Protocol, in our naivety we thought, "Great, a chance to do something really creative, really risk-taking, partnerships that will work really well for our young people and keep them out of the system", but really what we have on paper is nothing new, actually it is much more rigorous and demanding than what we had previously. I think restorative justice in Northern Ireland has an awful lot to offer if we are allowed the creativity to work in formal partnerships without, dare I say it, Big Brother watching every single step that we make.

Q276 Chairman: You are actually asking for contradictory things, are you not?

Ms Watters: Yes, I am.

Q277 Chairman: Mr Winston is agreeing.

Mr Winston: Yes.

Q278 Chairman: This Committee has got to decide what recommendations it can make that are constructive because you are saying, on the one

hand, "we desperately want this formal relationship" and, on the other hand, "we desperately need the flexibility".

Ms Watters: I am not sure, Chairman, that they are contradictory. I think in an ideal world they could sit quite comfortably together, I really do, but it is finding a creative way to make that happen.

Q279 John Battle: This is my very naïve attempt to de-politicise what you are doing in this sense, rather than—

Ms Watters: Please do.

Q280 John Battle: You dropped something in that is new to me. It was Tom's reference to America, Central Michigan University. Are these ideas that have come out of America? Are there tests in America? Are there people in America who have been helping you work on it? In other words, are there some American roots that we should be digging around in? The reason I am asking you is we need some of the ideas and creativity that you are implementing here even in my city. I have come here to learn how to do it where I am, not to tell you what to do. Are there some American roots that we should be digging around in?

Mr Winston: Yes, there are. I will just give you a couple of sentences and then pass over to Debbie. When we were trying to develop something around paramilitary violence in 1996, about nine months into the research I interviewed Debbie to ask her opinion on it. I did not know Debbie at the time. Debbie then informed me that for the five years prior to that she was working in Elkhart, Indiana using restorative practices. What we were trying to do was develop restorative practices using the same types of models Debbie was working on. I will pass over to Debbie now because she started giving us a focus on restorative practices.

Ms Watters: I think that is a key thing for marginalised communities. They did not know what they were doing was restorative justice, it was just a human response to crime and anti-social behaviour and I was able to put a term to it. It was very indigenous. All the victims were asking for in the Shankill was, "When somebody hurts me I want to know why they did it. I want them to make it right. I want my money back. I want my property back" and the young people were saying, "We feel marginalised. We are not a part of this society and we are lashing out". The community was saying, "This activity makes us scared". That is all restorative justice is about, healing broken relationships, bringing people together, dialogue. That is happening in America, in New Zealand and Europe but Professor Harry Mika would say that the most cutting edge work internationally at the moment is happening in Northern Ireland and that is because of the legacy of the violent conflict. We really have to work on the edge here and develop models that are making a difference to the lives of working class people. Yes, look in other places, look in America, Australia, in New Zealand—

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Q281 Chairman: We have not time but we would love to!

Ms Watters: What I think we can do differently here, if we are allowed to, is develop a model of practice that is truly unique. I go back to this partnership, community statutory partnership, that is flexible, fluid and takes some risks.

Chairman: Perhaps I should send each Member of the Committee to a different country!

Q282 Mr Murphy: Earlier you mentioned occasionally working across peace lines, presumably with republican schemes.

Ms Watters: Yes.

Q283 Mr Murphy: How does your requirement to automatically always inform the police affect that co-operation?

Mr Winston: It does not because it has never been the case until now with the Protocol. These Protocols are now stating that we must do that. In the past we have had working relationships with the police, and that is the difference. I feel that the working relationship with the police is a lot better at times because you know the local police person, the workings of them, how far you can go, what you have to do, and when you get things down prescriptively with guidelines, dare I say, then there is no wriggle-room. When you do away with the wriggle-room then you clog up the courts, you clog up the system and you do not have enough people with an ounce of sense to say, "This is how we are going to deal with this particular case".

Q284 Mr Murphy: How would you address the situation? Is flexibility more important than on each occasion informing the police?

Mr Winston: Again, it depends on the situation, on the case. What we have said from day one is we do not have an off-the-shelf model for everyone walking through our door. Each person coming through our door is an individual with individual needs, both victim and offender. We cannot say, "This worked last week so we will do it for this particular person", it is so person-centred that it works and it is so simple that it works.

Q285 Chairman: They would have told us that this morning, and indeed did, but at every one of the board meetings in Kilcooley the police are present. Is that the same with all of your schemes?

Ms Watters: Yes, it is the same with all of our schemes.

Q286 Chairman: What about Mr Murphy's extremely important question? Has the fact that the police sit on the boards of all of your schemes been a stumbling block with this co-operation?

Ms Watters: The police get a monthly report at each management committee meeting of the work that has taken place in that programme at that time.

Q287 Mr Murphy: So there is not any requirement from the republican schemes for you not to pass this information on to the police?

Ms Watters: Definitely not. We have our own standards of practice and we adhere to those at all times.

Q288 Chairman: Regardless?

Ms Watters: Regardless.

Mr Winston: I do not want to give the impression that ourselves and CRJ Ireland are working case-by-case together, that is not the case.

Q289 Lady Hermon: Three or four things come to mind. First of all, how do ASBOs fit into this system? Do they fit in at all? You are shaking your head, Debbie, very definitely here. We fought long and hard to get ASBOs extended to Northern Ireland, we have had them since August 2004, but to your mind do they fit in?

Ms Watters: For me, ASBOs should be very much a last resort because they are a punitive response. I think everything should be tried ahead of that, including restorative justice which is a restorative response. We have offered this model to the Housing Executive, to the city council, to the police, to say, "Use restorative justice before you hand out an ASBO. Let's try this more healing way of dealing with this situation and if it has to go to an ASBO we will continue to work with the young person and support them through that process". I think ASBOs should only be handed out as a last resort because if they are violated then, again, it is a criminal offence, so you are criminalising young people.

Q290 Chairman: Have you had direct experience of working with young people with ASBOs?

Ms Watters: In our caseload only one young person in East Belfast has received an ASBO.

Q291 Chairman: Only one?

Ms Watters: Very, very few ASBOs have been handed out in Northern Ireland.

Lady Hermon: Very few. Eleven ASBOs in two years.

Q292 Chairman: Within your experience only one?

Ms Watters: Just one.

Lady Hermon: We have only had them since August 2004.

Chairman: Yes, I appreciate that, but even so it is two years.

Q293 Lady Hermon: Yes, exactly. It is a very low number.

Ms Watters: The children's rights movement has really, really pushed here for ASBOs not to be handed out. Quite sensibly there has been an effort to only hand them out as a last resort, and sparingly.

Q294 Chairman: You said earlier that in 11 years you had not had any complaints.

Ms Watters: No formal complaints.

Q295 Chairman: If implemented, the Protocol would provide both for statutory inspection and opportunity for complaint and, indeed, some of the

evidence that we have received has been that the complaint procedure should be even more clearly specified. How would you react to both of those suggestions?

Mr Winston: I think that we believe there has to be a complaint mechanism. I do not believe that the Probation Board is a vehicle for it. Individuals from within the community, both statutory and voluntary, sitting around a table, perhaps with Probation Board chairmanship or people within the Probation Board being on that, but not the Probation Board *per se*. If we are talking about working in partnership with the community then there has to be community input into that complaint mechanism. It has to be taken away from a board like the Probation Board who, after all, sit on our committees and board and are possible funders, so there is a conflict of interest there. There is a need for a wider section of people sitting on that to take complaints.

Q296 Chairman: So you favour the idea of a complaint mechanism.

Mr Winston: We do not have a problem with that.

Q297 Chairman: How do you view the inspection suggestion? How would you like inspections to take place? Are you in favour of pre-announced Ofsted-type inspections or inspections that just happen out of the blue by somebody arriving? How would you like to see this happen?

Mr Winston: We have been speaking to Kit Chivers for the last three years, I believe since he came here.

Q298 Chairman: He has given evidence to us.

Mr Winston: We have been calling on Kit Chivers and the Northern Ireland Office to inspect us going back two years, but that has not been allowed by the Secretary of State and others for whatever reason. We have nothing to fear from inspection. We are an honourable and transparent organisation. The fact that we have asked Kit Chivers in to inspect us going back two years or more would prove that we have nothing to fear about that.

Q299 Lady Hermon: Why would the Northern Ireland Office be reluctant to have you inspected when you asked two years ago?

Mr Winston: I think there is a big political football being kicked around here called restorative justice and it has not touched the ground yet. Until that ball touches the ground, unfortunately we will have to wait.

Ms Watters: It is not part of his remit as yet.

Mr Winston: He is not allowed to do it.

Q300 Chairman: You would welcome it becoming part of his remit?

Ms Watters: Definitely. In terms of unannounced inspections or planned inspections, all we would ask is we are treated with parity in the same way as every other organisation. We are not asking for special treatment but also we do not agree with being treated more rigorously than other organisations.

Q301 Chairman: It was suggested in conversation with a fairly senior figure within Northern Ireland that these schemes will only really have proper effect if they become universal, uniform and cover the whole of the province of Northern Ireland and are applied by the same rules. I rather gather that is your view too, is it?

Ms Watters: I think that argument was made in terms of proportionality and everybody has the right to avail themselves of the same opportunities. We would love to roll out and spread out into every other area and, given the appropriate resources, help and support, we are open to doing that as long as the community wants us and are willing to work with us and be trained up.

Q302 Chairman: Do you find local authorities are co-operative, encouraging and helpful?

Mr Winston: No. I think it would be fair to say, Chairman, that we have been barred from being involved with local authorities simply because the Protocols have not been signed. The Protocols have not been signed because they have not been produced to be signed. I would like to put on record that in 1999 we signed a set of protocols with the Probation Northern Ireland Office and the police which were pulled at the highest level. Again, in 2001 a set of protocols were signed with the police and they were pulled at the highest level. We have nothing to fear about protocols and going through the process.

Q303 Chairman: No, I am not suggesting that you have, but I am trying to tease out what sort of co-operation you have from the various statutory bodies and you are saying not much from local authorities. What about individuals—I am not talking about any political party here—in elected positions, whether they be Westminster Members of Parliament, MLAs or councillors, what sort of co-operation and encouragement do you get? Do you get obstruction from some and co-operation from others? Do you get any difference? If you could tell us it would be helpful.

Mr Winston: I think we do get great help from certain individuals, both at Westminster and at city council and Assembly level. We also get some brickbats coming from people at Westminster, the city council and MLAs, so it is a bit like a curate's egg. There are people who like us and support the work that we do and there are others who do not.

Q304 Chairman: A bit like politicians!

Mr Winston: I think those who do not are ill-informed.

Ms Watters: It could be within the same party that there are people who like us and people who do not.

Q305 Chairman: We know the feeling!

Ms Watters: It does not have to follow a party line for us. We do have MLAs and local councillors who refer young people and victims to the programmes.

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Q306 Chairman: If you were given the opportunity to say to this Committee what two or three recommendations would be particularly helpful to you in your work, and this is no guarantee that the Committee will make such recommendations, I have to say that, it would be interesting to hear your point of view on that. What do you think would be most helpful for us to recommend to Parliament, and through Parliament to Government?

Ms Watters: I think one recommendation—you have heard us say it already—is treat us on our own merit, treat us separately from CRJ Ireland, take our practice, take our partnerships and judge us on that, not on the wider political agendas. I think that would open an awful lot of doors for us. As I have said, DSD have given us government money. The Probation Board have successfully approved a funding application on its merit but they have frozen the money until the Protocol is signed. Statutory organisations want to work with us and want to give us money but feel they are not being allowed to. For me, that would be one: treat us on our own merit.

Q307 Chairman: What about you?

Mr Winston: The biggest thing that I would wish for if I had a wish list would be the de-politicisation of restorative justice. It needs to go back to where it belongs, and I think that is at the grass roots level. Restorative justice came from the people and that is where it needs to stay. Dare I say in a room like this, when politicians get hold of things they tend to pull them apart, put them back together again and not in the way that they need to be.

John Battle: And end up broken.

Lady Hermon: Some do.

Q308 Chairman: Some do. This Committee does cut across parties and we do try to work, and have worked, effectively together and will continue to do so, I hope.

Mr Winston: The difficulty is I am talking about de-politicising things and in the Northern Ireland context if it is good for one side it tends to be bad for another. We try to do what is right for the people on the ground no matter where it is coming from. I think it is more a class issue than a political issue.

Q309 Lady Hermon: Really?

Mr Winston: Yes, I do.

Q310 Chairman: You make your point in a very interesting way. I know this is a very difficult question to answer but you have several years' experience. What would be an adequate level of funding? We heard the worry this morning in Kilcooley that two people were being laid off and all the rest of it and the sums that were being bandied around in conversation were really quite trivial in the context of—

Ms Watters: It is low. We are not talking big money.

Q311 Chairman: Would you give us some idea, this would be very helpful.

Ms Watters: We could give you big figures.

Q312 Lady Hermon: What sort of resources have you had to date and what would you need? IMPACT has been very successful in Kilcooley. You have mentioned in your evidence that IMPACT has been asked to go into Rathgill and other areas in Bangor. How much funding will it take to do that in Bangor? How much funding would you need?

Ms Watters: For a year to roll it out?

Q313 Lady Hermon: Yes.

Ms Watters: I think for a year to roll it out and keep staff in place—No, Tom, if I open my mouth and say the wrong thing.

Q314 Lady Hermon: Do not worry, Tom will correct you.

Ms Watters: I think Bangor could really do a lot with £100,000. I think it could transform it.

Q315 John Battle: That is just a bit more than keeping one person in prison for one year in Northern Ireland.

Ms Watters: Yes. Thank you.

Chairman: Mr Battle puts it in context.

Lady Hermon: £30,000 has been spent by the Northern Ireland Office on bottled water in one year, so that probably does put it into context.

Q316 Chairman: What we are really talking of, even to achieve your ambition of a de-politicised scheme across the whole province of Northern Ireland, is probably in the very low millions, are we not?

Mr Winston: Very much so. It would be very cost-effective. I think the previous Atlantic funding was something like £800,000 over a three year period for Northern Ireland, maybe it was slightly more than that with other funds coming in.

Ms Watters: That was 16–20 people.

Mr Winston: We are not talking big money, but then again if you want to roll it out to the other parts—

Ms Watters: Can I just say that part of why we work well and why we are different from the formal system is that we do a lot through volunteers. We are trying to create a culture within a working class marginalised community.

Q317 Chairman: How many volunteers have you got?

Ms Watters: We have got 268. We are trying to empower local people to do this for themselves, that is the beauty of it. That is why communities are being transformed. It is not all about paid staff, it is not about professionalising this, it is keeping it on the streets where it belongs.

John Battle: Can I share with you the parallel that has come into my mind, that in my constituency we have a big neighbourhood prison, 1,274 in it last night, and 50 a day go in and 50 a day come out five days a week. I have got a massive scheme of volunteers who practically hijack them when they come out and stick with them so they do not go back in again. They find them training, jobs, places to stay overnight and money. It is a network of volunteers but it does need co-ordination and we have got a co-ordination body. I come back to the cost. The cost

of every single person that does not go round into the flats, shoot up cocaine and go back in again is a massive saving to the national budget. I always try and spell it out backwards. If you were to save 200 people from going to prison in one year—I am talking about 50 a day in Leeds, so the scale of it is there—if you scale those numbers up, the saving in the long-term of what are now called in trendy language “opportunity costs” is massive to the state. If you come at it that way round the budget does not seem anywhere near as big as saying, “We need to double our budget to keep the scheme going”.

Q318 Chairman: I cannot promise you all that in the report but at least you have got a good PR man!

Ms Watters: Yes, we do. If you think of how much we have saved the system in terms of the punishment beatings and shootings that we have prevented, the average is that each punishment beating or shooting can cost the system anywhere from £30,000 to £100,000.

Chairman: We are coming to the end of the session because we have to see your colleagues from CRJ Ireland in a few moments. Thank you both very much indeed. If there are points that occur to you that you have not put across to us, questions that perhaps we should have asked or answers that you might feel later you should have given or amplified, please let our Clerk know. We are on a fairly tight timescale in that we are seeing the Minister on Wednesday of this week in Westminster and we will be producing our report in the early part of the New Year, but there is certainly time for you to send in any additional or supplementary information.

Q319 Lady Hermon: We have had a succession of Direct-Rule Justice Ministers here, and we have had very good ones, including Des Browne. Have any of those Justice Ministers, including Paul Goggins, met with Northern Ireland Alternatives?

Mr Winston: No. David Hanson has met with us on numerous occasions but Paul Goggins, no.

Chairman: David Hanson is the one handling this and he is the one giving evidence to us on Wednesday, so that is good.

Q320 Lady Hermon: Is that a disappointment to you? Are you surprised that they have not bothered beforehand?

Mr Winston: No. We have been very closely in contact with David Hanson and his office.

Chairman: That is good.

Q321 Mr Campbell: Just on the timeline, I think Tom mentioned something about a report that was coming out sometime in December. I am just wondering would it be possible to get that to us.

Mr Winston: As soon as we get that you will receive it.

Ms Watters: Atlantic are hoping to publish it for the NIO consultation close, which is 13 December. It is a joint publication for CRJ Ireland and ourselves.

Q322 Chairman: Get that to us if you could as soon as possible and then we will be able to take that into account. We have got a slight extension, being a parliamentary body, and we will be making our submission to Government by the middle of January. That would be helpful.

Mr Winston: Can I just ask a question on that. Does that mean 13 December is not a deadline at all?

Chairman: No, it means it is a deadline but we are a select committee of Parliament and we have just a little bit longer to put our report in because, for reasons entirely beyond our control but within the Government's, we have been somewhat delayed.

Q323 Mr Campbell: Sometimes deadlines can be extended.

Mr Winston: We know that.

Q324 Chairman: We have had great experience of that but I will not say any more to be provocative. Thank you very, very much indeed, it is very nice to see you.

Ms Watters: Thank you very much for your time.

Written evidence from CRJ Ireland is printed on page Ev 99

Witnesses: **Mr Jim Auld**, Director, and **Mr Harry Maguire**, Community Restorative Justice Ireland, gave evidence.

Q325 Chairman: Mr Auld and Mr Maguire, welcome. Thank you very much indeed for coming. I think you heard, if not all, most of the previous session. We are very anxious to get as balanced a view of community restorative justice within Northern Ireland as we can and to that end we have taken evidence in Westminster, we have had informal meetings with political parties and others here, we visited Kilcooley this morning and we are going to visit one of your schemes later on this afternoon. We are very grateful to you for making that possible. We have taken formal evidence from your colleagues and now we take it from you. You will have heard that we must get our report done during the first half of January, but we are very

anxious to take into account what we hear from you as we take into account what we heard earlier. Is there anything either of you want to say by way of opening statement before I ask questions?

Mr Auld: No.

Lady Hermon: Could you say a little bit about your organisation and how it started?

Chairman: I was just going to ask that. You were leaping in.

Lady Hermon: No, we are obviously reading the same script, Sir Patrick. You carry on.

Q326 Chairman: I never read the script. Please, carry on.

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Mr Auld: I am a youth worker. I have been a youth worker for 20-odd years mostly in nationalist, republican areas working with deep-end persistent offenders.

Q327 Chairman: All within Belfast?

Mr Auld: Within Belfast, yes. Mostly in North and West Belfast. Most of that time was spent working with NIACRO and Extern who are the two main voluntary organisations that work in criminal justice. My role there was working in diversionary programmes for young people who were engaged in persistent anti-social activity, mostly around car crime, which was a blight particularly on West Belfast at that stage. It was about trying to use their time constructively, trying to create conditions where they would look at employment, try to put some structure into their lives to varying degrees of success and, unfortunately, sometimes failure. One of the biggest difficulties working with people at that stage was the persistence of offending meant that they were liable to be shot or beaten by armed groups, by a range of armed groups that lived in nationalist areas. The predominant one was the IRA. I helped start another organisation that moved people out of the country to avoid them being shot or beaten. I developed a role that allowed me to negotiate with each of the armed groups around the safety of individuals. I would go and negotiate the safety of a particular person who had given me their permission to try and negotiate their safety. That was based on them not offending again. If they were not prepared to do that then I helped get them out of the country. A lot of people went to Manchester and Liverpool, to a Christian Society over there. Unfortunately, the vast majority of them were young males and what was happening was they were so unprepared for life out in the big, bad world that they could not hack what was happening to them in England because they had to go into the hostels, they had nobody to care for them or look after them, so very quickly they were coming back into very dangerous situations. At that stage we were floundering about and looking for ways to save them from being shot or beaten. An opportunity arose just before the 1994 ceasefires to get into a debate with senior IRA people that I had suggested to them that would allow me to get across to them what it was they were involved in apart from the immorality of what they were doing. What they were doing in practical terms was ineffective in terms of what they were supposed to be doing. They were shooting people and beating people in the belief that it was stopping them carrying out those activities but clearly it was not because there was ample evidence that six or eight weeks after someone was shot they would be back out doing the same thing. I got a group of people together who looked at what we could say to the IRA that might influence them. They were mostly academics and criminologists who had a good grasp of the criminal justice system and international law, human rights and that range of expertise. We met with a group of senior IRA people for probably a four month period on a weekly basis and had discussions with them. It culminated in us

going away with them and we looked at what would need to be put into place to allow them to walk away from punishments completely and to allow the criminal justice system to deal with those issues that were causing them so much bother. One of the difficulties in that whole thing was the role of the police within that, and that was the police recruiting those young people who were committing petty offences as informers. That certainly caused me concern because it was moving people and, bad as it was for people to be shot in the legs, it was much more dangerous for them to be going away and touting, as the nationalist community see it, on republicans and they ended up getting shot dead. It was a totally different level of thing that was happening. We engaged in that process and came up with a plan that we thought would allow the IRA to move away from the whole civilian policing issue and allow the criminal justice system to get on with their role. We published that as a discussion document on policing in Northern Ireland.

Q328 Lady Hermon: Could we have a copy of that?

Mr Auld: I think there should be a copy in the office, and I believe you are coming on the visit. There are only a couple left because it has been out of print for a while.

Q329 Lady Hermon: Thank you.

Mr Auld: At that stage we had criminologists, including the Professor in criminology from Queens, and he had never heard of the term "restorative justice".

Q330 Lady Hermon: Who was that?

Mr Auld: Kieran McEvoy. He had not heard of it and we had not heard of it either. To be truthful, I heard the term first from Jack Straw when I was driving down to work one morning. He had talked about it and that was when I looked it up and we came back and put into the package the restorative justice concept. When we looked at it and looked at what we had been planning the two of them fitted in very cleanly.

Q331 Chairman: Thank you very much. That is a very long but very helpful first answer. Thank you very much indeed. CRJ Ireland was established in 1999.

Mr Auld: That is right.

Q332 Chairman: You have got 15 local projects at the moment, as I understand it, including one in South Armagh which I was told this morning, and you will be able to confirm whether this is right or not, is about to close or has closed. Is that correct?

Mr Auld: We have five in South Armagh, Newry and South Armagh. The Newry project is about to close.

Q333 Chairman: Would you like to tell us a little bit about those projects and how you would see your umbrella organisation working? We have heard from your predecessors how their umbrella organisation works and how they receive funding,

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some of which is earmarked for particular projects, some of which is more general. Could you tell us a little bit about your organisation.

Mr Auld: The funding, as you know, is coming to an end from Atlantic Philanthropies. It was given for the central office and five projects, four in Belfast and one in Derry. They are still in operation, however two of the Belfast projects are not far off closing as well in terms of full-time employees. Each of the offices has a co-ordinator and a part-time administrator and a number of volunteers, usually between 15 and 20–25 people, in each of the areas where we work.

Q334 Chairman: Are you dealing for the most part with the same age group as your predecessors? We were somewhat alarmed, I think, and surprised to hear that they were dealing with children as young as nine and they gave the age profile as nine to 25. Would yours be the same?

Mr Auld: No, it would not. We would have a different profile. In fact, what happened early on in our programme, and I think it is to do with the politics in the north where there is no acceptance yet of policing, was more and more people came to us for a bigger variety of issues.

Q335 Lady Hermon: Such as? Give us an example.

Mr Auld: When we started we thought we were looking mainly at young males, 14–18 and 14–21, but it very quickly became apparent that they were the minority. The majority of cases involved family disputes or neighbour disputes over the silliest things, or what appeared to be the silliest things. I think there is a level of violence that is just below the surface of society that is liable to burst out into the open on the slimmest of excuses. If you had two children arguing in the street, the mothers very quickly became involved and the fathers very quickly became involved and then the aunts, the uncles and everybody else became involved, and there were people killed in that situation and people badly hurt and seriously injured. That become a fairly normal thing for us.

Q336 Chairman: So your age group would be rather higher?

Mr Auld: Very much so.

Q337 Chairman: The big difference that appears to come out at the moment, and I would greatly value your comments and reflection on this—you just touched on this when you talked about the issue of policing—is we have just received evidence from Northern Ireland Alternatives and all of their schemes have a formal police presence, there are one or two members of PSNI on the boards of the schemes, as we met this morning in Kilcooley, but I suspect when we come to you later this afternoon we will not meet PSNI officers in your headquarters.

Mr Auld: If you do they are probably raiding it!

Lady Hermon: Not because we are there!

Q338 Chairman: That is very interesting. Whether they arrest you or me, we will have to wait and see! Although that is an extremely amusing comment there is a serious underlying issue here, is there not, that you do not co-operate with the police officially. Do you co-operate with the police at all? Would you consider it incumbent upon you, either yourself or to advise if it were one of the schemes under your umbrella, if somebody came and reported what was quite clearly not a low level crime, a shooting or something really serious, to report that to the PSNI or to tell the person who told you to report it to the PSNI? How would you respond?

Mr Auld: It is very clear. When we are going over any case, especially a case of a serious nature where there is a crime committed, we look at what options people have and the first option we give them is that they should go to the PSNI.

Q339 Lady Hermon: You give them that option?

Mr Auld: We clearly give that as a first option.

Q340 Chairman: Do you make any contact with the PSNI?

Mr Auld: I have on several occasions. Let me give you two examples that highlight separate concerns apart from the politics of policing. There was a murder committed in West Belfast last year and we quickly, within three days, found out who it was. I contacted him and he arranged to meet me. I met him in a local bar.

Q341 Lady Hermon: You contacted the person who was responsible for the murder?

Mr Auld: The murderer, yes. He was wanted for murder. I contacted him and I said, “You don’t have any options here. You have committed a terrible crime and you need to hand yourself over to the PSNI”. The guy was petrified—petrified—because of what he had done. I persuaded him to hand himself in. I took him from the bar up to the police station and I said, “Here’s a guy who has committed murder. You are looking for him and he wants arresting”. The policeman said, “I am on my own here, you will have to go somewhere else”.

Lady Hermon: You are joking.

Q342 Chairman: So what happened?

Mr Auld: I took him to another police station. They arrested him and charged him with murder.

Q343 Lady Hermon: Which police station was undermanned?

Mr Auld: Woodburn.

Q344 Chairman: Gracious. What was the other example?

Mr Auld: For me the other one was even worse. It is a long and complicated story.

Q345 Chairman: The highlights, please.

Mr Auld: We had a girl come to us, a young woman, who was 19 and she told us a story over a period of a couple of days about how her whole family were involved in sex abuse on her where her grandmother

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and mother held her down and allowed her grandfather and uncles to rape her. The uncles were taking videos and selling them on the internet.

Q346 Lady Hermon: That is just appalling.

Mr Auld: Our role was clearly to get her to go to the police. It took us about three weeks—this is off the top of my head so forgive me on the timeframe—to persuade her to go to the police, but she did. We sent somebody with her every day, including myself, to Garnaville, to the abuse unit, the care unit, and we sat in while she was being videotaped. The police had 21 hours of videotape of her evidence.

Q347 Lady Hermon: With a female police officer?

Mr Auld: Yes. We had to get her accommodation out of where she was living because she was still living at home. We got her into a hostel in West Belfast. We were supporting her, we were visiting her, taking her out and diverting her attention from what was happening on the ground in terms of having to face the questioning by the police. Her uncle, one of the guys involved in the video, came up and attacked her and broke her collarbone. We, along with her solicitor, went to the court looking for an Exclusion Order. We went round the corner to the police station in Lisburn and said to the policeman on duty, “We need an Exclusion Order here and we want you to charge this man, he broke her collarbone”, and he said, “You will have to come back next week because the policeman on duty who is dealing with it is not here”.

Q348 Lady Hermon: Presumably somebody brought that to the attention of the Police Ombudsman?

Mr Auld: Yes.

Q349 Chairman: Did she deal with it?

Mr Auld: No, because the girl rejected it in the end. She felt so let down that she is back living in that situation.

Chairman: How extraordinary.

Q350 John Battle: I am new to this Committee and new to this whole business. Do you think it was just an excuse on the day or are relationships with the police so bad that the police do not take you seriously?

Mr Auld: No. I think that is a difficulty with policing, they are not efficient at doing their job.

Q351 John Battle: Not equipped.

Mr Auld: That is why it is separate from the politics of policing.

John Battle: That is helpful.

Q352 Dr McDonnell: Mr Auld and Mr Maguire, you are very welcome. I am glad of the examples you gave there but could I take you back to another situation some time in August 2000 where there was an allegation about a Provo who was on one of your teams somewhere, or on some of the teams, perhaps a volunteer, who had sexually abused a couple of girls. A number of actives on the ground had made complaints about this, even to the papers. I think the

comment that was made to the *Sunday World* at the time was: “We have a clear understanding of what is required in cases like this, to contact the social services, and the social services contact the police”. In this case my understanding, am I correct, was the police never received any allegations and the man in question has been moved away? In fact, I think you were asked about this last year and your response was that you have not heard of that man in years.

Mr Auld: That is right. That was six years ago and at that stage our position was that we did not contact the police but we went through social services or probation, one of the statutory organisations, with the full understanding that they would go to the police. In that case my understanding was that the police did not seek and have never sought that individual out.

Q353 Dr McDonnell: But the police never received the allegations is my information.

Mr Auld: You should take that up with social services because we informed them.

Q354 Chairman: Where a serious crime is alleged, do you not think it should always be a duty to go straight to the police?

Mr Auld: As an organisation we are coming to that position. I think what you need to realise and understand is the community that we are based in has serious misgivings about the whole role of the police. I am happy to go into the history of it if you want but I am sure nobody wants to go into the history of the policing.

Q355 Mr Campbell: Is there not less scope for misunderstanding, answering Dr McDonnell? You seem to be saying if there was a problem it may have been with social services. If you, the organisation, had gone directly to the police and made a note of the time you had been there, the police officer you were dealing with, there would be no misunderstanding.

Mr Auld: I accept that.

Mr Campbell: Would that not be the best way of doing that?

Q356 Chairman: You accept that now it would be the best way to do it?

Mr Auld: Yes.

Q357 Chairman: You accept, presumably, if the Protocol comes into being that we are investigating at the moment you would have to do that anyhow.

Mr Auld: That is something that we have not got a definitive answer on yet in terms of our response to the Protocols.

Q358 Chairman: You have not yet defined a response?

Mr Auld: No.

Chairman: You know you have until 13 December to do so.

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Q359 Lady Hermon: Is that a moveable deadline for you or is that a fixed deadline? Can you meet that deadline?

Mr Auld: I think we can meet the deadline.

Q360 Chairman: So you will be making a response by then?

Mr Auld: Yes.

Q361 Chairman: You will let us have a copy of that, will you?

Mr Auld: I will gladly.

Chairman: Thank you.

Q362 Dr McDonnell: The other thing that I am concerned about, and I will be upfront about it here, is there are serious concerns that to some extent CRJ Ireland is in effect a political policing programme, an alternative policing programme. You might want to comment on that because another note I have here from an old clipping is a note that says: "CRJ was recently launched in Downpatrick and is proving a success. In the coming months Sinn Fein plans to set up similar initiatives throughout South Down in order to offer a viable alternative to the police who have proved ineffective and unacceptable to many communities".

Mr Auld: I will come in first and then Harry can come in after. I have been very upfront and very straight. I do not want to be a policeman, I am too fat and too old anyway. I do not know anyone in the organisation who wants to be a policeman or woman. We have no desire to be an alternative to the police. There is only one police service and there can only be one police service.

Q363 Lady Hermon: So you do not see it as an alternative?

Mr Auld: I do not see it as an alternative. We are complementary to.

Q364 Dr McDonnell: Why do you think Catriona Ruane said that?

Mr Maguire: I was going to ask you where the comment came from. I am a republican ex-prisoner, just for your information. I was going to ask you to clarify where that emanated from. It did not emanate from the Community Restorative Justice Ireland representative. Clearly, in our view Catriona Ruane has got that wrong. I think it shows a lack of understanding and a lack of what we actually do on the streets.

Q365 Chairman: You have a chance to put it right.

Mr Maguire: We have put that right. We publicly went on record stating exactly what Jim Auld just said. We do not see ourselves as an alternative to the PSNI, we do not see ourselves as an alternative police service.

Q366 Chairman: Do you accept the PSNI as the police service of Northern Ireland?

Mr Maguire: We accept that there is a policing service in the north of Ireland.

Q367 Chairman: That is not quite the same.

Mr Maguire: If you let me finish my response. We accept that there is most certainly a policing service in the north of Ireland, however we also recognise that not everyone accepts the legitimacy of that policing service. That is the context in which we work. The question was posed directly is that how we see ourselves, do we see ourselves as a policing service, and we most certainly do not.

Q368 Chairman: Do the two of you accept the legitimacy of the PSNI?

Mr Auld: Whether we do or not as individuals is irrelevant. The point of it is that the vast majority of the people where we work have major difficulties with policing and with the PSNI. I may be living on a different planet but my understanding is that all the political parties in Ireland and the two governments are still in negotiations about resolving the difficulties on policing.

Q369 Dr McDonnell: I accept your point that Catriona got it wrong, she gets a few things wrong, but a year ago Jarlath McNulty in Strabahn said that Sinn Fein are "working along with the CRJ project in Derry with the aim of developing a wider debate on the viability of developing a Community Restorative Justice Project in Strabahn. The development of such a project is not dependent upon an acceptance of our corrupt policing structures, nor can it be", so has Jarlath got it wrong too?

Mr Maguire: I think that is fair enough, it is his right, but you have to understand how projects are developed. They are developed in conjunction with many stakeholders in the community. It could be a school teacher, a local doctor, a community worker who is issuing a statement saying, "This is what we would like to see". I think it is a lack of understanding.

Q370 Lady Hermon: Since there seems to be this misunderstanding and there is a perception that CRJ is a tool of Sinn Fein, could you just use this opportunity to explain your relationship with Sinn Fein? I think that would be very helpful.

Mr Auld: We do not have one.

Q371 Lady Hermon: You do not have a relationship?

Mr Auld: We do not have any formal relationship with Sinn Fein. We do have an informal relationship with individual councillors or individual MLAs.

Q372 Lady Hermon: Who will bring you cases?

Mr Auld: Who will bring cases, who will refer people who have got an issue where we are and they want to help get it resolved. One of the typical ones is if there are large groups of youths hanging around street corners drinking and being involved in petty anti-social behaviour, the local councillor will contact us and we will take the case on and go out and deal with it. Like the SDLP, Sinn Fein were offered a place on our board of directors and neither one of them have taken it up.

Lady Hermon: Really.

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Q373 Chairman: Could you just clarify one point for me. You gently rebuked me and said that your views were irrelevant in a sense, but the organisation which you represent, Community Restorative Justice Ireland, is a very important organisation, so let me rephrase my question before Dr McDonnell asks his. Does Community Restorative Justice Ireland, CRJI, accept the legitimacy of the PSNI?

Mr Auld: I would think that they do.

Q374 Dr McDonnell: Whatever your difference with the SDLP as such, I am here in an individual capacity and I want to work this, if it can be worked. I want to explain my own position. I am looking for ways and means but I want it to be open and transparent and fair. I must say I have not got that message coming through so far, to be honest about it. I will give you a case in point, and I will address this to Mr Maguire. Is it true to say that you witnessed a murderous attack by an IRA mob on Geoff Commander, or is that information false?

Mr Maguire: Well—

Mr Auld: Let me stop you there. That is a case that both of us are aware of. There are court cases going on about that. We have complaints in to the Police Ombudsman as well and that is not something I want to prejudice.

Q375 Dr McDonnell: I do not want to prejudice it either and there is no suggestion at all that Mr Maguire participated in the attack, but he was in the vicinity and the allegations that I heard—

Mr Auld: Do you want to prejudice the court case?

Q376 Dr McDonnell: No, I am not prejudicing the court case.

Mr Auld: Well, anything that Harry Maguire might say on it may prejudice the court case.

Q377 Dr McDonnell: I understand Mr Maguire has been named in witness statements and the Commanders have written to you. The Commanders have written to you, Mr Auld, asking that a statement be given to the police.

Mr Auld: I have—

Q378 Chairman: Are there proceedings ongoing in this case?

Mr Auld: Yes, there are.

Mr Maguire: I have sought legal advice in relation to this issue and I am on record as saying that I am available to be questioned by anyone.

Chairman: I think we will have to leave it at that because if it is a case that is *sub judice* we cannot pursue it in public session.

Dr McDonnell: Chairman, the case may be *sub judice* but the witness is not *sub judice*. The ability of a witness to give a statement is not *sub judice*, that is the point. I leave it there, I am not going to press it.

Chairman: You have put the point on record and Mr Maguire, I hope, understands the seriousness of the point that you made. Did you want to follow that up?

Dr McDonnell: No, go ahead. I am happy.

Q379 Mr Campbell: This is to pursue the question that the Chairman asked when you spoke about the legitimacy of the police service in Northern Ireland. You are aware of the deadline in terms of the Protocols, which is nine days' time, and you indicated earlier that you intend to respond by that deadline, which means within the next couple of days you will be formulating, if you have not already formulated, your response to the Protocols. Given that the Protocols themselves inherently will contain an official recognition and acceptance that you have to work within those Protocols, an essential element of which is the police, I did not take from your answer to the Chairman's question an unambiguous response to that. You are here officially as representatives of CRJI. Is it the case that CRJI officially recognises the police service in Northern Ireland as the only legitimate police service?

Mr Auld: Yes.

Q380 Mr Campbell: You do?

Mr Auld: I do.

Q381 Chairman: That is an unambiguous answer?

Mr Auld: That is unambiguous, it is one word.

Chairman: Thank you very much. I am grateful for your clarification.

Q382 Mr Campbell: I do not want to pre-empt what your response will be to the Protocols but can we take it that that element of the response to the Protocols will be equally unambiguous next week?

Mr Auld: I have not formulated the response yet. When I do it will be part of an overall package.

Mr Campbell: This is where the ambiguity comes into it, Chairman.

Q383 Lady Hermon: Will you very kindly send us a copy of your response?

Mr Auld: I will give you a copy of the response.

Q384 Mr Campbell: The element of the Protocols that deals with how CRJI will liaise with the police service is going to be unambiguous?

Mr Auld: I would hope so. It is not that difficult, writing things down. I would hope and assume that I will put it down fairly clearly and unambiguously.

Q385 Mr Campbell: It is just that you gave an unambiguous answer to my question just now that you recognise the police and you said unambiguously "yes". Now I am asking you in terms of the Protocols and you are almost saying, "I think we should be able to". Why can you not be equally unambiguous about that?

Mr Auld: Maybe you should read the Protocols and my response to the Protocols. I will send you a copy of it.

Chairman: We will await that with considerable interest.

Q386 Lady Hermon: You have a board of directors presumably?

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Mr Auld: Yes.

Q387 Lady Hermon: How many are on it?

Mr Auld: Sixteen.

Q388 Lady Hermon: Would they have to be unanimous on the Protocols? What are you looking for?

Mr Auld: I think it is two-thirds. That is off the top of my head.

Q389 Lady Hermon: There is no representative from Sinn Fein and no representative from the SDLP?

Mr Auld: The ex-deputy chair of the SDLP is coming on to the board of directors.

Q390 Lady Hermon: Coming on?

Mr Auld: Yes.

Lady Hermon: Good.

Q391 Dr McDonnell: Can we clarify that. Who is that?

Mr Auld: Eddie Espey.

Q392 Dr McDonnell: Eddie Espey has left the SDLP.

Mr Auld: That is why I said the "ex-deputy chair".

Chairman: What is he now?

Dr McDonnell: He is not associated with the SDLP.

Chairman: Thank you very much indeed. A lot of people are clamouring for questions. Yours was particularly on this line.

Q393 Mr Fraser: Is part of your job, therefore, given the point you have just made in answer to Gregory Campbell, to persuade others of the rule of law and to work within it?

Mr Auld: Yes.

Q394 Mr Fraser: Including Sinn Fein?

Mr Auld: Yes. That is a role that we see for restorative justice in the nationalist population. There have been many years of differences with the police and the nationalist population. We are the only organisation in the nationalist community, community organisation, that is calling for a relationship with the PSNI. That is a very difficult, lonely place for anybody to be.

Mr Fraser: It is, I am sure.

Q395 Lady Hermon: Do you have much support from the Catholic Church in what you are doing?

Mr Auld: None of them have ever come and said anything to us.

Chairman: We will get away from the confessional and go to John Battle.

Lady Hermon: That is very disappointing.

John Battle: I liked your question.

Lady Hermon: Thank you.

John Battle: It is about being rooted in the community. What I have found encouraging in my visit for the first time with this Committee has been the creative and imaginative approach to justice, particularly for young people but also integration and de-criminalisation of young people. Where I am greatly confused in my naivety is I cannot quite

understand why there is such a gulf, as it seems to me from the last session and this one, between Northern Ireland Alternatives and yourselves. I just wonder whether I could ask, is there any space for you to work with them, for you to hold common meetings with them, to compare notes with them? Is this relationship with the police a barrier for you or not, the presence of the police in a room? I am enquiring to see whether there is a myth about an insuperable barrier or whether there is a real barrier. Why can this amazingly productive initiative that is going on here that could, dare I say, liberate some of the communities I live in in my neighbourhood in inner city Leeds not be let out a bit more if you could work together? Why can you not?

Chairman: Just in case you did not hear the evidence, it is only fair of me to say that your predecessor from Alternatives did say that he considered he had an amicable relationship with you.

Q396 John Battle: Thank you. I did not mean to create the opposite impression.

Mr Auld: We do have a good relationship and, to be fair to Alternatives, I feel very sorry for them. The difficulties that Alternatives find themselves in are entirely our fault because of the politics of the situation. For me it shows up that the whole difficulty with restorative justice is political and it is about trying to use us as a Trojan horse to get into the nationalist community. The fact that the NIO are insisting that we need to have a relationship with the PSNI in order to gain funding gives a lie to Alternatives who do have a relationship with the police and they still cannot get funding. That shows the lie of the whole situation.

Chairman: It is very helpful to have that on the record from you. Thank you very much for that.

Q397 Mr Anderson: What are the implications if the Protocols go through saying you must work with the police? If you come to a decision that you cannot do that will you have to stop your work?

Mr Auld: No is the short answer to that. I think most of the projects that we have at the moment are entirely voluntary and they work just as successfully as the projects that are funded. Like Alternatives, the majority of the projects are volunteer-led.

Q398 Chairman: How many volunteers do you have? They said they have 268?

Mr Auld: At any one time we have probably about 160 volunteers but we continually train people. Over the period of a year we would probably lose about 140-160 people because we do not have the infrastructure to support those volunteers.

Q399 Chairman: So you have a rolling programme?

Mr Auld: We have a rolling programme and people get burnt out and they move away.

Q400 Mr Campbell: By "burnt out" you mean stressed, of course.

Mr Auld: Stressed.

Mr Campbell: Just for the record.

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Q401 Chairman: Thank you very much for that reassurance, although the big fire was in England yesterday!

Mr Auld: One of the things that need to be taken into consideration is that last year and the year before we did about 1,700 cases involving over 6,000 people. We trained about 160 volunteers. All of those people are within the nationalist population and all of those people have been given access to the information and proof that it works, that you can resolve disputes without resorting to violence. That should not be under-estimated. That is a lot of people who are getting positive information. All of those volunteers who have had practice on numerous occasions by dealing with those cases themselves who see people in dispute, who see how cases can escalate, how they can end up in death and destruction, are going back into their own communities and their own families able to deal with conflict situations in a more positive way.

Q402 Chairman: Mr Auld, you are going to be hosting us when we visit you very shortly, so whilst I am anxious to get one or two things on the record I would rather have more time with you on site, and I think colleagues probably would as well. Can you give me responses to three things that it is only fair to put to you because we put them to the other witnesses. First of all, how do you view the suggestion that the Protocol ought to have an attempt to define low level crime? We have had conflicting evidence on that. The evidence that we received in London was mostly in the affirmative; the evidence here has been more qualified. We have also asked all our witnesses about the need for a complaints system and the need for regular inspection, both of which are provided for in the Protocol. Could you give us your comments on those because I think it is only fair to you, as this will be published evidence, to have those replies on the record because our conversations later on will not be.

Mr Auld: We do not have any difficulty at all in terms of inspection or complaints. Like Tom and Debbie, we have met with Kit Chivers over a number of years and tried to insist that he comes and inspects us. I would put the concern that we can only be inspected on a like-for-like basis, you cannot inspect us any more rigorously than any other organisation without giving us the resources that those other organisations have. If you give us the resources that those other organisations have then that is fine, whatever way you want, we do not have any objection. In terms of a complaint mechanism, we have a complaint mechanism that is there but it is not satisfactory, and I am saying that on the record.

Q403 Lady Hermon: How does it operate?

Mr Auld: If somebody complains we have people from the community in which the complaint comes from, people who are respected community leaders, people with 15 or 20 years of experience in the community, people from professional backgrounds, who will come and sit on a panel and look at what took place.

Q404 Lady Hermon: Would any of those be members of the Catholic Church?

Mr Auld: There are some members of the Catholic Church on it.

Lady Hermon: Good.

Q405 Chairman: What about the definition or an attempt to define low level crime?

Mr Auld: I was saving that to last! Let me give you another example that explains the difficulty with putting down levels of criminal behaviour. I told this story to a group of judges and magistrates and it was my way of trying to say that we are not dealing with anything that is out of order here, it is all low level stuff.

Q406 Lady Hermon: Do you get much opportunity to speak to judges and magistrates? Are you invited to come and talk to them?

Mr Auld: I have had a couple and I can give you those experiences, they are very interesting. The first one was there were about half a dozen people in one of the hotels in the town. We had just finished a case where garden gnomes were stolen.

Q407 Chairman: Were they green or orange?

Mr Auld: Plants and stuff. It seemed as innocuous as that, but there was a serious side to it because the woman whose plants and garden gnomes were stolen had planted these in her garden in memory of her mother and it was her mother's anniversary the following week. It was like a small shrine to her mother and her mother's memory. That brought it from a joke to something serious, but it was still plants and these garden figures. The woman called us, we went out and looked at it and went to the next door neighbour. It was two guys up the street who had moved into a ground floor flat, the two of them had gone out the night before and celebrated, they were drunk, they were walking up the street, and said, "Look at the lovely flowers, I'll have them". They grabbed them and walked up the street and they did not even plant them, they just left them outside the door and went to bed. We knocked on the door and the two guys came out and we said, "You stole the plants here" and they said "Oh, shit".

Q408 Lady Hermon: Or words to that effect.

Mr Auld: Or words to that effect. They felt terrible. They apologised profusely, they lifted the flowers, walked down to the woman's house and apologised to her, it was a drunken prank. They went away and came back with an armful of flowers and chocolates and apologised again. Once the woman realised that there was no malice in the intent, she realised it was a drunken prank and was satisfied, end of story. When I told that story to the judges and magistrates there was silence for a couple of seconds and then there was a large intake of breath. One of the them starting rhyming off the criminal offences that were committed and how dare we be involved in such serious criminal offences. That is a mindset that needs to be changed. The other thing for me was the sectarianism of the judiciary when I met them. These two—I will not name them—were well-intentioned

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people, they thought they were coming to hear what we were saying, and they did and genuinely wanted to hear what we were saying, we told them what we had done and they, like you, said, "Can we come out and see what your place is?" and I said, "Of course you can, you are more than welcome", and one of them turned to the other and said—Harry was there, he will verify it—"I have an old brown leather jacket in the house, I will not shave for a couple of days so I'll blend in".

Q409 Lady Hermon: Was this recently?

Mr Auld: Two years ago, three years ago.

Mr Maguire: Four or five years ago.

Mr Auld: Was it that long? "I'll blend in by not washing".

Q410 Lady Hermon: Wow.

Mr Auld: Exactly. That is what some people in the criminal justice system think of my community.

Q411 Chairman: So you do not want too strong a definition of low level crime?

Mr Maguire: I think many of those issues could be worked out operationally with the police in reality. The Protocols in many ways affect the dynamic of a community's response to the issues that are happening within working class communities particularly. Can I just put on the record too that we receive referrals from the police.

Q412 Chairman: Sorry, from the police?

Mr Maguire: Not directly from the police but where people make a complaint to the police, the police will say, "Look, it is really not the station you should be in, you should go to the local CRJ office and they will be a better agency to deal with your concerns".

Q413 John Battle: So they treat you like a mediation service?

Mr Maguire: Funnily enough, in this whole debate it would be our view, because we have met the police and sat round tables with the police, particularly in the areas where we are working that the police would be our strongest supporters.

Q414 Lady Hermon: Is that the lower ranks or right up?

Mr Maguire: We can see it right up to the senior level.

Mr Auld: I have had many conversations with deputy chief constables and assistant chief constables, chief superintendents, and they all say they want to work with us.

Q415 Mr Anderson: If you sign the Protocols do you think they will have a detrimental effect on the service that you provide because people might not want to come to you?

Mr Auld: It is one of the major difficulties. On the point that you were making earlier to Tom and Debbie about expanding and rolling the situation out, we have 15 projects and in West Belfast we have four or five projects, hundreds of people come to us and they walk by the police stations. They come to

us because they want to come to us, they do not want to go to the police. I suppose the point I am making is in any community there is a large proportion of crime, particularly in working class communities, that is not reported anyway and those are primarily the people we are able to tap into. Some of those issues are very serious. It is not a question of "Go to the CRJ or go to the police", it is "Go to the CRJ or deal with it yourself" and if they are dealing with it themselves they are going to deal with it violently. We are creating conditions where people do not have to do that, and that suits a lot of people. If you have got a group of young males who are clashing at the weekend and one side has to go to the police, they will lose respect in their own area, they will lose face by going to the police because they are going to be seen as wimps in the area, they are not going to do that. But if they can come to CRJ where the situation is mediated they do not lose face and they will get the things resolved so things do not have to escalate.

Q416 Lady Hermon: Can you just tell me where ASBOs fit in to it? I did ask the previous witnesses.

Mr Auld: I am totally opposed to ASBOs. There are enough rules and regulations that government have and if they deal with them right they do not need ASBOs.

Q417 Mr Murphy: Given the choice, would you prefer to continue as you are now without signing up to the Protocols? Can you genuinely not see any advantage at all from your community's point of view in signing up to the Protocols?

Mr Auld: At the moment I see the latest draft of the Protocols as a hindrance because they are so restrictive. The Protocols need to be shelved. If the nationalist community is moving into a situation where there is going to be a relationship with the PSNI and CRJ fitting in and working alongside the PSNI, that has to be dealt with in a pragmatic way and can be done at an operational level with local area commanders of the PSNI and the CRJ.

Mr Maguire: Jim is right on the politics of policing. You need to remember that the CRJ is a small community organisation in many respects and we do not have the influence or the power to make policing happen. We depend on the politicians to make that happen, we depend on the governments to make that happen. In terms of how that impacts on the ground, we may have a voice—I say we "may" because I just do not know—and we may have a role. Most certainly we have been saying we need a policing service and a properly constituted policing service and we need to get that right given our history. We also need to understand that this type of project is, and has been, developed within a very, very complicated set of circumstances. The context is not the same as Leeds but it could be developed within the context of Leeds. In my view we also need to understand the potential that is here. I heard Debbie saying that the programmes are world leaders, and they are. As I commented a number of years ago, it is only in the north of Ireland that we could have something that is a world leader and we will try to choke and strangle

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it. It is only here that these types of things seem to happen. Rather than megaphone diplomacy, if we can sit down, iron out some of the issues that have been raised here today from local politicians, get round a table, discuss them, thrash them out and become more inclusive in this debate, we want to see that. We have been very clear about that. I am quite convinced we can get to where we all want to go, but that is going to take a significant amount of goodwill. I am quite sure you will hear more anecdotal evidence over in the offices when

you meet some of the co-ordinators and others and it will be a very enjoyable visit. There are many issues which we just need to roll out here. We are only one small cog in a very small wheel in a very big picture.

Chairman: Thank you very much for that. Thank you for the good humour with which you have both given your evidence. You have given us a lot to think about. Sadly, we have not got time to change into our leather jackets but, nevertheless, we still look forward to coming. Thank you very much indeed.

Tuesday 5 December 2006

The Committee met at the Stormont Hotel, Belfast

Members present:

Sir Patrick Cormack, in the Chair

Mr David Anderson
John Battle
Mr Christopher Fraser

Lady Hermon
Mr Denis Murphy
Sammy Wilson

Written evidence from the Police Service of Northern Ireland is printed on Page Ev 82

Witnesses: **Sir Hugh Orde OBE**, Chief Constable, and **Mr Drew Harris**, Assistant Chief Constable with responsibility for Criminal Justice, Police Service of Northern Ireland, gave evidence.

Q418 Chairman: Sir Hugh, could I welcome you and Mr Drew Harris. Thank you very much indeed for agreeing to come and give public oral evidence to the Committee. You have, of course, given evidence to this Committee on a number of occasions in the past but I think this is the first time that we have had a public session with you, although not the first of your public sessions, in Ireland. We are very glad to see you this morning. As you know, we are completing a short inquiry into Community Restorative Justice following the issuing of the draft Protocol consultation document. We are making our own submission to Government. We have taken evidence at Westminster, here yesterday from Northern Ireland Alternatives and CRJ Ireland. We also visited two projects, one in Kilcooley—IMPACT—and one in West Belfast. We have tried to familiarise ourselves with this subject. Tomorrow we will be taking evidence from the Minister, David Hanson, and then we shall be formulating our recommendations. Have you anything that you would like to say by way of opening statement?

Sir Hugh Orde: Thank you, Chairman. We have submitted a written statement to the Committee already so I will keep my opening comments very brief. ACC Drew Harris leads for me on this and has all the detail at the front of his mind, so he will deal with all the difficult questions while I am happy to take the plaudits! There are some key points that I would make. The first point is that the principle of keeping young people, whilst restorative justice is not limited to young people that tends to be the focus, out of the judicial system and gaining criminal convictions for minor offences has to be a good thing. I am a supporter of a system that gives young people an opportunity to learn from their mistakes and move on. I think there are some non-negotiable issues around that, however. The one sticking point historically around community restorative justice has been police involvement. I see that as utterly non-negotiable, there has to be complete integration with the criminal justice system and I am mindful of the evidence you have already heard on that, so I will not bother repeating it, but I do think it is very important and that has to be the key driver for our reason to be involved. There is a debate to be had around the level of crime that restorative justice can deliver on. I do think it is low level. I am not

convinced that a hard definition is necessarily helpful, police officers tend to know what low level crime is when they see it and what is appropriate and what is not. Providing there are proper safeguards and oversight in place, I think that is okay. I do believe if it is to work the speed of delivery has to be quick. I am not a fan of huge bureaucratic systems. If I have a concern around this, there seems to be a high level of legal involvement. It will work providing we have a seamless and quick transition between us, the Prosecution Service and the outcome. I am slightly concerned that if that is delayed, for all the reasons that justice does tend to get delayed, and we move into a formal legal route the benefits will be minimised. I am also a big believer, like the Police Service, in transparency and openness and we are held to account in many ways by many bodies. There has to be a greater public awareness of what CRJ is trying to achieve and a proper and transparent oversight process. I will limit my opening comments to that so we can deal with questions.

Q419 Chairman: Thank you very much. Mr Harris, did you wish to add anything at this stage?

Mr Harris: No, thank you, sir.

Q420 Chairman: Obviously we are asking our questions against the background of the draft Protocol. Could I ask you initially, do you believe that such a Protocol is necessary?

Sir Hugh Orde: I think we have to be clear of everybody's role. There has to be an understanding of who can partake in this process and who cannot. The public has to have confidence that the people delivering community restorative justice are people who are appropriate to deliver that and to engage with their communities. I do not know whether Drew would like to add on the fine details of that.

Mr Harris: We are aware of their work in terms of youth diversion work. We do not have an insight as to their restorative work. That is a difficulty at the moment. We have to move past that but also consider there may be other people who would be equally qualified and interested in delivering this process. If the Protocol sets out to them what is

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expected in dealing with the police this might move it on and move it past where we are at the moment where it is lodged in this contentious nature.

Q421 Chairman: Thank you. Can I just follow that up a little before bringing in my colleagues? All of the evidence we have received in London and much of the evidence we have received over here has underlined the crucial importance of police involvement. It became very apparent yesterday that although there was an amicable relationship between the two bodies that came before us, and both of them attested to that in respect of each other, nevertheless the one—Alternatives—was very emphatic that it wished to co-operate with the police at all levels and whilst there was recognition of the need to move towards that from CRJ Ireland, and we were given an unambiguous statement that was their wish, there was an acknowledgement on their part that it did not happen at the moment. They were even so generous, if you like, to say that they felt the discrepancy between them and Alternatives should not prejudice the funding of Alternatives, and it was a point that was made explicitly by them. We would welcome your comments on that. I am particularly concerned by what you say about Alternatives because in Kilcooley in the morning we met two of your officers, who apparently are present at all board meetings, and we had this assurance from Alternatives in the afternoon that they did wish to have an absolute relationship with the police, yet you say to us that you are not entirely happy about that and, indeed, the point is made in your written submission to the Committee and you alluded to it just now. Could either or both of you expand upon your views on the inadequacies as you see it of your relationship with Alternatives?

Mr Harris: Alternatives deals with more than community-based restorative justice and on the bits which are community-based restorative justice we have a very full relationship with them. They have stuck with us in times of difficulty in the loyalist areas of 2005 and they have assisted in programmes of youth diversion and dealing with the fear of crime and other crime initiatives that we have run, particularly in North Belfast, but we do not have a close insight, or the insight we would wish, in terms of their restorative work. I think what is impeding us there is a lack of a protocol as to how that relationship should develop.

Q422 Chairman: Let us just take the Kilcooley example, which was the one we visited and by which we were all impressed. Your two officers who were there, an inspector and the beat officer, both indicated the excellent relations and referred to their presence at the decision-making board meetings.

Mr Harris: Being at a board meeting is different from being involved in the actual process of deciding on the restorative outcomes of a case. That is what we do not have an insight into, the individual way in which they deal with the people who come in front of them and how these restorative resolutions work their way forward. We do not have a record of those. Obviously there are people who have done wrong of

some sort in their community, whether it be anti-social behaviour, behaviour which other people find to be a nuisance, or criminality, and we do not have an insight into that behaviour.

Q423 Sammy Wilson: That is an important point and I just want to follow up on that before we deal with some other points. Yesterday when we listened to some of the, I was nearly going to say the political spokesmen for the alternative schemes but the PUP were here yesterday—I do not know if they were speaking officially for Alternatives—they did suggest one thing which was a bit disturbing to me because it ties in with what you have said, Mr Harris. They said that when it comes to deciding whether or not someone should go through the normal criminal system or should go through Alternatives, rather than that being left to the police and the DPP that should be left to the community representatives, they should have an input into that. Do you see any dangers in that? I think one of the dangers that have been highlighted to me in some of the areas is, for example, what happens if someone who is connected to a paramilitary organisation's son comes before one of these schemes, do they get treated differently than someone else would be? Would your view be that not only should the police know what happens when somebody enters a scheme, but that the police or DPP or the justice system should have the ultimate decision as to who goes through the criminal justice scheme or who should go through the courts?

Mr Harris: That is ultimately a decision for the PPS. If you are dealing with a criminal matter which is reported by the police to the PPS, that is ultimately their decision. There may be a range of factors which the PPS will wish to consider and which we will present when we provide a case to the PPS, so the input of a community-based restorative scheme and what they consider to be their method of dealing with this, what the restorative outcome of this should be, would be an important part of that but ultimately the decision would lie with the PPS.

Q424 Sammy Wilson: And it should not lie with the “community”, I think that was the term they used yesterday, that it should lie with the community rather than with the PPS.

Sir Hugh Orde: I think this is a world that is in transition, the world of community restorative justice. If you look at where we have come from, and I am not too interested in looking backwards, we are now getting to a stage where the debate is around the involvement of the proper agencies, and I think that is critical and, as I said at the beginning, should be non-negotiable. We do not know what we do not know and in these cases, because of the nature of the crimes that may or may not be currently being restorative are entirely inappropriate for some of the concerns you raised, the process has to be very clear. As I said at the beginning, there has to be police involvement. We do not make decisions on judicial closure, that is a matter for the PPS. It is that seamless transition which needs to be quick that enables the return loop to be equally quick so the

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individual who is being considered does not have to wait an indeterminate amount of time to know whether they are going to be prosecuted or cautioned or whatever and then go through a restorative process. I absolutely agree with Drew in saying I do not see that as excluding community representatives, I think that is part of the whole picture that a prosecutor would want to make that decision on: is this person redeemable or are they not? They need to know all of that in the community's assessment as well as ours. The more information that goes in, the more the outcome is likely to be a long-term outcome rather than a short-term outcome which tends to criminalise people, which is not necessarily helpful over time.

Q425 Sammy Wilson: Can I ask one more question. Once it has been decided, you are saying your difficulty with both Alternatives and CRJ Ireland at present is once someone goes into the system you do not have any tracking as to what actually happens. Is that deliberate because some people feel that different levels of justice, or whatever, are handed out to one person rather than another depending on what their connections happen to be? Is it deliberate, is it accidental? Is it simply that nobody has bothered with this? Have the police requested to have an input and knowledge of that and been refused? How has that arisen and why do you think it has arisen?

Mr Harris: There are two stories here. One is the story of CRJ Ireland, and that is of no contact with the police. Trying to build a relationship is not there. With Alternatives, where a relationship has developed, and it is fruitful in many aspects, there is a wariness around the police being involved in a scheme which does not have a protocol, does not have a legal standing. We have an obligation under human rights on the manner in which we seek to investigate matters and report matters into the criminal justice system. There are aspects about the transparency of these schemes—we mentioned at the start that there is a lack of transparency—so all sorts of rumours build up about their disposals and how they deal with matters. Yes, it is easy for stories to develop that it depends on the rank of your uncle in certain organisations, for instance.

Chairman: I want to probe the CRJ Ireland non-relationship but, before we move on to that, because it is critical to the future, I would like to bring in Lady Hermon because the Kilcooley IMPACT scheme is in her constituency, she is intimately associated with it and it is fair to allow her to ask you some questions in view of your earlier comments. I would like just for a moment or two to concentrate on Alternatives and then move on to the more contentious issue.

Q426 Lady Hermon: I have to say that I am not at the receiving end of the IMPACT scheme, I am a supporter of the principle and the spirit. Sir Hugh, may I just pick up on one point that you referred to, and that is the delays that we already have, significant delays, in fact—those are my words, not yours—within the Prosecution Service at the moment, the PPSNI, not to be confused, of course,

with the PSNI. Justice delayed is justice denied. How in heaven's name do you expect this to work quickly—in your words—when we already have significant delays within the Prosecution Service?

Sir Hugh Orde: That is an extremely good question. I know the issue of delays has been raised by other people giving evidence to you and it is something that does need to be focused on. I think it is quite easy, it is around who makes the initial judgment and do other parts of the judicial system have confidence in the police officer role having substantial influence in recommendations. If we form a view, and our guys are at the front end of this, and if it is working properly they will know, having worked with the local community people, whether this person is redeemable or not, is this a minor crime within the context of the events we have looked at and certainly in the context of the victim, which we have to remember is vital in this. Is this something that in our professional judgment we think is suitable to go through a process that does not put some young person in front of the court. If that is good enough for us, and hopefully that and not much else is good enough for a prosecutor to agree with us on or make a decision on, that should be quite quick. If the Prosecution Service requires a huge amount of additional material before they form a view and make a judgment, we are going to sink. I think that is the critical issue, and it is not unique to here. I think that is a rubbing point, which was why I raised it at the beginning. That has to be nailed once and for all.

Q427 Lady Hermon: Have you already made representations to the director?

Sir Hugh Orde: I will let Drew deal with the Protocols as they currently stand.

Mr Harris: No, we have not. The detail of how these arrangements will work has not been worked through. An obvious point is how expeditious can we be in our inquiries. The Protocol does talk about a dedicated police officer and our vision is for police officers who are local to the area, who know the issues, to develop a relationship with the various schemes. It will be for them to conduct the inquiries and within a few days, we are talking about a couple of days, come to a conclusion and submit this to the PPS.

Q428 Chairman: Is this part of your representation on the Protocol to Government?

Mr Harris: Yes.

Q429 Chairman: Has that already gone in?

Mr Harris: No, it has not.

Q430 Chairman: But it will go in on 13 December?

Mr Harris: It will, yes.

Q431 Lady Hermon: Equally, within the Prosecution Service would you like to see a dedicated unit or a dedicated individual within each of the regional offices who would look at these with you?

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Sir Hugh Orde: In an ideal world, Lady Hermon, I would like to see a prosecutor in the police station if you look at the CPS model. That is an issue that has been raised with Government and is not seen as attractive to the PPS for understandable reasons around independence, I think. In terms of development, Northern Ireland is behind in that. The notion that the public see the judicial process as a series of completely independent processes is not the case. If the public see the process as “the process”, I am not sure there would be huge concern if public prosecutors were available in police stations, so we could have those conversations really quickly.

Q432 Lady Hermon: You do not think that would compromise the perceived independence of prosecutors?

Sir Hugh Orde: Not in my judgment, but obviously it is a judgment that others would have to make. I think it is a good thing. It is around our officers having the availability instantly of professional legal advice on some of these things. Some of these matters could be dealt with very quickly. We are talking about minor crime. All the evidence you have received to date, and I support it, is we are talking about minor crime. This will not work for serious crime.

Q433 Chairman: Although you have said to the Committee you do not feel you can define minor crime?

Sir Hugh Orde: No. On criminal damage the spectrum is huge.

Q434 Chairman: Of course. We have had conflicting evidence, Sir Hugh. Some of the witnesses, particularly in London, felt that the Protocol should have an annex or appendix attempting to define low level crime; other witnesses, particularly yesterday, were emphatic that without a degree of flexibility it is impossible to do that.

Sir Hugh Orde: I think it has to be flexible. That is because it is around making this sensitive to the needs of different communities in a way where someone sees a decision made because a professional judgment is made by a group of people who (a) trust each other within CRJ process, be that us and the community workers, and (b) knowledge of these individuals, and that adds a huge amount of value. If we say “this rules you out”, when actually little Johnny would find it hugely beneficial by going through that process, that is something. Of course, the approach of victims to this will be fundamentally different: some victims will have nothing to do with it and others will be far more willing to engage. I do think those decisions need to be made quickly. My personal vision is not for a huge typed file, transcripts and taped copies and all of this going across. That is my fear. That is based on two things. One is my knowledge that here there is a reliance on a huge amount of information before a decision is made, generally speaking, and that is not just in the judicial process, I have to say, it is in anything we do here. Second, the role of the legal profession within

this process seems to be pretty embedded and when we get to that stage—there is a risk of going on about dealing with history—it becomes over-legalistic rather than looking at a positive outcome for all parties, victim and perpetrator.

Q435 Lady Hermon: We will certainly make sure that a copy of your evidence is sent to Sir Alasdair Fraser.

Sir Hugh Orde: Thank you.

Q436 Lady Hermon: Before we move on, could I just ask you where do you see ASBOs fitting in with community restorative justice? We had a definite response from CRJ Ireland that they have no role to play. I do not think Alternatives were particularly keen on ASBOs. Having fought very hard to get ASBOs introduced into Northern Ireland, where does the Police Service think that they fit in?

Sir Hugh Orde: I will ask Drew to answer on the detail of that. I do not think anything should be ruled in or anything should be ruled out, frankly. My personal view of ASBOs is that they should be used more as a last resort than a first resort because once you go to an ASBO the potential is you are going to criminalise this individual because that is what happens next. That does not mean to say they are not a useful tool in our armoury and we do use them where we think they are appropriate. In terms of this particular relationship I know Drew has got some views.

Mr Harris: As you are aware, seemingly ASBOs is a whole process, it is not only matters of crime but other matters, so the information that a restorative scheme may have of previous incidents involving this individual and how they attempted to deal with them would be important information in respect of an ASBO and would fill out the picture about a person’s propensity to be anti-social in their community. It would be our position that we would seek such information from these schemes.

Q437 Chairman: Before we move on to the Sinn Fein issue, can I just ask you one other thing on the Protocol. The draft Protocol states that an advisory panel may be set up to discuss the suitability of dealing with a case by CRJ. Should that advisory panel be a requirement of the Protocol in view of what you have just been saying, or should it be an optional extra?

Mr Harris: In view of what Sir Hugh was saying you might presume that we would cut out the advisory panel because I think in some ways that adds an extra layer. To bring together a panel to discuss an issue is going to be another day or two days. That adds another layer into this process. We will have been the agency which received the information, we will have conducted some inquiries into this matter, we will have formed our own opinion which we will wish to submit to the PPS and I think that in itself is a strong process. An advisory panel is something which happens in England and Wales post-sentence to consider restorative outcomes as well as any other matter. It has been brought across and I think it sits in the wrong place in this Protocol.

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Q438 Sammy Wilson: I have just two questions, Chairman, and I know the Chief Constable could give us a quick answer. You mentioned that you believe the people who operate these schemes should be appropriate. Could you define what you believe to be appropriate personnel for these schemes? Secondly, how do you safeguard these schemes against at the very start of the process where something happens, someone calls round, it is alleged, and allegations have been made about this, and says to a victim, “By the way, you really don’t want the police to deal with this, we will deal with this”? How do you safeguard against that?

Sir Hugh Orde: If I could deal with the second one first. That is where the world has got to move on. We are seeing all sorts of groups that are trying to provide alternatives to policing in South Armagh, but this is around Community Watch Schemes rather than Community Restorative Justice Schemes. Our message is very clear: there is only one Police Service, that has to be us, and all that has to stop, it is as simple as that. In terms of appropriate people, people have to be vetted and people have to have confidence that these are people who one would expect to have a role in this sort of business, that is to say they have no substantial previous convictions, there is no intelligence to suggest they are members of illegal organisations and all those sorts of things. We will provide that information to the vetting panel which decides whether people are suitable or not.

Q439 Chairman: You say “no substantial previous convictions”, but we met people yesterday from both communities who quite clearly had substantial previous convictions who had been let out in one case after 11 years, in another case after several years, who were now apparently—I am choosing my words with great care—playing, both in Kilcooley and elsewhere, a constructive part in the operation of these schemes, one in co-operation with the police on a daily basis and the other not. Would it be your view that those people should not be eligible to serve in that way?

Sir Hugh Orde: This is difficulty territory, is it not, the world is moving on. As I understand it, the guidance currently is we are going back to the Good Friday Agreement date for substantial previous convictions. Do I believe people can change? Yes, I do. I also believe within all communities there are sufficient people who do not even cause a risk of falling within some of these criteria who are more than capable of doing this. The question is, are communities prepared to put people up that have the confidence of the wider community than currently exists and are the people who may currently be there and who could be excluded prepared to stand down and let the next generation take over. That is how I see it. I do think there is something absolutely critical about the role of the players in this. That is not to decry the work that has gone on in the transitional arrangements that have taken place that have got us to this point, but I do think if we step out with those guidelines we are in trouble. I will ask Drew to cover some of the issues that will build some reassurance on some of the issues you are talking about.

Mr Harris: POCVA is administered by the Department of Health, as you are aware, but we supply information to POCVA. Around that would be criminal convictions and other information, and at the moment that is decided on the issue of pressing need. In respect of individuals who wish to take part in community-based restorative justice, pressing need is going to cover issues of their past which have not been the subject of successful prosecution, so it may involve offences for which they were reported for which there was no prosecution, or if there is intelligence which has been passed across as being significant and showing, say, an involvement in punishment beatings. In my mind that would also constitute pressing need and we would supply that to the POCVA panel.

Q440 Chairman: Could you just spell out POCVA? We live in an age of acronyms.

Mr Harris: It is the Protection of Children and Vulnerable Adults.

Q441 Chairman: Thank you.

Mr Harris: That decision, the discretion on pressing need, lies with me. The POCVA arrangements have been in place for some time and work well. We have insights not only into people’s offending past but other things that they may have been involved in in the past or we believe they have been involved in.

Q442 Mr Murphy: Just on the numbers that were given to us by both Alternatives and the CRJ Ireland schemes. Alternatives said they only had experience of 2% re-offending. Whilst you have not got the details of exactly what happens to people who go through the schemes you must have the statistics that would indicate that indeed is the case in areas where these schemes operate.

Mr Harris: Was that 2% recidivism?

Q443 Mr Murphy: Yes.

Mr Harris: The expected dip that you would hope to see in crime is not transparent. I do not know the numbers they are dealing with so it is hard to estimate just what the magnitude of such a dip would be. It is almost impossible to comment upon that.

Q444 Mr Murphy: The numbers were quite significant, in the thousands rather than the hundreds. Indeed, your officers on the ground said that the place had been transformed, that they were able to walk around the estates one at a time and speak to people, and that had never happened previously, so the schemes are delivering on the ground.

Mr Harris: Certainly that is the experience of the Kilcooley project, a very positive experience there. There have not been similar experiences certainly in relation to CRJI. We do have good relationships with Alternatives in terms of North Belfast but it still remains a very difficult policing environment and there is a lot of crime.

Mr Anderson: We heard from CRJI that they reckon their recidivism rate is about 8% and the numbers in Kilcooley were nearly 2,000 young people, nearly

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2,000 victims and they said what you are not getting, which you were getting before, which is measurable is people being taken behind the shops and getting their legs broken or a bullet through the kneecap. The schemes seem to be working without the bureaucracy of the police being involved. I am not saying that in a bad way but there is a reality that it is working. One of my worries, particularly from the CRJI point of view, is given the fact, whether we like it or not, there is not the confidence in police, and it is historical and perhaps it should not be there, if they are forced to sign up to these Protocols people will stop coming and putting their faith in CRJI or they will fold altogether, so that would be a retrograde step. When we spoke to them on both sides yesterday it was a very, very positive situation. From the CRJI point of view I thought some of the work they have to do should be done by other statutory agencies, like social services, which are clearly not doing that to the extent these people on the ground are. Most of the things they were talking about was bad relations between neighbours, *et cetera*, but stopping it before it becomes a major situation. My worry is the insistence on going ahead with Protocols which you say are non-negotiable, and I understand where you are coming from, might have a detrimental effect overall and things might go backwards rather than forwards.

Q445 Chairman: Just before you answer that, I think it is important to put on record that Mr Auld giving evidence yesterday for CRJI gave an emphatic, unambiguous “yes” when asked whether he believed it was essential that there should be co-operation of the closest nature with the police, and he was taxed on that by several Members of the Committee.

Sir Hugh Orde: That would be Sammy!

Q446 Chairman: No, there were several Members of the Committee who asked it, and I also asked it from the chair and was given an unambiguous one word answer, which was “yes”. In that context perhaps you could address some of the remarks made by Mr Anderson. He has moved us on to the area that I was anxious we should move to. The critical question that faces Northern Ireland at the moment, or one of the most critical questions, is Sinn Fein’s support for policing and where we are going to stand if that does not materialise. Perhaps you would address those issues.

Sir Hugh Orde: First of all, will the systems go backwards if police get involved? Point one, confidence in policing is growing across the piece, that is manifest in a number of ways not only in rising reported crime rates in nationalist communities. When I was out on patrol quite recently with my officers in West Belfast and places, they are getting more and more feedback from those communities who are pleased to see us because the old world is falling away. If we do not now say that we need to move on, CRJI is a process in transition but we now need to nail our colours to the mast and there can only be one police service in Northern Ireland, and it is the one that I have the privilege of commanding and we need to engage. It is very

positive that Jim said those things. Jim Auld and I have shared a Sunday radio programme studio on these sorts of issues in the past and he has turned up at a lecture I gave at Queens, so this is not a man who is against policing, I fully accept that. We have got to make that leap of faith, as has he, and say it now needs to be embedded in the system and not ancillary to it. We have got to bite that bullet and move on in that way. The point is well made around what is not happening any more, which is punishment beatings across communities are down substantially, not universally but down substantially. Last night I was looking at the figures for the last 10 years and in the republican community the trend is downhill and unstoppable. I think there is recognition that those things did not work, it did not stop people committing crime, and probably it made them more criminal, so the world has moved on. In terms of where we will be if Sinn Fein do not join policing is we will be where we are now, we will continue to push edges, and I think this is one of the edges we need to continue to push. Just because a party does not want to engage, for whatever reason, that is not a matter to stop any of this in my judgment. If they do join it makes it all a lot easier because it helps my officers and they will be seen as more acceptable to the wider republican community and that will give us more access. As I have continually said, all I am asking to be judged on is what my officers do today, not what they did a third of a century ago.

Q447 Chairman: May I ask you a question without asking you to breach any confidence, which I certainly would not do. Are you having more, and more satisfactory, informal contact with the leaders of the nationalist community, particularly Sinn Fein?

Sir Hugh Orde: I have always said I will meet anyone who wants to make a difference to policing and recently I have met Sinn Fein more often than I have in the past at a number of levels to discuss some of the issues. I also think it is important not to forget that much of the nationalist community has been represented on policing by the SDLP.

Q448 Chairman: Indeed.

Sir Hugh Orde: I think there is a big danger in this attraction towards each group that might join when there is a group that has been engaged for five years. That represents a broad spectrum of nationalism and is engaged in policing, it does hold me to account. I have seen the brief notes of the Committee here in relation to this and I am quite clear they would support a system that has police involvement.

Chairman: I think it is very important to put on record that at the moment Alasdair McDonnell, who cannot be here for understandable reasons, who is Deputy Leader of the SDLP, is a most important Member of this Committee and plays an extremely constructive part in all our deliberations and would obviously endorse all that you have said in your recent statement.

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Q449 Mr Fraser: On the point that David Anderson asked about CRJI, when we were there yesterday afternoon talking to people who had gone through the process, three or four people who were victims commented, and I would like your comment back on this, that the reason why they went there was because their first approach was to the police and in each instance they said they went to the police and they were not dealt with either effectively or efficiently or you did not take the issue seriously enough and that forced them to go to CRJI for a better response. I asked people without other people listening and that was a common response I received. How does one overcome that given the point you made just now about confidence in the police in these communities?

Sir Hugh Orde: We have to keep trying. If people are not happy with what we do there are clear mechanisms of complaint which are entirely independent. I have always said if people are not satisfied with what we do they should complain to the Police Ombudsman so it can be properly investigated. We need to know is the point. Because we are not involved in CRJI that sort of communication is not happening. Success for me would be if something like that happened, for example that someone from CRJI would pick up the phone to the local inspector and say, "So and so has complained, they called you, it is not working right and we need to fix this".

Q450 Mr Fraser: From different communities, depending on where they are, would there be a log of the call coming in for help?

Sir Hugh Orde: Absolutely, yes.

Q451 Mr Fraser: And a process must be undertaken.

Sir Hugh Orde: Yes.

Q452 Mr Fraser: Particularly if you are talking, as you just said, informally to some of the people and there is general support for you from some of the people running that scheme it is an ideal launching point to do what you just talked about, which is the leap of faith.

Sir Hugh Orde: Yes.

Q453 Chairman: There is a perception in West Belfast that the police perhaps do not want to know. That was what I was told yesterday. As we are in public session I think it is helpful to give you the chance to comment on that perception. Politicians are well aware that perceptions are not always reality, but it is important that we hear your answer.

Sir Hugh Orde: If that is their perception, that is their reality, so it is important. We will do all we can to protect all communities, and I think we have proved that. We briefed you privately on public order. In terms of commitment, the scenes you saw at the riots just over a year ago showed the absolute commitment of my officers to stop any rioter getting down Springfield Road into the nationalist

community. We proved it beyond doubt. We are committed to protect people at every level, be it violence within their homes, domestic violence or whatever. Would I like more police officers? Yes, I suppose I probably would, but we have got to make sure that the officers we have are dealing with every case professionally and if we are not then we need to know about that. That is the feedback loop that I am seeking. I know my district commanders in West Belfast meet many community representatives, and indeed I was speaking to some only yesterday, and the feedback I am getting in broad terms is the world is moving on. When I was on the street with my uniformed officers who patrol on a daily basis I got the same feeling, the world is moving on. What I also picked up very clearly was a shared concern, if you like, that some people in the young community were not under the control of their own communities any more and, equally, we were still finding it difficult to get in, which goes back to the leap of faith. We have all got to make that leap and I put my own people in exactly the same position. We have all got to try and come together and look at how we move the world on or we are going to end up criminalising the next generation.

Q454 Lady Hermon: I was glad to hear that you seem to have a good, albeit not frequent, working relationship with Mr Jim Auld. I have to say that Mr Auld gave evidence here yesterday that was highly critical of the police response to two very serious matters, one involving an alleged murderer where in his evidence he suggested he had taken this alleged murderer to a local police station where they were so undermanned that it was recommended he take him to another police station. How do you respond to that sort of incident?

Sir Hugh Orde: I think in two ways. One is it is around being able to have those conversations with these people when they happen rather than through a third party. First of all, I welcome the fact that CRJI are prepared to engage with us. I am somewhat constrained in what I can say because it is a matter that is going through the court as we speak, but I think it is fair to say and put on record there was no allegation of murder, what we are talking about is a fatal road traffic accident. The way these things are portrayed is so important and if that sort of conversation can take place between—

Chairman: You are quite sure that is the same incident?

Q455 Lady Hermon: Was Mr Auld's evidence to us incorrect?

Sir Hugh Orde: I heard this yesterday and I had a communication from the district commander only this morning having heard it reported that this was a fatal hit-and-run. That is equally serious, someone has died, and I am in agreement with Jim that someone was killed as a result of this accident. I can also report that the individual who caused the

accident was charged with death by dangerous driving and is currently being prosecuted for that, disqualified driving and other matters.¹

Chairman: Obviously if it is currently before the courts we cannot pursue it. Lady Hermon may wish to refer to the other incident.

Q456 Lady Hermon: No, I will leave that. I want the Chief Constable to respond to a description of restorative justice which appeared in this morning's *Newsletter*, an unfortunate statement, I think. Let me just quote from an absent Member of this Committee. He said, and I would like your response to it, that the plans for restorative justice could leave some neighbourhoods exposed "to the law of the jungle". "Although the new Restorative Justice Protocols have some improvements, they still leave communities exposed. The danger of state paid vigilantes under Sinn Fein's control remains. That really would be political policing". Is that how you see CRJ Ireland, Chief Constable?

Sir Hugh Orde: No. Drew may want to come in on some of those issues in a moment. In broad terms, I think the whole principle behind this Protocol is to ensure that we create a system that is sustainable, that is seen to be transparent and subject to oversight and is focused on keeping people, mainly young people, out of the criminal justice system and giving them criminal records and giving them an opportunity to learn from their mistakes early on when they commit minor crime. I think that is a good thing. I do not think that necessarily leads in any way to vigilantism, providing it is properly controlled and the people who run it have the confidence of their communities. Political policing, I am not sure what political policing means, it is a mantra from the past, frankly. There is nothing political about dealing with domestic violence or dealing with anti-social behaviour, it is just good policing.

Mr Harris: Some of the elements around this we have alluded to already. I think it is about trust and trust through the transparency of these schemes, what they are about and what they intend to do in their community, so people are aware of how they fit in with the rest of the criminal justice system, how the police will work with them, how they will be inspected and ensure the standards, which are stringent standards, are met and how complaints are managed as well. There is a whole set of measures to ensure that they are working at a certain standard and being transparent about the manner in which they work and the trust comes from that. There is a

leap of faith in this as well and in some ways we have to put trust in what these people say about their good offices and move forward from there.

Q457 Lady Hermon: Do you see CRJ Ireland as a tool of Sinn Fein at the present time? Is your evidence that it is manipulated by Sinn Fein? Is it a political organisation?

Mr Harris: No, I do not see it as a tool of Sinn Fein. It is certainly an organisation which has an Irish republican outlook and they have a reticence in dealing with the Police Service which is close to Sinn Fein's. In conversations that I have had with CRJI members they have said to me that if Sinn Fein go on the policing board it is not automatic that their involvement with the police will therefore follow, they would have to debate that for themselves. I do not think one follows the other.

Sammy Wilson: So they are dissident republicans, are they!

Q458 Chairman: I think we will move on to Mr John Battle.

Sir Hugh Orde: You are being mischievous.

Q459 John Battle: I have come new to this Committee and I have to say I was deeply impressed by both schemes I saw. The reason is it is somewhere along the interface between the breaking down of relationships in neighbourhoods at all levels as distinct from the breaking of a law. I want to ask my question this way: you referred to the trust that could be built up, and there was evident trust in Kilcooley, for example, between the police and the people. I thought that there was co-operation in the community justice scheme that we saw between the people and the police through my interpretation of what was said to us and what we experienced when we met these people. I want to ask a question about the legal system and the Chief Constable's remark. If it is working at the local level could there be a different problem with the Crown Prosecution Services because both witnesses we have had suggested that there were problems in the "Northern Ireland Office" in relation to these schemes. I just wonder if I could widen the question and ask, do you think there is sufficient trust by the justice system in these schemes in general—I am applying that UK-wide as well—or is there suspicion that they are really undercutting the rule of law? Is there enough confidence from the top in these schemes to allow them to happen and allow them the flexibility that they might need to exercise? Both witnesses in two contexts used an expression which I thought was brilliant, which was allow you to exercise "an ounce of common sense", or will the system bear down on that in practice?

Sir Hugh Orde: That is a very good question and that gets to the nub of if we are going to do it, is it going to be effective in the long-term. I wrote something down in relation to something I heard earlier: quick justice by definition, in my judgment, is not bad justice, I think it enhances it. I do not know the director's mind on the value of these sorts of schemes. I have been very clear, and I hope explicit,

¹ Sir Hugh Orde informed the Committee in a letter of 5 January that "a full police investigation was carried out into a fatal hit and run road traffic collision during the early hours of the morning of 11 February 2006. One man presented himself to police on the evening of 11 February 2006. He was arrested that evening and charged with Causing Death by Dangerous driving, Causing Grievous Injury by Dangerous driving, Driving whilst Disqualified, no Insurance, Failing to Stop and Attempting to Pervert the Course of Justice. He pleaded guilty and was sentenced to nine years' imprisonment on 6 December 2006.

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in that I think they add huge value. It keeps young people out of courts, that is the bottom line. I do not know the figures around re-offending rates but that is more impressive than criminalising someone in any way, shape or form, never mind the costs. That is another reason for saying it. I think flexibility is absolutely essential. We have to get a scheme, and this will be in our feedback, whereby we all have confidence that when the local decision-makers, and that includes us, recommend that this young person has done a crime which in our judgment, the community's judgment and the victim's judgment, is minor and redeemable, we very quickly get approval to move down this way. That does not *prima facie* mean without all this other evidence there is the potential for a miscarriage of justice. If there was a concern I think it would be in that area: if we do not know everything, how can we make a decision? I think we have to be brave about that and recognise that we do not need this much material to make a decision on an outcome for a crime where the crime by definition is low level. I think there is a sliding scale here.

Q460 Chairman: Sir Hugh, would I be right in inferring from what you have just said that you would agree with two important points made to us yesterday, one made by Debbie Watters from Alternatives and the other made by both sets of witnesses. The first point was that these schemes ought to cover the whole of Northern Ireland. The second point was that it was absolutely vital that they be de-politicised, which was the word they used. I rather infer from your remarks that you would go along with both of those statements.

Sir Hugh Orde: Yes, I would. What is interesting is that in feedback we got from some of our district commanders the issue of equity did come up, ie if you have got some places where it will work and some places it will not work that will complicate it, how do we get equity at judicial decision-making level. I do not know if Drew wants to add to that.

Mr Harris: Yes. They are working in pretty confined geographical areas at the moment. If you live outside those areas, and you can live in as equally disadvantaged a place, there is no scheme in Lisburn or Craigavon that we are aware of, so young people get into trouble and the route is the criminal justice route which will come to an outcome which will give them a record. There is a disparity there. I would say in terms of commonsense, police officers have commonsense in pounds' worth and can apply their commonsense and discretion. That is what our police officers are trained to do.

Q461 Chairman: Police officers do it very well, I am sure. Could I ask you on the question of funding because the evidence we were given yesterday, and I appreciate that these figures were subjective to a degree and were based upon statistics that you have already said you cannot comment on, but it was an historic or actual fact that to keep somebody in custody for a year in Northern Ireland costs a very great deal of money, something like £80,000, which is significantly higher than the rest of the UK,

whereas dealing with some of these young people and keeping them out of trouble is much less costly. I think Debbie Watters put a figure of less than £1,500 per individual on it. I have no means of testing that. In your submission to Government, would you therefore be arguing for adequate funding for these schemes?

Sir Hugh Orde: I think this does make sense in value for money terms. It has been funded basically by charitable contributions, many of which have dried up in recent years.

Q462 Chairman: Absolutely.

Sir Hugh Orde: So that does cause a problem. Whether the Government feels it is able to support it is a matter for their fiscal department but I feel it is a good idea and I will certainly say I think it is a good idea because it keeps people out of the judicial system and by definition it is an awful lot cheaper than locking someone up. That having been said, on the crimes we are dealing with it would be highly unlikely for an individual to be incarcerated on the back of them. I would see these as the sort of penalties likely to be given that more worryingly might be less effective than this as a process, but we are not talking of saving huge numbers of prison places.

Chairman: Then you could be recycling young offenders, could you not?

Q463 Mr Murphy: I have a couple of points. In the event of the schemes in the republican areas not signing up to the Protocol in its current form, namely the police involvement, would you prefer to see those schemes operate as they currently are, albeit they would not be funded, or would you rather see no schemes at all?

Sir Hugh Orde: My general view is we are no worse off.

Mr Harris: We do not have a good insight into what they are dealing with and that is the difficulty of those schemes. We are aware of them dealing with street fighting and assaults and with some domestic violence incidents, therefore they are dealing with pretty serious matters which are really outside the discretion of a restorative solution in all likelihood. I would say there is only a small number of those cases which properly could be the subject of a restorative solution and those should be matters that should be dealt with by the criminal justice agencies in partnership with other agencies, including social services, education, *et cetera*. There is a danger around some of the crimes, and they are crimes, it is not low level crime either, they are serious matters that are being dealt with. That is where we are at the moment and it is a bad place. There is a lot of stuff going on. We learn of some of it but we do not get the full picture. They have some of it as well but they do not know all that we know. Where there is a disconnect in communication, time and time again that has led to tragic consequences.

Q464 Mr Murphy: I will accept that, that was genuinely one of the concerns of this Committee. However, I have some experience of having

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disagreements with the police myself, I went through the miners' strike for 12 months, and that did affect me and affected my community. That was just one year out of my—you might not believe this—58 years. It took me a long time personally to get over that and trust the police again because I perceived the police being used as a political weapon. That was one year. A lot of the people I work with still have not got their respect back for the police. I have some understanding of what these communities have gone through and how difficult it will be for them almost overnight to say, "Yes, that is fine, I realise that the politics have been taken out of policing". It will take a long time for the general public, not the politicians, because I have found here the public have been ahead of the politicians, no disrespect to my colleagues here. It is an issue where before we can take anything forward there needs to be an awful lot of work done with the communities on the ground. My final point is are there any areas currently in Northern Ireland where you cannot police, where your physical presence is not accepted?

Sir Hugh Orde: Yes, it is a difficult history. All we are asking is for our current officers to be judged on what they deliver now. I understand the point. It is equally difficult for our officers, 302 of their colleagues were murdered during the Troubles. It is back to the leap of faith. We are asking a lot of people to do a lot of strange things here and what is really interesting is that the vast majority are doing them. I think the vast majority have really moved on. I am not saying they are there yet, do not get me wrong, but I think we have moved on substantially. I would agree with your observation about politicians, present company obviously excepted.

Q465 Lady Hermon: Obviously.

Sir Hugh Orde: What is interesting, and it is a point I have made to parties who have not yet engaged with us, is their communities are leaving them behind because our guys are getting in and slowly proving we can make a difference. We are not going to get it all right, I accept that. What is quite interesting is the fact we are having those sorts of discussions and they are really about ordinary policing. I had a similar discussion when I was Deputy Commissioner in London about police failures around ordinary operations and we discussed them and moved on. Are there any no-go areas? No, there are not. Some places are more difficult than others, it would be fair to say, but there are no no-go areas in Northern Ireland.

Chairman: We are moving towards the end of the session and I know that you have commitments in London later as well, Sir Hugh. We will have a quick question from Mr Anderson and Mr Wilson.

Q466 Mr Anderson: I just want up to pick up on a point you were asked before about the involvement of paramilitaries. I know this is the leap of faith stuff but for some of them, in a sense, are they not a role model saying, "Look how I destroyed my life". If the description that comes out in these regulations says anybody who has done time for paramilitary offences, et cetera, cannot get involved, are we not

losing something that may well have an impact on certain people? There is a risk that people might come through who might use it the other way.

Sir Hugh Orde: It is the same principle as drug users and all this sort of thing.

Mr Harris: Some of the feedback we are getting is that the people with terrorist convictions are getting older and there is a generational gap between them and the young people. The challenge for them is how they re-engage and refresh themselves. People with terrorist convictions are in their 40s-plus now.

Q467 Lady Hermon: That is very young.

Mr Harris: There is a new generation.

Q468 Chairman: Very young indeed, yes.

Mr Harris: Not to a 15 year-old. Yes, it is very young but not to a 15 year-old. There is a relationship that has to be developed. I take the point you make but there is the aspect that the community finds this is suitable to take this work forward, because it is difficult work.

Mr Anderson: I agree totally but from the way I read the Protocols it could be that you could come out and say nobody who has got a paramilitary background should be involved and I think you would be losing an opportunity. It might not work for 100 15 year-olds but it might work for one. I think by saying they are out is a big mistake.

Lady Hermon: Could I just add to the point David has made. It is a fact—a fact—that in Kilcooley with the IMPACT scheme your police officers, with the greatest of respect, PSNI police officers, have been working hand in glove together very closely on the management committee of the IMPACT scheme. Two of the members of the IMPACT scheme, obviously not of the PSNI, do have convictions.

Chairman: Substantial convictions.

Q469 Lady Hermon: They have had a past, they are entitled to a future and have made a very positive contribution. Why should there be a difference when the Protocols come into place when they have actually proven their track record and their contributions to the community and to the scheme in Kilcooley?

Mr Harris: In any vetting process you are looking at people's past behaviour and making assessments as to the risks there are. We are talking about children and probably vulnerable adults here and it is the risks we take when we allow people with serious convictions to deal closely with them. There is no question on a whole range of offences, such as sex offences or sex crime, of those people being involved and getting through the POCVA process, but when it comes to crimes of violence, and when you look at people's criminal records they are not clear-cut, there will be a mixture, serious criminal records are always long criminal records, and there will be a history of violence, robbery, murder and so on. You can look at a terrorist's convictions and that is what you see. It does not say "as a result of terrorist action", it says "murder" or "robbery". That is what we are forming a basis on. We know something of the individual, we will go into the background and

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the Protocol makes a judgment about the Good Friday Agreement, and it is for the vetting panel to exercise their judgment. We will present information that we have and it would be wrong for us to second-guess what the panel is interested in.

Q470 Sammy Wilson: You will have noted from some of the questions that some of my colleagues have been seduced by the honeyed words and unsubstantiated statistics that they have heard over the last day. Alasdair McDonnell has been quoted by Lady Hermon. Is it not a fact that if we go down the road of schemes which have got inappropriate people, no police involvement, no control over which cases are referred to the schemes or referred to the court system, no insight into the process, no control over the way in which individuals are approached as to which crimes should be taken through the scheme or through the criminal process, we really are open to vigilantism in some of these areas?

Sir Hugh Orde: That is an awful lot of noes. The answer to those noes is yes, potentially. The strength of this Protocol is it deals with most of those issues and the wider public have to be satisfied that this is a system that is subject to a reasonable degree of oversight and without doubt has us involved and embedded in the system, because I think that is really important.

Q471 Chairman: And subject to inspection.

Sir Hugh Orde: And oversight.

Q472 Sammy Wilson: That is why the Protocols are so important and non-negotiable.

Sir Hugh Orde: I think so. Going back to what Lady Hermon said, no-one doubts the good work that these schemes have done. Whilst we may not have been part and parcel, we would not be where we are

now if it had not been for the people in Alternatives and CRJ Ireland starting to do that sort of work in their communities.

Q473 Lady Hermon: Thank you.

Sir Hugh Orde: But we do need to remember that we are all replaceable. I remind my senior management team of that every day. We are only as good as our last five minutes. There is potential to move this world on. If the will is there, there are plenty of people within these communities who can take over. If their desire is to deal with this in a way that is understood by a wider community, that is achievable by people who would not cause the concerns that Sammy raises. I think there is a way forward.

Q474 Chairman: To sum up, because we have now come to the end, and we are very grateful to both of you for your frank comments and evidence, you believe that there is a need for a Protocol; you are going to make certain observations because you are a bit concerned that the implementation of the Protocol could lead to rigidity and, therefore, delay; you would like to see schemes like this covering the whole of the province of Northern Ireland; you feel they should not be politicised but, most important of all, you believe that such schemes only have a credible future if there is a formal and proper police involvement and a recognition by those who operate the schemes that there is only one police force and that, as you say, is the one that you at the moment have the honour to command. Would that be a fair assessment?

Sir Hugh Orde: That would be a very fair assessment.

Chairman: Thank you very much indeed, Sir Hugh, and thank you, Mr Harris, we are most grateful to you. We wish you a safe journey to London as we will be on the same plane. Thank you.

Wednesday 6 December 2006

Members present:

Sir Patrick Cormack, in the Chair

Mr David Anderson
John Battle
Mr Gregory Campbell
Lady Hermon

Dr Alasdair McDonnell
Mr Denis Murphy
Stephen Pound
Sammy Wilson

Witnesses: **Mr David Hanson**, a Member of the House, Minister of State, and **Mr Stephen Leach**, Director of Criminal Justice, Northern Ireland Office, gave evidence.

Q475 Chairman: May I welcome you, Minister. We are very glad to see you, and Mr Leach, your Director of Criminal Justice. The questions will of course be directed to you, Minister, but you must feel free to bring in Mr Leach at any appropriate moment and we will be glad to hear from him as well. We are particularly glad because this is the last public session that we are having on community restorative justice. We have taken evidence both in London and, in the last couple of days, in Belfast, as you will know, and you will know who we have seen. We have also had private meetings with other political parties and again you are aware of that, and we have had meetings, both public and private, with the Chief Constable, and we will be having a private discussion session with Dr Garret FitzGerald, the former Taoiseach who did write to us some time ago, who was very exercised on this matter, and we are going to produce a report in the first half of January which the Secretary of State indicated would be acceptable from this Committee because the delay was not our fault. I am not suggesting that it was anybody's fault in particular but we could not deliver it before. Would you like to make any opening statement before we ask questions?

Mr Hanson: If I may, thank you. Can I formally introduce Stephen Leach who is the Director of Criminal Justice and Chair of the Criminal Justice Board. You may notice that we are both wearing the same tie. This is not a uniform for the Criminal Justice Division; Stephen has come from Belfast and I have been in London today, but it just so happens that we are wearing the same tie.

Q476 Mr Campbell: It shows joined-up thinking!

Mr Hanson: Absolutely. The Review of the Criminal Justice System in Northern Ireland recommended that community based restorative justice, properly handled, could have a role to play within the criminal justice system in dealing with lower level offenders and I agree with that recommendation. Since I have been appointed to this post at the General Election, I have looked at how we can take forward that wish in a positive way. I have come to the conclusion that, for community based schemes, there needs to be standards set to give confidence to the public over their use and that is what the draft protocol is about. In implementing that recommendation of the Criminal Justice Review, I have asked relevant criminal justice agencies in Northern Ireland to develop a set of arrangements to ensure that such

schemes would meet the high standards expected of any organisation engaged directly in criminal justice matters. The draft protocol is the result of those deliberations. It has been clear to me that the schemes that work in the criminal justice field need to have basic standards applied to them. They must, for example, comply fully with the rule of law, they must deal directly with the police, they must protect human rights of all participants, they must attain the highest standards required of those dealing with the criminal justice system and they must deliver both fair and proportionate outcomes. I have also taken the view, which I hope the Committee will ultimately share, that users should have a complaints mechanism, that schemes must be open to inspection and that indeed current paramilitary activity is not compatible with involvement in those schemes. It is important that we get this right. We have listened to those who said that our original proposals and guidelines last year that I published just after I was appointed were not robust enough to command public confidence and we have now strengthened the protocol accordingly. In the light of those changes, I have recently undertaken a further consultation and I am currently undertaking an equality impact assessment, both of which are completed on 13 December. You—and I hope the Committee—will be aware that the schemes are currently unregulated, that the schemes are of course privately funded, that they are and remain independent of government, free to decide how and when they operate and under whatever guidance they choose. I have taken the view that we need to make clear that there are certain standards that should apply to those schemes. The draft protocol is my best guess of what those standards should be and, as part of the deliberation, I am very keen to both respond to the Committee's deliberations, but also I hope to take into account any comments you make during the course of your considerations in order that I can reflect that in any final protocol.

Q477 Chairman: Thank you very much indeed for that. We much appreciate it. We have, as I said earlier, taken evidence from a number of people and we visited two of the schemes: we have visited one of the Alternative Northern Ireland schemes in Kilcooley on Monday morning and, on Monday afternoon of this week, we were in Andersonstown which is a CRJI scheme and we took formal evidence from both Alternatives and CRJI in public session

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in the Stormont Hotel in Belfast on Monday afternoon. I therefore think that we are fairly well informed on the two approaches. I think it would be fair to say that all the witnesses we have seen, without exception, have recognised a place for CRJ schemes. There has of course been not unanimity of view on precisely how they should be operated and various comments on the protocol have been made, but there seems to have been a general acceptance that a protocol is not in itself a bad idea, so long as it does not become too rigid because a degree of flexibility is necessary. A number of witnesses, including the Chief Constable yesterday morning, have made it plain to us that they feel that, if these schemes are to have a real impact—and I do not use that word in a punning sense because that is the name of the scheme we saw in Kilcooley—across the whole of the province of Northern Ireland, then they should indeed cover the whole of the province of Northern Ireland and they should, in the words of one of our witnesses, be depoliticised in every way. That is really the general drift of the answers. There are two big issues that we wish to confront particularly this afternoon with you. One is the fact that, at the moment as you rightly say, these schemes are freelance exercises and they are funded by charitable institutions, some of them from outside this country, perfectly properly, honourably and so on, but one set of schemes, the Alternatives, work in close cooperation with the police. It is an informal cooperation but it is a real one. It is not perfect, as we heard yesterday morning, but it is genuine. The other set of schemes, the CRJI schemes, do not work in any sort of cooperation with the police although Mr Auld, the Director, gave an unambiguous “yes” when asked if he felt that they would have to work with the police in the future and that was to some degree encouraging. At the moment, they do not. So, there is this difference. Of course, many people feel that if there is no agreement—we all hope there will be—those who have cooperated with the police and are willing to sign up to the protocol should not be penalised. Mr Auld himself in public session said that the relations with Alternatives with amicable, a sentiment that was reciprocated, and that they, CRJI, did not see why Alternatives should be penalised by being deprived of funding if they did not, as it were, sign up with the police. Would you give us your reaction to those particular points?

Mr Hanson: The first point to make is that at the moment, as you and the Committee will be aware, there is no funding applicable from the Northern Ireland Office or indeed from the devolved administration to support these schemes; they are entirely funded by, in most cases, a philanthropic organisation from America. We have taken a view that we need to put in place the protocols and, until such time as we have minimum standards agreed for the operation of those schemes, then we could not even consider whether we wish to fund any schemes in the future. As it happens, I have no budget this year, nor do I have any proposed budget for next year or indeed for future years as part of the comprehensive spending review to fund restorative justice schemes as currently constituted.

Q478 Chairman: Should not he who calls the tune pay the piper? You are going to have a protocol, you are insisting upon it, and, speaking for myself—and I believe that most of the Committee would go along with this—we see the good logic and the sense of that. However, we are concerned that if these schemes are, by common consent, performing a useful community service and you are insisting upon putting them into, quite legitimately, something of a strait-jacket, should you not then be prepared to help them?

Mr Hanson: There is an agreement across the board from many organisations. These are essentially voluntary organisations. They are undertaking activity in the voluntary sector. As it happens, they are working with the criminal justice field, which is why we believe we have to put minimum standards in place. I can think of a number of voluntary organisations and organisations across Northern Ireland that are doing work with the Government but which do not receive Government funding. The specifics of this case and these schemes have to be that they are doing work that I believe needs to be regulated because of the concerns that have been expressed. The regulation, as you will also be well aware of, is not statutory, it is a voluntary code and if schemes do, as I hope they will be able to in the early part of the New Year, sign up to the voluntary code and receive accreditation from my Department, then they will be able to apply legitimately for any source of funding available within currently the devolved assembly, which is my responsibility currently, and the Northern Ireland Office. We do not have a specific stream of resource for restorative justice but we do have, for example, specific resources in the Department of Social Development for neighbourhood renewal and it could be possible that they could apply to those schemes, but only if they are accredited and they comply to whatever final standards I agree.

Q479 Chairman: That is very helpful and I think that does help to point us in the right direction. Let me ask you one more question and then I will turn over to my colleagues. What happens if, unhappily, Sinn Féin does not sign up to policing and the CRJI schemes do not do so either? Are you going to ditch the protocol or are you going to allow the Alternative schemes to conform to it and then be eligible, as you have just indicated?

Mr Hanson: What I will be doing is ensuring that those schemes that do apply the protocol, that do sign up to the protocol and that do receive the accreditation from the Government that they are doing a job according to the final protocol, will be eligible both for Government support in a political sense and to apply for Government support for whatever source of resources they may wish to do so. Those schemes that do not apply to the protocol will not receive Government support, will not be engaged formally with the criminal justice system and will not be eligible for funding from the Government in any way, shape or form. However, providing they are not doing anything illegal, then I am not in a position to

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stop them doing what they do, but the Government will not engage with them in a positive way, nor will they fund them in any way, shape or form.

Q480 Chairman: That is very clear but, in order to absolutely confirm it, you envisage the possibility of a continuing separation of schemes, you would do nothing to stop a scheme continuing, whether it had a formal relationship or not, but you would only formally recognise those that signed up?

Mr Hanson: Absolutely.

Chairman: Thank you. That is very clear.

Q481 John Battle: I would like to ask about the types of offence or issue raised by the protocol because I am a bit of a loss to know the difference between what we might call in my constituency an ordinary common or garden mediation scheme which keeps youngsters out of ASBOs which criminalises them and a scheme that covers some types of crime. It is this definition of low-level crime. I am not sure in my mind what low-level crimes might be. I can imagine what serious crimes are, and the protocol only mentions two in fact: sexual offences and domestic violence. I could imagine worse, bad though they are. Why did you decide not to provide a definition of low-level crime and how do you see a distinction between kids, to give a practical example, kicking a ball against the wall of an old person's bungalow, which is not frontline criminal activity in my book and might be sorted out with a bit of negotiation? Is that what you have in mind? The protocol says that that kind of antisocial behaviour is not what you are really referring to. What do you have in mind?

Mr Hanson: There are two aspects of the current work of restorative justice schemes. About 70% to 80% of their work is what I would call neighbour disputes and low-level disturbance. It may well be that young people in the street who are kicking a ball against a garage and causing a disturbance or it may be young people jumping over fences or it may be young people throwing stones at windows; things which are not criminal activities but which are antisocial and disturbing. Those matters are not regulated by the protocol because they are work which goes on with the schemes currently. Neighbour disputes and those types of things happen continuously and the schemes sometimes get involved in mediation between partners and between other activities on that side. The criminal side is set down very clearly in the protocol. Matters that are raised with the police which the police think are criminal activity will be put to the Public Prosecution Service and the Public Prosecution Service will decide whether or not they wish to have that element of activity either taken through the courts for a formal criminal procedure or whether they wish to involve the community restorative justice schemes to see whether there is mediation or activity at a local level. We have deliberately not defined them because the police and the Public Prosecution Service have wished to have flexibility. Let me give you some examples. It might well be, for example, that, on a wet evening in December at midnight in Belfast, two people meet when they have left the pub, have an

argument, get into an altercation and one person gets beaten up. The scheme is a criminal offence but it might be the first offence that person has ever undertaken and therefore it might be better to have a restorative approach whereby the individual is taken through the scheme, having had the referral by the Public Prosecution Service, where the individual sits down face to face with the victim, talks through what the altercation was about, makes an apology and perhaps makes some informal reparation, and that will be something that could be referred to the scheme as low-level crime. Equally, if the person who has carried out the assault is a serial offender who has carried out serial assaults, it might well be that the Public Prosecution Service chooses to put that person through the courts. We have not defined it because it may well be that the same offence has different outcomes.

Q482 Chairman: Presumably, if the assault resulted in really serious injury, then it would have to be a crime.

Mr Hanson: That would be the decision of the Public Prosecution Service and the Public Prosecution Service would then look at that and say whether they felt that a restorative approach would be worthwhile examining or whether a criminal route down the courts formally would be the case.

Q483 John Battle: I can see the need for flexibility and that came out most strongly in the police evidence where, to be fair, in both of the schemes, looking at it on the good side of the evidence we received, two of the witnesses with whom I spoke used the expression that we need to inject an ounce of commonsense in how we handle these measures and I thought that was very encouraging. I would like to press you on the business of who does the referring to whom because, if you take your street case, it goes to the Crown Prosecution Service and they refer it to the community restorative justice system, either the Northern Ireland Alternatives or one of the other schemes. That decision has been made by the Criminal Prosecution Service, but can you envisage a situation—and this is not just neighbour disputes but a little higher up in the criminal area—where one of the schemes says, “No, we are going to handle that” and “We will make the decision as to whether we handle it or whether the CPS deals with it”? Can you see a conflict between the CRS interfering, as they would see it, and saying, “We want to take this person off your hands because we are going to deal with them” and they saying, “No, we want to handle them in our own way”? Can you envisage that happening or will the protocol deal with that?

Mr Hanson: What we have been very clear to do in the current draft protocol is to ensure that the schemes are embedded as part of the criminal justice system. So, the decision has to be with the police and with the Public Prosecution Service as to whether or not the scheme becomes involved in criminal activity. There may well be a very solid role in future for restorative justice schemes to help sort out those schemes without putting people (a) through the courts, potentially giving people really strong

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criminal records, and (b) having somebody imprisoned as a result at the end of it. It may well be that a restorative scheme might well involve mediation at a local level, some local restorative action by replacement of windows or whatever at the local level, and that will be a decision solely, in my view, for the police and the Public Prosecution Service to take because we cannot have a situation, which is why I put that in the draft protocol, where the community based restorative justice schemes themselves determine that they are going to be the police, they are going to make the judgment as to what should be prosecuted and what should not and they are going to make those decisions. That is not their role and, in my view, that is not their role in any way, shape or form because that will undermine the judiciary and undermine the police.

Q484 John Battle: If I may follow that through, the implication that I take from that would be that schemes working closely with the police will be acceptable but, if the scheme was not working closely with the police, you are not going to recognise it as a scheme under the protocol.

Mr Hanson: Not within the criminal justice field. What we have said in the criminal justice field is that there are schemes which are essentially doing community mediation. They may be neighbour disputes and low-level antisocial behaviour which is not criminal, all those issues. Those schemes can continue—

Q485 Chairman: They will have the status of a residents' association.

Mr Hanson: That is right, and they are doing that work anyway. A great deal of the work that Alternatives and CRJI are doing is in that field; that is perfectly legitimate and we are not really touching that except to say that we will have an overall inspection of the organisation as well as the criminal justice side. On criminal justice matters, I do not believe—and this has come through very strongly in the first consultation that I put out which . . . I am being honest, I think I got that wrong because it was straight after the Election, I had been appointed to the job, it landed on my desk, I took it in, I put it out, I think it was wrong and I have retracted that and reissued the guidance to say that we need to have that stronger involvement with the police and on the criminal justice side. I think that been broadly welcomed. I was certainly being pressed from all political parties in Northern Ireland to make those changes and I have made them and the new protocol puts the police and the Public Prosecution Service at the centre of determining what the schemes deal with.

Chairman: Thank you very much. It is very important that we recognise that.

Q486 Sammy Wilson: Minister, there is another point that I want to take you up with in a minute but I would like to follow on with the last answer that you gave. I welcome what you have said about whether or not a case should go through the CRJ system or go through the courts should rest with the criminal prosecution system but, if that is the case, what is the

point of the proposed Advisory Panel and is that not the first foot in the door for, as one of the people who gave evidence to us on I think it was Monday or Tuesday said, the community to make decisions about which cases should go where?

Mr Hanson: The Advisory Panel is determined to have an examination of who is working within the schemes. There are some other issues which we may come on to later about involvement of paramilitary activity in those schemes. The Advisory Panel is about offering advice to the suitability of individuals in and working in those schemes. That will be comprised of probably almost certainly the Youth Justice Board and the Probation Board. It will take submissions from the police. Indeed, I have written to the Policing Board for Northern Ireland, of which Mr Wilson was a former notable member, to ask them if they wish to nominate to the Advisory Board.

Q487 Chairman: It will have no role in determining whether Mr Billy Bloggs was or was not referred to CRJ.

Mr Hanson: No. What the Advisory Panel will do is to examine the suitability of the people who work within the organisations and they will receive advice from the police as to anybody's suitability because, as we may come on to later, there are individuals now who have serious convictions who are currently involved in those panels.

Q488 Chairman: Indeed, we do want to come on to that later.

Mr Hanson: The Advisory Panel's role is to advise on the suitability of individuals working in the schemes.

Chairman: Thank you for clarifying that.

Q489 Sammy Wilson: The next question I want to ask is, by not having a definition of which crimes or which actions are criminal or serious criminal offences or minor criminal offences and indeed by having this lower level antisocial behaviour or non-criminal matters which can be dealt with outside the protocols, is there not a real danger . . . We have been told that 80% of the work that these organisations do is probably of the latter nature, antisocial behaviour, and much of that is the kind of thing that the police say is the most aggravating behaviour within a community. By allowing these schemes to deal with that outside the protocols, are you not in effect saying that there is a whole raft of semi-policing of a community that we are not going to have any control or regulation of at all?

Mr Hanson: We are going to have control and regulation in the broader sense because what the protocols envisage is that the Chief Inspector of Criminal Justice will examine the suitability of the organisation, there will still be a complaints procedure operational for those schemes and there will still be a range of mechanisms in the protocol which deal with the organisational structure—

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Q490 Chairman: And there will be inspection.

Mr Hanson: The inspection—

Q491 Sammy Wilson: That is only for things that fall under the protocol.

Mr Hanson: It is but it is directly only things that fall under the protocol but, in doing so, the organisation will still be inspected as to its suitability across the board and, as I think you have seen in your old evidence from Mr Kit Chivers, he has indicated that he wishes to look at the organisations in the round and I think that is only fair and proper. If there are complaints from an individual on what I would term a domestic antisocial behaviour issue, I have no doubt that the complaints procedure should still be used for that mechanism.

Q492 Sammy Wilson: You have no doubt that that is your understanding of it but that is not what the protocol says. The protocol says that this inspection is for the work which is to be done as a result of the cases referred.

Mr Hanson: Again, that is because the protocol focuses on the criminal justice field but the wider issues of the suitability of the organisation and the wider issues of the complaints mechanism will apply across the board. What Kit Chivers will not be able to do is to inspect the way in which an individual operates the example I gave Mr Battle earlier relating to, for example, a neighbour dispute because that is not within the criminal justice field. The suitability of the organisation will still form part of the wider assessment.

Lady Hermon: It is delightful to see you here this afternoon along with Mr Leach. There are two points which come to mind immediately. First of all, the Prosecution Service in Northern Ireland. I am very concerned indeed about the existing delays within the Prosecution Service because of course justice delayed is justice denied and I think we would be agreed on that. In the evidence that we took yesterday from the Chief Constable in our public session, he indicated to the Committee that it would be his wish and his intention to have dedicated police officers to deal with referrals from restorative justice schemes. Have you had any conversations with the Director of the Public Prosecution Service in Northern Ireland, Sir Alasdair Fraser, regarding how he can speed up referrals which come to him through restorative justice schemes? Will he have dedicated officers? Would you wish to see dedicated officers within the Prosecution Service?

Chairman: May I make only other point that Sir Hugh made yesterday. Not only did he talk about the dedicated officers but he also said that he would like to see somebody from the Prosecutor's Department in each of the major police stations. He actually said that. I think that the two will need to be taken together.

Q493 Lady Hermon: Yes.

Mr Hanson: Sir Alasdair Fraser is broadly supportive of the approach that we are taking and indeed, in the protocol itself—

Q494 Chairman: We have seen Sir Alasdair.

Mr Hanson: In the protocol itself it does indicate that we would seek to fast track potential involvement in such schemes of individuals who were suitable for referral to the CRB schemes with the police and the Public Prosecution Service. I accept what Lady Hermon is saying with relation to the potential delay in the criminal justice system now. My colleague Stephen Leach and indeed the Attorney General, the Secretary of State and myself are involved in a considerable amount of work to reduce the delay at the moment and we are making significant inroads into that. What we have said in relation to this is that, in a sense, this will be a potentially quicker way of resolving the issues rather than taking them through the courts and, if the Public Prosecution Service rather than taking an issue through the courts determines that it will be referred to the restorative justice scheme, that will reduce the delay in terms of, I hope, an end to the individual's circumstances relating to any particular offence because it may well be dragged through the courts for a long period of time whereas, if there is an assessment by the PPS to refer to the CRJ scheme, the CRJ scheme will then be able to discuss at a local level what reparations need to be undertaken and how the offender and the recipient of that offence can work together to come to some mutual resolution.

Lady Hermon: What mechanisms—spell it out to the Committee—did the Public Prosecution Service indicate to you were going to be put in place to fast track references through restorative justice schemes? What is the mechanism? Did they agree that a prosecutor could come into a police station as Sir Hugh Orde has obviously expressed on the record to the Committee? Would that find agreement with you, Minister?

Q495 Chairman: It happens over here.

Mr Hanson: In terms of the practical outgoing of how the scheme will operate, Sir Alasdair is certainly going to have discussions with us about that once the protocols have been agreed. Personally, I would have no objection to the scheme which has been outlined by Lady Hermon operating here, if the police and the PPS are able to manage that. What we do have is an agreement between the PPS, the police and ourselves that there would be an element of fast tracking of those schemes in order that we could ensure that they were dealt with at a local level by CRJ in whatever form that takes and avoid going to court on those matters and that is the principle that we have agreed.

Q496 Lady Hermon: That is the principle?

Mr Hanson: The principle we have agreed. We are in the process of discussing again the consultation has not finished, despite my best efforts.

Q497 Chairman: We are well aware that a number of the bodies have not yet submitted because they told us this week. Even the police had not submitted theirs yet.

Mr Hanson: We have been in discussion at official level on that and you may wish to ask Mr Leach to comment on that.

Q498 Lady Hermon: Yes, I would want to.

Mr Hanson: To date, we have not as yet finalised the arrangements because we have not as yet finalised the protocol.

Q499 Chairman: Of course, you will want to listen to this Committee's views before you do finalise them.

Mr Hanson: Absolutely.

Q500 Lady Hermon: Mr Leach, perhaps you would like to comment on how these applications and referrals from community restorative justice schemes are going to be fast tracked through the Prosecution Service.

Mr Leach: That would be an operational matter for the Chief Constable and the Director and I know that there have been some initial discussions about this and, once ministerial decisions are made on the protocol at the end of the consultation when all the representations are in and ministers have considered them, then I know that they will be having much more detailed operational discussions as to exactly how they will do the fast tracking. There is a commitment on both sides to put in place mechanisms which will allow that fast tracking.

Q501 Lady Hermon: May I press you on the point raised by the Chief Constable yesterday. It was his wish on the record to see a prosecutor within a police station working very closely with the Police Service of Northern Ireland; would you have any objection to that procedure being put in place?

Mr Leach: I would not have any objection to it. It is not at the moment the basis on which the Public Prosecution Service is being rolled out. There is a sort of liaison within each regional office with the Regional Police Service and I think that on both sides it is felt that that is the most effective way of dealing with that at the moment, but of course the Public Prosecution Service is just being rolled out. The full roll-out is not yet complete and, when it is complete, when working relations have been fully established and when the PPS have taken over all the prosecution decisions, which is not the case yet throughout Northern Ireland, I think they may review that. I think that they may look rather more at putting prosecutors in police station which, as the Chairman has said, is something which happens quite regularly with the Crown Prosecution Service here.

Q502 Lady Hermon: Are you currently worried about the delays within the Prosecution Service?

Mr Leach: I think that we are worried about delays in the criminal justice system overall in the processing of cases. I would not point the finger particularly at the prosecution because there are a number of agencies involved and that is one of the difficulties in resolving this. We do have a Delay Action Team which is looking at this and which is going to—

Mr Hanson: The Secretary of State chairs a meeting which meets every three months now with representatives from the Lord Chancellor's Department, the Attorney General, myself as Criminal Justice Minister and himself with officials and the Chief Constable and the Chief Public

Prosecutor looking at how we can reduce delay and we have in place a Delay Action Plan and a Delay Action Team and we are making significant inroads into the time from original arrest through to final resolution by the court.

Chairman: I am sure that the Committee would all hope that you do not delay that process.

Sammy Wilson: May I come back on a question because I think that the Minister misunderstood or else inadvertently misled the Committee?

Chairman: The Minister would never mislead the Committee. You may not have been clear in your question, but put it again.

Q503 Sammy Wilson: Minister, I asked you about the point of the Advisory Panel and if these decisions were to be made by the CPS, what is the point of having an Advisory Panel. I think you may have misunderstood the question because quite clearly the draft protocols in paragraph 10 make it clear that you envisage setting up an Advisory Panel to discuss the suitability of resolving a case through a community restorative justice scheme. If the decision is going to rest with the CPS, what is the point of such a panel?

Mr Hanson: I am sorry, Mr Wilson, if I misunderstood the question. I thought that you were referring to the Vetting Committee at the time. The Advisory Panel itself, as you said, in paragraph 10 of the protocols which I have before me is looking at broad guidelines on that. Ultimately, the decision rests with the PPS to examine which case goes forward. It may well be that the issues that Mr Battle mentioned earlier regarding some general definition . . . We are simply saying that the police, the Probation Board and the Youth Justice Agency should examine whether there are broad issues and I have already said in the broad issues that there should not be, for example, serious sexual offences referred to those matters, but ultimately, within those guidelines there will be established within this that the Public Prosecution Service has the final arbiter decision. They can make a decision whether or not to prosecute or to refer, that is their role.

Chairman: Some of our witnesses did feel that an Advisory Panel might become an instrument of delay and I think that you need to reflect on that and obviously the Committee will want to reflect on that because we will want to assess all the evidence and make recommendations.

Q504 Sammy Wilson: It will either become a means of delay because you go through the Advisory Panel and then go through the CPS where the decision is going to be made anyway according to the Minister or else, eventually, you cut out the CPS in some cases and you do get the communities to make the decision.

Mr Hanson: I hope that I can help Mr Wilson in this. In my assessment, the Advisory Panel will meet, will establish some broad overarching views on the type of case that might be undertaken and give that advice, but ultimately it will be a decision for the PPS in every circumstance.

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Q505 Chairman: Of course, Minister, you are very anxious to tell us—and I believe you implicitly—that this is a genuine consultation exercise and, if the Committee should feel that this was going to be an inadvertent instrument of delay, we would tell you so and you would listen.

Mr Hanson: Absolutely.

Chairman: Let us move on to Mr Murphy and the standards and then I want to move on to staffing with Dr McDonnell.

Mr Murphy: Minister, we visited two schemes, one Alternatives and one Ireland scheme and, in many ways, they were very different in their approach to the schemes. The Alternative scheme seemed to have restored calm to an area that was quite violent; they still have problems now but even the police, who were very much involved in that one, accepted that it had made a significant difference to their job. With the Ireland one in Andersonstown, there was no police involvement at all and the people to whom I spoke were quite adamant that, even if there were formal signatures to the protocols that included police having to be represented on the boards, it would, in their view, have a detrimental effect on the work that they were doing. They were clearly handling cases that should be handled by the police but they were doing that because, in their words—and I was speaking to people who actually worked on the ground—the community has no confidence or trust in the police at this moment in time. Minister, until that trust is restored, then it will be extremely difficult for the communities themselves to actually sign up to this. I have some experience, albeit only for a 12-month period, of how trust can break down and how it is very difficult to restore that trust. I was involved in the 1984–85 miners' strike on the frontline for 12 months and it affected me personally and it affected a number of my colleagues and a number of the people with whom I lived to the extent that, even today—and this was just one year period, not like the troubles that existed for a 30 year period in parts of Northern Ireland—a number of people I know and meet regularly will have nothing at all to do with the police and still have not restored that trust. It is a huge job within these communities because policing will only operate with communities agreeing to policemen being there. Whilst I hear that other people have said that there are no “no go areas” anymore in Northern Ireland, it has been conceded that areas are difficult to police. What I am asking is, what extra work is being done first of all to try and re-establish that trust and I recognise of course that the Police Service of Northern Ireland carry many scars as well, so it is two-sided thing, not just the communities themselves? Is there any thinking outside the box? I know that the Chairman does not like us using these terms, but there needs to be some really heavy work done and some investment in these communities to ensure—

Q506 Chairman: I think that we had better have an answer inside the box now!

Mr Hanson: Mr Murphy, you will appreciate, as will indeed the members of the Committee, particularly those who represent constituencies in Northern

Ireland, that the policing issue is a very live one in Northern Ireland at the moment. There is a tremendous debate about engagement with the police, not just with the community but also from political parties, and I certainly want to encourage, as does the Secretary of State, want to encourage political parties and the community to liaise and work with the police as we would do in our own constituencies. I accept that there are very often occasions when trust has broken down, but I do feel that, as the Criminal Justice Minister and with my colleague, Paul Goggins, the Member for Wythenshawe and Sale East, and the Police Minister, we have to ensure that the police operate and have the ability to operate in all communities. I cannot condone a situation whereby serious crimes will occur and they will not be reported to the police, not because the crimes are not serious but because the individuals do not support the police operating within their communities. That is part of the reason why we have had to work very hard on the protocols and it is part of the reason why I have actually changed the protocols from the original draft. I have met with Jim Auld and I have met with CRJ Ireland and I have discussed with them the circumstances. There are very difficult issues. I have deep respect for the work that they are trying to do, but I still think that we need to put the police at the centre of it because we cannot have, particularly in the very fiery circumstances of parts of Northern Ireland, an alternative policing and criminal justice system that dishes out its own levels of justice with no relation to that criminal justice system. It is a very difficult issue but it is one on which I think I have to hold firm because, if I do not, I am really saying that the police have no locus to operate on these matters.

Q507 Chairman: I assure you that the Committee are entirely with you on that, Minister.

Mr Hanson: I understand Mr Murphy and I understand that, in my own constituency, the miners' strike was a very divisive event also.

Q508 Chairman: And in my constituency.

Mr Hanson: I know that trust does break down but I think that we do have to have a situation whereby the police are still central and the Public Prosecution Service as agents of the Government—

Q509 Chairman: Those who are leaders of the community, particularly those who hold elective office, do have to work on this.

Mr Hanson: Again, if I come back to the original focus of the protocols, we are not saying in a sense that the CRJ Ireland cannot do what it does. What we are simply saying is, do not expect Government endorsement or Government finance or Government help if you do not cooperate with the police.

Chairman: You cannot have the official imprimatur unless you are within the system or within the box!

Mr Murphy: Whilst I said they are very different in many ways, the thing that they did have in common was the fact that prominent people within the schemes were ex-paramilitaries. Some of them having

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served long sentences for very serious offences who appeared to have the respect of the community, whether that was in some ways because of the fear of their reputation. Nevertheless, they were there and appeared to be doing a reasonably good job.

Chairman: Mr Murphy, you are making an incredibly important point but I have promised Alasdair McDonnell that he can lead on that one and I would like to finish with this side and then move on to the starting if I may and, please, come in again because it is a very important point. Was yours related to the others, Mr Anderson?

Q510 Mr Anderson: Do you think overall that the schemes remain positive?

Mr Hanson: I think they probably have been positive but we have made no formal evaluation of the schemes as a government. Having talked to Tom Winston and Jim Auld, I can recognise from both sides of the schemes that there probably is a positive influence in those schemes. I have not done a formal evaluation of them and I have not done a formal assessment of their outcomes and whether they do reduce crime. They are independent of government. We are simply assessing how we put in place those minimum standards because, if we move to any form of funding, we would make that formal assessment. At the moment, we are simply trying to put that minimum standard in place.

Q511 Mr Anderson: Are you aware that the claim recidivism rate is in single figures and, although you might not have monitored them, you must have seen that, for example, we were told in Kilcooley that examples where people have been kneecapped or had their legs broken are non-existent. I do not know how regularly they were before but they were not uncommon. That must have come to your attention, surely.

Mr Hanson: Obviously I have been to Kilcooley and I have been to see Tom Winston at the Alternatives and I have seen Jim Auld and I do know from the statistics which they presented to me that there are successes in those schemes. What I am saying is that I have not formally undertaken an evaluation of the schemes or formally examined their claims on those schemes, but I think that they are a positive influence and the report of the Criminal Justice Review indicated that and, in my opening statement, I said that I believe—

Q512 Chairman: You are neither denying nor denigrating but you are merely saying that there has been no formal assessment.

Mr Hanson: My personal view is that they have been a positive influence but I have not formally examined that and—

Chairman: Your position is very similar to Sir Hugh in that regard who feels that, yes, they do have a role to play but, again, this has to be done. I would like Gregory Campbell to finish off this little session and then I want to move on to the very important issue which Dr McDonnell is going to deal with.

Q513 Mr Campbell: Minister, you will be aware of the capacity of some people in Northern Ireland to try and circumvent, however strictly you establish ground rules or protocols, and you are also obviously aware, not just from this Committee but elsewhere, of the concern that there is in the wider community regarding former paramilitaries' involvement in CRJ schemes. If we make an assumption that there may be some sort of qualified acceptance of policing but not a whole-hearted embracing of the concept, have you had any discussions with any of the private funders? If some of the schemes are not going to qualify for funding in whatever way it may be presented through the NIO and then they go back to some Atlantic philanthropies or some other scheme, have you had any discussions, formal or informal, to advise possible private funders about the nature of the protocols in order that they are clear on what you are trying to get?

Mr Hanson: We have had informal discussions with Atlantic philanthropies about the nature of their funding and we have also had informal discussions with other potential funders on a private basis, but ultimately nothing has come of that as yet. It is not really for me ultimately to determine the funding base from the private sector or from voluntary groups for those organisations. That is a matter for them to do. We have certainly looked at it from a government perspective and I said earlier in my remarks that, in the event of signing up to protocols, there is a wealth of funding available that could be applied for but is not community restorative justice orientated but which is government funding on neighbourhood renewal and on a whole range of other things as well, community safety, partnerships, etc, etc.¹

Q514 Mr Campbell: I fully understand that.

Mr Hanson: Those issues can be applied for. We have not encouraged or dealt with the private sector voluntary sector to a great extent to either continue funding or look for alternatives.

Q515 Mr Campbell: The protocols being fairly clear now, if there are one or more schemes that baulk at the protocols and then find that they cannot circumvent the protocols but go to the private sector . . . Obviously you cannot dictate or direct the private sector, but you can endeavour to make them aware of the rationale behind the protocol.

Mr Hanson: Absolutely., Again, I think that we would be very clear and it has been my objective all along to be very clear that if an organisation does not accept the guideline protocols and does not accept the minimum standards we set, whatever they finally might be, then we would simply say that this organisation is operating, it is operating within a legal framework but it does not have the support of government and anybody who deals with it should

¹ *Note from witness:* With regard to informal discussions with Atlantic Philanthropies, I can confirm that neither the Government nor officials from the Department suggested that funding of Northern Ireland Alternatives should be discontinued.

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know that it does not have the support of government and it does not have the support of government for X, Y, and Z reason.

Q516 Chairman: It is a little like an unregistered school.

Mr Hanson: Yes.

Chairman: I would like to move on to the very, very important question of funding staffing which Mr Murphy had a little trailer on and I will bring him in again of course but I would like Dr McDonnell to lead on this.

Q517 Dr McDonnell: Minister, thank you for your time and your interest and your very open and honest answers. I have a note here that the draft protocol notes that the protection of children and vulnerable adults' framework checks will indicate whether an individual has a criminal record and any other information which might show up that a person is unsuitable for the post. How do you determine when a paramilitary individual has become ex-paramilitary? How will you determine when somebody has become a force for good rather than a force for evil? Rather than having your answer piecemeal, I will throw in a couple of supplementaries to that. How do you prevent somebody who may be pretend to be ex- but is without very much ex- in fact and is currently an active paramilitary individual? We were picking up, certainly in one of the schemes, a great deal of respect, a massive amount of respect, much more so than in the general community, for individuals with former paramilitary connections and the distinct impression that I left with was that maybe this respect had more to do with current paramilitary connections. The third issue is, in a great many situations, the number of offences recorded I estimate only maybe to be 35–40%. How do you prevent sex offenders who may not be fully recorded or registered being on the scheme? In other words, at a local level, the community level, people have reputations that may not quite ever make it through the courts but yet make it on to the schemes. I can think of a number of youth workers who are appointed around Belfast who may be should not be there.

Mr Hanson: I would like to answer this question in this way. We have put down a clear break line in terms of involvement in paramilitary activity in terms of acceptance to the scheme and also in terms of serious convictions and acceptance to the scheme. That break line is the Good Friday Agreement. You will know better than I that there are well over 30,000 people who have convictions through the troubles of Northern Ireland but what I have put down in the protocol is the break of the Good Friday Agreement because people will have serious convictions before that and indeed there are people who you will have met during the course of your deliberations who have very serious convictions who are now working within these schemes, but they have those convictions pre the Good Friday Agreement. My assessment is that if anybody has a conviction of a serious nature, ie five years or more, post the Good Friday Agreement,

they are automatically excluded from working in these schemes. We have established the Suitability Panel for the very reason to which you have alluded. The Suitability Panel is going to be comprised of probably—we have to finalise this—the Probation Board and the Youth Justice Agency. It will, as in the annex under the document that we have put forward for consultation, be comprised of representatives of relevant statutory bodies and will receive information from the police. That is the key thing. We have worked with former colleagues of Mr Wilson on the Policing Board with Sir Desmond Rea and asked them to consider this matter and we have worked with the Chief Constable, and I am anticipating that the Suitability Panel will, as part of the accreditation procedure for these schemes, receive a list of individuals to commence who are working in this field. That list of individuals will then be assessed by the Suitability Panel and the police will examine those issues and, if they believe that they have information that will lead to their unsuitability, that will be brought to the attention of the Suitability Panel who will then report that to the scheme and indicate why that individual has not been supported for work on that scheme. It may well be that there is information to hand which is in a private way with the police and will not be public that indicates that somebody may still be involved in a paramilitary organisation or may be involved in criminal activity. We then have to assess their suitability based on that.

Q518 Chairman: Therefore, the sole criterion is not a past conviction, it is a present intent, so far as you can divine it.

Mr Hanson: Again, going back to the points which Mr Murphy and Mr Anderson made, there are people involved in the schemes now who have very serious convictions. They are individuals who I believe are reformed post the Good Friday Agreement because of the change in circumstances in Northern Ireland, from whichever side of the divide they have come. Individuals who are involved in schemes with those previous convictions I do not believe should be debarred because we have drawn a line in the sand, however distasteful that might be in some parts of Northern Ireland, in the Good Friday Agreement and those individuals are now living and working in a positive way in the community. Any individual who is still involved in paramilitary activity, be they a member of the UDA, UVF, the IRA or Continuity IRA, cannot legitimately, in my view, work on the scheme and entrench, which I think is Dr McDonnell's point, the paramilitary role in society. It may well be that there could well be—and I am not saying that there are—individuals who fall into that category who are not apparent but which information may be held by the police to that effect. They would report that information to the Suitability Panel who would assess it and make a judgment on whether individuals are involved in current paramilitary activity and, if they are, they would be deemed as not suitable and that will be an issue which would have to be accepted by the organisation at that stage because, in accepting the

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guideline protocol, they have accepted also that there will be a Suitability Panel and that it will receive information from the police.

Chairman: That is very helpful.

Q519 Dr McDonnell: Over the years, those of us who have been involved in creating employment and various other social schemes in Belfast have found it necessary to have ourselves across-community and have ourselves as broadly based as possible. One of the things that did emerge early in the schemes we saw was that they were fairly exclusively rooted in either loyalist or Provo communities. Is it possible, for instance—and I know that Lady Hermon probed at length on one occasion on church involvement—that the same rules that have applied to the social economy and various things over the last 20 years could be applied here? Surely it should be a condition that the majority of those in charge of any particular scheme or on the board of any particular scheme could come from the wider society, whether that is, dare I say it on my own behalf, from the SDLP or from the Ulster Unionist Party or from the various churches and religious organisations that are out there. Again, these people are very genuinely well intentioned—I am talking about the churches and maybe the political parties too—and who have the community welfare at heart. The second part of that question is, should we not have some sort of a single management structure that is maybe beyond the Government to dictate and maybe the Government has to respond to what is brought to it? Is it possible that we could have one single overall umbrella organisation for this scheme?

Mr Hanson: Again, it goes back to the point I made at the beginning which is that I am not responsible for the schemes. I can no more say to the schemes, “Do not form yourself on a loyalist basis or on a republican basis” than I could say, for example, to the Orange Order, “Don’t form yourself in that way” or to the Catholic Boys’ Clubs, “Don’t form yourselves in that way”. They are voluntary schemes that are forming themselves within the organisation. What I am trying to do is put down some minimum standards for them. If I were the Criminal Justice Minister and I were establishing restorative justice schemes in the community as the Minister, I would want to see them operating on a shared future objective with a board comprised of all representatives dealing with communities and done on a national basis.

Q520 Chairman: I have been thinking whilst listening to this. Would there be a case for a registrar of schemes?

Mr Hanson: I know that you have received representations already to this effect and I am not trying to make the schemes overtly bureaucratic.

Q521 Chairman: I appreciate that but I also fully understand the concerns of members of this Committee and those we have met outside which are motivated entirely by a wish for the public good. Recognition on the one hand that of course there is a place for people to redeem themselves—there must

be; there is no purpose in life if that does not exist—but, on the other hand, there is a deep suspicion—and it has been voiced by Garret FitzGerald in articles and things—that people are masquerading and using as a front the schemes which then enable them to have a hold over communities that was formerly exercised in a more overtly sinister way, choosing my words with care.

Mr Hanson: Again, one of the reasons why we have established the Suitability Panel is to tease out that potential possibility because there may be people involved and I am not saying that there are because it is a serious allegation to make. In the future, there may be people involved in schemes who are involved in paramilitary organisations who are using those schemes as a way of paramilitary control. If that were the case, the Suitability Panel and the vetting system would show that up, in my view, because I believe that the police would have the information to that effect. We are simply trying to ensure that individuals of goodwill are working in the schemes and individuals are not working in those schemes for alternative means or individuals who have alternative agendas are not working in those schemes because, in my view, those schemes can fulfil and indeed are currently fulfilling a useful role.

Q522 Dr McDonnell: Wearing my cross-border hat, Minister, will schemes be encouraged to export their expertise to Dublin, to Donegal and to Louth, places like that, as they have been doing already if they are funded?

Mr Hanson: Again, I am responsible for many things, but what happens in Donegal and Dublin is not one of them.

Q523 Chairman: I am greatly relieved to hear it.

Mr Hanson: I cannot speak for either the voluntary schemes themselves or for the jurisdiction south of the border. What I can do is simply again refer to what I am trying to do, which is to put down a minimum standard so that people in Northern Ireland can know what to expect of those schemes.

Q524 Mr Murphy: In having discussions with both schemes, the CRJI and the alternatives, one of the surprising things that came out was that they actually worked quite closely together across the peace lines, which was good to hear. In the event of, for argument’s sake, the alternatives managing to sign up to all of the protocols and the other schemes not, would you then prevent them working together?

Mr Hanson: Actually it is a question I have not considered, Mr Murphy, but if I give you my initial gut reaction, again, I am trying to regulate the schemes and provide a minimum standard. If Northern Ireland alternatives wish to engage with work with the CRJI, then I would publicly encourage them to do that, but I would probably also encourage them to use their influence to ensure that CRJI examined in detail the protocols. It is a question that I would not wish to give a glib answer to because I have not considered that possibility, but I will certainly reflect on it and perhaps consider outside the committee.

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Q525 Sammy Wilson: Has it disturbed you that in the evidence which we got from the Chief Constable yesterday he talked about these being part of the Criminal Justice System and, therefore, those who served on them, to use his words, had to be beyond reproach, and the conclusion he came to was that really anyone with a criminal record would not be appropriate? In fact, he said that maybe some of those who were aged ex-paramilitaries should step aside for people who were younger and did not have that kind of baggage with them.

Mr Hanson: I respect Sir Hugh Orde's view on this matter, but I have taken a judgment in the Protocol that the Good Friday Agreement is the break-point of previous convictions. What I have said is that certainly the break-point is on previous convictions, but not if it is of a serious sexual nature or of a serious nature in those other intents, but a number of people involved in those schemes have convictions due to the conflict in Northern Ireland. I have put the break-point as April 1998. I do not wish to see anybody with serious convictions or current paramilitary activity involved in the scheme, but I cannot rule out the many people previous to 1998 who have convictions. That may be a difference between Sir Hugh and myself. I know that the police have been very much involved with Stephen, and he may wish to comment on this in compiling the initial draft of the Protocols. They have been consulted. I understood that they are happy with the current draft. If we adopt that approach, Mr Wilson, then we will essentially remove many of the key personnel in the current schemes who are doing a reasonably good job in difficult circumstances, and I would not wish to do that because people have committed offences, have been released from prison as a result of that, are now adopting a different course of action but still have a potential influence on the communities which has reduced the number of punishment beatings and other issues, and I think one has to put it into context.

Q526 Mr Campbell: Minister, that means that someone who was involved in paramilitary activity in March 1998 is possibly in and someone who engaged in the same activity in May 1998 is out?

Mr Hanson: It does. Again, as with everything, Mr Campbell, you know that lines have to be drawn and the line we have drawn is the Good Friday Agreement, which will be produced in April 1998. I have put that line in the sand, but it is an accepted line that people have come to some conclusions on. I could have picked any date.

Chairman: If you are 65 minus a day you do not qualify for the pension, but if you are 65 you do, and I think one just has to accept that sometimes demarcation lines make rough justice, but there we are. It is good to have your comments on the record. I want to move on to the conclusion of the public session, but I want to bring in Lady Hermon, and she wants to come in at this point.

Q527 Lady Hermon: Thank you very much indeed. Following on from the point that has just been made by my two colleagues here to my right-hand side, Minister, you made reference earlier to the fact that

you have visited Kilcooley in Bangor and you are familiar with the Impact Scheme. You will also be aware that the Impact Scheme has always had police involvement from the very beginning. There were very positive active reports from members of the Police Service in Northern Ireland when we visited on Monday. You will also be aware that a number of the key members of the Impact Scheme are, indeed, past Loyalist paramilitaries, and I do emphasise the word "past". Do you as a minister have any knowledge or information at all of any of those members of Impact having a current involvement with any paramilitary organisation?

Mr Hanson: I do not have any knowledge at the moment. Again, it is not just Impact in Kilcooley but other schemes where people have had an involvement in paramilitary activity in the past. I cannot comment on any individual member of any individual scheme, not just in Kilcooley but elsewhere, because I do not have that information to hand.

Q528 Lady Hermon: In other words, you are confirming you have no information of current paramilitary activity.

Mr Hanson: No, I do not really have any, but the point of the suitability panel would be that there is an assessment made as to the suitability of individuals.

Q529 Lady Hermon: They would have access to information that you do not necessarily have.

Mr Hanson: Again, I do not know by name all the individuals who work on all the schemes. The key point is that in the adoption of the Protocol the schemes would have to supply names of individuals who worked on criminal justice matters. They would be assessed according to their suitability and information would be provided one way or another.

Q530 Chairman: Lady Hermon is proprietorially very jealous of the Kilcooley scheme. I understand why, because it was an impressive scheme, but, clearly, you are not in a position to answer that question in the negative or the affirmative. One thing that has come out quite clearly, I think, from every witness we have seen, has been the recognition of a need for a complaint system. You make the point in the Protocol, but there has been a degree of disagreement as to how that should be handled and by whom. There is unhappiness about the Probation Board doing it—it is not considered right by many—some have mooted the idea that perhaps this should be an add-on to the police ombudsman, but others feel that would be quite wrong. Would you be open to the suggestion—and I know it is yet another figure, but it is an important issue—for an independent complaints authority which would be totally divorced from either the Probation Board or the police ombudsman?

Mr Hanson: Again, we have considered this, obviously, in detail, Sir Patrick, and the Criminal Justice Board, which comprises the police, the Probation Board and various other matters under the Chairmanship of Stephen, had come to the conclusion collectively that the Probation Board is

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the best mechanism for this. We are not necessarily anticipating many complaints during the course of any particular year, and one of the reasons I have chosen the Probation Board as the route is that I would not wish to have established an alternative bureaucracy which may or may not have a significant workload dependence on the number of complaints that are made. We have agreed with the Probation Board that they will undertake this task. They have agreed to undertake that task. I know you had Ronnie Spence and the Chief Executive before you. That is the way we are intending to go. Again, I am very happy to accept suggestions, but the reason we have chosen the route we have is not to establish an alternative expensive bureaucracy which may or may not have a severe input.

Q531 Chairman: But you have not chosen this to the extent that you are deaf to other suggestions?

Mr Hanson: Sir Patrick, as long as the consultation is ongoing, I am never deaf to any suggestions at all.

Chairman: That is reassuring, and I think you may well find that you get some.

Q532 Lady Hermon: Is there not the potential for a conflict of interest though, since some funding may actually well come from the Probation Board? How can they also handle complaints about the system?

Mr Hanson: Indeed. Potentially, one of the funders could well be the Probation Board, but, again, I have to look at it in the round. Do I wish to establish an entirely new independent complaints procedure? Do I wish to have that outside of the system, because the police ombudsman could equally be part of the system overall. I am trying to come to a conclusion, on the recommendation of the Criminal Justice Board that the Probation Service is the best mechanism, to find a complaints procedure in the anticipation that we do not yet know what the workload would be and whether or not it would be extensive.

Q533 Lady Hermon: Mr Leach, is there anything you would like to add?

Mr Leach: Perhaps just to say that the Probation Board do, of course, have an independent Chair and independent members and they do have a complaints mechanism run by two or three members of the Board to deal with complaints against probation staff, and that is generally regarded as very successful, very independent, impartial and not compromised by the fact that the Probation Board has an interest and that it has its own staff and the members are looking at complaints; and because of the success of that we thought that a similar mechanism operated by independent Probation Board members would provide the right sort of independent mechanism for looking at complaints

against schemes which might be funded by probation or might not but probation would not be directly involved in the operation of the schemes.

Chairman: I think this is something which maybe we will want to deliberate on, and we may well, drawing upon the other evidence we have received, want to make recommendations in this field. Obviously, I am not in a position to put it to the committee, we need to deliberate, but I am sure we will come back to this. I am anxious to bring the public session to a close, but does any colleague wish to ask any other question in public while the Minister is here?

Q534 Mr Anderson: When I asked you before, Minister, about whether you thought they were going work, you basically said you personally thought they were. We have heard from a number of people—Lord Clyde, Kit Chivers, Ronnie Spence and Olwen Lyner—who said that there is a potential for this Protocol to make things bureaucratic and lose the effectiveness of the schemes. Have you considered that? Do you think that you might lose the potentially good things because you are making it too bureaucratic?

Mr Hanson: There is always a danger of that, Mr Anderson, but, again, the judgment I have to make and the judgment that the public of Northern Ireland and the political parties have put on me to try to make is: does the public have confidence in these schemes and who is regulating these schemes and who is monitoring their activity? I feel that we need to put in place, given their interface with the Criminal Justice System and the potential for difficulties to arise, some form of minimum standard, and the minimum standards I have put in place, as I have said, are the ones that I have outlined in the Protocol. They will certainly create an extra workload, they will certainly be, in part, an extra responsibility on a number of agencies, but I think that their outcome will be that there will be a greater level of confidence in the ability of those schemes to do what they are supposed to be doing in the community, and that is the balance we have to make.

Chairman: Thank you very much indeed for that. We much appreciate the evidence you have given in public. You have been very fair and frank in the things that you have said. I think there is certainly a unity of view that, if the schemes are to continue, they do have to be monitored, controlled and inspected and all the rest of it. The Committee will obviously be looking at what you have said with great care and what our other witnesses have said when we make recommendations, in the form of a report, to Parliament which you have agreed and the Secretary of State has agreed you will take into account. We are going to work very hard on this so that you get it as soon as possible after the House returns on 8 January. Thank you very much, and thank you, Mr Leach. Could I declare the public session closed and ask those who are members of the public if they would kindly withdraw?

Written evidence

1. Written evidence from the Kilcooley Community Forum

As a Community Development Manager in Kilcooley, Bangor, the third largest housing estate in Northern Ireland, I would like to submit the following information for consideration to the NI Affairs Committee.

Kilcooley has over the past 30 years witnessed much paramilitary activity ranging from murders to intimidation.

In 2000 when I started community development work there was on average one paramilitary punishment attack per month against a young person. This more than often meant masked men beating the victim with baseball bats or else they were shot in the leg/s.

As a result of this type of activity and an evident increase in the amount of attacks, a number of people including myself and two others namely: Jim Rea and Jim Martin decided to investigate the possibility of establishing a community based restorative justice project to provide an alternative to paramilitary attacks, assaults and expulsions.

Subsequently in 2002 the North Down IMPACT Project was founded and persuaded each of the local paramilitary organisations to sign up to the protocols which had been developed. Since then over 200 young people have not been subject to paramilitary assault by being referred to our project.

This is only the tip of the iceberg of IMPACT's work. They now provide victim support, mediation, personal development, youth training, and sports opportunities and have taken their services into the wider borough.

IMPACT is overseen by a community association management committee and has an advisory committee consisting of the District Manager of the Northern Ireland Housing Executive, an Inspector of PSNI, Church Reps and others who allow the work to be fully transparent and accountable.

IMPACT has been visited by Secretaries of State for Northern Ireland, Lord Clyde Oversight Commissioner, Ministers' of State, local MPs, MLAs' and other local government reps who have all praised the work they are doing.

Although IMPACT has always agreed to sign up to NIO protocols the NIO refuses to appreciate that this type of scheme has to have "associated links" for mediation purposes with paramilitaries. If this was not the case, how could they receive referrals or how could they have alleged threats verified and addressed?

The new baby in community restorative justice is the Youth Justice Agency which has no power or authority to mediate with paramilitaries and so cannot address alleged paramilitary threats against young people.

It is imperative that some form of "link" is in place to address paramilitary operations.

The present political climate would suggest paramilitary groups may very well disband or stand down their rank and file members and it would be great to think there will never again be a punishment attack, but until this ideal is realised it is imperative that CRJ schemes such as IMPACT should continue.

This community without doubt has witnessed a marvellous transformation as a result of the work of IMPACT and many young people can testify of how they have really benefited by being referred to the project.

The difficulty now is IMPACT, due to funding difficulties has had to make two of their staff unemployed and are running at only half strength and no matter where we seek to get fiscal support it is nearly impossible as everyone awaits the results of the "Consultation Process." This has become the bane of our project's life as it has only served to hinder our work, and the fact that CRJ Ireland refuses to sign up to the protocols only throws us back into disarray as we await the Government's decision.

The Northern Ireland Select Affairs Committee should have been gathering evidence from projects such as IMPACT and from places like Kilcooley where this type of scheme has proved itself beyond doubt.

The protocols also state that CRJ's should only receive referrals from recognised organisations, but it is my personal opinion (which I have expressed to Lord Clyde) that this rules out the "community" part of Community Restorative Justice.

I firmly believe the Committee should look more closely at the projects within PUL (Protestant, Unionist, Loyalist) communities where there is clear evidence the schemes provide a welcome alternative to paramilitary attacks.

Many within my community believe the Good Friday Agreement was brought down by Sinn Fein not delivering, and now Community Restorative Justice projects in PUL communities are to suffer because Sinn Fein refuse to sign up to the new protocols.

Is this fair?

I look forward to your response. Thank you.

Mark Gordon
Community Development Manager

1 November 2006

2. Written evidence from the Police Service of Northern Ireland

Northern Ireland has seen considerable developments in the use of Restorative Justice practice, across a range of different levels within the Criminal Justice system. The Police Service of Northern Ireland has been to the forefront of those developments, both in terms of developing our own practices, particularly around dealing with young people involved in crime and anti-social behaviour, but also in making a significant contribution to the implementation of legislation around Youth Conferencing, delivered by the Youth Conference Service.

In addition to this, Northern Ireland has also seen a significant growth in terms of community based restorative justice projects in various parts of the country. It is important to note that community based approaches to Restorative Justice, are not peculiar to Northern Ireland, and have been developed in other parts of the world, particularly North America. However due to the manner in which such approaches have developed in Northern Ireland, and the particular context in which this has taken place, has led to difficulties in terms of their engagement with the wider criminal justice system including the Police.

The Police wish to support any community based initiative, whereby that community is seeking to take responsibility for their area, and work to make it safer, and improve the overall quality of life for all who live there. However, it is absolutely vital that such an initiative, works in partnership with, and complements, not undermines or competes with the criminal justice system, and all the agencies working within it.

This view is entirely consistent with the recommendations of the Criminal Justice review which recognised that community based restorative justice initiatives have a contribution to make in addressing low level crime and anti social behaviour in their area, and further mandated the development of appropriate guidelines for the operation of such schemes, and in particular how they engage with the criminal justice system.

Officers have been involved with the Northern Ireland Office, and other statutory criminal justice agencies, including the Probation Board, the Public Prosecution Service, the Youth Justice Agency, and others, in seeking to develop appropriate guidelines/protocols. The fundamental principle of those guidelines must be to ensure that community based schemes can not, and do not, operate without the involvement of the police, do not seek to provide an alternative policing service, and cannot be involved in determining the guilt or innocence of an individual.

The Police have the statutory responsibility to investigate crime and bring offenders to justice, working with the Public Prosecution Service who provide an independent, and impartial decision making process regarding how individual cases should be dealt with. We cannot be party to any guidelines, protocols or schemes, which would in any way undermine this system.

There is a clear perception by many people in Northern Ireland that community based restorative justice schemes have the spectre of paramilitary or political agendas lurking behind them. That perception is clearly exacerbated by the fact that those schemes currently operating within nationalist/republican areas, under the banner of Community Restorative Justice Ireland, refuse to formally engage with the police. In addition whilst the schemes operating within unionist/loyalist communities under the umbrella of Northern Ireland Alternatives are prepared for such engagement, that process has been difficult in terms of how and within what parameters that engagement should take place.

The involvement of paramilitaries in CBRJ schemes is something that is taken up in a number of reports of the Independent Monitoring Commission, dated February 2006. The concerns expressed are shared by the Police Service.

Funding for community-based schemes has been provided by philanthropic groups on the basis that they offer an alternative to paramilitary assaults. Much of this funding has dried up although the schemes continue to seek funding from a variety of potential sources.

The Police Service of Northern Ireland have been engaged with the Northern Ireland office, and other statutory agencies (Probation Board, Youth Justice Agency, Public Prosecution Service, Criminal Justice Inspectorate) and with representatives from the schemes themselves to develop protocols to implement the recommendations of the Criminal Justice Review.¹

The draft protocols, which are currently out for consultation, are in our view, not about legitimising the current way in which CBRJ schemes operate but about how they should operate in the future as an element of the criminal justice system. They contain a number of safeguards, which the police support:

- Only applies to criminal offences and offenders. They do not relate to non-criminal matters.
- The Schemes must comply with the Human Rights Act 1998, current equality legislation and the UN “Basic Principles on the use of Restorative Justice Programmes in criminal matters”. They are also required to ensure that their staff receive training on these matters.
- Community Based Schemes have responsibility to promote confidence in the Criminal Justice System, including the police.
- When a scheme becomes aware of an offence or offender, they must promptly pass on all details (including broad proposals on how they would deal with the matter) to a dedicated police officer.
- Once police receive the information, they will consider what further investigations are required and if necessary, take fingerprints and DNA from the offender(s). They will then report the matter to the PPS who will make the decision whether or not to refer the matter to the scheme.
- Staff members in the schemes will be subject to a POCVA (Protection of Children and Vulnerable Adults—formerly known as a PECS check—Pre Employment Consultancy Service), which will indicate the existence of a criminal record or other information, which might show an individual to be unsuitable for a post.
- The Criminal Justice Inspectorate for Northern Ireland (CJINI) will carry out initial and random checks on the operation of schemes.
- Schemes will be required to provide training in communication, conflict mediation and victims’ issues. All trainers and materials will be subject to inspection by the Inspectorate.
- The Probation Board for Northern Ireland will provide an independent, external complaints system and schemes will be required to make information available to participants on how to make complaints. Complaints of a criminal nature will be dealt with by the Police.
- Schemes must keep records of all offenders and victims who are brought to their attention and these may be accessed on request by the Inspectorate.
- In order to ensure equity with areas that do not have community based schemes, fingerprints and DNA will be taken from offenders by police and a record kept of any restorative intervention with offenders.
- Further to what is specifically written in the protocol, if a scheme fails to provide the detail required for Police to exercise their discretion then we will automatically act upon our duty to investigate crime.

30 November 2006

3. Written evidence from Include Youth

We are pleased to enclose a hard copy of Include Youth’s Written Submission to the Northern Ireland Affairs Committee in respect of the current Inquiry into the Government’s draft Protocol for Community-based Restorative Justice Schemes.

¹ Recommendation 168 CJR: “We believe that community restorative justice schemes can have a role to play in dealing with the types of low-level crime that most commonly concerns local communities. However, we recommend that community restorative justice schemes should:

- (i) receive referrals from a statutory criminal justice agency, rather than from within the community, with the police being informed of all such referrals;
- (ii) be accredited by, and subject to standards laid down by the Government in respect of how they deal with criminal activity, covering such issues as training of staff, human rights protections, other due process and proportionality issues, and complaints mechanisms for both victims and offenders;
- (iii) be subject to regular inspection by the independent Criminal Justice Inspectorate which we recommend in Chapter 15; and
- (iv) have no role in determining the guilt or innocence of alleged offenders, and deal only with those individuals referred by a criminal justice agency who have indicated that they do not wish to deny guilt and where there is prima facie evidence of guilt. [para 9.98].”

Include Youth very much welcomes the opportunity to participate in this important Inquiry and hope our Submission makes a constructive contribution to the Northern Ireland Affairs Committee's Inquiry. We would welcome the opportunity to discuss any issues raised in our response further with Members, and should the Committee require any further information or clarification whatsoever, please do not hesitate to contact us.

Koulla Yiasouma
Director

30 November 2006

1. 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 Affairs Committee's Inquiry into government's draft Protocols for Community Based Restorative Justice Schemes. 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 to the Northern Ireland Affairs Committee's current Inquiry.

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 complaint 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*".²

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; and
- 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.

² Community Safety Unit Website.

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.

13. CONCLUSION

13.1 Include Youth intends the above as a constructive contribution to the Northern Ireland Affairs Committee's important Inquiry 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 10 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.

4. Written evidence from the Northern Ireland Policing Board

BACKGROUND

The Northern Ireland Policing Board (the Board) has closely followed the evolving debate as to how Community Based Restorative Justice (CBRJ) should be set up and administered in communities across Northern Ireland.

In this context, the Board submitted a detailed response to the NIO in relation to the Draft Guidelines on Community Based Restorative Justice (the Guidelines). This document is attached for information at Annex 1 (not printed). In addition, correspondence with the Minister is available should the Committee wish to be provided with copies.

The Board also met with both the Secretary of State, Peter Hain MP and the NIO Security Minister, David Hanson MP to seek further clarification as to issues of concern with regard to CBRJ. In this context the Board was encouraged when the Secretary of State, in meeting with the Board on 11 October 2006, stated:

“that if outstanding issues surrounding these schemes [CBRJ] could not be resolved to the satisfaction of the Board then Government would not proceed”.

The Board would draw the Committee's attention to the position put forward in their original submission, attached at Annex 1 (not printed):

“The Board considers it is quite inappropriate that the Government should propose that schemes withholding recognition from the PSNI may, nevertheless, participate in the criminal justice system without first requiring their full endorsement of the vitally important role of the police within the criminal justice system. As such it is difficult to see how schemes which do not endorse the police could be said to ‘help promote confidence in the criminal justice system’ which is described as a common aim and a responsibility on the part of all those involved in operating the guidelines.

In light of this, the Board takes the position that, if any scheme is to receive the endorsement of the State by being permitted to participate in the criminal justice system in the manner envisaged in the Draft Guidelines, it must give unqualified acceptance to the role of the PSNI within the criminal justice system.”

It is against this background, of having made a detailed submission on the original Draft Guidelines and in October receiving a very clear commitment from the Secretary of State, that the Board presents its views on the issue of Community Based Restorative Justice to the Northern Ireland Affairs Committee.

CURRENT POSITION

On reading the Draft Protocol for Community Based Restorative Justice, (the Protocol), the Board, while recognising the introduction of new and positive conditions into the Protocol, continues to be uneasy about the proposals for the set up and administration of CBRJ Schemes in Northern Ireland. The Board is concerned about the lack of detail as to how certain aspects of the Protocol may be implemented. For example, the Board would be concerned that some Schemes may only have minimal communication with

the police, in order to meet the basic requirements of the Protocol, as opposed to co-operating fully with the police. Such an approach may appear to satisfy the Protocol but would not help promote confidence in the criminal justice system as referred to above.

In light of this, the Board will be seeking further clarification from the Minister in relation to the following areas:

The relationship between CBRJ Schemes and the police

The Introduction to the Protocol states the Protocol seeks to establish a framework:

“That framework is based on Schemes compliance with the rule of law and full co-operation with statutory agencies, including the police, in implementing this Protocol”.

Paragraph 7 of the Protocol states:

“As noted above, community based Schemes share the responsibility of helping to promote confidence in the criminal justice system, including the police”.

Paragraph 9 of the Protocol states:

“If a community-based Scheme becomes aware of an offence or an offender, it will communicate promptly to a dedicated police officer the details it has about the offence, the offender and the victim, including such categories of information as the PSNI may indicate it requires”.

Taken together the Board recognises, and welcomes, the centrality that these clauses would give the police in relation to CBRJ Schemes. However, the Board would wish to see appropriate procedures put in place to ensure that the Protocol is implemented in a real and meaningful way and the involvement of the police is not reduced to a mere token gesture. To this end, the Board will be asking for the development of a detailed and robust Code of Practice setting out the procedures required in order to fully implement the Protocol.

This Code of Practice should be the framework against which CBRJ Schemes are inspected, as provided for in Paragraph 23 of the Protocol, and against which they are held to account.

Complaints System

Paragraph 22 states:

“An independent, external complaints mechanism, provided by the Probation Board will be available . . .”

In its original submission the Board stated:

“The Board would seek to see responsibility for this critically important safeguard taken forward by the oversight body. Given the nature of the relationships and the sensitive issues being dealt with, the emphasis must be on ensuring that those involved in the process, both victim and offender, are placed at the centre of any complaints process and that their rights are safeguarded and their needs are addressed.”

The Board considers that the important aspect of complaints in relation to CBRJ should be responsibility of a dedicated independent body capable of delivering a robust service to the highest international standards. If the Probation Board is to undertake this role the Board would be anxious to ensure that the Probation Board is given sufficient authority and resources to deliver to this standard even in those circumstances where a CBRJ Scheme is being recalcitrant in its co-operation.

The provision of an independent and effective complaints system is an inherent element in ensuring that the UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, as referred to at Paragraph 6 of the Protocol, is adhered to. The Board however, would be concerned that until such times as all CBRJ Schemes fully accept the legitimate and central role of PSNI within the Criminal Justice System, of which the CBRJ Schemes form a part, then the extent to which either the victim or the offender can make a free and informed decision with regard to any aspect of CBRJ remains seriously compromised.

By way of validating its concerns, the Board would draw upon the information provided by the Independent Monitoring Commission (IMC), an extract from their Twelfth Report states:

. . . without any leadership sanction, there were two assaults by PIRA members in early August, both we believe committed in the course of community watch activity. Some of the community watch activity in which PIRA members have been involved has attracted allegations of threatening behaviour and may have been associated with instances when people were forced from their homes.

Exiling has been an important issue for us since we first reported, for two main reasons. It can have a devastating impact on the lives of the victims, both immediately and in the long term. And it is a particularly arrogant manifestation of people taking the law into their own hands, whether they are paramilitaries or not. We have repeatedly said that only when a paramilitary group has both ended the practice of exiling and has allowed those previously exiled freely to return if they want to do so, can it be said fully to have given up illegal activity in this regard.

The Report goes on to state:

We are very conscious, as we have been since we first reported in April 2004, that data of this kind have limitations:

They can encompass only incidents which become known to the police, not those where the victims do not report them; in some cases fear of further paramilitary violence may lead people never to report what has happened to them. Threats which fall short of violence of their nature fall outside these figures even though intimidation can be almost as traumatic as violence itself. And no statistics can adequately portray the suffering of the victims or their families.

Against this background the Board will seek reassurance from Government as to the provision that will be made to ensure that those within the CBRJ system are not subject to any coercion and that the Probation Board has the full authority and resources necessary to investigate any complaints that may arise.

INSPECTION OF CBRJ SCHEMES

The Board remains concerned as to how the provision for inspection that has been set out in the Protocol should be implemented. The Board is on record as saying that inspection of CBRJ Schemes should be undertaken by an independent oversight body and the provision set out in the Protocol is not such as to change the Board's view on this matter.

With regard to the inspection of Schemes the Board continues to believe that this should be the responsibility of one independent dedicated oversight body who may seek the support of Criminal Justice Inspectorate Northern Ireland (CJINI), or other appropriate professional inspectorates, in carrying out inspections to ensure that the Schemes are operating to the required standard. Operating within this framework the Scheme should submit to the oversight body its proposal for operating CBRJ within a specified area. This submission by the Scheme should include a clear acceptance of the Protocol, the oversight body will then decide if the Scheme is of a standard to be approved. It should be responsibility of the oversight body to agree a budget with approved Schemes, to monitor their expenditure, to hold them to account and to arrange for them to be inspected as required.

While recognising the integrity of the CJINI, the Board would be anxious as to the constraints that their enabling legislation places upon them, CJINI cannot as part of an inspection look at individual cases or look at non criminal matters, nor has it the power to compel witnesses or to obtain documentary evidence. In addition the Board would be anxious as to CJINI's capacity to undertake this important additional role given the wide range of duties they already undertaken.

The inspection of Schemes is critical both in holding the Scheme to account against the agreed standard and in providing the public with confidence that the standards are being applied and upheld. The Board will continue to seek a specific undertaking from government that the body tasked with inspecting CBRJ Schemes is a body solely dedicated to this task and has both the authority and resources necessary to enable the job to be done properly.

In this context the Board is concerned at the position adopted by Government and set out in correspondence from the NIO Minister, David Hanson MP in which he stated:

It is not the Government's intention at this stage to create a body solely dedicated to the oversight of community-based restorative justice groups nor to task a single body with sole responsibility for the oversight of CBRJ groups. Rather we propose that oversight be undertaken by existing bodies whose current remits make them appropriate for such functions. Thus, the Criminal Justice Inspectorate will inspect Schemes, the Probation Board will process complaints, and the suitability of individuals will be determined by a panel comprising representatives of criminal justice agencies.

The Board is concerned that there will not be one oversight body. In particular the Board would highlight the challenge of ensuring that there is joined up thinking and action between all the organisations referred to above. With so many organisations having a part to play there is the opportunity for duplication and confusion, which would be detrimental to ensuring the effective delivery of CBRJ in communities across Northern Ireland.

If in implementing this aspect of the Protocol CJINI were to have both an oversight and an inspection role the Board would be uneasy with such an arrangement and considers that giving the two roles to one organisation is unacceptable and would compromise the inspection role.

THE NEED FOR AN INCLUSIVE PROTOCOL

Some schemes argue that 80–90% of their workload relates to non-criminal anti-social behaviour. It should be emphasised, that while a Scheme may refer to anti-social behaviour and indeed it is common parlance within society, the constituent behaviour may well have a criminal aspect to it. As such, it is entirely appropriate for the Protocol to refer to low level offences and it is for the police and the PPS to decide what action should be taken in response to this. The Board would wish to see the Protocol strengthened by the inclusion of a statement clearly indicating that all of the activities undertaken by CBRJ Schemes, including

those defined as anti social behaviour, are covered by the Protocol and clearly indicating those categories of crime that fall outside the remit of any CBRJ Scheme. In addition the Board would wish to see this area clearly regulated through the Code of Practice already referred to above.

The Board remains concerned that some Schemes currently operating under the banner of CBRJ do not fall within what might be commonly accepted as community restorative justice, as indicated in the IMC Report referred to above. This too is an issue where the Board will seek to see clear guidance and standards set down in a Code of Practice.

CONCLUSION

In conclusion, the Board recognises that progress has been made in developing a framework within which CBRJ Schemes should operate but considers that issues remain to be resolved if this important development within the Criminal Justice System is to provide a truly consensual basis for dealing with low level crime. In this context the Board will continue to seek from government clarification and detail as to how the Protocol will be implemented.

5. Written evidence from the Police Federation for Northern Ireland

COMMUNITY-BASED RESTORATIVE JUSTICE SCHEMES

The Police Federation for Northern Ireland represents some 9,200 police officers from the rank of constable to chief inspector serving in the Police Service of Northern Ireland. Our members are directly involved and committed to providing the people of Northern Ireland with the best possible police service and to playing an appropriate and professional role in underpinning the criminal justice system.

The Federation shares the general view that community-based restorative justice systems as advanced in accordance with recommendation 168 of the Review of the Criminal Justice System in Northern Ireland should have a role to play in dealing with low-level crime and with non-criminal anti-social behaviour. However, the efficacy of the concept of community-based restorative justice (CRJ) is by no means undisputed. Its cost-effectiveness as a remedy, the extent that such schemes can reduce re-offending, the quality of the experience for victims and offenders, have all been challenged legitimately by police experience and academic research. Community-based restorative justice does not therefore enjoy automatic acceptance as a useful additional dimension to the existing criminal justice system.

The Federation believes that the Northern Ireland community context and political setting of the proposed schemes cannot be ignored.

Northern Ireland is not a normal society. There is as yet no agreed form of self-governance; the communities are split physically with 90% of social housing wholly composed of one side of the community or the other. This lack of integration cannot be ignored in examining the self-serving motives of some proponents of CRJs. The IRA, based on reports from the Independent Monitoring Commission, has decommissioned its weapons but its structures and personnel remain operationally intact and the loyalist paramilitaries remain armed and potentially ready to resume conflict. According to the Independent Monitoring Commission members of both paramilitary groupings remain criminally active whether acting corporately or as “unauthorised” free-lancers. Their Reports also comment adversely on the links between paramilitaries and CRJs.

Politically there is a struggle for constituency control, particularly for the working class republican/nationalist and loyalist support, most obviously in West and North Belfast. The relevance of experience of CRJs elsewhere in other countries or other parts of the United Kingdom cannot be evaluated without factoring in these extra considerations.

The republican ethos—as was the nationalist until recently—is marked by its continued rejection of the criminal justice instruments of Northern Ireland. Their list of unacceptable bodies includes the British Army, Royal Irish Regiment and the police service even yet. In the campaign of terrorism over the past 35 years which the IRA chose to see as a war, it was axiomatic for republicans that they would also reject the rule of law and any official person or body charged with seeing its enforcement.

The point being made here is that the Republican movement supports the introduction of a community-based restorative justice system because it is for them an alternative to giving due recognition to the Police Service of Northern Ireland. CRJs are a way not of complementing the justice options but of denying the PSNI full pursuit of their legitimate policing role in their community areas. In assuring control of their areas espousal of CRJs suits the political agenda of Sinn Fein and the anti-civic agenda of the loyalist paramilitaries.

It is not just a case of using CRJs to deal with low-level crime or socially unacceptable behaviour, neither of which is defined. There is no “capping” of the nature of offences whereby crime of a certain, more serious gravity would be either reported or handed to the police. The murder of Robert McCartney in the Markets by Belfast IRA members remains unsolved through the courts because of a lack of co-operation from Sinn

Fein. Ironically, the offer of the IRA to shoot the perpetrators of the murder illustrates both the degree of lack of co-operation with the PSNI and the arrogance of a mindset that thought this could be an appropriate example of community-based justice.

The Federation accepts that in its revised July 2006 proposals the Government has recognised many of the flaws of its original December 2005 draft guidelines. However, it remains the view of the Federation that the context in which such schemes would operate cannot be ignored and that even the tightest wording will not prevent sinister control of CRJs by paramilitary organisations on both sides.

The July 2006 Protocol para 7 contains the sentiment . . . “community-based schemes share the responsibility of helping to promote confidence in the criminal justice system, including the police.” By this definition alone it is inappropriate for the implementation of CRJs in advance of all political parties and specifically Sinn Fein joining the Policing Board of Northern Ireland, consequent to participating in a devolved government and in full compliance of the St Andrews Agreement paragraph 6 which requires support for the PSNI and the criminal justice system.

On points of detail in the July 2006:

(i) Police Role in the Protocol

The role and judgement of the police must be central to the CRJs.

(ii) Funding

In our view funding of the schemes should be from the Government only. Funds from other sources whether charitable or otherwise will only allow scope to operate a scheme more loosely than specified. Secondly the ability to withdraw sole funding gives Government a firm control of how any CRJ will operate.

(iii) Independent Panel (Probation Board)

We believe that the policing element of this panel whether directly represented on the panel or as suppliers of information to the panel must be dominant and able to overrule the wishes of the Panel if necessary.

(iv) Suitability of persons to participate in Schemes

In our view any participant directly involved in a CRJ should pass the same qualifying standards (in particular vetting procedures) as a recruit to the PSNI. The criterion of excluding crimes committed prior to 10 April 1998 (many of which were mass murder through terrorist acts) as a bar to participation is ludicrous and only serves to reinforce unease that the Protocol is politically inspired as a policing concession rather than objectively and professionally driven as a complementary justice mechanism within the overall framework of justice delivery.

CONCLUSION

There is enough anecdotal evidence of vigilante behaviour, control of street disorder being turned on and off like a tap, of the assumption of investigative powers or interventions, of the exiling of alleged wrongdoers and the covering up of crimes by paramilitary personnel to cause alarm about what is planned by Government. The rule of law must run throughout Northern Ireland under the PSNI first before the scope for additional justice options can be explored. The introduction of a community-based restorative justice system is an eagerly sought prize for republican and loyalist politicians and their paramilitary wings alike.

These proposals should therefore wait agreement on the devolved institutions for Northern Ireland when it can be legitimately expected that all political parties and their co-travellers will give their support to all the agencies in the criminal justice system and quite specifically to the PSNI as per the St Andrews Agreement. Only then should further justice options complementary to existing arrangements be contemplated.

Prepared by PFNI

30 November 2006

6. Written evidence from Northern Ireland Association for the Care and Resettlement of Offenders

On Wednesday 22 November 2006 Mrs Olwen Lyner, CEO NIACRO, and Mr Pat Conway, Director of Services, gave evidence to the NI Affairs Committee with respect to Community Restorative Justice. The Chair of the Committee, Sir Patrick Cormack, requested further information with respect to the numbers employed by NIACRO who had a criminal and/or prison record and a view as to what constituted a definition of low level crime particularly within the context of Community Restorative Justice Schemes.

Throughout its 35 year history NIACRO has been engaged in trying to influence employers to recruit people with a criminal and/or prison record. One of the ways of influencing employers is by “leading by example”. In the past NIACRO would have provided placements with respect to the Prison Service’s Working Out Scheme. In addition NIACRO would have knowingly recruited individuals who would have

committed not only low but also medium and high level crime—high level would include individuals who would have been involved in the taking of life during the conflict. As an organisation NIACRO does this as it firmly believes that employment can and does reduce offending behaviour. This belief is based on empirical evidence.

Every job applicant dealt with by NIACRO is made aware of NIACRO's statement of non-discrimination which reads as follows:

“NIACRO is committed to equality of opportunity for all applicants including those with criminal convictions. Information about criminal convictions is requested to assist the selection process and will be taken into account only when the conviction is considered relevant to the role. Any disclosure will be seen in the context of the job description, the nature of the offence and the responsibility for the care of existing clients/volunteers and employees”.

At any one time the numbers of staff employed by NIACRO who have a criminal and/or prison record would be in single figures. We cannot supply specific figures as these are dealt with at the point of interview and figures are not held centrally in the organisation. Currently the organisation has approximately 85 staff and it is reckoned that of these five have a criminal and/or prison record. NIACRO currently has approximately 200 volunteers working for the organisation and of these it is reckoned that the numbers discussed would be approximately 25.

Amongst this cohort would be those individuals who are deliberately recruited as peer mentors ie the volunteers who have had experience of the Criminal Justice System, have worked through issues arising and would be considered good role models for those currently in the system. Although NIACRO is not averse to recruiting medium and high level offenders the reality is that most have been involved in crimes such as driving offences, non-payment of fines and crimes that were committed some time ago during the height of the conflict such as riotous behaviour.

Mrs Lyner and Mr Conway did express reluctance to provide an objective definition of low level crime as this can be fraught with difficulty. Restorative Justice Schemes are concerned primarily with the victim perpetrator relationship. Traditional justice is defined by the relationship between the State and the perpetrator. Consequently the dynamic introduced by the greater involvement of the victim may redefine what is low, medium or high level crime. This is one of the accepted features of, in particular, community restorative justice projects and restorative justice schemes in general. NIACRO, as stated to the NI Affairs Committee, would welcome a debate on the issue however it is likely that each situation will and should be dealt with on a case by case basis with the involvement of victims and with all affected parties around the table.

It is important that the potential of the projects is realised, overly tight definitions may actually work against the development of schemes and public confidence in them. The best approach may be to factor in a process or mechanism that, as a matter of course, takes account of the level of crime during a period of piloting projects under the new protocols.

Olwen Lyner, CEO and Pat Conway, Director of Services

1 December 2006

7. Written evidence from Northern Ireland Alternatives

RESPONSE TO THE NORTHERN IRELAND OFFICE CONSULTATION ON DRAFT GUIDELINES FOR COMMUNITY BASED RESTORATIVE JUSTICE PROGRAMMES

INTRODUCTION

In the eighth and most recent report of the Independent Monitoring Commission (February 2006), the IMC testify to the important role that Alternatives has to play within local communities.

“We have made clear our support in principle for schemes which operate accountably and to reasonable standards. We have said this because we think that in some communities, where the culture of lawfulness is not well embedded, such schemes can offer an acceptable alternative to turning to paramilitaries. Over time schemes can help integrate official law enforcement and justice procedures into communities which have been too long been estranged from them . . .”

Our first response to the NIO Guidelines was submitted in May 2005 outlining the nature of our work and our commitment to restorative justice principles and to working within the rule of law. This second response expands on that initial paper and further reiterates our desire to build on the existing framework for relations between the criminal justice system and Northern Ireland Alternatives consisting of Greater Shankill Alternatives, North Belfast Alternatives, East Belfast Alternatives and North Down Impact.

It is important to emphasise how committed Alternatives has been to developing partnerships since its inception. In 1999, we agreed a set of guidelines with the NIO, Probation and Police which were subsequently withdrawn by the statutory partners. In 2001, we agreed another set of guidelines with the

police and these too were withdrawn by the Northern Ireland Office. Throughout this process Alternatives has consistently displayed a willingness to take risks within the community to develop formal working protocols with the police and formal criminal justice system. By contrast, the NIO has stalled this process by refusing to engage with Alternatives separately from Community Restorative Justice Ireland. This ongoing refusal on the part of the NIO to distinguish between Alternatives' practice of community restorative justice and that of Community Restorative Justice Ireland ensures that the communities which Alternatives serves are continually denied their rights to a more comprehensive programme of community safety.

Alternatives standards of excellence are based upon the following defining facts:

- Representatives from the Police, Probation, Social Services and Housing Executive serve on each management committee and the Board of Northern Ireland Alternatives.
- We receive referrals from the Police, Probation, Social Services and have participated in and or helped to implement a number of Youth Conference Plans with no additional resources.
- We are significantly more cost-effective than the formal criminal justice system.
- We do not and have never worked with crimes of a violent or sexual nature.
- We respond to every referral within the appropriate legal framework.
- We have received government funding in the past.
- We are involved in the difficult work of addressing the legacies of the violent conflict—decreasing significantly the levels of punishment violence within local communities and transforming a culture of violence. This process falls under the remit of statutory agencies and they have failed to deliver on these issues.
- We put the needs of young people and victims first.
- We have trained hundreds of volunteers on restorative justice, mediation and non-violent responses.
- We provide a holistic response to issues of community safety at a grassroots level.
- We have been independently evaluated and adhere to strict standards of good practice and human rights compliance.
- We have previously agreed two sets of guidelines.
- though the guidelines apply only to matters of a criminal nature, Alternatives continues to be denied funding for the non-criminal aspects of our work.

CONTEXT

This response must be read and understood within the context of the issues outlined below.

- Legacies of the conflict/special circumstances.

Community-based restorative justice programmes cannot be seen in isolation from the legacies of the violent conflict and the ongoing process of conflict transformation within Northern Ireland. Alternatives is part of the peace process. It arose as the ceasefires were called and flourished as the hard process of negotiating and implementing a peace agreement continued. We are part of the transformation from conflict to peace. We must, therefore, be viewed in the category of “special circumstances.” In this period of transition where the communities we work in have little confidence in the police and the criminal justice system, it is important that community restorative justice is valued for how it can enhance and further this process of transition. To date the work of Alternatives has contributed significantly to the process of conflict transformation in the following ways:

- Alternatives has played a vital role in the dramatic decrease of paramilitary punishment beatings and shootings in the Shankill, North Belfast and East Belfast.
- The work of Alternatives and its engagement with young people has diverted many young people from joining paramilitary organisations.
- Alternatives has trained several hundred community volunteers in restorative justice and mediation thus helping to transform how local communities respond to violence.
- Many local residents now approach Alternatives for help rather than approaching paramilitary organisations. The presence of a restorative justice ethos at a grassroots level has helped to positively influence and change the culture of violence.
- Alternatives has continued to work closely with the PSNI regardless of recent political unrest and violence at a local level. We have continued to act as a bridge to help heal damaged relationships, to de-escalate volatile situations and to begin to build trust.

Even though this process of conflict transformation falls under the remit of statutory agencies, on the whole they have failed to deliver. Alternatives has carried out this work with no government funding and very little assistance from statutory agencies.

Community Ethos

The essential ingredient to the success of Alternatives is its grassroots approach, community ethos and independence from the formal criminal justice system. We need to maintain this independence to continue to deliver an effective service and retain the trust of local communities. If we lose this, there will be little to distinguish us from the Youth Conference Service and we both need to maintain our individual identities to be effective. This key role allows us to bridge the gap between local communities and the formal criminal justice system and to help bring the formal system closer to the communities and clients that it is supposed to serve.

Funding situation

The core funding from Atlantic Philanthropies formally ends in June 2006. From this point on, it will prove difficult for Alternatives to provide a comprehensive service of any kind that is managed and delivered effectively. This may place us in a position where discussions with the NIO may break down. To allow this process of consultation to be as effective as possible, Alternatives needs to be operational and maintaining its strong position within the community. The current funding crisis we find ourselves in is as a direct result of the Northern Ireland Office unwillingness to engage with Alternatives. This situation is not of our making. We urgently need core funding to help us continue this process of consultation with the Northern Ireland Office.

We therefore believe it is the responsibility of the NIO to provide gap funding to allow Alternatives to remain operational so that the process of consultation can be fully implemented.

Discrimination

Alternatives enjoys the support of all statutory agencies, including the PSNI, as demonstrated by their presence on local management committees and the Board of Northern Ireland Alternatives. There is therefore no justification for the exclusion of Alternatives from funding opportunities.

We can only conclude that Alternatives is experiencing discrimination due to the politicisation of restorative justice and the issue of policing within republican communities. It is our view that this process is being stalled to coincide with Sinn Fein joining the Policing Board and once this happens, funding opportunities will open up Community Restorative Justice Ireland and Alternatives will benefit from the ripple effect of this.

This view is confirmed by the recent statement by the Policing Board which indicated that there will be no funding for community based restorative justice programmes until Sinn Fein joins the Policing Board.

Alternatives has become caught in “the crossfire” of a political debate where working-class children, young people and families are the main ones who continue to suffer.

Commitment to the non-criminalisation of young people

Alternatives believes that we can help break the cycle of low level offending in which some young people have become involved. We believe that once a young person becomes involved in the system, it is more difficult for them to break the cycle of offending. Alternatives is committed to working with anti-social behaviour and low level offending to keep first offenders out of the “system” while holding them accountable and providing them with opportunities for “making things right.”

Additionally, Alternatives can offer intensive, rigorous and cost-effective alternatives for young people involved in all levels of offending. We support Article 40 of the United Nations Convention on the Rights of the Child, which states that member States will take measures without resort to judicial proceedings and will also establish a range of dispositions as an alternative to custody. Alternatives recommends, therefore, that our programmes are available not only to first time offenders but to all children and young people who are involved within the formal criminal justice system.

Response to the Guidelines**INTRODUCTION***Paragraph 2:*

Alternatives does not, under any circumstances, deal with crimes of a sexual or a violent nature. If and when, these offences come to our attention, they are immediately referred out to the appropriate statutory and/or voluntary agencies with the necessary expertise.

The majority of cases we deal with involve non-criminal matters or anti-social behaviour that does not reach the criminal level. Where we do become aware of a criminal matter, we will respond to it as directed by the appropriate legal framework.

Paragraph 3:

Alternatives agrees that inclusion, should be a common vision for all those involved in restorative justice, including the formal criminal justice system. We take this opportunity to urge the “system” therefore to be true to this ethos and end the ongoing exclusion of Northern Ireland Alternatives.

Paragraph 4:

This paragraph implies that the criminal justice system in its current form enjoys the confidence of local communities and that the presence of Northern Ireland Alternatives will only serve to damage this strong bond. As an organisation, we will continue to do our utmost to help build confidence between the formal criminal justice system and the community.

PRINCIPLES AND ROLES

Paragraph 9:

Alternatives has been built upon a policy of direct communication with the PSNI and will continue to adhere to it.

Paragraphs 10–15:

These paragraphs outline a proposed model for the way forward in terms of the formal criminal justice system and Alternatives developing formal partnerships. The model presented is complex, inefficient and offers no guarantees to Alternatives that referrals will be directed back. In terms of the statutory model that has been presented here, we have the following issues or questions:

- The success of any restorative process is the ability of an agency to act quickly and effectively. The failure of the formal system to do so is exactly why people have chosen not to participate in it. The model outlined here does not address these criticisms, and indeed perpetuates the inefficiencies of the current system. A clear timeframe is essential for this process. We also recommend that a designated person within the PPS be assigned to deal directly with the Panel and Alternatives to speed the process up.
Alternatives agrees that “justice delayed is justice denied.” We are open to exploring a model that better serves the needs of victims, offenders and the community rather than one which marginalises them and further victimises the victim. Our feedback from victims using our service indicates that responsiveness is one of their key needs.
- The model presented in the guidelines therefore serves as a disincentive for, victims and the community to participate and in our transitional society we need the provision of incentives to encourage the use of democratic processes. In cases where the PPS is involved Alternatives would require a turnaround of five to seven days to remain true to the responsive nature of community restorative justice practices.
- This model also displays a lack of understanding of the nature of restorative justice as it assumes the main need for victims is that of conviction of the offender. Our feedback from victims using our service indicates responsiveness, the opportunity to tell their story and regaining a sense of control are more important to their experience of justice than conviction of the offender.

Lord Clyde raised this issue in his Second Report and highlighted the need for “simplicity.”

“It is recognised that there are problems in establishing the appropriate interfaces with the state system and a clear relationship between the work of these bodies and that of the criminal justice system it is recognised that local 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.”

Outlined below is a proposed alternative model based on the premise that Alternatives should be viewed as a real alternative to bringing young people and adults into the system and that the Alternatives model is more intensive, holistic, effective and cost effective than anything that the formal criminal justice system has to offer.

- When an individual is referred to Alternatives, the manager will visit the person causing the offence and their family. The manager will then make an informal phone call to the local police station to notify them of the offence and the people involved. If this is the first time the person has offended, he/she will be given an informal warning by the police with no further action and referred on to the local Alternatives programme, with their consent, to address the needs of the victim, the community and themselves.

- If the individual has a previous history of low level offending but has never participated in a restorative process, the current system is failing with this individual and something different needs to be introduced to help “break the cycle.” This individual, when processed within the system, will be referred back to Alternatives for a community based process.
- If an individual has been involved in more serious criminal activity, Alternatives will follow the same procedure of notifying the police and bringing the individual in front of the panel as outlined in paragraph 11 of the Draft Guidelines. The need for expediency is vital and once again, if this person has never participated in a restorative process, he/she will be referred back to Alternatives.
- If an individual has participated in a restorative process and continues to re-offend, he/she should participate in the panel process as outlined in paragraph 11 and a recommendation be made to the PPS taking into account the factors outlined in paragraph 13.
- All participants on the programme will present their plans/contract to a local Restorative Assistance Panel (RAPS) with each panel consisting of people in total from the local community and local statutory agencies, among them Police, Probation, Education and Library Board, Social Services, Youth Justice Agency. This panel will also review the participant’s progress on a monthly basis and communicate as appropriate to relevant agencies.
- If it is apparent that a participant is continuing to offend, this information will be passed on either directly to the police or to the RAPs where the police play an integral role and the necessary action will be taken.
- All members of the RAPs and the panel outlined in paragraph 11 will receive training in community based restorative justice, the Alternatives’ model, criminal justice processes, human rights including childrens rights and victims rights and equality legislation.
- In terms of due process and consistency, we would like to pilot this model initially for a 12 month period in all of our existing schemes and with the necessary adjustments, begin to roll out this model of excellence throughout other areas in Northern Ireland.
- We would like a designated PSNI and Probation representative from each area—North, East, Shankill and Bangor to sit on each local RAPs Panel to ensure consistency and promote ongoing relationship building.

ACCREDITATION

Paragraph 17:

We welcome an initial scoping exercise by the Criminal Justice Inspectorate as soon as possible to help open up the funding channels for the non-criminal aspects of our work followed by a more rigorous inspection as outlined by the CJI.

Paragraph 18:

This paragraph complies with our existing practice on assessing the suitability of staff through POC VA. However, we question the inclusion of the final sentence “*The CJI will . . . , consult with the PSNI, other statutory agencies and the community about the operation of schemes and the suitability of individuals occupying posts in them, and generally, and any statutory agency may provide information to the Inspectorate in relation to these matters.*” If we follow the appropriate procedures through POC VA, we believe this sentence runs the risk of contravening Section 75 of the Northern Ireland Act 1998. We therefore require clarification as to what is meant by this sentence in this context.

With regard to the employment of people with a criminal record, Alternatives is informed by NIACRO’s document “Working with Conviction—A Guide for Employers,” with specific reference to the chapter “Employing Politically Motivated Ex-Prisoners.”

Paragraphs 19–20:

We welcome the inclusion of these paragraphs as they comply with our existing training programme. We would urge, however, that formal criminal justice agencies ensure that their Programme of training is equally comprehensive to ensure that their staff are trained to the same high standard as the practitioners within Alternatives.

Paragraph 22:

We support the spirit of this paragraph but feel the choice must be given to both the offender and the victim as to whether they want a supportive person present.

Paragraph 23:

We support the inclusion of this paragraph on an independent point of contact for advice on human rights issues and legislation as this complies with our existing practice. We have been in contact with the Northern Ireland Human Rights Commission since 2000 and the School of Law at Queens University Belfast since 2002.

Paragraph 24:

Alternatives supports an independent external complaints mechanism and is in the process of developing such a mechanism which, we suggest, should come under the remit of the Criminal Justice Inspectorate for inspection.

Paragraph 25:

Alternatives is supportive of and welcomes the inspection process as outlined in this paragraph. We would be agreeable to an initial “scoping exercise” to begin as soon as possible by the Criminal Justice Inspectorate with the provision of adequate resources.

Paragraph 26:

Alternatives already operates a youth prevention and youth diversionary programme which receives referrals from statutory agencies with no statutory funding or resources. This situation needs to change. We are happy to continue receiving such referrals and to further develop this referral base with the provision of adequate statutory funding.

THE WAY FORWARD

1. The provision of gap funding to allow the consultation process to be fully implemented. Alternatives has demonstrated its support for this process by agreeing to two previous sets of guidelines. This process has been stalled as a result of the politicisation of restorative justice by the NIO, SDLP and Sinn Fein. Alternatives and the communities it serves will no longer accept the discrimination we have encountered as a result of this political debate.
2. The provision of a public schedule for this ongoing process which will be strictly adhered to by all parties involved. Alternatives has consistently demonstrated its willingness to engage in a process of consultation and partnership. We refuse to allow this process to be further stalled while the NIO pursues a wider political agenda.
3. Alternatives will open its doors immediately to the Criminal Justice Inspectorate to begin an initial scoping exercise and implement the necessary changes with the provision of adequate resources.
4. The implementation of funded pilot projects as outlined above within each Alternatives geographical remit to help build on the process of transition.
5. An end to the policy of discrimination against Alternatives and the communities we serve.
6. An immediate and public distinction to be made between Alternatives and Community Restorative Justice Ireland.
7. The removal of the barriers to funding for the non-criminal aspects of our work.
8. The establishment of a forum with representation from key stakeholders to develop policies, practice and relationships regarding restorative justice.

CONCLUSION

The overall picture is one of opportunity and urgency. The opportunity exists to develop something unique and innovative that will provide the lead at a national and international level for how the community sector and the formal criminal justice system in Northern Ireland can work together.

The sense of urgency exists to move this process forward as quickly as possible. The stalling tactics have gone on for too long—Alternatives and the communities it serves need action.

We wish to be kept fully informed of the developments with regards to the consultation process and look forward to a response to our comments and suggestions for the way forward. We also look forward to receiving a copy of the analysis of responses when it becomes available.

March 2006

8. Written evidence from Community Restorative Justice Ireland

RESPONSE TO “A PROTOCOL FOR COMMUNITY-BASED RESTORATIVE JUSTICE SCHEMES”

CRJI has delayed its response to the consultation on the above Protocol in the hope that the political process would have clarified the position on policing. This is not a matter of the organisation taking a political position on the policing issue but recognising the reality that we drew attention to in our response to the December 2005 version of the Protocol: “the fact that, at the present time, a large majority of the people in the areas in which we work are opposed to active engagement with the Police Service of Northern Ireland.” We said then: “If we were to ignore that fact and pre-emptively engage in a fully operational relationship with the PSNI our credibility in the community would collapse and with it our efficacy in dispute resolution and our purpose for being.” At the time of writing this is still the position. We are not yet, therefore, in a position to participate in the practical implementation of the Protocol, though we endorse much of it in principle.

At this point we should also reiterate that we are fully in favour of a resolution of the policing issue. As we said in February: “We believe that people who choose to go directly to the PSNI should be free to do so and we will publicly and privately support that right within the communities in which we operate.” In practice our projects are increasingly advising people to seek assistance from the police in appropriate cases. We also restate our view “that the participation by all political parties in policing oversight structures is but one step in the normalisation of relations between the police and traditionally estranged communities. Once this has happened, CRJI is prepared to accept its responsibility in providing leadership at the grass roots level to overcome any remaining resistance to full and open partnership between the community and the police service.”

In general, we are extremely disappointed that there has been no response, either in the revised Protocol or directly from the NIO, to the particular points we made in our last submission. We will repeat some of those below. Let us first react, however, to the four significant changes the government has made to the document as a result of the consultation. These were, the insistence on a direct relationship with the police, the establishment of a “suitability panel,” an independent complaints mechanism under the auspices of PBNi and regular inspection by the Criminal Justice Inspectorate.

It is our view that the government took too much heed of a campaign of abuse and misinformation waged against CRJI during the consultation period. However, we accept and endorse all these proposals. As we have said, once there is a political resolution to the policing question we will take the necessary risk to develop a direct relationship with the PSNI. If the proposed “suitability panel” carries out its responsibilities in good faith, with past politically motivated convictions effectively taken out of consideration, we have no difficulty with it. We have said many times that we would welcome an independent complaints mechanism and regular inspection.

5. There has been no response to our question about the interpretation of the reference to Section 5 of the Criminal Law Act, so we repeat it: “Paragraph 5 draws particular attention to Section 5 of the Criminal Law Act (Northern Ireland) 1967. We would like to clarify how the Guidelines [now Protocol] are to be interpreted in the light of the two sub-sections of that Section. In particular, in respect to sub-section (1), given that the legal duty to pass information to the police is restricted to arrestable offences, is the reference to “an offence” in Paragraph 9 and elsewhere to be taken as meaning “arrestable offence?” Sub-section (2) explicitly removes the obligation to inform the police about an arrestable offence from the victim and an assisting third party if “reasonable recompense” is made for any loss or injury. The right of a victim to choose a restorative route to satisfaction, rather than a criminal investigation, is therefore enshrined in law. May we assume, consequently, that the Guidelines should be interpreted in the light of that sub-section and that the victim’s choice to choose a restorative route, should that be practicable, will be respected?”

6. This Protocol, like the various versions produced since 1998, seems to have no understanding of the role of a community mediation service, nor of the role of restorative justice as an alternative to the formal criminal justice system. We made a series of points in our previous response which, since there has been no response to them, are still valid.

7. The following point was noted in the summary of replies to the consultation but not dealt with substantively: “We have some concerns about the practical operation of some aspects of the system sketched out by the Guidelines. Paragraph 10 [now Paragraph 9] seems to assume that “cases” arrive at a community restorative justice scheme complete with full information about a particular crime, the victim and the offender.

This is seldom the case. The person presenting to the project will often be a party to a dispute who feels that they have been victimised by one or more people known to them, but it might often be a reckless pre-judgement to assume that the roles of victim and offender are clear and fixed. It may also be difficult to ascertain whether a crime has been committed and of what seriousness. Operational criteria will need to be developed to determine when and what information is passed on.”

8. Paragraphs 10–15 [now Paragraphs 9–15] seem to suggest that the main decision necessary in any given case is whether a prosecution is mounted. We believe that a prior decision point is whether a criminal investigation is required—in other words whether it is necessary to engage the criminal justice system at all.

We accept that, in cases of significant doubt, it is the prerogative of the police to make that decision, though we think it should be in consultation with the victim and the community scheme. We note that the idea of a panel in Paragraph 11 [now 10] goes some way to that. We think that agreed operational criteria would be needed to guide this decision-making. The details are for future discussion, but our current ideas are as follows:

As far as possible, disputes, minor crime and anti-social behaviour should be dealt with by agreement in the community, amongst neighbours. Except in the most serious cases the victim should have the choice of how s/he wishes a problem or harm to be dealt with—in such cases it should be the victim's right to choose a community restorative justice route.

Where there is a grey area—it is not clear whether a police investigation is necessary or not—the police have the right and responsibility to make the decision on the exercise of their discretion, but they should do that in consultation with the victim and the community project

9. If a decision is made to pursue a criminal investigation, both the police and the PPS will carry out their normal responsibilities. As far as the police are concerned, these will include conducting all relevant investigations, deciding who to question and who, if anyone, is to be arrested. In the course of that work they will presumably follow their own guidelines and policy on such matters as fingerprinting and taking DNA samples. The community project can have no part in any of that process, except in terms of general co-operation. We therefore fail to understand why Paragraph 12 [now Paragraph 11] refers to fingerprinting and taking DNA samples and justifies it in a lengthy footnote; it is no more relevant than the description of any other forensic technique. Once the police launch a criminal investigation any case is clearly out of the hands of the community project and any putative agreement between victim and offender to take the restorative route is vitiated, at least for the duration of the investigation. The case may come back again from the prosecutor, but it will be on a different basis and the restorative process will have to deal with the delay and any fall-out from the criminal investigation.

10. We think further clarification—or rather amplification—is needed in regard to the criteria the prosecutor will use to decide on whether a case should be referred back to the community project. We would like to see more emphasis on the views of the victim—for example a rebuttable presumption that the victim's opinion will prevail—and more detail on the question of the gravity of an offence.

11. Regarding Paragraph 14, [now Paragraph 13] we are concerned about the imposition of a warning or a caution prior to a restorative process. This predetermines an outcome and vitiates the concept of a solution agreed between perpetrator, victim and, where relevant, community. It may be that particular community schemes will wish to opt out of dealing with cases where a reference comes with a part-outcome attached.

There has been a significant new development in the context of this latest document. For years the NIO operated a ban on statutory funding for community restorative justice projects, though they repeatedly denied it. The government has now ended the deceit and publicly stated that schemes which do not sign up to the Protocol will receive no government funding from any source. Furthermore, it is now intended that inspections will also cover non-criminal work carried out by projects. We wonder where that leaves the field of community mediation in general and the funding of any current or future groups who wish to help neighbours resolve their disputes. Would such groups merely have to adhere to the legal position in Section 5 of the Criminal Law Act or would they have to sign up to the procedures of the Protocol to be eligible for statutory funding? Again, for example, will the Housing Executive's mediation scheme be obliged to establish similar structures in case it comes across circumstances where a criminal offence has been committed, or will all the projects funded by PBNI have to do likewise.

The answers to these questions, and the other points we have made, are important if the government is to show that it is not engaging in discriminatory practices against the Nationalist community under its own legislation. However, we believe that, in practice, and with goodwill in all the agencies, many of the issues could be resolved. In particular, we believe that sensible policing with the community will not insist on launching a full scale criminal investigation in cases involving no serious harm where a peaceful resolution is possible and available. We look forward to be able to build the close working relationships with all relevant statutory agencies in the future that will be necessary to build a safe and peaceful society.

7 December 2006

9. Written evidence from the Northern Ireland Human Rights Commission

CONSULTATION ON DRAFT PROTOCOL FOR COMMUNITY-BASED RESTORATIVE JUSTICE SCHEMES

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights,³ advising on legislative and

³ Northern Ireland Act 1998, s 69(1).

other measures which ought to be taken to protect human rights,⁴ advising on whether a Bill is compatible with human rights⁵ and promoting understanding and awareness of the importance of human rights in Northern Ireland.⁶ In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding “soft law” standards developed by the human rights bodies.

2. In making this Response, attention is drawn, in particular, to the body of international human rights standards and conventions that supports Community-Based Restorative Justice (CBRJ). These include the UN Standard Minimum Rules for the Administration of Justice (the Beijing Rules); the International Convention on the Rights of the Child; the UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines); the UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules); the EU Framework Decision on Restorative Justice and the Council of Europe Recommendation Concerning Mediation on Restorative Justice; the Council of Europe Recommendation Concerning Mediation in Penal Matters; the UN Economic and Social Council-endorsed Basic Principles on the use of Restorative Justice Programmes in Criminal Matters (the Basic Principles), and the ECHR as incorporated in the Human Rights Act 1998.

3. The Commission welcomes the opportunity to comment on the Protocol for Community-Based Restorative Justice (CBRJ) Schemes and welcomes the stated aim of extending “where possible the restorative justice principle . . . to a wider community base”. However, concerns remain about the degree of integration of CBRJ schemes into the formal criminal justice system required by the Protocol.

HISTORICAL CONTEXT

4. In order to contextualise this concern, it is useful briefly to revisit the origins of the Community-Based Restorative Justice schemes, and to acknowledge the valuable role they have played in tackling low level localised crime in areas where there has been a lack of confidence in formal policing mechanisms.

5. In Northern Ireland, there has been little experience of “normal” community policing. The lack of confidence in the police in some areas has led to communities seeking alternative ways to tackle crime within their communities. In Northern Ireland, as in South Africa, “restorative justice programmes have emerged in community-led initiatives designed to supplant existing systems of violent communitarianism and bridge the gap of state illegitimacy and ineffectiveness in the delivery of services”.⁷

6. Community restorative justice projects in Northern Ireland, therefore, have developed in a context specific to the conflict in Northern Ireland and as an alternative to paramilitary punishment, with a stated aim of ending altogether the role of paramilitaries in carrying out “community justice” activities that have, in practice, included physical assault and banishment with no semblance of fairness or proportionality.

7. Communities have largely taken responsibility for the establishment, running and funding of restorative justice projects and it is this initiative that has been at the heart of the many successes of the schemes and, which, conversely, has prevented wider acceptance. This is particularly so for those projects established in nationalist/republican communities, where the task of establishing working relations with the Police Service of Northern Ireland (PSNI) still presents obstacles for staff and users.

RELATIONSHIP BETWEEN SCHEMES, THE PSNI AND PPS

8. In respect of Recommendation 168 of the Criminal Justice Review Group, the Commission notes the recommendation that schemes should receive referrals from a statutory criminal justice agency and that the police should be informed of all such referrals.⁸ This ought not to preclude schemes electing to refer cases through a criminal justice agency other than the police, for example the Probation Board for Northern Ireland (PBNI). This procedure could be viewed as a transitional arrangement until such time as the new policing arrangements are formally endorsed by all parties and public confidence increased.

9. The Commission is disappointed to note that in relation to identified impacts of the Protocol “it has not been possible to identify any options which might ameliorate the potential impact on schemes in nationalist areas” (page 23). However, the Commission remains unconvinced that alternative transitional arrangements for referral of cases have been fully explored.

10. The Criminal Justice Review recognised the sensitivities involved in requiring detailed and specific information on alternative, community based programmes involving often-difficult negotiation with paramilitary groups. However, the Protocol appears inflexible and weighted towards formalisation and incorporation of schemes into statutory criminal justice agencies. The Justice Oversight Commissioner Lord

⁴ *Ibid*, s 69(3).

⁵ *Ibid*, s 69(4).

⁶ *Ibid*, s 69(6).

⁷ McEvoy, K & Mika, H (2002) “Restorative Justice and the Critique of Informalism in Northern Ireland” *British Journal of Criminology*: 42 at pp 534–562.

⁸ The Review of the Criminal Justice System in Northern Ireland, March 2000.

Clyde, in his Second Periodic Report, expressed his concern that “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 off the efficiency and effectiveness of the local scheme.” For this reason, this Commission has recommended previously “that serious consideration be given to transitional arrangements for funding of CBRJ schemes, that, for reasons that are to do with the bigger political picture, are not ready to integrate with the formal system”.

11. In its previous substantive response to the draft guidelines (March 2006), the Commission made the point that the UN Basic Principles nowhere *require* the involvement of, for example, the police or public prosecutors in the ways prescribed in the Protocol. The draft guidelines already provide for involvement by other agencies, notably the Probation Board and the Youth Justice Agency, and these are capable of acting as the primary points of contact between CBRJ and the mainstream system.

12. The Commission reiterates its concern “that the drive to integrate CBRJ schemes with the formal criminal justice system should not seek to impose an unnecessarily high degree of uniformity, without due regard to the particular circumstances of each local community” and that the relationship should respect “the distinctive character of community-based NGOs. The introduction of guidelines should allow for a reasonable period of transition to encourage existing schemes to maintain dialogue with one another, learn from best practice and move voluntarily towards common ways of working at a pace that reflects the changing environment in which they work.”⁹

13. The Protocol states that once the Public Prosecution Service (PPS) has received a report from the police, it will consider the evidence and information provided, and inform the police promptly of its decision. The police will then inform the scheme of that decision. The PPS also decides whether referrals to schemes should include an informed warning or a restorative caution to be given and recorded by the police. Apart from the centrality of the formal criminal justice system within the restorative process, these procedures raise a number of additional concerns.

14. First, clarification is sought as to the procedure to be followed if the PPS decides that a case is not suitable for referral to a CBRJ scheme. Further guidance is also required as to which broad categories of low level offending behaviour are deemed suitable for referral to a CBRJ scheme.

15. Second, there is provision for the police to fingerprint and take DNA from offenders, depending on the *nature of the offence*. The Commission requests clarification on the application of this provision. Specifically, which categories of offences would, and which would not, necessitate fingerprinting and the taking and storage of DNA samples by the police?

16. In relation to support for both offender and victim throughout the process, the Protocol states that support will be provided by “one or more appropriate people”.¹⁰ However, in the section of the Protocol outlining “Principles and Roles” reference is made to the fact that “parties should have the right to legal advice about the process” (pt 6). The Basic Principles 13(a) state that victims or offenders “should have the right to consult with legal counsel *during* the restorative process and, where necessary, *to translation and/or interpretation*” (emphasis added). It is our view that this provision should be integrated into the main body of the Protocol.

17. It is important to stress that confidence building with the criminal justice system not only depends on the steps taken by CBRJ schemes to ensure high operational standards, but also on the ability of the PSNI to build trust with those communities that have experienced poor police relations.

18. Overall, the Commission is concerned that, in the present climate, the centrality of the PSNI role throughout the referral process will create serious problems regarding its acceptability in some areas. This may be a relatively short-term problem, given the indications of a shift in political attitudes to policing structures, but if the Protocol simply ignores the existence of obstacles to engagement with the PSNI it will very likely lead to closure of some schemes, or a significantly reduced throughput, particularly in relation to CRJI schemes that have voiced concerns previously regarding this development.

THE ROLE OF CBRJ SCHEMES IN NON-CRIMINAL WORK

19. It is noted that the Protocol does not apply to the work of CBRJ schemes in the area of non-criminal activity, and that 71% of respondents to the Consultation on the Draft Guidelines indicated that there should be a “clear definition of the types of low level criminal offence which are, and are not, appropriate for CBRJ schemes to deal with”.¹¹ The Protocol’s lack of detail here raises concerns regarding the protection of human rights in this area of work and also around the future funding, particularly for schemes that do not secure accreditation in respect of criminal offence work. These are matters that clearly need to be clarified as soon as possible.

⁹ NIHRC submission *Draft guidelines for community-based restorative justice schemes*, March 2006.

¹⁰ NIO (July 2006), *Draft Protocol for Community-based Restorative Justice Schemes*, at para 20.

¹¹ NIO (September 2006), *A Protocol for community-based Restorative Justice Schemes: Consultation and Equality Impact Assessment*, Appendix 1 at para 2.2.

20. The Protocol does not relate to incidents of anti-social behaviour that do not reach the criminal level. There is a danger that if schemes are not funded to deal with this type of behaviour, more reliance will be placed on the imposition of Anti-Social Behaviour Orders (ASBOs), which although a civil injunction, if breached can lead to a custodial sentence. It is important that alternative approaches to dealing with anti-social behaviour, proportionate to the offence, are adequately supported so as to avoid, where possible, the criminalisation and entry into the penal system of, in particular, young people.

STAFFING

21. The Commission endorses the points made by NIACRO regarding the recruitment process. First, “independent organisations should be responsible for recruiting and selecting their own staff based on formalised recruitment and selection practices”. Furthermore, the proposal to establish a CBRJ Suitability Panel interferes with schemes’ “governance arrangements and their independent status”.¹²

22. Additionally, any applicant who is deemed unsuitable for a post should be provided with feedback on the reasons why their application has been unsuccessful. This is of particular importance given the proviso that the Suitability Panel may consider “any information provided by statutory organisations which might indicate the individual’s involvement in criminal or paramilitary activity” or indicate unsuitability for employment on the grounds of compromising public safety or adversely impact on public confidence.¹³ As the NIACRO response commented, “imposing barriers to employment which remain disclosed and unchallengeable impede[s] the development of public confidence in the Criminal Justice system and policing”.

THE INSPECTION PROCESS

23. While fully recognising the need for regular independent inspection, the Commission reiterates its concern regarding the level of access to information envisaged as essential to CJI inspection as being in conflict with Basic Principle 14: “Discussion in restorative processes that are not conducted in public should be confidential, and should not be disclosed subsequently, except with the agreement of the parties or as required by national law”.¹⁴ As stated previously, the Commission would wish to see further proposals to align the CJI role with the Basic Principles.

24. Once an inspection mechanism has been agreed for schemes, a clear definition of applicable sanctions should be made available in the event that a CBRJ scheme fails an inspection.

OTHER POINTS

25. There should be equal access to a CBRJ scheme whenever possible. If a case suitable for referral to a CBRJ scheme arises in an area where no accredited schemes are operational, consideration should be given to the case being dealt with by an established scheme. This would, of course, be dependent on suitable procedures being put in place regarding acceptable referral and supervisory arrangements.

26. The Commission reiterates its request for clarification on whether, and how, children have been consulted on the Protocol for Community-based Restorative Justice schemes.

27. As indicated previously, the Commission would be happy to review human rights training materials and to discuss other possible supporting or advisory roles, which, subject to resources, could include direct provision of human rights training.

CONCLUSION

28. Reference is made to the fact that the draft guidelines already provide that schemes will operate within the UN Basic Principles on the use of Restorative Justice Programmes in Criminal Matters.¹⁵ However, it is important to note that the Basic Principles refer to restorative justice as giving rise to “a range of measures that are flexible in their adaptation to established criminal justice systems and that complement those systems, taking into account legal, social and cultural circumstances”.¹⁶ Furthermore, power imbalances and cultural differences should be taken into account “in referring a case to, and in conducting, a restorative process”. The Principles also recognise that restorative justice processes “may need to undergo change in concrete form over time”.

¹² NIACRO, *Response to Second Set of Draft Protocols for Community-Based Restorative Justice Schemes*. www.niacro.co.uk

¹³ NIO, *Draft Protocol*, Appendix at para 3.

¹⁴ NIHRC submission (March 2006), *Draft guidelines for Community-Based Restorative Justice schemes*, para 14.

¹⁵ NIO, *A Protocol for Community-based Restorative Justice Schemes: Consultation and Equality Impact Assessment*, Table 3, page 21.

¹⁶ Preamble to the Principles, published as Annex to UN ECOSOC Resolution 2002/12.

29. The point has been made previously that “there appears to be a general perception that the obstacles to Republican involvement in the policing arrangements are diminishing over time”.¹⁷ Rather than present all schemes with an ultimatum to conform, further consideration should be given to establishing a procedure whereby the reporting of offences is carried out via an identified third party to the police (as proposed in the draft guidelines) that would be acceptable as a transitional arrangement. This would be in keeping with best practice as outlined in the UN Basic Principles in respect of flexibility and ensuring sensitivity to legal, social and cultural circumstances within restorative justice programmes.

30. As long as restorative justice schemes are safeguarded by well-structured protocols and human rights standards, they have much to offer in helping communities to re-build and move forward. As stated previously, many hundreds of offenders and victims have benefited from CBRJ schemes and this positive impact, for a relatively small investment as compared with other interventions, needs to be borne in mind.

December 2006

10. Written evidence from Dr Garret FitzGerald

RESTORATIVE JUSTICE SUBMISSION

INTRODUCTION

I am grateful to the Committee for its willingness to hear my views on the subject of Restorative Justice in Northern Ireland.

I have been concerned about this matter since late 2005. I have written about it twice in the *Irish Times*, and also encouraged BBC’s Newsnight to devote part of its programme to this subject early last year. These initiatives have been spontaneous, arising from my long experience of the Northern Ireland problem, and my consistent concern for the peace and stability of that area within the United Kingdom—until and unless at some point, in what must be a distant future, a majority of its people may choose to establish a political link with the Irish state. Whilst I am aware of the very deep concern of members of the Irish Government about this issue, I am not speaking for them.

I am particularly concerned that, after their appalling experience of violence during almost forty years, the people of both communities there Northern Ireland be enabled thenceforth to live their lives free not only of overt violence but also of local threats, intimidation, or similar, perhaps even unintended, pressures from people they may have had reason to fear in the past.

Of course I recognise the potential value of restorative justice schemes at local level in any society. You have such schemes in Britain and we have several in our state, with others currently in preparation.

I am not familiar with your arrangements in Britain, but ours are established under the supervision of the judiciary at local level, and of the Garda Síochána. This is very important, because we have had experience of IRA vigilantism in some of our urban areas—albeit not on the same scale as that to which the people of Northern Ireland have been subjected by paramilitaries there.

I should add that in our state we would never tolerate such schemes being established by or in conjunction with any political party—least of all one deriving its origins from a paramilitary body such as the IRA, which for over 80 years has constituted a threat to the lives of our people, our security forces, and our politicians, and at times even to the stability of our state.

We continue to suffer from lawless activities, including large-scale smuggling in border areas. The survival or tolerance of the possibility of vigilantism or intimidation of people in parts of Northern Ireland near the Border would pose a threat to our state. But my concern about restorative justice schemes in Northern Ireland is not confined to the possible impact on our side of the Border. As someone with deep roots in Northern Ireland—as it happens amongst the Protestant community there—I am equally concerned about its people.

I recognise that in such a divided community as Northern Ireland it would not be possible at this stage to organise restorative justice schemes in the same way as we have been able to start doing in our integrated society community. But by allowing and—as is now proposed—authorising and financing schemes sponsored by people who have been associated with former paramilitary bodies, HMG faces some serious dangers. It is my hope that your Committee will find it appropriate in your Report on this matter to press your Government to take appropriate precautions with such schemes with a view to safeguarding the security of the inhabitants of Northern Ireland.

¹⁷ NIHRC, *Draft guidelines for Community-Based Restorative Justice schemes*, at para 22.

INITIAL CONSULTATIONS ON GUIDELINES/PROTOCOL

I have to say that in my estimation the draft Protocol for Community-Based Restorative Justice Schemes, published by the NIO in revised form last September, notably fails to offer a number of necessary safeguards for the interests of the people of Northern Ireland.

I find this surprising, and I feel that part of the problems that persist with the provisions of this Protocol may derive from the fact—to which I am sure you will want to make specific reference in your report—that when the even more inadequate initial draft of what were then described as “Guidelines” was in preparation, the only consultations that seem to have taken place were with the former para-militaries already operating such schemes. This was despite the fact that several spokesmen for Sinn Fein, the sponsors of the CRJ scheme, had already at that time made explicit publicly that their restorative justice scheme was designed to offer “a viable alternative to the PSNI” and “a widely acceptable alternative policing system”.

Astonishingly at that stage there were no consultations with the Policing Board of Northern Ireland or with the constitutional political parties. You will, no doubt, have sought an explanation from the NIO for this extraordinary method of proceeding, which may have prejudiced the subsequent development of the Guidelines and Protocol.

PROPOSALS IN RELATION TO PARAGRAPHS OF THE REPORT

The outstanding issues that I hope your Committee will address include the following.

PARAGRAPH 8 OF PROTOCOL

There may be problems about defining “low-level” crime, but it should certainly be possible either to list the principal high-level crimes, or to indicate them by reference to the level of sentences imposed for them.

PARAGRAPH 9 OF PROTOCOL

The new provision removing from the draft Guidelines the provision for schemes to report offences to the police through a third party now requires them to “communicate” details of offences or an offender to the police. However, the unqualified use of the word “communicate” leaves it open to those concerned merely to write to the police and without having any direct personal contact with them or being available to discuss the matter with them.

This is, of course, precisely what has happened in relation to the appalling murder of Robert McCartney—the witnesses to which, (some of whom incidentally are personally involved in the CRJ), have, in some cases because of fear and intimidation, merely sent the police uninformative statements and have not been available for questioning.

It would clearly be intolerable that such a loophole be provided for the persistence of such behaviour in the case of those engaged in these schemes—a high proportion of whom are known to have been in the past active members of the IRA.

I am sure that the Committee will agree, therefore, that the word “communicate” in this paragraph needs to be qualified, perhaps by adding at the end of that sentence, “such communication to include, should the police request it, personal contact to clarify any outstanding matters”.

PARAGRAPH 17 OF PROTOCOL

Sinn Fein leaders have continued to deny that even murder is a crime if it was authorised by the IRA. Accordingly it would be desirable also that in Paragraph 9. the word “offence” be defined by adding to such words as “as defined by law”.

Moreover, after the first sentence of Paragraph 17 as currently drafted seems to confine itself to the specific issue of the protection of children or vulnerable adults, which is to be handled by POCVA. But whilst that organisation may, perhaps, be able to check on criminal records even if these are not confined to their own specific mandate of sexual abuse of minors, it is self-evidently not equipped to determine whether a staff member is currently “involved in paramilitary activity or criminality”

Moreover there is a further consideration that is not addressed here or elsewhere in this document. The biggest danger with these schemes is clearly that after years of intimidation and punishment beatings members of the local community would continue to live in fear of CRJ staff with such a background.

In relation to the two individual schemes whose published documentation I have seen, about half of the names of scheme staff given on these pamphlets for local CRJ people to be contacted were, I have reason to believe, in the past members of the IRA in the locality. In many cases these are bound to have included IRA people formerly engaged in punishment beatings—almost none of whom were ever convicted of such crimes, and thus could not be identified by the POCVA. If people in these areas are to be free of fear in future it is clearly *absolutely* necessary that no person known to the police through intelligence to have been formerly an inflictor of punishment beatings should be allowed to be a member of a restorative justice scheme, or in any way associated with such a scheme.

Because only the PSNI have available to them the necessary intelligence to ensure such an outcome a sentence needs to be added to this paragraph, perhaps after the present first sentence, along such lines as: “In particular there should be vetting of the members of all such schemes, designed to ensure that no one in respect of whom there the police have reason to believe that he or she has in the past engaged in intimidatory behaviour or punishment beatings can be a staff member of such a scheme”.

If this cannot be ensured because, for example, the PSNI feels unable to provide such a service, a dedicated body would need to be established to undertake this task on the basis of intelligence furnished to it by the PSNI, and the Committee should, I believe, so recommend. After all that has happened, the people of Northern Ireland do not deserve to be left at the mercy of people who in past years have held them in fear.

PARAGRAPH 19

This paragraph needs to be amended to make provision for independent training of restorative justice staff to be undertaken by an independent body such as CJINI, rather than allowing restorative justice schemes to undertake their own training, subject only to inspection by CJINI.

PARAGRAPH 22

Has the Probation Service investigatory powers, such as those that apply in the case of complaints against the police? If not, the Committee should recommend a more effective procedure. Given the problems that could arise with a restorative justice system run by a political party—and especially one with such a history—it would clearly be quite unacceptable that its activities be less adequately monitored than is the case with the official police force.

Similarly the provision for inspection of the schemes is inadequate. The scheme will be dealing with both low-level non-criminal activities, and the Criminal Justice Inspectorate has no function with respect to the latter, which constitute the great bulk of the work of these schemes. This needs to be rectified, and I hope that the Committee will so recommend.

CONCLUSION

Finally, I trust that the Committee will give serious consideration to these proposals for amendments to the Draft Protocol.

The manner in which the consultations on the original Guidelines were carried out has aroused great concern in both parts of the island of Ireland, as did the initial reaction of the Minister for State in Northern Ireland, David Hanson, to my article on this subject on 21 January 2006.

I submit a copy of my initial article, and of my response in the *Irish Times* on 4 February 2006 to Minister Hanson’s letter of 27 January to that paper—a response that explains the unhappiness of informed opinion in Ireland, including I believe that of the Irish Government, at aspects of the way this process has been developed.

Finally I should perhaps add that whilst I am very concerned about the possible dangers of party political restorative justice schemes in Northern Ireland, I, like so many other people in our island, am deeply appreciative of the manner in which HMG, with bi-partisan support at Westminster, has sought with skill and persistence to bring peace and stability back to Northern Ireland.

Two points: first the issues that I have raised relate to pressures that could exist at local level and are not, and should not be seen, as in any way casting doubt on the sincerity of Sinn Féin’s commitment to permanent peace, especially in view of their willingness finally to accept and work the PSNI. Secondly, I should perhaps also add that I am privately working within my own state to facilitate the re-integration of former paramilitaries into the general work-force—but, of course, with appropriate caution at this stage so far as the justice area is concerned.

10 January 2007

11. Draft Protocol for community-based Restorative Justice Schemes

COMMUNITY-BASED RESTORATIVE JUSTICE SCHEMES: PROTOCOL

INTRODUCTION

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

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

3. The Review described restorative justice as:

“a more inclusive approach to dealing with the effects of the crime, which concentrates on restoring and repairing the relationship between the offender, the victim, and the community at large, and which typically includes reparative elements towards the victim and/or the community.”¹⁸

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

4. In addition, the Review notes that:

“A core value and objective of the criminal justice system is that it should have the confidence of the community it serves”.¹⁹

The Review also points to the strong divisions of opinion which exist in the community in relation to schemes²⁰. These clearly have the capacity to damage confidence in the criminal justice system. Against this background, it should be a common aim and responsibility of all those involved in operating the Protocol, including the schemes, to promote confidence in the criminal justice system.

PRINCIPLES AND ROLES

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

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

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

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

- (a) to protect life and property;
- (b) to preserve order;

¹⁸ Review of the Criminal Justice System in Northern Ireland, paragraph 9.5.

¹⁹ Review of the Criminal Justice System in Northern Ireland, paragraph 3.31.

²⁰ Review of the Criminal Justice System in Northern Ireland, paragraph 9.20.

- (c) to prevent the commission of offences; and
- (d) where an offence has been committed, to take measures to bring the offender to justice.

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

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

PROTOCOL

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

Community schemes should

“receive referrals from a statutory criminal justice agency, rather than from within the community, with the police being informed of all such referrals.”²¹

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

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

11. The PSNI will consider the information received (including any provided through a panel discussion) and determine whether it is necessary to undertake investigations to verify and add to the information. Depending on the nature of the offence, offenders will be fingerprinted and DNA taken by the police²². On receiving a report from the police, the PPS will consider the evidence and information provided and inform police promptly of the decision reached. The police will inform the scheme of that decision. Where the PPS judges it appropriate to refer a case to the scheme, the latter may proceed to handle the case. Where the PPS does not decide to refer the case, the scheme will take no further action with regard to the disposal of the case, although it may offer support to the victim or the offender where its relationships with them are already established. However, this should not extend to involving them in restorative processes. The police and PPS will seek to fast-track the consideration of cases forwarded by schemes.

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

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

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

²¹ Review of the Criminal Justice System in Northern Ireland, paragraph 9.98(i).

²² The police take fingerprints and DNA from all offenders in custody at a police station. This helps to identify the offender, aids in detecting future crime, prevents further offences and therefore protects the public. In addition to these reasons, the recording of DNA and fingerprints as part of a community restorative justice process is necessary to ensure the offender has not carried out a more serious crime(s), which would make that offender's participation in the process inappropriate. It also ensures equality of treatment for those offenders in areas where community-based schemes do not exist. An offence will only be suitable to be dealt with by a community-based scheme if the offender consents to providing fingerprint and DNA samples.

14. In the course of any processes undertaken by a scheme when dealing with an offender, any disclosure of specific instances of offending, other than that which was the subject of the original referral, must be dealt with in accordance with this Protocol, and the offender informed accordingly (as is the case for any criminal justice agency). If this arises, the scheme should suspend dealing with the offender until further decisions are reached by the PPS.

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

Community schemes should

“be accredited by, and subject to standards laid down by the Government in respect of how they deal with criminal activity, covering such issues as training of staff, human rights protections, other due process and proportionality issues, and complaints mechanisms for both victims and offenders.”²³

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

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

18. Schemes will arrange for their staff to receive training, on induction, on human rights and equality legislation; on their obligations under the criminal law; and on the workings of the criminal justice system, including issues of due process and proportionality. Training will be updated regularly, and will cover any relevant changes to the law. Training will be provided by accredited trainers, and by use of accredited training materials. In addition schemes will provide training in communication, conflict mediation and victims’ issues. All training, trainers and training materials will be subject to regular inspection by CJINI.

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

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

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

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

Community schemes should

“be subject to regular inspection by the independent Criminal Justice Inspectorate.”²⁴

23. Schemes will agree to undergo an initial inspection before commencement of operation under this Protocol. Once schemes are operating, unannounced inspections will be conducted regularly. These inspections will initially take place on a pilot basis. They will include, as appropriate, examination of records

²³ Review of the Criminal Justice System in Northern Ireland, paragraph 9.98(ii).

²⁴ Review of the Criminal Justice System in Northern Ireland, paragraph 9.98(iii).

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

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

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

Community schemes should

“have no role in determining the guilt or innocence of alleged offenders, and deal only with those individuals referred by a criminal justice agency who have indicated that they do not wish to deny guilt and where there is *prima facie* evidence of guilt.”²⁵

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

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

July 2006

²⁵ Review of the Criminal Justice System in Northern Ireland, paragraph 9.98(iv).