

CRIMINAL JUSTICE INSPECTION NORTHERN IRELAND

RESPONSE TO THE GOVERNMENT'S CONSULTATION ON THE GUIDELINES FOR COMMUNITY-BASED RESTORATIVE JUSTICE SCHEMES

To: Criminal Justice Policy Branch,
Room G33, Massey House,
Belfast BT4 3SX

Introduction

1. CJI welcomes the publication for consultation of the proposed guidelines for the operation of community-based restorative justice schemes ("the schemes").
2. CJI indicated in a press release dated 5 December 2005 (attached at Annex A) that it requested it would inspect the schemes in a supportive manner, as it does with the agencies of the formal criminal justice system, but that it would not hesitate to make it clear if it found that schemes were failing to comply with the guidelines. The Chief Inspector made a further statement on the subject on 18 January 2006 (Annex B).
3. CJI does not at present have specific legal powers to inspect the schemes. The Secretary of State might wish to remedy that in due course, but to begin with it would, we believe, be sufficient for the Secretary of State to invite CJI to inspect them and for CJI to exercise its discretion to respond to such an invitation on a non-statutory basis.
4. CJI is guided by Ministers as regards the policy on this initiative. CJI is a provider of independent inspection services, not an alternative source of advice on public policy. Nevertheless CJI endorses the potential value of the CBRJ initiative if it can act as a catalyst for bringing the informal structures of social control in the communities concerned into a better relationship with the formal criminal justice system.
5. This will present a challenge to the communities, as well as to the formal criminal justice system. If the Government is going to involve the communities in the administration of justice and community safety all concerned will need to show that they are ready to observe modern, democratic standards of legality and human rights. The aim of inspection will be not merely to ensure compliance by the schemes themselves but to promote those standards more widely and to encourage appropriate engagement with the agencies of the criminal justice system.

6. Subject to finalisation of the guidelines in the light of consultation, CJI's proposed inspection framework is outlined at Annex C. CJI will take an independent view of the working of the schemes and will report publicly, without fear or favour, what it finds.

7. CJI will not inspect the schemes in isolation. It will also observe and comment upon the working relationships that develop between the official agencies and the schemes – for example, the working of the 'panels' referred to in paragraph 11 of the draft guidelines – and on the success of the initiative as a whole. At every stage CJI will aim to consult the widest possible range of interested parties.

8. CJI would be willing, if it would be helpful to Ministers and if agreed by the schemes, to undertake preparatory work with the schemes immediately to explore what a full inspection of the schemes might involve. Such an exercise might highlight issues which could usefully be addressed before the guidelines were finalised. It could also assist the schemes to put in place sufficiently robust procedures and policies now in order to meet the terms of the guidelines and the eventual inspection requirements. It might then be useful to pilot the guidelines with two or three schemes and inspect against them before rolling the guidelines out more widely.

Comments on the draft guidelines

PARAGRAPH 2 – Non-criminal business

“the guidelines do not relate to non-criminal matters”

It has been put to CJI that a large proportion (the majority) of the work of the schemes is non-criminal, and will therefore not be subject to the guidelines, even though the schemes may receive funding for it from public sources other than the NIO. CJI would suggest that, since the boundary between criminal and non-criminal work is likely to be hard to define, its inspection should extend to any criminal or community safety work, broadly defined, including diversionary work with young people, neighbourhood watch schemes and responses to anti-social behaviour.

PARAGRAPH 11 - Referrals

One of the advantages which the community based schemes enjoy over the formal system is the prompt nature of their disposal of business. We were told by one scheme that if the various parties were in favour, a minor case could be reported and dealt with within one week. The formal system, for obvious reasons, takes significantly longer to deal with even the most minor criminal matter. It is important that whatever referral system is put in place, its impact in terms of increasing the time taken to deal with cases is mitigated as far as possible. We therefore believe that the panel system envisaged in Paragraph 11 offers the preferable route for reducing avoidable delay.

We welcome the commitments on the part of the police and PPS to deal with cases promptly. It would be helpful for the PPS to sit with the other criminal justice agencies on the panel in order that the length of time taken by the formal system to respond to the schemes may be lessened. If the PPS are not on the panel, there should at any rate be a designated officer of the PPS available to be consulted and to give speedy advice on cases.

PARAGRAPH 18 – Suitability of individuals

While CJI is generally happy with the wording of Paragraph 18 and the mechanisms it envisages for dealing with the suitability of individuals working within the schemes, it must be stressed that the primary safeguard in terms of the employment of any individual (including the recruitment of volunteers) is with the employer. The schemes will therefore need to develop policies on the employment of those with previous convictions. Our view would be that the key criterion in relation to this matter is public safety. CJI will inspect how the schemes' employment practices (including POCVA checks) are operating, and will be alive to information from any source which may be indicative of unsuitability, but it cannot be for Inspectors themselves to determine the suitability of any particular individual.

PARAGRAPH 24 – Complaints

It is essential that there should be a robust and independent external system for receiving and investigating complaints. Given the relatively small number of cases with which the schemes deal, it would be hard to justify establishing a complaints agency devoted solely to this task, but neither do we think that it is sufficient to ask the individual schemes to appoint their own complaints referees. CJI is at present prohibited from undertaking this role itself by s.47(6)(a) of the Justice (Northern Ireland) Act 2002. It is important that whoever is given this responsibility enjoys the confidence of the schemes, the formal criminal justice system and the community, and that they are sufficiently resourced for the task.

PARAGRAPH 25 – Inspection

CJI would recommend that inspections should be annual to begin with. Annex C sets out CJI's thinking regarding the ground that inspections should cover.

Criminal Justice Inspection Northern Ireland
14 Great Victoria Street
Belfast BT2 7BA
028 9025 8000

20 February 2006

PRESS RELEASE

FOR RELEASE: 13:00 hours Monday 5th December 2005

COMMUNITY BASED RESTORATIVE JUSTICE SCHEMES

Welcoming the publication for consultation of the Government's proposed guidelines for community based restorative justice schemes, Chief Inspector of Criminal Justice Kit Chivers said:

“The Criminal Justice Review concluded that community based restorative justice schemes could have a useful part to play in dealing with low-level crime, provided they met the strict criteria specified by the Review.

“One of those criteria was that the schemes should be subject to regular inspection by the independent Criminal Justice Inspectorate (CJI). CJI has always known that it might be called upon to perform this role, and it is prepared for it.

“CJI will be talking with the schemes and with the police and other statutory agencies during the consultation period to make detailed plans for what will be involved. Following the consultation period CJI will publish its proposed inspection framework, drawing on its standard inspection approach and applying it to the guidelines as they are eventually finalised.

“CJI will be taking on this task in the belief that the schemes have the potential to succeed in meeting the criteria; and CJI will, as it always does, inspect in a supportive manner. But if any scheme fails to meet the criteria Inspectors will not hesitate to say so. CJI will report publicly the results of its inspections.”

Notes for Editors

The criteria specified by the Criminal Justice Review of 2000 were that community restorative justice schemes should:

- Receive referrals from a statutory criminal justice agency, rather than from within the community;
- Be accredited by, and subject to standards laid down by, the Government in respect of how they deal with criminal activity;
- Be subject to regular inspection by the independent Criminal Justice Inspectorate;
- Have no role in determining the guilt or innocence of alleged offenders.

Extract from speech to the CJI Stakeholder Conference, 18th Jan. 2006

Community-based restorative justice schemes

CJI has always known that it might be called upon to perform the role of providing independent inspection of the schemes, and it is prepared for it.

CJI will be talking with the schemes and with the police and other statutory agencies during the consultation period to make detailed plans for what will be involved. Following the consultation period CJI will publish its proposed inspection framework, drawing on its standard inspection approach and applying it to the guidelines when they are eventually finalised.

CJI will be taking on this task in the belief that the schemes have the potential to succeed in meeting the criteria; and CJI will, as it always does, inspect in a supportive manner. But if any scheme fails to meet the criteria Inspectors will not hesitate to say so. CJI will report publicly the results of its inspections.

It has been suggested that because some schemes are, it is alleged, questionable in the way they operate at present, CJI should not put its reputation at risk by being associated with them in any way. But it is for the Minister, not for CJI, to decide whether or not, and if so on what terms, the schemes are to be supported. It is CJI's duty to assist the Minister by providing an inspection service if he requests us to do so. CJI is a statutory organisation. We are independent as regards the way in which we conduct inspections and the terms in which we report, but not necessarily in terms of our agenda. The Secretary of State can give us tasks to do. I do not believe that, if CJI sticks to its principles and reports faithfully, without fear or favour, its reputation will be in any way sullied by responding to a legitimate request from Ministers.

In any case, the reputation of CJI is not the main issue here. The main issue is that this initiative, if a way forward can be found, presents a challenge and an opportunity to the communities concerned. If people want their community-based organisations to be entrusted with a role in the criminal justice system they will need to accept that the rules of the game are going to have to change. Giving responsibility to community-based organisations is not compatible with a continuation of paramilitary patterns of behaviour. Violence and threats of violence are no longer going to be acceptable as ways of the communities regulating themselves, and material offences are going to have to be reported and dealt with through official channels. If we are going to involve the communities in the administration of justice and community safety all concerned will need to show that they are ready to observe modern, democratic standards of legality and human rights. The echoes of paramilitarism – the alleged cover-ups of unacceptable acts and the exiling of people who protest – will have to cease. That is the real prize both for the criminal justice system and for the communities it serves.

Inspection of Community-based Restorative Justice Schemes

Draft inspection proposals, January 2006

Reference points

The Guidelines issued by the Secretary of State, together with the UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, would provide the overarching framework for the schemes' inspection.

The basic approach should be that generally used by CJI and described in its handbook 'Notes for Inspectors' (available at www.cjini.org). CJI's 'common core' criteria of Openness and Accountability, Partnership with other agencies, Equality and Human Rights, Learning and Results will all be relevant:

Openness: Are the proceedings open and above board?

Partnership: The relationship to the other agencies of the criminal justice system is at the heart of the proposed Guidelines.

Equality and Human Rights: This would cover not only impartiality but also non-coercion, privacy and the right to a fair trial if requested.

Learning: Are the schemes learning from experience and developing codes of good practice?

Results: What are the outcomes for offenders, victims and the wider community (in terms of reducing re-offending)?

Before any inspection the schemes would be invited to self-assess against these criteria, and organizations with an interest would be invited to comment on their observations of the work of the schemes.

The framework should also take account of other existing relevant methodologies, such as the approach currently being used to evaluate the Youth Justice Agency's Youth Conferencing Scheme.

CJI would always, in accordance with its basic values, inspect in a supportive manner with a view to improvement, but it would be prepared not to endorse, if necessary.

Pilot inspections

It is proposed that two or three schemes should pilot the Guidelines in the first instance. CJI would inspect the pilots as they proceeded to capture any lessons and enable Ministers to adjust the Guidelines as necessary.

Pre-inspection

There would be a pre-inspection before a scheme commenced formal operation, to establish a baseline of information and provide assurance of the potential for a satisfactory level of delivery. Aspects to be inspected would include:

- staffing complement;
- training and induction completed;
- suitability of line management arrangements for staff/volunteers;
- confidential storage for documentation;
- systems and policies in place e.g. complaints, dealing with non-compliance;
- ‘business plan’ for the coming year;
- evidence relating to outcomes.

Regular inspection

Full inspection should be regular for the first few years - we suggest annually, on an announced basis - and interspersed with unannounced inspections. The process would include an assessment of individual schemes and comparison between schemes. CJI would report publicly on the progress of the schemes each year. The process would include an evaluation of the relationship between the schemes and relevant agencies of the formal criminal justice system.

Complaints

There will need to be a robust, independent complaints mechanism for the schemes. CJI will wish to inspect all aspects of the complaints system and its usage.

Record keeping and statistical information

It is for the Northern Ireland Office and the schemes to agree the records that must be kept, but CJI will be glad to participate in discussions about those systems. We recommend that individual case files should be retained by each scheme, and that they should be supported by a standard statistical database. CJI will inspect against the requirements set out by the NIO as part of the funding agreement.

It would be important to clarify in advance whether victims and/or offenders are to be counted as the primary clients of the schemes.

It will be important not to overload the schemes with statistical requirements, bearing in mind that they are small organisations depending to a large extent on volunteers, but ideally the following should be recorded and analysed:

Profile of users:

- Referrals by source, age, gender, religion, geographical area, type and number of “offences”, previous offending history;

- Starters, by the same criteria;
- Completers, by the same criteria.

Process:

- Duration of engagement with the scheme
- Frequency of contact during engagement
- Nature/structure of engagement
- Time taken for decision by the agencies of the formal criminal justice system
- Nature of engagement with criminal justice system agencies

Outcomes:

- In how many cases was financial compensation agreed?
- In how many cases was financial compensation delivered?
- In how many cases was practical compensation agreed?
- In how many cases was practical compensation delivered?
- In how many cases were other outcomes (specify) agreed/delivered?
- How many cases were referred to the formal criminal justice system, and for what reasons?
- How many offenders re-offended within 6 or 12 months?
- Medium and long term outcomes: re-offending/reconviction/re-referrals
- Relationship outcomes for victims, offenders and community

Qualitative Feedback:

Sample satisfaction levels of:

- Victims
- Offenders
- Community stakeholders
- Liaison personnel from local statutory agencies
- Scheme managers, staff and volunteers
- Policy stakeholders within the formal criminal justice system

Costs:

- Establish average cost per completed case and compare with other restorative and conventional justice system provisions

Complaints:

- Number of complaints lodged
- Number of complaints dealt with internally
- Number of complaints referred to external complaints referee
- Outcomes of all complaints