

Alternatives and the Formal Criminal Justice System

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Introduction – The Basic Purpose of Alternatives

Alternatives was set up in a particular time and place with particular concerns. Its priorities were to help reduce anti-social crime and to provide a peaceful alternative to punishment violence. To carry out these tasks, however, Alternatives adopted the principles of community-based restorative justice as the best set of ideas around that could give a sensible guide to the necessary practice. Perhaps the most important theme of restorative justice is the wholeness of society and therefore of particular communities. It rejects the concepts of insiders and outsiders and understands that both offenders and victims are part of the community. Everything that happens in a community is the concern of the community.

Restorative justice is also, plainly, about justice. Its concept of justice is different from and critical of the retributive formal system – concentrating on righting wrongs and mending harm – but it is justice nonetheless. The point is that a community-based restorative justice scheme like Alternatives is coming from the community – the housing estates and neighbourhoods where its people live and work – armed with a legitimate and coherent concept of justice. This sense of justice does not want to replace the formal criminal justice system, though it might propose ideas to it. It has the right, however, to be recognised as a theory and practice of justice with equal value, if a different role and scope, to the formal system.

Another crucial aspect of Alternatives' concept of justice is that it is voluntary. It is understood that a society-wide justice system, a formal system, needs to rely, in the end, on the threat or use of coercion. In total contrast, a community-based restorative justice project can only work if it is wholly voluntary – in the sense that any use or threat of force will destroy its legitimacy and invalidate its co-operative approach.

Alternatives has several years' experience in the Shankill and is now working in five other areas. Daily practice has been concentrated on the intensive programme with young people and on community mediation. However, the experience of the staff, volunteers and committee has been that a wide range of problems and issues arise that require a community response, outside of the particular criminal activities of people who thus become under threat by paramilitaries.

Alternatives has also sought, largely successfully, to be representative of the communities in which it works. This is not just a matter of a committee with a wide range of representation but also of the relationship built up with the community by the project's daily work. Where there is trust in the goodwill, confidentiality and effectiveness of a project the people will bring their problems to it. That is community legitimacy.

It is suggested that this mixture of theory and practice means that Alternatives does not see itself as just another project, or network of projects, working with young people at risk. It is an indigenous group of professionals and volunteers, armed with a distinctive and sophisticated concept of restorative justice, practising justice on a daily basis with the widest support of the community. As such it has the following potential roles:

- Working with people referred by the community in a variety of restorative ways
- Helping solve neighbourhood disputes, working for social peace

- Leading community discussion on crime, punishment, justice and community safety
- Creating formal and informal links with the formal criminal justice system, working with it as a partner to create safe and just communities.

The breadth and depth of Alternatives' work and the fact that it is an organisation explicitly committed to doing justice in a broad range of ways, imply that it will be a highly significant component of the community side of any statutory-community partnerships established in the criminal justice field. Of course, there will be other components, from generalist residents' associations to specialist youth-at-risk projects. However, the scope of the restorative approach to justice in general and the range of Alternatives' interests in particular point to the potential for its projects to take a lead in partnership with the statutory criminal justice system in areas where it operates.

For that reason, this report explores a wide range of potential points of interaction between Alternatives and the formal criminal justice system, some which may have higher priority than others. It will be for the organisation itself to determine where it wishes to put its emphasis.

In principle, there are two ways in which statutory-community partnership can operate – in cases and circumstances initiated by the formal system and in those initiated by the community side. From Alternatives' point of view this means, on the one hand, the extent to which it can assist, support and modify the operations of the formal system and, on the other, the extent to which the formal system will allow and, hopefully, support the autonomous operations of the projects. In practice, these two forms of interaction may be combined, especially as co-operation develops. In a functioning partnership, it should not matter where a case originates, nor should the practical righting of wrongs be wholly determined by legalistic formality. For the sake of clarity, however, what follows is divided into two parts – the operations of the formal system and then the autonomous operations of Alternatives.

Part I - The Operations of The Formal System

Community Safety

The Formal Framework

The operation of a community safety strategy is only partly a criminal justice matter and when it comes to neighbourhood level hardly at all. It is, however, directed at helping to produce one of the main anticipated outcomes of a justice system – a community that is and feels safe.

Crime prevention and community safety projects have been run for many years by a variety of mainly voluntary organisations. In 1996 a Community Safety Centre was established with a multi-agency advisory committee chaired by the NIO. This Centre carried out some advisory and promotional work but did not connect in a strategic way with the community.

The Criminal Justice Review recommended that a Community Safety Strategy for Northern Ireland be developed. It also suggested that the Community Safety Centre be turned into a Community Safety Unit located within the civil service, in the NIO. A Draft Strategy was published in April 2002 and the Community Safety Unit is already operating. There have been a number of consultation seminars held and the final strategy document was published on 18 March.

In general, the proposed structure for promoting community safety is over-centralised and characterised by an almost wholly "top-down" ethos. The central Community Safety Unit,

located within the civil service structure, has lead and main responsibility for training, criteria for and decisions on funding of local partnerships, criteria for and decisions on funding for local projects, and prior “advice and guidance” on local strategies and local problems as well as a series of central functions:

- Develop a community safety strategy for Northern Ireland
- Influence other Government Departments’ policies to ensure that community safety issues are recognised and addressed
- Provide information, advice and guidance to local community safety partnerships
- Fund projects that assist to deliver central government crime targets
- Fund projects that deliver local targets and innovative projects
- Forge relationships with those dealing with community safety in other countries
- Advise Ministers on community safety issues.

The Strategy has a discussion about appropriate local (District Council level) structures. The Criminal Justice Review favoured putting community safety as one of the responsibilities of the District Policing Partnerships. The government rejected this but felt that no permanent statutory solution was possible while the Public Service Review (the study by the Assembly of local government structures) was still underway. The Draft Strategy came down in favour of laying the community safety responsibility on Local Strategy Partnerships – the revamped local Council-civil society structures set up to deliver PEACE II at a local level. This does not appear to have happened, however, except in a couple of cases.

The Final Strategy talks about the establishment of “voluntary partnerships” based on District Council areas until a long-term statutory solution can be achieved. It claims that 25 of the 26 areas have expressed an interest and 15 have either formed a partnership or held a seminar on the subject. It is not clear who within the District Council areas are supposed to take the initiative but one way or another the Council itself is expected to be involved.

The Community Safety Centre web-site lists just seven existing partnerships, in Antrim, Ards, Armagh and Dungannon, Ballymena, Lisburn, Newtownabbey and Ravenhill in Belfast. None of these are Local Strategy Partnerships and they have a variety of histories and structures. For the time being, at any rate, it appears that “Community Safety Partnerships” will be ad hoc structures set up where there is local demand. They have significant funding importance, however.

The Community Safety Unit ran a Challenge Competition for community safety projects for the 2002-3 year (there is a total budget for community safety of £2.5m for each of the three years 2003-4 to 2006-7; £1,750,000 will be available per year for grants). 30 groups have been funded this year and their names are on the web-site (www.communitysafetyni.gov.uk). The general eligibility criteria were:

“Eligibility is confined to applications from CSPs or to a partnership/inter agency group that can demonstrate representation from a broad range of statutory service delivery providers and appropriate involvement of the voluntary, community and business sectors and which will become the core of any formal local CSP. Where a CSP has been established applications must be submitted through this partnership. All applications must have the support of the police locally and this must be evidenced in the application.”

Neighbourhood projects must submit their funding applications through and with the support of Community Safety Partnerships where they exist or through partnerships that will eventually turn into CSPs. The support of the police for a project has to be formalised on the application form. In

practice, it seems that some community safety projects have been funded without going through a formal CSP structure. Further information has been sought on this.

The relationship between the NIO Community Safety Strategy and the policy of other government departments and agencies that also fund community safety projects is not clear. DSD are currently carrying out a review into their community safety policy which, amongst other things, involves developing a view on community-based restorative justice projects. In principle, the NIO should not be able to direct the policy of devolved government departments or other agencies, but this remains unclear.

The Potential Scope for Alternatives

“Community safety means preventing, reducing or containing the social, environmental and intimidatory factors which affect people’s right to live without fear of crime and which impact upon the quality of life. It includes preventative measures which contribute to crime reduction and tackle anti-social behaviour. It is about local solutions to local problems which have been identified by local people.”

The above is the definition of community safety in the NIO Draft Strategy. It has some curious features and the last sentence is hardly carried through in the Strategy. Nonetheless, it demonstrates the wide scope of the concept. The Community Safety Unit also, in principle, adopts the traditional holistic approach. Its preferred sequence for local projects is, first, a community safety audit and, second, a range of projects to address issues identified which may involve crime prevention, tackling anti-social behaviour or environmental initiatives.

This focus is different but complementary to that of Alternatives. It is unlikely that a local project would want to spend all its energies on the very wide range of concerns and activities that come under the community safety rubric. On the other hand, it would be strange if a local restorative justice project did not see the benefits of being closely associated with a community safety initiative. The information on problems and patterns of crime and antisocial behaviour that the audit would throw up would be important for the project to know as a possible basis for prioritising its activities. The agencies involved would also be virtually identical to those that the Alternatives project would engage with.

It is also important that the restorative justice perspective is fed into local community safety initiatives. Without an understanding of the limitations of the formal system and an appreciation of the effectiveness of local action for justice, community safety programmes might become simply forums for venting insecurity and demanding more official action.

It may be, then, that Alternatives activists may want to take the initiative in encouraging community safety partnerships where there are none. Certainly, they should be part of any that exist. Local projects should be aware of the risk of diluting their efforts but should also see community safety partnerships as one way of building the state/community co-operation so necessary for effective local justice.

Policing

The Formal Framework

This section concentrates on the community consultation role of the police rather than any “operational” co-operation that will be discussed in subsequent sections.

For all the controversy that it has generated, the Patten Report certainly had a clear view of the importance of the community in policing. A genuine partnership with the community, it was argued, is at the heart of democratic accountable policing.¹ Such a partnership was also viewed by Patten as central to effective policing.² Within this paradigm of police\community relations, policing is not something done to the community but rather as a matter of *“collective responsibility, a partnership for community safety”* (Patten 1999: para 1.7) with the police having certain professional functions within a network of agencies, groups and individuals at local community level. The Patten Report, however, argues that *“partnership between the police and the community goes well beyond formal arrangements of this sort...”* (Patten 1999: Para 7.4) It recommends that *“policing with the community should be the core function of the police service and the core function of every police station.”* (Para 7.9) It argues for devolved and decentralised power and responsibility down to local District Commanders with neighbourhood policing teams, headed by a *“beat manager,”* and that each such officer *“and his/her team should organise their own community liaison mechanisms.”* (Para 7.14) There are a string of recommendations to make these local police service “community friendly” and more responsive to local needs (Patten 1999: Chapter 7).

1 *“Accountability involves creating a real partnership between the police and the community – government agencies, non-governmental organisations, families, citizens; a partnership based on openness and understanding; a partnership in which policing reflects and responds to the community’s needs.”* (Patten 1999: Para 1.16 see also the whole of Chapter 5)

2 *“Policing should be a collective community responsibility: a partnership for community safety. This sort of policing is more difficult than policing the community. It requires an end to “us” and “them” concepts of policing”* (Patten 1999: Para 1.16 See also Chapter 7).

In addition, the report suggested that each of the 26 District Council should establish District Policing Partnership Boards which would have a bare majority of elected Councillors in proportion to their party strength in the local council. The rest would be from business, trade unions and the community at large. The role of the DPPB would be to *“reflect community concerns to the police.”* (Patten 1999: Para 6.30) The Commission also reported: *“Like the Policing Board, the DPPBs should be encouraged to see policing in its widest sense, involving and consulting non-governmental organisations and community groups concerned with safety issues as well as statutory agencies.”* (Patten 1999: Para 6.29) The report also recommended that Belfast (which has one city council) should be divided into four District Partnership Boards.

The slightly differently named District Policing Partnerships have now been set up, though the proposed division in Belfast is one of the changes to legislation that may come out of the current negotiations over the reformation of the Executive. The current ban on ex-prisoners serving as independent (as opposed to Councillor) members of the Partnerships may also be removed. In summary, the main responsibilities of the DPP are to:

- Provide views to the District Commander on any matter concerning the policing of the district.
- Monitor the performance of the police in carrying out the policing plan.
- Make arrangements for getting the views of the public on matters concerning the policing of the district and gaining their co-operation with the police in preventing crime.

- Act as a general forum for discussion and consultation on matters affecting the policing of the district.

These two main levels of police-community consultation, the District and neighbourhood levels, are shown in diagrammatic form in Annex 1.

The Potential Scope for Alternatives

The way in which an area is policed is clearly a major factor in the way an Alternatives project works. The extent to which the police understand and trust the community is the extent to which they going to carry out their functions sensitively and effectively. The extent to which the community trust and respect the police is the extent to which they will be prepared to assist with information and active support. In many Loyalist communities, we are far away from mutual understanding, trust and respect. The consultative mechanisms established by Patten must be one of the methods to change that situation.

For Alternatives, there are obviously the two levels of impact (leaving aside any general policy influencing of the overall Policing Board that NIA may wish to engage in), district and neighbourhood. Few people in the community are better placed than Alternatives staff and volunteers to reflect back to the police the priorities of local people, the effectiveness of various forms of policing, where and how crimes are taking place, how to develop trust and respect, and so on.

At a District level, Alternatives may have contacts with the elected or independent members but, in any event, should try to establish ways in which its voice can be heard. Some, at least, of the meetings are in public with the right of contribution and Alternatives projects might consider always having a representative present at such events. At a local level, the form of consultative mechanisms – the responsibility of the officer in charge of each Beat – may vary. Alternatives staff and volunteers may wish, together with others from the local community, to take the initiative in encouraging open and effective mechanisms at neighbourhood level and then participating actively in them.

The Youth Justice System

The Formal Framework

The juvenile justice system has been significantly modified by the Criminal Justice Review and the subsequent legislation, the Justice (Northern Ireland) Act 2002. The main, and apparently radical, change was the introduction of Youth Conferences as the main method of determining both diversionary methods and the results of prosecution. This is an avowedly restorative justice approach though the possible mixing of punitive and restorative measures and the lack of community involvement in the process weakens the concept in the eyes of some commentators.

The main features of the youth conference system are as follows:

- They may be diversionary – that is ordered by the prosecutor where s/he would otherwise have a clear intention to prosecute and where there is an admission of guilt; such a conference may recommend no action, prosecution or (by agreement with the offender) that s/he undertake a youth conference plan.
- They may be court-ordered, after a trial or an admission of guilt in court; such a conference may recommend that the court deals with the offence through its usual powers, that the offender

undertakes a youth conference plan or that a custodial sentence is imposed and the offender undertakes a plan (the offender must agree to the last two possible recommendations).

- A juvenile offender must be referred to a youth conference except where the fixed adult sentence would be life imprisonment, where it would only be triable on indictment or where it is a scheduled offence, though in the latter two cases the court has discretion to send the case to a youth conference.

- A youth conference plan can mean that the child be required to do one or more of the following-

- (a) apologise to the victim of the offence or any person otherwise affected by it;

- (b) make reparation for the offence to the victim or any such person or to the community at large;

- (c) make a payment to the victim of the offence not exceeding the cost of replacing or repairing any property taken, destroyed or damaged by the child in committing the offence;

- (d) submit himself to the supervision of an adult;

- (e) perform unpaid work or service in or for the community;

- (f) participate in activities (such as activities designed to address offending behaviour, offering education or training or assisting with the rehabilitation of persons dependent on, or having a propensity to misuse, alcohol or drugs);

- (g) submit himself to restrictions on his conduct or whereabouts (including remaining at a particular place for particular periods); and

- (h) submit himself to treatment for a mental condition or for a dependency on alcohol or drugs.

- The Youth Court is not bound to accept the Conference recommendation, though the intention clearly is that it normally would. It can also vary the terms of the Plan, with the consent of the offender. The Court sets a time-limit for the performance of the plan.

- Youth Conference Co-ordinators must be civil servants (a requirement only inserted in the legislation) and will be part of a new Conference Co-ordinating Agency. As well as running the conference, the Co-ordinator (or people in collaboration with him/her) must monitor the performance of the plan (see below).

- As well as the Co-ordinator, the child, an appropriate adult (normally a parent or guardian, failing them their legal representative or a social worker or any responsible person over 18) and a police officer must attend the conference; the victim, someone representing the victim, the child's legal representative acting as an advisor only and any officer supervising any order in force are entitled to attend and the Co-ordinator may allow other people to attend if s/he thinks it would be of value.

- The Conference takes the place of the Pre-Sentence Report into the personal circumstances of an offender.

An attempt to represent this process diagrammatically will be found in Annex 2.

The Potential Scope for Alternatives

The diagram shows the various points at which Alternatives projects might intervene and suggests ways in which that might happen. There are three main areas, all corresponding to the points where an offender is returned to the community by the formal system.

The first is where there is no prosecution and the offender is “diverted” in some way from further engagement with the formal system. The simplest of these is caution, informal or formal, at the instigation of the police or the prosecutor. It may often be appropriate that some community-based support is offered to a young person who has been cautioned and this is particularly an area for liaison with the police. Apart from a diversionary conference, other forms of diversion are likely to be more specific references to particular projects. Alternatives’ intensive programme might be one of these and other possibilities might be developed. This might be a point where formal referral to Alternatives is possible.

The second possible area of intervention is at the Conference stage. It appears that the formats of diversionary and court-ordered conferences are designed to be the same and the intention is to develop them in parallel. The main difference is that a diversionary conference cannot recommend custody.

There is no guaranteed place in a conference for community representatives but it may be that Alternatives staff or volunteers could be present, either as a responsible adult (if appropriate and assuming the project was already involved with the offender) or as a potentially interested party at the discretion of the Co-ordinator. Clearly the possibility of participation in a conference will depend on developing a good relationship with both the Conference Agency and individual Co-ordinators. The policy objective here would not necessarily be to agree formal protocols with the agency but to allow maximum discretion to the Co-ordinators to involve relevant people from the community.

There is potentially a very significant role for Alternatives in victim-offender mediation in support of the conference process. It will presumably be the responsibility of the Coordinator to oversee contact with the victim, though perhaps the police will do the leg work. In any case, many victims may well be fearful, resentful or sceptical about this approach from the formal system. Much of the power of a restorative approach is lost if the victim does not participate. In communities where it operates, it may well be that Alternatives could be a helpful go-between, persuading and supporting the victim to participate. There is also no reason why informal victim-offender mediation could not be a precursor to a formal conference.

Similarly, in any referral of an offender back to the community, the people of his or her neighbourhood are going to have to live with them. Mediation between the offender and the community may be an important role for Alternatives, before or after a conference.

Finally, Alternatives might have an important role in helping to create the Conference Plan. It will effectively be a package of measures, some restorative and others designed to support the offender in leading a peaceful, law-abiding life. The Criminal Justice Review said in Recommendation 162:

“We recommend that youth conference co-ordinators should take the lead in developing networks and inter-agency arrangements in local areas, and should co-ordinate the development of a local menu of programmes and options that might form part of a youth conference order. They should develop close links with a variety of organisations and groups with an interest in youth conferences

in local areas, including funders, programme providers, community groups, sentencers, the police, probation, social services and education authorities. [para. 9.86]"

This recommendation was accepted by government. Whether Youth Conference Coordinators, obliged to be civil servants, and located in a new central agency are the best placed to create these local networks remains to be seen. However, in principle, they should be very happy to have community-based collaborators, especially those applying the very same restorative practices that they will be using in their conferences, helping them in the process. The scope for Alternatives projects to be those local collaborators hardly needs to be stressed.

A very important point arises here, however, which has equal relevance to the adult criminal justice system. If involvement with Alternatives was to be part of a Conference Plan, that engagement would necessarily be under the supervision and authority of the Co-ordinator and finally of the court. That means that, although Alternatives would presumably be doing its normal kind of work with an individual, it would be doing it at the behest and under the supervision of a statutory body. Once an individual is "owned" by the statutory system, in the sense of being subject to the authority of a court, there is little or no chance of he or she being referred out of the system without supervision. Only in the case of a one-off diversion referral (as opposed to a diversionary conference plan) and reintegration after any court order has expired, might there be a formal referral to Alternatives to work autonomously with an individual.

The third main point of contact is post-custody. There are a number of reintegration projects related to the juvenile justice centres. Many of these concentrates on the offender as an individual, however, rather than the offender-in-the-community. It is Alternatives' strength that it always sees individuals in their community context. It therefore has a particular role to play in the reintegration of offenders from the communities in which it operates. It will be to negotiate effective working relationships with the youth justice centres and their ancillary structures such as Whitefield House.

The Adult Criminal Justice System

The Formal Framework

There is not a great deal in the Criminal Justice Review and the subsequent legislation that materially affects the normal criminal justice process in a way that would affect the potential for involvement by Alternatives. The role of the prosecutor is enhanced and that department will have more responsibility for custody/bail decisions and diversion, both of which indicate that Alternatives should attempt to build some sort of relationship with it. There should also be more care for victims and Alternatives may have a role in supporting them as well as facilitating victim-offender mediation.

Looking further ahead, the Criminal Justice Review recommended, and the government accepted, that pilot schemes for young adults and adults "based on the restorative philosophy" should be introduced and evaluated. There is no sign of this happening as yet, nor any indication of what form such schemes could take.

The basic criminal justice process is as follows:

- Arrest or summons
- Charge or caution (or some other form of diversion)
- Remand – bail or custody

- Trial of the facts or admission of guilt
- Pre-Sentence Report and Sentence
- Custodial or non-custodial sentence
- Release and reintegration.

This process is displayed diagrammatically in Annex 3.

The Potential Scope for Alternatives

The diagram shows the agencies involved at each stage and the potential involvement of an Alternatives project. Just as in the case of the youth justice system, the main areas for involvement are when an offender is referred back to the community by the formal system. Again, it is important to note that it is only in the case of diversion (possibly) and reintegration after any order or sentence has run out, that any involvement by Alternatives could be on the basis of the autonomous workings of its own restorative system. Otherwise its role will either be supportive and ancillary to the process (helping victims, for example) or working subject to the conditions of some sentence or order of the court.

As in the case of the youth justice system, Alternatives' involvement would mean carrying out various forms of victim-offender-community mediation and participating to a greater or lesser extent in the construction of a support package. Depending on the point in the process, a support package might be more or less formal. It might form the content of conditions in a probation order, for example. Again, reintegration is an area where there is great need for the restorative approach and where Alternatives is excellently placed.

Conclusion

In concluding this section on collaboration with the formal system, we perhaps need to repeat that Alternatives does not see itself as just another project working with offenders or people at risk. Nor is it, in spite of its origins, restricted to providing a particular alternative to paramilitary punishments. It actually delivers a sophisticated form of justice in the community in a way which should be complementary to the formal criminal justice system. The fundamental policy objective in negotiating with the statutory agencies should therefore be to achieve recognition of the legitimacy and effectiveness of the community-based restorative process.

Part 2 - The Autonomous Operations of Alternatives

In this section, we will discuss the operations of Alternatives, current and potential, that are not dependent on the formal processes of the criminal justice system. In effect this means work with cases and situations that originate within the community rather than those that are already the subject of attention by the formal system. Again, we will look first at the formal legal and policy framework and then at the work of Alternatives.

The Formal Framework

There is no legislation that directly covers the operation of community-based restorative justice. Such projects have never been regulated or licensed and, in principle, unless actions actually break some law, citizens have the right to come together for any purpose including mediation and the resolution of disputes. Obviously, an incorporated organisation, and particularly a charity, has to follow corporate law and regulation but that has never proved to be an obstacle for restorative justice projects.

There is one particular law, however, unique to Northern Ireland amongst UK jurisdictions, which may be relevant in some circumstances. This is Section 5 of the Criminal Law Act (Northern Ireland) 1967. Under the heading “Failing to give Information” this states:

“Where a person has committed an arrestable offence, it shall be the duty of every other person who knows or believes:

*(i) that the offence or some other arrestable offence has been committed; and
(ii) that he has information which is likely to secure, or to be of material assistance in securing, the apprehension, prosecution or conviction of any person for that offence;*

to give that information, within a reasonable time, to a constable and if, without reasonable excuse, he fails to do so then that person is committing an offence.”

Arrestable offences are defined in various statutes but basically include all offences other than those which would be dealt with by summons if they were detected.

As far as we know, there has never been a prosecution under this section, but it is nonetheless law. One could certainly imagine circumstances where disclosure in a mediation session, for example, could lead to disclosure of the commission of an arrestable offence. According to this law, a police officer should be given that information as soon as possible.

This creates issues around confidentiality that have arisen in youth, community and social work. This legislation has been particularly controversial when it comes to drugs where the legal requirement to inform a police officer of cases of simple possession would make any kind of trusting relationship with young people impossible. In fact, the Probation drug guidelines blatantly ignore this law and say that they will not inform the police unless dealing is involved.

The problem for Alternatives might be that it could be argued that disclosure of crimes might be incidental in other kinds of work but is fundamental to restorative justice. If it were argued that a project was breaking the law because of its very structure and day to day operations there could be real difficulties. It may be, of course, that disclosure of detailed evidence about a particular offence, rather than a general admission of bad behaviour, is relatively rare. Nonetheless, in principle, this law is a particular constraint or obligation on the practice of community-based restorative justice.

The only other formal domestic regulation is not in legislation but in “government policy.” This consists of two documents that made their first appearance as a government input to, ironically, the “confidence-building” strand of the peace talks in March 1998, were re-printed in full in the consultative document for the Criminal Justice Review and summarised in recommendation 168 of the Review itself. The government accepted that recommendation and added some riders that we will discuss below. We should note, however, that these positions simply represent the current opinion of the Northern Ireland Office and are not enshrined in any legislation or regulation. Furthermore, it is unclear to what extent this policy is binding on devolved government departments in respect of, for example, their funding policies.

Recommendation 168 reads:

“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. receives 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]"

In the Criminal Justice Review Implementation Plan this recommendation was accepted and the following rider attached:

"The Government looks forward to working in close co-operation with accredited schemes, and to assisting those schemes which are actively working towards accreditation. However, schemes which set out to deal with criminal matters and which do not attain accreditation pose a serious threat to the human rights of those involved and risk undermining the rule of law. In order to facilitate the move towards accreditation the NIO will draw up guidelines, developed in consultation with relevant parties, including statutory agencies and community schemes, for the operation of the schemes which would bring them into line with the Review's recommendation."

Community-based restorative justice schemes might see these statements as both a threat and an opportunity. On the one hand, the refusal to countenance community referrals seems to rule out the kind of autonomous operations we are discussing in this section. On the other hand, both the recommendation and the government response seem to point to a serious willingness to encourage the sort of collaboration with the criminal justice system that we discussed in Part 1. The scenario of accredited, inspected projects receiving referrals from a variety of criminal justice agencies fits in perfectly with the range of possible engagements with the formal system that we discussed above.

The perspective of such formal involvement creates no problems for Alternatives and it has made several efforts to engage with relevant statutory agencies. Unfortunately, there is so far, no sign whatsoever of the process of consultation between the NIO, statutory agencies and community restorative justice schemes that the Implementation Plan promised. That fact, together with the NIO's recent history of trying to starve community schemes of funding, makes the claim that they "look forward" to "assisting those schemes which are actively working towards accreditation," look a little hollow.

The refusal to countenance direct referral of cases from the community to the like of Alternatives appears to rule out the vast majority of current work, at least in those cases where alleged criminal activity might be involved. The other restrictions are much less significant. Alternatives has no wish to try the guilt of any person and, as the Criminal Justice Review personnel should have known, taking responsibility for one's behaviour is a condition of participation in restorative justice. There is no problem with training, accreditation or inspection – though no doubt Alternatives would wish to be involved in discussion of the detail of them.

The question of informing the police about every case, whether because of the Criminal Law Act or some future regulation, would give rise to problems in current circumstances. Many in the

community regard the police and the whole formal system as an alien and threatening structure. Furthermore, a proper restorative process could not be operated if it were seen as a lottery whether the police would step in, arrest participants and prosecute them through the formal process. In the future, however, if community policing works, and if formal protocols could be agreed that limited the discretion of the formal system to intervene in an operating community case, the involvement of the police could be seen as a plus rather than a minus.

“The Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters,” (Vienna Principles) adopted by the UN last year, address the issues involved in bringing restorative practices into some kind of engagement with the formal system. Although there is nothing in Alternatives current practice that contradicts them, they do imply that, in the case of any breakdown of the restorative process, the case be referred on to the normal criminal process. The issue will be building basic trust between agencies of the state and community based schemes.

Currently, however, in the absence of any movement on developing collaboration between community schemes and the formal system and the purported ban on community referrals, there is no space within current NIO policy for Alternatives or any other community-based restorative justice scheme to exist. It will clearly be a policy objective to change that situation.

The Potential Scope for Alternatives

The above discussion has highlighted some of the constraints and opportunities provided by the legal and policy framework and this section will not seek to repeat that. It may be useful, however, to look to a vision of the future that combines the two approaches of working at the initiative on the one hand of the formal system and on the other of the community. First, however, let us remind ourselves that this document is about Alternatives and the criminal justice system. It is therefore about cases and situations where a crime has been committed or where crime prevention is the issue. There are many other potential spheres of activity, particularly in relation to community disputes, schools and other institutions where restorative practices are appropriate but the involvement of the criminal justice system certainly is not.

The diagram in Annex 4 shows a stylised process of community-based restorative justice that takes referrals both from the community and the formal system. It is not an attempt to represent Alternatives’ current practice, nor what it should do, simply what the possible elements of a process might consist of.

The implication of the discussion in the previous section is that where cases involve serious crimes, there needs to be a relationship with the formal system, whatever the source of the referral. Also, as will be readily understood from examining it, the diagram implies that a statutory referral involves the whole case being handed over to the community-based scheme, subject to referral back to the formal system in case of breakdown. That is different to, but does not contradict the more partial engagement that the element-by-element discussion in Part 1 described.

The construction of such an operation as is described in the diagram would involve a significant amount of negotiation with statutory agencies and perhaps new legislation. Some of the issues that would need to be cleared up would include:

- Criteria for both statutory and community referrals especially, in the latter case, when referral on to the formal system should happen
- Connected to the above – criteria for the operation of both police and prosecutorial discretion

- The status of restorative outcomes in particular types of cases, especially whether legally binding or not
- Acceptable arrangements for supervision and monitoring of outcomes
- Criteria and circumstances for notification and consequences of failure of restorative package.

Conclusion

It is hoped that this paper has identified the various opportunities and problems that Alternatives faces when attempting to engage with the criminal justice system. Though the opinions of the author will often have been evident, it is for the organisation to examine options, take decisions and set priorities.

The period ahead is one where the attitudes and practices will still have much of the flavour developed over years of conflict while attempting to construct new relationships and methods of work. One difficulty for Alternatives will be its necessary concentration on work with people under threat because of their perceived criminal behaviour. Of course, in many cases this is not a matter of resolving the problems a specific crime has caused but of addressing a dysfunctional lifestyle. Nonetheless, even if it wanted to, Alternatives cannot abandon the area of criminality and it is there that some of the problems discussed in the latter part of the paper arise.

Nonetheless, the overall picture is one of opportunity for an organisation committed to justice working in a period where the appetite for effective solutions based on partnership is, at least temporarily and at least in theory, strong on all sides. It will be important to develop a set of clear policy positions and priorities and a strategy for achieving them. It is hoped that this paper will have contributed to that process.

26 March 2003