

Restorative justice: the
Government's Strategy –
*Responses to the
consultation document*

May 2004

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I Introduction

by Paul Goggins, Parliamentary Under-secretary of State for Correctional Services and reducing re-offending

In July 2003 the Government published *Restorative justice: The Government's Strategy*. We received over a hundred responses to that consultation document. The responses came from a wide range of criminal justice agencies, voluntary organisations and individuals – including some from abroad – and contained a wealth of innovative, thoughtful and constructive comment. I am very grateful to everyone who responded.

The responses broadly endorsed our strategy. The four overarching themes that emerged highlight the need to strike the right balance between our twin aims of encouraging the development of high quality restorative justice where we already know it works, and carrying out further research, as the basis for future policy.

First was the need for careful implementation of restorative justice. Given the sensitivity of bringing victims and offenders into contact, many responses welcomed the strategy's commitment to an evidence-based approach, and warned against a rushed or piecemeal 'roll out' of restorative justice. I recognise that, while we need to maintain momentum and build on the growing enthusiasm there is for restorative justice, we also need to ensure that it is done to the highest possible standards. We will continue to develop the evidence base through a programme of pilots. And, as promised in the strategy document, we have brought together a group of experts to advise Government on training and accreditation. The group has just published *Best practice guidance for restorative practitioners*, endorsed by a wide range of agencies, and later this year the National Criminal Justice Board will publish guidance on implementing restorative justice for Local Criminal Justice Boards and criminal justice agencies.

A second message in many of the responses was that restorative approaches mean a cultural change for the Criminal Justice System. Many responses argued that restorative justice should not be seen as just another 'tool in the toolbox', but as a new approach to justice. I have no doubt that restorative approaches *can* be successfully introduced within the Criminal Justice System, alongside interventions to protect the public, reduce re-offending and punish offenders. This will require a greater commitment to the needs of victims and communities and a willingness to support them to find solutions to the harm caused by crime. This shift in emphasis underlies all our key initiatives to reform the Criminal Justice System, including the National Victims and Witnesses Strategy, reform of police service to increase community engagement and public accountability, and the creation of the National Offender Management Service (NOMS). NOMS and the Youth Justice System will be required to take account of victims' needs when carrying out their work.

A third theme was that both voluntary and statutory agencies have a role to play in delivering restorative justice, and should work in partnership. Rather than restorative justice being the preserve of any one profession, the responses argued that the way to assure quality is by requiring any practitioner – whether a community-based volunteer or a criminal justice professional – to meet the same standards of training and accreditation. We recognise that the voluntary sector has provided much of the

enthusiasm and innovative practice that has underpinned the growth of restorative justice so far, and the implementation guidance from the National Criminal Justice Board will encourage criminal justice agencies to make full use of both voluntary and statutory sector expertise.

The fourth theme was that public understanding and acceptance of restorative justice was critical to its successful development, especially because it relies on the willingness of victims and community members to participate. Some responses suggested a public information campaign making clear how restorative justice helps victims and holds offenders accountable. I believe that these messages are right, but that public support will come about not through an advertising campaign, but as gradually more and more individual citizens experience restorative processes for themselves. The work itself is its own best advocate.

I hope this document, which summarises the many excellent and informative responses we received, and gives an update on the strategy, will stimulate further thinking and activity. As we develop the policy framework for the growth of restorative justice we will continue to consult: on standards; restorative approaches to tackle anti-social behaviour; the area of restorative approaches in domestic violence cases; and on how to integrate restorative approaches into mainstream criminal justice. As we do this, I look forward to a continuing partnership with all those involved in restorative justice.



Paul Goggins

Parliamentary Under-secretary of State for Correctional Services and reducing re-offending

2 The Government's Restorative Justice Strategy – Update and Next Steps

This section sets out the workstrands of the strategy as published in July 2003, and outlines progress and next steps on each workstrand. The main new commitments we have made in implementing the Strategy since July are as follows:

- We will publish, by the end of 2004, guidance for Local Criminal Justice Boards, agencies and their partners who wish to develop their use of restorative justice, to help them provide a high standard of service to victims, drawing on available best practice.
- We will ensure that meeting the needs of victims, including through restorative processes, is established as a core part of the work of the National Offender Management Service (NOMS) as we lay out our plans for the new organisation.
- We will also support and give proper recognition to the growth of restorative and victim contact work in the youth justice system by requiring Youth Offending Teams (YOT) to take account of victims' needs while carrying out their work.
- We will pilot in at least one area the provisions of the Criminal Justice Act 2003 which allow sentencers to mandate the use of restorative justice as part of sentences served in the community.
- We will publish a consultation document on the use of restorative justice in cases involving domestic violence, and issue a clear policy statement in the light of the responses.

Workstrand One: Restorative justice in policing and community safety

Commitments in July 2003

- We will publish the draft Code of Practice for the conditional caution, for consultation, later this year with a final version in 2004.
- We will pilot and evaluate the use of restorative justice as part of the conditional caution, followed by the national roll-out of conditional cautioning in 2004.

Developments

- The draft Code of Practice was published for consultation on 18 February 2004. The consultation process ended on 31 March and the draft Code was laid before Parliament on 19 April for Affirmative Resolution.
- The Government has decided upon a phased implementation of conditional cautioning and is currently selecting areas for the first phase of implementation, at least two of which will use restorative approaches to conditional cautioning.

Next Steps

- The conditional caution phased implementation is currently planned to begin in July 2004, subject to the Code of Practice being approved by Parliament, and its first 12 months will be evaluated. Other areas will be able to introduce conditional cautioning following the evaluation.
- The Code of Practice and additional guidance on restorative approaches to conditional cautioning will be available shortly on the Home Office website.
- The Code include a general steer as to how the conditional caution fits alongside other disposals, such as Fixed Penalty Notices; and more detailed guidance will be available on this point in due course, including updated Association of Chief Police Officers (ACPO) Gravity Factors, Home Office Circulars on Simple Cautioning and Conditional Cautioning, and process maps which local areas will be able to tailor to their particular needs and practices.
- We will formulate best practice in the use of restorative approaches to anti-social behaviour in the delivery of Acceptable Behaviour Contracts (ABCs) and through community conferencing. Information will be posted on the Home Office Anti-Social Behaviour 'Together' website¹ as and when best practice is available.
- We are keen to help police make best use of the new street bail provisions under the Criminal Justice Act 2003 to improve delivery of diversionary schemes, including restorative justice². We will shortly be publishing a consultation document on police powers setting out proposals in this area.

Workstrand Two: Restorative justice as a diversion from prosecution

Commitments in July 2003

- We will publish plans for the diversion pilot on the Home Office website later this year.
- The pilot is intended to run for at least a year, with results of the evaluation, including reconviction figures, available some 18 months after its completion.

Developments

- The specification for the restorative justice diversion pilot, diverting adults who plead guilty to more serious offences into restorative justice, was published on 27 October 2003. Following a tendering exercise, the Justice Research Consortium (JRC) was selected to run the pilot in London.

Next steps

- The restorative justice diversion pilot is planned to begin in July 2004, when the conditional caution is introduced. The pilot will run for approximately 21 months. Details of the project are available on the Home Office website³.

1 www.together.gov.uk.

2 For example, schemes like the Milton Keynes Retail Theft Initiative – see 'Restorative justice: the Government's strategy', page 15 at www.homeoffice.gov.uk/justice/victims/restorative.

3 www.homeoffice.gov.uk/justice/victims/restorative/diversionpilot.html.

Workstrand Three: Developing victim-offender contact post conviction

Commitments in July 2003

- We will develop a map of restorative provision in the correctional services by April 2004.
- We will set up a restorative justice network for the correctional services by April 2004.
- We will issue best practice guidelines for restorative justice in the correctional services by March 2005.

Developments

- Initial mapping of restorative provision across the Criminal Justice System is now being taken forward as a foundation for the restorative justice implementation guidance for Local Criminal Justice Boards to be produced later this year. The guidance will set out available best practice for all agencies, rather than just correctional services.

Next steps

- We will ensure that meeting the needs of victims, including through restorative processes, is established a core part of the work of the new National Offender Management Service.
- We will pilot in at least one area the provisions of the Criminal Justice Act 2003 which allow sentencers to mandate the use of restorative justice in sentences served in the community.

Workstrand Four: Delivering more high quality reparation post conviction

Commitments in July 2003

- We will set out more detailed plans for developing quality reparation in prisons and as part of community punishments in 2004.

Developments

- The new Enhanced Community Punishment (ECP) scheme is now live in all areas, and has provided an increased focus on high quality community punishment work placements.
- The new reparation marque, launched in October 2003, is increasing public recognition of community punishment work.
- The recent internal review of Prison Service Industries recommended that Governors should recognise the value of prisoners being able to see that their work in prison benefits others in society, particularly those who are disadvantaged, and that this may justify putting resources into genuinely reparative work programmes in prison.

Next steps

- We will conduct an audit of probation areas to ensure they meet specifications of the ECP scheme on quality of community punishment placements, and further promote best practice on badging of community punishment projects and using the marque.
- We are considering a pilot in which offenders will undertake reparative work during a period of deferred sentencing. We will consider using restorative processes as a core part of the pilot.

Workstrand Five: Restorative justice as an approach to case management

Commitments in July 2003

- The Probation and Prison Services are developing a new joint approach to case management and aim to launch pilots by April 2004. They will consider how restorative justice interventions could be incorporated in the model.

Developments

- The design of an integrated offender management system and the incorporation of restorative justice into it are now both being carefully studied in relation to the creation of NOMS and the implementation of the recommendations of the Carter Report⁴. Restorative interventions will have an equivalent place in the new arrangements with the more familiar interventions associated with offender rehabilitation, punishment and public protection.

Next steps

- Three Pathfinder regions have been identified to take forward the implementation of NOMS. The North West region will focus on the new offender management arrangements. Where restorative projects are available, offender managers will be expected to assess offenders' suitability for them and broker their involvement as appropriate.

Workstrand Six: Expanding and developing restorative justice in the Youth Justice System

Commitments in July 2003

- We will ensure, by the end of 2004, that 70% of victims consulted on or participating in restorative processes or reparation are satisfied.
- We will increase victim satisfaction year on year.

Developments

- We have introduced new targets for YOTs to ensure 75% of all victims of youth crime referred to them are offered the opportunity to participate in a restorative process, and that 75% of participating victims are satisfied.
- We have modified the Youth Justice Board's (YJB) counting rules to improve monitoring of these targets, and give a clearer definition of restorative justice which includes a requirement to consult victims.

4 www.homeoffice.gov.uk/justice/sentencing/correctional/reducingcrime-changinglives.html.

Next steps

- We will continue to deliver a comprehensive strategy for achieving enhanced and consistent standards, including promotion of effective practice, monitoring and performance improvement and the roll-out of the YJB training framework.
- We will continue to develop and improve the Restorative justice Assessment Profile, road-testing in five YOTs during 2004.
- We will publish an evaluation of the YJB funded Restorative justice in Schools projects by autumn 2004; and are providing additional funding for four of the pilots to develop their work further in co-ordination with joint Home Office and Department for Education and Skills (DfES) funded Safer Schools Projects during 2004-5.
- We will establish during 2004 pilot projects combining the use of Family Group Conferencing with Youth Inclusion and Support Panels. The pilots will be fully evaluated during the three year programme.

Workstrand Seven: Building restorative justice into new developments in the Criminal Justice System

Commitments in July 2003

- We will include restorative justice in the remit of the new Commissioner for Victims and Witnesses, and consider developing guidance on the place of restorative justice and reparation in Victim Personal Statements.
- We will incorporate restorative justice into Community Justice Centres (CJC) and consider its use in pilots of Intermittent Custody.
- We will consider how to build restorative justice into any appropriate further new developments.

Developments:

- The Domestic Violence, Crime and Victims Bill, which will establish the Commissioner for Victims and Witnesses, is currently before Parliament. Initial conclusions from a review of Victim Personal Statements is that rather than using them as a vehicle for restorative justice, we should instead include best practice on provision of information to victims about restorative justice in the new implementation guidance on restorative justice for Local Criminal Justice Boards.
- The first CJC is currently being developed in Liverpool, and the project plans to make restorative justice a key element of its work. Mediation services will also be available from the CJC.
- The Government launched two Intermittent Custody projects in January 2004 which are designed to enable offenders to maintain their employment, accommodation and family ties by serving their custodial sentence intermittently. Reparative work for the community is a key part of the regime. Now that the projects have been established, the type of offence for which many of the early Intermittent Custody Orders are being made suggests that there may be significant scope for restorative justice, and we will keep this possibility under review.

Next steps

- The forthcoming implementation guidance on restorative justice will include available best practice on how to provide information to victims on restorative approaches. This will be consistent with forthcoming roll-out of the “No Witness No Justice” pilots, which includes minimum requirements on needs assessments and information provision to victims and witnesses of crime; and with the final conclusions of the review of the Victim Personal Statement scheme due towards the end of 2004.
- Following the Green Paper *Policing: Building Safer Communities Together*⁵, the Government is exploring how a community advocate service might play a role in the use of restorative approaches to prevent and deal with minor crime and anti-social behaviour.
- The Home Office has provided seedcorn funding to help the development of a restorative community justice panel, an innovative local initiative in Chard, Somerset. The panel is intended to deal with anti-social behaviour, and we are considering how it may be able to operate within the framework of the restorative conditional caution.

Workstrand Eight: Increasing understanding of restorative justice

Commitments in July 2003

- We will work with criminal justice agencies and the voluntary sector to implement programmes to raise understanding of restorative justice amongst both the public and professionals.

Developments

- We have worked with organisations in the field to use the launch of the restorative justice strategy document, and the consultation conference with the Restorative justice Consortium on 28 November, to increase informed awareness of restorative justice. We have also supplied material for other events and specialist criminal justice publications. We welcome increasing recognition of the benefits of practitioners promoting and explaining successful restorative work.

Next steps

- We will provide Local Criminal Justice Boards (LCJBs) with material to help them explain and raise awareness of restorative justice in their areas. As part of a series of communication packs on key criminal justice themes. This material will be issued to LCJBs alongside restorative justice implementation guidance later this year.

Workstrand Nine: Ensuring high standards for the provision of restorative justice

Commitments in July 2003

- Over the next twelve months the Government proposes to hold a series of regular meetings with key stakeholders to develop policy on training and accreditation.
- We will develop effective practice standards for the Criminal Justice System by March 2005.

5 www.policereform.gov.uk/docs/consultation2003.html.

Developments

- We have convened an advisory group on training and accreditation, representative of the whole restorative justice sector. The group published in March *Best Practice Guidance for Restorative Practitioners*, which we believe all practitioners should work towards following, and all training should cover⁶.

Next steps

- *Skills for Justice* is planning to produce National Occupational Standards, and accredited awards, for restorative justice on the basis of the group's best practice guidance, by August of 2005.
- The group will publish a final report in the summer, which will include recommendations on awards and accreditation of practice, and on standards for supervision and assessment of restorative practice.

Workstrand Ten: Considering integration with the criminal justice system

Commitments in July 2003

- We will develop policy, in consultation with stakeholders, on how restorative justice could be fully integrated into the Criminal Justice System, drawing on responses to the questions posed in this document and the results of research.

Developments

- Restorative justice research trials funded under the Crime Reduction Programme (CRP) have all been completed, and independent evaluation is underway which will provide key evidence for future policy on the integration of restorative justice as a mainstream approach in adult criminal justice

Next steps

- We consult with stakeholders to produce policy statements on voluntarism, confidentiality and human rights in relation to restorative approaches within the criminal justice system by Spring 2005.
- In the longer term, we will draw on the emerging evaluation of CRP research and the diversionary restorative justice pilot, alongside consideration of relevant experience from the UK and abroad, to identify issues and recommendations for the integration of restorative justice as a mainstream approach in adult criminal justice.

Workstrand Eleven: Linking with restorative justice approaches outside criminal justice

Commitments in July 2003

- We will work to ensure that uses of restorative justice and related approaches within and outside the Criminal Justice System are consistent and mutually supportive.

Developments

- The best practice guidance produced under workstrand nine is designed to apply to restorative practice both within and outside the Criminal Justice System, including in schools, and to be of use to community mediators.

⁶ <http://www.homeoffice.gov.uk/docs3/bestpracticeforrestorativepractitioners.pdf>.

- The Home Office 'Together'⁷ on how to tackle anti-social behaviour already highlights the potential of restorative justice and community mediation to prevent and resolve anti-social behaviour.

Next steps

- The Home Office and DfES are working together to ensure the best practice guidance is applied as appropriate in restorative work in schools; and are exploring how to make links between curriculum material on citizenship and work with victims and witnesses, including restorative practice, in schools and in the Criminal Justice System. They will consider the implications of the forthcoming evaluation of YJB pilots for policy on the use of restorative justice in schools.

7 <http://www.together.gov.uk>

3 Summary of Consultation Responses

Restorative justice: the Government's Strategy was published in July 2003. We received 101 responses from a wide range of organisations and individuals, listed at Annex A. The main themes from the responses were announced at the Restorative justice Consortium's (RJC) conference in November 2003⁸. This summary of the responses includes key additional comments on the strategy made in workshops at that conference⁹.

Principles of restorative justice and meeting participants' needs

Question 1 What should be the main principles for the use of restorative justice in a criminal justice context? Should these differ from principles for restorative justice outside the criminal justice system?

Almost half of the 54 responses to this question, including both responses from criminal justice and non-criminal justice agencies, supported the **RJC principles of restorative justice**, which were published at Annex G in *Restorative justice: the Government's strategy*. Several respondents said that they saw no need for producing further principles.

'We recognise the Restorative justice Consortium's statement of restorative justice principles as experience-based, comprehensive, and faithful to the values of restorative justice.'

Prison Reform Trust

Some respondents listed additional or alternative principles. These included a mixture of desired outcomes, the values inherent within the process, underlying assumptions and elements of best practice. Two responses pointed out the need to adapt principles as knowledge grows.

Of the 21 responses that gave a view, 17 believed that the **principles of restorative justice should be the same within and outside the Criminal Justice System**. The main reason was that the essential emotional and psychological processes, values and core elements of practice are the same whatever the context. Concerns were also raised that some of the value of restorative justice may be lost if its principles are changed too much to fit the Criminal Justice System. However, some pointed out that certain principles – primarily voluntarism and confidentiality – needed modification when applied in a criminal justice context.

'Pure voluntarism...cannot be applied without significant modification... We have adopted an approach which dilutes the principle of pure voluntarism, but seeks to achieve co-operation using a presumption in favour of participation.'

National Probation Service, Thames Valley

⁸ See www.restorativejustice.org.uk/conference/2003/conf03.htm for more details of the conference.

⁹ The Home Office is grateful to Kate Akester, Guy Masters and Tim Newell for their assistance in ensuring that our summary of the responses to the consultation document accurately and fairly reflects those responses.

The issue of **voluntarism** for the offender created a polarisation of views. In the main, for non-statutory organisations it was an essential principle of restorative justice. Those with experience of restorative justice within the Criminal Justice System argued that voluntarism should not be absolute, arguing for a “presumption” or “expectation” of offender participation, unless ruled out by clear objective criteria (e.g. risk of harm; severe personality disorder).

Some responses suggested a degree of flexibility on the principle that restorative justice should only take place on **admission of guilt**, proposing that declining to deny responsibility was an alternative criterion.

Seventeen responses emphasised the need for **balance between interests of victim, offender and community**. But views differed on how the current balance needed to be changed. Some favoured more emphasis on victims' needs. Victim Support argued that restorative justice should take place whenever it can benefit victims, regardless of its effects on re-offending. On the other hand, others thought the document gave insufficient attention to the needs of offenders, one proposing a code of conduct to protect young offenders involved in restorative justice processes. Several felt the draft principles for the Criminal Justice System set out in the strategy document overemphasised victims' rights. Concerns were raised over the degree of influence victims and facilitators might have over the outcome of a restorative process, particularly when it is part of a criminal justice process. Twelve responses saw a need for greater emphasis on community involvement, in particular to help offenders reintegrate into the community and to support them in making changes to their lives.

Question 2 What would be the benefits and disadvantages of developing more specific principles in particular areas – for example for sensitive offences such as hate crime, sex crimes and domestic violence?

The responses to this question and to question 23 covered similar ground.

Hate crime

Of the 17 respondents who discussed hate crimes, 14, including the Commission for Racial Equality (CRE) were **generally supportive of the use of restorative justice**, if delivered sensitively. It was argued that much hate crime had a strong impact on the victim, or involved repeat victimisation and escalation, which made restorative approaches particularly appropriate, especially at an early stage. It was also seen as an effective way of challenging offenders' prejudices when compared with punishment within the Criminal Justice System, which was often ineffective or even counterproductive.

The CRE, among other respondents, advised that restorative justice principles should include race equality and that practitioners needed training in the Race Relations Amendment Act 2000 and in cultural awareness. They pointed out the need for an impact assessment of new policy set out in Chapter 5 of the strategy document. The evaluation of the research pilots needed to measure effects on different ethnic groups.

Domestic violence

Views on the use of restorative approaches in domestic violence cases were strongly polarised. Domestic violence specialists were strongly against their use in any such cases, while proponents of restorative justice thought they could be beneficial in some cases, with adequate safeguards. Some, but not all, of the arguments on restorative justice and domestic violence were also applied to sex crimes.

‘Standing Together is strongly opposed to the use of restorative justice or any other form of alternative dispute resolution in any case of domestic violence.’

Standing Together Against Domestic Violence

'We would support the piloting of restorative justice in selected domestic violence cases where this is part of a wider package of support for the family as a whole and the perpetrator is attending a groupwork programme or undergoing other treatment.'

Thames Valley Partnership

One of the main arguments against restorative justice in domestic violence cases was that it posed a high **risk of revictimisation** both during the process, and outside or after it, because of the specific characteristics of such cases. It was pointed out that victims were often very vulnerable, but found it difficult to seek help, so it might not be possible to screen out inappropriate cases. The victim might not be able to report a breach of the outcome agreement, or further abuse. Women were often under pressure to go back to an abusive partner, and some forms of restorative justice could increase this pressure. Important additional concerns were raised with respect to victims of domestic violence from cultural minorities.

At the same time, that perpetrators were often highly manipulative, and would be able to maintain and exploit **power imbalances**, however well run the process. Respondents cited evidence that perpetrators are often serious, prolific offenders involved in a variety of crime, so there was a very high risk of re-offending that restorative justice would be unable to address. They argued that domestic violence commonly involves cycles of violence and repentance that restorative justice would only perpetuate. There was concern that an apology, or a commitment not to re-abuse, should never be counted as "reparation".

Another key argument was that using restorative approaches, particularly as a diversion from court, would undermine wider efforts to encourage criminal justice professionals and the public to recognise the **seriousness of domestic violence**. Many respondents felt that domestic violence needed to be seen as an offence against the Crown and a matter of public concern, and that restorative justice could be seen as keeping it in the private domain. Some respondents were concerned that restorative justice schemes might be funded at the expense of domestic violence courts.

In contrast, responses from those involved in delivering restorative processes felt that individual victims had a **right to choose** for themselves whether it was appropriate for them, provided there were measures in place to ensure their safety and support. They said that experience showed that restorative approaches could be therapeutic and empowering for some victims, and could sometimes contribute to promoting behavioural change in offenders. It was argued that they could have a role for the many families who stay together following abuse, for whom there is currently relatively little support.

These respondents recognised that **highly skilled facilitators would be required**, with appropriate guidance. Restorative justice would normally need to be used in conjunction with other interventions and sources of support for both victim and perpetrator, and these would need to be delivered by specialists in the field as part of a **multi-agency approach**. Respondents also pointed out that special risk assessment processes already developed for domestic violence and sex crime cases would need to be applied. Specialist training would also need to cover cultural sensitivity, which could be critical for domestic violence cases in some minority ethnic communities.

Thirteen respondents highlighted existing research and practice on restorative justice on domestic violence and sex offences. However, the consensus was that **more evidence was required** on what works for victims.

Question 23 What are the particular needs of different sections of the community, such as women and members of ethnic minorities, to which restorative approaches need to be sensitive?

Many respondents pointed out that a key aspect of any restorative approach was to identify sources of vulnerability or power imbalances for any of the participants, whatever section of the community they came from. These could include employment status, any family commitments, race, religion, cultural background, sexual orientation, age, gender, any disability, views towards the police and language abilities. Practitioners needed to be aware of possible prejudices among participants, and able to ensure all participants were treated with respect.

It was argued that different sections of the community needed to contribute to the design of any restorative schemes that would affect them, and that scheme staff needed to be representative of the local community.

It was pointed out that disproportionate numbers of women and members of ethnic minorities are in prisons, and that expanding provision of restorative justice for these groups may help alleviate the problem.

'In practice, a well-run restorative approach is neutral with respect to ethnicity and gender. The degree of respect inherent in the process means that every effort goes into satisfying every individual's need for appropriate treatment.'

Justice Research Consortium

The Government's response to questions 1, 2 and 23

1. In view of the responses to the strategy, the Government believes that the RJC principles are widely accepted as capturing the main principles of restorative justice. We have provided funding to the RJC to consider whether they wish to revise their principles in the light of the responses.
2. The Government also recognises that applying restorative principles within the Criminal Justice System is not always straightforward. We will work with practitioners to develop policy statements on voluntarism, confidentiality and protecting the legal and human rights of participants by Spring 2005.
3. The Home Office held a seminar in January to discuss the use of restorative justice in domestic violence cases with key agencies from both the domestic violence and restorative justice fields; and leading international experts. This is a complex and sensitive area, and we believe that a fully effective policy would need to be based on a degree of consensus among stakeholders. We will continue to work with all interested parties, and will publish a consultation paper on the Home Office's website, followed by a policy statement on the basis of the responses to it.
4. The Home Office's Training and Accreditation Policy Group (see response to Question 5) has produced *Best Practice Guidance for Restorative Practitioners*. This makes clear that restorative practitioners should not take on sensitive and complex cases, especially those involving domestic violence, unless they have appropriate training and experience in this area. The Government believes all practitioners should work in accordance with this guidance.
5. The new restorative justice diversion pilot¹⁰ will investigate how well restorative justice works for ethnic minority participants, and this will provide an important basis for future policy. The pilot will operate in London, which will provide a relatively large sample size for this aspect of the research.

¹⁰ www.homeoffice.gov.uk/justice/victims/restorative/diversionpilot.html

Training and accreditation

Question 3 Who needs what level of training for restorative justice, within Criminal Justice System agencies and in voluntary sector providers?

All the responses which commented agreed that **training should be the same for voluntary agency and Criminal Justice System staff**. Broadly, they distinguished three different levels of training requirement.

- Level one. Basic restorative justice awareness training. This could be part of core training for all Criminal Justice System staff, and also given to judges, magistrates, court clerks, school staff and teachers.
- Level two. Training for any facilitators bringing victims and offenders into contact.
- Level three. Training for facilitators working with complex and sensitive cases.

Two responses suggested that facilitators running processes not involving victim participation, or involving only indirect victim-offender contact, needed a lower level of training than others.

Some respondents felt that **managers of restorative practitioners** would need level one training; others thought they needed more training than practitioners they managed. Some suggested that policy-makers should receive level one training.

Seven responses emphasised the importance of **ongoing training and supervision** of practitioners, to help disseminate new practice, and to develop and reinforce new skills as to assess performance.

Question 4 Do you agree that there is a need for a range of training providers, with a shared approach to training and accreditation for restorative justice practitioners? If so, what might this look like?

In the main, the responses agreed that a **common approach to training and accreditation was necessary**, in order to ensure high standards of practice, create a level playing field for competing training providers and to establish a career structure for practitioners.

'To date all accreditation has been done by training bodies accrediting training providers, where the accreditation body has no understanding of what restorative justice is. Accreditation has therefore been a mechanical process in which any course, which has been presented in a suitably documented form, has achieved accreditation.'

Restorative Justice Training Foundation

Many of these supported the development of a National Vocational Qualification (NVQ) in restorative justice; although two responses thought it was still too early in the development of restorative practices to define accreditation criteria.

At the same time, respondents said that the development of a shared approach would need to recognise that:

- accreditation requirements needed to be realistic, otherwise organisations would be unable to find the resources to train their staff accordingly, practitioners – especially volunteers – would be discouraged from aiming for accreditation
- existing experience and qualifications of practitioners would need to be recognised
- accreditation should avoid being so prescriptive as to stifle innovation or research

Almost all of the responses who commented agreed that practitioners should be trained to offer victims and offenders a **range of restorative justice models** to meet their needs. However, two respondents favoured face to face restorative justice, either in principle, or because only this approach had been carefully tested.

'We would like to highlight the need for practitioners to be trained to offer a range of practice, and be able to deliver a range of practice, so that likely participants are not 'passed around' different agencies.'

Wandsworth Youth Offending Team

'It is unfair to leave it to victims to assess the relative benefits to them of, say, a face-to-face conference compared with 'shuttle' mediation. Research needs to be conducted to find out when one model or another is likely to be most effective for them. When we have such evidence, then that model ought to be recommended to victims.'

Justice Research Consortium

Most of the responses saw a need for a **range of training providers**, although one response questioned the value of agencies having to shop around for high quality training. Another raised concerns about maintaining standards in a fragmented training market, and several responses called for accreditation of training packages or trainers, as well as or instead of individual practitioners. Some argued for a range of training providers, all involved in developing and then delivering a standard agreed training programme or package; while others argued for diversity and innovation in the production of training materials. The Association of Chief Police Officers (ACPO) favoured a single governing body for restorative justice to maintain consistent and safe practice.

Question 5 Over the next twelve months the Government proposes to hold a series of regular meetings with key stakeholders to develop policy on training and accreditation. What are the key issues this process needs to consider?

Respondents suggested a range of subjects, including:

- how to integrate different restorative processes into the training and accreditation framework, and to develop guidelines for when to use which process
- establishing a national training programme, including both initial and ongoing in-service training
- developing training for trainers
- who should be assessors for restorative justice qualifications, and how to ensure there would be enough assessors if an NVQ model were developed
- how to ensure ongoing supervision after accreditation
- exploring the potential for distance learning
- the transferability of awards or accreditation between agencies and between countries
- how organisations, voluntary and statutory, will fund training and accreditation for their staff
- the establishment of an organisation or expert panel to accredit training
- the use of peer review and maintenance of a portfolio to retain status as a restorative justice practitioner and opportunities for self development and qualifications for experienced practitioners
- how to acknowledge existing un-accredited expertise, e.g. under an Accredited Prior Experiential Learning system
- how to ensure that there is nationwide consistency in the how restorative justice is defined and delivered.

Additional points from conference workshop

Views in the workshop were broadly consistent with the strategy document responses. Participants reiterated the need for realistic training requirements and for flexibility in training courses, especially for practitioners in the voluntary sector. There was support for the idea of a professional association of restorative practitioners. The workshop noted that there is currently a lack of training capacity, and it was argued that policy work on training and best practice needed to avoid creating unrealistic expectations that training would be available. Many participants also wanted to see a clear career structure for restorative practitioners, perhaps including a route to higher education as in the nursing field.

The Government's response to questions 3, 4 and 5

Maintaining a high standard of practice in restorative justice is a key element of the Government's strategy. The Home Office set up the Training and Accreditation Policy Group in September 2003, and the Group produced *Best Practice Guidance for Restorative Practitioners* in March 2004.

The Government believes this is the most comprehensive and up-to-date guidance currently available, and that practitioners and trainers should aim to work consistently with it. It will inform the development of new national occupational standards in restorative justice and accredited awards, probably including a new NVQ in restorative justice. The group is continuing to work on a number of the issues raised in the consultation responses, and will produce a final report in the summer. The guidance, and more information about the group's work, including its future work programme, is available on the Home Office website¹¹.

Victims and datasharing

Question 6 What would be the benefits and drawbacks of including non-statutory restorative justice organisations in the Victims' Code of Practice?

Most respondents **favoured the inclusion in the Victims' Code of Practice of obligations to victims on organisations providing restorative justice**. A few thought this would give particular emphasis to the needs of victims in restorative processes. Some welcomed this, but one felt was unbalanced in the absence of similar codes addressing the rights of offenders and the community. It was pointed out that including restorative justice in the Code would create expectations for victims, which would need to have a realistic prospect of being met.

The vast majority of respondents (34 of the 39 who answered this question) thought these obligations **should also extend to non-statutory organisations**, so as to ensure consistent quality of service to victims, and to create a level playing field and encourage shared best practice between voluntary and statutory organisations.

'We consider that the time is right for non-statutory bodies to be fully embraced within the Criminal Justice Arena.'

Cumbria Constabulary

'We can see no drawbacks, only added value [to the inclusion of non-statutory organisations in the Victims' Code of Practice.]'

Association of Chief Police Officers

A few responses proposed that Criminal Justice System agencies should work in partnership only, or primarily, with named non-statutory organisations brought under the Code. At the same time, some respondents raised a concern that the Code could become a source of unwieldy regulation for non-

¹¹ www.homeoffice.gov.uk/justice/victims/restorative/index.html.

statutory agencies, undermining their independence and restricting innovation and diversity in the sector. They urged **careful consultation with the voluntary sector** in developing policy in this area.

Question 7 If the Code were to be extended, what obligations to victims should it include on organisations providing restorative justice?

Twelve of the 33 responses to this question emphasised that the obligations should be the same for voluntary and statutory agencies. Respondents offered a wide range of obligations that the restorative justice organisations should deliver. These amounted to a list of possible principles of restorative justice relating to victims, including:

- offering victims an informed choice
- obligations that are clear, simple and measurable
- victims should never be asked to take part in any process intended solely to meet the needs or address the behaviour of an offender
- the code could simply require compliance with a more detailed set of restorative justice principles
- an obligation on other organisations to inform victims accurately of the availability of restorative justice
- a requirement for adequate training and accreditation of practitioners, including enhanced Criminal Record Bureau (CRB) checks for staff
- robust protocols for partnership working
- data protection and confidentiality
- the ability to work as part of a multi-agency partnership
- adherence to identified good practice standards, to ensure delivery of high quality restorative processes.

One respondent argued that the Code should oblige agencies to offer restorative justice within agreed time scales pre- and post-sentence; while two others argued that providing information about and access to restorative justice should not be time-limited.

Two respondents argued for an evidence based approach to developing the obligations, learning from research as to what victims want and need.

Question 8 If the Code were to be extended to cover non-statutory organisations providing restorative justice, what criteria and procedures should be used to decide which organisations should qualify?

Many of the responses made the point that any procedure for bringing named restorative justice organisations under the Code, and monitoring their compliance, would need to be **"light touch"**.

Suggestions for bodies to oversee the criteria and procedures included both a central restorative justice regulator (like the Commission for Health Improvement) and devolved, local responsibility (e.g. Community Safety Partnerships, Local Criminal Justice Boards).

A variety of criteria were proposed for deciding which organisations should be brought under the Code – primarily a commitment and ability to abide by the Code, and criteria relating to organisational integrity:

- a suitable level of staff training and accreditation

- an ability to abide by restorative justice standards and principles
- financial viability, management quality, established track record
- diverse, representative management board and local community support
- charitable status and/or limited by guarantee
- an ability to work in partnership with other organisations, especially Criminal Justice System agencies
- an organisation's management committee should include members from a range of agencies, such as police, probation and Victim Support
- the ability to provide long-term support and aftercare for participants
- an agreement to accept inspection was also suggested by some respondents – with one suggesting the organisations should offer independent reviews of their cases
- a suitable ethos.

Question 9 Are there other local solutions to the data sharing issue that could usefully be made better known?

Many respondents' experience was that **strong local partnerships and true joint working between agencies could solve the problem**. A number of examples of good practice were offered, these are summarised briefly in Annex C. Respondents suggested that more training and opportunities for sharing best practice, such as seminars, should be made available to data controllers, perhaps delivered in a multi-disciplinary setting.

At the same time, many responses pointed to the **limitations of relying on local agreements** to facilitate datasharing. It meant a variable service to victims across different areas. Local agreements often stopped working when staff moved on. There were strong calls for more central guidance on the mechanics of datasharing and partnership working, and on the interpretation of the Data Protection Act, approved by the Information Commissioner. Some respondents called for legislation to require the provision of information needed for the facilitation of restorative processes, including reparation, to the relevant agencies – with suitable safeguards.

More broadly, ACPO highlighted the importance of up-to-date information technology for effective information sharing, with adequate security of electronic data, and perhaps including common databases.

Victim Support, among other respondents, agreed that **victims should generally be asked to opt out** of being given information about restorative processes, rather than opting in. However, some respondents disagreed, and the opt out approach was seen as inappropriate in sensitive cases like domestic violence, sex and hate crimes. It was suggested that standard information sheets for victims would be a useful support for the opt out approach.

Question 10 How far would data sharing issues be resolved by a statutory Victims' Code of Practice which covered non-statutory organisations offering restorative justice?

The majority of respondents who expressed a view thought that including restorative justice organisations in the **Code would help resolve datasharing problems**, especially if it included specific obligations on information exchange and information provision to victims.

However, many also thought the **benefits of the Code in this area would be limited**. Some felt that the fundamental problem was agencies' lack of willingness to put resources into retrieving and

sharing information with others, with the Data Protection Act used as an excuse. One commented that even with the Code, it would take time to build trust between statutory and non-statutory organisations.

Additional points from conference workshop

There was a strong view that the Code of Practice should help increase provision of restorative justice to victims. However, some participants recognised that further work was needed on the role and obligations of voluntary sector organisations and in increasing understanding of restorative justice if non-statutory restorative justice agencies were to be included in the Code, and that for this reason the first version might not include restorative justice. Conversely, others saw the Code as a tool to encourage a change of culture in the Criminal Justice System. Participants also discussed what restorative justice could offer to victims whose offenders are not caught, and what, if anything, the Code should say about those cases. There was also some support for the view that the Code of Practice must be backed up by a set of service standards enforced from the centre.

The Government's response to questions 6, 7, 8, 9 and 10

1. The Government recognises the importance in restorative processes of victims, offenders and communities. At the same time, the research evidence that restorative processes benefit victims is currently stronger than that they reduce re-offending. We are also committed, through the National Victims and Witnesses Strategy, to improving the ways that victims' needs are met, including through offering them restorative justice.
2. **The Victims' Code of Practice** will be put on a statutory footing if the Domestic Violence, Crime and Victims Bill, currently before Parliament, receives Royal Assent later this year. The legislation describes the process for issuing the Code, who will benefit from it, the sort of organisations that will be covered, and that complaints unresolved by the organisation they are made against will be dealt with by the Parliamentary Ombudsman (if the victim wishes). With the exception of one voluntary organisation, Victim Support, all of the agencies named in the Code are statutory, and would generally be regarded as constituent parts of the Criminal Justice System. Youth Offending Teams are given a specific section in recognition of the importance of their interaction with some victims.
3. The Code of Practice is likely to be implemented in full during 2005. Before then, and following the Bill receiving Royal Assent, there will be further discussion about the final contents of the Code. The Government notes and welcomes the views of many respondents about restorative justice initiatives being included in the Code, and also the understandable reservations expressed by some, particularly those from the voluntary sector. Given the requirements the Code places on particular organisations which deliver services nationally, it seems unlikely that restorative justice policy and practice will be sufficiently developed to be included in the first version. We shall however review the position before the Code is issued.
4. The Bill will also be creating a new office of Commissioner for Victims and Witnesses whose duties, broadly, will be to promote the interests of victims and witnesses, to take appropriate steps to encourage good practice in the treatment of victims and witnesses, and to keep the operation of the Code under review. Given the significance of restorative justice, it is therefore likely that the Commissioner will take a keen interest in the needs of those victims who are likely to have experience of it. The Commissioner is likely to take up post during 2005.

Datasharing

5. The Bill makes separate provision for organisations covered by the Code to share information to ensure that they can comply with their obligations. However, the Bill makes it clear that such provision does not override the terms of the Data Protection Act 1998 nor, implicitly, the Human Rights Act 1998. The practical effect of this is that organisations named in the Code have an authority to exchange information with each other, but that such exchanges must not contravene data protection and human rights legislation. This means that administrative protocols between some organisations will still be required.
6. The Home Secretary has recently commissioned a major inquiry into the handling of personal data and the effectiveness of intelligence based record keeping by Humberside and Cambridgeshire Police, under the Chairmanship of Sir Michael Bichard. He has also, in agreement with Lord Falconer, convened a high level Working Group to review the framework of guidance to the police service on data protection and information handling issues and offer its recommendations. In taking forward these initiatives, we aim to ensure that there is consistency across all forces in the way that information is obtained, handled and disclosed, making sure that all information handling procedures are robust and joined up.

Restorative justice and reparation in correctional services

Question 11 How can we develop and spread existing good practice in restorative justice within the correctional services? We would particularly welcome views on this question from people already working in the Prison and Probation Services.

Some responses suggested that restorative justice is most likely to grow successfully in an organic way, from Criminal Justice System staff experiencing it at first hand. But many others saw a need for greater **support for restorative justice from the centre**, in particular through creating a restorative justice unit in the correctional services. The unit would provide strategy and leadership, perhaps manage a steering group involving experienced practitioners, and establish a networking structure encouraged through seminars, websites, training and conferences. Several respondents thought that restorative justice should be subject to national performance targets, incorporated into agency business plans, with managers accountable for its introduction.

'A central body or unit should be responsible for driving forward good practice in the correctional agencies ... A strategic/operational merging of the Prison and Probation services would assist in the development and use of restorative practices across the range.'

Derby Youth Offending Team

A number of respondents emphasised funding as a key factor in developing restorative work. Other pressures on the correctional services, such as prison overcrowding, were seen as a significant barrier. For example, Thames Valley Partnership suggested that there was currently a lack of understanding of restorative principles within the prison service, due to lack of resource and expertise, and recruitment retention problems, which all combine to strangle imaginative thinking. On the other hand, efforts to address other issues – such as tackling drug abuse and improving resettlement – also provided opportunities for use of restorative processes.

The responses provided many valuable ideas for developing the use of restorative justice within the correctional services:

- Seventeen of the 38 responses to this question suggested building restorative justice into basic training of prison and probation staff.
- Six responses suggested clarifying the role of the services in relation to victims, so that it became normal to provide services to them. It was also suggested that the services should be encouraged to foster greater community links.
- Thames Valley Probation Service suggested the creation of a number of 'beacon sites' which could be awarded additional funding to help them carry out restorative work. In return, they would disseminate good practice to other areas. They also suggested creating a restorative justice development post in all prison and probation areas, to develop initiatives across all local institutions.
- Some suggested restorative justice be employed instead of adjudications, as way of dealing with complaints against staff and for assaults between prisoners.
- It was argued that a particularly effective approach was to make the most of partnerships with the voluntary sector. For example, REMEDI mentioned their partnership with South Yorkshire Probation Service, in which they provide awareness training for all probation staff, so they can explain restorative justice to all offenders when they come out of custody. They also train all staff in the victim contact unit and take referrals from them. CONNECT's response also highlighted their partnership with the probation service in London.

- It was suggested that the voluntary sector co-ordinator in every prison should be trained in restorative justice, so that they could explain and promote this to any offender interested or willing to take part.

Question 12 How can we increase the availability of appropriate, high quality reparative work for offenders that engages the offender with society and builds employment skills?

Seven of the 41 responses to this question suggested that the private sector should be engaged to deliver reparative work opportunities; one response suggested that government should look into providing incentives for businesses to offer such work. Others suggested job centres, parish councils, victims groups, local authorities, rotary clubs, trade unions and faith communities should all be approached to offer reparative work opportunities to offenders.

'Victims are often the best source of imaginative, innovative and realistic ideas.'

County Durham Youth Offending Service

Resource issues were mentioned as a **barrier to increasing the availability of reparation**, one Youth Offending Team (YOT) illustrating this point with the fact that they spend more on supervising their young offenders than it would cost to pay for the work they are doing. Other important constraints included health and safety regulations and availability of insurance – one respondent suggested that government provide an underwriting scheme for community reparation projects.

Fourteen of the 41 responses argued that reparative schemes could give offenders useful **employment-related skills** as well as meeting the needs of the local community. It was also highlighted that reparative work offered the opportunity to build human relationships as well as technical skills. Mediation UK believe that reparation assessment should pay attention to the offender's skills, interests and career plans. Kent police suggested that local companies should teach offenders a skill whilst a percentage of what they would normally pay an individual would be put back into community funds.

A number of respondents emphasised the importance of assessing the suitability of any placement for the offender: ACPO commented that it is important that offenders are not exploited and as a consequence end up becoming 'prison labour gangs'. Rather, it would be useful to identify the learning opportunities that arise from a scheme which could then be linked to expected transferable skills. The RJC went further, suggesting that offenders should be asked what they can do, as most offenders have skills to offer or particular interests that can be put to some use by their communities.

'It is probably true that the most successful schemes are small scale projects which build on an offender's interest and lead to employment.'

Bristol Justice Network

However, the Justice Research Consortium (JRC), among others, argued that it will not be possible both to meet the needs of local communities through reparative work, and to increase the employment skills of offenders. They argued that instead the focus of reparative work should be restorative; and that employment related skills and rehabilitation issues should be met through other programmes and training for the offender. The experience of developing both could then be reviewed and combined at a later stage.

Question 13 How can we involve victims and the community more, particularly communities damaged by crime, in deciding what reparative work offenders do?

The vast majority of the responses to this question (39 out of 44) said that the Criminal Justice System should put **more effort into consultation with local communities** about the focus of reparative work.

However, there were differences in how much weight should be given to the community's views, relative to the needs of victims and offenders. Some of the responses argued that reparative work should, in all cases where a victim wanted this, be decided by the offender's victim. The response from the JRC, for example, focused on how more victims could be encouraged to take part, so that for the majority of offenders, their reparation could be decided in consultation with their victim – although several contributors also pointed out that many victims want genuine remorse more than practical reparation.

Other responses argued that the focus of reparation should be decided primarily by the offender's interests, skills and longer term aspirations, as this is most likely to make the reparation both genuine in terms of motivation, and successful in terms of reducing recidivism. Thames Valley Probation Service argued for a strategic approach that balanced all the various purposes of reparation, with the needs of victims and communities as the primary purpose.

On **mechanisms for consulting communities** on the focus of local reparative work, 11 of the 44 responses suggested that Crime and Disorder Reduction Partnerships (CDRPs) should take a lead role, for example by developing local community forums. However, Thames Valley Partnership suggested that for this to work, CDRPs would need to make a greater commitment to involving communities in decision making more generally, arguing that much of their work is currently driven by national Home Office priorities. In a similar vein, it was suggested that all prisons should see accountability to local communities as a key function of the prison.

'Community Safety Partnerships have to date not been fully utilised to support the development of services to victims and the availability of local reparation placements. National guidance would be useful in both these respects.'

Worcester and Herefordshire YOS

Question 14 What are the best ways to raise awareness of reparation by offenders?

The responses showed the **need both for efforts at local level, and for a co-ordinated, strategic approach at national level**. Twenty-one responses pointed out the importance of local media outlets. A national reparation day was also suggested, where YOTs, probation services and prisons would all highlight the reparative work done by offenders. Responses also emphasised the need for politicians to promote reparative work not just as punishment, but as an achievement to be celebrated, leading to the restoration of the offender as a member of the community. *Justice* believed that a recognised national body for restorative justice would raise general levels of awareness and understanding of restorative justice, and therefore also of reparation.

Several responses pointed out that **visibility of the reparative work** and its results were the best way of increasing understanding of its purposes and benefits. The Albert Park Project was cited as a good example of this approach¹². Inside Out Trust also referred to one of their projects, which involves bringing visitors into prisons to see for themselves what can be achieved.

'The best advert for reparation is reparation itself.'

REMEIDI

¹² For more information on this project, see *Restorative justice: the Government's strategy*, page 20.

However, views were divided on whether **offenders should be identified** as such when carrying out reparation. Some argued that labelling offenders while on community placements undermines their re-integration into the community. But others thought that offenders should be visible, as this would reassure the community that the offender was giving something back to society.

Question 15 How can the correctional services develop restorative justice as an approach to case management, incorporating the need for risk assessment and programmes to reduce re-offending?

Four of the 34 responses to this question were against restorative justice as an approach to offender management. The main reason was that offender management is focused on addressing offending behaviour and offenders' needs, so there was a danger of victims being used as a means to this end, instead of being recognised as an equal party in the process. The RJC and Quakers Crime and Community Justice Group were amongst those who argued that this would make victims reluctant to participate. The Prison Fellowship and County Durham Youth Offending Service also argued that restorative justice as part of offender management would violate the principle that it should be voluntary for all participants.

On the other hand, 15 responses thought that restorative justice could form part of offender management. CARE argued that **offender management tools could create a consistent approach**, and need not undermine restorative justice by marrying it with punishments that remove responsibility for resolving the impact of their offence from the offender. A similar point was made by Crime Concern, who argued that restorative casework should challenge the offender to repair harm done to all parties.

'Restorative justice programmes will be best delivered as part of a consistent approach to case management.'

CARE

A number of the responses made specific **procedural suggestions** in relation to offender management. For example, it was recommended that an assessment for restorative justice should be built into pre-sentence reports, to inform the whole of the rest of the offender management process. Others suggested that the assessment should be made post sentence, alongside assessment of the victim's wishes, to assess the right timing for a restorative intervention in a particular case. Two respondents argued for a clear separation of the roles of case manager and restorative justice facilitator:

Additional comments from conference workshop

Participants highlighted that demand for restorative justice currently outstrips provision, and that there was a lack of trained facilitators. They reported some promising initiatives, but noted that without sustainable funding, many are short-lived, and identified a need for more central support for restorative justice in the Probation Service.

The workshop explored how criminal justice procedures can frustrate restorative practice in the correctional services. For example, a sentence might be too short to organise a conference with the victim; offenders are often imprisoned far away from their victim; and victims are often not ready to meet offenders when they are first offered that opportunity. They concluded that a flexible approach would help to take account of the varying circumstances of different prisons and probation areas.

Participants noted the danger that the values of restorative justice could be lost in rapid growth if statutory agencies re-defined it to match their objectives, and took different views as to whether restorative justice should be an alternative to or part of criminal justice.

The Government's response to questions 11, 12, 13, 14 and 15

Restorative justice

1. The Government welcomes the many examples that the responses offered of good restorative practice in the correctional services. The creation of the new National Offender Management Service (NOMS), in response to the Carter Report, provides an opportunity, to encourage both the spread of existing good practice and continuing innovation. In the new organisation, offender managers will broker appropriate interventions for offenders, and will have every incentive to look for effective and innovative practice. It will be easier to provide interventions seamlessly throughout an offender's sentence at the appropriate times, which could be of particular benefit for restorative processes. In addition, the Carter Report lays emphasis on reparation and payback in the correctional services, in which restorative approaches can play an important and positive role. At the same time, the Government is committed to ensuring that meeting the needs of victims is established as a core part of the work of the NOMS, in line with the National Victims and Witnesses Strategy, including through the provision of restorative processes.
2. The Government notes the responses' call for greater central support for and co-ordination of the development of restorative practice in the correctional services. It is not yet clear how far this kind of central function would fit into NOMS, but we will consider it as we develop plans for the new organisation. We also note the call for delivery targets for restorative justice. However, we believe the development of restorative justice must be evidence based, and that we need to wait for further research evidence before considering targets. As a next step, we intend to pilot the provisions of the Criminal Justice Act 2003 on restorative justice in at least one area.
3. The Government agrees with respondents who identified the benefits of incorporating restorative justice into offender management. We are continuing work to do this in the light of the creation of NOMS, and will ensure that it is done in ways that help the Criminal Justice System to meet victims' needs effectively and efficiently, and avoid pressurising victims or using them as a means to reduce re-offending.

Reparation

4. Re-connecting offenders with the community they have harmed, including through repair of some of the damage they have caused, and involving the community in creating solutions to crime in their area, is at the heart of the Home Secretary's civil renewal agenda. The Government recognises the importance of proactively engaging local communities, including businesses, and victims in planning constructive reparative work for offenders.
5. The introduction of the new Enhanced Community Punishment (ECP) scheme throughout England and Wales last year has provided an increased focus in the National Probation Service on the quality of community punishment work placements. It seeks to maximise opportunities to enhance employment related skills while addressing offenders' needs. Offenders are automatically asked what skills they can contribute to community punishment, firstly to get maximum benefit for the community from their punishment, and also because recognising and valuing what they can do enhances their motivation and commitment to the process. The ECP scheme amply demonstrates, it is indeed possible to meet some needs of local communities, and at the same time increase offenders work related skills.
6. Probation Areas already work with many of the local organisations that respondents suggested, who provide most of the work placements undertaken by offenders sentenced to community punishment. These include community bodies, like tenants and residents groups, Neighbourhood Watch, ethnic minority groups and faith groups. In some areas there are community or neighbourhood panels. In other areas, we acknowledge that help may be needed to set up these bodies. While there may be greater potential for work with CDRPs in some areas, the Probation Service aims to work with whatever structures are appropriate in each local area, rather than trying to impose a 'one size fits all' approach.
7. The Probation Service has taken a lead in producing the new reparation marque, which can provide lasting publicity of good work done, long after the offenders have departed, through plaques on physical projects, badges and notices on places where community punishment work is carried out. Offenders themselves are not labelled as this can undermine motivation and compliance.

Restorative justice in the youth justice system

Question 16 We would welcome your views on the progress of restorative justice in the youth justice system to date, and recommendations for future development of restorative justice for young offenders and their victims.

Many responses celebrated the achievements of the youth justice system to date. The Referral Order was singled out as an inspired way of involving a whole new range of people from the community. There was support for expanding the use of restorative approaches across the whole range of youth justice interventions, in both community and custodial sentences.

'The progress to date of restorative justice within the Youth Justice System has been phenomenal.'

Durham County Youth Offending Service

At the same time, responses identified some useful lessons to be learned from the introduction of restorative approaches in youth justice – primarily the importance of consultation with restorative justice experts, and of adequate training for practitioners, particularly in work with victims. They also made suggestions for further improvements, with some saying that practice across the country is still too varied and fragmented, with pockets of low quality service.

Many responses called for changes to the Youth Justice Board's (YJB) targets, along with further guidance for YOTs – most crucially, clear guidance that community reparation with no victim involvement does not count towards the restorative justice target.

It was also argued that the target that 70% of victims to be involved in restorative justice should be satisfied fails to encourage good practice, because there is no target for the number of victims who should be contacted – so the target itself can lead to an incentive to keep victim involvement down. In addition, how to measure victim satisfaction is not set out.

'The current targets set by the YJB for the YOTs need to be changed, because they are ambiguous.'

Victim Support

However, Victim Support suggested that any strategy or targets aiming to increase victim participation or face to face meetings would lead to pressure being put on victims. Instead, the aim should be to provide victims with accurate information so that they can make an informed choice.

A number of responses argued that YOT staff were unable to put enough time into preparing victims for restorative processes because of a lack of resources. Some arguing for ring-fenced funding for specialist victim contact workers. However, a number of others were concerned that if victim contact work is seen as a specialist function, or if it is contracted out, it would not be fully integrated strategically and operationally into the work of the YOT.

Several respondents recommended further training for those involved in restorative justice interventions. This ranged from those who thought that Youth Offender Panel panel members are too directive (like pseudo-magistrates) because of inadequate training; to those who called for better training for all YOT staff, including managers.

Some responses argued for further research and continued development of evidence based practice, backed up by an inspection process to ensure best practice is applied.

Many responses commented on the Referral Order. Several thought they should be available for second court appearances and not guilty pleas, as a sentence to consider alongside other existing options. Some raised the issue that Referral Order contracts can be more punitive than court sentences. This can lead to offenders breaching their Referral Orders so that they are given a higher tariff sentence,

such as an Action Plan Order, with fewer hours of reparation. Another issue raised was that when a young person commits a further offence during the time of their Referral Order contract, the sentence for the second offence 'cancels out' the Referral Order, including the contract based on the victim's wishes – which can be disappointing for victims. REMEDI argue that any sentence following a second conviction in this situation should include completion of the original Referral Order contract.

The responses noted that levels of victim participation in Youth Offender Panels were low, and saw room for improving the way victims are involved. A number of respondents felt victims were not being properly consulted or prepared for panel meetings, which were too offender-focused. Victim Support also argued that the compulsion of offenders to attend panel meetings risks re-victimising victims; and that victims aren't offered the opportunity to participate at a time that best suits them. In particular, there was criticism of the requirement to hold the panel meeting within 20 days, which didn't give victims enough time to consider whether they wanted to be present, and to prepare. It was suggested that this requirement should be replaced by one to make weekly contact with the offender until the panel sits.

Additional points from conference workshop

Participants agreed there was a lack of clarity around definitions and best practice among the different agencies involved in restorative work with young people. There was discussion on whether police or YOT workers were best placed to do victim contact work, with agreement that greater police awareness of restorative justice would bring a greater consistency of approach to victims. Participants also considered how best to evaluate participants' satisfaction with restorative processes, for example through a basket of measures.

Some participants saw schools as the prime environment for applying restorative approaches with young people, where it can tackle exclusion, bullying, conflict and help build emotional literacy, as well as preventing crime, with wider positive effects within the local community. Views differed on whether restorative approaches in schools should be undertaken by school staff or external agencies, with some participants arguing that restorative skills should be included in teacher training.

Overall, participants thought the implementation of restorative work for young people had been varied. They thought it should receive more funding, and that Department for Education and Skills and the YJB should work more closely together in a co-ordinated strategic approach, with the Office for Standards in Education (OFSTED) also involved.

The Government's response to question 16

The introduction of restorative justice in the youth justice system has been a major achievement. However, we recognise that there are uneven standards, and we are putting in place a comprehensive strategy to ensure YOTs achieve consistently high standards.

YJB targets

We acknowledge the need for clarity of definition and incentives for YOTs to engage with larger numbers of victims. This is being addressed by the introduction of a new target from April 2004, which is 'to ensure that 75% of victims of all youth crime referred to YOTs are offered the opportunity to participate in a restorative process and 75% of participating victims are satisfied'. The new target makes clear that providing restorative justice must involve consulting victims.

Training

Improved training for those working in the youth justice system is a high priority. For YOTs, the YJB is rolling out its Human Resources and Learning Strategy, including the Professional Certificate in Effective Practice (Youth Justice), and the delivery of training through regional consortia. The YJB will review the training of Youth Offender Panel volunteers in 2004/5.

Referral Order Issues

The rollout of Referral Orders has been a substantial success. However, we acknowledge there is more to do to ensure consistently high standards and improved training, and the Restorative justice Assessment Profile will provide further support and guidance for practitioners in engaging victims and community members. The decision that initial Youth Offending Panels be convened within 20 working days of the court order followed detailed monitoring of this issue during the piloting of Referral Orders. The panel has discretion to provide for restorative face to face meetings – if appropriate – at a later stage in the contract if the victim is unsure about an earlier meeting, but delaying the first panel might well be counter-productive in terms of the offender's rehabilitation.

Using restorative justice across the range of offences

The Government is considering whether the Referral Order should be available beyond a first conviction and has consulted on this proposal following its publication of *Youth Justice – the Next Steps*[†]. Feedback from practitioners suggested that Referral Orders could be extended to second and subsequent convictions where there is a guilty plea. However, allowing Referral Orders to be used where the defendant pleads not guilty and the facts of the case are not agreed could be problematic and undermine confidence. The Government therefore proposes to:

- Allow Referral Orders in cases where there have been previous convictions but Referral Orders were not used (because the defendant pleaded not guilty, or the Court imposed another sentence instead of a Referral Order) or were not then available.
- Allow a second RO where two years have elapsed since the first was satisfactorily completed
- Make ROs available in the Crown Court, as in Magistrates Courts

[†] See www.homeoffice.gov.uk/justice/sentencing/youthjustice/index.html

Victim personal statements

Question 17 What should be the role of Victim Personal Statements in giving victims a voice on restorative justice and reparation?

A third of the 39 responses to this question began by saying that victim personal statements (VPS) were not widely available, and that police practice in using them was inconsistent. In many areas, neither police nor victims understood them, for example how they related to sentencing. The general feeling was that these wider issues would need to be addressed by the current review of the VPS before it could be used in relation to restorative justice.

A small number of respondents felt that the VPS could be an effective way of seeking victims' opinions about restorative justice. They suggested that the victim's interest in restorative justice could be recorded on the form along with other information that would be useful as background for a restorative justice facilitator or organisation. At the same time it was pointed out that care would need to be taken to avoid raising unrealistic expectations about the availability of restorative justice.

However, several other respondents presented strong arguments against using the form in this way, or reported negative experiences of attempting it. The main reason was that the VPS provided no opportunity for dialogue between victim and offender. It was argued that the VPS was an ineffective substitute for more personal two-way victim offender contact. Fundamentally, the VPS was a message from victim to court, rather than victim to offender. Many respondents argued that police taking the VPS would need much more training, and more time to spend with victims, if they were to be used restoratively.

'Victim Personal Statements do not provide for the vital dynamics of restorative justice schemes.'

CARE

Several respondents also mentioned that the time the VPS is taken is inappropriate for their use in restorative approaches. It was pointed out that victims' views often change as they recover from the initial shock of the offence, and it was therefore recommended the VPS should be a 'living document' that can be reviewed. For example, it was suggested that victims should have the opportunity, should they desire it, to review their VPS after a restorative process has taken place.

Additional points from conference workshop

Participants thought that the VPS was ineffective. Its purpose was unclear, and victims did not receive sufficient feedback on what happened to it after if had been taken. It was suggested that the guidance on the VPS could be revised and reissued in the context of development of policy on victim advocates. The Victim Support representative at the workshop emphasised that victims' wishes on reparation should be taken into account by courts, but that they should not be given the burden of responsibility for deciding on sentencing or whether to prosecute.

The Government's response to question 17

A review of the VPS Scheme is being carried out following evidence that the take-up of the scheme since its launch in October 2001 has been lower than anticipated. The aim of the review is to improve the awareness of criminal justice practitioners to ensure that they are well versed in the VPS Scheme and its purpose. The review will also address the inconsistencies in take-up of the scheme, with the aim of ensuring that all suitable victims are offered the opportunity to complete a statement. The final aim of the review is to increase the use of second stage statements – where victims can provide an update to their original statement, or give a statement for the first time at a later stage of the criminal justice process.

On the basis of the consultation responses, we do not think that the VPS Scheme should be seen as, or used as a substitute for, restorative approaches. The purpose of the Statement is for the victim to inform the state and the criminal justice system of the effect the crime has had on them. Although offenders may be made aware of its contents, it is not primarily intended to be a means of communication between the victim and the offender.

An option we are considering is, in areas where restorative justice is available, for victims to be offered further information on restorative justice when they are offered the opportunity to make a VPS. If they express an interest, their contact details, and the VPS itself if they complete one, could then be passed, with their permission, to the organisation offering restorative justice. On the basis of the responses, we believe that for this to be effective, the police would need training to make sure that they explained the restorative justice process clearly and accurately to victims, without raising unrealistic expectations. The forthcoming implementation guidance for Local Criminal Justice Boards on restorative justice will include available best practice on how to provide information to victims on restorative approaches, and, once the review is completed towards the end of 2004, on how to link this with the taking of the VPS.

New criminal justice developments involving restorative justice

Question 18 What other possible future developments in criminal justice could be combined with restorative approaches?

The responses all suggested that restorative justice could be used more widely than at present and that it should not be seen as an intervention that can only be used at one stage of the criminal justice system. However, a key theme in many was that the Criminal Justice System needed a restorative ethos behind all its work, rather than more restorative justice work in combination with a punitive system. This was highlighted by one respondent who saw a contradiction between the Government's restorative justice strategy, and the White Paper on anti-social behaviour, which placed little emphasis on problem solving and conflict resolution.

'A key area for the significant expansion of restorative approaches is anti-social behaviour. Recognising and resolving the conflicts that give rise to anti-social behaviour can achieve re-integration and inclusion.'

Prison Reform Trust

A number of responses saw the potential for the use of restorative justice in tackling anti-social behaviour, either prior to an Anti-social Behaviour Order (ASBO), as the means whereby an Acceptable Behaviour Contract (ABC) or Parenting Order is agreed, or in connection with Youth Inclusion and Support Programmes. Responses also suggested that anti-social behaviour policy more generally would benefit from further consideration of restorative justice, which may work more effectively than coercive tactics in resolving problems and involving communities.

One respondent pointed out that there was an increasing range of ways of diverting offenders from prosecution, and called for greater clarity on how diversionary restorative justice should relate to other diversionary disposals such as Fixed Penalty Notices.

Responses called for the provision of quasi restorative services for victims where an offender has not been identified. Victim-offender groups in community and custodial settings were suggested as one solution. For the reverse situation, respondents also welcomed the provision of support circles for offenders which act as an effective and viable means of reducing risk to the community and the need for custody.

Several respondents were in favour of expanding the use of restorative approaches not just in the Criminal Justice System but also in non-criminal disputes such as staff-prisoner and staff-staff conflicts in prisons, and disputes in residential homes, workplaces and schools. It could also be used in complaints procedures – as in Thames Valley Police.

Seventeen of the 40 responses to this question wanted to see the expansion of restorative approaches in the community as well as increased community involvement in restorative justice. The development of Community Justice Centres (CJCs) was particularly welcomed, especially as these sites could provide community mediation as well as victim-offender mediation. One respondent proposed reparative boards for adults, similar to those used in the USA, in which community representatives decide what type of reparation will be done after a court decides the quantity. Thames Valley Partnership commented that although much has been claimed for community conferencing as a way of resolving community conflict, there have been few cases so far and more research is needed.

'The centres [Community Justice Centres] themselves could be tremendously pro-active in local communities and could promote restorative justice in an unparalleled fashion.'

REMEMI

Restorative justice and sentencing was a common theme. It was suggested that sentencing should take greater account of offers to make reparation. ACPO welcomed Lord Justice Woolf's decision to reduce a sentence by 2 years on account of a successful restorative process, among other mitigating factors. It was also suggested that victims could have their say at point of sentencing, in the same way as at Youth Offender Panel meetings. Following on from the more structured scope for victim-offender contact under the deferred sentencing provisions of the Criminal Justice Act, respondents recommended greater deferred sentencing to allow restorative justice to take place. One response also suggested creating a new sentence of restorative justice.

There was support for more use of restorative processes when offenders are released from custody e.g. support circles, mediation to mend family relationships, or in forming 'going straight contracts' for juveniles. It was also suggested that day release from prison could be linked to community service, intermittent custody could include voluntary work and restorative justice could be linked to drugs and mental health treatment.

A possible vision for future was put forward by Thames Valley Probation Service in the form of a multi-agency 'virtual' team capable of providing restorative justice at all points in the adult Criminal Justice System.

The Government's response to question 18

The Government welcomes the wide range of imaginative ideas that the responses offered for further uses of restorative approaches in the Criminal Justice System. We will continue to seek to build restorative justice into new developments in the Criminal Justice System wherever appropriate.

From the responses, a key gap we identified in the strategy document was on the use of restorative approaches in addressing anti-social behaviour. The Home Office's Anti-Social Behaviour Unit encourages the use of appropriate and tested restorative practices to tackle anti-social behaviour, whilst at the same time recognising that enforcement action will often also be needed. It is exploring the role that community conferencing or group mediation might have in solving at an early stage local problems and tensions, therefore preventing further escalation. This work will entail a mapping of current practice, the development of guidance on the essential elements necessary for successful community conferencing, the skill set required and when to apply it. The Home Office is also part funding a project in Chard, Somerset, to set up a community justice panel, which could operate similarly to a Youth Offender Panel, taking a restorative, community-based approach to minor crime and anti-social behaviour.

Current new initiatives in the Criminal Justice System in which we are considering how far to build in restorative justice include the following.

- The consultation document *Policing: Building Safer Communities Together* outlines, amongst broader police reform proposals, the concept of a community advocate service – an independent service to help resolve local people's issues and complaints related to policing and community safety. The specific role of community advocates will be defined more clearly in the light of the responses to the police consultation document. We are exploring how advocates might play a role in the use of restorative approaches to prevent and deal with minor crime and anti-social behaviour.
- The Criminal Justice Act 2003 enables a court to defer sentencing for a period of up to six months, during which time it can set and monitor requirements on the offender, including undertaking reparation. The sentence can then take account of the offender's conduct during the deferment period. The Government is planning to commence deferred sentencing powers later this year, and is considering a limited pilot. We will consider whether restorative approaches could be used in the pilot to determine the requirements set for the offender.

Increasing understanding of restorative justice

Question 19 How, and with whom, should the Government work to increase understanding of restorative justice a) among criminal justice and other professionals and b) the wider public?

Many respondents suggested that the general public needed to be better informed about restorative justice. Many argued that among professionals, including in criminal justice agencies, managers as well as practitioners needed training in restorative justice. It was suggested that magistrates in particular need greater training in restorative justice to feel confidence in sentences with a restorative element. Teachers were also singled out as being an audience for the awareness strategy. Other groups identified were retailers, leisure providers, local authority area panels, rape crisis workers, domestic violence workers, those working with children at risk, residents associations and Black and Minority Ethnic (BME) groups.

'It is the responsibility of everyone who supports restorative justice to increase awareness.'

Prison Fellowship

A wide range of delivery mechanisms were suggested for promoting understanding about restorative justice, from an organic approach using enthusiastic colleagues to spread the word, to the creation of

one co-ordinating agency to act as the main communication channel. Some responses suggested a particular role for Local Criminal Justice Boards.

The use of workshops, seminars, focus days, and observer programmes were recommended as effective vehicles for developing understanding amongst criminal justice and other professionals. It was also suggested that modules on restorative justice be included in their initial and ongoing training.

Respondents provided a number of suggestions for increasing awareness and understanding amongst the general public. These included using media campaigns, community councils, church groups, schools, voluntary organisations, local community groups, local community police and community safety partnerships. Volunteers could also be recruited from the community and faith groups to work for YOTs, and restorative justice could be taught in schools. Tapping into the media's interest in real life stories was mentioned as an effective tool, as well as promoting restorative justice through dramas, documentaries and story lines in soaps. However, it was stated that if this avenue is to be expanded there would need to be safeguards in place to protect those victims and offenders who deal with the media.

'Print and broadcast media can influence public awareness of restorative justice. The challenge is ensuring that the media's presentation of restorative justice is grounded on evidence, practice and participant experience.'

Justice Research Consortium

'The negativity we encounter on a daily basis is predominantly based on ignorance of what is available and a fear of what may be expected of participants.'

County Durham Youth Offending Service

Respondents remarked on the need to counter restorative justice being portrayed as a soft option for offenders. Respondents encouraged the idea of greater public debate about whether 'punishment' really works and also examine the role of 'responsibility' in dealing with crime. It was emphasised that restorative justice should be marketed as a preventative remedy as well being a cure for offending behaviour. It was also argued that promoting restorative justice needed political leadership and that the Government needs to communicate that a change of approach is needed.

Several responses emphasised that restorative justice needed to be understood as an approach rather than just a tool, and that it would be counter productive to promote restorative justice too much or too soon, before its benefits are proven and its availability widespread.

'Criminal Justice System professionals need to understand the ethos, before the process.'

Restorative justice Consortium

The Government's Response to question 19

We will be providing Local Criminal Justice Boards with a communication pack on restorative justice, including the basic tools and information to run a local communication campaign on restorative justice. The pack will include generic articles and key messages that can be tailored to each individual area. It will be made available alongside the restorative justice implementation guidance that we aim to publish later this year. The implementation guidance will be a toolkit for those Boards who are keen to maximise the use of restorative justice. The accompanying communication pack will help them to promote and explain restorative justice initiatives amongst the general public and Criminal Justice System professionals in their area.

Voluntary and statutory sector delivery of restorative justice

Question 24 *The value of community involvement through the use of volunteers needs to be balanced with making full use of the expertise of criminal justice professionals. What combination of criminal justice professionals, other professionals and volunteers should deliver restorative justice?*

Question 25 *What combination of criminal justice agencies and voluntary sector agencies should be used to deliver restorative justice, and why? What would be the main factors to consider in designing a multi-agency approach?*

Twenty-two responses said that both Criminal Justice System professionals and voluntary sector paid workers and volunteers can be good facilitators. Those respondents argued that the important factor is that facilitators have high quality training, and the same level of training/proficiency whatever their professional background and some argued strongly that good practitioners should not be barred from practising because they were connected with one agency rather than another. One respondent pointed to the need for more research on the effectiveness of facilitators from different backgrounds.

'Those that are really passionate about restorative justice and really understand it, and are good at delivering it should lead, regardless of where they come from, or what they do for a living. Please be careful not to sideline them.'

Restorative justice Training Foundation

'The role of facilitator is skill based rather than role specific and the ability to leave their professional and/or personal baggage at the door when conducting a restorative process is far more important than their background or agency.'

Real Justice

A number of responses argued that volunteers should deliver restorative justice, rather than the criminal justice professionals, because volunteers were free of the preconceptions held by criminal justice professionals; were more likely to be seen as neutral; may be more likely to come from the participants' communities; and may be less used to making decisions on other people's behalf, and thus find it easier to allow the participants to make their own decisions. The use of volunteer facilitators was also consistent with the ethos of restorative justice, which is about empowering people. Some respondents saw the role of criminal justice professionals as acting as 'gatekeepers', overseeing the whole process and ensuring it is done well. Respondents cautioned against seeing volunteers as a 'cheap option', given the need to ensure they are well trained, supported and monitored.

Other respondents said that it was unrealistic to rely on volunteers to deliver restorative justice, because of limits on the time they could give to it, on their accountability, and because of the extent of skills and experience needed to undertake such specialised work well. It was argued that unless restorative work is done on a regular basis, skills are lost and the quality of the work diminishes.

Fewer respondents were concerned about using paid workers from the voluntary sector. Some thought that criminal justice professionals had an advantage as facilitators because their status inspired more confidence from participants, and they had more knowledge of the Criminal Justice System and of the offender.

A few respondents were strongly against police officers acting as facilitators. *Justice* argued that it they could not be perceived, particularly by offenders, as fair. Similar arguments were made against using police stations as venues for restorative processes. However, ACPO and Real Justice argued that there

was no research evidence that victims and offenders find police any less fair or effective as facilitators than other professionals, or volunteers.

Twenty-six responses wanted to see a 'mixed economy' of both voluntary and statutory provision of restorative justice in England and Wales. Partnership working would combine the stable structure and funding of statutory agencies with the innovative capacity and independence of the voluntary sector. Youth Offender Panels were cited as a particularly good model of how the Criminal Justice System can work well in partnership with, and support, volunteers. At the same time, respondents also recognised the difficulties of multi-agency working and the need for a lead agency or multi-agency steering group, perhaps a sub-group of the Local Criminal Justice Board. One respondent pointed out that voluntary agencies may need support to enable them to play a full part in multi-agency partnerships.

'There is a strong case to be made for an independent national restorative justice service to which victims and offenders know they can refer themselves.'

Mediation UK

A few responses recommended that an independent national restorative justice service, either statutory or independent, be established to deliver restorative services and to develop good practice.

The Government's response to questions 24 and 25

The Government agrees with the majority of responses which argued that both volunteers and professionals can facilitate restorative processes, and that both should be working to the same minimum standards. We also see a role for both statutory and voluntary sector organisations – we value the contribution of the voluntary sector to the development of practice and policy on restorative justice, and are supportive of a continuing role for it even as the Criminal Justice System makes more use of restorative processes. The implementation guidance we will issue later this year will encourage criminal justice agencies to apply delivery models that make full use of both voluntary and statutory sector expertise, consistent with the Government's Compact on working in partnership with the voluntary sector and its five supporting codes of practice¹³.

Issues relating to mainstreaming restorative justice

Question 20 What kind of judicial oversight of restorative justice is needed to ensure reasonable consistency with sentencing practice and safeguard participants' human rights?

20% of respondents to this question argued that restorative justice did not need to be consistent with sentencing practices but responsive to the individuals involved, and that courts altering outcome agreements would disempower participants. Some respondents stated that procedures were already in place to ensure that offenders were not coerced into taking part or abused during the process.

'Consistency is a product of the adversarial system. Each victim is an individual; each offender is an individual. What one victim would choose for restorative justice is different from another.'

Medway Youth Offending Team

However, others argued that a balance needed to be struck between the needs of the participants and consistency in sentencing, and that outcomes needed to be proportionate. Several responses suggested that the courts should rubber stamp agreements as happens in New Zealand, or that they should set limits on reparation. Thames Valley Probation only makes reparation and attendance mandatory to foster responsibility and safeguard proportionality.

¹³ More information on the Compact is available at www.thecompact.org.uk.

Three respondents thought that consistency was of an issue for diversionary restorative justice. One respondent said that diversionary restorative justice needed safeguards, whereas the other two argued that because it was voluntary, oversight might not be needed – although the participants would need to be aware of the option of going to court. It was also recommended that sentencers should be involved in the selection of suitable cases for diversionary restorative justice.

Respondents suggested that sentencers need guidelines on restorative justice and how to take victims' views into account. It was also suggested that restorative justice guiding principles could be integrated into existing sentencing guidelines and frameworks, so that restorative justice would be subject to the same review and precedent as other sentencing approaches, and that it should fall under the remit of a future Sentencing Guidelines Council. ACPO recommended that the Department of Constitutional Affairs explore the consistency issue further and that the Sentencing Guidelines Council and National Criminal Justice Board should be involved as soon as possible.

A number of respondents suggested that consistency could be achieved through means other than court oversight. YOTs and the probation service already use national guidelines to ensure consistency in community reparation. Accreditation, accredited training, codes of practice, quality assurance and national minimum standards and the establishment of an inspectorate were also cited as ways of ensuring that participants were prepared properly so that the processes and outcomes were not too onerous and reasonably consistent.

'Whilst restorative justice processes cannot be controlled by sentencers as this would remove their empowering purpose, it is however the case that formal legal rights and due process can act as bounding mechanisms that empower and constitutionalise informal processes.'

Worcestershire & Herefordshire Youth Offending Team

Respondents recognised the need for the practice of restorative justice to comply with the European Convention on Human Rights (ECHR) and the Human Rights Act. ACPO produced a detailed response on the ECHR (in relation to the right to a fair trial, presumption of innocence, right to legal assistance and sentencing by an independent tribunal). On the issue of diversionary measures for children ACPO state that the ECHR was not written with children in mind and that there is a 'very legitimate tension between the requirements for trial and the informal measures which are likely to be more successful.' A few responses referred to tensions between restorative justice and human rights in the youth justice system and said that clear guidance was needed in relation to pressure to admit guilt in order to participate in Youth Offender Panels.

'The experience of the Youth Offending Panels is that they work well and protect victims and safeguard human rights.'

Kent Youth Offending Service

Other responses commented that allowing parties to obtain legal advice was key, although there were also strong feelings that lawyers should not be present in restorative processes.

Additional points from conference workshop

Some sentencers remarked that they would like feedback from restorative processes, both in relation to their role in court and the role they play on parole boards, but as yet there is no established mechanism for this. Some participants thought that information from restorative processes could be useful for sentencers, but that it needed to encompass the emotional expressions from restorative meetings as well as the outcome agreements. Examples were shared of cases where information from a restorative justice process had informed the judge's thinking and resulted in a harsher or lighter sentence. However, some sentencers took the view that successful restorative justice should not be a mitigating factor, and that sentencers should not be influenced by victims' views. Some participants suggested that restorative justice offered the opportunity for a radical review of sentencing and that an ideal process would involve all stakeholders in the process, like the Canadian sentencing circle model.

Question 21 How far should information that emerges during a restorative process be inadmissible as evidence in court, so as to encourage the full participation of offenders and safeguard their human rights, but without undermining the prosecution of offences?

'Confidentiality in the restorative justice process is paramount, and where this is under threat then the process should be terminated.'

Association of Chief Police Officers in Scotland

Twenty-four out of 37 responses to this question said that restorative processes needed to be confidential in order to work. Those respondents were concerned that if information from restorative processes were admissible in court, victims would be worried about such information affecting the severity of the disposal, and that they might be cross-examined on it. It would make both victims and offenders less likely to take part.

However, other respondents argued that restorative processes yielded useful information. For example, Pre-Sentence Reports could usefully include information on pre-sentence restorative justice, and courts should be able to take into account whether the offender had agreed to take part. Another response said that there should be a means of recording any failure of a restorative process, so that this can be taken into account if restorative justice is considered in the future. It was notable that 16 of the 24 respondents who favoured confidentiality subsequently cited exclusions for such a policy, including information about further offences and danger posed to people, especially children.

There was agreement that participants should be given clear information about what information would be passed on to whom and why, and that this was an issue where clear practice standards and training was needed.

Victim Support's response referred to Council of Europe and United Nations recommendations on admissibility of evidence. Victim Support argued that victims cannot be prohibited from offering confessional evidence in court, as confidentiality in a restorative process is not protected by law. They also argued that intentional violation of the outcome agreement, which can lead to re-victimisation of the victim, should be taken into account in subsequent sentencing decisions.

'Ultimately it is impossible to prevent either a victim or offender from disclosing information from the mediation process to a third party, and this includes court.'

Victim Support

Concerns were raised about whether a fair trial could take place after a restorative process has occurred and one respondent thought that cases referred to restorative justice should not be ones

that would be reverted to prosecution if restorative justice failed. ACPO advised that any evidence for court gathered in a restorative process needed to be compliant with the Police and Criminal Evidence Act (PACE).

Question 22 Restorative processes can yield useful information about future crime prevention. How can we draw on this information without compromising participants' need for confidentiality?

Twenty-seven respondents agreed that suitably anonymised information about crime prevention collected in restorative processes would be very useful. Some remarked that useful information of this nature is already being passed to Community Safety Partnerships, Multi-Agency Risk Assessment Conferences and Local Risk Management Meetings.

One respondent said that the primary purpose of restorative justice processes should not be to gather crime prevention information particular to the offending behaviour of the participants. Fourteen out of the 36 respondents to this question said that the participants needed to give permission for information to be passed on. Others said that it could be passed on without permission if it was anonymised. One respondent commented that information gathering on crime prevention should be a priority over confidentiality, particularly as the power of the Crime and Disorder Act overrides confidentiality requirements if the information can be used to prevent crime. One respondent stressed the importance of ensuring that practitioners passed on crime prevention information that would be difficult to respond to as well as that which would be easy to respond to.

'If the anonymity of the offender and victim is preserved, there can be little difficulty about using the information for future crime prevention.'

Justice Cooke

Most respondents said that permission from the participants should be obtained at the beginning of the process. It was suggested that if questionnaires were to be used to collect the information, these would need to be different for the victim and offender and practitioners would need diversity awareness training in order to administer the questionnaire sensitively. It was suggested that offenders could be given the opportunity to participate in crime reduction panels as a reparative activity.

Question 26 How far should provision of restorative justice, if integrated into the whole Criminal Justice System, be based on its current use in the youth justice system?

30% of respondents thought that any mainstreaming of restorative justice in the adult Criminal Justice System should be based on the youth justice system. Several respondents felt that replicating the juvenile system would be particularly beneficial for 18-20 year olds.

The Referral Order was particularly highlighted as a disposal worth replicating, not least because it allows for the offender to undertake community reparation rather than restorative justice if the victim does not want to participate. This means the victim does not have the burden of influencing what happens to the offender.

However, a number of respondents argued that adult restorative justice should not be based on the current youth justice approach, because the latter is too focused on offenders, and does not make enough use of restorative processes, especially for more serious offences. 45% of responses to this question stressed the need to learn lessons from the youth justice system. Some lessons identified are listed above in the summary of responses to question 16.

Several responses highlighted aspects of the youth justice approach that would need to be adapted for adults. For example, account would need to be taken of the different developmental stages and needs of young people and adults. The active consent and participation of parents and carers is normally required in juvenile cases. The age of offenders can affect victims' perception of them, and may also affect the public's willingness to volunteer as panel members.

There was support from a number of respondents for the Government's evidence based approach, commenting that the basis for mainstreaming restorative justice should be based on the research evidence of what processes work best in this country. Any decision to use youth justice models should be based on evaluation of them.

Additional comments from conference workshop

Participants that the YOT structure should be replicated for adults, because of its success in getting voluntary and statutory agencies working together. They suggested adapting the model so it could make greater use of the voluntary sector, and cautioned against creating excessive dominance of the statutory sector in delivering restorative justice to adults.

In contrast with the majority of respondents to the strategy, workshop members were critical of the idea of Referral Orders for adults, because of the difficulty in recruiting enough volunteers for the panels. At the same time, they also thought that if Referral Order were to be used for adults, they should be made available in a wider range of cases than for juveniles.

The workshop reiterated the point that the youth justice experience shows that mainstreaming restorative justice for adults will require cultural change, but that this cannot be rushed if restorative principles are to be fully understood.

The Government's response to questions 20, 21, 22 and 26

These questions raised, in outline, a series of issues that would need to be fully resolved before restorative approaches were made a mainstream part of the Criminal Justice System, especially in sentencing and as a diversion from prosecution. The Government's strategy is to continue to develop evidence and practice so as to be in a position in due course to consider further action to mainstream restorative justice. The responses usefully highlighted the complexity of these issues, and we recognise that they will need to be considered in detail and with close involvement of expert stakeholders, including the Sentencing Guidelines Council and representatives of the judiciary, and taking into account the evaluation of the current programme of pilots. As a first step, we will produce a policy statement on confidentiality and information exchange next year, since guidance in this area is likely to become necessary even before any mainstreaming of restorative justice.

Diversionary restorative justice and conditional cautioning

The consultation document did not ask a specific question on diversionary restorative justice and conditional cautioning, but a workshop was held on this issue at the conference on 28 November.

There was general support in the workshop for diversionary restorative justice, not least because it would allow court and correctional service resources to be concentrated on cases where they would be most effective. Some participants thought that some cases were too serious for diversion. There was agreement that assessment of seriousness should be based on impact on the victim and community rather than offence type. It was argued that decisions on whether to divert a case needed to take account of any prior relationship between victim and offender. While some participants saw sexual offences as inappropriate for diversionary restorative justice, others pointed out that some victims might prefer it to a court appearance. It was also argued that it might be an inefficient use of resources to run restorative processes for very minor offences that would normally result in a caution.

There was some discussion of how diversion should work, including around the Scottish model of prosecutorial diversion. Participants from the police pointed out the need for the restorative process to take place as soon as possible after arrest, and for bail procedures to facilitate this. It was pointed out that diversion mechanisms needed to be consistent with courts' key performance indicators, especially given that restorative processes could take longer than prosecution. Stress was laid on the importance of resourcing any rehabilitative and reparative activities appearing in outcome agreements, and of dealing effectively with breaches, on which models of good practice in Northern Ireland were mentioned.

The workshop highlighted the potential for community representatives to take part in diversionary restorative schemes. The point was made that diversion into community reparation should be available as an alternative to restorative justice where victims did not want to participate, to avoid giving victims an effective veto over diversion. There was agreement that victims in such cases should be given a say in what reparative activities the offender undertook.

Participants pointed out that diversionary restorative justice might benefit some groups more than others, and in particular that young black male offenders were less likely to plead guilty and therefore to qualify for it. They thought that diversionary restorative justice would need careful explanation to the public.

See Workstrands 1 and 2 in Section 2 above for next steps on diversionary restorative justice and conditional cautioning.

Annex A List of respondents and analysis of responses

Association of Chief Police Officers

Association of Chief Police Officers in Scotland

Association of Police Authorities

Birmingham Youth Offending Team

Board of Deputies of British Jews

Bradford District Domestic Violence Partnership

Bristol Justice Network

CARE

Chorley and South Ribble – Domestic Abuse Project

Churches Criminal Justice Forum

City of Derby Youth Offending Team and Community Safety Partnership

Commission for Racial Equality

Community and Criminal Justice Research Unit, De Montford University

Congleton Community Safety Partnership

CONNECT

The Honourable Mr Justice Cooke

County Durham Youth Offending Service

Crewe and Nantwich Safer Communities Partnership

Crime Concern

Crown Prosecution Service

Cumbria Constabulary

Cumbria Crown Prosecution Service

Summer Deaton, Restorative Justice Project, Boulder County Sheriff's Office, USA

Devon Forum for Justice

Enfield Youth Offending Team

Janice Evans, Cranfield University

Darrell James Fox
Gateshead Council
Theo Gavrielides, Centre for the Study of Human Rights, London School of Economics
Greater London Domestic Violence Project
Greater Manchester Police Authority
Michael Hadley, Victoria University, Canada
Penelope Hewitt, former magistrate
Steve Hewson, Thames Valley Police
Howard League for Penal Reform
Wendy Huckle, domestic violence consultant
Humberside Police
IMKAAN
Inside Out Trust
Ipswich Women's Aid
Dean Jackman
Justice
Justice Research Consortium
Kent County Constabulary
Kent Youth Offending Service
Lambeth Youth Offending Team
Lancashire Probation Service
LEAP – Young Mediators Network
Leicester City Youth Offending Team
Judge McElrea, New Zealand
Mediation Somerset
Mediation UK
Medway Youth Offending Team
Metropolitan Police Service
David Miers, Cardiff Law School
Audrey Mullender, University of Warwick
National Children's Bureau
Navajo Working Group for Human Rights, USA

Tim Newell, former prison governor

Northern Network of Referral Order Coordinators

Northgate Information Solutions

Northumbria Probation Area Board

J M Pearch

Peterborough Community Safety Partnership

Police Service of Northern Ireland

Prison Fellowship

Prison Reform Trust

Proactive Resolutions

Quaker Crime & Community Justice Group

Reading and Wokingham Youth Offending Team

Real Justice

Refuge

REMEDI

RESPECT

Restorative justice Training Foundation

Restorative justice Consortium

Laura Richards, Behavioural Consultant, Metropolitan Police

Stuart Robbins, Volunteer, East Kent Victim/Offender Mediation and Kent Youth Mentoring Service

Declan Roche, London School of Economics

Rotherham Domestic Violence Forum

Safer Rotherham Partnership

Joanna Shapland, Sheffield University

South Tyneside Youth Offending Service

Southall Black Sisters

Southampton Mediation

Staffordshire Probation Area

Standing Together Against Domestic Violence

Stockton Youth Offending Team

Surrey Police

Thames Valley Partnership

Thames Valley Probation Area

Understanding and Responding to Hate Crime

Victim Support

Victims' Voice

Wandsworth Youth Offending Team

Wessex Youth Offending Team

West Midlands Probation Service

West Yorkshire Police

Women's Aid Federation of England

Lindy Wootton, Restorative justice Co-ordinator; HMP Bristol

Worcestershire & Herefordshire Youth Offending Service

Breakdown of responses

Category	Sub total	Total
Statutory Agencies		40
● CPS	2	
● Police	13	
● Probation Service	5	
● Prison Service	1	
● YOTs	14	
● CDRPs	5	
Voluntary sector/charity		32
● Domestic violence related	12	
Faith based organisations		4
Academics		7
Individuals		10
Other (private companies, training providers and statutory partnerships)		8
Overall total		101

Annex B List of consultation questions

- 1 What should be the main principles for the use of restorative justice in a criminal justice context? Should these differ from principles for restorative justice outside the criminal justice system?
- 2 What would the benefits and disadvantages of developing more specific principles in particular areas – for example for sensitive offences such as hate crime, sex crimes and domestic violence?
- 3 Who needs what level of training for restorative justice, within Criminal Justice System agencies and in voluntary sector providers?
- 4 Do you agree that there is a need for a range of training providers, with a shared approach to training and accreditation for restorative justice practitioners? If so, what might this look like?
- 5 Over the next twelve months the Government proposes to hold a series of regular meetings with key stakeholders to develop policy on training and accreditation. What are the key issues this process needs to consider?
- 6 What would be the benefits and drawbacks of including non-statutory restorative justice organisations in the Victims' Code of Practice?
- 7 If the Code were to be extended, what obligations to victims should it include on organisations providing restorative justice?
- 8 If the Code were to be extended to cover non-statutory organisations providing restorative justice, what criteria and procedures should be used to decide which organisations should qualify?
- 9 Are there other local solutions to the data sharing issue that could usefully be made better known?
- 10 How far would data sharing issues be resolved by a statutory Victims' Code of Practice which covered non-statutory organisations offering restorative justice?
- 11 How can we develop and spread existing good practice in restorative justice within the correctional services? We would particularly welcome views on this question from people already working in the Prison and Probation Services.
- 12 How can we increase the availability of appropriate, high quality reparative work for offenders that engages the offender with society and builds employment skills?
- 13 How can we involve victims and the community more, particularly communities damaged by crime, in deciding what reparative work offenders do?
- 14 What are the best ways to raise awareness of reparation by offenders?
- 15 How can the correctional services develop restorative justice as an approach to case management, incorporating the need for risk assessment and programmes to reduce re-offending?
- 16 We would welcome your views on the progress of restorative justice in the Youth Justice System to date, and recommendations for future development of restorative justice for young offenders and their victims.

- 17 What should be the role of Victim Personal Statements in giving victims a voice on restorative justice and reparation?
- 18 What other possible future developments in criminal justice could be combined with restorative approaches?
- 19 How, and with whom, should the government work to increase understanding of restorative justice
a) among criminal justice and other professions and b) the wider public?
- 20 What kind of judicial oversight of restorative justice is needed to ensure reasonable consistency with sentencing practice and safeguard participants human rights?
- 21 How far should information that emerges during a restorative process be inadmissible as evidence in court, so as to encourage the full participation of offenders and safeguard of their human rights, but without undermining the prosecution of offences?
- 22 Restorative processes can yield useful information about future crime prevention. How can we draw on this information without compromising participants' need for confidentiality?
- 23 What are the particular needs of different sections of the community, such as women and members of ethnic minorities, to which restorative approaches need to be sensitive?
- 24 The value of community involvement through the use of volunteers needs to be balanced with making full use of the expertise of criminal justice professionals. What combination of criminal justice professionals, other professionals and volunteers should deliver restorative justice?
- 25 What combination of criminal justice agencies and voluntary sector agencies should be used to deliver restorative justice, and why? What would be the main factors to consider in designing a multi-agency approach?
- 26 How far should provision of restorative justice, if integrated into the whole criminal justice system, be based on its current use in the youth justice system?

Annex C Examples of good practice on datasharing

Question 9 of the strategy document asked respondents to supply examples of local good practice on sharing the data that agencies need to contact potential participants in restorative processes. Examples were received from the following agencies.

Cumbria Constabulary

The Constabulary includes a space for victim details on an information sheet given to police officers who contact victims, which is then passed to the Youth Offending Team (YOT).

Enfield Youth Offending Team

The YOT, which includes voluntary sector representation, is registered as a 'data entity', which enables all its members to share data amongst themselves. This does not allow them to share all data with their parent agencies; but the heads of all the agencies are signed up to a data sharing protocol. The YOT's restorative justice conference co-ordinator has access to a number of agencies' databases and regularly exchanges information with local multi-agency panels, e.g. one on Anti-Social Behaviour Orders.

Justice Research Consortium

JRC's projects in London and Northumbria are led and managed by police, which makes datasharing straightforward.

Their project in Thames Valley is more complex. The National Probation Service Thames Valley is the lead agency in a multi-agency Steering Group, which includes senior management representation from HM Prison Bullingdon, Thames Valley Police, Oxfordshire Victim Support, Thames Valley Magistrates Courts Service and Mediation Oxfordshire. The membership by Thames Valley Police of JRC and the Steering Group is key to successful sharing of victim details. Passing of information from the Victims Unit of NPS Thames Valley is regulated by the protocol set out in Appendix A of *Restorative justice: the Government's strategy*.

Remedi

South Yorkshire has established a 'Multi Agency Victim Group' which has successfully brought together local agencies to formulate effective datasharing protocols. The Police act as a gatekeeper for information, disseminating it to those involved in the group.

Victim Support

Victim Support has a datasharing protocol with the Crown Prosecution Service whereby the CPS passes witnesses' contact details to the Witness Service (run by Victim Support). Victims provide their consent (on an opt-out basis) to a specific statement in the MG11 form, when this is read to them by the police at the time they make their witness statement. As a safeguard, the Criminal Records Bureau vets all Victim Support personnel.

Wessex Youth Offending Team

Datasharing has been made simpler by the Chief Constable's supportive stance, who regards any member of the YOT, not just its police officers, as entitled to receive information about victims from the police.

Further copies of this guidance can be downloaded from
www.homeoffice.gov.uk/justice/victims/restorative



Criminal Justice System: working together for the public