Written evidence from the Crown Prosecution Service

1. This submission comprises the Crown Prosecution Service’s contribution to the Justice Committee inquiry into restorative justice (RJ). It is not intended to be an articulation of overall Government policy towards RJ, an explanation of which will be provided by other parties (such as the Police and Ministry of Justice) more closely involved with its formulation and delivery. Instead this contribution focuses on how the CPS currently interacts with RJ and what we are doing to support its further integration into the criminal justice system.

2. The CPS is supportive of RJ which we primarily encounter as an effective and proportionate response to low level offending where:

   i. the suspect admits the offence;
   ii. the public interest does not require a formal criminal justice disposal; and
   iii. the offender is willing to make a reparation.

3. The Code for Crown Prosecutors sets out that, when deciding whether it is in the public interest to charge, the CPS should consider whether bringing a prosecution is a proportionate response to the offence. If it is not, then it may be a conditional caution involving RJ will be more appropriate. The Director’s Guidance on Conditional Cautions for Adult and Youth offenders, which has been issued to Police and prosecutors under Section 37A of the Police and Criminal Evidence Act 1984, explains how these decisions are made.

4. As RJ is at present usually considered before charge or post-conviction, the CPS may not be involved in the decision to offer it. The involvement of the CPS is mandatory for indictable only offences, but in other pre-charge scenarios the Police are free to make their own decisions independently of prosecutors (although still in line with the Director’s Guidance). There may be some cases where a reviewing lawyer identifies that a form of RJ might be an alternative to prosecution and discusses that option with the Police, but this is uncommon. It is also relatively rare for conditional cautions to be considered by the CPS post-charge and then usually only when the defence raises the possibility.

CPS position on and involvement with Restorative Justice

5. It is more common for the RJ process to be used before a case comes to court – for example as part of conditional cautions and some community sentences. The Director’s Guidance on Conditional Cautions allows for an authorised person (‘a police officer not below the rank of Sergeant or any person specifically authorised by the Director of Public Prosecutions’) to offer a conditional caution for any summary only or either way offence, without referring the case to the CPS.\(^1\) It is

\(^1\) The Director’s Guidance on Charging states that conditional cautions for domestic abuse and hate crimes can only be given within current out of court disposal (OOCD) pilot Areas. The OOCD pilots specify that community resolutions are not for use in intimate partner violence. In addition they specify that restorative justice is not suitable in cases of intimate-partner domestic violence as a condition of a CC, but may be used in familial violence under strict safety criteria.
also the Police or another organisation responsible for delivering RJ in an area who liaise with the victims and deliver RJ itself (in cases involving youths this may be the Youth Offending Team). As such, the CPS may not always be involved with cases in which it is offered.

6. Section 7 of the Code for Crown Prosecutors provides guidance on alternatives to prosecution for adults and youths, including conditional cautions, and sets out that the CPS is supportive of RJ as an effective and proportionate response to low level offending where the public interest does not require a formal criminal justice disposal. Informal disposals such as RJ may be sufficient to satisfy the public interest and reduce the risk of future offending.

7. Our Restorative Justice Guidance to prosecutors states that ‘in areas where RJ-trained personnel are available and a case with a personal victim is being considered for a conditional caution, consideration should always be given to including an RJ process in the caution.’

8. RJ only becomes an option once we have found that there is sufficient evidence for a realistic prospect of conviction (Stage 1 of the Code for Crown Prosecutors’ test). Once met, the public interest (Stage 2 of the test) is considered and allows for diversion to be explored. We take the seriousness of the offence, the offender’s culpability, the circumstances and the harm caused to the victim into account. If diversion is deemed appropriate – a decision for the Police or CPS, not the victim – then for RJ to take place both the offender and victim must agree and the offender needs to have admitted responsibility for the harm they have caused. The CPS experience is that RJ works best when the offender is committed to participating in a meaningful way, rather than simply trying to avoid being prosecuted.

9. The Crime & Courts Act 2013 made provision to allow for courts to defer sentencing post-conviction, to allow for RJ to take place. The CPS is involved with trialling this work, although our involvement is broadly limited to not opposing applications to adjourn for the RJ to take place prior to sentence.

What progress has been made by the Government in implementing the Restorative Justice Action Plan 2014?

10. The CPS is not specifically mentioned in the Action Plan and implementing its commitments is primarily for other organisations. The CPS does not routinely provide information to victims about RJ; this is something for the Police or other partners. However, we are committed to playing our part in delivering the plan as much as possible, especially in relation to ensuring restorative justice is available to victims at all stages of the CJS and to ensuring people are aware and understand what it is.

11. One of the Action Plan’s measurements for success is that partners ‘continue to work with the Restorative Justice Council (RJC) to understand the extent and nature of restorative justice provision and build on research which has attempted to provide a benchmark.’ We have identified this as something we can do and are currently in contact with the RJC to identify new opportunities for improving our support for restorative justice (see paragraphs 19-20).
How are the entitlements to restorative justice in the Victims’ Code working and what are their implications for any such entitlements in any future Victims’ Law?

12. The Victims’ Code states that victims of adult offenders are entitled to be provided with information about RJ and to be referred to services where these exist. Although the Victims’ Code applies to all partner agencies in the CJS, it is the Police, NOMS and other providers rather than the CPS who are best placed to comment on the extent to which the entitlements contained in the Victims’ Code are working.

13. The CPS has no specific position on the extent to which the Code’s provisions should be reflected in any Victims’ Law. However, one of our core commitments is the service we provide to victims and this commitment shapes our response to ensuring that the entitlements are delivered wherever appropriate. We have a duty to continually review cases so that even once charged, we will work with the defence and take into account any representations about acceptance of guilt that allows RJ to be considered if appropriate to the particular case.

14. The CPS remains supportive of any endeavour which will improve the experience of the criminal justice system for victims and witnesses.

What is the impact and effectiveness of the National Offender Management Service’s restorative justice programme to promote the development of victim-offender conferencing?

15. The CPS has no specific comment on this question.

What is the effectiveness of delivery of restorative justice across the range of service providers and funding arrangements, including provision made by Police and Crime Commissioners, the prison Service, the National Probation Service, and Community Rehabilitation Companies?

16. The CPS has no specific comment on this question.

Next steps

17. The CPS acknowledges that all partner agencies in the criminal justice system have an obligation to support victims and that RJ can improve victims’ experiences, help them recover from a crime and also contribute to driving down reoffending rates. While other CJS partners are currently more involved with RJ than the CPS, we recognise that there may be more we can do.

18. We are currently in discussions with the RJC to explore how we can add further value, either at the pre-charge stage where the Police have not yet considered a diversion or later in the course of a prosecution.

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