



Hearing the Relatives of Murder and Manslaughter Victims

Response to Government's consultation

from the Restorative Justice Consortium

November 2005

1. We welcome the government's initiative in consulting the public about this important issue. We agree of course that victims of crime – and indeed of other damaging events - should have a voice, and that the criminal justice system should be more sensitive to their needs. As Victim Support has ably shown over the last thirty years, however, much help for victims is most effectively provided outside the court process, and the voluntary sector in particular has much to contribute.

2. Relatives of homicide victims (whom we will refer to as 'relatives' for brevity) have many needs and an important point is to recognise that they are differing needs and assumptions should not be made.

As a general statement, it may be said that they commonly want their suffering to be recognised, that the person referred to in court was very real to them, they would like to let the offender know the effects his action has had on their lives, and often they want to ask questions that only the offender can answer, for example about the last moments of the life of the deceased person.

Courts are designed for quite different functions, and although they should of course be as helpful as possible to relatives who are observing the proceedings or giving evidence, these needs are generally best met elsewhere. However courts and the various agencies involved with the relatives can do much to explain the functions of the court and what to expect at every stage of proceedings. We welcome the CPS willingness to take on a more proactive and communicative role with victims and their relatives. This will enable them to feel less excluded from proceedings.

3. We should make it clear at the outset what we are *not* proposing. Restorative justice is often proposed as an alternative to sentencing for less serious crimes, but

that is obviously not the case with homicide. Secondly, it is often presented as an opportunity for the offender to apologize and the victim (in this case the relative) to forgive. The restorative justice process may make those interactions more likely, but it does *not* aim at them; it only provides a channel of communication for them to use in the way most helpful to them. There should be no *expectation* of an apology, which might not be sincere, and certainly no pressure for forgiveness, although evidence suggests that those who are able to forgive find it helpful. Thirdly, it does not consist merely in bringing the relative(s) and the offender together; it should begin with several interviews with both the relatives and the offender to make sure that they understand what the process may be like, to make as sure as possible that it will be constructive, and if there is a possibility that it will not go as expected, to prepare them for that (if they want to go ahead nonetheless) or to recommend that the contact should not proceed. The contact is not necessarily face-to-face – that is their choice - although the evidence suggests that the participants derive greater benefit when it is.

4. What we *are* proposing is that relatives should be made aware that there are possibilities for them to communicate with the offender, with careful preparation, support and safeguards. This may lead to the results mentioned above; another result may be to discharge any hostile feelings so that when the offender is eventually released, both he or she and the relatives need no longer fear each other, if the offender returns to live in the same locality.

5. This means, firstly, that arrangements should be in place for this to happen if relatives want it, and secondly, that those who advise them should not only know of the process but be able to explain it in an understanding way so that the relatives can make an informed choice whether to ask for it. They should not have to struggle to find their way through the system, as described by Lesley Moreland in her book *An ordinary murder* (2001).

6. This would clearly require a nationwide network of mediators or facilitators with specialist training in work of this kind, and a programme of training and supervision would also be needed. Suitable arrangements should certainly be included in the proposed pilots (paragraphs 74-5).

7. There may also be occasions when offenders ask for such a meeting, in order to express their remorse and apologize. If this happens before sentence, it may of course be suspected of being an attempt to secure a shorter sentence (or minimum recommended term in the case of life sentences), but it is not necessarily so, and the guiding principle should be whether the relatives are ready for it and feel, after full discussion, that they might find it helpful. There may be occasions when the relatives and the defendant wish to make a joint statement to the prosecutor or the judge, and they should be made aware of this possibility, although of course there should be no pressure on either side to do so. It should be remembered that ‘homicide’ includes many situations other than ‘cold-blooded murder’; one of the commonest, where there is often intense and immediate remorse, is causing death in a road crash, but there are also cases where a fight went too far, mercy killing, and other examples.

The consultation paper

8. In the light of these considerations we should like to comment on specific points in the consultation paper (some of which, despite its title, is about the situation of victims of other kinds of crime as they experience the criminal justice system). Since they have been included, we will comment on them separately later in this response.

9. Paragraphs 28-31 refer to Victim Personal Statements (for relatives in cases of homicide). Misgivings about these have been raised in Home Office-sponsored research (by Carolyn Hoyle and others), and may be crudely summed up as ‘If the statements could affect the sentence, they place a heavy burden on victims and are potentially unfair on offenders; if they do not, relatives are likely to ask what is the point of them.’ We would add that many relatives are likely to find it easier to express their feelings orally than on paper (even with help) and that they can do it better in a restorative meeting than in a court or police statement. Often, the person they especially want to hear it is the defendant, who in the court-room is preoccupied by what is happening to him, rather than to the relatives. The court does not provide the possibility for him or her to answer the relatives’ questions – and indeed the consultation paper does not suggest that they should even get a chance to ask them. Even expressions of remorse are likely, in court, to seem to be perfunctory, or attempts to get a lighter sentence; in a restorative setting the relatives can assess for themselves whether they want to accept any apology that may be made.

10. ‘Relatives should be able to present their views in person to the judge at the sentencing stage of the trial, according to paragraph 39 (to use the technical term, they should have the ‘right of allocution’).’

We believe that the proposal of giving the relatives a voice in court before sentencing takes place will not provide for the needs of most relatives and in fact will have a re-victimising effect on them. The reasons for this are as follows:

- Victims of crime and those bereaved go through a process of recovery, which involves different stages. The court process is not be able to take account of this, nor to enable the person to speak at a time that they feel able to do so.
- Relatives may feel that the sentence the offender receives will be dependent on their ‘performance’ in court and may feel that they have let the victim down if the sentence is not what they were hoping for.
- Other countries (such as South Australia) have tried this and victims do not report feeling satisfied with their involvement.
- Some relatives may feel unable to appear in court and speak and they may be left with feelings of guilt as a result.
- This could also put the relatives at risk, or feel more at risk, of intimidation by the offender or his associates.
- There is no evidence that this works in meeting victims needs.

Regarding offenders, there may be grounds for alleging an ‘unfair sentence’ if the judge appears to be influenced by the relatives’ input into being more punitive, even if only subconsciously.

For the reasons given above, we have reservations about this; if it were to go ahead, we should want to see a procedure that would make clear exactly what the relatives should, and should not, expect from the process. They may want to be heard by the judge, but for many, as we have noted, the person by whom they most want to be heard is the offender – and they want to hear *from* him or her as well. So whether or not they can address the judge, we believe that this would be no substitute for offering them the opportunity of a dialogue with the defendant, in a safe setting away from the court room, where feelings can be not only expressed but responded to, free from the responsibility of sentencing.

11. An important omission from the consultation document is any mention of the reporting of the statement by the media. It draws a distinction between a statement in court and one made to the media (paragraph 44), but without restrictions, it should be remembered that a statement to the court *is* likely to be a statement to the media. This may lead some victims to say what they think is expected of them rather than what they really feel – apart from any possible prejudicial effect on the offender. Victim-offender dialogue, in contrast, takes place away from the media, and for both sides there are fewer barriers to expression of their true feelings.

12. It is proposed that this should also be done in cases of corporate manslaughter (paragraph 40), and we have previously made representations on this subject (*Corporate manslaughter: The government's draft Bill for reform. Comments from the Restorative Justice Consortium*, 2005; see also *New Law Journal* 28 October 2005, p 1613). Here too we asked that there should be an opportunity for dialogue, as well as the possibility that the offender(s) could make reparation in a way acceptable to the relatives.

13. Relatives should be able to communicate effectively with the prosecutor (paragraphs 45, 62-4, 68). One reason for this is that prosecutors have a duty to challenge unjustified opprobrious statements about the victim, made by the defence during a plea in mitigation (*Victim's Charter*, 1990, pp 17-18); but they cannot do so unless they know whether the allegations are indeed unjustified.

14. It is proposed that victims should be offered support when making statements in court (paragraph 46). The same is true of the victim-offender dialogue which we are advocating, although it is likely to be less necessary, because the atmosphere will be less formal than a court, and mediators are trained to be 'omni-partial', looking after the interests of all participants, especially any who may appear to be at a disadvantage through nervousness or inarticulateness. Such supporters could be lay people, not lawyers; they would not require special training, but the process should be clearly explained to them.

15. With regard to vulnerable relatives (paragraph 65) the same applies, and we repeat that face-to-face contact may not be appropriate at this stage, or ever. But neither should it be assumed that there may not come a time when communication will be helpful to the relative, for example before the offender's release from prison (see also paragraph 20 below)..

16. The proposed right of allocation involves deciding which relative should be able to exercise it (paragraphs 52-55). In the case of mediation or conferencing this

need not be a problem, as more than one person affected by the offence could take part, so long as this did not create an unfair situation in which, for example, an offender was confronted by a large number of relatives of the victim. Numbers would in any case be kept small by the practical limitations of the number of people for whom preparatory interviews could be arranged.

17. The consultation document considers the appointment of an advocate (paragraphs 56-9). This is another problem which would not arise, since the general experience is that mediation and conferencing work best when lawyers are not present. Both victims and offenders, however, should have the right to legal advice (at public expense if necessary) before or after the session. The lawyers involved should have received training in the process of victim-offender dialogue and its implications; so should those who give general advice about the process (paragraphs 61, 72).

Victims of other violence

18. Victims of serious violent crime have to be consulted before offenders are released. It is not uncommon for victims to want to meet or communicate with offenders at this point, to see whether they have any cause for unease about the offender's return to the same locality. (Offenders may want it too, because they may also be apprehensive about meeting the victim.) Probation officers carrying out this victim enquiry work should be aware of this, and facilities should be available in every area to enable it to happen if victims request it.

Other points raised in the consultative document

19. In paragraph 6 specialist courts are mentioned. Drugs and domestic violence raise complex issues, which we will not explore here, but with regard to anti-social behaviour, we want to stress that often it can and should be dealt with by methods such as mediation before it becomes so serious as to be criminalized.

20. Paragraph 7 refers to the target of increasing the satisfaction of victims and witnesses, and we draw attention to the numerous research studies that have found much higher satisfaction with restorative justice than with courts (a minimum of 75% in most projects, and in some cases over 90%).

21. A fast track service for vulnerable victims is referred to in paragraph 9. This is desirable from many points of view, but it should be balanced against victims' need for time in which to come to terms with the offence and to consider whether they are ready to take part in a restorative process.

22. The Crown Prosecution Service has to consider the consequences for the victim in deciding whether to prosecute. This includes the recommendation, in the *Code for Crown Prosecutors* (2000, p. 13), that a prosecution is less likely to be needed if the defendant has put right the loss or harm. It also states, rightly, that defendants must not avoid prosecution simply because they are able to pay compensation; but putting right the loss or harm can be done in different ways that do

not necessarily involve the payment of money, for example an apology accompanied by a symbolic gift, or work for the community, or co-operation with any programmes designed to help the offender to do better in future.

23. In the Quality of Service Standards (paragraph 11) and the Witness Care Units, (paragraph 13), information about restorative justice should also be available.

24. The government proposes to use the proceeds of crime for the newly established Victims' Fund. Putting such moneys to good use is of course desirable, if it is not possible or appropriate to return it to its original owners; but if the government and the public want to show respect for victims, such a fund should be adequately maintained at public expense, and not depend on how much the police happen to have recovered. Nor should it depend on the surcharge on fixed penalty notices and criminal convictions, which in any case we believe to be inappropriate from the offender's point of view.

25. The next section, at the beginning of Chapter 4, is headed 'Listening to victims', and we stress once again that victims can speak most freely in the less formal setting of a mediation or conferencing session, and the offender is more likely to hear them and to accept responsibility instead of trying to deny or minimize it. In addition, in such a setting the facilitators can explore the background of the offence, including aspects that would not be relevant in court. This should throw light on social conditions, which need to be addressed by those responsible for crime reduction.

26. In the Victims' Advisory Panel (paragraph 25) we ask that persons with knowledge and experience of restorative justice should be included. Similarly, the Witness and Victim Experience (WAVE) survey should include restorative justice services; these should also, of course, perform to the highest standards, and the standards should be set in agreement with relevant organizations and researchers with expertise in this field.

27. We welcome comments made previously that 'victims should be put at the heart of the criminal justice system' and the suggestion of 'rebalancing the system'. We feel that if all agencies had as their aim to 'endeavour to meet the needs of victims and society' agencies would better consider those needs and go some way to meeting them but not at the expense of the offender. It does not have to be an either/or situation.

Conclusion

28. To summarize, we agree that victims should be heard, but they often want to be heard by the offender as much as by the court: to ask questions and to hear answers *from* the offender. Court procedure is designed for quite other purposes, and we recommend that the government's proposals, especially the pilot programmes, should make it possible for restorative dialogue to take place if both the offender and the relative(s) so wish. The criteria for evaluation should be agreed with restorative justice practitioners, researchers, and others with specialist knowledge and experience. There should be a clear understanding of what restorative justice does

and does not do; all involved, especially for lawyers, probation officers and police, should have a full understanding of this, and training where necessary. All restorative processes require full explanations and discussions with the participants, and adequate safeguards; this is especially true where a death is involved. Court proceedings after murder or manslaughter, even with reforms, can be traumatic for relatives of the victim. We believe that the possibility of victim-offender dialogue, for those who want it, could ease their pain and help them to make a new start after the loss they have suffered.

About the Restorative Justice Consortium

The Restorative Justice Consortium was formed in 1997. It brings together a wide range of people with an interest in restorative justice. These include organizations, policy makers, practitioners, academics etc from many different contexts and from across the world.

In June 2003, the Consortium was granted charitable status.

The objects for which the Consortium is established are:

" To promote restorative justice for the public benefit as a means of resolving conflict and promoting reconciliation by;

- Promoting the use of restorative justice in the criminal justice system, in schools, in the workplace and elsewhere in the community in situations where conflict may arise*
- Developing and promoting agreed standards and principles for evaluating and guiding restorative practice*
- Advancing education and research on restorative justice and the publication of the useful results of that research"*

Merchant House

89, Southwark Street

London

SE1 0HX

02079604633

www.restorativejustice.org.uk

info@restorativejustice.org.uk

November 2005

