



## **Facing Forward Submission to the Joint Oireachtas Committee on Justice, Defence and Equality on the Heads of the Criminal Justice (Community Sanctions) Bill**

**April 2014**

### **1. Introduction to this Submission**

**a.** This submission has been prepared on behalf of Facing Forward by Barbara Walsh, Niall Counihan, and Nadette Foley. Their relevant professional experience and expertise is detailed in Appendix 1.

**b.** Facing Forward was established in 2005 in response to gaps in the Irish criminal justice system and to support the introduction of restorative approaches based on best practice that has emerged in other countries.

Our Management Committee is made up of people from a variety of backgrounds including mediation, criminal justice, community development, and peace and reconciliation work. We are a member based, voluntary organisation.

**c.** In October 2013, Facing Forward made a detailed submission to the Oireachtas Committee for Justice, Defence and Equality on the larger topic of Restorative Justice on which a hearing is pending later this year.

### **2. Facing Forward's Approach to Restorative Justice**

One way of understanding RJ is to consider the differences between it and our current Retributive Justice system by looking at three questions:

#### **Retributive Justice asks:**

1. What law was broken?
2. Who broke it?
3. How do we punish them?

#### **Restorative Justice asks:**

1. What harm was done and to whom?
2. What needs have arisen based on that harm?
3. Whose obligation is it to meet those needs?

RJ also has a purpose beyond the immediate objectives of the Criminal Justice System. Internationally, where restorative practices are embedded within criminal justice systems, they are one part of a wider restorative approach in communities, schools and throughout society. Facing Forward recognises the ripple effect of crime at all levels of the community, and is working to encourage and support a more restorative approach.



The Restorative Justice Council<sup>1</sup> in the UK has a document, which outlines best practice. The following are some of their key principles that may be relevant to the provision in the Heads of this Bill:

- Primary aim to be the repair of harm.
- Secondary aim to be to restore relationships between individuals impacted by harm and throughout the wider community affected.
- The individual who has been harmed and the person responsible for the harm are the primary participants in any restorative process. There should be some level of agreement about the essential facts of the incident and an acceptance of responsibility by the person who caused the harm.

### **3. The Heads of the Criminal Justice (Community Sanctions) Bill**

Facing Forward welcomes the mention of restorative justice and reparation and the introduction of a statutory obligation to obtain the consent of the person, contained in the draft Heads of the above Bill. Facing Forward is limiting its detailed comments to Heads 8, 9 and 10. Facing Forward also welcomes the proposed steps to give a statutory basis for a Reparation Fund to replace 'Court Poor Box' in Head 30, and encourages the Committee members to consider how funds from this source could be used to support the expansion of restorative options alongside other supports for victims of crime. In keeping with the principle of Community Engagement and the importance of maintaining community trust in the criminal justice system, the involvement of community and victims' representatives in monitoring the implementation of the Reparation Fund might be considered.

Facing Forward particularly welcomes the breaking of the link between payment of monetary reparation and any mitigation of a sentence.

Facing Forward would urge the Committee to consider what awareness raising among the general public, those being brought before the District Court on summary charges or on indictable charges being dealt with summarily and those harmed by such offences, might be necessary to provide a supportive context for the future use of the restorative approach detailed in the Heads of this Bill. As the criminal justice system formalises the restorative direction which is becoming more apparent in its work, there is a need to ensure that there is sufficient public understanding of the benefits to victims, offenders and society of restorative approaches.

#### **Head 8**

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<sup>1</sup> ([http://www.restorativejustice.org.uk/resource/best\\_practice\\_guidance\\_for\\_restorative\\_practice\\_2011/](http://www.restorativejustice.org.uk/resource/best_practice_guidance_for_restorative_practice_2011/)).



Subhead (3)(f), together with Head 9, provide for a “limited and specific restorative justice approach in relation to District Court criminal proceedings for minor offences”. Facing Forward welcomes this provision which replaces some sections of the Probation Act 1907 and expands the statutory basis for Restorative Justice interventions.

(3) (f) This requires the Restorative Justice criteria specified in Head 9 to be satisfied. Facing Forward would like further explanation of the wider meaning of the restorative process envisaged in the Bill.

### **Head 9**

This Head introduces a mechanism for reparation with the following conditions, which recognise the rights of the person whom the offence has harmed as set out in the EU Victim’s Directive:

- (2) (a) the person has offered to provide reparation to the person in respect of whom the offence was committed, and
- (b) the person in respect of whom the offence was committed is willing to accept the reparation.

(4) In this Head, “reparation means financial reparation, any other form of reparation, or both”. In the Explanatory Notes for Head 9, the only examples of ‘reparation’ given are monetary compensation. Facing Forward would urge that the possibility of encouraging victims and offenders to consider reparation in its widest sense be incorporated into the final version of the Bill. This would respect the different interests and needs of individual victims in the spirit of the EU Victim’s Directive.

Facing Forward welcomes the requirement that the ‘person in respect of whom the offence was committed is willing to accept the reparation’. We see this as a statutory recognition of the voice of the victim, which can be seen as facilitating the victim’s right to be heard in Article 10 of the EU Victims Directive. Facing Forward wonders if the court would want to see evidence of this consent in the form of a signed written consent from the person impacted by the offence?

The Heads of the Bill do not specify the precise mechanism by which the victim’s consent is to be sought. It is likely that in the case of adult offenders it will be the Gardai as the ‘designated authority’ (EU Victim’s Directive) who will carry out the action to obtain the victim’s consent under this Bill. Facing Forward would like to see some mention of the needs of ‘victim’s with specific protection needs’ as obligated by the EU Victim’s Directive, which include all victim’s under 18, victims of sexual crime and victims of hate crime. Mention of the need for specialised training for communication with such victims could also enhance the provisions of this Bill. Under the terms of



this Bill, when a Garda contacts a victim to ascertain whether or not they consent to a reparation order being made, to comply with the obligation in the Victim's Directive, they may also need to refer people to victim support agencies. Facing Forward recognises that certain individual victims may have suffered considerable trauma and harm and have safety concerns, so it is important that their individual needs be taken into account and responded to appropriately. The EU Victim's Directive also encourages States to put in place Codes of Conduct or Guidelines for professionals who are in contact with victims.

Facing Forward would like the process of seeking the victim's consent to include information to the victim on wider restorative possibilities, within the limits of the context of summary offences. Can the restorative element be strengthened by giving a victim time to consider not only if they want reparation, but what reparation means to them? For some victims, it may simply be the cost of damage done or medical expenses incurred as a result of the offence, but for others, there may be additional issues. It may be necessary for Gardai to take other needs into account, beyond the limits of obtaining consent.

Facing Forward would also ask the Oireachtas Committee to investigate whether an additional question could be asked of victims, to see if they might be interested in communication of any sort, indirect or direct with their offender. As these are summary offences, such communication would need to be carried out promptly as the purpose of this mechanism is that the offender can put this 'minor' offence behind them. Would it be appropriate for victims who consent to reparation to be given the option of attending the summary hearing in the District Court to hear the offender accepting responsibility for the offence and the harm caused and the reparation arrangement being confirmed? This option could have additional restorative benefit for both the victim and offender.

In considering the Heads of this Bill, Facing Forward hopes that the Oireachtas Committee will avail of every opportunity to consult widely with agencies working with those responsible for such offences as well as those impacted by the harm caused by such offences.

#### **Head 10**

(e) 'The need to have due regard to the interests of any victim of the Offence'. This item relates to the EU Victim's Directive which recognises the need for the victim to play 'a key role in criminal proceedings'. In summary offences, this role may be less than in proceedings dealing with offences which attract higher tariffs.



## **Conclusion**

Facing Forward welcome the Heads of the Criminal Justice (Community Sanctions Bill) for the following reasons:

- It is a first step in fulfilling the National Commission on Restorative Justice recommendations to place restorative approaches on a statutory footing.
- It gives a statutory basis for taking the needs and interests of the victim into account, through requiring consent for the payment of reparation.

Facing Forward proposes that the following issues be considered:

- The needs of the victim for a wider consideration of reparation, other than monetary and support for their other needs.
- The 'specific protection needs' of certain victims and how these will be met.
- The questions of giving victims information on further restorative possibilities for communication between them and the offender.
- The possibility of informing victims of the option to be present at a District Court hearing where the offender accepts responsibility for the harm.
- The need to conduct public awareness work to ensure widespread understanding of the benefits to victims, offenders and Irish society of introducing restorative justice approaches within the criminal justice system.



## **Appendix 1.: Biographies of Facing Forward Submission Group**

**Barbara Walshe** is the current Chairperson of Facing Forward. She is also the Research Coordinator of Facing Forward's current research project being undertaken in partnership with the Department of Applied Social Science at UCD, on '*Sexual Trauma and Abuse: Restorative and Transformative Possibilities*'. Barbara spent 3 months in 2013 in Milwaukee, Wisconsin doing advanced training in Restorative Justice with Prof Janine Geske and facilitating restorative circles in juvenile detention centres. Barbara has a background and experience in community development, mediation, dialogue, facilitation, peace building and research and radio production. She has a Masters in Reconciliation and Conflict Studies (Trinity College, Dublin), BA English and Sociology (NUI, Galway); Masters in Community Development (NUI, Galway) and a range of other qualifications in education, housing and project management.

**Niall Counihan** has been a member of the Facing Forward Management Committee since 2009. He is currently employed as the co-ordinator of the Cabra Community Policing Forum, and sees great value in the use of Restorative Practices to resolve community antisocial behaviour and associated issues. Niall is currently a member of the Mediation Institute of Ireland and is a mediation practitioner. He also has a NUI diploma in Youth Justice.

**Nadette Foley** was formerly Director of the Irish Refugee Council and the Multicultural Resource Centre Northern Ireland and has worked in the area of human rights, asylum advocacy, cultural diversity, anti-racism, intercultural integration and community development. She has extensive experience working with those who have survived the trauma of human rights violations including forced migration, torture, and racist and sexual violence. Nadette is an MII certified community and family mediator with Mediation Ballymun. She has engaged in Restorative Circle process training run by former State Supreme Court Justice, Prof Janine Geske in Dublin and at Green Bay Maximum Security Prison in Wisconsin and has co-facilitated restorative circles in Ireland.