



**St Helena  
Government**

## **MEMORANDUM**

Date: 22.09.2017

From: Attorney General

To: Chief of Police

Subject Matter: Review of file HEHN01479

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### **Background**

1. By e-mail dated 20 June 2017 the Acting Chief of Police, Steve Riley as he then was, asked the AG to carry out a review of the police file in relation to an incident of sheep worrying that had taken place on 22 May 2017.
2. In particular, S Riley asked the Attorney General to read the file and to consider if the use of restorative justice was appropriate in these circumstances.
3. This was communicated to residents in a press release by S Riley published on 20.06.2017 which said: "It is essential that the Police maintain the trust and confidence of the community and for this reason I have passed the file to the Attorney General to read and consider if the use of Restorative Justice was appropriate in these circumstances."

### **The legal basis for Restorative Justice**

4. Restorative justice is one type of community resolution in the Out of Court Disposal policies of St Helena Police dated July 2016. Out of Court Disposals are ways of dealing with offences without having to use the courts. Conditional Cautions are a type of out of court disposal and they form Part 3 of the Criminal Justice Act (UK) 2003.

5. In order to ascertain if the Criminal Justice Act (UK) 2003 applies to St Helena, we must consider section 3 of the English Law Application Ordinance 2005 (ELAO) which provides that English law in force up to 1 January 2006 applies to St Helena in so far as it is applicable and suitable to local circumstances and subject to modifications, adaptations, qualifications and exceptions as local circumstances render necessary. The Supreme Court has held that the Criminal Justice Act 2003 has general applicability to St Helena in the case of *R v Cyril Leo*, December 2014.
6. Therefore, Part 3 of the Criminal Justice Act (UK) 2003 is applicable to St Helena subject to the qualifications in ELAO.
7. Section 25 of the Criminal Justice Act (UK) 2003 provides that the Secretary of State must prepare a code of practice in relation to conditional cautions. This happened when in 2004 the Code of Practice for Adult Conditional Cautions was approved by the UK Parliament and brought into force (by statutory instrument (SI2004- 1683)). The Code governs the use of Conditional Cautions under Part 3 of the Criminal Justice Act 2003 ("the Act"). This Code was updated in 2014.
8. The Code of Practice introduced Restorative Justice, defined at part 8 as processes that "bring victims and offenders, and sometimes community members, into contact, either face to face or indirectly, to focus on the impact of a particular crime, and together to agree what can be done to repair the harm caused by that crime. Such processes must always be voluntary for both the victim and the offender. Any person delivering a restorative process, including preparatory work with victims and offenders, must be trained in restorative justice and must meet the required standards."
9. I have seen the Guidance on Out of Court Disposals of St Helena Police Service. It deals with the manner in which cautions may be given. It contains a section on "Community resolutions and restorative justice" – in particular it states the situations in which it may be used:

*Correct use of community resolutions*

*Consideration should only be given to the issue of a community resolution when*

- *It is clear a crime or incident has occurred*
- *The offender accepts responsibility for the offence and agrees to participate in CR and is capable of understanding the situation and process.*
- *The victim has been consulted and consent sought. In certain cases CR may be appropriate without victim consent, or in the absence of an identifiable victim (for example drug offences or public order), however in the event where victim consent is not secured then a supervisor must be consulted*
- *The offence must be a less serious offence. This is not defined however any decision should be on a case by case basis taking into consideration*
  - *The type of offence*
  - *The offenders previous record*
  - *The circumstances of the offence / incident*
  - *The risk posed to the public and community confidence in the police*
  - *The likely penalty if a prosecution is successful*

- *If CR is appropriate taking into account the circumstances of the offence*

*The most appropriate offences for community resolution are likely to be low level criminal damage, low value theft, minor assaults without injury and anti-social behaviour.*

*The offender should not have an offending history or previous convictions. If the officer feels that CR is the most appropriate outcome (due to relevance of previous convictions or timescales since the last offence) then the case should be referred to a supervisor.*

## **This case**

10. The facts of this case can be summarised as follows. On 22 May 2017, P took P's 2 dogs for a walk in the Ball Alley area. The dogs were on the leash. Upon arriving near the Norman Williams Nature Reserve, P removed the leash and the dogs ran off. The dogs were seen chasing sheep that belonged to V. I have reviewed the statements of the witnesses. The witnesses saw the chasing but did not see the dogs attacking or biting the sheep. The veterinary's report stated: "unable to confirm what caused the puncture wound and what the cause of death of this animal was but it appeared that the sheep had been attacked." The evidence establishes that V sustained loss due to the actions of the dogs as one of V's sheep was injured and another died.

## **The offence**

11. The facts above amount to the offence of sheep worrying. Section 11(1) of the Animals' Trespass Ordinance 1982:

### Dogs worrying and trespassing

11.(1) Whenever any dog kills, wounds or worries any domestic animal or poultry the keeper of such dog shall be guilty of an offence and shall be liable on conviction to a fine not exceeding £150 for every animal so killed, wounded or worried.

12. There is no doubt that P was liable under section 11(1) of the Animals' Trespass Ordinance 1982. The offence is a strict liability offence. This means that the intention of P is not relevant. I have read the statement of V. It is necessary to emphasize that V did not want to go to court. In any event, had this matter been prosecuted, the penalty would have been a fine of £300 (£150 for every animal so killed, wounded or worried).

## **Applying the guidance on restorative justice**

13. In applying the guidance cited above, I find that the use of Restorative Justice in this case was appropriate and proportionate for the following reasons:

- a. It was clear that an offence had been committing (worrying of sheep contrary to section 11(1) the Animals' Trespass Ordinance 1982;
- b. The offender accepted responsibility for the offence (actually P sought to inform V of what had happened) and agreed to participate in CR; P is capable of understanding the situation and process;
- c. The victim was consulted and consent sought to use CR. There is evidence in the file that V said that he wanted compensation and an apology;
- d. The offence must be a less serious offence. This is not defined however any decision should be on a case by case basis taking into consideration:
  - i. The type of offence: here we have a strict liability offence, there is no evidence that P's dogs had behaved in this manner previously,
  - ii. The offenders previous record: P has no police record;
  - iii. The circumstances of the offence / incident: based on the previous history of P's dogs, the worrying incident was not foreseeable;
  - iv. The risk posed to the public and community confidence in the police: this risk is low, P took onboard advice given and has been warned about not letting the dogs off the leash;
  - v. The likely penalty if a prosecution is successful: a fine of £300 and possibly the destruction of the dogs (although this is not certain as this was a first offence and there was no evidence as to the cause of puncture in the sheep's neck (statement of vet – inconclusive evidence));
  - vi. If CR is appropriate taking into account the circumstances of the offence – I conclude that it was considering what V wanted and the fact that this was a first offence by P;
- e. This was an offence suited to community resolution as it amounted to low level criminal damage and P was remorseful and willing to retribute the loss to V.
- f. The offender should not have an offending history or previous convictions and this was the case here.

### **The procedure**

14. I have seen evidence in the file that confirms that the Police applied the procedure required in the St Helena Police Service Out of Court Disposals policy, which is as follows:

1. *Record the allegation of an offence or antisocial behaviour – any offence that is reported to police must be recorded in the standard manner (be it via the front desk register or OTCRIS)*
2. *Open an investigation log – as per any criminal investigation an investigation log should be used to list enquiries conducted and give an investigative strategy. The log should also be used to detail rationale regarding the disposal options and any decisions regarding disposal made.*
3. *Ensure that the criteria for an OOCB disposal is met – This is listed above but includes;*
  - *An offence or anti-social act has actually occurred*
  - *The offender / perpetrator admits the offence or act (obtained by questioning, via recorded interview or contemporaneous notes)*
  - *Is another outcome more appropriate*
  - *Is CR in the public interest*
4. *Engage the victim in the process. As stated above CR can be conducted without the victim being engaged but the resolution must be in the public interest and a suitable outcome that would stand up to later scrutiny. RJ cannot be commenced without engagement of both parties.*
5. *Does the offence or act meet the criteria for CR or RJ – Please see the gravity matrix in appendix A*
6. *If the above criterion is met conduct the community resolution or RJ process.*
7. *Record any finalisation regarding a CR or RJ on the investigation log – This must include rationale for such a decision. Officers must ensure that any aggravating or mitigating factors should also be included for a decision to finalise a report using RJ or CR*
8. *At the time of giving the caution ensure correct information is given to all parties – This must include*
  - *That this is an informal process and will not be lawfully enforceable (in the event that an agreement of financial reparation is made)*
  - *That this is not a formal sanction and would not be disclosed on any future criminal records check however police will record the outcome on the criminal records database and this may have an impact on any decision making regarding the disposal of any future criminal charge against the offender.*
9. *The CID clerk will update the criminal record of the offender with the finalisation being COMMUNITY RESOLUTION and give a brief description of what the resolution was.*

## **Outcome**

15. I am satisfied that the evidence in the file supports the assertion that the victim was put first at all times by the Police. V was heard and V's requests were followed through. This was monetary compensation for the loss of the sheep and an apology.
16. The community interest on this case is due to gossip in the community as to the identity of P. I commend the Police for leaving personalities aside and focus on the process. In this regard, I highlight that the victim learnt about the identity of the offender after V's wishes were ascertained. The victim reiterated his wishes after learning about P's identity and repeated that he did not want to go to court and wanted compensation for the damage and an apology.
17. I have seen evidence in the file that on 4 June 2017 the investigating officer, the victim and the offender met and signed a Restorative Justice Agreement. It is my view that the community resolution tool of restorative justice has been applied appropriately. I also highlight the fact that the offender accepted full responsibility for the actions of the dogs from the outset. At the meeting, the offender apologised to the victim and provided the compensation requested by the victim for the loss of the sheep.

## Recommendations

18. I recommend that the Police produces a leaflet or brochure to cover:

- a. What community resolution is
- b. The situations where using restorative justice is appropriate
- c. The situations where restorative justice is not appropriate
- d. The offender profile suited to the use of restorative justice.

19. I further recommend that the Police engage with the community through radio interviews and newspaper articles to raise awareness about community resolution.

20. Finally, due to media interest (please see email attached), I recommend that a press release be drafted to communicate these findings.



Angelo Berbotto  
Attorney General