

Irish Probation Journal

Providing a forum for sharing theory and practice, increasing co-operation and learning between the two jurisdictions and developing debate about work with offenders.

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Irish Probation Journal (IPJ) is a joint initiative of the Probation Service (PS) and the Probation Board for Northern Ireland (PBNI).

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Editorial

Irish Probation Journal, now in its 15th year, is a peer-reviewed journal that focuses on the broad field of probation and criminal justice policy and practice. The journal publishes articles on subjects from within probation, criminal justice and the wider criminology community. Each edition seeks to ensure that there is a broad range of contributions including research studies, practice initiatives, policy commentaries and a variety of book reviews.

The journal provides a valuable opportunity for academics, researchers and practitioners to share their knowledge, research findings and examples of good and innovative practice. It offers a forum for continuous learning and development not only for probation practitioners but also for the wider criminal justice system. Contributions from a diverse and multidisciplinary international audience continue to enhance the quality of this shared dialogue across borders.

The papers in this year's publication reflect current policy and practice developments, discuss findings and recommendations from research and generate discussion to inform learning and stimulate further critical analysis. A timely article that places victims at its centre draws from a range of disciplines including philosophy to promote the importance of adopting a humane approach to addressing harmful behaviour. The complexities of a converging relationship between the voluntary sector and the criminal justice system as they continue to build partnerships are explored in a paper that highlights challenges and poses key questions. A practitioner paper on risk assessment draws from case material to provide a stimulating overview of the challenges of reconciling tensions between theory and everyday practice.

An article on problem-solving courts including mental health courts demonstrates the learning from engagement with the American therapeutic jurisprudence system and describes the implication for emerging practice in Northern Ireland. Some of those themes also appear in the article on ADHD that draws from international research to highlight the need to provide adequate screening for this condition in order to intervene more effectively with young people in the system. Understanding the needs of service users so that services can respond appropriately was the aim of research conducted with a group of women in Limerick. The paper based

on this research contributes to our awareness and understanding of trauma and the need for trauma-informed care, with participant voices providing practical guidelines for improved practice across services.

Once again, the journal is further enriched by contributions from international jurisdictions. The article from Japan describes the evolution of probation practice in a narrative that includes oral history, legislative change and developments in penal policy. Readers will be particularly interested in the system of volunteering which is unique to Japan. Scholars of design are increasingly focused on the role of design as a tool for innovation and user satisfaction in the provision of government services. The paper from the Köln School of Design and the Royal College of Art outlines the interesting synergy of social design and offender rehabilitation.

A study on non-compliance opens an important discussion in the journal on issues of enforcement, and this paper draws from practice across European jurisdictions. It includes the findings from pilot research on the management of breach processes in the context of community service in Ireland and highlights the need for further research on the subject of non-compliance. Findings from an action research project on the impact of programmed interventions on attitudinal change demonstrate the importance of direct engagement by practitioners with data collation and analysis. We welcome, for a second year, the inclusion of a reflection and commentary from a practitioner on an article from the previous year: Orla Lynch's 'Understanding Radicalisation: Implications for Criminal Justice Practitioners'. We hope that this theme can continue into future editions.

Irish Probation Journal would not be possible without the commitment and efforts of the members of the Editorial Committee. We would like to put on record our thanks to the committee members who encourage and guide contributors through the journey of publication.

In particular this year we would like to put on record our thanks to Gerry McNally, a long-standing member of the editorial committee who is standing down as Editor of the journal after six years in this role. Gerry's advice, encouragement and enthusiasm have been invaluable in making *Irish Probation Journal* the success it is today.

We also extend our thanks to both the Probation Service and the Probation Board for Northern Ireland for continuing to support the journal.

Finally, we wish to invite both established authors and new writers to submit papers and articles for inclusion in future editions of the journal. We firmly believe that this cross-border initiative has the potential to contribute to policy and practice not only throughout the island of Ireland but internationally. We hope you enjoy this publication.

Ursula Fernée
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A More Humane Approach to Addressing the Harm of Criminal Behaviour Starts with Victims*

Tim Chapman[†]

Summary: This paper argues that the critical problems in relation to crime are not the people who commit crimes but the harms that have resulted from the crime, the harms that have caused the crime and the harms that result from inhumane and ineffective ways of addressing crime. Most crime is inhumane because it violates the dignity of human beings, because it can weaken social relations and because victims generally experience it as unjust. The commission and consequences of crime can dehumanise both the victim and the perpetrator. More humane approaches to addressing the harm of criminal behaviour are based on the dignity of the individual, on the solidarity of people supporting each other and on social justice. More humane approaches activate in practical and effective ways people's agency, victims' ability to act to recover from harm and perpetrators' ability to act to redeem themselves. More humane approaches build pro-social relationships that support recovery and desistance from offending. More humane approaches bear witness to and strive to reform abuses of human rights, discrimination and stigmatisation.

Keywords: Humane, victim, community, harm, restorative, criminal justice, relationships.

Introduction

The global economy has harnessed scientific and technological advances to produce goods and services, which have added greatly to many people's standard of living, material comfort and convenience. However, there have also been major negative consequences, including a widening gap between those with power and money and those who struggle to live

* This paper comprises the revised text of the 11th Martin Tansey Memorial Lecture, sponsored by the Association for Criminal Justice, Research and Development (ACJRD) and delivered at the Criminal Courts of Justice, Dublin, 17 April 2018.

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on a restricted income and are excluded from political influence. This in turn has a negative impact on social stability and cohesion.

The *harm of criminal behaviour* is also being globalised through cybercrime, the drug trade, organised human trafficking, terrorism and hate crime. Ethnic minorities and migrants are stigmatised and subject to greater control by the state authorities, especially the agencies of the criminal justice system, leading to a disproportionate number of foreign prisoners in European prisons.

The modern world, while it offers many material comforts, also creates an underlying sense of insecurity (Bauman, 1989). Social theorists now refer to 'risk society' (Beck, 1992) and to the 'precarity' many people experience (Butler, 2004). Citizens lose the experience of solidarity with others that community and religion offered in the past. They feel threatened by other ethnic groups, often blaming them for their lack of resources, and thus offering opportunities for populist and identity politics.

There is a real danger that the value of the common good is being eroded in modern society. Yet there remains a yearning among many people for social relationships of a more human scale and for a more humane culture.

The focus on the *harm caused by criminal behaviour* signifies that crime is not simply rule-breaking activity that is addressed strategically by a large, expensive professional bureaucracy. It draws attention to how people suffer from its impact. This viewpoint prioritises the lived reality of individual and communal experiences, perspectives, feelings, needs and desires.

Human beings can act both inhumanely and humanely. A more humane approach must not only encourage, develop and support the capacity within people to contribute to the common good but also allow for the expression of society's condemnation of serious harm and the control of people's capacity to act unjustly and to inflict suffering on others.

A fuller expression of humanity would take account of a more complex view in which cultural and social background, personal narratives, identity and relationships interact to influence how individuals make sense of their circumstances and choices. This reality brings into focus not only human agency and relationships but also structural inequality and discrimination requiring a commitment to social justice and human rights. This is essentially about taking the harm

people experience in relation to criminal behaviour seriously and about pressing for reform within criminal justice to ensure that more humane approaches to harm are implemented and sustained.

I will suggest that to transform the way we address the harm of criminal behaviour, we should start with victims' experiences of crime rather than the risks that perpetrators pose. The EU's Directive on the rights, support and protection of victims of crime¹ and the Criminal Justice (Victims of Crime) Act 2017 offer an opportunity to radically engage once again with the way a society addresses crime.

The harm of criminal behaviour

Generally, people accept that there are rules or norms that regulate behaviour and that, if a person violates these rules, a social reaction in the form of a sanction is appropriate. We cannot ignore the fact that deviance from the norm is performed before a moral audience. Crime is generally experienced as an injustice and those affected expect justice.

When harm occurs, the criminal justice system focuses on the perpetrator – detecting, building a case, prosecuting, sentencing and implementing the sentence. A focus on addressing the harm of criminal behaviour through policy and practice can fundamentally alter the orientation of approaches to crime. Following White's (2007) maxim: the person is not the problem; the problem is the problem. And the problem is harm.

Three parties can be affected as a consequence of criminal behaviour:

1. the person who has been harmed and their family members, friends, etc.
2. the person responsible for harm and their family members, friends, etc.
3. society (both communities on a micro level and the society at large).

People who have been harmed

People who have been victims of crime may report material and physical harms which can be assessed for reparation by the legal system. From a more humane point of view we need to distinguish between the reality of harm and the experience of suffering, which may be emotional,

¹ Directive 2012/29/EU of the European Parliament and of the Council of the European Union, 25 October 2012, establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA.

psychological or relational. The suffering caused by the harm of criminal behaviour will be subjective and specific to each individual.

The meaning of the harm caused by criminal behaviour is also mediated by its wrongfulness in that it has no justification in law. For Shklar (1990) injustice is experienced in a very human way, distinct from how the system administers justice. It stimulates powerful, often distressing, emotions particular to the individual. Consequently victims' experiences are personal and specific to the context in which the injustice occurs. Their lives are interrupted and disrupted by an unwelcome experience of harm over which they had no choice and little control (Crossley, 2000). This interruption to a life narrative can cause 'shattered assumptions' (Janoff-Bulman 1992) about living in the world and can have a seriously detrimental effect on the capacity to participate in society. This complex combination of distressing emotions and moral judgements that arise from an injustice will often continue to dominate the victim's thoughts and behaviour long after physical wounds have healed, punishment has been inflicted or compensation received.

The criminal justice system, as a bureaucratic, professional system operating as far as possible under universal principles, strives to address the criminal offence in an impersonal and rational manner. Victims' wish to undo the injustice that they have suffered personally is usually very much at odds with their experience of the criminal justice process, which is bound by rules and procedures.

In some countries there have been improvements, such as the option of victim impact statements and police victim liaison officers. The EU Directive on Victims has required member states to improve services for victims. Nevertheless, many victims continue to experience *secondary victimisation* by the criminal justice system (Dignan, 2005; Laxminarayan *et al.*, 2013; Kunst *et al.*, 2015).

Families of victims may experience a 'ripple' effect from the harm and suffer from distressing emotions arising from their concern for the victim's suffering. Important relationships may be weakened or ended due to changes in the victim's personality, moods and behaviour caused by trauma. A family's standard of living may be adversely affected by the victim's ill health having an impact on employability.

People responsible for harm

From a humane point of view, the risk factors (Farrington, 2007) found to be associated with offending can also be experienced as harmful. Indeed, many offenders have experienced trauma in the past (Ardino, 2011; Foy *et al.*, 2011; Weeks and Widom, 1998). These experiences may interact to reinforce what Maruna (2001) has called ‘a condemnation script’, inhibiting desistance from harmful behaviour.

A humane approach would recognise the reactions of society and the media (Cohen, 1973) and the criminal justice system to the individual as a significant part of this cycle (Becker, 1963). Social reaction theory states that these reactions often cause stigmatisation leading to *secondary deviance* (Lemert, 1951).

If, as research into desistance has found, the process of desisting from harming others is facilitated by improving social circumstances, attachment to pro-social relationships, maturation, and generating a more positive identity or life narrative, it is clear that social and criminal justice reactions to the perpetrator can have the effect of excluding offenders from the resources that they require, weakening personal relationships, reducing personal responsibility, and reinforcing a commitment to antisocial values and peers.

There is also a ripple effect of harm in relation to perpetrators. Their families may suffer also from stigma and consequent isolation and lack of support. If the main earner is in prison or unable to gain employment, the family’s income will be reduced. The absence of a parent can lead to children not thriving and, in many cases, engaging in harmful behaviour themselves.

The impact on society

The *harm of criminal behaviour* can also be experienced by society. Fear of crime (Hale, 1996) is an example of such harm. This fear can be a very concrete emotion at certain times of the day or in specific places or in the vicinity of certain types of people. It can also be more general, a prevailing feeling of anxiety or unease over the problem of crime. Some groups perceive the risk of becoming a victim more than others. They tend to be people who feel less able to cope with the consequences of crime. Often this fear is exaggerated when related to the actual risk. This fear of crime can have concrete effects on people’s choices and behaviour. They avoid certain areas, purchase equipment to improve their security and take other preventive measures.

Crime can also be detrimental to social cohesion and the social capital available to members of a community. Intergroup conflict may develop, for example between gangs or between groups of young people and other residents, or between different ethnic groups.

Some communities can be stigmatised as ‘hot spots’ for crime and this can have an impact on how the rest of society see and act towards residents. Local people can then perceive the police as a force of control rather than protection. More generally people can lose a common belief in a just, stable and moral society (Wenzel *et al.*, 2008; Vidmar, 2000).

What is the impact of these harms on personal and social life?

The harm of criminal behaviour diminishes people’s sense of control over their lives and has a negative impact on their self-efficacy (Simantov-Nachlieli *et al.*, 2013). It was the limitation to people’s agency or capacity to take action that Arendt (1958) understood through the concept of the irreversibility of a harmful act: the impossibility of undoing past actions once they have been taken.

The irreversibility of an action can lead both victim and perpetrator of harm to be stuck in the consequences of what they have done, as Arendt (1958: 237) writes: ‘our capacity to act would, as it were, be confined to one single deed from which we could never recover; we would remain the victims of its consequences forever’.

The shattered assumptions (Janoff-Bulman, 1992) that harm causes in the victim lead to a sense of unpredictability about future events, which disrupts the individual’s preferred life narrative. Just like the perpetrator, the victim can be trapped in a narrative of harm, which inhibits each party from moving on and fully engaging in activities that are important to them.

According to Fraser (in Fraser and Honneth, 2003), injustice in relation both to the distribution of resources and to the recognition of the value of people violates the principle of *parity of participation* in society. In conclusion, the harm of criminal behaviour may be defined as the loss or damage of resources and the violation of values that enable both victims and perpetrators and those in relation to them to participate actively in society.

What is distinctive about more humane approaches to harm?

The concept of the *common good* can be traced from ancient Greek philosophy through Catholic social teaching to modern liberal philosophy. It stands in opposition to a life lived purely in the pursuit of personal interest. A just society is one in which people have the opportunities and capacities to participate in society for the common good as they choose. The aim of more humane approaches to addressing the harm of criminal behaviour is to enable people responsible for harm, people who have been harmed and others who have been affected to participate fully in society and to contribute to the common good.

A more humane approach to addressing the harm of criminal behaviour includes all actions designed and delivered with the purpose of preventing or undoing injustices and repairing the individual, relational and social harms that have caused and been caused by criminal behaviour. Such actions should restore the internal and external resources required to participate actively in society.

We have seen that crime harms individuals, relationships and society in general. The values that shape more humane approaches relate to three key areas: the value we place on the individual, the value we place on how individuals relate to each other and the quality of the society we aspire to create. Thus we define ‘humane’ as that which respects, restores and sustains these values, and ‘inhumane’ as that which disregards, damages or violates these values.

The dignity of human beings is derived from the value of human life and the potential of people’s agency, their ability to choose their actions and be responsible. To be a victim of a crime is to be treated as a means to another’s end or to be objectified. This is dehumanising and humiliating. Disrespect can provoke aggression and violence (Gilligan, 1996; Butler and Maruna, 2009). Respect requires a refusal to stereotype, stigmatise, objectify or idealise individuals and a belief that in spite of previous behaviour, people can change.

A more humane approach reinforces solidarity derived from mutual responsibility and reciprocal support. Human beings can only live in relation to others (Levinas, 1969). As a consequence, both actions for the common good and harmful behaviour have a ‘ripple effect’ beyond those directly responsible and those directly affected. Families, friends, neighbours and communities all have a stake in the harm being dealt with. The criminal justice system’s almost exclusive focus on the person

responsible for the harm means that these other parties are mainly ignored and neglected.

Responsibility originates from the demands of living with others (Levinas, 1969). The primacy of relationships explains why human beings consider that norms and their ethical basis are so important. Other people are not only an essential part of our well-being and our capacity to survive and to thrive, but also an imminent threat to our safety and well-being. This reality requires individuals to be socialised in the norms and values of society and to eventually learn to take personal responsibility for acting according to a duty to others.

Inequality in society tends to separate people physically and relationally according to wealth, status, ethnicity and faith. This disconnectedness can lead to moral indifference or the neutralisation of moral responsibility for others (Bauman, 1989). This enables the system to consider the problem of harm as a technical problem that can be solved effectively by technical methods, often involving excluding or separating people. A more humane approach would create opportunities for people to reconnect.

A Jesuit priest named Luigi Taparelli is usually credited with introducing the term 'social justice' in the 19th century. It now forms the basis of international conventions of human rights and many international statements on crime and criminal justice. Social justice refers to the fair and just relations between the individual and society. It involves the redistribution of resources in conditions of inequality and the removal of obstacles to equality of opportunity and full participation in society. Social justice has in recent times focused on the recognition of the value of diversity. Similar approaches can be adopted in relation to the neglect of victims and discrimination against and labelling of offenders.

Criminal justice in the modern era has focused on the value of safety, emphasising public protection, operating on the basis of risk management and measuring its effect through the reduction of reoffending. A shift towards more humane approaches would not abandon these concerns but would place the value of justice at the core of criminal justice.

Rather than seeing individuals as simply products of their genes, their upbringing or their environment, more humane approaches would recognise their capacity to make meaning out of situations and events, to choose their actions, to reflect on the results of these actions and to learn

and to generate new understandings. To have the ability to choose one's actions, not necessarily in the circumstances of one's choosing, and to be responsible for the consequences of one's actions is to be human. The harm of criminal behaviour can disrupt and inhibit this ability. Unfortunately, the response to crime by the system often reinforces this disruption in the lives of both victim and perpetrator of the harm.

More humane approaches should offer opportunities for all parties to take active responsibility for the process of addressing the harm so that they may get on with their lives.

When one acts in such a way as to harm a person unjustly, one has broken a social contract that enables people to go about their lives and societies to function. This breach creates an obligation to make things right with the individual who has been harmed and with society. By fulfilling these obligations (or repaying the debt) one should be reintegrated into society with all its benefits and responsibilities. In this way, the offender is redeemed and forgiven. This is what Bazemore (1998) refers to as 'earned redemption'. Not all perpetrators of harm will be ready or willing to redeem themselves when held accountable. This does not mean that they will never be ready or willing to in the future (Maruna, 2009, 2010).

More humane approaches should offer all parties the opportunity and support to 'signal' that they have transformed themselves or are in the process of transforming themselves (Bushway and Apel, 2012). Desistance from crime (Weaver, 2016) and recovery from trauma (Courtois and Ford, 2012) are relational processes. Both processes involve finding one's place in the world again and moving on in one's life. To do so requires the individual to actively participate in the process, with support and with the recognition of others that change is taking place.

More humane approaches should offer the opportunity and support to repair broken relationships, maintain and strengthen important relationships or build new relationships.

Which theories support more humane approaches?

Reintegrative shaming

John Braithwaite's (1989) theory of reintegrative shame has had a significant influence on restorative justice. Its emphasis on the importance of emotion, responsibility, relationship and reintegration means that it is

compatible with more humane approaches. Its key idea is that the shame should arise naturally from the examination of the harm in the presence of the person who has been harmed and other people significant to the perpetrator. In this way the shame is attached to the act, not to the person, and can lead to genuine remorse and motivation to repair the harm and to desist from further conduct causing harm. The acceptance of the perpetrator and the offer of support by the community on the basis of his/her making good the wrong are critical to this process.

Desistance from crime

Desistance research (Maruna, 2001; Farrall, 2002; McNeill, 2006; Weaver, 2015) is the study of how offenders stop harming people. It is an uneven process of progress and relapse. Three key and overlapping concepts have been identified, each of which resonates with more humane approaches, as follows.

1. *Maturation*: People eventually grow out of criminal behaviour.
2. *Social bonds*: Significant relationships cause the individual to decide that the risks of crime are no longer worth it. The relationship may be intimate, a partner or a child, a new set of pro-social friends, or a job or recreational activity.
3. *Identity transformation*: The individual develops a new, non-criminal narrative. Maruna (2001) distinguishes the ‘condemnation script’ of the persistent offender from the ‘redemption script’ of desistance.

Recovery

‘Recovery-oriented systems of care’ refer to a holistic framework of services and relationships that can support the long-term recovery of people who have suffered harm or trauma. This is clearly relevant to victims. But it is also true that many offenders have suffered trauma in their lives and this may be driving their harmful behaviours, such as addictions.

This means mobilising social support and activating the individual’s personal resilience and other psychological resources. It also requires positive living conditions, a safe home, sufficient income, meaningful activities, etc. Support (Courtois and Ford 2015) may include self-help groups, mutual aid and other peer-based care. It also involves understanding the impact of the harm on families and communities.

The Good Lives Model

The Good Lives Model (GLM) developed by Ward and colleagues (see Ward and Maruna, 2007) is an approach to offender rehabilitation that is responsive to offenders' particular interests, abilities and aspirations. The practice involves making plans with the offender to achieve the 'goods' that are important to the individual. This is based on the premise that people harm others because they lack the internal and external resources necessary to satisfy their values, needs and goals.

Restorative justice

'Restorative justice is an inclusive approach to addressing harm or the risk of harm through engaging all those affected in coming to a common understanding and agreement on how the harm or wrongdoing can be repaired, relationships strengthened and justice achieved' (European Forum for Restorative Justice, 2016).

Restorative justice is distinguished by its focus, its participants and its process of making decisions. Restorative justice entails an encounter or at least communication between those affected by a specific act of harm. Crucially, it involves a process of coming to a common understanding of the harmful act and its consequences and an agreement on what should be done about it.

Restorative justice places harm at the centre and identifies all those with a relationship to the harm: the persons harmed and those close to them, the person responsible for the harm and those close to them, and those affected in society or the community.

The harm creates a real stake in the process of undoing the injustice, repairing the harm, and strengthening relationships. The counter-intuitive aspect of the restorative process is that even though they may hate or fear each other, each party needs the other to have what they have lost or violated restored. The harm may have resulted in material loss. In many cases this is not so important. Existential losses such as safety, respect, justice and control over one's life are often what motivate both parties to engage in this difficult process.

The very human activities of storytelling and dialogue drive the restorative process towards its outcomes. Arendt (1978: 216) wrote of the ability of stories to 'reclaim our human dignity'. Stories represent human beings as actors and sufferers rather than passive victims or objects of others' narrative or theories. Not only does the space to tell one's story in the words and style of one's choosing restore dignity, but it also often

facilitates an emotional and relational connection which can lead to mutually satisfactory outcomes (Wenzel *et al.*, 2008; Black, 1976; Horwitz, 1990; Winkel, 2007; Rossner, 2013; Strang *et al.*, 2006).

Dialogue is a conversation with a centre, not sides (Isaacs, 1999). At its best in a restorative process it connects with our humanity: 'We humanise what is going on in the world and in ourselves only by speaking of it, and in the course of speaking of it we learn to be human' (Arendt, 1968: 25).

This quality of dialogue requires skilful preparation and facilitation to be empowering: 'Power is actualised only where word and deed have not parted company, where words are not empty and deeds are not brutal, where words are not used to veil intentions but to disclose realities, and deeds are not used to violate and destroy but to establish relations and create new realities' (Arendt, 1958: 200).

Blustein (2014: 594) points out that participation in a justice process 'enables victims to move recognition of their moral standing and psychological needs to a more central place in the justice process, something that often does not happen when wrongdoers are subject to criminal prosecutions'. Minow (2000: 243) has observed that the telling of the story by the victim transforms the narrative from one of 'shame and humiliation to a portrayal of dignity and virtue'. Through this the victim regains 'lost worlds and lost selves'.

There has been extensive research into the effects of restorative justice. Restorative processes consistently achieve at least 85% satisfaction among victims (Shapland *et al.*, 2012; Jacobson and Gibbs, 2009; Beckett *et al.*, 2004; Strang, 2002; Strang *et al.*, 2006; Umbreit and Coates, 1993).

Restorative justice reduces further harm. There is considerable empirical work acknowledging the role that restorative justice processes play in lowering reoffending rates. Offenders in restorative programmes are more likely to complete the programmes and less likely to reoffend compared to a control group. A meta-analysis of victim-offender mediation and family group conferencing studies (De Beus and Rodriguez, 2007) found that family group conferencing had twice the effect on recidivism of traditional justice programmes, and victim-offender mediation had an even larger effect. Another meta-analysis (Latimer *et al.* 2005) found that restorative processes were associated with reduced recidivism for both youth and adults. A rigorous study (Shapland *et al.*, 2012) in England found that significantly fewer offences

were committed by those who participated in restorative processes over two years than by those in a control group. This amounted to a 14% reduction in the frequency of offending.

Restorative justice saves money. In the criminal justice system In England, £9 was saved for every £1 spent on restorative justice (Shapland *et al.*, 2012).

How can more humane approaches demonstrate their value?

This article refers to *approaches* rather than *projects*, *programmes*, *services*, *techniques* or *methods*. ‘Approaches’ is a more inclusive term and can encompass each of these activities, but is not confined by them. An approach tends to denote an orientation and a movement towards a destination or goal rather than a scientific method or highly developed professional practice. An approach requires action designed to reach a goal. Yet this approach is not described as *more effective*. It is a *more humane approach*, which, as I have explained, places the importance of values at the core.

This is not to say that evidence of effective achievement of outcomes is disregarded. It is important that treating human beings in a humane manner meets real social needs and will yield socially beneficial results. This means that there should be evidence that the approach adopted will be effective in meeting the identified needs or that it is designed in such a way as to ensure that it is possible to assess its effectiveness. The second option allows the opportunity to test an innovative approach.

Research and policy on approaches to the harm caused by crime in modern society are dominated by two perspectives: on the one hand empirical sciences (the observation, description and measurement of crime and its causes and the effectiveness of responses established to address these causes), and on the other hand practical philosophy, values, beliefs and norms which determine how society ought to be and how approaches ought to contribute to such a society.

Ferrara offers a ‘third term’ as an alternative to either facts or values as a means of understanding the world: ‘the force of the example’. He defines exemplarity as ‘entities, material or symbolic, that are as they should be, atoms of reconciliation where *is* and *ought* merge and, in so doing, liberate an energy that sparks our imagination’ (2008: ix–x). Exemplarity can take two forms: examples of best practices judged on existing criteria and examples of completely new practices, which extend the range of

possibilities open to society. Ferrara argues that the exemplarity of *what is as it should be* accounts for much of the change in the world. Examples ‘illuminate new ways of transcending the limitations of what is and expanding the reach of our normative understandings’ (2008: 3).

This is what *more humane approaches* seek to achieve – concrete examples, which people can attest to be both real and successful and ultimately to be a satisfying experience of justice. Other dimensions of *humane* can be quantified through measures of efficacy and efficiency:

- reducing the number of people causing harm
- reducing the number of people being harmed
- reducing the number of people being prosecuted
- reducing the number of people being incarcerated
- increasing the number of people improving their educational attainment, gaining employment, and other personal and social circumstances
- increasing the number of people rebuilding relationships with their family or community.

Specific exemplars

What would count as specific exemplars of more humane approaches in Ireland? I would like to conclude with some recommendations.

1. Support schools to challenge the normalisation of violence as a means of dealing with conflict

This can be done through establishing a strong non-violent culture within the school, through staff taking responsibility to be role models in non-violence and through restorative conferences and circles to address violence or the threat of violence when it occurs.

2. Develop victim-initiated restorative processes

The flaw in most restorative processes is that they depend on the perpetrator being identified and being willing to participate in the process. This means that the victim has limited access to reparation and that restorative processes tend to be unbalanced in favour of the offender. Often this results in victim support organisations being sceptical about restorative justice. Victim support agencies could be supported to develop victim-led restorative justice.

3. Support communities to challenge gang violence in their neighbourhoods

This can be modelled on the successful project Operation Ceasefire in Boston. The approach combines three elements:

- i. representatives of the local community expressing their disapproval of the gang members' violence and requesting them to desist and reintegrate within the community
- ii. the offer of support to desist and reintegrate from service providers, Probation and Parole Officers, the church and other community groups
- iii. a focused deterrence strategy by the police aimed at the most serious offenders to apprehend and prosecute those who carry firearms, to put them on notice that they face certain and serious punishment for carrying illegal firearms.

A simple pre/post comparison (Braga *et al.*, 2001) found a statistically significant decrease in the monthly number of youth homicides in Boston following implementation of Operation Ceasefire. There was a 63% reduction in the average monthly number of youth homicide victims, going from a pre-test mean of 3.5 youth homicides per month to a post-test mean of 1.3 youth homicides per month.

This approach to violence has also been used to address domestic violence successfully in High Point, North Carolina. It could also be used in relation to radicalised violent extremists and other forms of violence.

4. Test a rigorous approach which combines restorative justice with follow-up support based on research into desistance from offending

Restorative justice has consistently been found to reduce reoffending, and desistance research has discovered the processes through which most people eventually desist from offending. There are clear links between the two approaches. For example, the key operating values in restorative processes according to Howard Zehr (2005) – responsibility, relationships and respect – have a clear connection to the key desistance processes, maturation, social bonding and changing one's identity and narrative. These links could be tested in practice to find out if it is possible to support and accelerate desistance.

5. *Support the development of the 'moral community'*

Christie (1993) describes a 'moral community' in Norway through which politicians, practitioners, journalists and prisoners meet privately on retreat annually. For Christie these meetings encouraged participants to consider what standards of treatment are valid for all human beings, not just for the objectified and stigmatised prisoner.

6. *Support work towards building dynamic security (United Nations Office on Drugs and Crime, 2015) approaches in prisons*

Physical and procedural security arrangements are essential for any prison. But daily interactions between staff and prisoners, the development of positive relationships, fair treatment and concern for prisoners' well-being, and a routine of constructive activities all reduce the risk of discipline problems, conflict and breaches of security. By having positive relationships with prisoners, staff will not only act as positive role models but also be more aware of what is going on generally and with individual prisoners and be enabled to 'nip problems in the bud'.

7. *Support the development of the restorative city model*

This would provide an opportunity to research the effectiveness of integrating more humane approaches throughout the 'offender pipeline' from prevention to reintegration and co-ordinating a city's resources to achieve this end.

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Unmasking the ‘Criminal Justice Voluntary Sector’ in the Republic of Ireland: Towards a Research Agenda

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Summary: Voluntary sector organisations (VSOs) play a pivotal, but as yet unevaluated role in the Irish criminal justice system. The aim of this paper is to address some of the key issues and debates discussed in the extensive international literature on the criminal justice voluntary sector and to consider how they might be translated into an Irish context. After presenting the contours of the Irish criminal justice voluntary sector and discussing the difficulties of scoping a complex and diverse field, the paper highlights key strengths and weaknesses discussed in the international literature. The Irish criminal justice voluntary sector ultimately has to be interpreted as an element of broader Irish penal and social policy. Making it visible as a distinct field of intervention and research is important if we want to highlight some of the sector’s undeniable strengths. However, it is also timely to critically interrogate some of its tensions and contradictions in a way that will ultimately be useful to service users, practitioners and policy-makers alike.

Keywords: Voluntary sector organisations, third sector, state–civil society partnerships, desistance, service user involvement, social control, marketisation.

Introduction

The relationship between the voluntary sector and the criminal justice system has been converging in the past two decades into more tightly knit partnerships in different national contexts. In England and Wales, for example, it has been argued that this convergence has resulted in the creation of a ‘shadow penal state’ (Corcoran *et al.*, 2018: 1), where voluntary sector activity has been institutionalised across the entire spectrum of the criminal justice system (Corcoran, 2011). In New Zealand, the

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Ministry of Justice has announced that reducing recidivism rates is not possible without voluntary sector organisations (Mills and Meek, 2015). Similarly, in the Australian context it has been mentioned that the extension of crime control tasks beyond the state and private sector into the voluntary sector happened 'alongside the government focus on evidence-based policies seeking cost-effective outcomes from government-commissioned services' (Ransley and Mazerolle, 2017: 484).

Some aspects of this trend are also observable in the Republic of Ireland. Close working relationships between voluntary sector organisations (VSOs) and criminal justice systems are not new. This is particularly the case in the history of Irish social and penal policy, with its significant reliance on the mostly church-based voluntary sector. In continuation of the provisions of 19th-century Poor Law and the concurrent construction of crime and deviance as the result of mainly moral shortcomings, rudimentary early services for the after-care of prisoners, for example, were provided by VSOs. Similarly to most other areas of early social policy, 'the state was quite happy for VSOs to take on this role, having no formalised provisions or structures of support for released prisoners' (Rogan, 2011: 41). Similarly, well before the development of a statutory probation service in the 1960s, legislation encouraged individuals or groups of persons from civil society to 'form a society and apply to be recognised officially', so as to 'act as probation officers and receive financial assistance from the state towards their expenses' (Kilcommins *et al.*, 2004: 50). Subsequently and in line with the broader strategy of subsidiarity, Ministers of Justice maintained the preference for the use of voluntary (often Church-based) organisations in providing services for those involved with the criminal justice system (Kilcommins *et al.*, 2004: 50).

As will become evident throughout this paper, more empirical research will be needed in an Irish context to offer nuanced and considered conclusions about various aspects of the contemporary shape of this relationship. Increasingly, we find a rich body of analysis and commentary on various aspects of penal policy in the Republic of Ireland (Hamilton, 2016; Rogan, 2016) and there is also a well-established critique of voluntary sector and state relationships (McMahon, 2009; Meade, 2009; Powell and Geoghegan, 2004). However, these knowledge fields have not yet interacted significantly and, as a result, the more problematic aspects of VSO relationships with the criminal justice system have not been considered in depth.

The aim of this paper is to address some of the key issues and debates discussed in the extensive international literature on the criminal justice voluntary sector and to consider how they might be translated into an Irish context. My strategy here is to raise questions more than provide answers, as a means to contribute to a critical conversation on the criminal justice voluntary sector in the Republic of Ireland. Putting the sector under scrutiny is useful in terms of locating and characterising Irish penal policy more broadly in relation to the particular Irish political economy as a ‘mixed economy of welfare’ (Fanning, 1999: 51). But more immediately, it also draws our attention to the intricacies that should be considered when designing future policies that regulate and activate voluntary sector engagement with the criminal justice system. Particularly in relation to the ‘back door marketisation’ (Maguire, 2012: 484) of the voluntary sector generally in Ireland and the heavy reliance on state funding, I would also hope that this paper encourages VSOs involved with the criminal justice system to consider their ‘voice’ and ‘boundaries’ vis-à-vis the state. Ultimately, these considerations also have repercussions on the ‘lived experiences’ of service users as well as professionals involved in the criminal justice voluntary sector, however little we yet know about these in the Irish context.

If we assume that the delivery of legitimate criminal and social justice is a public good that has to be placed under detailed scrutiny in all its ‘benign’ aspects, rendering the field of the criminal justice voluntary sector ‘visible’ for analysis is critically important. At different ends of the political spectrum, volunteering, voluntary sector provision of services and partnerships with the ‘community’ or civil society have been presented in political rhetoric and governmental practices as the solution to a plethora of ‘modern ills’, such as individualisation, the loss of community and overreliance on the state (Powell and Geogheghan, 2004). In relation to criminal justice specifically, an assumption commonly made is that more benign forms of criminal justice interventions administered in the community, such as prevention and early intervention, diversion and community sanctions, represent progressive and re-integrative ideals. However, there is also a well-established intellectual tradition of ‘revisionist’ and radical criminology which has conducted more critical commentary and typically argues that the spread of more benign forms of criminal justice interventions can signify an expansion of ‘social control’ (Cohen, 1979, 1985; Garland, 2001; Wacquant, 1993). As will be further outlined below, similar debates can be found in relation to the

increasing entanglement of VSOs in the criminal justice system and what has aptly been described as the 'interpenetration of civil and penal spheres' (Corcoran, 2011: 30).

Before I examine some of these debates in greater detail, the following section offers some definitional considerations of the term 'criminal justice voluntary sector' that I have adopted for this paper and broadly sketches its contemporary landscape in the Republic of Ireland. I will then consider some key strengths and weaknesses of VSO involvement commonly discussed in the research literature.

What is the 'criminal justice voluntary sector' in the Republic of Ireland?

Throughout this article, I use the term 'criminal justice voluntary sector' for pragmatic reasons and as a shorthand to describe the broad field of collaboration between voluntary sector organisations and the criminal justice system. The term is used for example in Scotland, where the Criminal Justice Voluntary Sector Forum¹ (CJVSF) co-ordinates the interests of VSOs collaborating with the criminal justice system. In reality, the term is a misnomer as it implies the existence of a unitary and formal entity, which is not the case. A similar term often used in the literature, 'penal voluntary sector' (Tomczak, 2017), effectively denotes the same as 'criminal justice voluntary sector', but implies that all the work undertaken in the sector contributes to achieving penal ends, and is therefore not adopted in this paper. Equally, the term 'voluntary sector' is often used interchangeably with 'charitable sector', 'not-for-profit sector', 'community and voluntary sector', 'third sector' or 'NGO sector'. Each of these terms has slightly different connotations. For example, 'charities' are often understood to be larger organisations that rely heavily on public fundraising and donations to support their work.

'Third sector' was popularised by New Labour's 'third way' politics in the UK in the late 1990s, a strategy that has also been pursued by the Irish state in the shape of social partnership. From 1987 onwards, the Irish state delivered its political, social and economic governance through a series of consecutive 'social partnership' agreements. Bringing together actors from the public sector, civil society and the market to formulate and deliver these agreements reconfigured how government operated. For the community and voluntary sector, the inclusion of a

¹ <http://www.ccpscotland.org/cjvsf/>

dedicated ‘Community and Voluntary Pillar’ in the 1996 Agreement ‘Partnership 2000’ was significant in that it provided the sector with a dedicated voice at the highest level of economic and social policy formation. However, opinions remain mixed as to whether the voluntary sector’s inclusion has led to a co-option of dissenting voices (Allen, 2000), a democratisation of social relations or a more complex picture, depending on particular structures and the relative power of stakeholders (Powell, 2007).

Throughout this paper, the terms ‘voluntary sector’ and ‘VSOs’ are used, with the understanding that they encompass a wide range of organisations. In terms of legal status in the Republic of Ireland, VSOs vary greatly, including trusts, limited companies with charitable purpose, and industrial, provident and friendly societies, to name a few. Despite this diversity, several commonalities exist, namely that they all have ‘charitable purpose only and provide public benefit’ and therefore fall under the regulatory remit of the Charities Regulator.² Also, they are all governed by trustees or directors who act in a voluntary capacity with the ultimate responsibility for the management and financial affairs of the organisation. This does not preclude the hiring of professional staff and many VSOs are indeed relying on a mix of professional staff and volunteers (Geogheghan and Powell, 2004).

Similarly to other jurisdictions, there are only a handful of VSOs in the Republic of Ireland that could be categorised as organisations that work solely with service users involved (or formerly involved) in the criminal justice system. However, the criminal justice voluntary sector is much wider than this and penetrates all areas of the Irish criminal justice system. The Probation Service in Ireland, for example, spends a third of its annual budget – €15 million – on funding 61 voluntary sector organisations ‘to deliver supports to their clients in the community with a view to reduce recidivism and support reintegration’ (Irish Probation Service, 2016: 1). Importantly, VSOs are also involved in the delivery of various community-based sanctions and early release schemes (‘Community Return Scheme’, ‘Community Support Scheme’ and ‘Community Service Orders’). Young Persons Probation runs the well-established Le Chéile mentoring scheme, relying on a dedicated core of trained volunteers.

Equally, several Irish prisons rely on VSOs (including volunteers) to staff their family visit areas and provide information and pastoral support

² <http://www.charitiesregulatoryauthority.ie/en/cra/pages/faqs>

within the prison. A number of VSOs are offering prison 'in-reach' services to support continuous service delivery post-release (see e.g. Focus Ireland, 2012) and in other instances, VSO staff train prison officers. Victims' support services at court and in the community are also supported by volunteers. Significantly, the jurisdiction's first ever bail support scheme is delivered by a voluntary sector organisation (Department of Children and Youth Affairs, 2017). Also, the voluntary youth work sector has been a long-standing partner in Garda Youth Diversion Projects.

In terms of daily interventions and practices, services offered in these settings are numerous. They include group and individual support, drug and addiction work, health support, education and employment support, family support and much more (Irish Probation Service, 2008). Significant importance has also been given over the past decade to inter-agency collaborations and partnerships in Irish penal and social policy. Reflective of this emphasis, the most recent Joint Prison and Probation Strategy (2015–2017) has for example reiterated the forging of 'collaborative arrangements with statutory and voluntary providers to respond to the reintegration needs of released prisoners' as one of its key strategic outcomes to enhance pre-release planning for prisoners (Irish Prison Service and Probation Service, 2015a: 2). Similarly, the Social Enterprise Strategy 2017–2019, spearheaded by a partnership between the Department of Justice and Equality, the Irish Prison Service and the Irish Probation Service, accorded central importance to the 'third sector' for the Strategy's delivery (Department of Justice and Equality *et al.*, 2017).

To assess the parameters of the criminal justice voluntary sector in the Republic of Ireland more systematically, we would need more empirical data. In the English and Welsh context, for example, researchers and analysts can rely among other sources on the annual 'state of the sector' reports published on the basis of membership surveys by Community Links (CLINKS). CLINKS is a VSO umbrella organisation that is exclusively dedicated to supporting voluntary organisations that work with offenders and their families. CLINKS was founded in 1998 as a response to New Labour's strategy of fostering 'active citizenship' and rebranding civil society as the way forward in welfare state politics (Martin *et al.*, 2016). The annual reports 'collect information about how healthy the sector is, the role it is playing, and the wellbeing of service users' (CLINKS, 2018). Notably, CLINKS has recently also supported a relatively critical piece of research in

partnership with academics at the University of Keele, which among other things highlights some of the pressures that VSOs are under in an increasingly ‘marketised funding landscape’ (Corcoran *et al.*, 2017: 8). It is indicative of a relatively expansive and well-positioned voluntary sector that umbrella organisations support state-of-the-art and possibly ‘state-critical’ research such as this.

But even with this type of empirical information at hand, systematic mapping and scoping of the size, distribution, activities and impact of criminal justice voluntary sector remains complex. The task has been described in the context of England and Wales as like trying to map a ‘loose and baggy monster’ (Tomczak, 2017: 75). This complexity has been attributed to a number of factors. VSOs differ in terms of their size, geographical distribution, service user population, historical legacies, institutional affiliations and correspondingly to this in their overall ethos and mission (Hucklesby and Corcoran, 2016: 3). VSOs involved with the criminal justice system in England and Wales can be differentiated in relation to their functions, which often combine different elements such as service provision, advocacy, co-ordination and research and analysis (Hucklesby and Corcoran, 2016: 4). Crucially, some of these VSOs are enabled by the courts to engage and manage those sanctioned in the community and on different early release schemes, although they don’t seem too keen to expand these roles (Corcoran and Grotz, 2016: 111). VSOs are also embedded to different levels in ‘communities’, some adhering more closely to organically grown community development groups while some larger charities work across different jurisdictions. In addition, defining exactly who should be categorised as a VSO involved with the criminal justice system has been described as complicated in the context of England and Wales by the fact that the activities of many VSOs extend beyond the criminal justice system. Others provide ongoing support to users who have ceased to be in contact with the criminal justice system but are still affected by this experience (Hucklesby and Corcoran, 2016: 4). A further characteristic of the English and Welsh criminal justice voluntary sector generally is that some VSOs are set up by former service users of the criminal justice system or criminal justice staff, bringing a particular – yet under-researched – type of expertise and motivation to their work (Martin *et al.*, 2016: 37). Finally, VSOs rely to different degrees on a mix of professional staff and volunteers, a combination that has drawn the interest of a wide range of research (Corcoran and Grotz, 2016; Kort-

Butler and Malone, 2014; Mills and Meek, 2016). At first sight, it is evident that many of these complexities described in the extensive English and Welsh literature would equally apply to the Irish criminal justice voluntary sector.

There are potentially an endless number of criteria according to which VSOs in the criminal justice system could be categorised. However, how does one make best sense conceptually of the complexity and diversity of the criminal justice voluntary sector across different jurisdictions? To start answering this question, I will now discuss research that highlights the various benefits of VSO sector contribution to the criminal justice system.

Understanding the strengths and benefits of the criminal justice voluntary sector

The following discussion of some of the benefits of involving the voluntary sector in criminal justice service delivery is necessarily oversimplified, as it does not drill down into the particularities of different types of criminal justice voluntary sector provision. Also, caution is required in relation to the quality of available data when one is trying to trace and measure the impact of the sector. These challenges are partly caused by the underlying volatility, diversity, short-term horizons and 'bit-sized' funding arrangements of VSOs. Due to most VSOs relying on 'soft money' and short-term funding timeframes, they spend significant time setting up an initiative; data-gathering and evaluation mechanisms often come as an afterthought and with too little resourcing, resulting in a lack of available and timely data (Hedderman and Hucklesby, 2016).

Even in the best-case scenario when monitoring and evaluation are built into projects, the quality and quantity of available data are often questionable. At the surface, this relates to technical questions, such as discrepancies between service users' self-reported data (e.g. on substance abuse) and actual use, the lack of comparable data across organisations and so on. However, Hedderman and Hucklesby (2016) conclude that there are more systemic explanations for the lack of high-quality data in the criminal justice voluntary sector. These relate to the difficulty of motivating volunteers to participate in data collection regimes, staff feeling that the time spent with service users is restricted by data collection and the different and changing reporting criteria of different funders, making the data-gathering process even more cumbersome for

VSO staff (Hedderman and Hucklesby, 2016). In a way, this also highlights the unequal relationship between the ‘modernised state’ and community-based VSOs (Smith, 2010: 553), leading to what some have argued is a ‘modernise or perish’ mentality vis-à-vis VSOs (Corcoran, 2011: 42).

A third note of caution relates to the point that we have to explicitly acknowledge the contested and politicised nature of debates around the voluntary sector. Voluntary sector representatives as well as politicians of various leanings have an interest, for different reasons, in emphasising the usefulness and strengths of the sector. With these caveats in mind, I will now continue to outline the generic benefits and strengths of the criminal justice voluntary sector. I will discuss first the benefits relating to individuals, mainly service users, and secondly benefits more relevant at the systemic level, i.e. beneficial to the state, broader society and the goals of the criminal justice system.

Empowerment, social inclusion and building up social capital of service users

It is well known across national contexts that people in contact with the criminal justice system have faced multiple challenges in their lives based on a range of adversities and experiences of disempowerment. In the Republic of Ireland, the direct link between disadvantage, social exclusion, imprisonment and criminalisation has been evidenced and acknowledged (Irish Penal Reform Trust, 2012). One of the foundational strengths of the VSO sector, then, is arguably its ‘value-driven ethos’ (Martin *et al.*, 2016: 31), which supports disempowered communities and individuals. While VSOs’ missions and ethos vary greatly as to their positioning between rights-based social justice approaches on the one hand and more paternalistic charitable connotations on the other, research shows how VSOs are effective in mobilising their service users’ social capital (Martin *et al.*, 2016: 31) and human capital (Tomczak, 2017: 155). By providing a variety of tailored supports such as training and employment, supporting relationships with family members, and accessing housing and social welfare, VSOs can contribute to compensating and repairing some of the manifold disadvantages experienced by people in contact with the criminal justice system. VSOs can also provide psychological benefits and opportunities for self-development (Tomczak, 2017: 155) through individual support as well

as group-work interventions. The literature also suggests that VSOs are particularly well placed to support 'hard-to-reach' populations with complex needs, often those belonging to ethnic minorities, female victims of crime and service users with mental health problems (Martin *et al.*, 2016: 33). Through their ability to 'distance' themselves from state institutions which have often been experienced negatively by service users, VSOs are often more acceptable service providers.

Flexible, local and service-user-friendly support

It is frequently highlighted that VSOs contribute to supporting service users on their complex journeys of desistance. Desistance research has shown that the process of disengaging from offending behaviour is a complex interaction of personal realisation, social circumstances and availability of opportunities (Maruna, 2001). The argument proposed is that VSOs are usually small and flexible enough to support the complex desistance journey through 'offering holistic, person-centred interventions, deeply embedded in the appropriate social and local context, with significant points of synthesis with desistance theory' (Martin *et al.*, 2016: 15).

The assumption is that most VSOs hail from local communities, allowing for 'reciprocal, trusting relationships with service users and communities' (Martin *et al.*, 2016: 31). An evaluation of an Integrated Offender Management pilot initiative in England and Wales, for example, noted that one of its strengths was the VSOs' rootedness in local communities (Wong *et al.*, 2012, cited in Tomczak, 2017). Through this rootedness, VSOs potentially also contribute beyond supporting desistance at an individual level towards promoting practices that co-produce desistance in more collective forms (Weaver, 2013). This denotes practices that 'produce outcomes that aim to benefit whole communities or collectivities rather than just individuals or groups of service users' (Weaver, 2013: 13).

Also, it has been noted that, in terms of social distance, VSO staff can most likely keep a better psychological distance from the offender than statutory staff can, and focus on strengths rather than the offending behaviour (Tomczak, 2017: 157). Similarly, research in the US on restorative community service has shown that 'a system that involves community organisations, as well as the community in general, leads to greater "buy-in" to the rehabilitative process. This form of community

involvement develops and encourages new transferable skills, helping to support the reintegration of individuals' (Irish Penal Reform Trust, 2017: 16). Finally, it is argued that VSOs can actively include service users' voice in service planning, design and delivery. For example, CLINKS research from 2011 found that VSOs were the most active entities promoting service user consultative groups in prisons and probation trusts across England and Wales (Martin *et al.*, 2016: 37).

VSOs addressing systemic inefficiencies and weaknesses

Arguably, VSOs contribute beyond supporting individual service users, at a more systemic level, and therefore facilitate a more efficient criminal justice system. It has been suggested that they play an important part in delivering 'a fair and just system by assuming responsibility for ending state-sponsored punishment at the appropriate time, so that former offenders can move back into active citizenship. The role of the voluntary sector therefore extends beyond providing crime reduction solutions to creating a more credible and efficient criminal justice system' (McNeill, 2012). It is also the case that service users' involvement with VSOs can be ideally juxtaposed to the necessarily disempowering experience of being subject to the mandatory intervention of the state through being involved with the criminal justice system. It is argued that this can soften the impact of the criminal justice system, particularly if VSOs are allowed to act 'as independently as they can from the formal machinery of justice' (Martin *et al.*, 2016: 31). Moreover, VSOs also advocate for service users' rights: individually, but also for collective groups of service users, particularly through influencing penal policy. For example, Maurutto and Hannah-Moffat (2016) show that despite state co-option of many VSOs in Canada, women's VSOs played an instrumental role in influencing the legal and penal process by shaping the development of specialised domestic violence courts.

In the Republic of Ireland, the Irish Penal Reform Trust (IPRT) is the foremost example of a critical and effective research and advocacy VSO, often successfully influencing penal policy at the highest level. The role of VSOs as watchdogs has most recently also been reiterated during Ireland's last review of the Optional Protocol to the Convention Against Torture (OPCAT) in 2017, where it was emphasised that civil society organisations should continue to be 'allowed to make repeated and unannounced visits to all places of deprivation of liberty, publish reports

and have the State party act on their recommendations' (IPRT, 2017). Finally, VSOs can act as innovators and mediators in terms of the sometimes fossilised relationships between state institutions and agencies. Indeed, anecdotal evidence from the Republic of Ireland demonstrates that criminal justice VSOs can provide innovation by forging new collaborations between Government departments and, as a result, provide innovative solutions to service users.

The flipside of the criminal justice voluntary sector: net-widening and boundary blurring

The term 'social control' is over-used, but is useful in conceptualising the criminal justice voluntary sector. Stan Cohen famously argued in his book *Visions of Social Control* (1985) that new forms of seemingly benign crime control, including the involvement of communities in the criminal justice system, can contribute to 'net-widening', 'boundary-blurring' and 'masking'. Although with slightly different points of emphasis, all three concepts denote an extension of social control. Cohen suggested that whereas the prison physically implied clear geographical boundaries in a particular setting, concentrating control, crime control is increasingly dispersed to more sites, resulting in 'boundary blurring'. He did not argue that this movement was negative per se, as it could potentially lead to increased investments in local communities, but warned that boundary blurring 'can easily lead to the most undesirable consequences: violations of civil liberties, unchecked discretion, professional imperialism' (Cohen, 1985: 257). Similar ideas have been raised by other scholars in relation to historical philanthropic work (Ignatieff, 1987) and the invention of social work (Donzelot, 1980).

Contemporaneously, debates have applied the 'social control' argument to investigating whether and to what extent similar 'pains of imprisonment' (Sykes, 1958) can be experienced when people are punished in the community, and whether this warrants the claim that we have moved from a century of 'mass incarceration' to one of 'mass supervision' (McNeill, 2018). The 'paradox of probation' refers to these same concerns and points out that when more stringent community penalties replace lesser sentences, 'probation functions as a net-widening rather than a penal reduction mechanism' (Carr, 2016: 331).

It is important to differentiate between coerced and non-coerced participation in the criminal justice voluntary sector (Maguire, 2016:

65). It could be argued that when a statutory element is involved, i.e. when VSOs are obliged to monitor compliance and report breaches, the risk of ‘net-widening’ is more significant. In the Republic of Ireland, for example, the Community Return Programme was introduced as an incentivised and structured early release programme in 2011 through a partnership between the Probation Service and the Irish Prison Service (McNally, 2015). Prisoners, generally serving sentences between one and eight years, are assessed for participation in the programme. Community Return supports them in pursuing meaningful work placements in the community, which are hoped to have rehabilitative and reintegrative effects. Importantly, VSOs monitor compliance with the conditions agreed under the programme. The evaluation of the pilot programme (Irish Prison Service and Probation Service, 2015) has demonstrated the success of the programme, as only 88 (11% of) pilot participants breached their supervision conditions and were thus returned to prison. The reasons for breach included ‘non-attendance, drug use/relapse, participant coming to adverse attention of An Garda Síochána, reoffending or a significant deterioration in resettlement conditions’ (Irish Prison Service and Probation Service, 2015b: 36). The programme’s evaluation seems to indicate that these breaches were probably performed as a last resort, as two-thirds of community-based Probation Officers submitted applications to the Irish Prison Service to facilitate a change of supervision conditions in order to allow for drug rehabilitation treatment, change of address, etc. (Irish Prison Service and Probation Service, 2015b: 36).

Nevertheless, the involvement of VSOs in Community Return can be considered as an example where concerns around ‘net-widening’ should at least be investigated. Whereas more research would be needed as to its actual effects on service users, particularly in relation to the interactions with VSO staff, it has to be acknowledged as a potential risk for the criminal justice voluntary sector. In relation to this, the Jesuit Centre for Faith and Justice (JCFJ) has warned that the involvement of VSOs in the Community Return Programme is problematic as it potentially alters ‘the dynamic between community and voluntary organisations, their service users, and the IPS and Probation service’ (JCFJ, 2013: 5).

However, an expansion of social control can also happen in much more subtle ways, for example through daily and informal information sharing. VSO staff gain detailed information on service users ‘during apparently informal and non-punitive interactions’. At times, this

'privileged access to information about services users ... can result in recalling service users to prison' (Tomczak, 2017: 50). While information sharing does not always result in more punitive outcomes, the 'privileged access to information may be lubricated by the relatively informal locations where contact occurs, the apparent separation between charitable staff and the statutory criminal justice agencies, and the capacity of charitable staff to interact with their clients more frequently than statutory staff are able to' (Tomczak, 2017: 151).

In instances where VSOs are collocated with statutory criminal justice agencies, but also provide services on behalf of the criminal justice system in the community, it is important to look at the micro interactions between service users, VSOs and the criminal justice system to ascertain the 'shadings' of boundary blurring and the parameters of what is acceptable to all involved parties. Research from other jurisdictions appears hopeful, stating that 'there is little evidence that this [reporting duties by VSO staff] causes resentment or undermines trust, or that offenders confuse their role with that of probation officers' (Maguire *et al.*, 2007: 78).

Responsibilisation of civil society and penal drift

It is also useful to consider the criminal justice voluntary sector within a broader set of efforts of 'responsibilising' civil society into the co-production of social services. Particularly in relation to criminal justice systems, the process of 'responsibilisation' refers to extending responsibility for different tasks of crime control towards non-judicial agencies, communities and civil society. It has been described by numerous commentators as a core feature of advanced liberal crime control strategies, which extend their reach into civil society and communities (Crawford 1998; Garland, 2001; O'Malley, 1992; Pratt, 1989). In criminal justice, just as in other sectors, the involvement of civil society represents a shift in how government operates, as the state's function changes from 'rowing' to 'steering' (Osborne and Gaebler, 1992). The motivation behind the 'responsibilisation strategy' is not merely to share responsibility, resources and blame; it constitutes 'a new conception of how to exercise power in the crime control field, a new form of "governing-at-a-distance" that introduces principles and techniques of government that are by now quite well established in other areas of social and economic policy' (Garland, 2001: 127). Central government entices

VSOs through funding arrangements to participate in ‘partnership’ arrangements.

Arguably this ‘responsibilisation’ of civil society can be seen as a strategy working jointly with the ‘rolling back’ of the welfare state. While ‘responsibilisation’ of the criminal justice voluntary sector is not problematic per se, the risk arises of VSOs ‘drifting’ from their original ‘mission’ of social justice and empowerment towards concerns more typically associated with the criminal justice system: what has been described as ‘penal drift’ (Wacquant, 2009). This can occur through very subtle movements towards the normalisation of more controlling and potentially punitive tendencies, for example when VSO staff engage relatively unproblematically with issues relating to monitoring, sanctioning and responsabilising of service users. For example, research in England and Wales has shown that VSO staff rationalise and ‘neutralise’ their collaboration with the criminal justice system, by informing their service users of conditions and consequences of involvement (and possible lack of involvement) and thus conclude that it is ‘up to the person themselves’ to make the right choices (Corcoran *et al.*, 2017: 16). While this might seem a sound strategy in practice settings, it is also indicative of the penetration of punitive logics.

This is not to say that VSOs don’t also resist trends towards ‘penal drift’. Maguire (2016) suggests that most VSOs working in the criminal justice voluntary sector have been able to resist the pressures of penal drift. Similarly, Corcoran (2011) cites examples of resistance, whereby for example the Association of Charity Shops refused to require its service users to wear visible ‘Community Payback’ tags when working on its premises. My own research on youth workers’ engagement with youth diversion and prevention work on Garda Youth Diversion Projects (GYDPs) has shown how they engage in a range of discursive and material resistance strategies (Swirak, 2013). Again, we need to conduct more research in the Irish context as to the effects of ‘penal drift’ in the broader criminal justice voluntary sector. This is particularly important in regard to the relationships between VSO staff and service users, but there is definitely an argument to be made that the sense of ‘unconditionally positive’ relationships between VSO staff and service users should be opened up to detailed scrutiny.

Partnerships and marketisation

Responsibilisation of VSOs does not occur in a social and political vacuum, but in the context of a re-articulation of relations between the criminal justice voluntary sector, the state and markets. What we can see across many western jurisdictions is further state retrenchment and the rolling out of market principles across the social sphere. Neoliberalism is 'multifaceted' (Konings, 2012) and 'at once an ideology, a form of politics and set of practices' (Dukelow and Murphy, 2016: 19). Underpinned by the political ideology of neoliberalism, marketisation can then be understood as a governmental regime (Corcoran, 2014) that introduces particular instruments that govern and regulate the criminal justice voluntary sector according to market-led principles. Particularly in relation to criminal justice, one of the fundamental public goods in functioning democracies, this 'penetration of private interests' (Corcoran, 2014) is worrying.

The 'asymmetry' (Smith, 2010: 552) of relationships between the state and VSOs is an inevitable feature of any contractual arrangement, as 'government is able to drive the evolution of these norms given their resources and political influence and the relative absence of alternative funding sources for non-profit services' (Smith, 2010: 553). However, third-sector literature has debated extensively whether these relationships are hierarchical or whether they represent a more horizontal relationship of 'mutual dependence' (Salamon, 1987).

In the context of the English and Welsh voluntary criminal justice sector, detailed analysis has shown that consecutive governments were successful in gradually opening up the state-VSO relationship to private market forces. In the 1980s, Conservative governments pursued the well-known agenda of privatisation of public services, lean government and fiscal constraint, starting to consider the potential of, for example, prison privatisation (Corcoran *et al.*, 2018: 2). In the early 1990s, legislation enabled the outsourcing of prison management to private sector providers as well as 'stipulating that probation services contract community-based drug and alcohol support services to the voluntary sector' (Corcoran *et al.*, 2018: 3). Under New Labour in the 1990s, 'third way politics' reified the voluntary sector 'as the missing link in a mixed welfare landscape ... which could invigorate contestability in public services' (Corcoran *et al.*, 2018: 3). Several pieces of legislation on both the criminal justice and voluntary sectors paved the way to

institutionalise the voluntary sector as a provider of penal services. Crucially, this relationship once formed has been opened up to marketisation, by further outsourcing custody and resettlement services and requiring VSOs be more commercial and less reliant on public funding (Corcoran *et al.*, 2018: 4). This has also included the introduction of payments by results to provide ‘financial incentives for service providers in improving competition, performance and effectiveness, and privatised probation supervision for medium and low risk (ex)-offenders by founding Community Rehabilitation Companies (CRC)’ (Tomczak, 2017: 6). Notably, this privatisation of probation services has recently been deemed utterly unsuccessful, with only two of the 21 established CRCs having successfully contributed to lowering reoffending rates (Savage, 2018).

However, the exact effects of marketisation on the criminal justice voluntary sector are variable. Tomczak for example argues that the results of neoliberal reforms sometimes restricted VSOs in their agency, but often provided sufficient leeway for organisations to follow their original mission (Tomczak, 2018: 7). She shows how state funding is not a unitary entity, that VSOs can exert agency in the funding process and that marketisation can introduce proactive competition (Tomczak, 2018: 80). Interestingly, she also highlights how even the most controversial marketised reforms, such as payment-by-results pilots on mandatory resettlement, offered some ‘valuable avenues of practical and emotional support’ to prisoners (Tomczak, 2017: 155). Corcoran *et al.* (2017) demonstrate, as a result of their recent large-scale empirical study into the English and Welsh criminal justice voluntary sector, how VSOs adapt to different degrees to demands made by marketisation. This research found that VSOs adapt their business and income diversification strategies, sometimes resulting in organisational mergers. However, they are often faced with negotiating role ambiguity in relation to their original ethos and demands made on them by funders. Many VSOs also reported that more marketisation led to higher workloads for staff, greater emphasis on turnover and a sense of workers feeling deskilled by the demands of delivering ‘routinised and watered down interventions’ (Corcoran *et al.*, 2017: 15).

While developments of marketisation in the Irish criminal justice voluntary sector might not be immediately apparent, there are indications that similar trends are progressively creeping into the relationship between VSOs and criminal justice agencies. Ireland’s

longstanding mixed economy of welfare is increasingly dominated by strong trends towards marketisation and privatisation in the delivery of services, particularly in the areas of employment and training, housing, water and health (Dukelow and Murphy, 2016). At present, contractual relations between statutory bodies and VSOs are regulated by service level agreements (SLAs). As these are not publicly available, it is difficult to assess them as to their inclusion of market-based principles. However, several other developments are indicative of the appetite for further marketising the VSO sector generally. In 2010, for example, social impact investment was piloted in the Republic, based on the UK social impact bond model. It was ultimately discontinued because of budget constraints (JCFJ, 2013: 17), but the piloting of a model that encourages investment of private funds in community organisations for the delivery of outcomes-based contracts should be particularly concerning for VSOs working with vulnerable service users.

Most worryingly for the voluntary sector, the current government is showing a serious commitment to introducing 'commissioning' and competitive tendering into the sector. The Public Service Reform Plan (2014–2016) outlined the need to move away from block grants towards releasing funds upon the delivery of agreed outcomes through the introduction of commissioning. During the public consultation process on commissioning, many VSOs voiced strong criticisms of these planned developments. Community Work Ireland, for example, argued that its work focused on addressing 'poverty, social exclusion and inequality through community work or community development' and was 'not a service that can be commissioned' (Community Work Ireland, 2016: iv). It also expressed the concern that commissioning inevitably leads to privatisation of human and social services. It is not yet known to what extent such concerns will be considered in the Department of Public Expenditure and Reform's current efforts in 'seeking to understand how best to align and integrate a commissioning approach with existing expenditure policy'. It is also notable that the Department of Public Expenditure and Reform has co-funded (notably with Atlantic Philanthropies and the Ireland Funds) a social enterprise ('Benefacts') that acts as a 'single repository of financial, governance and other relevant data on the not-for-profit sector', indicating that Government wants to further fold the VSO sector into its supervisory regime.

Conclusion

I have structured this paper rather schematically around ‘strengths’ and ‘weaknesses’ of some selected debates central to the criminal justice voluntary sector with a view to narrowing down what types of data and research we will need in the Republic of Ireland to better understand the size, shape and impact of the criminal justice voluntary sector. Ultimately, more complexity will be needed to understand the varied effects of the criminal justice voluntary sector in an Irish context. Tomczak’s conclusion in relation to her research in England and Wales seems particularly pertinent, as she shows that VSOs cannot be simply ‘reduced to intermediaries of punishment that merely expand the carceral net’ (Tomczak, 2015: 157), but that VSOs’ different types of involvement in the carceral net have to be understood in ‘all their complexity, with different types of qualities and substance’ (Tomczak, 2015: 163).

In order to paint a similarly nuanced picture for the Irish criminal justice voluntary sector, we would need to start by collecting basic empirical research. In the absence of an infrastructural organisation such as CLINKS in the Republic of Ireland, we have to rely on other umbrella organisations to collate information on the voluntary criminal justice sector. One of the main Irish VSO umbrella organisations, the WHEEL, for example, collects detailed membership and demographical information on VSOs and includes ‘work with ex-offenders’ as a possible data category to be used when registering for membership. However, in the overall national voluntary sector profiles provided annually, no further information is provided for this category of services provided. In addition to basic empirical charting of the voluntary criminal justice sector, in-depth qualitative research with VSO managers, staff, volunteers and service users across different types of service provision would be important to further tease out some of the particularities of the Irish criminal justice voluntary sector. Over time, such data would also be useful to describe and analyse transformations and shifts in the sector.

Some might say that the worry about ‘marketisation’ of the criminal justice voluntary sector is a particular Anglophone obsession that unnecessarily vilifies marketisation and overlooks disadvantages of state-centric modes of criminal justice delivery and practice (Evans, 2017). However, given the English and Welsh experience with marketisation and privatisation of parts of their criminal justice system and the Irish tendency of policy transfer, it might be worthwhile to keep an eye on

current efforts to reform VSO financing occurring in conjunction with ongoing prioritisation of partnerships with the voluntary sector. Bringing into visibility and delineating the criminal justice voluntary sector as a distinct field of intervention and research will allow us to add a further layer of analysis to Irish penal policy and to interrogate some of the sector's tensions and contradictions in way that will ultimately be useful to service users, practitioners and policy-makers alike.

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Non-compliance and Breach Processes in Ireland: A Pilot Study

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Summary: The purpose of this paper is to contribute to the literature on non-compliance and breach processes by presenting some of the findings from a recent pilot study on the nature of the breach process that follows non-compliance with a community service order in Ireland. The Irish pilot study emerged from a broader comparative study of breach processes undertaken by a group of international scholars as part of the COST Action SI 1106 on Offender Supervision in Europe.¹ The paper begins by examining the literature on non-compliance in the field of offender supervision and then introduces the comparative study on breach processes before providing a detailed description of the Irish pilot study. The remaining sections examine the relevance of the findings from both a national and a comparative perspective.

Keywords: Breach, non-compliance, supervision, punishment, reintegration, community service, enforcement, courts, probation.

Background

Over the past decade, there has been a growing realisation that what happens during the enforcement of punishment – a phase that some refer to as the ‘back door’ of the system – can have important implications for human rights and the experience of punishment, desistance

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¹ Offender Supervision in Europe was COST Action 1106 (European Cooperation in Science and Technology) that ran from 2012 to 2016. Its main aim was to explore the emergence of the relatively under-examined phenomenon of ‘mass supervision’ by facilitating co-operation between individuals and institutions already researching offender supervision, and to attract new early-stage researchers to the field. As a European forum for research on offender supervision, its members reviewed and synthesised existing knowledge in the field and also engaged in new interdisciplinary and comparative work. For more information see <http://www.offendersupervision.eu/>

and reintegration, and in some countries, for the growth of the prison population. Padfield and Maruna (2006) were among the first commentators to highlight the ‘extraordinary’ growth in the numbers of people recalled to prison in England and Wales and the need to pay greater attention to the ‘back door’ sentencing practices of release, supervision and recall. They argued that too much emphasis was placed on ‘front end’ sentencing practices and not enough attention was paid to ‘back door’ practices which are at least as influential in terms of sentence length and prison populations.

Noting a significant increase in recalls in recent years, they drew attention for the first time to the many theoretical, legal and practical issues raised by recalls. They noted that certain legislative changes that amended release arrangements for prisoners made an increase in recalls to prison inevitable (Padfield and Maruna, 2006). These changes resulted in more prisoners than ever before being subject to post-sentence supervision and to more stringent conditions, both of which increased the likelihood of recall. Stricter enforcement of conditions brought about by the introduction of National Standards and an increasing emphasis on risk assessment and public protection have been identified as key factors in the growing numbers of recalls to prison (Robinson and McNeill, 2008; Padfield, 2012b; Weaver *et al.*, 2012).

The impact of recall on prison populations has undoubtedly received the most research attention to date, with a special edition of *European Journal of Probation* dedicated to the topic in 2012 (see the editorial by Padfield, 2012a). The growth in revocations of community sanctions and measures has received much less attention. Understanding the nature, impact and circumstances in which revocations of supervisory measures are occurring may present a more pressing concern than previously realised, given findings from a recent study that show that most European countries have experienced a growth in *both* their prison and supervisory populations over the past two decades (Aebi *et al.*, 2015). The growth in supervisory populations in Europe raises the prospect that more people will eventually become subject to breach proceedings for non-compliance with the conditions attached to such measures.

However, interest in the enforcement processes, at the back end of the system, arises not simply because of the expanding population subject to supervision. It also stems from an understanding that these processes involve decisions about the conditions under which people

experience the 'lessening or tightening of punishment' and thus involve key 'moments in which the extent and character of punishment are decided' (Weaver *et al.*, 2012). Breach processes deserve greater attention precisely because they may have unintended and/or damaging consequences including additional punishment, increases in recidivism and prison overcrowding, all of which undermine rehabilitative efforts (Weaver *et al.*, 2012; Boone and Maguire, 2018a).

The existing body of research on offender supervision and community sanctions is relatively underdeveloped (McNeill and Beyens, 2013; Carr *et al.*, 2013). Within this field, research on compliance with supervisory sanctions is still in its infancy (Boone and Herzog-Evans 2013; Boone and Maguire, 2018a). Similarly, with some notable exceptions including Walsh and Sexton (1999) and Seymour (2013), compliance with community sanctions has elicited very little research attention in Ireland. One reason for this may be the difficulty of defining compliance and non-compliance. A growing body of mainly theoretical literature now exists on the nature of compliance (see for example Bottoms, 2001; Braithwaite, 2013; Digard, 2010; Robinson and McNeill, 2008, 2010).

While an exploration of this literature is beyond the scope of this paper, compliance as understood in this context refers to when a person adheres to the conditions of a supervisory order, obeys all the directions given to them by their supervisor and successfully completes the order. Non-compliance involves the failure to adhere to the conditions of the supervisory order or the directions given to them by their supervisor, or the failure to complete the order. Non-compliance may be minor or quite serious, and different consequences generally follow this distinction. Breach proceedings may not always be initiated in every case where issues of non-compliance emerge, as less formal methods may be considered sufficient, especially in relation to minor violations. A certain proportion of those who successfully complete supervisory orders will have violated conditions of their order at some point during the period of order. Providing appropriate statistics on non-compliance can thus be more complex than first imagined.

Nevertheless, attempts to understand compliance are often hampered by the lack of relevant statistical data. The pilot study reported in this paper examined breach processes that follow allegations of non-compliance with community service orders (CSOs) in Ireland. However, statistical information on levels of compliance with CSOs is not yet

publicly available in Ireland. The 2017 annual report from the Irish Probation Service records that 2200 CSOs were made in that year. No information, however, is available on the number of CSOs completed each year nor on the number of prosecutions for non-compliance with the conditions of CSOs dealt with by the courts on an annual basis. Insights from previous research suggest that completion rates are between 80% and 85%. Walsh and Sexton's (1999) examination of 269 CSO case files found that completion certificates had been issued in 81% of cases whereas 17% of CSOs had been revoked. A more recent review of the operation of CSOs in Ireland suggested a figure of between 81% and 85% (Petrus Consulting, 2009). Walsh and Sexton (1999) noted that in at least 40% of the orders successfully completed, Probation Officers (POs) expended considerable energy persuading participants to complete their orders. In at least 2% of the successfully completed orders, participants had been prosecuted for non-compliance and had a formal breach registered against them, but the court had decided to provide a further opportunity to complete the order. Similarly, Seymour's (2013) study of compliance with CSOs in Ireland found that supervisors utilised a variety of strategies to encourage and promote compliance among young offenders who did not perceive the formal breach process or custody as a deterrent.

As they currently stand, compliance rates of between 80% and 85% are reasonably high when compared with other countries. For example, in England and Wales, in 2015 69% of community orders (not directly equivalent to a CSO but the closest comparator) were successfully completed (Hucklesby *et al.*, 2018). In Belgium, between 2010 and 2014 the rate of successful completions of work penalty orders ranged from 76% to 81% (Beyens and Scheirs, 2018). In other countries, links between the credibility of community sanctions, enforcement practices and rates of compliance have been politicised and have led to pressure to make breach processes tougher and to reduce the discretion of POs supervising CSOs and similar sanctions (see Robinson and McNeill (2008) and Hucklesby *et al.* (2018) for accounts of how this has occurred in England and Wales, and Boone and Beckmann (2018) in relation to The Netherlands). In Ireland, while policy-makers have acknowledged the importance of the credibility of community sanctions and of ensuring robust enforcement mechanisms (Department of Justice and Equality, 2014; Irish Probation Service, 2014), breach processes remain relatively invisible outside of the organisation. No political pressure has yet

been exerted to adopt tougher enforcement practices to enhance the credibility of community sanctions (Maguire, 2018).

However, this favourable situation could potentially change, especially considering recent policy attempts to expand the use of the CSO to reduce the prison population in Ireland. It has been a long-standing policy aim of the Irish Probation Service to increase the uptake of CSO by the courts (McCarthy, 2014). With the implementation of the Fines (Payment and Recovery) Act 2014 in 2016, judges may now impose a CSO as a means of enforcing the payment of a court ordered fine instead of relying on imprisonment. Under this legislation the Circuit Court can make an order for a minimum of 40 and a maximum of 240 hours. In the District Court, the maximum is 100 and the minimum is 30 hours. Recent prison statistics confirm that the implementation of the 2014 Act resulted in a significant reduction of 73.2% in the numbers of persons committed to prison for non-payment of court fines in 2017 (Irish Probation Service, 2017). It is likely that much of this decrease is related to the implementation of payment of fines by instalments. It is possible that the CSO will increasingly be used as a means to deal with non-payment of fines, and thus non-compliance with the conditions of CSOs, and the enforcement mechanisms in place to deal with non-compliance, may become increasingly salient.

Methodology for comparative research

In addition to limited research on breach processes at a national level, a review of penal decision-making in Europe, conducted by Boone and Herzog-Evans (2013) as part of the COST Action on Offender Supervision in Europe, concluded that little comparative knowledge existed about the nature and impact of breach processes in Europe. Arising from this, members of the Working Group on Decision-Making and Supervision of the same COST Action decided to focus our research attention on expanding our understanding of breach processes in a comparative context.² We designed a comparative methodology that would allow us to study breach processes across a number of European jurisdictions. Before we could settle on the methodology, we needed to clarify our definition of breach processes and what exactly we wanted to understand and know more about.

²The COST Action had four Working Groups: Practising Supervision; Experiencing Supervision; European Norms, Policy and Practice; and Decision-Making and Supervision. The research reported here was undertaken by the Working Group on Decision-Making and Supervision.

Given that we had contributors from 10 different European jurisdictions, arriving at a single definition of what we meant by the terms ‘breach’ and ‘breach process’ was not an easy task. Did we mean the decision by the supervisor to report non-compliance or the initial interpretation of behaviour by the supervisor as involving some level of non-compliance? Alternatively, by using the term ‘breach’ did we mean to refer to the act of non-compliance itself? Confusing as this was, it led us to an important starting point: breach is not necessarily an objective act but is instead something that is actively constructed, negotiated and renegotiated depending on the circumstances of a particular case. Based on this constructive interpretation of what breach involves, we defined breach processes as involving many different interdependent stages and interrelated actors, and we thus decided to take a processual approach towards understanding decision-making in breach processes. A processual approach not only would facilitate an understanding of the final decision in a breach process (whether to recall or revoke) but also, importantly, would provide insight into how this final decision would be influenced by all of the preceding decisions and decision-makers.

We decided that a qualitative methodological approach would best serve our aim of capturing an account of breach *as a process* involving a series of decisions and decision-makers from the very start of the process right up until the final decision. We chose the vignette method supplemented by semi-structured interviews as the best way to capture the viewpoints and orientations of all the actors involved at various stages of the breach process. A detailed account of the vignette method and of how we chose and designed the comparative vignette instruments is provided elsewhere (Maguire *et al.*, 2015). Here, I will briefly outline some of the main considerations and decisions that informed the design of the comparative vignettes and semi-structured interviews.

A vignette can be regarded as a description of an event, situation or incident that is presented to informants in order to elicit their reactions, opinions or views (Schoenberg and Ravdal, 2000). Vignettes are used to study beliefs, attitudes and perceptions (Hughes, 1998). They are usually accompanied by questions prompting informants to respond to the scenario by giving their opinion, by explaining what they would do in response to the situation or describing the course of action that would normally follow the event (Hughes, 1998; Schoenberg and Ravdal, 2000). However, before we could design a vignette that would capture the process of breach including the various different actors and stages,

we needed to understand more about the diversity of breach processes across the 10 European jurisdictions.

To accomplish this, we asked members of our Working Group to map the breach procedures and processes in their jurisdictions by highlighting the key decision points as well as the key decision-makers in their system. We decided to examine breach decision-making processes at both the sentencing phase and the release phase. This meant that contributors were asked to provide details of two different types of breach processes. For the sentencing phase we asked contributors to describe the process and procedures that follow an allegation of non-compliance made against a person serving a community sentence imposed by a court after conviction. More specifically, we decided that we would focus on the CSO, but, as we discovered, this distinct order did not exist in all jurisdictions. For the release phase, we asked contributors to focus on the process and procedures that follow an allegation of non-compliance with one or more conditions of their early release from prison.

Based on these descriptions we designed two vignettes, one for the breach process associated with the CSO (or other similar order) and another to capture the breach process related to non-compliance with conditions of early release from prison. Each vignette was designed to capture all stages of the process within each phase. The vignette and accompanying questions were designed to capture at least three actors/stages in the decision-making process. Brief details were provided about the nature of the non-compliance and about the previous actors' responses to the non-compliance. Once the generic vignettes were designed, we asked our Working Group members to adapt the vignettes so that they made sense in their jurisdiction. A key challenge involved ensuring that the vignettes were not changed to the extent that they no longer measured reactions to a common scenario.

The vignettes were piloted in each country. The results were used to inform in-depth descriptions and analysis of how breach processes (both early release and community service) are regulated and practised in 10 countries. These included Belgium; England and Wales; Germany; Greece; Italy; Ireland; Lithuania; The Netherlands; Spain; and Sweden. This work formed the basis of a book (Boone and Maguire, 2018b), comprising both country chapters and thematic chapters. Contributors from 10 jurisdictions wrote up their descriptions and analysis informed by the pilot study. These were then used as a basis to inform our comparative analyses of breach processes. This analysis focused on four

key themes: European law, ethics and norms; parties, roles and responsibilities; discretion and professionalism; and legitimacy, fairness and due process.

The following sections of this paper describe the Irish pilot study and present some of the findings on the nature of the breach process that follows non-compliance with a CSO in Ireland. For more information about the nature of breach processes associated with early release from prison in Ireland, see Maguire (2018).

Community service in Ireland

The CSO was introduced in the 1980s in Ireland with the primary policy aim of providing an alternative to imprisonment (Rogan, 2011). A judge may impose a CSO of between 40 and 240 hours of unpaid work, which must usually be completed within one year, as a direct alternative to a sentence of imprisonment or as a means to enforce an unpaid court-ordered fine. When imposing a CSO, a judge must ensure that certain conditions are met: a prison sentence is appropriate in the circumstances of the case; the person is over 16 years, consents to the order and is a suitable candidate; and an appropriate work place is available. Persons serving a CSO are assigned to a work site and are supervised on site by a community service supervisor (CSS) who reports directly to the supervising PO. Although there are three distinct decision-making parties involved in the CSO breach process in Ireland – the CSS, the supervising PO and the judge – as we shall see, the law officially recognises only the roles of the PO and the judge.

A combination of legislation, legal regulations and District Court rules currently govern the review and enforcement of CSOs (Maguire, 2018). Sections 7 to 12 of the Criminal Justice (Community Service) Act 1983 provide POs with the power to prosecute for non-compliance with the conditions attached to a CSO and also provide for the revocation, variation and extension of CSOs. The conditions that a participant on CSO must comply with are set out in Section 7 in fairly broad terms: participants must (1) report to the relevant officer as directed; (2) satisfactorily perform all the hours in the order as directed; and (3) notify the officer if there is a change of address. Additionally, the Criminal Justice (Community Service) Regulations 1984 provide that persons subject to a CSO must ‘obey all instructions given to him under the Act by or on behalf of a relevant officer’. Section 7 further provides

that any person who does not comply with these conditions 'without a reasonable excuse' shall be guilty of an offence, and if convicted, may be liable to a fine not exceeding €300.

The 1983 Act provides judges with a number of options besides convicting, fining and revoking the CSO. Under Section 8 a judge may re-sentence the person to another penalty that would have been available at the time of the original sentencing hearing, and Section 9 allows the court to extend the completion period beyond one year. Independently of enforcement action, Section 11 provides the court with the power to revoke, extend or vary the CSO where there has been a change of circumstances, and either the person or the PO may make an application under this provision.

This brief overview of the legal criteria governing the enforcement of non-compliance raises a number of issues. First, non-compliance with the conditions of a CSO is an offence in itself, a situation that, as we will see later, contravenes existing European standards and recommendations on best-practice guidelines for community sanctions and measures (Morgenstern *et al.*, 2018). Second, as noted earlier, the legal regulations do not officially recognise the role of the CSS, who is the only layperson involved in the breach process apart from the person subject to breach. Third, the law is relatively silent regarding the exact nature of behaviour that constitutes non-compliance, leaving much discretion in the hands of practitioners in terms of how this is defined.

In 2009 the Probation Service developed a very detailed set of guidelines for the enforcement and supervision of CSOs called the *Probation Service Manual for Community Service* (Irish Probation Service, 2014). This manual provides very thorough guidance on all stages of the supervision and enforcement of CSOs, from induction processes right up to and including the steps that should be taken prior to initiating a prosecution for non-compliance. It provides a list of examples of what are acceptable and unacceptable excuses for non-attendance and advises that the supervisee should give advance warning before the absence and written verification of the reason for the absence. The manual also provides examples of serious misconduct that may lead to the immediate suspension of the CSO and return to court as well as behaviour that falls short of the expected level of co-operation and requires investigation by the PO. The level of detail provided by the manual and the legal regulations provide very useful insight into the nature of the CSO breach processes in Ireland.

The Irish pilot study

The Irish pilot study focused on the breach process that follows an allegation of non-compliance with conditions of a CSO.³ The vignette therefore had to be adapted so that it would make sense in an Irish context. As the Irish CSO breach process has three stages, each involving three distinct decision points, the only adaptation that the generic vignette needed was in the description of the sentence. This had to reflect the fact that in Ireland CSOs are only imposed as alternatives to a prison sentence:

John is a 22-year-old unemployed man who has been convicted of assault (mid-level) of another man outside a nightclub at 2 a.m. The victim was taken to the hospital but was discharged a few hours later. John has three previous convictions but has never been sentenced to prison. John was sentenced to six months in prison, and in lieu of this, the judge imposed a community service order of 120 hours to be completed within one year.

The three official decision-makers involved in the CSO breach process in Ireland are typically the CSS, the supervising PO and the judge who imposed the sentence. The same vignette scenario was presented to each of these actors but adjusted slightly to take account of where in the process the actor would come into contact with the person alleged to have violated the conditions of their CSO. As the CSS would always be the first point of contact in terms of responding to any alleged non-compliance, the CSS interviewed was presented with the types of violations and asked to respond to the scenario based on all three examples of non-compliance, as follows.

1. John is one quarter the way through his order when he fails to show up one day.
2. John is one quarter the way through his order when he turns up late one morning. This is the second time in a row that John has been late. He had an emergency at home and had to bring his mother to the hospital.
3. John turns up for work but he doesn't do the work as instructed. He spends more time talking, laughing and smoking, and generally being disruptive, than engaging in the task.

³ For further information on and analysis of breach processes related to early release in Ireland, see Maguire (2018)

For the next actor in the process, the supervising PO, the same scenario was presented but with an additional line explaining that the immediate supervisor has referred the case to you with a recommendation for breach. A similar line was added to the vignette that the judge responded to, but it mentioned that both the CSS and the PO recommended breaching the offender. Each actor was asked a number of questions about the vignette, aimed at eliciting their views about: the types of violations, the number of chances that should be given, their decision and what formal and informal options may be open to them, how they would communicate their decision to the next decision-maker or what kind of information they would expect from a previous decision-maker.

Having received ethical approval and permission to contact practitioners from the Irish Probation Service, three practitioners were interviewed for the Irish pilot study including a CSS, a PO with experience of taking prosecutions for non-compliance and a District Court judge. Each practitioner was asked to respond to the vignette guided by the questions described above, and interviews were recorded and transcribed. As this research was undertaken as a pilot study aimed at testing the validity of the research instruments, only three research participants were recruited. As a result the findings are limited and not generalisable, and should only be considered preliminary insights into the nature of the breach process in Ireland.

Insights from the pilot

As noted above, three main actors are involved in the CSO breach process in Ireland: the CSS, the supervising PO and the court. The immediate supervisor arguably plays a vital role, as they alert the supervising PO that a particular person has violated a requirement. It is part of the CSS's responsibility to keep track of attendance on site and report to the PO on a daily basis. The guidance manual requires CSSs to respond to and report non-attendance (Irish Probation Service, 2014). It describes a system of texting participants who fail to turn up to let them know that their absence will be reported to the supervising PO. The guidance also suggests that CSSs may wish to text participants in advance to remind them to attend their site in compliance with the order. Insights from the pilot study show that the practice of sending texts is not popular among all CSSs. Some CSSs may regard this practice as falling outside of their job role. Of course, the generalisability of this insight awaits further, more substantive research.

The extent to which non-attendance or other behaviour falling below the level of co-operation expected is tolerated by CSSs is crucially important. Although CSSs are not officially recognised by the law, they play a crucial role in deciding when to alert the PO to behaviour that is potentially unacceptable. The legal regulations recognise the PO as the decision-maker in terms of officially deciding whether or not there has been a violation. However, in practice the CSS and the PO often make this decision jointly.

The PO cannot make an informed decision without the information supplied by the CSS, and so the CSS potentially has some power and discretion to influence the decision of the PO. The role of the CSS can be easily overlooked in terms of understanding how breach processes work in practice. The relationship and level of co-operation between the CSS and the PO can also be important in terms of determining how efficiently or otherwise the enforcement process works. Good relations between the PO and the CCS may lead to high levels of co-operation and communication and ensure a swift response to violations, whereas a breakdown in relationships might lead to slower response. Information gathered by the CSS will often be included in the PO's report to the court where a decision is made to initiate a prosecution.

Once a violation (non-attendance or other non-cooperative behaviour) has been reported to the PO, he or she must fully investigate the allegation by gathering evidence and interviewing all parties before making a decision. If the PO decides that the violation has occurred the participant will be issued with a warning letter. This letter may be cancelled if the participant provides proof of an acceptable excuse. Once three warnings letters have been issued a meeting is arranged with the participant to discuss the situation. The CSS and/or a Senior PO (SPO) may also be present at this meeting.

Depending on how this meeting goes, the PO decides either to prosecute or to give the participant one more chance to complete. If a decision to prosecute is taken, the PO will write to the participant to notify them. The Notification of Breach Proceedings letter notifies the participant but also invites them to meet with the PO. The PO must then prepare a report to submit to the court that provides evidence of the type and nature of the breach under Section 7(1) of the 1983 Act and must also set out how this violation amounts to an offence under Section 7(4). The attendance records and information provided by the CSS are used to support the main allegation of non-compliance. The prosecuting

PO usually attends court to provide oral evidence and to answer any questions the judge may have. Insights from the pilot interviews suggest that prosecuting POs would usually be highly aware of the importance of providing sufficient evidence to support the application.

The final two actors are the defendant and the judge. The participant/defendant will normally be present at the court hearing and is entitled to legal representation as the application may potentially lead to imprisonment. The defendant rarely has an opportunity to speak in court. However, at every stage in the breach process prior to the court hearing the participant is given numerous opportunities to engage, to be heard and to engage with the decision-making PO. If a defence lawyer is present for the court hearing they may try to negotiate with the prosecuting PO in advance of the hearing to present a resolution to the judge. The role of the defence lawyer often involves requesting the court to allow his or her client another opportunity to complete the order. Occasionally, if there has been a change of circumstances, the defence lawyer may request revocation and re-sentencing.

The practitioners interviewed articulated a number of viewpoints regarding the underlying aims of the breach process. While the PO stressed the importance of engaging with the participant all the way along the process, to encourage completion and to avoid a prison sentence, a perception of a judicial reluctance to revoke a CSO was also highlighted. The PO interviewed explained that judges, in three-quarters of cases, generally give the defendant another chance to complete. Bearing this in mind, from the perspective of the PO, the decision to proceed with a prosecution is taken only if the PO feels that everything possible has been done to help the defendant engage with and complete their order. In many cases a prosecution represents the last resort.

However, it was also acknowledged that in a minority of cases a prosecution might be taken as a way to reinforce with the defendant the fact that a prison sentence will have to be served if the order is not completed. The PO explained that in a small number of cases the court will be told that the Probation Service is unwilling to engage further with the defendant. The interview with the judge confirmed that sometimes a prosecution is an opportunity for a 'short, sharp, shock' to remind the defendant of the seriousness of their non-compliance:

You might find from the presentation of the Probation Officer that they are looking for a short, sharp shock and therefore they are

bringing the breach back. Therefore you tend to play the game, a little bit of concern not to say annoyance and a few direct comments to the solicitor representing, indicating that this gentleman is on a slippery slope.

In this quotation, the judge is showing a willingness to respond to the lead provided by the PO. However, this judge also acknowledged that the decision to impose a CSO in lieu of a prison sentence is not taken lightly and therefore the decision to revoke a CSO is not made lightly either. An important factor for the judge interviewed was ascertaining the attitude of the offender, particularly in relation to whether the non-compliance was related to a chaotic lifestyle or to wilful non-compliance. Indeed, the attitude of the offender was mentioned as an important decision-making factor for the CCS, the PO and the judge.

Comparative insights

This section presents some of the major thematic insights from the broader comparative study and uses them to enhance our comparative understanding of the Irish breach process.

Parties, roles and responsibilities

The Irish CSO breach process is fairly similar to the breach processes of many of the other jurisdictions that participated in the comparative study. Blay *et al.* (2018) examined the roles and responsibilities of the various parties typically involved in the breach decision-making process relating to community sentences across the 10 jurisdictions of the study. They concluded that direct supervisors, POs and judges are the typical parties involved.

Although final decision-makers tend to be judicial, the presumption that the decision-making power lies with the final decision-maker did not hold up. Instead, Blay *et al.* (2018) found that the type of decision-making involved in these processes resembled what Hawkins (2003) has termed ‘serial decision-making’. This concept acknowledges that decision-making is often a collective rather than an individual enterprise, particularly when it is based on information contributed from a number of different parties. According to Hawkins (2003), decision-making is often anticipatory, in that the probable actions to be taken by the next layer of decision-makers are regularly taken into account.

Early actors in breach processes often adjust their decisions in order to anticipate, and thus control, the decisions of parties further along in the process (Blay *et al.*, 2018). Thus, early stage actors may have a greater impact than later stage parties on the decision-making of parties who legally may be considered more powerful decision-makers. Blay *et al.* (2018) found that decisions are often influenced by the nature of the relationships between the various actors in the process. The serial decision-making analysis of breach processes makes sense in the Irish context. The CSS, although not legally acknowledged as a decision-maker in the process, plays a crucial role in deciding when to blow the whistle on participants' behaviour. Similarly, a PO's report has the potential to influence how a judge perceives the defendant's behaviour. Moreover, as discussed earlier, decision-making, at least at the early stage of the breach process in Ireland, is usually a collective enterprise involving the CSS, the PO and the SPO.

The layperson emerges as a surprisingly important decision-making party in breach processes across all jurisdictions (Blay *et al.*, 2018). Hitherto, comparative criminal justice research paid scant attention to the role of the layperson, preferring to analyse the role and cultural habitus of judges, prosecutors, lawyers, POs and police officers. Beyens and Persson (2018: 71) define laypersons in this context as those who 'are not clad in the proverbial finer metals offered by a professional training, profession-specific knowledge and the support of the employing organisation and peers'. Despite the growing importance of laypersons as actors in breach process and thus in supervisory sanctions and measures, their role and decision-making powers tend not to be reflected in official guidelines or laws governing the breach process. Their lack of visibility belies the important role they play in the early stages of breach processes in terms of constructing the behaviour of supervisees as non-compliant and thus worthy of a report to a more a senior decision-maker. Toleration of non-compliance among laypersons and the knock-on impacts for how non-compliance is dealt with are a topic worthy of greater research.

Ireland is a good example of a country in which the role of the layperson in the criminal justice system has become increasingly important. As described earlier, CSSs, who technically may not be considered part of the penal apparatus as they are not professionally trained and do not possess the specific knowledge of criminal justice professionals, play an important role at the early stage of the Irish breach

process in terms of their construction of behaviour as non-compliant and the reporting of non-compliant behaviour to POs. The official guidelines in Ireland do recognise their role but, despite the extensive contact they have with CSO participants as front-line staff, most CSSs receive relatively little specific training in rehabilitative skills (McGagh, 2007; Carr *et al.*, 2013). Anecdotal evidence suggests that the involvement of laypersons may be set to increase across a range of European jurisdictions, which may change the nature of supervisory practices (Maguire and Boone, 2018: 112).

Discretion

The degree of discretion available to decision-makers in the breach process is a key theme examined by Beyens and Persson (2018). In their comparative analysis of levels of discretion, they found marked variations in discretion available both between countries and between actors in the same breach process. However, they also found that even in countries where discretion is limited, practitioners still exercise some discretion in terms of interpreting what constitutes compliant or non-compliant behaviour. They note that attempts to restrict discretion in order to enhance the perception of credibility have not necessarily been successful. They highlight the tensions between the exercise of discretion and the need to ensure oversight to avoid discrimination and abuse of power in order to maintain the credibility of the breach process (particularly in the eyes of external stakeholders). Despite these seemingly contradictory aims, Beyens and Persson (2018) conclude that in many countries examined in the study most practitioners routinely use their discretion to give more chances to offenders than they are formally required to.

As noted previously in the description of how the Irish breach process works in practice, the law provides Irish practitioners with considerable discretion in terms of how they define what constitutes non-compliance. While the guidance manual describes a 'three strikes' policy before prosecution is initiated, the pilot interviews showed that in some instances more chances might be given to participants if their non-compliance was out of their control or not due to a deliberate desire to violate conditions. A similarly tolerant approach to non-compliance was evident across a number of other jurisdictions. Indeed, the importance of discerning the attitude of the participant before deciding how to respond to an alleged incident of non-compliance was a common theme

running through most practitioner accounts across jurisdictions (Beyens and Persson, 2018). The degree of discretion available to Irish practitioners in comparison with other countries was reasonably generous and, importantly, Irish completion rates ranked among the highest of the 10 countries examined in the study.

Legitimacy and due process in the breach process

The extent to which persons subject to breach processes are treated fairly and perceive their treatment as legitimate is important. Dealing firstly with legitimacy, Hucklesby *et al.* (2018), drawing on Tyler's (1990, 2013) work on procedural justice and compliance, explain that legitimacy not only speaks to the credibility of a particular system, it is also fundamentally related to the nature of authority and the extent to which it should be obeyed. As Tyler's work has demonstrated in the context of police–citizen contacts, perceptions of fair treatment – what he refers to as procedural justice – have been shown to be as important to members of the public as final outcomes, particularly in terms of future compliance with the law. Persons who perceived their treatment by the police to be fair were more likely to comply with the law. Procedural justice in turn consists of four elements: voice, respect, neutrality and trust (Tyler, 2013).

Work on the nature of compliance by Robinson and McNeill (2008, 2010) has shown that compliance is often dynamic in nature and changes in response to the type of enforcement practices employed. They argue that responsive enforcement practices that allow sufficient discretion for supervisors to respond in a flexible manner to non-compliance are more likely to be perceived as legitimate and thus more likely to encourage future compliance. Hucklesby *et al.* (2018) draw on this work and, applying it to breach processes, argue that breach processes must both respect due process rights and be responsive if they are to be considered legitimate. They then explore the degree of responsiveness and the extent to which due process rights are protected in the breach processes of the 10 countries included in the study. They conclude by proposing a new overarching framework for assessing the legitimacy of breach processes, combining responsiveness and due process rights, which they refer to as a responsive rights-based breach process model (Hucklesby *et al.*, 2018: 98).

Hucklesby *et al.* (2018) identified a continuum of responsiveness when comparing the 10 European jurisdictions. The Irish community service breach process was one of the most responsive of the 10

jurisdictions for the following reasons: it provides informal and formal opportunities for offenders to participate in the decision-making process; it has a culture of tolerance of low-level non-compliance; practitioners can give participants additional opportunities to comply over and above formal guidelines; it is supportive of supervisory relationships; and practitioners typically distinguish between unwillingness to comply and genuine difficulty in complying when assessing the attitude of the participant towards compliance. The CSO enforcement process also scored highly in terms of the protection of due process rights. However, this is largely due to the fact that in Ireland allegations of non-compliance with the conditions of a CSO are prosecuted as criminal charges in the courts: an approach that, as we will see in the next section, is out of keeping with other European jurisdictions and with best European standards.

Breach processes and European law, ethics and norms

An important consideration in the comparative analysis of breach processes in Europe is the extent to which they comply with European norms, values and ethics. Morgenstern *et al.* (2018) highlight how persons subject to allegations of non-compliance with conditions during the enforcement stage of punishment are much less protected than during the initial trial phase. The typical protections afforded to persons charged with criminal offences by Articles 5 (the right to liberty) and Article 6 (the right to a fair procedure) of the European Convention of Human Rights (ECHR) have been found by the European Court of Human Rights (ECtHR) not to apply, for the most part, to the implementation phase of punishment. From their analysis of the 1992 European Rules on Community Sanctions and Measures (ERCSM)⁴ as well as the European Probation Rules 2010, Morgenstern *et al.* summarise a number of the key features that breach processes in Europe should observe, and the Irish breach process examined here fulfils many of the best practice standards they identify.

A key point they highlight is the need for final decision-makers to be sufficiently impartial and independent of those implementing punishment. In most cases they identify judges as the most appropriate final

⁴ These rules were recently updated and are now contained in Recommendation CM/Rec (2017) 3 on the European Rules on community sanctions and measures. They can be accessed at <https://rm.coe.int/168070c09b>

decision-makers, as they are typically independent of the executive branch of government responsible for sentence enforcement. Although decision-making in the initial stages is carried out by the POs in terms of deciding whether to take a prosecution or not, the final decision-maker in terms of the criminal adjudication of the charge of non-compliance in Ireland is a judicial authority and thus independent of the executive. Morgenstern *et al.* (2018) identify proportionality of response to non-compliance as an important principle that should govern breach processes and that involves treating minor and more serious forms of non-compliance differently.

Proportionality is a relevant aspect of the Irish system too. Evidence from the pilot study carried out in Ireland suggests that practitioners at the early stage of the process regularly differentiate between minor and significant transgressions, and indeed the very detailed practice guidance (Irish Probation Service, 2014) includes strategies for distinguishing between and responding differently to the two. In particular, the Service Manual encourages practitioners to distinguish between unwillingness to comply and disorganised lifestyle or confusion about what is required in order to comply.

The 1992 rules (and the recent update of those rules) prohibit automatic conversions of community sanctions and measures to imprisonment as a response to non-compliance (Morgenstern *et al.*, 2018). In Ireland, a judge may re-sentence any person to any sentence that may have been available to the court at the initial time of sentencing. This allows for a proportionate judicial response to non-compliance and suggests that automatic imprisonment is not a feature of our system. However, the Irish process conflicts with Rule 84 of the 1992 European Rules on Sanctions and Measures in that it makes non-compliance in itself a criminal offence. This rule has been carried forward into the new updated rules, and it appears that Ireland is one of only a handful of countries that still criminalise people for non-compliance with conditions of community sentences. This should be amended at the earliest available opportunity.

A related issue is the extent to which sanctions are used to motivate compliance to the exclusion of other, more supportive measures. Article 85 of the European Probation Rules 2010 advances the notion that POs develop proactive measures to help offenders avoid non-compliance. Walsh and Sexton's (1999) study acknowledged that the relatively high rate of completion of CSOs in Ireland was in part due to the proactive

work done by POs in encouraging offenders towards completion. Some evidence of this appeared in the Irish pilot, but an interesting question arises regarding the extent of consistency of approach around the country. Do certain practitioners exercise a more forgiving approach than others in terms of tolerating higher levels of non-compliance? The new Integrated Community Service introduced on a pilot basis by the Irish Probation Service in 2017 (for more information see Irish Probation Service (2017)) directly addresses the concerns of Article 85 by providing that up to one-third of CSO hours may be spent on attending programmes and accessing services aimed at enhancing rehabilitation and reintegration. This is a very welcome move. The initiative is now being piloted on a national basis and its uptake and impact will be reviewed in 2019.

Conclusion

The aim of this paper was to contribute to the literature on non-compliance and breach processes in Ireland. The findings of the pilot study are by their very nature limited, and further studies that would provide a more substantial and comprehensive insight are well overdue. However, together with the comparative insights, they provide an interesting preliminary examination of how the process works in Ireland.

The Irish breach process that follows an allegation of non-compliance with CSOs is arguably a very sophisticated one. It respects proportionality and impartiality and provides sufficient discretion to practitioners to enable them to encourage and motivate sometimes reluctant participants towards completion. It provides numerous opportunities for CSO participants who violate the terms of their conditions to participate in decision-making and have their say. Compared with other European countries, it can be considered to possess ingredients favourable to a high level of legitimacy as it combines high levels of due process protection with a highly responsive approach to enforcement that prioritises the participant-supervisor relationship above strict enforcement protocols that have been found wanting elsewhere.

Of course, confirmation of these preliminary findings on legitimacy must await more substantive research that incorporates the perspectives of those subject to breach processes. However, this relatively enlightened approach conflicts with the continued criminalisation of non-compliance in Ireland. That approach not only is out of sync with the European Rules

on Sanctions and Measures but also stands in stark contrast to most other countries in the EU, where criminalisation has long been removed.

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From the High, Hard Ground of Theory to the Swampy Lowlands of Risk Assessment in Practice: The Real-Life Challenges of Decision-Making

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Summary: Assessment of risk, both the likelihood of reoffending and Significant Risk of Serious Harm to Others, is a core component of a Probation Officer's role. Arguably, nowhere in a Probation Officer's work is Schön's 'swampy lowland' (see below) more obvious than in the assessment for Significant Risk of Serious Harm to Others, where theory can jar with the reality of everyday practice. This article considers the implications of that tension within wider literature. It outlines PBNI's approach to the Significant Risk of Serious Harm to Others assessment and draws on a case study to explore decision-making and risk assessment, considering the immediate and wider influences.

Keywords: Risk assessment, risk of harm, significant risk of serious harm, decision-making, professional judgement.

In the varied topography of professional practice, there is a high, hard ground overlooking a swamp. On the high ground, manageable problems lend themselves to solutions through the use of research based theory and technique. In the swampy lowlands, problems are messy and confusing and incapable of technical solution ... The practitioner is confronted with a choice. Shall he remain on the high ground where he can solve relatively unimportant problems according to his standards of rigor, or shall he descend to the swamp of important problems where he cannot be rigorous in any way he knows how to describe? (Schön, 1987: 3)

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The theory of risk assessment

‘Risk is a complex practice issue’ (Kemshall *et al.*, 2013: 1) and the limited predictive power of risk assessment is readily acknowledged in the literature (Drake *et al.*, 2014), with McSherry (2014: 783) proposing that ‘it is impossible to identify the *precise* risk an individual poses’ (emphasis in original). Horsefield (2003: 374) states that risk assessment ‘has a history which belies its success, since, if its value was based only on accuracy in prediction of future events, it would have vanished years ago’.

The growing interest in risk assessment in criminal justice evolved from a widespread disquiet with Martinson’s ‘Nothing Works’ doctrine (Burman *et al.*, 2007), a revival of interest in rehabilitation through the Risk–Need–Responsivity Model (Bonta and Andrews, 2007) and an emergent public protection agenda, with a stronger focus on managing risks and maximising public safety (Hsieh *et al.*, 2015). This is in keeping with Feeley and Simon’s (1992) ‘New Penology’ that saw rehabilitative efforts displaced by rational and efficient management of resources. These developments prompted a wealth of international research (Powis, 2002; Burman *et al.*, 2007; Barry *et al.*, 2007). A preoccupation with risk definitions and categorisations is evident in the literature (Kemshall, 2003), with some recognition that violent individuals are not a ‘homogenous group that can easily be set apart or distinguished from others’ (Barry, 2007: 31). This challenges risk assessment and management practices to be individualised.

The generational language of risk assessment tools adds to the dialogue (Lewis, 2014), with ‘first generation’ professional judgements replaced by ‘second generation’ actuarial static risk assessments, and a never-ending tussle between actuarial methods and clinical assessments persisting (Lancaster and Lumb, 2006; Fazel *et al.*, 2012). With much consideration given to static and dynamic risk factors (Serin *et al.*, 2016), ‘third generation’ dynamic risk assessments, ‘sensitive to changes in an offender’s circumstances’ (Bonta and Andrews, 2007: 4), forged the way for ‘fourth generation’ assessments, expanding to case management and incorporating responsivity (Burman *et al.*, 2007). McNeill (2012; cited in Weaver, 2014) argues that a preoccupation with tools and practices has created an inward-looking approach of ever-increasing regulation that focuses on practitioners to the detriment of those being assessed. Kemshall *et al.* (1997) perceptively foresaw the forensic rather than predictive use of risk, whereby failures to prevent serious reoffending

from known individuals become ‘blameworthy’ (Nash, 2012: 3). Stalker (2003: 219) suggests that ‘risk management is characterized in the literature as little more than social work watching its own back’. Kemshall *et al.* (2013) warn of this leading to precautionary decision-making and risk aversion whereby risk and its impact are overestimated, resulting in over-intrusive and disproportionate responses. Conversely, they also acknowledge the inherent tensions for staff tasked with determining future risk. This goes to the heart of risk assessment within the realm of public protection and contemporary probation practices.

Risk assessment in PBNI

Probation Officers in PBNI use the Assessment, Case Management and Evaluation (ACE) tool to assess the likelihood of general offending. The ACE is a ‘fourth generation’ assessment tool. PBNI commissioned an independent review of ACE in 2012 to assess its predictive validity for reoffending and its relevance to the evolving role of the Probation Officer. The review concluded that ACE is among the best available risk assessment tools for use in Northern Ireland, particularly as it focuses on dynamic criminogenic needs (Cooper and Whitten, 2013). Included in this is a Risk of Serious Harm filter, which, if triggered, leads to an assessment for Significant Risk of Serious Harm to Others, using the Risk Assessment Inventory, commonly referred to as RA1.

Assessment as a Significant Risk of Serious Harm to Others means that there is a high likelihood an individual will commit a further offence of serious harm, causing death or serious physical or psychological injury. This assessment is generally prompted when an individual has been convicted of a ‘serious’ offence, as defined by the Criminal Justice (Northern Ireland) Order 2008. Originally based on the work of Brearley (1982; cited in Kemshall and Pritchard, 1996), PBNI’s RA1 considers the key risk factors that have stood the test of time, including previous convictions; age at first conviction; substance abuse; mental health; employment; and demographic, social and personal factors, together with attitude to offending, victim awareness, attitude to others, and internal and external protective factors.

As the RA1 has been refined over time, there is now a clear focus on the extent to which serious harm has been caused, including frequency and escalation; associated triggers and whether opportunities for harmful behaviour are increasing or decreasing; the nature and degree of violence

including any aggravating factors; relevant information about victims, and the relationship, if any, to the individual being assessed; motivation and ability to change; and the presence or lack of protective factors to mitigate risk (Probation Board for Northern Ireland, 2017).

Essentially, the RA1 affords a structured process for Probation Officers to gather, verify and evaluate information. Where it is concluded that an individual could meet the threshold for presenting with a Significant Risk of Serious Harm to Others, a multidisciplinary PBNI-led risk management meeting is convened. Attended by the Probation Officer, a representative from PBNI's psychology department, investigating police officers and any other relevant professionals, it is chaired by the Probation Officer's line manager. It is in this arena that the assessment for Significant Risk of Serious Harm to Others is fully considered and a collective determination is made.

PBNI's Significant Risk of Serious Harm to Others assessment can have important implications for sentencing decisions. The Criminal Justice (Northern Ireland) Order 2008 provides for public protection sentences for 'dangerous' individuals, where courts can impose a lengthier period of imprisonment for relevant individuals (Bailie, 2008). PBNI's assessment assists the court in reaching a statutory test for 'dangerousness' but it is not binding. It is for the court to decide if 'dangerousness' has been met, having considered PBNI's Significant Risk of Serious Harm to Others assessment. Consequently, this has widened the scope of, and potential scrutiny of, PBNI assessments within the judicial system.

The real challenges of risk assessment

In practice, the Significant Risk of Serious Harm to Others assessment can present very real challenges for staff, who can be constrained by partial information and time restrictions and bound by rules of evidence (Kemshall and Pritchard, 1999). Further obstacles can impact on Probation Officers, including the shortcomings of risk assessment tools (Drake *et al.*, 2014), together with the wider influences on contemporary practice, such as risk aversion, blame avoidance (Kemshall *et al.*, 2013) and what Fellowes (2018) refers to as an 'anxious organisational culture'.

The challenges of assessing Significant Risk of Serious Harm to Others in everyday practice are explored through an example from the author's practice. This case stands out as the most memorable assessment to date. It involved a young man, referred to here as Jim. He

pleaded guilty to the offence of manslaughter in a joint enterprise case. The circumstances, including the motivation for the offence, were not fully understood. Jim's exact role remained contested, but he was involved in a sustained assault which led to the death of the victim. The court requested a pre-sentence report from PBNI at the point of conviction. Determining if Jim was a Significant Risk of Serious Harm to Others was a key consideration in preparing the pre-sentence report. The assessment was far from straightforward and demanded a thorough and considered approach.

After information was gathered and Jim was interviewed, the risk and protective factors were collated in the RA1. Consideration was given to the risk factors that heightened his potential for future violence. He was a young, unemployed male, from a fractured background. His substance abuse, impulsivity and negative peer associates were noted. Protective factors included no evidence of mental illness or personality disorder and he was assessed as above average IQ. His verbalised insight into his offending, capacity for empathy and victim awareness were indicated (Powis, 2002: 8).

The absence of a prior pattern of violent offending was particularly noteworthy in this case, together with a limited generalised criminal record. Many studies have illustrated that a pattern of prior violence is the *best* predictor for future violence (Powis 2002: 3). Jim had a conviction for common assault and, although it demonstrated some capacity for aggression, it was at the lower end of the spectrum. It was not a clear enough indicator, on its own, to point towards a Significant Risk of Serious Harm to Others outcome. There was also a need to be conscious of the importance of not up-tariffing, in line with Kemshall's (1998: 67) 'precautionary principle', whereby risk is overestimated, with a net-widening effect.

Research indicates that violence prediction is constrained by a low 'base rate' (Kemshall, 2010), which is 'the known prevalence of a specific type of violent behaviour within a given population over a given period of time' (Borum, 2000: 1275). Moore (1996: 18) claims that ignorance of the base rate is the 'single most common source of error'. However, Murray and Thompson (2010: 161) suggest that 'there may be some relevant, recurring risk factors in a particular case that are not generally found in the population as a whole'. Therefore, risk assessment benefits from being individualised and targeted.

More recent research is focusing on the interplay between the conditional triggers and stressors which are inherently difficult to decipher and 'highly context-specific' (Baker, 2010: 50). Canton (2014: 76) elaborates: 'risk is a function of individuals *in* places and circumstances, *at* particular times, *with* other people ... it is these entirely unpredictable situational contingencies and interpersonal dynamics that lead to serious crime' (emphasis in original). This succinctly captures the challenges involved in assessing Jim.

A clinical psychologist's report was made available and the description of Jim's attitude to the index offence confirmed the author's assessment. Interestingly, Barry *et al.* (2007) found for violent individuals that self-reports of their behaviour appeared fairly accurate but Moore (1996: 16) remarked that self-report is more useful in a 'continuing, rather than snapshot assessment'. It would have been foolish not to consider Jim's potential to manipulate and present himself in an overly positive light. The assessment, after all, had ramifications for sentencing and he was likely to have a vested interest. The author was mindful that Jim had attempted to thwart the initial police investigation, demonstrating his capacity for self-protection. However, there appeared to be a real and considered regret for his involvement in the death of the victim and there was no evidence of excessive denial or minimisation in interview. In *R v Ryan Arthur Quinn* [2006]¹ the Court of Appeal highlighted the problem of distinguishing 'authentic regret for one's actions from unhappiness and distress for one's plight as a result of those actions' where the defendant, also guilty of manslaughter, maintained a false explanation for striking his victim and the court considered he failed to express an explicit and frank acceptance that his actions caused the victim's death.

A drawback that inevitably hampered the accuracy of the assessment on Jim was that little was known about the motivation and circumstances of the offence. Conflicting accounts were provided with limited contextual information. 'Assessing complex situations and people holistically is key to understanding presenting risks' (Barr and Montgomery, 2016: 152). But risk is about uncertainty, and Kemshall (1998) is credited with developing 'defensible decision-making' to achieve defensible practice. The assessment was progressed on 'contingent knowledge' (Kemshall, 1998: 67), evaluating, recording and applying the policies and procedures to what was known at the time.

¹ NICA 27.

The PBNi's Guidance Notes (2011) informed the completion of the RA1. However, it was the *decision* as to whether Jim presented a Significant Risk of Serious Harm to Others that proved challenging. With Jim, there were finely balanced risks that made the assessment difficult to conclude, and a risk management meeting was convened to consider the assessment fully. This experience fitted well with Wynne's (1988; cited in Kemshall, 1998: 69) view that 'in practice imprecision naturally occurs, and the actual practice rules present as more complex, ambiguous and very different from the neat, rule-bound image ... projected in public'.

Decisions of this significance are rightly taken at a multidisciplinary level as they outweigh individual assessment in terms of accuracy and thoroughness in risk prediction (Moore, 1996). The risk management meeting afforded face-to-face information sharing to fully consider the case. Kemshall and Wood (2007; cited in Burman *et al.*, 2007: 19) highlight the fact that reliable risk assessment requires effective information exchange across agencies, which was facilitated by the risk management meeting. Consideration was given to the potential for different tolerances of risk, with respect to the different professional agendas of those present and their varying knowledge of the assessment process. However, Nash (2012: 16) found that 'police and probation services had moved very closely together in formulating their view of risk'. Huxham and Vangen (2005; cited in Barry 2007: 36) describe the 'collaborative advantage' of multidisciplinary working when organisations can agree a shared rationale.

There were a number of real concerns about Jim's behaviour, including the nature of the index offence, the many unknowns about the circumstances, Jim's failure to source help and his initial attempts to thwart the police investigation. However, the collective decision hinged on there being insufficient grounds to fully evidence Significant Risk of Serious Harm to Others, and after lengthy deliberations, it was unanimously agreed that Jim fell short of the threshold. *R v Lang* [2005],² the leading authority on Significant Risk of Serious Harm to Others, was approved by our Court of Appeal in *R v Owens* [2011].³ It upheld that risk must be significant, taking account of the index offence, the individual's personal circumstances and their offending history. More recently, the Court of Appeal held in *R v Lukas Kubik* [2016]: 'If

² EWCA Crim 2864.

³ NICA 48.

a finding of harm is to lead to an increased sentence of imprisonment it must be convincingly established'.⁴ This highlights the fact that the evidential basis is more than speculation or mere apprehension.

Falling shy of the threshold does not of itself point to no risk. Perry and Sheldon (1995: 18) point out: 'There are no criteria which enable us to place individuals into sharply defined, once-and-for-all categories of "dangerous" or "not dangerous". Rather there is a continuum of statistical risk with uncomfortably limited predictive capacity.' It was imperative to devise an individualised risk management plan at the risk management meeting to target risk factors and promote protective factors, in keeping with desistance theory, good risk assessment principles and PBNI's risk management policies. In fact, risk assessment, in itself, is a defunct process without the formulation of a plan.

It can be an uneasy position to reach a conclusion that an individual who has been convicted of manslaughter does not meet the threshold for Significant Risk of Serious Harm to Others. This challenged the author to reflect on the assessment. One critique offered was that insufficient weight was placed on the impact of the death on the family of the victim. It was true that if the court accepted PBNI's Significant Risk of Serious Harm to Others assessment, an extended sentence for public protection would not be imposed. Understandable abhorrence at the index offence can conjure deep emotions that drive a 'victim championing' agenda (Kemshall, 2016). However, *R v Lang* [2005] rightly cautioned against 'assuming there is a significant risk of serious harm merely because the foreseen specified offences are serious'. Moore (1996: 75) warns that 'demonising the perpetrator should never be condoned on the grounds that it is necessary for effective risk reduction'. There is a need to be mindful that decisions influenced in this way lead to over-prediction of risk, erosion of proportionality and defensive practice, which in essence are the hallmarks of discriminatory practice.

It is accepted that the RA1 is not without its limitations. However, it offers a framework which is methodically sound and founded on theory and research. Its generalised approach is also its strength and its open-endedness provides for a considered and individualised assessment that can be adapted and complemented as the case requires. It is perhaps more imperative that the Probation Officer is equipped with the requisite skills, values and knowledge base to improve the quality and validity of risk

⁴ NICA 3.

prediction. Whitehead and Thompson (2004: 81) write that the efficacy of risk assessment ‘is predicated upon practitioners acquiring a range of skills associated fundamentally with interviewing and communicating’.

One recognised downfall in the assessment of risk is vulnerability to biases, and it would be erroneous to suggest that this assessment of Jim was wholly objective. Strachan and Tallant (2010) suggest that good decision-makers have awareness of the cognitive processes they go through when assessing risk, and Munro (2011) highlights the difficulty in changing one’s mind when faced with new information. The author reflected on the potential for bias. Looking for evidence to support an initial hypothesis on Jim might have been tempting but the collective multidisciplinary and multiagency context of the risk management meeting served to temper confirmation bias (Murray and Thompson, 2010). Optimism bias was perhaps more difficult to combat; Kemshall *et al.* (2013) highlight the importance of knowing our weaknesses. A fundamental value Probation Officers subscribe to is the inherent belief in rehabilitation. The Significant Risk of Serious Harm to Others process highlights the tension between rehabilitation and risk management, but Weaver and Barry (2014) argue that the challenge for practitioners is to move beyond the confines of risk and capitalise on strengths. This assessment had to guard against being overly optimistic by weighting the factors and bringing the case through the risk management meeting process to garner a multidisciplinary perspective.

As Jim’s case was complex and had a high media profile, in line with PBNi practice standards, the assessment and subsequent report were subject to gatekeeping. The purpose of gatekeeping is to check that a draft report and assessments follow best practice guidance, distinguish between verified fact and opinion, and provide a balanced, objective and impartial view. The assessment was accepted by the gatekeeper; however, there was a discussion about future reoffending against the backdrop of this being a high-profile media case.

The need to consider public perceptions about future serious reoffending is an inevitable feature of modern probation practice as there is the potential for reputational damage. Fellowes (2012: 68) highlights the existence of organisational anxiety whereby practitioners work in a threatening environment ‘where fear of public and political censure rides high’. It would appear in contemporary practice that many Probation Officers ‘fear’ external ridicule. In considering reputational damage, Tuddenham (2000: 175) remarks that ‘there are few prizes for taking

risks in work with offenders, only penalties'. A 'political risk' of not being seen to do something about crime, described by Carlen (2002; cited in Barry, 2007: 38), is attributable to the 'blame culture' of modern society. With this, the focus shifts to communities that *feel* safer as opposed to communities that *are* objectively better protected (Crook and Wood, 2014). Tuddenham (2000: 174) argues that the wider social and political influences negatively impacting on our work need to be acknowledged if risk assessment practice is to be enhanced and human rights and anti-oppressive practices are to be preserved.

In Jim's case, the court accepted PBNI's assessment on Significant Risk of Serious Harm to Others. The subsequent media reaction and its 'exploited constructions of dangerousness' (Nash, 2012: 9) reinforced the importance of due diligence in practice but moreover illuminated the potentially wide-ranging ramifications of decision-making in the course of a Probation Officer's work. They also reinforced McCaughey's (2010: 18) assertion that 'Public confidence in our entire criminal justice system ... can only be achieved when the public fully understands the different roles and responsibilities of organisations within that system and, more importantly, how they work together to increase community safety and prevent crime'.

In Jim's case, the assessment process, including the scrutiny of the case, was a challenging experience but ultimately created a rich source of reflection and learning. It is those uncomfortable experiences that sometimes offer us the best opportunities for learning if we allow ourselves to be open to the process. It is to the credit of those involved in what was a very difficult decision-making forum that a potentially unpopular, yet defensible, decision was reached. However, there is no philosopher's stone. Another Probation Officer could have reached a different assessment outcome and, importantly, Jim could go on to cause serious harm again, such is the fallibility of risk prediction. Kemshall *et al.* (2013: 11) recognise this uncertainty as an 'intrinsic feature of the risk-assessment process', and therein lies the challenge for contemporary practice.

The shift towards public protection is now well embedded in our criminal justice landscape. Nash's (2011: 481) observation underpins the current state of play in probation: 'Once enshrined in a welfarist and befriending relationship, the information obtained in probation interviews now has an increased impact upon the liberty of the offender'. This highlights the key role PBNI's assessment of Significant Risk of Serious Harm to Others now plays in determining the sentencing of

individuals who come before our courts convicted of very serious offences. Significant Risk of Serious Harm to Others assessments are formally ratified in a multidisciplinary context, with the court ultimately determining dangerousness, and can impose public protection sentences. But why has this process evolved? McSherry (2014: 780) suggests that ‘taking away a person’s liberty ... because of *who* they are and what they *might* do, rather than what they have done, not only breaches human rights, but focuses resources at the wrong end of the spectrum’ (emphasis in original). Clearly the dilemma of relying on fallible tools to guide sentencing for offences not yet committed is apparent. Lancaster and Lumb (2006: 278) write that ‘the needs of the offender have been replaced by protection of the public as a rationale for action’. Probation Officers, however, strive to strike a balance between their responsibilities to individuals under suspension and their public protection responsibilities. Indeed, Kemshall *et al.* (2013) suggest that both the employer and the public have come to expect it.

Conclusion

Individuals assessed as posing Significant Risk of Serious Harm to Others represent a very small proportion of the workload in PBNI (approximately 3%). But effective risk assessment and management strategies targeted at those critical few whose actions could otherwise be devastating can serve to reduce harm and ultimately protect the public. Having an awareness of the pitfalls and the wider influences is essential in order to understand and make risk-based decisions in the real world of probation. Almost two decades ago, Tuddenham called on us to ‘resist both insidious and obvious pressures to formulate practice shaped by political imperatives, and explicitly assert the primacy of *professional* judgements’ (2000: 181; emphasis in original). This challenge is likely to demand continued attention in a culture of increasing public, political and media scrutiny, together with the advancement of managerialism in criminal justice services.

Nash (2012: 4) observes that ‘it is next to impossible to prevent the unknown from occurring but the system needs to ensure it does all it can to “anticipate”’. Notwithstanding the critics describing defensible decision-making in risk-based reasoning as protectionist (Parton, 1998; cited in Stalker, 2003), it is perhaps a necessary lifejacket for Probation Officers wading through the ‘swampy lowlands’ of our day-to-day

practice, protecting our professional integrity and competence, which is compromised by ‘contingent’ knowledge, fallible tools and wider influences. In terms of the very real challenges of accurate risk prediction, Lawrie (1997: 302) forges a way through this quagmire of uncertainty by reminding us that: ‘The quintessential test of good practice is not whether a person ... seriously harms someone else, it is whether the quality and content of the work is appropriate on the basis of the known facts about the case’.

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ADHD and the Irish Criminal Justice System: The Question of Inertia

Etain Quigley and Blanaid Gavin*

Summary: Studies report ADHD rates of 26% for incarcerated adults and 30% for young people, highlighting an overrepresentation of this cohort within the prison/detention systems. There has been some progress internationally in terms of developing guidelines and protocols for criminal justice practitioners when presented with diagnosed and/or suspected cases of ADHD within the adult and youth justice fields. Further, there is a growing body of literature supporting better outcomes, in terms of reoffending and general life course progression, for those who are identified as having the condition and treated accordingly. However, the Irish system has been slow to make progress in this space. This paper presents international research, discusses why the Irish system has failed to develop a strategy to explore the potential for approaches currently being adopted elsewhere, and makes suggestions for next steps.

Keywords: Attention deficit hyperactivity disorder, diagnosis, treatment, mental health, criminal justice, youth justice.

Introduction

Attention deficit hyperactivity disorder (ADHD) is a common developmental disorder with early onset of symptom presentation (Polanczyk *et al.*, 2007). While it has traditionally been associated with children and young people, there is a growing body of literature directed at the adult population (Ginsberg *et al.*, 2010). The primary symptoms are hyperactivity, inattention and impulsivity, but deficits in executive functioning, such as planning, organisation, self-control, affect regulation and working memory, are also common (Sayal *et al.*, 2018). These variables combined can impact on educational and occupational performance, social skills

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and psychological functioning, thus impairing an individual's life course development and progression (Kessler *et al.*, 2005; Torgersen *et al.*, 2006).

ADHD occurs in 3–5% of school-aged children (Polanczyk, 2007) and 2–4% of adults (Ginsberg *et al.*, 2010). ADHD symptomology presents as pervasive and impairing levels of over-activity, inattention and impulsivity in excess of typical developmental progression (Ginsberg *et al.*, 2010; Sayal *et al.*, 2018). Moreover, deficits in executive functioning, such as planning, organisation, self-control, affect regulation and working memory, are common (Ginsberg *et al.*, 2010). The majority of children with ADHD continue to experience symptoms into teenage years (Barkley *et al.*, 2006), with lifespan persistence evident in approximately 2–4% of adults (Ginsberg *et al.*, 2010). Early onset of ADHD-type presentation is an indicator for this continuation (Wright *et al.*, 2015), with some studies suggesting that obvious ADHD impairment at a young age is associated with higher risk for persistence into adulthood (Ginsberg *et al.*, 2010). Research in the area of adult ADHD has found increased levels of sick leave and unemployment and an increased risk of experiencing abuse, presenting with coexisting conditions and involvement with antisocial behaviour leading to conviction (Kessler *et al.*, 2005; Torgersen *et al.*, 2006). Moreover, children and young people with ADHD are at an increased risk of developing other mental health problems in adulthood (Sayal *et al.*, 2018), with reports suggesting that nearly 80% of adults with ADHD present with at least one other coexisting psychiatric disorder (Sobanski *et al.*, 2007; Torgersen *et al.*, 2006).

A diagnosis of ADHD requires a level of impairment in at least two areas of life to be evident for a duration of at least six months (Young *et al.*, 2015). As a prevalent psychiatric disorder of childhood, ADHD and ADHD-type presentation is the single most frequent reason for attendance at Child and Adolescent Mental Health Services (CAMHS) in Ireland (CAMHS, 2014). Furthermore in Ireland, a large, nationally representative study of 8568 nine-year-olds (Growing Up in Ireland Study) revealed that ADHD diagnosis rates are five times lower than established prevalence rates (Nixon, 2012), highlighting a potential under-diagnosis of children with ADHD in Ireland and thus a failure to provide timely targeted therapeutic input. Even when children are correctly diagnosed, resource limitations within CAMHS mean that they receive very little therapeutic input and support despite the known effectiveness of treatment (Sayal *et al.*, 2018; Sonuga-Barke *et al.*, 2013; Storebo *et al.*, 2015). With ADHD, just as in almost all medical conditions, early detection promotes positive

outcomes (McGorry and Killackey, 2002; Sayal *et al.*, 2018). Similarly, early intervention with ADHD-type presentation is key to preventing behaviour deterioration and problematic outcomes in terms of life course progressions (Fletcher and Wolfe, 2009).

One of the most impairing aspects of ADHD and ADHD-type presentation is its negative impact on academic functioning, which has been consistently and robustly demonstrated across both primary and secondary schooling and is therefore likely to impair educational outcomes of children and employment prospects in adult life (Frazier *et al.*, 2007; Watts, 2018). Further, the lack of supports and expertise among practitioners who work with children on a daily basis in terms of how to effectively manage ADHD-type presentation results in a high percentage of young people disengaging with the education system as a result of problematic behaviour (Fletcher and Wolfe, 2008).

The majority of young people with ADHD within the general population who are receiving treatment at the service boundary age of 18 will require adult services, yet most adult services do not treat ADHD, representing a cliff-edge in treatment and a profound discontinuity in mental health service structure and provision (McNicholas *et al.*, 2015; Ogundele 2013; Sayal *et al.*, 2018). Adults with ADHD in Ireland have also faced problems whereby the adult psychiatric services tend to have a higher threshold than CAMHS, and this often results in referral letters from CAMHS to the adult services being returned with a recommendation to engage with a general practitioner or another medication management expert (Murry *et al.*, 2017). This problem has also been reported in other jurisdictions (Coghill, 2017).

Those who present with ADHD may be doubly disadvantaged within the criminal justice system whereby difficulties around remaining focused and attentive during, for example, probation interviewing/work can prove problematic and, for those undiagnosed, may result in incorrect interpretations in terms of engagement and attitude, making them more vulnerable within the system (Usher *et al.*, 2013). For example, functional impairments can impact on the individual's ability to follow the basic rules of the court and probation (Colwell *et al.*, 2012). There is limited Irish research within this space and therefore it is difficult to determine whether these findings are applicable in an Irish context. The aim of this paper is to raise these issues and encourage debate and research in this area going forward, with a view to optimising outcomes for young people and indeed adults who are experiencing these problems within the system without appropriate supports.

Prevalence rates

The *Diagnostic and Statistical Manual of Mental Disorder*, fifth edition (DSM-V; American Psychiatric Association, 2013) outlines the diagnostic criteria for ADHD as six or more symptoms of inattention and/or six or more symptoms of hyperactivity–impulsivity, which must be present for at least six months prior to assessment (over 17 years of age it reduces to five or more symptoms). The symptom presentation should be observed more frequently and be more severe than for children at a similar stage of development. The hyperactivity–impulsivity and/or inattentiveness symptoms typically occur prior to the age of seven years; the impairment should be evident in at least two settings, e.g. home and school; and there should be evidence of clinically significant impairment in social, academic and/or occupational settings. DSM-V also distinguishes between mild, moderate and severe presentation – mild relates to no or few symptoms beyond those required to make the diagnosis; moderate relates to where symptoms present as being mild to severe; and severe relates to presentation where symptoms are in excess of those required to make a diagnosis and impact the social, academic and/or occupational functioning of the individual. Prevalence rates are typically reported as 5–8% of the general population (WHO, 2012). However, statistics on ADHD from the Centers for Disease Control and Prevention suggest that some parts of the US far exceed what would be expected (9.4% in 2016),¹ thus suggesting over-diagnosis, whereas in the EU some commentators argue that there has been under-diagnosis, particularly among girls and older children (Sayal *et al.*, 2018). While figures are not available in an Irish context, figures for 2004 from the UK suggest that less than half of children with ADHD have been diagnosed and thus the others have received no treatment (Sayal *et al.*, 2010). It is important that potential over-diagnosis in other jurisdictions should not mask the under-diagnosis evident in countries such as Ireland.

Why would under-diagnosis persist? As outlined below, this condition remains controversial in terms of acceptance as a concrete condition. Further, the medicalisation of children has proved difficult for society to accept (we will return to this below).

While the World Health Organisation estimates prevalence rates at 5–8% (WHO, 2010), this figure rises for those who are incarcerated in prisons. For example, studies point to ADHD being common among

¹ See <https://www.cdc.gov/ncbddd/adhd/data.html> (accessed 11 April 2018).

adult prison inmates (Edvinsson *et al.*, 2010; Eme, 2009; Rasmussen *et al.*, 2001; Rösler *et al.*, 2004, 2009), with one Swedish study reporting prevalence rates as high as 40% among adult inmates (Ginsberg *et al.*, 2010), and 30% reported for young people (Young *et al.*, 2015). However, studies that used screening for diagnosis for adults had a significantly higher prevalence rate (43.3%) than those that used clinical interview (25.5%), thus recommendations for best practice suggest screening followed by clinical interview (Young *et al.*, 2015).

Even taking the figure of 25.5% of adult inmates, this is approximately an eight-fold increase when compared to the general population of adults (2–4%). These figures therefore highlight a clear over-representation of people with ADHD within the prison system. However, there is a dearth of research exploring prevalence among individuals involved with the criminal justice system but not incarcerated. In Ireland no data are available on the number of young people who are involved with Young Persons' Probation, the Garda Diversion Programme and/or the Garda Diversion Projects who may meet the criteria for a diagnosis of ADHD. Similarly, no data are available on the number of adults who have ADHD and are working with the Probation Service and other Probation-supported services.

A brief discussion on assessment, treatment and management

Guidelines related to assessment, treatment and management have been developed internationally and yet reports suggest that clinicians often discuss guidelines as being vague, particularly in the area of assessment and diagnosis (Kovshoff *et al.*, 2012). Treatment and diagnosis is time consuming and complicated due to requiring process steps of gathering and then piecing together information related to the individual (Kovshoff *et al.*, 2012). While guidelines for diagnosis and treatment are broadly similar across the EU and the US, there is variation in terms of the order of the treatment. For example, in the US medication is the first-line treatment whereas in the EU medication is acceptable for first-line in more severe cases, while in mild to moderate cases behavioural management is recommended for first-line treatment with medication the second-line treatment approach (Sayal *et al.*, 2018). Data from a randomised control trial – Multimodal Treatment of ADHD (MTA) – suggest that medication was superior to behavioural treatment for more severe ADHD, but differences were less evident among less severe cases (Santosh *et al.*,

2005). Meta-analyses have reported behavioural treatments as improving conduct and parental coping skills but as not improving ADHD symptoms, whereas pharmacological treatment shows moderate to large effects in terms of symptom improvements (Sayal *et al.*, 2018). Therefore it is suggested that behavioural treatments will benefit people with ADHD but are less likely to reduce symptoms (Sayal *et al.*, 2018).

The UK National Institute for Health and Care Excellence (NICE) has published guidelines for treatment. For parents of children with moderate impairment, parent training programmes are recommended with cognitive behavioural and/or social skills training recommended for the children themselves (NICE, 2008). For those with severe impairment, drug treatment is recommended as a first-line treatment, with psychological and family therapy as part of the treatment plan (NICE, 2008). While the evidence for the effectiveness of social skills training programmes has been mixed, some studies have noted cognitive behavioural therapy (CBT) interventions, combined with parent training and classroom accommodations as well as medication, as beneficial (Hannesdottir *et al.*, 2017). More complex cases have been discussed as being best managed through multidisciplinary teams consisting of psychologists, occupational therapists, social workers and specialist nurses, with the most important member being a family therapist (Coghill, 2017).

Working with the young person and their family also requires the gathering of information from multiple sources such as teachers and, in the case of the Irish criminal justice system, it is suggested, juvenile liaison and Probation Officers. This makes ADHD a labour-intensive and multi-modal approach which requires multidisciplinary teams to work together. In practice this can prove problematic due to historical silos across the multiple agencies that interact with children and young people. Indeed, a previous study which explored welfare provision in probation practice in Ireland reported difficulties in inter-agency working and information sharing between professionals across key agencies who deal with young people (Quigley, 2014). The same study found that Probation Officers often struggled to engage child protection and welfare agencies due to high thresholds of risk/need required for such engagement, and this resulted in Probation Officers attempting to address those gaps as part of Probation assessment and supervision. This problem is not peculiar to Ireland: similar issues have been raised in other jurisdictions (Pakes and Winstone, 2010).

The pathologisation of behaviour?

It would be inappropriate for this paper not to address the elephant in the room. ADHD has had a controversial history, although diagnosis of other neurodevelopmental disorders such as autism has been less contentious (Sayal *et al.*, 2018). This may be a result of the less obvious symptomology presentation, which is typically a more extreme version of the norm. However, this does not mean that it does not have a debilitating effect on an individual's life. The contentiousness has led to diverging schools of thought, the most obvious being (1) those who recognise ADHD as a condition which seriously impairs individuals' lives; (2) those who do not recognise the condition and feel that it is a modern construct and pathologisation of problematic behaviours (Sayal *et al.*, 2018). The latter is an important argument in terms of an over-pathologisation of behaviour generally. This is not new to the criminal justice space; one need only look to the father of criminology, Cesare Lombroso, and the evolution of the positivist school of thought that emerged from his ideas to recognise the link to positive criminology (Mannheim, 1972). Whether or not bringing a condition such as ADHD into the criminal justice space could result in problematic welfare-based sanctions – such as indeterminate sentences, which still operate in the US juvenile system – requires more attention, and certainly the authors of this paper are not suggesting anything of the sort. Rather, we are suggesting that some young people and adults may be criminalised for behaviours that require a health service rather than a criminal justice service intervention. It is beyond the scope of this paper to discuss the problematic history associated with welfare provisions within the criminal justice space, and indeed it has been discussed at length by scholars in the area (see Garland, 2001). The aim of this paper is to better understand the shift that has already occurred within the system in terms of the diagnosis being presented to criminal justice practitioners, with limited service provision and supports being put in place to meet these changes.

The contentious nature of the condition alongside the problematic nature of providing welfare services through the criminal justice system may be the reasoning behind the underdeveloped symptom identification, diagnosis, referral and treatment/management systems in place within the Irish criminal justice system. It may also be the reason why there has been limited progress in the area of training for criminal justice practitioners (An

Garda Síochána, Probation Officers, lawyers, Judges, detention school staff/prison officers) who interact with individuals potentially presenting with such symptoms. Further, it may explain why there are no Irish-specific protocols and guidelines in terms of ‘next steps’ or long-term management when there is a suspicion of the condition.

The controversial nature of the diagnosis can lead to stigma for the young person and their family. This stigma can be compounded by a lack of acceptance, recognition and support by key professionals who interact with the young person and their family, such as teachers, primary care practitioners and criminal justice practitioners (Bell *et al.*, 2011). Commentators have recommended increasing the knowledge base around ADHD of these groups of practitioners to reduce ADHD-related stigma (Sayal *et al.*, 2018). Moreover, it was suggested that systems and interventions aimed at streamlining care pathways between key stakeholders (primary care, specialist healthcare services, education and youth justice) be put in place to allow these groups to interact and communicate, thus facilitating improved access to care (Wright *et al.*, 2015).

Even in jurisdictions where the condition is broadly accepted, ADHD remains somewhat controversial within wider society but also within professional fields, such as clinicians, teachers, social care workers and youth justice workers (Sayal *et al.*, 2018). Commentators have suggested that this may be a result of diagnostic controversies and difficulties. Recurring themes within these debates are: the lack of a specific diagnostic test to diagnose ADHD; the fact that symptoms are an extreme version of typical behaviours; the perception of a cut off-point where normal behaviours move into the realm of abnormal behaviours based on subjective evaluation; the broadening of diagnostic criteria over time; reports of variation in diagnostic rates across clinicians and the use of medication (Sayal *et al.*, 2018). And yet these same issues can be raised for other psychiatric disorders and physical conditions such as hypertension and asthma without the conditions being invalidated (Coghill and Sonuga-Barke, 2012). Indeed, when ADHD was compared with other psychiatric disorders in the DSM-V field trials,² its value was

² ‘The DSM-5 Field Trials were designed to obtain precise (standard error <0.1) estimates of the intraclass kappa as a measure of the degree to which two clinicians could independently agree on the presence or absence of selected DSM-5 diagnoses when the same patient was interviewed on separate occasions, in clinical settings, and evaluated with usual clinical interview methods’ (Regier *et al.*, 2013: 59).

one of the most reliable (0.61), exceeded by autism (0.69) while being higher than bipolar disorder (0.56), schizophrenia (0.46), major depressive disorder (0.28), and generalised anxiety disorder (0.20) (Sayal *et al.*, 2018). Moreover, concerns regarding false-positives have been challenged through research findings which report higher rates of false-negatives (Foreman and Ford, 2008). Foreman and Ford (2008) conducted a study in the UK involving a sample of 502 patients and while a small number of false-negatives were reported, only one false-positive was. Findings from this study suggest that while there certainly seems to be an issue with over-reporting in some parts of the US, as outlined above, it has been reported that appropriate and carefully standardised assessment can accurately and reliably diagnose ADHD (Sayal *et al.*, 2018).

Medication has been another bone of contention. For example, there has been widespread concern about the increased prescribing of methylphenidate, e.g. Ritalin, for the condition across the UK and other jurisdictions (Boffey, 2015). Indeed, in 2011 the Dutch Ministry for Health declared an intention to ‘demedicate’ its youth (Foundation Nederlands Comité voor de Rechten van de Mens, 2014). Concerns around medication and its diversion for recreational use have also played a role in the negative reporting on the use of medication within the media and society generally (Wilens *et al.*, 2008). This continues despite new methods of dispensation that operate through slow release, reducing or eliminating its use for a quick-release ‘high’ (Sikes *et al.*, 2017). Further concerns around the use of stimulant medication leading to adolescent substance use have been raised (Wilens *et al.*, 2003). However, studies have shown either that ADHD medication is a protective factor against substance use in adolescence or that it neither increases nor decreases the risk of substance abuse among this cohort (Hogue *et al.*, 2017). In fact, while there was a spike in prescribing over the past twenty years, this has slowed considerably more recently (Holden *et al.*, 2013), perhaps suggesting a catch-up phenomenon (Sayal *et al.*, 2018).

ADHD and the criminal justice system

ADHD, like other mental health issues, can cause considerable difficulties for frontline criminal justice staff such as Probation Officers (McCormick *et al.*, 2017). Moreover, providing care to people with mental health difficulties as they move through the criminal justice

system has been described as being fraught with difficulty (Pakes and Winstone, 2010). These difficulties can raise concerns regarding the ability of the offender to engage with rehabilitative interventions. Moreover, such needs often take precedence over reoffending work and can require Probation Officers, and other criminal justice practitioners, to attempt to manage the gap of mental health service provision (Haqanee *et al.*, 2015; Quigley, 2014). Individuals with untreated ADHD have been reported to have greater contact with the criminal justice system, have an earlier age of first contact with the system, have higher recidivism rates and display more institutional behavioural disturbance (Young *et al.*, 2015). Other symptoms, such as being more likely to get easily frustrated, having greater difficulty dealing with the frustration and being more likely to inappropriately express their anger (Connor *et al.*, 2012; Ginsberg *et al.*, 2015), are all contrary to behavioural expectations within the criminal justice system, with studies reporting this cohort being treated more harshly in the system than offenders without such symptoms (Colwell *et al.*, 2012).

Inmates with ADHD have been reported to be involved in up to eight times more incidents of aggression, this being associated with underlying deficits in executive function (Young *et al.*, 2009). Within the prison system adult prisoners were found to have more acute ADHD when compared to psychiatric outpatients and controls (Ginsberg *et al.*, 2010), leading Ginsberg *et al.* (2010) to suggest that this group present as severely affected by their ADHD and that the common view that ADHD symptoms reduce with age may not hold true for inmates.

There is a dearth of such information on offenders engaging with criminal justice practitioners in the community. Related to mental health in general, Probation Officers reported filling the gap where mental health services have failed and outlined struggling to engage appropriate services (Quigley, 2014). This small study highlights a gap in resources in terms of accessing required supports for the type of presentation (Quigley, 2014). Approximately 26% of adults and 30% of young people (with some studies reporting rates as high as 75%) involved in the prison system are likely to meet criteria for ADHD. It follows that if the care and treatment of ADHD were to be enhanced through identifying and implementing efficiencies and delivering services in line with international mental healthcare standards, these changes would represent a very significant enhancement of mental health care within the criminal justice system (Young *et al.*, 2015).

How are other jurisdictions dealing with this?

It would be impossible to discuss all services and initiatives in other jurisdictions; below we outline key programmes in England and the US – the Youth Justice Liaison and Diversion (YJLD) teams and the Diversion and Liaison Scheme (D&L) in England; and specialised supervision, the Front End Diversion Initiative (FEDI) and the mental health courts in the US. These may provide points of interest in terms of models that might be developed for the Irish system.

England

YJLD

The aim of the YJLD was to divert vulnerable young people (first arrest) away from the criminal justice system and direct them towards mental health, emotional support and welfare services. The service was originally set up across six areas and operated by screening and identifying vulnerabilities, delivery of brief interventions and liaison with specialist services. They were separate from, but worked closely with, Youth Offending Teams (YOTs), CAMHS and other appropriate professional groups. The primary aim of the teams was to identify needs and make appropriate referrals. An evaluation reported beneficial effects in terms of mental health improvements (Whittington *et al.*, 2015) but no effect in terms of reoffending rates (Haines *et al.*, 2015). However, there was an effect in terms of the average time to reoffending (Haines *et al.*, 2015), meaning that those who engaged with the YJLD took longer to reoffend. This suggests that follow-up interventions may decrease reoffending rates (Haines *et al.*, 2015) – further research is required in this area.

D&L

The Bradley Report (Lord Bradley's 2009 review of people with mental health problems or learning difficulties in the criminal justice system) recommended the establishment of a national model of Criminal Justice Mental Health Teams (CJMHTs) that focused on the adult system. Their primary aims would be screening, assessment, liaison and information management – with the objective of managing continuity of care for an individual as they move through the criminal justice system. Indeed, the report recommended a National Diversion Programme with the roll-out of liaison and diversion services in all custody suites and courts by 2014. In 2014 the Liaison and Diversion Programme, as it is

now called, was implemented and by 2016 it covered 53% of the population of England, with the aim being to cover 75% of the population by April 2018.³ Evaluations found that there has been an increase in the total number of people being identified with vulnerabilities such as mental health issues and that those who were part of the Liaison and Diversion (police station) had significantly less contact with the police as either victim or perpetrator than prior to their engagement with the programme (Earl *et al.*, 2017). However, there are limited data to show whether this model reduces reoffending and/or improves mental health (Kane *et al.*, 2017). Further research is required in this area.

United States

Specialised supervision

Specialised supervision is a form of probation supervision focused on adult offenders with mental health difficulties. It operates less as a monitoring and enforcement approach, typical in the US probation model, and more as a case management approach (Colwell *et al.*, 2012), with small caseloads, specialised trained officers, internal and external service co-ordination, and active problem-solving (Skeem *et al.*, 2006). On review, the departments that adopted this model experienced reduced recidivism rates and improved mental health related to the offenders who came under the scheme (Skeem *et al.*, 2006).

FEDI

Arising from specialised supervision, the FEDI operated for young offenders out of four Texas probation departments. The model operated specialised supervision and low caseloads (no more than 15). The officers were trained in motivational interviewing, family engagement, crisis intervention and behavioural health management (Colwell *et al.*, 2012). This approach differed from the traditional probation approach in the US and fostered a more holistic multidisciplinary model that led to multiagency relationships and relationships between the Probation Officer, the young person and their family. Young people who received the specialised supervision had improved school attendance and fewer disciplinary referrals compared to the three months prior to engagement (Colwell *et al.*, 2012).

³ See <https://www.england.nhs.uk/commissioning/health-just/liaison-and-diversion/news/> (accessed 19 April 2018).

While Irish Probation Officers already adopt this style of practice whereby they have maintained a strong social work practice ethos and approach (Bracken, 2010; Quigley 2014), their caseloads, along with minimal access to mental health supports and in particular support with potential ADHD cases, may hamper their ability to achieve more positive and sustained change for this cohort of offenders.

Mental health courts

Mental health courts are a form of diversion out of the traditional court system and therefore do not operate at police level as some of the diversion programmes discussed above do. There are currently over 250 in the US (Schneider, 2010).

Mental health courts are a form of therapeutic jurisprudence, a philosophical approach or paradigm which is often discussed in terms of the law and practice being therapeutic for those they affect (Wexler and Winick, 1991). The overall aim of therapeutic jurisprudence is to explore the therapeutic and anti-therapeutic nature of the law and to outline more therapeutic approaches: importantly, without breaching due process and/or constitutional rights (Wexler, 2018). The retention of due process and constitutional rights is key to a rights-based therapeutic jurisprudence which is not overly paternalistic, autonomy-depriving and punitive.

The mental health court operates a multidisciplinary model which incorporates psychiatrists, psychologists, case workers and social workers who work collaboratively to meet the particular mental health needs of the individual (Schneider, 2010). The accused elects to participate in either a mental health treatment programme tailored to their needs or a fixed programme, the former being seen as preferable and incorporating psychological therapies, educational training, occupational therapy, housing, social services, counselling, budgetary counselling and so on (Schneider, 2010). Evaluations have found: high levels of satisfaction and a feeling of fairness on the part of participants and low levels of coercion (Poythress *et al.*, 2002); reduced recidivism after participation (McNiel and Binder, 2007); reduced violent crime after participation (Frailing, 2010); less time spent in prison than for those who travelled the traditional criminal justice pathway (Boothroyd *et al.*, 2003); and reduced homelessness and reduced psychiatric hospitalisation after participation (O'Keefe, 2006). Interestingly, mental health court participation was not the driver to beneficial outcomes; rather completion of the course was necessary (Frailing, 2010).

Juvenile mental health courts

Juvenile mental health courts were introduced in 1998, with the first one set up in York County, PA (Heretick *et al.*, 2013). As with the adult system, they adopt a therapeutic jurisprudence philosophy promoting a non-adversarial, treatment-oriented approach when adjudicating juvenile offenders, while still upholding their due process rights. Similarly to adult mental health courts, they adopted a multidisciplinary approach with the added family support/therapy layer (Heretick and Russell, 2013). The goal of the juvenile strand is to decrease recidivism and increase engagement with appropriate treatment (McNiel and Binder, 2007). Evaluations of the juvenile mental health courts are limited. However, what work has been done in the area highlights efficacy in terms of both aims of the system, namely reduced recidivism and increased engagement with treatment, with graduates showing significant post-release reductions in offences, including violence offences (Heretick and Russell, 2013). Again, further research is required in this area.

All of these initiatives relate to mental health generally and, while they are important in their own right, ADHD can be overlooked if not lost within these models. As a result, recommendations have been made in England outlining the need to build on these services so as to incorporate specific screening and assessment for ADHD across the various agencies – police, courts, probation, court and detention facilities– with a view to appropriate referrals for assessment and to ensure that offenders are managed in a manner that meets their particular needs (Young *et al.*, 2011).

Suggested next steps

The aim of this paper was not to provide concrete recommendations but rather to review the issue of ADHD within the criminal justice system, and to point to developments in other jurisdictions that might inform current and future thinking in this jurisdiction. In an ideal world, screening would take place at each contact point of the criminal justice system – Garda, court, Probation Service, incarceration/detention – with a view to referring those identified for clinical assessment, and ensuring that case notes follow the client to prevent duplication and screening fatigue.

Screening training can be provided to the Gardaí and Probation Officers as a first point of identification with a view to referring those

deemed in need of clinical assessment on to clinicians with expertise in ADHD. What might this look like? A brief outline of a possible model is given below and, while each agency/phase of the criminal justice system is discussed separately, it is suggested that a cross-agency and multi-layered strategy be considered.

Community

Pre-court

A national roll-out of mental health screening with an explicit ADHD component operationalised at Garda level and providing a pathway to assessment, treatment and management. This screening should facilitate early and first-line identification with a view to referral/diversion for both youth and adult offenders.

Court system

The Mental Health Commission and An Garda Síochána (2009) recommended the introduction of a pilot mental health court system at district court level. To date this has not occurred. Ryan and Whelan (2012) have provided a comprehensive analysis of mental health courts in other jurisdictions and argued that the Irish system would benefit from such a model, alongside other diversionary methods. They suggest that the best model would not depend on a guilty plea for participation, that charges should be dropped upon graduation, that prison should not be used as punishment for non-compliance, that a clear protocol should be in place to ensure participation is voluntary, and that due process should be respected. It is hoped that many individuals would be identified at an earlier stage, namely first contact with the police, and diverted for treatment at that point. For those who slip through that net and for those who repeatedly present to criminal justice agencies resulting in a court appearance, the evidence of the effectiveness of mental health courts, as outlined above, provides some empirical basis to move forward in this direction. Therefore, it is suggested that the recommendation of the above 2009 Report be explored further.

Probation Service

It is suggested that the Probation Service have a role in carrying out the screening for the mental health courts and that this screening for mental health difficulties (inclusive of ADHD) could be carried out alongside the usual risk assessments that are currently conducted. Those identified

could be diverted for assessment, treatment and management with a view to establishing a form of specialised supervision as outlined above to meet the particular needs of this cohort of offender. This would require additional training on the part of the Probation Officers and a reduced case load as a result of the additional burden in terms of time and resources required for this type of work.

Custodial

Adult imprisonment and youth detention

There is currently mental health screening and assessment at youth detention and prison phases of the system. Furthermore, there is currently a robust and effective in-reach and liaison service for mental health (McInerney *et al.*, 2013; O'Neill *et al.*, 2016), albeit with a primary focus on more acute mental health conditions such as psychosis rather than ADHD. Thus, it is likely that limited attention is being paid to ADHD despite the high prevalence rates identified in other jurisdictions among those incarcerated. It is suggested, as was recommended by Harpin and Young (2012), that ADHD screening, assessment and care pathways be developed, and this can easily be integrated in to the current system.

It is accepted that the suggestions above would require a major overhaul of the criminal justice system, would be time- and resource-intensive, and would require collaboration across agencies. However, working towards such an approach is not an impossible task, as is evidenced by other jurisdictions.

Conclusion

Individuals involved with the criminal justice system, both young people and adults, have been shown to have higher rates of ADHD than the general population. Symptoms associated with ADHD can be misinterpreted as intentional non-compliance and purposeful defiance, leaving those within the criminal justice system additionally disadvantaged compared to their peers.

The increasing attention paid to mental health issues within criminal justice practice of late, with reference to key interventions that have emerged in other jurisdictions and, to a more limited extent, in this jurisdiction, have been explored in this paper. In an Irish context these interventions are primarily focused on the prison and detention phase of

the system, and what interventions do exist primarily focus on more acute episodes of mental health problems such as psychosis. As a result, those with ADHD or ADHD-type presentation are currently being overlooked within the system. The authors of this paper recommend a comprehensive review of current interventions with a view to incorporating ADHD screening and assessment into prison and youth detention, and developing an Irish-appropriate community mental health diversion model specifically incorporating ADHD into screening, diversion, assessment and treatment.

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A Practitioner's Response to 'Understanding Radicalisation: Implications for Criminal Justice Practitioners'

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Summary: This is a practitioner's response to 'Understanding radicalisation: Implications for criminal justice practitioners' by Orla Lynch (*Irish Probation Journal*, 2017). That article examined the complexities of defining the processes of radicalisation alongside the challenges for criminal justice professionals in responding to radicalised persons. This response considers the key points highlighted by Lynch and reflects on how we as professionals may begin to better understand and engage with radicalised persons. Further, it engages with some of the possible methods of assessment and intervention highlighted by Lynch and considers how they could be utilised in practice. These include the Returnee 45 model and the Community Policing and Radicalisation model. The importance of community embeddedness and legitimacy and a clear focus on the care of individuals and communities, as part of a response to radicalisation, is also highlighted.

Keywords: Radicalisation, probation, terrorism, de-radicalisation, disengagement, assessment, intervention, care, community engagement.

Introduction

In reading and thinking about Orla Lynch's (2017) article on how we understand and respond to radicalisation, I was left with a number of questions. Firstly, what were my own assumptions about who becomes radicalised and what biases do I carry in this regard? Secondly, what are the challenges for us as practitioners in recognising, assessing and supervising those who are radicalised or at risk of radicalisation? Thirdly, what methods and models could we begin to think about as part of a potential response to this phenomenon?

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Making assumptions

Reflecting on Lynch's article gave me pause to consider the type of person that comes to mind when the topic of radicalisation is raised. The reality is that the rise of Islamic terrorism in this century has undoubtedly left me with a distorted view of who might become radicalised. Whatever biases I may hold are clearly challenged by the reality that not all acts of terrorism have their roots in Islamic extremism. Any presumptions I might make in this regard should be rightfully challenged by the clear displays of far-right terrorism such as that seen in the killing of British MP Jo Cox or the Finsbury Park Mosque attack. Mark Rowley, the outgoing chief of the United Kingdom's counterterrorism police, noted a sharp increase in the risk posed by far-right terrorist groups (Grierson, 2018). Similarly, such a rise in far-right activity and violence, often allying closely with democratic political parties, has become increasingly evident in continental Europe (Holleran, 2018). These far-right groups have positioned themselves not only in opposition to the Islamic faith and their perception of its aims, but also against immigrants regardless of their faith. I share these reflections to highlight the implicit biases we may carry with us into our practice when radicalisation is being discussed.

Lynch stresses the need to separate out the notion of the *terrorist* from *terrorism* to allow us to ground our understanding of perpetrators within their day-to-day lives (2017: 80). She argues that such a grounding can provide a space for perpetrators to reveal their motivations and justifications, contending that an individual's path towards radicalisation can be rooted in mundane and ordinary processes such as peer pressure and family loyalty. It could be argued that these driving factors are not alien to probation staff, as they can feature in processes of criminalisation more generally. The key messages Lynch delivers in this part of the paper is that motives for individuals who participate in political violence are varied, can change depending on a person's level of engagement and can be retrofitted with meaning by perpetrators.

I believe that we need to consider radicalisation as a continuum of extreme behaviours grounded in often complex individual and group dynamics and situations. As mentioned in the original piece, Ireland's experiences of terrorism are rooted both historically and contemporarily in our differing religious, political and social beliefs, as well as in some of the driving factors for individuals mentioned above.

If as practitioners we merely satisfy ourselves that radicalisation is simply a problem with service users of certain faiths, or is emerging from certain parts of the world, the consequences could be potentially damaging. Such a starting position could result in the belief that only a small number of a particular type of person within our service user population is at risk of radicalisation. We could become complacent, both organisationally and as individual practitioners, and this could contribute to a belief that we have little to do in terms of examining how we assess, respond to and challenge radicalised persons.

We should be mindful of the point raised by Lynch (2017): that terrorist acts are not necessarily the result of a clear-cut path from social activism. I think this opens up an area that it is valuable for us to consider, particularly in terms of some of the young men who are referred to us. For instance, patterns of behaviour, such as a willingness to use violence, a propensity to act impulsively and a disregard for consequences, can be utilised for the sake of a cause in which the perpetrator may not necessarily believe. Furthermore, the sense of meaning that many people – not just those who criminally offend – are seeking may be found through engagement in a movement. Whether the process of radicalisation occurs rapidly without a clear path of social activism or in the context of being part of a movement, it is incumbent on us to try to understand service users' lives and relationships. An understanding of such factors puts us in a better position to recognise when service users are going through a cognitive or behavioural change and what this may mean.

Challenges for practitioners

Lynch clearly delineates efforts at guiding people away from radicalisation into two categories: disengagement and de-radicalisation. I reflected on both of these from a practitioner's perspective and in the context in which we work.

Given that disengagement implies tolerance of a set of beliefs provided they are not accompanied by violence, what does this mean for how we might potentially work with radicalised persons? I think the answer to this question depends on the particular stance we adopt. If we take a public safety perspective, then it may be *good enough* to ensure that a person has disengaged from violence, and in doing so prevent further harm to the public. However, do we miss an opportunity to assist

the individual in building a better, more meaningful life for themselves and those around them if we focus solely on disengagement from crime? I suggest that being satisfied with disengagement could serve to portray the service user as merely a violent actor devoid of any hope for a better life and minimise any efforts to truly (re)integrate them into society.

If we consider de-radicalisation, I think there are a further set of challenges. Firstly – and the original article identified this – sensitive political and religious issues are being introduced into the service user–practitioner relationship. Further, I envisage that if we are to take the challenge of de-radicalising seriously, we need to be equipped not only with a knowledge of the various processes of radicalisation, but also of the belief systems possibly contributing to it. While acknowledging the challenges of responding to radicalisation, I believe that such an approach may serve multiple objectives in terms of contributing to public safety and, if handled sensitively, responding to the individual service user's need for a better life. There may well be scope in working towards this aim for utilising some of the methods that already form part of probation practice, such as the Good Lives Model (Ward and Stewart, 2003) with its emphasis on assisting those who have offended in attaining primary human goods.

Specific to social work practice, there is evidence that radicalisation remains an uncomfortable area of intervention for social workers generally. For instance, in research exploring how English local authorities were responding to radicalisation, Chisholm and Coulter (2017) found that social work participants were very aware of ongoing public debates about radicalisation but that there were broad differences in how the issue was internally defined by local authorities. This study also found that while staff identify some similarities between radicalisation and other forms of child exploitation, they reported less confidence in responding to the former. This research identified a number of barriers to effective practice, underpinned by a view that both intervening and not intervening carried risks. One of the central drivers of lowered staff confidence was the lack of clear agency definitions and direction in relation to radicalisation. Other concerns identified included the view of communities that social workers lacked legitimacy, and challenges of a multi-agency response and to the legitimacy of interventions. In reading this research, one is struck by the interconnectedness of the challenges. For example, some staff recognised that they were over-zealous in identifying a risk of radicalisation and it was possible that

this, in turn, decreased their defensibility. There were examples of how some local authorities had addressed these challenges through, for example, having a single referrer and building an evidence base from previous learning.

Given the clearly identified challenges in responding effectively to radicalisation, we may understandably be left with a deep sense of uncertainty or even paralysis about when and how to respond when we believe a person is or has been radicalised. In the midst of uncertainty, the danger is that we rely on our traditional ways of responding to offending without due regard for the unique individual journey and challenges of radicalisation. Relying on traditional ways of working or indeed basing our intervention on shaky presumptions about which people become radicalised, and why, leaves us at risk of failing in our responsibility to both the public and service users.

Potential methods and models for intervention

There is clearly no neat solution to how we respond to this phenomenon, given that radicalisation is ‘fluctuating and unpredictable’ (Vermeulen and Bovenkerk, 2012: 19). In the original article, Lynch clearly articulates the pitfalls of the current actuarial risk assessments aimed at radicalisation. I would suggest that we face a further challenge in assessing radicalisation in an Irish context given our limited experience, when compared to our continental European counterparts, of working with racial or religiously motivated crime. While this is not insurmountable, it will require an increased awareness and commitment to developing methods to assess and respond to the dynamics particular to involvement in terrorism.

Lynch highlights the potential benefits of the Returnee 45 model used to shape and guide practice in regard to returning foreign fighters. This is evidently useful in providing a framework for assessment and case management. While it is intended for use with those returning to the West having been involved in foreign conflicts, I would suggest that there are elements of the model that could be considered in responses to other forms of radicalisation.

While easy answers do not exist, there are examples of practice that we can draw on in beginning to think about how we as practitioners respond to radicalisation. For example, the CoPPRa (Community Policing and the Prevention of Radicalisation) model developed in

Belgium and funded through the European Union (Radicalisation Awareness Network, 2017) is a model based on the assumption that frontline police officers have an important role to play in preventing radicalisation because they work on the ground, understand their local communities and tend to have good community knowledge. It recognises that despite these advantages many community police lack the knowledge to spot early signs of radicalisation within the communities they police. The project aims to address this gap through the provision of practical information and training materials about radicalisation.

The CoPPRa model utilises a very useful schema of a 'staircase' to a terrorist act, developed by Moghaddam (2005), which suggests that people move through stages, beginning at 'unhappy people in society' through a number of steps to 'terrorism'. The staircase narrows as it moves toward the terrorist act, symbolising a narrowing of options other than violence. There is an implication within this schema that the process can be disrupted, people can move out at various stages and a terrorist act is not the inevitable conclusion. Further, if a person reaches the terrorist act, there will have been a number of warning signs worthy of intervention on their own merits (de Geode and Simon, 2013: 322). The CoPPRa model is applicable to a range of radicalisation processes not necessarily connected with a specific group. Furthermore, the underpinning belief in such a model, i.e. *that terrorism ultimately occurs when people cannot find traditional means of solving problems*, while perhaps overly broad, has some similarity with criminological theory and should be considered useful. For example, the work of left realist criminologists is based on the view that crime is likely to occur where people cannot access political solutions to the problems with which they are faced (Lea and Young, 1984: 88; Young, 1999).

The underlying principle of the CoPPRa model is to support professionals who have, by nature of their roles, achieved some degree of community embeddedness. In many ways, practitioners working for state institutions in a small state like the Republic of Ireland could feasibly embed themselves in service user communities more easily than in larger, more complex societies. However, working in and, importantly, working *with* such communities to identify and respond to radicalisation will not happen without significant vision, strategy and effort. Our first task needs to be to define what we mean by community: are we seeking to strengthen our connections with specific geographic areas or with groups of people? My answer is that both aspects need to be strengthened to operate a

model like CoPPRa, which requires an interconnectedness between the security/civil arms of the state and the caring part of the state.

This requires the utilisation of civil society to identify the burgeoning signs of radicalisation. This can only be possible if we are rooted in and relevant to communities. If we as practitioners are seen either as irrelevant or as meddling outsiders, our lack of legitimacy, perceived or otherwise, will negate our capacity to draw on the knowledge of communities, both geographic and social. This approach would inevitably necessitate closer connections between civil society members (e.g. teachers, social workers, youth workers) and the security infrastructure. Such a bringing together requires further exploration and debate, but my view is that it should be conducted with a strong care focus, i.e. *radicalisation is ultimately harmful, we care about you and your community, and we will try to work with you to stop it.*

Such care-focused interventions may be more palatable to practitioners, who may see them as aligned to core social work and social justice principles in seeking to care for communities. However, I believe caution should be exercised even if we are approaching radicalisation from a care perspective. We need to be mindful of whose values we are seeking to fulfil, and not unthinkingly believe that values that are not our own are necessarily dangerous. However, I believe that responding to the dangers of radicalisation from a care-focused perspective would serve to maintain a coherence to social work values and place relationship- and community-building at its core. Furthermore, such a care focus opens up opportunities to view those at risk of radicalisation as potential victims within their own life stories.

Conclusion

On reading Orla Lynch's article, I was left with a number of thoughts. Firstly, the challenge of responding to radicalisation for probation services throughout Europe is complex and challenging. Secondly, from a personal perspective, radicalisation can too easily be something happening 'out there'. Given that terrorism has occurred on the island on which I live, and in recent months has occurred in major cities of our nearest neighbour, there is an imperative that we recognise and respond to it as a reality. Within this recognition and response, there is a need for us as practitioners to examine and interrogate the ways in which we work

and to seek out means of responding to radicalisation as part of a progressive modernising agenda of practice.

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Probation in Japan: Engaging the Community

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Summary: Japan has a unique probation system, which engages citizen volunteers to support the work of professional staff. This paper provides a brief description of its characteristics, history, structure, organisation, operation, current challenges and opportunities, as well as an overview of various community-based approaches used in the delivery of services to offenders.

Keywords: Japan, probation, parole, volunteer probation officers, community.

Introduction

Japan is a unique island country in Asia. The east side is adjacent to the Pacific Ocean and the west faces the Sea of Japan, which separates Japan from China, South Korea, North Korea and Taiwan. The northern end faces the Sea of Okhotsk, the icy ocean shared with Russia. The south-western regions are subtropical holiday destinations. Japan enjoys four distinct seasons, brought by the monsoon blowing from different directions in the summer and the winter. The land area is 378,000 km², which is about five times larger than Ireland. Japan is divided into 47 prefectures, each having its own prefectural government. The population is approximately 127 million, 26 times larger than that of Ireland (as of February 2018).

The low birth rate and an ageing population (more than one in four people are 65 or older) are having a serious impact on Japan's capacity to sustain social welfare policies and other aspects of the social system, and the government has not yet found effective measures to remedy these problems. Japan is recognised as one of the safest and most secure countries in the world. The overall number of recorded crimes has

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consistently declined after hitting a peak of 2.85 million in 2002: in 2016, the number was lower than one million for the first time since the end of the Second World War.¹

Theft accounts for 51% of the total number of people charged by the police. This is followed by assault at 11.4%, injury 9.7%, embezzlement 8.9%, fraud 4.6% and other crimes including destruction of property, intrusion, etc.²

The percentage of offenders over 65 years old is on the increase, clearly reflecting the characteristics of demography. Reoffending by elderly offenders is a growing problem.³

Crime trends have changed over time. A new type of fraud called *ore-ore* fraud (*ore-ore* means ‘It’s me, it’s me’ in Japanese) emerged around 2004.⁴ An offender randomly calls an elderly person, starting a conversation as if the caller is an acquaintance of the victim, and asks for money to assist in clearing a debt. The police in partnership with financial institutions are working to raise awareness of this type of fraud.

There are 76 penal institutions⁵ across Japan. The number of people incarcerated has been declining since 2002. While the total capacity of the system is 89,389, the recorded figure for those incarcerated in 2016 was 55,967, 44 per 100,000 of population.⁶ On average, there are 2.92 inmates per prison officer. The only prison that has an overcrowding problem in 2018 is the Women’s Prison. The number of inmates in juvenile training centres was 1219 in 2016.⁴ It has been in decline since 2001.⁷

History of the probation system: it all started from the community

Contemporary offender rehabilitation in Japan originated from the Shizuoka Prefecture Released Prisoners Protection Company, established in 1888. It was founded by Meizen Kimpara,⁸ an eminent

¹ ‘Japan’s crime rate hits record low as number of thefts plummets.’ <https://goo.gl/ZaJGA2>

² 2017 White Paper on Crime: Community Network to Support Rehabilitation. <https://bit.ly/2FWFHfN>

³ ‘Aging Japan: Prisons cope with swelling ranks of elderly inmates.’ <https://reut.rs/2pJIS6i>

⁴ ‘“Jokyo” scam is swindlers’ latest ruse as “ore-ore” fraud hits new record.’ <https://bit.ly/2KIzmfw>

⁵ Japanese ‘penal institutions’ include prisons for sentenced adults, juvenile detention centres for sentenced juveniles, and detention houses for pre-trial inmates.

⁶ 2017 White Paper on Crime – Community Network to Support Rehabilitation <https://bit.ly/2FWFHfN>

⁷ 2017 White Paper on Crime (English version is not yet uploaded). http://hakusyo1.moj.go.jp/en/nendo_nfm.html

⁸ Offender Rehabilitation in Japan (2017). Rehabilitation Bureau, Ministry of Justice, Tokyo. <http://www.moj.go.jp/HOGO/WCP3/other/pdf/pamphlet.pdf>

entrepreneur who was committed to public service throughout his lifetime, together with Kyoichiro Kawamura, the deputy prison warden of Shizuoka prison. The tragic story of how it all began revolves around the experience of an ex-prisoner.⁹ This man, known as Gosaku, was viewed as a troublemaker in the prison where Mr Kawamura worked. Gosaku was deeply influenced by the teachings of Mr Kawamura and eventually began to demonstrate his commitment to a crime-free life.

After serving more than 10 years in prison, Gosaku enthusiastically returned home, only to find that his wife had remarried and had three children with her new husband. On discovering this changed situation, and understandably devastated, he sought support and shelter from a relative. The relative could not condone his criminal conduct and refused to provide any help. Gosaku then went to the police and requested that he be returned to prison, but the police told him they could not arrest a man who had not committed an offence. In the past, he would have committed a crime as soon as he was released, but he was determined to keep the promise given to Mr Kawamura. Devastated, Gosaku wrote a letter to Mr Kawamura and then committed suicide by drowning.

On hearing the news of Gosaku's death, Mr Kawamura consulted Mr Kimpara about this tragedy. Mr Kimpara's view was that 'Any great teaching in prisons means nothing if we did not help the ex-prisoners after their release'.¹⁰ They began a campaign to persuade and encourage the involvement of others in establishing a company to support released prisoners. The primary focus for the company was to arrange housing and employment for ex-prisoners. It grew to employ 1700 probation staff throughout the prefectures to oversee and develop the project. These efforts were the precursor of the modern Volunteer Probation Officer (VPO) system and offender rehabilitation facilities in Japan.

Later, similar private groups were established throughout the country. The target of those services was initially limited to those released from prison. However, following the introduction of the system of suspension of execution of the sentence (1905) and the system of suspension of prosecution (1922), the service's targets were expanded to include these categories of supervision.

In 1939, under the Judicial Rehabilitation Services Act, rehabilitation projects of adult released prisoners, adults under a suspended sentence

⁹ Volunteer Probation Officers and Offender Rehabilitation (2017). The Third World Congress on Probation Organizing Committee, p. 23. <http://www.moj.go.jp/HOGO/WCP3/index.html>

¹⁰ Attributed quotation without a confirmed documented source.

and juveniles were established as 'Judicial Rehabilitation Services'. This meant that the rehabilitation projects were officially recognised as a national system for the first time. After the Second World War, under the new constitution of Japan, major criminal justice reforms were implemented. These included a complete revision of the Code of Criminal Procedure, the Juvenile Act and other laws. In the rehabilitation field, the Offenders Prevention and Rehabilitation Act was enacted in 1949 as a basic law. This law established a system for probation, parole and crime prevention activities for both adults and juveniles.

Volunteer Probation Officers

In 1950, the Judicial Rehabilitation Services Act was abolished and was replaced by the Volunteer Probation Officer Act 1950, which provided for VPOs, recognising in law Japan's already established unique system of using volunteers (known as *hogo-shi*) with professional Probation Officers in supervising probationers in their local area.¹¹

VPOs are respected people with authority and good standing in their own community commissioned by the Ministry of Justice as citizen volunteers, in the spirit of volunteer social service, to support the rehabilitation of offenders or juvenile delinquents. Volunteering and community leadership are highly valued qualities and sincerely honoured in Japanese society. In probation, reliance on volunteers is common and incorporated into practice.¹² The VPOs' character and personality are their principal assets in their work. They are expected to be financially secure, active in their community and available to do the work when required.¹³

In engaging VPOs, Directors of local Probation Offices consult with local community interests and VPO associations to compile a list of candidates. A local VPO Screening Commission, comprising members of the Court, prosecution, legal services and other relevant interests, reviews nominated candidates. The Commission advises the Minister of Justice, who then appoints the VPOs.

¹¹ 'Volunteer Probation Officers in Japan – Community Volunteers Supporting Offender Rehabilitation.' Presentation by K. Iino, M. Iino and S. Imafuku at the 3rd World Congress on Probation 2017. <http://www.moj.go.jp/HOGO/WCP3/program/pdf/SessionJapan.pdf>

¹² 'The Volunteer Probation Officer Scheme as a Key Component of Community Corrections in Japan. Is it Evidence-informed?' Frank Porporino, in Volunteer Probation Officers and Offender Rehabilitation (2017). The Third World Congress on Probation Organizing Committee. <http://www.moj.go.jp/HOGO/WCP3/index.html>

¹³ Article 3, Volunteer Probation Officers Act (Qualifications of VPO). <https://goo.gl/aKPmpK>

VPOs have official legal status as part-time government officials. They are not paid, but all or some of the expenses in their duties are reimbursed. The maximum authorised number of VPOs is fixed by law at 52,500, and they are allocated to each Probation District by the Minister of Justice. There were 47,641 VPOs on 1 January 2018, organised in VPO associations based on local districts nationwide. There are about 1100 Probation Officers in Japan, working at the front line of community-based supervision. A significant part of the Probation Officers' role is working with and supporting their local VPOs. Each VPO will usually have one or two persons to supervise. A Probation Officer could be responsible for and support 30 or more VPOs.

In the spirit of volunteer social service in the community, the VPO assists adult and juvenile offenders to improve and rehabilitate themselves, and enlightens the public on crime prevention to enhance the local community and contribute to the welfare of both individuals and the public (Art. 1, Volunteer Probation Officers Act 1950).

Some limited training is provided to individual VPOs by their Probation Officers. In addition, Probation Officers provide training opportunities for VPO associations. The VPO works under the guidance of the Probation Officer and provides day-to-day supervision in the community as well as regular progress reports to the Probation Officer.

The average age of VPOs is 64.7 years (1 January 2017). About 26% of VPOs are female.¹⁴ The largest group is homemakers, followed by members of religious professions (11.1%), executives or officials of companies or other organisations (8.0%), and persons engaged in primary industries such as farming and fishing (7.6%).¹⁵

The number of VPOs has fallen in recent years. Some explain the downward trend as stemming, in part, from Japan's prolonged economic slump. Many seniors have to continue working after retirement age, depriving them of time to engage in volunteer activities. Many have given up volunteering due to increasing fears regarding more serious offenders and concern at using their homes to meet offenders.¹⁶ To help with training, the Justice Ministry has started a mentorship scheme, with experienced VPOs accompanying new staff on their duties, and has

¹⁴ Statistics of Ministry of Justice (2017). <https://goo.gl/jstfqH> [in Japanese].

¹⁵ 'Volunteer Probation Officers in Japan' by S. Minoura, in *Volunteer Probation Officers and Offender Rehabilitation* (2017), The Third World Congress on Probation Organizing Committee, p. 13. <http://www.moj.go.jp/HOGO/WCP3/index.html>

¹⁶ 'Volunteer probation officers face uphill battle.' *Japan Times*. <https://goo.gl/fA9Kxz>

introduced an internship programme. The Ministry is planning to build rehabilitation support centres, so that VPOs do not have to meet supervisees at home.¹⁷

The work of a VPO

A probationer/parolee is first referred to a VPO by the Probation Officer. The VPO meets regularly with the probationer and provides information, advice and observations on the probationer's life until the probation is over. Generally, VPOs work with low- and medium-risk offenders who are not likely to require specialist interventions. The VPO provides monthly reports on interviews to the Probation Officer. Through interviews and contact, the VPO is expected to befriend the probationer as a neighbour and mentor them towards rehabilitation.¹⁸ For most low- and medium-risk probationers the VPO is their front-line supervisor. Annually, the Ministry of Justice hosts award ceremonies to recognise VPOs and other volunteers for their outstanding performance and contribution to their communities.

Supporters in the community

In addition to VPOs, rehabilitation of offenders in the community in Japan is supported by community organisations¹⁹ including the following.

Women's Association of Rehabilitation Aid (WARA)

WARA originated in the 1960s. It started in a local community to help juvenile delinquents, similarly to VPO associations. WARA developed its activities, focusing mainly on giving maternal care to probationers, such as providing cooked food at rehabilitation facilities. Its non-judgemental, caring attitude and work plays an important role in the rehabilitation system.²⁰ Currently, WARA has approximately 170,000 members working across the country.

¹⁷ 'Number of [volunteer] probation officers in Japan set to fall by half over next decade.' *The Mainichi*. <http://mainichi.jp/english/articles/20170107/p2a/00m/0na/021000c>

¹⁸ 'Volunteer Probation Officers in Japan – Community Volunteers Supporting Offender Rehabilitation.' Presentation by Kimiko Iino, Mitsuru Iino and Shoji Imafuku at the 3rd World Congress on Probation 2017. <http://www.moj.go.jp/HOGO/WCP3/program/pdf/SessionJapan.pdf>

¹⁹ 'Community involvement in the Japanese criminal justice system.' K. Someda. https://www.unafei.or.jp/activities/pdf/joint_indonesia/session5.pdf

²⁰ *Ibid.*

Big Brothers and Sisters movement (BBS)

BBS is a nationwide non-profit organisation mentoring at-risk young people including juvenile probationers.²¹ Although it has a similar name to the popular Big Brothers Big Sisters in America, BBS of Japan has a different purpose and mission. In Japan BBS focuses on children at risk and with difficulties, while the US BBS targets young children in general.

BBS activities include ‘friendship activities’, which provides mentors for juvenile delinquents by matching them with a caring youth mentor and role model. Currently, BBS has approximately 4500 members.

Co-operative Employers

Co-operative Employers are private business owners who contribute by employing probationers. Approximately 18,000 business owners provide co-operation across the country. Most are construction-related corporations.

Offender rehabilitation facilities

Offender rehabilitation facilities help inmates on their release by providing accommodation and meals, and providing guidance for employment and other forms of social adaptation. Currently, there are 103 facilities throughout the country for offender rehabilitation approved by the Ministry of Justice.²² Of these, 88 are male-only facilities, seven female-only facilities, and eight are male and female facilities. The capacity is 2383 offenders in total (1 June 2017). Offender rehabilitation facilities provide treatment to prevent reoffending, and social skills training (SST) to facilitate interpersonal relationships. Some facilities provide treatment for problem drinking and drug use. They also promote and support interaction with local communities because it is important to gain trust from local citizens.

Structures for offender rehabilitation

The governmental bodies responsible for offender rehabilitation administration in Japan are as follows.

²¹ ‘Big Brothers and Sisters Movement in Japan: Youth Volunteers participating in offenders’ rehabilitation.’ Presentation material by T. Koyama and N. Toda at the 3rd World Congress on Probation, 2017. <http://www.moj.go.jp/HOGO/WCP3/program/zip/session4.zip>

²² Lowering the recidivism rate.’ *Japan Times*. <https://goo.gl/CCKy4G>

The Rehabilitation Bureau, Ministry of Justice

The Rehabilitation Bureau of the Ministry of Justice supervises Probation Offices and Regional Parole Boards across Japan. It is responsible for developing new measures and related law. There are about 60 full-time staff in the Rehabilitation Bureau.

Regional Parole Boards

There is a Regional Parole Board in each of the eight High Court jurisdictional areas around the country, which is composed of three or more members. The main responsibilities of the Regional Parole Boards are:

1. permitting release on parole or revoking the disposition
2. permitting release on parole or discharge from a juvenile training school
3. suspending probation provisionally for probationers with suspension of execution of the sentence or revoking such disposition
4. supervising the affairs of the probation office.

Probation Officers work as full-time staff of the Parole Board. One of their main tasks is to visit penal institutions to interview inmates and to prepare pre-release reports for the Board considering the appropriateness, risk of reoffending, suitable timing of release and other issues. Only when all members of the Board agree can an inmate be released on parole.

Probation Offices

There is a Probation Office in each jurisdictional area of the 50 District Courts around the country. The responsibilities of the Probation Office are:

1. conducting probation supervision
2. promoting crime prevention and promoting the activities of the residents of local communities
3. other affairs delegated to the authority of the Probation Offices in accordance with the Offenders Rehabilitation Act or other laws and regulations.

In addition, the Probation Offices are responsible for the implementation of mental health supervision arising under the Act of Medical Care and

Treatment for Persons Who Have Caused Serious Incidents on the Grounds of Insanity or Diminished Capacity.

People working at Probation Offices

Probation Officers

Currently there are about 1100 Probation Officers in Japan, working at the front line of community-based treatment and supervision. They are national public officers with qualifications in psychology, pedagogy, welfare, sociology and other relevant subjects relating to rehabilitation (usually above bachelor's degree level). They co-ordinate and work with VPOs in the work of probation. They also take part in crime prevention activities, and other matters relating to measures for crime victims and others in offenders' rehabilitation.

The average caseload²³ of a Probation Officer is about 76 cases for probation/parole and 100 cases for Co-ordination of the Social Circumstances for Inmates.²⁴ In most instances, a case is referred to a VPO. The Probation Officer will supervise and work with the VPO.

The work of the Probation Officer and the VPO is area-based. The Director of the Probation Office allocates one or more probation districts to a Probation Officer. The Probation Officer is responsible for every supervised person living in that area. If the probationers/parolees move to another district with permission, the responsibility moves to the Probation Officer responsible for that area.

Rehabilitation co-ordinators

Rehabilitation co-ordinators are qualified mental health welfare workers who engage in mental health supervision and co-ordination of the social circumstances for persons who are subject to the system of medical health supervision.

Administrative staff

Administrative staff are in charge of finance and human resource management. They also support the management of VPOs' associations and their crime prevention activities.

²³ The numbers are the sum of continuing cases from 2016 and starting cases in 2017.

²⁴ 'Co-ordination of the Social Circumstances for Inmates' means that a Probation Officer oversees 100 inmates in finding an appropriate place to return to after release.

Range of probation supervision

Juveniles on probation from the Family Court (Type 1)

Juveniles or children on probation are typically known by Probation Officers as ‘Type 1’ cases. They are under 20 years of age and have low to medium risk of reoffending. The maximum period of probation is two years, or until their 20th birthday, whichever is longer.²⁵ If the probationer has complied with their conditions and has led a sound life for at least a year, the Director of the Probation Office can permit an early discharge. About 75% of Type 1 probationers are discharged early (2016).²⁶ Those who continually violate supervision conditions, despite interventions by the Probation Officer and VPO, can be sent to Juvenile Training Centre by the Family Court.

Juveniles released from the training school (Type 2)

These are juveniles aged between 12 and 23 years (26 for Medical Juvenile Training Centre) discharged from juvenile training centres by the Regional Parole Board. Parole supervision will continue until their 20th birthday or the last day of custody imposed by the Family Court. If they comply with conditions for a certain period, the Director of the Probation Office can apply to the Regional Parole Board for early discharge. The Board will assess risk of reoffending by reading the reports submitted by the Probation Officer and, if appropriate, consider ending the parole. On the other hand, if the juvenile violates conditions repeatedly, the Board can decide to put him or her back in a juvenile training centre.

Parolees from an adult penal institution (Type 3)

These are adult offenders released on parole. The parole continues for the remaining sentence period. Moving to a new residence without permission is considered a serious violation of parole. If a parolee leaves his or her residence without permission for seven consecutive days without good reason, the progression of the sentence period will be temporarily halted. The Probation Officer notifies the local police to put the parolee on the wanted list. The Probation Officer will also request a Court warrant to take the parolee into custody when found.

When the police find the parolee, they make an emergency call to the Probation Office. The Probation Officer will go promptly to the

²⁵ Offenders Rehabilitation Act, 2007, Article 66. <https://goo.gl/YDBz4o>

²⁶ 2017 White Paper on Crime – Community Network to Support Rehabilitation. <https://bit.ly/2FWFHfN>

place where the parolee is detained and put him/her into custody using handcuffs. The Probation Officer will put the parolee's confession on record to submit to the Regional Parole Board, which determines whether the parole should be revoked, and whether he or she should be returned to a penal institution.

Persons under probation with (partial) suspended execution of sentence (Type 4)

These are adult offenders for whom the District Court has suspended the execution of sentence with a condition of probation supervision. The probationer will be on probation during the suspension (between one and five years). The condition will be reviewed and reduced if he/she has been complying with the conditions for a certain period.

Parolees from a women's guidance home

Some women charged with prostitution offences are sent to a women's guidance home. There is only one guidance home in Japan. There is rarely more than one case per year.

Parole

A person who has been incarcerated for execution of the sentence or protective measures (for juveniles) may be allowed parole by the Regional Parole Board before the expiration of their sentence.

In 2016, 13,260 inmates were released on parole, 57.9% of the total of released inmates.²⁷ Prisoners completing their full sentence and released on the expiration date without anywhere to go are given a special card that offers emergency aftercare from Probation Offices.²⁸ Supports include the provision of accommodation and meals and the granting of travel expenses to return to their home area, etc.

All probationers/parolees are expected to comply with two types of conditions, the general conditions and the special conditions.²⁹ General conditions are designated by law and are applied to every probationer/parolee. These conditions include maintaining a sound attitude, attending interviews with the Probation Officer or VPO, declaring their

²⁷ 2017 White Paper on Crime – Community Network to Support Rehabilitation. <https://bit.ly/2FWFHfN>

²⁸ Urgent Aftercare of Discharged Offenders – Offenders Rehabilitation Act (2007), Article 85. <https://goo.gl/av7zdE>

²⁹ General and Special Conditions – Offenders Rehabilitation Act (2007), Articles 50, 51. <https://goo.gl/av7zdE>

actual conditions of life, notifying the Director of the Probation Office of their place of residence, and obtaining the Director of the Probation Office's permission in advance when changing their residence or travelling for more than seven days.

The frequency of interview with the Probation Officer and VPO depends on the reoffending risk. It is usually twice a month but could increase to three times a month or more. The interview may take place in VPO's home, Probation Office, the probationer's/parolee's residence, or at an offender rehabilitation support centre.

Special conditions for each case can be imposed by the Regional Parole Board or by the Director of the Probation Office in response to the probationer's/parolee's risk of recidivism or his or her rehabilitative needs. For example, special conditions such as 'not drinking alcohol' could be imposed in cases where the offence was triggered by drinking alcohol. The Regional Parole Board may impose special conditions for parolees from juvenile training school and parolees from penal institutions.

There are approximately 70,000 persons under Probation or Parole Supervision each year. At the end of 2015, there were 36,100 under supervision in total: Type 1 accounted for 44.6%, Type 2 for 11.3%, Type 3 for 14.4% and Type 4 for 29.7%.³⁰

Methods of probation

Instruction and supervision

The Probation Officer gathers information on their behaviour and assesses the risk of reoffending by reading monthly reports from the VPO, summoning the probationer/parolee or visiting their residence. Much of the day-to-day supervision is by the VPO. The Probation Officer implements specialised treatment programmes to address specific criminal tendencies such as violent behaviour, alcohol problems, sex offending and drug addiction.

If the probationer/parolee does not comply with their supervision conditions, or change their antisocial behaviour, the Probation Officer can revise and raise the risk level of the probationer (varying from the lowest level, C, to B, A, S), and increase the frequency of summons to both warn the probationer/parolee and help them address their problems.

³⁰ 'Offender Rehabilitation in Japan' (2017), Rehabilitation Bureau, Ministry of Justice, Tokyo. <http://www.moj.go.jp/HOGO/WCP3/other/pdf/pamphlet.pdf>, p. 16.

Guidance and assistance

Guidance and assistance includes assisting probationers to find suitable accommodation after release from a penal institution, assisting them to receive medical care and treatment, assisting them to find employment, giving vocational guidance and teaching general life skills. The Director of the Probation Office may entrust the guidance and assistance to other suitable persons in offender rehabilitation facilities or self-reliance support homes within the community. Collaboration with social service agencies and the private sector is crucial in achieving a successful outcome in probation. Each Probation Officer has a responsibility to promote and support collaboration among agencies and services in their area to provide better outcomes for their probationers.

Co-ordination of the social circumstances for inmates

The co-ordination of social circumstances is a procedure to ensure smooth social reintegration of imprisoned offenders after release. While a person is in custody, the Probation Officer works to find an appropriate place for them to return to after release.

1. The inmate asks to start the procedure by informing the prison officer of the name and address of a person who would take care of him/her after release (a 'guardian').
2. A Probation Officer or a VPO visits and interviews the prospective guardian to investigate and assess whether the person is suitable.
3. Based on the results of the investigation and co-ordination, a report is sent to the Regional Parole Board and correctional institution with the opinion of the Director of the Probation Office attached regarding whether the inmate should return to the residential area after release.
4. The Regional Parole Board reviews the report in considering parole.

VPOs are especially proficient in performing this assessment, as most VPOs have abundant knowledge of their local community and people living around them. Research conducted by the Ministry of Justice found that the average length of a VPO's residence in their community is about 46 years.³¹

In most cases, the inmates choose a family member or close friend who had been living in the same area for generations as their guardian.

³¹ 'Volunteer Probation Officers in Japan' by S. Minoura.

Some VPOs look after a whole family because other members are or have been in penal institutions or on probation. One probationer on release from prison told the author ‘Please appoint Mr X as my VPO. He used to be my father’s VPO as well and he was very nice.’³²

There is no rule that prohibits a VPO from being in charge of both parents and their children. In fact, in most cases it is beneficial if the family members trust the VPO.

Pardons

A pardon is the act of extinguishing the country’s punitive authority through executive power and changing the contents of the judicial decision made by the court or changing or extinguishing the validity of the judicial decision.³³

A pardon is decided by the Cabinet and approved by the Emperor, and arises only rarely. The ‘remission of execution of sentence’ is available to parolees sentenced to life imprisonment. A life-sentence prisoner will serve at least 30 years in custody before being considered for parole. After release, they will be on probation supervision for the rest of their life.

In most cases, a ‘remission of execution of sentence’ pardon is for older parolees who have been behaving outstandingly well for a very long time, and show no risk of reoffending.

In requesting remission, the Probation Officer carefully assesses whether the parolee truly regrets the crime, is correctly compensating for the damage caused by the crime, and is sincerely performing consolation and respecting the dead.

The Probation Officer interviews the victim (or the victim’s family if the victim is deceased) to hear their opinion about ending the supervision. As the VPO had been supervising the probationer for a long time, their opinion carries great importance. The VPO also supports the parolee during the stressful process of assessment for pardon.

When the certificate of remission of execution is approved, a small award ceremony is usually held at the Probation Office, attended by the Director, Probation Officer and VPO.

The 80-year-old probationer received his certificate of remission of execution of sentence from the Director. His hands were shaking and

³² Personal communication.

³³ Pardon Act 1947. <https://goo.gl/JFMShB>

tears were shining in his eyes. As a VPO who looked after him for more than 10 years, I too was truly happy and was proud as ever for being a VPO.³⁴

Individual pardons are intended to rehabilitate offenders and to prevent reoffending. The pardon is expected to contribute to reintegrating ex-offenders into society.

Medical treatment and supervision

The Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases under the Condition of Insanity (better known as the Medical Treatment and Supervision Act) 2005 provides for the medical care and treatment of persons who have committed serious offences while suffering from a serious mental disability or at a time when their capacity for normal criminal responsibility was diminished (Fujii *et al.*, 2014).

The purpose of the Act is to improve the medical condition of such persons, and to prevent reoffending. Probation Offices are responsible for investigation of the person's social circumstances at the trial, including pre-trial reports. They will also be responsible for the co-ordination of social circumstances when the person is discharged from hospital, and for overseeing treatment in the community.

The District Court makes the decision on committal to hospitals designated by the Ministry of Health, Labour and Welfare. Rehabilitation co-ordinators work with the hospital staff through the treatment process. When a Judge allows the person's release to community care, the rehabilitation co-ordinators convene a multidisciplinary team meeting involving local government personnel, medical personnel and social workers from the designated community treatment institution where the person will regularly attend after leaving the hospital.³⁵ The team holds regular meetings to exchange information on the person. If a crisis arises, the rehabilitation co-ordinators apply to the Court for their return to hospital.

³⁴ A translated excerpt from the monthly offenders' rehabilitation journal *Kousei Hogo*, July 2017.

³⁵ VPOs usually do not take part in mental health supervision as this requires high degree of expertise in mental health treatment.

Recent developments

In 2007 the government, in response to public pressure following serious offending by those on probation/parole supervision, introduced new legislation aimed at strengthening the effectiveness of supervision. This new legislation modernised the probation system in Japan.

The Offenders Prevention and Rehabilitation Act of 1949 and the Act on Persons under Probation with Suspension of Execution of the Sentence of 1954 were restructured and integrated into a new basic law, the Offenders Rehabilitation Act.

Based on this act and the Basic Plan for Crime Victims (approved in 2005), new measures to engage and empower crime victims have been implemented. Crime victims can now provide an opinion during an offender's parole examination and decision process. While the offender is on probation, victims can send messages to the offender via Probation Offices. Probation Officers specialising in victim care manage those messages and, where appropriate, deliver them to the probationers. Victims can also request notification reports regarding how the offender's probation is going.³⁶

In recent years, the percentage of repeat offenders has been increasing compared to first offenders. 'Recidivism prevention' has become a major challenge and the focus of the government's criminal justice measures. Several government policies relating to the prevention of reoffending have been initiated at the Ministerial Meeting Concerning Measures Against Crime. New policies have included Comprehensive Measures for the Prevention of Repeat Offences (July 2012), Declaration: No Return to Crime, No Facilitating a Return to Crime (December 2014) and Emergency Measures for the Prevention of Repeat Offences by Drug-Dependent People, Elderly Criminals, and Others (July 2016).³⁷

In December 2016, the Act on Promotion of Recidivism Prevention was enacted. It established the basic principles and clarified the responsibilities of the national and local governments (prefectures, cities, etc.). It encourages national and each local government to create 'the basic plan for promotion of reoffending prevention'. This was a big step forward in incorporating local governments in reoffending prevention. Historically, rehabilitation of offenders was viewed as a national

³⁶ The National Police Agency, Measures for Crime Victims 2007. <https://goo.gl/pwAaog>

³⁷ Ministry of Justice pamphlet (in English), 2017, p. 13. <http://www.moj.go.jp/content/001221539.pdf>

government responsibility. Local governments are now expected to construct a detailed local plan that reflects their own circumstances.

New measures of probation

Partial suspended execution of sentence

In June 2013, the Act for Partial Amendment of the Penal Code and the Act on Suspension of Execution of Part of the Sentence against Persons Who Have Committed the Crime of Using Drugs and Others were introduced. The system of partial suspended execution of sentence was established in June 2016. Persons who have not previously been sentenced to prison can be discretionally granted probation for the duration of the suspension of execution of the sentence. This new law also seeks to reduce repeat drug offending by adding a non-custodial measure over an extended period after release from prison to enable drug offenders to have more time to undergo addiction treatment with probation supervision in the community.

Specialised treatment programmes

At the Probation Office, Probation Officers provide specialised treatment programmes for offenders who have specific criminal issues and risks. There are four specialised treatment programmes: a sexual offender treatment programme, a drug relapse prevention programme, a violence prevention programme and a drink-driving prevention programme.

Attendance at these programmes is mandated for probationers/parolees through added supervision conditions. The programmes are mainly educational sessions based on cognitive behavioural therapy using textbook and audiovisual resources. Probationers/parolees obliged to attend a drug relapse prevention programme are also required to undergo basic drug testing.

The programmes are usually delivered by a Probation Officer, one-to-one, at the Probation Office. Some offices conduct group programmes where there are sufficient participants. Some invite specialists such as professors and members of DARCs (Drug Addiction Rehabilitation Centres) as facilitators.

Social contribution activities

Social contribution activities³⁸ are designed to enhance the self-efficacy and the morality of the probationers/parolees and to increase social adaptability through participation in social activities that benefit their local communities. These activities include cleaning activities at public places and care assistant activities at welfare facilities etc.

Since June 2015, it is possible to add social contribution activities as special conditions in supervision orders. These are not alternatives to custody but measures to engage young probationers in their local community. The experience of being appreciated by residents and adults has a surprisingly positive impact on the behaviour of young probationers.

Measures for employment support

The recidivism rate of unemployed probationers is about three times higher than that of employed probationers. Since 2006, the Ministry of Justice and the Ministry of Health, Labour and Welfare have been working together to implement 'Comprehensive employment support measures for released inmates'.

In 2009, based on the notion that the business community should support the employment of released inmates to maintain public order, the National Organisation for Employment of Offenders was established. This organisation includes Japan's top-ranking companies: Toyota, Sony and others.

In addition, locally based job assistance provider organisations set up branches in 50 locations³⁹ nationwide to run programmes including subsidy and support programmes for employers who employ probationers. The main provider organisation staff are volunteers working in the branch offices. They serve as a bridge between the local employer and the probationer. It takes time and effort to motivate and support probationers in job hunting. A Probation Officer alone cannot accomplish this.

Since April 2015, the government has implemented measures to pay incentives to employers who hire probationers and parolees and to give guidance and advise probationers on the skills necessary for work.⁴⁰

³⁸ For examples of social contribution activities, see <https://goo.gl/MqQE98>

³⁹ One organisation in each prefecture, four organisations in Hokkaido.

⁴⁰ 'Japan gov't helps 128 get jobs after prison release through job info centers.' *Kyodo News*, <https://goo.gl/3HTLkc>

National crime prevention activity: 'Movement Towards a Brighter Society'

The 'Movement Towards a Brighter Society' is a national movement that started in 1951 in a community in Tokyo and is now led by the Ministry of Justice. The movement's mantra is that 'it is the power of the community that prevents crimes and juvenile delinquency and helps offender rehabilitation'. It aims to encourage citizens to combine their efforts from their respective positions to contribute to society, as well as to seek the understanding and support of the local community for the integration of offenders into mainstream society.

Various activities in local communities – mostly promoted by local VPO associations and Probation Offices – such as symposia, mini-conferences and anti-delinquent classes at local schools have been developed all over the country. July is the main campaign month for these activities.

Each year, the movement promotes renewed aims and objectives. In 2017, the aims and objectives included:

- increasing the number of cooperative employers employing former inmates
- reducing the number of released offenders who have nowhere to live
- creating a local environment that supports social reintegration and long-term support for recovery from drug addiction
- creating an environment in which elderly inmates or inmates with disabilities etc. can receive the support necessary for social reintegration.

For 2018, another aim has been included:

- creating an environment where juvenile delinquents can continue their study.

International developments

Japan has been central to the sharing and dissemination of the VPO model of practice in the Philippines, Singapore and South Korea. Similar volunteer systems are now developing in Thailand and Malaysia. Seminars and training programmes were provided by the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI)⁴¹ in collaboration with ASEAN countries.

⁴¹ UNAFEI is a United Nations regional institute. <http://www.unafei.or.jp/english/>

Japan led the establishment of the Asia VPO meetings in Tokyo in July 2014 and Sept 2017. The meetings developed the Tokyo Declaration to recognise and document the values of the VPO system, share information and experience on the VPO and similar systems and enhance public recognition of the contribution of VPOs.

At the Second Asia Probation Meeting, delegates from the Philippines, South Korea, Singapore, Thailand, Kenya and China discussed challenges they face and solutions in their countries in adopting the Tokyo Declaration. As in Japan, the major concern among participants was the difficulty in engaging appropriate VPO candidates. Increasingly specialised knowledge, expertise and support is required. To sustain and develop the VPO culture and enhance international recognition of the system, research evidence on its value and effectiveness is a priority. While there are challenges, there is wide and developing research evidence and knowledge from practice to sustain the role and contribution of VPOs into the future.

Recent challenges

Securing candidates for VPOs

Recently, awareness of the importance of the prevention of reoffending has been rising among the public and the public's expectations and interest in the work of VPOs are increasing. However, due to the weakening of interpersonal relationships in the community and the intensity and demands of the duties of VPOs, it is becoming ever more difficult to secure suitable persons as VPOs. Securing new VPOs is an urgent issue for the future of rehabilitation in Japan.

In these new circumstances, new measures have been introduced to recruit VPOs, to strengthen the skills and activities of VPOs, and to expand the offender rehabilitation support centres, which are the hubs for the offender rehabilitation activities of the VPOs. To engage suitable people, 'VPO candidate information meetings' are now held in communities. To encourage people to experience the positive activities of VPOs there are 'internships for VPOs'. A 'multiple responsibility system' in which more than one VPO can work with a probationer/parolee and share the tasks has been implemented.

To ensure the sustainable development of this unique Japanese VPO system, the government and the VPO organisations continuously make collaborative efforts to secure volunteers' recruitment and to support their activities.

Act on the Promotion of Recidivism Prevention

Article 3, Section 1 of this law enacted in December 2016 states that ‘regarding the fact that many offenders face problems such as lack of stable employment and housing thus struggling to rehabilitate, the basic principle for preventing recidivism is to sufficiently support the rehabilitation of those by gaining understanding and cooperation of citizens, and not letting them be isolated’.

The difficult conditions that many probationers face are one of the reasons for the high recidivism rate. A key feature of this law is that it encourages local government to participate more in offender rehabilitation. Formerly, the national government (or the criminal justice system) alone was considered responsible for offender rehabilitation. The act clearly states that local government should be more actively involved and create a basic plan for offender rehabilitation according to local circumstances, following the aims and objectives of the national plan.

As result of these changes, local authorities are expected to work together, build efficient networks of related organisations, establish specialised bureaux within government offices and promote other measures to support offender reintegration and resettlement in their communities.

Revising the Juvenile Law

In June 2015, the minimum voting age was reduced from 20 to 18; this came into effect in June 2016.⁴² The amendment to the Public Offices Election Law included a supplementary provision revising age regulations in the Civil Code, Juvenile Law and other laws and regulations.

In June 2018 the government enacted an amendment in Civil Code, to take effect in April 2022, lowering the age of adulthood from 20 to 18.⁴³ Following on these amendments, the Ministry of Justice is considering whether to lower the maximum age subject to protection under the Juvenile Law from 19 to 17.

In Japan, since 1948, persons under 20 years are subject to protection under Juvenile Law. Every juvenile case is sent to Family Court and undergoes intense assessment for a judge to decide the appropriate level of educational treatment according to the individual’s needs. These special measures for juveniles are considered effective in rehabilitation and prevention of reoffending.

⁴² ‘House of Representatives passes bill to lower voting age.’ *Japan Times*, <https://goo.gl/NdEgDG>

⁴³ ‘Japan lowers its age of adulthood to 18.’ CNN, <https://goo.gl/pAHTt4>

When an adult – a person over 20 years – commits a crime, they are held to account for their conduct. Judgment is based on the principle of punishment, not one's need for protection or education. While many young adults need educational care and protection, once they are prosecuted as adults, education and treatment are not considered under the current procedures.

The Ministry of Justice has established an expert committee of lawyers, legal professionals and other experts to consider whether it is now necessary to introduce new protective measures for the 'new adults' between 18 and 20 years.⁴⁴ Issues under consideration include:

1. strengthening education and treatment for young adults in prison
2. widening application of probation with suspended execution of sentence (Type 4)
3. implementing new educational measures for minor offenders
4. improving the current treatment of offenders in general.⁴⁵

Conclusion

Japan's VPO system has a long and distinguished history. It is built on a strong ethos of voluntary community-based commitment and has enjoyed public and government support. There are new and increasing challenges as interventions and supervision become more complex, with greater central accountability and the need for new skills and expertise. VPOs represent their communities and their work is fundamentally about the relationships and the personal and social capital that can help ex-offenders turn their lives around.

The Act on the Promotion of Recidivism Prevention is currently one of the priority issues in offender rehabilitation in Japan. Historically, the rehabilitation of offenders was developed by the hard work of certain citizens such as VPOs, WARA and Co-operative Employers, supported by the national government, but was not fully integrated into wider policy and practice.

The engagement and understanding of citizens and local communities is still required and needs to be improved. Since every offender will eventually return to the local community, the further involvement of

⁴⁴ 'Changing the Juvenile Law.' *Japan Times*, <https://goo.gl/V6g5rs>

⁴⁵ Minutes of the Legislative Council Panel on Juvenile Law and Criminal Law, Ministry of Justice [in Japanese]. http://www.moj.go.jp/shingi1/housei02_00296.html

local government and its services is essential. Probation Officers and VPOs work hard in connecting various members of the community.

The integral role of the community and VPOs in working with offenders for their rehabilitation has been an internationally recognised strength and a unique feature of criminal justice in Japan. Japan has led the sharing and dissemination of the VPO model of practice in countries such as the Philippines, Singapore and South Korea. The role and work of VPOs will continue to develop in each jurisdiction to meet the needs of communities and the people with whom they work.

The VPO system is not only an effective measure but also a historically valuable part of Japanese culture. It is important that, as Japanese society develops and lifestyles become more demanding, we do not lose sight of this legacy – the value, contribution and importance of volunteers and communities in the supervision and rehabilitation of our brothers and sisters who have been in trouble with the law.

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Service Design in Criminal Justice: A Co-production to Reduce Reoffending

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Summary: This article provides an overview of a project undertaken with the UK prison service that uses music to help reduce prisoners' anxiety and stress, and assists prisoners in taking control of their future by developing skills, providing employment and supporting them on release. The project, which is a record label called InHouse Records, was co-designed with prisoners and the Royal College of Art. It now operates in four UK prisons and is demonstrably improving prisoners' behaviour. InHouse Records is encouraging prisoners to recount their experiences through restorative storytelling and helping to build skills for the future to improve opportunities for employment and reduce recidivism. It is an example of service design being used to co-create a service for prisoners, with prisoners, and is demonstrating the value of design-led innovation to tackle complex social issues.

Keywords: Co-production, prison, innovation, recidivism, design, service design, programme, music, records.

Introduction

The goal of this project, undertaken by the Royal College of Art's (RCA) Service Design Programme, was to design and implement a vocational-based programme of skills development, education and work within a prison that could lead to new opportunities in the community as well as improve prisoner behaviour within the prison service. The design approach involved a collaborative effort with prisoners, prison staff and designers, supported by Ernst and Young (EY) and senior faculty from the RCA. The outcome was the design of a fully functional record label, created with and by the prisoners.

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This paper introduces the concepts of design thinking and service design and their application in the public sector. It describes how these techniques were applied in the UK Prisons to research the issues, and the resulting design and implementation of the service. It explores the impact in terms of behaviour, the anticipated benefits to the prison service, and the potential for it to impact recidivism rates as the first prisoners return to the community.

Service design and innovation in the public sector

Over the past two decades, the importance of design and the value of design thinking (Brown, 2008), as a tool for innovation, have been recognised by both business and government. In the domain of digital consumer technologies, design has become a strategic tool for business. It helps to translate technological innovation into user value, connecting with consumer needs, and creating compelling product and service experiences that leading firms have, in turn, successfully transformed into business value. Design has also been applied successfully to public service innovation, notably the UK Government portal (Gov.UK), recognised by other national governments and by international design awards (Government Digital Service, 2015; Gruber *et al.*, 2015). The impact of service design is remarkable and the application of this concept is growing rapidly all over the world (Mager, 2016)

During this period management scholars have focused on the role of design management and service design as a tool for innovation in both products and services, and have studied its impact on business performance (e.g. Black and Baker, 1987; Bruce and Bessant, 2002; Chiva and Alegre, 2009; Gemser and Leenders, 2001; Hargadon and Sutton, 1997; Kotler and Rath, 1984; Moultrie and Livesey, 2014; Walsh, 1996).

A designer's approach to a problem begins with an acute observation of the service users and of the system's context and constraints, be they socio-cultural, technical or economic, in what is known as the 'discovery' phase. This may involve ethnography, visual anthropology and the use of participative workshops with users and front-line teams. The next phase involves developing insights and framing the problem, often referred to as the 'define' phase. This is to ensure an understanding of the underlying causes rather than the symptoms of the problem and the human as well as technical and economic constraints that will help

define the brief. From here, designers move into the 'ideation phase', exploring through prototypes and visualisations. This will include working with potential users and other stakeholders to consider alternative potential solutions and to consider how different types of users and stakeholders might interact with those solution concepts. In the final 'delivery' phase, the prototypes are tested not only in terms of their technical robustness and effectiveness, but also for their fit with users' needs and the broader context of their lives (Stickdorn *et al.*, 2017).

The rapid visualisation, building and testing of prototypes at different levels of fidelity and subsequent rapid iterations is a crucial part of the design process. It is used to bring together interdisciplinary teams to quickly share their understanding of the effectiveness of the proposition; by embodying the proposition in material form, it can create a boundary-spanning object (Tushman, 1977). A boundary-spanning object is a commonly understood object that enables different disciplines to communicate more effectively and to identify any previously hidden barriers to adoption, or possibly to explore opportunities to improve the proposition. In the case of this project, not only did the testing focus on the end service, but the process of testing also helped to anticipate systemic constraints and potential systemic barriers.

Applying this approach to services rather than the design of physical goods requires a detailed and profound understanding of the users' journey and experience before engineering the process workflow. The user experience rather than the phenomenon of the task flow becomes the frame of reference for the design, and each element or task within it. It involves co-design, designing with users, front-line teams delivering the services, and key stakeholders. It is a highly collaborative and iterative process that discovers needs, frames the key insights, and then rapidly prototypes and trials potential solutions with key stakeholders before moving into the delivery phase. At the heart of service design is the primacy of the human experience. The products, services, processes, organisational design and business model should enable that compelling, effective and even transformative experience, rather than the other way around. The user experience should not simply be a probable consequence of design choices; it should be highly intentional.

This approach is especially powerful when it used for breakthrough thinking and where disruptive innovation is required, or where there is a need to address 'wicked' problems (Rittel and Webber, 1973). This is where the nature of the problems and the system's context may be

unclear or highly complex. The challenges and complexity of the criminal justice system and, within it, the role of the prison service have this level of complexity and can be categorised as a ‘wicked’ problem.

Project inception and research approach

The project was initiated and led by Judah Armani, one of the authors of this paper, a second-year postgraduate student on the Service Design Masters programme at the RCA. This programme explores the intersection of design thinking, social change and enterprise, and encourages students – especially those with years of experience in design or related disciplines – to develop and apply their skills through an innovation project of their choice.

Judah spent 18 months researching the prison service through a combination of ethnographic research and the use of semi-structured interviews and workshops with prisoners, officers and governors. He then used co-creation workshops, first with prison officers and then with prisoners, to identify a series of insights and subsequently applied an action research approach to develop and test a service proposition to address the needs of the different stakeholders and the challenges identified through the insights. The initial proposition was first tested in HMP Elmley, where lessons were learned, and then deployed to a further four prisons.

Key insights from research

His research findings identified five key insights that shaped, and continue to shape, the initiative and the resulting service proposition.

Insight 1: Focus on what’s strong, not what’s wrong

The interviews with prisoners identified that those who had been exclusively involved in organised crime, or drug dealing of some sort, were highly entrepreneurial. They understood stock, flow, supply and demand, for all the wrong reasons, but nonetheless they understood the concepts of business. This contrasted with the provision of work for prisoners within the prisons, which was very non-aspirational and could not exploit their entrepreneurial skills.

Insight 2: Sustainability

All the men interviewed suffered repeatedly from breakdowns in their relationships, which seemed to always end badly, whether it was with a primary caregiver or whether it was a love relationship. This led to the second insight, of ensuring that any programme or set of actions put in place was sustainable. Any solution that was developed would have to enable the development of long-term sustainable relationships that could survive inside and outside of prison, as well as ensuring that the service was sustainable enough for prisoners to make longer term plans.

Insight 3: Safe and enabling environments

Judah's previous research with Pupil Referral Units (PRUs) indicated that of the 86,000 prisoners in the UK, almost 50% are products of a PRU or indeed never finished school at all. This led to the third insight, that it was imperative to create safe and enabling environments. The moment any delivery in prison begins to feel like school, the prisoners immediately disengage. The environments offered by any new service would need to be mindful of the social and physical architecture, and could be expressed as: how might we continually seek to create the space that provides safety and encourages personal expression?

Insight 4: Language

The average vocabulary of a prisoner may reduce to less than 3000 words after being in a prison for as little as 12 months (from an interview with Nicholas Coutts of the Dialogue Trust). The lack of language to express oneself can increase frustration and lead to more disruptive and violent behaviour, so the insight that emerged focused on how we might nurture dialogue and expansion of vocabulary with a view to reducing violence.

Insight 5: Aspirational and restorative

While there are already employment opportunities within prison, they do not cater for restorative practice and there appear to be no plans in this regard. There are restorative programmes on offer in prison, but these are never connected to employability skills, and tend to be administered by charities, which brings their sustainability into question. The final insight was that the solution would need to provide employment, skills development and opportunities that were both aspirational and restorative.

Solution development

In September 2017, Judah began incorporating these insights into a learning and development platform designed for scale and for delivery of sessions within prison. To complement the platform, he chose the music industry, and specifically a record label, to provide all the learning and development, transferable skill sets and aspiration to a set of selected prisoners at HMP Elmley. The design was undertaken with the prisoners, so that the proposition that emerged was one they were wholly invested in. The role of the service designer was one of facilitation, administration and helping to nurture and guide the concepts that emerged, as well as to visualise and bring materiality to those concepts.

Judah was supported by the Head of Service Design at the RCA, Nick de Leon, and from EY by Neil Sartorio and his team. Together they developed and then tested the initial concept, convinced the first prison (HMP Elmley) and its Governor to support this initiative, developed the model with the prison service and the prisoners, and collectively launched an initial prototype of the service in the autumn of 2017. From this initial prototype, the proposition was refined and it is now operating in four UK prisons.

A crucial element of the concept was to involve the prisoners as stakeholders in the design of the service and setting up the record label, InHouse Records. The prisoners came up with the brand, its name and the design of the label itself. They are not only stakeholders in its development and operations but will become shareholders in the social enterprise following the formation. Another important element is the design of the business model, to which the prisoners again provided input. All of the profits created by InHouse Records go to the Victim Support Fund.

The service has three distinct components – (1) the record label, which generates new music and releases singles; (2) the recording studios, which can be used by musicians outside of the prison and enable them to work with prisoners and record new music; and (3) a marketing and event management section to enable concerts to be performed within the prisons (as so famously demonstrated by Johnny Cash at San Quentin).

As future employment is a very important dimension of the service, the project sought sponsors and potential employment partners and has created a series of partnerships with Universal Records, Fender Guitars, Roland Instruments and the BBC.

There are two sides to the label: the one inside the prison that identifies and trains musicians, songwriters, marketing specialists, engineers and technicians, as well as one outside involved in reaching out to the music business and channels of distribution. The element outside offers employment opportunities to prisoners when released as well as providing the support they need in making their first steps into purposeful work, either in the music industry through the partners listed above or with other firms where they can develop their skills.

The record label identifies and develops the prisoners' talent in songwriting and musicianship, sound engineering and production, marketing and events management. It offers opportunities to prisoners to develop their capacity as songwriters, managers, producers and performers, and to develop skills in leadership, management, supply chain, marketing, technical systems and project management. To achieve this goal, the prisoners are supported by experts from the music industry, academia and business. These are drawn from the partnership network of companies in the music business, media and professional services firms, especially EY.

One of the key goals is to help improve prisoners' attitude and behaviour by providing work experience with transferable skills and industry-accredited qualifications. This is achieved under the umbrella of the record industry, which is able to capture prisoners' imaginations and fuel their commitment. Outside prison, the label seeks to reduce reoffending and create safer, crime-free communities.

While setting up an enterprise of this kind within a prison is certainly innovative, the focus on prisoners' experiences is ground-breaking. Working with music enables the prisoners to unburden themselves emotionally through self-expression. The model focuses on what's strong – not what's wrong – and uses 'restorative storytelling' to help prisoners make sense of their lives by framing it all with music. In and of itself, the music offers genuine benefits for reducing anxiety and stress, which means that it is possible to promote the rehabilitation culture in prisons and help prisoners take control of their future. Prisoners are encouraged to recount their interests and experiences through restorative storytelling, where past experiences are explored and skills that the men once viewed as 'bad' can be repurposed for good. This process allows prisoners to look on the past not as a waste of time but as a mix of choices with bad consequences and enables them to salvage skills that can be used in better ways.

The approach is highly inclusive and has encouraged some formerly more passive prisoners to not just take part but actually become involved in leading the label.

The initial prototype service was tested at HMP Elmley and the platform was refined as a result to ensure that prisoners could move through the service components in a non-linear way rather than with a highly prescriptive model. It also demonstrated the importance of industry partnerships within as well as outside of the prison. When the first prisoners were released it also identified the need to provide extensive initial support to enable them to harness the experience they had had with InHouse Records and use that to create employment opportunities. The learning was exploited in subsequent jobs and the platform became increasingly robust and, importantly, applicable to domains other than music. This important element emerged from the testing, demonstrating that the platform, if sufficiently robust, could be tailored further and applied in domains such as fashion, catering and hospitality.

Achievement to date

InHouse Records is now a functioning record label that's been launched in HMP Elmley and HMP Rochester. It is transforming the behaviour of high-risk prisoners, developing their skills and self-esteem, and creating job opportunities for them on release. InHouse Records is about to be incorporated as a company, and the prisoners involved are being issued shares as part of its formation.

The label began releasing its first singles in November 2017 and is targeting three new singles each month for National Prison Radio. Now a steady stream of music is emerging from all four prisons.

In December 2017, the first showcase of work by the prisoners was shared outside of the prison community. In front of a proud audience of friends and family, as well as 40 trainee prison officers, this vibrant showcase for the pioneering record label demonstrated previously hidden or undiscovered talents. The co-founders of the label confidently performed a set-list of their own songs, hitting the right notes between fun, camaraderie and, at times, brutally honest and confessional narratives.

Impact assessment

It is still very early to assess the impact accurately; however, those who are participating in the label have had fewer problems in prison. The prisoners chosen by prison staff for the pilot at Elmley were the hardest-to-reach men. For instance, they had refused to leave their wing for any work in the past. After six months, a few showcases and five singles, there had been a reduction in negative entries on their personal records by 30%, almost 40% fewer adjudications, and a 42% increase in positive entries in the prison log.

As a result of the initial impact at Elmley, the initiative received support from the Minister for Prisons and the Head of the prison service and it has been established in three further prisons at Rochester, Oxford and Lewes, with plans for Belfast. The current goal of InHouse is to grow to operate in 60 prisons by 2020, and strong support has been given to the service by the Secretary of State for Justice.

Feedback from all those involved has been encouraging. A prison officer, Tom Cunningham, commented that ‘for me personally, the label has been the best part of my nine-year career in the prison service. Working with men who want to change and be the best versions of themselves has had a positive effect on my attitude.’

The Governor at HMP Elmley – referred to as ‘Number One’ – cites the label as ‘helping staff recognise a different way of approaching rehabilitation’.

Learning from InHouse Records

The key lessons we can take from this are as follows.

- *Co-design and co-ownership.* The power and importance of a service design approach. In this case the prisoners were tasked with the challenge of defining the principles to ensure high-level design, and were involved not just as another stakeholder but at the heart of the programme and in a leadership role.
- *Alignment of interests.* The success of this initiative to date is based on the prisoners being engaged in an activity that resonates with their personal interest, ignites their passion and can give them a sense of achievement in a field that is recognised by their peers. It also is aligned with the prison services goals of skills development, reduced recidivism and improved behaviour. This last point is crucial, as poor

behaviour carries real economic costs for the prison service. So improvements in behaviour are reflected in savings to their budget and enable further investment in skills and training.

- *Partnerships.* The resources of other organisations and firms in the music industry and media industries are crucial to developing skills as well as supporting real employment opportunities.
- *Creation of role models.* In prison the role models are often negative ones with connotations of violence and control. This project has created a new set of role models, and the achievement of previously passive and even vulnerable prisoners has inspired not only the ‘bigger characters’ but also those who have previously stepped back from engaging in initiatives like this. The involvement of ex-prisoners who return to explain how the programme supported them on leaving has been an inspiration to many.
- *Creation of a platform.* The approach in terms of the design for prisoner engagement, on-boarding, management, partnership, business model, skills and training, release and support on release are all repeatable in other sectors. These sectors include fashion, food and beverage and sport. As a result, working with the prison service, EY and the RCA, we are examining other opportunities, especially in women’s prisons, to further expand this approach.
- *Business model design.* It is important to combine a robust and sustainable service model with a robust commercial model. In this case, a service business can be funded through social investment bonds, and can deliver a service to the prison service. Combining the service design approach with EY’s social venture practice has enabled the design of the service and the design of the business model to proceed hand in hand.

Service design is an innovative approach to public services that uses in-depth exploration in order to discover opportunities; co-creates concepts for desirable futures; and prototypes, tests and iterates these concepts – and thus is able to develop innovation that is rooted in user needs and is viable as a solid business model.

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Problem-Solving Justice and Problem-Solving Courts: What Northern Ireland Can Learn from the US Experience of Mental Health Courts

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Summary: The research and evidence from problem-solving courts in the USA consistently supports the notion that this model is effective, works in reducing reoffending and enhances treatment engagement. The approach draws on desistance theories and models to assist offenders to stop committing crime by supporting them in addressing their core needs and risks as well as encouraging treatment and an offence-free life. A problem-solving approach to justice was included in the Northern Ireland draft Programme for Government (PfG) (2016). As Probation interventions have a key role in delivering problem-solving justice, the author applied for and received a Winston Churchill Fellowship¹ in 2017. The fellowship provided an opportunity to engage directly with the staff and structures of problem-solving courts in New York that were providing an alternative to custody for complex and vulnerable offenders. This paper describes the current developments in problem-solving justice in Northern Ireland, outlines the approaches taken in the American context, reviews the learning from the study visit, and discusses how the experience and learning gained from the Winston Churchill Fellowship Project can serve to inform further developments.

Keywords: Problem-solving justice, problem-solving courts, mental health courts, probation, desistance, reoffending.

What are problem-solving courts?

The term 'problem-solving courts' refers to a judicial or criminal justice approach that attempts to address the underlying problems that contribute to criminal behaviour. It is based on the concept of therapeutic justice, whereby the offender is encouraged to engage in treatment interventions in order to reduce their risk of reoffending.

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¹ Winston Churchill Fellowships are for UK citizens to travel overseas to bring back fresh ideas and new solutions to today's issues, for the benefit of others in the UK.

Current context: problem-solving justice

In early 2016 the Northern Ireland Executive announced a new approach in the Programme for Government (PfG) which captured the major societal outcomes that Government wanted to achieve over the following five years.²

The draft PfG, published for consultation in May 2016, set out key elements of the new approach with its focus on delivering improved societal outcomes. It recognises the importance of collaborative working across local government, the private sector and the voluntary and community sectors. Within the draft PfG the Department of Justice (DoJ) leads on Outcome 7 – *‘We have a safe community where we respect the law and each other’* (Northern Ireland Executive, 2016: 29) – with three indicators of change: reduced crime, reduced reoffending and increased effectiveness in the justice system.

A number of historical drivers contributed to the developments in 2016, which the Department acknowledged as being influential in taking a different approach in order to ‘turn the curve’ (DoJ, 2017a: 5). In 2015, the Northern Ireland Executive commissioned the Organisation for Economic Co-operation and Development (OECD) to conduct a Public Governance Review of Northern Ireland (OECD, 2016). The final report published by the OECD recommended that a pilot approach which was then being developed in Londonderry court area involving domestic violence should be expanded to include an offender programme element, and that these approaches should be developed more widely within the justice sphere.

In January 2016, the NI Assembly Justice Committee undertook two visits to observe problem-solving courts in New York and Glasgow. The Committee’s subsequent report (2016) noted that the approach was proven to reduce offending, rectify perceptions of inequality, increase public trust in the justice system and reduce the number of people going to prison. It recommended that a pilot problem-solving court should be developed, as part of the PfG, to be focused on drugs and alcohol addiction or on mental health issues. The Justice Committee also recommended that the Derry domestic violence court arrangements be further developed to encompass a problem-solving model.

In 2017 the then Minister for Justice announced that she would

² The draft PfG contains 14 strategic outcomes which, taken together, plan for and enable continuous improvement on the essential components of societal wellbeing. The outcomes are supported by 48 indicators with which to measure any change.

prioritise domestic violence, mental health problems and crimes against the most vulnerable by adopting a problem-solving justice approach (DoJ, 2017b).

Key principles of problem-solving courts

The key principles identified in the OECD Report (2016) include the following.

- *Creative partnerships:* Problem-solving courts work closely with other criminal justice agencies. The community is often involved in the judicial process alongside social services and treatment providers. Indeed, the community has a fundamental role to play in helping the justice system to identify, prioritise and deliver local problem-solving initiatives. The courts have sought to maximise contact between themselves and the community while retaining their independence and impartiality. This approach has been most effective, and it is important to recognise that problem-solving treatment programmes use various strategies to engage communities and victim groups, which is critical to the effectiveness and buy-in of all involved. Another strategy used effectively by problem-solving courts is to engage with the media. Regular contact with media outlets can provide opportunities to engage with the wider community. This enhances community buy-in, and sends a public message that problem-solving courts are not a soft option. It provides reassurance that the individuals who have come before the courts are engaging with treatment programmes to address areas of risk/need and that they are also held accountable and challenged on issues of non-compliance or non-engagement. This approach is well received by victims of crime, who welcome initiatives that support offenders in making positive changes to their lives and reduce the likelihood of further victimisation in communities. Through justice, health, community partners and stakeholders coming together, the process of fostering new approaches and new responses to include diversion and sentencing options is critical.
- *Team approach:* In problem-solving courts, all parties are asked to support the same goal: rehabilitation of the offender with the objective of reducing reoffending and crime. This requires a non-adversarial approach where the roles of the judge, the prosecutor and the defence lawyer evolve and adjust to the specificities of the

problem-solving approach. Judicial decisions are informed through the collaboration of team members (including social workers and treatment providers) before final adjudication.

- *Judicial oversight and interaction:* In a mainstream court in certain countries and jurisdictions, the role of the judge is that of a detached arbiter. The judge in a problem-solving court actively tries to build a relationship with the defendant and focuses on their treatment and rehabilitation. The judge fosters a dialogue and speaks directly with the defendant on a frequent basis, often over an extended period. This dialogue will include elements of positive reinforcement and validation but will also challenge the individual to commit to programmes, and impose sanctions when contracts are not completed.
- *Judicial monitoring:* In problem-solving courts the authority of judges is engaged to positively influence the behaviour of defendants by staying involved even post-adjudication. Defendants are required to account for their behaviour on a regular basis during status hearings. Prior to these hearings it is not uncommon for judges to discuss the progress of each defendant in conference meetings with other members of the problem-solving team. In fact, this approach is encouraged within all problem-solving courts.
- *Informed decision making:* The collaborative approach between all members of the team ensures that relevant and detailed information is available to inform targeted and timely decision making. The judge not only has access to a range of expert reports but has the opportunity to engage in discussion around the content of those reports to ensure that the appropriate areas of risk/need are addressed, balancing offender reintegration and public safety. This reflective, discursive approach is mirrored in the judge's direct conversations with the defendant, which contain elements of care and control. In addition, this approach increases judicial understanding and knowledge of the underlying contributory causes of criminal behaviour, including substance abuse, domestic violence dynamics, crime patterns in certain neighbourhoods, etc. Ongoing specialist training for judges in these areas is fundamental to the effectiveness of problem-solving courts.
- *Tailored approach:* Problem-solving justice is very much dedicated to the notion that once people reach the justice process, they should be treated as individuals who have a range of complex needs that have often not been the primary source of treatment or intervention. One of

the forces that have driven the expansion of problem-solving courts in the USA is the frustration of many justice professionals and judges who find that the same individuals seem to continually revolve around the system. Problem-solving courts reject the 'one-size-fits-all' approach to criminal cases where judges may merely act as 'case processors'. Instead, decisions in a problem-solving court try to meet the specific needs of each case and address the underlying causes of the criminal behaviour. To facilitate individualised justice, problem-solving initiatives invite many service providers to share the space with them in the court room, in order to create a centralised and collaborative 'one-stop-shop' approach which makes it easier for the offender to access the appropriate help that they need. By customising problem-solving courts and problem-solving initiatives, it seeks to address the underlying problems that an individual presents with, thereby reducing the likelihood of repeat offending and increasing the likelihood that the offender can become a productive and valued member of society.

- *Accountability*: Judicial monitoring is one of the most distinctive characteristics of problem-solving courts and emphasises the accountability of offenders. In order to achieve this, there must be rigorous compliance, monitoring, engagement and in turn clear consequences and sanctions for those who do not comply. This can improve accountability of service providers by requiring that there are regular up-to-date reports and court reviews as a means of ongoing assessment, review of treatment, engagement and progress.

Mental-health courts in the USA: the experience

A substantial number of criminals and offenders suffering from mental illness navigate the criminal justice system (Denckla and Berman, 2001). It is recognised that prisons are not suitable environments to treat and manage those diagnosed with mental illness, yet many offenders with mental illness find themselves returning repeatedly to institutions of the criminal justice system (Watson *et al.*, 2004). Mental-health courts in the USA were established to stop this revolving door, and the Winston Churchill Scholarship provided the opportunity to focus in particular on these courts.

The study began at the Center for Court Innovation in New York,³ which is engaged in research and policy development around problem-

³ <https://www.courtinnovation.org/>

solving courts. It is a non-profit think-tank that helps courts and criminal justice agencies to reduce crime and increase public confidence in the justice system.

A number of valuable lessons were learnt at the Center for Court Innovation. The key one was the importance of the participation of the individual and the relationship with the judge in the problem-solving court. This is fundamental to the effectiveness of problem-solving courts. Wales *et al.* (2010) argue that the observed reduction in recidivism among participants in mental-health courts was the result, in part, of the particular role of the judge in conveying elements of procedural justice. Firstly, the judge demonstrates a heightened level of interpersonal engagement with participants that affords them dignity, respect and voice. Secondly, the judge ensures oversight of accountability for participants and service providers alike; and finally, it is the judge who ensures the transparency of decision making through an open negotiation process.

The Brooklyn Mental Health Court,⁴ based in New York, was visited to witness first-hand how it operated. This Mental Health Court aims to balance the judicial process with the treatment needs of defendants with poor mental health and public and community safety concerns. It aims to identify, assess, evaluate and monitor offenders with mental illness. As well as creating links between the mental health arena and the criminal justice system, the court tries to build public confidence in a system which can deliver high quality, community-based interventions as a realistic alternative to custody. There was an opportunity to meet with the clinical team that serviced the court, which consisted of the team leader, co-ordinator, social workers, psychologists and psychiatrists, and to observe the processing of cases.

In one case a female prisoner had been convicted of a larceny offence in relation to the theft of a credit card, and sent to Riker's Prison (New York's high-security prison). The judge heard her plea that she was in treatment for mental health issues and the reasons around her situation. The judge directed 18–24 months of residential treatment. He was extremely supportive and asked if she understood what the conditions were, accepting and acknowledging that she had a serious drug and alcohol problem. He agreed that he would review and direct her to outpatient treatment and told her that he could then discuss the case with probation, and gave her a range of options and directions in terms of

⁴ <https://www.courtinnovation.org/programs/brooklyn-mental-health-court>

what would happen. He explained that if she did comply she would not go to jail, but if she failed during the course of the treatment, he would indeed send her to Riker's Prison for a period of two to four years.

One of the observations from the visit to Brooklyn Court was the significance of graduations. If the individual successfully completes the judge's direction, then there is a graduation ceremony. These graduations are a very important aspect of the problem-solving courts, where individuals are rewarded with certificates after successful completion of the programme. It is an important motivating factor and an acknowledgement of achievement. Family and friends are invited to observe this graduation; interestingly, 80% of the individuals that come through the Mental Health Courts successfully graduate, which is a true testimony to their success (Aldigé Hiday *et al.*, 2014).

While in New York, there was also an opportunity to meet with consultant forensic psychiatrist Dr Merill Rotter, Director for the Mental Health Court within the Bronx. He advocated for a very strong clinical team to support this Mental Health Court, as the process requires clinically informed judicial oversight and supervision.

An important model that Dr Rotter introduced to mental-health problem-solving courts is the 'sequential intercept model' as set out by Munetz and Griffin (2006). This model provides a conceptual framework for communities to organise targeted strategies for justice agencies involved with individuals with behavioural and health disorders. Within the criminal justice system there are numerous intercept points and opportunities for linkage to services for the prevention of further penetration in the system. The sequential intercept model has been used as a focal point for states and communities to assess available resources, to determine gaps in services and to plan for community change. These activities are best accomplished by a team of stakeholders that cross over multiple systems, including mental health, substance abuse, law enforcement, pre-trial services, courts, jails, community corrections, housing, health, social services, peers, family members and many others. The model helps to assess for appropriate diversion activities and how they may be developed as well as how agencies can better meet treatment needs, when to begin activities to facilitate re-entry and, finally, how to provide appropriate treatment and supervision in the community.

There was also the opportunity to visit the Queens County Supreme Court, where there are a number of problem-solving courts. Time was spent with Judge Marcia Hirrsch and her court team. The ethos of this

mental health court treatment model is one of least restrictive care. It is an attempt to treat the individual in the community and provide wrap-around services for the individual. The judge applies a diversion approach to mental health treatment, ideally without or instead of criminal prosecution. This happens through the court effectively adjourning the participant's case if assessed as suitable, so that they can be dealt with by the court directly intervening to address their assessed underlying needs and risks prior to sentencing. Further visits were carried out in Washington, DC, Carolina and Florida.

The Pretrial Services Agency (PSA) in Washington is equivalent to the UK concept of Probation Services. Meetings with PSA highlighted the seamlessness of the points of contact on the frontline, effectively illustrating the sequential intercept model. The PSA team interview individuals, conduct assessments, carry out drug tests when required and access mental health needs, referring to the diagnostic team for screening assessment if deemed appropriate.

This takes place on a daily basis in the court, which is a pioneering approach. The team, on site, will then determine suitability for the problem-solving court. The report is prepared by the Supervision Treatment Team, with an assessment and conditions of treatment for consideration by the judge.

During the visit to Washington, DC, there was an opportunity to meet with a range of policy makers, including Captain David Morrisett who outlined the importance of the supporting research. There are a growing number of studies in relation to mental health courts that have been subject to rigorous evaluation, and studies that have identified the profiles of defendants who are more likely to benefit from participation in mental health courts (Frailing, 2010; Moore and Hiday, 2006; McNiel and Binder, 2007; Boothroyd *et al.*, 2005). Although the numbers of published mental health studies are still relatively small and the studies vary in the outcomes measured as well as the degree of statistics on the significance of their results, the outcomes have been generally very consistent and positive (Sarteschi *et al.*, 2011; Steadman *et al.*, 2011).

In Carolina and Florida, there was an opportunity to meet with several leading judges in the field of mental health, and the author spent time with Judge Steve Leifman and his team, who highlighted the differences between defendants in traditional courts and those in mental health courts. Mental health court defendants have lower rates of

reoffending, longer times in the community before committing new offences and fewer days in incarceration. The studies that followed participants for a period of time after they exited the mental health courts showed that positive effects can endure (McNeil and Binder, 2007). Mental health participants also demonstrated greater engagement in community-based treatment than non-participants, validating the assumption underlying mental health courts' design and operation (Perez *et al.*, 2003). The combination of treatment and judicial supervision improves engagement and public safety outcomes. (Perez *et al.*, 2003).

Reflections from site visits

1. *A theoretical framework:* The framework informing practice in the courts is based on risk, need and responsivity (RNR) principles that are very well known to probation practice (Andrews and Bonta, 2003, 2010; Bonta and Andrews, 2010) and the risk of harmful reoffending is assessed and understood in addition to individualised needs of the participant being addressed. All of these needs are adhered to in terms of providing evidence-based strategies for working with offenders using validated risk assessment tools, such as the Assessment, Case Management & Evaluation System (ACE), B-SAFER (for domestic violent offenders), Risk Matrix 2000, and Stable and Acute 2007 (SA07) (for sex offenders). These are then matched to the needs and risk of the individual and the appropriate interventions and treatment.
2. *Procedural justice approach:* Practice is based on fair and consistent procedures, allowing the voice of the offender to be heard and ensuring respectful interactions at every stage of the process. There is an underlying principle that offenders can understand the reasons for their decisions and accept their responsibilities. Offenders do recognise the holistic approach and concern of the judge and the genuine interest in their case and personal circumstances.
3. *Multi-agency approach:* This is a very apparent practice within the New York Mental Health Courts and was underpinned by the principle of co-operation, sharing and partnership. This was evident across the practice of defence lawyers, the judge, the treatment accommodation providers, social services, probation and parole.
4. *Success:* A further element that was apparent was the hope and desire for success and the trust that exists between the individual and the

court. The clinical team, the defence, the prosecution and all of the community treatment providers felt that trust was absolutely fundamental to their success, and the relationship with the judge played a big part in a successful outcome in the mental health courts that were visited.

5. *Successful outcomes*: Research indicates that a successful outcome is: the participant's graduation from the courts, the dismissal or conditional discharge of the case at the end of treatment, staying out of prison and remaining free of illegal substances (Frailing, 2010). The successful outcomes can also be personal outcomes for participants who have developed a sense of self-worth and optimism and recognise that they can contribute as a citizen, as a member of their community and, importantly, within their own family.

Conclusion

In the US, jurisdictions such as Washington, DC have based their decision to develop mental health courts, in part, on the success of drug courts. Research showed that participants in drug courts have higher rates of treatment retention and lower rates of recidivism than defendants not going through these types of court (Jewell *et al.*, 2017). Likewise, research shows that mental health courts have reduced recidivism (Anestis and Carbonell, 2014).

Another reason for developing mental health courts was the belief that, fundamentally, untreated or inadequately treated mental health needs contributed to criminal behaviour (Stefan and Winick, 2005). It is also clear that justice involvement can help connect people to appropriate treatment, which can improve the symptoms of mental illness and reduce problematic behaviour and related recidivism. Judicial supervision, including the use of gradual incentives and sanctions, can also help keep people in treatment and the overall combination of treatment and judicial supervision aims to reduce recidivism and improve public safety.

The research undertaken demonstrates that mental health courts in all of the states visited by the author in the USA are supported by investment in resources, evaluation and training, and by building confidence and buy-in from the community and victims' groups (Justice Center, 2015).

Resources are a crucial factor in the establishment of mental health courts. Although once in operation these can be cost-effective,

experience in the United States shows that the development of problem-solving courts including mental health courts requires investment (Berman and Feinblatt, 2015).

Likewise, it is extremely important to build community confidence. It is important that the community and wider public understand that these courts are not a soft option. These courts can be extremely challenging in having individuals confront the reasons for their offending for the first time. It was observed first-hand on this study trip that some initial participants asked to leave the treatment programme because they found it too difficult.

The problem-solving approach in the US is both creative and innovative. The courts clearly target the root problems of offending and apply a rehabilitative approach. Those delivering services were committed to ensuring that the revolving door syndrome was disrupted. It is important that those delivering services are supportive, enthusiastic and committed to the principles of rehabilitation.

The outcomes achieved in the US include reducing overcrowding in jails, encouraging and delivering on family life, reducing the number of victims, saving money and rehabilitating individuals (Butts, 2001).

In Northern Ireland over 70% of individuals within criminal justice have some form of mental health problem. There is clearly a need to develop strategies to deal with those with mental health problems in the justice system. Two pilot problem-solving courts are currently operating in Northern Ireland, one addressing domestic violence and the second substance misuse. It is an opportune time to build on existing knowledge and practice and extend this provision to the area of mental health.

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Resilience in the Face of Trauma: Implications for Service Delivery

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Summary: It was noted with some concern by service providers in Limerick that women presenting to homeless, probation and drug treatment services in Limerick city significantly exceeded the number attending similar services in other geographical areas in Ireland. Different services were engaging with the same women simultaneously, sometimes for years, without any discernible positive outcomes for the women. Research was commissioned to facilitate a better understanding of the women's needs, with a view to enabling services to be more responsive. The findings profile a group of women with considerable resilience and capacity for survival, despite very challenging life experiences. An Adverse Childhood Experiences analysis showed that the women in this research cohort were more frequently affected by almost all forms of childhood adversity than people in the general population. The women proffered some practical advice that could help services to be designed and delivered in a trauma- and gender-informed manner. This paper presents a brief literature review of trauma and trauma-informed care, outlines the research findings and makes recommendations for future service design and delivery.

Keywords: Women, trauma, adverse childhood experiences, homelessness, probation, drug treatment, trauma-informed care.

Introduction

Overview of trauma

The term 'trauma' can have various meanings depending on who is using it and in what context. Medical doctors, for instance, may talk of trauma as the wounds that result from physical injury. Psychological trauma, however, is defined more broadly as 'an event, series of events

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or set of circumstances that is experienced by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects on the individual's functioning and mental, physical, emotional or spiritual well-being' (SAMHSA, 2014: 7). Psychological trauma refers both to events and to an individual's unique experience or response to events or enduring conditions (Covington, 2008; Pearlman and Saakvitne, 1995).

The ground-breaking Adverse Childhood Experiences (ACEs) study established a relationship between exposure to childhood emotional, physical or sexual abuse and household dysfunction, and seven of the leading causes of death in adults (Felitti *et al.*, 1998). The study also established a strong graded relationship between experiences of childhood adversity and subsequent negative health outcomes; the more ACEs someone had, the more significant were their negative health outcomes in later life. Felitti *et al.*'s research, which was conducted with over 17,000 people in the general population, found that those with four or more ACEs had a 4–12-fold increased health risk for alcoholism, drug abuse, depression and suicide attempts (1998: 245).

Building on the original ACEs study, other researchers have established correlations between childhood adversity and homelessness, substance misuse and criminality.

ACEs were strongly related to experiences of adult homelessness, with the risk of adult homelessness increasing by 40% for each additional type of childhood adversity reported (Cutuli *et al.*, 2013). These findings were replicated in an Irish study in the Cork Simon Community, where 77% of service-users experienced four or more ACEs, compared with 12.5% in the general public, while 8% had all 10 ACEs (Lambert and Gill-Emerson, 2017).

The relationship between childhood trauma and substance misuse is also well documented (Dube *et al.*, 2003; Covington *et al.*, 2008). A summary of the literature by the National Institute of Drug Addiction in the US notes that up to two-thirds of people in treatment for drug abuse report that they were physically, sexually or emotionally abused during childhood (Swan, 1998).

While the initial research into the impact of ACEs concentrated primarily on health outcomes, there is now strong evidence that higher scores on the ACEs questionnaire are linked to future violence, the likelihood of incarceration and the risk of recidivism (Moore and Tatman, 2016). In their study on the prevalence of ACEs in a population

of juvenile offenders, Baglivio *et al.* (2014) found that offenders reported disturbingly high rates of ACEs, and had higher composite scores than previously examined populations.

Developments in neuroscience have helped us understand that there are real neurological reasons why people exposed to ACEs engage in high-risk behaviour (Van Der Kolk, 2014; Burke-Harris, 2015, Reim *et al.*, 2015). Exposure to adversity and toxic stress affects the developing brain and bodies of children, with particular implications for both the pleasure and reward centre of the brain and the area responsible for processing and regulation of emotions (Burke-Harris, 2015; Reim *et al.*, 2015). Trauma survivors may experience persistent states of ‘hyper-arousal’, which includes dysregulated fear, anger or elation; others may experience ‘hypo-arousal’, leaving them unresponsive and disengaging (Ogden *et al.*, 2006; Van Der Kolk, 2014). These responses, which can be understood as ‘normal’ trauma responses, can make it difficult for trauma survivors to engage with mainstream services, and, indeed, for mainstream services to engage meaningfully with trauma survivors.

Trauma-informed care

In light of the clear connections between childhood adversity and substance misuse, criminality and homelessness as outlined above, there is an impetus for service providers to understand trauma, how it manifests, and how services can appropriately support trauma survivors.

Trauma-informed care (TIC), which has its origins in the treatment of post-traumatic stress disorder among military veterans, is an approach to the provision of human services that has increasingly gained traction over the past 30 years (Wilson *et al.*, 2013). In order for organisations to work in a trauma-informed way they need to:

1. maximise physical and psychological safety (for both staff and service-users)
2. partner with service-users to ensure that they have an active voice in decision-making
3. identify trauma-related needs of service-users (routinely screen for trauma and its effects)
4. enhance service-users’ wellbeing and resilience
5. enhance family wellbeing and resilience
6. enhance the wellbeing and resilience of staff
7. partner with agencies and systems that interact with service-users,

adopting an interagency approach in the interests of the service-users (Wilson *et al.*, 2013).

The Substance Abuse and Mental Health Services Administration (SAMHSA) in the United States provides a road map for creating a trauma-informed organisation. It notes that this is a fluid, ongoing process, requiring organisations to assess, and potentially modify, every facet of their operations to ensure that they can be effective in serving trauma survivors (SAMHSA, 2014). Becoming a trauma-informed organisation is not an insignificant undertaking.

The research

Background and methodology

The research was commissioned by the PALLS project, a Probation Service funded project that works with adults involved in the criminal justice system in the Mid-West region. The objectives were to get a clearer picture of the needs, and a better understanding of the experiences, of women accessing local drug, homeless and criminal justice services. A steering committee was established to liaise with Quality Matters, who conducted the research, and to facilitate contact with women service-users who agreed to be interviewed for the research. The committee had representatives from PALLS, the Probation Service, the Mid-West Drug and Alcohol Forum, the Health Service Executive (HSE) Drug and Alcohol Services, Mid-West Simon Community, Bedford Row Family Project, and McGarry House, the local low-threshold homeless service. Ethical approval was received from the Probation Service and HSE Mid-West.

Information leaflets about the research were displayed in prominent places within the participating services, and information sessions were held with frontline workers, who were asked to identify women who might be invited to participate.

Semi-structured interviews were conducted with female service-users of eight services in Limerick in October and November 2016. Interviews lasted between 35 minutes and one hour and covered 65 questions in total. Semi-structured interviews allowed women the opportunity to provide information that they felt was relevant, especially regarding questions that focused on how they felt when interacting with services. The interview tools used with the women drew on two frameworks.

Firstly, the National Drug Rehabilitation Implementation Committee's standards for care-planning (NDRIC, 2008) informed the domains of need. Secondly, questions relating to trauma were drawn from the ACEs Study and the definitions of ACEs provided by the Centers for Disease Control and Prevention (Felitti *et al.*, 1998). Instruments were developed by the research team, approved by the project steering group and then piloted prior to use in the field.

In addition to these interviews, frontline staff who worked with women with substance abuse issues were invited to complete a survey, which was distributed via email and completed online. The survey instrument was developed using a number of bespoke items, as well as items from the Trauma-Informed Care Project's organisational self-assessment.¹ The tool was developed by the research team, approved by the steering group and piloted prior to use. The online survey was distributed to front-line staff from drug and alcohol services, homeless services, and the Probation Service.

Profile of service-user research participants

A total of 24 women took part in the interviews and ranged in age from early 20s to mid-50s, with an average age of 35. All participants identified as Irish and participants included women from the majority population and Traveller women. 63% ($n = 15$) of the women had lived in Limerick their entire lives, while another 21% ($n = 5$) had moved to Limerick within the past two years. Other significant characteristics of the women included the following.

- 83% were parents, and 17% had at least one child in someone else's care.
- 21% had been cared for in foster or group homes.
- 79% had experienced homelessness at least once in their lives, with 67% homeless at the time of the research (in homeless accommodation, staying temporarily with someone, or sleeping rough).
- 83% had engaged with the Irish legal system (Courts, Gardai or Probation Service).
- While all the women had difficulties with drug misuse across the lifespan, a majority stated that they currently 'rarely' or 'never' used alcohol or drugs, with 39% reporting daily or weekly drug use.

¹ www.traumainformedcareproject.org

- 65% of the women self-identified as having mental health issues.
- 91% of the women had experienced intimate partner violence in adulthood.

Ethical considerations

The researchers were committed to ensuring that all participants felt safe, felt empowered, and had an overall positive experience of the research process. A number of ethical risks were identified, and management strategies employed to ensure that participants felt safe throughout the research. This included measures to preserve total anonymity for all participants and taking each of those interviewed through a 16-point informed consent checklist that outlined all facets of the research before beginning their interview. All participants were provided with contact details for out-of-hours support should they feel upset later in the day following the interview. All field researchers had significant experience of working with vulnerable adults and interviews were trialled in a peer environment prior to use in the field. All participants were compensated for their time.

The researchers were committed to identifying pragmatic recommendations from the research findings, and the Steering Committee undertook to implement the recommendations.

Results

Findings in relation to the women's experiences of childhood and adult trauma

Of the 24 women who took part in this research, 23 answered questions in relation to ACEs (Felitti *et al.*, 1998). The ACEs questionnaire examines 10 categories of adverse childhood experiences in three broad domains: abuse (physical, emotional or sexual); neglect (physical or emotional); and household dysfunction (substance misuse, criminality, mental illness, divorce and exposure to domestic violence) (Dube *et al.*, 2003). A simple 'yes or no' answer is elicited for each of the questions, with positive responses scoring one point. The final cumulative score is the ACE score for the individual (Felitti *et al.*, 1998).

The results of this research showed that the women who participated had disproportionately high rates of ACEs when compared to the general population. The range of ACE scores of the women in the study was 0–8, with the average being 5. The most frequently occurring ACE scores were 8 and 5. Over 55% ($n = 13$) of the women had scores of 5 or more,

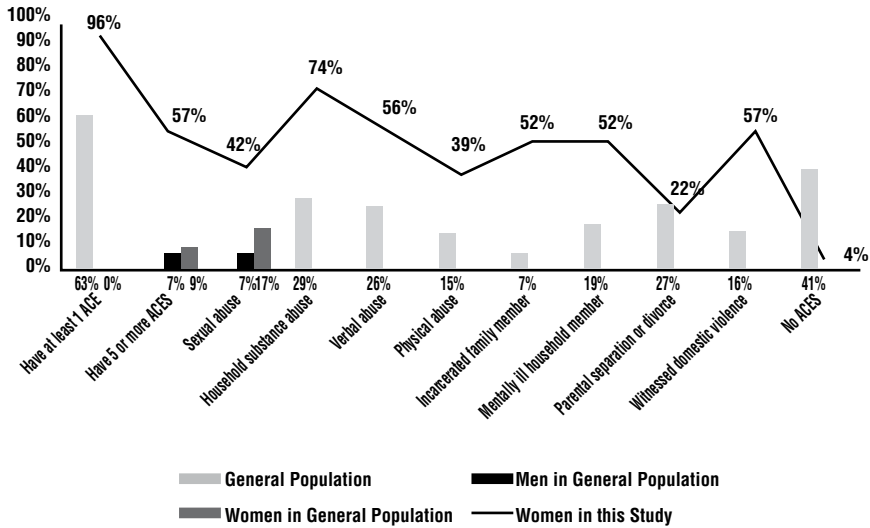
and five of these women had scores of 8. Figure 1 shows that the women in this study were more frequently affected by almost all forms of childhood trauma and were, in many instances, affected to a very significant degree. They were:

- 7 times more likely to have grown up in a household where there was an incarcerated person (e.g. family member)
- 6–8 times more likely to have 5 or more ACEs (6 times more likely than women in the general population; 8 times more likely than men)
- 3.6 times more likely to have grown up in a household where there was domestic violence
- 3 times more likely to have grown up in a household where there was somebody with a mental health illness
- 2.6 times more likely to have grown up in a house where there was substance abuse
- 2.5–6 times more likely to have experienced childhood sexual abuse (2.5 times more likely than women in the general population; 6 times more likely than men)
- 2.5 times more likely to have experienced physical abuse in childhood
- twice as likely to have experienced verbal abuse in childhood
- 1.5 times more likely to have one ACE than people in the general population
- 10 times less likely to have no ACEs at all.

Figure 1 depicts the experiences from the general population of the 10 ACE items in the bars, with the line depicting the proportion of women in the study who had experienced ACEs. It clearly shows a pattern of women having significantly higher rates of ACEs than those recorded for the general population (Felitti *et al.*, 1998).

The ACEs study revealed that experience of physical abuse, sexual abuse or witnessing mother being a victim of domestic violence doubled the risk of being a victim of intimate partner violence, with exposure to all three increasing the risk of victimisation in adulthood by 3.5 times (Anda *et al.*, 2002). In addition to inquiring about ACEs, the women in this study were asked about experiences of intimate partner violence; 91% had experienced violence by a partner in adulthood. This compares with prevalence figures for domestic violence in adult women in the general population of between 18% and 39% (Kelleher & Associates and O'Connor, 1995).

Figure 1. Cohort ACES compared to general population



As previously detailed, the prevalence of ACEs is a predictor of health difficulties later in life, including problematic substance use. All of the participants interviewed for this research had current or previous difficulties with drug and/or alcohol use. When asked about their problematic substance use, over 65% ($n = 15$) of the women stated that, in their opinion, it was related to trauma and/or their life experiences. A further 30% ($n = 7$) stated that their problematic substance use was somewhat related to trauma and/or life experiences. When discussing the relationship between the two, 33% ($n = 8$) of the women stated that they had used drugs or alcohol as a past coping mechanism.

Findings in relation to the needs of women

Parenting

Women highlighted the challenges of balancing caring for their children and building a future for themselves and their children.

The fear of losing custody of their children reduced some women’s willingness to engage with a service, as articulated in the following quote:

Never went to a service [for two years] because I knew the kids would have been taken off me ... the fear kept me from asking for

help ... I know everything is watched ... I know women who have brought their kids and social workers were on top of them and took them away ... a social worker is a heart stopper.

Participants who had multiple children in care spoke about wanting one dedicated social worker:

Trying to manage all the various people, social workers and foster carers, is actually making my life challenging – having just one social worker would be much better. There are so many reviews, so many case conferences.

Some of the women (42%) viewed services as unsafe and inappropriate places to bring their children:

I don't want my kid in there because everyone just wants the next fix; I don't want my kid listening to conversations in waiting rooms.

The women also identified lack of childcare as a barrier to attending services:

When I was trying to get into recovery before, I couldn't go to the day programme because there was no crèche for my child. I suppose it delayed my recovery for about a year ... my using was getting worse while I was waiting.

Housing and homelessness

The women who participated in this research clearly identified the lack of safe, available housing as a core barrier to progression:

Housing is huge – housing first, then the rest of the services. You can deal with the rest ... I would prefer my own place because I can be away from a dangerous environment with drugs and could get my child back and give them a safe place.

The women identified two system barriers that make it extremely difficult to secure accommodation: landlords being unwilling to rent property to Housing Assistance Payment (HAP) scheme participants, and the lack of savings for a rental deposit. These obstacles are captured in the quotes below.

Landlords don't want hassle to deal with HAP, they just want the money up front. The ones that do accept HAP have higher prices.

Not able to do it [pay] on my own and I need a bit of help ... financial and searching ... I have some of the deposit but not sure where I am going to come up with the rest of the money ... 50% of my income goes to rent at [service] ... so it is hard to save.

Criminal justice issues

Of the women who answered the question 'Do you want to stop offending?', 100% ($n = 18$) answered 'Yes'. Two-thirds of the women (66.7%) had been on probation.

The women were equivocal about whether or not contact with the Probation Service could assist them with not offending, with 29% answering in the affirmative and 37% saying that offending is a personal choice and not within the Probation Officer's control. The women who felt their Probation Officer could help them reflect a sense of support, mutual respect and genuine caring:

Yes, if you get the right one. Someone that listens but won't take excuses, who will call you out on your stuff and not let you get away with anything. But you know she was there for you if you needed anything. I will never forget my Probation Officer. She motivated me to do better because I cared for her.

Other women felt that their Probation Officer could not help them to stop offending:

I don't think there is anything that can be done to help – people can do it if they want.

Women cited lack of stability in their lives, mental health difficulties and fears for their safety as reasons for missing appointments with their Probation Officer.

I missed appointment because I had to go into town [to the Probation Office] – I was afraid I would be attacked by someone who could hurt me. Depression is also a cause. Sometimes it is hard to get out of bed.

A few women noted that Probation Officers could be flexible and accommodating when it came to appointments, while others were able to identify what would help them keep appointments: outreach-based appointments, consistency in appointment times and reminders by text or phone.

Some women stated that their primary needs in relation to offending were support in finding a rehabilitation placement and access to housing. They particularly noted that lack of detox facilities hampered their efforts at desisting from offending.

Drug and alcohol use

The women identified a number of key gaps in service provision in relation to drug and alcohol services, including adequate detox facilities, access to counselling and child-friendly services.

One woman spoke about what counselling could provide for her:

I need to have proper counselling ... Once a week would be enough. It would be the safe place I think I am missing. I need a place to go where I can talk. I need to trust them – need them not to be bound by the same restrictions as other services.

Other women were clear about the need for gender-specific services:

Women would benefit from women-only services – we would be stronger because when a man is around, he thinks he owns you ... I would be nervous with a man sitting there.

The women also identified the need for safe accommodation, appropriate to their needs, to support and facilitate their recovery from substance misuse.

Mental health

Self-identified mental health difficulties were prevalent among the group of women interviewees, with 65% acknowledging having mental health issues. The women identified a number of challenges in accessing mental health supports: timeliness of access to services, fear of child protection services and not trusting their service provider.

The women spoke about the need for swift access to services based on need:

I am on the waiting list because I missed my last appointment ... Depression makes it hard to get going ... I was feeling really bad one day and [the service] refused to see me. There is no one checking up on me. They should see you when you need to be seen, not when it is convenient for them.

The women also spoke about mental health and addiction simultaneously, underpinning the connection between the two in their lives. They referenced the need for services to work together:

I received [mental health] help to get me off [medication] and so I don't have a benzo issue anymore, but there are not enough places where you can get help for poly drug use. Treatment centres [for mental health] should be connected with detox and other services.

A number of women reported feeling judged by their general practitioner or mental health provider. They emphasised the need to be treated with dignity and respect:

I feel judged by my doctor. He is not helpful or honest. I don't trust him at [service]. I need someone to talk to confidentially who is understanding and who I can trust.

Poignant statements of being alone in their struggles were made by a number of women:

I feel particularly isolated ... left to me own devices.

The weekends are hard – there is no support at the weekend. This is when isolation kicked in for me.

Rating of service providers on key trauma-informed qualities

Both service-users and service staff were asked to rate service provision in relation to qualities associated with trauma-informed services. The women and staff were asked to rate on a scale of 1–5 – with 1 being 'not at all' and 5 being 'very much so' –the extent to which services made the women feel:

- (a) safe
- (b) cared for
- (c) understood
- (d) valued
- (e) respected
- (f) trusted.

The results are depicted in Figure 2. The women who participated were generally positive in their overall perception of drug and alcohol service providers, with scores averaging between 4.3 and 5.0 ($n = 22$) for all areas of the survey. In relation to feeling cared for, valued, and respected, the average was the maximum score of 5. Housing-related services scored in the average range between 2.5 and 3.7 ($n = 21$). The least well-regarded services were offending-related/criminal justice services, with scores ranging from 1.9 (poor) to 2.7 (average) ($n = 19$).

Figure 2. Service-user ratings of service providers

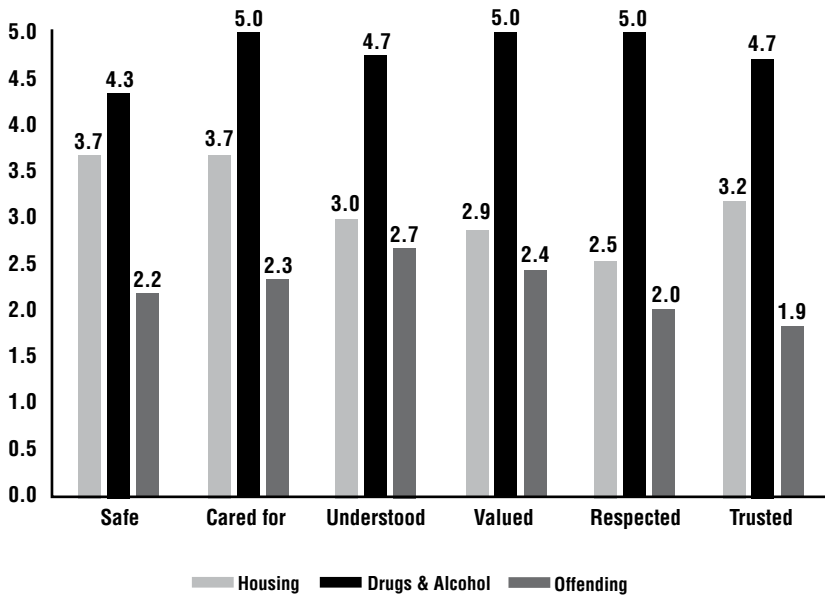
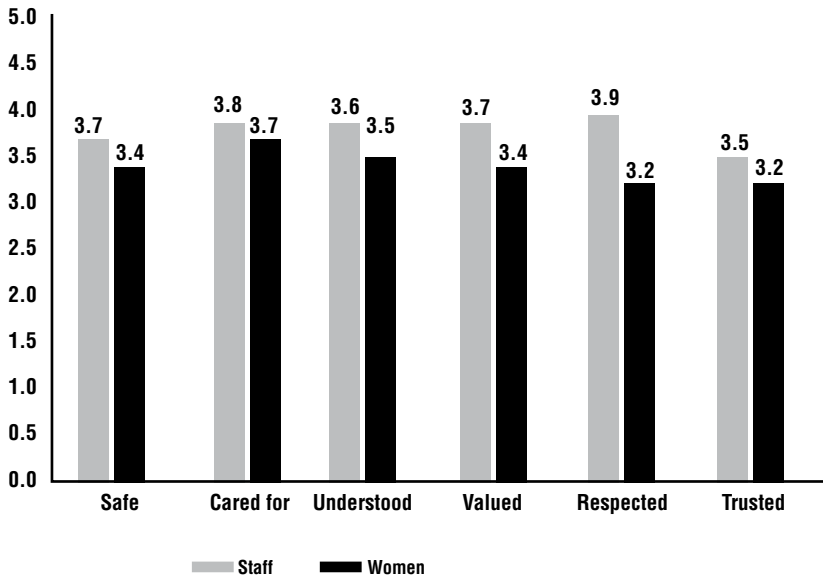


Figure 3 shows a comparison of service providers' ranking of themselves compared to service-users' ranking of the services against the same

qualities. The service provider scores are an amalgamation from all three types of service provider. In all cases, staff ranked themselves higher than the women ranked them on each of the qualities, with more marked differences in relation to their capacity to make women feel respected, and to a lesser degree safe, valued and trusted.

Figure 3. Comparison of service-provider and service-user ratings of services



Discussion and recommendations

The data in this research align with similar research nationally and internationally, concluding that people using homeless, addiction and criminal justice services are likely to be ‘unrecovered trauma survivors’ (Whitfield, 1998; Lambert and Gill-Emerson, 2017; Felitti *et al.*, 1998; Moore and Tatman, 2016). The current study identified that the participants had an average ACE score of 5; previous research indicates that a score of 4 or more is clinically significant, with increased risk for psychological and substance dependence disorders, homelessness and involvement with criminal justice systems (Taylor and Sharpe, 2008; Murphy *et al.*, 2014; Burke-Harris, 2015; Moore and Tatman, 2016; Birn *et al.*, 2017).

It has been well established that exposure to trauma has implications for brain structure, decision making, ability to engage effectively with services, and emotional regulation (Reim *et al.*, 2015; Jedd *et al.*, 2015; Hart and Rubia, 2012; Lambert and Gill-Emerson, 2017; Schore, 2003). Experiences of trauma frequently result in behaviours that can be considered aggressive, challenging, evasive and non-engaging. Services that incorporate knowledge about the impact of trauma on the brain and behaviour facilitate a better understanding of presenting behaviour; the client is no longer regarded as unwilling and difficult, but instead is perceived as unable and trying. Reinterpreting these behaviours as entirely understandable adaptive responses to unresolved trauma depersonalises the behaviour and improves staff responses, and ultimately increases the service's capacity to support traumatised clients (Lambert and Gill-Emerson, 2017; Huckshorn and LeBel, 2013). Providing training to staff to enable them to understand clients' behaviour through a trauma lens, and respond appropriately, is recommended.

Acknowledging the role of trauma in the development of substance misuse, mental health difficulties and criminality is not about providing an 'abuse excuse', but about developing new evidence-informed strategies for engaging with unrecovered trauma survivors.

There is also a very high correlation between ACEs and the likelihood of experiencing intimate partner violence in adulthood (Franchek-Roa *et al.*, 2017). A staggering 91% of women in the current study reported experiences of intimate partner violence, indicating a need to routinely screen women attending mental health, addiction, homeless, mental health and criminal justice services for intimate partner violence.

Thematic analysis of the research findings indicated that there is variance between the women's experience of the service they received and some service providers' perceptions of themselves in relation to key factors underpinning trauma-informed care, including feeling valued, respected, safe, cared for, understood and trusted (SAMHSA, 2014). This points to the potential value of services turning the lens of scrutiny away from the women and towards themselves, so that they might better understand their capacity to provide effective services to this cohort of women. It is recommended that services consider taking a whole-service approach, including assessment and corrective action, to the issue of trauma in order to provide an environment where their clients can engage, heal and grow.

Notwithstanding the small cohort involved, this research adds to the

international body of evidence on trauma and substance use, criminality and homelessness. The research highlights the need for health and community services to explore and implement trauma-informed approaches to ensure they can effectively engage trauma survivors, and women substance users in particular.

Since this study's completion, there has been some progress in relation to the recommendations outlined above. An action relating to trauma-informed care for services in Limerick has been included in the regional HSE Connecting for Life suicide prevention action plan 2017–2020 (HSE 2017). Additionally, Novas, a homeless service within Limerick, is developing a service standard and online training module to support organisations working with vulnerable groups to become trauma-informed. These developments are encouraging and will create opportunities for additional research and shared learning across a range of agencies who work to the shared goal of evidence-informed effective practice.

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Measuring Attitudinal Change: An Action Research Project

David Williamson, Stephen Roe, Darren Ferguson and Niamh Dooley*

Summary: Choice and Challenge is a 12-session offending programme based on a motivational cognitive behavioural therapeutic (CBT) approach, designed and implemented by the Probation Service Programme Development Unit (PDU) in 2013. The programme has been delivered in community and custody settings for four years. Pre- and post-programme attitudinal testing has been put in place from the outset in order to have some evidence of effectiveness and to assist in programme revision. Programme impact has been measured using the Crime Pics II questionnaire. Information was also collected on some participants in the six- to 12-month period following completion of the programme. Initial findings suggest that participant attitudes were positively impacted. However, the change has proved difficult to sustain and there are significant variations in terms of which attitudinal indices are best sustained. Victim awareness is the least eroded of the four measured indices. This paper provides a brief introduction to the programme, describes the design process and considers the implications of the findings for service delivery in the Probation Service.

Keywords: Probation supervision, recidivism, reoffending, antisocial attitudes, antisocial behaviour, crime, CBT, group work.

Introduction

The Probation Service has made an increasing commitment in recent years to the delivery of high-quality, evidence-based, structured programme interventions for targeted groups and individuals as part of their supervision. This includes a dedicated Programme Development Unit (PDU) with responsibility for the development and implementation

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of targeted intervention programmes, established in 2012. The PDU is located within the Bridge Project, a funded Probation project based in Dublin which also delivers interventions for male offenders convicted of serious violent offences in a joint agency initiative with An Garda Síochána and the Irish Prison Service.

The Probation Service staff in the PDU have dedicated training in group-work practice and the delivery of Service-approved programmes. Their time is divided between supervision, group-work delivery and their programme development tasks. The Bridge Project and Probation Service personnel had previously implemented a number of cognitive behavioural programmes since 2003, with varied results, and some of the principles that underpinned these approaches were used to inform the Choice and Challenge programme.

Choice and Challenge

A pilot of a new Choice and Challenge group programme with persistent medium-risk¹ offenders commenced in 2012. An internal evaluation of the programme identified challenges and obstacles concerning language, social context, and clarity in aims and focus. The evaluation also prompted development of a one-to-one structured programme, for implementation by Probation Officers as part of case supervision plans.

The core principles underpinning the Choice and Challenge programme are clearly stated in the programme introduction:

In comparing the attitudes, values, beliefs, opinions and behaviours of those who break the law in serious and frequent ways with those who have not, we know that there are key areas in which those who offend differ, in general, from those that do not. These are broadly in relation to –

- Feelings, thoughts and behaviours about criminal settings, persons and activities.
- Feelings, thoughts and behaviours about conventional settings, persons and activities.
- Empathy or sensitivity to the wishes, feelings and expectations of others.

¹ The Level of Service Inventory Revised (LSI-R) is the Probation Service-approved instrument used in risk prediction.

- Self-management and self-control skills.
- Sense of accomplishment and feelings of self-worth based on achievement in conventional pursuits.²

The importance of being able to deliver targeted interventions in relation to offenders is an accepted part of Probation practice. As Lipsey *et al.* (2001) noted in their meta-analysis of programmes:

CBT is indeed an effective intervention – treated offenders recidivated at a rate of about two thirds of the offenders in the treatment-as-usual groups with which they were compared. Moreover the most effective programmes reduced recidivism rates to around one third of the rate for untreated controls.

After major revisions and restructuring by the PDU, a further Choice and Challenge group programme was tested through practice by the designers, before being piloted in a number of teams across the country. Following feedback from participants and facilitators, the Choice and Challenge programme was further revised and was launched as an approved intervention programme in 2013.

The Choice and Challenge Group Programme comprises 12 sessions designed for adult male offenders. Participant selection criteria include a requirement that the participant be ‘group ready’ and stable in relation to addiction and mental health issues. There is emphasis on responsivity and awareness of specific learning needs and learning styles. Groups are co-facilitated by two Probation Officers (sometimes in conjunction with experienced staff from Probation-funded projects) and delivered either once or twice weekly.

The following is an overview of the sessions delivered to the participants on whose data the research was based: (i) Programme aims, overview and expectations, (ii) How people learn – learning and offending, (iii) Pro-social and anti-social thinking, (iv) Problem solving, (v) Thinking errors and self talk, (vi) Excuses and individual behaviour, (vii) Morality and hierarchy of offences, (viii) Use of time – high-risk situations, (ix) Victim awareness and victim empathy, (x) Crime responses, (xi) Goal setting and life choices, (xii) Review and action plans.

² *Choice and Challenge* – internal Probation Service document, 2013, p. 5.

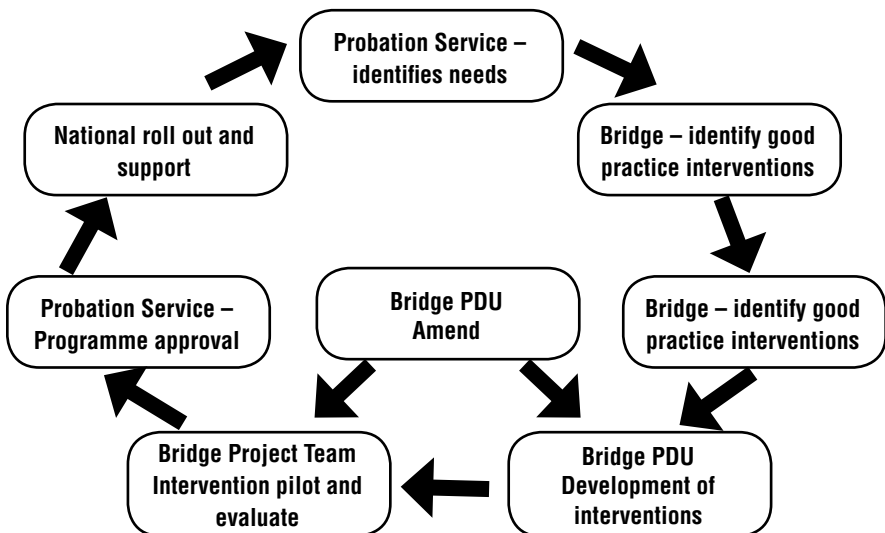
Programme design process

The PDU from the outset focused on issues of programme content, ensuring the appropriate integration of elements of effective programmes. In designing the Choice and Challenge groupwork programme, the PDU focused not only on programme content but also on consistent implementation and effective delivery. At the same time, the team was conscious of the broader challenges of the remit to implement a programme strategy, supporting the delivery of groups on a national basis across Probation Service practice.

As Leschied *et al.* (2001: 5) have noted, ‘Numerous researchers and practitioners now speak about the need for examining “technology transfer”; the application of what research has suggested can be effective and translation of the knowledge into routine correctional practice’.

In the design of Choice and Challenge the PDU team realised it would be essential that the programme have a strong sense of integrity and coherence. It would also be important to be able to assure staff charged with delivery of Choice and Challenge of its quality, benefit to practice and overall efficacy. To achieve this in the design and testing, the PDU used the process described in Figure 1.

Figure 1. PDU programme design process



A crucial element in the design process, following initial programme research, is to run a pilot Choice and Challenge programme in the PDU. Following the learning from that in-house pilot, the programme is further trialled in Probation teams with links to community-based projects. All learning, including user and facilitator feedback, is consolidated into the approved programme. A second incremental strand of design and implementation within the PDU formally identifies the duration of each programme so that there is an in-built redesign and evaluation timeframe. The Choice and Challenge programme was delivered for nationwide roll-out in 2013, with an agreed review and revision scheduled for 2018.

Research rationale

A key purpose in establishing the PDU was the option of undertaking action research in new practice initiatives and developments in order to measure and review effectiveness and impact. Action research is generally linked to organisational development. Sagor (2000) outlines a seven-step process for such research in educational settings which proved useful in formulating an effective action research model for the Choice and Challenge programme. As Maguire and Priestley (2000: 22) note, ‘the single most commonly reported finding of research is that many programmes are never evaluated at all and that numerous opportunities for providing information that would be valued by practitioners, managers and researchers alike are simply lost’.

The initial step in an action research process is the selection of a *focus*, which in this case was the improved impact of programme delivery. The second step is *clarifying theories*. The PDU designed the Choice and Challenge programme on cognitive behavioural therapy (CBT) principles delivered within a motivational framework. As Barnes *et al.* (2017: 613) note, ‘CBT programs that target criminal activity ... are also not simple analogues to traditional CBT programming, and may have several unique features. When dealing with an offender population, CBT treatment can integrate training focused on both interpersonal and social skills, two distinct skill-sets thought to influence the propensity to commit crime.’ Completing Choice and Challenge is not an alternative to supervision but an adjunct and support to supervision. This is an important cornerstone for all programmes designed in the unit.

The third phase is *identifying research questions*. The PDU wished to examine:

1. if the Choice and Challenge CBT programme delivered within a motivational framework impacted on attitudes in relation to offending
2. what attitudes, if any, were most positively impacted on
3. whether any potential changes were then sustained.

Following Sagor's (2000) model, the next steps were to *collect data* and to *analyse the data*, before *reporting results* and, crucially, *taking informed action*.

For the purpose of the action research model utilised in the Choice and Challenge programme, it was agreed that structured testing of outcomes should be incorporated in the programme delivery. The guidance for facilitators says that:

Participants should be subject to a testing process before and after the programme to measure differences in thinking and behaviour. This testing should be specifically related to attitudes and beliefs in terms of offending and will allow for longer term testing to examine if any positive changes can be sustained.

The standard general offending instrument for the assessment of risk of reoffending and need used in the Probation Service is the LSI-R. While the LSI-R has been extensively validated, its mix of static and dynamic factors and the recommended interval length between tests limited (in the PDU's view) its usefulness as an outcome measurement for the Choice and Challenge programme. LSI-R was used as a supporting measure and also in 'identifying treatment targets and monitoring offender risk while under supervision and/or treatment services'.

The PDU's hypothesis is that over time, programme completion, aligned with other supervision interventions, should lead to risk reduction. To measure the impact and effectiveness of Choice and Challenge's CBT based approach, the PDU sought an instrument that would reflect attitudinal change and a related change in thinking. On that basis the PDU elected to use Crime Pics II, devised by M & A Research (2008), as the primary measure for the action research on the Choice and Challenge programme.

As the Crime Pics II developers state, 'Traditionally, assessment of the impact of probation work has been made on the basis of simple

activity measures such as compliance levels or crude outcome measures such as reconviction rates' (M & A Research, 2008: 3). Crime Pics II was selected for its demonstrated validity and ease of administration. It addresses attitudinal change, providing the opportunity to assess the success of the probation intervention, including the Choice and Challenge programme. The introduction in the manual for the Choice and Challenge programme describes the use of Crime Pics II:

In the individual Choice and Challenge programme the selected tool is Crime Pics II, which is a validated tool measuring attitudes in relation to victim awareness, evaluation of crime as worthwhile, anticipation of further offending and general attitude to crime.

Research methodology

Between October 2015 and December 2017, 101 adult male participants who completed the Choice and Challenge programme responded to Crime Pics questionnaires. All participants were in either community or custody settings in Dublin.

The main purpose of the action research – to improve programme effectiveness – was explained to the participants. They were advised that the individual data from the questionnaires and the related scoring were not disclosed to supervising staff and had no direct impact on the course of probation supervision or operational decisions in custody settings. Any participant who did not wish to complete a questionnaire was not obliged to do so, and feedback to participants on their scores was encouraged.

The Crime Pics II questionnaire is in two parts. Four indices are measured in Part 1 (questionnaire items); the manner in which an offender scales a range of life problems is measured in Part 2 (problem inventory). The four indices measured in the questionnaire are: general attitude to offending (G), anticipation of reoffending (A), victim hurt denial (V) and evaluation of crime as worthwhile (E).

The questionnaire section contains 20 statements and the offender rates his response to each statement on a five-point scale: strongly agree, agree, neither agree nor disagree, disagree, strongly disagree. Examples of statements include 'In the end, crime does pay; my crimes have never harmed anyone; I always seem to give in to temptation; once a criminal, always a criminal'.

The problem inventory comprises 15 items relating to life issues: money, relationships, mental health, housing, etc. The respondent is asked to rate from four domains whether these issues are a big problem, problem, small problem, no problem at all. The raw data results are scaled using a conversion table in the Crime Pics II manual to produce a set of scores between 0 and 9. The higher the scaled score, the greater is the positive identification of the offender with the attitudinal index being measured.

At the end of the programme, Crime Pics II was completed a second time with each participant. The scores of those who did not complete the programme were not included. The question of non-completion of programme interventions and higher reconviction rates has been explored extensively (Palmer *et al.*, 2007; Wilson *et al.*, 2005; Lipsey *et al.*, 2001). One of the central questions it raised for the Choice and Challenge action research in reflecting on the findings was the level of motivation for completers v. non-completers, as much as programme design. As Palmer *et al.* (2007: 260) note in relation to improved outcomes for programme completers, 'The first explanation is that the treatment effect could be a selection effect, with programmes simply sorting out those offenders who would have done well, regardless of the treatment'.

For a small cohort ($n = 20$) who were still engaged with or available to the PDU team, a third Crime Pics II questionnaire was completed six months after the programme finished.

Each scale in Crime Pics II measures a different factor. The G scale is described as looking at a general feeling about offending. According to the Crime Pics II manual (p. 27), 'A person with a low G score believes that offending is not an acceptable way of life. In essence, they are saying "Crime is not for me".'

The A scale indicates the expectation by the person as to whether they will offend again. The lower the score, the greater is the expectation that offending will be avoided. The V scale indicates the level of acceptance that there has been an adverse effect on victims by the person's offending. The Crime Pics II authors accept that the nature of offending is likely to have an impact on scoring in this scale. Scale E explores the person's consideration of crime as worthwhile and is, in effect, a form of cost-benefit analysis. The P scale is a self-reporting scale that gives a sense of the problems that the person feels they are facing in life.

In practice, Crime Pics II can be applied to identify attitudes that require attention and the areas that present problems for the person. If

one sees improvements in terms of attitude resulting from programme intervention, improvements in self-reported problems can be anticipated.

Findings from data

The average age of those who undertook and completed the programme and were measured by Crime Pics II was 32.8 years. Accurate criminal records were gathered in relation to 88 of the 101 completers and showed a range from 1 to 379 convictions and an average of 47.6. Removing the highest and lowest scores, the average for the remaining 86 participants was 44.5 offences. This indicated that many but not all of those engaged in the Choice and Challenge programmes had well-established pro-criminal attitudes and had been involved with the criminal justice system for a number of years.

There were, however, instances of regression within scores as well as scores that remained constant. The regressed scores were broadly clustered within some individuals but, given the relatively small percentages and size of the group for whom we had complete data, it was not possible to draw any conclusions as to what factors may have influenced the regressions.

A review of LSI-R scores for those completing the programme and included in the review showed that the majority of those for whom assessments were completed (95/101) were in the moderate risk of reoffending category in the year following assessment (47/95), with 33 placed in the high-risk category and 15 in the very high category.

The findings for participants for whom Crime Pics II was completed pre- and post-programme showed an overall positive improvement across the four attitudinal indices and also in the ranking related to perceived problems within their lives (Table 1, Figure 2). Participants among whom regression was noted started at lower levels than the general completers of the programme, as noted in Table 2 and Figure 3. There were also instances with no change in scores across the group. There were 8 instances of static scores for scale G, 9 for scale A, 15 for scale V, 4 for Scale E and 11 instances on the problem inventory scale.

For the static instances on scale G the average score was 1.1, while it was 5.8 for scale A, 1.4 for scale V, and 2.7 for scale E. For 13 out of 101 completers on scale G there was no improvement: attitudes either remained static or regressed. 19 out of 101 scale A (Anticipation of further offending), 21 out of 101 scale V (Victim hurt denial), 15 out of

101 scale E (evaluation of crime as worthwhile) and 22 out of 101 scale P (Problem inventory) indicated no improvement.

Table 1. Overall Crime Pics scores

<i>Category</i>	<i>Pre</i>	<i>Post</i>	<i>% of group</i>
G	0.2	2.4	5.05
A	1.6	4.7	10.1
V	1.7	3.5	6.06
E	2.6	5.3	11.1
P	3	4.5	7.9

Figure 2. Attitudes to crime before and after Choice and Challenge programme

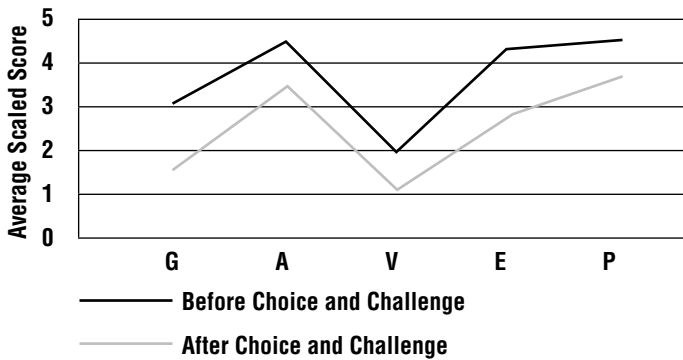
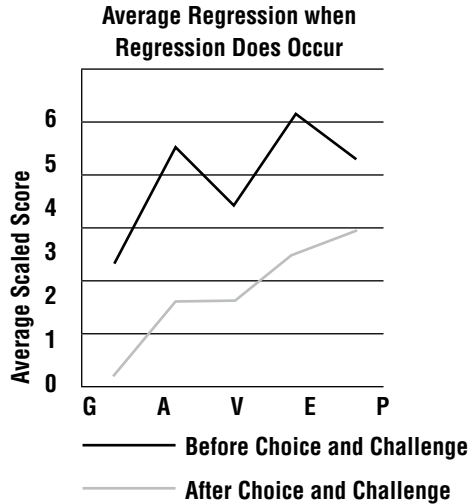


Table 2. Overall changes in indices

<i>Category</i>	<i>Pre</i>	<i>Post</i>	<i>% of group</i>
G	0.2	2.4	5.05
A	1.6	4.7	10.1
V	1.7	3.5	6.06
E	2.6	5.3	11.1
P	3	4.5	7.9

Figure 3. Regression changes

The most significant negative scores in the Crime Pics II attitudinal scales were in relation to scales A (Anticipation of reoffending) and E (Evaluation of crime as worthwhile). Interestingly, victim hurt denial was the lowest scoring index, both pre- and post-testing.

For a small number of those who completed the programme and were available, a third Crime Pics II assessment was completed six months post-programme (Table 3). Given that this sample represented only 20 of the 101 programme completers, and that by and large those available for a third test had remained either engaged with or available to the PDU team, findings must be interpreted cautiously.

Table 3. Third test averages

Scale	Pre-programme	Post-programme	6–12 months	% change 1–3
G	3.4	1.4	2	–41
A	4.6	3.5	3.6	–20
V	1.3	0.4	0.5	–61
E	4	1.6	2	–50
P	4.2	3.2	3.5	–16

Discussion

The goal of undertaking this action research was to look more closely at whether and how the Choice and Challenge programme was able to deliver on the goals of changed behaviour and reduced recidivism. We also wished to consider how we could use and incorporate the findings in programme revisions and fulfil the Probation Service goal that interventions should be evidence-based.

The initial action research findings show that the Choice and Challenge programme has the capacity to deliver behavioural change centred on challenging pro-criminal attitudes. For the 101 people who completed the Choice and Challenge programme over the course of the study, there were significant improvements in measurable attitude scores as well as a reduction in their self-perceived difficulties.

These improvements ranged from a 54% improvement in general attitude to offending scores to a 16.2% improvement in the level of life difficulties reported. The programme interventions do not target the structural challenges that most offenders face in making change and, especially, in the development of secondary desistance and new identities. However, provision of a well-researched, CBT-based targeted programme, delivered within a motivational framework, could provide what King (2013: 147) identified as a Probation supervision task in 'helping to develop particular skills and capacities that are likely to be of assistance during the desistance process'.

There is no simple relationship between life problems and offending. While positive changes in thinking patterns and attitudes may improve coping capacity and increase positive life chances, factors beyond the impact of the individual's thought and action will be in play. What a person feels to be a significant or non-significant problem in their lives is likely to be impacted by how they manage a problem and their personal resources just as much as it is related to the actual dynamics and objective scale of the problem.

In examining the Crime Pics II G scale and how it measures the extent to which an individual feels that they want to move away from crime or that crime 'is not for them', the findings appear impressive. When static and regressed scores are excluded there is an improvement from 51.83% to 61%. The Choice and Challenge programme appears to have significantly impacted the completers' attitudes and thinking scores. When regressed and static scores are excluded, the improvement grows from 16% to 32% on the Crime Pics II P scale.

These results must be qualified because they only include data for those who completed the Choice and Challenge programme. They do not include full statistical returns for individuals who failed to complete the programme. Those additional data would have provided a greater understanding of the range of any impact.

One group for whom attendance was compulsory and with an added incentive to comply were participants released from custody under the Community Return scheme, an early release from custody initiative, serving between one and eight years.

Those participating in the Community Return Programme are granted reviewable temporary release having served at least 50 per cent of their sentence and following an individual assessment process. Factors considered at the assessment process include progress during custodial sentence (behaviour while in prison and engagement with services), risk to the community (the nature of the offence and previous offending), and resettlement stability (accommodation status upon release, addiction issues and medical suitability). (McNally and Brennan, 2015: 141)

Community Return participants have to complete community service obligations as well as having reporting conditions for 50% of the balance between the date they commence on Community Return and the completion of their sentence. Research has shown that ‘Almost 89 per cent of prisoners released on the Community Return Programme since its commencement have completed or are completing their supervision successfully’ (McNally and Brennan, 2015: 156).

It is also important to note that, as engagement in the Choice and Challenge programme was voluntary in most cases, participants were more likely to have had potentially greater levels of motivation. Reviewing the starting Crime Pics II scores shows that completers averaged 3.1 on scaled scores for the G scale, with the highest possible score being 9. This would suggest that the completers were, potentially, already in the process of positive change. Healy and O’Donnell (2008: 25) say, ‘[that] the majority of offenders eventually terminate their criminal careers is a criminological truism. The “age–crime curve” shows that by the age of 28 most have ceased to be involved in crime.’

Findings provided an opportunity to explore the correlation between being ready for and wanting change and actually making those changes.

The scores for the completers on scales A (anticipation of reoffending) and E (evaluation of crime as worthwhile) are higher than those for the G scale, at 4.3 and 4.2 respectively. While the E scale score shows an improvement of 33.3% to 2.8, the A score shows only an improvement of 20% to 3.4 for all completers. When static and regressed scores are removed, the results are considerably more positive, with a 54% improvement on the A scale and 52% improvement on the E scale. Looking at the small sample of regressed completers' scores, these results are reversed. The 10.1% (A) and 11.1% (E) for regressed completers reflect negative scores increased by 193% and 103% respectively.

These findings fit with other studies that indicate significant differences between an offender's stated desire for change, which we would broadly associate with the G scale, and their belief in their own capacity to change or their agency, associated with the A scale (Burnett, 1992; Farrall, 2002; Healy and O'Donnell, 2008). In our view the E scale reflects at least ambivalence in relation to the value of offending.

These two scales would appear to be key measures of the likely progress in desistance for a programme completer, given that simply wanting a change in direction, in the absence of any level of personal agency, limits the likelihood of success. Ambivalence about the benefits of offending and motivation to change makes positive change more difficult to sustain. Programme design should promote delivery using a motivational perspective and facilitators need to be competent and confident in how they deliver the programme with that perspective.

In the Crime Pics II V (victim hurt denial) scale, the average pre-programme score for all completers was 2, with a post-programme average score of 1.2, showing a 40% improvement. This pre-test score was the lowest across the five scales, supporting the possibility that the relative success of the programme in attitudinal impact could be a selection feature. Even if this proved to be true, the role of the programme in supporting the process of initial desistance and building support for secondary desistance is still very important and significant.

Removal of regressed and static scores produced a pre-test average score of 3.3 with a post-test score of 1.1, indicating a 67% improvement. For those who regressed, 6 of the 101 completers, their scores went from 1.7 to 3.5. There were 15 static completers in this scale, with a score of 1.4. Overall, there was a score improvement for 80% of those completing the programme.

The victim awareness input to the Choice and Challenge programme, where completed, contributes to improved attitude scores. The victim hurt denial score level begins from a generally positive base. There also appears to be a weak correlation between levels of victim awareness in those completing Choice and Challenge programmes and the changes in anticipation of further offending and evaluation of crime as worthwhile.

For particular offence types involving individual targets, there may be a strong rationale for greater victim awareness input. As Burrows (2013: 384) puts it when reflecting on the historically weak voice of victims in the criminal justice system, ‘this position has been increasingly challenged by a variety of voices which have sometimes been collectively termed “the victims movement”’; Burrows adds that there has been a culture shift in which victims are ‘increasingly seen as consumers of the criminal justice system’.

In revising the Choice and Challenge programme it will be important to take account of not just these findings but also the Probation Service commitments to victims, as reflected in the Service’s Victims Charter. The Victims Charter says the Probation Service will ‘make sure that any community-based programmes are sensitive to your concerns and aim to prevent reoffending’.

Rather than increasing the direct programme input in relation to victims, best results may be achieved by ensuring that programme elements address issues highlighted on the Crime Pics II E, A and G scales. As Burrows (2013: 386) argues, ‘victim awareness work targets knowledge (for example the consequences of offending for both specific and potential victims, attitudes/cognitions (including denial and minimisation), and emotions (for example encouraging offenders to care or develop empathy)’.

The results from the small cohort available to complete Crime Pics II 6–12 months after completing the Choice and Challenge programme comprise only 20 of the total completers. It is difficult to draw strong findings since the sample is small in number and contains some for whom supervision was intensive as well as others subject to ‘ordinary’ supervision. Two participants had been returned to custody within the period, while others had progressed to low-intensity supervision. Overall, the results show that the Crime Pics II A, E and V scales remain the lowest, indicating that even with slippage from early gains the awareness of victim hurt remained high.

Conclusion

The inclusion of pre- and post-programme testing is an indicator of good practice in programme delivery. Scores reviewed on an individual level provide a focus for both one-to-one and group supervision. It is also important to look at trends and patterns within pre- and post-programme scores, and to use findings to inform programme content and issues of responsivity together with feedback from focus groups and programme reviews. The PDU has used these research findings for this purpose.

Because of the short time frame for the action research project and limited access to confirmed data on new charges and reoffending, it was not possible as part of this project to report fully on participant behavioural change and recidivism. This gap is worthy of attention in a future research study.

When the action research commenced, the PDU team had not fully anticipated the wide range and review that followed. The process reinforced the importance of the integration of evaluative tools into the design of effective programmes. It also highlighted the challenges of managing and coordinating operational resources and systems in order to meet that objective.

The final step for the action research project, using Sagor's (2000) framework, is the taking of informed action. Some actions, such as the revising of the Choice and Challenge programme and improving data gathering, lie within the scope of the team. The findings of this study will inform the overall review of the programme this year. Steps have been taken to enhance the sessional content in relation to supporting and building offender agency, a key learning point from the findings. The findings in relation to victims were encouraging, particularly at a time when the Probation Service and the wider criminal justice system are working to respond more effectively to the needs of victims. The possibility of an increase in the victim focus is a current subject under discussion and raises interesting questions. As Burrows (2013) notes, 'Although the imperative to undertake victim awareness work is apparent, the actual concept of "victim awareness" is not always as clear'.

In designing and delivering the Choice and Challenge programme, the PDU has taken a very concrete step to embed action research into the overall programme process. The findings have demonstrated positive and measurable attitudinal changes across a range of indices. In addition to informing the current review of the Choice and Challenge

programme, this action research project has provided a blueprint for further research within the Programme Development Unit. It will also contribute to informing wider decisions in the organisation regarding the development, design and delivery of best-practice interventions throughout the Service.

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Book Reviews

Bad Psychology: How Forensic Psychology Left Science Behind* **Robert A. Forde**

London: Jessica Kingsley, 2018

ISBN: 978-1-78592-230-5, 304 pages, paperback, £9.99

I attended an interdisciplinary meeting a few years ago where a packed audience discussed criminal justice responses to juvenile offenders. At one point during the proceedings, a long-established and well-respected judge leaned across the table and said to me ‘I remember when it was just you and me’. I knew what she meant because, as little as 30 years ago, there were few psychologists, academics, community workers or youth workers involved in justice matters, either juvenile or adult; there was the judge and the Probation Officer, and sometimes parents and grandparents.

Fast-forward 30 years and the ‘field’, both of criminal justice processes and of commentary, has become very crowded. We now have various experts giving definitive (but often contradictory) explanations about what works in addressing criminal behaviour, reducing recidivism and protecting the public. One group of professionals who have gained considerable stature and influence is forensic psychologists, whose impact has gone beyond their own discipline and is largely determining how crime and criminality are viewed, understood and responded to by both psychologists and Probation Officers.

In his book *Bad Psychology: How Forensic Psychology Left Science Behind*, Robert Forde systematically challenges some of the principal orthodoxies about crime and criminality which are advanced by prominent elements within forensic psychology. He methodically, and critically, reviews the scientific support for each element of the forensic psychologist’s task: risk

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assessment, case formulation, intervention, evaluation and communication, devoting a chapter to each.

For the purposes of this review, I am going to concentrate primarily on what Forde says about risk assessments and interventions, principally because these areas of work are most relevant to probation practice.

Forde argues that many of the risk assessment tools used in forensic psychology and probation practice do not measure what they purport to measure; he makes the point that 'risk' is a statistical judgement about a group of people, not a personality characteristic (p. 65) and that applying statistical predictors based on groups to individuals is inherently flawed (p. 73). He further states that actuarial risk assessment tools achieve the best predictive accuracy in risk assessment, and contends that introducing clinical or professional judgement into the equation diminishes the accuracy of the assessment because it introduces bias. Forde bemoans what he refers to as the fixation on risk assessment, claiming that it has 'aspired to the level of accuracy desired by politicians and policymakers, rather than to a level consistent with the evidence about what is actually possible' (p. 267).

It is perhaps in describing how forensic psychologists intervene to reduce the risks of reoffending that Forde is most forceful. He reserves most of his scorn for cognitive behavioural programmes (CBPs), which, he says, are not supported by the scientific evidence. These programmes are based on the premise that it is possible to change people's behaviour by changing their attitudes and beliefs. Forde has a number of fundamental difficulties with this assertion; he refers to the work of Sir Frederick Bartlett on schemata, the structures in the brain that underlie attitudes and beliefs, which are not directly observable or reportable, but which influence how we interpret our world, and consequently our behaviour. He also likens the efforts of CBPs to change people's behaviour by changing their attitudes and beliefs to brainwashing and the 'thought reform' techniques adopted by communist China to 're-educate' Westerners (p. 115). These 'thought reform' programmes were, of course, ineffective and any perceived changes in attitudes and beliefs dissipated as soon as people left China.

Forde is very critical of the 'one size fits all' approach in which psychologists use a professional override to consider clients suitable for programmes they would not otherwise be recommended to attend. He believes that some people are inappropriately detained in custody to complete treatment programmes when there is no evidence to suggest

that the programmes reduce risk, and that others are released from prison, having completed the requisite number of programmes, without any proven reduction in risk.

One of the most damning assertions that Forde makes is that ineffective CBPs are being maintained by individual and commercial considerations – what he refers to as the ‘offender behaviour’ industry – and that both clients and the public are badly served as a result. He says that many of the programmes have not been properly evaluated, and those that have indicate little or no treatment effect.

Forde argues that prison psychologists in the UK (and Probation Officers too, although he does not set the same professional standard for probation!) are not aware of the current up-to-date research, and that their practice is seriously faulty as a result.

One of the interesting secondary themes in the book is the treatment meted out to people who question the commonly accepted orthodoxy of what is effective in assessing and reducing risk in forensic psychology and, by extension, probation practice. Forde describes the tendency to ‘shoot the messenger’ rather than engage in constructive and challenging professional debate. This is a serious concern. Closing down discussion is like declaring with certainty that ‘we know what works; now let’s get on with it’. While this view does emanate from some quarters, it is certainly not one that I share. I believe that the route into crime involves complex processes at individual, family, community and societal levels; surely, effectively supporting desistance from offending also requires interventions at those levels.

One aspect of the dominant paradigm in forensic psychology and probation practice that I have struggled with in recent decades is the propensity to locate most of the causes of criminality within the individual, family and community domains. Structural issues of poverty, marginalisation and state neglect do not feature in what has become the dominant analysis or lexicon. This imbalance will not be addressed until we can at least create safe spaces to have the professional and constructive debates and discussions that are so badly needed at this time.

While Robert Forde’s book is not the last word in forensic psychology, nor is it intended to be, it certainly deserves to be read. Those of us working in the criminal justice arena, whether as psychologists, social workers, Probation Officers or academics, owe it to the people we service to create safe and constructive spaces for the discussions and debates to be held.

Why Punish? An Introduction to the Philosophy of Punishment*

Rob Canton

Basingstoke, UK: Palgrave Macmillan, 2017

ISBN: 978-1-137-44902-3, 242 pages, paperback, €37.99

Why as a society do we feel the need to ‘punish’, and what has shaped our beliefs? What do we mean by punishment? All too often, we hear public comments about those who have offended such as *lock them up ... throw away the key, prisons are like hotels, and bring back capital punishment*. Comments such as these can appear to come from a desire to see retribution rather than rehabilitation.

Rob Canton’s most recent book provides an in-depth exploration of themes such as retribution, deterrence, rehabilitation and desistance, incapacitation and risk, and restorative justice before offering a critical analysis of the limits and perils of punishment. It encompasses a wide-ranging discussion of the purposes, meanings and justifications of punishment for crime and the extent to which punishment does, could or should live up to what it claims to achieve. At a time when probation practitioners and those working within criminal justice are often faced with questions about ‘soft justice’ or ‘tough justice’, this book prompts important questions and reflections about what ‘better’ punishment might look like.

Canton examines ‘the sociological inquiry’ (Chapter 2) and considers the influences from anthropology, psychology and other social sciences, exploring how societies, historical and contemporary, respond to ‘wrongdoing’ and the origins of punishment. He challenges the reader to question rhetorically this age-old, complex debate in society: ‘punishment is justifiable because only through punishment can harm perpetrated against the victim be properly acknowledged, the wrongdoing adequately vindicated’, and ‘by one mechanism or another [punishment] reduces crime’.

Canton inspires the reader to reflect on the extensive arguments in relation to punishment, utilising a number of perspectives, including sociological, political, philosophical and ethical, to consider if indeed there is justification for punishment. As importantly, we are asked to consider if it achieves the desired outcomes. These perspectives are clearly outlined by Canton in a manner that stimulates critical thought and ensures that the reader comprehends the narrative.

* Reviewed by Kate Tyrrell, Area Manager, Probation Board for Northern Ireland (email: kate.tyrrell@pbni.gsi.gov.uk).

Why Punish? is an excellent read for students of philosophy, criminology, crime and deviance, or indeed professionals who work in the wider criminal justice arena, including the judiciary. However, disciplines such as sociology and social policy and the decision-makers in government would also benefit from this book, to enable critical analysis of the purpose and role of punishment and the impact on society, victims and perpetrators of crime.

Ultimately, Canton challenges the reader to deliberate on outcomes for all those affected by punishment and the cost of it, ethically and morally. He challenges us, as a society, to consider *why ought we to punish* rather than *why we punish*. His book provides various insights through a number of theoretical perspectives that are easy to understand and follow for both students and practitioners, either new to this arena or experienced.

Canton challenges the reader in Chapter 10 'to really think about types of punishment and outcomes'. I found myself reviewing current approaches to managing offenders and where we sit ethically, in relation to balancing 'Human Rights legislation' with 'protecting the public from harm'.

I am proud to be part of an organisation that is consistently exploring a balanced approach to 'punishment' and seeking innovative interventions, such as Enhanced Combination Orders as an alternative to short-term custodial sentences, and problem-solving approaches such as PBNi's new approach to managing domestic abuse and the facilitation of service user forums. These approaches are designed to counteract what Canton refers to as the 'otherwise limited capacity of punishment to achieve its objectives'. Canton also emphasises the importance of consistency in the application of punishment in the wider context.

As someone who has worked in the criminal justice field for over 20 years and a former student of social sciences, I found that the hypothesis proposed in Canton's book unfolded in succinct chapters that were easy to follow. The book achieves its objectives and motivates the reader to contemplate critically the function of punishment and the moral and ethical principles that reinforce various cultural approaches to the abstract that is 'punishment'.

The reader is encouraged to consider alternative options for punishment, and how it can be made more effective and achieve the desired outcomes for society, victims and offenders, which encompass a moral compass. Canton also explores the political challenges for the policy-makers.

Canton states that ‘a great deal of writing on the philosophy of punishment is too detached from the realities of policy sentencing and implementation’. This is reflective of a wider challenge faced by practitioners in the field of justice, in attempting to balance the conflicting dynamics of care and control. Rehabilitation programmes incorporating education and restoration must be mindful of that challenge. The public and media require evidence that offenders are paying their debt to society in addition to engaging in prosocial, reintegrative activities.

Canton believes that, alongside the innate human characteristic to punish, is the urge to ‘reconcile or seek forgiveness’. This reflects my own experience of working in ‘restorative justice’. Canton highlights the perspective that can empower both the injured party and the defendant and is a positive example of what better punishment looks like ‘for all parties’.

Canton notes that ‘victims rarely feel their experiences vindicated in a courtroom’, which is reflective of the adversarial system in our society, a theme that is also explored in his 2013 article on ‘The point of probation: on effectiveness, human rights and the virtues of obliquity’¹ and is expanded here. Canton refers to the shortcomings of formal systems that fail to respond adequately to victim issues and the consequences of this for all parties.

Canton draws attention to the importance of remorse in the prevention of reoffending and explains that remorse is not always immediately achievable but rather can be a process towards accepting responsibility and gaining insight into the offence and empathy.

The Human Rights Act has two key principles. Firstly, the rule of law: rights are subject to a limited amount of interference from the state in defined circumstances that benefit society as a whole and not one individual. Secondly, proportionality decrees that individual rights should be exercised in a way that is proportional to the needs of society. Canton captures the essence of this in Chapter 6. He also encourages consideration of the wider impact of punishment on communities, families and children.

This book highlights the fact that legislation and criminal justice policies are not driven by any specific ideology but rather are underpinned by an eclecticism of disciplines. Canton’s introduction to

¹ ‘The point of probation: on effectiveness, human rights and the virtues of obliquity’, *Criminology & Criminal Justice*, vol. 13, pp. 577–593.

the philosophy of punishment uses an analytical lens to reflect the range of approaches to punishment that prevail in numerous cultures both historically and contemporarily. The reader is challenged to consider the aim of 'punishment' and deliberate on whether it meets the objectives of a modern society.

I enjoyed this book; I found it to be an interesting and motivating read, which will evoke necessary reflection whether you are involved in the criminal justice domain, or interested in philosophy, or if the concept of a balanced, ethical society is important to you. You will be compelled to contemplate retribution, prevention and rehabilitation, with much to dwell on.

Canton reinforces the real importance of reflection with regard to 'why we punish', considering what this should look like, and questioning if it is always fit for purpose. As a society, are we achieving the intended outcomes from our current penal system?

Rehabilitation Work: Supporting Desistance and Recovery*

Hannah Graham

Abingdon, UK: Routledge, 2016

ISBN: 978-1-138-49945-4, 226 pages, paperback, £36.99

Hannah Graham's book is a unique and important addition to the study of rehabilitation and desistance theory. It provides an empirical examination of the interface between processes of desistance from crime and substance misuse and the implications for rehabilitation work, from a practitioner's perspective. It uses research from Australia to discuss the culture and conditions practitioners inhabit and examines why significant numbers of practitioners are leaving the field of alcohol and drugs or are on long-term leave. It provides valuable insights into how practitioners manage complex working environments, including organisational structures and culture, and how this impacts on the day-to-day rehabilitation work in criminal justice settings.

Given that criminal justice agencies across these islands are working in an environment of continuing organisational change and budget constraints, this book provides an important insight into the reality faced by many practitioners working at the coalface. Hannah Graham asks two fundamental questions: What are the perspectives, experiences and

* Reviewed by Fergal McMahan, Probation Officer, Probation Board for Northern Ireland (email: Fergal.McMahan@pbni.gsi.gov.uk).

culture of practitioners working in the field? How do these shape rehabilitative processes in working with people, with complex needs, to support their desistance and recovery? In short: How do the culture and conditions of those working on the front line impact the delivery of rehabilitation and the promotion of desistance?

Chapters 1 to 4 provide the rationale for this book, and critically review the international literature of desistance and recovery work. The publication highlights the adoption and dominance of the medical model in recovery and desistance work. This is contextualised by exploring the de-institutionalisation process which occurred post-Second World War in Western Europe and North America. The philosophical, social, economic and political context of this process is explained. The legacy of these dynamics is explored as it is recognised that they have produced the current macro-theoretical perspectives, namely risk, desistance and recovery paradigms, from which the Risk–Need–Responsivity and Good Lives models have emerged.

Chapter 3 provides a critique of tools and models of ‘evidence-based practices’. This analysis considers whether these are desistance- or recovery-oriented models. It reflects on the duality and interconnectedness of professional intervention and informal care *outside and beyond* the scope of formal intervention. The chapter concludes by recognising the value of both, and describes how one approach relies on the other.

Chapter 4 promotes an understanding of the use of critical realism as an analytical strategy in understanding and reflecting on the dynamics associated with desistance and recovery and people involved in those processes. The latter half of this chapter defines and clarifies language and concepts used in the rest of the book.

Chapters 5 and 6 outline the research with criminal justice and recovery workers, beginning with an analysis of demographics and dynamics of those working with substance misuse in Tasmania. There is also reference to other jurisdictions. The role of professional ideology, rehabilitation models and theories, and values is explored, with some consideration of the associated dynamics at play – for example, institutional and sectoral dynamics and demands. The themes and issues that emerge include professional dominance, sectoral politics, and the differences between clinical and non-clinical practitioners and government and non-government workers.

Chapter 7 begins with an exploration of collaboration in working with people with complex needs and provides examples of good practice. It

identifies tensions in this process, as would be expected from the challenges of collaborative working, and identifies the strengths and benefits of shared working. The chapter concludes by advocating for closer and more strategic collaborative working as a way forward.

Chapter 8 provides a theoretical analysis of Chapters 5–7 and employs the concepts of Pierre Bourdieu, a twentieth-century philosopher and sociologist, as a framework to think about the work at hand. Issues explored are the stigmatisation of the work and workforce, the precariousness of the profession, professional identity (crisis) and the meaning of professionalism.

Chapter 9 consolidates the key themes and findings of the book; it calls for further research into how exactly the helping process works. Apart from emphasising the need for a coalition of committed helpers to defend and promote the helping professions, this book identifies the need for further research in jurisdictions outside the UK and USA, and underlines how the findings in this work are transferable to other neoliberal societies globally, especially when contextualised within the reality of increasing substance misuse.

Dr Graham combines professional social care discourse and research, practitioner interviews and workforce data to produce a joined-up understanding of the dynamics at work in the process of recovery within criminal justice practice.

Her work is informed, reflective and thought-provoking, and, I would argue, essential reading for the conscientious professional seeking to understand and develop best practice in these fields. It will also benefit those interested in advancing effective social care practice, and underlines the continued relevance of social work in criminal justice practice.

In addition, any student of criminal justice and/or recovery work will find this work valuable because of the author's exhaustive exploration of the relevant theories (particularly their philosophical and political context), and how these have contributed to the development of instruments used to assess, intervene and help the service user.

For me, the key to this book's relevance is its examination of the interplay between desistance and recovery discourse and practice, and the gaps between what is supposed to happen and what actually happens in *real-time* interventions.

The book's presentation, structure and style are clear and accessible, making reading it an enjoyable experience. As an attempt to advance

knowledge and practice in the relevant fields of enquiry as opposed to being an extended report on research, this book has clearly succeeded. As the author admits in her introduction, one (ironic) consequence of the process of producing the book was that it became not only a study of practitioners working with people with complex needs, but also a vehicle to understand the practitioners as people with complex needs, deserving of support, while they do difficult, challenging, often crisis-driven change work. This in itself should encourage those working in probation and criminal justice organisations to read this work, and think about its relevance to their own agency culture and the environment in which they work.

The practitioner and the policy-maker alike will find this work useful as a vehicle to understand and contextualise the interplay between crime and drug misuse, and the professional voice and role in intervening to promote effective helping methods and the philosophy underpinning this work. Graham skilfully highlights the familiar themes of the importance of good collaboration and communication between workers in the field, and identifies the challenges inherent in the helping professions' sphere of influence at a time when the developed world appears to devalue helping people who have not had the best chance in life.

General Information & Guidelines for Contributors

IPJ, a joint initiative of the PS and the PBNI, aims to:

- Provide a forum for sharing good theory and practice, increasing co-operation and learning between the two jurisdictions and developing debate about work with offenders.
- Reflect the views of all those interested in criminal justice in an effort to protect the public and to manage offenders in a humane and constructive manner.
- Publish high-quality material that is accessible to a wide readership.

IPJ is committed to encouraging a diversity of perspectives and welcomes submissions which genuinely attempt to enhance the reader's appreciation of difference and to promote anti-discriminatory values and practice.

Preliminary Consultation: If you have a draft submission or are considering basing an article on an existing report or dissertation, one of the co-editors or a member of the Editorial Committee will be pleased to read the text and give an opinion prior to the full assessment process.

Submissions: Contributions are invited from practitioners, academics, policymakers and representatives of the voluntary and community sectors.

IPJ is not limited to probation issues and welcomes submissions from the wider justice arena, e.g. prisons, police, victim support, juvenile justice, community projects and voluntary organisations.

Articles which inform the realities of practice, evaluate effectiveness and enhance understanding of difference and anti-oppressive values are particularly welcome.

Submissions (in MS Word attachment) should be sent to either of the co-editors.

Gail McGreevy, PBNI
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Ursula Fernée, PS
UGFernee@probation.ie

Originality: Submissions will be considered on the understanding that they are original papers that have not been published or accepted for publication elsewhere. This does not exclude submissions that have had limited or private circulation, e.g. in the writer's local area, or as a conference paper or presentation.

IRISH PROBATION JOURNAL is a peer-reviewed publication. The following types of submission are considered.

Full Length Articles: Normally around 3,500–5,000 words, though all contributions up to a maximum of 7,500 words including references will be considered.

Practice Pieces: Shorter practice pieces are very welcome. These offer an opportunity to describe a recent piece of practice, practice-related issues or recent practice developments in brief. Ideally around 2,000–3,000 words including references; 4,000 words maximum.

All *full-length articles* submitted to the journal are anonymised and then subjected to rigorous peer review by members of the editorial board and/or editorial advisory board and/or by appointed specialist assessors. The final decision to publish or reject is taken by the editors in the light of the recommendations received.

All *practice pieces* will be considered and a link-person from the editorial committee will be assigned to liaise with the author. The final decision to publish practice pieces will be taken by the editors.

More detailed guidelines for contributors are available from the Editorial Committee on request and should be followed when making submissions.

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