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## Editorial

This year is the centenary of the path-finding Probation of Offenders Act 1907. It is recognised as a significant landmark for probation on this island, and those who are or have been involved in delivering probation services have much to be proud of. Over the past one hundred years, generations of dedicated staff have worked with individuals and their families, as well as with a range of statutory and voluntary agencies in the community, to manage, rehabilitate and (re)integrate offenders into society. Their innovative and caring spirit firmly established probation as meeting a significant social need and enabled probation to adapt to the changing expectations of the judiciary, other criminal justice stakeholders and the public. This spirit continues and probation is now recognised as the lead agency in the supervision of offenders.

The articles in this fourth volume of the *IPJ* both reflect the achievements of the past and highlight current best practice. Gerry McNally outlines the history of the Probation Service, how it grew and developed, adapting to challenges over the years. Shane Kilcommins and John Considine examine the evolving state intervention in the operating model of criminal trials. Such reflections can help us shape our future direction at a time when probation in both jurisdictions is facing significant change: in Northern Ireland, with the introduction of a new sentencing framework within a devolved criminal justice system; and in the Republic of Ireland, with the completion of Probation Service restructuring and of updated working relationships with courts and prisons.

We can also learn from what is happening elsewhere. For example, Brian Stout looks at the introduction of NOMS in England and Wales, and considers its possible implications for Northern Ireland. Two further articles outline the origin and principles of the contrasting risk assessment instruments used in our two jurisdictions.

Probation today, as the remaining articles in this volume demonstrate, is responding to a variety of challenges and core concerns such as the needs of victims, effective probation practice with offenders presenting a diversity of problems to be addressed, the role of community service and how projects can facilitate probation ‘intervention’ in an evolving multicultural society.

The Editorial Committee wishes to thank all the contributors as well as the PBNI and Probation Service for making this journal possible. We continue to receive good advice from our Advisory Panel as well as financial support from the NI Statistics and Research Agency. We also acknowledge the co-operation of our publishers, who have assisted us with their expertise and produced again a high-quality publication.

There have been changes to the Editorial Committee since the last volume as the two former editors – Paul Doran and Vivian Geiran – have taken up new responsibilities. We would like to thank Paul and Vivian and all other committee members for their hard work in establishing this journal.

Finally, as this is the fourth volume, we would welcome learning of your response to the journal. We have therefore included a short questionnaire and ask all our readers to take a moment to complete and return it to us. Such feedback is essential if the *IPJ* is to meet its aims in reflecting the richness and diversity of practice within probation as we move into the next one hundred years.

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September 2007

## Probation in Ireland: A Brief History of the Early Years

Gerry McNally\*

**Summary:** This article, the first of a two-part history, traces the early years of probation in Ireland from its origins prior to the foundation of the state to the 1970s. It reviews the social, cultural and political factors at work in Ireland and reflects on their particular influences in the practice and development of the Probation Service. The article acknowledges the contribution of individual officers in their practice and in the development of the Probation Service. Comparison is made with developments in probation in Northern Ireland and in England and Wales.

**Keywords:** Probation, Probation Service, probation practice, Probation of Offenders Act 1907, history, twentieth-century Ireland, voluntarism, social work, Department of Justice, criminal justice, courts.

### Informal beginnings

In England, a beginning was made in formalising probation and supervision in the Summary Jurisdiction Act 1879 and the Probation of First Offenders Act 1887. 'The first Act did not apply to Ireland and the second was of very little use,' according to Molony (1925, p. 184).

Prior to the enactment of probation legislation in Ireland, it was the practice to allow certain offenders out on recognisance, to come up for judgment if called on, and no difficulty had been experienced in attaching certain conditions to the recognisance, although not authorised by express enactment (Molony 1925). In a similar way, the Irish courts were also served by informal court missionaries, who operated, as other charitable bodies at the time, on a strictly denominational basis, with

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Catholic individuals and organisations working with Catholic offenders (Skehill 2000).

The 1907 probation legislation (see below) ended this less formalised practice only in name. Many police court missionaries in England and Wales became probation officers and carried on with their task of ‘saving offenders’ souls by divine grace’. In Ireland, probation was formally established only in the courts in Dublin city, with the continued assistance of church agencies. The prominent contribution and role of the church and voluntary agencies continued in a personal and visible manner in courts in Ireland into the 1970s, in a partnership with the small professional Probation Service. That contribution continues to the present day in the organisational support and contribution of bodies such as the Society of St Vincent de Paul, the Depaul Trust, the Salvation Army, the Quaker community and other non-denominational community groups.

### **Probation of Offenders Act 1907 (7 Edward ‘VII., c. 17)**

The Probation of Offenders Act 1907, which applied to Ireland, effected a great reformation and provided a new official mechanism for supervising, on behalf of the court, the conduct of offenders released on probation.

In 1914, the Criminal Justice Administration Act gave further powers. For example, under Section 7, power was given to recognise and subsidise societies for the care of youthful offenders; Section 8 made it possible to add additional conditions to the recognisances, such as residence; and Section 9 gave power to vary the times and conditions by increasing the period and by altering the conditions or adding new conditions (Molony 1925).

The duties of the probation officer, subject to the directions of the court, were defined in the Probation of Offenders Act 1907 as: ‘To visit or receive reports from the probationer, to see that he observes the conditions of the order, to report to the Court as to his behaviour, and to advise and befriend him, and, where necessary, to try and find him employment’.

The Probation of Offenders Act 1907 continued in operation with the establishment of Saorstát Éireann (Irish Free State) on 6 December 1922 and has remained in Ireland as the principal legislation in the work

of the Probation Service. It has been updated or replaced in all other jurisdictions.

Following the enactment of the Probation of Offenders Act 1907, the probation staff in the Dublin city courts comprised one official probation officer, Miss Dargan, assisted by an unpaid volunteer, Miss O'Brien. There is no detailed evidence readily available of the work of the police court missionaries in the Dublin police courts, though their presence has been acknowledged, or of probation officers or police court missionaries outside Dublin city. Until 1936, all probation officers in Ireland were female, consistent with Skehill's (2000, p. 691) claim of the predominance of women within the field of philanthropy and social work in Ireland and elsewhere in the early years of the twentieth century. In Dáil Éireann in 1936, in the course of seeking a lady probation officer for Cork District Court, Richard Anthony TD for Cork Borough told the Minister for Justice that 'long before the advent of the late Government we had a lady probation officer attached to the old police courts in Cork City' (*Dáil Éireann Debates*, vol. 62, 19 June 1936). Anthony was unsuccessful in his request and nothing further was heard of the 'lady probation officer attached to the old police courts in Cork City'.

I have selected data from two years prior to the establishment of Saorstát Éireann to illustrate the volume of work managed by Miss Dargan and Miss O'Brien in the Dublin Metropolitan Police Courts.

Dublin Metropolitan Police statistics (BOPCRIS 1908) report that 'during 1908, the first year of operation of the Probation of Offenders Act 1907, 188 probation orders were made, 88 in cases of indictable charges and 100 in non-indictable matters'. This was a very substantial workload for a single probation officer and one unpaid assistant! Of the 130 males subject to probation orders, 68 were under 16 years of age, 31 were aged 16 to 21 years and 31 were over 21 years. Of the 58 females subject to probation orders, 11 were under 16 years, 16 were aged 16 to 21 years and 31 were over 21 years. In 18 cases, offenders were brought up for sentence after release on probation orders (breach or revocation): three were discharged, one was committed to industrial school, two were sentenced to imprisonment (one and two months respectively), six were committed to reformatory school, one was sent to a place of detention, three were dealt with for fresh offences and two were otherwise disposed of.

Six years later, Dublin Metropolitan Police statistics (BOPCRIS 1914) report that 'during the year 1914, 258 Probation orders were

made, 175 of the persons so dealt with being charged with Indictable Offences and 83 with Non-indictable Offences'. Of the 220 males against whom probation orders were made, 42 were under 12 years of age, 57 were aged 12 to 14 years, 65 were aged 14 to 16 years, 29 were aged 16 to 21 years and 27 were over 21 years. Of the 38 females against whom probation orders were made, two were under 12 years of age, four were aged 14 to 16 years, 12 were aged 16 to 21 years and 20 were over 21 years. In 12 cases, the offenders were brought up for sentence after release on probation order (breach or revocation): two were committed to an industrial school, five were committed to a reformatory school and two were dealt with for a fresh offence.

The Juvenile Court, first introduced in England and Ireland by Section 111 of the Children Act 1908, provided that when a child or young person was charged, the court would sit either in a different building or room from that in which the ordinary sittings of the court were held, or on different days or times from those at which the ordinary sittings were held. The probation officers, already engaged with younger offenders, were quickly a central part of the Dublin Juvenile Court. This was reflected in the changing profile of persons on probation in the statistics for 1908 and 1914, as well as for following years.

The Report of the Departmental Committee on the Probation of Offenders Act 1907, chaired by Herbert Samuel, recommended that probation 'should be extended, and Courts should appoint full-time officers to be assisted by part-time paid or honorary workers ... Salaries rather than fees should be paid to probation officers ... The help of local social agencies should be enlisted' (Home Office 1910). However, the political and civil disruption, as well as the challenges to judicial order that marked life in Dublin in the decade leading up to the establishment of Saorstát Éireann in 1922, did not provide a stable or supportive environment in which the nascent Probation Service could develop.

In 1925, at the end of a paper on the Probation of Offenders Act 1907, Molony, based on his experiences in the conflicted criminal justice system prior to the establishment of the state, said that 'in Ireland the [probation] system has never had a fair chance, due to causes on which I need not dwell. Nobody knows better than I do the troubles and difficulties which have beset a law reformer in the past. Let us hope those troubles and difficulties have now disappeared' (1925, p. 195).



## Probation and the establishment of Saorstát Éireann

Miss Dargan continued in her post with the establishment of Saorstát Éireann until her demise in 1926. Kathleen Sullivan was then recruited and Miss O'Brien given recognition as a probation officer. Some years later E. J. Little, senior judge of the Dublin District Court, remarked that 'these three ladies must surely be awarded the martyr's crown', having been 'overcome by work, broke down; they died of cancer, each at her post' (Molony 1940, p. 58).

In Dáil Éireann on 10 March 1925, Tomás Mac Eoin TD asked how many prisoners were brought before the Children's Court in Dublin in 1924, and how many probation officers (distinguishing between paid and voluntary officers) have been appointed to deal with such cases. Kevin O'Higgins, Minister for Justice, replied that 'the number of persons brought before the Children's Court in Dublin in 1924 was 386, of whom 70 were placed on probation'. Minister O'Higgins outlined that there was one paid probation officer, who employs an assistant. There were no permanent voluntary probation officers, but two unnamed ladies had agreed to act without remuneration in any cases that may be entrusted to them by the justices of the court (*Dáil Éireann Debates*, vol. 10, 10 March 1925).

On 1 May 1925, Minister O'Higgins, in moving Vote 32 (District Court) before the Committee on Finance, included the sum of £400, provided under sub-head A, for a probation officer, which, he considered, might attract some attention, explaining that the duties of probation officers are set forth in the rules made under Section 7 of the Probation of Offenders Act 1907. It is the first note in Dáil Éireann of financial provision in respect of probation activities following the passage of the Courts of Justice Act 1924, under which the Dublin Metropolitan Police Courts were abolished and one District Court was set up for the whole Saorstát (*Dáil Éireann Debates*, vol. 11, 1 May 1925).

Despite their limited numbers and lack of resources, the probation officers exercised significant influence and authority, not just in court but also in wider policy and practice arenas. For example, Kathleen Sullivan, one of the probation officers attached to the District Court, interested in the case of Mary Cole, approached the Minister for Justice 'concerned to suggest some treatment which might be more calculated to transform this wretched girl than detention in Mountjoy Female Prison'. Mary

Cole had been convicted of the murder of two children. She was found guilty at the Central Criminal Court on 23 March 1928 but was not subject to the death penalty under the terms of the Children Act 1908, which stated that persons under the age of 16 found guilty of murder shall be detained at the pleasure of the Governor General rather than being sentenced to death. Instead, Mary Cole was sent to Mountjoy Female Prison. A memorandum from the Department of Justice, dated 28 August 1928, laid before the President of the Executive Council, reported that the Minister for Justice had issued a licence discharging Mary Cole from Mountjoy Female Prison, having been advised that the Sister Superior of the Sisters of Charity of St Vincent de Paul, Henrietta Street, Dublin was prepared to take Mary Cole into her care. Under the care of the Sisters of Charity, the memorandum states, Mary Cole 'will be under proper reformatory influences and at the same time the community will be protected from a person of the gravest criminal tendencies' (National Archives 1928).

### **Probation in Ireland in the 1930s**

Kathleen Sullivan died in 1936, in the circumstances noted by Justice Little above. Following the first Civil Service Appointment Commission for a probation officer, Evelyn Carroll was appointed and took up duty in March 1937. Miss O'Brien, one of the first probation officers, died in May 1937.

In February 1938, the Minister for Justice, Patrick Rutledge, in replying to a question in Dáil Éireann from Sean Brady TD for Dublin County, advised that two additional probation officers, both women, were recently appointed (Bridget Murphy and Mary E. Ryan had been appointed in November 1937), bringing the number of female probation officers in Dublin to three. These appointments were made following a recommendation from the Dublin justices that there should be four female probation officers attached to the metropolitan courts. The minister provided an additional note, detailed here, on the official history of probation in Saorstát Éireann:

Until the year 1926 there was only one probation officer in Dublin, a woman. In 1926 the number was increased to two women. One of these officers died in March, 1936, and while the filling of the vacancy

was under consideration, the Minister for Justice suggested to the then senior justice that in addition to two women, it would be well to have a male probation officer to deal with male adults and older boys.

The then senior justice accepted the suggestion, although expressing some doubt as to whether there was full-time work for such an officer. A male probation officer was appointed accordingly in October, 1936, and in March, 1937, the vacant post of female probation officer was filled and the staff brought up to two women and one man. The number of female probation officers was again reduced to one in May, 1937, by the death of one of these women, and shortly afterwards a recommendation was received from the Dublin justices that a staff of four female probation officers was necessary.

The Minister for Justice was not satisfied that there was sufficient suitable work for four female officers, and came to the conclusion that it would be more prudent to appoint only two female officers on a temporary basis in addition to the existing one (bringing the staff up to three women and one man) and to review the situation generally after a reasonable interval. The present staffing, therefore, viz., three women and one man, may be considered as more or less experimental.

The following table gives particulars as to age and sex of the persons under supervision according to a recent return:-

Sex	Under 14 years	From 14 to 16 years	From 16 to 18 years	Over 18 years
Males	35	40	62	88
Females	3	7	10	44
TOTALS	38	47	72	132
GRAND TOTAL	289			

(*Dáil Éireann Debates*, vol. 70, 16 February 1938)

In October 1936, Joseph McDonnell, the first male probation officer, was appointed and assigned to look after boys and adult male offenders. He was appointed chief probation officer in 1938. Denis Morrissey was appointed as probation officer in 1938 and John C. Ryan in 1940. The number of probation officers was further supplemented in 1945 with the appointment of Mary Dooley and Evelyn Flanagan. Between 1936 and 1945, the fledgling Probation Service had expanded significantly from

two probation officers to a chief probation officer and four probation officers, all assigned to Dublin courts. There was no development of the service in courts outside Dublin. However that decade of expansion was the high-water mark in the development of the Probation Service for nearly twenty years as the changing social and political climate in Ireland influenced social and penal policy and impacted directly on the role and direction of the service.

### ***Quadragesimo Anno* and the principle of subsidiarity**

A most significant development for the Probation Service and social policy in Ireland generally, though not immediately evident at the time, was the publication in 1931 by Pope Pius XI of *Quadragesimo Anno*. This papal encyclical stressed harmony between social groups as the Christian answer to class war. It also advocated the restoration of the state, burdened by excessive duties, to its rightful place, which was not to do everything itself, but to direct, watch, urge and restrain subsidiary organisations. This described the principle of subsidiarity or subsidiary function: it is a disturbance of right order to assign to a higher association (government) what lesser and subordinate organisations can do (Whyte 1971, p. 67).

The principle of subsidiarity, as reflected in the narrow and rigid interpretation by the Irish hierarchy, proved to be a major influence in the development of social policy and service delivery, including probation, in Ireland until the 1970s (Cooney 1999; McNally 1993). A renowned example of that influence can be seen in the Mother and Child Scheme controversy in March 1951 and the resignation of Dr Noel Browne as Minister for Health at the insistence of his party leader, Seán MacBride, in April 1951 (Browne 1986; Adshead and Millar 2003). Catholic social thinking and its sway over government policy had been seen increasingly in the late 1930s and early 1940s to exercise influence and to direct developments and practice in probation and social services generally, that trend was to continue over the three decades following the publication of *Quadragesimo Anno*.

### **Probation and the role of organised voluntary workers**

From the early 1940s, there was a strengthening explicit preference in government for the engagement of voluntary denominational

organisations in the provision of probation supervision and related services rather than for the development of a full-time state service. On 5 May 1942, Gerald Boland, Minister for Justice, introducing the 1942 District Court Vote in Dáil Éireann, said he had succeeded in ‘enlisting the services’ of a group of volunteers ‘through the assistance of the Archbishop of Dublin, Dr. McQuaid’. With the help of the Archbishop, the Legion of Mary, as a recognised society under Section 7 of the Criminal Justice Administration Act 1914, had been able to do, in his view, ‘very good work’ and he did not think that even if the number of permanent officers was multiplied by three ‘that you would do near as much good as we hope to do now with the help of the voluntary social workers. They are devoting a lot of time to the work and belong to a social service organisation that I think will give good results’ (*Dáil Éireann Debates*, vol. 86, May 1942).

The missionary commitment and role of voluntarism in probation, then in decline in England and Wales in the face of the new scientific social work approach (McWilliams 1983), actually underwent a resurgence and strengthening in Ireland from the late 1930s, during World War II (known as ‘the emergency’ in Ireland) and on into the 1960s. It was an Ireland where society was marked by strong clerical influence, conservatism and increasing distrust of ‘foreign ways’. John Charles McQuaid, Archbishop of Dublin, was ‘a master at harnessing state resources to social and educational initiatives which were run by clergy or lay Catholic organisations. He was particularly adept at persuading the state authorities to finance Church involvement in the voluntary sector, while retaining ecclesiastical control of projects’ (Cooney 1999, p. 140). During the 1940s, Archbishop McQuaid expanded the Church’s role in social service provision and, in particular, in working with offenders and managing institutions. Rather than employing probation officers, denominational ‘volunteers’ carried out many of the functions, with as many as 46 Legion of Mary volunteers in Dublin said to be engaged in probation work.

### **Conditions of employment in the 1940s**

In 1940, E. J. Little, Senior Dublin District Court Justice, reported that (quoted in Molony 1940, p. 58):

... the Probation Officer must be present in the Custody and Juvenile Courts to note the names, addresses and occupations of the persons charged; later visit the home of each party and prepare a report for the Justices. In Court he must also produce at a moment's notice the record, if one exists, of each case and advise the Justice as to the best course to be taken. His afternoon visits to the homes of the parties under probation supervision must be followed up by visits to clergymen, school attendance officers, relieving officers, employment exchanges, employers, Garda stations and to the offices of charitable societies to check up on his information.

All this meant persistent work and fatigue of both body and mind. At the end of each day's work he must be ready at his own home for visitors, parents, young people, one or other, sometimes both, of married couples, and informants come to lay complaints. He must find time also to run to the Circuit Court for the hearing of Appeals with particulars of which he is familiar.

In 1937, according to Justice Little, the number of cases under probation supervision was 287 (a slight difference from the figure of 289 cited by the Minister for Justice in his February 1938 statement above). In 1938, that number had increased to 481 and in 1939 the number had again increased to 940. Of these, 757 were male and 138 female. At the end of 1939, 741 remained on probation supervision. He claimed that 'Probation properly used would save thousands who might otherwise drift into one or other of the currents or backwaters of the twin rivers of Unemployment and Crime' (Molony 1940, p. 59).

Justice Little explained that justices in 1937 were 'faced with a dilemma, either suspend the system or kill the Probation Officers'. He estimated that in 1939 each probation officer supervised 148 cases, whereas in England the Home Office would not permit any probation officer to have more than 70 on supervision. Justice Little outlined that the times were 'tragic and with unemployment and social and civic disorganisation, the number was increasing at an alarming rate'. He said that 'the status of the Probation Officers was that of non-established Officers, without pension rights, whose services may be dispensed with at a week's notice; but these circumstances did not affect their devotion to their work. It was a life of sacrifice' (Molony 1940, p. 59).

Fahy (1943, p. 79) referred to the fact that 'since the birth of our State no official investigation of the Probation System has ever been

conducted, and to the further fact that the closest secrecy is maintained regarding that System'. He had met, he said, 'a point blank refusal to supply either the Statistics or any other information requested'. In his view there was 'strong evidence of a complete failure on the part of the authorities to appreciate the principles upon which the Probation system is based and to understand the universality of its application'. In the same paper, Fahy noted that the circumstances and lack of development in Northern Ireland at the time was similar but that 'no attempt was made to conceal the defects of the present system, and those defects, together with recommendations for putting the Probation Service on a sound basis were in the process given fullest publicity' (p. 76).

A memorandum to the Department of Justice from probation officers in October 1943 sought improved conditions of employment and described how 'one must always be ready to deal with anything that might crop up unexpectedly even during normal "off" hours'; the officers also pointed out that (Probation Officers 1943):

The diverse nature of the work calls for persons of very wide experience of life. A Probation Officer is expected to be able to cope with any type of person or any offence that a Justice in these courts has powers to deal with. In addition there is the more serious Court work which has to be attended to in the Circuit and Central Criminal Courts, entailing very heavy responsibility and capacity for good judgement. ...

Risks to health are very considerable, considering that all types of homes are visited and all manner of persons encountered, many of them suffering from highly and dangerously infectious diseases. ...

Attendance at meetings of voluntary workers and supervision of night-school classes etc. entails being on duty some evenings until 9 or 10pm. ...

No provision, other than the goodwill of the Dublin Transport Co., is made for travelling expenses. No allowance for the use of bicycle, no allowances for out-of-pocket expenses incurred in the payment of fares etc. for probationers travelling with an officer, is made. Also the wear and tear of clothes is very considerable in view of the requirement when visiting certain homes where disease is rife.

A supporting letter for a further probation officers' memorandum in 1949 seeking improved conditions was signed by the principal justices of

the District Court (Hannan, O'Sullivan, Mangan 1949) and described how the task of probation officer 'requires a breadth of worldly experience, an integrity of character and a development of moral and social sense which are infrequently found combined in one person'. The justices went on to say that 'the criminal business of the Metropolitan District could not be disposed of in a manner calculated to serve the highest interests of both the individual and the community without the services of the Probation Officers'. Perhaps a little too optimistically, they suggested that 'the Minister for Justice, and the Government ... will merely need to have the memorandum brought to their attention in order to realize the justice of the claims made therein and implement these claims at the earliest available opportunity'.

The claims were unsuccessful and brought no improvement of conditions, earnings or tenure.

### **Conditions of employment in the 1950s**

For probation officers in the early 1950s, there had been no real improvement over the previous decade. In 1951, for example, the small cohort of probation officers provided 2,390 reports to courts and made 4,941 visits, but still had not been established as civil servants, remained without security of tenure or pension rights and had an extremely poor salary scale, as mentioned by Justice Little in 1940.

In 1953, Evelyn Carroll, a probation officer, was assigned to work full time with the recently established Adoption Board. The rationale, it appears, was that as the Adoption Board was constituted as a court, and probation officers provided a form of social work service to the courts, it would be most appropriate that a probation officer should fulfil that task with the Adoption Board.

In September 1954, after the failure of another memorandum to the Minister for Justice requesting improved pay and conditions for probation officers, the group of now long-serving officers formed a staff association and affiliated to the Institute of Professional Civil Servants, a forerunner of IMPACT which is the present probation officers' trade union. This became the vehicle for the first changes in circumstances and conditions achieved by the probation officers during the 1950s, though progress was still exceedingly slow.



At an early stage, recompense for out-of-pocket travel and some related costs was achieved. In May 1955, establishment – tenure as civil servants – was offered by the Department of Justice in negotiation with the Institute of Professional Civil Servants for the chief probation officer and four, but not all, of the existing probation officers. A salary of £600 per annum was agreed for male probation officers and £508 per annum for female officers, a marginal improvement.

### **Changing social climate in Ireland**

For many in Ireland, the 1960s were to emerge as a period of rapid economic and social development arising from the changed approach to economic planning exhibited by government in the Programme for Economic Expansion authored by T. K. Whitaker and launched in 1958. The programme proved to be a watershed marking the end of Ireland's traditional policy of economic isolationism and the adoption of the view that the only way forward lay in modernisation and the development of an export-driven economy. Luckily the 1960s were a boom period for the world economy and the new approach in Ireland benefited.

The 1960s saw many other changes: the influence of Vatican II and the leadership of a reforming Pope resulted in a gradual relaxing of the overt controlling instinct of the Catholic hierarchy, the advent in Ireland of a national television broadcasting service in 1961, the introduction of free second-level education, the arrival of a consumerist culture and a greater emphasis on individualism, the 1960s-inspired winds of change in terms of music and protest, and the beginning, to some extent, of post-Civil-War politics (Mac Éinrí 1997).

The changing social climate in Ireland, in influencing change in social and political attitudes, expectations and actions, also had an impact on government and institutions in the delivery and operation of services.

Based on these evidence sources and on recollections of retired officers familiar with the work of their predecessors, probation practice in Ireland changed little in form and content from the earliest years of the service until the 1960s. Understanding of practice in the early years is largely dependent on third-party comment in papers and reports cited elsewhere in this article. Some examples of papers, reports and other documentation remain from the 1940s onwards. Practice was governed by the original 'assist and befriend' mandate outlined in the

memorandum issued with the Probation of Offenders Act 1907. Reports to court, though not provided for in legislation, were a major task and took a great proportion of the time of the probation officer as outlined in Justice Little's 1940 commentary.

From the 1960s onwards, there was increased recruitment of graduates and trained social workers into the Probation Service. This was in line with a new valuing and a prioritising of social services generally, as well as the influence of planning, research and international experience in government decision-making. This contributed to a rapid pace of change and development never before seen in the service.

In England and Wales, the professionalisation and development of the Probation Service had accelerated from the 1930s onwards (McWilliams 1983; McWilliams 1985). The service in Ireland, as it developed in the 1960s, had the benefit of their experience, in many instances learning from it. Ireland began a process of catching up with international best practice, rejoining that mainstream and, in due course, becoming an active contributor.

### **Social work training and probation practice**

From 1960 onwards, there was an evident 'changing of the guard' as many of the long-serving probation officers retired, with minimal entitlements despite a career of service and social commitment.

The Probation Service and its practice, in common with Irish society in general, was beginning to take greater cognisance, and exercise less distrust, of developments elsewhere. Ironically, however, while the prevailing attachment to the professional social work model of practice in probation elsewhere was approaching its nadir (McWilliams 1986), Ireland, coming late to the model (established in England and Wales since the 1930s), explicitly adopted that approach, just as social work principles and practice in probation were increasingly being challenged in research and effectiveness-based management internationally.

The professionalisation of social work in general in Ireland had been delayed and very limited, despite the aspirations of some such as the non-denominational Civics Institute of Ireland. Among the universities, UCD was the first to establish a social science degree in 1954. TCD introduced its degree in social studies in 1962, and UCC established a social science degree in 1968. As late as 1970, the skills requirement for

a welfare officer, the then title, was described as 'training in or experience of social work'. It was not until 1975 that a degree in social science was required for recruitment as a welfare officer.

During the late 1960s, increasingly professional and assertive probation officers raised concerns and complaints in letters to the Department of Justice, the Department of Education and the courts regarding the ill-treatment of children at Marlborough House (Raftery and O'Sullivan 2000, p. 238). As evidence at the Commission to Inquire into Child Abuse later confirmed, the concerns were regrettably not followed up (Ryan 2006, pp. 114–115).

The level of frustration, upset and disquiet in the Probation Service in 1968 can be gauged in a highly critical column in *The Irish Times* on 22 April 1968 entitled 'Our Hopelessly Inadequate Probation Service'. The article was based on the detailed commentary and experience of a recently resigned probation officer. It articulated many accumulated concerns from her experiences and those of her colleagues. The lack of a Probation Service outside Dublin, deficits in training of probation officers, gaps in social services generally and poverty in the community were cited as sources of frustration and disillusionment (O'Brien 1968).

### **Prison welfare officers and the beginnings of change**

An interdepartmental committee was established in 1962 by Charles Haughey, Minister for Justice, to address issues such as aftercare for young men discharged from reformatories, industrial schools, St Patrick's Institution and prison (Ryan 2006). Arising from the unpublished report of that committee, Charles Haughey, at the Law Students Debating Society of Ireland in February 1964, announced the appointment of two prison welfare officers (Martin Tansey and Noel Clear) to be 'responsible for advising ordinary prisoners on personal and domestic problems, for helping them to secure employment and for giving of after-discharge counsel and guidance' (quoted in Mansergh 1986, p. 40).

A significant point in this development (influenced by a similar development in England and Wales in 1953) and the work of the interdepartmental committee was that cognisance was now been taken of developments in probation and criminal justice outside Ireland. Consideration was also being given at a policy level to appropriate tasks

and roles for the Probation Service in the criminal justice system in place of the previous apparent drift and absence of policy or planning.

### **Probation administration officer**

A recommendation of the interdepartmental committee in 1962 provided for a probation administration officer, who should be someone of high executive ability (McGowan 1993, p. 46). This seems to be the first specific reference to ‘control and administration’ or management in the Probation Service’s activities.

Joseph McDonnell, chief probation officer since 1938, had died suddenly in September 1962. An opportunity for change presented itself. During his time as chief probation officer, McDonnell had performed duties similar to other probation officers including reports to courts and supervision of offenders. He had not, it appears, exercised significant policy and management functions beyond basic administrative tasks.

The first appointment as probation administration officer in 1964 proved unsuccessful, with the appointee subsequently withdrawing within two years and later returning to another post in the service. For a brief period then, the Probation Service was managed by an official from the Department of Justice, giving rise to renewed disquiet among the officers.

### **1969 Review of the Probation Service: A springboard for development**

The administration problems contributed to a management and strategic hiatus in the Probation Service which, in hindsight, had the benefit of prompting or contributing to the commissioning of a further review of the service by Mícheál O’Móráin, Minister for Justice, in January 1969. This was to be the second review of the service during the 1960s, whereas there had not been any examination or review in the previous 60 years. In the following years the service would be known at different times as the ‘Welfare Service of the Department of Justice’ and the ‘Welfare and Aftercare Service’ before settling as the ‘Probation and Welfare Service’ in 1979.

Change in the Probation Service in the 1960s or progress to a full-time professional service was not always consistent or assured. In 1962,

Charles Haughey had expressed hope that societies throughout the country interested in youth welfare would apply for recognition as supervisors of young people placed on probation, as he gave formal recognition to three societies in Dublin. And on 19 November 1968, Mícheál O'Móráin, Minister for Justice, replying to a question from Michael O'Leary, Labour TD for Dublin Central, on the provision of probation officers, stated in the course of an exchange following his official reply 'In my view, the work done by the voluntary service is more effective than can be done by the official service'. However, the work of the 'official' Probation Service in prisons, in supervising offenders on release and on orders from courts was to play an important role in the expansion and development that followed from the consideration of the 1969 review of the service.

### **Prisons Bill 1970 and the Probation Service review**

On 26 May 1970, opening the second stage debate of the Prisons Bill 1970 in Dáil Éireann, Desmond O'Malley, Minister for Justice, said (*Dáil Éireann Debates*, vol. 247, 26 May 1970):

... last year the existing probation and after-care service was thoroughly investigated. As a result of that investigation I am satisfied that the service is inadequate and that it needs to be expanded considerably and thoroughly reorganised. The expansion will call for a big increase in the present staff in Dublin and for an extension of the official probation and after-care service to the country generally. New senior supervisory posts will be created and extra clerical assistance provided to improve the efficiency of the service.

For the Probation Service, rebranded as the Welfare Service of the Department of Justice, operating since the foundation of the state on an ad hoc basis with little direct management, little changed practices or tasks, little developed policy or practice guidelines and a hitherto apparent disregard and disinterest in the operation or practice of probation elsewhere, this period represented a major break with the past and the first evidence of a new, planned and structured approach.

By 1973, service numbers had reached 47, almost six times the total four years previously. Posts were established in Athlone, Cork, Dundalk,

Kilkenny, Limerick, Sligo and Waterford and additional officers were assigned to prisons and detention centres. The establishment of a service headquarters provided a focus and a point of engagement for the service with the Department of Justice, the other criminal justice agencies and the wider community. The expansion of the service was managed by Martin Tansey, the first principal welfare officer, following his appointment by the Minister for Justice in 1972.

### **From the 1970s to the present time**

Martin Tansey continued, until his retirement in 2002, to lead the Welfare Service, renamed the Probation and Welfare Service in 1979, through periods of change and expansion, from a small cohort of eight officers in cramped premises at Dublin District Court to a nationwide service with more than 330 personnel in over 34 locations.

While new legislation and new responsibilities were to arise over the following years, the Probation of Offenders Act 1907 remained, and still remains, the core mandate of the service. The Act, reflecting the social, political and judicial values of the late nineteenth and early twentieth centuries, was increasingly interpreted in its broadest terms to facilitate innovation and developing practice as well as to accommodate and support evolving government and service priorities.

Having changed relatively little from its earliest years, the Probation Service began its belated development in the context of the rapid social, economic and political change in Ireland in the 1960s. Like change and development throughout Irish society, that development has proved to be a complex, and sometimes challenging, rollercoaster-like process which continues today. The period of exponential growth, changing practice and evolving priorities in Ireland in the Irish criminal justice system and in the Probation Service since the 1970s is a further fascinating story that merits in-depth examination and treatment in a separate article.

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## Should Northern Irish Probation Learn from NOMS?

**Dr Brian Stout\***

**Summary:** The Probation Service in England and Wales is undergoing a process of significant change. The Offender Management Bill is proceeding through parliament and a new regime for supervising offenders is taking shape within the National Offender Management Service. This article outlines these changes. It suggests that this new model should be of interest to Northern Ireland, but that caution should be taken before simply replicating what is being introduced in England and Wales.

Until recently, there were strong similarities between probation practice in the Republic of Ireland, Northern Ireland and England and Wales. Probation officers had the same, or similar, training, and the legislative and organisational contexts were broadly similar. There was regular movement of staff between the three jurisdictions. This situation is now changing. The Committee on the Programme for Government has agreed that probation matters in Northern Ireland will be the responsibility of the devolved Assembly, and this provides an opportunity to consider how probation in Northern Ireland should be organised in the future. In this context, it is worth considering the fundamental changes, and the controversy surrounding them, to probation practice in England and Wales.

The reorganisation of the Probation Service in England and Wales is one of the most radical in its history. Proposals in the Offender Management Bill include the introduction of end-to-end management for offenders, and allowing private and voluntary bodies to bid to provide probation services. The government argues that these reforms will reduce reoffending and address some of the perceived shortcomings of the present probation regime. Opponents of the proposals contend that the changes amount to the destruction of the Probation Service. This article outlines the development of these changes and some of the arguments in favour of and against them.

**Keywords:** National Offender Management Service (NOMS), end-to-end management, contestability, Offender Management Bill.

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## **The Carter Report and the government's proposals**

The origin of the process of change in England and Wales was *Managing Offenders, Reducing Crime* (Carter Report) produced by Patrick Carter in 2003 at the request of the Prime Minister. The report identified problems with prison and probation disposals being used too much with first-time offenders and being poorly targeted, and with too much regional variation in sentencing. Carter proposed a new way of managing offenders that would reduce crime and maintain public confidence. This approach involves establishing a new role for the judiciary and ensuring that sentences are targeted and rigorous. This article concentrates on the third of Carter's proposals, that a new approach should be taken to managing offenders.

Carter suggested that the prison and probation services should be restructured into one service, the National Offender Management Service (NOMS). In this service, regional offender managers would work across prisons and probation and fund the delivery of specified contracts. The system would be focused on the end-to-end management of offenders throughout their sentence and there would be a clear separation between the tasks of supervising offenders and of providing punishment and intervention.

In immediate response to the Carter Report, the government issued the paper *Reducing Crime – Changing Lives* (Home Office 2004), which accepted Carter's recommendations and outlined the creation of a new body, NOMS, that would bring together the prison and probation services to provide end-to-end management of offenders. The intention was that a national offender manager would report to the NOMS chief executive and manage ten regional offender managers, who would be responsible for sourcing prison places and community supervision through contracts with providers from the public, voluntary and private sectors.

In addition to responding to the Carter Report, the government's proposals were designed to facilitate the sentencing framework created by the Criminal Justice Act 2003. Some of the sentences created by this Act require much greater co-operation between prisons and probation. For example, 'custody minus' allows an offender to undertake a community punishment under the threat of swift imprisonment for non-compliance; 'custody plus' involves a short prison sentence followed by a period of supervision in the community; and 'intermittent custody'

allows some offenders to spend part of the week in prison and part of it in the community. The Act also created a new generic community sentence that provided the courts with the maximum flexibility to tailor interventions to the particular circumstances of the individual offender. The government's view was that the NOMS reforms will allow this new sentencing regime to be implemented most effectively. Crucially, the government proposed that the new system would be accompanied by a check in the increase of numbers in custody. It estimated that changes in sentencing practice could ensure that the prison population in England and Wales in 2009 would be 80,000, rather than the projected 93,000.

The two most significant changes that NOMS will bring to the Probation Service relate to the concepts of end-to-end management and contestability:

- **End-to-end management:** it is proposed that there should be a single person responsible for each offender from the point where he enters the criminal justice system to the time when he leaves it, regardless of whether he is serving his sentence in prison, in the community, or in both.
- **Contestability:** the government intends to encourage the private and voluntary sectors to compete to manage more prisons and to manage offenders in the community. The intention is to encourage partnerships between public sector, private sector and voluntary bodies, harnessing their respective strengths.

The government anticipated that these changes could be achieved quickly (with a fully regionalised service introduced within five years) and invited responses to its proposals.

### **Reaction to the proposals**

The reaction to the government's proposals was overwhelmingly negative. In the House of Lords' debate on NOMS, Lord Ramsbotham, the former chief inspector of prisons, stated that of the 750 responses to the consultation only ten had been in favour of the government's proposals. Opposition has been expressed in both the House of Commons and House of Lords, by academic commentators (see, for

example, Hough *et al.* (2006) for a series of well-argued critiques of the NOMS plans) and by penal reform organisations.

The strongest opposition has come from the National Association of Probation Officers (NAPO), which led the campaign against the introduction of NOMS and objected to the introduction of contestability on both practical and ideological grounds. The Probation Boards Association (PBA 2005) also expressed concerns about the introduction of a market to probation services. It emphasised that it is imperative that future probation services retain a community link and local accountability. An interesting critic of the government's proposals has been Martin Narey, the first director of NOMS who subsequently resigned to take up a post as chief executive of children's charity Barnardo's. In a magazine interview (Jerrom 2006), Narey supported much of what is planned by the government but joined those arguing that NOMS cannot be a success unless prison numbers stabilise at a manageable level.

### **Criminal justice context**

The Offender Management Bill proceeded through parliament in 2007, but is now being considered in a very different criminal justice context than existed in 2003.

The work of the Probation Service in England and Wales has received a much higher public profile recently, due to the publicity given to a number of incidents where serious violent crimes have been committed by offenders under probation supervision. Probation Inspectorate (HMIP) reports into these incidents have identified failings in probation supervision at both an individual and an organisational level (HMIP 2006a) and failures of communication and decision-making (HMIP 2006b). A *Panorama* television documentary in late 2006 added to the public disquiet by revealing some of the limitations and difficulties in supervising offenders in hostels. Although other agencies have also been criticised, and some probation practice did withstand the scrutiny of HMIP, the cumulative effect of these incidents has been to reduce public confidence in the Probation Service and to increase the pressure for reform. The then Home Secretary John Reid criticised the Probation Service in a speech to prisoners at Wormwood Scrubs in November 2006. Those opposed to the proposed changes are now therefore arguing in a climate of public dissatisfaction with the work of probation.

In addition, the sentencing regime and custodial context has changed significantly from that envisaged by Carter in 2003. The sentence of custody plus, which seemed particularly well suited to the NOMS organisational structure, was shelved by the government in the summer of 2006 so that resources could be allocated elsewhere. The government has explicitly distanced itself from the earlier intention to link NOMS to a capping of the prison population (Clarke 2005), and the prison population exceeded the 80,000 target by the end of 2006.

### **The Offender Management Bill**

The government's response to consultation has been robust (Home Office 2006). It acknowledged that its original proposals had not been popular but did not suggest changes at that stage. However, it changed the emphasis of its discourse as the Bill progressed. There has been an increasing focus on the need to involve community and voluntary groups, perhaps in recognition of the unpopularity of the language of contestability and the reservations about the involvement of private providers. One of the purposes of NOMS is to involve a greater range of providers and the government has set ambitious targets to ensure this: 5% of probation business must be subcontracted in 2006/7, with an increase to 10% in 2007/8 (NOMS 2006). The government's language during the debate suggested that most of this business will go to the voluntary sector, but it remains to be seen whether this will be the case.

The government proceeded with the process of enacting the Bill, as originally conceived, up to the point where it was voted on in the House of Commons on 28 February 2007. However, the government was forced to make compromises in the face of parliamentary opposition. The concessions included a commitment to ensuring that probation trusts retain a local link with the communities they serve and, most crucially, a commitment to ensure that court-related probation tasks, such as assessment and report preparation, remain in the public sector. This was a key concession to those concerned that core probation work was being privatised. These compromises had the desired effect and the Bill, which at one point looked like it might be defeated, was passed by the House of Commons with a majority of 25.

The Bill proceeded to the House of Lords on 17 April 2007. It passed its second reading there, following some more minor concessions. At the

time of writing (April 2007) the Bill has progressed to the House of Lords' committee stage. Although the work of parliament is not yet complete, the ability of the government to make key concessions and thus to persuade enough of those previously opposed to the Bill to support it, suggests that the Bill's defeat is now unlikely. The expectation must be that the Bill will be enacted in a form close to its present manifestation.

### **Could NOMS be a model for probation in Northern Ireland?**

Probation developments in England and Wales have long been an influence on policy elsewhere (Raynor 2007) and Ireland has been no exception to this. There are, however, two reasons to expect that the NOMS reforms will not be imported wholesale into Northern Ireland. Firstly, NAPO, in explaining its failure to defeat the Bill, cited one factor as the absence from the House of Commons of the Northern Irish MPs, who were campaigning for the May elections at the time. If NAPO is correct in stating that the Northern Irish MPs opposed the Bill, then it seems unlikely that they would seek to introduce similar legislation into the Northern Ireland Assembly. Secondly, the goal of greater involvement of the voluntary sector has already been achieved, to a certain extent, in Northern Ireland. There is an established tradition of voluntary involvement in work with offenders in Northern Ireland, and close working relationships have been developed between the Probation Board for Northern Ireland (PBNI) and the main voluntary bodies. Recent research (NIACRO 2007) found that although all major parties in Northern Ireland supported the involvement of the voluntary sector in work with offenders, there was no suggestion of any need to introduce some form of a contestability model to achieve this.

### **Conclusion**

As Northern Ireland considers the role and function of its probation service in a new devolved criminal justice system, there are a number of places where ideas can be sought. Scotland and the Republic of Ireland have very different probation regimes than that introduced by NOMS, and the PBNI has a proud tradition of its own. The consequences of the introduction of NOMS in England and Wales will be of interest to

probation policymakers, but perhaps the wisest course will be to monitor and observe these consequences for a period before rushing to replicate the model. The laudable goal of significant voluntary sector involvement in the Northern Irish criminal justice system might be achievable in another way.

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## Rethinking the ‘Equality of Arms’ Framework between the State and the Accused in the Republic of Ireland

**Dr Shane Kilcommins and Dr John Considine\***

**Summary:** Trials have evolved into an adversarial process, and the state has taken over the prosecutorial function. There are five challenges to this ‘equality of arms’: expanded powers of the state to address a perceived imbalance between prosecution and defence; emergency provisions becoming part of normal law; the application of criminal law to deal with regulatory issues; the use of civil jurisdiction as a crime prevention strategy; and the accommodation of victims and witnesses within the system. Maintaining a balance between security and public protection on the one hand and strong due process safeguards on the other is a complex task. But keeping both perspectives in mind helps ensure that new measures are driven by evidence-based criteria and broad considerations of strategy.

**Keywords:** Prosecutor, powers, normalisation, civil jurisdiction, victim.

### Introduction

Many commentators believe that change is taking place in the criminal justice system. For the most part, however, such analyses focus on the back end of the system: on prison expansionism, on the decivilising of punishment, on the rise of a risk culture, on the increasing use of civil sanctions, on restrictions on judicial discretion, and on the steady loss of the humanism and social work expertise. In this article,<sup>1</sup> we wish to focus on the front end of the system, to demonstrate the variety of ways in which the modern due process model of justice is increasingly being

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<sup>1</sup> This article is based on a paper presented at the North–South Probation Conference held in the Slieve Donard Hotel, Newcastle, Co. Down on 23 and 24 May 2006.



reconfigured. The article will commence by explaining what is meant by the modern due process model of justice, setting out in particular how the 'equality of arms' framework between the state and the accused was created, before going on to document the various ways in which this model is being reshaped.

### **How would we define the modern due process model of justice?**

In very general terms, it can be said that an exculpatory model of justice existed prior to the nineteenth century. Under such a model 'the paradigm of prosecution' was the victim (Hay 1983, p. 165). He or she was the key decision-maker and the principal investigator. It was the victim's energy that carried the case through the various prosecution stages. Victims, for example, engaged in fact-finding, gathered witnesses, prepared cases, presented evidence in examination in chief and bore the costs involved. Guilt was determined by a much looser conception of culpability than the 'beyond reasonable doubt' formula which we understand today. It was, for the most part, premised on moral blameworthiness and local knowledge about the nature of the accused. At trial, those accused of crime were ordinarily not entitled to have arguments made for them by legal counsel on the basis that 'it requires no manner of skill to make a plain and honest defence'. Furthermore, there was no explicit presumption of innocence. In 'accused speaks' trials, as they were referred to, the accused was always under an obligation of self-exculpation (Langbein 1983). At the end of the prosecution case, the trial judge would turn to the accused and ask how he wished to respond to the evidence. The inference was clear. If the accused had nothing to say in his defence, then he was more likely than not to be guilty (Beattie 1986).

In the course of the nineteenth and early twentieth centuries, however, the trial gradually evolved from an 'expressive theatre' that sought discovery of the truth via an accused speaks forum to a more reflective, categorised process that sought determination of justice through testing the prosecution's case (Langbein 2003). A logic of adversarialism slowly unfolded, which had a number of important consequences. The beyond reasonable doubt standard of proof, for example, crystallised into a legal formula and it became a maxim of law that it was better that ten guilty men should go free than to punish one innocent man. Facilitated by the

‘lawyerisation’ of the trial process, exclusionary rules of evidence were also formulated as rules of law. These acted as filtering devices that examined the prosecution case through the lens of its possible prejudicial effect on the accused. They included, *inter alia*, the inadmissibility of hearsay evidence; closer scrutiny of the voluntariness and fairness of confessions; corroboration warnings in respect of accomplice witnesses; more rigorous examination of the competence of certain prosecution witnesses; and the exclusion of bad character evidence against the accused as proof of his propensity to commit the crime in question. The accused was gradually freed from the burden of exculpation.

The state also, over the course of the nineteenth century, began to monopolise the prosecutorial function. The local *victim* justice system thus increasingly yielded to a *criminal* justice system as an ‘equality of arms framework’ was created between the state and the accused. This was all consistent with the emergence of a rule of law society in which executive arbitrariness and discretionary power abuses were constrained, egalitarianism was advocated and procedural justice was promoted in addition to substantive justice. Today, we would suggest that this equality of arms framework is being challenged in five related areas.

### **The ‘tooling up’ of the state**

Many commentators would claim that the system is now over-protective of those accused of crime, at the expense of justice. For example, on 8 December 2003, the President of the Association of Garda Sergeants and Inspectors suggested that:

... the overwhelming feeling of members is that the criminal justice system has swung off balance to such an extent that the rules are now heavily weighted in favour of the criminal, murderer, drug trafficker, and habitual offender. At the same time, the system is oppressive on the victims of crime, the witness who comes to the defence of the victim and the juror whose role it is to ensure justice is done and seen to be done. Much of the blame can be laid at the door of the system. The State has an equal duty of care to the victim, witness and juror as to the accused.

Similarly, James Hamilton, Director of Public Prosecutions, noted that Ireland's laws are heavily weighted against the prosecution: 'I sometimes feel that the criminal law in Ireland can be like a game of football with very peculiar rules. The prosecution can score as many goals as they like but the game goes on. As soon as the defence scores a goal the game is over and the defence is declared the winner' (*The Irish Times*, 14 May 2006).

A 'tooling up' of the state is evident in the increased powers of search and seizure for the Garda Síochána. For example, gardaí are increasingly permitted to issue their own search warrants in 'circumstances of urgency'. This more self-substantiating process circumvents the need for judges or peace commissioners to be independently satisfied that reasonable grounds exist for the crossing of thresholds.<sup>2</sup> It is also evident in:

- The enactment of the so-called 'hot pursuit' provision, which enables gardaí to enter into private property without a warrant when pursuing a suspected offender.<sup>3</sup>
- The introduction of far-reaching powers under the Criminal Justice Act 1994 in relation to drug trafficking and money laundering that provide for the issuance of access orders and search warrants against innocent third parties, such as financial advisers and solicitors.<sup>4</sup>
- Increased Garda powers of detention without charge.<sup>5</sup>
- The inroads that have been made into the right to silence.
- Restrictions on the right to bail.
- A downwards pressure on the standard of proof.<sup>6</sup>

<sup>2</sup> See, for example, Section 8 of the Criminal Justice (Drug Trafficking) Act 1996.

<sup>3</sup> See Section 6(2) of the Criminal Law Act 1997.

<sup>4</sup> See *Hanahoe v. Hussey* [1998] 3 IR 69.

<sup>5</sup> The Criminal Justice Act 2006, for example, increases the maximum period of detention from 12 hours to 24 hours. This trend in expanding pre-trial detention means, as Walsh (2005) suggests, that the 'whole centre of gravity of the criminal process is moving rapidly away from the open public forum of the court and into the private closed demesne of the police station'.

<sup>6</sup> The Sex Offenders Act 2001, for example, provides that sex offender orders may be imposed where there are 'reasonable grounds' for believing that they are necessary.

### **The normalisation of extraordinary law<sup>7</sup>**

A second way in which the equality of arms framework is being undermined is through the gradual normalisation of extraordinary measures into the ordinary criminal justice system. Following the War of Independence and the Civil War in the early 1920s, a law-bound democratic polity began to emerge in Ireland. Democracy itself, however, continued to be blighted in the ensuing two decades by a residual militant republicanism that manifested itself in the form of the Irish Republican Army (IRA). The fledgling Irish state responded with a series of draconian emergency laws and tactics that enjoyed a ‘high degree of public tolerance’ (O’Halpin 1999, p. 201). These included the introduction of military tribunals with the power to dispense justice for capital crimes, restrictions on the right to appeal the decisions of such tribunals, internment powers without trial, intrusive political surveillance, the proscription of certain organisations, the power to proclaim meetings and increased powers of search and seizure (Hogan and Walker 1989).

A new Constitution came into force following its approval by a referendum in July 1937. The history of paramilitarism in Ireland, however, ensured that provision was also made for the security menace still posed to the state. The establishment of special non-jury courts (under Article 38.3), whose powers, composition, jurisdiction and procedures were to be established by legislation, and provisions in respect of treason (under Article 39) all signpost the contingencies that were still being made to protect state security from subversive activity. More broadly, Article 28.3.3 also gave constitutional immunity to any law which was ‘expressed to be for the preservation of public safety of the state in time of war or armed rebellion’. Once a declaration of emergency was made by both Houses of the Oireachtas, constitutional rights and safeguards could be abridged.

More permanently, and following renewed IRA activity in the late 1930s in Ireland and Britain, the Offences Against the State Act 1939 was introduced. The Act and its subsequent amendments, particularly in 1972 and 1998, are open to constitutional challenge. The 1939 Act forms the principal pillar in Ireland’s permanent quest to protect state security.

<sup>7</sup> For a fuller analysis, see Kilcommins and Vaughan (2004), pp. 55–80 and Kilcommins *et al.* (2004), pp. 154–161.

The first four parts of the Act are permanently in force. On the other hand, Part V, which makes provision for the establishment of the Special Criminal Court and the power of the government to schedule offences, only comes into operation when the government makes the appropriate proclamation that the ordinary courts are inadequate to secure the effective administration of justice and the preservation of public peace and order. In making such proclamations under Part V, the government does not have to explain to the Dáil why such draconian measures are deemed necessary. The necessary proclamations under Part V of the 1939 Act have been made for the periods 1939 to 1946, 1961 to 1962 and 1972 to date. The current proclamation can be annulled only by a resolution of the Dáil or when the government issues a proclamation declaring that Part V is no longer in force (Kilcommins and Vaughan 2004).

The enactment of the 1939 Offences Against the State Act must be seen in a context in which it was thought that democracy in Ireland was extremely fragile and in need of extraordinary powers to sustain it against the 'enemy within' who sought to subvert the state. This meant that Ireland placed a degree of reliance on extraordinary legislation to counter the specific threat posed. What is striking about this extraordinary legislation, however, is that it has proved remarkably malleable in adjusting to more normal circumstances. Despite the signing of the Good Friday Agreement in 1998, which is dependent on the maintenance of paramilitary ceasefires and decommissioning, and which 'looks forward to a normalisation of security arrangements and practices', the Irish government has demonstrated no willingness to remove such extraordinary laws. Indeed they have come to be seen as an efficient means of investigating and prosecuting serious, though ordinary, crimes (Kilcommins and Vaughan 2004; Hillyard 1987). This has occurred in a variety of fields.

Evidence of this normalisation process is discernible in the wide use of the extraordinary powers of arrest and detention – so as to encompass some serious, though non-paramilitary, activities – permitted under Section 30 of the Offences Against the State Act 1939.<sup>8</sup> Further evidence of this normalisation process can be gleaned from the continued retention of the non-jury Special Criminal Court. The re-introduction of

<sup>8</sup> See *DPP v. Quilligan* [1986] IR 495. See also Walsh (1989).

the court in 1972, at the height of ‘the Troubles in Northern Ireland’,<sup>9</sup> was justified on the basis that juries were likely to be intimidated by paramilitaries. It continues to be employed today despite little in the way of a risk assessment as to whether there is a possibility of continued paramilitary intimidation.<sup>10</sup> Moreover, the Special Criminal Court is increasingly being employed to try cases that have no paramilitary connection. Indeed, far from being disbanded on the basis of the notable downturn in paramilitary activity, the Irish government has announced that a second such court will be established to expedite trials. The establishment of this second court will, according to a government press release, ‘serve to demonstrate the State’s resolve to seriously deal with any activity which is a threat to the State and its people’. The once emboldening claim that one has a right to a jury trial in Ireland, as provided for under Article 38.5 of the 1937 Constitution, seems much more fragile, and somewhat quixotic, in the light of such developments.

### **Criminalising the corporations**

When we think about criminal law we tend to think only in terms of homicides, assaults, sexual offences, the requirements of *mens rea* and *actus reus* and the general defences. This is a mistake because criminal law is increasingly being employed to contend with regulatory issues. There are, for example, now over 400 company law offences on the criminal calendar. This growth in the administration of regulatory crime has two important consequences for the purposes of this article: the fragmentation of the prosecutorial function and further restrictions on due process rights (Braithwaite 2000).

Throughout the nineteenth century, the state very gradually began to monopolise the prosecutorial function as the view emerged that the

<sup>9</sup> This was how the Irish government justified its introduction to the European Commission of Human Rights in *Eccles, McPhillips and McShane v. Ireland* (Application No. 12839/87, Decision of 9 December 1988).

<sup>10</sup> The Irish Council for Civil Liberties suggests that the ‘level of paramilitary violence has declined more than tenfold since the mid 1970s and the threat of paramilitary violence now comes largely from very small splinter groups with virtually no popular support’. Irish Council of Civil Liberties Submission to the Committee to Review the Offences Against the State Acts, 1939–1998, and related matters, available at: [http://iccl.ie/DB\\_Data/publications/ICCL%20SUBMISSION%20TO%20THE%20COMMITTEE%20TO%20REVIEW%20THE%20OFFENCES%20AGAINST%20THE%20STATE%20ACTS.pdf](http://iccl.ie/DB_Data/publications/ICCL%20SUBMISSION%20TO%20THE%20COMMITTEE%20TO%20REVIEW%20THE%20OFFENCES%20AGAINST%20THE%20STATE%20ACTS.pdf)

security of society could not be left at the whim of individual victims. Violence and justice were now to a greater extent monopolised by the central authorities through the medium of the Office of the Director of Public Prosecutions. Conflicts were no longer viewed as the property of the parties most directly affected. Previously strong stakeholder interests such as victims and the local community were gradually colonised in the course of the nineteenth century by a state apparatus which acted for rather than with the public. The local victim justice system thus increasingly yielded to a Leviathan criminal justice system that was governed by a new set of commitments, priorities and policy choices.

Centrally organised schemes of prosecution, for example, were operated in Ireland since 1801 and by the mid-nineteenth century sessional crown solicitors were appointed in each of the counties.<sup>11</sup> In England, a statute passed in 1879 created the Office of the Director of Public Prosecutions, thus facilitating the gradual emasculation of the victim's previously pivotal role in initiating and carrying on criminal proceedings. By now, the duties of investigation, prosecution, sentencing and punishment – all of which had previously been premised to a large degree on popular participation – had become more privatised, focused and discreet state-accused events.

Today the Office of the Director of Public Prosecutions (DPP) is, to some extent, beginning to lose its monopoly role vis-à-vis particular types of regulatory crime. The number of agencies with the power to investigate crimes in specific areas and to prosecute summarily has increased dramatically in recent years and now includes the Revenue Commissioners, Competition Authority, Environmental Protection Agency, Health and Safety Authority and the Office of the Director of Corporate Enforcement.

In terms of the focus of this article, there are two interesting characteristics about the current use of these regulatory strategies in Ireland. First, the emergence of this regulatory criminal framework is significantly different from the unified monopolies of centralised control underpinning policing and prosecution in the modern state. Arguably these new techniques and strategies can be seen as part of a pattern of more (rather than less) governance, but taking 'decentred', 'at-a-distance' forms. This enlargement in scope, however, is fragmented in

<sup>11</sup> Private prosecutors could still initiate proceedings. See *People (DPP) v. Killen* [1958] ILTR 182; *The People (Attorney General) v. Boggan* [1968] IR 67.

nature, occupying diverse sites and modes of operation. Despite extensive powers to share information, there is no unifying strategy across the agencies or with other law enforcement institutions such as the DPP or Garda Síochána. Staffing levels, resources, workloads and working practices vary from agency to agency. Indeed, and apart from respective annual reports, there is little in the way of an accountability structure overseeing the policy choices of the various regulatory agencies, the manner in which they invoke their considerable investigative and enforcement powers or the way in which information is shared between them and the Garda Síochána.

Second, many aspects of regulatory crime operate in opposition to the general trend of paradigmatic criminal law, which permits general defences, demands both a conduct element and a fault element and respects procedural standards such as a legal burden of proof beyond reasonable doubt. Pure doctrines of subjective culpability and the presumption of innocence are increasingly abandoned within this streamlined regulatory framework. It remains a matter of speculation the extent to which the instrumental mentality underpinning much of the regulatory framework will seep into paradigmatic criminal law and be employed to undermine further the doctrinal reasoning that supports many of the due process protections operating in that domain. But we should certainly remain alive to the possibility of the normalisation of some of the more repressive, consequentialist aspects of this regulatory framework into the ordinary criminal justice system.

### **Employing the civil realm**

What also appears to be emerging in recent years is the increasing adoption of a more variegated approach to the detection, investigation and punishment of offences. In particular the state has begun to use the civil jurisdiction as a crime prevention strategy. This can clearly be seen in relation to the enactment of measures by which the proceeds of crime can be confiscated or taxed.<sup>12</sup> The Proceeds of Crime Bill was mooted in Ireland in 1996 to combat the dangers posed to society by drug-related crime. Its cardinal feature permits the Criminal Assets Bureau (CAB) to

<sup>12</sup> Efficient civil actions will in all likelihood continue to grow as a legitimate response to social problems. The recent introduction of antisocial behaviour orders in Ireland may be cited as an example of such a trend.



secure interim and interlocutory orders against a person's property, provided that it can demonstrate that the specified property – which has a value in excess of €13,000 – constitutes, directly or indirectly, the proceeds of crime. If the interlocutory order survives in force for a period of seven years,<sup>13</sup> an application for disposal can then be made. This extinguishes all rights in the property that the respondent party may have had (Kilcommins *et al.* 2004). CAB also has a power to ensure that the proceeds of criminal activity are subjected to taxation (Considine and Kilcommins 2006).<sup>14</sup>

The speed with which the legislation was introduced is a cause of concern, not least because of the manner in which it seeks to circumvent criminal procedural safeguards guaranteed under Article 38 of the Constitution. In particular, the legislation authorises the confiscation of property in the absence of a criminal conviction; permits the introduction of hearsay evidence; lowers the threshold of proof to the balance of probabilities; and requires a party against whom an order is made to produce evidence in relation to his or her property and income to rebut the suggestion that the property constitutes the proceeds of crime (McCutcheon and Walsh 1999). This practice of pursuing the criminal money trail through the civil jurisdiction – thereby immunising the state from the strictures of criminal due process embodied in the Irish Constitution – raises all sorts of civil liberty concerns about hearsay evidence, the burden of proof and the presumption of innocence. It is difficult to dislodge the perception that such a device permits the Irish state to achieve late-modern criminal justice goals – public protection, crime control and threat neutralisation – in a civil setting.

Moreover, measures such as the Proceeds of Crime Act 1996 might best be described as falling under a schema of *criminal administration*, a cost-efficient form of legitimate coercion which jettisons the orthodox safeguards of *criminal law* (the requirements of criminal guilt, proof beyond reasonable doubt and the presumption of innocence) in the

<sup>13</sup> See also Section 7 of the Proceeds of Crime (Amendment) Act 2005.

<sup>14</sup> But see previously *Hayes v. Duggan* [1929] IR 406, where it was held that it would be unethical for the state to benefit from criminal wrongdoing. Murnaghan J stated that he 'did not believe that any well ordered state can consider that its own criminal law will not be enforced'. The decision in *Hayes v. Duggan* was overturned by Section 19 of the Finance Act 1983, which provided that profits or gains on unlawful activity were chargeable to tax. See now Section 58 of the Taxes Consolidation Act 1997. Furthermore, the Disclosure of Certain Information for Taxation and Other Purposes Act 1996 authorised information sharing between the Revenue Commissioners and the Garda Síochána in respect of criminal assets.

‘public interest’. In addition to the absence of safeguards, this schema also, however, displays another important difference from the traditional criminal law. Injunctions that seize or tax assets thought to be the proceeds of crime are not designed to reorientate human behaviour or to reintegrate those that are deviant. Instead their focus is more ‘apersonal’ in nature and seeks to move the law away from the ‘barren aim of punishing human beings’ to the fruitful one of threat neutralisation.

### **Legal pluralism**

The modern criminal justice system has excluded the voices of many stakeholders in its attempt to set up this equality of arms framework between the state and those accused of crime. It has, for example, often overemphasised the importance of the collective (‘the social’) and made categorical exclusionary assumptions about victims and witnesses which may be seen as part of the more generalising or totalising tendencies of modernity. Increasingly, however, the system is having to recognise that it operates within a complex matrix of competing tensions and that it cannot set itself up solely in terms of a contest between the state and the accused.

More accommodation of victims and witnesses has become necessary and this obviously has implications for the equality of arms framework. For example, in recent years the victims of crime have become much more prominent actors in the theatres of prosecution and sentencing. This has ensured a more responsive support structure in the aftermath of crimes, more empathetic treatment by criminal justice agencies in the detention and prosecution of crimes and a more conducive courtroom environment regarding the provision of information on crimes. Upgrading the status of the victim from ‘nonentity’ to ‘thing’ is of course a laudable and necessary tactic (Christie 1977).<sup>15</sup> Evidence of this more inclusionary momentum is, for example, observable in the introduction of victim impact statements under Section 5 of the Criminal Justice Act

<sup>15</sup> See also Lea (2002) who notes: ‘The result is that the relationship in which the victim remained an essentially passive participant in criminal justice, handing over the problem and the injury itself to the State, is beginning to be undermined. There is a move ... back in the direction of older social relations, predating those of crime control, in which crime was essentially a relationship between victim and perpetrator ... and in which the notion of the “social” as a collectivity, both material, with its own dynamics and interests and requiring careful governance, and moral, with the capacity to suffer harm, was much less developed’ (p. 175).

1993, which provides that in determining sentences for sexual offences or offences involving violence the court shall take into account and may, where necessary, receive evidence or submission concerning any effect on the victim. In addition allocution rights are provided to the victim under Section 5(3) of the Act. It is also evident in the abolition of a mandatory requirement on judges to warn juries of the dangers of convicting on the basis of the uncorroborated testimony of children and sexual complainants.<sup>16</sup> Fortunately, the exclusionary notion that the testimony of children is inherently unreliable, and the 'folkloric assumption that women are by nature peculiarly prone to malice and mendacity and particularly adept at concealing it' (Temkin 1982, p. 418), no longer hold sway. This more inclusionary momentum is also, *inter alia*, evident in the employment of intermediaries, live television links and video testimonies for witnesses and victims in the courtroom; separate legal representation for rape victims under the Sex Offenders Act 2001; provisions for greater victim participation in the restorative justice model embodied under the Children Act 2001;<sup>17</sup> and greater judicial awareness of the reasons that might prevent a sexual complainant from making a complaint at the first available opportunity.<sup>18</sup>

## Conclusion

All of the five categories delineated above impact upon the equality of arms framework created between the state and the accused throughout the nineteenth and twentieth centuries. Much of the momentum for the changes taking place is grounded in the need for greater public protection and security. One current theme in particular, which repeatedly resonates in many Western countries, is the extent to which public protection and security should trump the individual liberty rights of people such as those accused of crime. The needs of public protection

<sup>16</sup> See Section 28 of the Criminal Evidence Act 1992 and Section 7 of the Criminal Law (Rape) Amendment Act 1990.

<sup>17</sup> See Lea (2002) who notes: 'Locally based forms of restorative justice and conflict resolution through mediation aim to use precisely the resources of local communities to disconnect the solution of a wide range of harms and conflicts from the state and the discourses of criminal justice and the criminalizing abstraction and to bring perpetrators and victims together as fellow community members. In this sense there appears to be a return to pre-modern systems of community control' (p. 179).

<sup>18</sup> See *People DPP v. DR* [1998] 2 IR 106.

and security, of course, are essential goods in society which are necessary for our self-preservation, wellbeing and happiness. Criminal wrongdoing impairs the ability of citizens to enjoy the fruits of fair justice and public order. For these reasons alone, such criminal occurrences must be considered in the context of security and the need to enable justice to take place in an environment which is free from the threat of injury or harm. The pursuit of public protection and security through our criminal law system, therefore, is an objective that we should all support and we should constantly seek ways of reforming the law so as to enhance such goals.

But we should also bear in mind that the demand for security and public protection must be ranged against the need to live in a society which is genuinely committed to safeguarding civil liberties and human rights. Individuals want to be able to go about their daily lives free from the menace of crime. But they also want to live in a society where strong due process safeguards exist which guarantee, as far as practicable, fairness of outcome, should they themselves be accused or suspected of a crime by the state. This is an important point because we sometimes conveniently forget that those accused of crime and offenders are also citizens and that their liberty interests are also our liberty interests. Maintaining a balance between these often competing, though not mutually exclusive, perspectives is a complex and tortuous process. By keeping both perspectives in mind, we can better ensure that any measures designed at enhancing security are driven by evidence-based criteria and broader considerations of strategy implications rather than broad-based appeals to common-sense authoritarianism and simple majoritarianism.

Finally, it is also important to bear in mind, as we have seen above, that not all of the momentum is authoritarian and repressive in orientation. There is a tendency to view alterations in the equality of arms framework simply in Manichean terms with the forces of light of the equality of arms framework ranged against the forces of darkness of any attempts to change it. As we have sought to show above, some of the momentum underpinning changes in the equality of arms framework is more inclusionary and complex in design than this Manichean vision tends to portray. Attempting to include previously overlooked voices or 'strengthening the criminalisation' of previously overlooked crimes in the employment, corporate and environmental arenas cannot simply be explained in terms of a logic of repression.

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## Probation Practice and Citizenship, Good Relations and the Emerging European Intercultural Agenda

**Dr Derick Wilson\***

**Summary:** It is imperative that criminal justice agencies see the goals of wider Good Relations and delivering a service to different citizens as central to their practice. Staff seeking to build Good Relations between people from ‘different religious beliefs, political opinions and racial groups’ (NI Act 1998, Section 2) must be supported to maintain a critical distance from their personal traditions and the communities they serve if, professionally, they are to work towards a model of citizenship not partisanship. From 2003 to 2006 an across-grade development group of staff in the Probation Board for Northern Ireland considered how the service could support Good Relations. The Good Relations tasks of staff were understood to be to promote personal development and to grow an ease with meeting difference within the agency and with clients. The PBNI initiative is relevant to people and organisations, in any jurisdiction, seeking to enable citizenship and accommodate diversity. It is now time to build civic-minded organisations and public institutions that become blocks to the toleration of demeaning behaviours and establish Good Relations between our diverse citizens as an intercultural and citizenship-based necessity.

**Keywords:** Good Relations, citizenship, sectarianism, racism, organisational learning, interculturalism, equity, diversity, interdependence.

The other is the limit beyond which our ambitions must  
not run and the boundary beyond which our  
life must not expand.  
(Niebuhr 1952, p. 137)

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## **Good Relations, interculturalism and living with equal and different citizens**

Over three years, from 2003 to 2006, a developmental action research programme involving an across-grade development group of Probation Board for Northern Ireland (PBNI) staff addressed the theme of promoting Good Relations (NI Act 1998, Section 75(2b)) within the practices of board members and staff (Wilson 2006).

Although the staff group obtained a mandate to promote this theme, and secured this strand within the specific business objectives of the PBNI's corporate plan for 2006 to 2008, further development had to be curtailed for financial reasons. The significant motivation and progress by staff meeting the obstacle of inadequate resources disappointed all involved; however this is a common experience for developmental groups as change processes move peripheral themes into the centre of an already crowded organisational business plan (Senge 1994). This team understood that Good Relations could no longer be a peripheral theme in a contested society.

The Northern Ireland Office highlighted the PBNI initiative as contributing to its departmental obligations under the Race Equality Strategy launched by the Office of the First Minister and Deputy First Minister (OFMDFM) in March 2006. In securing a devolved administration in 2007, an agreed criminal justice system will bring Good Relations into sharper relief. Potentially, the work of the PBNI group could become one model that invites other criminal justice agencies to make similar corporate commitments.

As the Good Relations implementation plan (OFMDFM 2006), overseen by the head of the Northern Ireland Civil Service, gains momentum, it is to be hoped that the substantial agenda developed by the PBNI group will be actioned more fully. The learning accumulated by the group and the proposals they made around post-qualifying and organisational development were well worked out and ready for implementation.

Addressing the need to promote Good Relations between people from different religious beliefs, political opinions and racial groups is not just a peculiarity of Northern Ireland. This initiative resonates with and informs the questioning of multiculturalist approaches as many previously committed to these approaches consider the intercultural agenda. Sondhi (2006), responding to the above-mentioned Race Equality Strategy launch, pointed out how:

... multiculturalism is now in question, not only from traditional sceptics but from voices on the left and the liberal centre. ... The charge now levelled at multiculturalism is that it created a false sense of harmony by establishing a system for the distribution of power and resources which worked for a while but that was unable to adapt to change. ... At the local level it is argued that the system encouraged the creation of culturally and spatially distinct communities fronted by 'community leaders' where difference became the very currency by which importance was judged and progress made.

It is now argued that multiculturalism has promoted group identity at the expense of securing a common experience of citizenship between different people. There is a parallel existing with the growth of single identity work in Northern Ireland. While Sondhi went on to argue that there 'was much within multiculturalism, particularly as it is being reformed through community cohesion and other critiques, which still speak to our neighbourhoods', he proposed the intercultural approach as being important to promote. The 'intercultural approach goes beyond equal opportunities and respect for existing cultural differences to the pluralist transformation of public space, institutions and civic culture. An intercultural approach aims to facilitate dialogue, exchange and reciprocal understanding between people of different backgrounds' (Sondhi 2006). This model consolidates the experience of equal and different citizens meeting and working together and is aligned with the PBNI's Good Relations approach (Wilson 2006).

The challenge of accommodating diversity has become a central theme in the nation-states of the expanded European Union, both with the diversity of people and traditions within the EU and the wider challenge of welcoming and accommodating those wishing to settle in the EU from outside it. The Republic of Ireland, Northern Ireland and Great Britain all have to meet the modern challenge of securing citizenship as the base on which equal and different citizens have their place secured.

One task of policing, the courts, the prison service and probation is to hold people to account when they behave in ways that humiliate and abuse others different to them. In Britain, the changing nature of racism means that there has been a growth in the level of inter-ethnic violence in addition to what were, primarily, racist actions of 'white-on-black' ([www.kenanmalik.com](http://www.kenanmalik.com)). People from all traditions and cultures now face



the challenge of being at ease with those different to them, accepting them as equal and different citizens. In the vibrant economy of the Republic of Ireland, there is an increasingly diverse population, and while the historical racial antipathy to the Traveller community remains, a wider range of people who are full citizens or residents have become the focus of racism (Watt and McGaughey 2006). In Northern Ireland, as Table 1 illustrates, there was an increase in reported racial attacks from April 2002 to March 2007.

**Table 1.** Reported racial incidents in Northern Ireland, 2002–2007

<i>Year</i>	<i>2002– 2003</i>	<i>2003– 2004</i>	<i>2004– 2005</i>	<i>2005– 2006</i>	<i>2006– 2007</i>
Reported incidents	226	453	813	936	1047

Source: PSNI 2007, p. 3

Probation services have the task of challenging the behaviour of people who have been convicted of crimes that feed fear in the wider society. These criminal actions draw on a base of unease with people different to them. In undertaking this work, probation supports the Good Relations agenda – hate crime being one of at least six drivers for such a Good Relations approach (Wilson 2005). Where such work succeeds, probation contributes to a lessening of fear about such actions occurring again, dissolves any movements towards revenge and retaliation that may be arising in communities and strengthens the law by showing that it holds people to account and assists rehabilitation (Wright 1996). As such, agreed law and order develops and equal citizenship experiences are patterned.

### **Good Relations work in an ethnic frontier: Learning for stable societies**

#### *An ethnic frontier*

Wright (1996) identifies ‘ethnic frontier’ areas as places of divided loyalties and opposed identities. An ethnic frontier is characterised by the inability of either group finally to dominate the other, and peace, such as it exists within its boundaries, equals an uneasy tranquillity. In such places, deterrence of one tradition by the other and vice versa are

dominant dynamics. Such societies reveal the importance of securing agreed law and order systems, of addressing and establishing equal treatment and equality of opportunity in employment, of establishing freedom of cultural expression and of establishing fairness in education. Wright (1987) argues that the above themes are the dominant sites where the conflict emerges in most ethnic frontier societies. The PBNI, as a criminal justice agency, then has an important role beyond merely that of its own agency in this Good Relations practice, it contributes to whether the criminal justice sector is better regarded.

*Ethnic frontier societies remind us that homogeneity cannot be protected by force, being at ease with difference is the goal*

To be partisan in this time is to deny the diverse reality that is structuring our societies today. We are in a new world where states based on 'same and equal' now have to embrace 'diverse and equal' and at the same time promote 'interdependence and cohesion'. The old tools through which majorities assumed they knew best and assimilated or ignored minorities can no longer be used. Yet new models around being at ease with diversity are rare.

This new journey into being at ease with diversity will only start by building small local experiments. We need new knowledge that will come only from Good Relations practice that is committed to engaging in bold and imaginative projects and programmes. These programmes build relationships in which distrust based on religious understandings can be explored, intolerance of different political views can be engaged with and racist actions that deny people their equal place as citizens can be confronted.

Some people still wish for easy answers but they are no longer possible. Assimilating 'others' demeans people, getting rid of others is illegal and marginalising others, thankfully, increasingly brings out advocates for the scapegoats. Privatising and withdrawing from the debate only means that down the line these non-voters may become hostage to those who then gain power.

An alternative must now be considered. It is time to find ways to be at ease with difference outside rivalry and scapegoating (Wilson and Morrow 1996). Racism, homophobia, sectarianism, sexism and attacks on those with a learning disability and the aged are inter-linked by the same powerful dynamics of unease with difference. It is time to think about, design and create something that is unknown and untested.

## **Cementing partisanship or enabling citizenship?**

### *Staying open to differences?*

The nature of a communal conflict in an ethnic frontier area is that institutions and organisations can be experienced by people from the different traditions within it as being partial to one or other competing group. The culture of organisations is such that, without due diligence, they can become closed to difference. The reality of living in a conflict is that seeing one another as equal and different citizens becomes harder and people more readily see ‘others’ as members of opposing traditions and even as being dangerous for them. Even workers involved in voluntary, community and public organisations can collude with serving a narrower communal identity. They can readily lose sight of working to some higher order professional value base that is concerned with promoting and securing a just, sustainable and shared society, inclusive of people from different backgrounds and experiences (see [www.jedini.com](http://www.jedini.com)). In a contested society, workers need values and principles that challenge the growth of partisan practice.

In a contested society, when people are with ‘others’ they have little or no relationship with, they very readily see them as ‘those to be fearful of’ or ‘as dangers to them’ and draw on stories or personal experiences of distrust or hurt. When groups or traditions become the primary points of identity, experiences of being equal and different become less dominant in daily life. Because of these dynamics, the challenge for public agencies is to build secure relational spaces and organisations that are structurally and programmatically committed to acknowledging diversity. In so doing, they promote Good Relations.

### *A practice based on change being possible*

Working for understanding in a contested society must be driven by the hope that change in the future can be secured. It has been the documented experience of colleagues that, even where such work has been only a fragile strand, such strands do exist and grow new choices for the people involved in them (Wilson 1994; Fitzduff 1989). There is a body of practice where patterns of trust have grown and ways of supporting such new relationships have developed that give hope and possibilities (Wilson and Tyrell 1995).

In working for Good Relations and reconciliation it is important to hold up a vision of a possible future together, without trivialising the

current realities felt by people caught up in a conflict. Staff need to work in a manner that does not overstate the extent to which trust develops yet remain patient and committed to this relational and structural task over periods of years. After a civil conflict it is necessary that society ‘learns to acknowledge and turn away from those evils in firm, institutionalised forms of the collective commitment, “never again”’ (Shriver 2005, p. ix). The PBNI initiative is one such practical institutional attempt. Some understandings informing this practice have been:

- Every person living within a culture or tradition has ‘cultural good reason’ for the positions they take. These positions are often difficult to question and can be associated with deep emotions. They are usually influenced by the beliefs and actions of friends, family and significant others.
- In each person the power of their traditions and the stories of whom to be fearful of can continually erode other, more fragile, experiences of meeting people from different backgrounds and traditions. These stories can prevent some people meeting others different to them whereas others take a risk and move forward.
- It is possible for people to change the ways in which they have acted. This is easier if the wider context or system around them supports them in this change. Building communal trust is much easier when the political, civic and public institutions define the promotion of understanding across lines of traditional hostility as a central priority for themselves. Tentative relationships between different people grow more readily when given wider structural support (Wilson and Morrow 1996).
- It is possible for people to change from a violent lifestyle and work for peace (Fitzduff 1989) and for people from very different backgrounds and traditions to develop experiences of trust and sustain these new relationships over time (Wilson 1994).

*Promoting a mental model that relationships between equal and different citizens matter*

Good Relations practice needs to be developed within a citizenship mental model (Senge 1994) that promotes equal and different citizenship and acknowledges ‘others’ as gifts not threats. One of the positive strands that remains alive after over 35 years of conflict is that reconciliation in a political form, as well as in local life, is still part of the

vocabulary in Northern Ireland, even though separation grows (Byrne *et al.* 2006). This search lies at the core of Good Relations practice and assists in addressing the growing racist attitudes and behaviours that have become public in recent years (ICR 2005).

### *Challenging the mental model of partisanship*

There is the need for probation staff to challenge mental models that shape the actions and practice of some people and organisations. Such an active understanding insists that every person is an equal and different citizen sharing one place. This is the foundation stone on which Good Relations practice builds towards a more open, culturally diverse and inclusive society. Using these mental models to guide and check working practices involves moving through, and beyond, the historic distrust and fear at the centre of the recent political contest. It is also to create more openness to 'others' from different cultures and traditions who have come to live in this society and who wish to find a place, a job and even sanctuary.

Working with the lens of equal and different citizenship in a contested society is not easy. The high levels of separation and distinctive, often excluding, cultures means that partisanship is an easier model for many people to get by with. However, partisanship is a denial of the best values in community work and public service practice and is not a basis on which to secure a peaceful, shared and interdependent society. Good Relations work practice in a contested society has to be rooted in an explicit citizenship model. When staff are engaged with so-called single identity groups, then the worker has to become the 'other', challenging the group members to move towards a citizenship experience.

## **Good Relations practice and the 'push and pull' dynamics of an ethnic frontier**

In an ethnic frontier, when fears are high, space for innovative organisational work is often small, whereas when fears are low, there is more space (Wright 1988). Staff have to be prepared to push for challenges when they can, knowing that some progress might fall back. Such practice is to push for the civic mind, whenever possible, knowing that the partisan reaction will also kick in from time to time. The

following strands are different pulls back to partisanship and pushes towards citizenship.

*Mixed meetings in the midst of a conflict can be emotional spaces*

Many meetings between people from different traditions in an ethnic frontier are filled with an emotional content that few people feel confident to acknowledge, address and move through. It is important that the staff members of public agencies have explored these dynamics themselves and draw on their own experiences to assist the people they work with to move through, and beyond, such fears so that together they can develop additional confidence and ease.

*People are more than their beliefs*

In a conflict, meetings between people become readily focused on the rightness or otherwise of the religious, political or cultural beliefs of people from different groups, traditions or communities. People are driven to simplify matters and are less able to meet and explore the complexity and interdependence of their daily lives. However, probation staff have to hold on to the belief that 'people are more than their beliefs' and assist wider meeting and engagement. Such meetings may need to be in 'private spaces' where nothing is attributed, as well as in carefully facilitated public spaces where issues and themes are aired because they are important for public understanding.

*Separation, avoidance and politeness frustrate just and open relationships*

In a conflict, individuals find it more comfortable to seek out those they think they are like and to move apart from those they see as different to them. Separation is preferred by some, and avoidance and politeness are practised by almost all. The spaces for real meetings and engagements across lines of difference are increasingly hostage to the wider fears. Those that promote relationships between people from different backgrounds and cultures are weakened and more readily isolated. In a partisan climate or culture it is difficult for a community-based worker to hold on to the belief that the primacy of right and just relationships between people is the central means through which people grow and develop. It is difficult to hold to the value base that sees people, understood to be different, as people to be at ease with and to learn from. Probation staff, working to an agency with a vision of an interdependent society, and to a court mandate premised on citizenship,

have more protection and distance from such partisan and separating processes.

*Meeting together creates points of change and contrast*

Public sector staff need to work to the wider vision of a more open and shared society, personally as well as institutionally. Such a practice enables people to develop a critical and reflective distance from the many subtle partisan dynamics they sometimes are held within. Spaces where previously threatening differences can be explored make Good Relations more possible between people from different religious upbringings, political opinions and racialised experiences (Eyben *et al.* 2002). For an agency such as probation, that works across and within different localities and with a variety of community organisations, such experiences assist the growth of Good Relations.

**Becoming an intercultural society challenges both contested and stable societies today**

Meetings where people come together from different backgrounds and cultures, across lines of distrust or silence, are often hostage to wider fears and so little new knowledge or learning about the 'other' is acquired. One function of a public body in society is to administer services to that diverse citizen base fairly and a second is to mirror that society in the body of its staff. When criminal justice bodies perform these functions well, they grow public confidence in that central law and order system.

*Organisations and staff should model inclusive ways of working*

Working to enable people to be at ease with difference is becoming the central challenge facing democratic societies today. Experiences of increasing polarisation and the growth of racist attacks and hate crimes demonstrate the need to promote citizenship as the primary basis for an agreed society, not communally opposed identities. Professional values of promoting equity, valuing diversity and securing interdependent relationships and structures (Eyben *et al.* 1997) for a shared society (OFMDFM 2005) are important standards to hold workers accountable to. They are reminders of the need for a 'values-led profession' (Lorenz 1994).

*Promoting professional values that secure a shared society in groupwork and organisational practice*

In their work with people and groups, probation staff can ensure that the boundaries around the relationship or group are fair and equitable (equity), that the space between people affirms and acknowledges them to be different (diversity) and that the growth of supportive relationships between members is an experience of interdependence and commitment to one another (interdependence). For the team leader or board member it means that each person engaged is welcome to state their views (equity), that the full abilities and experiences of the staff and board members are valued (diversity) and that the organisation's values and vision are of a shared future and an inclusive and interdependent society (interdependence).

It is to the credit of PBNi staff that they have, throughout the conflict, worked across communities and traditions and not given in to partisanship. The current Good Relations programme now invites staff teams to re-examine the extent to which there may be any tacit cultures within teams or locations that collude with partisanship and diminish a citizenship-based approach.

*Moving between citizenship and partisanship: The tension for staff*

Professional workers, in statutory, voluntary and community organisations, need to develop their work within an understanding that public funds and policy insists on promoting a shared and citizen-based society, not a partisan one. The task of promoting practice models based on a citizenship model rather than reinforcing assumptions that feed partisanship is a continual tension for those working to a vision of a shared society. For those workers that buy into supporting partisan traditions and work uncritically, there is little tension: they are carried within the seductive comfort of partisanship.

Separate and distinct traditions and areas do not grow overnight but are accretions over time. They are contributed to in the choices people exercise about where to live or move. In such small manners, sharing is built or diluted. In Northern Ireland an element influencing these choices, in both public housing and in private developments, is fear or distrust of those from different traditions and the perceived 'loyalty' of people living in those areas.

Separation is also fed where there is a professional unwillingness to name these hard issues of growing separation openly or to name the need



for competences in diversity management or in community relations within the wider public service. Ouseley (2001) identifies the need to examine whether public funding of community programmes explicitly encourages sharing or implicitly reinforces separation (see also Jarman *et al.* 2005).

## **Sustaining and supporting reflective practice**

### *The professional worker and Good Relations practice*

To meet others from a different tradition or culture is a journey of emotion, rationality and politics, especially in a contested society. Emotionally, people have to acknowledge their histories and fears as well as the stories they have been told about the 'other'. Rationally, they are forced to recognise that their behaviour in excluding groups of people in terms of identity, religion, social background, gender and all other equality grounds is no longer sustainable. Politically, they are required to renegotiate power relationships as well as to build a new society where the old, bipolar identities have to acknowledge the new diversity and interdependence agenda that is evident even in a contested space (Wilson 1994).

### *Good Relations: Being on the other side of vigilance*

The desire for good community relations between people associated with opposed traditions in a contested society is the shadow side of the communal reality that people from different traditions are brought up with: that the 'others' are to be feared and can never be trusted. Wishing for good community relations is in fact a desire to be 'on the other side' of vigilance: in a place where the intentions and connections of the others have ceased to threaten or injure.

Many workers can give good examples of friendships across lines of supposed hostility. People use these friendships as proof that they are not among the bigoted when, in fact, they are evidence of an underlying sense of their fundamental improbability and fragility. Northern Ireland remains a country of 'innocent people, in which those who would damage community relations are always others and never us – yet somehow we end up where we are ... On the old and well-tried principles of safety first, people profess their commitment to a common future, but first construct their defence' (Morrow *et al.* 2002).

*Building contrasting experiences*

Good Relations work has to be about the experience of change being possible as a human reality as well as about changes in policy that, overall, drive institutions forward on the journey towards a shared future. The practice of promoting the Good Relations agenda to organisations, staff and people of all ages deals with relationships which are scarred by violence or the fear of violence. Individuals in the midst of such an ethnic frontier setting easily feel overwhelmed because the source of their fear is not an individual who can be removed, as in crime, but a whole group of people and the ideology and structure which unites and supports them.

Good personal relationships therefore always take place in the shadow of this fear which can never be fully forgotten. Good Relations work is about the development of a body of knowledge, experience and practice whereby difficult issues of violence and fear can be faced and transformed. There will be a real change when we, together, build a lasting hopefulness in children and young people and an adult society that is open to differences.

**Conclusion**

Good relationships between people from different backgrounds and traditions are, initially, a primary task for the state, institutions, boards, staff and adult society. A general and over-riding experience is that the staff involved need to be assured of the support for the community relations/Good Relations agenda by all levels of the policy and institutional layers they work within (Eyben *et al.* 1997). There are several priorities for such engagements.

A first priority must be to link this practice to policies, structures and programmes that deal with the wider dynamics of violence against individuals, hate crime and the securing of community safety. A citizenship-based society requires that citizens are not ambivalent about violent actions and that the law can assume unanimity of support. These are goals to work for in an ethnic frontier society, they are not 'givens'. It is in this fragile context that the Good Relations practice of the PBNI needs to be understood. If people choose to see acts of threat or violence against them as being actions by members of one tradition against all members of their tradition, the securing of an agreed legal order is weakened, as is the securing of a society founded on equal citizenship. In

such a climate, the tendency for 'tit-for-tat' actions rises to the surface and the goal of securing an agreed society is diminished.

In cultural terms, the law and order system should hold individuals to account, diminish fears growing within the wider population and erode any tendencies to retaliation and revenge. When this works, citizen-based societies are strengthened; when it fails, people more readily become partisan.

A second priority is to link the day-to-day practices of public and civic institutions to the promotion of openness and fair treatment and the need for improved community relations and Good Relations. Co-existence, at best, means an uneasy peace where no-one learns 'with the other' but most people learn about the other through the stories of the worst fears of their group. Good Relations practice is about assisting people and groups to evolve relationship structures that enable and ennoble one another; and secure the place of each different person, as of right. Promoting cross-cultural understanding and peace-building between people is, at root, not primarily about skills and problems, but about enabling and supporting open and potentially trusting relationships, underpinned by an organisational and societal culture that acknowledges the other as a 'gift' rather than a 'danger'. Work for understanding is a practical engagement that is about meeting others in ways that undermine previous 'cultural stereotypes' and 'certainties'.

A professional value base and a public service ethic reject partisanship. These value bases are identified with promoting the common good, interdependence and agreed and equal citizenship as the basis for a stable society. Partisanship, if perpetuated, ensures that future generations will be mortgaged to strife, enmity, bitterness, continuing division and limited opportunities because separate and equal is no equality at all.

A third priority is to link citizenship and Good Relations with economic sustainability. The citizenship script is essential for linking the work with people from diverse backgrounds to the wider search for the economic sustainability and future vitality of a contested region. Morrissey, an economist who since 2000 has argued the economic centrality of Good Relations, claims there is a 'new seriousness about the policy field of good relations, a moral abhorrence of the manifestations of sectarianism and racism seen across Northern Ireland and a recognition of the diseconomies and threat to development represented by a divided and segregated society' (2006, pp. 2–3). The citizenship

agenda is part of the wider challenge of promoting a diverse and interdependent future together. As more staff in public and civic organisations model such approaches, people will experience relationships and spaces that model ease and open enquiry that they can be mimetic with (Girard 1977; Girard 1978) and so become interdependent with others.

At the centre of probation practice is the belief that people can change their violent and criminal behaviours and that people have to be held to account when they disturb societal Good Relations. Clients on probation need to be with professional staff who can speak about how they, themselves, are open to living with those different to them and face the challenges of being partisan. Real change means that the state has to examine the ways in which law and order works in the society; how equality of access for people from different backgrounds or cultures operates and whether equality of employment opportunities are safeguarded. Organisational cultures have to examine how they need to change to speak about 'others' in an inclusive way and to change how differences are acknowledged and addressed in their work. It is now time to invite people in political life, civic life, faith organisations, trade unions and public life to show 'civic courage' (Shriver 2005) and build civic-minded organisations and public institutions that establish Good Relations between our diverse citizens as a necessity.

In promoting a Good Relations agenda, the PBNI supports work towards a more secure and citizen-based society. In the midst of insecurities around difference that are emerging as one element of societal life in more stable societies in the Republic of Ireland and Britain, the evolving practice within the PBNI has learning within it to assist probation services to hold to wider intercultural values. Its work towards a shared future for different and equal citizens is something that all societies now need to accumulate and learn from.

Sondhi (2006) argues that the intercultural approach facilitates dialogue, exchange and reciprocal understanding between people of different backgrounds. He sees encounter between equal, yet different, citizens as a key activity. When the PBNI promotes Good Relations practice between board members and with the staff body, and supports staff promoting this theme with clients and partners, it establishes the experience of equal and different citizenship as a primary point of engagement for all staff. Such practice links Good Relations in Northern Ireland with the practice of promoting wider intercultural understanding

throughout the EU. In such ways, this work enables Northern Ireland to become an outward-looking and forward-looking region,<sup>1</sup> a place with institutional experiences that organisations in more stable societies facing the intercultural challenge can learn from.

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<sup>1</sup> Some aspects of the preparatory work associated with this project were supported under the EU Peace Programme, through funding from NICRC EU Programme Measure 2.1.

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## The Place of Victims in the Criminal Justice System

**Sheena Norton\***

**Summary:** Victims are often the forgotten parties in the criminal justice system, despite their involuntary and highly distressing involvement in this arena. This article reflects on some of the approaches to victims in the practice of the Probation Service in Ireland, and in the United Kingdom, and presents a review of some of the pertinent literature. It highlights the effects of crime on victims and considers how probation officers can respond to this, exploring some implications for effective practice.

**Keywords:** Victims, victimisation, criminal justice system, offenders, pre-sanction reports.

### Introduction

The last 30 years have seen the rise of the victims' movement in Ireland and the UK. This movement involves a variety of interest groups, policymakers and state agencies, all calling for the recognition of victims' losses and for an improvement in the manner in which victims are treated in the criminal justice system. Zedner (2002) observes that since the 1980s the study of victims has become a growth industry within criminology, prompting debate about the rights of victims and the standards of practice in related fields, and suggests that the victim should be recognised as a key player in the criminal justice process as 'without the co-operation of the victim in reporting crime, furnishing evidence, identifying the offender and acting as a witness in court, most crime would remain unknown and unpunished' (p. 435). Nevertheless, the

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criminal justice system is still often criticised for the manner in which it can disregard victims' interests and/or use victims to achieve the desired outcome in a court case, for example as witnesses for the prosecution (Koffman 1996; Victim Support 2000; Williams 2002a).

It is accepted that the criminal justice system was traditionally concerned with the perpetrators of crime to the neglect of the victim and much is found in the literature detailing the struggle of victims to gain a voice or some level of recognition within the system (Crawford and Goodey 2000; Department of Justice 1997; McIvor 1996; Newburn 2003; Roberts 1997; Victim Support 2000; Zedner 2004; Zellerer and Cannon 2002). Goodey (2000) argues that measures in recent times to integrate victims into the criminal justice system must be given careful consideration and thought; such developments may not always be primarily in the interests of victims but may be about reducing recidivism, about promoting the reintegration of offenders into the community or a means by which agencies of the criminal justice system can win public support.

The issue of 'secondary victimisation' is recognised in the literature and becomes apparent when the victims of crime experience further victimisation through their experience with agencies of the criminal justice system, which they may perceive as insensitive or even harmful (Koffman 1996; Maguire and Pointing 1988). All too often 'an individual's initial negative reaction on becoming a victim is reinforced and intensified by their experience of the criminal justice process' (Reeves and Mulley 2000, p. 127).

Victims are increasingly encouraged to play a role in decision-making about offenders through reparation and victim impact statements. The relevance of incorporating the victim's perspective has certain benefits. It can afford those who have been subjected to crime, recognition and respect for the plight they have experienced and give them a voice where previously they were silenced, something which is often desired and welcomed by victims of crime (McIvor 1996; Roberts 1997; Williams 2002b). Additionally, some argue that incorporating the victim's perspective helps probation officers to make more accurate risk assessments and provides the probation officer with information on which to base effective future work with offenders (Dominey 2002).

Ireland, like many other countries, had a tendency to overlook the effects of crime on victims as the criminal justice system focused on the



detection, prosecution, conviction and sentencing of criminals (Department of Justice 1997). The *Victims Charter* acknowledges and aims to rectify this position in the Irish system (Department of Justice, Equality and Law Reform 1999).

### **Effects of crime on victims**

Few would deny the often devastating effects of crime on those upon whom it is inflicted. Victims of crime may be affected adversely in many ways: physically, emotionally, psychologically and financially. Unfortunately, many people's first contact with the criminal justice system is as a result of being a victim of crime. Roberts (1997, p. 151) remarks that 'in the aftermath of a violent crime, victims often have to cope with physical pain, psychological trauma, financial loss, and court proceedings which all too frequently seem impersonal and confusing', and others concur with this observation (Kosh and Williams 1995; Watson 2000; Williams 2002a). Research has indicated that victims of crime do have particular needs, ranging from the need for information from the criminal justice process to the need for emotional support (Mawby and Walklate 1994).

'Victims of crime have been subjected to someone interfering in their lives, and this negative experience may fundamentally alter their view of the world' (Reeves and Mulley 2000, p. 126). Victim surveys highlight people's 'hidden' experience of crime and 'fear of crime' (Goodey 2000, p. 15). The main sources of victim data in the Republic of Ireland are official statistics and the results of limited surveys such as that provided by Breen and Rottman (1984) and the Central Statistics Office (1998). A study undertaken by Watson with the Economic and Social Research Institute on victims of crime in Ireland discovered that, aside from the possible physical injury or financial loss attached to crime, 'Victimisation can result in psychological distress and increased suspicion, or victims may respond by restricting their activities' (2000, p. 208). Feelings of anger, fear and guilt are both normal and healthy and it is usually the emotional impact of a crime that is more profound for the victim than physical pain or financial loss (Reeves and Mulley 2000). Other reported effects of crime include feelings of self-blame for the offence and the impact on work such as missing time or losing/leaving a job (Watson 2000).

The effects of crime can vary according to the offence. Most studies indicate that the dominant effect for all victims, regardless of the crime, is psychological distress (Zedner 2002). Anecdotal evidence suggests that people are more affected by certain categories of crime and whether or not they know the perpetrator. It is also crucial to bear in mind that different people are affected differently by crime. Victims often find it hardest to recover from crimes such as assault, robbery, domestic burglaries and car theft (Tudor 2002). Some people can come to terms with the crime relatively quickly and move on with their lives whilst others (for example the elderly, repeat victims, victims of sexual assaults or other violent crimes) are more vulnerable to experiencing long-term detrimental effects as a result (Department of Justice 1997; Nettleton *et al.* 1997; Watson 2000; Zedner 2002). However, the likelihood of such an experience relates not only to the impact of criminal victimisation itself but also to other aspects in the person's life (Mawby and Gill 1987; Mawby and Walklate 1994; Nettleton *et al.* 1997). For some, criminal victimisation can result in post-traumatic stress syndrome.

The risk of victimisation in general depends in part on one's geographical location, as well as one's age, sex and patterns of lifestyle activity such as going out in the evenings and consuming alcohol (Zedner 2002). Certain groups or categories of people appear to be more prone to victimisation, and repeat victimisation at that, than other categories in the population (Koffman 1996). Van Dijk (2000) concedes that victim recidivism is very common and claims that many victims are revictimised by the same type of offence often within the same year. Victims of crime are disproportionately male, single, young, reside in urban areas and belong to lower socio-economic groups (Fattah 1989 cited in Spalek 2003). Interestingly, this is also the profile of a typical offender. The statistics indicate that those most at risk of becoming a victim are young males between the ages of 16 and 24, those that are unemployed, lone parents and single people living in the private rented sector and those that socialise in pubs and clubs three or more times a week (Zedner 2002).

Males are victims in 64% of mugging offences and 80% of assaults against strangers, while females are victims in 74% of domestic violence cases (Zedner 2002). In Watson's (2000) survey, assaults appear to have more impact on victims than other crimes; victims of assault knew the offender in more than half of cases, rising to three in four cases in relation to females; one in four female assault victims was assaulted by their

spouse or partner. Victims usually have strong views about what happened to them and the person that did it to them and 'For the most part, victims of crime want to be kept informed and want to be given an opportunity to say something' (Nettleton *et al.* 1997, p. 38). Evidence also suggests that significant numbers of crimes go unreported (Koffman 1996; Zedner 2002).

### ***Victims Charter***

The Probation Service is an agency of the Department of Justice, Equality and Law Reform. An Garda Síochána, the Courts Service, the Prison Service and the State Prosecution Service (Office of the Director of Public Prosecutions and the Chief State Solicitor's Office) are identified as the other parts of the Irish criminal justice system in the Department of Justice, Equality and Law Reform's *Victims Charter* (1999). The *Victims Charter* seeks to describe all elements of the criminal justice system from the point of view of a victim of crime. It sets out what victims of crime can expect from players in the justice system, including the Probation Service.

The *Victims Charter* states that the Probation Service: 'Concerns itself with your plight as a victim and attempts to consider your sensitivities and trauma in the way that it undertakes its work. Offenders are strongly encouraged to take responsibility for the hurt, damage and suffering they may have inflicted on you' (p. 18). It also advises victims that the Probation Service will consider them when preparing reports for court and, when requested, will assist in the preparation of victim impact reports.

The *Victims Charter* is currently being revised and updated. Also the Minister for Justice, Equality and Law Reform established the Commission for the Support of Victims of Crime in 2005, with a remit to disburse funding for victim support and assistance measures and to develop a framework for victims into the future.

### **Pre-sanction reports**

Assessments by way of pre-sanction reports (PSRs) are carried out by probation officers and proposals are presented to the court on the most appropriate method of dealing with offenders and on the measures that might be put in place to prevent reoffending. The Probation Service's

first published guide for officers writing probation reports came in 1999 and was entitled *Service Practice for the Preparation and Presentation of Pre-Sanction Reports*. This document stated that the primary focus of reports ought to be on the offence and the offender's pattern of offending (Probation and Welfare Service 1999).

In relation to victim issues, the guide states that PSR authors should make proposals 'so that the risk of the offender creating further victims of crime is reduced and so that the community is thus protected and made safer. Hence the PSR is targeted towards victim and community protection' (p. 4). The guide stipulates that 'victim issues' should be a specific section and heading in probation reports to the courts and suggests the following form:

- Offender awareness of victim(s).
- Offender awareness of impact of crime upon victim.
- Attitude to victim.
- Attitude to reparation.
- Capacity to make reparation.

Although the guide stipulates that 'Preparation of PSRs may involve consulting with and canvassing the view of a range of people relevant to the case' (p. 10), it does not suggest with whom it may be appropriate to liaise.

Dominey (2002, p. 168) argues that the tasks of probation officers at the report-writing stage in carrying out an assessment of an offender's awareness of the victim include:

- Making decisions regarding who or what qualifies as a victim in the case before them.
- Directly questioning the offender about the victim and the consequences for them both at the time of the offence.
- Challenging the offender with information supplied by the State Prosecution Service on the offence or the victim.
- Gaining the offender's perspective on the experience of being a victim themselves.
- Commenting in the PSR as to the offender's attitude to the victim.

Spalek (2003) notes that probation officers are likely to assess offender awareness of the impact of their crime by directly ascertaining the views

of the offender regarding the offence and by encouraging the offender to divulge any personal experience of being a victim in order to evaluate their understanding of the consequences of their crime. Dominey (2002) remarks that the quality of PSR assessment depends on the level of training probation officers have in the area of victimology and also describes how 'often a PSR author is presented with a case where there is not a straightforward relationship between one offender, one offence and one victim' (p. 167). It is not always possible to identify victims, such as in the possession of drugs for personal use or soliciting for prostitution (Spalek 2003), or in cases such as shoplifting or fraudulent welfare claims where the victim may be a 'faceless' commercial organisation or government department (Dominey 2002).

Work done at the PSR stage to assess the offender's level of victim awareness is, according to Dominey (2002, p. 171), 'the start of a process intended to raise victim empathy in offenders'. Where assessment of the impact of the offence upon the victim is included, it assists probation staff in making accurate assessments of the offender's pattern of offending and can provide a basis for effective work with the offender in the future (Dominey 2002; Williams 2002b). What is also evident is that victim issues are more important in some PSRs than in others and offenders may be more likely to feel remorse in cases where serious harm has resulted (Dominey 2002).

Probation work in the UK now involves direct work with victims of crime, alongside traditional indirect work. Its central mission is similar to that in Ireland in that it seeks to make offenders 'aware of the impact of the crimes ... on their victims, the community and themselves' ('National Standards'). Many agencies in the criminal justice system have new responsibilities in working with victims of crime. The Probation Board for Northern Ireland (2005) set up a Victim Information Scheme in 2005 to work directly with victims by providing information when an offender has come under probation supervision.

Victim work requires a high level of skill to respond to victims' needs whilst simultaneously respecting offenders' rights. Some reservations about direct victim work have been expressed and it has been suggested that it is demanding and perhaps even inappropriate for probation officers to deal with both offenders and victims simultaneously (Reeves and Mulley 2000; Spalek 2003). Probation officers have voiced concern that they may not have the competencies required for victim work, however others stress that probation officers have the skills to deal with

many potentially stressful situations including direct work with victims (Nettleton *et al.* 1997; Tudor 2002).

### **Victim impact reports**

At the pre-sanction stage of an offender's case before the court, probation officers may be requested to prepare an independent report on the victim, detailing the impact of the crime upon them and any long-lasting implications. These reports are also referred to as victim impact reports or victim statements. Through such reports, the 'victims are afforded proper recognition and respect, while some of their hurt and pain is communicated for the court's consideration' (Probation and Welfare Service 2001, p. 9). The Community Law Reform Committee of Australia defines victim impact statements as 'a statement setting out the full effects – physical, psychological, financial and social – suffered by a victim as a result of a crime' (quoted in Walklate 2002, p. 147). Many consider such statements to be a positive thing; at the very least they are an improvement in victim participation in the criminal justice system and could even extend to recognition of the rights of victims.

Victim impact reports can only be compiled with the consent of the victim. Within the Probation Service, the practice is that the victim is dealt with by a separate officer to the one assessing the offender and preparing the PSR.

### **Restorative justice projects**

There would appear to be a recent revival in interest in restorative justice as the way forward, reflected in the *No More Excuses* white paper in the UK (Home Office 1997) and the Children Act 2001 in Ireland. An increasing number of probation services are adopting aspects of restorative justice in order to achieve greater citizen involvement in the rehabilitative, sanctioning and surveillance aspects of their work than is possible when the focus is solely on offender supervision.

Essentially, restorative justice is about bringing the offender, victim and others affected by the crime together, to discuss the implications of the offence and collectively to reach a resolution (Hudson 2003; Marshall 1999). In doing so, the intention is to bring offenders to an

understanding and recognition of the harm they have caused their victims and the wider community.

A guiding value of the Probation Service generally in fulfilling its mission is that 'intervention to restrain further offending is more effective when undertaken by way of reparation, restoration, renewal and resettlement than by simple retribution' (Probation and Welfare Service 2001, p. 5). The aim of restorative justice is important: 'it must always be undertaken with the other party(ies) in mind. Hence, victim contact work, victim perspective work with offenders in the course of report writing, in supervision, in group work, in custody and on release into the community, may be carried out within the parameters of restorative principles' (Tudor 2002, p. 132).

Some specific models for restorative justice exist such as victim/offender mediation, restorative conferencing and family conferencing (Tudor 2002). Currently, there are two restorative justice projects in Ireland: the Nenagh Community Reparation Project and the Restorative Justice Services in Tallaght. The Nenagh Community Reparation Project was established in 1999 in conjunction with the Probation Service. Other stakeholders in the project include Nenagh District Court, An Garda Síochána and a panel of representatives from the local community. The project is based on the community reparation model of restorative justice. Following a guilty plea in court, a judge may refer an offender to the project to participate in a process of reparation. The reparation process consists of the offender and victim coming together, along with the various community stakeholders, to discuss the offence and reach a unanimous resolution. This agreement is then presented to the judge, who has the ultimate authority in deciding if a proposal is satisfactory (Nenagh Community Reparation Project 2002). Restorative Justice Services (formerly the Victim/Offender Mediation Service) was established in 1999 in Tallaght, Co. Dublin and is funded by the Department of Justice, Equality and Law Reform through the Probation Service.

The relevance of restorative justice is its capacity to place the victims and the community centre stage as well as the offenders (Zellerer and Cannon 2002; HMIP 2000; Criminal Justice Reform 2005). Victims thus become enabled to express their feelings and perceptions of the crime and harm that they have experienced, offenders learn to understand the effects of their crime and the impact of it upon the victim (Tudor 2002; Zellerer and Cannon 2002; HMIP 2000). One description claims that

‘Restorative Justice processes offer unique benefits: giving victims a voice, answering their questions and empowering everyone involved’ (Criminal Justice Reform 2005, p. 4).

### **Family conferencing**

The Children Act 2001 aims to divert children and young people from court, conviction and custody as much as possible. The Probation Service is responsible for the delivery of a range of community sanctions and interventions under the Act, including family conferencing. Victims are provided with the opportunity to meet the offender, give their account of how the offence has affected them, and establish the facts of the offence; while offenders are provided with the opportunity to apologise to their victim and offer some type of reparation. Whereas victims may traditionally not have a voice in the criminal justice system, here they can be involved and have their opinion heard. However, whilst the majority of victims do appear to benefit from the experience, a small minority are disappointed and perhaps even further traumatised by the experience (Masters 2002; Morris and Maxwell 2000).

### **Effective practice**

It is accepted that social workers and probation officers influence their clients in many ways. Humans learn from watching other people (observational learning) and from what we feel and think (cognitive learning) as our thoughts and feelings govern our behaviour (Coulshed and Orme 1998, p. 158). Payne (1997, p. 120) describes the aim of behavioural social work as ‘increasing desired behaviour and reducing undesired behaviours, so that people respond to social events appropriately’. This is effectively what probation supervision aims to do. Probation officers aim to influence offenders positively so that pro-social behaviour is promoted and undesirable offending behaviour is reduced or stopped. They seek to deconstruct criminal thinking and construct alternative thinking and ultimately pro-social and anti-criminal behaviour. The development of victim empathy and awareness of victim issues is often employed as a key strategy in doing so.

Connolly (2000) states that tackling criminogenic need must include developing an increase in victim empathy in offenders. Support of



this position is found in Zehr and Mika's work (2003), which advocates that offenders must be facilitated to understand the consequences of their offending, for both the victim and community at large, and to take responsibility for their actions. Nellis and Gelsthorpe (2003) expand on this by postulating that constructive work cannot be employed with offenders in the absence of incorporating the issue of the needs, rights and interests of the victims with those who have put them in that position. Probation work aims to rehabilitate offenders and 'in order to rehabilitate victims too, repair of the damage they have caused in offending forms a core part of this work' (Tudor 2002, p. 132).

Increasing victim empathy with offenders can be carried out in the context of one-to-one supervision of offenders and/or groupwork programmes. The aim is to elicit the offender's own experience of victimhood and the 'feelings associated with being a victim, such as shock, anger and guilt, are elicited and links can gradually be made with offences perpetrated' (Dominey 2002, p. 171). It is also worth considering the high probability that many offenders have themselves been a victim of crime (Dominey 2002; Tudor 2002; Williams 2002b) and that this contributes to the cognitive and behavioural processes which support offending.

## **Research base**

Dominey (2002, p. 169) suggests that there is a distinct lack of research into the benefits of offender remorse or victim awareness and asserts that 'The link between expressing remorse today and behaving better tomorrow is not established'. Spalek (2003) also believes that the link between victim empathy in an offender and reoffending has not been adequately researched, making it impossible to know whether an offender who expresses remorse is less likely to reoffend than an offender who does not express remorse. Spalek further contends that whilst giving 'consideration of the victim in work with offenders seems a positive approach to tackling crime', there are also problems such as the 'victim' and the 'offender' not being obviously identifiable or perhaps even being interchangeable (p. 221).

When we know the plight of victims, expand our capacity to assist them and develop approaches and specific interventions to create

awareness in offenders of their victims' lived experience, we in the Probation Service in Ireland will have taken significant steps on the journey towards recognising and empowering victims.

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## Community Service in Northern Ireland

**John Bourke\***

**Summary:** As 2007 is the twenty-fifth anniversary of the Probation Board for Northern Ireland being given the legislative responsibility for community service, this article reflects on important aspects of community service practice and developments in Northern Ireland over the period. It also considers the challenge in reshaping and modernising community service in Northern Ireland to be both aware of the need for public protection and successful in assisting offenders to reduce reoffending, increase their employability and enhance their social inclusion.

**Keywords:** Community service, reparation, reconviction, social inclusion, employment-related skills.

### Introduction

Community service orders (CSOs) were introduced in Northern Ireland on 1 April 1979 as part of the Treatment of Offenders (Northern Ireland) Order 1976. During the early years community service (CS) operated as a new community sentence within the responsibility of the then Probation and After Care Service. In 1982 the Probation Board for Northern Ireland (PBNI) was established and assumed the legal responsibility to 'secure that arrangements are made for persons to perform work under Community Service Orders' under the Probation Board (Northern Ireland) Order 1982 Act, Section 4(i)b. More recently the legislative authority has been written into Article 13 of the Criminal Justice Order (NI) 1996 where, in the case of a person aged 16 years or over who is convicted of an offence punishable by imprisonment, the court may make a CSO requiring him or her to perform unpaid work

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with the offender's consent of not less than 40 hours and not more than 240 hours.

The purpose of a CSO is to prevent further offending by integrating the offender into the community through (PBNI 2006, Section 9):

- Successful completion of positive, constructive unpaid work.
- Keeping disciplined requirements.
- Reparation to the community by undertaking socially beneficial work.

### **Historical perspective**

Over its 25-year history the CS scheme in Northern Ireland has gone through a number of structural changes. Initially a centralised structure organised and supervised CSOs throughout Northern Ireland. This central administration was intended to support uniformity in the development of practice, however practice tended to vary the further from the centre (Belfast) it was delivered. This structure also created an artificial separateness from mainstream probation practice delivered by local field teams.

A comprehensive review of CS was undertaken in the late 1980s. The prevailing view was that CS should be more closely aligned and integrated with field team services. This consequently led to the decentralisation of CS operations although its administration remained incorporated into central headquarter departments.

The 1980s and 1990s were difficult times in Northern Ireland but it is worth noting that despite the civil unrest CS was supported by voluntary and community sectors in both urban and rural settings and successfully delivered across the sectarian divide. The period posed challenges and difficulties for CS staff, who were often at the front end of service delivery, representing a criminal justice system that was under attack.

The Northern Ireland Social Services Inspectorate undertook the first independent inspection of CS practice in 1997. The inspectors challenged the lack of consistent practice and emphasised the need for more standardised service delivery. One outcome of this inspection was the drafting and implementation of PBNI minimum practice standards and the introduction of a monitoring system to improve and maintain quality control. A further consequence of the inspection was a reduction in the number of placements provided by voluntary and community

organisations that supervised only one CS worker (offender) and an increase in the number of worksites supervised by CS supervisors working with groups of CS workers on specified projects. This resulted in both negative and positive outcomes in that there was a reduction in the number of voluntary and community sector placements but an increase in the control and direct supervision of CS workers. A further inspection in 2002 focused on enforcement and indicated that there had been significant improvements in attendance and monitoring (NI Social Services Inspectorate 2003).

The success of CS in Northern Ireland as a sentencing option has been evidenced by research comparing adult reconviction rates in the two-year period following sentence in 2002 (Ruddy and McMullan 2007). As Table 1 shows, CS is as effective as other community sentences and significantly more effective than custody in terms of reconviction rates in Northern Ireland.

**Table 1.** Adult reconviction rates in the two-year period following sentencing in 2002

<i>Sentence</i>	<i>Reconviction rate (%)</i>
Community service orders	34.7
Probation orders	36.4
Custody probation orders	35.8
Discharge from custodial sentence	50.6

Source: Ruddy and McMullan, 2007

### **Formulating a new strategy**

In 2006 the PBNI agreed a new CS strategy, which addresses the managing and resourcing of the scheme and is directed towards social inclusion. Planning for the future of CS in Northern Ireland involved extensive consultations with beneficiaries, offenders and staff. The feedback was very positive, but had to be balanced with sentence expectations and the need for public protection.

As part of this planning process it was useful to reflect on 25 years of CS practice in Northern Ireland (in the region of 1.5 million hours of work completed) in order to identify the fundamental elements of the scheme that resulted in positive outcomes for both the community and the offenders. These include:

- Meaningful work.
- Matching offender interests/aptitudes to work deployment.
- Close links between the offender and the beneficiary.
- Clear understanding by the CS workers of the services provided by the voluntary/community organisation.
- Good instruction and consistent supervision.

Recent changes in CS in England and Wales present a further opportunity to review CS. Although there are clear variations in CS schemes between the different jurisdictions, there were also legislative and operational similarities up until 2001 when the first of three significant developments was introduced in England and Wales.

### *1. Community punishment orders*

The Criminal Justice and Court Services Act 2000 (Article 200) changed the title of community service to community punishment (CP). This change stimulated the age-old debate of punishment/retribution versus restorative processes/reparation in terms of potential outcomes for offenders, victims and the wider community. The change in title supported the ideological stance of being ‘tough on crime’, however it could be argued that CPOs are identical to CSOs in all but name.

### *2. Enhanced community punishment*

Enhanced community punishment (ECP) was intended to increase the effectiveness of the CP scheme using ‘What Works’ principles. The ECP is designed to teach the following through the practice and experience of CP work:

- Pro-social attitudes and behaviours – through modelling and enforcement.
- Problem-solving skills – through problem solving in a work context.
- Employment-related skills – through guided learning in a work context.

The thinking behind ECP had much to commend it in terms of developing work discipline and skills, and resulted in some significant outcomes:

- Good standards of work.
- Beneficiaries being happy with the results.



- Most areas exceeded the national target for order completions.
- CS supervisors received training.
- Practical links were formed with Crime and Disorder Reduction Partnerships.
- CS supervisors spent significant amounts of productive time with both offenders and the public.
- Managers at all levels had opportunities to sell the service (HM Inspectorate of Probation 2006).

The positive outcomes from the introduction of ECP influenced part of the review process and recommendations for CS development in Northern Ireland. However, there were also problems with ECP, which included:

- Wide variations in the quality of casework management.
- Not all work projects were seen to promote positive benefits for the offender.
- The programme was resource intensive.

ECP was effectively ended as a comprehensive national scheme with the introduction of ‘unpaid work’.

### *3. Unpaid work*

The Criminal Justice Act 2003, which came into effect on 4 April 2005, introduced the community order which states that the court can impose any one or more of twelve requirements, one of which is called unpaid work (‘community service’) (Sections 177 and 199). The unpaid work requirement is where the offender works up to 300 hours on community projects under close supervision. In effect the offender is repaying his or her debt to society; but at the same time the scheme helps the offender to develop new skills. Charities, community organisations and local authorities can provide workplaces and benefit from the offender’s contribution. Unpaid work can be a singular sentence or it can be combined with one or more other requirements reflecting the criminogenic needs of the offender.

Similar sentencing requirements can be given by the courts in Northern Ireland through the use of combination orders (PBNI 2006, Section 10). A combination order combines CS with probation supervision, which can include additional requirements to address specific needs.

## **The way forward**

The vision for CS in Northern Ireland, as outlined in the PBNI Community Service Review, is to create a dynamic scheme that is transparent and inclusive and that maintains the confidence of the courts and the wider community by evidencing an offender's reparation for the harm done, through voluntary work. This review outlines a plan to modernise the present CS scheme in the following ways:

- To highlight the reparative nature of the work to the wider community.
- To demonstrate equal opportunity with particular reference to female offenders who have been under-represented.
- To undertake work for the agreed benefit of victim groups.
- To increase the employability of offenders participating in the scheme through skills developments including literacy and numeracy.
- To extend and develop positive partnerships with the voluntary and community sectors who are willing to contribute to skills development.
- To increase the visibility of the scheme through a proactive publicity strategy.
- To show CS as a positive experience, which contributes to social inclusion.

The challenge of the modernisation plan is to develop the CS scheme in a way that contributes to the social inclusion of offenders within the community and that also benefits the community. In order for this to happen, CS needs to maximise opportunities for learning. Opportunities need to be built into the delivery of the order and not viewed as an add-on to the existing scheme. Increasing employability is a significant contribution towards social inclusion and research shows that one of the most successful methods of reducing or stopping offending is to place offenders in employment (Social Exclusion Unit 2002). Other developments planned are:

- To produce pro-social attitudes and behaviours in offenders by enabling CS staff to develop a pro-social approach to their work.
- The introduction of new work projects where trained CS staff teach 'problem solving at work' to enable offenders to learn new skills.
- The delivery of employment-related skills within the CS work context.

Some examples of work projects that provide new opportunities are:

- The refurbishment of the SS *Nomadic*, a former support ship to the *Titanic*, offers a range of restorative work and is a highly visible and prestigious project.
- Environmental work for the Forestry Commission enables offenders to learn horticultural skills in Castlewellan Forest Park, which in turn benefits the public.
- ASSISI, an animal sanctuary, provides an opening for offenders to work with animals.

Potentially the most significant development on the horizon is the review of the sentencing framework (Hanson 2006), which proposes the introduction of supervised activity orders (community service) as an alternative to imprisonment for fine defaulters. This proposal will probably present logistical difficulties but it is an exciting opportunity to expand the PBNI's work, extend partnerships with the community and voluntary sectors, benefit the community and avoid unnecessary imprisonment.

## **Conclusion**

Research has shown that CS in Northern Ireland is more successful at reducing reconviction rates than periods of imprisonment. It remains an important sentencing option for the courts and provides opportunities for both direct and indirect reparation. Overall feedback from offenders, PBNI staff and beneficiaries reflects very many positive views about the CS scheme. Statistically, CS has maintained its percentage share of community sentences over the years, but the PBNI does not plan to take this situation for granted and has formulated a modernisation plan to increase effectiveness in terms of completion of hours and reduction of reoffending. The plan will develop offenders' skills and increase their social inclusion. CS work will also demonstrate good practice to the public and promote its benefits for the wider community.

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## The Roma Project: A Case Study of Community Service

**Brian Horgan\***

**Summary:** The criminal justice system has a responsibility to address offending behaviour in a manner that is sensitive to the offenders' culture, identifies the special characteristics of their offences and also addresses their unique needs. In Tallaght (southwest Dublin), a District Court judge requested the help of the Probation Service to address the repetitive offending behaviour and difficulties experienced by Roma women in particular. The result was the development of a community service project to engage these women in a non-threatening and productive manner. It was built on the known skills of Roma women (sewing) and their manifest need for English language classes. It proved popular and there was a high rate of attendance: of three projects completed, not one participant has been returned to court for non-attendance. The presentation of toys made in the project to a children's hospital received positive media coverage. Community service therefore can both address offending behaviour and bring about behavioural change.

**Keywords:** Social and cultural factors, communication, added value to community service.

### Introduction

There is no evidence that members of the Roma community are at a higher risk of offending or have a higher rate of conviction than other groups in Irish society. However this does not relieve those of us who work in the criminal justice system of the responsibility of addressing their offending behaviour in a manner which is sensitive to their culture, identifies the special characteristics of their offences and addresses their unique social, educational and other related needs. 'Provision for the

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Roma community will not be achieved without considerable attention to cultural and social factors' ([www.paveepoint.ie](http://www.paveepoint.ie)<sup>1</sup>).

Regular meetings take place between the senior probation officer (Tallaght) and the judge of the local District Court. During one such meeting the judge shared his concern about the numbers of repeat offenders from the Roma community coming before him. He identified these offenders as predominantly female, mothers and of a younger age group. He also stated that the offences individually were not very serious, but the repetition and frequency with which they were being convicted could result in custodial sentences being imposed. He expressed his reluctance to sentence these women to custody at this stage, but acknowledged that such a course could be necessary in the future. He requested the assistance of the local Probation Service team to help him deal with this dilemma.

Following that meeting, a probation officer assigned to community service work and the author began discussing how to respond to the request and concerns of the judge. It was decided to explore the possibility of establishing a community service project<sup>2</sup> specifically for Roma women, taking into account their lifestyle, culture and skills. What follows is a description, in narrative form, of the process and work that resulted in the Roma project being established.

### **Project development**

The Probation Service in Tallaght had (in 2005) a limited experience of working with referrals from the Roma community. The response of members of that community to structured assessment and supervision was varied but overall, from the point of view of the Probation Service, it was not very fruitful or productive. Those who were referred were often reluctant to engage positively and were unwilling to keep in contact with the service. The first obstacle to be overcome was communication – most of the Roma community had very poor English language skills. The system of assessment and supervision sessions on a weekly or monthly schedule appeared to be alien to the lifestyle of members of the Roma

<sup>1</sup> Pavee Point is a partnership of Irish Travellers and settled people working together to improve the lives of Irish Travellers by promoting social justice, solidarity, socio-economic development and human rights.

<sup>2</sup> Such projects are provided for in the Criminal Justice (Community Service) Act 1983. Participants are offenders convicted of an offence and sentenced to a term of detention or imprisonment which is suspended pending the completion of a set number of hours (between 40 and 240) of community service.

community. In addition, female offenders would frequently arrive in the office with very young children; the office in Tallaght does not have crèche facilities for children, thus interviewing Roma women was especially difficult.

We were also aware that members of the Roma community considered that they did not experience fairness or dignity in their dealings with statutory bodies, including justice agencies and personnel, in Romania (where 90% of the Roma living in Ireland come from). Our experience suggests that Romanian nationals (interpreters and offenders) tend to exhibit a high degree of prejudice against the Roma community.

The Roma women we came in contact with have been largely untouched by the social phenomena of feminism and equality which have had such an impact on western European societies. This is apparent in a number of key aspects of their lives. The lack of freedom in choosing a husband, the role of women as childminders, the pressure on women to beg on the streets as the source of the family income, the levels of control exercised by husbands over the minute details of their wives' lives, domestic violence etc. All of these phenomena were cultural, and as a result would not be subject to influence through the level of contact that we were having with the women. However such realities would have to be taken into account in any attempt to develop a project that would engage the Roma women over a period of time in a non-threatening and productive manner.

On the positive side we were also aware that most Roma women were highly skilled in the craft of hand-sewing (their colourful, voluminous and multi-layered skirts and dresses are handmade by the women, who acquire the skill from a very early age). The contacts we already had with members of the Roma community indicated to us that for the most part they were resilient and resourceful people who were used to surviving in hostile social environments. The Roma women, in particular, were not used to having their skills and abilities recognised. When it was decided to take the first steps to establish the project, these factors helped us make a number of decisions about the functioning, working and scope of the project.

## **Project design**

With the explicit endorsement of the District Court judge, we set about designing a community service project which would be both restorative

to the community and beneficial to the offenders/participants. It was decided to build on the known skills of the women and base the work of the project on sewing and making soft toys. Fortunately we were able to call on the services of a long-serving and skilled community service supervisor (who has been doing precisely this type of work for over 20 years).

It was also decided that an integral part of the project should be English language classes. Again we were fortunate to be able to use the staff of the Tallaght Probation Project, one of whom, a highly qualified English language and English literacy tutor, was assigned to work with the women.

In discussions among ourselves and with other agency personnel, it was decided to establish priorities for the project. The following goals were set out:

1. Completion of the community service order within an acceptable timeframe.<sup>3</sup>
2. Meeting the Probation Service's requirement to provide work of a suitable kind for offenders by basing the restorative element of the project around the known skills of the Roma women – namely sewing and making soft toys.
3. In accordance with the wishes of the District Court judge, addressing the women's poor English language and literacy skills during the hours of community service. An anticipated added value in providing this type of instruction was that it could enable better integration of the women and also of their children. 'However, for Roma to participate in English classes it is necessary for Roma-specific measures to be taken. Past experiences of discrimination mean that Roma adults often feel uncomfortable unless in the company of their own people. Furthermore, a limited experience of education means that appropriate teaching models may need to be employed' (Roma Support Group: [www.romasupport.ie](http://www.romasupport.ie)).

<sup>3</sup> Community service is a direct alternative to imprisonment and failure to comply with the terms of the order may activate breach proceedings which may result in imprisonment. Section 2 of the Criminal Justice (Community Service) Act 1983 states: 'This Act applies to a person (in this Act referred to as an "offender") who is of or over the age of 16 years and is convicted of an offence for which, in the opinion of the court, the appropriate sentence would but for this Act be one of penal servitude, of imprisonment or of detention in Saint Patrick's Institution, but does not apply where any such sentence is fixed by law'.



4. Perceiving the Roma community as a relatively insulated group, and concerned that the women's access to health services might be deficient, the Public Health Nursing Service would be invited to address the participants on the availability of child health and women's health services. 'Roma women sometimes do not seek medical attention until late in their pregnancy, presenting difficulties around ante-natal and post-natal care. Most Roma qualify for medical cards, however they sometimes feel they do not get sufficient support and information from health authorities to guide them through the application process' ([www.romasupport.ie](http://www.romasupport.ie)).
5. Including a session on the issues of offending behaviour and the need to desist from it (targetted specifically at offences Roma women are frequently found guilty of – begging and shoplifting).

### **Actioning the project**

One of the first issues we had to face was where to locate the project. It was important that the site would not be a 'public place' or a location where members of the public had access. Our concern was to ensure that there would be no potential for further identification of Roma women with antisocial behaviour in the public mind. It was decided to use a suitable space in the offices of the Probation Service in Tallaght. This location was also accessible to the clients and to the inter-agency staff members whom we wished to recruit. Because of the nature and novelty of this project it was also envisaged that there would be more probation officer contact required than on a standard community service project.

The issue of childcare was foremost in our discussions about potential problems with the project and strategies to avoid them. We knew from our contact with members of the Roma community that women have almost sole responsibility for childrearing. We also knew that this was an unrecognised burden for many of them. It was decided that, rather than provide childcare facilities for the duration of the project, the hours of work would be limited to five per day and we would inform the women that they would have to arrange for the fathers of the children or some other suitable person to care for the children during the hours of the project. We saw this approach as beneficial to the participants in that it would provide them with some child-free time and opportunities to interact in a positive and rewarding manner with the supervisor, probation officers, teacher, other Roma women etc. without distraction

or interruption. We also hoped that it might encourage the fathers of the children to take an active parenting role, particularly for the very young children. We were conscious of the potential risks to children in this approach, however we stressed the need for the women to make adequate and careful arrangements for childminding (this included the need to discuss with Probation Service personnel any concerns they might have in this regard).

There were, and still are, community service projects in which the sole participants are women. The question arose for us, should we refer the Roma women to those projects? It could be argued that this would promote integration and tolerance of and for the Roma people. However these projects concentrate on the restorative work alone. As outlined earlier, we were of the view that there was greater potential for behavioural change by taking a wider approach with the participants than is the norm for community service. Hence we concluded that the possible (minor and unknown) benefits of integration were far outweighed by the more targeted approach of the Roma project.

Following a period of discussion within the Tallaght office and consultation with other agencies it was decided to start the project. Contacts were made with staff at the Health Service Executive, Pavee Point (which has members of the Roma community participating in its programmes), the manager of the Tallaght Probation Project and probation colleagues working on a community service project for women. The goals set out above were to be addressed using statutory and non-statutory resources.

We identified a group of Roma women who had been placed on community service orders in Tallaght District Court. Although requests were made for referrals from probation colleagues outside the Tallaght area, no other referrals were made.

The principal activity of the project was sewing and making soft toys. This proved to be very popular with the women because it was a craft with which they were familiar and were proud to demonstrate their skills and abilities. It was also very acceptable to the women because the community service supervisor was able to enhance their skills by teaching them how to use sewing machines.

We also decided to place a strong emphasis on the acquisition of English language and literacy skills, making it a part of every day's activities. The English literacy tutor held group and individual lessons each day. Both were very successful in engaging the participants in the

activities with the result that there was a very high rate of attendance. Indeed most of the women arrived each day prior to the official starting time.

In order to facilitate the childcare obligations of the women it was decided to begin the work at 9.30 a.m. and finish at 2.30 p.m. each day. For organisational reasons within the Probation Service, the project was restricted to five days every two weeks. With hindsight this was probably a good idea anyway and accounted in some way for the high level of attendance.

Three projects have been completed. None of the participants (13) have been returned to court (breached) for non-attendance. One has been reconvicted on similar charges and participated in a second project.

It was our intention that the items manufactured in the projects would go to local charities. This is what happened to a large extent. However one participant requested that she be allowed to send some of the items to her grandchildren (toys) and children (curtains, bedding etc.) living in poor circumstances in Romania. In view of the fact that Irish people have sent large amounts of aid to charities in that country, it was decided that we could not object to this request.

Most of the items made on the projects went to the National Children's Hospital in Tallaght. Contact was made with the matron of the hospital midway through the first project. She expressed interest in accepting the toys. She also requested that some other types of craftwork be supplied and requested that they be fire-proofed. The ever-resourceful supervisor was able to arrange this. In the week before Christmas 2005, the first presentation of toys and Christmas decorations was made at a reception in the hospital, in the presence of the participants. The judge of Tallaght District Court was also there and praised the women for their achievement. Every child in the hospital received a toy and every child going home before Christmas received a handmade fabric Christmas decoration to bring home.

Importantly, this event received positive coverage in the national and local media, which hopefully contributed to a more positive image of members of the Roma community, and indeed of other offenders, in the public mind. Special emphasis was put on the fact that the Roma women were making a positive contribution to their local Irish community.

Two more projects have taken place since then. There has been no significant change in either the numbers attending or the completion rates. For the third project we had one woman who was not on a community service order. She was on a probation bond and was happy

to attend and avail of the opportunity to enhance her sewing skills and develop her facility with the English language. She is still on a probation bond and continues her supervision.

Currently there is no project taking place. Will we do it again? Of course. Now that the format is set, the organisational aspects are simplified. The only problem at this time is that we do not have appropriate referrals. Is this a measure of success?

## **Conclusion**

Learning points from applying this community service project are:

- Community service can play a much greater role in bringing about behavioural change when it promotes the positive self-image of the offenders, addresses their social needs and enhances their social skills.
- This type of community service project provides an opportunity to address the offending behaviour of participants.
- Community service should create the opportunity to identify and enhance the skills and address the needs of participants, and not just be about ‘getting the hours done’.
- The greater the involvement of probation officers, the bigger return for the participants.
- The project reduced reconviction rates.
- Participants benefit from inter-agency (statutory and non-statutory) co-operation.
- The project offered us an insight into the position of women in Roma society and specifically the cultural pressures that place them at risk of offending.
- The modular approach allows for inputs to change and increase (for instance, the next project will include a module on domestic violence, which we have learned is a relevant issue for some Roma women).
- The targetted approach and Roma-specific character of the projects contributed to the high level of attendance.
- No Roma women have received custodial sentences in Tallaght District Court since the programme began.

## The Level of Service Inventory in the Republic of Ireland

Peter Davies\*

**Summary:** By 2004 it was widely accepted that structured risk instruments such as the Level of Service Inventory-Revised could help improve the accuracy of predictions of the likelihood of reconviction and other outcomes. The Probation Service in Ireland came later to it than UK services but learned from their experiences, for example, of the importance of training and of acknowledging and planning for the consequential changes to service culture. After the system was rolled out, periodic valuations were made of samples of test scores which yielded valuable information on the risk and need levels of offender populations and of the quality of the tests themselves. The emphasis now is on refresher training, exploration of newer versions and other instruments and computerisation of the test process.

**Keywords:** Assessment, risk, partnership, staff training and support.

### Introduction

During the mid to late 1990s, criminal justice services in the UK and some other European countries began to explore the possibilities offered by structured risk instruments in the assessment and management of offenders. In Ireland a limited number of Dublin staff working in the Bridge Project and the Circuit Court were trained to use the Level of Service Inventory-Revised (LSI-R) in the late 1990s. Then in spring 2004, it was decided to introduce structured risk assessment instruments into mainstream practice across the country.

In selecting the appropriate instrument, the experiences of the Bridge Project and Circuit Court were important sources of information about the LSI-R, as well as the research and evaluations of the experiences of other probation and criminal justice services in using the LSI-R and

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similar instruments. In the end the decision came down to a choice between the LSI-R and the Offender Assessment System (OASys) that had been developed by the Home Office for use in the English and Welsh probation and prison services. Major factors influencing the decision were the body of evidence supporting the LSI-R and the fact that its lengthy development process had ensured that the test is relatively short and therefore useable on a day-to-day basis by practitioners. Having made the decision to introduce the LSI-R, the service also decided to adopt the Youth Level of Service/Case Management Inventory (YLS/CMI) as its core assessment instrument for assessing younger clients.

The rationale for the introduction of the LSI-R and YLS/CMI was recognition that the service needed a consistent and evidence-based approach to the assessment of clients. By 2004 it had been accepted by criminal justice organisations throughout the world that assessments of clients based solely on practitioner judgements were likely to be both inconsistent and unreliable. A host of studies had also demonstrated that structured risk assessments such as the LSI-R could help improve the accuracy of predictions of the likelihood of reconviction and other outcomes.

The Irish service came late to structured assessment compared to services in many parts of the UK. This gave it a huge advantage, as it was able to learn from the experiences of others, both good and bad. It also tapped into the knowledge and experience of staff at The Cognitive Centre Foundation who had been instrumental in introducing the LSI-R and YLS/CMI into practice throughout the UK. The key lesson learned from these sources was that simply training staff to use the test without providing ongoing support at many levels would very quickly reduce the impact of the LSI-R on the development of practice in the service.

## **Partnership**

The Cognitive Centre Foundation, despite its grand title, is a limited company called SSD Limited. For some in the UK public sector, working with private business is akin to a pact with the devil as its sole focus is considered to be on making a profit. As a result, some preferred to try to develop their own (extremely poor) intervention programmes rather than purchase expertly designed and proven programmes from the

outside. When confronted by someone who expressed this view, one of the founders of the company David Sutton, a former chief probation officer, asked whether that meant that they also made their own desks, chairs and filing cabinets.

The upshot is that real partnerships between probation services and the Cognitive Centre are rare, however where they do exist the outcomes are invariably positive for all those involved. From the outset the Irish Probation Service was clear that it wanted to work in partnership with the Cognitive Centre and in particular to benefit from the Cognitive Centre's knowledge and experience of what needed to be in place to make full use of the tests. The service was very clear about what it wanted to achieve and where it wanted to go, but also knew that it had to be responsive to the concerns of staff and to implementation issues as they arose.

## **Training**

The management style and culture in the Irish Probation Service is very different from the centrally driven and directive-based model exercised by the British Home Office through the National Offender Management Service and recognises that staff must be firmly 'on board' if a project is to succeed. Before the training proper started, therefore, management emphasised that the introduction of the LSI-R into practice would be a gradual process designed to ensure that staff fully understood the professional rationale behind the move to structured risk assessment and the impact that it was likely to have on their work practices.

The process of introducing and assimilating the LSI-R into practice started in the early summer of 2004, initially with a presentation to managers followed by a series of half-day introductory sessions throughout the country. These sessions were primarily concerned with providing staff with information about the LSI-R, giving them a chance to ask questions and generally preparing them for what was to be a major change in the way they worked. These events were important for a number of reasons, not least of which was to gauge people's reactions to the prospect of the LSI-R tests being introduced. Whilst there were many questions asked, my impression is that people did not generally feel threatened or challenged by being asked to use the tests and the vast majority welcomed it as a way to improve practice.

The LSI-R basic training course lasts for two days, the second day taking place approximately six weeks after the first. This gives participants an opportunity to practice using the instrument and to share experiences and questions on the second training day. The first part-one training day took place in Limerick on 14 September and the fifteenth and last of these events was held on 21 October. When all fifteen courses were completed (by the end of January), the vast majority of probation officers were trained and qualified to use the LSI-R. The first YLS/CMI courses were run in Dublin at the end of January.

The changes that the LSI-R represented for the service were also likely to impact on the organisations and individuals that interact with probation officers on a daily basis. Briefing sessions, led by Anna Connolly, were therefore undertaken with judges and lawyers to ensure that they had an understanding of the tests, how they were to be used and in particular how they were likely to impact on the preparation of pre-sanction reports.

### **Staff performance, support and development**

It was realised from the outset that the introduction of the LSI-R tests would prove a major cultural change for the service. Previously, as with other probation and criminal justice services throughout the world, services provided for clients had been largely based on unstructured assessment and interventions that relied heavily on the officer's training and professional and life experience. The interactions between officer and client were essentially guided by the officer's judgement of what was right in that particular situation. Certainly there were no 'correct' ways of doing things.

The LSI-R tests changed this, as there is certainly a correct way of using the tests based on an understanding of social learning theory and the testing procedures outlined in the manuals. There are scoring 'rules' that can be broken and therefore an officer's use of the tests can be deemed faulty and mistakes can be fairly easily identified. Thus systems needed to be developed that not only supported staff but also actively encouraged the development of the instruments as part of service delivery in the Irish Probation Service. It was also acknowledged that management needed to be aware of situations where the tests were not being accurately scored, and more contentiously which members of staff were making mistakes.



The importance of developing consistent and accurate use of the tests is twofold. Firstly it ensures that the service provided to any particular client is not solely dependent on the skills and expertise of the officer preparing their report or supervising them. Secondly when used well the tests give reliable information about changes in a client's risk levels, and eventually information on the effectiveness of interventions.

That there would be initial 'inter-rater reliability' problems was predictable and anticipated. The LSI training is called 'basic' training, in other words there is an expectation that further training and/or support will follow. As with any training programme it could be predicted that there would be variations in levels of understanding and subsequent performance. What is different about the LSI tests is that these variations can be identified.

At the outset it was agreed that the mechanism for offering staff support and guidance in the use of the instruments would be the LSI Superuser Group. The 'superuser' approach had been used before in the service as a means of supporting specific areas of practice. Officers volunteered or were recruited in the spring of 2004 and advanced training courses were run in June and November. The LSI Superuser Group comprises 'champions' in the use of the test and is seen as offering a pool of expertise and experience that staff can utilise when necessary.

## **Integration**

A considerable amount of work has been undertaken on the integration of the tests into the practices of the service. The training raised many practical issues from how to explain the use of the tests to clients to how to use it in formulating parole reports. During the basic training programme, management became clearer about how the tests should be used and developed practice guidelines that have since become part of the training. The tests are now central to overall risk and case management practices in the service.

The training also offered a model for interpreting the results of LSI-R tests and using them to develop case management approaches. In other jurisdictions it had been observed that the link between the LSI-R assessments and case planning had not been made and that the LSI-R test was not always being used to guide plans for intervention. From the outset the training aimed to emphasise this link.

The next or fourth generation of assessment instruments makes the links more overt and is designed to be compatible with organisational case management and tracking systems. These tools work on the principle that criminal and youth justice probation and social work organisations should be aiming to reduce recidivism through addressing criminogenic need rather than providing a general welfare service. Crucially these instruments address responsibility issues and take practitioners through a process of assessment, analysis and interpretation, intervention planning and review. The YLS/CMI is an example of a fourth generation instrument.

### **Data collection and interpretation: Lessons for practice**

One of the beneficial aspects of the use of the LSI-R tests is that collecting and analysing the data from the tests can generate valuable information on the risk and need levels of offender populations throughout Ireland. Thus part of the agreement between the Probation Service and the Cognitive Centre was that the Cognitive Centre would produce periodic evaluations of samples of LSI-R and YLS/CMI tests. These evaluations provide information on risk and need levels of offender populations in Ireland and on the quality of the tests themselves.

The first sample was evaluated at the Cognitive Centre in the summer of 2005. The trawl undertaken to find LSI-R tests for the sample indicated that the use of the test was somewhat patchy and that it had been more readily integrated into practice in some areas than in others. Nevertheless enough tests were available to provide representative samples for all the teams/regions in Ireland and overall the initial results proved encouraging in that the comparative risk levels were broadly as expected, for example the Dublin samples scored higher on average than the 'country' areas. Within Dublin, the Circuit Court and the Bridge Project teams scored significantly higher than the other Dublin teams, again as expected. It was also evident that basic mistakes in administration were being made which, whilst probably not affecting the overall results in the study, might have significant implications for the assessments of individual clients.

The results from the second, larger sample in 2006 were even more encouraging. Overall the scores had increased which, in the view of the tests' publishers and Professor Peter Raynor at Swansea University,

indicates that users in Ireland are becoming more confident in the use of the tests. There was also an 'evening out' of the scores to the extent that risk levels in the regions in country areas had become quite similar, as had the Dublin scores with the expected exception of the Circuit Court and Bridge Project teams. However mistakes in administration were still evident and that was a concern.

The collection and interpretation of data is a valuable spin-off from the use of the LSI-R as information can be obtained about offender characteristics based on a range of factors such as gender, geography, offence type, age etc. This in turn can provide hard information to assist decisions about the level and nature of resources needed.

## **2007 and beyond**

In less than three years the Irish Probation Service has transformed its risk assessment processes, but it still has many challenges to face. As the tests become more widely used the task of improving and sustaining inter-rater reliability becomes more important. In 2004 Bonta wrote, 'A training programme may successfully train staff to a high skill level but the skills often deteriorate with time. In one study, hundreds of videotapes of offender risk assessments conducted by correctional officers found an average error rate of 13%. After booster training sessions, the percentage of errors decreased to one percent'. Basic training is thus only the start and refresher training led by the LSI Superuser Group has to be a priority.

One associated issue is that overall responsibility for the supervision of staff, which includes the monitoring of performance, lies with the line manager or senior probation officer. The LSI Superuser Group's remit can only cover overall trends and issues, not the individual performance of probation officers who are, after all, their peers. What has emerged is the need to equip the supervisors of LSI-R users with the ability to identify where staff are making errors in the use of the tests and to help correct them. The Cognitive Centre has developed new training materials that will hopefully help superusers and supervisors in their tasks.

The new version of the LSI-R, the Level of Service/Case Management Inventory (LS/CMI) is now available. This fourth-generation instrument offers a similar model to the YLS/CMI and may, in the long term, be a way forward for the service. The use of other risk assessment

instruments to support assessment processes should also be a consideration, particularly in relation to the assessment of risk of serious harm and of 'specialist' offenders such as domestic violence and sex offenders.

Validation studies are necessary in order that the tests can formally be said to be validated in the Irish jurisdiction. The reality is that the LSI tests are reliable predictors in Ireland but the formal step of a validation study remains an important stage.

Finally, computerisation is central to the overall success of the project. Eventually the pen and paper 'QuikScore™' will largely be a thing of the past. Officers will input the test results, which will be integrated into offenders' electronic records. Not only will this allow for more effective risk and case management but also over time a huge database on Irish offender populations and trends will be available to the service. This will begin to become a reality during the next year.

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## **The Assessment, Case Management and Evaluation System (ACE) in Northern Ireland**

**Pat Best\***

**Summary:** This article charts the introduction and development of the ACE (Assessment, Case Management and Evaluation) risk assessment system in the Probation Board for Northern Ireland during the mid-1990s.

**Keywords:** Assessment, risk, partnership, staff training and support.

### **Introduction**

In the early 1990s a major sentencing review heralded the introduction of the 1996 Criminal Justice Act (NI). This legislation fundamentally changed the nature of the work of the Probation Board for Northern Ireland (PBNI), from a service mandated to ‘advise, assist and befriend’ clients to one tasked to ‘protect the public’ as well as to ‘rehabilitate the offender’.

In anticipation of this development, an organisational change management process began in the PBNI. This process was based on the TQM (total quality management) approach and involved the establishment of task-focused, cross-sectional teams to work on identified areas of practice. I was involved alongside seven or eight other managers, probation officers and administrative grades in the working party tasked to address the needs of the PBNI in relation to assessment as well as what were known in those days as SERs (social enquiry reports).

The Task Group spent a number of months researching and evaluating different assessment tools used nationally and internationally. The three main tools considered were LSI-R (Level of Service Inventory-Revised),

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OGRS (Offender Group Reconviction Score) and ACE (Assessment, Case Management and Evaluation) System.<sup>1</sup> The pros and cons of each tool were considered and the decision was made to adopt the ACE System, largely due to the fact that it was a more comprehensive and dynamic tool which could be used at various stages of contact to inform assessment and case management. It is interesting to note that at this stage most of the discussion was around assessment and supervision; the terms 'risk assessment' and 'risk management' were not part of the vernacular!

The rationale for the introduction of ACE was that the PBNI needed to adopt a more systematic, consistent and evidence-based approach to the assessment of offenders. Until then, assessments had been based solely on practitioner judgements and, whilst these were in some cases extremely good, they were inconsistent and dependent on the knowledge and skill of the individual probation officer. It was recognised in the new era that the PBNI needed to make assessments which were accurate as well as defensible and which would stand up to increased scrutiny.

The PBNI, as with the Irish Probation Service, came relatively late to structured assessment systems. In the early 1990s some services in England and Wales had started to use ACE; these included the Greater Manchester Probation Service and the West Midlands Probation Service. Being able to learn from the experiences of others proved invaluable to the Task Group. We also consulted with Colin Roberts, Professor of Criminology at the Probation Studies Unit at Oxford University, who had designed the original ACE system. We were impressed by the depth of his knowledge about risk assessment and case management and his practical approach. In addition, his probation background was useful in relation to the PBNI's implementation of ACE in Northern Ireland.

### **Initial development**

The initial stage of the change process involved the establishment of an implementation plan. As part of this process, a further ACE Development Group, comprising a cross-section of staff, was set up and provided a useful access point for Roberts and his team.

<sup>1</sup> At that stage, work in the UK on the Offender Assessment System (OASys) had not yet begun. See [www.probation.homeoffice.gov.uk](http://www.probation.homeoffice.gov.uk) for further details on OASys.

One of the first tasks of the Development Group was to customise ACE to the specific needs of Northern Ireland, both in terms of the tool itself and the guidance notes which accompanied the tool. It was clear from the outset that a tool which was researched and developed in another cultural context and based on patterns and profiles of offending in England and Wales would not automatically transfer. The Development Group made a number of key changes to the English model, including the development of a Young Persons' ACE, a risk of harm filter, a revised scoring mechanism and the insertion of protective factors i.e. strengths to provide a more balanced outcome rather than focusing solely on risk factors. As well as this, the Development Group was keen, as a result of consultation with the practitioners and teams, that the tool would include a section on victims, the community and a case history perspective.

Although the work of the Development Group delayed the initial implementation of ACE it was felt that these changes to the format and content of the tool were essential to improve the validity of the tool and for staff to feel ownership of the final outcome. In fact, Roberts transferred many of the ideas from and much of the work carried out in Northern Ireland back to England and Wales in terms of the development of the OASys tool. It is interesting to see that many of the inclusions that Northern Ireland had conceived (for example the risk of harm assessment) were subsequently incorporated in OASys.

## **Training**

Once the Development Group felt comfortable with the final draft – there were in fact numerous drafts of ACE (NI) – attention turned to the model for training/implementation. The Development Group considered that training was key to the successful implementation of ACE. It also felt that the follow-up to initial training was equally as important in order to embed the process and make further adjustments to the tool. In England and Wales the model of pilot sites had been adopted but the Development Group opted instead for widespread implementation, with the use of 'champions', one from each operational team, to assist with the process.

Training was conducted on a team-by-team basis with the assistance of the champions, who were initially trained alongside middle and senior

management. The basic training courses were two-day events, commencing with an overview of assessment processes and some skills training in eliciting information and forming judgements, and followed by an introduction to ACE itself.

Until this training very little had been done in terms of knowledge and skill development within the PBNI in relation to risk assessment training. The process therefore proved to be quite a culture shock for some staff who until then had worked from their own structures and who felt that their practice was being interfered with in some way. It is fair to say that there was a good deal of initial resistance to be overcome. However with the help of a consistent focus from senior management, the use of the cross-sectional Development Group and the adoption of the change management model using a representative from each team, the process of implementing ACE began to work. Within a few months all members of the service were trained and the date for full-scale implementation had arrived.

As with all processes, ACE impacted on other systems as well as other organisations and individuals, both internal and external. Briefing sessions were undertaken with judges and magistrates as well as solicitors, and further down the line work began with staff from the Prison Service and Training Schools (as the Youth Justice Centres were known at that time), to enable them to understand the ACE process and its implications for their work. In fact a major training and development plan was initiated and developed with the Prison Service, which has seen the introduction of ACE into the prison setting in Northern Ireland. It was recognised that it was important if not essential to have a seamless criminal justice system employing aligned processes and systems in order to have effective risk assessment and risk management of offenders.

### **Implementation and further development**

The Development Group, having successfully overseen the initial introductory training, soon realised that this was only the beginning of its work. Knowing on the one hand how to use ACE at an individual level and on the other achieving consistency on an organisational level were the two ends of a continuum. It was recognised that the PBNI had a long way to go before it would achieve the latter.



The trusted model of the Development Group came into play once again to oversee and audit the ongoing implementation of ACE. Thus the team representatives were asked to monitor and provide feedback on issues, difficulties and strengths in practice as well as to carry out, from time to time, formal audits of practice.

Although extremely ambitious, it was very useful that the PBNI, at the same time as embarking on a process of change in terms of assessment, was also introducing new formats and processes in relation to presentence report (PSR) writing and subsequently in terms of supervision and case management standards. Some would say that it was foolhardy to implement so much change at one time but on the other hand it meant that all the changes developed together and contributed to an integrated system for the assessment and case management of offenders in Northern Ireland.

As a consequence, audits of PSRs were able to incorporate an element of the connection between the ACE risk assessment and the PSR. Furthermore, audits of case management and supervision planning were able to ascertain how far work plans were established from the use of ACE. Initially it was apparent that some probation officers were completing the ACE documentation subsequent to the completion of the PSR or work plans, thus relegating ACE to the level of a paperwork exercise. However, as time went on and new staff were trained and inducted on the basis of ACE, this practice diminished.

Further developments and adaptations did occur arising out of the feedback to the Development Group. Perhaps the most important of these was the development of RAI (Risk Assessment Inventory), the risk of harm assessment tool for use with those who were identified via the ACE screen as having the potential to cause serious harm to others. The initial tool for this was developed in-house and then further adaptations were made in consultation with the Psychology Department at Queen's University Belfast.

The development and implementation of RAI, alongside the introduction of a policy concerning the assessment and management of risk concern cases, meant that the PBNI was well placed to meet the demands of the new criminal justice and sex offender legislation of the late 1990s in Northern Ireland as well as the introduction of MASRAM, the multi-agency process for the risk assessment and management of sex offenders.

## **Data collection/PIMS**

One of the features of ACE which appealed to managers as well as researchers was its evaluation aspect. ACE provides a wealth of information not only for individual practitioners in terms of reviewing the effectiveness of practice and progress on supervision but also on a macro level for analysis in terms of the profile of offender populations in Northern Ireland. This in turn is invaluable information for the planning and resourcing of projects to meet offender needs.

Unfortunately, until relatively recently, the fact that ACE was a paper-based process made data collation a laborious task, carried out mostly by university researchers or social work students on a small scale. However, the introduction of PIMS (PBNI Information Management System) has meant a major change in the PBNI's capacity to collect and analyse data. Whilst some concerns exist at this early stage in relation to the reliability of data, this is a developmental issue which will be resolved and the introduction of PIMS means that the PBNI is now in a position to appreciate fully the opportunities provided by the 'E' (evaluation) element of ACE.

## **Future development**

The transformation of the PBNI's systems of risk assessment has been a ten-year project, which, since risk assessment is such a dynamic process, is still subject to change. However, I believe the service has substantially improved its capacity to risk assess and risk manage increasingly more high-risk offenders. It is also well placed to meet the demands of new legislation which will bring more offenders of a high-risk profile under the statutory supervision of the PBNI as a consequence of the recent review of criminal justice legislation in Northern Ireland.

Two issues still remain for consideration in my opinion. First is the issue of the North/South integration and alignment of risk assessment systems. It is regrettable that both services have developed apart on this issue, although it is true that both have made major strides in implementing more systematic, rigorous and evidence-based approaches. It should be possible to establish more integration and to plan together on proposed developments in this important area of practice. The second is the issue of OASys, particularly now that E-OASys exists. Much expertise, time and energy have gone into the development and

continuing refinement of this well-researched and comprehensive tool. It represents, in terms of performance/management reporting in particular, a considerable improvement on both ACE and LSI-R. The situation regarding OASys is subject to continuing review within the PBNI and a final decision on its applicability will need to be taken by all the criminal justice agencies both North and South.

Due to the mobility of offenders, it is important to ensure that processes and systems between the three jurisdictions – England/Wales, Northern Ireland and the Republic of Ireland – are aligned to ensure effective risk assessment and risk management of offenders, particularly those who have the potential to cause serious harm to others.

# Treating Addiction, Tackling Crime: The Impact of Probation-Led Residential Treatment on Offender Substance Misuse, Recidivism and Attitudes Towards the Criminal Justice System<sup>1</sup>

Tara Hollway, Sonia Mawhinney and Noel Sheehy\*

**Summary:** Given the well-documented relationship between substance misuse and offending behaviour, increases in alcohol and drug consumption in Ireland are a cause for concern for criminal justice agencies. In one attempt to address this problem, the Probation Service established a residential treatment facility for men who come before the courts on alcohol/drug-related offences and for male probation clients who are at risk of reoffending due to an addiction problem. This study, part of a larger evaluation, examined whether the programme impacted on future propensity to reoffend in a group of male substance-abusing offenders (n=14). The impact of the treatment programme on two dynamic criminogenic needs – substance misuse and attitudes towards the criminal justice system – was explored, as was the relationship of these dynamic criminogenic needs to future offending behaviour.

Although 64% of clients relapsed after completing the programme, the majority (64%) had not reoffended. The offences of those who did reoffend were all alcohol-related. No significant relationship was observed between propensity to reoffend and attitudes towards the criminal justice system. There were no significant changes in client attitudes over the treatment programme.

**Keywords:** Substance misuse, attitudes, criminogenic needs, treatment, recidivism.

## Introduction

Alcohol consumption in Ireland has increased dramatically over the last few decades, with Irish adults now identified as one of the highest consumers of alcohol in the world (Strategic Task Force on Alcohol

<sup>1</sup> This research was funded by the Department of Justice, Equality and Law Reform.

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2004). Given the well-documented negative relationship between alcohol misuse and criminal activity, this pattern has been a growing concern for Irish criminal justice agencies. For example, National Crime Council Statistics (2003) identified alcohol as a primary factor in an increase of 161% in public order offences between 1996 and 2001, and indicated that intoxication in a public place and threatening and abusive behaviour accounted for over 80% of proceedings taken under the Criminal Justice (Public Order) Act 1994 between 2000 and 2001. Similar findings were reported by the Health Promotion Unit (2003), which attributed alcohol as a factor in 48% of all criminal offences committed by adults in Ireland, including 88% of public order offences, 48% of offences against the person and 54% of all criminal damage offences. The number of arrests for drink-driving offences also increased by 125% between 1995 and 2002 (Strategic Taskforce on Alcohol 2004). In addition to the social cost of alcohol-related crime, financial costs to the Irish economy were estimated to be around €147.5 million in 2003, an increase of almost 50% since 2001 (Byrne 2004).

The relationship between drug use and criminal activity is less straightforward, with many offending drug users also indicating an offending history prior to their use of drugs (Drugscope 2000), however it is clear that many people who use illicit drugs are involved in crime. For example, Gossop *et al.* (1998), in the British National Treatment Outcome Research Study, report high levels of criminal behaviour among a sample of 1,100 opiate-dependent drug users who had sought treatment. Research conducted by the Garda Research Unit in 1996 in the Dublin metropolitan area indicates that 43% of individuals apprehended for offending behaviour in 1995/1996 were known drug users and were responsible for 63% of all detected crime (Farrell 2002).

Criminal justice agencies have implemented a variety of sanctions in attempts to tackle substance-related offending behaviour. However, research suggests that the use of sanctions alone is largely ineffective for many offenders: 'Using specifically developed prediction scales, follow-up studies of those dealt with in different ways by courts suggest that most offenders' likelihood of re-offending is little influenced by the sentences imposed on them. Judged at least by their subsequent behaviour, they appear impervious to the effects of criminal sanctions' (McGuire 2002a).

Differences in effectiveness among sentencing disposals have been observed when structured programmes or interventions are available.

For example, McGuire (2002b) reports on a summary of 30 meta-analytic reviews that indicate that interventions or treatments of a variety of types (such as diversion schemes, correctional boot camps, community-based programmes and socio-therapeutic prison regimes) generally show a reduction in recidivism in experimental compared to comparison samples (although some interventions are more successful than others).

### **Criminogenic needs**

An intervention is more likely to be effective if it focuses on certain areas that have been shown to be risk factors for criminal activity (McGuire 2000b). The targeting of 'criminogenic risk factors' in intervention studies has been associated with substantial reductions in recidivism (Andrews 2001). Criminogenic risk factors, or criminogenic needs, are features and circumstances of offenders (and their surroundings) which contribute to offending behaviour, and therefore can be used to determine the risk of recidivism (Vogelvang *et al.* 2003). Static criminogenic needs (such as criminal history or demographic profile) cannot be changed and are therefore generally used to assess level of risk. However, dynamic criminogenic needs can be changed and interventions can be targeted towards these needs to bring about a reduction in offending. Dynamic criminogenic needs include substance abuse, offence-related emotions and cognitions, and criminal associates (Andrews and Bonta 1994).

#### *Substance abuse*

Substance abuse is widely accepted as a criminogenic risk factor and many studies have been conducted to determine the impact of substance abuse treatment programmes on reoffending behaviour. Although some studies report 'surprisingly weak' evidence in support of substance abuse treatment programmes as a means of reducing recidivism (McGuire 2000b), others indicate more positive outcomes. For example, Gerstein *et al.* (1994) examine pre-treatment and post-treatment criminal activity in a sample of 1,900 participants in Californian substance abuse treatment programmes and report a reduction in offending after treatment, with 74% of participants involved in criminal activity in the year preceding treatment, and only 20% in the year after treatment. Nochajski

*et al.* (1993) observe lower rates of recidivism two years after a sample of offenders completed an alcohol treatment programme compared to those who did not complete the programme. Research on drug treatment programmes and recidivism has also identified positive results. For example, individuals who completed a treatment programme for heroin addiction had 20% fewer arrests than those who did not receive treatment (Platt *et al.* 1990–1991). A study of reconviction following drug treatment and testing orders in Scotland (McIvor 2004) found that reconviction rates and the frequency of reconviction were lower among those who completed their orders than among those whose orders were revoked. Such findings suggest that diverting suitable individuals away from the criminal justice system into appropriate treatment programmes may be an effective approach to reducing recidivism in a substance-abusing offending population.

### *Attitudes*

Antisocial or offence-related attitudes have also been acknowledged as risk factors for deviant behaviour in both the theoretical literature and in empirical research. For example, Andrews and Bonta (1994), in their general personality and social psychology perspective on criminal conduct, identify an antisocial attitude as one of the ‘big four’ risk factors for criminal conduct. In differential association theory, Sutherland (1947) proposes that criminal behaviour is learned through peer interaction, with this learning including both the actions and the motivations and attitudes intrinsic to offending behaviour. Gendreau *et al.* (1992), in a meta-analytic review, report that the antisocial peers and/or attitude domain is more strongly related to criminal behaviour than five other specific domains (social class, personal distress, educational/vocational achievement, parental/familial factors and temperament) (in Simourd 1997). Simourd and Andrews (1994) report similar findings in research with delinquents.

## **Dealing with substance-abusing offenders**

Various approaches have been implemented to address problem drinking and drug-taking within Irish society and to reduce their impact on deviant behaviour. These initiatives have included: alcohol education court programmes, where participants are educated about the physical,

social and psychological effects of alcohol; drug courts, which are treatment-oriented courts where the judge dispenses justice with the help of professionals who provide treatment to the defendant (Working Group on a Courts Commission 1998); and, more recently, fast-track counselling schemes where Garda juvenile liaison officers refer young people at risk of alcohol/drugs misuse or other issues to health service counsellors.

In addition to these initiatives, it is recognised that a number of individuals will benefit from more intensive interventions to reduce their propensity to relapse and reoffend. In response to this need, the Probation Service, with funding from the Department of Justice, Equality and Law Reform, established Harristown House in 1998. Harristown House was the first, and remains the only, residential addiction treatment centre provided within the criminal justice sector in Ireland. It provides treatment for men who have come into contact with the criminal justice system as a result of their misuse of alcohol and/or drugs. The programme, which consists of six weeks of residential treatment and two years of community-based aftercare, aims to address some of the behaviours that lead to criminal activity, reduce incidence of offending behaviour and encourage clients to live a life free from alcohol and/or drugs.

The Harristown House treatment model is based on the Minnesota Model, which is an abstinence-oriented, multi-professional approach to the treatment of addictions based on the principles of Alcoholics Anonymous (Cook 1988). The central feature of the Minnesota Model is the 12-step philosophy, the underlying principle being that the addict is unable to exercise choice with regard to drinking/drug-taking and that the power to live without alcohol/drugs must come from a source other than, and greater than, the self (Haylett 2001). In addition to the Minnesota Model, a matrix of other theories has been adopted, including cognitive-behavioural therapy, motivational interviewing, reality therapy and brief solution focused theory.

Potential clients are referred via the criminal justice system by a variety of routes. They may be directly referred by District or Circuit Court judges; the defendant's probation officer or solicitor may make a recommendation to the judge; or a client under a probation bond may be referred for assessment if it becomes apparent that he has a problem with alcohol/drugs. Individuals nearing the end of a custodial sentence may also be referred under the conditions of temporary release. All referral forms must be completed by the potential client's probation officer.



Harristown House is located in Castlerea, Co. Roscommon. The main catchment area for the service is the Western region, specifically within a 50-mile radius of the facility. This boundary facilitates a greater likelihood of participation and commitment from clients, particularly during the aftercare programme. However the project accepts referrals from across Ireland, depending on service occupancy and identified need.

Between its inception in October 1998 and December 2004, Harristown House received 637 referrals for assessment (467 of these were made on behalf of individuals) and made 377 admissions (constituting 289 individual clients).

### **Purpose of research**

This study forms part of a larger piece of research on Harristown House carried out between January 2004 and December 2005 (Hollway 2007). The main aims were to determine effectiveness in reducing/eliminating substance abuse and offending behaviour in the client group, to examine issues around the delivery of the service and to develop recommendations to improve upon the service provided.

The current study sought to examine whether the addiction treatment programme provided by Harristown House impacted on future propensity to reoffend in a group of substance-abusing offenders. Specifically, we assess the impact of the treatment programme on two dynamic criminogenic needs – substance misuse and attitudes towards the criminal justice system – and the relationship of these dynamic criminogenic needs to future offending behaviour.

### **Research method**

#### *Design*

A pre-test post-test quasi-experimental design was employed, where clients' attitudes towards the criminal justice system and substance misuse status were measured prior to the intervention (residential programme) and examined twice after treatment (post-test 1 and post-test 2).

#### *Participants*

Participants consisted of 14 males, aged between 17 and 60 years (mean=30 years; s.d.=13.3):

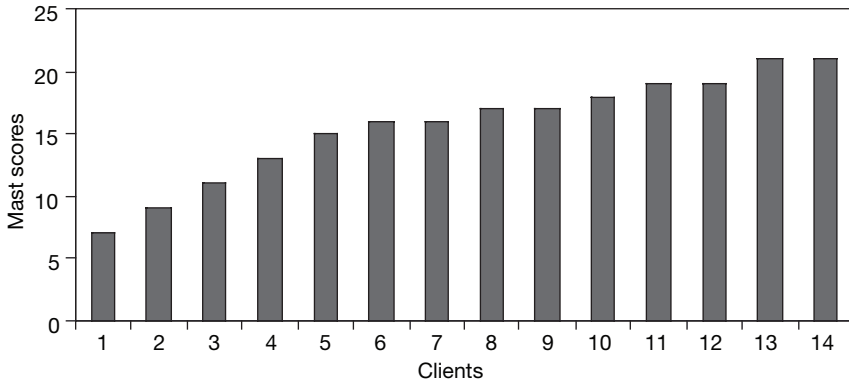
- 71% were single and 29% were separated/divorced.
- 36% were fathers.
- Alcohol was identified as the main drug of choice by 86% of clients, although 71% used both alcohol and drugs.
- 50% had at least one experience of treatment prior to their admission to Harristown House.
- 50% had previously attempted suicide.
- 43% of clients were on bail or had their cases adjourned prior to admission to Harristown House.
- 29% had been in custody or on remand.
- 28% were on probation/bail.

An examination of offence data on admission indicated a total of 31 offences committed by the 14 clients (average of 2.2 offences per client): 35% of offences were violent (19% were against the person and 16% were against property with violence), 16% were vehicle-related, 7% were against property without violence and 42% were categorised as ‘other offences’ and included those relating to public order, breach of barring orders and drugs, such as possession with intent to supply.

All Harristown House clients are routinely administered the Michigan Alcoholism Screening Test (MAST, Selzer 1971) prior to admission. This is a widely used measure for assessing alcohol abuse and screening for alcohol problems. The version employed by Harristown House consists of 22 items. Scores on the MAST can range from 0 to 22, with higher scores indicating greater severity of alcohol abuse. Individuals scoring between 3 and 5 are viewed as ‘early or middle problem drinkers’. Those who receive a score of 6 or above are recognised as ‘problem drinkers’. The average MAST score for the 14 clients was 15.6 (ranging from 7 to 21; s.d.=4.3), indicating a client group with very severe problems with alcohol (see Figure 1).

### *Procedure*

All clients admitted to the residential programme during a predetermined time-period were invited to participate in the research. Client data were collected at three time-points – on admission to the programme (pre-test); on completion of the six-week programme (post-test 1); and between three and nine months after admission to the programme (post-test 2). It was intended that clients at post-test 2 would be tested six months after they had been admitted to the residential

**Figure 1.** Distribution of MAST scores

programme. However, although clients were contacted prior to the six-month follow-up period, it often took a few months to arrange and conduct these interviews. Furthermore, clients who were admitted to the residential programme late during the research could only be followed for a period of three months within the research time-frame. Consequently, the post-test 2 follow-up period covers three to nine months after admission to the programme. The 14 clients who are reported on in the current study all completed the residential programme and participated in the research at all three time-points.

Data collection at each time-point consisted of a semi-structured interview conducted by the research officer and the administration of the Criminal Sentiments Scale (Modified) (CSS-M). Where possible, the CSS-M was completed by the client in the presence of the research officer (to offer assistance if needed). Some follow-up questionnaires were administered by post due to geographical distance. Data collected during the client interviews provided information on client alcohol/drug use and offending behaviour prior to and after Harristown House. Where possible, these data were supplemented with information from probation officers. Due to the relatively short time-frame, recidivism in this study refers to reoffending behaviour, not reconviction.

The CSS-M (Simourd 1997) is a 41-item instrument that measures antisocial attitudes, values and beliefs related to criminal activity. Scoring for each question ranges from 0 (a rejection of antisocial statements or acceptance of pro-social statements) to 2 (an endorsement of antisocial statements or rejection of pro-social statements). Undecided responses receive a score of 1. The CSS-M produces a total score, which can range

from 0 to 82, and three subscale scores. The 'Law-Court-Police' (LCP) subscale assesses respect for the law and criminal justice system and consists of 25 items with a score range from 0 to 50. The second subscale, 'Tolerance for Law Violations' (TLV), assesses specific justifications for criminal behaviour; scores on this ten-item subscale can range from 0 to 20. 'Identification with Criminal Others' (ICO) is a six-item subscale that assesses personal evaluative judgements about law violators; scores can range from 0 to 12. Table 1 provides examples of items from the CSS-M subscales. Higher scores on the total scale and subscales indicate the presence of greater pro-criminal attitudes. Research indicates that the CSS-M is a reliable and valid measure of criminal attitudes (Simourd 1997; Simourd and Van de Ven 1999).

**Table 1.** Selection of items from the CSS-M subscales

<i>Subscale</i>	<i>Example</i>	
Law-Court-Police (LCP)	Item 16:	Court decisions are pretty well always fair
	Item 23:	The police are as crooked as the people they arrest
Tolerance for Law Violations (TLV)	Item 28:	You should always obey the law, even if it keeps you from getting ahead in life
	Item 33:	It's okay to break the law as long as you don't get caught
Identification with Criminal Others (ICO)	Item 36:	People who have broken the law have the same sorts of ideas about life as me
	Item 40:	I have very little in common with people who never break the law

CSS-M scores at each of the three data-collection stages were entered into SPSS (Statistical Package for the Social Sciences) for analysis. Change across time was examined using non-parametric analyses.

## **Research results**

### *Alcohol/drug relapse*

64% (n=9) of clients relapsed after completing the programme. 56% (n=5) reported between one and three slips, where a slip was defined as

an episode of drinking of less than two weeks' duration (Patterson *et al.* 1997). 22% (n=2) indicated multiple slips, while a further 22% (n=2) reported drinking regularly. 36% (n=5) of clients maintained complete abstinence between completing treatment and the end of the data-collection period.

The position with regards to alcohol use at the end of the data-collection period was available for 12 clients: 11 indicated that they were abstinent and one reported that he was drinking regularly.

No relationship was observed between alcohol/drug relapse and client age on admission to Harristown House, age of first use of alcohol/drugs and severity of alcohol use (as measured by the MAST).

### *Recidivism*

64% (n=9) of clients had not reoffended after completing the residential programme. The offences of the five clients who did reoffend were all alcohol-related. Recidivism was not related to client age on admission to Harristown House, age of first use of alcohol/drugs and severity of alcohol use (as measured by the MAST).

### *Criminal attitudes*

Table 2 displays the group mean scores for each of the subscales and the total CSS-M scale. No significant changes in criminal attitudes during the course of treatment were observed on any of the subscale or total scale scores.

**Table 2.** CSS-M total and subscale mean scores (s.d.) at three time-points

	<i>Baseline</i>	<i>Six-week</i>	<i>Post-follow-up</i>
LCP	22.9 (12.6)	21.9 (12.5)	20.2 (14.0)
TLV	8.8 (5.7)	9.5 (4.7)	9.6 (4.7)
ICO	5.6 (1.7)	5.6 (2.0)	5.1 (2.4)
CSS-M total	37.3 (18.6)	37.1 (18.0)	35.0 (19.9)

No relationships were observed between the CSS-M and client age on admission to Harristown House, age of first use of alcohol/drugs and severity of alcohol dependence (as measured by the MAST).

No significant relationships were observed between relapse status, recidivism and the CSS-M subscale and total scale scores at any of the three time-points.

## Discussion

The present study examined the impact of the Harristown House addiction treatment programme on two dynamic criminogenic needs – substance abuse and attitudes towards the criminal justice system. The impact of these two criminogenic needs on propensity to reoffend was also assessed.

### *Impact of the programme on substance abuse*

Almost two-thirds of clients relapsed at least once after discharge from the residential programme. This is consistent with previous research. For example, Walsh *et al.* (1991) report a 67% relapse rate of alcohol-abusing workers over a two-year period; in a longer follow-up study, Vaillant (1983) reports a 95% relapse rate among individuals with alcohol problems who were followed for eight years after treatment at a public hospital; and 52% of individuals involved in the Aiseiri study relapsed at least once after treatment<sup>2</sup> (University College Cork 1993).

A positive outcome, particularly in a client group identified as heavy substance abusers, is that over one-third of clients maintained complete abstinence (i.e. they did not relapse at all) after completing the treatment programme. Furthermore, the majority of clients were abstinent at the end of the research phase. This compares favourably with rates reported in other studies. For example, Patterson *et al.* (1991) report a one-year abstinence rate of 40% in a sample of male alcoholics who had received six weeks of inpatient care;<sup>3</sup> Lauderson (1982) reports an abstinence rate of 57%; and Finney and Moos (1991) indicate that 49% of clients were abstinent four years after treatment, with 54% abstinent ten years after treatment. However it must be noted that the length of follow-up for the Harristown House clients was shorter than the others cited. A longer follow-up period would provide a clearer indication of whether

<sup>2</sup> This research did not specify length of time between discharge from the residential programme and relapse.

<sup>3</sup> This rate increased to 54% for the sample who received intensive community psychiatric nurse aftercare.

abstinence, or a reduction in the number of relapses, can be maintained by the Harristown House clients over time. A larger sample would also facilitate an exploration of the factors that may influence abstinence in this client group, such as attendance at aftercare.

#### *Impact of the programme on criminal attitudes*

The Harristown House clients exhibited negative attitudes towards the criminal justice system on entry to the residential programme. For example, a sample of 141 male inmates sentenced to two years or more in a medium security prison in Canada (Simourd 1997) scored lower on each of the subscales (LCP: mean=15.5, s.d.=9.9; TLV: mean=6.2, s.d.=4.7; ICO: mean=4.1, s.d.=2.5) and total scale (mean=25.7, s.d.=15.0) than the Harristown House sample. This difference was greatest on the LCP subscale, with Harristown House clients presenting much more negative attitudes towards the law, courts and police than Simourd's sample.

No significant change in criminal attitudes in the Harristown House clients was observed over time. The substance abuse programme provided at Harristown House does not specifically target criminal attitudes and therefore the lack of change observed in the sample may reflect a genuine absence of change in attitudes. Alternative explanations may be that the measurement instrument is not appropriate for use with this type of client group or it was not sensitive enough to detect small attitude changes over time.

#### *Impact of substance abuse and criminal attitudes on recidivism*

The Harristown House recidivism rate of 35% for individuals who have received substance abuse treatment compares favourably with other rates of reoffending in both the general and substance-abusing offending population. For example, in 2003, 61% of English prisoners reoffended within two years of release, and a recidivism rate of 73% was observed amongst young offenders aged between 18 and 21 years (Home Office 2004). In an evaluation of the first three years of the Irish Stepping Out programme,<sup>4</sup> McGlone and Fitzgerald (2003) report that over half of those participating had not reoffended since or during their time

<sup>4</sup>The Stepping Out programme is a vocational adjustment programme that aims to reduce recidivism in offenders in Athlone and Portlaoise. Approximately two-thirds of participants used alcohol or other substances.

on the programme. Recently released findings from research carried out by the Institute of Criminology at UCD and the University of Missouri into prisoner reoffending in Ireland report that 27% of released prisoners were serving a new prison sentence within one year of release (O'Donnell *et al.* 2006). In an American study, probationers who completed residential treatment for drug abuse problems had a re-arrest rate of 36% during a two-year follow-up period, lower than the 1992 national rate of 43% reported by the US Department of Justice (Broome *et al.* 1996).

However, it must be noted that definitions of recidivism are often inconsistent across studies, with reference made to reoffending, re-arrest, reconviction or reincarceration. Furthermore, the examples referred to here involved longer follow-up periods than with the Harristown House sample. Moreover, the present study is based on a comparatively small sample. Therefore, while it is useful to make such comparisons, caution must be exercised when attempting to draw any definitive conclusions from them.

Only substance abuse was identified as having a significant impact on recidivism amongst the Harristown House clients. All those who reoffended did so due to their relapse into alcohol/drugs misuse. However, no significant differences were observed between recidivism and scores on the CSS-M subscale and total scale scores at any of the three time-points. Analysis carried out in the larger study (Hollway 2007) indicates that clients who reoffended scored significantly higher on the baseline LCP subscale than those who did not reoffend. This suggests that clients who reoffended post-discharge had less respect for the criminal justice system on entering the programme than those who did not reoffend post-discharge. Given the well-documented relationship between criminal attitudes and deviant behaviour (Gendreau *et al.* 1996), and the role this can play in identifying specific problem areas that can be targeted in treatment (Simourd 1997), it is recommended that further research is conducted in this area with a larger sample of substance-abusing clients.

### *Limitations*

The research experienced a number of limitations, mainly due to time and to the nature of the client group. Difficulties in recruiting and following-up clients resulted in a smaller sample and a shorter follow-up period than intended. Similar difficulties have been reported in other



studies with client groups that abuse substances. For example, Holden (1987) refers to high attrition rates with clients who are involved in alcoholism treatment programmes, while Saunders (1989) identifies the difficulties of following-up on such clients. Although every effort was made to include as many clients as possible in the follow-up stages, including telephone interviews, text messages and postal questionnaires, some clients were lost to the research. Therefore, caution must be exercised when interpreting these outcome findings as those clients lost to the research may differ significantly from those involved in the follow-up.

Harristown House residents are admitted to the programme on a continuous basis. Therefore the clients recruited to participate in the evaluation were not randomly sampled. Rather a convenience sampling approach was applied whereby all clients admitted to Harristown House during the data collection period were invited to participate in the research. Employing this type of non-probability sampling reduces confidence in the generalisations that can be made from the sample to the population. However, a comparison of client demographics indicates that the research sample did not differ significantly from the demographic profile of the full Harristown House population.

## **Conclusion**

Harristown House was developed in response to a need for residential addiction treatment for men who offend due to their use of alcohol and/or drugs. This study examined the impact of the treatment programme on substance misuse and attitudes towards the criminal justice system and on the relationship of these criminogenic risk factors to future offending behaviour in a sample of Harristown House clients. Although many clients relapsed after discharge from the programme, the majority had not reoffended. A relationship was observed between recidivism and relapse of alcohol and/or drug use. No significant relationship was observed between propensity to reoffend and attitudes towards the criminal justice system in this sample. However, in the larger study, clients who reoffended had significantly less respect for the criminal justice system than those who did not reoffend. In addition, there were no significant changes in client attitudes over the treatment programme.

Future research with a larger group of Harristown House clients, followed over a longer time-period, and with pre-offending and post-offending data, would provide a greater insight into the relationship between substance abuse, criminal attitudes and recidivism in this client group.

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## The Probation Board for Northern Ireland's Cognitive Self-Change Programme: An Overview of the Pilot Programme in the Community

**Robin Jordan and Geraldine O'Hare\***

**Summary:** With probation agencies increasingly charged with supervising offenders in the community who are assessed as posing a high risk of reoffending and a high risk of harm if a further offence was to occur, the need for an effective offending-behaviour programme for violent offenders is both timely and essential. One such intervention is the Cognitive Self-Change Programme developed by Jack Bush and researched extensively within secure facilities in North America. More recently, this programme has been adapted within a number of prisons in England, Wales and Northern Ireland, with the relapse prevention component of the programme being available to offenders upon their release to probation supervision in the community provided they have successfully completed the core elements of the programme in prison.

This article provides an overview of the ethos, principles and components of the Cognitive Self-Change Programme, and offers some preliminary reflections on the process of piloting this programme in its entirety with high-risk violent offenders subject to supervision in the community by the Probation Board for Northern Ireland. The roles and responsibilities of the programme and treatment managers are also outlined and a brief consideration of some of the difficulties encountered along the way, and the lessons learned, is included.

**Keywords:** Cognitive-behavioural programmes, risk management, cognitive self-change programmes, high-risk offenders, instrumental violence, community-based interventions.

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## **Cognitive self-change: A brief background**

Before describing the principles of cognitive self-change (CSC) and the process by which the Probation Board for Northern Ireland (PBNI) has come to pilot this programme in the community, it is first worth outlining briefly CSC's origins and development in North America, where it has been extensively researched by the Department of Corrections in Vermont.

The process of CSC evolved primarily through the work of Jack Bush (see, for example, Bush 1995) and has been adopted as the offending programme of choice in a significant number of North American secure facilities, and more recently in certain prisons<sup>1</sup> in England, Wales and Northern Ireland. The fundamental principle underlying CSC is that each of us is able to direct our lives by consciously choosing the way we think. By changing how we think, we can influence how we feel and how we construe and interact with the world around us. Significantly, in terms of what we perceive to be valuable and rewarding, we can gain positive reinforcement through creating new and different meanings for what we do and what we do not do. In other words, we can train ourselves to gain a sense of satisfaction and pleasure from behaviours simply by attaching a different meaning to them.

Through his experience of working with violent and high-risk prisoners, Bush asserts that 'Criminal violence is not associated with any single disease or behaviour' (1995, p. 139), it is not a distinct form of criminal behaviour, but represents a learned and functional response to what may be perceived by the perpetrator as threatening or stressful situations. Such a propensity to violence is underpinned by pro-violent attitudes and beliefs and often functions as the primary means through which the perpetrator may experience a sense of power and control. In this sense, violence is a learned response from which the perpetrator derives positive reinforcement, for example a sense of efficacy, an increase in self-esteem or a reduction of negative feelings.

Bush proposes that through the process of learning to identify particular thoughts and feelings experienced by the perpetrator during the commission of violent acts, it is possible to identify the underlying pro-offending attitudes and beliefs. In so doing this process can provide a starting point for perpetrators to identify new ways of

<sup>1</sup> HMP Full Sutton, HMP Wakefield, HMP Parkhurst, HMP Kingston, HMP Channings Wood, HMP Dartmoor, HMP Swaleside, HMP Gartree, HMP Ranby and HMP Maghaberry.

thinking that will make it less likely that they will respond in a violent manner, but will nonetheless enable them to maintain a sense of self-worth, or, as Bush puts it, enable the people to still feel good about themselves.

### **Cognitive self-change: Simple but effective**

The Cognitive Self-Change Programme (CSCP) is similar to other programmes that attempt to address offending and offending-related behaviour through the application of cognitive-behavioural principles. Cognitive-behavioural approaches have been demonstrated to be the most effective in reducing the risk of reoffending (see, for example, McGuire and Priestly 1995).

The CSCP is a long and intensive programme and to complete it successfully takes anywhere between eight and eighteen months and requires each participant to attend between approximately 130 and 260 group sessions. Furthermore, each participant is required to attend individual sessions with a programme facilitator, the purpose of which is to support the participant's completion of individually tailored journal assignments and to address, as necessary, issues of non-compliance, resistance or other identified impediments to progress. The CSCP is designed as a rolling programme, whereby participants are able to leave and join as necessary. Participants who are experienced in the programme are encouraged to support and facilitate the progress of new, less experienced group members.

Importantly, where the CSCP differs from other cognitive-behavioural programmes is that it does not assume that participants start with any motivation to change. Creating conscious choice is viewed as being at the heart of motivating antisocial offenders to change. This is achieved through the acquisition of four discrete but related skills, which clients are then required to both implement and practice in their interactions with others. The four skills, or steps to self-change, can be summarised as follows:

1. Learning how to pay attention to thoughts, feelings and attitudes.
2. Learning how to see when thoughts, feelings and attitudes are leading towards doing something potentially hurtful, violent and/or criminal.

3. Being able to generate new thinking that will lead away from the old, offending-related thinking, yet allow participants to feel good about themselves.
4. Practice using this new thinking in real life situations.

Each step of CSC is a cognitive skill – a behaviour that through practice can be learned and mastered. Importantly, the programme ethos dictates that nobody can be forced to change the way they think, feel and behave. The cognitive-emotional aspects of human behaviour are rooted in habitual and unique patterns of experience that are not amenable to direct influence from others. However, just as these are learned and, in many cases, adaptive responses to experiences, so too can they be modified or unlearned through conscious effort. The programme adopts an authoritative approach to working with offenders and the basic requirement from the outset is that participants attend each session and engage in an open and straightforward manner. Participants are required to undertake work as directed by programme facilitators in order to learn the skills necessary to change their behaviour.

Ultimately, however, the programme is delivered in a spirit of co-operation that respects each participant's right to choose to change his or her thinking and behaviour. It is important to underline the point that the CSCP does not seek to educate participants with regard to 'right' and 'wrong' ways of thinking, but rather its purpose is to assist participants to identify the relationship between thinking, feeling and behaving, thus enabling them to consciously adopt alternative, less 'risky' attitudes and beliefs that lead away from offending, but without undermining their self-identity and self-worth. As Bush (1995, p. 40) puts it, 'The programme does not demand that offenders comply their thinking to any specified norm. (This is both impossible and undesirable: impossible, because we have no access to how offenders think other than what they tell us, undesirable because coerced compliance is not real or lasting change)'.

In keeping with this ethos of non-coercion, the requirements for participation in the programme are underpinned by what is known as the 'strategy of choices', which dictates that (see, for example, PBNI Cognitive Self-Change Manual, p. 26):

You can be part of the group and accept its rules or you can choose not to be part of the group. But you cannot be part of the group and



choose to disobey its rules. That would subvert the function and purpose of the group. It is [the facilitator's, treatment manager's, programme manager's etc.] responsibility not to let that happen. So you [the would-be participant] must decide what you want to do.

Presenting the strategy of choices to would-be participants is intended to address the basic paradox inherent within criminal justice whereby the main toll for controlling criminal behaviour – punishment and the threat of punishment – triggers resistance and resentment of authority which reinforce the very behaviour that is the focus of the intervention.

The four skills of CSC identified above are learned and reinforced, and each participant's competency and progress is assessed through the practice of simple techniques: cognitive check-ins, thinking reports, group presentations and journal assignments. In addition, individual competency development plans are devised for each participant and are designed to address identified deficits, areas of concern or other identified impediments to progress. When a participant has satisfactorily completed all the tasks for a given stage of the programme, they have completed that stage and can be credited accordingly. This task-based criterion does not eliminate the facilitator's or treatment manager's judgement as to an individual participant's overall level of engagement and progress, but it does operationalise and make transparent the criteria for progress and ultimately for completion of the programme.

### **Cognitive self-change: From prisons to the community**

The PBNI has for some time recognised the need for a cognitive-behavioural programme to address violent offending. Probation officers were increasingly preparing pre-sentence reports (PSRs) on individuals convicted of serious violent crimes. For example, in 2004 a PBNI audit of PSRs over a six-month period indicated that 30% were written for offenders where the index offence was one of violence. Significantly, over half of those PSRs written on violent offenders were for an offence of assault occasioning actual bodily harm or for a more serious violent offence. In addition, 42% of these offenders had three or more previous convictions for a violent offence, indicating a pattern of violent offending as opposed to a one-off, isolated incident. Furthermore, sentencer

satisfaction surveys carried out by the Northern Ireland Office identified the absence of a programme aimed at specifically addressing violent behaviour as a significant concern for a high number of sentencers in various courts in Northern Ireland, and, in particular, amongst Crown Court judges. As such, the need for a programme such as the CSCP in working with this offender population to manage and reduce risk had been clearly identified.

The PBNI became aware of the CSCP being delivered within the Vermont Department of Corrections by Jack Bush and his associates, and of its application within other correctional facilities predominantly in North America, in 2004. It was perceived that the CSCP would meet the needs of sentencers and the offending population in addressing issues related to public protection. Bush visited Northern Ireland in January 2005 and trained a number of PBNI and Northern Ireland Prison Service staff in the delivery of the CSCP. In close consultation with Bush, elements of the programme have since been modified and adapted to suit the offending population it is aimed at within Northern Ireland, as well as its delivery, for the first time, within a community-based context. Modifications made to Bush's original CSCP manual include the development and implementation of a suitable model for evaluating programme effectiveness and treatment outcomes. Notwithstanding the difficulties of identifying an appropriate psychometric tool to measure thinking styles and attitudinal change, in consultation with Shadd Maruna<sup>2</sup> a psychometric test battery that is administered to participants pre- and post-programme has been implemented. This comprises:

- Psychopathy checklist – screening version.
- Psychological inventory of criminal thinking styles.
- Personality assessment inventory.
- Stages of change questionnaire.
- Locus of control questionnaire.

Participation in the CSCP became available as an additional requirement to probation orders made in courts in Northern Ireland from May 2005, and the programme was piloted by the PBNI in January

<sup>2</sup> Shadd Maruna, Lecturer in Criminology at Queen's University Belfast, has researched extensively the area of offender reform and desistance from crime.

2006. The programme became available in HMP Maghaberry in 2005, and it is intended that participants will be able to commence the programme in prison and complete it under supervision in the community.

Offenders who are assessed at the pre-sentence stage as suitable for participation in the programme, and who subsequently have the programme included as a condition of an order, are required to attend two group sessions and one individual session per week for between eight months and two years.<sup>3</sup>

### **Assessment and selection criteria for programme participants**

The CSCP is designed for adult offenders. Participants on the PBNP programme must be at least 21 years old as a level of maturity is required to engage with the programme content, which assumes that violent offending is underpinned by ingrained patterns of thinking that may not be fully discernible in younger offenders – the programme specifically targets established patterns of thinking and behaviour and how an individual's belief system has developed over time.

As indicated, a participant on the programme will have an index offence of violence, usually an offence of assault occasioning actual bodily harm (AOABH) or a more serious offence. Furthermore, it is expected that a participant's criminal record will reflect a pattern of instrumentally violent offending, and where this is the case, consideration may be given to an offender's suitability for participation in the programme where the index offence is less serious than AOABH. What is crucial, however, is that the index offence and/or a participant's criminal record reflect a propensity for the use of instrumental violence. In other words, using violence as a means to an end, to achieve an identified objective (for example the use of a gun in robbery) as opposed to violence indicative of an inability on the offender's part to manage anger effectively (reactive violence). It is important that this distinction is applied in the assessment process, since an anger management or more

<sup>3</sup> Offenders sentenced to custody probation orders with an additional requirement of the CSCP are able to commence the programme in prison and complete it in the community. Where a straight probation order is imposed by the court, the PBNP has indicated to sentencers that a minimum of two years' supervision will be required in order to provide sufficient time to complete the programme.

general psycho-educational programme may be a more appropriate intervention for offenders not predisposed to adopting instrumental violence.

A potential participant on the PBNI's CSCP is assessed at the pre-sentence stage as posing an increased likelihood of reoffending (evidenced by a score of 30 or more on the ACE<sup>4</sup> document) and as likely to cause significant harm if a further offence was to occur (established according to the criteria laid out in the RAI<sup>5</sup> assessment form).

Where addiction, literacy or other issues are identified that would likely impact on an offender's ability to participate on the programme, these should be addressed accordingly before he can be included. This may mean an additional requirement to a probation order or custody probation order to attend for counselling or tutoring in one or more of these areas.

Importantly, the offender will require a level of cognitive functioning commensurate with the demands and expectations of the programme. If there are concerns during the assessment stage regarding a potential participant's intellectual ability, he or she will be referred to the PBNI's Psychology Department where an assessment will be carried out. In general, a cut-off score of 80, as measured by the Wechsler Adult Intelligence Scale (third version), is considered sufficient to enable a participant to engage adequately with the programme and to understand and implement the concepts central to the process of CSC. It is not possible to include on the programme those individuals who evidence persistent or severe mental health problems.

Participants will also be screened using a short version of the psychopathy checklist (see, for example, Hare 1980) prior to their participation on the programme. This process will be administered by a psychologist and any offender evidencing personality traits indicative of psychopathy will not be assessed as suitable for inclusion on the programme.

Prior to the making of a court order that includes the CSCP as a requirement, a potential participant will be interviewed by a programme

<sup>4</sup> The ACE (Assessment, Case Management and Evaluation) System is a standardised risk-assessment tool (Probation Studies Unit, University of Oxford/Warwickshire Probation).

<sup>5</sup> The RAI form is a standardised tool used to assess the potential risk of harm posed by a client on probation if a further offence was to be committed.

facilitator, who will explain in detail the purpose and content of the programme and the expected levels of participants' engagement and participation. The offender and facilitator will sign a contract detailing the conditions necessary for inclusion in the programme. A signed copy of this contract will be given to the offender and a copy retained by the facilitator. Each would-be participant is also required to read and sign an agreement on disclosure and confidentiality.

Given the programme's philosophy with regard to the strategy of choices, it is essential that prospective participants give their fully informed consent to participate on the programme: informed choice is at the core of each stage of the programme and is viewed as central to motivating significant and lasting change away from offending and violence.

### **Programme delivery: Roles and responsibilities**

An assistant chief officer (ACO) within the PBNI has operational responsibility for the delivery of the programme. The ACO is required to have a sound working knowledge of the demands of the CSCP for both staff referring participants to the programme and those involved in its delivery. The ACO is also responsible for taking the strategic decisions necessary to ensure the successful implementation of the programme.

The programme manager supervises those staff who deliver the CSCP. He or she ensures the proper allocation of staff and other resources as required, including making all practical and logistical arrangements for group sessions. It is also the responsibility of the programme manager to facilitate the staff appraisal process and, in particular, to identify training needs relating to the delivery of the programme. It is intended that the programme manager will liaise closely with the treatment manager with respect to the competency and performance of the programme facilitators.

It is essential that the treatment manager has a detailed knowledge of CSC principles and programme content and is fully trained in its delivery. The treatment manager's primary responsibilities include providing immediate support and guidance to programme facilitators in achieving best practice, and assisting in session preparation, debriefing and delivery, as necessary, for ongoing programme sessions and in the development of the participants' individual competency development

plans. It is also the responsibility of the treatment manager to ensure that programme integrity is maintained throughout all aspects of delivery. Furthermore, the treatment manager is tasked with convening regular meetings with facilitators and the probation officers who have overall responsibility for supervising participants' orders. The purpose of this is to provide ongoing support and training and to assist in the assessment of participant engagement and progress in relation to the allocation of programme credits. Finally, the treatment manager will assist and support facilitators to make decisions, in consultation with the programme manager, with regard to the day-to-day running of the programme, particularly where difficult practice issues arise.

It goes without saying that the programme facilitators will have been fully trained in the philosophy and methods of the CSCP. Three facilitators will be assigned to each programme, with two running the group sessions and the third acting in a back-up capacity to assist with the delivery of sessions as required. Facilitators trained to deliver the programme will have previous experience of working with high-risk offenders and delivering cognitive-behavioural programmes. Facilitators are required to meet regularly with the treatment manager to discuss programme issues and their experiences of and performances in delivering the programme. Trained facilitators, including those not directly involved in delivering ongoing group sessions, will be required to carry out pre-sentence assessments for prospective participants. As mentioned previously, participants are also required to participate in individual sessions, and these too are delivered by facilitators trained in the process of CSC.

### **Piloting cognitive self-change in the community: Some preliminary reflections**

Since the PBNI's CSCP in the community is at the pilot stage, the accompanying evaluation process is intended to provide information relevant to treatment outcomes and effectiveness. The evaluation will also consider in detail how effectively the existing programme has been adapted for delivery in the community. Without wishing to pre-empt the outcome of this evaluation, it has become apparent that while the overall philosophy, process and content of the CSCP are amenable for use

within a community context, there have been a number of challenges from a programme management perspective.

The CSCP is a programme designed for offenders who are assessed as posing an increased likelihood of reoffending in a violent manner that will likely result in serious injury to a victim were this to occur. As such, in terms of the responsivity principle, which tells us that treatment resources should be targeted at the highest risk offenders, the CSCP is intensive and completion can only be achieved through regular attendance over an extended period of time. On more than one occasion an offender has been assessed as suitable for participation in the CSCP and has agreed to attend as an additional requirement of the order, only to choose to withdraw from the programme (when the reality of the commitment required becomes apparent during initial attendance) and return to prison to serve the remainder of the sentence, rather than proceed on the programme in the community.

Furthermore, a number of participants have commenced the programme and have progressed through the first few blocks, including being able to identify their 'risk thinking' and outline new attitudes and beliefs that will lead them away from further violence and offending. However, what has proved challenging for them is being able to implement this new thinking and associated behavioural change against a backdrop of family, friends and acquaintances who may themselves be involved in offending behaviour or who expect the participant to remain the same. In this respect, it is important not to underestimate the status and sense of identity and self-esteem that many offenders, particularly violent offenders, derive from their behaviour and reputation. Offenders participating in prison-based CSCPs face a similar dilemma, with the difference being that they are able to rehearse and practice the skills and new thinking within an environment that arguably offers fewer opportunities to falter, than is the case for participants in the community. Accordingly, a level of support for participants not usually required by those in offending-behaviour programmes is a must within the CSCP.

The overall management structure that the PBNi put in place for the pilot programme has been adequate in many respects, although, again, running the CSCP in the community has brought with it unique challenges. It is essential that operational systems are in place that support the resourcing of the programme at every level. These must include not only providing ongoing training and support for facilitators and programme and treatment managers, but also making information

about the programme available to staff and managers who may not be directly involved in either the assessment, delivery or evaluation stages.

Finally, given the nature of the programme in terms of intensity and the potential risk posed by clients assessed as suitable for inclusion, a model for participant supervision and programme delivery akin to that of the PBNI's Community Sexual Offending Group Programme is being considered as the ideal. Most significantly, this would include having a dedicated CSCP delivery team, as opposed to the existing arrangement whereby facilitators are drawn from teams where it is expected that they will continue to discharge other responsibilities not related to the CSCP.

To conclude, the PBNI's pilot of the CSCP in the community has been running for just over one year and represents an ambitious project that has thrown up some unexpected challenges along the way. However, there is an ever-increasing need to supervise high-risk offenders in the community and the CSCP represents as appropriate and effective an evidence-based treatment method as is currently available (see, for example, Henning and Frueh 1996). It is envisaged that the lessons learned from the pilot will prove invaluable within the broader context of supervising violent offenders in the community and of public protection in Northern Ireland.

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## Measuring the Effectiveness of Court Penalties Using Reconviction Analysis

Louise Cooper and Laura Duncan\*

**Summary:** The most commonly used method to measure the effectiveness of court disposals in the UK is reconviction. In Northern Ireland, the Northern Ireland Office has responsibility for producing this information. It is regarded as an independent and impartial body as it does not directly supervise court disposals, which adds legitimacy to its findings. Reconviction figures for the 2002 cohort for both adults and juveniles have recently been published and report that 18% of adults receiving a non-custodial sentence and 47% of adults released from custody were reconvicted within two years. In addition, they showed that those who received statutory supervision following custody had a lower reconviction rate than those without this element to their sentence.

**Keywords:** Effectiveness, community sentences, reoffending, reconviction.

### Introduction

The purpose of the Probation Board for Northern Ireland (PBNI) is to 'Protect the public by working with the Courts, other Agencies and Partners to reduce reoffending and integrate offenders successfully back into the Community', with the aim of reducing crime and the harm that it does. The PBNI thus prepares approximately 6,200 pre-sentence reports per annum to assist sentencers, and supervises around 3,600 people in the community subject to a range of community-based court disposals. All work conducted by the PBNI is based on the assessment and management of individual risk, and the board continuously seeks to ensure its practices reflect an evidence-based approach.

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Reconviction rates remain the most commonly used method of assessing the effectiveness of court disposals in preventing reoffending. Reoffending and reconviction rates, however, are not the same thing (reconviction is an underestimate of actual reoffending). The results of the Northern Ireland Crime Survey would suggest that during 2005 there were 225,000 reported incidents of crime; however in the same period, Police Service of Northern Ireland (PSNI) statistics show a recorded crime rate of 123,000. This implies that approximately 55% of crimes are reported. In addition, of those crimes that are reported, there are numerous ways by which they can be cleared up, only one of which is a sanction against the offender. Even given these limitations, reconviction remains the most widely accepted measure currently available to assess the effectiveness of court disposals. The Home Office and Northern Ireland Office (NIO) both have public service agreement targets regarding the reduction of actual reconviction rates compared to the predicted rates.

### **Study findings**

Reconviction rates have now been published for 2001 and 2002 offender cohorts. Due to sampling constraints, data from these two years cannot be directly compared, however both years show similar trends in both the rates and aetiology of reconviction. Information from the 2002 cohort was published by the NIO in February 2007 (Ruddy and McMullan 2007) and the following summary is based on these figures.

To generate this information the NIO analyses data supplied by the PSNI from the Integrated Crime Information Service (ICIS) database. In total the 2002 adult cohort consisted of approximately 20,000 adults aged 17 years and over. This cohort comprised approximately 19,000 adults who received a non-custodial disposal during 2002 and 1,000 adults released from custody during 2002. As is standard for reconviction analysis, the criminal careers of the cohort were followed over a two-year period. The reconviction rate is therefore the percentage of offenders who were reconvicted within this two-year period. In summary, the analysis showed:

- 18% of those who received a non-custodial disposal were reconvicted within two years compared to 47% of the custodial group.

- The reconviction interval shows that the pace of reconviction increases more quickly for the custodial group than for the non-custodial group: after six months, 11% of those released from custody had been reconvicted, rising to 27% after one year, compared to 2% and 7% respectively of those who received non-custodial sentences.
- Looking at reconviction rates for community supervision disposals only (probation order, community service order and combination order),<sup>1</sup> the two-year reconviction rate was 36%.
- Those released on a custody probation order<sup>2</sup> had a lower two-year reconviction rate (36%) compared to those discharged directly from custody (51%).
- When examining the reconviction rates for all disposals, it is noted that those on combination orders have the highest rate of reconviction (55%). However, as only 18 offenders subject to this disposal were included in the analysis, these figures should be treated with caution. The next highest reconviction rate related to those released from custody (51%).
- Overall reconviction rates appear to reduce with age: 29% of those aged 18 to 20 who received non-custodial sentences reoffended, compared to 12% of those aged 35 or over. For those released from custody, the figures were 70% and 30% respectively.
- Overall results showed that reconviction rates for offenders receiving any type of disposal increased with the number of previous convictions. For those with one or two previous convictions, 19% of both custodial and non-custodial groups were reconvicted within two years. This rate rose sharply for those with 11 or more previous convictions to 62% of the custodial group and 37% of the non-custodial group.

<sup>1</sup> A probation order can last between six months and three years. A community service order may be imposed on any individual aged 16 or over and is made on the basis of the number of hours which an offender must work in the community (ranging from 40 to 240 hours) during a period of 12 months. A combination order is a sentence that combines a probation order and a community service order; the period of probation supervision can last from one to three years and the community service part of the order can range from 40 to 100 hours and must be completed as instructed.

<sup>2</sup> A custody probation order is a sentence of the court requiring an offender to serve a period of imprisonment (the offence must justify 12 months or more) followed by a period of supervision in the community (the period of supervision will be for one to three years commencing on the date of release), and is unique to Northern Ireland.

- As with the 2001 cohort, the highest reconviction rates for both custodial and non-custodial groups were for the offence categories of burglary, criminal damage and theft: 43%, 34% and 28% respectively for the non-custodial group and 67%, 62% and 71% for the custodial discharge group. For both groups, reconviction rates were lowest for sexual offences: 9% for the non-custodial group compared to 14% for the custodial group.

## Conclusion

As well as indicating the effectiveness of the interventions applied to particular cohorts of offenders, these figures can also provide useful information when planning the future direction and implementation of interventions. Issues raised by this research include how best resources could be targeted towards young offenders, repeat offenders and those involved in property offences. This information has also been used to inform decisions about the review of Northern Ireland's criminal justice legislation, specifically the expansion of post-release community supervision.

Although not directly comparable, the findings from the 2001 and 2002 cohorts suggest that those given community-based sentences either as a complete sentence or as an addition to custody are less likely to reoffend than those given custodial sentences only. Although some caution should be exercised when comparing across different disposals due to variations in the types and seriousness of crimes involved, these figures still provide support for the effectiveness of community-based supervision.

In addition, as the NIO uses Home Office standards to calculate reconviction rates, comparisons can be drawn with England and Wales and Scotland. Figures show that the PBNI's effective supervision of community-based sentences compares well using the same measures as other probation services (36% reconviction rate in Northern Ireland compared to 52% in England and Wales and 55% in Scotland).

While reconviction information is helpful to inform effectiveness debates, there are nonetheless recognised limitations, not least the amount of time taken to generate and publish information and the treatment of reconviction as an 'all or nothing measure'. The PBNI is of the view that the scope of the effectiveness debate could be widened to

include a broader range of information, for example on the severity and frequency of reconviction, or other more positive outcome measures such as the number of offenders with improved basic skills or the number who have gained employment.

The PBNI recognises that the next 12 to 18 months in the criminal justice system in Northern Ireland will bring about an unparalleled rate and sweep of change with the review of the sentencing framework and devolution to the Northern Ireland Assembly, and looks forward to informing and participating fully in the effectiveness debate.

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## Book Review

### **Race and Probation\***

**Edited by Sam Lewis, Peter Raynor, David Smith and Ali Wardak**

Cullompton: Willan Publishing, 2006

ISBN: 978-1-84392-143-1, 256 pages, paperback, GBP£25.99

*Race and Probation* sets out to explore probation's work with Black minority ethnic (BME) and racially motivated offenders. It sets the scene for this task by briefly identifying BME people's experiences of the criminal justice system and highlighting the importance of a greater understanding and awareness of this reality to the implementation of effective probation policy and practice.

The subject is addressed within four distinct but related sections. Part 1 provides a detailed background to the subject matter (Chapters 1 to 3), Part 2 explores the needs and experiences of BME offenders (Chapters 4 to 7), Part 3 looks at more recent developments in policy and practice (Chapters 8 to 11) and Part 4 is a summary chapter outlining conclusions.

Part 1 takes the reader through probation's historical record of responding to race as well as the criminal justice system's response to racially motivated offending. It also focuses on evidence of racial discrimination within the criminal justice system and the probation service. In relation to probation, it concludes that the responsibility to address racism has fallen primarily upon the shoulders of Black and Asian staff, with policy and practice being driven by local responses, as in the case of community unrest. Credit is given to probation for a degree of exploration of the issues that has not been evident within other agencies. It is proposed that incidents of racially motivated offending are

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hard to find due to anxious probation staff lacking confidence in how to address racist offending particularly within a groupwork context. Racist attitudes remain hidden at all levels of probation. Chapter 3 asks penetrating questions about probation's contribution to the interactive nature of law enforcement which can perpetuate a complex cycle of discrimination. There are lessons which can be applied locally, not only in relation to racism but also in relation to sectarian offending and the role of probation.

The first two chapters of Part 2 rely on research carried out by Calverley *et al.* in 2004, which was sponsored by the Home Office. These chapters explore the criminogenic needs of Black and Asian men and the extent of social exclusion they experience on probation as well as issues of confidence and 'legitimacy' as related to the criminal justice system. After a complex analysis of the research it is indicated that the criminogenic needs of BME probationers are on average lower than their white counterparts but yet they receive similar community sentences to white offenders with higher criminogenic needs. The possibility therefore has to be considered that BME people receive 'differential sentencing'.

Chapters 6 and 7 focus on the experience of female minority ethnic offenders and those of mixed heritage respectively, and reinforce the need to break out of traditional views of BME groups. The combined effect of a young increasing population experiencing socio-economic disadvantage and discrimination from criminal justice agencies, the authors of Chapter 7 propose, will 'contribute to their increased representation among the offending population'.

Part 3 commences with an examination of recent developments in exploring, designing and delivering programmes for BME offenders. Despite attempts to tackle discrimination, Chapter 8 again reminds us of Black and Asian people's negative experiences of the criminal justice agencies and argues that the responsibility to address this falls upon local service responses.

Chapters 9, 10 and 11 explore issues of specialist provision for BME offenders, minority ethnic people's experiences of supervision and programmes and what might be effective in working with racially motivated offenders respectively. The importance of locally relevant information to commission culturally specific work is stressed but it is acknowledged that more questions are raised than answered in terms of the benefits of specialist services for BME offenders. In terms of

groupwork, there is support for mixed groups but it is suggested that programmes should include some content relevant to minority ethnic offenders such as the effects of racism. In working with racially motivated offenders the concept of shame is explored and how it can build into the more familiar cognitive-behavioural work looking at the offender's emotional responses and self-control. It is argued that for probation to be effective in this work it needs to move beyond the enforcement of orders and punishments and to engage with those it supervises in a more complex way, daring to suggest that probation develop again the old practice of using relationships within probation practice.

Part 4 rehearses the key messages of the book, which are summarised in a brief five-page chapter. This is helpful in that, although the content of many chapters is readable and immediately accessible, some of the detailed studies contained within the book are more difficult to penetrate.

For those used to dealing with research as a matter of course the detailed nature of some of the material may not pose a problem. For the practitioner keen to get to the key concepts that will inform their work, this level of detail may provide more of a challenge. For this very reason *Race and Probation* meets a broad spectrum of needs. What the book unquestionably does is provide material that raises the challenge of addressing race and crime at a personal and practitioner level, at an organisational and policy level and with those we supervise to reduce offending. At a time when the peoples living on this island are increasingly diverse, in a way that could not have been imagined even a short time ago, the information in this book is well worth reading and should not be ignored.